In the Supreme Court of Ohio

STEVEN SINLEY, Plaintiff-Appellee, vs. SUPERIOR DAIRY, INC., et al. Defendant-Appellant.	Case No.: 2020-1158 On Appeal from the Cuyahoga County Court of Appeals, Eighth Appellate District Court of Appeals Case No. 109065

MEMORANDUM IN OPPOSITION OF JURISDICTION OF PLAINTIFF-APPELLEE, STEVEN SINLEY

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TABLE OF CONTENTS

THIS CASE DOES NOT INVOLVE A MATTER OF GREAT PUBLIC OR GENERAL INTEREST.

Appellee, Steven Sinley, responds and opposes the memorandum in support of jurisdiction filed by Superior Dairy, Appellant below. As this is not a case of great public or general interest, it should not be accepted for further review by this Court. The absence of any demonstrable basis of such import proves that the matter should not be reviewed.

Appellant raises the specter of coronavirus as the basis of a further appeal. By Appellant's own admission, if coronavirus had not have happened the Court would not have jurisdiction over the matter. Appellant's Brief ("Apt. brief") at p. 1. ("[coronavirus]'s wake… catapults this case *into one* of great significance…"). (Emphasis added). While being a very serious problem not only for the judicial system, but society as a whole, coronavirus has not had any role to play in the underlying facts and circumstances of this case, nor should it be a consideration by the Court when addressing the issues at hand. And, to raise a pandemic as a basis for this Court to exercise jurisdiction over a matter concerning the application of R.C. 2711.01 et seq. and 9 U.S.C. §1 et seq. to the facts of this case simply confuses matters. While it may take years for our society to fully recover from its impact, Appellant's proposed alterations to clearly established law will only cause greater damage to our system of justice.

Pursuant to the Ohio Constitution and the Rules of Practice, a case must involve a constitutional question or a matter of great public interest for the Supreme Court to accept jurisdiction. Ohio Constitution, Article IV, Section 2(B)(2)(e); Supreme Court Rules of Practice, S.Ct.Prac.R. 5.02(A)(1) and (3). "Except in these special circumstances, it is abundantly clear that … a party to litigation has a right to but one appellate review of his cause." *Williams v. Rubich*, 171 Ohio St. 253, 253-254; See also *State v. Bartrum*, 121 Ohio St.3d 148, 2009-Ohio-355, 902 N.E.2d 961 at ¶ 31 ("[O]ur role as a court of last resort is not to serve as an additional court of

appeal on review, but rather to clarify rules of law arising in courts of appeals that are matters of public or great general interest").

This Court has steadfastly held, "arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which [it] has not agreed so to submit." (Citations omitted.) *Taylor v. Ernst & Young, L.L.P.*, 130 Ohio St.3d 411, 2011-Ohio-5262, 958 N.E.2d 1203, ¶ 20. Contrary to Appellant's assertion, the lower court did not alter the standard used to address statutorily based claims in a collective bargaining agreement or the presumption favoring arbitration. Rather, based upon the Appellant's failure to include *the* statutory claim in its *own* agreement the trial court and the appeals court both reasoned there had not been a clear and unmistakable waiver of a judicial forum. The Eighth District decision did not alter these principals and the decision does not have any far-reaching implications. In sum, Appellant has not provided any reason to revisit firmly held principles of law.

STATEMENT OF THE CASE AND FACTS

Steven Sinley, Plaintiff-Appellee, alleges an employer intentional tort against Superior Dairy, Inc., under Ohio's Employer Intentional Tort statute R.C. 2745.01, as a result of the conduct detailed below. An employer intentional tort arises when an employer commits a tortious act, during employment, with the intent to injure or the belief that the injury was substantially certain to occur. R.C. 2745.01(A). When an injury occurs as a result of an employer's deliberate removal of an equipment safety guard, R.C. 2745.01(C) creates a rebuttable presumption that the employer removed the safety guard with an intent to injure.

On May 11, 2019, Mr. Sinley answered a call to repair an "RKK2 Grinder" (the "Grinder"). (R. 1) *Complaint,* at ¶ 6, 8 (facts alleged are taken as true). Normally, Grinders have an electronic guard that shuts off power to them when they are disassembled. *Id.* at ¶ 11. But Superior Dairy had

removed the electronic guard on this Grinder that day. *Id*. Before Mr. Sinley arrived to repair it, his supervisor (the "Supervisor") had already disassembled it. *Id*. The Supervisor also failed to lockout/tagout the machine, leaving it energized. *Id*. at ¶ 9.

