Lack of Specificity and Failure to Follow a Grievance Procedure in A Collective Bargaining Agreement May Lead to Dismissal

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Gary Westberry v. State Operated School District of Newark and Superintendent Cami Anderson, United States District Court, District of New Jersey, Civ. Action No. 15-07998(JMV), U.S.D.J., May 19, 2017.

In a recent decision, the U.S. District Court dismissed certain claims brought by Gary Westberry ("Westberry"), an employee of the Newark School District (the "District") against the District based, in part, upon the Collective Bargaining Agreement ("CBA") to which Westberry was subject. Westberry's 10-count complaint arose out of decisions to reassign him to certain teaching and administrative positions in the District during a time when the then-superintendent was attempting to implement various education reforms. Westberry, who served as both a teacher and an administrator, alleged violations of the First Amendment, the Conscientious Employee Protection Act (CEPA), the Law Against Discrimination (LAD), and also brought breach of contract, breach of the covenant of good faith and fair dealing, promissory estoppel and civil conspiracy claims.

If faced with a multi-count complaint from an employee subject to a CBA, a well-crafted grievance clause might provide a good defense because if the employee did not utilize the procedure as required, they may have missed the boat for those claims.

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