Bosley v. City of New Haven

Superior Court of Connecticut, Judicial District of New Haven At New Haven

April 19, 2022, Decided

DOCKET NO.: NNH-CV-21-6115082

Reporter
2022 Conn. Super. LEXIS 483 *

HARRY BOSLEY, ET AL v. CITY OF NEW HAVEN

Notice: THIS DECISION IS UNREPORTED AND MAY BE SUBJECT TO FURTHER APPELLATE REVIEW. COUNSEL IS CAUTIONED TO MAKE AN INDEPENDENT DETERMINATION OF THE STATUS OF THIS CASE.

Judges: [*1] KAMP, J.

Opinion by: KAMP

Opinion

MEMORANDUM OF DECISION RE: MOTION TO DISMISS # 104

The defendant, City of New Haven, has filed a motion to dismiss alleging that this court lacks subject matter jurisdiction because the plaintiffs have not exhausted their administrative remedies. For the reasons set forth below, the motion is granted.

FACTS

The plaintiffs, Harry Bosley, Ernest Jones, Josue Vega, Jr., Christian Cordero, and Ian Cordero (the plaintiffs) are employees of the Department of Fire Services of the city of New Haven, and members of a collective bargaining unit known as New Haven Firefighters Local 825 (the union). In a one-count complaint filed on June 22, 2021, the plaintiffs allege the following facts. The plaintiffs were under a collective bargaining agreement between the union and the city of New Haven (the defendant). On December 19, 2017, the union and the defendant executed a memorandum of understanding (MOU) which was incorporated into the contract between the parties. The plaintiffs argue that the defendant has failed to adhere to the promotional examination timelines defined by the MOU[1], and as a result, the defendant has prevented the plaintiffs from adequately pursuing promotional opportunities [*2] within the fire department.

The plaintiffs allege that despite earning high scores on promotional exams and advancing through department ranks, as well as having the requisite time in grade to apply for and sit for each relevant promotional exam, the defendant has nonetheless failed to adhere to the promotional timelines prescribed by the MOU. Compl. ¶ 11, 12. As a result, the plaintiffs have been prevented from pursuing future promotional opportunities within the fire department. Compl. ¶ 12. The plaintiffs claim that they initiated the grievance process as outlined by the collective bargaining agreement. As prescribed by Step I of the grievance procedure, Plaintiff Jones met with the Fire Chief John Alston on behalf of the plaintiffs in December, 2018; the meeting yielded unfavorable results. Ramirez Aff , ¶ 8 (a). On January 1, 2019, Fernando Ramirez, a union member who is not party to this action, learned of the plaintiffs' allegation that the MOU had been violated. Ramirez Aff., ¶ 8 (c). Ramirez filed a grievance on behalf of the plaintiffs on or around January 1, 2019, which was denied by then Union President Frank Ricci. Ramirez Aff., ¶ 8 (d).

In accordance with Step I of the [*3] grievance procedure, Ramirez then advanced the grievance with Fire Chief Alston on January 10, 2019; he did not

[1] The MOU provides in relevant part that "[t]he [c]ity shall schedule fire suppression promotional testing two times a year based on [the following] listed number of vacancies and there being no active list": (a) one deputy chief vacancy; (b) two battalion chief vacancies; (c) five captain vacancies; (d) ten lieutenant vacancies; and (e) chief of operations. Compl., Pl. Ex. A. The MOU further provides in relevant part that "[a]ll tests will be given and completed in the closest upcoming test cycle given the vacancy/ies occur 90 days prior to said period." Compl., Pl. Ex. A. The promotional exams "carr[y] a requirement that the applicant have the requisite time in grade in order to apply for the promotion and sit for the examination." Compl. ¶ 10.

respond. Ramirez Aff., ¶ 8 (e). On January 18, 2019, in accordance with Step II, Ramirez advanced the grievance to the city of New Haven's Office of Labor Relations. Ramirez Aff., ¶ 8 (f); Ex. C. The Office of Labor Relations denied the grievance on February 6, 2019. Ramirez Aff., ¶ 8 (g); Ex. D. Afterward, Ramirez attempted to, in accordance with Step III, advance the grievance with the State of Connecticut Board of Meditation and Arbitration (SBMA). Ramirez Aff., ¶ 8 (h). Upon arriving at the SBMA, however, Ramirez was informed that SBMA would not accept the grievance because it "belonged to the union," and as such, could only be filed by the union. Ramirez Aff., ¶ 8 (i). Ramirez then asked Union President Ricci to release the grievance so that Ramirez could file it on behalf of the plaintiffs, but Ricci refused. Ramirez Aff., ¶ 8 (j). As a result, the plaintiffs filed this suit.