The Supervisor did not warn Mr. Sinley that the machine was energized. *Id*. The Supervisor did not alert Mr. Sinley that Superior Dairy had removed the disassembly power shut off guard. *Id*. The Supervisor never told Mr. Sinley he had skipped the lockout/tagout process. *Id*. Unaware of his peril, Mr. Sinley went to work on the Grinder, placing his hands inside it. *Id.* at ¶ 12. While working on the Grinder, with his hands inside it, the Supervisor intentionally and without warning reset the Grinder. *Id*. Energized, the machine ground and amputated all four fingers of Mr. Sinley's dominant right hand. *Id*.

On August 9, 2019, counsel filed a lawsuit against Superior Dairy Inc. ("Appellant" herein), two other entities, along with the Ohio Bureau of Workers Compensation. (R. 1). Before answering the complaint, Appellant filed a motion to compel arbitration. (R. 6). Appellee argued the collective bargaining agreement ("Agreement") it had with the Appellee's union waived the right to a jury trial of the statutory claim. *Id*.

The Agreement contains a grievance process that includes arbitration. The arbitration procedure specifies those claims covered by the procedure:

> **Section 4.** The above procedures set forth in Articles IX and X shall apply equally to any alleged violation of laws or statutes by the Union or the Company, as alleged by an employee, including without limitation; Title VII of the 1964 Civil Rights Act; the federal Age Discrimination in Employment Act; the Consolidated Omnibus Budget Reconciliation Ace; the Employee Retirement Income Security Act; the Equal Pay Act; the Fair Labor Standards Ace; the Family and Medical Leave Act; the Americans With Disabilities Act Amendments Act; the Immigration Act of 1990; the Fair Credit Reporting Act; the Labor-Management Relations Act; the Lilly Ledbetter Fair Pay Act; the Occupational Safety and Health Act (but only as to the anti-relations [sic] aspect of OSHA); alleged breaches of a Union's duty to fairly represent its employees; alleged breaches of Ohio public policy; Ohio

> Revised Code Chapter 4112; Ohio Revised Code Section 4112.90 (workers' compensation retaliation); Ohio Revised Code Section 4101.17; Ohio Revised Code Section 4113.52; Ohio's overtime and/or minimum wage statute; and the Genetic Information Non-Discrimination Act of 2008.

Apt. brief at 7, citing Article X Section 4 of the Agreement.

The provision does not reference or otherwise attempt to define an unresolved dispute to include an employer intentional tort. It does not refer to the claim in a general sense (the use of terms to describe or otherwise include such a claim e.g., a bodily injury caused by an intentional act) nor does it reference R.C. 2745.01- the statute which governs such an action. As such, the Agreement does not clearly and unmistakably waive a judicial forum.

In its briefing, knowing that the arbitration provision as drafted did not include language needed to satisfy the clear and unmistakable waiver standard, the Appellant submitted 2 affidavits on its own intent and that of the trade union, not a party to the proceeding. In detail, the Agreement set forth those claims that were waived but did not include an employer intentional tort. Knowing this, Appellant asked the trial court to take into consideration a standard that would allow for and encourage the use of intent. Apart from a multitude of hearsay objections, the affidavits do not claim that the parties intended to waive an employer intentional tort claim.

In support of its motion, it filed two briefs, two affidavits, and an assortment of documents, all consisting of 229 pages. (R. 6) and (R. 14). Being fully briefed, the trial court denied Appellant's motion. Thereafter, the Appellant filed an appeal in the Eighth District where it once again raised the above language as the basis of this appeal. (R. 23). The propositions below address the decision by the Eighth District wherein it concluded that since the Agreement did not contain a clear and unmistakable waiver of the statutory claim Appellee could not be compelled to submit to the arbitration procedure and the trial court did not err in denying Superior's motion to stay proceedings and compel arbitration.

APPELLEE'S RESPONSES TO APPELLANT'S PROPOSITIONS OF LAW

Appellant's Proposition of Law No. I: The presumption of arbitrability applies in R.C. 2711.03 and 9 U.S.C. § 3 motions to compel arbitral resolution of statutory claims. Arbitration should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.

