IN THE SUPREME COURT OF OHIO

| | |
|---|---|
| Timothy Gales<br>Plaintiff-Appellant | } Case No. 21-0331<br>}<br>}On appeal from the Franklin<br>} |
| Ohio Department of Public Safety et al,<br>Defendants – Appellee | }County Court of Appeals Tenth<br>}District Case Number19AP0720 |

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NOTICE OF DISCRETIONARY APPEAL
THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST

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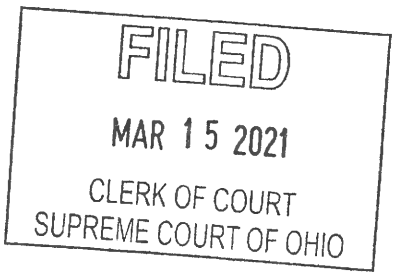


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Defendant appellant Timothy Gales,
hereby gives notice of appeal to the Supreme Court of Ohio from judgment of the Franklin County Tenth District Court of Appeals, entered on February 1, 2021. Date stamp copies of appeals Judgment entry and opinion are

attached hereto as addendum 1 and 9 and are included in memorandum support of jurisdiction filed contemporaneously with notice of appeal. This case raises questions that are of public or great interest,

CERTIFICATE OF SERVICE

Timothy Gales to state that a true copy of the aforementioned notice was sent via U.S. regular mail on March 11,2021 to, the Ohio Department of Public Safety, 1970 West Broad Street, Columbus Ohio 43223, and to the Ohio AttorneyGeneral 30 East Broad Street 29th flr labor law section Columbus, Ohio 4321

Respectfully submitted,

3-15-21

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IN THE SUPREME COURT OF OHIO

On Discretionary Appeal from the Franklin County
Court Of Appeals, Tenth Appellate District,
Case No. AP 19 0720

21-0331

Timothy Gales
Plaintiff – Appellant
v
Ohio Department of Public Safety et. Al,
Defendants Appellee's

# MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT TIMOTHY GALES

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interference with ORC 4117.09 constitute an unfair labor practice for which the state employee relations board refused to prosecute, based on untimely filed per 90 day statutory requirements.

THIS CASE IS OF SUBSTANTIAL CONSTITUTIONAL AND STATUTORY QUESTIONS, AND IS OF GREAT PUBLIC INTEREST

(A).The General Assembly of Ohio on July 6, 1983 enacted by house bill 133 created the State Employee Review Board, herein known as (SERB). To oversee all of the States labor relation issues and disputes. In its formation and powers became a new agency within SERBS structure. Known as the office of collective bargaining who in 1983 was given statutory authority as state agencies exclusive representative for the entire state government. This includes the Ohio Public Safety, and the Ohio State Patrol. This Bill enacted by the Ohio General Assembly did not convey upon the Ohio State Patrol who statutory authority falls under ORC 5501 any rights to interfere with formation of senate bill 133 or as a party to a disputed controversy related to collective bargaining. In, addition, The General assembly, under house bill 133 did not give any powers or rights to state agencies, to individually argue OCB disputes within the meaning of 4117. The powers of ORC 4117,strictly THE AUTHORITY OF SERB and the department of administrative services, office of collective bargaining to conduct all of the States business related to collective bargaining. Simply put, the Department of Public Safety, nor the State Patrol, based on the laws of 4117 of the Ohio Revised Code, does not have standings independently to challenge an arbitration award.

(B).The issue is important to the general public because there is no statute authorizing the Ohio State Patrol and the Ohio Department of Public Safety to unlawfully act in the capacity of Serb and OCB. The courts erred when they allowed (12-B-6) dismissal for the appellant lack of standings but felled to vacate the award against the Appellee's for lack of standings and for an expired contract in violation of ORC 4117.04 and ORC 4117.09.

(C)A second issue in the instant case involves an expired agreement between the state of Ohio office of Collective Bargaining and the Ohio Fraternal Order of Police. As the dispute involved a single issue from the original November 24, 2014 arbitration awards dealing with offset. As the Tenth district pointed out in its decision. The original case was settled by arbitration under contract between the state of Ohio and the Fraternal Order of Police on November 24, 2014 with the arbitrator who issued the award namely, E. William Lewis. In the original award noted above. Arbitrator E.William Lewis ordered the state to return the appellant back to work immediately, as this was no way to treat a 29 year employee. In addition, E William Lewis at

the request of the state. Required the Appellant to turn over any receipt of earning /unemployment from the date of termination until the date of the award. April 13, 2013 until November 24, 2014. However, the state refused to comply, and appealed the arbitrator decision to the Franklin County Court of Common Pleas, who on May 19, 2016 rejected the states argument, then pursuant to the request of FOP issue an additional award for interest on all money due in back pay. The Interest ordered by the court was not interest ordered by an arbitrator and therefore the courts were silent on the issue. Then again, the state being dissatisfied with the lower court decision, appealed to the Tenth district Court of appeals, who on April 14, 2017, upheld in its entirety the lower court decision.

(D). On January 11, 2018 a dispute over offset became a controversy when the State Highway Patrol ordered an administrative investigation on the appellant as it relates to the November 24, 2014 award for alleged offsets. On or about June 26, 2017 the appellant complied with the wording of the arbitrator agreement to provide receipts for offset. The appellant gave all required receipts to his representative at the fraternal order of police. As of a result. The Appellee's offset $ 35.300 from the appellants back pay. By using the Ohio State Patrol to conduct an administrative investigation bring up a very serious concern. Ohio Revised Code 2711.11 modify or correction of an award is the sole duty of the courts of common pleas. The General Assembly did not confer authority to the highway patrol to correct an award through the disciplinary process. It's very important for this court to take a closer look at the infringement of laws which were created to protect the integrity of the Ohio Collective Bargaining laws only to be trampled on by the Ohio State Patrol, because they have been taught that they are above the law and that therefor state patrol name alone will not be challenged. The patrol acted on an expired contract that no longer had any force or effect. And based off the patrol wrongful and unlawful acts the appellant was unlawfully terminated by the appellee's who acted on there on behalf in violation of orc 4117. ORC 5503.01 and, 5502.14. This another reason the court should accept this case and make an opinion on the patrol interference with ORC 4117 and ORC 2711.11, 2711.13. 5502.14 The General Assembly gave statutory authority for 4117 to (SERB) and ORC 2711 to the (courts of common pleas). And, ORC 5502.14 to the authority of the director of Public Safety, and not the Ohio State Patrol. This statutory and constitutional question is of great

interest to the general public, other public employers and unions. The court should accept this case for briefing and argument.

## STATEMENT OF THE CASE AND FACTS

(A).The appellant Timothy Gales a former 33 year employee of the Ohio Department of Public Safety. At no time during the appellant employment was he ever a legally employed member of the Ohio State Highway Patrol. The appellant was hired as an enforcement agent for the Ohio Department of Public Safety Investigative Unit where he was sworn in by former Executive director Ed. Duvall, who was instrumental in naming the Ohio Investigative Unit as the new unit under the Ohio Department of Public Safety ORC 5502.01. In ORC 5502.01 the General Assembly gave the director of public safety to establish requirements for it enforcement agent personnel described 5502.14. Therefore, during the appellant unlawful termination and without the Ohio General Assembly enacting new laws to transfer the Ohio Investigative Unit under the authority of the Ohio State Patrol. All actions occurring against the appellant were unlawfully and a sham. This further evidence why this court should accept jurisdiction of this case to clarify who has statutory authority to terminate an enforcement agent for dispute within the collective bargaining agreement between the state of Ohio and formerly, the Fraternal order of police who is now de certified by SERB as of April 19, 2019. ORC 5503.01 to 5503.06 allows the superintendent of the Ohio State Patrol to appoint troopers dispatchers, and radio personnel. Nothing in the section noted above allows, the patrol superintendent, to hire, terminate, promote, or demote an enforcement agent hired into the Ohio Investigative Unit. As a result law violations, the Ohio State patrol has no standings when it comes to enforcement agents disputes in the OCB for enforcement agents. The appellant based on the laws of Ohio has never been an employee of the Ohio State Patrol. In fact the superintendent would violate the law of Ohio. If he attempted to commission an enforcement agent under 5503.01 to 5503.06 of the ORC.

(B). On September 10 2018 the appellant attended a staged (RIGGED) arbitration set up by the Ohio State Highway Patrol and the Fraternal Order of Police. Arbitrator David Stanton presided over the second arbitration as

noted by the Tenth District appeals court. The appellant was issued a union warning! Which Douglas Behringer stated in part. He has been allowed to select the arbitrator for the appellant. Douglas Behringer further boasted to Curtis Hundley, that the arbitrator and he go way back. Douglas Behringer further lamented that should the appellant say anything negative about him or the union. His good buddy David Stanton would have none of it and would take care of the appellant for the union. On two occasion the first being on the day of the arbitration. David Stanton advised the appellees and the fop he would have a hard time taking the employment away from a 33 year employee. Therefore, he requested to mediate the appellant departure by asking the appellant to retire. The appellant refused the retirement offer. On a second occasion, on or about, October 25, 2018 Douglas Behringer contacted the appellant and ask the appellant if he would re-consider retiring. Again, the appellant refused. Douglas Behringer then advised the appellant that as a result of declining the retirement offer a second time. He stated "WELL", the arbitrator is not going to like your answer. We will see how this shakes out for you, but it doesn't look good. This points to fraud, and misconduct on the part of the arbitrator, who should remained neutral. However, allegedly sharing with his good buddy how he would fashion his remedy. I believe that a 33 year black American Law enforcement officer, deserves his rights to speak directly to the court referencing the appellee lack of standing by use of an expired contract (CBA), and how this instant case is far different from Leon v. Boardman for which operated under a VALID (CBA). The court should accept this case for review because (Leon v. Boardman twp.) isn't precedent setting for employees who were once covered under the expired (CBA). Which courts have long standing ruled is dead and can't be revived.

Proposition (1)

I. Here the state want this court to believe that the appellant lacks standing to bring an application under 2711.13 and have asked the court to vacate an award the appellant believe was fraudulent and procured by undue means to include corruption. The appellant is very aware of the narrow window courts have in reviewing arbitration awards. However, courts may vacate an arbitration award if the court determines that one of the following exist in the arbitration process. The appellee's acted on an expired contract that no longer existed, and ended June 30, 2015. (See court file attachment 4.22.19 (19cv03311).

1. The award was procured by fraud.
2. The award was procured by corruption of the arbitrator or all of them
3. The arbitrator exceeded his/her authority
4. Manifest disregard of the law

II. OHIO REVISED CODE 4117.10 SUB SECTION (D)

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(A). States as follows: There is hereby established an office of collective bargaining in the department of administrative services for the purpose of negotiating with and entering into written agreements between the state agencies, departments, boards, and commissions and the EXCLUSIVE representative on matters of hours, terms and condition of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. Last amended under house bill 64 in 2015. The general assembly didn't give to the Ohio Department of Public Safety, or the Ohio State Patrol, any authority to act as a party to a negotiated contract Ohio revised code 4117.10 (d). And the lower court erred when it failed to recognized the office of collective bargaining as exclusive state representative. Instead, the lower court erred when it ruled that the office of collective bargaining were not a party to a State of Ohio Contract Agreement (CBA). However, ruled that Public Safety was in fact a party to the agreement, however, the lower court failed to mentioned if the State Patrol was a party to the 2012 2015 agreement attached the application to vacate. The appeals court failed to answer this important question while under appeal on case:19AP0720

(B). The Ohio Supreme Court answered this very question in (Leon v. Boardman Twp., 100 Ohio St.3rd 335,2003-Ohio-6466) as it related to Exclusive Representative for any employee covered under a collective bargaining agreement with his/her exclusive union organization.
Now the Appellant is asking this court to accept this case and apply the meaning of 4117 10 (d) for standings for state agencies To include the Ohio State Highway Patrol. A division of public safety. Who are not identified as the employers under ORC 4117.10 (D) and where the General Assembly placed a new agency under DAS to be the exclusive representative for state agencies. Namely, the office of collective bargaining who is identified as the employer as it relates to collective bargaining. A review of this law would be of great interest to the general public.
(C). It's the belief of the appellant, that If an employee in a bargaining unit organization must adhere to the exclusive representative with his or her employee organization. Then there can't be or shouldn't be double standards for state agencies for which the Ohio General Assembly, enacted the Office of Collective Bargaining as it sole exclusive representative. Therefore, Public Safety, the Patrol nor other agencies simply can't walk into common pleas court and ask for dismissal under (12 B -6) while not being a party to the agreement. The lower court and the appeals court erred when they allowed the appellees to dismiss citing the appellant lacks standings. A clear review of ORC 4117 reveals without question that DPS and OSP lacked the legal standings to bring a challenge to an award which was fraudulently procured by corruption under 2711.10 and the lower court has misinterpreted orc 4117.10 (D)

## III. PROPOSITION II. EXPIRED CONTRACTS AGREEMENT

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(A). The appellant further bring to the court attention. The statutory language under ORC 4117.04 enforcement of an expired contracts and facts.

(B). On April 13, 2013. The appellant was terminated from his employment based on an internal investigation by the department. The appellant termination was secured by DAS and DPS under a valid contract between, the state of Ohio Officer of Collective Bargaining and the Fraternal Order of Police. As a result of the appellant termination a grievance was filed and the

matter was pursued in arbitration on September 10, 2014. After a two day hearing. Arbitrator William E. Lewis issued his final award to the aforementioned parties On November 24, 2014. Ordering the immediate reinstatement of the grievant, with back pay and benefits.
(C) On February 3, 2015, The office of collective bargaining challenged the award in Franklin County Common Pleas Court. On May 19, 2016, the court denied the appeal in its entirety.
(D). June 2016 the Office of Collective Bargaining appealed the lower court case to the Tenth District Court of Appeals. On April 14, 2017, the Tenth District rejected the state appeal and affirmed the lower court decision.
(E). On January 11, 2018, OSP Investigator Chad Miller ordered the appellant into a hearing. Trooper Chad Miller had with him for discussion. the November 24, 2014 award issued by E. William Lewis in the conference room. Lt. Trooper Chad Miller advised that I was the subject of an internal investigation based on the appellant alleged failure to provide income tax documents to further determine additional offset. Lt. Chad Miller claimed that the appellant failed to comply with the term and conditions of 2014 award. Lt. Miller unlawfully revived an expired contract 7-1-12 through 7-1 2015 in his attempt to correct an award in violation of 2711.11 modification of an award. The contract had expired July 1, 2015.

Iv. Franklin County Common Pleas Court can't revive an expired contract

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(A). On April 22, 2019 the appellant submitted an application to vacate what he believed to be a fraudulent award issued by arbitrator David Stanton on January 25, 2019. In the complaint the appellant argued that the Ohio Department of Public Safety, nor, the State Patrol were parties to a collective bargaining agreements. The Appellant further argued that the contract had expired on July 1, 2015 and the award was unenforceable due to date expiration, July 1, 2012 until June 31, 2015. The appellant argued that the original award was issued by arbitrator E. William Lewis on November 24, 2014. The new second award based on the same issues was issued by a second arbitrator on September 10, 2018, who was not the original arbitrator.
(B). On September 10. 2019 the court granted appellee;s motion to to dismiss appellant application for lack of standings. It should be noted, that the court was well aware that the contract agreement had expired. The appellant on

April 22, 2019, attached to his application to vacate the award. The actual 7-1 12. to 6 ~~30-20~~15 contract that the original award was issued under by E.William Lewis on November 24, 2014. The new award issued on January 25, 2020 with no new issues other than interpretation of offset was issued in violation of an expired contract. In addition, the second award was in violation of court decisions on second awards on the same set of facts is a nullity (Athens fourth district court of appeals) Therefor the lower court revived the contract when it erred by dismissing the application to vacate. Courts have long held that contracts expiration dates render the contact unenforceable. As no one at this point is a party to an expired contract to include the appellant. The courts have further ruled that expired contracts such as the one in the instant case before the court no longer exist.

(B). On January 28, 2021, the Tenth District Court of Appeals, issued its decision and affirmed the lower court decision. Based on standings (Leon V. Boardman). The appeals court admitted through its review of the appeal, went back to the original award issued by E. William Lewis on November 24, 2014. The appeals court asserted that it was needed to gain context of the issue before the court. The appeals court correctly identified in its decision the original award dates of July 1, 2012 and ending June 30, 2015. The appeals court correctly pointed out the date of the second award issued by a different arbitrator, Namely, David Stanton, on January 25, 2019. The Tenth district court further reported in its decision to affirm. That they too, reviews the contract submitted by the appellant to the lower court to vacate. The contract submitted by the appellant, was the contract the original award was issued under by Arbitrator E.William Lewis. July 1, 2012 through June 30, 2015. The Tenth District erred when it also revived an expired contract. ( steelworkers v. Enterprise car, 363 U.S. 593 (1960), Ohio Supreme Court, (Brown v. Artex) This court should accept this case for arguments based on both courts reviving an expired contract for which no one is a party to, and the contract no longer exist. The courts erred in its rulings.

(A). In the U.S. Supreme Court case: Steelworkers v. Car Enterprises, triology anticipates that that the scope of judicial intervention is limited to whether the parties agreed to arbitrate or there was an objecting party to the award.

(B). The U.S. Arbitration act as a result of ambiguous have produced two broad challenges to arbitration awards. The first award can be challenged on substantive grounds. If the arbitrator have clearly exceeded his scope of authority. Such as when an award is over reaching, such as when an award order an act that's illegal or violative of public policy or abuse of authority. 1. Therefore the arbitrator in the case before the court clearly violated public policy by engaging in a dispute that clearly was outside a valid agreement. The arbitrator on September 10, 2018 admitted at the hearing he should not be hearing the case. Clear sign of public policy violations.

(C). The award can also be challenged on the second grounds when an arbitrator have issued an award

2. The second challenge to the arbitration award can occur when the arbitrator deprives a party of rights. The standard of due process deprives a party of his rights when the award itself was produced by corruption, fraud, misconduct, partiality of the arbitrator, allows a court to vacate the award. The instant case before this court, the appellant claimed corruption due to the friendships with other labor attorneys who opposed the appellant to include the FOP representative who had an inherent dislike for the appellant and was allowed to select his friend as the arbitrator. This clearly show partiality on the part of the arbitrator. The arbitrator stated that at soon as the hearing for the appellant was over. He would destroy all evidence and no evidence would be available for reviewing. A clear sign of a biased arbitrator, who by corruption of others, namely Douglas Behringer, FOP, James Hogan DPS help guide the arbitrator decision on January 25, 2010. The contract had expired (U.S. Steel Workers v Enterprise Car ) The Federal second District has held that employees of exclusive representative are bound by the arbitration agreements. Unless the employee can show, fraud, corruption, or

misconduct on the part of an arbitrator. The appellant have provided to the courts evidence of fraud and partiality corruption and misconduct as it relates to the fraudulent and rigged award.

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## U. S. Court MODEL FOR THE RIGGED AWARD

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(A). The federal courts have application for rigged award model.

