

[Cite as *Mun. Constr. Equip. Operators' Labor Council v. State Emp. Relations Bd.*, 2009-Ohio-6318.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 93361**

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## **MUNICIPAL CONSTRUCTION EQUIPMENT OPERATORS' LABOR COUNCIL**

PLAINTIFF-APPELLANT

vs.

## **STATE EMPLOYMENT RELATIONS BOARD**

DEFENDANT-APPELLEE

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**JUDGMENT:**  
**AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CV-676838

**BEFORE:** Cooney, A.J., Boyle, J., and Sweeney, J.

**RELEASED:** December 3, 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).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶ 2} Plaintiff-appellant, Municipal Construction Equipment Operators' Labor Council ("CEO Union"), appeals the common pleas court's dismissal of its appeal from the State Employment Relations Board ("SERB"). Finding no merit to the appeal, we affirm.

{¶ 3} This administrative appeal involves the October 31, 2008, SERB determination that the defendant-appellee, city of Cleveland ("City"), had not engaged in an unfair labor practice when it eliminated health insurance benefits for CEO Union members. On November 19, 2008, the CEO Union appealed the decision to the common pleas court under R.C. 2505.07 and 4117.13(D). The court dismissed the appeal, holding that it lacked jurisdiction because the appeal was untimely under R.C. 119.12 and 4117.02(P).

{¶ 4} In its sole assignment of error, the CEO Union argues that the common pleas court erred in concluding that its appeal was untimely. The question, in the instant case, is whether R.C. 119.12 or 2505.07 governs the time to appeal from a SERB decision.

{¶ 5} Accordingly, the instant appeal requires us to determine whether the lower court interpreted the law correctly. "An appellate court's scope of

review on issues of law is plenary \* \* \*.” *Bartchy v. State Bd. of Edn.*, 120 Ohio St.3d 205, 2008-Ohio-4826, 897 N.E.2d 1096, citing *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339, 343, 587 N.E.2d 835. We hold that R.C. 119.12 governs the time to appeal from a SERB decision.

{¶ 6} R.C. 4117.02 establishes the rules that govern SERB, and R.C. 4117.02(P) provides that “[e]xcept as otherwise specifically provided in this section, the [state employment relations] board is subject to [R.C.] Chapter 119. \* \* \*.” The Ohio Supreme Court reiterated this conclusion in *State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, 818 N.E.2d 688, holding, “SERB is an agency whose administrative adjudications are subject to judicial review pursuant to R.C. 119.12 [and] R.C. 4117.02(P) (formerly [M]); *South Community, Inc. v. State Emp. Relations Bd.* (1988), 38 Ohio St.3d 224, 527 N.E.2d 864, syllabus; *Ohio Historical Soc. v. State Emp. Relations Bd.* (1990), 48 Ohio St.3d 45, 46, 549 N.E.2d 157.” In turn, R.C. 119.12 requires that a party seeking to appeal an agency’s order must file the appeal within 15 days after the agency mails its order.

{¶ 7} R.C. 119.12 provides, in pertinent part:

“Any party desiring to appeal shall file a notice of appeal with the agency setting forth the order appealed from and the grounds of the party’s appeal. \* \* \* *Unless otherwise provided by law relating to a particular agency, notices of appeal shall be filed within fifteen days after the mailing of the notice of the agency’s order as provided in this section.* \* \* \*” (Emphasis added.)

{¶ 8} We must reject CEO Union’s argument that R.C. 2505.07, and its 30-day time period to appeal, governs the instant case because, although that statute addresses administrative appeals generally, it does not apply to appeals from SERB decisions. Tellingly, CEO Union does not cite a single case that applies R.C. 2505.07 to an appeal of a SERB decision. On the other hand, there are many cases involving appeals of SERB decisions that incorporate R.C. 119.12. See, e.g., *Univ. Hosp., Univ. of Cincinnati College of Medicine; Groveport-Madison Local Edn. Assn., OEA/NEA v. State Emp. Relations Bd.* (1992), 62 Ohio St.3d 501, 584 N.E.2d 700; *Franklin Cty. Sheriff’s Dept. v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 498, 589 N.E.2d 24; *Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police, Capital City Lodge No. 9* (1991), 59 Ohio St.3d 167, 572 N.E.2d 87; *South Community, Inc. v. State Emp. Relations Bd.* (1988), 38 Ohio St.3d 224, 527 N.E.2d 864; *Boieru v. State Emp. Relations Bd.* (1988), 54 Ohio App.3d 23, 560 N.E.2d 801. Notably, SERB advised CEO Union of the 15-day time period to appeal at the bottom of page two of its order, in the section designated in bold block letters, “Time and Method to Perfect Appeal.”

{¶ 9} By appealing SERB's order 19 days after SERB mailed it, CEO Union exceeded the statutory time period of 15 days, and the common pleas court lacked jurisdiction over the case. Accordingly, we overrule the sole assignment of error.

Judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas 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.

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COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

MARY J. BOYLE, J., and  
JAMES J. SWEENEY, J., CONCUR