

[Cite as *Arcenio v. Youngstown State Univ.*, 2016-Ohio-4812.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

VICTOR ARCENIO)	CASE NOS. 14 MA 0163
)	14 MA 0164
PLAINTIFF-APPELLEE)	
)	
VS.)	OPINION
)	
YOUNGSTOWN STATE UNIVERSITY,)	
et al.)	
)	
DEFENDANTS-APPELLANTS)	

CHARACTER OF PROCEEDINGS: Civil Appeals from the Court of Common Pleas of Mahoning County, Ohio
Case No. 2013 CV 860

JUDGMENT: Reversed and Vacated.

JUDGES:

Hon. Cheryl L. Waite
Hon. Carol Ann Robb
Hon. Stephen A. Yarbrough of the Sixth District Court of Appeals, sitting by assignment.

Dated: June 29, 2016

[Cite as *Arcenio v. Youngstown State Univ.*, 2016-Ohio-4812.]

APPEARANCES:

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[Cite as *Arcenio v. Youngstown State Univ.*, 2016-Ohio-4812.]
WAITE, J.

{¶1} In these consolidated appeals Appellants Director, Ohio Department of Job and Family Services (“ODJFS”) and Youngstown State University (“YSU”) challenge an award of attorney fees and costs to Appellee Victor Arcenio following his successful administrative appeal of the decision of the Unemployment Compensation Review Commission (“Commission”). Appellants argue that there is no statutory basis in Ohio for awarding the prevailing party attorney fees in administrative appeals from the Commission. Appellant YSU adopted and incorporated by reference the brief filed by the Director of ODJFS. The administrative record contains the only evidence before this Court. For the following reasons, the judgment of the trial court is reversed and the fee award is vacated.

History of the Case

{¶2} Although Appellants do not appeal the merits of the administrative appeal, a brief review of the underlying facts is instructive. Appellee filed an application for unemployment benefits on June 4, 2012, which was initially allowed on July 5, 2012 (with retroactive payments dating back to May 10, 2012). The application was subsequently disallowed on August 31, 2012. ODJFS provided notice to Appellee solely by electronic mail of both the initial determination and the redetermination. However, Appellee was reemployed in the interim (on July 16, 2012), and never read the second notice.

{¶3} The redetermination notice informed Appellee not only that his claim had been disallowed, but that he was required to reimburse ODJFS for unemployment payments made prior to his reemployment. The redetermination letter

contained notice of his right to appeal within twenty-one days of issuance. However, it was not until Appellee received a notice from the Office of the Ohio State Treasurer demanding repayment, in November of 2012, that he filed an appeal.

{¶4} On December 14, 2012, ODJFS concluded that the appeal was untimely based on the deadline set forth in the electronically-mailed notice of redetermination. Appellee timely sought review by the Commission. On January 30, 2013, a day after the administrative hearing was held, the Commission affirmed the ODJFS decision despite the fact that the Ohio Administrative Code at the time required that notice of ODJFS determinations and redeterminations be sent to interested parties at the last known post office address. See Former Ohio Adm.Code 4141-27-10(A), 2003-2004 Ohio Monthly Record 2167 (A), effective February 22, 2004 (prior to the February 26, 2016 amendment).

{¶5} Appellee then filed a timely appeal to the common pleas court pursuant to R.C. 4141.282, which governs appeals of final administrative decisions regarding unemployment compensation benefits. On January 31, 2014, the trial court, relying on *Wagner v. Ohio Dept. of Job and Family Services*, 9th Dist. No. 26147, 2012-Ohio-2286, reversed the Commission's decision regarding the timeliness of the appeal and remanded the matter to the agency for consideration on the merits. In *Wagner*, as here, the Commission relied on an electronic mail notice of determination in order to find that Wagner's appeal was untimely. The Ninth District cited Ohio Adm.Code 4141-27-10(A) to conclude that the time for Wagner's appeal ran "from the date the agency sent its determination to her post office address," and in the

absence of a waiver of notice by regular mail, reversed the Commission's decision regarding the timeliness of Wagner's appeal. *Id.* at ¶ 8. Notably, an amendment to Ohio Adm.Code 4141-27-10, effective February 26, 2016, now recognizes electronic notice for the purpose of calculating appeal time where the interested party voluntarily elects to receive notifications *via* electronic correspondence.

