

STATE OF MICHIGAN
COURT OF APPEALS

DOUGLAS DEJAEGHERE,

Plaintiff-Appellant,

v

CITY OF BIRMINGHAM and POLICE
OFFICERS ASSOCIATION OF MICHIGAN,

Defendants-Appellees.

UNPUBLISHED

December 30, 2003

No. 242411

Oakland Circuit Court

LC No. 2000-026701-CL

Before: Wilder, P.J., and Griffin and Cooper, JJ.

PER CURIAM.

Plaintiff Douglas Dejaeghere appeals as right from the trial court's order granting summary disposition in favor of defendant Police Officers Association of Michigan (POAM), pursuant to MCR 2.116(C)(10), with regard to plaintiff's claim for breach of POAM's duty of fair representation, and dismissing plaintiff's claim for breach of a collective bargaining agreement (CBA) against defendant City of Birmingham (hereafter the "City") as moot. We affirm.

Plaintiff, a former Birmingham police officer, brought this action after POAM failed to request arbitration of a thirty-day suspension without pay and plaintiff's subsequent termination of employment on January 18, 2000 for violating various policies, procedures, rules and regulations of the City's police department. At the time of his discharge, plaintiff had a lengthy history of disciplinary actions. These disciplinary actions included a prior termination of his employment in 1996, which an arbitrator modified in 1998 to a suspension without pay. Plaintiff's most recent disciplinary actions stemmed from two separate incidents, one involving plaintiff's improper use of emergency equipment on his patrol vehicle and the other involving plaintiff's unauthorized possession and use of a police department video camera. POAM pursued plaintiff's grievances concerning these matters to the fifth step of the grievance procedure set forth in a collective bargaining agreement with the City, but declined to pursue the sixth step. The sixth step of the grievance procedure provided:

[s]hould the City Commission elect to waive Step 5 or in the event the City Commission renders a decision which does not satisfactorily settle the grievance, the Union may submit the matter to final and binding arbitration by notifying the other party and the Federal Mediation an [sic] Conciliation Service within fifteen (15) days . . . of receipt of the Commission's decision or its decision to waive."

We review de novo plaintiff's challenge to the trial court's determination that POAM was entitled to summary disposition under MCR 2.116(C)(10) with regard to whether POAM breached its duty of fair representation.¹ The central issue we must decide is whether POAM's conduct toward plaintiff was arbitrary, discriminatory, or in bad faith.² "An individual employee does not have the absolute right to have a grievance taken to arbitration, even where, in some instances, the employee's grievance against the employer may have merit under the terms of the applicable collective bargaining agreement."³ The union's considerable discretion in deciding which grievances should proceed to arbitration includes latitude in investigating the claimed grievances and the power to abandon frivolous claims.⁴

The evidence in this case demonstrates that POAM, through its agents, processed plaintiff's grievances concerning his suspension and later termination to the fifth step of the grievance procedure established under the CBA before declining to pursue arbitration. The evidence regarding the investigation conducted by POAM's assistant general counsel, Peter Cravens, included, among other things, conversations with plaintiff about the incidents underlying the disciplinary actions and inquiries to determine whether plaintiff's claim of disparate treatment could be substantiated. The record also demonstrates that Mr. Cravens was familiar with plaintiff's disciplinary history, having been involved in a prior grievance against plaintiff that was arbitrated.

We note that when considering a claim that a disciplinary action was taken without just cause, arbitrators, in the absence of contrary language in the CBA, are generally permitted to determine that a disciplinary action was too severe, despite some infraction on the part of the employee.⁵ But viewing the evidence in a light most favorable to plaintiff in this case, there is no genuine issue of material fact that Mr. Cravens could reasonably question POAM's ability to prevail at arbitration with regard to having the thirty-day suspension or plaintiff's later discharge modified or set aside. This is especially true in light of plaintiff's substantial disciplinary record. On this record, we conclude that a reasonable trier of fact could not determine that POAM, through its agents, acted in an impulsive, irrational, or unreasonable manner, or with little care or indifference to plaintiff's interests.⁶

Absent a genuine issue of material fact for trial with regard to whether POAM breached its duty of fair representation, the trial court properly granted POAM's motion for summary disposition under MCR 2.116(C)(10).⁷ Further, because plaintiff has failed to show any basis for

¹ *Taylor v Modern Engineering, Inc*, 252 Mich App 655, 658; 653 NW2d 625 (2002).

² *Silbert v Lakeview Ed Ass'n, Inc*, 187 Mich App 21, 25; 466 NW2d 333 (1991).

³ *Id.* at 25-26; see also *Goolsby v Detroit*, 419 Mich 651, 663; 358 NW2d 856 (1984).

⁴ *Goolsby, supra* at 663; see also *Vaca v Sipes*, 386 US 171; 87 S Ct 903; 17 L Ed 2d 842 (1967).

⁵ See *Police Officers Ass'n of Michigan v Manistee Co*, 250 Mich App 339, 344-346; 645 NW2d 713 (2002).

⁶ See *Goolsby, supra* at 679.

⁷ *Taylor, supra* at 658.

disturbing the trial court's determination that this ruling rendered plaintiff's claim against the City moot, we also affirm the trial court's dismissal of plaintiff's breach of contract action against the City.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard Allen Griffin
/s/ Jessica R. Cooper