(1). The comments may be examined by applying it to situation that often threatens the rights of individual grievant. Called the rigged award. The courts have found that a rigged award or an orchestrated award occurs when the union agree with the company either overtly or tacitly that a result adverse to the interest of the grievant should flow from arbitration. The sentiment is then communicated explicitly or implicitly by the union actions and arguments to the arbitrator who will tailor his award accordingly. The courts further have noted that the arbitration can provide the process of the employee contractual rights. However the process is useless to the individual, if the award is rigged to meet the needs of the company and the union.
(1). The appellant have stated at the time of his unlawful award, and application filed with the court, that the arbitration was staged. The appellees used an expired contract with rogue actors, to include the arbitrator, who knew the appellant had 33 years of employment, however, the arbitrator in his bogus, bias and fraudulent award. Stated in the award, the appellant had 21 years of employment, so that he could feel comfort in to stealing the employment of a 33 year black law enforcement officer who committed no wrongs. The case before the court is identical to model federal court have examined. This court should accept this case for full briefing and argument.

## CONCLUSION:

(A).The Ohio Supreme Court should accept this case because there are un answered STATUTORY and CONSTITUTIONAL questions of standings for public employers identified in ORC 4117.10 (D) and the case is of great interest to the general public, and other government agencies identified under ORC 4117.10 (D), as to the sole and exclusive representative for state agencies under the aforementioned ORC 4117 code. The Court have clearly and without dispute. Answered this question for employees who are members of an authorized employee organization group: (in Leon v. Boardman Twp).This decision and opinion of the Ohio Supreme Court, however did not provide direction for employers where an exclusive representative by law have been identified. Leon v. Boardman is not in dispute by either the Appellee or the Appellant as to court meaning of standings/ as it relates to binding arbitration for union members. Now the court should answer the second part of this very important topic and issue RELATED to EMPLOYERS, standings. A question of the law for the court. Under 4711.10 (B) the question remains as to who has standings for state agencies as it exclusive representative. This case is of great general interest to the public, other employee organizations, as well other public employers covered under ORC 4117. The court should accept and allow briefing.

(C) The appellant a former 33 year African American law enforcement officer, believes in, and understands the judicial system. The appellant asserts that it has been difficult getting legal assistance from the legal community who simply refuse to challenge court decisions. Therefore, the appellant was left with the decision, that in order to be heard that challenge must come as a citizen who has the highest regard for the courts and attorneys who have worked and earned there jurisprudence degrees. I am no match for any of them, to include our elected judges. I have, however, been blessed with the ability as an African American, law enforcement officer, to review and apply the appropriate section of the ORC 29 Chapter, to criminal laws violated by suspects. With this level of experience it has allowed me to research any laws and apply it to the issue at hand. I believe my service to the citizen of Ohio, of over half of my life should touch the Ohio Supreme Court conscious and, allow this appellant to argue why this case should be reversed and remanded back for further review.

What has occurred to this former 33 year employee should shock the conscious of the court as to how an arbitrator and the fop, along with DPS-O.S.P. came together as a group and ordered the appellant into a staged/rigged arbitration with an expired contract. Then the Appellee;s attempted to use the judicial system by providing false and misleading motions to the court, to deny a 33 year African American, law enforcement officer who committed no agency policy violations or, violations of any criminal laws. Could lose his 33 year career for refusing to provide his tax records for offsets that were not ordered by any court, or, the original arbitrator who issued his award November 24, 2014 original decision. No court should have dismissed this case based on standings when it has effected the rights of this citizen. I respectfully request this court to accept jurisdiction, allow full briefing of the issues and schedule for argument.

The appellees are simply relying on Leon v. Boardman Twp to argue their case. The real issue is an expired contract that has had no force or effect and essentially no longer existed. Leon v. Boardman doesn't address this issue of standings in an expired contract and the lower court and appeals court erred by not vacating the unenforceable award.

## LAW AND ARGUMENT

(A). ORC 4117.10 (D), is clear and unambiguous to its meaning. The office of collective bargaining is the sole exclusive representative for state agencies/ the court erred when it identified that the office of collective bargaining was not the exclusive representative of state agencies. The appeals court failed to answer the question, and left the matter unresolved. This court should accept the case and resolve the issue of exclusive representative for state agencies. The issue is of great general public interest and deserves to be answered.
(B). The Highway Patrol is not the employer of the appellant. 5502.14 clearly has the Ohio Department of public Safety as the appointing authority. At no time did the Ohio General Assembly give authority to the patrol to administer the title 43, or the supplemental food nutrition programs for the state of Ohio known as (SNAP). And the food nutrition act of 2008, (7 U.S.C. 2011) the child nutrition act, 1966, 80 Stat 885, 42,USCA. The Ohio State patrol have no jurisdiction on private property. The appellant assignments were solely private property investigation, and not state property or state roads or highways as defined ORC 5503.01 duties of the patrol. The court should accept this case based on the law noted above. The case is of great general interest to the public.
(C). Duties and solely the duties of the Patrol under 5502.01. The appellant or other enforcement agents were never appointed by the superintendent of the Ohio State Patrol. The appellant as an enforcement agent, duties are not defined in 5503.01, which makes it impossible for the appellant to be employed with the patrol. This question is of great general interest to the public. I asked the court to accept this case.

(D). Pursuant to ORC 4117.04 state as follows, referencing an expired contract. States in part, that if a public employer enters into an agreement

with an employee organization for a period not to exceed 3 years. Any extension of agreements shall not be construed to effect the original date of the agreement. This question of law is ripe for argument. The instant case before the courts, the appellant have long argued expired contract. The language in ORC 4117.04 is unambiguous to its meaning expired contracts means just that expired, the contract no longer exist. With that said, the appellant has pointed out to the court the date of the original award. (E).November 24, 2014, and the second award issued January 25, 2019, which was based on the set of issues in the original award (offset). The contract for which the award was issued had expired June 30, 2015. If the lower court and the appeals court had followed the precedent of U.S. Steel v. Car Enterprises noted herein. There would have been a different outcome. As a result. The Ohio Tenth district Court of Appeals and, the Franklin County Common Pleas Court, fashioned their decision on the case precedent as it relates to a VALID agreement (Leon v. Board Township) on standing of a union employee involved in the challenge of a valid contract. The appellant believes court decisions is in direct conflict with the Federal second circuit court in the case of (Steelworkers v. Enterprise Car) the case was argued based on an expired contract. The second circuit court reversed the court of appeals and vacated the expired contract award and refused to have it enforced. (See Addendum, Steelworkers v. Enterprise Car). The appellant believes that the question of expired contract should be certified since there is a conflict with our state courts on it application, and, when a grievant has been terminated as a result of a contract dispute unlawfully, and under an expired contract, where the state court of common pleas and the Tenth district Court of appeals have remained silent on the issue brought before the court. The court should accept this case for briefing and argument because it's of great interest to the general public, other, public employers and exclusive employee organizations.

(F) The court have long held no one can be a party to an expired contract unless there is specific language in the contract to which both parties agreed to keep. 4117.04 is clear the contract is dead with no parties to it. Once it has expired the contract no longer exist. On September 19, 2019 the court should have vacated the award based on it being expired, and not for the appellant lack of standing as this instant case related to an invalid and expired contract. And was not related to a valid contract as outline by the Ohio Supreme Court

in Leon v. Boardman Township. The court should allow briefing and arguments, this case is of great public interest.

3-15-20

# APPENDIX 1

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---|---|---|
| Timothy Gales, | : | |
| Plaintiff-Appellant, | : | |
| v. | : | Nos. 19AP-720<br>(C.P.C. No. 19CV-3311) |
| Ohio Department of Public Safety, et al., | : | (REGULAR CALENDAR) |
| Defendants-Appellees. | : | |

D E C I S I O N

Rendered on January 28, 2021

**On brief:** *Timothy Gales*, pro se. **Argued:** *Timothy Gales.*

**On brief:** *Dave Yost*, Attorney General, and *Matthew J. Karam*, for appellees.

APPEAL from the Franklin County Court of Common Pleas

BEATTY BLUNT, J.

{¶ 1} Plaintiff-appellant, Timothy Gales, appeals from a decision of the Franklin County Court of Common Pleas granting the motion to dismiss of defendants-appellees, Ohio Department of Public Safety ("ODPS") and Ohio State Highway Patrol ("OSHP") (collectively "appellees"). For the reasons that follow, we affirm.

## I. Facts and Procedural History

{¶ 2} Gales is a former employee of the OSHP, which is a division of the ODPS. (May 20, 2019 Mot. to Dismiss at 2.) While employed by the OSHP, Gales was a member of the Fraternal Order of Police ("FOP"). (Apr. 22, 2019 App. to Vacate at 1.) Although not directly relevant to the matter presently before the court, we begin with a brief summary of the prior history of the parties and events leading up to the instant matter to provide context to our analysis of Gales' appeal.

