[Cite as *State ex rel. Johnston v. N. Olmsted City School Dist. Bd. of Edn.*, 2024-Ohio-677.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE EX REL. EMILY JOHNSTON,	:	
Relator,	:	No. 112691
v.	:	
NORTH OLMSTED CITY SCHOOL DISTRICT BOARD OF EDUCATION,	:	
Respondent.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: COMPLAINT DISMISSED
DATED: February 22, 2024

Writ of Mandamus
Motion Nos. 566472 and 567000
Order No. 570293

Appearances:

Baasten, McKinley & Co., L.P.A., Brandon F. Harned and Rachel M. Reight, *for relator*.

Scott Scriven LLP, Sandra R. McIntosh, and Jessica K. Philemond, *for respondent*.

MICHELLE J. SHEEHAN, P.J.:

{¶ 1} On May 8, 2023, the relator, Emily Johnston, commenced this mandamus action against the respondent, the North Olmsted City School District Board of Education ("the Board"), to compel the Board to place her at the

appropriate step level on its teacher salary schedule. She asserts that she is entitled to four more years of credit. Attached to the complaint is the relevant contract between the Board and the North Olmsted Education Association ("the Union"). On July 31, 2023, the Board filed its answer and attached two letters of acceptance signed by Johnston and the actual contract between Johnston and the Board. On the same day, the Board filed a motion for judgment on the pleadings arguing, inter alia, that Johnston's claim was barred because she has or had an adequate remedy at law. Johnston filed her motion for judgment on the pleadings on August 18, 2023. Both parties have filed briefs in opposition and reply briefs. For the following reasons, this court grants the Board's dispositive motion, denies Johnston's motion for judgment on the pleadings, and dismisses this complaint for a writ of mandamus.

FACTUAL BACKGROUND

{¶ 2} R.C. 3317.14 requires any school district to adopt a teachers' salary schedule with provisions for increments based upon training and years of service. The Board adopted such a salary schedule in its collective bargaining agreement with the Union. Article 31, Salary Provisions, in section 31.2.2 provides in pertinent part as follows:

> Teachers shall be placed on a schedule in accordance with the training and experiences described in these regulations. The placement of each teacher in a salary class shall be the highest class for which such teacher is qualified. For teachers new to the district, credit shall be granted for salary schedule placement for verified teaching service up to a maximum of twelve (12) years, in accordance with law.[1]

[1] The court notes that the salary schedule adopted by the Board is more elaborate and generous than the minimum salary schedule specified in R.C. 3317.13.

{¶ 3} R.C. 3317.13(B) requires that a school district employing a teacher new to that district "shall grant such teacher a total of not more than ten years of service * * *."

{¶ 4} Article 9 of the collective bargaining agreement controls the "Grievance Procedure." Section 9.1.1 defines a "Grievance" as "a claim by a teacher * * * that an alleged violation, misinterpretation or misapplication of a provision or provisions of this AGREEMENT has occurred." Section 9.2.2 provides that "[i]f a teacher in the unit represented by the [Union] believes that there is a basis for a grievance the teacher must first discuss the matter with his [or her] principal or other immediate supervisor in an effort to resolve the matter informally." Section 9.3 then specifies the rest of the grievance procedure. If the grievance is not resolved through the informal process, then the teacher or the Union must file a written agreement with the principal or immediate supervisor, pursuant to a specified form and within a strict time period. The principal or immediate supervisor must meet with the grievant within five days and must give a written disposition within five days of the meeting. If the grievant is not satisfied with the result, the grievant must file a written appeal to the superintendent. If the grievant is not satisfied with the result, then the final step in the grievance procedure is binding arbitration.

{¶ 5} Johnston avers that prior to the 2018-2019 school year, she signed a contract with the Board placing her at the pay grade of "Masters" and "Step 10." Subsequently, a new human resources director informed her that the previous

human resources director had improperly offered her ten years of service credit. The new director proffered her a new contract reflecting six years of service credit. Because this was just days before the new school year, Johnston felt compelled to agree to the new contract in lieu of unemployment.

