[Cite as *Aronhalt v. Castle*, 2012-Ohio-5666.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Rick A. Aronhalt,	:	
Plaintiff-Appellant/ [Cross-Appellee],	:	
v.	:	No. 12AP-196
	:	(C.P.C. No. 09CVH-08-13103)
Dr. Steve Castle, Superintendent et al.,	:	(REGULAR CALENDAR)
Defendants-Appellees/ [Cross-Appellants].	:	

D E C I S I O N

Rendered on December 4, 2012

TheNyceCompany, and *Kinsley F. Nyce*, for plaintiff-appellant.

Crabbe, Brown & James, LLP, and *John C. Albert*, for defendants-appellees.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Plaintiff-appellant, Rick A. Aronhalt, appeals a judgment of the Franklin County Court of Common Pleas that granted summary judgment on all but two of Aronhalt's claims to defendants-appellees, the Board of the New Albany-Plain Local School District (hereinafter, respectively, "Board" and "District"); the five Board members; Steve Castle, superintendent; Ken Stark, director of operations and planning; and Brian Ramsey, treasurer. Defendants-appellees cross appeal from the same judgment. For the following reasons, we affirm.

{¶ 2} In 1997, the Board hired Aronhalt as facilities coordinator, and the parties executed a two-year employment contract. As facilities coordinator, Aronhalt was

responsible for satisfying the maintenance and custodial needs of the District's facilities, as well as overseeing the construction of new facilities.

{¶ 3} Before the term of the 1997 contract expired, the parties entered into a new two-year employment contract to raise Aronhalt's salary. In 1999, the parties revised that second contract to provide Aronhalt with performance bonuses associated with the construction of the new elementary school complex.

{¶ 4} In 2000, the parties executed a third employment contract, which made Aronhalt facilities coordinator from July 1, 2000 to June 30, 2002. During the term of the third contract, the then superintendent changed Aronhalt's job title and description. Aronhalt became the District's facilities construction coordinator, a position that required Aronhalt to focus solely on overseeing construction for the District. Specifically, the facilities construction coordinator's duties included determining the need for new facilities in the District, designing and developing new school facilities, monitoring the construction process, reviewing completed construction, and facilitating the opening of new buildings. Although Aronhalt did not want the transfer, he continued to work for the District once transferred.

{¶ 5} When Aronhalt's third employment contract expired in 2002, the parties entered into a one-year contract designating Aronhalt the District's facilities construction coordinator. From 2003 to 2007, the parties signed three sequential, two-year contracts, in which Aronhalt agreed to work as the District's facilities construction coordinator. During his tenure at the District, Aronhalt oversaw the construction of three new schools, an athletic facility, and a performing arts center; the expansion of the high school; and the renovation of the high school's HVAC system.

{¶ 6} In May and November 2007, the District placed construction bond issues on the ballot. Both issues failed. In the summer of 2008, the District was debating whether to put another construction bond issue on the November 2008 ballot. During this period, Castle completed and provided Aronhalt with a copy of his yearly evaluation. In part, the evaluation stated:

> As you are aware, Rick, we have had recent discussions in regards to the future existence of the position of Facilities [Construction] Coordinator here in our New Albany-Plain Local School District. The Board of Education will determine in the next few weeks how best to proceed with the facility

> plan here on the learning campus. If the Board of Education decides not to move forward with a bond issued [sic] on the November 2008 ballot, I will need to further assess your current position here in our school district due to the fact that there will be no significant construction work on our campus for the foreseeable future. As I have indicated Rick, please realize this does not reflect on the work you have done in our school district for the past several years, nor is it a current reflection of the work being done at this point in time. Rather as we have discussed, it is simply the fact that without any facilities or construction work here on the campus there may not be the need to continue filling this position of facilities [construction] coordinator. I again reinforce to you in a very professional way the need for you to explore other job opportunities in case the need for a full-time facilities [construction] coordinator no longer is needed in the New Albany-Plain Local School District.

