

IN THE COURT OF APPEALS OF IOWA

No. 8-729 / 08-0384
Filed December 31, 2008

PATRICK A. HARRISON,
Plaintiff-Appellant,

vs.

**STATE OF IOWA and IOWA DEPARTMENT
OF ADMINISTRATIVE SERVICES,**
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,
Judge.

Patrick A. Harrison appeals from a district court summary judgment ruling
in favor of the defendants. **AFFIRMED.**

James L. Sayre of James L. Sayre, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, and Mark Hunacek, John R.
Lundquist, and Heather L. Palmer, Assistant Attorneys General, for appellees.

Heard by Sackett, C.J., and Eisenhauer and Doyle, JJ.

DOYLE, J.

Patrick A. Harrison appeals from a district court summary judgment ruling in favor of the defendants. Harrison contends the district court erred in holding that he could not recover on a claim for breach of contract as a matter of law. Upon our review, we affirm the judgment of the district court

I. Background Facts and Proceedings.

The following facts are undisputed. On September 25, 2004, Harrison commenced employment as an electrician with the Iowa Department of Administrative Services (DAS). As an electrician, Harrison was a covered employee under the collective bargaining agreement (CBA) by and between the State and the American Federation of State, County, and Municipal Employees, Council 61 AFL-CIO (Union). Under the CBA, the State has the “exclusive power, duty and right to . . . [s]uspend, discipline or discharge employees for proper cause.” Additionally, under the CBA, the Union and the State “recognize the authority of the [State] to suspend, discharge or take other appropriate disciplinary action against employees for just cause.”

On June 21, 2005, Harrison severed a telephone cord with his personal buck knife while another employee was talking on that telephone with a contractor. Based upon the incident, the DAS terminated Harrison’s employment. The DAS stated that Harrison’s actions were in violation of the DAS’s work rules and its violence-free workplace policy. Harrison did not receive any discipline prior to his termination, nor did he receive any progressive discipline from the DAS involving the incident.

Harrison timely grieved his termination pursuant to the CBA. Harrison's grievance proceeded through step three of the CBA's grievance procedures, at which time, on November 7, 2005, the DAS denied Harrison's grievance. On March 21, 2006, the Union, Harrison's certified bargaining representative, refused to take the matter to arbitration, step four of the CBA's grievance procedures. Harrison conceded that he did not have the individual right to take his grievance to arbitration under the provisions of the CBA.

On May 25, 2006, Harrison filed a "Prohibited Practice Complaint" against the Union. The Iowa Public Employment Relations Board (PERB) set the hearing on Harrison's complaint for November 15, 2005, which was continued. On January 8, 2007, Harrison and the Union filed a joint dismissal of the "Prohibited Practice Complaint" pending before the PERB. The same day, the PERB entered an order granting the joint dismissal.

On February 15, 2007, Harrison filed an action in district court against the State and DAS (hereinafter referred to collectively as the State). Harrison alleged that the State breached the collective bargaining agreement between the State and the Union by terminating his employment without just cause. Harrison further asserted a claim for unpaid wages pursuant to Iowa Code section 91A (2007). The State filed its answer on March 19, 2007, denying Harrison's claims and affirmatively asserting that Harrison failed to exhaust required remedies under the CBA and that the district court was without jurisdiction and/or authority to hear Harrison's claims.

Thereafter, the parties filed competing motions for summary judgment. On February 11, 2008, the district court entered its ruling granting the State's

motion, finding both of Harrison's claims were derivative of the CBA and Harrison failed to exhaust the remedies outlined in the CBA or prove that the Union breached the duty of fair representation. Additionally, the court found it lacked subject matter jurisdiction over the necessary breach of the duty of fair representation element of Harrison's claims. As such, it denied Harrison's motion, as it concerned the merits of the case, and dismissed Harrison's petition.

Harrison appeals. He contends the district court erred in holding he could not recover on a claim for breach of contract as a matter of law.

II. Scope and Standards of Review.

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.4; *Alliant Energy-Interstate Power & Light Co. v. Duckett*, 732 N.W.2d 869, 873 (Iowa 2007). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. No fact question arises if, as here, the only conflict concerns legal consequences flowing from undisputed facts. *McNertney v. Kahler*, 710 N.W.2d 209, 210 (Iowa 2006).

III. Discussion.

Harrison contends the district court erred in holding that he could not recover on a claim for breach of contract as a matter of law. Specifically, Harrison argues that he is only required to attempt to exhaust the contractual

remedies set forth in the CBA, and that he in fact did everything he could do to exhaust the contractual remedies. Harrison further argues that his claim against his employer should not hinge on whether the union breached its duty of fair representation. Upon our review, we affirm the judgment of the district court.