{¶ 6} The Board attached the first "Letter of Acceptance," signed June 20, 2018. It shows that Johnston agreed to accept employment with educational experience of "MA Step 10." The letter further provides:

> This offer is contingent upon being able to verify the above educational experience. Also, you will be required to have proper certification for your area of teaching. Upon acceptance, your name will be presented to the Board of Education of the North Olmsted City Schools at an appropriate time. Later, a formal contract will be forwarded to you.

The Board also attached the second "Letter of Acceptance" signed July 11, 2018, placing Johnston at "MA Step 6." The actual contract between the Board and Johnston, signed July 20, 2018, is also attached to the answer. The Board avers that a "Letter of Acceptance" is not a contract until the Board approves it.

{¶ 7} Johnston maintains that the contract and statutes require the Board to give her ten years of service credit. Consequently, she filed this mandamus action. Johnston argues that she could not have filed a grievance prior to beginning her employment. The Board counters that, even if that were true, Johnston could have filed a grievance on the first day of her employment or on any of the following 25 days pursuant to Article 9.3.1 of the Agreement. It is undisputed that Johnston has never filed a grievance related to this matter.

LEGAL ANALYSIS

{¶ 8} 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 and (3) there must be no adequate remedy at law. *State ex rel. Ney v. Niehaus*, 33 Ohio St.3d 118, 515 N.E.2d 914 (1987), and *State ex rel. Harris v. Rhodes*, 54 Ohio St.2d 41, 374 N.E.2d 641 (1978). 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, 676 N.E.2d 108 (1997), and *State ex rel. Boardwalk Shopping Ctr., Inc. v. Court of Appeals for Cuyahoga Cty.*, 56 Ohio St.3d 33, 564 N.E.2d 86 (1990). Mandamus is an extraordinary remedy that 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*, 50 Ohio St.2d 165, 364 N.E.2d 1 (1977); *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 113 N.E.2d 14 (1953); *State ex rel. Connole v. Cleveland Bd. of Edn.*, 87 Ohio App.3d 43, 621 N.E.2d 850 (8th Dist.1993); and *State ex rel. Dayton-Oakwood Press v. Dissinger*, 32 Ohio Law Abs. 308 (1940).

{¶ 9} This court rules that the grievance procedure provided Johnston with an adequate remedy that now precludes mandamus. A claim of improper placement on the salary schedule comes within the definition of a grievance, a violation, misinterpretation, or misapplication of the agreement.

{¶ 10} *State ex rel. Johnson v. Cleveland Hts./Univ. Hts. School Dist. Bd. of Edn.*, 73 Ohio St.3d 189, 652 N.E.2d 750 (1995), is controlling. In that case, the

teacher was being compensated during the relevant time period at the level of MA 20 (Master's degree plus 20 years of service). During that period, the teacher earned her juris doctor degree and she sought compensation beyond the Master's degree level. Such placement on the salary schedule was possible if the superintendent agreed that the additional education related to the teaching assignment or contributed to the improvement of professional efficiency as a public school teacher. When the superintendent declined to grant the credit, the teacher initially filed a grievance, but withdrew it and sought relief through mandamus. The Supreme Court of Ohio in affirming this court's decision held that the grievance procedure of the collective bargaining agreement provided an adequate remedy at law that precluded mandamus.

{¶ 11} Similarly, in *State ex rel. Chavis v. Sycamore City School Dist. Bd. of Edn.,* 71 Ohio St.3d 26, 641 N.E.2d 188 (1994), mandamus was not available to those teachers who were covered by the collective bargaining agreement because the agreement's grievance and arbitration procedures were adequate remedies. In *State ex rel. Lockard v. Wellston City School Dist. Bd. of Edn.,* 2015-Ohio-2186, 35 N.E.3d 880 (4th Dist.2015), mandamus was not available to a teacher seeking military service credit because the collective bargaining agreement's grievance and arbitration procedure provided an adequate remedy at law.

