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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JOHN DOE,

Case No. 1:09cv243

Plaintiff,

Judge Michael R. Barrett

v.

MARY RONAN,

09-2104

and

CINCINNATI PUBLIC SCHOOLS,

ORDER CERTIFYING STATE LAW
QUESTIONS TO THE SUPREME COURT
OF OHIO AND STAYING PROCEEDINGS
PENDING RESOLUTION OF THE STATE
LAW QUESTIONS

and

OHIO DEPARTMENT OF EDUCATION,

Defendants.

This matter is before this Court pursuant to Plaintiff John Doe's Motion to Certify State Law Questions to the Supreme Court of Ohio (Doc. 23). Defendants Ronan and Cincinnati Public Schools oppose this motion (Doc. 27). The Ohio Department of Education does not take a position (Doc. 26). Plaintiff requests that this Court issue a certification order pursuant to Rule XVIII of the Supreme Court of Ohio Rules of Practice for the following questions of Ohio state law:

- I. Does Ohio Revised Code § 3319.391 and Ohio Administrative Code § 3301-20-01 violate the Retroactivity Clause of Article II, Section 28 of the Ohio Constitution?

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BY: [Signature]
11/17/09

II. Does Ohio Revised Code § 3319.391 and Ohio Administrative Code § 3301-20-01 violate the Contract Clause of Article II, Section 28 of the Ohio Constitution?

Having duly considered all of the relevant documents including Plaintiff's Amended Complaint and Plaintiff's Motion, Plaintiff's Motion to Certify State Law Questions to the Supreme Court of Ohio and stay proceedings is hereby GRANTED. The Court finds that these questions of Ohio law may be determinative of the proceedings and further finds that there is no controlling precedent in the decisions of the Supreme Court of Ohio.

1. Background Information¹

Plaintiff has been an employee of Cincinnati Public Schools ("CPS") for over eleven years. (Doc. 11, ¶ 7.) He was first employed as a "Safe & Drug Free School Specialist" in 1997 and then as a "Due Process Hearing Specialist" beginning in 2002 to the present. (Id.) Plaintiff now works in an administrative capacity and does not have direct interaction with students except at administrative hearings where parents and/or guardians are present. (Id. at ¶ 9.) On July 14, 2008, the parties entered into a contract whereby Plaintiff would continue to be employed as a hearing officer for the 2008-2009 school year. (Id. at ¶ 11.)

On November 24, 2008, Defendants informed Plaintiff that he would be terminated after he had used all his sick leave. (Id. at ¶ 12.) CPS stated that his continued employment was barred due to O.R.C. § 3319.39, § 3319.391, and H.B. 190. (Id. at ¶ 13.) This new statute requires that any current employees who have a conviction for certain enumerated offenses must be released from employment. (Id. at ¶¶ 14-18.) See also

¹ The following facts are taken from the Court's Order Denying Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction. (Doc. 10, pgs. 1-2.)

O.A.C. 3301-20-01. Plaintiff was convicted of Unlawful Sale of Narcotic Drugs on November 11, 1976. (Doc. 11, ¶ 19.) Plaintiff served over three years in a correctional facility where he became rehabilitated. (Id. at ¶ 20.) Plaintiff obtained his bachelor's degree in 1983 and has become a Licensed Social Worker and Certified Chemical Dependency Counselor. (Id. at ¶¶ 22-23.) This conviction has been expunged, and he has been a model citizen since being released from jail. (Id. at ¶¶ 22-27).

2. Pending Motions

There are currently two other motions currently pending before this court, Defendants Ronan and Cincinnati Public Schools Board of Education's motion for judgment on the pleadings (Doc. 19) and Defendant Ohio Department of Education's motion to dismiss (Doc. 17). Both of these motions are DENIED at this time. Defendants should refile the motions after the stay is lifted.

3. Questions of Law to Be Answered

I. Does Ohio Revised Code § 3319.391 and Ohio Administrative Code § 3301-20-01 violate the Retroactivity Clause of Article II, Section 28 of the Ohio Constitution?

II. Does Ohio Revised Code § 3319.391 and Ohio Administrative Code § 3301-20-01 violate the Contract Clause of Article II, Section 28 of the Ohio Constitution?

4. Parties

Plaintiff John Doe
(MOVING PARTY)

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Kimberly Beck (0080616)
Carly Chu (0083211)
Sarah M. Sparks (0083803)
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Defendant Cincinnati Public Schools
Defendant Mary Ronan

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Defendant Ohio Department of
Education

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IT IS SO ORDERED.

s/Michael R. Barrett
United States District Judge

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U.S. District Court

Southern District of Ohio

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ORDER granting [23] Motion to Stay; denying [17] Motion to Dismiss; denying [19] Motion for Judgment on the Pleadings; [17] & [19] are subject to refiling after the stay is lifted. Signed by Judge Michael R. Barrett on 11/16/2009. (ba1)

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