IN THE SUPREME COURT OF OHIO

Jeffrey Harmon,	:	
	:	
and	:	Case No. 2023-0559
	:	
David Beasley,	:	
Plaintiffs-Appellees,	:	On Appeal from the Hamilton County Court of Appeals, First Appellate District
	:	
v.	:	
	:	Court of Appeals Case No. C-220236
City of Cincinnati,	:	
	:	
and	:	
	:	
City of Cincinnati Civil Service Commission,	:	
	:	
Defendants-Appellants.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF AMICUS CURIAE THE OHIO MUNICIPAL LEAGUE ON BEHALF OF DEFENDANTS-APPELLANTS

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EXPLANATION OF WHY THIS CASE INVOLVES A QUESTION OF PUBLIC OR GREAT GENERAL INTEREST

Amicus curiae, the Ohio Municipal League, urges this Court to accept the City of Cincinnati's jurisdictional appeal over this case to resolve important conflicts regarding public sector collective bargaining rights.

This case involves a question of public or great general interest because if the lower court's interpretations of R.C. 2506.01 and R.C. 4117.10 stand, the purpose of R.C. 4117.10(A), allowing for public employers and unions to supersede civil service rules through bargaining, will be frustrated. The First District's interpretation threatens the ability of public sector employers and their unions to negotiate and agree to employment procedures that differ from those under state and local law. Moreover, the First District's ruling invites "forum shopping." It encourages employees to file appeals of employment disputes in multiple forums, which is contrary to the efficient resolution of employment disputes. The precedent set forth in the First District's ruling will lead to frivolous and duplicitous litigation. This will send shock waves throughout the state and disrupt the labor-management system for the resolution of employee grievances.

A. An interpretation of R.C. 4117.10 that permits employees to file claims on matters that are already being resolved via the grievance procedure of a collective bargaining agreement would have catastrophic consequences for the judicial system, administrative agencies, labor unions, and public employers.

Ohio Revised Code Section 4117.10 states that an agreement between a public employer and an exclusive representative entered into pursuant to Chapter 4117 governs the wages, hours, and terms and conditions of public employment covered by the agreement. Further, R.C. 4117.10 explains that if such an agreement provides for a final and binding arbitration of grievances, then the public employers, employees, and employee organizations involved in the agreement are subject solely to that grievance procedure and the state personnel board of review and civil service commissions do not have jurisdiction over such grievances. This Court has held that R.C.

4117.10(A) prevents an employee from resolving a grievance under the arbitration procedure of a collective bargaining agreement and then filing an individual complaint regarding the same issues. *State ex rel. Waiters v. Szabo,* 129 Ohio St.3d 122, 2011-Ohio-3088, 950 N.E. 2d 546. Essentially, this section prohibits employees from taking "two bites at the apple" to resolve their claims.

In short, the Ohio General Assembly enacted R.C. 4117.10(A) to permit public employers and unions to enter into agreements that prevail over conflicting laws, including civil service rules. *DeVennish v. City of Columbus*, 57 Ohio St. 3d 163, 167, 566 N.E.2d 668, 671-72 (1991) (regarding civil service appeals). This is an important tool for public employers and unions to bargain concerning the wages, hours, and terms and conditions of employment, notwithstanding any conflicting state or local statute, ordinance, or rule. Where a collective bargaining agreement addresses an issue, the collective bargaining agreement must control. Otherwise, public employers and their employees may be subject to conflicting jurisdictions and face contradictory results.

That is what happened here. In this case, the City of Cincinnati enacted a program during the height of the COVID-19 pandemic under which some non-essential employees were placed on leave. Two employees, Jeffrey Harmon and David Beasley, were placed on leave under the program. Both employees were members of a labor union, which had an effective collective bargaining agreement ("CBA") with the City. Neither employee filed a grievance under the CBA, but the employees' labor union filed a grievance on behalf of the entire bargaining unit regarding the leave program. Eventually, the employees filed an appeal with the Civil Service Commission regarding their placement on leave. After an appearance before the Commission, the Commission determined that it did not have jurisdiction to hear the employees' appeals because R.C. 4117.10 divested it of jurisdiction in favor of a resolution under the CBA.

The employees filed an appeal of the Commission's decision. The common pleas court found that the Commission did have jurisdiction to hear the appeals. The First District Court of Appeals affirmed that decision and determined that R.C. 4117.10 did not divest the Commission of jurisdiction over the appeals because (a) if the employees' placement on leave constituted a layoff, then the CBA specifically authorized them to appeal their layoff to the Commission, and (b) if their placement on leave did not constitute a layoff, then the issue was not specifically covered by the CBA and the employees had a right to their appeal. The City appealed.

