STATE OF MICHIGAN

COURT OF APPEALS

KIMBERLY KRZEMIEN, HELENE MEEKS, KELLI ONUFRAK, JOANN STRADER, and REGINA WEST,

Plaintiffs-Appellants,

v

CITY OF RIVER ROUGE,

Defendant-Appellee.

UNPUBLISHED
December 10, 1999

No. 204102
Wayne Circuit Court
LC No. 96-622569 AW

Before: Doctoroff, P.J., and Holbrook and Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the order denying their motion for a writ of mandamus or, alternatively, summary disposition, and granting summary disposition to defendant. We affirm.

The relevant facts are largely undisputed. Plaintiffs are employees of defendant city, and are all members of the International Union of the American Federation of State, County and Municipal Employees and Council #25, Local Union 1391 ("the Union"), which was their exclusive collective bargaining agent. A collective bargaining agreement ("the Agreement") covered their employment during the period from July 1, 1990, through June 30, 1995. Under the terms of the Agreement, employees hired before September 1, 1992, received higher wages and benefits than those hired after that date.

On May 18, 1993, defendant city and the Union reached an agreement for settling a dispute over the employment status of certain employees who were not union members, but who allegedly were performing bargaining unit work. Pursuant to a "Letter of Understanding," which was ratified by both defendant city and the Union, the city and Union agreed to accrete a list of employees, which included plaintiffs, to the Union's bargaining unit. The "Letter of Understanding" provides in pertinent part:

> 2. That further included in that list is each employee's seniority date, wages and fringe benefit package applicable to them. These provisions will govern these employees until the negotiation of a contract succeeding the contract expiring June 30, 1995.

* * *

4. That this agreement shall serve as the final resolution and settlement of this matter and no grievances will be filed as a result of this agreement.

The "Letter of Understanding" subsequently became Article 46 of the Agreement, which was subtitled "Letter of Understanding - Accretion of Non-Union Employees."

Article 13 of the Agreement provides for a four-step grievance procedure, which included arbitration. Also, Article 12 provides, in pertinent part:

> Grievances must be filed within fifteen (15) working days of the occurrence of the event giving rise to the grievance or knowledge of its occurrence. The parties, recognizing that an orderly grievance procedure is necessary, agree that each step must be adhered to.
>
> Step 1
>
> Any employee having a grievance shall first take up the matter with his immediate supervisor and his steward, if so desired by the employee. The supervisor shall attempt to adjust the matter and shall respond to the steward or employee within five (5) working days.
>
> Step 2
>
> If the grievance has not been settled, it shall be presented in writing by the union steward, or the union grievance committee to the department head within five (5) days after the supervisor's response is due; the department head shall respond to the union steward or the grievance committee in writing within five (5) working days.
>
> Step 3
>
> If the grievance still remains unadjusted, it shall be presented by the union steward, union representative, or grievance committee to the civil service commission in writing (with a copy of the response to the local union president) within five (5) working days.
>
> Step 4
>
> If the grievance is still unsettled, either party may, within thirty (30) days after reply of the civil service commission is due, by written notice to the other, request arbitration or, as an option, federal mediation and conciliation service. . . .

* * *

> The decision of the arbitrator shall be final and binding upon the employer, the union, and the grievant, provided that the arbitrator shall not insert his judgment, wisdom, or reasoning for that of the employer or the union. . . .

On July 10, 1995, plaintiffs submitted a class-action grievance ("Grievance I-95") seeking an adjustment of their seniority dates. As the trial court noted in its opinion, "[t]he gist of the grievance was that the plaintiffs had been hired before September 1, 1992, but the City was treating them for the purposes of pay and fringe benefits as employees hired after September 1, 1992." The Union, acting on behalf of plaintiffs, presented the grievance to defendant city, which denied it in a letter from the mayor and city council to the Union. In that letter, the mayor and city counsel acknowledged that, while there was a difference between plaintiffs' original dates of hire and their Union seniority dates, defendant city and the Union had agreed to this.

Thereafter, the Union presented plaintiffs' grievance to the Civil Service Commission ("Commission"), which granted the grievance. Neither party requested arbitration. When defendant city refused to implement the Commission's decision, plaintiffs commenced this action to obtain a writ of mandamus or, alternatively, summary disposition, to enforce the Commission's decision. Following a hearing, the trial court issued an opinion and order denying plaintiffs' motion and granting summary disposition in favor of defendant.

The grant or denial of a writ of mandamus is reviewed for an abuse of discretion. *Rhode v Dep't of Corrections*, 227 Mich App 174, 178; 578 NW2d 320 (1997). In *Musselman v Governor*, 448 Mich 503, 521; 533 NW2d 237 (1995), our Supreme Court observed:

> To obtain a writ of mandamus, the plaintiff must have a clear legal right to the performance of the specific duty sought to be compelled, and the defendants must have a clear legal duty to perform the same. . . . Mandamus is an extraordinary remedy that may lie to compel the exercise of discretion, but not to compel its exercise in a particular manner.

