In the
Supreme Court of Ohio

STATE OF OHIO EX REL. CITY OF LAKEWOOD, Relator, vs. JUDGE SHIRLEY STRICKLAND SAFFOLD, Respondent.	:	Case No. 2023-0308

MERIT BRIEF OF RELATOR CITY OF LAKEWOOD IN SUPPORT OF APPLICATION FOR WRIT OF PROHIBITION

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In the
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STATE OF OHIO EX REL. CITY OF LAKEWOOD, Relator, vs. JUDGE SHIRLEY STRICKLAND SAFFOLD, Respondent	: : : : : : : : : :	Case No. 2023-0308 **MERIT BRIEF OF RELATOR CITY OF LAKEWOOD**

I. INTRODUCTION AND SUMMARY OF ARGUMENT

More than three decades of decisive and precedential case law have firmly established that in Chapter 4117 of the Ohio Revised Code – the Public Employee Collective Bargaining Act ("Chapter 4117" or the "Act") – the General Assembly created a mandatory and comprehensive statutory framework for the resolution of all public sector labor disputes. Chapter 4117 creates an exclusive series of rights for public employees and employers, as well as specific procedures and remedies for the vindication of those rights. The Act also creates a specialized body – the State Employment Relations Board ("SERB") – to which the General Assembly granted exclusive, primary jurisdiction to resolve disputes arising under Chapter 4117. The fundamental purpose of the Act is to establish a coherent and focused procedural framework through the statute, the Ohio Administrative Code, and the corresponding body of labor law decisions to govern uniformly Ohio public employee labor issues.

Central to Chapter 4117 is the right of public employees to bargain collectively with their employer through their exclusive, certified bargaining representative over the terms and conditions of their employment. See R.C. 4117.08. When a party with rights under the Act alleges that those

rights have been violated – an "unfair labor practice" ("ULP") – the statute grants SERB primary, exclusive jurisdiction to hear and rule on such allegations.

This case arises wholly from Relator the City of Lakewood's (the "City") collective bargaining relationship with the certified representative of a group of its employees – the American Federation of State, County, and Municipal Employees, AFL-CIO, Ohio Council 8 and Local 1043 (jointly referred to herein as the "Union" or "AFSCME"). The Union expressly acknowledged such in its Application and Motion to Compel Arbitration in the underlying proceedings – i.e., "It is under this CBA [the parties' collective bargaining agreement] that the instant dispute arose."

After the Union grieved the City's termination of a member of the Union, Michael Satink ("Satink"), the parties entered into a collectively bargained last chance agreement ("LCA") in settlement of the grievance. The parties' collective bargaining agreement ("CBA") specifically provided that "all pre-arbitration grievance settlements reached by the Union and the City shall be final, conclusive and binding." Pursuant to the LCA, Satink was reinstated to employment, and in exchange, his rights and remedies under the CBA were amended. Specifically, his right to access the grievance and arbitration provisions in the CBA were modified based on the nature of any future misconduct.

After entering into the LCA, Satink engaged in misconduct. Accordingly, the City terminated his employment. Instead of abiding by the terms of the LCA, which waived "recourse to the grievance or arbitration provisions" of the CBA, the Union filed a grievance challenging Satink's termination, which the City rejected, and the Union sought to advance the grievance to arbitration. Based upon the collectively bargained language of the LCA, the City rejected the Union's attempt to do so.

The Union asserts that the City violated the CBA by failing to advance the grievance to arbitration. However, instead of filing an unfair labor practice charge or a grievance challenging

the City's application and interpretation of the LCA, the Union filed its Application and Motion to Compel Arbitration with the Cuyahoga County Court of Common Pleas. In essence, the Union sought to have Respondent, Judge Shirley Strickland Saffold ("Respondent"), resolve a dispute over the terms of a R.C. Chapter 4117 collectively bargained agreement – i.e., the LCA – and improperly interpret it to determine the parties' obligations with respect to grievance and arbitration rights arising from R.C. Chapter 4117.

The City moved to dismiss the action under Ohio Civ. R. 12(B)(1) based upon Respondent's lack of subject-matter jurisdiction. Respondent instead granted the Union's Application and Motion to Compel Arbitration. In doing so, Respondent allowed the Union to bypass the General Assembly's special statutory scheme for enforcing rights created by Chapter 4117. Furthermore, without jurisdiction to do so, Respondent improperly determined a contract interpretation dispute arising from a collectively bargained agreement. In the face of Respondent's actions, the City was left with no choice but to apply for a writ of prohibition, seeking to vacate and correct Respondent's unauthorized exercise of jurisdiction.

This Court has clearly and unequivocally decided that matters arising under Chapter 4117 fall within the primary, exclusive jurisdiction of SERB. Respondent's lack of jurisdiction over the action is patent and unambiguous. By granting the Union's Application and Motion to Compel Arbitration, Respondent has undermined the clear dictate of the General Assembly – that all public sector labor disputes be resolved through a mandatory and comprehensive statutory framework. Based upon Respondent's patent and unambiguous lack of jurisdiction, this Court must issue a writ of prohibition to vacate Respondent's action in granting the Union's Motion to Compel Arbitration and directing Respondent to immediately cease any further exercise of jurisdiction.

II. SUMMARY OF FACTS

The pertinent facts underlying the City's request for a writ of prohibition are straightforward and uncontroverted. Those facts are set forth in detail in the City's Complaint for Original Action in Prohibition and corresponding affidavits and exhibits, and are briefly summarized below.

The City is a chartered, home-rule municipal corporation and a "public employer" as defined in R.C. §4117.01(B). (See, Complaint at ¶¶ 1-2; Affidavit of Patrick Watts ("Watts. Affd.") at ¶ 2; Affidavit of Claudia Dillinger ("Dillinger Affd.") at ¶).[1] The Union is an "employee organization," as defined in R.C. §4117.01(D) and is the "exclusive representative" of a group of employees, which included Satink, in the City's Department of Public Works. (See, Complaint at ¶ 8; Watts Affd. at ¶ 3; Dillinger Affd. at ¶ 3). The City and the Union are parties to a CBA, which was effective from January 1, 2020 through December 31, 2022. (See, Complaint at ¶ 7 and Ex. 1; Watts Affd. at ¶ 4; Dillinger Affd. at ¶ 4). The CBA contains a grievance and arbitration procedure, which defines "grievance" as a dispute or difference concerning "the interpretation and/or application of and/or compliance with any provision" of the CBA. (See, Complaint at ¶ 10 and Ex. 1 at p. 8).

In resolution of a prior grievance challenging the City's termination of Satink for misconduct, the parties negotiated and entered into the LCA. (See, Complaint at ¶¶ 11-15 and Exs. 2-3; Dillinger Affd. at ¶¶ 5-8). As set forth in the parties' CBA, "All decisions of arbitrators and *all pre-arbitration grievance settlements reached by the Union and the City shall be final, conclusive and binding* on the City, the Union and the employee(s)." (See, Complaint at ¶ 10 and Ex. 1 at p. 9) (emphasis added). Among other provisions, the LCA contained two clauses directly

[1] These affidavits were submitted as an attachment to the Complaint on March 1, 2023.

addressing the Union's and Satink's right to utilize the CBA's grievance procedure. First, the LCA provided that Satink would submit to and comply with the City's Employee Assistance Program ("EAP"), and that his failure to do so would result in immediate termination. (See, Complaint at ¶ 14 and Ex. 3 at ¶ 4). Under those circumstances, the Union and Satink would retain the right to utilize the CBA's grievance procedure "only as to the fact of his non-compliance but, if non-compliance is demonstrated, not as to the appropriateness of termination." (See, Complaint at ¶ 14 and Ex. 3 at ¶ 4). Second, the LCA provided:

> If, during the term of this Agreement, Satink violates any City work rule or policy pertaining to professional, respectful, and workplace appropriate behavior when performing assigned work responsibilities, *he shall be subject to immediate termination without recourse to the grievance or arbitration provisions of the Collective Bargaining Agreement*.

(See, Complaint at ¶ 14 and Ex. 3 at ¶ 7) (emphasis added). Notably, *unlike the EAP-related clause*, the parties did not include any right for the Union or Satink to utilize the grievance procedure as to the fact of Satink's violation of the work rule or policy. In addition, the LCA provided: "This Agreement is entered into on a non-precedent setting basis and does not alter the Parties respective contractual rights or obligations *except as expressly set forth herein*." (See, Complaint at ¶ 14 and Ex. 3 at ¶ 10) (emphasis added).

Subsequently, Satink engaged in conduct that violated the LCA and resulted in disciplinary charges. (See, Complaint at ¶ 16; Dillinger Affd. at ¶ 9). Following a pre-disciplinary hearing, the City terminated his employment. (See, Complaint at ¶ 17; Dillinger Affd. at ¶ 10). The Union filed a grievance challenging Satink's termination and alleging violations of the CBA. (See, Complaint at ¶ 18 and Ex. 4; Dillinger Affd. at ¶ 11). In response, the City noted that, pursuant to the LCA, the Union and Satink waived any right to grieve or arbitrate the termination. (See, Complaint at ¶ 19; Dillinger Affd. at ¶ 12).

The Union did not file a ULP with SERB nor did it file a grievance alleging that the City breached the LCA or CBA by rejecting the Union's attempt to process the grievance over Satink's termination. Instead, the Union filed its Application and Motion to Compel Arbitration in the Cuyahoga County Common Pleas Court. (See, Complaint at ¶ 20 and Ex. 5; Watts Affd. at ¶ 5; Dillinger Affd. at ¶ 13). In response, the City filed its motion to dismiss for lack of subject-matter jurisdiction. (See, Complaint at ¶ 25 and Ex. 7; Watts Affd. at ¶ 5). In a journal entry on January 30, 2023, without any written analysis or explanation, Respondent denied the City's Motion to Dismiss and granted the Union's Application and Motion to Compel Arbitration. (See, Complaint at ¶¶ 29-30 and Ex. 11; Watts Affd. at ¶ 12).

On March 1, 2023, the City filed its Complaint with the Ohio Supreme Court and an Application for a Peremptory Writ of Prohibition. The City also filed a Memorandum in Support of its Application for a Peremptory Writ of Prohibition.