The First District's interpretation of R.C. 4117.10 focused on whether the employees' CBA addressed the City's implementation of the leave program. However, as this Court has held, employees cannot litigate an issue that is the subject of a grievance when the collective bargaining agreement has a final and binding arbitration procedure. *Szabo,* 129 Ohio St.3d 122. The employees' CBA contained a final and binding arbitration procedure, and a grievance was already filed regarding the leave program. Further, based on the union's grievance, the leave program must be addressed under the CBA. Allowing the employees' appeals to proceed would not only give them a second bite at the apple regarding their employment claims, but it would essentially eviscerate R.C. 4117.10's limitation on raising a claim in multiple venues.

Political subdivisions throughout the state would be subjected to enormous amounts of litigation and huge expenses to resolve any employment-related case if the First District's interpretation of R.C. 4117.10 stands. Political subdivisions would also lose an incentive to engage in collective bargaining because their agreements would not create a final resolution. Further, the secondary claims against political subdivisions, which are major employers in this state, would increase the burden on the judicial system with excess litigation.

B. An interpretation of R.C. 2506.01 that permits appeals to be taken based solely on the unfounded allegations of an appellant will subject the judicial system, and political subdivisions, to an unfathomable amount of frivolous litigation.

The appeal in this case was brought under R.C. 2506.01. That section provides a limited right to appeal to the court of common pleas for a review of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state. However, this Court has interpreted R.C. 2506.01 appeals to be limited to decisions arising from quasi-judicial hearings. *State ex rel. McArthur v. DeSouza*, 65 Ohio St. 3d 25, 27, 599 N.E. 2d 268 (1992). This Court later clarified that a quasi-judicial hearing occurs only when the appellant is entitled to notice, a hearing, and the presentation of evidence at that hearing. *M.J. Kelly Co. v. City of Cleveland*, 32 Ohio St. 2d 150, 153, 290 N.E. 2d 562 (1972).

In this case, two employees of the City of Cincinnati requested a quasi-judicial appeal hearing before the City's Civil Service Commission regarding whether their placement on leave violated the Civil Service Rules regarding layoffs. Commission staff indicated that the employees were not entitled to a quasi-judicial appeal hearing, but that they could appear before the Commission and request such a hearing. After the employees' appearance, which did not require notice, a hearing, or an opportunity to present evidence under the Civil Service Rules, the Commission denied the employees' request for a quasi-judicial appeal hearing.

The employees appealed the Commission's decision under R.C. 2506.01 to the court of common pleas. The City filed a motion to dismiss the case based on the fact that the decision being appealed did not arise from a quasi-judicial hearing. The common pleas court denied the motion to dismiss, and found for the employees. The City appealed. On appeal, the First District Court of Appeals affirmed and held that the common pleas court had jurisdiction to hear the appeal because the employees' filing with the Commission alleged facts that would have entitled them to a quasi-judicial appeal hearing.

The lower court's interpretation of R.C. 2506.01 focused on whether the employees alleged a claim to the civil service commission which would entitle them to a quasi-judicial hearing. However, when a court considers whether a matter was validly appealed under R.C. 2506.01, the correct consideration is whether the hearing that actually occurred entitled the appellant to a quasi-judicial hearing. *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 141 Ohio St.3d 113, 2014-Ohio-4364, 22 N.E. 3d 1040, ¶ 28 & 36-27. Ohio Revised Code § 2506.01 does not create a right to appeal based solely on the kind of hearing that the appellant wanted. This interpretation would enable individuals to file an appeal under R.C. 2506.01 from almost any decision that a political subdivision makes simply by wording their claim in a creative manner.

Opening the door to R.C. 2506.01 appeals this wide would result in a great deal of increased litigation, some of which would undoubtedly be frivolous. An increase in litigation of this potential volume would burden our judicial system. Further, political subdivisions throughout Ohio would stand to lose immeasurable amounts of taxpayer dollars defending the additional R.C. 2506.01 appeals. Therefore, the implications of this case are vast and far reaching, and it involves matters of public or great general interest.

