

IN THE SUPREME COURT OF OHIO

SHAWN JONES,)
vs.) On Appeal from the Eleventh Appellate District
Plaintiff-Appellee,) Portage County
)
KENT CITY SCHOOL)
DISTRICT BOARD OF) Court of Appeals
EDUCATION,) Case No. 2021-P-0094
)
Defendant-Appellant.)
)

**MEMORANDUM IN SUPPORT OF JURISDICTION OF DEFENDANT-APPELLANT
KENT CITY SCHOOL DISTRICT BOARD OF EDUCATION**

Patrick O. Peters (0079539)
Jackson E. Biesecker (0100780)
Jackson Lewis, P.C.
Park Center Plaza I, Suite 400
6100 Oak Tree Boulevard
Cleveland, OH 44131
(216) 750-0404
(216) 750-0826 (Fax)
Patrick.Peters@jacksonlewis.com
Jackson.Biesecker@jacksonlewis.com

*Counsel for Defendant-Appellant
Kent School District Board of Education*

John F. Myers (0032779)
234 Portage Trail
Cuyahoga Falls, OH 44221
(330) 819-3695
johnmyerscolpa@gmail.com

Counsel for Plaintiff-Appellee Shawn Jones

TABLE OF CONTENTS

I.	THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST	1
II.	STATEMENT OF THE CASE AND FACTS	3
III.	ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW	5
	<i><u>Proposition of Law No. 1:</u></i> A collective bargaining agreement between a school district and teachers union may supersede non-conflicting provisions of R.C. § 3319.11 and R.C. § 3319.111 related to teacher evaluations. The Eleventh District's decision places an unreasonable restraint on the ability of school districts and teachers unions to establish teacher evaluation protocols through the collective bargaining process.	5
	<i><u>Proposition of Law No. 2:</u></i> Where a school district and teachers union establish unique teacher evaluation procedures through a collective bargaining agreement, allegations that teacher observation requirements were not adhered to constitute an unfair labor practice. Courts lack jurisdiction over said claims, with exclusive jurisdiction belonging to the State Employee Relations Board. The Eleventh District's decision upends longstanding Ohio law related to labor relations and significantly weakens the ability of parties to pursue unfair labor practice charges.	6
	<i><u>Proposition of Law No. 3:</u></i> Ohio school districts are not required by law to implement the OTES framework developed by the Ohio Department of Education. The OTES framework is a non-mandatory model teacher evaluation system that Ohio school districts are not required to adhere to. The OTES framework was created to assist Ohio districts with developing teacher evaluation procedures. The Eleventh District's decision mandates compliance with the OTES framework, which was only intended by the Ohio Legislature to serve as a model to assist school districts in developing their own teacher evaluation policies and procedures.....	8
IV.	CONCLUSION	10
	CERTIFICATION OF SERVICE.....	11

EXHIBIT 1 – Appellate Court Opinion dated January 30, 2023

EXHIBIT 2 – Trial Court Order dated August 18, 2021

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Copley-Fairlawn City School Dist. Bd. of Edn. v. Copley Teachers Assn.</i> , 9th Dist. Summit No. 29404, 2020-Ohio-4801	9
<i>Crawford v. Kirtland Local Sch. Dist. Bd. of Edn.</i> , 2018-Ohio-4569, 124 N.E.3d 269 (11th Dist.).....	7, 9
<i>Flower v. Brunswick City School Dist. Bd. of Edn.</i> , 2015-Ohio-2620, 34 N.E.3d 973	2, 6
<i>Naylor v. Cardinal Local School Dist. Bd. of Edn.</i> , 69 Ohio St.3d 162, 630 N.E.2d 725 (1994).....	2, 6
<i>Routson-Gim-Belluardo v. Ohio Dept. of Edn.</i> , 2017-Ohio-2611, 90 N.E.3d 180 (2d Dist.).....	9
Statutes	
R.C. Chapter 4117.....	5, 7
R.C. § 3319.11	1, 5, 6, 8
R.C. § 3319.16	2, 4, 6
R.C. § 3319.111	2, 5, 6, 8
R.C. § 3319.111(H).....	2, 5, 6
R.C. § 3319.112	7, 8
R.C. § 3319.112(D).....	8, 9
R.C. § 4117	7
R.C. § 4117.10(A).....	6

I. THIS CASE IS OF PUBLIC AND GREAT GENERAL INTEREST

This case is of public and great general interest because it involves (1) the ability of Ohio school districts to establish procedures for evaluating teachers, (2) the freedom of school districts and teachers' unions to engage in collective-bargaining, and (3) establishes jurisdiction where interpretation of a collective-bargaining agreement is required. This case is of particular public interest because it raises questions of law that may be treated differently among Ohio's Appellate Courts and requires affirmative guidance from this Court.