On July 12, 2023, the Ohio Supreme Court issued an order that, among other things, granted an alternative writ and set a schedule for the presentation of evidence and filing of briefs. On July 1, 2023, the parties submitted evidence and related notices. Now, the City submits this Merit Brief in Support of its Application for a Peremptory Writ of Prohibition.

III. ARGUMENT

This Court's precedent has long established that, when a union asserts that a public sector employer has violated its collective bargaining rights under R.C. Chapter 4117, the matter falls exclusively within SERB's jurisdiction and not that of the State's Courts of Common Pleas. Respondent exercised jurisdiction over a lawsuit asserting one essential claim – that the City was required to arbitrate a dispute under the terms of the LCA – a collectively bargained agreement. As the underlying dispute arose entirely from R.C. Chapter 4117-created rights, it is subject solely to the remedies set forth therein, and Respondent had no subject-matter jurisdiction over it.

Despite this lack of jurisdiction, Respondent improperly interpreted and resolved a dispute over the terms and conditions of the collectively bargained LCA.

When a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions. State ex rel. Mayer v. Henson, 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223, ¶ 12, citing State ex rel. Dannaher v. Crawford, 78 Ohio St.3d 391, 393, 678 N.E.2d 549 (1997). A suit for a writ of prohibition is properly directed to the Ohio Supreme Court, which has original jurisdiction pursuant to the Ohio Constitution, Article IV, § 2(B)(1)(d).

For a writ of prohibition to issue, the relator must establish that: (1) the respondent is about to exercise or has exercised judicial power; (2) the exercise of judicial power is legally unauthorized; and (3) if the writ is denied, relator will incur injury for which no adequate legal remedy exists. State ex rel. City of Cleveland v. Russo, 156 Ohio St. 3d 449, 2019-Ohio-1595, 129 N.E.3d 384, ¶ 8, citing State ex rel. Elder v. Camplese, 144 Ohio St. 3d 89, 2015-Ohio-3628, 40 N.E.3d 1138, ¶ 13. Regarding the third element, this Court has held that, where the respondent's lack of subject-matter jurisdiction is "patent and unambiguous," the relator is not required to establish that it lacks an adequate remedy at law, because the availability of alternate remedies like appeal is immaterial to the relator's entitlement to the writ. State v. Lewis, 99 Ohio St. 3d 97, 2003-Ohio-2476, 789 N.E.2d 195, ¶ 18; citing State ex rel. Goldberg v. Mahoning Cty Bd. of Electors, 93 Ohio St. 3d 160, 101, 753 N.E.2d 192 (2001); see also, State ex rel. Sapp v. Franklin County Court of Appeals, 118 Ohio St. 3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 15, citing State ex rel. Columbus S. Power Co. v. Fais, 117 Ohio St. 3d 340, 2008-Ohio-849, 884 N.E.2d 1, ¶ 16. This Court has further explained that:

> If a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition and mandamus will issue to prevent any further unauthorized exercise

> of jurisdiction ***and to correct the results of prior jurisdictionally unauthorized actions***.

State ex rel. Sapp v. Franklin County Court of Appeals, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 15 (emphasis added), citing State ex rel. Mayer v. Henson, 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223, ¶ 12, and State ex rel. Powell v. Markus, 115 Ohio St.3d 219, 2007-Ohio-4793, 874 N.E.2d 775, ¶ 7.

Here, the first element is satisfied because Respondent has exercised judicial power in the underlying case. Faced with the City's Motion to Dismiss for Lack of Subject-Matter Jurisdiction, Respondent nonetheless exercised jurisdiction by granting the Union's Motion to Compel Arbitration – and did so without any written analysis or explanation.

Accordingly, the second element is the "dispositive issue." State ex rel. Duke Energy Ohio, Inc. v. Hamilton County Court, 126 Ohio St.3d 41, 2010-Ohio-2450, 930 N.E.2d 299, ¶ 17. As set forth herein, Respondent had no jurisdiction over the underlying matter, which arose solely from and depended upon collective bargaining rights created by R.C. Chapter 4117.

Collective bargaining is the exclusive province of R.C. Chapter 4117 and SERB. This Court succinctly summarized SERB's exclusive jurisdiction over public sector collective bargaining matters when it explained that:

> [I]f a party asserts claims that arise from or depend on the collective bargaining rights created by Chapter 4117, **the remedies provided in that chapter are exclusive**.

Franklin County Law Enforcement Assoc. v. Fraternal Order of Police Capital City Lodge No. 9, 59 Ohio St. 3d 167, 171, 572 N.E.2d 87 (1991), at paragraph two of the syllabus (emphasis added). Over the decades, this Court has reiterated this straightforward mandate. See, e.g., State ex rel. City of Cleveland v. Russo, 156 Ohio St. 3d 449, 2019-Ohio-1595, 129 N.E.3d 384, ¶ 13.

State courts have no jurisdiction to entertain actions alleging violations of Ohio's Collective Bargaining Act. Indeed, when the courts of common pleas have decided to retain

jurisdiction – including the Cuyahoga County Court of Common Pleas – this Court has issued a writ of prohibition extinguishing that court's attempted exercise of jurisdiction. See, e.g., State ex rel. City of Cleveland v. Russo, 156 Ohio St. 3d 449, 2019-Ohio-1595, 129 N.E.3d 384; State ex rel. City of Cleveland v. Sutula, 127 Ohio St. 3d 131, 2010-Ohio-5039, 937 N.E.2d 88.

A. Relator's Response to the Issue Posed in the Court's July 12, 2023 Order

In the July 12, 2023 order, the Court directed the parties "to brief the issue of whether the common pleas court's jurisdiction to enforce an arbitration provision under R.C. 2711.03(A) applies to an arbitration provision contained in a collective bargaining-agreement under R.C. 4117.09(B)(1)." In addition to the argument set forth below with respect to the City's propositions of law, the City first addresses why R.C. 2711.03(A) does not vest the Courts of Common Pleas with jurisdiction in this context, as jurisdiction lies exclusively with SERB.

As an initial matter, the Ohio Legislature enacted R.C. Chapter 4117 long after it enacted the Ohio Arbitration Act, R.C. Chapter 2711. See Amalgamated Transit Union Local 268 v. Greater Cleveland Regional Transit Auth., 8th Dist. No. 108883, 2020-Ohio-3120, ¶ 35 ("[T]he Ohio legislature . . . enacted Chapter 4117 (***effective Apr. 1, 1984***), which requires public employers to collectively bargain with its employees, and created [SERB]. SERB has exclusive jurisdiction over claims arising from or depending on the collective bargaining rights created by Chapter 4117.") (emphasis added); BST Ohio Corp. v. Wolgang, 165 Ohio St. 3d 110, 2021-Ohio-1785, 176 N.E.3d 31, ¶ 33 (Fisher, J., concurring) ("[N]early a century ago, the General Assembly enacted the Ohio Arbitration Act, which is now codified in R.C. Chapter 2711. Am.S.B. No. 41, 114 Ohio Laws 137 (***effective 1931***).") (emphasis added). With this later enacted statute, subject to limited, narrow exceptions, the Ohio Legislature removed jurisdiction from the Courts of Common Pleas and vested jurisdiction exclusively with SERB with respect to claims arising from

or depending upon R.C. Chapter 4117 rights, including the grievance and arbitration rights at issue in the present matter.

"In Revised Code Chapter 4117, [titled] *Public Employees' Collective Bargaining*, the legislature 'established 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.'" FOP Ohio Labor Council, Inc. v. City of Uhrichsville, 5th Dist. Tuscarawas No. 2018 AP 01 0002, 2018-Ohio-3344, ¶ 25 (quoting State ex rel. City of Cleveland v. Sutula, 127 Ohio St.3d 131, 2010-Ohio-5039, 937 N.E.2d 88) (emphasis added). When "a party asserts claims that arise from or are dependent on the collective bargaining rights created by R.C. Chapter 4117, ***the remedies provided in that chapter are exclusive***." State ex rel. FOP, Ohio Labor Council v. Court of Common Pleas, 76 Ohio St.3d 287, 289, 1996-Ohio-424, 667 N.E.2d 929 (emphasis added).

SERB "is an agency of the state of Ohio created by R.C. Chapter 4117 and charged with the administration of the . . . Act." State ex rel. Brecksville Edn. Assn. v. State Emp. Relations Bd., 74 Ohio St.3d 665, 666, 1996-Ohio-310, 660 N.E.2d 1199 (1996). The General Assembly has identified certain matters for SERB to address in the first instance. State ex rel. Ohio Civ. Serv. Emples. Assn. v. State, 146 Ohio St.3d 315, 2016-Ohio-478, 56 N.E.3d 913, ¶52. R.C. 4117.11(A) enumerates various types of unlawful activity, identified as public employer unfair labor practices, making it unlawful for a public employer to, *inter alia*, "interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117," to "refuse to bargain collectively," or to "[e]stablish a pattern or practice of repeated failures to timely process grievances and requests for arbitration of grievances." See R.C. 4117.11 (A)(1), (5), and (6). R.C. 4117.11 and 4117.12 bestow upon SERB the exclusive authority to investigate and render determinations regarding ULPs. See R.C. 4117.11 and 4117.12. The Supreme Court has

reaffirmed that SERB "has exclusive jurisdiction to decide matters committed to it pursuant to R.C. Chapter 4117." Uhrichsville, 2018-Ohio-3344 at ¶ 25-26 (quoting Franklin Cty. Law Enforcement Assn. v. FOP, Capital City Lodge No. 9, 59 Ohio St.3d 167, 169,572 N.E.2d 87 (1991)). With very limited, narrow exceptions, R.C. Chapter 4117 does not vest Ohio's Courts of Common Pleas with jurisdiction over Chapter 4117 matters, beyond appeals from, or enforcement of, orders rendered by SERB. See R.C. 4117.13(A), (F). As this Court has noted, "it was clearly the intention of the General Assembly to vest SERB with broad authority to administer and enforce R.C. Chapter 4117." Lorain City School Dist. Board of Education v. SERB, 40 Ohio St. 3d 257, 266, 533 N.E.2d 264 (1988).

