

[Cite as *Bringheli v. Parma City School Dist. Bd. of Edn.*, 2009-Ohio-3077.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91064

GIUSEPPE BRINGHELI, ET AL.

PLAINTIFFS-APPELLANTS

vs.

**PARMA CITY SCHOOL DISTRICT
BOARD OF EDUCATION**

DEFENDANT-APPELLEE

**JUDGMENT:
AFFIRMED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-636133

BEFORE: Celebrezze, J., Gallagher, P.J., and Dyke, J.

RELEASED: June 25, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Appellants, Giuseppe Bringheli and Renee Nimrichter Breyley (“appellants”), bring this appeal challenging the trial court’s decision to dismiss their complaint against appellee, Parma City School District Board of Education (“appellee”). After a thorough review of the record, and for the reasons set forth below, we affirm.

{¶ 2} Appellant Bringheli worked as a permanent, part-time bus driver for appellee from November 1989 until October 2006. Appellant Breyley worked as a permanent, part-time bus driver for appellee from April 1986 to February 2007.¹ Both appellants were subject to a Negotiated Agreement between The Parma City School District and The Ohio Association of Public School Employees, effective February 1, 2006 to January 31, 2009 (“Collective Bargaining Agreement” or “CBA”).

{¶ 3} In September 2006, appellants traveled to Las Vegas, Nevada for a bicycle conference. They reported to their employer that some or all of their time off was for sick leave. Both appellants were criminally charged with theft in office, in violation of R.C. 2921.441. Ultimately, appellant Bringheli pleaded

¹Both appellants had longer overall employment histories with appellee, but for purposes of this appeal, we note their employment history dating back to the time they were hired as permanent, part-time bus drivers.

guilty to falsification of records, in violation of R.C. 2921.13; appellant Breyley pleaded no contest to falsification of records, in violation of the same statute. Appellant Bringheli was terminated, and appellant Breyley resigned. Appellee paid appellants for their accrued sick leave.

{¶ 4} On September 19, 2007, appellants filed a complaint against appellee for abuse of process, negligent supervision, invasion of privacy, intentional tort, and a Public Records Act violation.

{¶ 5} On November 30, 2007, appellee filed a motion to dismiss arguing lack of subject matter jurisdiction, failure to state a claim upon which relief could be granted, and governmental immunity. Even though they opposed appellee's motion, in their brief in opposition appellants clearly stated several times that the facts of their complaint revolve around the issues of "wages, hours, terms and conditions of employment." See Objection to Motion to Dismiss, pp. 2, 3, 17, 19. Appellants made the additional argument that they had previously filed a grievance under the CBA, but withdrew it after their union withdrew its representation.

{¶ 6} On January 28, 2008, the trial court granted appellee's motion on the grounds that the court lacked subject matter jurisdiction. The journal entry dismissing plaintiffs' case stated: "Plaintiffs are both subject to their Collective Bargaining Agreement ("CBA"). This court finds that it does not have subject

matter jurisdiction over the captioned case and plaintiff's [sic] proper recourse is to follow the procedures as set forth by the CBA. ***."

Review and Analysis

{¶ 7} Appellants filed this timely appeal of the trial court's dismissal. They raise one assignment of error for our review.

{¶ 8} "I. The trial court erred in dismissing Plaintiff's [sic] Complaint."

{¶ 9} In their sole assignment of error, appellants argue that the causes of action in their complaint against appellee are not governed by the CBA, therefore, the trial court should not have granted appellee's motion to dismiss for lack of subject matter jurisdiction. We disagree.

{¶ 10} The standard of review for a dismissal pursuant to Civ.R. 12(B)(1), lack of subject matter jurisdiction, is whether the plaintiff has alleged any cause of action over which the court has authority to decide. *McHenry v. Indus. Comm. of Ohio* (1990), 68 Ohio App.3d 56, 62, 587 N.E.2d 414. "There is no restriction on the type of materials the trial court may consider in ascertaining whether it had subject matter jurisdiction. The trial court is not confined to the allegations of the initial pleadings when determining its subject matter jurisdiction pursuant to a Civ. R. 12(B)(1) motion to dismiss. Furthermore, it may consider material pertinent to such inquiry without converting the motion into one for summary judgment. *** A trial court has authority to consider any pertinent evidentiary materials when determining its own jurisdiction. ***." (Internal

citations omitted.) *Sherman v. Burkholder* (Dec. 15, 1994), Cuyahoga App. No. 66600.

{¶ 11} In ruling on appellee's motion to dismiss, the trial court considered the CBA. Despite appellants' argument to the contrary, this is proper, and the court did not err in relying on the CBA.

{¶ 12} Appellants argue that their complaint asserts causes of action not covered by the CBA, therefore, the common pleas court has jurisdiction. We are not persuaded by their argument.

{¶ 13} "If a party asserts rights that are independent of R.C. Chapter 4117, then the party's complaint may properly be heard in common pleas court. However, if a party asserts claims that arise from or depend on the collective bargaining rights created by R.C. Chapter 4117, the remedies provided in that chapter are exclusive."² *Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police, Capital City Lodge No. 9* (1991), 59 Ohio St.3d 167, 170-171, 572 N.E.2d 87.

{¶ 14} In this case, we do not find that appellants have asserted any claims that fall outside the scope of R.C. Chapter 4117, which was meant to regulate in a comprehensive manner the labor relations between public employees and

²R.C. 4117.10(A) states in pertinent part: "*** Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees. ***." See, also, *State ex rel. Rootstown Local Sch. Dist. Bd. of Educ. v. Portage County Court of Common Pleas* (1997), 78 Ohio St.3d 489, 678 N.E.2d 1365 (a party's complaint which asserts rights that are independent of R.C. Chapter 4117 may properly be heard in common pleas court).

employers. See *Franklin Cty. Law Enforcement Assn.*, supra. The CBA by which these parties are governed sets forth the policies and procedures for the regulation of absences and pay as well as for discipline. Subsections 9.1 through 9.6 of the CBA cover sick leave generally, acceptable use of sick leave, documentation of sick leave, and accumulation of sick leave; subsection 6.9 covers disciplinary procedures.

{¶ 15} Prior to filing the underlying action in the common pleas court, appellants filed a grievance, and the union agreed to represent them. Once the union learned that appellants had entered pleas to falsification of records (guilty in Bringheli's case and no contest in Breyley's case), the union withdrew its representation. Appellants then withdrew their grievance. By filing a grievance originally, however, they acknowledged that the terms of the CBA govern their issues with appellee regarding their sick leave pay and terminations.

{¶ 16} Furthermore, in their opposition to appellee's motion to dismiss, appellants acknowledged that their complaint raised issues related to "wages, hours, and terms of employment." Again, these are issues specifically governed by the CBA and the grievance procedure it provides.

{¶ 17} We do not find that, merely because appellants filed a civil complaint in the common pleas court alleging causes of actions against appellee, they have somehow taken the matter outside the scope of the CBA. Appellants' underlying claims are clearly governed by the CBA, and the only remedy available to them is through the appropriate grievance procedure, even if they must represent themselves.

{¶ 18} We find that the trial court did not err in dismissing this case for lack of subject matter jurisdiction. Appellants' sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellants costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

SEAN C. GALLAGHER, P.J., and
ANN DYKE, J., CONCUR