UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 02148

September Term, 2015

JONATHAN MAGNESS,

v.

JAMES C. RICHARDSON, et al.

Eyler, Deborah S.,
Kehoe,
Shaw Geter,

JJ.

Opinion by Shaw Geter, J.

Filed: April 24, 2017

This is an appeal from the grant of summary judgment by the Circuit Court for Harford County. Appellants, having been informed that their jobs would be terminated by the Harford County Government Division of Environmental Services, filed an action against the County, an appellee, seeking declaratory and injunctive relief. They averred that the termination constituted a "reduction in force," and that the County failed to comply with the County Code and the local union's collective bargaining agreement's provisions regarding such reductions. Appellants' local union, the American Federation of State, County and Municipal Employees, also an appellee, was granted leave to intervene and subsequently filed a Motion to Dismiss, or alternatively, a Motion for Summary Judgment, which the County later joined. On September 18, 2015, following a hearing, the court granted appellees' Motion for Summary Judgment, finding appellants were bound by the Local Union's Settlement Agreement with the County, were required to exhaust their administrative remedies through the County's grievance process prior to presenting their claims to the Court, and, furthermore, that the County's actions did not constitute a reduction in force.

We have reworded and renumbered appellants' questions presented as follows:[1]

[1] In their brief, appellants asked:

1. Did the Trial Court err in finding that the elimination of DES was not a RIF as defined in Section 38-36 of the County Code, Article 9 of the MOA, and applicable case law and if so, did the Trial Court err by interpreting that the protections set forth under Section 38-36 of the County Code and Article 9 of the MOA were not applicable to the Appellants?

2. Did the Trial Court err by finding that the Appellants were bound by the Local Union's representation in the Union's grievances it filed on June 16, 2015 and that the subsequent agreement between the County and the Local Union in settling the Local Union's grievances was not an *ultra vires* contract?

1. Did the circuit court err in holding appellants were bound by the Settlement Agreement reached by the Local Union and the County?

2. Did the circuit court err in granting summary judgment, finding appellants were required to exhaust their administrative remedies before seeking redress with the courts?

3. Did the circuit court err in finding that the County's actions did not constitute a reduction in force?

For the reasons set forth below, we answer the first two questions in the negative. Because they are dispositive, we decline to answer the third. Therefore, we affirm the judgment of the circuit court.

BACKGROUND

Appellants, Jonathan Magness and David Cupp, were employees of Harford County's Division of Environmental Services ("DES"), at the Scarboro landfill. They were also members of the Local Union bargaining unit. DES is an agency of County government. On June 9, 2015, County Executive Barry Glassman informed the American Federation of State, County and Municipal Employees ("Local Union") that the County Government had reached an agreement with Maryland Environmental Services ("MES") to assign operation of the Scarboro landfill to them. As a result, forty-six DES positions would be eliminated, including 26 Union positions.

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3. Did the Trial Court err by finding that the Appellants were required to exhaust their administrative remedies and if so, should the Trial Court have either dismissed the action without prejudice or stayed the court proceedings pending the outcome of the administrative proceedings?

4. Did the Trial Court err by denying Appellants' request for injunctive relief ordering the County to refrain from terminating the Appellants' employment until a decision could be rendered on the merits of the Appellants' legal arguments?

The following day, the County informed the employees at the Scarboro landfill about its intended action. This announcement was followed by letters to each of the affected Union employees on June 12, 2015, encouraging them to apply for one of 13 postings published for 27 County job vacancies. The letters also notified employees that if they were not offered other employment with the County, their last day of employment would be August 29, 2015. Both appellants received this letter.