STATEMENT OF AMICUS INTEREST

The Ohio Municipal League is a non-profit Ohio corporation composed of a membership of more than 700 Ohio cities and villages. The League's members, who collectively employ tens of thousands of employees, are subject to R.C. Chapter 4117 and R.C. Chapters 2505 and 2506. The League and its members have an interest in ensuring the proper application of Ohio's well established public-sector collective bargaining and administrative appeals laws. If the First District's decision stands, the established public-sector collective bargaining law will be weakened, and all Ohio municipal employers will be harmed by the resulting potential increase in frivolous claims and corresponding costs of legal defense to defend against such claims which are

not valid under the statute. Further, if the First District's interpretation of R.C. 2506.01 stands, then well-established precedent will be called into question, and municipalities throughout Ohio will be subject to increased administrative appeals which they will be forced to spend taxpayer dollars to defend.

STATEMENT OF CASE AND FACTS

Like all political subdivisions throughout the country, the City of Cincinnati ("Cincinnati" or "City") felt the devastating impacts of the COVID-19 pandemic. (Opinion ¶ 3). Cincinnati faced the possibility of experiencing a million-dollar budget deficit. *Id*. In an effort to combat the effects of the pandemic, Cincinnati developed the "Temporary Emergency Leave" ("TEL") program. *Id*. at ¶ 1-3. Under the TEL program, employees who were not responsible for critical functions of the City were placed on leave status. *Id*. at ¶ 3. If an employee was placed on a leave status, they had the option of either using accumulated leave, such as sick or vacation time, or electing to go unpaid and seek unemployment compensation from the state. *Id*.

In April of 2020, the City informed two employees, Jeffrey Harmon ("Harmon") and David Beasley ("Beasley") (collectively, the "Employees"), that they were being placed on a three-month leave under the TEL program. *Id*. The Employees are both members of the Cincinnati Organized and Dedicated Employees, Inc. ("CODE") labor union. *Id*. at ¶ 7. The City and CODE had a collective bargaining agreement ("CBA") in place at the time that the Employees were placed on leave status. (Opinion ¶ 1). Section 8.3 of the CBA indicated that contractual grievances should be resolved by final and binding arbitration. (T.d. 25 at 38). The CBA defined a "grievance" as:

> an alleged violation of a specific provision of this Agreement arising under and during the term of this Agreement, except any dispute or difference of opinion concerning a matter or issue addressed by the Cincinnati Civil Service Commission's rules or which could be heard before the Cincinnati Civil Service Commission…

(T.d. 25 at 35).

In April of 2020, CODE initiated a grievance under the CBA on behalf of its bargaining unit, including Harmon and Beasley, related to the City's implementation of the TEL program. (T.d. 25 at 89-92). One of the accusations cited by CODE for the grievance states that "no employee placed on the TEL list has the opportunity to properly displace another employee not on the TEL list who had fewer retention points[.]"

Instead of allowing these disputes to be resolved under the CBA, in May of 2020 the Employees both filed an appeal with the Civil Service Commission ("Commission") of the City indicating that they were "appealing the procedural aspects of [their] lay off to the Civil Service Commission in [their] individual capacity." (T.d. 24 at 10, 49). Harmon pointed to Civil Service Rule 12 and indicated that layoff procedures outlined in that rule were not followed in the implementation of his leave status. (T.d. 24 at 10). Beasley indicated the following regarding his appeal:

> Prior to being laid off, I was not provided the opportunity to fill any vacancies within the Computer System Analyst classification at ETS. Six other Computer Systems Analysts with fewer retention points than me were not laid off. I was not given the opportunity to displace them. I was also not given the opportunity to displace employees with fewer retention points in equivalent… or lower…classification series…

(T.d. 24 at 49). The Employees both essentially cited procedural deficiencies under Civil Service Rule 12, for what they deemed to be layoffs and not leave. Civil Service Rule 12 outlines the procedures under which a City employee may be laid off.

Civil Service Rule 17 outlines what appeals the Commission will hear, how the hearings are conducted, and possible outcomes. The Commission hears appeals regarding dismissals, separations, demotions, suspensions in excess of three working days, displacements, layoffs, results of a criminal background check, results of a classification study, rejections of an

application, the grading of an examination, or failure to meet the minimum qualification for an open competitive, non-competitive, or promotional examination. (City of Cincinnati, Civil Service Rule 17). Appeal hearings under Civil Service Rule 17 are quasi-judicial in nature. The Commission has the power to subpoena and require the attendance of witnesses, to subpoena the production of documents, and to administer oaths. Civil Service Rule 17 does not create a right to appeal being placed on leave.