In order to promote 'harmonious and cooperative relationships between government[s] and [their] employees,' the Public Employment Relations Act ("the Act") authorizes collective bargaining between public employers and their employees, establishes procedures for the processing of employee grievances, and authorizes binding arbitration of disputes arising from claimed violations of collective bargaining agreements.

Kucera v. Baldazo, 745 N.W.2d 481, 483 (Iowa 2008) (citing Iowa Code §§ 20.1, .18 (2005)). To that end, the legislature created the PERB "to implement the provisions of this chapter and adjudicate and conciliate employment-related cases involving the state of Iowa and other public employers and employee organizations." Iowa Code § 20.1. Among other things, the PERB's powers and duties include "[a]djudicating prohibited practice complaints including the exercise of exclusive original jurisdiction over *all claims* alleging the breach of the duty of fair representation imposed by section 20.17." *Id.* (emphasis added).

Pursuant to the Act, if a public employee is covered by a CBA and the CBA sets forth grievance procedures, the employee is required to follow said procedures. *Id.* § 20.18. Nevertheless, Iowa Code section 20.17(5) provides that the "[t]erms of any collective bargaining agreement may be enforced by a civil action in the district court of the county in which the agreement was made upon the initiative of either party."

Here, the parties agree Harrison, prior to his termination, was a covered employee under the CBA between the State and the Union. The CBA at issue here sets forth a specific grievance procedure for complaints “alleging a violation involving the application and interpretation of the provisions of [CBA].” The CBA also provides that its grievance procedure shall be “exclusive” and “shall replace any other grievance procedure for adjustment of any disputes arising from the application and interpretation of this Agreement.”

It is undisputed that the fourth step of the CBA’s grievance procedure, “Grievance Arbitration,” was not completed in the present case because the Union, against Harrison’s wishes, did not approve of proceeding to arbitration. Harrison contends he did everything he could do to exhaust the CBA’s remedies and should not be precluded from pursuing his contractual claim. Conversely, the State contends Harrison was required to exhaust his contractual remedies, and that if he did not, he was required to establish the Union breached its duty of fair representation, known as a “hybrid” claim. Both parties cite *O’Hara v. State*, 642 N.W.2d 303 (Iowa 2002), in support of their arguments.

In *O’Hara*, a factually similar case, the Iowa Supreme Court was faced with the question of whether the PERB has exclusive, original jurisdiction over public employee claims against (1) the union for breach of the duty of fair representation and (2) the public employer for breach of the collective bargaining agreement, based upon amendments to chapter 20 in 1990. *O’Hara*, 642 N.W.2d at 305, 311. There, an employee of the Iowa Department of General Services (IDGS), whose position fell within the collective bargaining unit governed by a CBA between the State and the Union, was terminated from his

employment. *Id.* The employee grieved the termination through the third step, at which time the employee's termination was upheld. *Id.* at 305-06. The employee asked for the Union's assistance to appeal the decision and to take the grievance to arbitration pursuant to the CBA. *Id.* at 306. Although the Union appealed the decision, the Union ultimately withdrew the employee's grievance from arbitration. *Id.* The employee appealed the Union's decision to withdraw his grievance, and the Union advised him it would take no further action on his grievance. *Id.*

Thereafter, the employee filed a prohibited practice complaint against the Union with the PERB alleging that the Union engaged in prohibited practices within the meaning of Iowa Code section 20.17(1) (1995). *Id.* While his prohibited practice complaint was still pending before the PERB, the employee filed an action in the district court against the State of Iowa and the IDGS (hereinafter referred to collectively as the State). *Id.* He alleged, among other things, that the State breached the collective bargaining agreement between the State and the Union by terminating his employment without just cause. *Id.* The State moved to dismiss the employee's action, contending that the district court lacked subject matter jurisdiction, based on amendments to Iowa Code chapter 20. *Id.* at 306-07. The employee then joined the Union as a defendant, and Union filed a motion to dismiss on the same grounds as the State. *Id.* at 307. The district court granted the both the State and the Union's motions, concluding amendments to chapter 20 gave the PERB exclusive original jurisdiction over fair representation claims, and consequently, it was without jurisdiction to entertain

the employee's claims against the State and the Union. *Id.* The employee appealed. *Id.*

On appeal, the Union and amicus argued that the amended language of section 20.1(2), which granted the PERB exclusive original jurisdiction over "all claims" alleging the breach of the duty of fair representation, included claims against employers for breach of the CBA. *Id.* at 310-11, 312. The amicus specifically argued that all "hybrid" claims against an employer necessarily involve claims alleging the union's breach of its fair representation duty, because in a hybrid claim an employee is required to allege and prove the union breached its duty of fair representation as a prerequisite to recovering for a claimed breach of the CBA against the employer. *Id.* at 310.