{¶ 7} At the July 28, 2008 Board meeting, the Board decided against putting a construction bond issue on the November 2008 ballot. The next day, Castle gave Aronhalt written notice that he intended to recommend to the Board that it suspend Aronhalt's contract pursuant to Policy 1540. Adopted in May 2008, Policy 1540 allowed the Board to suspend the contracts of administrative staff members due to "[f]inancial conditions affecting the District" and "[r]eorganization and/or consolidation of administrative functions." In the July 29, 2008 notice, Castle stated that:

> As a consequence * * * of the lack of construction undertakings underway or approved for the immediate future, and in recognition of the constrained financial conditions in which the District will necessarily be operating * * *, I have determined that the best interests of the District will be presently promoted by reorganizing and/or consolidating administrative functions through the elimination of the post of Facilities Construction Coordinator and the associated suspension of your administrative contract * * *.

Following Castle's recommendation, the Board eliminated the position of facilities construction coordinator and suspended Aronhalt's contract effective September 24, 2008.

{¶ 8} On August 28, 2009, Aronhalt filed a complaint against defendants alleging claims for breach of contract, unfair labor practices, and violation of the Whistleblower Statute, R.C. 4113.52. Aronhalt's whistleblower claim arose from his allegation that the

District was illegally repaying an energy conservation loan with money from the District's bond retirement fund. According to Aronhalt, he informed his supervisor about the allegedly illegal activity and, as a consequence, the Board adopted Policy 1540 and suspended his contract.

{¶ 9} Defendants moved for summary judgment twice. The trial court permitted defendants to file a second motion for summary judgment to attack those claims that survived the first motion for summary judgment. Ultimately, the trial court granted defendants summary judgment on all claims but the claims that: (1) defendants breached Aronhalt's 2000 contract by transferring him to a position of lesser responsibility without his consent and (2) defendants failed to pay Aronhalt all the compensation owed to him, including unused vacation time. After the trial court rendered its decision on defendants' second motion for summary judgment, Aronhalt sought and received leave to amend his complaint to remove the claims that survived summary judgment. Once Aronhalt filed his amended complaint, the trial court entered judgment in defendants' favor.

{¶ 10} Aronhalt now appeals, and he assigns the following errors:

> [1.] The Trial Court erred as a matter of law and in conflict with the uncontroverted evidence in determining that Aronhalt was an "Administrator" an ORC defined position with specific duties and responsibilities as well as ORC mandated exacting requirement for Appellees to procedurally adhere in regard to each step of the contracting renewal and termination processes regarding Aronhalt. The trial Court does not recognize the changing employment status during his tenure that Appellees unilaterally modified in relation to Aronhalt[']s job titles and duties, November 2000, but that at termination were not as an Administrator but non-teaching employee, "Facilities Construction Coordinator" this latter category is NOT an Administrator position and Granting Summary Judgment on Claim IV which could only be possible were Aronhalt an Administrator in 2008 is error. This is in contravention of ORC § 3319.081 which in 2008 could only be applied as to "non-teaching employee" contracted school personnel.
>
> [2.] The Trial Court erred as a matter of law and in conflict with the evidence in Granting Summary Judgment for Defendants on Claim V.

> [3.] The Trial Court erred as a matter of law and in conflict with the evidence in Granting Summary Judgment for defendants on Claim VI.
>
> [4.] The Trial Court erred as a matter of law and in conflict with the evidence in Granting Summary Judgment for defendants on Claim II.
>
> [5.] The Trial Court erred as a matter of law and in conflict with the evidence in Granting Summary Judgment for defendants on Claim III.[1]

{¶ 11} Defendants now cross appeal, and they assign the following errors:

> I. THE TRIAL COURT ERRED IN NOT APPLYING THE DOCTRINES OF WAIVER, ESTOPPEL AND LACHES TO PLAINTIFF'S FIRST CLAIM.
>
> II. THE TRIAL COURT ERRED IN NOT APPLYING THE DOCTRINES OF WAIVER, ESTOPPEL AND LACHES TO PLAINTIFF'S THIRD CLAIM.
>
> III. THE TRIAL COURT ERRED IN NOT APPLYING THE DOCTRINES OF WAIVER, ESTOPPEL, AND LACHES TO PLAINTIFF'S FOURTH CLAIM.
>
> IV. THE TRIAL COURT ERRED IN NOT GRANTING SUMMARY JUDGMENT DISMISSING PLAINTIFF'S FIRST CLAIM.
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> V. THE TRIAL COURT ERRED IN DENYING SUMMARY JUDGMENT ON PLAINTIFF'S SEVENTH CLAIM.
>
> VI. THE TRIAL COURT ERRED IN NOT GRANTING SUMMARY JUDGMENT AND DISMISSING ALLEGED CLAIMS OF EMOTIONAL DISTRESS.

{¶ 12} Before addressing the parties' assignments of error, we must resolve defendants' request that we strike Aronhalt's affidavit, dated April 30, 2012, and the

[1] We quote Aronhalt's brief verbatim, without correcting any errors in the text. We will continue this practice whenever quoting from a document filed by Aronhalt.

documents attached to the affidavit.[2] Aronhalt included this affidavit in the appendix to his appellate brief even though he had never submitted it to the trial court.

{¶ 13} Appellate review is limited to the record as it existed at the time that the trial court rendered its judgment. *Wiltz v. Clark Schaefer Hackett & Co.*, 10th Dist. No. 11AP-64, 2011-Ohio-5616, ¶ 13. " 'A reviewing court cannot add matter to the record before it, which was not part of the trial court's proceedings, and then decide the appeal on the basis of the new matter.' " *Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110, ¶ 13, quoting *State v. Ishmail*, 54 Ohio St.2d 402 (1978), paragraph one of the syllabus. Because Aronhalt's April 30, 2012 affidavit was not before the trial court when it decided the motions for summary judgment, we will not consider it on appeal.

{¶ 14} While Aronhalt's affidavit was not before the trial court, the majority of the attached documents were. Defendants now assert that this court should ignore the attached documents because Aronhalt failed to properly authenticate them. Defendants, however, did not object to the documents below. " 'Absent an objection, a trial court has the discretion to consider unauthenticated documents when rendering summary judgment.' " *Wolfe v. AmeriCheer, Inc.*, 10th Dist. No. 11AP-550, 2012-Ohio-941, ¶ 11, quoting *Columbus v. Bahgat*, 10th Dist. No. 10AP-943, 2011-Ohio-3315, ¶ 16; *accord State ex rel. Gilmour Realty, Inc. v. Mayfield Heights*, 122 Ohio St.3d 260, 2009-Ohio-2871, ¶ 17 (holding that courts may consider evidence that does not comply with Civ.R. 56(C), such as unsworn and unauthenticated documents, if there is no objection). Where a party does not object in the trial court to the introduction of unauthenticated evidence submitted in support of, or in opposition to, a motion for summary judgment, that party waives that objection on appeal. *Carter v. Vivyan*, 10th Dist. No. 11AP-1037, 2012-Ohio-3652, ¶ 17. Because defendants failed to object to the documents in the trial court, they cannot raise that objection in this court. Consequently, we will consider the documents attached to Aronhalt's affidavit, with the exception of document numbers 00626, 00463, and 00415. We exclude those three documents because they were not adduced before the trial court.

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[2] Pursuant to App.R. 15, "an application for an order or other relief shall be made by motion." We direct all parties to file motions separately from briefs so we do not overlook a request for relief.

{¶ 15} All of the parties' assignments of error challenge the trial court's rulings on defendants' motions for summary judgment. Summary judgment is appropriate when the moving party demonstrates that: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion when viewing the evidence most strongly in favor of the nonmoving party, and that conclusion is adverse to the nonmoving party. *Hudson v. Petrosurance, Inc.*, 127 Ohio St.3d 54, 2010-Ohio-4505, ¶ 29; *Sinnott v. Aqua-Chem, Inc.*, 116 Ohio St.3d 158, 2007-Ohio-5584, ¶ 29. Appellate review of a trial court's ruling on a motion for summary judgment is de novo. *Hudson* at ¶ 29. This means that an appellate court conducts an independent review, without deference to the trial court's determination. *Zurz v. 770 W. Broad AGA, L.L.C.*, 192 Ohio App.3d 521, 2011-Ohio-832, ¶ 5 (10th Dist.); *White v. Westfall*, 183 Ohio App.3d 807, 2009-Ohio-4490, ¶ 6 (10th Dist.).

{¶ 16} When seeking summary judgment on the ground that the nonmoving party cannot prove its case, the moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on an essential element of the nonmoving party's claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). The moving party does not discharge this initial burden under Civ.R. 56 by simply making a conclusory allegation that the nonmoving party has no evidence to prove its case. *Id.* Rather, the moving party must affirmatively demonstrate by affidavit or other evidence allowed by Civ.R. 56(C) that the nonmoving party has no evidence to support its claims. *Id.* If the moving party meets its burden, then the nonmoving party has a reciprocal burden to set forth specific facts showing that there is a genuine issue for trial. Civ.R. 56(E); *Dresher* at 293. If the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party. *Id.*

{¶ 17} By Aronhalt's first assignment of error, he argues that the trial court erred in granting defendants summary judgment on his fourth claim. For the fourth claim, Aronhalt's complaint states:

> All defendants and all acts of Defendants individually and/or collectively did deprive Plaintiff of Rights guaranteed by the Ohio Revised Code 4117.03 (A) (1) (2) (3) (4). Plaintiffs right

> to join employee organization and collective bargaining were violated.

(R. 3 at ¶ 41.)

{¶ 18} The trial court granted summary judgment on this claim because it found that Aronhalt was a supervisor and management-level employee and, thus, not entitled to collective bargaining rights. We find that a more fundamental reason—the lack of subject-matter jurisdiction—required the entry of summary judgment on Aronhalt's fourth claim. We recognize that the parties have not raised and the trial court did not address the issue of subject-matter jurisdiction. Nevertheless, because subject-matter jurisdiction cannot be waived and may be raised by an appellate court sua sponte, we may consider the issue. *State v. Lomax*, 96 Ohio St.3d 318, 2002-Ohio-4453, ¶ 17; *Basinger v. York*, 969 N.E.2d 797, 2012-Ohio-2017, ¶ 6 (4th Dist.); *Coey v. Dave Gill Pontiac-GMC, Inc.*, 10th Dist. No. 04AP-432, 2005-Ohio-464, ¶ 10.

{¶ 19} R.C. 4117.03(A) lists the collective bargaining rights of public employees. Pursuant to R.C. 4117.11(A)(1), "[i]t is an unfair labor practice for a public employer, its agents, or representatives to * * * [i]nterfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code * * *." "Whoever violates section 4117.11 of the Revised Code is guilty of an unfair labor practice * * *." R.C. 4117.12(A). Thus, by stating in this fourth claim that defendants deprived him of rights guaranteed by R.C. 4117.03, Aronhalt alleged an unfair labor practices claim.

{¶ 20} The State Employment Relations Board ("SERB") has exclusive jurisdiction to decide a claim of unfair labor practices where a complaint brought before a common pleas court alleges conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11. *State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Court of Common Pleas of Franklin Cty.*, 76 Ohio St.3d 287, 289 (1996). Thus, common pleas courts do not have subject-matter jurisdiction over claims such as Aronhalt's fourth claim. *Jamison v. Scott*, 10th Dist. No. 11AP-607, 2012-Ohio-378, ¶ 12-13; *Ohio Assn. of Public School Emps./AFSCME Local 4, AFL-CIO v. Madison Local School Dist. Bd. of Edn.*, 190 Ohio App.3d 254, 2010-Ohio-4942, ¶ 70-71 (11th Dist.). Accordingly, we conclude that the trial court did not err in granting summary judgment on Aronhalt's fourth claim, and, thus, we overrule Aronhalt's first assignment of error.

{¶ 21} By Aronhalt's second assignment of error, he argues that the trial court erred in granting defendants summary judgment on his fifth claim. For the fifth claim, the complaint states:

> Defendants Castle, Stark and [the Board] both individually and collectively did change, without Plaintiffs knowledge, the terms of the contract for employment by enacting Policy 1540 without input from Plaintiff in violation of O.R.C. 3319.171.

(R. 3 at ¶ 42.)

{¶ 22} Policy 1540 specifies the circumstances in which and the procedures by which the Board can suspend the contracts of the District's administrative personnel. The Board adopted Policy 1540 pursuant to R.C. 3319.171, which authorizes boards of education to "adopt an administrative personnel suspension policy governing the suspension of any contract of employment entered into by a board under section 3319.02 of the Revised Code." R.C. 3319.171(A). Aronhalt alleges that the Board violated R.C. 3319.171(C) by not securing his input during the developmental stage of Policy 1540. According to R.C. 3319.171(C), the procedures and provisions included an administrative personnel suspension policy "shall be developed by the board of a district * * * with input from the superintendent and all assistant superintendents, principals, assistant principals, and other administrators employed by that board under section 3319.02 of the Revised Code."

{¶ 23} R.C. 3319.171 does not define "input." Courts accord undefined statutory terms their common, everyday meaning. *Am. Fiber Sys., Inc. v. Levin*, 125 Ohio St.3d 374, 2010-Ohio-1468, ¶ 24. The on-line Merriam-Webster Dictionary defines "input" as "something that is put in: as * * * ADVICE, OPINION, COMMENT." Merriam-Webster, http://merriam-webster.com/dictionary/input (accessed Nov. 29, 2012). Thus, R.C. 3319.171(C) requires boards of education to provide the specified administrative personnel with the opportunity to provide advice, opinion, and comment about a proposed administrative personnel suspension policy. *Mason v. Bexley City School Dist.*, S.D.Ohio No. 2:07-CV-654 (Mar. 15, 2010).

{¶ 24} Here, Stark testified that a draft of Policy 1540 was distributed and discussed during an administrative leadership meeting on April 17, 2008. The agenda for that meeting lists "Board Policy Review and Update" as the next to last item for

discussion. Aronhalt admits that he attended the April 17, 2008 meeting and received the agenda. However, Aronhalt claims that he left the meeting early so he missed the discussion of Policy 1540.[3] Aronhalt did not ask anyone about the agenda items discussed in his absence. Given these facts, the trial court concluded that reasonable minds could only find that the Board satisfied its duty under R.C. 3319.171(C). We agree. Aronhalt's failure to contribute his opinion of Policy 1540 is a consequence of his own actions, not the Board's.

{¶ 25} Aronhalt asserts two more arguments under this assignment of error: (1) the Board violated R.C. 3319.171(C) by not obtaining input from the District's principals and assistant principals and (2) the Board could not use Policy 1540 to suspend his contract because he was a "non-teaching employee" and, thus, subject to different suspension procedures.[4] Both of these arguments exceed the scope of the fifth claim as it is pled in the complaint.

{¶ 26} A plaintiff cannot fulfill its Civ.R. 56 burden by merely raising new grounds for recovery in response to a properly supported motion for summary judgment. *Morris v. Dobbins Nursing Home*, 12th Dist. No. CA2010-12-102, 2011-Ohio-3014, ¶ 29; *Bradley v. Sprenger Ents.*, Inc., 9th Dist. No. 07CA009238, 2008-Ohio-1988, ¶ 8; *Stadium Lincoln-Mercury, Inc. v. Heritage Transport*, 160 Ohio App.3d 128, 2005-Ohio-1328, ¶ 35 (7th Dist.); *White v. Mt. Carmel Med. Ctr.*, 150 Ohio App.3d 316, 2002-Ohio-6446, ¶ 30 (10th Dist.); *accord Karsnak v. Chess Fin. Corp.*, 8th Dist. No. 97312, 2012-Ohio-1359, ¶ 48 ("Generally, a plaintiff cannot enlarge her claims during a defense to a summary judgment motion * * *."). Holding otherwise would deprive the defendant of fair notice and an opportunity to respond to the plaintiff's claims. *Karsnak* at ¶ 48; *Stadium Lincoln-Mercury, Inc.* at ¶ 35; *White* at ¶ 30. A plaintiff must respond to a motion for summary judgment based on the claims already presented rather than surprise

[3] Defendants dispute this fact, pointing to Stark's affidavit testimony that Aronhalt was present when Policy 1540 was discussed. Because we must construe the evidence most strongly in favor the nonmoving party, we disregard this part of Stark's testimony.

[4] We will address whether Aronhalt was a "non-teaching employee" or an "other administrator" below.

the defendant and court with new theories of recovery. *Stadium Lincoln-Mercury, Inc.* at ¶ 35.

{¶ 27} Here, by his fifth claim, Aronhalt only challenged the validity of Policy 1540 based on the Board's failure to get input from him, not others. Moreover, Aronhalt only claimed that defendants improperly adopted Policy 1540, not that defendants used an inapplicable policy to suspend his employment contract. Aronhalt's belated attempts to enlarge his fifth claim to include additional bases for recovery do not preclude summary judgment. Accordingly, we conclude that the trial court did not err in granting defendants summary judgment on Aronhalt's fifth claim, and, thus, we overrule his second assignment of error.

{¶ 28} By Aronhalt's third assignment of error, he argues that the trial court erred in granting defendants summary judgment on his sixth claim. Aronhalt's sixth claim is his whistleblower claim. The trial court entered summary judgment on that claim because it found that Aronhalt failed to file his action within the 180-day statute-of-limitations period applicable to such claims.

{¶ 29} Pursuant to R.C. 4113.52(D), "[i]f an employer takes any disciplinary or retaliatory action against an employee as a result of the employee's having filed a report" under R.C. 4113.52(A), the employee has a cause of action against the employer. However, the employee must bring his or her action within 180 days after the date that the employer takes the "disciplinary or retaliatory action." R.C. 4113.52(D).

{¶ 30} Aronhalt's complaint identifies two allegedly retaliatory actions: (1) Castle's presentation of Policy 1540 to the Board for its approval and (2) the "termination" of Aronhalt's 2007 employment contract. (R. 3 at ¶ 24, 43.) The first alleged retaliatory action took place in April 2008, well over 180 days before Aronhalt filed his action on August 28, 2009. According to Aronhalt, the second alleged retaliatory action occurred on June 30, 2009. We disagree. Although Aronhalt's 2007 employment contract would have expired on June 30, 2009, that contract actually ended on September 24, 2008, the effective date of the contract's suspension. *State ex rel. Hlynsky v. Osnaburg Local School Dist. Bd. of Edn.*, 11 Ohio St.3d 194, 196 (1984) (holding that once a board of education suspends a limited employment contract, the employee "ha[s] no contract which [can] 'expire' "). Consequently, Aronhalt's 2007 employment contract terminated

on September 24, 2008. As Aronhalt filed his action over 180 days after that date, the statute of limitations bars his whistleblower claim.

{¶ 31} Aronhalt also argues to this court that defendants' retaliatory actions include withholding pay for his unused vacation time until mid-August 2009. Aronhalt referenced this delay in pay in his complaint, but he did not assert it as a basis for his whistleblower claim. Therefore, Aronhalt could not raise it to avoid summary judgment. *See Karsnak* at ¶ 48; *Morris* at ¶ 29; *Bradley* at ¶ 8; *Stadium Lincoln-Mercury, Inc.* at ¶ 35; *White* at ¶ 30.

{¶ 32} Next, Aronhalt urges this court to apply the doctrines of equitable estoppel or equitable tolling to render his whistleblower claim timely. Although these equitable doctrines are different, in this case, they would both operate identically to stop the statute-of-limitations clock from ticking. However, neither of the doctrines applies here. Generally, both equitable estoppel and equitable tolling require fraud. *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006-Ohio-2625, ¶ 43 (holding that the purpose of equitable estoppel is to prevent actual or constructive fraud); *Moore v. Dept. of Rehab. & Corr.*, 10th Dist. No. 10AP-732, 2011-Ohio-1607, ¶ 21 (holding that equitable tolling "is generally limited to those circumstances in which an employee is intentionally misled or tricked into missing the filing deadline"). Aronhalt claims that the element of fraud is present here because defendants misrepresented to him that his contract did not officially terminate until June 30, 2009. The record contains no evidence to support this claim. Accordingly, we conclude that the trial court did not err in granting defendants summary judgment on Aronhalt's whistleblower claim, and, thus, we overrule his third assignment of error.

{¶ 33} By Aronhalt's fourth assignment of error, he argues that the trial court erred in granting defendants summary judgment on his second claim. For the second claim, the complaint states, "[The Board] did not notify Plaintiff of intent to non-renew administrative contract in violation of O.R.C. 3319.02 (D)(4)." (R. 3 at ¶ 39.)

{¶ 34} Before going any further, we must address an argument that pervades Aronhalt's brief. Aronhalt repeatedly contends that, after he became facilities construction coordinator, he was a "non-teaching employee" and not an "other administrator." Different sections of R.C. Chapter 3319 regulate the employment of

different types of school employees. R.C. 3319.02 applies to "other administrators," but not to "non-teaching employees." Aronhalt's second and third claims allege that defendants violated R.C. 3319.02 after his transfer to the position of facilities construction coordinator. Thus, if Aronhalt is correct that he was a "non-teaching employee," then his second and third claims must fail.

{¶ 35} Pursuant to R.C. 3319.02(A)(1)(b), the category of "other administrator" includes "[a]ny nonlicensed employee whose job duties enable such employee to be considered as either a 'supervisor' or a 'management level employee,' as defined in section 4117.01 of the Revised Code." A "supervisor" is "any individual who has authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment * * *." R.C. 4117.01(F). A "management level employee" is "an individual who formulates policy on behalf of the public employer, [or] who responsibly directs the implementation of policy * * *." R.C. 4117.01(L).

{¶ 36} We concur with Aronhalt that he did not qualify as a "supervisor" as a facilities construction coordinator. As facilities coordinator, Aronhalt's duties included directing maintenance and custodial personnel to perform various tasks. However, with the shift in his position, Aronhalt lost all supervisory control over other public employees.

{¶ 37} To determine whether Aronhalt was a "management level employee," we focus on whether he "responsibly direct[ed] the implementation of policy." R.C. 4117.01(L). Ohio courts have not specifically analyzed what kind of job duties signify that an employee has the authority to responsibly direct the implementation of policy. We thus turn to precedent from SERB for assistance. *See Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.2d 257, 260 (1988) (recognizing that SERB possesses the authority to interpret R.C. Chapter 4117). According to SERB, a person directs the implementation of policy when " 'he is charged with developing the methods, means, and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors.' " *In re Univ. of Cincinnati*, SERB No. 98-003 (Feb. 26, 1998), quoting *In re New Jersey Turnpike Auth.*, 150 N.J. 331, 337 (1997).

{¶ 38} Here, Aronhalt's responsibilities as facilities construction coordinator included: (1) "assist[ing] in planning for future needs in a rapidly changing and growing school community by participating on facilities committees and in other activities designated by the Superintendent to determine district classroom space and programming needs for the Board of Education," (2) "review[ing], coordinat[ing], and implement[ing] design and development with the architects through the construction process to the successful completion and occupancy of new school facilities," (3) "monitor[ing] the construction process to insure that construction activities and objectives are meeting design goals," and (4) "review[ing] all construction from start to finish to insure quality." Position Description [for] Facilities Construction Coordinator, at 1-3. Given this job description, we conclude that, once the District made the policy decision to construct or renovate certain buildings, Aronhalt had the responsibility to oversee and coordinate the implementation of that policy decision. Thus, we find that reasonable minds could only conclude that Aronhalt was a management-level employee. Aronhalt, therefore, fell within the "other administrator" classification as a facilities construction coordinator.

{¶ 39} We now turn back to Aronhalt's second assignment of error, in which he alleges that the Board failed to provide him notice as mandated in R.C. 3319.02(D)(4). Aronhalt asserts that this claim refers to his 2000 employment contract and the circumstances surrounding the renewal of that contract in 2002. Defendants argue that Aronhalt has never before related his second claim to his 2000 employment contract. According to defendants, throughout the litigation of this case before the trial court, Aronhalt instead argued that the Board violated R.C. 3319.02(D)(4) by failing to provide the proper notice with respect to his 2007 employment contract. Defendants thus argue that Aronhalt waived his right to raise deficiencies with the notice the Board had to provide before renewing or non-renewing Aronhalt's 2000 employment contract. We disagree. Aronhalt argued below that the Board failed to provide the proper notice in 2002. (R. 118 at 8; R. 140 at 5.) Consequently, we will address Aronhalt's argument.

{¶ 40} In relevant part, R.C. 3319.02(D)(4) states:

> Before taking action to renew or nonrenew the contract of an assistant superintendent, principal, assistant principal, or other administrator under this section and prior to the last

> day of March of the year in which such employee's contract expires, the board shall notify each such employee of the date that the contract expires and that the employee may request a meeting with the board.

Our review of the record reveals that the Board satisfied its obligation under R.C. 3319.02(D)(4). The record contains a letter, dated February 8, 2002, informing Aronhalt that his current contract would expire on June 30, 2002 and that he could request a meeting with the Board in executive session to discuss the reasons for considering the renewal or non-renewal of his contract.

{¶ 41} Aronhalt's argument, however, does not address the sufficiency of the February 8, 2002 notice under R.C. 3319.02(D)(4). Rather, Aronhalt argues that the Board failed to give him written notice of its intention not to reemploy him pursuant to R.C. 3319.02(C)—a completely different provision. Once again, we reiterate that Aronhalt cannot change theories of recovery in response to a motion for summary judgment. *See Karsnak* at ¶ 48; *Morris* at ¶ 29; *Bradley* at ¶ 8; *Stadium Lincoln-Mercury, Inc.* at ¶ 35; *White* at ¶ 30. Accordingly, we conclude that the trial court did not err in granting defendants summary judgment on Aronhalt's second claim, and, thus, we overrule Aronhalt's fourth assignment of error.

{¶ 42} By Aronhalt's fifth assignment of error, he argues that the trial court erred in granting defendants summary judgment on his third claim. For the third claim, the complaint states, "[The Board] without notification to non-renew did change the contract with Plaintiff to a one-year contract for lesser responsibility instead of a two-year contract in violation of O.R.C. 3319.02." (R. 3 at ¶ 40.)

{¶ 43} According to R.C. 3319.02(C):

> The board of education * * * shall execute a written contract of employment with each assistant superintendent, principal, assistant principal, and other administrator it employs or reemploys. The term of such contract shall not exceed three years except that in the case of a person who has been employed as an assistant superintendent, principal, assistant principal, or other administrator in the district * * * for three years or more, the term of the contract shall be for not more than five years and, unless the superintendent of the district recommends otherwise, not less than two years. If the superintendent so recommends, the term of the contract of a person who has been employed by the district * * * as an

> assistant superintendent, principal, assistant principal, or other administrator for three years or more may be one year, but all subsequent contracts granted such person shall be for a term of not less than two years and not more than five years.

{¶ 44} Here, the Board hired Aronhalt in 1997. The parties executed a series of two-year employment contracts from 1997 until 2002, when the parties instead executed a one-year employment contract. Because Aronhalt had worked for the District for more than three years by 2002, R.C. 3319.02(C) required that the term of his 2002 employment contract be "not less than two years" unless the District superintendent recommended to the Board a contract term of shorter length. According to the minutes from the Board's March 18, 2002 meeting, the superintendent recommended that Aronhalt receive a one-year employment contract for the 2002-2003 school year. Given that the superintendent recommended a one-year contract, the Board did not violate R.C. 3319.02(C) in setting the term of Aronhalt's 2002 employment contract at one year.

{¶ 45} In the context of his fifth assignment of error, Aronhalt also argues that the Board did not evaluate him each year as required in R.C. 3319.02(D)(2)(c). The complaint contains no claim alleging that the Board breached Aronhalt's employment contracts by failing to evaluate him in accordance with R.C. 3319.02(D)(2)(c). Consequently, this new claim does not preclude summary judgment on Aronhalt's third claim. *See Karsnak* at ¶ 48; *Morris* at ¶ 29; *Bradley* at ¶ 8; *Stadium Lincoln-Mercury, Inc.* at ¶ 35; *White* at ¶ 30. Accordingly, we conclude that the trial court did not err in granting defendants summary judgment on Aronhalt's third claim, and, thus, we overrule Aronhalt's fifth assignment of error.

{¶ 46} Having addressed all of Aronhalt's assignments of error, we now turn to defendants' cross appeal. Initially, we find defendants' second and third cross-assignments of error are moot. Both of those cross-assignments of error address claims on which we have ruled that the trial court appropriately granted summary judgment. As we have determined that the trial court did not err in its decision on those claims, we do not need to address defendants' additional arguments as to why they should prevail on those claims.

{¶ 47} By defendants' first, fourth, fifth, and sixth cross-assignments of error, defendants argue that the trial court erred in denying them summary judgment on

Aronhalt's first and seventh claims. Aronhalt, however, withdrew those claims when he filed his amended complaint. Appellate courts only decide actual, present controversies and only enter judgments capable of enforcement. *Serbin v. Hartville*, 5th Dist. No. 2008 CA 00293, 2009-Ohio-6940, ¶ 28; *Columbus v. Abdulshafi*, 10th Dist. No. 09AP-903, 2010-Ohio-3021, ¶ 6; *In re the Estate of Wise*, 10th Dist. No. 04AP-1012, 2005-Ohio-5644, ¶ 8. Appellate courts do not render advisory opinions that cannot affect the cases before them. *Abdulshafi* at ¶ 6; *Andonian v. A.C. & S., Inc.*, 97 Ohio App.3d 572, 575 (9th Dist.1994). Here, defendants would have us review the viability of claims that are no longer part of this case. A ruling on such claims would be merely advisory, as it would have no effect on the case as it is now configured. Therefore, we overrule defendants' first, fourth, fifth, and sixth cross-assignments of error.

{¶ 48} For the foregoing reasons, we overrule Aronhalt's five assignments of error. We overrule defendants' first, fourth, fifth, and sixth cross-assignments of error, and find defendants' second and third cross-assignments of error moot. We affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

FRENCH and DORRIAN, JJ., concur.