On May 19, 2020, Defendant-Appellant Kent City School District Board of Education (the "District") voted to not renew Plaintiff-Appellee Shawn Jones' limited teaching contract. During a nonrenewal hearing on June 30, 2020, Appellee's nonrenewal was affirmed by the Board of Education. (Ex. 1 – Appellate Court Opinion, ¶ 6).

On August 18, 2021, Judge Beck L. Doherty of the Portage County Court of Common Pleas affirmed Appellant's decision to non-renew Appellee's teaching contract. (Ex. 2 – Trial Court Order).

On January 30, 2023, the Court of Appeals for the Eleventh Appellate District reversed the Trial Court's decision and remanded the case. (Ex. 1). The Appellate Court erroneously held that (1) the Trial Court had jurisdiction to hear an appeal that required interpretation of a collective bargaining agreement; (2) the collective bargaining agreement between the school board and the teacher's union could not supersede non-conflicting provisions of R.C. § 3319.11, 3319.111, or 3319.16; and (3) that Ohio school districts must adhere to the teacher evaluation procedures outlined in the Ohio Teacher Evaluation system ("OTES"), which is merely a suggested model framework.

It is well-established by this Court and other Ohio courts that a collective bargaining agreement may supersede nonconflicting provision within Ohio's teacher evaluation statute. *See*

Naylor v. Cardinal Local School Dist. Bd. of Edn., 69 Ohio St.3d 162, 165, 630 N.E.2d 725 (1994).

The Ohio Legislature added R.C. § 3319.111(H) in 2013, which provides that “the requirements of this section prevail over any conflicting provisions of a collective bargaining agreement.”

But the Appellate Court erred in holding that a collective bargaining agreement could not supersede *nonconflicting* provisions of R.C. § 3319.111. *See Flower v. Brunswick City School Dist. Bd. of Edn.*, 2015-Ohio-2620, 34 N.E.3d 973, ¶ 31 (holding that the CBA supersedes the statutory requirements of R.C. § 3319.16 for teacher termination where there are no conflicting terms). This holding creates confusion between teachers, unions, and school districts and robs these parties of the freedom to contract and set the terms of employment, including establishing compliant teacher evaluation procedures.

The Appellate Court also erred in concluding it was not necessary to interpret the CBA in effect at the time of Appellee’s nonrenewal to determine which evaluation procedures had been adopted by the school board and teacher’s union. (Ex. 1, ¶ 24). Indeed, the Appellate Court erroneously concluded that a decision could be reached without referring to the applicable CBA. *Id.* This raises constitutional issues related to due process and fairness. All parties involved had the constitutional and statutory right to the protections afforded by their collectively bargained terms of employment. Under the new standard imposed by the Appellate Court’s holding, Ohio school districts, teachers, and unions could selectively disregard collective bargaining rights.

The Appellate Court also erroneously held that school districts must strictly comply with the OTES framework. The OTES framework is a model developed by the Ohio Department of Education to assist school districts in developing their own teacher evaluation standards. The Appellate Court’s holding oversteps the intent of the Ohio Legislature by mandating strict

compliance with the OTES framework. This holding goes against established law that school districts and teachers unions are required to establish their own teacher evaluation procedures.

Ohio courts and litigants require this Court’s intervention to prevent these consequences. Therefore, the District respectfully submits that this Court should accept jurisdiction over this dispute and reverse the Eleventh District’s decision.

II. STATEMENT OF THE CASE AND FACTS

The District is an Ohio public school district serving Kent, Ohio and surrounding communities. The District employed Appellee during the 2019-2020 school year under a one-year limited teaching contract. The District employs its teachers under a collective bargaining agreement (“CBA”) with the teachers union, the Kent Education Association (the “Union”).

The District and Union negotiated teacher evaluation procedures as contained in the CBA. In response to the COVID-19 pandemic, the District and Union entered into a Memorandum of Understanding (“MOU”) in April 2020 as an addendum to the CBA.

