SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1240-21

RONALD POLL,

Plaintiff-Appellant,

v.

HOLMDEL TOWNSHIP
BOARD OF EDUCATION
and DR. LEE SEITZ,

Defendants-Respondents.

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Submitted November 1, 2022 – Decided January 18, 2023

Before Judges Sumners and Geiger.

On appeal from the Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-1845-21.

Costello & Mains, LLC, attorneys for appellant (Deborah L. Mains, on the brief).

Parker McCay, PA, attorneys for respondents (William C. Morlok and Jeffrey P. Catalano, on the brief).

PER CURIAM

In the fall of 2020, plaintiff Ronald Poll was employed by defendant Holmdel Township Board of Education (Board) as the head coach of the Holmdel High School boys' soccer team for the fifth consecutive season. In accordance with the terms of the parties' written employment contract and a collective bargaining agreement (CBA) between the Board and the Holmdel Education Association (Association), plaintiff was to be paid a stipend of $7,677 for his coaching duties.

On or about September 26, 2020, defendant Lee Seitz, the Board's Interim Superintendent of Schools, suspended plaintiff without pay for his alleged inappropriate discipline of a student athlete. Three days later, Seitz directed plaintiff to resign as head coach. Plaintiff complied the next day, submitting a letter of resignation. Plaintiff was not paid any of his coaching stipend.

Almost eight months later, plaintiff filed a lawsuit in the Law Division seeking damages for not being paid his stipend. In a subsequent first amended complaint, plaintiff alleged violations of the Wage Payment Law, N.J.S.A. 34:11-4.1 to -33.6. The Wage Payment Law authorizes an "employee [to] recover in a civil action the full amount of any wages due . . . plus an amount of liquidated damages equal to not more than 200 percent of the wages lost or

of the wages due, together with costs and reasonable attorneys' fees as are allowed by the court." N.J.S.A. 34:11-4.10(c). The complaint also asserted a breach of contract claim, alleging the parties had "a legally enforceable contract," and defendants failed to pay plaintiff his stipend "due and owing under [his] contract."

In lieu of an answer, defendants moved under Rule 4:6-2(e) to dismiss plaintiff's first amended complaint for failure to state a claim upon which relief could be granted. Defendants contended the court lacked subject matter jurisdiction because plaintiff failed to file a grievance for payment of his stipend though the procedures set forth in the CBA. Under the CBA, a grievance must be filed within fifteen calendar days of a violation. If the grievance is not resolved by the Board, then it goes to binding arbitration. The motion judge, Linda Grasso Jones, entered an order dismissing the complaint with prejudice, setting forth her reasons in a bench decision.

We conclude, as did the judge, plaintiff's complaint should be dismissed under Rule 4:6-2(e). Like the judge, we focus our inquiry on "the legal sufficiency of the facts alleged on the face of the complaint." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). Thus, we "search[] the complaint in depth and with liberality to ascertain whether the

fundament of a cause of action may be gleaned even from an obscure statement of claim," and give plaintiff an opportunity to amend if necessary. Ibid. (quoting Di Cristofaro v. Laurel Grove Mem'l Park, 43 N.J. Super. 244, 252 (App. Div. 1957)). Because we discern no way plaintiff can amend his complaint "to articulate a legal basis entitling [him] to relief," it should remain dismissed with prejudice. Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005).

Plaintiff's argument that his claim for unpaid wages falls outside the parameters of the CBA grievance process and should be heard by a jury under the Wage Payment Law flies in the face of our Legislature's mandate governing the employment conditions of public employers and public employees. The New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 to -64, provides that a "majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit[.]" N.J.S.A. 34:13A-5.3. It further states that "[w]hen an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative." Ibid. Additionally, the grievance procedures established in the agreement "shall be

utilized for any dispute covered by the terms of such agreement[,]" and the Act explicitly permits binding arbitration. Ibid. See Troy v. Rutgers, 168 N.J. 354, 379 (2001) (alteration in original) (quoting N.J.S.A. 34:13A-5.3) (holding the Act mandates that "grievance procedures through which the employees may appeal 'the interpretation, application or violation of policies, agreements, and administrative decisions . . . affecting them.'").