Appellee's Response to Proposition of Law No. I: The Appellant would have this Court adopt and apply a new standard of review when it comes to arbitration provisions in collective bargaining agreements. A standard that has not been applied by any other court and would use as a basis of consideration the intent of the parties. As demonstrated below, there is no basis to affect such a change to already established law.

Appellant's first proposition of law seeks to have this Court overturn the Eighth District's holding (along with the holding of many other courts) that a presumption in favor of arbitration may not be applied to waive a judicial forum of a statutory claim where the claim has not been clearly and unmistakably waived. It advocates for a change of the clear and unmistakable waiver standard as applied to collective bargaining agreements. Appellant would seek to introduce the intent of the parties. Such a standard would not only overturn precedent but would be unimaginably unworkable.

Appellant claims that the Eighth District's holding creates, "impermissible anti-arbitration precedent." Apt. brief, at 10. In citing to the following *dicta*, Appellant has quite obviously taken the lower court's holding out of context:

> [a]lthough we generally apply a presumption of arbitrability when reviewing arbitration provisions and resolve any doubts regarding arbitration in its favor [citation omitted], such a presumption does not apply to waiver of a judicial forum for a statutory claim.

Sinley v. Safety Controls Technology, Inc., 8th Dist. Cuyahoga No. 109056, 2020-Ohio-4068, ¶ 15 (Aug. 13, 2020). To the extent that Appellant calls the above excerpt "palpably wrong" and "anti-arbitration precedent," review of the Eighth District's immediately preceding language demonstrates that Appellant missed the intent.

The Eighth District took great effort to explain how its holding and the application of the "clear and unmistakable" waiver standard was consistent with the Federal Arbitration Act and the Ohio Arbitration Act, observing that both acts "provide that a court shall stay proceedings and compel arbitration when 'an issue is referable to arbitration under an agreement in writing for arbitration.'" (Citations omitted.) *Id*. at ¶15. The court went on stating, "[a]lthough we generally apply a presumption of arbitrability when reviewing arbitration provisions and resolve any doubts regarding arbitration in its favor, [] such a presumption does not apply to waiver of a judicial forum for a statutory claim." (Citations omitted.) *Id*. The court acknowledged long-held principals including, "arbitration is a matter of contract, and a party cannot be required to arbitrate a dispute it did not agree to submit to arbitration." (Citations omitted.) *Id*. It further acknowledged that when deciding a motion to compel arbitration a court must, "focus [] on whether the parties actually agreed to arbitrate the issue and the not the general policy goals of the arbitration statutes." (Citations omitted.) *Id*.

To overturn the lower courts' rulings, the Appellant would have the Court favor general policy goals of arbitration while simultaneously ignoring what the parties actually agreed upon. Ohio courts have consistently observed a distinction between statutory and contractual rights. *Wilson v. Glastic Corp.,* 150 Ohio App.3d 706, 2002-Ohio-6821, 782 N.E.2d 1208, ¶ 24 (8th Dist.) (observing that statutory rights are inherently independent from contractual rights considered by a collective bargaining agreement). The initial observation of a collective bargaining agreement leads to the premise that it is primarily concerned with contractual rights, and there is no inherent inclusion of those separate and distinct statutory rights. Honoring that distinction, Ohio courts have applied the United States Supreme Court's "clear and unmistakable" standard to arbitrate statutory

rights in arbitration agreements. *Haynes v. Ohio Turnpike Comm*, 177 Ohio App.3d 1, 2008-Ohio-133, 893 N.E.2d 850, ¶ 18 (8th Dist.) (citations omitted.)

