

IN THE COURT OF COMMON PLEAS OF
LUZERNE COUNTY, PENNSYLVANIA

LEONARD GALLI,

Plaintiff,

v.

BOROUGH OF EXETER, and
THOMAS SHANNON, Chairman,
Exeter Borough Council,

Defendants.

: CIVIL ACTION

:
:
:
: No. 2014-5006

ORDER

AND NOW, this _____ day of _____, 2014, upon consideration of Plaintiff Leonard Galli's Motion for Injunctive Relief and the response in opposition by Defendants Exeter Borough and Thomas Shannon, it is hereby **ORDERED** that said Motion is **DENIED** with prejudice.

so, Plaintiff ignores the plain text of the Pennsylvania Labor Anti-Injunction Act, P.S. 43 § 206a, *et seq.*, which prohibits this Court from exercising jurisdiction over labor disputes and likewise prohibits the imposition of an injunction in this instance. Additionally, assuming *arguendo*, that Plaintiff has an agreement with the Borough, which the Borough adamantly denies, Plaintiff ignores the critical fact that the Union is also a party to any such agreement and thus the Pennsylvania Labor Relations Board (“PLRB”) is the exclusive forum for resolving this dispute. Finally, Plaintiff’s demand for mandamus relief to compel the Exeter Borough Council to perform a discretionary act and execute the draft agreement cannot be sanctioned and should be rejected by the Court.

II. FACTUAL AND PROCEDURAL BACKGROUND

In 2013, Plaintiff was observed watching graphic pornography on his work computer during his shifts as Sergeant with the Borough Police Department. An investigation into Plaintiff’s computer use was conducted by the Borough where it was determined that Plaintiff regularly viewed sexually explicit materials on his work computer and also made frequent visits to the website craigslist.org’s “Casual Encounter” and “Male 4 Male” sections. A copy of Plaintiff’s Internet browsing history is attached hereto as Exhibit “A”; a copy of the file folder from Plaintiff’s work computer, which identifies the names of videos watched at work by Plaintiff with the date and time of viewing is attached hereto as Exhibit “B”; and a copy of the Workstation Examination Report prepared by Dennis G. Cheng, which represents a portion of the Borough’s investigation into Plaintiff’s conduct, is attached hereto as Exhibit “C.”

As a result of Plaintiff’s conduct, he was placed on paid administrative leave pay by the Borough on February 5, 2014. While on paid administrative leave, Plaintiff and the

Borough engaged in settlement discussions. A draft settlement agreement (the “Draft Agreement”) was circulated to Plaintiff in February 2014 for consideration. A copy of the Draft Agreement is attached hereto as Exhibit “D.” The Draft Agreement acknowledged that Plaintiff “expended time performing non-work activities and used a Borough computer to conduct his personal business, visit the website craigslist.org to arrange for sexual relationships and watched pornographic material.”¹ See Exhibit D at p. 2 ¶6. Plaintiff rejected the Draft Agreement, based in part, on the inclusion of specific reference to his conduct, and requested material revisions. A copy of the email rejecting the agreement is attached hereto as Exhibit “E.” The Borough, in turn, declined to make Plaintiff’s proposed revisions and elected to proceed with the investigation.

The Borough and the Union jointly agreed that Plaintiff would participate in an employee interview on April 17, 2014. However, in an effort to avoid participation in the employee interview, Plaintiff initiated these legal proceedings where he inexplicably attempts to resurrect the Draft Agreement as a binding agreement between the parties.

II. LEGAL ARGUMENT

A. **Plaintiff’s Request for Injunctive Relief is Prohibited By the Labor Anti-Injunction Act and the Pennsylvania Labor Relations Act**

The Pennsylvania Labor Anti-Injunction Act and the Pennsylvania Labor Relations Act deprive this Court of jurisdiction to issue an injunction in accordance with Plaintiff’s request. The Labor Anti-Injunction Act and the Pennsylvania Labor Relations Act jointly define a “labor dispute” to include “any controversy concerning terms or conditions of employment.” 43 P.S. § 206c(c); 43 P.S. § 211.2(h). At its heart, Plaintiff’s Complaint is a

¹ The Draft Agreement also has “draft” marked prominently in triplicate on every page. Thus, there can be no doubt that the Draft Agreement was intended as a draft. Unsurprisingly, Plaintiff did not attach the Draft Agreement to the Complaint, even though his lawsuit is essentially a breach of contract claim.