This Court has repeatedly explained that, in determining whether SERB has exclusive, original jurisdiction, "the dispositive test is whether the claims 'arise from or depend on the collective bargaining rights created by R.C. Chapter 4117.' . . . Therefore, 'SERB has exclusive jurisdiction over matters within R.C. Chapter 4117 in its entirety, not simply over unfair labor practices claims.'" State ex rel. City of Cleveland v. Sutula, 127 Ohio St. 3d 131, 2010-Ohio-5039, 937 N.E.2d 88, ¶ 20, quoting Franklin Cty. Law Enforcement Assn., 59 Ohio St.3d 167, at paragraph two of the syllabus, State ex rel. Fraternal Order of Police, Ohio Labor Council v. Court of Common Pleas, 76 Ohio St.3d 287, 289, 667 N.E.2d 929 (1996), Assn. of Cleveland Fire Fighters, Local 93 of the Internatl. Assn. of Fire Fighters v. Cleveland, 156 Ohio App.3d 368, 2004-Ohio-994, ¶ 12, and Carter v. Trotwood-Madison City Bd. of Edn., 181 Ohio App.3d 764, 2009-Ohio-1769, 910 N.E.2d 1088, ¶ 64 (2d Dist.). Again, the dispositive test is whether the claims "arise from or depend on the collective bargaining rights created by R.C. Chapter 4117." Id, citing Franklin Cty. Law Enforcement Assn., 59 Ohio St.3d 167 at paragraph two of the syllabus. Importantly, among the rights created in Chapter 4117 are those involving grievances

and labor arbitration, which exists solely as a creation of the Act: they were expressly authorized by the General Assembly in R.C. 4117.09(B)(1).

SERB's "exclusive jurisdiction to resolve [ULP] charges is vested in SERB in two general areas: (1) where one of the parties filed charges with SERB alleging a [ULP] under R.C. 4117.11 and (2) where a complaint brought before the common pleas court alleges conduct that constitutes a [ULP] specifically enumerated in R.C. 4117.11." Sutula, at ¶16. Accordingly, the Union's failure to file a ULP charge is not dispositive of the jurisdictional issue, as it alleges conduct that could constitute an unfair labor practice. Sutula, at ¶21 ("Even though the union did not separately file a ULP, its claims still alleged conduct constituting a ULP -- i.e., alleging that, 'by ignoring a valid [CBA], the city is interfering with its employees' statutory collective-bargaining rights and is refusing to bargain collectively."); Harouff v. Akron Regional Metro Transit Auth., 9th Dist. Summit No. 13852, 1989 Ohio App. LEXIS 1642, at *8 (May 3, 1989) ("A complaint which states a claim that reads as a violation of the specific enumerated provisions of Section 4117.11, regardless of the terms that the complaint uses, should be brought before [SERB] pursuant to Section 4117.12, and not be reviewable by the Court of Common Pleas until [SERB] has released a final order.").

Specifically, an employer commits an unfair labor practice by refusing to comply with a collective bargaining agreement's grievance and arbitration procedures, without a valid basis to do so. See, e.g., In re Tuscarawas Township Board of Trustees, SERB No. 2009-001, 2009 OH SERB LEXIS 13 (Aug. 31, 2009) (referred to herein as "*Tuscarawas*"); In re Franklin County Sheriff, SERB No. 91-001, 1991 OH SERB LEXIS 1 (Jan. 8, 1991). For example, in *Tuscarawas*, the union filed contemporaneous grievances challenging the terminations of two employees, which the employer refused to process. See 2009 OH SERB LEXIS 13, *8-9. The union then filed an unfair labor practice charge based upon the employer's refusal. An Administrative Law Judge

issued a proposed order stating that the employer "violated Ohio Revised Code §§ 4117.11(A)(1), (A)(5), and (A)(6) by failing to follow the contractual procedure for discipline and grievances." Id. at *2. Upon its review of the proposed order, SERB analyzed the facts as to each of the forgoing subsections and ultimately held the employer violated R.C. 4117.11(A)(1) and (A)(6). Id. at *17-23.

With respect to R.C. 4117.11(A)(1),[2] SERB stated: "A violation will be found if, under the totality of the circumstances, it can be reasonably concluded that the employees were interfered with, restrained, or coerced in the exercise of their O.R.C. Chapter 4117 rights by the employer's conduct." Id. at *17-18. With respect to R.C. 4117.11(A)(6),[3] SERB stated: "A public employer must process grievances and requests for arbitration. O.R.C. § 4117.11(A)(6) 'contains a specific unique violation for failure to process grievances and requests for arbitration of grievances.'" Id. at *18, quoting In re Franklin County Sheriff, SERB No. 91-001, 1991 OH SERB LEXIS 1, *5 (Jan. 8, 1991). Despite the fact that the case only involved two contemporaneously filed grievances, SERB nonetheless held the employer's "failure to process these grievances, or allow them to advance to arbitration" constituted a "practice" for purposes of R.C. 4117.11(A)(6). Id. at *20. Ultimately SERB held:

> [T]he Township's refusal to process and arbitrate Mr. Faber's and Mr. Knerr's grievances violates O.R.C. §§ 4117.11(A)(1) and (A)(6). The Township's obligation to process grievances through arbitration is set forth in… [the collective bargaining agreement, which] requires "just cause" for employee discipline and the presence of a Union officer in the case of suspension or discharge… The Township has recognized these contractual requirements during the disciplinary process. The grievances concern employee discipline, a subject matter covered by the [collective bargaining agreement], and the Township is obligated under O.R.C. Chapter 4117

[2] R.C. 4117.11(A)(1) provides: "It is an unfair labor practice for a public employer, its agents, or representatives to… [i]nterfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances."
[3] R.C. 4117.11(A)(6) provides: "It is an unfair labor practice for a public employer, its agents, or representatives to… [e]stablish a pattern or practice of repeated failures to timely process grievances and requests for arbitration of grievances."

> and the [collective bargaining agreement] to process the grievances through arbitration. By failing to do so, the Township violates O.R.C. §§ 4117.11(A)(1) and (A)(6).

Id. at *20-21.

Furthermore, although SERB in *Tuscarawas* ultimately did not find a violation of R.C. 4117.11(A)(5),[4] its analysis of that subsection is insightful. Specifically, SERB expounded:

> The [collective bargaining agreement] contains the grievance machinery that culminates in final and binding arbitration. The grievance procedure is an extension of the collective-bargaining process… But the Township's refusal to process the grievances to arbitration does not *automatically* constitute a refusal to bargain under O.R.C. § 4117.11(A)(5). The circumstances of each case will determine whether the employer's conduct constitutes a refusal to bargain.

Id. at *21-22 (emphasis in original). This fact-specific analysis falls exclusively within SERB's jurisdiction under R.C. Chapter 4117.

Accordingly, as demonstrated in *Tuscarawas*, the Union's underlying assertions – i.e., that "the City is violating the CBA by refusing to abide by its agreement to arbitrate the instant grievance" – set forth an allegation of an unfair labor practice over which SERB has exclusive jurisdiction. Ultimately, the Union's allegations are baseless on account of the controlling language of the LCA. Nevertheless, Respondent lacked any authority to exercise jurisdiction over the underlying dispute and acted improperly by granting the Union's Motion to Compel Arbitration.

The Supreme Court has held that "[i]f a party asserts rights that are ***independent*** of R.C. Chapter 4117, the party's complaint may properly be heard in common pleas court." Franklin Cty. Law Enforcement Assn., 59 Ohio St.3d 167, syllabus at ¶2 (emphasis added). However, "[a]ny claim which is independent of R.C. Chapter 4117, such as a breach of contract enforcement, still

[4] R.C. 4117.11(A)(5) provides: "It is an unfair labor practice for a public employer, its agents, or representatives to… [r]efuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117 of the Revised Code."

falls solely within the jurisdiction of SERB if the asserted claim arises from or is dependent on the collective bargaining rights created by R.C. Chapter 4117." State ex rel. FOP, OLC v. Court of Common Pleas, 76 Ohio St.3d 287, 290 (1996), citing State ex rel. Clev. City Sch. Dist. Bd. of Edn. v. Pokorny, 105 Ohio App.3d 108, 110 (1995); see also Johnson v. Ohio Council Eight, 146 Ohio App.3d 348, 351 (8th Dist. 2001) ("When a party asserts a claim sounding in contract, a court must always ask: Which contract? The answer in this case is that we are dealing with a public employees collective bargaining contract. These contracts are exclusively within the jurisdiction of SERB").

Here, the Union fails to identify any rights underlying its claim that are "independent" of R.C. Chapter 4117. As discussed further below, the Union attempts to rely upon R.C. Chapter 2711, but the underlying "right" that it seeks to vindicate – a purported right to arbitrate a labor grievance – unquestionably arises from and depends on Chapter 4117. The Ohio Arbitration Act sets forth a procedural mechanism to request judicial enforcement of an arbitration agreement, but that statute does not confer rights. As the underlying rights at issue arise from and depend upon R.C. 4117, SERB's jurisdiction is exclusive. See Staple v. City of Ravenna, 11th Dist. Portage No. 2021-P-0070, 2022-Ohio-261, ¶ 17.

Finally, it should be noted that R.C. 4117.09(B)(1)'s statement that "[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" does not vest the Courts of Common Pleas with original jurisdiction. "It is well established… that '[t]his section does not provide a right to an original action in the court of common pleas.'" Lemay v. Univ. of Toledo Med. Ctr., 6th Dist. Lucas No. L-17-1182, 2018-Ohio-2339, ¶ 20, quoting Johnson v. Ohio Council Eight, 146 Ohio App.3d 348, 352, 766 N.E.2d 189 (8th Dist.2001). "Rather, the section requires that any collective bargaining agreement contain a two step procedure

- a grievance procedure with arbitration first, and ultimately the right to file in common pleas court." Id.; State ex. rel. Wilkinson v. Reed, 99 Ohio St.3d 106, 2003-Ohio-2506, 789 N.E.2d 203, ¶ 19 (same); Guinn v. Cuyahoga Metro Housing Auth., 8th Dist. No. 110465, 2021-Ohio-4212, ¶ 7 (same); see also Shearer v. Piqua, 1991 Ohio App. LEXIS 5415 ("R.C. 4117.09(B)(1) should be construed to mean that suits for violation of agreements may be brought when the agreement does not provide for binding arbitration. When, as here, the agreement provides for final and binding arbitration the remedy is limited to the enforcement of the award."); Bailey v. Beasley, 10th Dist. Franklin No. 09AP-682, 2010-Ohio-1146, ¶ 16 ("[W]e reject [the plaintiff's] argument that R.C. 4117.09(B)(1) invests the trial court with subject-matter jurisdiction over his claim for violations of the CBA.").

