STATE OF MICHIGAN

COURT OF APPEALS

NORMAN DICKSON,

Petitioner-Appellant,

v

FARMINGTON SCHOOL DISTRICT and FARMINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS,

Respondents-Appellees.

UNPUBLISHED
September 27, 1996

No. 187348
LC Nos. 94-000124
94-000028

Before: White, P.J., and Griffin and D. C. Kolenda,* JJ.

PER CURIAM.

Petitioner filed a complaint with the Michigan Employment Relations Commission (MERC), alleging that respondent Farmington School District engaged in unfair labor practices and that the school district illegally dominated or controlled petitioner's union, respondent Farmington Association of School Administrators (FASA). Petitioner appeals as of right from the order of the MERC dismissing his claims. We affirm.

In his complaint filed with the MERC, petitioner alleged that respondents committed an unfair labor practice by orally agreeing to amend the collective bargaining agreement without ratification of the union members. Petitioner alleged that the contract as written would have obligated the school district to interview him for the open position of principal of Farmington Harrison High School. However, petitioner's modification of the contract allowed a "credentials screening committee" to decide who would interview for the position. Petitioner alleged that, by agreeing to the modification, FASA violated its duty of fair representation.

Prior to petitioner's filing of his complaint with the MERC, he filed a complaint in the Oakland Circuit Court. In Count VI of petitioner's corrected second amended complaint in circuit court, he alleged that respondent FASA violated its duty of fair representation by entering into an oral

* Circuit judge, sitting on the Court of Appeals by assignment.

modification of the collective bargaining agreement. This claim, which was virtually identical to the issue raised by petitioner with the MERC, was dismissed by the trial court on summary disposition. Accordingly, the MERC found that "the charge against [respondent FASA] must be dismissed because [petitioner] has already had his day in court on this claim." We agree.

Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. *Eaton Co Bd of Rd Comm'rs v Schultz,* 205 Mich App 371, 375; 521 NW2d 847 (1994). Res judicata requires that: (1) the first action be decided on the merits, (2) the matter contested in the second case was or could have been resolved in the first, and (3) both actions involve the same parties or their privies. *Schultz, supra*, 375-376. Res judicata was clearly applicable to the instant claim. Summary disposition is a judgment on the merits which bars relitigation on the basis of res judicata. *King v Michigan Consolidated Gas Co*, 177 Mich App 531, 535; 442 NW2d 714 (1989). Thus, the first element was met. Both petitioner's circuit court claim and the claim filed with the MERC alleged violations of respondent FASA's duty of fair representation based on the union's oral modification of the collective bargaining agreement. Because the claims are virtually identical, the second element of res judicata applies to this case. Finally, the parties to the circuit court claim and the MERC claim are identical, thus satisfying the third element. Accordingly, the MERC properly dismissed petitioner's claim that FASA engaged in unfair labor practices. Because of our resolution of this issue, we need not address respondents' argument that petitioner's claim was barred by the limitations period of MCL 423.216(a); MSA 17.455(16)(a).

Petitioner next argues that respondent union was effectively controlled by, and subject to, the power and influence of the Farmington School District. Petitioner contends that the MERC's finding that no domination existed was not supported by competent, material, and substantial evidence on the whole record. We disagree.

MCL 423.210(1); 17.455(10)(1) provides, in part:

> It shall be unlawful for a public employer or an officer or agent of a public employer
>
> * * *
>
> (b) to initiate, create, *dominate*, contribute to, or interfere with the formation or administration of any labor organization. [Emphasis added.]

The burden of showing an unfair labor practice in violation of MCL 423.201 *et seq.*; MSA 17.455(1) *et seq.*, is on petitioner. *MERC v Reeths-Puffer School Dist*, 391 Mich 253, 264-266, 268-269; 215 NW2d 672 (1974); *WOEA v West Ottawa Bd of Ed*, 126 Mich App 306, 327; 337 NW2d 533 (1983). To violate MCL 423.210(1); 17.455(10)(1), an employer must actually dominate the union, not merely have the potential to dominate. *Federal-Mogul Corp v NLRB*, 394 F2d 915, 918 (CA 6, 1968).[1] The act does not prohibit cooperation between management and labor and, in fact, encourages it. *Id.* "Changing conditions in the labor-management field seem to have strengthened the case for providing room for cooperative employer-employee arrangements as alternatives to the traditional adversarial model." *NLRB v Northeastern Univ*, 601 F2d 1208, 1214 (CA 1, 1979).

Petitioner argues at length that the credentials screening committee lacked guidelines regarding its composition and procedure, thus allowing the school board to dominate the union. However, each of petitioner's arguments merely goes to the *potential* for domination, but never does petitioner show that domination has actually occurred. "It is not the potential for control that the Act declares unlawful, but the actual domination of a labor organization and employer interference in employee freedom of choice." *Federal-Mogul*, *supra* at 918; see also *Northeastern Univ*, *supra* at 1213. Thus, petitioner's argument that the creation of the credentials screening committee constituted a violation of the PERA was without merit. Petitioner also contends that employer dominance over the union was shown by the school board's recommendation of potential attorneys for the union and by the drafting of affidavits by the school board's attorney's, which were signed by the union's representatives. We agree with the MERC that these transactions offered no evidence of coercion or influence by the school board. As stated by the MERC, "We are unable to conclude on these facts that the Employer dominated the Union under the definition set by Section 10(1)(b) of PERA or federal law." Accordingly, we find that the decision of the MERC was supported by competent, material, and substantial evidence on the record.

Affirmed.

/s/ Helene N. White
/s/ Richard Allen Griffin
/s/ Dennis C. Kolenda

[1] Because the language of the Public Employment Relations Act (PERA) is virtually identical to federal law, precedent from federal cases is given great weight in interpreting the PERA. *Gibraltar School Dist v MESPA*, 443 Mich 326, 335; 505 NW2d 214 (1993).