{¶6} On February 10, 2014, Appellee filed a motion seeking attorney fees and costs pursuant to R.C. 2335.39, Ohio's Equal Access to Justice Act, in the amount of \$3,644.50. Appellee sought attorney fees for a period spanning from February 12, 2013 to February 4, 2014. These included the preparation of the notice of appeal to the Commission (although counsel did not appear on Appellee's behalf at the hearing), as well as all proceedings before the court. The matter was fully briefed. In a judgment entry dated October 24, 2014, the trial court found that Appellee was a "prevailing party" as defined by R.C. 2335.39, and awarded attorney fees and costs in the requested amount.

APPELLANTS' SOLE ASSIGNMENT OF ERROR

THE COMMON PLEAS COURT ERRED BY GRANTING APPELLEE VICTOR ARCENIO ATTORNEY FEES WHEN R.C. 4141.282 DOES NOT AUTHORIZE THE GRANT OF ATTORNEY FEES AND R.C. 2335.39 PERMITS ATTORNEY FEES IN AN ADMINISTRATIVE APPEAL ONLY WHEN THE AGENCY DECISION WAS APPEALED PURSUANT TO R.C. 119.12.

Standard of Review

{¶7} Where the interpretation of a statute is at issue, this Court exercises *de novo* review. *Lang, et al. v. Director, ODJFS*, 134 Ohio St.3d 296, 2012-Ohio-5366, 982 N.E.2d 636, ¶ 12.

Statutory Right to Attorney Fees

{¶8} R.C. 4141.282, captioned “Appeal of determination of benefit rights or claim for benefits determination; redeterminations; hearings,” governs this appeal. R.C. 4141.282 is a subsection of Chapter 4141, which is entitled, “Unemployment Compensation.” Both parties agree that neither R.C. 4141.282 nor any other section of R.C. 4141 authorizes an award of attorney fees to a prevailing party. Appellee argues instead that attorney fees and costs are available pursuant to R.C. 2335.39.

{¶9} R.C. 2335.39, “Recovery of attorney’s fees by certain prevailing parties,” is the final subsection in R.C. 2335, governing “Fees and Costs.” R.C. 2335.39 states, in pertinent part:

(B)(1) Except as provided in divisions (B)(2) and (F) of this section, in a civil action, or appeal of a judgment in a civil action, to which the state is a party, or in an appeal of an adjudication order of an agency pursuant to section 119.12 of the Revised Code, the prevailing eligible party is entitled, upon filing a motion in accordance with this division, to compensation for fees incurred by that party in connection with the action or appeal. Compensation, when payable to a prevailing eligible party under this section, is in addition to any other costs and expenses that may be awarded to that party by the court pursuant to law or rule.

{¶10} Subsection (B)(2) provides that,

Upon the filing of a motion under this section, the court shall * * * determine whether the position of the state in initiating the matter in controversy was substantially justified, whether special circumstances make an award unjust, and whether the prevailing eligible party engaged in conduct during the course of the action or appeal that unduly and unreasonably protracted the final resolution of the matter in controversy.

{¶11} These subsections provide, then, that attorney fees are available to a prevailing party in three distinct proceedings: a “civil action,” an “appeal of a judgment in a civil action” where the state is a party, and “in an appeal of an adjudication order of an agency pursuant to section 119.12 of the Revised Code.” R.C. 2335.39(B)(1). In his motion before the trial court, Appellee initially argued that this matter constituted “an appeal of an adjudication order of an agency,” but omitted the qualifying language “pursuant to section 119.12.” (2/10/14 Motion for Attorney’s Fees, p. 3.) When Appellants correctly argued that this section was inapplicable to Appellee’s case because of the limiting language, Appellee then asserted in his reply brief that this matter involved “a civil action.” Appellants submitted an additional filing in order to address the “civil action” argument raised for the first time by Appellee in his reply brief.

{¶12} In these consolidated appeals, Appellee now concedes that this matter does not involve an appeal of an adjudication order of an agency pursuant to section

119.12 of the Revised Code. (Appellee's Brf., p. 7.) The only argument Appellee advances on appeal is that this matter constitutes a "civil action."