During the school year, Appellee violated multiple District policies related to attendance, workday hours, and staff and student relations. Appellee left the school building early without notifying or asking permission six times in October 2019, leading to a three-day suspension without pay. (Ex. 1, ¶ 3). Appellee did not come to school on January 6, 2020, and failed to secure a substitute teacher, leaving the students in his classroom unsupervised until one of the students informed the administration of his absence. *Id.*

On January 10 and 14, 2020, the District’s Assistant Superintendent met with Appellee and informed him that it was highly likely that the District would not renew his contract at the end of the school year because of these policy violations. On January 14, 2020, the District sent Appellee a letter confirming the two meetings and informing him that he was placing Appellant on “a full cycle OTES evaluation from this date,” as the District considered nonrenewal. *Id.*

The District proceeded to conduct three formal observations of Appellee. The first evaluation took place on January 29, 2020, before the District's schools moved to virtual instruction. (Ex. 1, ¶ 5).

Appellee's second and third formal observations were conducted virtually, in accordance with the CBA and MOU. The second formal observation occurred on May 1, 2020. *Id.* During this observation, Appellee was not online at the same time as the students and evaluator. Appellee had pre-recorded himself delivering a lesson, then shared the recording with his students, and later shared it with the evaluator.

The second formal observation was based on this recording. The evaluator also conducted a pre-conference and post-conference meeting with Appellee relative to this observation. Following the post-conference meeting on May 4, 2020, Appellee and the evaluator scheduled his third observation for May 11, 2020.

But Appellee called out sick the morning of May 11, 2020. Appellee later presented a doctor's note stating he was not to return to work until June 1, 2020, past the deadline for the District to conduct Appellee's third and final evaluation. The District did not pre-approve Appellee's medical leave.

As permitted by the teacher evaluation procedures outlined under the relevant CBA and MOU, the evaluator conducted the third formal evaluation on May 11, 2020. During the evaluation, the evaluator viewed students completing work assigned by Appellee according to his instructions.

Having conducted three formal evaluations pursuant to the teacher evaluation procedures outlined in the CBA and MOU, the District complied with the three formal observations required under R.C. § 3319.111 to non-renew Appellee's limited teaching contract.

The Appellate Court erroneously found that it could determine whether the third evaluation constituted a bona fide “formal observation” without any need to refer to or interpret the terms of the CBA. (Ex. 1, ¶ 21). Yet because the Appellate Court could not determine whether the third evaluation was proper under the CBA without first interpreting the CBA, the Appellate Court lacked jurisdiction. The Appellate Court incorrectly analyzed Appellee’s third evaluation under the OTES model framework, which effectively mandates compliance with OTES in disregard of bargained-for teacher evaluation procedures.

III. ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. 1: A collective bargaining agreement between a school district and teachers union may supersede non-conflicting provisions of R.C. § 3319.11 and R.C. § 3319.111 related to teacher evaluations. The Eleventh District’s decision places an unreasonable restraint on the ability of school districts and teachers unions to establish teacher evaluation protocols through the collective bargaining process.

The Appellate Court’s decision, if it stands, will unconstitutionally restrain the ability of Ohio school districts and teachers unions to implement teacher evaluation procedures through the collective bargaining process. The Eleventh District misinterprets R.C. § 3319.111(H) which states: “Notwithstanding any provision to the contrary in Chapter 4117 of the Revised Code, the requirements of this section prevail over any conflicting provisions of a collective bargaining agreement entered into on or after the effective date of this amendment.” R.C. § 3319.111(H). This section states, on its face, that the provisions of R.C. § 3319.111 only prevail over *conflicting* provisions of a CBA. But nowhere does this statute prohibit a CBA from superseding *non-conflicting* provisions of R.C. § 3319.11 or 3319.111.

It is well-established under Ohio law that a CBA may supersede the provisions R.C. § 3319.11, 3319.111, and 3319.16. *Naylor v. Cardinal Local School Dist. Bd. Of Edn.*, 69 Ohio St.3d 162, 165, 630 N.E.2d 725 (1994). Prior to the enactment of R.C. § 3319.111(H), a CBA could entirely negate the requirements of R.C. § 3319.111. *Id.*

Indeed, the Eleventh District is the only Ohio court to hold that R.C. § 3319.111 cannot be superseded by a CBA. (Ex. 1, ¶ 24). The Eleventh District reasoned that the number of teacher evaluations required by a CBA could not differ from the statutorily-imposed three evaluations – but the Appellate Court did not consider that school districts retain the freedom to determine what constitutes a “formal observation” for purposes of R.C. § 3319.111.

