[Cite as *State ex rel. Cleveland v. Sutula,* 2010-Ohio-914.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94264

STATE OF OHIO, EX REL. CITY OF CLEVELAND

RELATOR

vs.

JUDGE JOHN D. SUTULA

RESPONDENT

JUDGMENT:
COMPLAINT DISMISSED

Writ of Prohibition
Motion No. 429056
Order No. 431210

RELEASE DATE: March 8, 2010

ATTORNEYS FOR RELATOR

Stephen S. Zashin
Jon M. Dileno
Zashin & Rich Co., L.P.A.
55 Public Square
4th Floor
Cleveland, Ohio 44113

Robert J. Triozzi
Director of Law
City of Cleveland
601 Lakeside Ave., Room 106
Cleveland, Ohio 44114-1077

ATTORNEYS FOR RESPONDENT

William D. Mason
Cuyahoga County Prosecutor

By: Charles E. Hannan, Jr.
Assistant County Prosecutor
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

ANN DYKE, J.:

{¶ 1} The city of Cleveland ("City"), the relator, has filed a complaint for a writ of prohibition. The City seeks an order from this court, which prevents Judge John D. Sutula, the respondent, from exercising any jurisdiction in *Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, Cuyahoga County Court of

Common Pleas Case No. CV-700307. Judge Sutula has filed a motion to dismiss, which we grant for the following reasons.

Facts

{¶ 2} The following facts are gleaned from the complaint for a writ of prohibition, Judge Sutula's motion to dismiss, and the brief in opposition to the motion to dismiss:

{¶ 3} (1) the Municipal Construction Equipment Operators' Labor Council ("Union") has been certified by the State Employment Relations Board ("SERB") as the exclusive bargaining representative of a bargaining unit that consists of employees in the City's Water and Property Management Divisions;

{¶ 4} (2) in October 2007, the City and the Union entered into negotiations for a collective bargaining agreement;

{¶ 5} (3) in March 2009, the Union declared that a bargaining impasse existed and requested that SERB appoint a fact-finder to resolve the negotiation disputes;

{¶ 6} (4) on July 2, 2009, the appointed fact-finder issued his Report and Recommendation;

{¶ 7} (5) on July 6, 2009, the Union notified SERB that its members rejected the fact-finder's Report and Recommendation and that a strike was scheduled for July 17, 2009;

{¶ 8} (6) on July 16, 2009, the City submitted a final proposal to the union in an effort to avert the strike;

{¶ 9} (7) on July 16, 2009, the Union rejected the City's final proposal and commenced a strike on July 17, 2009;

{¶ 10} (8) on July 27, 2009, the Union presented a counter-proposal to the City, which was rejected;

{¶ 11} (9) on July 29, 2009, the Union presented a second counter-proposal;

{¶ 12} (10) on July 29, 2009, the Union accepted, via email, the City's original final proposal and indicated that the strike was over as of 5:30 a.m. on July 30, 2009;

{¶ 13} (11) on July 29, 2009, the City notified the Union that the original final proposal was no longer available for acceptance, thus rejecting the Union's acceptance of the original final proposal;

{¶ 14} (12) on July 30, 2009, all striking Union members returned to their positions of employment;

{¶ 15} (13) on July 31, 2009, the Union filed a complaint for declaratory judgment, damages, and other equitable relief in *Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, supra;[1]

[1]The Union's complaint contains two counts. Count 1 seeks declaratory judgment, while Count 2 is grounded in specific performance, injunctive relief, and

{¶ 16} (14) on September 3, 2009, the City moved to dismiss the complaint for declaratory judgment and other equitable relief on the basis that all of the Union's claims were solely within SERB's exclusive jurisdiction;

{¶ 17} (15) on November 6, 2009, Judge Sutula denied the City's motion to dismiss;

{¶ 18} (16) on November 17, 2009, the City commenced this original action in prohibition, with an application for an alternative writ of prohibition, against Judge Sutula;

{¶ 19} (17) on November 19, 2009, this court denied the City's application for an alternative writ of prohibition and established a briefing schedule for the parties;

{¶ 20} (18) on December 7, 2009, Judge Sutula filed his motion to dismiss the complaint for a writ of prohibition; and

---

damages. The Union, through its complaint, prays that the "Court will issue an order that: (a) finds Cleveland refused and failed to perform in accord with Cleveland's Offer, (b) declares Cleveland has no legitimate basis for its refusal and failure to perform in accord with Cleveland's Offer; (c) holds Cleveland's failure to perform has damaged the members of the bargaining unit described in this complaint; (d) requires Cleveland to cooperate with the CEO Union in preparing a New CBA, consistent with Cleveland's Offer; (e) requires Cleveland to present the New CBA to Cleveland City Council, with a recommendation by Cleveland's administration for its prompt approval and implementation, and to withdraw any contrary communication, after ratification of the New CBA by the members of this bargaining unit; and (f) Cleveland shall thereafter make the payments to the members of this bargaining unit in accord with Cleveland's offer, along with prejudgment and post-judgment interest, attorney fees and such other relief as the Court deems just."