{¶13} R.C. 2335.39 is Ohio's version of the federal Equal Access to Justice Act, 28 U.S.C. §2412. It was passed to censure frivolous government action that forces a party to resort to the courts in order to protect his or her rights. *Collyer v. Broadview Dev. Ctr.*, 81 Ohio App.3d 445, 448, 611 N.E.2d 390 (10th Dist.1992). It is intended to "encourage relatively impecunious private parties to challenge unreasonable or oppressive governmental behavior by relieving such parties of the fear of incurring large litigation expenses." *Id.* at 448, 611 N.E.2d 390, quoting *Spencer v. NLRB*, 712 F.2d 539, 549 (D.C.Cir.1983); see, generally, Constantini & Skindell, Fee Shifting in Ohio: An Overview of Ohio's Version of the Equal Access to Justice Act (1989), 18 Capital U.L.Rev. 201.

{¶14} Appellee claims that the term "civil action" as used in this statute should be broadly construed because its purpose is remedial. He argues that the federal statute, on which the Ohio statute is modeled, has been liberally interpreted to allow an attorney fee award not only for an administrative appeal before the trial court, but also for the proceedings held by the administrative agency following remand. Appellants, on the other hand, argue that the legislature specifically limited the administrative appeals to which R.C. 2335.39 applies: only "adjudication order[s] of an agency pursuant to section 119.12 of the Revised Code." Appellants contend that the legislative intent is clear and that the phrase "civil action" does not include all administrative appeals. Otherwise, the legislature would have no reason to

specifically limit the applicable agency orders identified in the statute. All of the parties encourage us to look beyond the statute itself to define the term “civil action.” Because the statute as a whole provides sufficient evidence of legislative intent, however, we are required to look no further than the plain language provided.

{¶15} No Ohio appellate court has addressed the precise issue raised in these consolidated appeals. However, the Tenth District has had occasion to interpret the term “civil action” as found in R.C. 2335 in *Collyer, supra*. The facts of the *Collyer* case are unique. As a consequence, it provides little direction with respect to the issue before us. However, because Appellee relies almost exclusively on *Collyer* for the proposition that an award of attorney fees is available in an administrative appeal from the Commission, and *Collyer* provides a primer on textual challenges to the statute, a review of the case is informative.

{¶16} *Collyer* was employed as a classified civil service therapeutic worker with Broadview Development Center, a state facility operated by the Ohio Department of Mental Retardation and Developmental Disabilities. He was given a disability separation pursuant to provisions of the Ohio Administrative Code, which effectively terminated his employment with the facility. *Collyer* appealed his separation to the State Personnel Board of Review, which ultimately “disaffirmed” the state’s actions on procedural grounds. The state appealed the Board’s order to the Franklin County Court of Common Pleas, citing R.C. 2506.01, 124.34 and 119.12 as jurisdictional bases for appeal. The common pleas court vacated the Board’s order, finding that the Board had no authority to review disability separations. However, the

Tenth District reversed the trial court's judgment, holding that the state had no right of appeal of the Board's order to the Franklin County Court of Common Pleas. On remand to the trial court, Collyer filed a motion for attorney fees pursuant to R.C. 2335.39.

{¶17} The Tenth District ultimately concluded that the matter before the Court did not constitute an R.C. 119.12 appeal (as asserted by the state), but, rather, was “in the nature of a mandamus or prohibition action to challenge the authority of the personnel board to ‘disaffirm’ a disability separation.” *Id.* at 450. The *Collyer* Court opined:

We do not think that the question of whether R.C. 2335.39 applies to a given case should turn on the state's characterization of the case, no matter how erroneous. R.C. 2335.39 and 119.092 were designed to make government attorneys think before filing. The protection afforded private parties in these statutes against oppressive or thoughtless state action seems ever the more [sic] compelling when the state improperly characterizes the relief sought.

Id.

