

STATE OF MICHIGAN
COURT OF APPEALS

JACKSON COUNTY BOARD OF
COMMISSIONERS and JACKSON COUNTY
SHERIFF,

UNPUBLISHED
August 21, 2008

Plaintiffs-Appellees,

v

POLICE OFFICERS LABOR COUNCIL,

No. 276711
Jackson Circuit Court
LC No. 06-002432-CL

Defendant-Appellant.

Before: Meter, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

In this labor-law dispute involving a terminated employee, defendant appeals as of right from the order granting summary disposition under MCR 2.116(C)(10) to plaintiffs and permanently enjoining defendant from pursuing a grievance arbitration. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Plaintiffs and defendant were parties to a collective bargaining agreement (CBA), effective from January 1, 2002, through December 31, 2004. Before the CBA expired and while the parties were negotiating a new labor contract, defendant requested statutory mediation. More than 30 days later but before mediation occurred, defendant filed a petition for compulsory arbitration pursuant to 1969 PA 312 (Act 312), MCL 423.231 *et seq.* Thereafter, the CBA expired with no agreement on a continuation. Following the unsuccessful mediation and while arbitration was still pending, the Jackson County Undersheriff dismissed, for excessive absenteeism, an employee previously covered under the expired CBA. On behalf of the employee, defendant filed for grievance arbitration, alleging a violation of the former CBA, which provided for just-cause employment. Plaintiffs contested arbitration in this action for injunctive relief, and the trial court ultimately enjoined defendant from pursuing the grievance arbitration. This appeal followed.

Defendant argues that the trial court improperly granted summary disposition concerning the grievance arbitration. We disagree. A trial court's decision on a motion for summary disposition is reviewed *de novo*. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). Summary disposition should be granted under MCR 2.116(C)(10) if "there is no genuine issue

regarding any material fact and the moving party is entitled to judgment as a matter of law.” *Babula v Roberson*, 212 Mich App 45, 48; 536 NW2d 834 (1995).

The labor mediation act, MCL 423.1 *et seq.*, provides for mediation of labor-negotiation disputes between certain public employees and their respective employers. MCL 423.1. When mediation fails to resolve those labor disputes, either party is allowed to submit an Act 312 petition for compulsory interest arbitration. MCL 423.233. MCL 423.233 “requires unsuccessful mediation on an unresolved dispute” before a filed petition becomes effective. See *Manistee v Employment Relations Comm*, 168 Mich App 422, 426; 425 NW2d 168 (1988). “After ‘Act 312’ interest arbitration is invoked, neither party to the dispute may alter existing ‘wages, hours, [or] other conditions of employment’ without the consent of the other during the pendency of proceedings before the arbitration panel. MCL 423.243.” *Ottawa Co v Jaklinski*, 423 Mich 1, 14; 377 NW2d 668 (1985) (alteration in original). The “wages, hours, [or] other conditions of employment” are those rights that existed when Act 312 arbitration was invoked. *Id.* at 15.

In *Ottawa*, the Supreme Court concluded that an employee’s request under an expired CBA for grievance arbitration – she alleged in her request that an employment decision made without just cause violated the former CBA – was not arbitrable because the CBA had expired at the time the alleged violation occurred. *Ottawa, supra* at 11, 26. The Court noted that the right to just-cause employment did not continue once the CBA expired because it did not accrue over time and did not vest upon a particular contingency. *Id.* at 26. Therefore, under *Ottawa*, the right to just-cause employment does not continue once a CBA expires because it never accrues or vests either during the CBA effective period or after the CBA expires. See also, generally, *Gibraltar School District v Gibraltar MESPA-Transportation*, 443 Mich 326, 350; 505 NW2d 214 (1993). Thus, unless an employee’s grievance is based on an alleged violation while the CBA is still in effect, that grievance cannot be arbitrated. In applying the rule from *Ottawa* to the facts of this action, plaintiffs cannot be ordered to arbitrate because the grievance arose after the CBA expired.

Defendant, however, distinguishes *Ottawa* by arguing that all the rights provided under the now-expired CBA were frozen in place when defendant filed its Act 312 petition *before the CBA expired* (in *Ottawa*, the Act 312 arbitration was initiated *after* the expiration of the CBA, see *id.* at 15). The problem with defendant’s argument, though, is that defendant’s Act 312 petition did not become effective until after the CBA expired because mediation did not occur until after that expiration. MCL 423.233 requires a party to wait 30 days from the *submission of the dispute to mediation* before an Act 312 arbitration petition can be filed. This Court has provided that unsuccessful mediation of an unresolved dispute must occur to effectively initiate Act 312 arbitration. See *Manistee, supra* at 426. Therefore, defendant’s argument is without merit and we must affirm.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael R. Smolenski
/s/ Deborah A. Servitto