{¶ 3} Effective July 1, 2012, the State of Ohio ("the state") and FOP entered into a collective bargaining agreement ("CBA") which permitted the parties to submit certain disputes to arbitration. *State v. FOP of Ohio, Inc.*, 10th Dist. No. 16AP-457, 2017-Ohio-1382, ¶ 2. On March 1, 2013, the director of ODPS issued a letter to Gales informing him that his employment had been terminated for violation of workplace rules, violation of Ohio law, and "actions that brought discredit" upon ODPS. *Id.* The termination was the culmination of a workplace investigation into allegations that Gales had sold numerous vehicles that he purchased at auction to members of the public without obtaining a dealer or salvage license from the Ohio Bureau of Motor Vehicles. *Id.*

{¶ 4} Pursuant to the terms of the CBA, Gales filed a grievance challenging his termination. *Id.* at ¶ 3. Subsequently, the parties submitted the matter to arbitration. *Id.* Following a two-day hearing in September 2014, the arbitrator[1] issued a decision and award dated November 24, 2014 which modified Gales' termination to a one-month suspension without pay. *Id.*

{¶ 5} On February 20, 2015, the state filed an "application and motion to vacate arbitration award" in the trial court. *Id.* at ¶ 4. On March 20, 2015, FOP responded in an "answer and counterclaim" asserting the trial court should deny the state's motion to vacate and seeking an order (1) confirming the arbitration award, (2) requiring the state to pay Gales any and all back pay and benefits, (3) awarding interest to Gales, and (4) requiring the state to pay all costs. *Id.*

{¶ 6} On May 19, 2016, the trial court issued a decision and entry denying the state's motion to vacate the arbitration award and granting FOP's motion to confirm the arbitration award. *Id.* at ¶ 7. The trial court also awarded both prejudgment and postjudgment interest on the back pay due to Gales from November 24, 2014 until the date of Gales' reinstatement. *Id.* at ¶ 9.

{¶ 7} The state filed a timely appeal of the judgment of the trial court. *Id.* at ¶ 9. On April 13, 2017, this court issued a decision which affirmed the judgment of the trial court in its entirety. *Id.* at ¶ 31.

{¶ 8} On May 15, 2017, Gales was reinstated to his position as an enforcement agent with OSHP/ODPS. (App. to Vacate at 6.) On January 11, 2018, Gales became the

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[1] The arbitrator was E. William Lewis. (App. to Vacate at 5.)

subject of an administrative investigation. *Id.* The investigation concerned allegations by ODPS that Gales breached his obligation offset as provided for in the November 24, 2014 arbitration award by failing to disclose all income earned from other employment during his absence subsequent to his previous termination. *Id.* at 6-7. Ultimately, on March 20, 2018, Gales was terminated from his employment for being untruthful regarding secondary employment. (*Id.* at 8; Mot. to Dismiss at 2.)

**{¶ 9}** Gales' termination was grieved and proceeded to arbitration on September 10, 2018. (App. to Vacate at 9; Mot. to Dismiss at 2.) The parties to the arbitration included the FOP and appellees. (App. to Vacate at 9.) On January 25, 2019, the arbitrator[2] issued an arbitration award denying the grievance and upholding Gales' termination. *Id.* at 13.

**{¶ 10}** On April 22, 2019, Gales filed his "application to vacate arbitration award, to non-party" in the Franklin County Court of Common Pleas, seeking to vacate the arbitration award issued on January 25, 2019 which denied Gales' grievance and upheld Gales' termination from employment.[3] On May 20, 2019, appellees responded to Gales' application to vacate by filing a motion to dismiss, arguing the trial court should dismiss the complaint in its entirety pursuant to Civ.R. 12(B)(1) for lack of subject-matter jurisdiction. On June 4, 2019, Gales filed an "answer" in response to appellees' motion to dismiss.

**{¶ 11}** In a September 19, 2019 entry, the trial court granted appellees' motion to dismiss, finding that Gales lacked standing to petition the court to vacate the January 25, 2019 arbitration award. More specifically, after first determining that the motion should be evaluated under the Civ.R. 12(B)(6) standard as opposed to the Civ.R. 12(B)(1) standard, the trial court reviewed the CBA attached to Gales' application to vacate and found that the CBA failed to confer the requisite standing under R.C. 2711.10 to file such an application. (Sept. 19, 2019 Decision and Entry at 1, 6.) Thus, the court dismissed Gales' application to vacate arbitration award pursuant to Civ.R. 12(B)(6). (*Id.* at 7.)

**{¶ 12}** This timely appeal followed.

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[2] The arbitrator of Gales' grievance of the second termination was David Stanton. (App. to Vacate at 9.)

[3] Gales also filed an unfair labor practice charge with the State Employment Relation Board ("SERB") against ODPS, OSHP, the FOP and the Office of Collective Bargaining. (Mot. to Dismiss at 2.) SERB dismissed the charge on November 22, 2019. (Brief of Appellees at 1.)

## II. Assignments of Error

{¶ 13} Gales asserts the following nine assignments of error for our review:

> [1.] Trial Court erred in dismissing the appellant action and abused its discretion in dismissing appellant's action
>
> [2.] Trial Court erred by dismissing appellant's action pursuant to Ohio civil rule 12 (B-6) failure to state a claim. and abused its discretion
>
> [3.] trial court erred by dismissing appellant's application to vacate in violation of 2711.13 and by doing so abused its discretion when it dismissed the action on a 12 (B -6) which is not part of the Ohio Revised Code 2711.
>
> [4.] Trial court erred, and abused its discretion, by ruling the defendants were parties to a collective bargaining agreement pursuant to ORC 4117.10 (D) Then ruled, the Office of Collective Bargaining were not a party to the agreement between the state of Ohio and Fraternal Order of Police. pursuant to orc 4117 (D) The appellee's, namely, State Patrol, and Public safety, clearly were not ever meant to be included into the laws by the general assembly
>
> [5.] Trial Court erred by dismissing appellant's application that alleged fraud, corruption, bias, and misconduct on the part of the arbitrator Ohio Revised code 2711.10 . And that, the Appellee's unlawfully and without leave of the court reversed the appellant from being Judgment creditor and real person in interest to judgment debtor. Which was confirmed by the franklin county common pleas court on May 19, 2016 (15MS00119). The appellee's operated off a confirmed award and a contract which had expired some three years ago.
>
> [6.] Trial court erred and abused its discretion, by dismissing appellant's application based on arbitrator and appellee's public policy violations. The arbitrator violated public policy by reviewing an award issued on November 24, 2014. The arbitrator violated public policy when he ignored the fact he was reviewing an award which was confirmed by the court. The arbitrator to satisfy the will of the appellee's and fop crafted a remedy to support issuing a fraudulent award of dishonesty. When in fact it was the appellee's who were dishonest and acted in bad faith when the appellee's unlawfully revisited a closed award.

> [7.] Trial Court erred by dismissing Appellant's motion which cited award not enforceable due arbitrator misconduct and expired contract 2012-2015 and based on same set of facts from previous arbitration. Arbitrator making rulings on disputes not before him.
>
> [8.] Trial Court erred by dismissing appellant's case due to previous award confirmed by the courts May 2016 Appeals Court April 14, 2017.
>
> [9.] Trial court erred by dismissing appellant's application to vacate due the appellee's lack of standings with a collective bargaining agreement

(Sic passim.)

## III. Discussion

**{¶ 14}** Gales has presented nine assignments of error, many of which are difficult to parse as being unclear, indecipherable, and/or somewhat incoherent. Nevertheless, based on our construction of the assignments of error as stated, each of Gales' assignments of error asserts, in essence, either that the trial court erred in granting appellees' motion to dismiss generally, or that the trial court erred in granting appellees' motion to dismiss specifically by finding that Gales lacked standing to petition the court to vacate the arbitration award pursuant to R.C. 2711.10. As explained below, we disagree.

**{¶ 15}** " 'An arbitration award may be challenged only through the procedure set forth in R.C. 2711.13 and on the grounds enumerated in R.C. 2711.10 and 2711.11.' " *State v. FOP of Ohio* at ¶ 14, quoting *Miller v. Gunckle*, 96 Ohio St.3d 359, 2002-Ohio-4932, ¶ 10, citing *Schaefer v. Allstate Ins. Co.*, 63 Ohio St.3d 708, 711 (1992). As set forth in R.C. 2711.13, "[a]fter an award in an arbitration proceeding is made, any party to the arbitration may file a motion in the court of common pleas for an order vacating, modifying, or correcting the award as prescribed in sections 2711.10 and 2711.11 of the Revised Code." R.C. 2711.13. Furthermore, " 'the language of R.C. 2711.13 is clear, unmistakable, and, above all, mandatory.' " *FOP of Ohio* at ¶ 14, quoting *Galion v. Am. Fedn. & Mun. Emps., Local No. 2243*, 71 Ohio St.3d 620, 622 (1995).

**{¶ 16}** As we have previously stated, a motion filed pursuant to R.C. Chapter 2711 " 'is not a full complaint initiating a civil matter.' " *FOP of Ohio* at ¶ 15, quoting *Geiger v. Morgan Stanley DW, Inc.*, 10th Dist. No. 09AP-608, 2010-Ohio-2850, ¶ 19. Instead, a

motion filed under R.C. Chapter 2711 " 'occupies a hybrid procedural position, only vaguely defined by the statues that provide for it.' " *Reynoldsburg City School Dist. Bd. of Edn. v. Licking Hts. Local School Dist. Bd. of Edn.*, 10th Dist. No. 11AP-173, 2011-Ohio-5063, ¶ 16 ("*Reynoldsburg I*"), quoting *Geiger* at ¶ 19. Therefore, in cases brought pursuant to R.C.2711, " 'the applicable rules in both the local rules and Ohio Rules of Civil Procedure are those pertaining to motions rather than those pertaining to the commencement of an action.' " *FOP of Ohio* at ¶ 15, quoting *Reynoldsburg* at ¶ 15.