In sum, and as further elaborated upon below, R.C. 2711.03(A) does not vest the Courts of Common Pleas with jurisdiction relative to an arbitration provision contained in a collective bargaining agreement under R.C. 4117.09(B)(1).

B. Propositions of Law and Related Argument

Proposition of Law No. 1:

Disputes Arising from Collective Bargaining Between a Public Employer and the Exclusive Representative of a Group of Public Employees Fall Squarely and Exclusively within SERB's Authority and Jurisdiction.

At its core, this matter arises from the parties' disagreement over the meaning of the language of Paragraph 7 of the LCA – in particular, whether the Union waived its right to grieve and arbitrate Satink's termination. There is no dispute that the LCA is a collectively bargained agreement, which modified the parties' CBA. Because this matter emanates from a collectively bargained agreement, the rights and obligations under that agreement arise from and are dependent upon R.C. Chapter 4117. As such, Respondent lacked authority to exercise jurisdiction over the parties' dispute and to interpret and apply the terms of a collectively bargained agreement. Instead,

the dispute should have been resolved either by: (1) SERB, pursuant to the procedures set forth in R.C. 4117.12 governing ULPs; or (2) through the grievance and arbitration procedure in the parties' CBA, which provides a resolution mechanism for disputes over "the interpretation and/or application of and/or compliance with" the CBA. However, the Union never filed a ULP, nor did it file a grievance alleging the City breached the LCA or CBA by refusing its requests to process the grievance and proceed to arbitration over Satink's termination.

Upon the Union's request and without any written analysis or explanation, Respondent improperly adjudicated the underlying dispute over the meaning of the parties' LCA – i.e., in granting the Union's Motion to Compel, Respondent necessarily determined that the language of the LCA did not constitute a waiver of the Union's right to grieve and arbitrate Satink's termination. By interpreting a collectively bargained agreement and determining the parties' rights under that agreement, Respondent supplanted the exclusive jurisdiction of SERB. "When a party asserts a claim sounding in contract, a court must always ask: Which contract? The answer in this case is that we are dealing with a public employees collective bargaining contract. **These contracts are exclusively within the jurisdiction of SERB**." Johnson v. Ohio Council Eight, 146 Ohio App. 3d 348, 351, 766 N.E.2d 189 (8th Dist. 2001) (emphasis added).

In sum, Respondent patently and unambiguously lacked jurisdiction as the Union's claim arose from and depended upon collective bargaining rights created by R.C. Chapter 4117. As such, a writ of prohibition is necessary to vacate the result of Respondent's improper exercise of jurisdiction in interpreting and resolving a dispute over the meaning of the parties' collectively bargained agreement.

Proposition of Law No. 2:

A Public Employees Union Cannot Evade SERB's Exclusive Jurisdiction by Relying on Ohio's Arbitration Act.

The Union asserted that its underlying filing was "pursuant to R.C. § 2711.03." (See, AFSCME's Application and Motion to Compel at ¶1). In essence, the Union seeks to do an end-run around R.C. Chapter 4117 (and SERB's exclusive jurisdiction) by relying on Ohio's Arbitration Act. However, the Union also states that "[i]t is under [the parties'] CBA that the instant dispute arose." (See, id. at ¶4). As the foundation of that contention is a collectively bargained agreement, the sole basis for the relief the Union seeks arises under R.C. Chapter 4117. Therefore, Respondent patently and unambiguously lacked jurisdiction.

The Union's reference to Ohio's Arbitration Act, R.C. Chapter 2711, in its Motion to Compel Arbitration does not defeat SERB's exclusive jurisdiction. Courts "refuse to allow form to prevail over substance and to condone a transparent attempt to contravene R.C. Chapter 4117 . . . ." State ex rel. Ohio Dept. of Mental Health v. Nadel, 1st Dist. Hamilton No. C-020255, 2002-Ohio-4449, ¶ 16 ("The true nature . . . falls squarely within the ambit of R.C. Chapter 4117. Accordingly, we have examined the motion not for what it purports to be, but for what it is. It is a claim alleging unfair labor practices.").

Courts have rejected similar attempts to rely upon R.C. Chapter 2711 as an avenue to avoid SERB's exclusive jurisdiction over matters arising from R.C. Chapter 4117. For example, last year, the Eleventh District held:

> Despite the fact that [an employee's] complaint does not allege violations of Chapter 4117 in his complaint, substantively his claims stem from a labor dispute and resolution process set forth in the CBA, which stem from rights created in Chapter 4117. **The mere fact that [the employee] couches his allegations as being under R.C. 2711 is insufficient to vest jurisdiction in the common pleas court**. . . . Because [the employee's] complaint is based on rights afforded him by Chapter 4117, his complaint falls within the exclusive jurisdiction of SERB.

Staple v. City of Ravenna, 11th Dist. Portage No. 2021-P-0070, 2022-Ohio-261, ¶ 17,[5] citing State ex rel. Ohio Dept. of Mental Health v. Nadel, 98 Ohio St.3d 405, 2003-Ohio-1632, 786 N.E.2d 49, ¶ 23.

In *Staple*, the city-employer terminated a police officer, who filed a grievance challenging his termination. Staple, 2022-Ohio-261, ¶¶ 2-3. After the grievance process, the union submitted a demand for arbitration. See id. at ¶ 5. However, the city claimed the demand was untimely and, accordingly, refused to move the matter to arbitration. See id. The officer then filed an application in court seeking enforcement of the arbitration provision under R.C. Chapter 2711 and declaratory relief as to: (a) whether the issue of arbitrability was within the subject-matter jurisdiction of the arbitrator; and (b) whether the arbitration demand was timely. See id. at ¶ 6. After initiating the state court proceedings, the officer also filed a ULP with SERB. See id. at ¶ 7. On the city's motion, the Court of Common Pleas dismissed the state court action for lack of subject-matter jurisdiction. See id. On appeal, the Eleventh District affirmed and rejected the argument that R.C. 2711 vested the court with jurisdiction. Irrespective of the officer's filing of the ULP, the court explained that it "must decide whether the allegations in Mr. Staple's complaint, taken as true, are based on rights afforded him by R.C. 4117." See id. at ¶ 16. In answering that question, the court held: "It is clear from the record that Mr. Staple's **claims are entirely dependent on the collective bargaining rights created by Chapter 4117, primarily labor arbitration**, as set forth in R.C. 4117.09(B)(1)," which provides for grievance and arbitration procedures in public-sector collective bargaining agreements. See id. at ¶ 17 (emphasis added). Accordingly, the *Staple* Court properly held that the matter fell "within the exclusive jurisdiction of SERB." See id.

[5] On June 7, 2022, this Court declined to accept jurisdiction over an appeal of the Eleventh District's decision in *Staple*, stating: "Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4)." See June 7, 2022 Entry in Case No. 2022-0274.

Like the court in *Staple*, Respondent was faced with the Union's attempt to bypass SERB's exclusive jurisdiction by relying on R.C. 2711 to compel arbitration. However, as the matter arose from a dispute over a collectively bargained right – i.e., the rights to grieve and arbitrate under the CBA and, more specifically, whether those rights were waived under the LCA – the Union's claim was entirely dependent on the rights created by R.C. Chapter R.C. 4117. Accordingly, as did the court in *Staple*, Respondent should have dismissed the matter for lack of subject-matter jurisdiction.

Similarly, in 2020, the Eighth District upheld the dismissal of a union's motion to compel arbitration based upon a lack of subject-matter jurisdiction. See Amalgamated Transit Union Local 268 v. Greater Cleveland Regional Transit Auth., 8th Dist. No. 108883, 2020-Ohio-3120 (referred to herein as "*GCRTA*"). In *GCRTA*, the union sought to pursue interest arbitration with respect to a dispute over the terms of a successor contract. The employer resisted the union's efforts to engage in interest arbitration, maintaining that the dispute had to be resolved under the procedures set forth in R.C. 4117.14. The union then filed an action in Cuyahoga County Common Pleas Court seeking to compel arbitration under R.C. Chapter 2711. The employer filed a motion to dismiss for lack of subject-matter jurisdiction, which the trial court granted as the union's claims "arise from or depend on the collective bargaining rights created by R.C. Chapter 4117 and fall within the exclusive jurisdiction of SERB." See id. at ¶ 13. On appeal, the Eighth District affirmed and held that "the trial court properly dismissed this case for lack of subject-matter jurisdiction." See id. at ¶ 37.

Furthermore, although it did not involve an application under R.C. 2711, this Court's decision in Franklin County Sheriff's Department v. Fraternal Order of Police, 59 Ohio St.3d 173, 572 N.E.2d 93 (1991) is instructive. In *Franklin*, the union submitted grievances regarding the promotion of employees. In response, the sheriff-employer filed an action in common pleas court

seeking a declaratory judgment under R.C. 2721 stating that the grievances were outside the scope of the relevant collective bargaining agreements. Subsequently, the union filed a ULP charge with SERB alleging the employer "refused to follow the grievance procedure set forth in the collective bargaining agreements." See id. at 175. The trial court subsequently dismissed the employer's declaratory judgment action for a lack of subject-matter jurisdiction, stating "the grievances are filed under the collective bargaining agreement, specifically reference the collective bargaining agreement code sections that have been violated, and therefore are the exclusive jurisdiction of SERB to review and arbitrate." See id. at 173. The court of appeals reversed and incorrectly held that "SERB's authority to determine an unfair labor practice charge does not deprive the courts of common pleas of the general declaratory judgment jurisdiction and capacity to determine arbitrability pursuant to R.C. Chapter 2721." See id. Correcting this erroneous conclusion, this Court reversed, emphasizing that R.C. 4117.09 states that a public-sector collective bargaining agreement "*shall contain* a provision that . . . [p]rovides 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." See id. at 174 (emphasis in original). This Court held:

> [B]ased on the foregoing statutory provisions and case law, it is clear given the facts of this case that R.C. Chapter 2721, under which the sheriff brought his claim for declaratory relief, is in conflict with R.C. Chapter 4117. Since the aforementioned provisions of R.C. Chapter 4117 contemplate the exclusive jurisdiction of SERB over the matters specifically raised in the sheriff's complaint before the court of common pleas . . . the court of appeals erred in finding that SERB's authority to determine an unfair labor practice did not deprive courts of common pleas of the general declaratory judgment jurisdiction and capacity to determine arbitrability pursuant to R.C. Chapter 2721. In our view, **a contrary holding would merely create inordinate delays in resolving certain collective bargaining agreement disputes such as the arbitrability of grievances, and would most certainly undermine the express will of the General Assembly which elevated R.C. Chapter 4117 over all other statutory provisions not specifically excepted within its terms**.

See id. at pp. 175-76, citing Franklin County Law Enforcement Assoc. v. Fraternal Order of Police Capital City Lodge No. 9, 59 Ohio St. 3d 167, 572 N.E.2d 87 (1991); see also Ohio Historical Society v. SERB, 66 Ohio St.3d 466, 469, 613 N.E.2d 591 (1993) ("R.C. Chapter 4117 'was meant to regulate in a comprehensive manner the labor relations between public employees and employers.' . . . The Declaratory Judgments Act, R.C. Chapter 2721, was not intended to be used to circumvent such comprehensive agency processes. . . . Common pleas courts are limited to appellate jurisdiction, at the proper time, over these and other matters arising under R.C. Chapter 4117.").

The foregoing decisions demonstrate that parties to a collective bargaining agreement cannot evade SERB's exclusive jurisdiction by relying on other statues – e.g., R.C. 2711 to compel arbitration or R.C. 2721 for a declaratory judgment as to arbitrability – when the underlying dispute arises from collective bargaining rights under R.C. Chapter 4117. Instead of addressing the above authority its Brief in Opposition to the City's Motion to Dismiss for Lack of Subject-Matter Jurisdiction, the Union argued that the underlying issue is one of substantive arbitrability for judicial determination. However, the underlying dispute is not a question of substantive arbitrability. Rather, it is a question of contract interpretation over the meaning of the grievance and arbitration waiver language in the parties' collectively bargained LCA. Simply put, Respondent did not have authority to resolve that question.

As numerous courts have recognized, Ohio's courts of common pleas lack jurisdiction to resolve disputes over agreements collateral to collective bargaining agreements, such as last chance agreements and other grievance settlements arising from the R.C. Chapter 4117 bargaining relationship. See, e.g., Lowes v. Baldwin, No. 2:18-cv-537, 2019 U.S. Dist. LEXIS 222325, *15-18, 21-22 (S.D. Oh. Dec. 30, 2019) ("The LCA is a 'a creature wholly begotten by the CBA,' so Chapter 4117 precludes this Court from exercising jurisdiction over a claim alleging a breach of

the LCA."), citing Bryant v. Witkosky, 11th Dist. No. 2001-P-0047, 2002 Ohio App. LEXIS 1499, *10 (Mar. 29, 2002) ("A settlement agreement, entered into to resolve a dispute covered under a collective bargaining agreement, is also covered under that collective bargaining agreement. . . . We believe it was the intent of the Ohio State Legislature, when it drafted Chapter 4117, to keep these disputes out of Ohio's courthouses."); Bailey v. Beasley, 10th Dist. No. 09AP-682, 2010-Ohio-1146, ¶ 18 ("A settlement agreement 'arising out of a collective bargaining agreement between public employees and public employers in the state of Ohio, pursuant to R.C. 4117, continue[s] to be subject to the grievance procedure. A common pleas court does not have subject-matter jurisdiction over [it].'"); Mun. Constr. Equip. Ops. Lab. Council. v. Cleveland, 8th Dist. No. 104114, 2016-Ohio-5934, 71 N.E.3d 655, ¶ 19 (2016) ("[T]he Union's claim arises from alleged breaches of settlement agreements, so it does not directly arise from the CBA. However, the claims certainly are dependent on the CBA and the rights created by it. Therefore, the trial court properly dismissed the Union's complaint."); see also R.C. 4117.10(A) ("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.").

Notably, in addition to not filing a ULP with SERB, the Union never filed a grievance challenging the City's interpretation and application of the LCA's grievance and arbitration waiver language. Had the Union done so, that issue of contract interpretation would have properly proceeded for resolution before an arbitrator. Instead, the Union improperly sought the intervention of Respondent, who lacked any jurisdiction to resolve the dispute. By rendering the underlying decision, Respondent supplanted the role and authority of an arbitrator, as vested in the parties' CBA, to resolve disputes between the parties regarding "the interpretation and/or application of and/or compliance" with the parties' negotiated language. (See, Complaint at ¶ 10).

IV. REQUEST FOR PEREMPTORY WRIT.

In an original action before this Honorable Court, its rules provide for four possible judgments: the Court may (1) dismiss the complaint, (2) issue an alternative writ, thereby requiring the parties to submit evidence and additional briefing, (3) issue a peremptory writ of mandamus or prohibition, or (4) deny the writ outright." State ex rel. Richland Cty. v. Richland Cty. Court of Common Pleas, 152 Ohio St.3d 421, 2017-Ohio-9160, 97 N.E.3d 429, ¶ 20 (citing S.Ct.Prac.R. 12.04(C).

This Court has previously explained that, in a prohibition action, when the pertinent facts are uncontroverted and it appears beyond doubt that relator is entitled to the requested relief, a peremptory writ will be granted. State ex rel. Duke Energy Ohio, Inc. v. Hamilton County Court, 126 Ohio St.3d 41, 2010-Ohio-2450, 930 N.E.2d 299, ¶ 15 (citing State ex rel. Sapp v. Franklin County Court of Appeals, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 14). Because the pertinent facts in this case are uncontroverted, the City requests that this Court grant a peremptory writ of prohibition.

This Court has granted peremptory writs in other cases where the court lacked subject-matter jurisdiction because of SERB's exclusive jurisdiction over collective bargaining matters. See, e.g., State ex rel. City of Cleveland v. Russo, 156 Ohio St. 3d 449, 2019-Ohio-1595, 129 N.E.3d 384, ¶ 22 ("Thus, as in prior cases, we grant a peremptory writ of prohibition to prevent Judge Russo from 'exercising jurisdiction over a case which is within the exclusive jurisdiction of SERB.'"); State ex rel. FOP, Ohio Labor Council v. Court of Common Pleas, 76 Ohio St.3d 287, 290, 667 N.E.2d 929 (1996). The Court should do the same here.

V. CONCLUSION

This matter arises solely from a dispute between the Union and the City as to the meaning of collectively bargained language. In seeking to prevail on its interpretation, the Union

improperly sought to have Respondent exercise jurisdiction over a claim that arose solely from and depended upon collective bargaining rights created by R.C. Chapter 4117. As Respondent patently and unambiguously lacked jurisdiction, she exceeded her authority by granting the Union's Application and Motion to Compel Arbitration, which must now be vacated and corrected. The City respectfully requests that this Honorable Court grant the City's requested writ of prohibition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 11th day of August, 2023 via email upon the following:

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APPENDIX

APPENDIX 1

138161761

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

OHIO COUNCIL 8 AMERICAN FEDERATION OF STATE ET AL
Plaintiff

CITY OF LAKEWOOD
Defendant

Case No: CV-22-962000

Judge: SHIRLEY STRICKLAND SAFFOLD

JOURNAL ENTRY

96 DISP.OTHER - FINAL

DEFENDANT-RESPONDENT CITY OF LAKEWOOD'S MOTION TO DISMISS FOR LACK OF SUBJECT JURISDICTION UNDER CIV.R.12(B)(1) & BRIEF IN SUPPORT OF ITS MOTION TO DISMISS WITH EXHIBITS, FILED 07/25/2022, IS HEREBY DENIED.

PLAINTIFF'S APPLICATION AND MOTION TO COMPEL ARBITRATION IS HEREBY GRANTED.

IT IS SO ORDERED.

COURT COST ASSESSED TO THE DEFENDANT(S).
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

1/27/23

Judge Signature Date

- 96
01/26/2023

APPENDIX 2

Article IV, Section 2 | Organization and jurisdiction of Supreme Court

Ohio Constitution / Article IV Judicial

Effective: *1994*

(A) The Supreme Court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the supreme court in the place and stead of the absent judge. A majority of the Supreme Court shall be necessary to constitute a quorum or to render a judgment.
(B)(1) The Supreme Court shall have original jurisdiction in the following:

(a) Quo warranto;

(b)Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo;

(f) In any cause on review as may be necessary to its complete determination;

(g) Admission to the practice of law, the discipline of persons so admitted, and all other

matters relating to the practice of law.

(2) The supreme court shall have appellate jurisdiction as follows:

(a) In appeals from the courts of appeals as a matter of right in the following:

(i) Cases originating in the courts of appeals;

(ii) Cases involving questions arising under the constitution of the United States or of this state.

(b) In appeals from the courts of appeals in cases of felony on leave first obtained,

(c) In direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed;

(d) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;

(e) In cases of public or great general interest, the supreme court may direct any court of appeals to certify its record to the supreme court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(f) The Supreme Court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from

invoking the original jurisdiction of the supreme court.

(C) The decisions in all cases in the Supreme Court shall be reported, together with the reasons therefor.

APPENDIX 3

Ohio Revised Code

Section 4117.01 Public employees' collective bargaining definitions.

Effective: September 29, 2015
Legislation: House Bill 64 - 131st General Assembly

As used in this chapter:

(A) "Person," in addition to those included in division (C) of section 1.59 of the Revised Code, includes employee organizations, public employees, and public employers.