While other Ohio courts have not addressed whether a CBA may supersede non-conflicting provisions of R.C. § 3319.111, several Ohio courts have determined that a CBA may supersede non-conflicting provisions of R.C. § 3319.16, which contains a similar provision to R.C. § 3319.111(H). *See Flower v. Brunswick City School Dist. Bd. of Edn.*, 2015-Ohio-2620, 34 N.E.3d 973, ¶ 31 (9th Dist.) (“we hold that: (1) under R.C. § 4117.10(A), the PAR program procedures for teacher termination supersede the statutory procedures for teacher termination set forth in R.C. § 3319.16 and (2) the CBA does not alter the statutory grounds of good and just cause as the substantive basis for teacher termination.”).

The Appellate Court’s decision would do grievous harm to school districts, teachers, and unions, if permitted to stand. Accordingly, Appellant requests that the Court accept jurisdiction and reverse the Appellate Court’s decision and uphold that a CBA may supersede non-conflicting provisions of R.C. § 3319.11 and 3319.111.

Proposition of Law No. 2: Where a school district and teachers union establish unique teacher evaluation procedures through a collective bargaining agreement, allegations that teacher observation requirements were not adhered to constitute an unfair labor practice. Courts lack jurisdiction over said claims, with exclusive jurisdiction belonging to the State Employee Relations Board. The Eleventh District’s decision upends longstanding Ohio law related to labor relations and significantly weakens the ability of parties to pursue unfair labor practice charges.

The Appellate Court’s decision, if it is allowed to stand, would significantly degrade the ability of Ohio teachers and unions to pursue unfair labor practice charges. R.C. Chapter 4117 is

the Ohio public employer statute, allowing public employers and the exclusive representatives of public employees to enter into a collective bargaining agreement controlling all the terms of employment.

The District is a “public employer,” and Appellee was a “public employee” as defined in R.C. § 4117.01. The outcome of this matter therefore depended on R.C. § 4117. “Even when the rights asserted by a plaintiff are created by state law, if the application of the law is dependent on an analysis or interpretation of a collective bargaining agreement, the trial court lacks subject matter jurisdiction over the matter.” *Crawford v. Kirtland Local Sch. Dist. Bd. of Edn.*, 2018-Ohio-4569, 124 N.E.3d 269, ¶ 31 (11th Dist.) (Citing *Guden v. Western Reserve Psychiatric Hosp.*, 10th Dist. Franklin No. 00AP-912, 2001 Ohio App. LEXIS 2634, *3 (June 14, 2001)).

The District and Union addressed teacher evaluation procedures in the relevant CBA. But the Appellate Court erroneously concluded that it could reach a decision as to whether the third evaluation of Appellee constituted a proper “formal evaluation” without understanding how that term was defined in the relevant CBA between the District and Union. (Ex. 1, ¶ 28). But the Appellate Court noted that “[s]ection 3319 does not define ‘formal observation’ nor is there case law interpreting this term.” *Id.* at ¶ 30.

It is evident from the language in R.C. § 3319.112 that the Ohio Legislature intended for school districts to develop and implement their own teacher evaluation procedures:

To assist school districts in developing evaluation policies under sections 3311.80, 3311.84, 3319.02, and 3319.111 of the Revised Code, the [Ohio] department [of education] shall do all of the following:

- (1) *Serve as a clearinghouse of promising evaluation procedures and evaluation models that districts may use;*
- (2) *Provide technical assistance to districts in creating evaluation policies;*
- (3) *Provide guidance to districts on how high-quality student data may be used as evidence of student learning attributable to a particular teacher, including examples of appropriate use of that data within the framework adopted under this section;*

(4) Provide guidance to districts on how information from student surveys, student portfolios, peer review evaluations, teacher self-evaluations, and *other components determined appropriate by the district may be used as part of the evaluation process.*

R.C. § 3319.112(D) (emphasis added)

Under R.C. § 3319.112(D), Ohio school districts are instructed to develop their own teacher evaluation procedures, so long as these do not conflict with the provisions of R.C. § 3319.111.

To determine whether the third evaluation of Appellee constituted a “formal observation,” as required by R.C. § 3319.11, the Appellate Court would have been obligated, on the face of R.C. § 3319.112, to examine and interpret the District’s CBA. Under Ohio law, because the Appellate Court was required to analyze and interpret the District’s CBA to understand whether Appellee’s third evaluation met the requirements of Appellant’s established teacher evaluation procedures, it lacked subject matter jurisdiction over the claim.