{¶ 17} We have previously held "that Civ.R. 13(A), pertaining to compulsory counterclaims, does not apply to proceedings on a motion to vacate, modify or correct an arbitration award brought pursuant to R.C. 2711.10." *Licking Hts. Local School Dist. Bd. of Edn. v. Reynoldsburg City School Dist. Bd. of Edn.*, 10th Dist. No. 12AP-579, 2013-Ohio-3211, ¶ 22 ("*Reynoldsburg II*"). We arrived at this conclusion after an analysis that began with a discussion of the applicability of the Ohio Rules of Civil Procedure (the "Rules") to special statutory proceedings as provided for in Civ.R. 1. In *Reynoldsburg II*, we first noted that pursuant to Civ.R. 1(C)(7), the Rules,

> to the extent that they would by their nature be clearly inapplicable, shall not apply to procedure * * * in all other special statutory proceedings; provided, that where any statute provides for procedure by a general or specific reference to all the statutes governing procedure in civil actions such procedure shall be in accordance with these rules.

*Reynoldsburg II* at ¶ 18, quoting Civ.R. 1(C)(7).

{¶ 18} We next cited favorably to a decision of our sister court in the Fifth Appellate District which addressed the applicability of the Rules in a case brought under R.C. 2711.09. In *MBNA Am. Bank, N.A. v. Anthony*, 5th Dist. No. 05AP09-0059, 2006-Ohio-2032, the losing party had filed a motion for definite statement pursuant to Civ.R. 12(E) in response to the prevailing parties' motion to confirm an arbitration award. Without ruling on the motion brought pursuant to Civ.R. 12(E), the trial court confirmed the arbitration award. The Fifth District affirmed the judgment of the trial court, stating:

> Proceedings involving the confirmation or vacation of an arbitration award are special statutory proceedings. Civil Rule 1(C)(7) provides the civil rules are by definition not to apply to procedural matters in special statutory proceedings "to the extent that they would by their nature be clearly inapplicable."

> Pursuant to R.C. 2711.09, when a motion is made to confirm an arbitration award * * * [t]he applicable civil rule provisions are those pertaining to motions, rather than those pertaining to commencement of an action. The Civil Rules do not provide for an answer and counterclaim to a motion in such proceedings. Therefore, the trial court did not err in entering final judgment prior to the alleged answer date.

*Reynoldsburg* at ¶ 19, quoting *Anthony* at ¶ 12-13.

**{¶ 19}** We then noted that we applied the same reasoning in our review of the trial court's decision in *Reynoldsburg I*, which concerned the applicability of the discovery cut-off date established by Loc.R. 39.05 to cases brought pursuant to R.C. 2711. In *Reynoldsburg I*, we rejected appellant's argument that the trial court erred in denying the motion to vacate the arbitration award prior to the expiration of the discovery cut-off date, finding instead that the time limits set forth in the case schedule pursuant to Loc.R. 39.01 were inapplicable to a proceeding brought under R.C. 2711 because Loc.R. 39.01 applied only to initial pleadings filed in order to open a new case, and hence commence an action, and cases brought pursuant to R.C. 2711 did not involve the commencement of an action. *Reynoldsburg I* at ¶ 15.

**{¶ 20}** Ultimately, we found in *Reynoldsburg II* that "[b]oth the *Anthony* case and our opinion in *Reynoldsburg I* recognize, that by operation of Civ.R. 1(C)(7), the civil rules that apply to special proceedings brought pursuant to R.C. 2711.05 et seq., are those pertaining to motions, not pleadings. Civ.R. 13(A) applies only to counterclaims and cross-claims, both of which are "pleadings" under the Civil Rules." *Reynoldsburg II* at ¶ 21, citing Civ.R. 7(A). Thus, we found that based upon the foregoing reasoning, Civ.R. 13(A) is inapplicable to proceedings brought pursuant to R.C. 2711.10. *Id.* at ¶ 22.

**{¶ 21}** Based upon the foregoing analysis, the Rules are clear that Civ.R. 12 applies only in cases involving pleadings, and hence cases where an action has been commenced, and not to special statutory proceedings such as cases like the instant matter brought pursuant to R.C. 2711. Specifically, Civ.R. 12(B) provides as follows:

> Every defense, in law or fact, to a claim for relief in any ***pleading***, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the ***responsive pleading*** thereto if one is required, except that the following defenses may at the option of the ***pleader*** be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of

> jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19 or Rule 19.1. A motion making any of these defenses shall be made ***before pleading*** if a ***further pleading*** is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a ***responsive pleading*** or motion. If a ***pleading*** sets forth a claim for relief to which the adverse party is not required to serve a ***responsive pleading***, he may assert at the trial any defense in law or fact to that claim for relief. When a motion to dismiss for failure to state a claim upon which relief can be granted presents matters outside the ***pleading*** and such matters are not excluded by the court, the motion shall be treated as a motion for summary judgment and disposed of as provided in Rule 56. Provided, however, that the court shall consider only such matters outside the ***pleadings*** as are specifically enumerated in Rule 56. All parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 56.

(Emphasis added) Civ.R. 12(B).

{¶ 22} Furthermore, the tests for reviewing motions made pursuant to Civ.R. 12(B)(1) and 12(B)(6) confirm that a court considers such motions by reviewing the complaint, a pleading present only in actions which have been commenced. *See* Civ.R. 3(A); Civ.R. 7(A). A court presented with a motion to dismiss for lack of subject-matter jurisdiction made pursuant to Civ.R. 12(B)(1) must determine whether the ***complaint*** states any cause of action cognizable by the forum. *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989); *PNC Bank, Natl. Assn. v. Botts*, 10th Dist. No. 12AP-256, 2012-Ohio-5383, ¶ 21. A motion to dismiss under Civ.R. 12(B)(6) for failure to state a claim on which relief can be granted tests the sufficiency of the ***complaint***, *Volbers-Klarich v. Middletown Mgt.*, 125 Ohio St.3d 494, 2010-Ohio-2057, ¶ 11, and in order for a court to dismiss a case pursuant to Civ.R. 12(B)(6) "it must appear beyond doubt from the ***complaint*** that the plaintiff can prove no set of facts entitling him to recovery." (Emphasis added) *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus. In a proceeding brought pursuant to Chapter 2711 of the Revised Code, there simply is no complaint, and thus no action which has been commenced.

{¶ 23} As set forth above, this court has consistently held that in cases brought pursuant to R.C. 2711, " 'the applicable rules in both the local rules and Ohio Rules of Civil

Procedure are those pertaining to motions rather than those pertaining to the commencement of an action.' " *FOP of Ohio* at ¶ 15, quoting *Reynoldsburg I* at ¶ 15. Because motions filed pursuant to Civ.R. 12 are applicable only in cases pertaining to the commencement of an action, we find that motions filed pursuant to Civ.R. 12, including motions filed pursuant to Civ.R. 12(B)(1) or 12(B)(6), are inapplicable in a proceeding brought under Chapter 2711 of the Revised Code.

**{¶ 24}** Notwithstanding the foregoing, the inapplicability of Civ.R. 12(B)(6) to proceedings brought pursuant to R.C. Chapter 2711 does not preclude a defendant from moving for dismissal on the ground that a plaintiff lacks standing. *See Lupo v. Columbus*, 10th Dist. No. 13AP-1063, 2014-Ohio-2792, ¶ 19.[4] This is so because Civ.R. 7(B)(1) permits parties to file motions seeking court orders. *Id.* Furthermore, "trial courts * * * possess the innate ability to rule on a motion to dismiss for lack of standing." *Id.* at ¶ 20. Therefore, Civ.R. 7(B)(1) permits a party to file a motion to dismiss for lack of standing, and the trial court's inherent power imbues the court with the authority to entertain and rule on that motion. *Id.*

**{¶ 25}** " ' "The question of standing is whether a litigant is entitled to have a court determine the merits of the issues presented." ' " *Koehring v. Ohio State Dept. of Rehab. & Corr.*, 10th Dist. No. 06AP-396, 2007-Ohio-2652, ¶ 8, quoting *Cuyahoga Cty. Bd. of Commrs. v. State*, 112 Ohio St.3d 59, 2006-Ohio-6499, ¶ 22, quoting *Ohio Contrs. Assn. v. Bicking*, 71 Ohio St.3d 318, 320 (1994), *reconsideration denied* (1995), 71 Ohio St.3d 1459. " 'Whether established facts confer standing to assert a claim is a matter of law.' " *Id.*, quoting *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, ¶ 90, *reconsideration denied*, 109 Ohio St.3d 1427, 2006-Ohio-1967 (further citations omitted).

**{¶ 26}** Because the question of standing is a matter of law, therefore, the standard of judicial review to be applied in this case is de novo. *Id.*, citing *Portage Cty. Bd. of Commrs.* at ¶ 90, citing *Goodyear Tire & Rubber Co. v. Aetna Cas. & Sur. Co.*, 95 Ohio St.3d 512, 2002-Ohio-2842, ¶ 4, *reconsideration denied*, 96 Ohio St.3d 1489, 2002-Ohio-4478; *Cuyahoga Cty. Bd. of Commrs.* at ¶ 23 (further citations omitted). " '[*D*]*e novo* appellate review means that the court of appeals independently reviews the record

[4] In *Lupo*, this court specifically found that "[t]he inapplicability of Civ.R. 12(B)(6) to R.C. 2506.01 appeals does not preclude an appellee from moving for dismissal, or the trial court from granting such a motion, on the ground that the appellant lacks standing." *Lupo* at ¶ 19.

and affords no deference to the trial court's decision.' " *Koehring*, 2007-Ohio-2652, at ¶ 10, quoting *BP Communications Alaska, Inc. v. Cent. Collection Agency*, 136 Ohio App.3d 807, 812 (8th Dist.2000), dismissed, appeal not allowed, 89 Ohio St.3d 1464, citing *Hall v. Ft. Frye Local School Dist. Bd. of Edn.*, 111 Ohio App.3d 690, 694 (4th Dist.1996) (citation omitted).

