

ORIGINAL

IN THE SUPREME COURT OF OHIO

State ex re. STACEY L. CARNA

Relator-Appellant,

v.

TEAYS VALLEY LOCAL SCHOOL
DISTRICT BOARD OF EDUCATION

Respondent-Appellee.

CASE NO. 11-0716

On Appeal from the Pickaway
County Court of Appeals,
Fourth Appellate District
Case No. 2010 CA 0018

MEMORANDUM OF APPELLEE
TEAYS VALLEY LOCAL SCHOOL DISTRICT BOARD OF EDUCATION
CONTRA JURISDICTION

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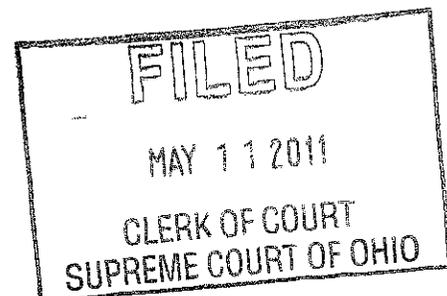


TABLE OF CONTENTS

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF APPELLEE’S POSITION CONCERNING JURISDICTION 1

ARGUMENT 2

 RESPONSE TO PROPOSITION OF LAW I 2

 R.C. 3319.02(D)(5) does not mandate automatic reemployment of a school administrator where the school board holds its regular, public meeting within the timeframe permitted by R.C. 3319.02(D)(2) for consideration of contract renewal and the administrator, having been advised of the intent not to renew and having requested a meeting with the school board, fails to appear.

 A. This is not a case of public or great general interest because the Fourth District Court of Appeals read and applied the statutory language as written. 5

 B. This is not a case of public or great general interest because the Fourth District Court of Appeals did not create otherwise nonexistent prerequisites to a valid R.C. 3319.02(D) meeting request. 8

 C. This not a case of public or great general interest because the Fourth District Court of Appeals’ Carna decision does not obscure when an employee’s right to request a meeting is triggered. 10

CONCLUSION 13

CERTIFICATE OF SERVICE 14

TABLE OF AUTHORITIES

CASES

Depas v. Highland Local School Dist. Bd. of Edn. (1977)
52 Ohio St.2d 193, 370 N.E.2d 744 10

State ex rel. Stacey L. Carna v. Teays Valley Local School District
(Mar. 17, 2011), Pickaway App. No. 10CA18, 2011 Ohio 1522 6, 7, 10, 11

State of Ohio v. Bartrum (2009), 121 Ohio St. 3d 148,
2009 Ohio 355, 902 N.E.2d 961 1

Williamson v. Rubich (1960), 171 Ohio St. 253, 168 N.E.2d 876 1, 12

STATUTES

R.C. 3319.02(D)(2) 6, 7, 8, 9,
10, 11, 12

R.C. 3319.02(D)(4) 1, 5, 6, 7,
9, 11, 12

R.C. 3319.02(D)(5) 1, 2, 5, 6, 7,
8, 9, 10,
11, 12

STATEMENT OF APPELLEE'S POSITION REGARDING JURISDICTION

This Honorable Court's role "is not to serve as an additional court of appeals on review, but rather to clarify rules of law arising in courts of appeals that are matters of public or great general interest." **State of Ohio v. Bartrum** (2009), 121 Ohio St. 3d 148, 153, 2009 Ohio 355, 902 N.E.2d 961, O'Donnell, J., dissenting, citing Section 2(B)(2)(e), Article IV of the Ohio Constitution. "Public or great general interest" is distinguished from questions of interest primarily to the parties to the subject action. **Williamson v. Rubich** (1960), 171 Ohio St. 253, 254, 168 N.E.2d 876.

This case does not present an issue of public or great general interest. Contrary to Appellant Stacey L. Carna's interpretation, the decision on appeal does not impact contract renewal for every public school administrator in the State of Ohio. (Appellant's Memorandum in Support of Jurisdiction, p. 1). Rather, the lower court's decision speaks to a specific set of facts – unique to Ms. Carna and Appellee Teays Valley Local School District – in the particular circumstances of the March 17, 2008 vote not to renew Ms. Carna's contract.

Furthermore, the question presented is not whether school districts can ignore R.C. 3319.02(D) with impunity (Appellant's Memorandum in Support of Jurisdiction, p. 1), but whether the Teays Valley School Board ignored R.C. 3319.02(D)(4) such that R.C. 3319.02(D)(5) compels Ms. Carna's reemployment. This particular question is of interest only to Ms. Carna and the Teays Valley School Board. Therefore, this Honorable Court should decline to exercise its jurisdiction herein.

ARGUMENT

RESPONSE TO PROPOSITION OF LAW I

R.C. 3319.02(D)(5) does not mandate automatic reemployment of a school administrator where the school board holds its regular, public meeting within the timeframe permitted by R.C. 3319.02(C) and (D)(2) for consideration of contract renewal and the administrator, having been advised of the intent not to renew and having requested a meeting with the school board, fails to appear.

In an effort to broaden the purported scope and significance of her issue on appeal, Ms. Carna strictly limits the facts she considers relevant. (Appellant's Memorandum in Support of Jurisdiction, p. 5-6). She omits from her narrative the following facts, all of which bear on whether her issue is one of public or great general interest or merely one of personal interest to the parties before this Court:

- 1) In early May 2007, teachers and school secretaries raised concerns about irregularities occurring during three (3) days of standardized, Ohio Achievement Tests (OATs) at Ashville Elementary School. (Appellant's Memorandum in Support of Jurisdiction, Appendix B, p. 2-3);
- 2) The School Board placed Ms. Carna, then serving as Ashville Elementary School's Principal, on paid administrative leave. (Appellant's Memorandum in Support of Jurisdiction, Appendix B, p. 2);
- 3) At the time Ms. Carna was placed on administrative leave, she was only partially through her first year of a two (2) year Administrator's Contract with the School Board. (Appellant's Memorandum in Support of Jurisdiction, Appendix B, p. 2);

- 4) Shortly after Ms. Carna was placed on administrative leave, the circumstances surrounding the invalidation of the Ashville Elementary OATs were subject to investigation by the Ohio Department of Education. (Appellant's Memorandum in Support of Jurisdiction, Appendix B, p. 3);
- 5) On July 11, 2007, Ms. Carna requested a meeting with the School Board to discuss the anticipated non-renewal of her Administrator's Contract on its natural expiration date at the end of the 2007-2008 school year. (Appellant's Memorandum in Support of Jurisdiction, p. 6);
- 6) Ms. Carna remained on paid administrative leave through the remainder of her Administrator's Contract, as the School Board did not seek to terminate said Contract. (Appellant's Memorandum in Support of Jurisdiction, Appendix B, p. 3);
- 7) In January 2008, the School Board provided Ms. Carna a written Administrative Evaluation indicating the likelihood that her Contract would not be recommended for renewal. (Appellant's Memorandum in Support of Jurisdiction, Appendix A, p. 2);
- 8) Ms. Carna did not request to meet with the School Board. (Appellant's Memorandum in Support of Jurisdiction, Appendix A, p. 10);
- 9) On February 29, 2008, Teays Valley School Board provided Ms. Carna a second written Administrative Evaluation for the 2007-2008 school year, which evaluation stated that the Superintendent would recommend that Ms. Carna's contract not be renewed for the 2008-2009 school year. (Appellant's Memorandum in Support of Jurisdiction, Appendix A, p. 2);

- 10) Ms. Carna did not request to meet with the School Board. (Appellant's Memorandum in Support of Jurisdiction, Appendix A, p. 10);
- 11) Ms. Carna signed, but noted her objection to, both the January and February 2008 Administrative Evaluations. (Appellant's Memorandum in Support of Jurisdiction, Appendix A, p. 2);
- 12) There is no evidence that Ms. Carna ever reiterated her July 11, 2007 request to meet with the School Board. (Appellant's Memorandum in Support of Jurisdiction, Appendix A, p. 10);
- 13) At the School Board's March 17, 2008 meeting, it voted not to renew Ms. Carna's Administrator's Contract. (Appellant's Memorandum in Support of Jurisdiction, Appendix A, p. 2-3);
- 14) There is no evidence that Ms. Carna appeared at the March 17, 2008 School Board meeting;
- 15) Over a period of five (5) days in July and August 2008, an administrative hearing officer for the Ohio State Board of Education conducted administrative proceedings concerning the May 2007 allegations of irregularities in the Spring 2007 OATs at Ashville Elementary. (Appellant's Memorandum in Support of Jurisdiction, Appendix B, p. 1); and
- 16) On October 6, 2008, the Ohio State Board of Education hearing officer issued a Report and Recommendation finding no evidence of Ms. Carna's involvement in any OAT irregularities. (Appellant's Memorandum in Support of Jurisdiction, Appendix B, p. 3-4).

