

STATE OF MICHIGAN
COURT OF APPEALS

PATRICK BOGGS,

Plaintiff-Appellee,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellant.

UNPUBLISHED

July 18, 1997

No. 196556

Court of Claims

LC No. 95-015642-CM

Before: Hood, P.J., and McDonald and Young, JJ

MEMORANDUM.

Defendant appeals as of right from a judgment entered following a bench trial, holding that defendant should have represented plaintiff in a related action, that defendant violated the Employee Right to Know Act and awarding plaintiff \$5,000 for attorney fees incurred in the related action and \$1,000 in costs. On appeal, defendant challenges only the circuit court's ruling on plaintiff's representation claim. We reverse and remand.

A female corrections officer filed a lawsuit against plaintiff, a corrections officer, and defendant, alleging that plaintiff had sexually harassed her. Plaintiff thereafter filed an action asserting that defendant had breached a collective bargaining agreement by failing to provide him with legal representation in the sexual harassment lawsuit. Defendant now challenges the trial court's finding that it was obligated to provide legal representation to plaintiff under the collective bargaining agreement.

Plaintiff was a union-represented public employee covered by a collective bargaining agreement that included a grievance and arbitration procedure. As such, plaintiff cannot prevail on a breach of contract claim against defendant as his employer without succeeding on a claim that his union (the Michigan Corrections Organization) breached its duty of fair representation in connection with the contractual claim. *Knoke v East Jackson Public School Dist*, 201 Mich App 480, 482, 485; 506 NW2d 878 (1993); accord *City of Saginaw v Chwala*, 170 Mich App 459, 464-465; 428 NW2d 695 (1988) and *Pearl v City of Detroit*, 126 Mich App 228, 238-239; 336 NW2d 899 (1983). Because it is undisputed that plaintiff did not bring a claim of breach of the duty of fair representation

against his union in connection with the instant claim, the trial court erred by holding for plaintiff on this breach of contract claim.

We note, however, that the trial court also determined that defendant violated the Employee Right to Know Act, MCL 423.501, *et seq.*; MSA 17.62(1), *et seq.*, and that it indicated that any damages for this violation were being included in the award of damages for the breach of contract. Accordingly, we remand with instructions that the trial court modify the judgment to reflect that defendant prevails on the contractual claim, and for a determination of the amount of damages, if any, that should be awarded to plaintiff based on defendant's violation of the Employee Right to Know Act.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Gary R. McDonald

/s/ Robert P. Young, Jr.