{¶ 12} The cases cited by Johnston are distinguishable and unpersuasive. Johnston relies heavily on *Tapo v. Columbus Bd. of Edn.,* 31 Ohio St.3d 105, 509 N.E.2d 419 (1987). In that case, the teachers had claimed that they had been

improperly placed on the salary schedules for many years: for Tapo since 1969 and for Wilcox since 1971. In 1981, the board of education agreed, placed them at the proper level, and offered back pay for the last six years. To get their complete back pay, the teachers brought a breach-of-contract action. The Supreme Court of Ohio ruled that because the board of education had agreed that the teachers had been improperly placed, there was nothing to arbitrate through the grievance procedure and that the teachers did not have to exhaust their administrative remedies. From this Johnston argues that the grievance procedure does not preclude mandamus for proper placement on the salary schedule.

{¶ 13} However, in *Johnson*, *supra,* the Supreme Court of Ohio distinguished *Tapo* because the parties had stipulated that the teachers were entitled to their proper placement on the salary schedules; thus, there was nothing to arbitrate. The court specifically held that *Tapo* did not relieve Johnson of her adequate remedy through the grievance procedure.

{¶ 14} *State ex rel. Stuckey v. Washington Court House City School Dist.,* 12th Dist. Fayette No. CA89-07-018, 1990 Ohio App. LEXIS 587 (Feb. 20, 1990), did not address the issue of an adequate remedy at law; rather, the court held that a 12-year delay in bringing the action precluded the writ because of laches. In *Crawford v. Bd of Edn.*, 6 Ohio St.3d 324, 453 N.E.2d 627 (1983); *State ex rel. Fenske v. McGovern*, 11 Ohio St.3d 129, 464 N.E.2d 129 (1984)*; State ex rel. Gingrich v. Fairfield City Bd. of Edn.*, 18 Ohio St.3d 244, 480 N.E.2d 485 (1985); *State ex rel. Madden v. Windham Exempted Village School Dist. Bd. of Edn.*, 42 Ohio St.3d 86,

573 N.E.2d 646 (1989); *Milliron v. Cloverleaf Local School Dist. Bd. of Edn.*, 9th Dist. Medina No. 2450-M, 1996 Ohio App. LEXIS 600 (Feb. 21, 1996); and *State ex rel. Fink v. Bd. of Edn.,* 10th Dist. Franklin No. 93APE10-1462, 1994 Ohio App. LEXIS 2009 (May 12, 1994), there is no mention of a grievance procedure in a contract that would pose an impediment to mandamus. In fact, in *Madden*, *supra,* the court specifically stated that there was nothing in the record to show that relator had an adequate remedy at law. Similarly, *Maple Heights Teachers Assn. v. Maple Hts. Bd. of Edn.,* 6 Ohio St.3d 314, 453 N.E.2d 619 (1983), is distinguishable because it was brought as a breach-of-contract action and the plaintiffs had exhausted their applicable contractual procedures.

{¶ 15} Johnston argues that because she was not a member of the Union when she signed the contract, she could not invoke the grievance procedure. Therefore, she argues that the grievance procedure did not and does not provide an adequate remedy that would preclude mandamus. The Board has repeatedly countered Johnston's position by pointing out she could have filed a grievance on the first day of her employment or on any of the following 25 days pursuant to Article 9.3.1 of the Agreement. Johnston has not addressed this fact; nor has she offered any explanation as to why she has never filed a grievance other than to suggest she could not be made whole at this point. Her complaint in mandamus demonstrates that she disagreed with the lower salary placement when she signed the second letter of acceptance on July 11, 2018. Complaint at ¶ 12. While her explanation that she felt compelled to do so is plausible, it also establishes that she was aware of the issue

prior to her first day of work. Upon starting her employment on August 24, 2018, the grievance procedure in the Agreement provided her an adequate remedy to challenge it.