The Iowa Supreme Court acknowledged the amicus's discussion of hybrid claims, explaining:

[W]e agree that a "hybrid" claim and a claim for a breach of a fair representation duty are related. However, we do not agree that they are interchangeable. The United States Supreme Court has made this clear:

[A hybrid] suit, as a formal matter, comprises two causes of action. The suit against the employer rests on § 301 [of the federal Labor Management Relations Act, 29 U.S.C. § 185], since the employee is alleging breach of the collective-bargaining agreement.¹ The suit against the union is one for breach of the union's duty of fair representation, which is implied under the scheme of the National Labor Relations Act. "Yet *the two claims are inextricably interdependent. 'To prevail against either the company or the Union, . . . [employee-plaintiffs] must not only show that their discharge was contrary to the contract but must also carry the burden of demonstrating a breach of duty by the Union.'*" *The employee may, if he chooses, sue one defendant and not the other; but the case he must prove is the same whether he sues one, the other, or both.* The suit is thus not a straightforward breach of

¹ Harrison, as an employee of a subdivision of this state, is not covered by the Labor Management Relations Act. See 29 U.S.C. § 152(2) (2007).

contract suit under § 301 . . . but a hybrid § 301/fair representation claim, amounting to “a direct challenge to “the private settlement of disputes under [the collective-bargaining agreement].”

Id. at 312-13 (quoting *DelCostello v. International Bhd. of Teamsters*, 462 U.S. 151, 164-65, 103 S. Ct. 2281, 2290-91, 76 L. Ed. 2d 476, 489 (1983)) (other citations omitted) (emphasis in original).

Although our supreme court ultimately rejected the Union and the amicus’s arguments that the language “all claims” included claims against employers for alleged breaches of CBAs, the court concluded that under the plain language of Iowa Code chapter 20, “[a] public employee must raise claims against the union for breach of the fair representation duty before the PERB, while at the same time such an employee may raise a claim for breach of a collective bargaining agreement in the district court.” *Id.* at 313. In so holding, the court stated:

The amendments are silent . . . when it comes to a public employee’s claims against a public employer for breach of a [CBA]. The amendments did not add language to address claims for breach of a [CBA]. *Nowhere in chapter 20 is there any mention about jurisdiction over such claims and the proof required to establish those claims. Moreover, the amendments made no change to section 20.17(5), which permits “either party” to a collective bargaining agreement to enforce the terms of such agreements in a civil action in the district court.* And, as mentioned, we held in [*Norton v. Adair County*, 441 N.W.2d 347 (Iowa 1989)] that the language of section 20.17(5) was “broad enough to include . . . a third-party beneficiary [such as] the employee.”

Therefore, a reading of the plain language of chapter 20, as amended, leads to the conclusion that (1) the PERB has exclusive original jurisdiction over a public employee’s claim for breach of the fair representation duty against the union, and (2) a public employee may raise a claim for breach of a collective bargaining agreement against the public employer in the district court.

The district court therefore correctly held that it lacked subject matter jurisdiction over [the employee’s] claim for breach of the Union’s duty of fair representation. However, the court erred in

holding that it lacked such jurisdiction over [the employee's] claim against the State for breach of the collective bargaining agreement.

Id. at 312 (internal citations omitted) (emphasis added). The court acknowledged that “[t]his could lead to several practical problems,” but noted it is bound by what the legislature said, not by what it should or might have said, and consequently could not read into chapter 20 language that simply is not there. *Id.* at 313-14.

The facts of *O’Hara* make that case distinguishable from the instant case. Because Harrison did not exhaust the contractual remedies in the CBA, he was required to assert a claim against the Union for breach of its duty of fair representation. In *O’Hara*, the employee’s claim against the Union for breach of its duty of fair representation was pending before the PERB at the same time as his breach of CBA lawsuit was pending against the State in district court. Unlike the employee in *O’Hara*, Harrison dismissed his complaint filed with the PERB against the Union prior to filing his breach of CBA lawsuit against the State in district court. Consequently, the district court lacked subject matter jurisdiction to hear Harrison’s breach of CBA claim against the employer. Accordingly, we conclude the district court did not err in concluding that Harrison failed to exhaust his contractual remedies outlined in the applicable collective bargaining agreement and thus could not bring a separate, contractually based claim against the State.

IV. Conclusion.

Because we conclude the district court did not err in concluding that Harrison failed to exhaust his contractual remedies outlined in the applicable collective bargaining agreement and thus could not bring a separate,

contractually based claim against the State, we affirm the judgment of the district court.

AFFIRMED.