{¶18} Because an award of attorney fees was not available by way of R.C. 119.12, the Tenth District turned to the definition of the term “civil action.” Recognizing that the term was not defined in R.C. 2335, the Tenth District opined that “[a]lthough the language differs in some respects at the federal level, * * * in recent years the United States Supreme Court has broadly construed the term * * * in

the federal Equal Access to Justice Act.” *Id.* The *Collyer* Court acknowledged that the United States Supreme Court liberally construed the term “civil action” to include fees incurred on remand to the administrative agency in *Sullivan v. Hudson*, 490 U.S. 877, 109 S. Ct. 2248 (1989). As a consequence, the Tenth District broadly construed the term “civil action” to include “a purported R.C. 119.12 appeal seeking to challenge the validity of an administrative rule in common pleas court, when no R.C. 119.12 appeal lies.” *Id.*

{¶19} It is important to note that, unlike the Ohio statute, the plain language of the federal statute specifically includes administrative appeals from agency decisions. 28 U.S.C. 2412(d)(1)(A) provides for attorney fees in “proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action.” 28 U.S.C. 2412. Consequently, although the federal statute has been broadly construed to include fees for administrative proceedings that follow court remand, the federal statute specifically allows fee awards in all administrative appeals.

{¶20} A second challenge to the attorney fee award was raised in *Collyer* based on the phrase “matter in controversy” found in division (B)(2) of the statute. One of the first cases to interpret the Ohio Equal Access to Justice Act was the Tenth District’s decision in *Highway Valets, Inc. v. Ohio Dept. of Transp.*, 38 Ohio App.3d 45, 526 N.E.2d 112 (10th Dist.1987). In that case, a newly formed company sought certification as a minority business enterprise, but the transportation department denied the company's application because the owners of the company refused to

reveal their income tax records. The company pursued an unsuccessful administrative appeal and then sought extraordinary relief in the Court of Claims for the certification. Although the company prevailed in the Court of Claims, that court denied attorney fees pursuant to R.C. 2335.39 because the state had not “initiated” the lawsuit there. The Tenth District determined:

Although the term “matter in controversy” is a matter of some controversy, we believe the term refers to the litigation itself and not to the conduct which gave rise to the litigation. When the term is viewed in relation to the entire text of R.C. 2335.39, it is clear that the “matter in controversy” refers to the subject matter of the litigation. Thus, if the state did not initiate the litigation then it did not initiate the “matter in controversy.” * * * The wording of R.C. 2335.39 contemplates situations where the state is the initiating party of the lawsuit and a trial court has no discretion to change the wording of the statute.”

Id. at 47, 526 N.E.2d at 114.

{¶21} The Eleventh District Court of Appeals has read *Highway Valets* to mean that the state must file the lawsuit and the prevailing party must be the defendant in the lawsuit in order for operation of R.C. 2335.39 to allow attorney fees. See *Knight v. Trumbull Cty. Bd. of Elections*, 65 Ohio App.3d 317, 583 N.E.2d 1328 (11th Dist.1992) (mandamus action to restore name to ballot). Other appellate courts have similarly applied *Highway Valets* to deny attorney fees in administrative appeals where the state was not the party pursuing the administrative appeal to court. See

Costa v. Ohio Bur. of Emp. Serv., 63 Ohio App.3d 315, 578 N.E.2d 848 (8th Dist.1989) (unemployment compensation appeal); *Kirby v. Court of Common Pleas*, 78 Ohio App.3d 397, 604 N.E.2d 1367 (1st Dist.1992) (R.C. 124.34 civil service appeal).

{¶22} As an aside, Appellants raised a challenge based upon the “matter in controversy” provision of the statute in their motions for reconsideration before the trial court, citing *Costa, supra*. *Costa* is an Eighth District unemployment compensation case where the appellate court denied attorney fees, not because they were unavailable under the statute (that issue was not raised) but because *Costa*, not the state, had instituted the administrative appeal to the common pleas court. However, the trial court in the matter before us never addressed Appellants’ “matter in controversy” challenge because notices of appeal were filed almost immediately after they filed their motions for reconsideration.