This principle was most recently reaffirmed by the United States Supreme Court *in 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 248 (2009), which held that an employee subject to a collective bargaining agreement can only be compelled to arbitrate those claims that "clearly and unmistakably" require arbitration. By way of example, in *Pyett*, the applicable collective bargaining agreement specifically stated and listed several statutory claims, including the Age Discrimination in Employment Act of 1967, which was the statutory claim at issue. *Id*. at 252. The Supreme Court reaffirmed the holding in the *Gardner-Denver*[1], *Barrentine*[2], and *McDonald*[3] trilogy of cases that a plaintiff is not required to arbitrate claims that are not "clearly and unmistakably" set forth in the agreement. Based on the text of the applicable collective bargaining agreements, "the employees had not agreed to arbitrate their claims." *Id*. at 264. An example of this principle can be found in *Barrentine*. The United States Supreme Court held that a collective bargain agreement's arbitration provision did not preclude a Fair Labor Standards Act claim because the provision did not expressly reference the FLSA. *Barrentine* at 744. The Supreme Court, in *Pyett*, similarly noted in its *McDonald* holding that a plaintiff could bring a Section 1983 action in court because the arbitration provision in the collective bargaining agreement did not address Section 1983 claims. *Pyett* at 263. The United States Supreme Court explained in *Pyett* that "as in both *Gardner-Denver* and *Barrentine*, the Court's decision in *McDonald* hinged on the scope of the collective-bargaining agreement and the arbitrator's parallel mandate." *Id*.

[1] *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 94 S.Ct. 1011, 39 L.Ed.2d 147 (1974).
[2] *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 101 S.Ct. 1437, 67 L.Ed.2d 641 (1981).
[3] *McDonald v. West Branch*, 466 U.S. 284, 104 S.Ct. 1799, 80 L.Ed. 2d 302 (1984).

District Courts have followed suit in adopting the clear and unmistakable waiver standard in collective bargaining agreements. In citing to *Pyett*, the court in *Waymire v. Miami Cty. Sheriff's Office*, S.D.Ohio No. 3:15-cv-159, 2017 U.S. Dist. LEXIS 46768, at *15 (Mar. 29, 2017), explained: "[w]hile a collective bargaining agreement may indeed require arbitration of statutory claims, thereby barring employees from suing in court, a collective bargaining agreement may only do so if the agreement's arbitration provision expressly covers [those] rights." *Id*. *Wright v. Universal Maritime Serv. Corp.,* 525 U.S. 70 (1998); *Smith v. Bd. of Trs. Of Lakeland Cmty. Coll*., 746 F. Supp.2.d 877, 897 (N.D. 2010); *Minnick v. Middleburg Hts*., 8th Dist. Cuyahoga No. 81728, 2003-Ohio-5068 (quoting Wright and adopting the Wright standard).

Rather than addressing the long-established precedent, the Appellant advocates for a standard where broad language would be applied and if the language itself was insufficient then the intent of the parties could be taken into consideration. Appellant's agreement does not clearly and unmistakably require employees to arbitrate Ohio intentional tort claims. It does not reference, mention, or otherwise attempt to define an unresolved dispute to include an employer intentional tort claim. Furthermore, the agreement does not refer to or reference R.C. 2745.01 the statute that governs the action.

Appellant raises no issue in its first proposition that merits this Court to impose its jurisdiction. As demonstrated above, the holding by the Eighth District simply applied clearly held principles to the facts of the case.

Appellant's Proposition of Law No. II: A "clear and unmistakable" waiver of a judicial forum for resolving employee statutory claims can exist in a private or public-sector collective bargaining agreement without exhaustively listing every conceivable, possible state and federal statute. A collectively-bargained waiver of a judicial forum for employee statutory claims is to be treated and viewed no differently than the complete waiver of the statutory right or claim itself.

Appellee's Response to Proposition of Law No. II: The law is clear: In a collective bargaining agreement there must be a "clear and unmistakable" waiver of an employee's statutory claims for a mandatory arbitration provision to apply. The "clear and unmistakable" waiver standard requires more than just a broad based or generalized waiver of a statutory claim.

Once again, Appellant advocates for the repudiation of precedential authority in favor of a broad-based generalized application of what is defined as the clear and unmistakable waiver standard.

Ohio courts are guided by the federal court standard set forth in *Fazio v. Lehman Bros., Inc.*, 340 F.3d 386 (6th Cir. 2003), in determining whether a cause of action is within the scope of a collective bargaining agreement. "[A] proper method of analysis [to make this determination] is to ask if an action could be maintained without reference to the contract or relationship at issue. If it could, it is likely outside the scope of the arbitration agreement." *Academy of Medicine v. Aetna*, 108 Ohio St.3d 185, 2006-Ohio-657 at ¶ 35, quoting *Fazio v. Lehman Bros., Inc*., at 395. Consequently, under this standard, a party may only be compelled to arbitrate statutory claims that are clearly and unmistakably identified within a collective bargaining agreement. When applying this standard to the Appellant's arbitration agreement, there is no doubt that it does not clearly and unmistakably waive the judicial forum of an employer intentional tort claim.