Thereafter, the Local Union filed two grievances on behalf of all members, one addressed to the County's Director of Human Resources and the other to the County Personnel Advisory Board ("PAB"). The Union alleged that the County's action amounted to a reduction in force ("RIF") under the collective bargaining agreement, or Memorandum of Agreement ("MOA"), between the County and the Union, and the County Code. They alleged this would require the County to follow the RIF procedures outlined in the MOA. On July 2, 2015, after meeting with County representatives, the Union representatives entered into a grievance settlement on behalf of all affected employees ("Settlement Agreement"). The settlement agreement defined how, when, and to what effect current employees of the landfill would be offered the opportunity to apply for available jobs remaining within County employment. The terms of the Settlement Agreement were announced to the work force by the County's Director of Human Resources on site on July 6, 2015, with the elected Local Union officers present.

On July 28, 2015, the County sent another letter to appellants, informing them that because the County had not yet offered them another position, their employment would be terminated on August 29, 2015.

Appellants, on August 13, 2015, filed a grievance with the County's Department of Human Resources, alleging, amongst other things, that the County was required to follow the "reduction in force" provisions located in Section 38-36 of the Harford County Code and Article 9 of the MOA prior to their termination. The next day, appellants also filed a Request for Declaratory Judgment, as well as a Motion for Temporary Restraining Order, Preliminary Injunction, Final Injunction, and for Injunctive Relief and Complaint for Writ of Mandamus with the Circuit Court for Harford County. Appellants here sought a judicial determination as to whether the County's actions met the definition of a reduction in force, and if so, whether the County fully complied with the provisions of Section 38-36 of the Harford County Code and Article 9 of the MOA. The circuit court heard argument and subsequently denied the temporary restraining order request on August 17, 2015, finding that appellants would not suffer irreparable harm before the merits hearing scheduled for August 28, 2015.

The Local Union requested and was granted leave to intervene as a party on August 28, 2015. They subsequently filed a motion to dismiss, or alternatively, a motion for summary judgment, which the County later joined.

Mr. Magness' employment was terminated on August 29, 2015, and Mr. Cupp applied for early retirement in order to protect his rights to his benefits. Appellants filed a second grievance with the Department of Human Resources on September 2, 2015 regarding their terminations pursuant to Section 38-44 of the County Code.

On September 11, 2015, the circuit court conducted a summary judgment hearing, wherein the Local Union and County argued that appellants' action was flawed because

appellants had failed to exhaust available remedies prior to filing their action. They also alleged that the Settlement Agreement between the Union and the County foreclosed appellants' claims under the MOA and the County Code. Appellants contended that they were not required to exhaust their administrative remedies. They alleged that the available remedy, under the Settlement Agreement, was inadequate and was not exclusive.

On September 18, 2015, the circuit court entered a Memorandum Opinion and Order that granted the Union's motion for summary judgment, finding that appellants had failed to exhaust their administrative remedies, appellants were bound by the Local Union's Settlement Agreement with the County, and the County's action was not a reduction in force.

This appeal followed.

STANDARD OF REVIEW

A motion for summary judgment shall be granted "if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Maryland Rule 2-501. We therefore determine whether the trial court was legally correct. *Windesheim v. Larocca*, 443 Md. 312, 326 (2015) (citing *Goodwich v. Sinai Hosp. of Balt., Inc.*, 343 Md. 185, 204 (1996)).

DISCUSSION

I. The circuit court did not err in finding that the appellants were bound by the Local Union's representation in the Union's grievances.

Appellants argue that, as Harford County employees, they have the right to "represent themselves individually or designate their personal representative in their

employment relations with the county." County Code, § 38-3(C). While they acknowledge that the Local Union has an "exclusive" right to represent members in negotiations with the County related to wages, hours, working conditions and other terms of employment of all members, they assert that the Code does not preclude a member "from bringing matters of personal concern to the attention of appropriate officials or from choosing his own representative in a grievance or appellate action." Appellants further contend that the Union's right to collectively bargain on behalf of its members does not extend to submitting and settling individual grievances.

The Union, on the other hand, argues that they are fully authorized to act as appellants' exclusive representative by both the County Code and the MOA. Because appellants were members of a bargaining unit for which the labor organization was designated as the exclusive representative, the Union contends appellants are bound by its actions. The Union further contends they were not obligated to inform appellants individually about the grievance filed with the County on behalf of the affected employees, nor were they required to secure their permission before entering into a settlement agreement.