{¶23} The Ohio Supreme Court reached the opposite conclusion in *State ex. rel. R.T.G., Inc. v. State*, 98 Ohio St.3d 1, 2002-Ohio-6716. There, the Court construed the phrase “matter in controversy” in the statute to permit fees where the state initiates either the conduct that gave rise to the litigation or the litigation caused by the controversy. *Id.* at ¶ 67. The *R.T.G.* Court reasoned that “[h]ad the General Assembly intended to permit fees only where the state initiates the litigation, then it could have indicated that fees would be awarded only where the state initiated ‘litigation,’ as opposed to the more general language of ‘matter in controversy’ that was actually used.” *Id.*

{¶24} With this summary in mind, Appellee correctly argues that both R.C. 2335.39 and the federal statute upon which it was modeled have been liberally construed. This does not mean, however, that the statute should be so broadly construed that it countermands the legislative intent, where, as here, the plain language read as a whole reveals that the legislature did not intend to include all administrative appeals within the definition of the term “civil action.”

{¶25} Ohio courts must first look to the plain language of the statute itself to determine legislative intent. *Hubbell v. Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, 873 N.E.2d 878, ¶ 9, citing *State ex rel. Burrows v. Indus. Comm.*, 78 Ohio St.3d 78, 81, 676 N.E.2d 519 (1997). A statute is applied as written when its meaning is “unambiguous and definite.” *Hubbell* at ¶ 11, citing *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶ 52.

{¶26} In determining whether a statute is ambiguous, the court must objectively and thoroughly examine the statute, consider each provision in context, and apply ordinary rules of grammar. *Ohio Neighborhood Finance, Inc. v. Scott*, 139 Ohio St.3d 536, 2014-Ohio-2440, 13 N.E.3d 1115, ¶ 25, citing *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 11; *Hedges v. Nationwide Mut. Ins. Co.*, 109 Ohio St.3d 70, 2006-Ohio-1926, 846 N.E.2d 16, ¶ 24.

{¶27} Next, statutory language “must be construed as a whole and given such interpretation as will give effect to every word and clause in it. No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.” *D.A.B.E.*,

Inc. v. Toledo–Lucas Cty. Bd. of Health, 96 Ohio St.3d 250, 256, 2002-Ohio-4172, 773 N.E.2d 536, ¶26, citing *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.*, 95 Ohio St. 367, 372-373, 116 N.E. 516 (1917). A basic rule of statutory construction requires that “ ‘words in statutes should not be construed to be redundant, nor should any words be ignored.’ ” *D.A.B.E.* at ¶ 26, quoting *E. Ohio Gas Co. v. Pub. Util. Comm.*, 39 Ohio St.3d, 295, 299, 530 N.E.2d 875 (1988).

{¶28} Here, the legislature made an award of attorney fees available for prevailing parties in three types of proceedings where the state is a party: a civil action, or an appeal of a judgment in a civil action, or an appeal of an adjudication order of an agency pursuant to section 119.12 of the Revised Code. “ [C]anons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise * * *.’ ” *O’Toole v. Denihan*, 118 Ohio St.3d 374, 2008-Ohio-2574, 889 N.E.2d 505, ¶ 51, quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339, 99 S.Ct. 2326, 60 L.Ed.2d 931 (1979). Consequently, the statute must be read to include three distinct categories of proceedings. Because the legislature specifically limited the availability of attorney fees to adjudication appeals taken only pursuant to R.C. 119.12, the plain language of the statute demonstrates that the legislature did not intend that all other appeals from the Commission, which are governed by R.C. 4141, be considered “civil actions” for the purposes of that statute.

{¶29} Although the Tenth District in *Collyer, supra*, concluded that the term “civil action” was ambiguous, that conclusion was predicated upon the specific facts

of *Collyer* and through a direct analogy with the federal statute, without recognizing the crucial differences in language between the state and federal law.

{¶30} It is clear that the language in R.C. 2335.39 specifically limiting administrative appeal language to those brought pursuant to R.C. 119.12 would be both redundant and superfluous if, in fact, the legislature intended that every appeal taken from an Ohio administrative agency was a “civil action” for purposes of the statute. The plain language reflects the Ohio legislature’s intent to allow attorney fees only to a particular category of agency appeals; that is, adjudication appeals filed pursuant to R.C. 119.12.

{¶31} An explanation of R.C. 119.12 is helpful in interpreting R.C. 2335.39 in this regard. R.C. 119.12 is captioned: “Appeal by party adversely affected; notice; hearing; priority,” and is a part of R.C. Chapter 119, entitled: “Administrative Procedure.” R.C. 119.12 sets forth the procedures for agency adjudications and is similar to those pertaining to appeals from the Commission found in R.C. 4141.282. Like R.C. 4141.282, R.C. 119.12 contains no right to attorney fees.

