

[Cite as *State ex rel. Crumbley v. State Emp. Relations Bd.*, 2011-Ohio-621.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 95298

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STATE OF OHIO, EX REL.  
JESSIE CRUMBLY

RELATOR

vs.

STATE EMPLOYMENT RELATIONS BOARD

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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Writ of Mandamus  
Motion Nos. 438602 and 439484  
Order No. 441205

**RELEASE DATE:** February 9, 2011

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KATHLEEN A. KEOUGH, J.:

{¶ 1} On June 21, 2010, the relator, Jessie Crumbley, commenced this mandamus action against the respondent, the State Employment Relations Board (“SERB”), to compel SERB to vacate its dismissal of the underlying unfair labor practice charge, *Jessie Crumbley v.*

*Ohio Patrolmen's Benevolent Assn.*,<sup>1</sup> SERB Case No. 2010-ULP-03-0090, and to hold a hearing on the charge. Crumbley alleged that the Union had failed to represent him on various grievances he wished to pursue against his employer; SERB denied the unfair labor practice charges, because, inter alia, many were untimely and Crumbley had not fulfilled his initial burden of showing that he had forwarded the grievances to the Union. On August 18, 2010, SERB filed the record from the underlying unfair labor practice charge. On October 21, 2010, SERB filed its motion for summary judgment. On November 19, 2010, Crumbley filed his motion for summary judgment, and on December 13, 2010, SERB filed its brief in opposition to Crumbley's dispositive motion. For the following reasons, this court grants SERB's motion for summary judgment, denies Crumbley's motion for summary judgment, and denies the application for a writ of mandamus.

#### FACTUAL AND PROCEDURAL BACKGROUND

{¶ 2} Crumbley has worked as a corrections officer for the city of Cleveland since 1990. He also stated that he has tried to persuade his fellow union members to select the Teamsters as their union representative and that this has earned him the wrath of the Union.

{¶ 3} He filed the underlying unfair labor practice charge on March 22, 2010. In this filing, Crumbley stated that he was forced to file the grievances personally because there

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<sup>1</sup> The court will refer to the Ohio Patrolmen's Benevolent Association as "the Union."

were no representatives on his shift during the relevant time period. He further stated that he faxed the grievances to the Union office, but they were returned to him and that the Union did not process his grievances.

{¶ 4} Crumbley then listed in his unfair labor practice charge filing the grievances the Union would not process: (1) the grievance for denying his choice of vacation on December 17, 2009, in violation of his seniority rights; (2) the grievance for failure to promote him in late March 2009; (3) the grievance that Cleveland promoted someone else to corporal in July 2009 over the contract limit and with less seniority; (4) the grievance filed in April 2009 for improper denial of promotion; (5) grievances made in November 2008 and January 2009, that Cleveland failed to follow the Family Medical Leave Act; (6) the grievance that he was denied promotion to corporal in November 2008; (7) the grievance for non-discrimination of employees has not been processed since December 16, 2008; (8) the grievance that Cleveland unjustly disciplined him on December 28, 2009, for an incident while transporting a prisoner; (9) the grievance that Cleveland unjustly disciplined him for insubordination for failure to sign papers in January 2010; and (10) the grievance for the equalization of overtime in a non-discriminatory manner.

{¶ 5} SERB's record includes several of the Union's official grievance forms completed by Crumbley. In each of these, Crumbley authorized himself to be his representative in the disposition of the grievance. Several of the copies of these forms

indicate that they were faxed, but it is uncertain to what number they were faxed. Furthermore, the number listed does not correspond to the Union's fax number stated elsewhere in the record.

{¶ 6} After conducting its investigation, SERB on May 20, 2010, summarily dismissed the unfair labor practice case because many of the charges were untimely, because Crumbley did not establish that he had forwarded the grievances to the Union, because he indicated that he was representing himself, and because he did not provide sufficient information to show how the Union's actions were arbitrary, discriminatory, or in bad faith. This mandamus action followed.