The defendant filed this motion to dismiss and an accompanying memorandum of law in support of the motion on August 31, 2021. The plaintiffs filed a memorandum in opposition on September 10, 2021. [*4] A hearing on the motion was held on February 10, 2022.

DISCUSSION

"A motion to dismiss . . . properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court . . . . A motion to dismiss tests, *inter alia*, whether, on the face of the record, the court is without jurisdiction. (Internal quotation marks omitted.) *Filippi v. Sullivan*, 273 Conn. 1, 8, 866 A.2d 599 (2005). "When a court decides a jurisdictional question raised by a pretrial motion to dismiss, it must consider the allegations of the complaint in their most favorable light . . . . [A] court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." (Internal quotation marks omitted.) Id.

The defendant argues that the plaintiffs failed to exhaust the administrative remedies available to them through the collective bargaining agreement between the union and the defendant, and therefore, the court does not have subject matter jurisdiction over the action. "It is well settled under both federal and state law that, before resort to the courts is allowed, [*5] an employee must at least attempt to exhaust exclusive grievance and arbitration procedures, such as those contained in the collective bargaining agreement between the defendant and the plaintiffs' union." *DePietro v. Department of Public Safety*, 126 Conn. App. 414, 425, 11 A.3d 1149, cert. granted on other grounds, 300 Conn. 932, 17 A.3d 69 (2011). "Failure to exhaust the grievance procedure deprives the court of subject matter jurisdiction." *Hunt v. Prior*, 236 Conn. 421, 432, 673 A.2d 514 (1996).

The plaintiffs argue that they have, to the extent possible, exhausted the administrative remedies available under the collective bargaining agreement, but because the union refused to advance the grievance to the arbitration stage at step three of the grievance procedure, their only available remedy remains with the court. Step three of the grievance procedure outlined in the collective bargaining agreement provides in relevant part that "[n]othing contained herein shall prevent any employee from representing his own grievance and representing himself, *at Steps I and II of the Grievance Procedure*." (Emphasis added.) Accordingly, "the union had the sole power under the contract to invoke the higher stages of the grievance procedure." *Vaca v. Sipes*, 386 U.S. 171, 185, 87 S. Ct. 903, 17 L. Ed. 2d 842 (1967).

"Where the collective bargaining agreement permits only the union to take a grievance to arbitration, the employee has [*6] no further remedy unless he can prove that the union breached its duty of fair representation by acting arbitrarily, maliciously or in bad faith." *Saccardi v. Board of Education*, 45 Conn. App. 712, 722, 697 A.2d 716 (1997); see also *Vaca v. Sipes*, supra, 386 U.S. 185 ("An employee may seek judicial enforcement of his contractual rights . . . [when] the union has sole power under the contract to invoke the higher stages of the grievance procedure, and if . . . the employee-plaintiff has been prevented from exhausting his contractual remedies by the union's wrongful refusal to process the grievance.")

In the complaint, the plaintiffs state that following the union's refusal to advance the 'grievance to arbitration, they filed a complaint alleging the union breached its duty to represent the plaintiffs fairly and adequately (DFR claim). Despite this, however, the complaint in this action neither names the union as a defendant nor does it allege that the union breached its duty of fair and adequate representation. See *Alosi v. University of Connecticut*, Superior Court, judicial district of Tolland, Docket No. CV-21-6021662-S (September 8, 2021, *Sicilian, J.*) (holding that because plaintiff did not name union as a party to action or allege that union breached its duty of fair representation, the [*7] plaintiff had not

established that he had exhausted his contractual remedies). In addition, "[a]n employee alleging a breach of the duty of fair representation . . . must initially seek relief before the board of labor relations, *and jurisdiction [regarding that issue] lies in the Superior Court only for purposes of an appeal from an adverse final order of the board of labor relations*." (Emphasis added). *Piteau v. Board of Education*, 300 Conn. 667, 683, 15 A.3d 1067 (2011).

In light of the foregoing, the defendant's motion to dismiss is granted without prejudice pending an adverse final decision of the board of labor relations regarding the plaintiffs' DFR claim. Though the plaintiffs state in their complaint that they filed a DFR complaint against the union with the board of labor relations, there has yet to be an adverse final order in that action. Additionally, the union has not been added as a party in the present action, and the operative complaint does not allege that the union breached its duty of fair representation. See *Vaca v. Sipes*, supra, 386 U.S. 186 ("[T]he . . . employee may bring an action against his employer in the face of a defense based upon the failure to exhaust contractual remedies, provided the employee can prove that the union as a bargaining agent breached its [*8] duty of fair representation in its handling of the employee's grievance."). Accordingly, the defendant's motion to dismiss is granted without prejudice.

CONCLUSION

For the foregoing reasons, the defendant's motion to dismiss is granted.

/s/ Kamp

KAMP, J.