Appellant advocates for the adoption of a standard which seeks to waive a right to judicial forum based upon the language "any alleged violation of laws or statutes." As demonstrated above, the clear and unmistakable waiver standard requires much more than a broadly worded provision to act as a waiver. Here, the collective bargaining agreement does not contain any language that

covers the claim itself. The Appellant argues that this language is broad enough to include the claim at issue.

Appellant claims the majority of federal courts have adopted a position that allows for the waiver of a judicial forum based upon such broad language. In fact, the federal courts, and in particular, the cases relied upon actually enforce the lower court's ruling by affirming the standard set forth in *Wright* which states that the clear and unmistakable waiver must be "particularly clear" and "explicitly stated." (Citations omitted.) *Wright v. Universal Mar. Serv. Corp.*, 525 U.S. 70, 79-80, 119 S.Ct. 391, 142 L. Ed.2d 361 (1998); see e.g., *Abdullayeva v. Attending Homecare Srvcs., LLC*, 928 F.3d 218 (2d Cir. 2019) (an FLSA claim defined in the agreement as all federal, state, and local wage and hour laws and wage parity statutes and specifically identified violations arising under the FLSA (along with state wage and hour laws)); *Lawrence v. Sol. G. Atlas Realty Co.*, 841 F.3d 81, 83 (2d Cir. 2016) (determining that the clear and unmistakable waiver standard had not been met discrimination claims including Section 1981, Title VII, FLSA and other state law violations were defined in the agreement as, "[n]o discrimination…: '[t]here shall be no discrimination against any present or future employee by reason of race, creed, color, age, disability of an individual in accordance with applicable law, national origin, sex, sexual orientation, union membership, or any characteristic protected by law.'"); *Ibarra v. United Parcel Service*, 695 F.3d. 354, 357 (5th Cir. 2012) (a Title VII claim based upon sex discrimination was defined in the agreement as including any form of discrimination, "with respect to hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, sexual orientation, national origin, physical disability[,] veteran status or age in violation of any federal or state law, or engage in any other discriminatory acts prohibited by law, nor will they limit, segregate or classify employees in any way to deprive any individual employees

of employment opportunities because of race, color, religion, sex, national origin, physical disability, veteran status or age in violation of any federal or state law, or engage in any other discriminatory acts prohibited by law. This Article also covers employees with a qualified disability under the Americans with Disabilities Act.").

Even those cases that have rejected a bright-line waiver standard have required much more explicit language than the language being relied upon by the Appellant. *See Darrington v. Milton Hersey School*, 958 F.3d 188, 188 (3rd Cir. 2020), (Title VII claims was defined in the non-discrimination provision of the agreement as: "any dispute alleging discrimination… based upon membership in any protected categories under federal or state law" and further defined as: discrimination "on the basis of race, color, religion, age (40 and above), sex, national origin, disability status…").

In support of its position, the Appellant has lumped together cases involving a collective bargaining agreement with cases not governed by the clear and unmistakable waiver standard. *See Brown v. ITT Consumer Fin. Corp.*, 211 F.3d 1217, 1221 (11th Cir. 2000) (an individualized agreement) ("Where, as here, the agreement to arbitrate was made by the *individual* employee, and *not by his collective bargaining representative*, the employee can be compelled to arbitrate his statutory claim. [Citing] *Brisentine v. Stone Webster Engineering Corp*., 117 F.3d 519, 524-25 (11th Cir. 1997)"); *Green Tree Financial Corp.-Ala. v. Randolph*, 531 U.S. 79 (2000) (a mobile home financing agreement); *Mey v. DIRECTV, LLC*, 2020 WL 4660194 (4th Cir. Aug. 7, 2020) (a cellular phone contract). These cases are not supportive or otherwise instructive on what constitutes a "clear and unmistakable" waiver as they do not involve a collective bargaining agreement.

