

STATE OF MICHIGAN
COURT OF APPEALS

MARQUETTE AREA PUBLIC SCHOOLS, and
MARQUETTE AREA PUBLIC SCHOOLS
BOARD OF EDUCATION,

UNPUBLISHED
January 19, 2006

Plaintiffs/Counter Defendants-
Appellees,

v

MARQUETTE AREA EDUCATION
ASSOCIATION,

No. 265191
Marquette Circuit Court
LC No. 05-042404-CL

Defendant/Counter Plaintiff-
Appellant.

Before: Zahra, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's grant of summary disposition for plaintiffs in this action seeking declaratory and injunctive relief concerning arbitration under a collective bargaining agreement. We affirm.

I

This case arises from plaintiffs' termination of James Cihak's employment as the girls' head track coach for Marquette Area Public Schools. Cihak was employed as the girls' head track coach for the 2003-2004 school year. He was not a teacher; he was employed only in the extracurricular coaching position.

In March of 2004, plaintiffs notified Cihak that his employment was terminated. Defendant subsequently filed a grievance on behalf of Cihak, followed by a demand for arbitration under the parties' Collective Bargaining Agreement (CBA). Plaintiffs rejected Cihak's grievance and demand for arbitration. It was plaintiffs' position that Cihak's termination was not governed by the CBA because he was not a member of the collective bargaining association, and, further, the CBA precluded arbitration of a grievance concerning termination from employment in an extracurricular sports coaching position.

Plaintiffs filed this action in the circuit court seeking injunctive and declaratory relief. Defendant filed a counter-complaint for breach of contract. The parties waived oral argument, and the trial court issued a decision in favor of plaintiffs. The court enjoined arbitration of Cihak's grievance and granted summary disposition for plaintiffs. Reading the plain language of the CBA, the trial court determined that Cihak was not a member of defendant's bargaining unit, and thus defendant was not the exclusive bargaining representative of Cihak. Consequently, defendant cannot arbitrate a grievance filed on Cihak's behalf.

II

This Court reviews de novo a trial court's grant of summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition under MCR 2.116(C)(10) is properly granted when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). The court considers the pleadings, affidavits, depositions, admissions and other documentary evidence in the light most favorable to the nonmoving party. *Id.*

III

Defendant argues that the trial court erred in finding that the CBA does not cover individuals like Cihak who are non-certificated and "hired to fill vacant bargaining unit positions." We disagree.

Article I, Section 1, of the CBA provides in relevant part:

The bargaining unit shall consist of:

All regularly scheduled full-time and part-time certificated teaching personnel under probationary contract or continuing tenure, including counselors, alternative school personnel, department heads, nurses, social workers, psychologists, therapists, Planetarium Director, and Coordinators; but excluding . . . [specifically named administrative and other positions], and all other employees including supervisors.

We agree with the trial court that under the plain language of Article I, Section 1, Cihak was not a member of the bargaining unit. It is undisputed that Cihak is not a certificated teacher nor was he employed in a position specifically included in the bargaining unit. Accordingly, he is not a member of the bargaining unit, and, thus, absent some other provision to the contrary, Cihak's employment is not governed by the CBA. We find no other provision of the CBA under which Cihak's employment is governed by the CBA.

We are unpersuaded by defendant's argument that reading Article I, Section 1 together with other provisions, supports a conclusion that Cihak's employment was governed by the CBA. The CBA provisions in Article I, Section 2, concerning the terms "employee," "member," or "teacher" do not operate to make Cihak's employment subject to the CBA. Section 2 provides in relevant part:

The terms “employee”, “member” or “teacher” when used in this Agreement refer to all employees in the above-described bargaining unit unless the context requires otherwise.

We are unconvinced that the phrase “unless the context requires otherwise” has any specific bearing on the issue before us. Further, defendants have failed to show how the CBA provisions for filling special assignment vacancies in Article X, Section 7, or other tangentially related provisions, support their argument that Cihak is entitled to pursue his grievance and arbitration under the CBA. Any argument in this regard is tenuous and does not overcome the plain language of Article I, Section 1, which clearly defines the bargaining unit. The fact that other provisions cited by defendant address extracurricular positions with respect to bargaining unit members does not warrant a conclusion that nonmember extracurricular employees are governed by the CBA because they are hired to fill positions that could be filled by bargaining unit members.

IV

Defendant argues that an issue of material fact exists regarding whether this matter is subject to arbitration, and, therefore, the court erred in concluding that the grievance was not substantively arbitrable. We disagree.

Article III, Section 2—Step Three, “Grievance Procedure,” sets forth the powers of the arbitrator. Paragraph 3B provides that the arbitrator shall have no power to rule on any of the following:

* * *

3. The termination of services or failure to re-employ any teacher to a position on the extracurricular schedule.

Under the express provisions of Paragraph 3B, termination from employment in an extracurricular position is not subject to arbitration under the CBA. Even if Cihak were considered a “teacher” for purposes of the CBA, termination of his employment from the coaching position would not be subject to arbitration. The fact that a previous arbitration decision determined that the language of Article III did not mandate dismissal of a teacher-coach’s grievance does not raise a triable question of fact in this case.

V

Defendant argues that plaintiffs were not entitled to dismissal of defendant’s counterclaim and that the trial court failed to address the counterclaim. We find no error.

Because the trial court correctly concluded that Cihak is not a member of defendant’s bargaining unit and is not represented by defendant with respect to the CBA, defendant’s counterclaim is properly dismissed. Defendant’s breach of contract claim against plaintiffs was premised on Cihak’s alleged wrongful discharge and is therefore untenable given the finding that Cihak’s employment is not governed by the CBA.

Affirmed.

/s/ Brian K. Zahra

/s/ William B. Murphy

/s/ Janet T. Neff