

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

1501

CA 10-01525

PRESENT: CENTRA, J.P., LINDLEY, SCONIERS, GREEN, AND GORSKI, JJ.

ARKPORT STAFF UNITED AND RONNI PORCARO, IN
HER CAPACITY AS PRESIDENT OF ARKPORT STAFF
UNITED, PLAINTIFFS-RESPONDENTS,

V

MEMORANDUM AND ORDER

ARKPORT CENTRAL SCHOOL DISTRICT, BOARD OF
EDUCATION OF ARKPORT CENTRAL SCHOOL DISTRICT
AND WILLIAM S. LOCKE, IN HIS CAPACITY AS
SUPERINTENDENT OF ARKPORT CENTRAL SCHOOL
DISTRICT, DEFENDANTS-APPELLANTS.

HOGAN, SARZYNSKI, LYNCH, SUROWKA & DEWIND, LLP, JOHNSON CITY (AMY J.
LUCENTI OF COUNSEL), FOR DEFENDANTS-APPELLANTS.

JAMES R. SANDNER, LATHAM (ROBERT T. REILLY OF COUNSEL), FOR
PLAINTIFFS-RESPONDENTS.

Appeal from an order of the Supreme Court, Steuben County (Peter C. Bradstreet, A.J.), entered March 25, 2010. The order denied the motion of defendants to dismiss the complaint.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Supreme Court properly denied defendants' motion to dismiss the complaint in this action seeking, inter alia, a declaration that the members of plaintiff Arkport Staff United (hereafter, Union) are entitled to longevity increases under article 27 of the collective bargaining agreement (CBA) between the Union and defendant Arkport Central School District. Contrary to defendants' contention, the instant action is subject to the six-year statute of limitations applicable to breach of contract actions (see CPLR 213 [2]), rather than the four-month statute of limitations applicable to CPLR article 78 proceedings (see CPLR 217 [1]; *Nassau Ch. Civ. Serv. Empls. Assn., Local 830, AFSCME, Local 1000, AFL-CIO v County of Nassau*, 154 Misc 2d 545, 548, *affd* 203 AD2d 267; *Aloi v Board of Educ. of W. Babylon Union Free School Dist.*, 81 AD2d 874, 875). The statute of limitations "applicable to a declaratory judgment action depends upon the nature of the substance of the underlying claim . . . Since the plaintiffs' underlying claim is an action on the contract," i.e., the CBA, CPLR 213 (2) applies (*Aloi*, 81 AD2d at 875). The instant action was commenced within six years of the alleged breach of the CBA and thus is timely. The court also properly determined that dismissal

of the complaint was not warranted based upon plaintiffs' alleged failure to "fully utilize" the grievance procedure within the meaning of section 11.3 (b) of the CBA.

Entered: December 30, 2010

Patricia L. Morgan
Clerk of the Court