{¶32} However, R.C. 119.092, captioned “Recovery of attorney’s fees by certain prevailing parties,” does authorize an award of fees to a prevailing party “if an agency conducts an adjudication hearing under [Chapter 119].” R.C. 119.092 employs language virtually identical to R.C. 2335.39, using the same limitations and standards for awarding attorney fees. Therefore, R.C. 119.092 makes an attorney fee award available at the first stage of the R.C. 119.12 agency appeal (the agency

adjudication) and R.C. 2335.39 makes such award available at the second stage of the R.C. 119.12 agency appeal (the appeal to the Ohio courts).

{¶33} Assuming *arguendo* that the term “civil action” is ambiguous, where a statute is subject to various interpretations, the court may invoke rules of statutory construction in order to arrive at legislative intent. *Cline v. Ohio Bur. of Motor Vehicles*, 61 Ohio St.3d 93, 96, 573 N.E.2d 77 (1991), citing *Meeks v. Papadopoulos*, 62 Ohio St.2d 187, 190, 404 N.E.2d 159 (1980). “The primary rule in statutory construction is to give effect to the legislature’s intention.” *Cline* at 97, 573 N.E.2d 77.

{¶34} “ ‘The canon *expressio unius est exclusio alterius* tells us that the express inclusion of one thing implies the exclusion of the other.’ ” *Crawford–Cole v. Lucas Cty. Dept. of Job & Family Servs.*, 121 Ohio St.3d 560, 2009-Ohio-1355, 906 N.E.2d 409, ¶ 42, quoting *Myers v. Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353, 852 N.E.2d 1176, ¶ 24. However, this canon “does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an ‘associated group or series,’ justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence.” *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168, 123 S.Ct. 748, 154 L.Ed.2d 653 (2003), citing *United States v. Von*, 535 U.S. 55, 65, 122 S.Ct. 1043, 152 L.Ed.2d 90 (2002).

{¶35} Because the kinds of administrative appeals in the two chapters are sufficiently related, we must conclude that non-R.C. 119.12 appeals were excluded by deliberate choice, not inadvertence. This conclusion is supported by a review of

R.C. 119.092, which makes attorney fees available at the agency adjudication stage in a R.C. 119 appeal. It stands to reason that the legislature also chose to make attorney fees available for appeals taken pursuant to R.C. 119.12, because such awards to the prevailing party are specifically available at the first stage of the administrative process pursuant to R.C. 119.092.

{¶36} Finally, Ohio courts have recognized that R.C. 2335.39 is modeled after the federal Equal Access to Justice Act. As previously stated, the clear language of the federal statute makes attorney fee awards available in all administrative appeals. See 28 U.S.C. 2412. The Ohio legislature's decision to depart from the federal statute's all-encompassing language in favor of the limiting language found in R.C. 2335.39 further demonstrates the legislature's intent that use of the term "civil action" as found in the statute does not apply to administrative appeals.

Conclusion

{¶37} R.C. 2335.39 is a remedial statute, which should be liberally construed. However, both the plain language of the statute and alternatively the rules of statutory construction reflect that the Ohio legislature did not intend to make attorney fee awards available in all administrative appeals. Although the term "civil action" is not specifically defined, as the legislature explicitly limited the availability of attorney fees to agency adjudications conducted pursuant to R.C. 119.12, this language controls. Moreover, while the Ohio statute was modelled after the federal law, there is an important distinction between the two. The federal statute specifically includes all administrative appeals. The Ohio legislature's decision to omit such broad

language and specifically limit awards to only Chapter 119 appeals is telling. Finally, the availability of attorney fees to a party at the administrative level pursuant to R.C. 119.092 supports the conclusion that the legislature intended to limit the availability of attorney fees to only R.C. 119.12 appeals.

{¶38} Insofar as appeals involving unemployment compensation are governed exclusively by R.C. 4141.282, which contains no provision for attorney fees, we find no statutory basis in Ohio for an award of prevailing party attorney fees in administrative appeals from the Commission. Accordingly, the judgment of the trial court is reversed and the fee award is hereby vacated.

Robb, J., concurs.

Yarbrough, J., concurs.