(B) "Public employer" means the state or any political subdivision of the state located entirely within the state, including, without limitation, any municipal corporation with a population of at least five thousand according to the most recent federal decennial census; county; township with a population of at least five thousand in the unincorporated area of the township according to the most recent federal decennial census; school district; governing authority of a community school established under Chapter 3314. of the Revised Code; college preparatory boarding school established under Chapter 3328. of the Revised Code or its operator; state institution of higher learning; public or special district; state agency, authority, commission, or board; or other branch of public employment. "Public employer" does not include the nonprofit corporation formed under section 187.01 of the Revised Code.

(C) "Public employee" means any person holding a position by appointment or employment in the service of a public employer, including any person working pursuant to a contract between a public employer and a private employer and over whom the national labor relations board has declined jurisdiction on the basis that the involved employees are employees of a public employer, except:

(1) Persons holding elective office;

(2) Employees of the general assembly and employees of any other legislative body of the public employer whose principal duties are directly related to the legislative functions of the body;

(3) Employees on the staff of the governor or the chief executive of the public employer whose principal duties are directly related to the performance of the executive functions of the governor or

the chief executive;

(4) Persons who are members of the Ohio organized militia, while training or performing duty under section 5919.29 or 5923.12 of the Revised Code;

(5) Employees of the state employment relations board, including those employees of the state employment relations board utilized by the state personnel board of review in the exercise of the powers and the performance of the duties and functions of the state personnel board of review;

(6) Confidential employees;

(7) Management level employees;

(8) Employees and officers of the courts, assistants to the attorney general, assistant prosecuting attorneys, and employees of the clerks of courts who perform a judicial function;

(9) Employees of a public official who act in a fiduciary capacity, appointed pursuant to section 124.11 of the Revised Code;

(10) Supervisors;

(11) Students whose primary purpose is educational training, including graduate assistants or associates, residents, interns, or other students working as part-time public employees less than fifty per cent of the normal year in the employee's bargaining unit;

(12) Employees of county boards of election;

(13) Seasonal and casual employees as determined by the state employment relations board;

(14) Part-time faculty members of an institution of higher education;

(15) Participants in a work activity, developmental activity, or alternative work activity under sections 5107.40 to 5107.69 of the Revised Code who perform a service for a public employer that

the public employer needs but is not performed by an employee of the public employer if the participant is not engaged in paid employment or subsidized employment pursuant to the activity;

(16) Employees included in the career professional service of the department of transportation under section 5501.20 of the Revised Code;

(17) Employees of community-based correctional facilities and district community-based correctional facilities created under sections 2301.51 to 2301.58 of the Revised Code.

(D) "Employee organization" means any labor or bona fide organization in which public employees participate and that exists for the purpose, in whole or in part, of dealing with public employers concerning grievances, labor disputes, wages, hours, terms, and other conditions of employment.

(E) "Exclusive representative" means the employee organization certified or recognized as an exclusive representative under section 4117.05 of the Revised Code.

(F) "Supervisor" means any individual who has authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment, provided that:

(1) Employees of school districts who are department chairpersons or consulting teachers shall not be deemed supervisors.

(2) With respect to members of a police or fire department, no person shall be deemed a supervisor except the chief of the department or those individuals who, in the absence of the chief, are authorized to exercise the authority and perform the duties of the chief of the department. Where prior to June 1, 1982, a public employer pursuant to a judicial decision, rendered in litigation to which the public employer was a party, has declined to engage in collective bargaining with members of a police or fire department on the basis that those members are supervisors, those members of a police or fire department do not have the rights specified in this chapter for the purposes of future collective bargaining. The state employment relations board shall decide all

disputes concerning the application of division (F)(2) of this section.

(3) With respect to faculty members of a state institution of higher education, heads of departments or divisions are supervisors; however, no other faculty member or group of faculty members is a supervisor solely because the faculty member or group of faculty members participate in decisions with respect to courses, curriculum, personnel, or other matters of academic policy.

(4) No teacher as defined in section 3319.09 of the Revised Code shall be designated as a supervisor or a management level employee unless the teacher is employed under a contract governed by section 3319.01, 3319.011, or 3319.02 of the Revised Code and is assigned to a position for which a license deemed to be for administrators under state board rules is required pursuant to section 3319.22 of the Revised Code.

(G) "To bargain collectively" means to perform the mutual obligation of the public employer, by its representatives, and the representatives of its employees to negotiate in good faith at reasonable times and places with respect to wages, hours, terms, and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, with the intention of reaching an agreement, or to resolve questions arising under the agreement. "To bargain collectively" includes executing a written contract incorporating the terms of any agreement reached. The obligation to bargain collectively does not mean that either party is compelled to agree to a proposal nor does it require the making of a concession.

(H) "Strike" means continuous concerted action in failing to report to duty; willful absence from one's position; or stoppage of work in whole from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Strike" does not include a stoppage of work by employees in good faith because of dangerous or unhealthful working conditions at the place of employment that are abnormal to the place of employment.

(I) "Unauthorized strike" includes, but is not limited to, concerted action during the term or extended term of a collective bargaining agreement or during the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code in failing to report to duty; willful absence from one's position; stoppage of work; slowdown, or abstinence in whole or in part from the full, faithful, and

proper performance of the duties of employment for the purpose of inducing, influencing, or coercing a change in wages, hours, terms, and other conditions of employment. "Unauthorized strike" includes any such action, absence, stoppage, slowdown, or abstinence when done partially or intermittently, whether during or after the expiration of the term or extended term of a collective bargaining agreement or during or after the pendency of the settlement procedures set forth in section 4117.14 of the Revised Code.

(J) "Professional employee" means any employee engaged in work that is predominantly intellectual, involving the consistent exercise of discretion and judgment in its performance and requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship; or an employee who has completed the courses of specialized intellectual instruction and is performing related work under the supervision of a professional person to become qualified as a professional employee.

(K) "Confidential employee" means any employee who works in the personnel offices of a public employer and deals with information to be used by the public employer in collective bargaining; or any employee who works in a close continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer.

(L) "Management level employee" means an individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration. Assistant superintendents, principals, and assistant principals whose employment is governed by section 3319.02 of the Revised Code are management level employees. With respect to members of a faculty of a state institution of higher education, no person is a management level employee because of the person's involvement in the formulation or implementation of academic or institution policy.

(M) "Wages" means hourly rates of pay, salaries, or other forms of compensation for services rendered.

(N) "Member of a police department" means a person who is in the employ of a police department of a municipal corporation as a full-time regular police officer as the result of an appointment from a duly established civil service eligibility list or under section 737.15 or 737.16 of the Revised Code, a full-time deputy sheriff appointed under section 311.04 of the Revised Code, a township constable appointed under section 509.01 of the Revised Code, or a member of a township or joint police district police department appointed under section 505.49 of the Revised Code.

(O) "Members of the state highway patrol" means highway patrol troopers and radio operators appointed under section 5503.01 of the Revised Code.

(P) "Member of a fire department" means a person who is in the employ of a fire department of a municipal corporation or a township as a fire cadet, full-time regular firefighter, or promoted rank as the result of an appointment from a duly established civil service eligibility list or under section 505.38, 709.012, or 737.22 of the Revised Code.

(Q) "Day" means calendar day.

APPENDIX 4

Ohio Revised Code

Section 4117.08 Matters subject to collective bargaining.

Effective: September 29, 2007
Legislation: House Bill 119 - 127th General Assembly

(A) All matters pertaining to wages, hours, or terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement are subject to collective bargaining between the public employer and the exclusive representative, except as otherwise specified in this section and division (E) of section 4117.03 of the Revised Code.

(B) The conduct and grading of civil service examinations, the rating of candidates, the establishment of eligible lists from the examinations, and the original appointments from the eligible lists are not appropriate subjects for collective bargaining.

(C) Unless a public employer agrees otherwise in a collective bargaining agreement, nothing in Chapter 4117. of the Revised Code impairs the right and responsibility of each public employer to:

(1) Determine matters of inherent managerial policy which include, but are not limited to areas of discretion or policy such as the functions and programs of the public employer, standards of services, its overall budget, utilization of technology, and organizational structure;

(2) Direct, supervise, evaluate, or hire employees;

(3) Maintain and improve the efficiency and effectiveness of governmental operations;

(4) Determine the overall methods, process, means, or personnel by which governmental operations are to be conducted;

(5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;

(6) Determine the adequacy of the work force;

(7) Determine the overall mission of the employer as a unit of government;

(8) Effectively manage the work force;

(9) Take actions to carry out the mission of the public employer as a governmental unit.

The employer is not required to bargain on subjects reserved to the management and direction of the governmental unit except as affect wages, hours, terms and conditions of employment, and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. A public employee or exclusive representative may raise a legitimate complaint or file a grievance based on the collective bargaining agreement.

Ohio Revised Code

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

Effective: March 1, 1990

Legislation: House Bill 262 - 118th General Assembly

(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 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.

Ohio Revised Code

Section 4117.10 Terms of agreement.

Effective: September 29, 2015
Legislation: House Bill 64 - 131st General Assembly

(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.

Ohio Revised Code

Section 4117.11 Unfair labor practice.

Effective: April 1, 1984
Legislation: Senate Bill 133 - 115th General Assembly

(A) It is an unfair labor practice for a public employer, its agents, or representatives to:

(1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances;

(2) Initiate, create, dominate, or interfere with the formation or administration of any employee organization, or contribute financial or other support to it; except that a public employer may permit employees to confer with it during working hours without loss of time or pay, permit the exclusive representative to use the facilities of the public employer for membership or other meetings, or permit the exclusive representative to use the internal mail system or other internal communications system;

(3) Discriminate in regard to hire or tenure of employment or any term or condition of employment on the basis of the exercise of rights guaranteed by Chapter 4117. of the Revised Code. Nothing precludes any employer from making and enforcing an agreement pursuant to division (C) of section 4117.09 of the Revised Code.

(4) Discharge or otherwise discriminate against an employee because he has filed charges or given testimony under Chapter 4117. of the Revised Code;

(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117. of the Revised Code;

(6) Establish a pattern or practice of repeated failures to timely process grievances and requests for arbitration of grievances;

(7) Lock out or otherwise prevent employees from performing their regularly assigned duties where

an object thereof is to bring pressure on the employees or an employee organization to compromise or capitulate to the employer's terms regarding a labor relations dispute;

(8) Cause or attempt to cause an employee organization, its agents, or representatives to violate division (B) of this section.