“labor dispute” with the meaning of the Acts (*i.e.*, Plaintiff is disputing the “terms and conditions” of his employment with the Borough).

The Labor Anti-Injunction Act expressly provides that “[n]o court of this Commonwealth *shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case included with this act* [such as a labor dispute], except in strict conformity of the with the provisions of this act, nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this act.” 43 P.S. § 206(d) (emphasis added). Plaintiff’s request for injunctive relief fails to fall into any of the Labor Anti-Injunction Act’s recognized exceptions. For example, jurisdiction may be asserted in situations involving mass picketing. *See generally*. Therefore, under the plain terms of the Labor Anti-Injunction Act, this Court lacks the jurisdiction to issue injunctive relief.

Likewise, the Court is equally precluded from exercising jurisdiction over this “labor dispute” as jurisdiction is properly vested with the Pennsylvania Labor Relations Board in accordance with the Pennsylvania Labor Relations Act. 43 P.S. § 211.1, *et seq.* As set forth above, Plaintiff is a member of the bargaining unit covered by the Collective Bargaining Agreement. To the extent that the Draft Agreement is a valid agreement, which Defendants unequivocally dispute, it is an extension of the Collective Bargaining Agreement and the PLRB is the exclusive forum for addressing these issues. *See Ellwood City Police Wage & Policy Unit v. PA. Labor Relations Board*, 736 A.2d 707 (Pa. Commw. Ct. 1999) (noting that disputes arising out of contractually created rights are to be protected by the grievance and arbitration process and particularly the Labor Board). Accordingly, if Plaintiff contends that the Draft Agreement is a valid agreement, he is required to avail himself of the grievance and arbitration

process set forth in the CBA and then, through his Union, file an appeal with the Pennsylvania Labor Relations Board.

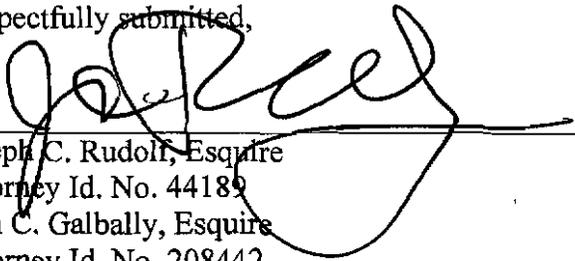
B. Plaintiff's Action for Mandamus to Compel Execution of the Draft Agreement Cannot Be Sanctioned.

Plaintiff contends that he is entitled to the remedy of mandamus to force Borough Council to sign the Draft Agreement. However, it is well settled that “[m]andamus ‘is an extraordinary writ designed to compel performance of a ministerial act or mandatory duty where there exists a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other adequate and appropriate remedy.’” *Princeton Sportswear Corp. v. Redevelopment Auth.*, 333 A.2d 473, 476 (Pa. 1975). Plaintiff has not – and cannot – satisfy this exacting standard. Plaintiff has no “clear legal right” with respect to the Draft Agreement. Further, he cannot circumvent the political process that requires members of Borough Council to vote prior to entering into such agreements. Because the Draft Agreement was never finalized, Council never reviewed the Agreement or took the required vote at a public meeting. Therefore, beyond the fact that Plaintiff has no right to the remedy, he cannot require the Court to direct Borough Council to convene and vote in a particular way on a discretionary matter.

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court deny Plaintiff's motion for injunctive relief with prejudice and award attorneys fees and costs pursuant to Section(q) of the Pennsylvania Labor Anti-Injunction Act.

Respectfully submitted,



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Date: April 17, 2014