{¶ 16} Johnston maintains that pursuing a grievance and arbitration under the Agreement now is not an adequate remedy because it can only provide her prospective relief and not retroactive relief for the past five years she has worked without pursuing a grievance. Other courts have rejected similar arguments. In *State ex. Rel. Lockard v. Wellston City Sch. Dist. Bd. of Edn.*, 4th Dist. Jackson No. 14CA5, 2015-Ohio-2186, ¶ 19, the Fourth District Court of Appeals noted, "[t]he fact that the teacher had failed to pursue her right to arbitrate her grievance and was then precluded from doing so did not render her right to arbitrate inadequate." *Id.*, citing *State ex. rel. Williams v. Belpre City School Dist. Bd. of Edn.,* 41 Ohio App.3d 1, 8, 534 N.E.2d 96 (4th Dist.1987). The court further observed, "If a party to an arbitration agreement could use their own delay to exempt themselves from arbitration and avail themselves of court, no arbitration agreement would be enforceable — a party could simply wait it out until the right to arbitrate expired and pursue a claim in court." *Id.* at ¶ 19. Johnston does not dispute that she was aware of this grievance before she started working. Therefore, her argument that the grievance procedure does not provide her an adequate remedy is not persuasive, because she could have and should have filed her grievance as soon as she received her official contract and became a member of the Union. Accordingly, because the relator had an adequate remedy at law that precludes mandamus and that is

dispositive of this matter, we decline to address the Board's alternative grounds for dismissal, including equitable estoppel, laches, and the alleged defective affidavit. Relator's motion on the pleadings is denied, and respondent's motion on the pleadings is granted. The complaint for mandamus is dismissed. Relator to pay costs. This court directs the clerk of courts to serve all parties notice of the judgment and its date of entry upon the journal as required by Civ.R. 58(B).

{¶ 17} Complaint dismissed.

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MICHELLE J. SHEEHAN, PRESIDING JUDGE

EILEEN T. GALLAGHER, J., CONCURS;
MARY EILEEN KILBANE, J., DISSENTS (WITH SEPARATE OPINION ATTACHED)

MARY EILEEN KILBANE, J., DISSENTING:

{¶ 18} I respectfully dissent because the bait and switch by the North Olmsted Board of Education is wrong and violates its own rules. Johnston's unwarranted loss of service credit must be restored. For the following reasons, I would grant the writ of mandamus.

{¶ 19} On June 20, 2018, Johnston executed a Letter of Acceptance that offered ten years of service credit, and she anticipated executing an employment contract that included those terms. However, rather than presenting the agreed-upon terms in an employment contract, the Board claimed their former human resources employee made an error in calculating Johnston's service credit that

necessitated providing Johnston with a revised Letter of Acceptance. The second Letter of Acceptance allocated only six years of service credit to Johnston. With no option but to commit to employment at the reduced service credit or risk unemployment for the upcoming school year, Johnston executed the second letter on July 11, 2018.

{¶ 20} As stated by the majority, Johnston did not file a grievance with the Board disputing the loss of four years of service credit but now seeks, through a mandamus action, relief for the inadequate service credit agreed to in 2018.

{¶ 21} If a collective bargaining agreement does not address a specific topic or issue, the matter is governed by state and local laws. R.C. 4117.10(A). I would find that the collective bargaining agreement does not provide a mechanism for Johnston to collect retroactive back pay for the underpayment of wages. Thus, the issue presented in Johnston's complaint did not qualify as a grievance subject to the agreement's provisions, and she does not have an adequate remedy at law except through a writ of mandamus. I would have granted Johnston's dispositive motion and denied the Board's motion for judgment on the pleadings.

{¶ 22} For these reasons, I respectfully dissent.