(B) It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purpose of collective brgaining or the adjustment of grievances.

(2) Cause or attempt to cause an employer to violate division (A) of this section;

(3) Refuse to bargain collectively with a public employer if the employee organization is recognized as the exclusive representative or certified as the exclusive representative of public employees in a bargaining unit;

(4) Call, institute, maintain, or conduct a boycott against any public employer, or picket any place of business of a public employer, on account of any jurisdictional work dispute;

(5) Induce or encourage any individual employed by any person to engage in a strike in violation of Chapter 4117. of the Revised Code or refusal to handle goods or perform services; or threaten, coerce, or restrain any person where an object thereof is to force or require any public employee to cease dealing or doing business with any other person, or force or require a public employer to recognize for representation purposes an employee organization not certified by the state employment relations board;

(6) Fail to fairly represent all public employees in a bargaining unit;

(7) Induce or encourage any individual in connection with a labor relations dispute to picket the residence or any place of private employment of any public official or representative of the public employer;

(8) Engage in any picketing, striking, or other concerted refusal to work without giving written notice to the public employer and to the state employment relations board not less than ten days prior to the action. The notice shall state the date and time that the action will commence and, once the notice is given, the parties may extend it by the written agreement of both.

(C) The determination by the board or any court that a public officer or employee has committed any of the acts prohibited by divisions (A) and (B) of this section shall not be made the basis of any charge for the removal from office or recall of the public officer or the suspension from or termination of employment of or disciplinary acts against an employee, nor shall the officer or employee be found subject to any suit for damages based on such a determination; however nothing in this division prevents any party to a collective bargaining agreement from seeking enforcement or damages for a violation thereof against the other party to the agreement.

(D) As to jurisdictional work disputes, the board shall hear and determine the dispute unless, within ten days after notice to the board by a party to the dispute that a dispute exists, the parties to the dispute submit to the board satisfactory evidence that they have adjusted, or agreed upon the method for the voluntary adjustment of, the dispute.

Ohio Revised Code

Section 4117.12 Board to investigate charge of violation.

Effective: July 17, 2009

Legislation: House Bill 1 - 128th General Assembly

(A) Whoever violates section 4117.11 of the Revised Code is guilty of an unfair labor practice remediable by the state employment relations board as specified in this section.

(B) When anyone files a charge with the board alleging that an unfair labor practice has been committed, the board or its designated agent shall investigate the charge. If the board has probable cause for believing that a violation has occurred, the board shall issue a complaint and shall conduct a hearing concerning the charge. The board shall cause the complaint to be served upon the charged party which shall contain a notice of the time at which the hearing on the complaint will be held either before the board, a board member, or an administrative law judge. The board may not issue a notice of hearing based upon any unfair labor practice occurring more than ninety days prior to the filing of the charge with the board, unless the person aggrieved thereby is prevented from filing the charge by reason of service in the armed forces, in which event the ninety-day period shall be computed from the day of the person's discharge. If the board dismisses a complaint as frivolous, it shall assess costs to the complainant pursuant to its standards governing such matters, and for that purpose, the board shall adopt a rule defining the standards by which the board will declare a complaint to be frivolous and the costs that will be assessed accordingly.

(1) The board, board member, or administrative law judge shall hold a hearing on the charge within ten days after service of the complaint. The board may amend a complaint, upon receipt of a notice from the charging party, at any time prior to the close of the hearing, and the charged party shall within ten days from receipt of the complaint or amendment to the complaint, file an answer to the complaint or amendment to the complaint. The charged party may file an answer to an original or amended complaint. The agents of the board and the person charged are parties and may appear or otherwise give evidence at the hearing. At the discretion of the board, board member, or administrative law judge, any interested party may intervene and present evidence at the hearing. The board, board member, or administrative law judge is not bound by the rules of evidence prevailing in the courts.

(2) A board member or administrative law judge who conducts the hearing shall reduce the evidence taken to writing and file it with the board. The board member or the administrative law judge may thereafter take further evidence or hear further argument if notice is given to all interested parties. The administrative law judge or board member shall issue to the parties a proposed decision, together with a recommended order and file it with the board. If the parties file no exceptions within twenty days after service thereof, the recommended order becomes the order of the board effective as therein prescribed. If the parties file exceptions to the proposed report, the board shall determine whether substantial issues have been raised. The board may rescind or modify the proposed order of the board member or administrative law judge; however, if the board determines that the exceptions do not raise substantial issues of fact or law, it may refuse to grant review, and the recommended order becomes effective as therein prescribed.

(3) If upon the preponderance of the evidence taken, the board believes that any person named in the complaint has engaged in any unfair labor practice, the board shall state its findings of fact and issue and cause to be served on the person an order requiring that the person cease and desist from these unfair labor practices, and take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of Chapter 4117. of the Revised Code. If upon a preponderance of the evidence taken, the board believes that the person named in the complaint has not engaged in an unfair labor practice it shall state its findings of fact and issue an order dismissing the complaint.

(4) The board may order the public employer to reinstate the public employee and further may order either the public employer or the employee organization, depending on who was responsible for the discrimination suffered by the public employee, to make such payment of back pay to the public employee as the board determines. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or require the payment to the employee of any back pay, if the suspension or discharge was for just cause not related to rights provided in section 4117.03 of the Revised Code and the procedure contained in the collective bargaining agreement governing suspension or discharge was followed. The order of the board may require the party against whom the order is issued to make periodic reports showing the extent to which the party has complied with the order.

(C) Whenever a complaint alleges that a person has engaged in an unfair labor practice and that the

complainant will suffer substantial and irreparable injury if not granted temporary relief, the board may petition the court of common pleas for any county wherein the alleged unfair labor practice in question occurs, or wherein any person charged with the commission of any unfair labor practice resides or transacts business for appropriate injunctive relief, pending the final adjudication by the board with respect to the matter. Upon the filing of any petition, the court shall cause notice thereof to be served upon the parties, and thereupon has jurisdiction to grant the temporary relief or restraining order it considers just and proper.

(D) Until the record in a case is filed in a court, as specified in Chapter 4117. of the Revised Code, the board may at any time upon reasonable notice and in a manner it considers proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

APPENDIX 9

Ohio Revised Code

Section 4117.13 Board or party may petition court of common pleas.

Effective: April 1, 1984
Legislation: Senate Bill 133 - 115th General Assembly

(A) The state employment relations board or the complaining party may petition the court of common pleas for any county wherein an unfair labor practice occurs, or wherein any person charged with the commission of any unfair labor practice resides or transacts business, for the enforcement of the order and for appropriate temporary relief or restraining order. The board shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and evidence upon which the order was entered and the findings and order of the board. When the board petitions the court, the complaining party may intervene in the case as a matter of right. Upon the filing, the court shall cause notice thereof to be served upon the person charged with committing the unfair labor practice and thereupon has jurisdiction of the proceeding and the question determined therein. The court may grant the temporary relief or restraining order it deems just and proper, and make and enter upon the pleadings, evidence, and proceedings set forth in the transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board.

(B) The findings of the board as to the facts, if supported by substantial evidence, on the record as a whole, are conclusive. If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there exist reasonable grounds for the failure to adduce the evidence in the hearing before the board, its member or agent, the court may order the board, its member, or agent to take the additional evidence, and make it a part of the transcript. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the modified or new findings, which, if supported by the evidence, are conclusive and shall file its recommendations, if any, for the modifying or setting aside of its original order.

(C) The jurisdiction of the court is exclusive and its judgment and decree final, except that the same is subject to review on questions of law as in civil cases.

(D) Any person aggrieved by any final order of the board granting or denying, in whole or in part,

the relief sought may appeal to the court of common pleas of any county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, by filing in the court a notice of appeal setting forth the order appealed from and the grounds of appeal. The court shall cause a copy of the notice to be served forthwith upon the board. Within ten days after the court receives a notice of appeal, the board shall file in the court a transcript of the entire record in the proceeding, certified by the board, including the pleading and evidence upon which the order appealed from was entered.

The court has exclusive jurisdiction to grant the temporary relief or restraining order it considers proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board. The findings of the board as to the facts, if supported by substantial evidence on the record as a whole, are conclusive.

(E) The commencement of proceedings under division (A) or (D) of this section does not, unless specifically ordered by the court, operate as a stay of the board's order.

(F) Courts of common pleas shall hear appeals under Chapter 4117. of the Revised Code expeditiously presented and where good cause is shown give precedence to them over all other civil matters except earlier matters of the same character.

Ohio Revised Code

Section 4117.14 Settlement of dispute between exclusive representative and public employer - procedures.

Effective: September 29, 2013
Legislation: House Bill 59 - 130th General Assembly

(A) The procedures contained in this section govern the settlement of disputes between an exclusive representative and a public employer concerning the termination or modification of an existing collective bargaining agreement or negotiation of a successor agreement, or the negotiation of an initial collective bargaining agreement.

(B)(1) In those cases where there exists a collective bargaining agreement, any public employer or exclusive representative desiring to terminate, modify, or negotiate a successor collective bargaining agreement shall:

(a) Serve written notice upon the other party of the proposed termination, modification, or successor agreement. The party must serve the notice not less than sixty days prior to the expiration date of the existing agreement or, in the event the existing collective bargaining agreement does not contain an expiration date, not less than sixty days prior to the time it is proposed to make the termination or modifications or to make effective a successor agreement.

(b) Offer to bargain collectively with the other party for the purpose of modifying or terminating any existing agreement or negotiating a successor agreement;

(c) Notify the state employment relations board of the offer by serving upon the board a copy of the written notice to the other party and a copy of the existing collective bargaining agreement.

(2) In the case of initial negotiations between a public employer and an exclusive representative, where a collective bargaining agreement has not been in effect between the parties, any party may serve notice upon the board and the other party setting forth the names and addresses of the parties and offering to meet, for a period of ninety days, with the other party for the purpose of negotiating a collective bargaining agreement.

