

IN THE COURT OF CLAIMS OF OHIO

DAVID DAVIS

:

Plaintiff :

CASE NO. 2003-09262

v.

:

JUDGMENT ENTRY

INDUSTRIAL COMMISSION OF OHIO

:

Judge Fred J. Shoemaker

Defendant :

: : : : : : : : : : : : : : :

{¶1} On August 29, 2003, plaintiff filed a "motion for a preliminary injunction, temporary restraining order and request for declaratory relief." A hearing was convened and both parties presented oral argument. Upon consideration of the arguments of counsel, the court hereby makes the following determination.

{¶2} The court notes that the facts and circumstances underlying this motion are not in dispute. Plaintiff was employed by defendant from approximately 1996 through August 2003. Plaintiff was terminated from his position allegedly for violating a "Last Chance Agreement" that required him to refrain from engaging in hostile, threatening, or intimidating behavior. The parties executed this agreement in December 2002 and it was in effect for two years from the date it was signed by plaintiff. According to the parties, plaintiff's employment was governed by a collective bargaining agreement that required an employee to pursue his complaints via the grievance procedure. The contract also required the parties to submit to binding arbitration. Plaintiff acknowledges that he is currently participating in this process and that an arbitration hearing is scheduled for September 3, 2003.

Defendant asserts that this is a preliminary hearing at "Level 3" of a multi-stage grievance process. Plaintiff seeks to have the grievance proceedings stayed in order that this court could review and subsequently determine the constitutionality of the language contained in the Last Chance Agreement.

{¶3} Initially, the court notes that plaintiff has not filed a complaint with this court setting forth claims for monetary relief.

R.C. 2743.03(A) grants exclusive original jurisdiction to the Court of Claims over all civil actions filed against the state. R.C. 2743.03(A)(2) authorizes the court to exert jurisdiction over claims for injunctive and declaratory relief only if they arise out of the same claim for which plaintiff seeks money damages. In *Oakar v. Ohio Dept. of Mental Retardation* (1993), 88 Ohio App.3d 332, the court ruled that this court does not have jurisdiction over matters where the sole remedy sought by plaintiff is equitable relief.

{¶4} In addition, this court has no subject-matter jurisdiction over an alleged violation of plaintiff's constitutional rights as asserted under Section 1983, Title 42, U.S.Code because the state is not a "person" within the meaning of Section 1983 and thus cannot be a defendant in such an action. *Bleicher v. Univ. of Cincinnati College of Medicine* (1992), 78 Ohio App.3d 302; *Graham v. Ohio Bd. of Bar Examiners* (1994), 98 Ohio App.3d 620. Furthermore, to the extent that plaintiff requests relief premised upon alleged violations of the Ohio or United States Constitution, this court is without jurisdiction to hear those claims. *White v. Chillicothe Correctional Inst.* (Dec. 29, 1992), Franklin App. No. 92AP-1230.

{¶5} Finally, even assuming this court had jurisdiction over the matters presented, the court finds that plaintiff's request is premature inasmuch as plaintiff is participating in the grievance procedures outlined in the bargaining agreement and such process is ongoing. Thus, plaintiff currently has an available and appropriate administrative remedy. For the foregoing reasons, plaintiff's motion is hereby DENIED. Court costs are absorbed by the court. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

FRED J. SHOEMAKER
Judge

Entry cc:

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SJM/cmd
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