**{¶ 27}** In the case before us, the trial court relied upon *Leon v. Boardman Twp.*, 100 Ohio St.3d 335, 2003-Ohio-6466 in finding that Gales was not a proper party to pursue a proceeding to vacate the arbitration award issued on January 25, 2019. In *Leon*, the Supreme Court of Ohio held that "when an employee's discharge or grievance is arbitrated between an employer and a union under the terms of a collective bargaining agreement, the aggrieved employee does not have standing to petition a court to vacate the award pursuant to R.C. 2711.10, unless the collective bargaining agreement expressly gives the employee an independent right to submit disputes to arbitration." *Leon* at ¶ 18, syllabus.[5] In reaching this conclusion, the high court found that "sound labor policy disfavors an individualized right of action because it tends to vitiate the exclusivity of the union representation, disrupt harmony, and in particular, impede the efforts of the employer and union to establish a uniform method for the orderly administration of employee grievances." *Leon* at ¶ 17.

**{¶ 28}** After reviewing the CBA attached by Gales to his application to vacate, the trial court determined that it did not expressly give Gales the independent right to submit his dispute to arbitration. Consequently, the court granted appellees' motion to dismiss Gales' application to vacate for lack of standing under the standard applicable to Civ.R. 12(B)(6).

**{¶ 29}** As set forth above, Civ.R. 12(B)(6) is inapplicable in a proceeding brought pursuant to R.C. Chapter 2711; therefore, it was error for the trial court to have applied the standard used for motions brought pursuant to Civ.R. 12(B)(6) in reviewing and ruling upon appellees' motion to dismiss. Nevertheless, as stated previously, a motion to dismiss

[5] We note that in *Leon*, the Supreme Court of Ohio also specifically rejected the argument Gales makes regarding being the "real party in interest." In *Leon*, the court found that our prior decision of *Barksdale v. Ohio Dept. of Adm. Servs.*, 78 Ohio App.3d 325 (10th Dist.1992), wherein we found that an employee-union member had standing to challenge an arbitration award despite not being a party to the arbitration proceeding, was a "legal anomaly" and improperly disregarded the terms of the collective bargaining contract. *Leon* at ¶ 7-10.

upon the grounds that Gales lacked standing could have been properly filed pursuant to Civ.R. 7(B)(1) in any event. Accordingly, we find the trial court's error in applying Civ.R. 12(B)(6) was harmless error.

{¶ 30} Moreover, we have reviewed the copy of the CBA between the FOP and the state attached by Gales to his application to vacate, and we agree with the trial court that it does not contain any provision which expressly give Gales the independent right to submit his dispute to arbitration or otherwise challenge the arbitration award. Therefore, pursuant to the authority set forth in *Leon*, the trial court properly granted appellees' motion dismiss for lack of standing under R.C. 2711.10. Accordingly, we overrule Gales' nine assignments of error.

## IV. Disposition

{¶ 31} Having overruled all of Gales' assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

NELSON, J.J., concurs.
LUPER SCHUSTER, J., concurs in judgment only.

# APPENDIX 2

# 4117.04 Public employers exclusive representative.

(A) Public employers shall extend to an exclusive representative designated under section 4117.05 of the Revised Code, the right to represent exclusively the employees in the appropriate bargaining unit and the right to unchallenged and exclusive representation for a period of not less than twelve months following the date of certification and thereafter, if the public employer and the employee organization enter into an agreement, for a period of not more than three years from the date of signing the agreement. For the purposes of this section, extensions of agreements shall not be construed to affect the expiration date of the original agreement.

(B) A public employer shall bargain collectively with an exclusive representative designated under section 4117.05 of the Revised Code for purposes of Chapter 4117. of the Revised Code.

When the state employment relations board notifies a public employer that it has certified an employee organization as exclusive representative for a unit of its employees, the public employer shall designate an employer representative and promptly notify the board and the employee organization of his identity and address. On certification, the employee organization shall designate an employee representative and promptly notify the board and the public employer of his identity and address. The board or any party shall address to the appropriate designated representative all communications concerned with collective relationships under Chapter 4117. of the Revised Code. In the case of municipal corporations, counties, school districts, educational service centers, villages, and townships, the designation of the employer representative is as provided in division (C) of section 4117.10 of the Revised Code. The designated representative of a party may sign agreements resulting from collective bargaining on behalf of his designator; but the agreements are subject to the procedures set forth in Chapter 4117. of the Revised Code.

Effective Date: 09-29-1995 .

# APPENDIX 3

# 4117.10 Terms of agreement.

(A) An agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs the wages, hours, and terms and conditions of public employment covered by the agreement. If the agreement provides for a final and binding arbitration of grievances, public employers, employees, and employee organizations are subject solely to that grievance procedure and the state personnel board of review or civil service commissions have no jurisdiction to receive and determine any appeals relating to matters that were the subject of a final and binding grievance procedure. 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. All of the following prevail over conflicting provisions of agreements between employee organizations and public employers:

(1) Laws pertaining to any of the following subjects:

(a) Civil rights;

(b) Affirmative action;

(c) Unemployment compensation;

(d) Workers' compensation;

(e) The retirement of public employees;

(f) Residency requirements;

(g) The minimum educational requirements contained in the Revised Code pertaining to public education including the requirement of a certificate by the fiscal officer of a school district pursuant to section 5705.41 of the Revised Code;

(h) The provisions of division (A) of section 124.34 of the Revised Code governing the disciplining of officers and employees who have been convicted of a felony;

(i) The minimum standards promulgated by the state board of education pursuant to division (D) of section 3301.07 of the Revised Code .

(2) The law pertaining to the leave of absence and compensation provided under section 5923.05 of the Revised Code , if the terms of the agreement contain benefits which are less than those contained in that section or the agreement contains no such terms and the public authority is the state or any agency, authority, commission, or board of the state or if the public authority is another entity listed in division (B) of section 4117.01 of the Revised Code that elects to provide leave of absence and compensation as provided in section 5923.05 of the Revised Code;

(3) The law pertaining to the leave established under section 5906.02 of the Revised Code , if the terms of the agreement contain benefits that are less than those contained in section 5906.02 of the Revised Code;

(4) The law pertaining to excess benefits prohibited under section 3345.311 of the Revised Code with respect to an agreement between an employee organization and a public employer entered into on or after the effective date of this amendment.

Except for sections 306.08, 306.12, 306.35, and 4981.22 of the Revised Code and arrangements entered into thereunder, and section 4981.21 of the Revised Code as necessary to comply with section 13(c) of the "Urban Mass Transportation Act of 1964," 87 Stat. 295, 49 U.S.C.A. 1609(c), as amended, and arrangements entered into thereunder, this chapter prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in this chapter or as otherwise specified by the general assembly. Nothing in this section prohibits or shall be construed to invalidate the provisions of an agreement establishing supplemental workers' compensation or unemployment compensation benefits or exceeding minimum requirements contained in the Revised Code pertaining to public education or the minimum standards promulgated by the state board of education pursuant to division (D) of section 3301.07 of the Revised Code.

(B) The public employer shall submit a request for funds necessary to implement an agreement and for approval of any other matter requiring the approval of the appropriate legislative body to the legislative body within fourteen days of the date on which the parties finalize the agreement, unless otherwise specified, but if the appropriate legislative body is not in session at the time, then within fourteen days after it convenes. The legislative body must approve or reject the submission as a whole, and the submission is deemed approved if the legislative body fails to act within thirty days after the public employer submits the agreement. The parties may specify that those provisions of the agreement not requiring action by a legislative body are effective and operative in accordance with the terms of the agreement, provided there has been compliance with division (C) of this section. If the legislative body rejects the submission of the public employer, either party may reopen all or part of the entire agreement.

As used in this section, "legislative body" includes the governing board of a municipal corporation, school district, college or university, village, township, or board of county commissioners or any other body that has authority to approve the budget of their public jurisdiction and, with regard to the state, "legislative body" means the controlling board.

(C) The chief executive officer, or the chief executive officer's representative, of each municipal corporation, the designated representative of the board of education of each school district, college or university, or any other body that has authority to approve the budget of their public jurisdiction, the designated representative of the board of county commissioners and of each elected officeholder of the county whose employees are covered by the collective negotiations, and the designated representative of the village or the board of township trustees of each township is responsible for negotiations in the collective bargaining process; except that the legislative body may accept or reject a proposed collective bargaining agreement. When the matters about which there is agreement are reduced to writing and approved by the employee organization and the legislative body, the agreement is binding upon the legislative body, the employer, and the employee organization and employees covered by the agreement.

(D) There is hereby established an office of collective bargaining in the department of administrative services for the purpose of negotiating with and entering into written agreements between state agencies, departments, boards, and commissions and the exclusive representative on matters of wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. Nothing in any provision of law

to the contrary shall be interpreted as excluding the bureau of workers' compensation and the industrial commission from the preceding sentence. This office shall not negotiate on behalf of other statewide elected officials or boards of trustees of state institutions of higher education who shall be considered as separate public employers for the purposes of this chapter; however, the office may negotiate on behalf of these officials or trustees where authorized by the officials or trustees. The staff of the office of collective bargaining are in the unclassified service. The director of administrative services shall fix the compensation of the staff.

The office of collective bargaining shall:

(1) Assist the director in formulating management's philosophy for public collective bargaining as well as planning bargaining strategies;

(2) Conduct negotiations with the exclusive representatives of each employee organization;

(3) Coordinate the state's resources in all mediation, fact-finding, and arbitration cases as well as in all labor disputes;

(4) Conduct systematic reviews of collective bargaining agreements for the purpose of contract negotiations;

(5) Coordinate the systematic compilation of data by all agencies that is required for negotiating purposes;

(6) Prepare and submit an annual report and other reports as requested to the governor and the general assembly on the implementation of this chapter and its impact upon state government.