#### DISCUSSION OF LAW

{¶ 7} First, this court notes that mandamus is the proper remedy for "reviewing" a denial of an unfair labor practice charge for lack of probable cause. In *State ex rel. Leigh v. State Emp. Relations Bd.* (1996), 76 Ohio St.3d 143, 666 N.E.2d 1128, the Supreme Court of Ohio noted a probable cause determination by SERB under R.C. 4117.12(B) is not reviewable by direct appeal. Rather, in the absence of an adequate remedy in the ordinary course of the law, mandamus is the appropriate remedy to obtain judicial review of a SERB order dismissing an unfair labor practice charge.<sup>2</sup> "A writ of mandamus will issue to correct an

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<sup>2</sup>The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief,

abuse of discretion by SERB to dismiss unfair labor practice charges. \* \* \* An abuse of discretion implies an attitude that is unreasonable, arbitrary or unconscionable.” *Id.* at 145. *State ex rel. Portage Lakes Edn. Assn., OEA/NEA v. State Emp. Relations Bd.*, 95 Ohio St.3d 533, 2002-Ohio-2839, 769 N.E.2d 853; and *State ex rel. Hamilton Cty. Bd. Of Commrs. v. State Emp. Relations Bd.*, 102 Ohio St.3d 344, 2004-Ohio-3122, 810 N.E.2d 944. As a corollary, SERB cannot abuse its discretion based on evidence that was not properly before the board when it made its decision. Thus, the review of a SERB decision is limited to the facts as they existed at the time SERB made its decision, as shown by the SERB record. *Portage Lakes* and *State ex rel. Hall v. State Emp. Relations Bd.*, 122 Ohio St.3d 538, 2009-Ohio-3603, 912 N.E.2d 1120. Furthermore, the courts must give deference to SERB’s findings and interpretation of R.C. Chapter 4117, and the court may not substitute its judgment for that of SERB, even if there is conflicting evidence on an issue. *Portage Lakes* and *Hall*.

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and (3) there must be no adequate remedy at law. Additionally, although mandamus may be used to compel a court to exercise judgment or to discharge a function, it may not control judicial discretion, even if that discretion is grossly abused. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914. Furthermore, mandamus is not a substitute for appeal. *State ex rel. Pressley v. Indus. Comm. of Ohio* (1967), 11 Ohio St.2d 141, 228 N.E.2d 631, paragraph three of the syllabus. Thus, mandamus does not lie to correct errors and procedural irregularities in the course of a case. *State ex rel. Jerningham v. Gaughan* (Sept. 26, 1994), Cuyahoga App. No. 67787. Furthermore, if the relator had an adequate remedy, regardless of whether it was used, relief in mandamus is precluded. *State ex rel. Tran v. McGrath*, 78 Ohio St.3d 45, 1997-Ohio-245, 676 N.E.2d 108. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1.

{¶ 8} R.C. 4117.12(B) provides in pertinent part as follows: “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 \* \* \*.” Crumbley filed his unfair labor practice with SERB on March 22, 2010. Ninety days before then is December 22, 2009. Thus, SERB properly dismissed those unfair labor practice charges which originated before that date.

These include the grievances for choice of vacation based on seniority, for promotion, for failure to follow the Family Medical Leave Act, for discriminatory practices since December 16, 2008, and for equalization of overtime. Indeed, Crumbley implicitly conceded this point in his motion for summary judgment in which he argued only two of the grievances: the discipline for the incident in late December 2009, and the discipline for insubordination in January 2010.

{¶ 9} Crumbley argues that SERB abused its discretion in rejecting these unfair labor practices because his statement shows that he filed these grievances with the Union, but the Union refused to process them. He asserts that the grievance forms show the Union’s file-stamp. However, the stamp reads “House of Corrections,” not the “Ohio Patrolmen’s Benevolent Association.” He states he faxed the grievance forms to the Union, but the notations on the forms show only that they appeared to be faxed, not where. SERB could not confirm on its record that Crumbley faxed them to the Union. Finally, Crumbley listed himself as his representative in these grievances, not the Union and not the Union’s

representative. R.C. 4117.03(A)(5) preserves the individual's right to represent himself in a grievance without the intervention of the bargaining representative. *Walters v. Lavelle*, Cuyahoga App. No. 95270, 2011-Ohio-116. Crumbley argues that he put his own name on the form because there was no Union representative on his shift. However, by doing so, it appears that Crumbley sought to invoke his right under R.C. 4117.03(A)(5). Because SERB on its record could not confirm that Crumbley filed the grievances with the Union, it did not abuse its discretion in summarily dismissing them on the grounds that Crumbley sought to represent himself, and that he did not forward the grievances to the Union.

{¶ 10} Accordingly, this court grants SERB's motion for summary judgment, denies Crumbley's motion for summary judgment, and denies the application for a writ of mandamus.

Relator to pay costs. The court directs the Clerk of Court for the Eighth District Court of Appeals to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Writ denied.

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KATHLEEN A. KEOUGH, JUDGE

KENNETH A. ROCCO, P.J., and  
COLLEEN CONWAY COONEY, J., CONCUR