Thus, Ms. Carna's claim to R.C. 3319.02(D)(5) automatic reemployment arises solely in the exceptional circumstance of an administrator, under investigation by the Ohio Department of Education, awaiting hearing by the State Board of Education, on paid leave during the entire school year leading up to and including the contract vote, requesting an R.C. 3319.02(D)(4) meeting approximately eight (8) months before it could be held and failing to appear at the only School Board meeting at which the contract renewal discussion could have been held. To argue that "[l]eft unaltered, this decision [on appeal] will strip principals, assistant superintendents, and other administrators of the basic procedural protections enacted by the General Assembly" ignores the singular factual context in which the Fourth District Court of Appeals' decision was made. (Appellant's Memorandum in Support of Jurisdiction, p. 14).

Ms. Carna claims that this case involves a matter of public or great general interest because the Fourth District Court of Appeals "rearranged the words of the statute," "create[d] a number of nonexistent prerequisites to a valid meeting request," and "settled on a sequence of events that makes it impossible to tell when the right to request a meeting has been triggered." (Appellant's Memorandum in Support of Jurisdiction, p. 9, 10, and). In law and fact, the Fourth District Court of Appeals did none of these things.

A. This is not a case of public or great general interest because the Fourth District Court of Appeals read and applied the statutory language as written.

When R.C. 3319.02(D)(5) mandates automatic reemployment "if the board fails to provide at the request of the employee a meeting as prescribed in division (D)(4) of this section [R.C. 3319.02]," it plainly and unambiguously means two (2) things:

- 1) A meeting “[b]efore taking action to renew or nonrenew the contract;” and
- 2) A discussion of the reasons for considering renewal or nonrenewal.”

R.C. 3319.02(D)(4). If the employee requests, the meeting will also occur in executive session with the employee’s chosen legal representative present. R.C. 3319.02(D)(4).

When the Fourth District Court of Appeals wrote, “[w]e do not believe that a request that occurs after an informal verbal notification from an assistant superintendent nearly one year before the contract expires constitutes the type of request for a meeting that the statute contemplates,” it did not rearrange or misinterpret R.C. 3319.02(D)(5). **State ex rel. Stacey L. Carna v. Teays Valley Local School District Bd. of Edn.** (Mar. 17, 2011), Pickaway App. No. 10CA18, 2011 Ohio 1522, P18. Rather, it recognized that the essential characteristic of the “meeting as prescribed in division (D)(4)” is that it involve a discussion of the reasons for renewal or nonrenewal “[b]efore taking action,” a term strictly controlled by R.C. 3319.02(D)(2)(c). R.C. 3319.02(D)(4) and (5). (Emphasis added).

R.C. 3319.02(D)(2)(c) establishes the parameters for evaluation of school administrators’ job performance. It mandates, in relevant part, that “the evaluation process shall be completed as follows:”

In any school year that the employee's contract of employment is due to expire, at least a preliminary evaluation and at least a final evaluation shall be completed in that year. *A written copy of the preliminary evaluation shall be provided to the employee at least sixty days prior to any action by the board* on the employee's contract of employment. The final evaluation shall indicate the superintendent's intended recommendation to the board regarding a contract of employment for the employee. *A written copy of the evaluation shall be provided to the employee at least five days prior to the board's acting to renew or not renew the contract.*

R.C. 3319.02(D)(2)(c)(ii). (Emphasis added).

Thus, R.C. 3319.02(D)(4)'s mandate of a meeting "[b]efore taking action to renew or nonrenew the contract" necessarily means a meeting:

- 1) at least sixty (60) days after the employee's preliminary evaluation in the last school year of her contract. R.C. 3319.02(D)(2)(c)(ii);
- 2) at least five (5) days after her final evaluation in that school year. R.C. 3319.02(D)(2)(c)(ii); and
- 3) before the last day of March of the same school year. R.C. 3319.02(D)(4).

As applied to the specific facts of the present case, R.C. 3319.02(D) permitted the School Board to meet with Ms. Carna to discuss her Contract renewal only between March 5, 2008 – sixty (60) days after her preliminary evaluation and five (5) days after her final evaluation for the 2007-2008 school year – and March 31, 2008. R.C. 3319.02(D)(2)(c)(ii) and (4). The School Board acted by resolution approved in open, public meetings held on a regular, fixed schedule. R.C. 121.22, 3313.14, 3313.15, 3313.18, and 3313.26. The only such meeting occurring between March 5 and March 31, 2008 was the March 17, 2008 meeting at which the School Board considered and voted on the nonrenewal of Ms. Carna's contract. There is no evidence that Ms. Carna attended the March 17 meeting.