If the settlement procedures specified in divisions (B), (C), and (D) of this section govern the parties, where those procedures refer to the expiration of a collective bargaining agreement, it means the expiration of the sixty-day period to negotiate a collective bargaining agreement referred to in this subdivision, or in the case of initial negotiations, it means the ninety-day period referred to in this subdivision.

(3) The parties shall continue in full force and effect all the terms and conditions of any existing collective bargaining agreement, without resort to strike or lock-out, for a period of sixty days after the party gives notice or until the expiration date of the collective bargaining agreement, whichever occurs later, or for a period of ninety days where applicable.

(4) Upon receipt of the notice, the parties shall enter into collective bargaining.

(C) In the event the parties are unable to reach an agreement, they may submit, at any time prior to forty-five days before the expiration date of the collective bargaining agreement, the issues in dispute to any mutually agreed upon dispute settlement procedure which supersedes the procedures contained in this section.

(1) The procedures may include:

(a) Conventional arbitration of all unsettled issues;

(b) Arbitration confined to a choice between the last offer of each party to the agreement as a single package;

(c) Arbitration confined to a choice of the last offer of each party to the agreement on each issue submitted;

(d) The procedures described in division (C)(1)(a), (b), or (c) of this section and including among the choices for the arbitrator, the recommendations of the fact finder, if there are recommendations, either as a single package or on each issue submitted;

(e) Settlement by a citizens' conciliation council composed of three residents within the jurisdiction

of the public employer. The public employer shall select one member and the exclusive representative shall select one member. The two members selected shall select the third member who shall chair the council. If the two members cannot agree upon a third member within five days after their appointments, the board shall appoint the third member. Once appointed, the council shall make a final settlement of the issues submitted to it pursuant to division (G) of this section.

(f) Any other dispute settlement procedure mutually agreed to by the parties.

(2) If, fifty days before the expiration date of the collective bargaining agreement, the parties are unable to reach an agreement, any party may request the state employment relations board to intervene. The request shall set forth the names and addresses of the parties, the issues involved, and, if applicable, the expiration date of any agreement.

The board shall intervene and investigate the dispute to determine whether the parties have engaged in collective bargaining.

If an impasse exists or forty-five days before the expiration date of the collective bargaining agreement if one exists, the board shall appoint a mediator to assist the parties in the collective bargaining process.

(3) Any time after the appointment of a mediator, either party may request the appointment of a fact-finding panel. Within fifteen days after receipt of a request for a fact-finding panel, the board shall appoint a fact-finding panel of not more than three members who have been selected by the parties in accordance with rules established by the board, from a list of qualified persons maintained by the board.

(a) The fact-finding panel shall, in accordance with rules and procedures established by the board that include the regulation of costs and expenses of fact-finding, gather facts and make recommendations for the resolution of the matter. The board shall by its rules require each party to specify in writing the unresolved issues and its position on each issue to the fact-finding panel. The fact-finding panel shall make final recommendations as to all the unresolved issues.

(b) The board may continue mediation, order the parties to engage in collective bargaining until the

expiration date of the agreement, or both.

(4) The following guidelines apply to fact-finding:

(a) The fact-finding panel may establish times and place of hearings which shall be, where feasible, in the jurisdiction of the state.

(b) The fact-finding panel shall conduct the hearing pursuant to rules established by the board.

(c) Upon request of the fact-finding panel, the board shall issue subpoenas for hearings conducted by the panel.

(d) The fact-finding panel may administer oaths.

(e) The board shall prescribe guidelines for the fact-finding panel to follow in making findings. In making its recommendations, the fact-finding panel shall take into consideration the factors listed in divisions (G)(7)(a) to (f) of this section.

(f) The fact-finding panel may attempt mediation at any time during the fact-finding process. From the time of appointment until the fact-finding panel makes a final recommendation, it shall not discuss the recommendations for settlement of the dispute with parties other than the direct parties to the dispute.

(5) The fact-finding panel, acting by a majority of its members, shall transmit its findings of fact and recommendations on the unresolved issues to the public employer and employee organization involved and to the board no later than fourteen days after the appointment of the fact-finding panel, unless the parties mutually agree to an extension. The parties shall share the cost of the fact-finding panel in a manner agreed to by the parties.

(6)(a) Not later than seven days after the findings and recommendations are sent, the legislative body, by a three-fifths vote of its total membership, and in the case of the public employee organization, the membership, by a three-fifths vote of the total membership, may reject the recommendations; if neither rejects the recommendations, the recommendations shall be deemed

agreed upon as the final resolution of the issues submitted and a collective bargaining agreement shall be executed between the parties, including the fact-finding panel's recommendations, except as otherwise modified by the parties by mutual agreement. If either the legislative body or the public employee organization rejects the recommendations, the board shall publicize the findings of fact and recommendations of the fact-finding panel. The board shall adopt rules governing the procedures and methods for public employees to vote on the recommendations of the fact-finding panel.

(b) As used in division (C)(6)(a) of this section, "legislative body" means the controlling board when the state or any of its agencies, authorities, commissions, boards, or other branch of public employment is party to the fact-finding process.

(D) If the parties are unable to reach agreement within seven days after the publication of findings and recommendations from the fact-finding panel or the collective bargaining agreement, if one exists, has expired, then the:

(1) Public employees, who are members of a police or fire department, members of the state highway patrol, deputy sheriffs, dispatchers employed by a police, fire, or sheriff's department or the state highway patrol or civilian dispatchers employed by a public employer other than a police, fire, or sheriff's department to dispatch police, fire, sheriff's department, or emergency medical or rescue personnel and units, an exclusive nurse's unit, employees of the state school for the deaf or the state school for the blind, employees of any public employee retirement system, corrections officers, guards at penal or mental institutions, special police officers appointed in accordance with sections 5119.08 and 5123.13 of the Revised Code, psychiatric attendants employed at mental health forensic facilities, youth leaders employed at juvenile correctional facilities, or members of a law enforcement security force that is established and maintained exclusively by a board of county commissioners and whose members are employed by that board, shall submit the matter to a final offer settlement procedure pursuant to a board order issued forthwith to the parties to settle by a conciliator selected by the parties. The parties shall request from the board a list of five qualified conciliators and the parties shall select a single conciliator from the list by alternate striking of names. If the parties cannot agree upon a conciliator within five days after the board order, the board shall on the sixth day after its order appoint a conciliator from a list of qualified persons maintained by the board or shall request a list of qualified conciliators from the American

arbitration association and appoint therefrom.

(2) Public employees other than those listed in division (D)(1) of this section have the right to strike under Chapter 4117. of the Revised Code provided that the employee organization representing the employees has given a ten-day prior written notice of an intent to strike to the public employer and to the board, and further provided that the strike is for full, consecutive work days and the beginning date of the strike is at least ten work days after the ending date of the most recent prior strike involving the same bargaining unit; however, the board, at its discretion, may attempt mediation at any time.

(E) Nothing in this section shall be construed to prohibit the parties, at any time, from voluntarily agreeing to submit any or all of the issues in dispute to any other alternative dispute settlement procedure. An agreement or statutory requirement to arbitrate or to settle a dispute pursuant to a final offer settlement procedure and the award issued in accordance with the agreement or statutory requirement is enforceable in the same manner as specified in division (B) of section 4117.09 of the Revised Code.

(F) Nothing in this section shall be construed to prohibit a party from seeking enforcement of a collective bargaining agreement or a conciliator's award as specified in division (B) of section 4117.09 of the Revised Code.

(G) The following guidelines apply to final offer settlement proceedings under division (D)(1) of this section:

(1) The parties shall submit to final offer settlement those issues that are subject to collective bargaining as provided by section 4117.08 of the Revised Code and upon which the parties have not reached agreement and other matters mutually agreed to by the public employer and the exclusive representative; except that the conciliator may attempt mediation at any time.

(2) The conciliator shall hold a hearing within thirty days of the board's order to submit to a final offer settlement procedure, or as soon thereafter as is practicable.

(3) The conciliator shall conduct the hearing pursuant to rules developed by the board. The

conciliator shall establish the hearing time and place, but it shall be, where feasible, within the jurisdiction of the state. Not later than five calendar days before the hearing, each of the parties shall submit to the conciliator, to the opposing party, and to the board, a written report summarizing the unresolved issues, the party's final offer as to the issues, and the rationale for that position.

(4) Upon the request by the conciliator, the board shall issue subpoenas for the hearing.

(5) The conciliator may administer oaths.

(6) The conciliator shall hear testimony from the parties and provide for a written record to be made of all statements at the hearing. The board shall submit for inclusion in the record and for consideration by the conciliator the written report and recommendation of the fact-finders.

(7) After hearing, the conciliator shall resolve the dispute between the parties by selecting, on an issue-by-issue basis, from between each of the party's final settlement offers, taking into consideration the following:

(a) Past collectively bargained agreements, if any, between the parties;

(b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;

(c) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

(d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement

through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public service or in private employment.

(8) Final offer settlement awards made under Chapter 4117. of the Revised Code are subject to Chapter 2711. of the Revised Code.

(9) If more than one conciliator is used, the determination must be by majority vote.

(10) The conciliator shall make written findings of fact and promulgate a written opinion and order upon the issues presented to the conciliator, and upon the record made before the conciliator and shall mail or otherwise deliver a true copy thereof to the parties and the board.

(11) Increases in rates of compensation and other matters with cost implications awarded by the conciliator may be effective only at the start of the fiscal year next commencing after the date of the final offer settlement award; provided that if a new fiscal year has commenced since the issuance of the board order to submit to a final offer settlement procedure, the awarded increases may be retroactive to the commencement of the new fiscal year. The parties may, at any time, amend or modify a conciliator's award or order by mutual agreement.

(12) The parties shall bear equally the cost of the final offer settlement procedure.

(13) Conciliators appointed pursuant to this section shall be residents of the state.

(H) All final offer settlement awards and orders of the conciliator made pursuant to Chapter 4117. of the Revised Code are subject to review by the court of common pleas having jurisdiction over the public employer as provided in Chapter 2711. of the Revised Code. If the public employer is located in more than one court of common pleas district, the court of common pleas in which the principal office of the chief executive is located has jurisdiction.

(I) The issuance of a final offer settlement award constitutes a binding mandate to the public employer and the exclusive representative to take whatever actions are necessary to implement the award.