

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

IN THE OHIO COURT OF CLAIMS

WILLIAM RUSSELL

Plaintiff

v.

CLEVELAND STATE UNIVERSITY

Defendant

Case No. 2013-00138

2014 JUL 17 PM 3:02

Judge Patrick M. McGrath
Magistrate Holly T. Shaver

DEFENDANT'S MEMORANDUM
CONTRA PLAINTIFF'S MOTION
FOR LEAVE TO FILE FIRST
AMENDED COMPLAINT

On March 4, 2013, Mr. Russell filed his original Complaint in this lawsuit, wherein he alleges four causes of action, including claims of age discrimination, disability discrimination, and retaliation pursuant to R.C. Chapter 4112 and the ADEA, as well as a claim of interference and retaliation pursuant to the FMLA. On July 8, 2014, Mr. Russell filed a motion asking this Court for permission to amend his Complaint to include a fifth cause of action asserting a claim for breach of contract claim based on alleged violations of the terms and conditions of a collective bargaining agreement between his Union and the University. (See Proposed Amended Complaint at ¶¶ 49-61.) Although he fails to attach a copy of the alleged contract, he does identify it as the "*Agreement Between Cleveland State University and Service Employees International Union District 1199 WV/KY/OH, the Health Care and Social Services Union, CTW/CLC*." However, Mr. Russell's motion for leave to amend the Complaint is not well-taken and should be denied.

First, Mr. Russell's motion for leave to assert a breach of contract claim based on violations of a collective bargaining agreement should be denied because this Court lacks jurisdiction to consider such claims. Public employees were granted collective bargaining rights in 1984, and those rights came with various restrictions. One such restriction is that every collective bargaining agreement must contain this language:

ON COMPUTER

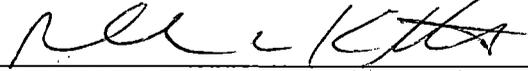
The agreement shall contain a provision that...[p]rovides for a grievance procedure which may culminate with final and binding arbitration of unresolved grievances, and disputed interpretations of agreements, and which is valid and enforceable under its terms when entered into in accordance with this chapter. No publication thereof is required to make it effective. *A party to the agreement may bring suits for violation of agreements or the enforcement of an award by an arbitrator in the court of common pleas of any county wherein a party resides or transacts business.*

See R.C. 4117.09(B)(1) (emphasis added). That language has always been understood to mean that the Court of Claims has no jurisdiction to enforce or even to interpret the terms of a public collective bargaining agreement. *See e.g. Gudin v Western Reserve Psychiatric Hospital*, 10th Dist. No. 00AP-912 (June 14, 2001). Here, Plaintiff's employment—including his fringe benefits, service credit, termination and ability to seek rehire—was governed by a collective bargain agreement. Therefore, because Mr. Russell's breach of contract claim is based solely on alleged violations of his rights pursuant to a collective bargaining agreement, this Court lacks of jurisdiction to consider such claims.

Therefore, for these reasons, the University asks this Court to deny Mr. Russell's motion for leave to amend the Complaint.

Respectfully submitted,

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COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

On July 17, 2014, we sent a copy of this document via electronic mail to Plaintiff's Counsel:

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