{¶ 21} (19) on December 18, 2009, the City filed a brief in opposition to the motion to dismiss.

Legal Analysis

Prohibition: General Rules

{¶ 22} In order for this court to issue a writ of prohibition, the City must establish that (1) Judge Sutula is about to exercise judicial or quasi-judicial power, (2) the exercise of that power is not authorized by law, and (3) denying the writ will result in injury for which no other adequate remedy exists in the ordinary course of the law. *State ex rel. Sliwinski v. Burnham Unruh*, 118 Ohio St.3d 76, 2008-Ohio-1734, 886 N.E.2d 210; *State ex rel. Lipinski v. Cuyahoga Cty. Court of Common Pleas*, 74 Ohio St.3d 19, 1995-Ohio-96, 655 N.E.2d 1303. An adequate remedy at law will preclude relief in prohibition. *State ex rel. Lesher v. Kainrad* (1981), 65 Ohio St.2d 68, 417 N.E.2d 1382; *State ex rel. Sibarco Corp. v. Berea* (1966), 7 Ohio St.2d 85, 218 N.E.2d 428. Furthermore, absent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction over an action possesses the legal authority to determine its own jurisdiction, and a party challenging its jurisdiction has an adequate remedy at law by way of a post-judgment appeal. *Whitehall ex rel. Wolfe v. Ohio Civ. Rights Comm*. (1995), 74 Ohio St.3d 120, 656 N.E.2d 688. Finally, an appeal does not constitute an adequate remedy at law if the court patently and unambiguously

lacks jurisdiction over the action. *State ex rel. Lewis v. Moser* (1995), 72 Ohio St.3d 25, 647 N.E.2d 155.

City's Claim of Patent and Unambiguous Lack of Jurisdiction

{¶ 23} In the case sub judice, the City argues that Judge Sutula patently and unambiguously lacks jurisdiction over the Union's action for declaratory judgment, damages, and other equitable relief because the claims are within SERB's exclusive jurisdiction. The general rule is that if a party asserts claims that arise from or are dependent on the collective bargaining rights created by R.C. Chapter 4117, SERB possesses exclusive jurisdiction over the action. *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, paragraphs one and two of the syllabus. SERB's exclusive jurisdiction, however, is premised upon the existence of a valid collective bargaining agreement.

{¶ 24} "Relators' reliance on these cases is misplaced. In *Fraternal Order of Police*, 76 Ohio St.3d 287, 667 N.E.2d 929, the claims arose from an existing collective bargaining agreement. The agreement here, however, has expired. Similarly, despite relators' contentions to the contrary, *Vandalia-Butler* [(Aug. 15, 1991), Montgomery App. No. 12517] did not hold that an employer's validly implemented final offer following impasse constitutes a collective bargaining agreement 'as a matter of law.' * * * a collective bargaining agreement must be

approved by the employee organization, reduced to writing, and executed by the parties. * * *

{¶ 25} "* * *

{¶ 26} "If a party asserts rights that are independent of R.C. Chapter 4117, the party's complaint may properly be heard in common pleas court. *Franklin Cty. Enforcement Assn*., supra, 59 Ohio St.3d 167, 572 N.E.2d 87, at paragraph two of the syllabus. * * *" *State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage Cty. Court of Common Pleas* (1997), 78 Ohio St.3d 489, 493, 678 N.E.2d 1365.

{¶ 27} Herein, it is clear that Judge Sutula, as a judge of the common pleas court, possesses original jurisdiction in actions for declaratory judgment, damages, and other equitable relief. R.C. 2721.02(A), 2305.01. It is also clear that in the action currently pending before Judge Sutula, no claim of an unfair labor practice, pursuant to R.C. 4117.11, has been raised by any party. It must also be noted that there exists no collective bargaining agreement between the parties in the underlying civil action. The claims raised by the Union in the underlying action, are not dependent upon any collective bargaining rights under R.C. Chapter 4117 and jurisdiction is not exclusive to SERB. *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn*., 82 Ohio St.3d 222, 1998-Ohio-249, 694 N.E.2d 1346. Thus, Judge Sutula does not patently and unambiguously lack jurisdiction to hear the Union's action for declaratory judgment, damages,

and other equitable relief. We also find that Judge Sutula can determine the court's jurisdiction and that there exists an adequate remedy at law to challenge the exercise of the jurisdiction by way of an appeal. *Krooss v. Murray,* 123 Ohio St.3d 85, 2009-Ohio-4051, 914 N.E.2d 366; *State ex rel. Plant v. Cosgrove*, 119 Ohio St.3d 264, 2008-Ohio-3838, 893 N.E.2d 485.

{¶ 28} Accordingly, we grant Judge Sutula's motion to dismiss. Costs to the City. It is further ordered that the Clerk of the Eighth District Court of Appeals serve notice of this judgment upon all parties as required by Civ.R. 58(B).

Complaint dismissed.

ANN DYKE, JUDGE

COLLEEN CONWAY COONEY, P.J., and
JAMES J. SWEENEY, J., CONCUR