The determination that Ms. Carna's July 11, 2007 meeting request was insufficient for purposes of automatic contract renewal did not rewrite R.C. 3319.02, but simply acknowledged that in the particular circumstances of her case, it is impossible to conclude that the School Board "fail[ed] to provide" Ms. Carna an R.C. 3319.02(D)(4) meeting. R.C. 3319.02(D)(5). Carna, *supra* at P18.

B. This is not a case of public or great general interest because the Fourth District Court of Appeals did not create otherwise nonexistent prerequisites to a valid R.C. 3319.02(D) meeting request.

Ms. Carna rejects the foregoing logic, contending that “[w]hile the statute prohibits the board from holding a vote on renewal or nonrenewal prior to each of [the statutorily mandated written evaluations being provided to the employee], it does not relate an employee’s request for a meeting to any of these events.” (Appellant’s Memorandum in Support of Jurisdiction, p. 11). Thereupon, Ms. Carna derides the Fourth District Court of Appeals’ concern that allowing employees to request an R.C. 3319.02(D)(4) meeting at any time subjects the R.C. 3319.02(D)(5) right of automatic contract renewal to abuse. (Appellant’s Memorandum in Support of Jurisdiction, p. 11-12).

However, Ms. Carna fails to distinguish her own case, much less the cases of others she claims have an interest in this matter, from the potential for such abuse. Indeed, she cannot. The undisputed facts demonstrate that the School Board considered and voted on the nonrenewal of Ms. Carna’s Contract at the only open, public meeting on its regular, fixed schedule that occurred within the parameters established by R.C. 3319.02(D)(2)(c)(ii). R.C. 121.22, 3313.14, 3313.15, 3313.18, and 3313.26. That meeting took place on March 17, 2008, approximately eight (8) months after Ms. Carna’s July 11, 2007 request. There is no evidence that Ms. Carna was barred from the meeting or was denied the information that every other employee of the school district had about the time, date and place of said meeting. Nonetheless, there is no evidence that Ms. Carna attended or attempted to attend that meeting.

If, as Ms. Carna advocates, her July 11, 2007 request was sufficient and effective to evoke an R.C. 3319.02(D)(4) meeting to occur eight (8) months later, the question becomes whether the School Board "failed] to provide" the meeting within the meaning of R.C. 3319.02(D)(5). (Emphasis added). The School Board was there, in precise compliance with R.C. 3319.02(D)(2), 121.22, 3313.14, 3313.15, 3313.18, and 3313.26. The School Board held a discussion and vote on the nonrenewal of Ms. Carna's Contract. There is no evidence of any secrecy, irregularity, or evasiveness in the School Board's reviews of Ms. Carna's job performance, notice of the Superintendent's intention to recommend nonrenewal of her Contract, or in the convening of its March 17, 2008 meeting. The evidence indicates only that Ms. Carna failed to appear.

Now, Ms. Carna seeks not only to transform her failure into an automatic renewal of her Contract under R.C. 3319.02(D)(5), but to recast the unusual facts of this case in an effort to universalize its application to all Ohio school administrators. Neither scenario is appropriate. Ms. Carna's failure to appear for the School Board's March 17, 2008 meeting, after requesting it eight (8) months earlier, is unique to her. Whether that failure was a calculated abuse of R.C. 3319.02(D)(5) or a simple oversight, it perfectly exemplifies why, as a practical matter, the R.C. 3319.02(D)(4) request for a meeting must take place in some temporal proximity to the time when R.C. 3319.02(D)(2)(c) permits the meeting to occur. Here, the want of such proximity renders it impossible to determine that the School Board "failed] to provide" the meeting. Indisputably, the meeting did not occur. However, it was Ms. Carna, not the School Board, whose absence defeated the intention of R.C. 3319.02(D)(4).

C. This not a case of public or great general interest because the Fourth District Court of Appeals' Carna decision does not obscure when an employee's right to request a meeting is triggered.

Contrary to Ms. Carna's argument in support of this Honorable Court's exercise of jurisdiction, the procedural rights of school administrators are no different today, and no less clear, than they were prior to the issuance of the decision on appeal. Pursuant to R.C. Chapter 3319, a school administrator's job is a matter of contract. School boards are under no statutory obligation to renew an administrator's contract in anticipation of its natural expiration. They may nonrenew a contract for any reason or no reason at all. R.C. 3319.02(D)(5). Moreover, school administrators have no property right in and therefore no procedural due process guarantees as to their employment. Depas v. Highland Local School Dist. Bd. of Edn. (1977), 52 Ohio St.2d 193, 370 N.E.2d 744.

Under R.C. 3319.02(D)(2)(c) and the Fourth District Court of Appeals' Carna decision, administrators are entitled to and school boards must provide two written (2) job evaluations in the administrator's final contract year. The first such evaluation must be provided to the administrator no less than sixty (60) days before the school board takes "any action" on the administrator's contract. R.C. 3319.02(D)(2)(c)(ii). Carna, *supra* at P17. The second evaluation must be provided to the administrator at least five (5) days before the school board "act[s] to renew or not renew the contract." R.C. 3319.02(D)(2)(c)(ii). Carna, *supra* at P17. Further, the second evaluation must indicate whether the superintendent will recommend renewal or nonrenewal of the administrator's contract. R.C. 3319.02(D)(2)(c)(ii). Carna, *supra* at P17.

Although school administrators are entitled to notice of the date of their contract expiration and their right to request a meeting with the school board, the want of such notice does not give rise to a statutory right of automatic reemployment. R.C. 3319.02(D)(4) and (5). Rather, an administrator has a right to automatic contract renewal only if the school board fails to provide the R.C. 3319.02(D)(2) evaluations or fails to meet with the administrator as requested under R.C. 3319.02(D)(4). R.C. 3319.02(D)(5).

The Carna decision does not affect or modify these procedural rights. Furthermore, the Carna decision does not shorten the administrator's time to prepare for a meeting with the school board to discuss contract renewal, render the administrator's right to counsel at the meeting "meaningless," impede preparation for the meeting, or modify in any way the administrator's rights in and with regard to that meeting. (Appellant's Memorandum in Support of Jurisdiction, p. 13).

By statute, administrators have a right to notice of a superintendent's recommendation concerning contract renewal only in the second evaluation in their final contract year. R.C. 3319.02(D)(2)(c)(ii). (Emphasis added). By statute, administrators have a right to receive a copy of that second evaluation as little as five (5) days before the school board acts to renew or nonrenew the contract. R.C. 3319.02(D)(2)(c)(ii). (Emphasis added). R.C. 3319.02(D), not the Carna decision, dictates the amount of advance notice a school administrator is entitled to receive before a school board votes to renew or nonrenew her contract. If Ms. Carna believes that five (5) days' notice is inadequate, her complaint is about the statute, not the decision on appeal, and her remedy is with the General Assembly, not this Honorable Court.

The sole issue before this Court is whether there is public or great general interest in the determination that Ms. Carna's July 11, 2007 request did not invoke R.C. 3319.02(D)(5) reemployment based on the want of an R.C. 3319.02(D)(4) meeting on March 17, 2008. The adequacy of the statutory notice period is inapposite to this issue. Ms. Carna's claim about what "could" have happened had she reiterated her request to meet "dozens or hundreds of times" is similarly irrelevant. (Appellant's Memorandum in Support of Jurisdiction, p. 13). There is no evidence that Ms. Carna ever reiterated, even once, her request to meet with the Teays Valley School Board.

Ms. Carna's claim that in the decision on appeal the School Board was "permitted to ignore" her July 11, 2007 request to meet – or any other hypothetical request she could have made but failed to – is equally immaterial. (Appellant's Memorandum in Support of Jurisdiction, p. 13). In fact, the School Board did not "ignore" the request, but was statutorily prohibited from acting on it until mid-March 2008. R.C. 3319.02(D)(2)(c)(ii). The determination whether this case presents a matter of public or great general interest turns on one direct question: whether the School Board, statutorily prohibited from holding an R.C. 3319.02(D)(4) meeting with Ms. Carna in July 2007 and/or at any other time prior to mid-March 2008, can fairly be said to have "fail[ed] to meet" with her before contract renewal, despite the fact that it held the requisite meeting, openly, publicly, and on its regular, fixed schedule, on March 17, 2008. R.C. 3319.02(D)(5). (Emphasis added). As the answer to that question necessarily depends on the unique facts of this case, it is a matter of interest only to the respective parties hereto. Therefore, this Honorable Court should decline to exercise its jurisdiction in the matter. Williamson, *supra* at 254.

CONCLUSION

For all of the foregoing reasons, Appellee Teays Valley Local School District Board of Education respectfully requests that this Honorable Court DECLINE to exercise jurisdiction in this matter.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following, via regular U.S. Mail, on this 11 day of May 2011:

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