Because of that fact, staff for the Commission informed the Employees that their requests for a formal appeal hearing were not authorized under the Civil Service Rules. Instead, Commission staff suggested that the Employees could make an appearance before the Commission under Civil Service Rule 2, which would allow the Commission to review their case and determine if a full appeal hearing was appropriate. Civil Service Rule 2 allows individuals or groups which have a matter that might require consideration or a decision from the Commission to request such an appearance, after which Commission staff will make arrangements for the appearance.

The Employees ultimately appeared before the Commission on July 16, 2020, and requested a full hearing of their cases under Civil Service Rule 17 based on the argument that their leave status was a layoff. (T.d. 39 at 1-125). At the appearance, the Commission heard arguments from counsel for the Employees and the City. Ultimately, the Commission determined that they did not have jurisdiction to hear the appeals because the Employees' placement on leave status did not fall under any of the Civil Service Rule 17 categories. (T.d. 39 at 390). Further, the Commission determined that disputes regarding the TEL program should be resolved under the contractual grievance and arbitration procedure of the CBA. (T.d. 39 at 390).

In August of 2020, the Employees filed an appeal under R.C. 2506.01 regarding the Commission's decision. (Opinion ¶ 10). In November of 2020, Cincinnati filed a motion to dismiss

the case. *Id*. at ¶ 8. In February of 2021, the Employees filed a "Consolidated Amended Notice of Appeal and Complaint for Writ of Mandamus." *Id*. at ¶ 10. In response, the City filed a second motion to dismiss arguing that the trial court lacked subject matter jurisdiction over the appeals pursuant to R.C. 4117.10, that the Commission's decision was not appealable under R.C. 2506.01, and that the Employees had failed to state a claim upon which relief could be granted for a writ of mandamus. *Id*. After a hearing, the magistrate judge denied Cincinnati's motion to dismiss. *Id*. at ¶ 12. The case then proceeded as a typical R.C. 2506 appeal. *Id*. After a hearing, the magistrate judge entered a decision reversing the Commission's decision, and concluding that the Commission was required to hold a hearing on the Employees' appeals. *Id*. at ¶ 2.

On appeal, the First District Court of Appeals affirmed the decision of the trial court. As to the authority of the common pleas court to hear the R.C. 2506.01 appeal, the First District held that the common pleas court had jurisdiction to hear the Employees' appeals because the Employees' filing with the Commission alleged facts that would have entitled them to a quasi-judicial appeal hearing. As to whether R.C. 4117.10 divested the Commission of jurisdiction to hear the Employees' appeals, the First District held that R.C. 4117.10 did not divest the Commission of jurisdiction over the appeals because (a) if the Employees' placement on leave constituted a layoff, then the CBA specifically authorized them to appeal their layoff to the Commission, and (b) if their placement on leave did not constitute a layoff, then the issue was not specifically covered by the CBA and the Employees had a right to their appeal.

ARGUMENT

Proposition of Law No. I: The common pleas court did not have subject matter jurisdiction to hear the Employees' R.C. 2506.01 appeal because Civil Service Rule 2 did not require a quasi-judicial hearing.

The trial court did not have subject matter jurisdiction over the Employees' appeal because the appearance conducted by the Commission under Civil Service Rule 2 did not require the

Employees to be provided with notice, a hearing, or an opportunity to present evidence. The decision of a commission of a political subdivision may be appealed under R.C. 2506.01 if it arose out of a quasi-judicial hearing. *M.J. Kelly Co. v. City of Cleveland*, 32 Ohio St. 2d 150, 153, 290 N.E. 2d 562 (1972). A quasi-judicial hearing occurs when an individual is entitled to notice, a hearing, and an opportunity to present evidence. *Id*. Therefore, because the hearing conducted before the Commission was not quasi-judicial, the trial court lacked jurisdiction to hear the Employees' R.C. 2506.01 appeal.

Pursuant R.C. 2506.01 the final orders, adjudications, or decisions of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state may be reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located. However, an administrative appeal under that section can only be granted if the decision being appealed arose from a quasi-judicial proceeding. *M.J. Kelly Co. v. City of Cleveland*, 32 Ohio St. 2d 150, 153, 290 N.E. 2d 562 (1972). When determining if a hearing was quasi-judicial in nature, courts will look to what the law required the agency to do, not what the agency did. *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 141 Ohio St.3d 113, 2014-Ohio-4364, 22 N.E. 3d 1040, ¶ 36. Stated another way, when there is no requirement for notice, a hearing, or an opportunity to present evidence, the hearing is not quasi-judicial. *Id*. When a court considers whether a civil service commission hearing was quasi-judicial, they should consider whether the commission followed the proper procedure outlined in the rule under which they held the hearing, not whether the proper rule was used to justify the hearing. *Id*. at ¶ 28 & 37. If the civil service rule under which a civil service commission reviews a matter does not require notice, a hearing, or the opportunity to introduce evidence, then no quasi-judicial hearing occurs. *State ex rel. McArthur v. DeSouza*, 65 Ohio St. 3d 25, 28, 599 N.E. 2d 268 (1992).