To be sure, unions have historically been recognized as advocates for the rights of their members. The broad authority of the union as the exclusive bargaining agent is undoubted. *Humphrey v. Moore*, 375 U.S. 335, 342 (1964). "By its selection as bargaining representative, it has become the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially." *Id.* (citing *Wallace Corp. v. National Labor Relations Board*, 323 U.S. 248, 255 (1944).

In the present case, as the MOA states, its purpose is the "promoting [of] harmonious relationships between the County and its employees and the establishment of equitable and peaceful procedures for the resolution of differences." To that end, the MOA outlines a comprehensive process for grievances and the protections afforded to employees. Further, by statute, the Union had the authority to file their own grievances against the County on behalf of the representation unit under County Code, § 38-6(A).

The question, then, is whether members may ever act independently of the Union. The Court of Appeals' decision in *Jenkins v. William Schluderberg-T.J. Kurdle Co.* is instructive. 217 Md. 556 (1958). In *Jenkins*, the employee sued her former employer for wrongful discharge in breach of the collective bargaining agreement, after the Union failed to arbitrate her grievance when she requested it to do so. The Court began by finding that "[t]here no longer seem[s] to be any doubt that in certain situations an individual employee may [individually] sue his employer for the breach of a collective bargaining agreement." *Id.* at 559. "Several theories have been advanced to explain this result," but "[u]nder any of [the] theories, the individual may sue the employer for infringement of his individual rights." *Id.*

However, in an effort to curtail individual lawsuits from employees, "the collective bargaining agreement usually provides for a detailed procedure through which all grievances are channeled." *Jenkins*, 217 Md. at 560. "Maryland law has long recognized the rule that a union member must exhaust the union's internal remedies before filing suit in court." *Amalgamated Transit Union v. Lovelace*, 441 Md. 560, 561 (2015) (citing *Walsh v. Commc'ns Workers of Am., Local 2336*, 259 Md. 608, 612 (1970)). "Thus, if the

employee refuses to take even the initial step of requesting the processing of the grievance, he will not be granted relief in the courts." *Jenkins*, 217 Md. at 560.

"The difficulty," the Court continued, "arises when [the employee] presents his grievance to the union and he is dissatisfied with the way in which the union handles his case." *Jenkins*, 217 Md. at 561. In those circumstances, "he cannot sue the employer if he does not like the result of the union[']s efforts at negotiation." *Id.* This is because unions are afforded considerable discretion in the handling and settling of grievances. *Id.* at 564; *see also Stanley v. Am. Fed'n of State and Mun. Emp. Local No. 553*, 165 Md. App. 1, 15 (2005); *Neal v. Potomac Edison Co.*, 48 Md. App. 353, 358 (1981), *cert. denied*, 290 Md. 719 (1981); *Meola v. Bethlehem Steel Co.*, 246 Md. 226, 235 (1967). "Indeed, an 'employee has no absolute right to insist that his grievance be pressed through any particular stage of the contractual grievance procedure." *Stanley*, 165 Md. App. at 15 (citing *Neal*, 48 Md. App. at 358). "A union may screen grievances and press only those that it concludes will justify the expense and time involved in terms of benefitting the membership at large." *Id.*

Ultimately, the Court in *Jenkins* concluded that the employee was not barred from seeking redress in the courts because her failure to exhaust her contractual remedies was due to the Union's "[willful], arbitrary and discriminatory" actions." In the cases since, it has become clear that "a State court may entertain a suit by a union member against a union's officers and representatives 'based on the member's claim that the union had, without good cause or reason, refused to take to arbitration the member's grievance against his employer.'" *Stanley*, 165 Md. App. 1, 14 (2005) (internal citations omitted). A union's

arbitrary actions, therefore, "reliev[e] the employee of [the] express or implied requirement that disputes be settled through contractual grievance procedures." *Neal*, 48 Md. App. at 359.

