IN THE COURT OF APPEALS OF IOWA

No. 6-535 / 05-1080
Filed August 9, 2006

CITY OF FORT DODGE,
Plaintiff-Appellant,

vs.

JAMES BRIAN CHASTAIN,
Defendant-Appellee.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke, Judge.

The plaintiff appeals from the district court's order dismissing the case for lack of subject matter jurisdiction. **AFFIRMED.**

Maurice C. Breen of Breen & Breen, Fort Dodge, for appellant.

MacDonald Smith and Jay M. Smith of Smith & McElwain Law Office, Sioux City, for appellee.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

VOGEL, P.J.

The City of Fort Dodge ("the City") appeals from the district court's order dismissing its claim against James Chastain for lack of subject matter jurisdiction. Since we conclude the City did not follow the terms of the collective bargaining agreement to pursue grievances, we affirm the order.

Chastain worked as a firefighter for the City from September 1994 until September 2002, when he accepted a position with the Council Bluffs Fire Department. Chastain's position with the City is governed by a collective bargaining agreement ("the Agreement") entered into by the City and the Fort Dodge Fire Fighters Association, Local 622, which was effective from July 1, 2001, through June 30, 2005. Article IX details accrual of sick leave benefits, and Article XIX, entitled "Retirement Benefits," covers payout of unused sick leave benefits:

> Any member of the Fort Dodge Fire Department retiring on service of disability retirement will be entitled to pay for. . . . sixty percent of their accumulated sick leave up to a maximum of ninety days. This benefit shall be paid according to the following formula:
>
> > Sick Leave: # of days times 8 hours per day times the 40 hour pay rate equals the total dollar amount.
>
> ***
>
> The definition of retirement shall be construed pursuant to Chapters 400 and 11 of the Code of Iowa.

When Chastain separated from employment with the City in September 2002, the City paid him a gross sum of $7,063.63 for his unused sick leave. In January 2004, the City notified Chastain that it believed the sick-leave payment was in error and requested Chastain to return $4,630.21 of the payment. Chastain did not respond to the notification, nor did he return any portion of the sick-leave payout funds.

The City commenced a civil action in Iowa district court in September 2004 seeking the return of the payout funds. Chastain answered the City's petition by asserting, among other things, that the district court did not have subject matter jurisdiction over the action, as the grievance procedures of the Agreement required arbitration. The City contended that only the association or employee/members, not the City/employer, are bound by the grievance procedures in the Agreement. After submitting the case on stipulated facts, the court agreed with Chastain that the City was bound by the Agreement, and dismissed the suit based upon lack of subject matter jurisdiction. The City appeals.

The scope of review of rulings on subject matter jurisdiction is for correction of errors at law. *Keokuk County v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999). *See also State v. Mandicino*, 509 N.W.2d 481, 482 (Iowa 1993) (noting that subject matter jurisdiction should not be confused with authority, as "A court may have subject matter jurisdiction but for one reason or another may not be able to entertain a particular case. . . . In such a situation we say the court lacks authority to hear that particular case.")

The City argues on appeal that the district court misinterpreted the grievance procedure in the Agreement in finding that the City, as well as the association and association members, are bound by the process. Article XIII states:

> The term grievance shall mean a dispute between the parties as it relates to the terms of this agreement only and shall exclude any and all items accepted for appeal and decision by the Civil Service Commission.
>
> Grievance shall be handled in the following manner:
>
> (a) The grievance must be brought to the attention of the

> Chief or officer in charge within seventy-two hours of its alleged occurrence. This may be done either orally or in written form. Written grievances would be preferred.
> (b) The Chief shall have five days in which to answer the grievance.
> (c) The aggrieved Party may appeal the decision in Step (b) to the Personnel Director for the City. This must be done in writing within five days after the Chief has given his response.
> (d) The Personnel Director will have seven days in which to answer the grievance.
> (e) If the grievance has not been resolved after Step (d), either party may request the Federal mediation and Conciliation Service to appoint a Mediator.
> (f) If the grievance has not been resolved after Step (e), the aggrieved Party may within five days request binding arbitration as prescribed in the Iowa Public Employment Relations Act.
> (g) The time limits specified in the grievance procedure shall exclude Saturdays, Sundays and observed holidays.
>
> The time limits hereinabove are to be strictly construed and each Party will make every effort to settle the grievance equitably at each step.
>
> Members of the Grievance Committee may meet with representatives of the City for the purpose of resolving said grievances during duty hours. A reasonable amount of time will be allowed for investigation and preparation of grievances consistent with the public safety.

The district court found, and we agree, that the term "aggrieved party" in Article XIII applies to the City as well as the association or its members. Although "aggrieved party" is not explicitly defined by the Agreement, the preamble of the Agreement sets forth the parties' intent:

> It is the intent and purpose of the Agreement to promote and insure a spirit of confidence and cooperation between the City of Fort Dodge, Iowa, and the members of the Fort Dodge Fire Department, and to set forth the personnel, compensation, and procedural policies agreed to by the members of the Fort Dodge Fire Department and the City of Fort Dodge.

The City is undisputedly a party to the Agreement and is bound by its provisions, including the grievance procedure for addressing conflicts arising

under the Agreement. The crux of the City's suit against Chastain is whether he was entitled to a payout of his accrued sick-leave benefits when he separated from employment with the City. Solving this issue requires interpretation and determination of rights under the Agreement. The City's two assertions that 1) only employees are bound by the grievance procedure or 2) that this suit is not a dispute of topics contained in the Agreement are implausible. How and when unused sick leave is to be compensated, is set forth in Article XIX of the agreement, and the very subject of the City's dispute with Chastain. We agree with the district court's conclusion that the grievance procedure contained in the Agreement is not unilateral to the association and employee/members, but also binds the City. While not controlling authority, we find instructive the Third Circuit's decision in *Eberle Tanning Co. v. United Food and Commercial Workers Int'l Union*, 682 F.2d 430, 434 (3rd Cir. 1982). In *Eberle*, as in this case, the collective bargaining agreement contained a grievance procedure that seemed employee-focused at the initial stages, but allowed any party to seek arbitration of an unsettled dispute. The court recognized that this vague language created an ambiguity, which was resolved by conforming to federal labor policy favoring alternative dispute resolution of labor issues. *Id.* "A fair reading of the contract as a whole indicates that the grievance arbitration machinery is not wholly employee oriented." *Id.* at 435.

As the City failed to exhaust its contractual remedies prior to filing suit, the

district court was without authority to entertain the case.[1] We affirm the district court's dismissal of the City's petition against Chastain.

AFFIRMED.

[1] While the district court couched the issue in terms of a want of "subject matter jurisdiction," it stems from a failure to exhaust contractual remedies. *See Heck v. George A. Hormel Co.*, 260 N.W.2d 421, 422-23 (Iowa 1977) ("It is clear the present action is one over which the district court has jurisdiction unless the arbitration clause in the Hormel contract deprives it of that power. The question is whether the arbitration clause stripped the court of jurisdiction or merely imposed a condition precedent to the commencement of action. . . . we believe the better view is that expressed by those courts which say an arbitration agreement merely imposes a condition precedent to a determination of the case.") A variation in terminology, however, does not affect the outcome of this case.