

OPINIONS OF THE SUPREME COURT OF OHIO

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The State ex rel. Eaton City School District Board of Education et al., Appellees, v. State Employment Relations Board, Appellant.

[Cite as State ex rel. Eaton City School Dist. Bd. of Edn. v. State Emp. Relations Bd. (1992), Ohio St.3d .] State Employment Relations Board -- Investigatory file compiled by SERB must be disclosed upon request -- Files excepted from disclosure, when.

(No. 91-14 -- Submitted May 19, 1992 -- Decided August 12, 1992.)

Appeals from the Court of Appeals for Franklin County, Nos. 87AP-860 and 87AP-1132.

In separate actions, the State Employment Relations Board ("SERB") issued a complaint against the Eaton City School District Board of Education ("Eaton") alleging a violation of R.C. 4117.11(A)(1) and (3) in not renewing an employment contract, and an unfair labor practice charge against the Batavia Local School District Board of Education ("Batavia"), which SERB later dismissed. Eaton and Batavia seek to inspect and copy all records prepared by SERB during its investigation of each case. SERB refused to disclose these records, and the school boards each filed a complaint in mandamus in the Court of Appeals for Franklin County, seeking to compel SERB to produce the records.

The court of appeals rejected SERB's arguments for nondisclosure, conducted an in camera inspection of the records, and issued the writ as to both complaints.

This cause is before the court upon an appeal as of right.

Ennis, Roberts & Fischer Co., L.P.A., and J. Michael Fischer, for appellees.

Lee I. Fisher, Attorney General, and Joseph M. Oser, for appellant.

Per Curiam. SERB argues that the investigatory files are not public records and that, alternatively, the records are either trial preparation records or law enforcement investigatory records. In Franklin Cty. Sheriff's Dept. v. State Emp. Relations Bd. (1992), 63 Ohio St.3d 498, 589 N.E.2d

24, we rejected arguments identical to those advanced in this case.

Paragraph one of the syllabus in Franklin Cty. Sheriff;s Dept. holds:

"Investigatory files compiled by the State Employment Relations Board pursuant to R.C. 4117.12 must be disclosed upon request pursuant to R.C. 4117.17 and 149.43 unless an in camera inspection demonstrates that all or any portions of the files are excepted from disclosure. Excepted information may be redacted prior to disclosure."

The appellate court, here, inspected the records in camera and found nothing to except or redact. Accordingly, we affirm the issuance of the writ.

However, SERB validly questions the breadth of the appellate court's decision. In the Eaton case, it is undisputed SERB did not submit certain records it considered to be its work product and not sought by Eaton. The court of appeals referee, apparently without reviewing these records, nevertheless recommended that SERB be ordered to disclose its entire investigatory file. Thus, we limit the writ to the submitted records.

Accordingly, we affirm the judgment of the court of appeals issuing the writ. However, in the Eaton case, we limit the court of appeals' decision to the submitted records. If Eaton seeks the withheld records, the court of appeals shall inspect them in camera, pursuant to Franklin County Sheriff's Dept., supra, and rule upon their disclosure.

Judgment affirmed,  
as modified.

Moyer, C.J., Sweeney, Holmes, Douglas, Wright, H. Brown  
and Resnick, JJ., concur.