Even if an agency does provide an individual with notice of a hearing and does conduct a hearing, that does not change a hearing that was not quasi-judicial into a quasi-judicial one. *State ex rel. Zeigler v. Zumbar*, 129 Ohio St. 3d 240, 2011-Ohio-2939, 951 N.E. 2d 405, ¶ 21.

This Court decided a substantially similar issue in *State ex rel. Mun. Constr. Equip. Operators' Labor Council v. Cleveland*. In that case, an employee was removed from a position after fourteen months when they did not place highly enough on the eligibility list for their position, for which no eligibility list had previously existed. *Id*. at ¶ 10-11, 26. Civil service commission staff denied the employee's request for a full disciplinary hearing based on their interpretation of the civil service rules because the employee was not terminated for disciplinary reasons, but they did grant him an opportunity to present his case to the civil service commission. *Id*. at ¶ 14-15, 25. The commission conducted a hearing on whether to grant the employee a full disciplinary hearing, and ultimately decided against it. *Id*. at ¶ 17. The union sought a writ of mandamus on the employee's behalf. *Id*. at ¶ 15. This Court, in determining whether the employee had an adequate remedy at law, held that while the civil service rules did require the employee to be given a full hearing, the civil service rule under which the commission considered the employee's request for a full hearing did not require the commission to conduct a full hearing. *Id*. at ¶ 28 & 37. Thus, this Court held that the commission's denial of the request for a full hearing did not arise from a quasi-judicial hearing, and it was not an appealable decision under R.C. 2506.01. *Id*. at ¶ 37.

The First District's opinion on this question errs by focusing on the wrong issue. The First District's opinion focuses on what it believes justified the hearing before the Commission (*i.e.*, that the Employees were laid off). However, as this Court has addressed, the proper consideration is not whether the Commission considered the complaint under the correct rule, but whether they followed the correct procedure under the rule that was cited for the hearing. *Id*. at ¶ 37. In this case,

the proper consideration was whether the rule under which the Commission did consider the matter, Civil Service Rule 2, required notice, a hearing, and an opportunity to present evidence.

In this case, the Commission staff determined that the Employees were not eligible for a full appeal hearing under Civil Service Rule 17. Commission staff did set the matter for an appearance before the Commission under Civil Service Rule 2. Civil Service Rule 2 does not require the Commission to provide notice, a hearing, an opportunity to present evidence, or any other indicia of a quasi-judicial hearing. Regardless of whether the Employees should have been given a full appeal hearing, the appearance before the Commission out of which the decision to deny a full appeal hearing arose was not a quasi-judicial hearing from which a R.C. 2506.01 appeal could be taken. Thus, the trial court lacked subject matter jurisdiction to even hear the Employees' R.C. 2506.01 appeal.

Proposition of Law No. II: The Commission did not have jurisdiction to hear the appeals of the Employees because R.C. 4117.10 removed their jurisdiction in favor of the controlling collective bargaining agreement as evidenced by the labor union's grievance on the same issue.

The jurisdiction of the Commission to hear the Employees' appeal was extinguished by R.C. 4117.10 because that section prohibits employees from getting two bites at the apple when their complaints are resolved via a collective bargaining agreement. Under R.C. 4117.10(A), when a collective bargaining agreement contains a final and binding arbitration procedure, the parties to the agreement, including bargaining-unit employees, are subject only to the grievance procedure. Here, because CODE filed a grievance under the CBA regarding the same issue raised by the Employees' appeal, the Commission was without jurisdiction to hear their appeals.