Judge Grasso correctly explained "plaintiff was required to follow the [CBA] grievance procedure because not getting paid when the contract says you're supposed to be paid, . . . is something that['s] . . . expected between the [the Board and the Association] and is covered by the grievance procedure." The judge cited Thompson vs. Joseph Cory Warehouses, 215 N.J. Super. 217, 220 (App. Div. 1987) (quoting Republic Steel Corp. v. Maddox, 379 U.S. 650, 652-53 (1965)), where we concluded "an employee seeking to bring a contract grievance 'must attempt the use of the contract grievance procedure agreed upon by employer and union as the mode of redress.'" The judge was further guided by Fregara v. Jet Aviation Bus. Jets, which held that a claimant is barred from seeking damages by failing to exhaust remedies afforded under a labor union contract. 764 F. Supp. 940 (D.N.J. 1991).

Plaintiff points to no compelling reason in law or equity that would allow him to seek relief under the Wage Payment Law and subvert the well-established doctrine of exhaustion of remedies set forth in Thompson and Fregara, by doing an end around to avoid the CBA grievance process. As we recognized in Rosen v. Smith Barney, Inc., given the absence of a legislative statement of intent, we are left with "the conclusion that the [Wage Payment Law] was designed to protect employees' wages and to guarantee receipt of the fruits of their labor" barring an express provision of the Wage Payment Law allowing employers to "withhold or divert any portion of an employee's wages." 393 N.J. Super. 578, 585 (App. Div. 2007). That said, recognizing the clear legislative intent under the Act authorizing collective bargaining between public employers and public employees regarding wages and a grievance process, we must conclude that public employees, such as plaintiff, have no recourse under the Wage Payment Law and must resolve their salary disputes under the agreed upon grievance process.

We favor the judge's determination, relying upon Garfinkel v. Morristown Obstetrics & Gynecology Assocs., P.A., 168 N.J. 124 (2001), that there is no merit in plaintiff's contention that the Wage Payment Law applied to his salary dispute because the CBA's grievance process—the last resort

being arbitration—did not constitute a waiver of plaintiff's right to seek relief under that statutory scheme. The judge stated Garfinkel does not remove plaintiff's "claim outside of the [CBA]" because there, the issue involved the arbitrability of claims under the Law Against Discrimination [(LAD)],[1] which does not arise from a contract itself and is treated differently as "a separate important legislation to protect people's rights [in eradicating discrimination] . . . outside of what contracts [generally address]."

There is no basis in law or fact justifying plaintiff's argument equating his Wage Payment Law claim with that of LAD claim, which, under Garfinkel, 168 N.J. at 132, must be clearly and unmistakably waived by a party to prosecute through a statutory right to a jury trial in lieu of a contractual arbitration clause. The CBA grievance process is a creature of the Act and details the way an Association member can resolve a salary dispute. There is no need for the CBA to clearly and unmistakably waive a member's right to pursue a Wage Payment Law claim in lieu of the grievance process. Otherwise, salary disputes of Association members could be turned on their heads by litigating Wage Payment Law claims in the trial court. See Antol v. Esposto, 100 F.3d 1111, 1121 (3d Cir. 1996) (holding there would be several

[1] N.J.S.A. 10:5-1 to -50.

adverse effects on labor law, including allowing employees to bypass the grievance procedures of the collective bargaining agreement, if the Pennsylvania Wage and Collection Law (PWCL), 43 P.S. § 260.1-260.45, superseded the Labor Management Relations Act, 29 U.S.C.A §§ 141 to 187 and National Labor Relations Act, 29 U.S.C.A §§ 141 to 187; thus in the interest of uniform labor policy, the Pennsylvania statutory scheme was found to be preempted by federal law). Plaintiff's claim fits squarely in the CBA, and the judge correctly dismissed his complaint.

Plaintiff's lawsuit is strictly limited to a demand for payment of his coaching stipend arising from the CBA and is not preempted by the Wage Payment Law. He makes no claim outside of the CBA, such as infringement upon important educational policies, which should not be addressed by its grievance process. See Bd. of Educ. v. Neptune Tp. Educ. Ass'n, 144 N.J. 16, 24 (1996) (holding that, in accordance with N.J.S.A. 18A:29-4, a board of education is not required under the Act to pay teaching staff members an increment when the collective bargaining agreement has expired); Dunellen Bd. of Educ. v. Dunellen Educ. Ass'n, 64 N.J. 17, 24-25, (1973) (holding N.J.S.A. 18A preempts the Act regarding a board of education's authority to

consolidate department chairmanships). Plaintiff's claim must be resolved through the CBA.

To the extent we have not expressly or impliedly addressed any of arguments posed in this appeal it is because we find them to have insufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION