[Cite as *Laborers' Internatl. Union of N. Am., Local Union No. 500 v. Ecological Servs., Inc.*, 2012-Ohio-3110.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Laborers' International Union of North America, Local Union No. 500

Appellant

v.

Ecological Services, Inc., et al.

Appellees

Court of Appeals No. L-11-1012

Trial Court No. CI0200808354

DECISION AND JUDGMENT

Decided: July 6, 2012

* * * * *

Joshua M. Hughes and Thomas P. Timmers, for appellant.

Jacob M. Lowenstein, for appellees

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas that granted summary judgment in favor of appellees in appellant's action alleging that appellees required members of appellant Laborers' International Union of North America, Local Union No. 500, ("Local 500") to pay kickbacks in violation of R.C. 4115.10(D). For the reasons that follow, the judgment of the trial court is reversed.

{¶ 2} The undisputed facts relevant to the issues raised on appeal are as follows. Appellee Harish Pandhi is the president of appellee Ecological Services, Inc. ("ESI"), an Ohio corporation that specializes in the removal of hazardous materials. In 2008, the city of Toledo contracted with ESI for the remediation of asbestos at the Acme Power Plant. Due to the nature of the work, the Acme project was subject to "prevailing wage" law as set forth in R.C. 4115.01 et seq.

{¶ 3} A number of ESI employees began working on the Acme project in August 2008. On September 9, 2008, appellant Local 500 filed a "Prevailing Wage Complaint" with the Ohio Department of Commerce. In so doing, appellant used the Department of Commerce's pre-printed, one-page form and, under "REASON FOR FILING COMPLAINT," checked each of the five available boxes provided to identify alleged violations: (1) prevailing wage not paid, (2) fringe benefits not paid, (3) misclassifications, (4) wages not paid, and (5) overtime. The complaint was followed up by an investigation. On November 3, 2008, an investigator with the Department of Commerce issued a "determination" on the administrative complaint, finding that, although ESI had missed a recent change in the prevailing wage rate which had resulted in underpayment to the Acme employees, "make-up" checks had been issued in order to properly compensate the workers and that "[i]t appears at this time that the correction has been made." The following day, a finding was issued in the form of a letter from the superintendent of the Wage and Hour Bureau to Local 500 indicating that a determination for back wages would not be issued because "[w]ages due to employees were paid directly to the employees."

{¶ 4} On November 26, 2008, Local 500 filed a "Complaint for the Enforcement of the Prevailing Wage Law," appealing the director's determination of no underpayments, in the Lucas County Common Pleas Court pursuant to R.C. 4115.16(A) and (B). The complaint was amended on June 15, 2009, setting forth new allegations that appellees had required the employees on the Acme project to pay kickbacks in violation of R.C. 4115.16(D) and that appellees' violations were intentional. Appellant also alleged that defendants intentionally violated R.C. 4115.10(A) by "suffering, permitting or requiring their employees to work for less than the rate of wages so fixed." The Director of the Department of Commerce was dropped as a defendant, while Harish Pandhi, president of ESI, and Thomas Grant, who had been a foreman for ESI at the Acme plant, were added as parties via the amended complaint. (The record reflects that a suggestion of death was filed on March 3, 2011, giving notice of Grant's death on February 5, 2011.)

{¶ 5} Appellees moved for summary judgment, asserting that the trial court lacked jurisdiction to hear the kickback allegations because the director had not addressed that issue during the administrative process. As stated in its judgment entry, the trial court agreed:

> This Court finds that [the] administrative complaint filed by the Plaintiff did not contain evidence or allegations of the alleged kickbacks. Without such evidence or allegations, the Department of Commerce never considered kickbacks as a potential violation of the law. To allow these

matters to proceed in this Court without administrative review would deprive the Defendants of the administrative process required by R.C. 4115.16(A). Defendants are being asked to first address new allegations in this Court without having had the opportunity to address them at the administrative level.

Having found that the claims currently before the Court are distinct from those raised in the original administrative action, this Court finds that it is without jurisdiction to hear the claims. Accordingly, all other pending issues are deemed moot.

{¶ 6} It is from that judgment that appellant Local 500 appeals, setting forth the following assignments of error:

Assignment of Error 1 – The trial court committed reversible error when it granted defendants' motions for summary judgment and dismissed the action.

Assignment of Error 2 – The trial court committed reversible error when it imposed exhaustion of administrative remedies requirements on an R.C. 4115.16(B) action in direct contravention of the statute.

Assignment of Error 3 - The trial court committed reversible error when it required an interested party to both know and present all potential prevailing wage violations to the department of commerce in the administrative process.

Assignment of Error 4 – The trial court committed reversible error in creating a due process right to administrative review of a R.C. 4115.16(A) complaint.

{¶ 7} Appellate review of summary judgment determinations is conducted on a de novo basis, applying the same standard utilized by the trial court. *Lorain Nat'l. Bank v. Saratoga Apts.*, 61 Ohio App.3d 127, 572 N.E.2d 198 (9th Dist.1989); *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Summary judgment shall be granted when there remains no genuine issue of material fact and, when considering the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C).

{¶ 8} As set forth above, on November 3, 2008, investigator Marilyn Summerville summarized her inquiry by writing that "a complaint was filed because classification[s] were missing" and further concluded that "[i]t appears at this time that the correction has been made." However, this was, in fact, not an accurate conclusion as the Prevailing Wage Complaint filed with the Department of Commerce on the required form indicates as the possible "reason[s] for filing" only the following options: prevailing wage not paid, fringe benefits not paid, misclassifications, wages not paid, and overtime.

{¶ 9} Nevertheless, a final determination of a violation of the prevailing wage statutes is only made upon the issuance of a letter from the superintendent of the Wage and Hour Bureau – in this case, Robert S. Kennedy. *See, e.g., Vaughn Industries, LLC v. Lake Erie Elec., Inc.*, 5th Dist. No. 2010CA0043, 2011-Ohio-1146, ¶ 31, where Kennedy

testified that a final determination will be issued "from Columbus with the actual letter of finding."

{¶ 10} In the case before us, the record reflects that the finding on the merits of the complaint was issued on November 4, 2008, by Superintendent Kennedy. Kennedy's letter to Local 500 states that "A determination for back wages will not be issued for the following reason" with a check mark by "Other." His letter makes no specific finding on the issue of the prevailing wage but concludes: "Wages due to employees were paid directly to the employees." Kennedy did not check off the box adjacent to "Employer's records indicate that the prevailing wages were paid in full." Thus, the only determination made by Superintendent Kennedy, was that "[w]ages due to employees were paid directly to the employees."

{¶ 11} With respect to the trial court's finding that "the claims currently before the Court are distinct from those raised in the original administrative action," and that it is therefore without jurisdiction to hear the claims, this court has held that a court's subject matter jurisdiction comprehends the court's authority to hear and determine the claims for relief involved in an action and to grant the relief requested. *Internatl. Bhd. of Elec. Workers, Local Union No. 8. v. Vaughn Industries, Inc.*, 156 Ohio App.3d 644, 2004-Ohio-1655, 808 N.E.2d 434 (6th Dist.). The subject matter jurisdiction of the courts of common pleas and its divisions is determined by statute. Ohio Constitution, Article IV, Section 4(B).

{¶ 12} As we further stated in *Vaughn, supra,* at ¶ 33:

> As applied to the case before us, R.C. 4115.15(B) expressly states that if the administrator does not rule on the merits of a complaint within 60 days, "the interested party may file a complaint in the court of common pleas of the county in which the violation is alleged to have occurred." The common pleas court then has the authority to "hear and decide the case." Id. Its decision on the merits "shall have the same consequences as a like determination by the administrator." Id. Thus, the statute plainly and unambiguously confers subject matter jurisdiction on the Wood County Common Pleas Court to hear and decide all matters raised in IBEW's civil action.

{¶ 13} Thus, the common pleas court has jurisdiction to hear any and all claims brought in the civil action filed herein, including allegations of kickbacks. Accordingly, appellant's first assignment of error is found well-taken. Appellant's second, third and fourth assignments of error are rendered moot.

{¶ 14} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is reversed and remanded for further proceedings consistent with this decision. Costs of this appeal are assessed to appellees pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J.
CONCUR. _____
JUDGE