

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN STATE UNIVERSITY
ADMINISTRATIVE PROFESSIONAL
ASSOCIATION, MEA/NEA,

UNPUBLISHED
December 16, 2008

Respondent-Appellee,

v

No. 278415
MERC
LC No. 05-000044

JOHN MORALEZ,

Charging Party-Appellant.

Before: Fitzgerald, P.J., and Bandstra and O'Connell, JJ.

PER CURIAM.

Charging Party John Moralez appeals as of right from an order of the Michigan Employment Relations Commission (MERC) granting summary disposition for respondent union, Michigan State University Professional Association, MEA/NEA. Moralez claims that MERC erred in finding that the union did not breach its duty of fair representation and that MERC erred in denying his motions to reopen the record, to strike respondent's pleadings, and to amend his charges. We affirm.

Moralez worked at WKAR-TV, a public television station operated by Michigan State University (MSU), as a television producer and host. Due to a number of budgetary cuts, WKAR-TV laid off Moralez in July 2003. Moralez decided at that time not to pursue a grievance related to his lay off.

In February 2005, Moralez advised the union that he would like a grievance to be filed on his behalf because another WKAR-TV employee who had been laid off at the same time as Moralez had received a favorable arbitration award. The union informed Moralez that his situation was different because the other employee was a member of a different collective bargaining unit.

Moralez nonetheless chose to proceed with the grievance process, and the union filed a grievance. Following a hearing on the grievance on April 7, 2005, MSU denied Moralez's grievance.

The union thereafter advised Morales that the grievance would not be pursued to arbitration because it was untimely and unlikely to succeed on the merits. Moralez appealed the

union's decision to the union's executive board, which denied the appeal. Moralez then appealed that decision to the executive committee, which upheld the union's decision not to proceed to arbitration. Having no further internal appeals, Moralez filed suit before MERC alleging that the union violated its duty of fair representation under the Public Employment Relations Act (PERA) by refusing to proceed to arbitration. MERC determined that Moralez's claim was timely filed, but that summary disposition in favor of the union was appropriate because the union did not breach its duty of fair representation in deciding not to pursue Moralez's grievance to arbitration.

To prevail on a claim of unfair representation, a charging party must establish that the employer breached the collective bargaining agreement and that the union breached its duty. *Knoke v East Jackson Pub School Dist*, 201 Mich App 480, 488; 506 NW2d 878 (2003). Moralez alleged that MSU breached Articles 1 and 16 of the collective bargaining agreement when it laid him off and refused to reinstate him. He asserted that he had mandatory recall rights under the agreement and that MSU's hiring of outside contractors to produce programs previously assigned to Moralez violated that right. However, a review of Articles 1 and 16 and MSU's actions does not unequivocally establish that MSU's actions violated the agreement. Article 1 recognizes respondent as the bargaining unit for certain employees. Article 16 permits MSU to reduce the workforce for budgetary reasons, or any other cause, and provides procedures for layoff and recall. Here, MSU laid off Moralez for budgetary reasons, and notified Moralez three months in advance pursuant to the procedures outlined in Article 16. Thereafter, several contractors who were not employees were hired to produce programs Moralez produced as a "one-shot deal." No provision of the collective bargaining agreement prohibits MSU from hiring contract workers. Nor does the agreement mandate that Moralez be recalled under the circumstances of this case. Moralez simply concludes that MSU's actions violated Articles 1 and 16 of the agreement. Such a bald accusation cannot support a finding that MSU breached the agreement. "[Appellant] bears the burden of proving the factual predicate of his claim." *People v Hill*, 257 Mich App 126, 138-139; 667 NW2d 78 (2003). Moralez has failed to meet his burden. Because Moralez did not establish that MSU breached the collective bargaining agreement, it is unnecessary for this Court to consider his argument that the union breached its duty.¹

Moralez also argues that MERC abused its discretion when it denied his motions to reopen the record. We disagree. The motions sought to introduce correspondence between the NAACP and MSU, various human resources documents, and an unrelated MERC decision and order. A review of these motions reveals that MERC properly found that this information was irrelevant to Moralez's case and would not have changed the outcome of the case. *St Clair Co Intermediate School Dist v St Clair Co Ed Ass'n*, 245 Mich App 498, 519; 630 NW2d 909 (2001) (quotations omitted); 2002 Administrative Code: 2002 AC R 423.166. Accordingly, we find that MERC properly denied Moralez's motions.

¹ We note, however, that unions have considerable discretion in deciding which grievances should proceed to arbitration.

Moralez next contends that MERC should have permitted amendments to the charges. Our review of these motions reveals that these amendments were cumulative in nature and provided no additional information upon which a different outcome is warranted. Cf. *Pollock v Farmers Mut Ins Co*, 349 Mich 12, 17; 84 NW2d 238 (1957). In other words, MERC had already considered all the information Moralez proffered, much of which was factually baseless, in concluding that summary disposition in favor of the union was appropriate. A review of these amendments does not create the impression that their denial was somehow unjust or inconsistent with due process. See R 423.153(3). MERC did not abuse its discretion by denying amendments to the charges.

Lastly, Moralez argues that MERC erred when it denied his motion to strike in which Moralez argued that the union's pleadings did not support its motion for summary disposition and, therefore, should be struck. Contrary to Moralez's argument that MERC denied the motion without any reason, MERC denied the motion because it concluded that the union's motion was sufficient to support judgment in respondent's favor as a matter of law. MERC's findings are conclusive if supported by competent, material, and substantial evidence on the record and will be accorded deference by this Court. MCL 423.216(e); *Branch Co Bd of Comm'rs, supra* at 189 (citations and quotations omitted). After a review of the record, we conclude that MERC did not abuse its discretion in denying Moralez's motion to strike.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Peter D. O'Connell