Indeed, the Appellate Court could not have decided this matter without consulting the relevant CBA. But instead of interpreting the CBA, the Appellate Court’s decision mandated compliance with the OTES framework, despite noting that this system is merely a model. (Ex. 1, ¶ 32). If the Appellate Court’s decision is allowed to stand, school districts will be penalized for not comporting with the intricacies of a model framework that was only intended to serve as a guide.

The Appellate Court’s decision would do grievous damage to the enforcement of collective bargaining rights and improperly confer subject matter jurisdiction to Ohio courts. Accordingly, Appellant requests that the Court accept jurisdiction and reverse the Appellate Court’s holding and find that the courts lack subject matter jurisdiction over this claim.

Proposition of Law No. 3: Ohio school districts are not required by law to implement the OTES framework developed by the Ohio Department of Education. The OTES framework is a non-mandatory model teacher evaluation system that Ohio school districts are not

required to adhere to. The OTES framework was created to assist Ohio districts with developing teacher evaluation procedures. The Eleventh District’s decision mandates compliance with the OTES framework, which was only intended by the Ohio Legislature to serve as a model to assist school districts in developing their own teacher evaluation policies and procedures.

The OTES framework is “a teacher assessment model created by the Ohio Department of Education.” *Routson-Gim-Belluardo v. Ohio Dept. of Edn.*, 2017-Ohio-2611, 90 N.E.3d 180, ¶ 4 (2d Dist.) Pursuant to R.C. § 3319.112(D), the Ohio Department of Education created the OTES framework to assist school districts in developing their own teacher evaluation procedures.

Indeed, some school districts and unions choose to adopt the OTES framework in their respective CBAs. *See Copley-Fairlawn City School Dist. Bd. of Edn. v. Copley Teachers Assn.*, 9th Dist. Summit No. 29404, 2020-Ohio-4801, ¶ 2 (“The CBA provides for teacher evaluations to be done in conformity with the Ohio Teacher Evaluation System framework as developed and approved by the Ohio State Board of Education.”); *Crawford v. Kirtland Local School Dist. Bd. of Edn.*, 2018-Ohio-4569, 124 N.E.3d 269, ¶ 5 (11th Dist.) (“The CBA incorporates the teacher evaluation procedures established in the Ohio Teacher Evaluation System under the Ohio Revised Code.”).

The Appellate Court, without referring to the operative CBA to determine whether it had adopted the OTES framework or provided for different teacher evaluation procedures, proceeded to analyze Appellee’s third formal evaluation according to the OTES framework. (Ex. 1, ¶ 35).

The Appellate Court’s holding, if it is allowed to stand, will create confusion among Ohio courts. Additionally, this holding will severely restrict the autonomy of Ohio school districts and unions to develop and implement their own teacher evaluation procedures, in conformity with the Ohio Revised Code. Accordingly, Appellant requests that the Court accept jurisdiction, reverse the

Appellate Court's holding, and affirm that the OTES framework was developed to assist school districts and is not mandatory.

IV. CONCLUSION

The Appellate Court's decision is highly improper both in its reasoning and its failure to follow established law in this state. For all the foregoing reasons, Defendant-Appellant respectfully submits that this Court should review and reverse the decision of the Eleventh District Court of Appeals in the matter.

Respectfully submitted,

/s/ Patrick O. Peters

Patrick O. Peters (0079539)

Jackson E. Biesecker (0100780)

Jackson Lewis, P.C.

Park Center Plaza I, Suite 400

6100 Oak Tree Boulevard

Cleveland, OH 44131

(216) 750-0404

(216) 750-0826 (Fax)

patrick.peters@jacksonlewis.com

jackson.biesecker@jacksonlewis.com

*Counsel for Defendant-Appellant
Kent School District Board of Education*

CERTIFICATION OF SERVICE

I hereby certify that on this 16th day of March 2023, a true and accurate copy of the foregoing ***Memorandum in Support of Jurisdiction of Kent City School District Board of Education*** was e-filed with the Supreme Court of Ohio. Notice of this filing will be delivered to Counsel for Plaintiff-Appellee, John F. Myers, Esq., by email to johnmyerscolpa@gmail.com.

/s/ Patrick O. Peters
Patrick O. Peters (0079539)

One of the Attorneys for Defendant-Appellant

4853-9294-4214, v. 6