

[Cite as *Missig v. Cleveland Civ. Serv. Comm.*, 2010-Ohio-2595.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91699

ANTHONY E. MISSIG

PLAINTIFF-APPELLANT

vs.

**C/O CLEVELAND CIVIL SERVICE
COMMISSION, ET AL.**

DEFENDANTS-APPELLEES

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-637924

BEFORE: Jones, J., Cooney, P.J., and Celebrezze, J.

RELEASED: June 10, 2010

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), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten 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. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} This cause is before this court on remand from the Ohio Supreme Court. See *Missig v. Cleveland Civ. Serv. Comm.*, 123 Ohio St.3d 239, 2009-Ohio-5256, 915 N.E.2d 642. This court's judgment was reversed on the authority of *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2597, 909 N.E.2d 616.

{¶ 2} In *Lima*, the Ohio Supreme Court held that: (1) R.C. 9.481¹ was validly enacted pursuant to the general welfare clause of the state constitution (governing wages, hours, and employee health, safety, and welfare); and (2) the home-rule provision of the state constitution could not impair the legislature's power to enact legislation pursuant to the general welfare clause.

{¶ 3} We now consider whether appellant, Anthony E. Missig's termination of his employment as Battalion Chief with the City's Division of Fire, due to violations of Cleveland City Charter Section 74(a), more commonly known as the residency requirement, was valid.

Law and Analysis

{¶ 4} In *Lima*, the court, faced with an obvious conflict between the Akron and Lima residency requirements and R.C. 9.481, considered whether the statute was enacted pursuant to Section 34, Article II of the Ohio Constitution. *Lima* at _9. The court recognized that if it found in the affirmative, it would then be

¹R.C. 9.481(B)(1) states that "no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." See, *Lima v. State*, 122 Ohio St.3d 155, 2009-Ohio-2597, 909 N.E.2d 616.

required to decide whether R.C. 9.481 would prevail over ordinances enacted pursuant to Section 3, Article XVIII of the Ohio Constitution. *Id.* With regard to the first prong of its analysis, the *Lima* court compared R.C. 9.481 to the statute considered in *Am. Assn. of Univ. Professors, Cent. State Univ. Chapter v. Cent. State Univ.*, 87 Ohio St.3d 55, 1999-Ohio-248, 717 N.E.2d 286. The *Lima* court held that “as in *Am. Assn. of Univ. Professors*, the General Assembly believed that ‘the public interest necessitated legislative intervention. It enacted a law, therefore, to address and modify the existing concern.’ 87 Ohio St.3d at 61, 717 N.E.2d 286. R.C. 9.481 provides for the comfort and general welfare of public employees by ensuring that they will be able to choose the municipality in which they reside. We hold that R.C. 9.481 was enacted pursuant to the authority granted in Section 34, Article II.” *Lima* at _14.

{¶ 5} Section 34, Article II of the Ohio Constitution mandates that no other constitutional provision can impair or limit the General Assembly’s ability to make laws pursuant to that section. *Id.* at _15. “This prohibition, of course, includes the ‘home rule’ provision contained in Section 3, Article XVIII.” *Id.* The *Lima* court held that R.C. 9.481 is constitutional, and thus municipalities cannot require their employees to reside in a particular municipality. *Id.* at _17.

{¶ 6} R.C. 9.481 was passed in January 2006 with an effective date of May 1, 2006. The record demonstrates that Safety Director Martin Flask did not terminate Missig for violation of the residency requirement until July 10, 2007, well after the statute’s effective date.

{¶ 7} In light of the foregoing and the recent decision in *Lima*, upholding the constitutionality of the statute prohibiting political subdivisions from imposing residency requirements on employees as a condition of employment, we hold that appellant's termination was improper.

{¶ 8} Accordingly, based on the Ohio Supreme Court's decision in *Lima*, this court now reverses the trial court decision and hereby orders that Anthony E. Missig be fully reinstated to his previous position.

{¶ 9} This cause is reversed and remanded to the lower court for further proceedings consistent with this opinion.

It is ordered that appellant recover of appellees 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.

LARRY A. JONES, JUDGE

COLLEEN CONWAY COONEY, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR.