



Bargar, a labor relations officer, to review the charges. As a result of the meeting and Ogle's recommendation, plaintiff received a one-day suspension.

{¶4} On April 28, 2000, another pre-discipline notice was delivered to plaintiff that listed charges including neglect of duty, tardiness, unauthorized absence and failure to follow proper call-in procedures. The notice reports that plaintiff was found sleeping at his post and specifies nine incidents where plaintiff was either tardy, did not report to work, or failed to properly notify defendant that he would be taking sick leave. (Plaintiff's Exhibit 4.)

{¶5} Plaintiff does not dispute that he was sleeping on duty; however, he contends that Ronald Weidner, the security supervisor, threatened him with disciplinary action because Weidner favored another employee for the security officer 2 position. Plaintiff testified that he experienced a great deal of stress as a result of "retaliation" by Weidner and Ogle. Plaintiff did not file a grievance with his union as a result of not being promoted.

{¶6} Plaintiff testified that he sought counseling for work-related stress and that he took "stress leave" when the stress became "too much." According to plaintiff, he was notified that he had received a one-day suspension when he returned to work on May 11, 2000. Although plaintiff consulted with his union representative regarding the suspension, he did not file a grievance. On May 12, 2000, plaintiff submitted a letter of resignation that he characterized as a response to the disciplinary action that had been taken against him. Plaintiff testified that Thomas Joyce, a security supervisor, declined to accept his resignation letter. On May 16, 2000, plaintiff sent Joyce and 11 other co-workers a second letter that explained the reasons for his resignation; defendant's human resources department did accept that letter of resignation. Although plaintiff claims that he signed the resignation letter under duress, he explained in his May 16, 2000, letter and his trial testimony that he had been thinking about resigning for eight months before he submitted his resignation. The court finds that plaintiff's resignation was voluntary in that plaintiff ultimately made the decision to resign rather than be subjected to the alternative of being disciplined.

{¶7} Even if it may be argued that plaintiff did not resign voluntarily, the court finds that he failed to pursue his grievance in accordance with a collective bargaining agreement.

{¶8} The evidence submitted at trial includes a copy of the collective bargaining agreement. (Defendant's Exhibits F and G.) Article 25 of the collective bargaining agreement contains a detailed grievance procedure culminating in final and binding arbitration of complaints or disputes between defendant and union members.

{¶9} R.C. Chapter 4117 establishes a framework for resolving public sector labor disputes by creating procedures and remedies to enforce those rights. R.C. 4117.10(A) provides that a collective bargaining agreement between a public employer and the bargaining unit "controls all matters related to the terms and conditions of employment and, further, when the collective bargaining agreement provides for binding arbitration, R.C. 4117.10(A) recognizes that arbitration provides the exclusive remedy for violations of an employee's employment rights." *Gudin v. Western Reserve Psychiatric Hosp.* (June 14, 2001), Franklin App. No. 00AP-912; See *Oglesby v. Columbus* (Feb. 8, 2001), Franklin App. No. 00AP-544.

{¶10} Furthermore, R.C. 4117.09(B)(1) provides that a party to a bargaining unit agreement "may bring suits for violation of agreements \*\*\* in the court of common pleas of any county wherein a party resides or transacts business." The Tenth District Court of Appeals has held that R.C. 4117.09(B)(1) expressly allows for suits alleging violations of collective bargaining agreements and that the jurisdiction over such actions lies with the courts of common pleas alone. *Moore v. Youngstown State Univ.* (1989), 63 Ohio App.3d 238, 242.

{¶11} In his complaint, plaintiff sets forth allegations which could be construed as a claim for retaliatory discharge. In *Gudin*, the Tenth District Court of Appeals held that whether a claim, such as retaliatory discharge, is preempted by the collective bargaining agreement is dependent upon a case-by-case analysis of the alleged conduct forming the basis for the claim. The Court of Appeals adopted the analysis used by the United States Supreme Court to determine whether "a state-law retaliatory discharge claim was

independent of the collective bargaining agreement and, thus, not preempted by federal labor law, when the state-law claim presented purely factual questions that could be resolved without interpretation of the collective bargaining agreement.” Id. citing *Lingle v. Norge Div. of Magic Chef, Inc.* (1988), 486 U.S. 399, 407. The Court of Appeals determined that such claims “are preempted in two situations: (1) if the state claim is founded on rights created by collective bargaining agreements; or (2) if the rights are created by state law but the application of the law is dependent on an analysis or interpretation of a collective bargaining agreement.” Id.

{¶12} In this case, plaintiff’s claims regarding both the promotion sought by plaintiff and the alleged retaliation by his supervisors were founded on rights created by the collective bargaining agreement. With regard to the promotion, plaintiff’s rights concerning his application and selection for promotion were addressed in Article 17 of the collective bargaining agreement. With regard to plaintiff’s retaliation claim, Article 24.03 of the collective bargaining agreement provides that “[a]n Employer representative shall not use the knowledge of an event giving rise to the imposition of discipline to intimidate, harass or coerce an employee. In those instances where an employee believes this section has been violated, he/she may file a grievance, including an anonymous grievance filed by and processed by the Union in which the employee’s name shall not be disclosed \*\*\*.”

{¶13} The court finds that plaintiff’s claims of wrongful or constructive discharge and retaliation are predicated on allegedly wrongful conduct that is directly related to the terms and conditions of his employment and are, therefore, preempted by the collective bargaining agreement. The court concludes that it is without jurisdiction to decide matters that are subject solely to a final and binding grievance procedure.

{¶14} Even if plaintiff could prevail on the jurisdictional issue, as stated above, plaintiff voluntarily resigned his position and he has failed to prove that he was constructively discharged or that defendant retaliated against him. Accordingly, judgment shall be rendered in favor of defendant.

{¶15} This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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J. WARREN BETTIS  
Judge

Entry cc:

Donald James Lowe  
1260 Crestview Street  
Reynoldsburg, Ohio 43068

Plaintiff, Pro se

Karl W. Schedler  
Stephanie D. Pestello-Sharf  
Assistant Attorneys General  
150 East Gay Street, 23rd Floor  
Columbus, Ohio 43215-3130

Attorneys for Defendant

AMR/cmd  
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