Ohio Revised Code Chapter 4117 was established to create a comprehensive framework for the resolution of public-sector labor disputes by creating a series of new rights and setting forth specific procedures and remedies for the vindication of those rights. *Franklin County Law Enforcement Ass'n v. Fraternal order of Police, Capital City Lodge No. 9*, 59 Ohio St.3d 167, 169,

572 N.E. 2d 87 (1991). Section 4117.10(A) provides that an agreement between a public employer and an exclusive representative entered into pursuant to R.C. Chapter 4117, governs the wages, hours, and terms and conditions of employment covered by the agreement. Further, R.C. 4117.10(A) explains that if such an agreement provides for a final and binding arbitration of grievances, public employers, employees, and employee organizations are subject solely to that grievance procedure and both the state personnel board of review and civil service commissions have no jurisdiction to receive and determine any appeals related to such grievances. Allowing individuals who receive unfavorable decisions during a collective bargaining agreement arbitration to seek a separate remedy individually would circumvent the processes in place. *State ex rel. Nichols v. Cuyahoga Cty. Bd. Of Mental Retardation & Developmental Disabilities*, 72 Ohio St. 3d 205, 209, 648 N.E. 823 (1995). In fact, R.C. 4117.10(A) was designed to prevent dual litigation through both an arbitration and a separate appeal to a civil service commission. *In re Civ. Serv. Charges Against Piper*, 142 Ohio App. 3d 765, 772, 757 N.E. 2d 3 (2nd Dist. 2001).

This Court decided an identical issue in *State ex rel. Waiters v. Szabo,* 129 Ohio St.3d 122, 2011-Ohio-3088, 950 N.E. 2d 546. In that case, a municipal employee, who was a union member, was terminated by the municipality and the union filed a grievance regarding the termination under the collective bargaining agreement. *Id*. at ¶ 2-3. The municipality and the union resolved the matter via arbitration, but the employee's claim for back-pay was denied. *Id*. at ¶ 3-4. After some time passed and the employee was not re-instated, the employee filed a complaint for a writ of mandamus to compel her reinstatement with back pay. *Id*. at ¶ 7. This Court, citing R.C. 4117.10(A), held that the employee had already been represented by the union in a grievance and arbitration procedure on the issues that she raised, and therefore she was "relegated to the arbitration proceeding" which was in the process of resolving the issues that she had raised. *Id*. at

¶ 13. Further, this Court noted that the employee had already received the benefit of the union's representation in contesting the city's termination of her. *Id.*

The First District's opinion on this issue erred by focusing on an irrelevant portion of the issue at hand. The First District's opinion regarding the interpretation of R.C. 4117.10 focused primarily on whether the TEL program imposed layoffs. The First District held that if a layoff had been imposed, then the Employees had the right under the CBA to seek a full appeal hearing, and that if the imposition of the leave status did not constitute a layoff, then the TEL program was not addressed by the CBA and the Employees had the right to seek a full appeal hearing. However, when a court interprets a contract, they should "construe the language of the parties' agreement to avoid 'manifest absurdity.'" *State ex rel. Ohio Assn. of Pub. School Emp./AFSCME, Local 4, AFL-CIO v. Batavia Local School Dist. Bd. Of Edn.*, 89 Ohio St. 3d 191, 197, 729 N.E. 2d 743 (2000). Under the First District's interpretation of R.C. 4117.10(A), employees could raise a claim under the civil service rules even if a grievance had in fact been filed on the same issue – a plainly absurd result. In this case, the fact that CODE considers the implementation of the TEL program to be covered by the CBA is evident from the fact that they filed a grievance regarding that exact issue. It is unclear why CODE and the City would create an agreement that permits an issue to be resolved in two different ways.

In this case, as in *Waiters*, the Employees are members of a union with a controlling collective bargaining agreement, and the union has initiated a claim under the grievance procedure for the same issues raised by the Employees. The Employees are already receiving the benefit of the union's representation in contesting the implementation of the TEL program, and therefore cannot take a second bite at the apple and pursue their claims individually. Because the union

already raised the grievance under the CBA, which requires final and binding arbitration, the Employees are bound by that procedure and R.C. 4117.10 divested the Commission of jurisdiction.

CONCLUSION

The enormous implications of this case are evident. First, if the First District's interpretation of R.C. 2506.01 stands, then individuals will be able to bring claims simply by phrasing their complaints in a creative way, regardless of the real issue. Second, if the First District's interpretation of R.C. 4117.10 stands, then employees throughout the state will get multiple bites at the apple to resolve employment disputes. Therefore, the Ohio Municipal League respectfully support's the request of the Appellant in asking this Court to accept jurisdiction and reverse the decision of the lower courts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction of Amicus Curiae the Ohio Municipal League on behalf of Defendants-Appellants was served by electronic mail this 2nd day of May, 2023, upon the following:

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