Amended by 131st General Assembly File No. TBD, HB 64, §101.01, eff. 9/29/2015.

Amended by 128th General AssemblyFile No.29, HB 48, §1, eff. 7/2/2010.

Effective Date: 03-22-1999; 09-29-2005

**Note:** The amendment to this section by 129th General AssemblyFile No.10, SB 5, §1 was rejected by voters in the November, 2011 election.

# APPENDIX 4

# 5502.14 Enforcement agent.

(A) As used in this section, "felony" has the same meaning as in section 109.511 of the Revised Code.

(B)

(1) Any person who is employed by the department of public safety and designated by the director of public safety to enforce Title XLIII of the Revised Code, the rules adopted under it, and the laws and rules regulating the use of supplemental nutrition assistance program benefits shall be known as an enforcement agent. The employment by the department of public safety and the designation by the director of public safety of a person as an enforcement agent shall be subject to division (D) of this section. An enforcement agent has the authority vested in peace officers pursuant to section 2935.03 of the Revised Code to keep the peace, to enforce all applicable laws and rules on any retail liquor permit premises, or on any other premises of public or private property, where a violation of Title XLIII of the Revised Code or any rule adopted under it is occurring, and to enforce all laws and rules governing the use of supplemental nutrition assistance program benefits, women, infants, and children's coupons, electronically transferred benefits, or any other access device that is used alone or in conjunction with another access device to obtain payments, allotments, benefits, money, goods, or other things of value, or that can be used to initiate a transfer of funds, pursuant to the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.) or any supplemental food program administered by any department of this state pursuant to the "Child Nutrition Act of 1966," 80 Stat. 885, 42 U.S.C.A. 1786. Enforcement agents, in enforcing compliance with the laws and rules described in this division, may keep the peace and make arrests for violations of those laws and rules.

(2) In addition to the authority conferred by division (B)(1) of this section, an enforcement agent also may execute search warrants and seize and take into custody any contraband, as defined in section 2901.01 of the Revised Code, or any property that is otherwise necessary for evidentiary purposes related to any violations of the laws or rules described in division (B)(1) of this section. An enforcement agent may enter public or private premises where activity alleged to violate the laws or rules described in division (B)(1) of this section is occurring.

(3) Enforcement agents who are on, immediately adjacent to, or across from retail liquor permit premises and who are performing investigative duties relating to that premises, enforcement agents who are on premises that are not liquor permit premises but on which a violation of Title XLIII of the Revised Code or any rule adopted under it allegedly is occurring, and enforcement agents who view a suspected violation of Title XLIII of the Revised Code, of a rule adopted under it, or of another law or rule described in division (B)(1) of this section have the authority to enforce the laws and rules described in division (B)(1) of this section, authority to enforce any section in Title XXIX of the Revised Code or any other section of the Revised Code listed in section 5502.13 of the Revised Code if they witness a violation of the section under any of the circumstances described in this division, and authority to make arrests for violations of the laws and rules described in division (B)(1) of this section and violations of any of those sections.

(4) The jurisdiction of an enforcement agent under division (B) of this section shall be concurrent with that of the peace officers of the county, township, or municipal corporation in which the violation occurs.

(C) Enforcement agents of the department of public safety who are engaged in the enforcement of the laws and rules described in division (B)(1) of this section may carry concealed weapons when conducting undercover investigations pursuant to their authority as law enforcement officers and while acting within the scope of their authority pursuant to this chapter.

(D)

(1) The department of public safety shall not employ, and the director of public safety shall not designate, a person as an enforcement agent on a permanent basis, on a temporary basis, for a probationary term, or on other than a permanent basis if the person previously has been convicted of or has pleaded guilty to a felony.

(2)

(a) The department of public safety shall terminate the employment of a person who is designated as an enforcement agent and who does either of the following:

(i) Pleads guilty to a felony;

(ii) Pleads guilty to a misdemeanor pursuant to a negotiated plea agreement as provided in division (D) of section 2929.43 of the Revised Code in which the enforcement agent agrees to surrender the certificate awarded to that agent under section 109.77 of the Revised Code.

(b) The department shall suspend the employment of a person who is designated as an enforcement agent if the person is convicted, after trial, of a felony. If the enforcement agent files an appeal from that conviction and the conviction is upheld by the highest court to which the appeal is taken or if no timely appeal is filed, the department shall terminate the employment of that agent. If the enforcement agent files an appeal that results in that agent's acquittal of the felony or conviction of a misdemeanor, or in the dismissal of the felony charge against the agent, the department shall reinstate the agent. An enforcement agent who is reinstated under division (D)(2)(b) of this section shall not receive any back pay unless the conviction of that agent of the felony was reversed on appeal, or the felony charge was dismissed, because the court found insufficient evidence to convict the agent of the felony.

(3) Division (D) of this section does not apply regarding an offense that was committed prior to January 1, 1997.

(4) The suspension or termination of the employment of a person designated as an enforcement agent under division (D)(2) of this section shall be in accordance with Chapter 119. of the Revised Code.

Amended by 128th General AssemblyFile No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 01-01-2004 .

# APPENDIX 5

# 4117.09 Parties to execute written agreement - provisions of agreement.

(A) The parties to any collective bargaining agreement shall reduce the agreement to writing and both execute it.

(B) The agreement shall contain a provision that:

(1) Provides for a grievance procedure which may culminate with final and binding arbitration of unresolved grievances, and disputed interpretations of agreements, and which is valid and enforceable under its terms when entered into in accordance with this chapter. No publication thereof is required to make it effective. A party to the agreement may bring suits for violation of agreements or the enforcement of an award by an arbitrator in the court of common pleas of any county wherein a party resides or transacts business.

(2) Authorizes the public employer to deduct the periodic dues, initiation fees, and assessments of members of the exclusive representative upon presentation of a written deduction authorization by the employee.

(C) The agreement may contain a provision that requires as a condition of employment, on or after a mutually agreed upon probationary period or sixty days following the beginning of employment, whichever is less, or the effective date of a collective bargaining agreement, whichever is later, that the employees in the unit who are not members of the employee organization pay to the employee organization a fair share fee. The arrangement does not require any employee to become a member of the employee organization, nor shall fair share fees exceed dues paid by members of the employee organization who are in the same bargaining unit. Any public employee organization representing public employees pursuant to this chapter shall prescribe an internal procedure to determine a rebate, if any, for nonmembers which conforms to federal law, provided a nonmember makes a timely demand on the employee organization. Absent arbitrary and capricious action, such determination is conclusive on the parties except that a challenge to the determination may be filed with the state employment relations board within thirty days of the determination date specifying the arbitrary or capricious nature of the determination and the board shall review the rebate determination and decide whether it was arbitrary or capricious. The deduction of a fair share fee by the public employer from the payroll check of the employee and its payment to the employee organization is automatic and does not require the written authorization of the employee.

The internal rebate procedure shall provide for a rebate of expenditures in support of partisan politics or ideological causes not germaine [germane] to the work of employee organizations in the realm of collective bargaining.

Any public employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion or religious body which has historically held conscientious objections to joining or financially supporting an employee organization and which is exempt from taxation under the provisions of the Internal Revenue Code shall not be required to join or financially support any employee organization as a condition of employment. Upon submission of proper proof of religious conviction to the board, the board shall declare the employee exempt from becoming a member of or financially supporting an employee organization. The employee shall be required, in lieu of the fair share fee, to pay an amount of money equal to the fair share fee to a nonreligious charitable fund exempt from taxation under section 501(c)(3) of the Internal Revenue Code mutually agreed upon by

the employee and the representative of the employee organization to which the employee would otherwise be required to pay the fair share fee. The employee shall furnish to the employee organization written receipts evidencing such payment, and failure to make the payment or furnish the receipts shall subject the employee to the same sanctions as would nonpayment of dues under the applicable collective bargaining agreement.

No public employer shall agree to a provision requiring that a public employee become a member of an employee organization as a condition for securing or retaining employment.

(D) As used in this division, "teacher" means any employee of a school district certified to teach in the public schools of this state.

The agreement may contain a provision that provides for a peer review plan under which teachers in a bargaining unit or representatives of an employee organization representing teachers may, for other teachers of the same bargaining unit or teachers whom the employee organization represents, participate in assisting, instructing, reviewing, evaluating, or appraising and make recommendations or participate in decisions with respect to the retention, discharge, renewal, or nonrenewal of, the teachers covered by a peer review plan.

The participation of teachers or their employee organization representative in a peer review plan permitted under this division shall not be construed as an unfair labor practice under this chapter or as a violation of any other provision of law or rule adopted pursuant thereto.

(E) No agreement shall contain an expiration date that is later than three years from the date of execution. The parties may extend any agreement, but the extensions do not affect the expiration date of the original agreement.

Effective Date: 03-01-1990 .

**Note:** The amendment to this section by 129th General AssemblyFile No.10, SB 5, §1 was rejected by voters in the November, 2011 election.

# APPENDIX 6

# 5503.01 Division of state highway patrol.

There is hereby created in the department of public safety a division of state highway patrol which shall be administered by a superintendent of the state highway patrol.

The superintendent shall be appointed by the director of public safety, and shall serve at the director's pleasure. The superintendent shall hold the rank of colonel and be appointed from within the eligible ranks of the patrol. The superintendent shall give bond for the faithful performance of the superintendent's official duties in such amount and with such security as the director approves.