This Court reviews a trial court's grant of summary disposition de novo. *Dep't of Social Services v Baayoun*, 204 Mich App 170, 173; 514 NW2d 522 (1994). In this case, the trial court appeared to grant summary disposition in favor of defendant under MCR 2.116(C)(5) [plaintiffs lacked the capacity to sue] and (C)(8) [failure to state a claim]. When reviewing a ruling on a motion under MCR 2.116(C)(5), we must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties. *Id.* A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim to determine whether the opposing party's pleadings allege a prima facie case. *Stehlik v Johnson (On Rehearing)*, 206 Mich App 83, 85; 520 NW2d 633 (1994). The trial court must consider all well-pleaded facts in favor of the nonmoving party and should grant the motion only if the allegations fail to state a legal claim. *Id.*; *Radtke v Everett*, 442 Mich 368, 373-374; 501 NW2d 155 (1993).

We conclude that defendant city did not have a clear legal duty to implement the Commission's decision and, therefore, the trial court did not abuse its discretion by denying plaintiffs' request for a writ of mandamus.

First, the trial court did not err when it determined that defendant city did not have a clear legal duty to implement the decision of the Commission for the reason that the parties, by not seeking arbitration, had not exhausted their administrative remedies under Article 13 of the Agreement. In this regard, we agree with the following reasoning employed by the trial court.

> In the case at bar the plaintiffs' Union did not exhaust all of the remedies available to it under the Agreement. Yet the unambiguous language of the Agreement required the parties to adhere to each step of the procedure. *Contrary to plaintiffs' intimation, the provisions of Step 4 were not limited to only those who received an unfavorable decision at step three. Rather that provision allowed either party to seek arbitration, not if it received an unfavorable decision by the Commission, but rather "If the grievance is still unsettled*." Hence as in *AFSCME* [*v Highland Park Board of Ed*, 214 Mich App 182, 187; 542 NW2d 333 (1995), aff'd 457 Mich 74; 577 NW2d 79 (1998)], a party seeking judicial action to implement a decision made in the grievance process was required to exhaust its administrative remedies under the Agreement, and this meant proceeding through arbitration. [Emphasis provided.]

The trial court also ruled that defendant city did not have a clear legal duty to implement the decision of the Commission because the Commission had no authority to decide the merits of plaintiffs' grievance. Once again, we agree with the trial court's analysis of this issue:

> Upon review of the language of the Agreement the court concludes that this case represents one of those where the parties to a collective bargaining agreement have clearly sought to remove a particular subject matter from the grievance procedure otherwise set up in the collective bargaining agreement. In the case at bar Article 13 certainly contains broad language that suggests that any dispute arising out of the Agreement is subject to its grievance procedure. Doubtless this would ordinarily include the issue of whether an employee was receiving the wages and benefits provided for in the Agreement. *Yet Article 46 represented an exception to the broad terms of Article 13. In that article the parties agreed that certain employees, among them the plaintiffs, would be deemed within the collective bargaining unit, and more importantly for our purposes, went on to expressly fix their salaries and benefits. With respect to these provisions the language of Article 46 is clear and express. It provides, "[N]o grievances will be filed as a result of this agreement (i.e., the provisions of Article 46). In its most narrow sense, this language would preclude employees covered by Article 46 from filing a grievance over the substance of its provisions. Since the amount of plaintiffs' pay and benefits was expressly governed by Article 46, it follows that they had no right to file grievances over these matters, and hence, invoke the grievance procedures of Article 13* since the text of Article 13 reflects that it is by the filing of a grievance at Step 1 that an employee,

through the Union, can ultimately receive a hearing before the Commission. Absent a grievance, the Commission simply would have nothing to decide. *Given the subject matter of the grievance the court finds that it was not subject to the grievance procedure of Article 13, and hence, was not properly before the Commission*. [Emphasis added.]

The trial court also did not err when it additionally concluded that plaintiffs were not the proper parties to seek enforcement of the Commission's decision. We agree with the trial court that *Saginaw v Chwala*, 170 Mich App 459; 428 NW2d 695 (1988), is factually distinguishable from this case and, therefore, plaintiffs' reliance on that case is misplaced. Analyzing the provisions of Article 13 of the Agreement, the trial court properly concluded that, while individual employees could pursue a grievance at the Step 1 level, only a union agent or the grievance committee could pursue a grievance at later stages, including the initiation of proceedings to enforce the Commission's decision. Accordingly, under the provisions of Article 13, only the union or its agent, not an individual employee, has standing to enforce the Commission's ruling. See *Cleveland v Porca Co*, 38 F3d 289, 296-297 (CA 7, 1994); *Black-Clawson Co v Int'l Ass'n of Machinists*, 313 F2d 179, 183-184 (CA 2, 1962).

For the foregoing reasons, the trial court properly denied plaintiffs' request for a writ of mandamus, and properly granted summary disposition in favor of defendant.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly