

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Frederick Cerrone,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-573
v.	:	(C.C. No. 2011-02051)
	:	
The University of Toledo,	:	(ACCELERATED CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on March 6, 2012

Greenfield, Killam & Frank, Ltd., Catherine H. Killam and R. Kevin Greenfield, for appellant.

Michael DeWine, Attorney General, Christopher P. Conomy and Emily M. Simmons, for appellee.

APPEAL from the Court of Claims of Ohio

KLATT, J.

{¶ 1} Plaintiff-appellant, Frederick Cerrone, appeals a judgment of the Court of Claims of Ohio that dismissed his action against defendant-appellee, the University of Toledo ("UT"). For the following reasons, we affirm.

{¶ 2} Prior to October 26, 2008, Cerrone was a lieutenant in the UT Police Department. On that date, however, UT demoted Cerrone to a law enforcement officer position for allegedly violating department policies and procedures. Cerrone appealed his demotion to the State Personnel Board of Review. Cerrone and UT resolved their dispute over his demotion through a settlement agreement. Section 3 of the Settlement Agreement and Release of Claims states:

Cerrone agrees to remain in his current position as University Law Enforcement Officer until December 31, 2013. However,

UT may terminate Cerrone's employment prior to December 31, 2013 for just cause in accordance with the collective bargaining agreement ("CBA") between UT and UT Police Patrolman's Association. If Cerrone was to be promoted to a position not covered by the CBA between UT and UT Police Patrolman's Association, his termination prior to December 31, 2013 shall be in accordance with UT's policies applying to employees not members of a bargaining unit.

{¶ 3} Cerrone worked for UT as a law enforcement officer until January 20, 2011, when UT laid him off pursuant to an economic restructuring. Cerrone filed a grievance related to his layoff pursuant to Article 8 of the collective bargaining agreement between UT and the UT Police Patrolman's Association ("CBA"). Cerrone also filed the instant lawsuit, alleging that UT breached the settlement agreement by laying him off. UT moved for dismissal of Cerrone's suit under Civ.R. 12(B)(1). UT argued that because it laid Cerrone off pursuant to the CBA, his sole remedy was to file a grievance and arbitrate in accordance with the CBA. Thus, UT asserted, the trial court lacked subject matter jurisdiction over Cerrone's action. The trial court agreed, and on June 2, 2011, it entered a judgment dismissing Cerrone's action.

{¶ 4} Cerrone now appeals the June 2, 2011 judgment, and he assigns the following error:

The Court of Claims erred in dismissing the Complaint on the ground that it lacked jurisdiction to review claims arising under public sector collective bargaining agreements, as the Complaint here alleges the breach of a settlement agreement between a public employer and a single employee, not a collective bargaining agreement.

{¶ 5} A trial court must grant a Civ.R. 12(B)(1) motion to dismiss for lack of subject matter jurisdiction if the complaint fails to raise a cause of action cognizable by the forum. *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). In deciding such a motion, the trial court may consider evidence outside of the complaint. *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.*, 48 Ohio St.2d 211 (1976), paragraph one of the syllabus. Because whether a court possesses subject matter jurisdiction is a question of law, appellate courts review a ruling on a Civ.R. 12(B)(1) motion de novo. *Crosby-*

Edwards v. Ohio Bd. of Embalmers and Funeral Dirs., 175 Ohio App.3d 213, 2008-Ohio-762, ¶21 (10th Dist).

{¶ 6} According to R.C. 4117.10(A), "[a]n agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs the wages, hours, and terms and conditions of public employment covered by the agreement." Interpreting this sentence, this court has held that "R.C. 4117.10(A) clearly provides that [a] collective bargaining agreement controls all matters related to the terms and conditions of employment" covered by the collective bargaining agreement. *Gudin v. W. Reserve Psychiatric Hosp.*, 10th Dist. No. 00AP-912 (June 14, 2001); *Oglesby v. Columbus*, 10th Dist. No. 00AP-544 (Feb. 8, 2001). When and how an employer may lay off an employee is a term and condition of employment. *Oglesby*.

{¶ 7} Here, the settlement agreement is silent on the matter of layoff. In contrast, Article 20 of the CBA specifies under what circumstances UT may lay off a member of the UT Police Patrolman's Association. Because a collective bargaining agreement controls all matters related to the terms and conditions it covers, the CBA—not the settlement agreement—controls whether or not UT may lay off Cerrone.

{¶ 8} If a collective bargaining agreement entered into pursuant to R.C. Chapter 4117 provides for a grievance procedure culminating in final and binding arbitration, then that procedure provides the exclusive remedy for violations of an employee's employment rights. R.C. 4117.10(A); *Gudin*; *Oglesby*. Here, the CBA provides for final and binding arbitration of grievances. Cerrone's sole remedy, therefore, is through the CBA's grievance procedure, and the trial court lacked jurisdiction to hear his suit.

{¶ 9} In arguing to the contrary, Cerrone relies on *Koenig v. Dayton*, 28 Ohio App.3d 70 (1985). There, the plaintiff, a city police officer, was a member of a union that had entered into a collective bargaining agreement with the city. The plaintiff sued the city for breach of contract because the city did not defend him in a separate lawsuit in accordance with the terms of an insurance agreement between the plaintiff's union and the city. The appellate court found that the suit belonged in court, not before an arbitrator, because the duty to defend arose under the insurance agreement, and not the collective bargaining agreement. *Id.* at 72.

{¶ 10} This case is distinguishable from *Koenig*. Unlike in *Koenig*, the CBA—not a separate, different agreement—governs UT's obligations with regard to the alleged wrongdoing. As we stated above, the CBA—not the settlement agreement—controls how UT may initiate and proceed with a layoff. Thus, because the actual dispute between the parties is whether UT complied with the CBA, Cerrone must seek his remedy through the grievance procedure.

{¶ 11} Accordingly, we overrule Cerrone's assignment of error, and we affirm the judgment of the Court of Claims of Ohio.

Judgment affirmed.

FRENCH and TYACK, JJ., concur.