Appellant can hardly claim that it was not understanding what was necessary to satisfy the "clear and unmistakable" waiver standard. The same issue was presented in *Kovac v. Superior Dairy, Inc.*, 930 F.Supp.2d 857 (N.D. Ohio 2013). In *Kovac*, the Appellant was subject to a lawsuit brought by an employee alleging discrimination under the Americans with Disabilities Act, the Ohio Unlawful Discriminatory Practices Act, and an intentional infliction of emotional distress claim. *Id*. at 862. Before filing the action, the employee had filed grievances with his union under Article IX of the then existing collective bargaining agreement. *Id*. at 861. Once the union decided not to pursue the action the employee filed a charge of discrimination with the Ohio Civil Rights Commission and the Equal Employment Opportunity Commission. *Id*. at 862. As in this case, Appellant filed a motion to stay and compel arbitration. *Id*. at 864. The Kovac court set forth the 4-pronged test used to determine whether to grant motions to dismiss or stay the proceedings and compel arbitration: (1) The court must determine whether the parties agreed to arbitrate; (2) The court must determine the scope of that agreement; (3) If federal statutory claims are asserted, the court must consider whether Congress intended those claims to be non-arbitrable; and (4) If the court concludes that some, but not all, of the claims in the action, are subject to arbitration, it must determine whether to stay the remainder of the proceedings pending arbitration. (Citations omitted.) *Id*. at 865.

Appellant's demand for arbitration in Kovac failed because "a statute must specifically be mentioned in a collective bargaining agreement for it to even approach Wright's 'clear and unmistakable' standard." *Id*. at 857. At the time Appellant's Article X of the collective bargaining agreement called for binding arbitration of "any controversy or dispute arising between the parties to the agreement…" but did not list specific claims or statutes. *Id*. at 865-6. In *Kovac*, and as it does so again, Appellant asked the court to construe the broad and sweeping language in the

arbitration provision as evidencing a "clear and unmistakable" agreement to arbitrate Kovac's statutory claims. *Id*. at 867. The court stated that the starting point of the analysis was *Wright*, for the pronouncement "that a union-negotiated waiver of employees' statutory right to a judicial forum for claims of statutory employment discrimination must be '"clear and unmistakable."' (Citations omitted.) *Id*. at 866. The court went on to explain that the collective bargaining agreement must explicitly incorporate the statute to satisfy the difficult "clear and unmistakably" waiver. *Id*.

As it has done so in this case, the Appellant asked the court to recognize the use "of broad, non-specific language evidence[d] a "clear and unmistakable" agreement to arbitrate [plaintiff's] statutory employment discrimination claims." *Id*. at 867. The court stated that such a finding "would turn the law completely on its head [and] it is exactly this sort of general arbitration provision, []" that fails to constitute the necessary waiver of those claims. *Id*. at 867, citing to *Wright*, 525 U.S. at 80 ("We will not infer a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is 'explicitly stated.'") The court found that Appellant's motion to compel lacked merit and was denied because there was no clear reference to what statutes were being included in the provision, it was not "clear and unmistakable." *Id*.

Following *Kovac*, the Appellant went back to the drawing broad, but this time specifically listing a number of causes of action and laws, in legal terminology, including the claims at issue in *Kovac* i.e., Americans with Disabilities Act, and R.C. 4112.02. The additions did not include or otherwise reference personal or bodily injury, nor does it list an *intentional tort claim* or R.C. 2745.01, the employer intentional tort statute. At the time these changes were made Appellant had the guidance needed to satisfy a "clear and unmistakable" waiver as pronounced by the court in

Kovac. Had it wished to do so the Appellant could have easily added an employer intentional tort to its list of claims subject to arbitration. Appellant as any other employer may at any time bargain for added terms and considerations. Even newly enacted legislation may be incorporated into a collective bargaining agreement.[4] By not doing so, Appellant simply chose not to include the claim in its arbitration agreement.

CONCLUSION

Because the Appellant Superior Dairy has failed to explain why this case involves a matter of public or great general interest, and because its arguments fail on the merits, this Court should decline to exercise jurisdiction over this appeal.

Respectfully submitted,

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[4] See e.g., memorandum published by National Labor Relations Board General Counsel, Peter B. Robb, on March 27, 2020: Case Summaries Pertaining to the Duty to Bargain in Emergency Situations. MEMORANDUM GC 20-04.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Opposition of Jurisdiction of Plaintiff-Appellee, Steven Sinley, was served on October 22, 2020 by U.S. Mail upon the following counsel:

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