Such is not the case here. Appellants failed to exhaust their administrative remedies and are therefore barred from seeking redress in the courts. However, even assuming, *arguendo*, that appellants had filed a timely grievance, or had attempted to and been barred, their claim still fails. The Union was authorized under County Code, § 38-6(A) to file their own grievances on behalf of the representation unit. Surely the outsourcing of Union member jobs falls under "other terms of employment of all employees in the representation unit." Likewise, the Union has wide discretion to settle those grievances with the County on behalf of their members, in a way in which they reasonably believed would "justify the expense and time involved in terms of benefiting the membership at large." *Stanley*, 165 Md. App. at 15 (citing *Neal*, 48 Md. App. at 358); *see also Humphrey*, 375 U.S. at 342.

Courts have generally "refused to allow a minority group of employees to set aside a collective bargaining agreement in a suit against their employer, once it was determined that the labor organization satisfied its duty of fairly representing the employees." *Offut v. Montgomery Cty. Bd. of Educ.*, 285 Md. 557, 566 (1979); *see also Humphrey*, 375 U.S. 335 (1964) (finding that the Court would not "find a breach of the collective bargaining agent's duty of fair representation in taking a good faith position contrary to that of some individuals whom it represents nor in supporting the position of one group of employees against that of another," after finding no support for the contention that the union lacked the authority to make the agreement.).

In the present case, there has been no allegation that the Union did not satisfy its duty of fair representation, nor that its action was arbitrary or discriminatory. Therefore, we find that the circuit court did not err in holding that appellants were bound by the Local Union's representation in the Union's grievances with the County.

II. The circuit court was correct in finding appellants were required to exhaust their administrative remedies.

As mentioned above, "Maryland law has long recognized the rule that a union member must exhaust the union's internal remedies before filing suit in court." *Amalgamated Transit Union v. Lovelace*, 441 Md. 560, 561 (2015) (citing *Walsh v. Commc'ns Workers of Am., Local 2336*, 259 Md. 608, 612 (1970)). This doctrine "concerns 'the relationship between legislatively created administrative remedies and alternative, statutory, common law or equitable judicial remedies.'" *United Ins. Co. of Am. v. Md. Ins. Admin.*, 450 Md. 1, 14 (2016) (quoting *Prince George's County v. Ray's Used Cars*, 398 Md. 632, 644 (2007)). When the General Assembly provides both an administrative and a judicial remedy to resolve a particular matter, "the relationship between that administrative remedy and a possible alternative judicial remedy will ordinarily fall into one of three categories[:]

> [T]he administrative remedy may be exclusive, thus precluding any resort to an alternative remedy…[Second] [T]he administrative remedy may be primary but not exclusive. In this situation, a claimant must invoke and exhaust the administrative remedy, and seek judicial review of an adverse administrative decision, before a court can properly adjudicate the merits of the alternative judicial remedy. [Or the] administrative remedy and the alternative remedy may be fully concurrent, with neither being primary, and the plaintiff at his or her option may pursue the judicial remedy without the necessity of invoking an exhausting the administrative remedy."

United Ins. Co. of America v. Maryland Ins. Admin., 450 Md. at 14-16 (quoting *Zappone v. Liberty Life Ins. Co.*, 349 Md. 45, 64 (1998)).

Appellants contend that, in the instant case, the administrative remedy established by the County Code and MOA was a concurrent remedy, and, therefore, they were not required to exhaust their administrative remedy before pursuing judicial action. Appellees argue to the contrary. They contend that the available remedies are primary, and, therefore, appellants were required to exhaust them before pursuing a judicial remedy.

"In the absence of specific statutory language indicating the type of administrative remedy, there is a rebuttable presumption that an administrative remedy was intended to be primary" and the "claimant cannot maintain the alternative judicial action without first invoking and exhausting the administrative remedy." *United Ins. Co.*, 450 Md. at 15 (quoting *Zappone*, 349 Md. at 63)). In determining whether the presumption in favor of the administrative remedy prevails, the court considers four factors:

> "(1) the comprehensiveness of the administrative remedy in addressing the aggrieved party's claim; (2) the administrative agency's view of its jurisdiction over the matter; (3) the claim's dependence upon the statutory scheme; and (4) the claim's dependence upon the administrative agency's expertise."

United Ins. Co., 450 Md. at 17 (quoting *Zappone*, 349 Md. at 64-66)).

First, "[a] very comprehensive administrative remedial scheme is some indication that the [General Assembly] intended the administrative remedy to be primary." *Zappone*, 349 Md. at 64. "Therefore, the relevant inquiry is whether the statutory scheme is *sufficiently comprehensive*, in that it encompasses any claim raised by an aggrieved party,

and 'preclude[s] resort to a *fully* independent common law remedy.'" *Carter v. Huntington Title & Escrow, LLC*, 420 Md. 605, 627 (2011) (quoting *Zappone*, 349 Md. at 67).

Second, if "the General Assembly has provided a special form of remedy and established a statutory procedure before an administrative agency for a special kind of case," *Carter*, 420 Md. 629, it is generally "an indication that 'a litigant must ordinarily pursue that form of remedy and not by[-]pass the administrative official." *United Ins.*, 450 Md. at 23 (quoting *Carter*, 420 Md. at 629).

The third consideration is whether the claim is dependent on the statutory scheme that provides the administrative remedy. *United Ins.*, 450 Md. at 23; *see also Finch v. Holladay-Tyler Printing, Inc.*, 322 Md. 197, 198 (1991). Thus, "[w]here that judicial cause of action is wholly or partially dependent upon the statutory scheme which also contains the administrative remedy…the Court has usually held that the administrative remedy was intended to be primary and must first be invoked and exhausted before resort to the courts." *Zappone*, 349 Md. at 65.

Finally, courts consider whether the "judicial cause of action is wholly or partially dependent upon…the expertise of the administrative agency." *Zappone*, 349 Md. at 65. In that case, "the Court has held that the remedy was intended to be primary and must first be invoked and exhausted before resort to the courts." *Id.*

In the case at bar, appellants filed individual grievances with the Personnel Advisory Board, seeking the same declaration of rights and remedies sought in the instant action. They contend, nevertheless, that the administrative remedy available was not sufficiently comprehensive. Appellants argue that because the PAB could not offer injunctive relief

before the August 29 termination date, the PAB could not "provide to any substantial degree the remedy sought," and, therefore, they were not required to exhaust that remedy before turning to the courts.

Appellants cite *Poe v. City of Baltimore*, 241 Md. 303 (1966), and *Prince George's County v. Blumberg*, 288 Md. 275 (1980), to support this position. Specifically, appellants contend those cases support the position that "[i]f an agency cannot provide to any substantial degree the remedy sought, the employee is not required to exhaust administrative remedies." The Court in *Poe* held that "[w]here there is no *adequate* administrative remedy, or where that remedy does not provide for judicial review of the agency's action," a party was not required to exhaust those administrative remedies. 241 Md. at 309-10. The Court in *Prince George's County v. Blumberg* held that "[w]here the administrative agency cannot provide to any substantial degree a remedy," the party is not required to exhaust their administrative remedies. 288 Md. at 285.

In *Poe*, the Court of Appeals considered whether a party was required to exhaust the available administrative remedy, given that their claim was a constitutional question. Appellants in *Poe* filed suit against the Mayor and City Council of Baltimore, arguing that a 1931 city zoning ordinance, which classified appellants' property as residential, resulted in a taking of the property without due process, and that the ordinance, insofar as it restricted appellants' property to residential use only, was unconstitutional. On appeal, appellants argued that they had "no effective remedy before [the administrative agency], because…only a court can decide a question of constitutional law." 241 Md. at 307. The issue, then, the Court found, was "whether the property [could] be used, under existing

circumstances, for any purpose under the zoning classification." 241 Md. at 311. The Court ultimately found that, although the agency would not have jurisdiction to decide the constitutionality of the statute or ordinance in general, because the issue before them was based on "the application of the general statutory plan to a particular situation," which the agency did have authority to resolve, the party was required to exhaust the administrative remedies. *Id.* at 311.