The superintendent, with the approval of the director, may appoint any number of state highway patrol troopers and radio operators as are necessary to carry out sections 5503.01 to 5503.06 of the Revised Code, but the number of troopers shall not be less than eight hundred eighty. The number of radio operators shall not exceed eighty in number. Except as provided in this section, at the time of appointment, troopers shall be not less than twenty-one years of age, nor have reached thirty-five years of age. A person who is attending a training school for prospective state highway patrol troopers established under section 5503.05 of the Revised Code and attains the age of thirty-five years during the person's period of attendance at that training school shall not be disqualified as over age and shall be permitted to continue to attend the training school as long as the person otherwise is eligible to do so. Such a person also remains eligible to be appointed a trooper. Any other person who attains or will attain the age of thirty-five years prior to the time of appointment shall be disqualified as over age.

At the time of appointment, troopers shall have been legal residents of Ohio for at least one year, except that this residence requirement may be waived by the superintendent.

If any state highway patrol troopers become disabled through accident or illness, the superintendent, with the approval of the director, shall fill any vacancies through the appointment of other troopers from a qualified list to serve during the period of the disability.

The superintendent and state highway patrol troopers shall be vested with the authority of peace officers for the purpose of enforcing the laws of the state that it is the duty of the patrol to enforce and may arrest, without warrant, any person who, in the presence of the superintendent or any trooper, is engaged in the violation of any such laws. The state highway patrol troopers shall never be used as peace officers in connection with any strike or labor dispute.

Each state highway patrol trooper and radio operator, upon appointment and before entering upon official duties, shall take an oath of office for faithful performance of the trooper's or radio operator's official duties and execute a bond in the sum of twenty-five hundred dollars, payable to the state and for the use and benefit of any aggrieved party who may have a cause of action against any trooper or radio operator for misconduct while in the performance of official duties. In no event shall the bond include any claim arising out of negligent operation of a motorcycle or motor vehicle used by a trooper or radio operator in the performance of official duties.

The superintendent shall prescribe a distinguishing uniform and badge which shall be worn by each state highway patrol trooper and radio operator while on duty, unless otherwise designated by the superintendent. No person shall wear the distinguishing uniform of the state highway patrol or the badge or any distinctive part of that uniform, except on order of the superintendent.

The superintendent, with the approval of the director, may appoint necessary clerks, stenographers, and employees.

Amended by 130th General Assembly File No. 7, HB 51, §101.01, eff. 7/1/2013.

Effective Date: 04-22-1997 .

# APPENDIX 7

JUSTIA

# Steelworkers v. Enterprise Car, 363 U.S. 593 (1960)

**Syllabus** Case

## U.S. Supreme Court

**Steelworkers v. Enterprise Car, 363 U.S. 593 (1960)**

**United Steelworkers of America v. Enterprise Wheel & Car Corp.**

**No. 538**

**Argued April 28, 1960**

**Decided June 20, 1960**

**363 U.S. 593**

*Syllabus*

Employees were discharged during the term of a collective bargaining agreement containing a provision for arbitration of disputes, including differences "as to the meaning and application" of the agreement, and a provision for reinstatement with back pay of employees discharged in violation of the agreement. The discharges were arbitrated after the agreement had expired, and the arbitrator found that they were in violation of the agreement and that the agreement required reinstatement with back pay, minus pay for a

ten-day suspension and such sums as the employees had received from other employment. Respondent refused to comply with the award, and the District Court directed it to do so. The Court of Appeals held that (a) failure of the award to specify the amounts to be deducted from the back pay rendered the award unenforceable, though that defect could be remedied by requiring the parties to complete the arbitration, (b) an award for back pay subsequent to the date of expiration of the collective bargaining agreement could not be enforced, and (c) the requirement for reinstatement of the discharged employees was unenforceable because the collective bargaining agreement had expired.

*Held:* The judgment of the District Court should have been affirmed with a modification requiring the specific amounts due the employees to be definitely determined by arbitration. Pp. 363 U. S. 594-599.

(a) Federal courts should decline to review the merits of arbitration awards under collective bargaining agreements. *Steelworkers v. Warrior & Gulf Navigation Co., ante,* p. 363 U. S. 574. P. 363 U. S. 596.

(b) The opinion of the arbitrator in this case, as it bears upon the award of back pay beyond the date of the agreement's expiration and reinstatement, is ambiguous, but mere ambiguity in the opinion accompanying an award is not a reason for refusing to enforce the award, even when it permits the inference that the arbitrator may have exceeded his authority. Pp. 363 U. S. 597-598.

(c) The question of interpretation of the collective bargaining agreement is a question for the arbitrator, and the courts have no

Page 363 U. S. 594

business overruling his construction of the contract merely because their interpretation of it is different from his. Pp. 363 U. S. 598-599.

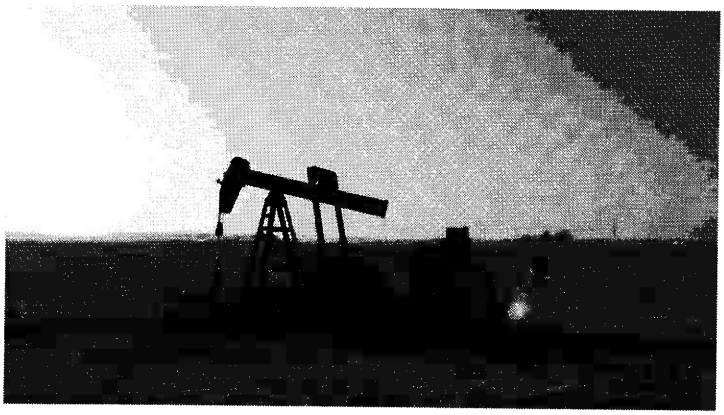
(d) The Court of Appeals erred in holding that an award for back pay subsequent to the date of expiration of the collective bargaining agreement could not be enforced, and that the requirement for reinstatement of the discharged employees was unenforceable because the collective bargaining agreement had expired. Pp. 363 U. S. 596, 363 U. S. 599.

(e) The judgment of the District Court ordering respondent to comply with the arbitrator's award should be modified so that the amount due the employees may be definitely determined by arbitration. P. 363 U. S. 599.

69 F.2d 327, reversed in part.

Oral Argument - April 28, 1960

# APPENDIX 8



# Ohio Supreme Court rules on oil, gas expired leases

Leave a Comment (https://ofbf.org/2020/02/05/ohio-supreme-court-rules-oil-gas-expired-leases/#comments)

When does an oil and gas lease expire due to lack of production, and how long do landowners have if they want to take recourse in court?

The Ohio Supreme Court ruled on the issue in November 2019, siding with Farm

Bureau members Barry and Rosa Browne in Guernsey County.

The case, Browne v. Artex Oil, asked what was the appropriate statute of limitations for the question of whether an oil and gas lease expired due to lack of production. According to Farm Bureau Policy Counsel Leah Curtis, Farm Bureau argued a 21-year statute of limitations was to apply, under court precedent and Ohio law, in support of the Brownes.

The other side argued that it should be a 15-year statute of limitations, which is something that generally applies to a breach of contract case. The Supreme Court ruled, in line with the argument Ohio Farm Bureau made, that there was no breach in this case, rather the Brownes alleged that the lease expired on its own terms. Because there was no breach, the "breach" statute of limitations could not apply and instead the statute of limitations that applies to lawsuits seeking to determine ownership property should apply.

"In general, this is an important decision for landowners and Farm Bureau members," Curtis said, while noting that while the court was considering a 15-year vs. 21-year statute of limitations, the General Assembly changed the contract statute of limitations and shortened it to eight years and current legislation seeks to shorten this statute of limitations even further.

"Without clarifying the statute of limitations, oil and gas companies would be encouraged to leave unproductive wells on the property, in hopes that within the eight years they would be able to restart production and continue to hold the property," Curtis said. "It can take some time for a landowner to determine whether they even have a plausible claim worth taking to court. The longer statute of limitations ensures a landowner has ample opportunity to investigate their claim prior to filing a lawsuit."

The case now returns to the trial court to review in light of this Supreme Court opinion, meaning that the lower court has to now review evidence as to whether the lease expired due to nonproduction prior to 1999.

"This case didn't answer the specific question as to whether the Brownes lease is still in effect; that will be for the trial court to determine. But from a general standpoint, this is an important clarification of the law for those who believe their oil and gas lease has expired on its own terms, such as due to nonproduction," Curtis said.

(https://ofbf.org/growwithus/)

Leave a Comment (https://ofbf.org/2020/02/05/ohio-supreme-court-rules-oil-gas-expired-leases/#comments)

# APPENDIX 9

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

| | | |
|---|---|---|
| Timothy Gales, | : | |
| Plaintiff-Appellant, | : | |
| v. | : | Nos. 19AP-720<br>(C.P.C. No. 19CV-3311) |
| Ohio Department of Public Safety, et al., | : | (REGULAR CALENDAR) |
| Defendants-Appellees. | : | |

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on January 28, 2021, appellant's nine assignments of error are overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Any outstanding appellate court costs shall be assessed to appellant.

BEATTY BLUNT, NELSON, JJ,. concur.
LUPER SCHUSTER concurs in judgment only.

/S/ JUDGE
Judge Laurel Beatty Blunt

Tenth District Court of Appeals

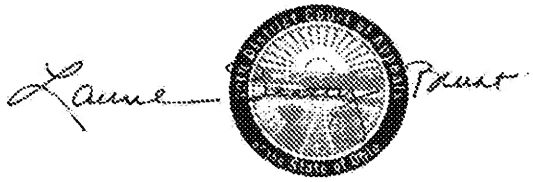
**Date:** 02-01-2021

**Case Title:** TIMOTHY GALES -VS- OHIO DEPARTMENT OF PUBLIC SAFETY ET AL

**Case Number:** 19AP000720

**Type:** JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge Laurel Beatty Blunt