In *Prince George's County v. Blumberg*, the Court considered, amongst other issues, whether the parties were required to exhaust their administrative remedies when they contended that the agency would not have been able to provide them with an adequate remedy. In *Blumberg*, the party brought claims against two independent agencies, and therefore, they argued, the administrative remedy provided by either agency would have been inadequate. The Court held that, although one agency did not have authority to provide relief as to the other, "this [did] not make the appeal to the [agency] inadequate, or excuse its use," as it concerned the question that the agency did have authority to review. "An administrative remedy 'is not 'inadequate' so as to authorize judicial intervention before exhaustion of the remedy merely because it is attended with delay, expense, annoyance, or even some hardship." *Prince George's County v. Blumberg*, 288 Md. at 292 (quoting *Bennet v. School Dist. Of City of Royal Oak*, 10 Mich. App. 265 (1968)).

In the instant case, although appellants did request injunctive relief, such relief was not the ultimate aim of appellants' claim. Appellants requested injunctive relief only until there could be a judicial determination as to whether the County's actions constituted a reduction in force, which the Personnel Advisory Board was authorized under the County

Code to do. Though the Personnel Advisory Board could not offer injunctive relief, they could offer an *adequate* relief for the remedy sought. Simply because this could have caused appellants "delay, expense, annoyance, or even some hardship" does not mean that the remedy provided is inadequate.

Moreover, appellants' argument that the PAB did not have the authority to determine whether the County's actions constituted a RIF is incorrect. The County Code provision § 38-36, detailing the RIF procedure, specifically contemplates the PAB's review and approval. Likewise, the RIF provisions and the provisions detailing the PAB appellate process are contained in the same article – Chapter 38, Article IV of the County Code. The statute providing that disputes between employee organizations and the County are to be handled by the PAB is also contained in Chapter 38 of the County Code. Appellants' claim, therefore, is dependent on the statutory scheme that provides the administrative remedy.

Finally, although the determination of whether the County action was a reduction in force is not wholly dependent on the expertise of the PAB, it is clear from the statute that the General Assembly intended the PAB to be the primary arbiter for disputes between County employees and the County. As appellants themselves point out, the General Assembly, according the County Code, intended that "the PAB [be] the final decision maker in all grievances." Allowing appellants to circumvent this process is contrary to the agreement reached. Thus, we find the circuit court did not err.

Appellants also contend that the circuit court's ruling, finding that they were able to seek redress for their claims through the PAB, contradicts the court's holding in granting

the Union's motion for summary judgment that there was no dispute of material fact. We disagree.

The court noted that, to defeat a motion for summary judgment, "[t]he non-moving party's facts must be material and of a substantial nature, not fanciful, frivolous, gauzy, spurious, irrelevant, gossamer inferences, conjectural, speculative, nor merely suspicions." The court cited to *Benway v. Maryland Port Admin.*, in which this Court held that the "proper standard" to determine whether there is a dispute of material fact "is that a party must provide the court with more than a different theory of how the events transpired." 191 Md. App. 22, 46 (2010).

In the instant case, the circuit court held that appellants' "disputed facts contained in their pleadings and argued before the court have no merit," and were only "conclusory statements without demonstrating any evidentiary support." Therefore, the court found there was not a dispute of material fact, and granted the County and Local Union's motion for summary judgment.

Appellants did not below, and have not now, established any dispute of material *fact*, only a dispute as to the application of the *law* – whether the County's actions legally meet the requirements to be considered a reduction in force. As such, the circuit court was correct in granting the motion for summary judgment. This finding is not inconsistent with the trial court's, and our, determination that appellants should have, as a matter of law, first sought redress from the PAB.

JUDGMENT OF THE CIRCUIT COURT FOR GARRETT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.