

**IN THE SUPREME COURT OF OHIO**

|                                      |   |   |
|--------------------------------------|---|---|
| <b>State ex rel. STACEY L. CARNA</b> | : |   |
|                                      | : |   |
| <b>Relator-Appellant,</b>            | : | <b>CASE NO. 11-0716</b>                   |
|                                      | : |   |
| <b>v.</b>                            | : | <b>On Appeal from the Pickaway County</b> |
|                                      | : | <b>Court of Appeals</b>                   |
| <b>TEAYS VALLEY LOCAL SCHOOL</b>     | : | <b>Fourth Appellate District</b>          |
| <b>DISTRICT BOARD OF EDUCATION</b>   | : | <b>Case No. 2010 CA 0018</b>              |
|                                      | : |   |
| <b>Respondent-Appellee.</b>          | : |   |

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**BRIEF ON BEHALF OF AMICI CURIAE  
OHIO ASSOCIATION OF ELEMENTARY  
SCHOOL ADMINISTRATORS AND  
OHIO ASSOCIATION OF SECONDARY SCHOOL ADMINISTRATORS  
IN SUPPORT OF APPELLANT STATE ex rel. STACEY L. CARNA**

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**FILED**  
 AUG 26 2011  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

**RECEIVED**  
 AUG 26 2011  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

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**INTEREST OF OHIO ASSOCIATION OF ELEMENTARY SCHOOL  
ADMINISTRATORS (OAESA) AND OHIO ASSOCIATION OF SECONDARY  
SCHOOL ADMINISTRATORS (OASSA)**

The Ohio Association of Elementary School Administrators (“OAESA”) is a professional association serving Ohio’s elementary and middle level school administrators. Many of the administrators are elementary or middle school principals or assistant principals serving under administrators’ contracts, with their respective boards of education, governed by R.C. § 3319.02.

The Ohio Association of Secondary School Administrators (“OASSA”) is a professional association serving Ohio’s secondary school administrators. Many of the administrators are high school principals or assistant high school principals. These administrators serve under administrators’ contracts, with their respective boards of education, governed by R.C. § 3319.02.

Ohio’s administrators, who have tremendous responsibility in dealing with teachers, staff, students, parents and members of the community have very little job security but have counted on the fact that the law (R.C. § 3319.02) has promised them an audience with their employer (board of education) during the year that their contract is up for renewal if they merely request the same. That right has altered by the trial court and the Court of Appeals, in the above-captioned case, and now, administrators are left with uncertainty about the meaning of the law (R.C. § 3319.02) which they thought they understood.

The members of the OAESA and OASSA joined their profession to be “educators” but, now, are being forced to become “litigators” just to secure the right to have one meeting with their employer (board of education) to discuss their future.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

The facts relevant to the proposition of law are not in dispute and are as follows. Appellant State, ex rel. Stacy L. Carna (hereinafter referred to as “Ms. Carna”) was employed under a two year administrator’s contract with the Appellee Board of Education of the Teays Valley Local School District (hereinafter referred to the as the “Teays Valley Board of Education”) (pg. 2 of Court of Appeals Decision at Appendix 4 of Appellant’s Brief).

On or about July 11, 2007, the assistant superintendent informed Ms. Carna that she was going to be recommended for nonrenewal (pg. 2 of Court of Appeals Decision at Appendix 4 of Appellant’s Brief). During that conversation, Ms. Carna requested a meeting with the Teays Valley Board of Education (pgs. 9 and 10 of Court of Appeals Decision at Appendix 11 and 12 of Appellant’s Brief).

During Ms. Carna’s 2007-2008 contract year, she received two evaluations (pg. 2 of Court of Appeals Decision at Appendix 4 of Appellant’s Brief).

The Teays Valley Board of Education did not, during Ms. Carna’s 2007-2008 contract year, notify Ms. Carna of the date that her contract was expiring or that she could request a meeting with the Teays Valley Board of Education (pg. 12 of Court of Appeals Decision at fn 2 at Appendix 14 of Appellant’s Brief).

On March 17, 2008, the Teays Valley Board of Education voted to nonrenew Ms. Carna’s administrator’s contract (pgs. 2 and 3 of Court of Appeals Decision at Appendix 4 and 5 of Appellant’s Brief). Notwithstanding Ms. Carna’s request for a meeting, the Teays Valley Board of Education never honored that request.

Ms. Carna filed a mandamus action in the Common Pleas Court of Pickaway County, Ohio on the basis that she was not provided with a meeting, in executive session, with the Teays

Valley Board of Education to discuss its reasons for considering renewal or nonrenewal of her contract prior to it taking action to nonrenew her contract. Ms. Carna and the Teays Valley Board of Education filed cross-motions for partial summary judgment and the trial court entered summary judgment in favor of the Teays Valley Board of Education and denied Ms. Carna's motion for summary judgment (pg. 3 of Court of Appeals Decision at Appendix 5 of Appellant's Brief).

Ms. Carna appealed to the Court of Appeals of Pickaway County, Ohio, Fourth Appellate District, and the Court of Appeals affirmed the trial court holding, essentially, that the Teays Valley Board of Education did not have to provide Ms. Carna with a meeting to discuss the reasons for the renewal or nonrenewal of her contract because her request for a meeting was "too early."

Ms. Carna filed a notice of appeal and memorandum in support of jurisdiction with this Court and this Court accepted jurisdiction of her appeal.

## ARGUMENT

### PROPOSITION OF LAW

**Under R.C. § 3319.02, a board of education must afford an administrator a meeting, in executive session, if the administrator requests the same prior to March 31 of the year in which the administrator's contract expires, and the failure to do so results in automatic reemployment for the administrator.**

R.C. § 3319.02(D)(4) provides as follows:

Before taking action to renew or nonrenew the contract of an assistant superintendent, principal, assistant principal, or other administrator under this section and prior to the last day of March of the year in which such employee's contract expires, the board shall notify each such employee of the date that the contract expires and that the employee may request a meeting with the board. **Upon request by such an employee, the board shall grant the employee a meeting in executive session.** In that meeting, the board shall discuss its reasons for considering renewal or nonrenewal of the contract. The employee shall be

permitted to have a representative, chosen by the employee, present at the meeting. (Emphasis added)

An administrator's contract has a specific expiration date, but the contract is automatically renewed unless the administrator's board of education votes to nonrenew the contract and gives written notice of the same to the administrator no later than the last day of March in the year in which the contract expires. R.C. § 3319.02(C) provides, in relevant part, as follows:

An assistant superintendent, principal, assistant principal, or other administrator is, at the expiration of the current term of employment, deemed reemployed at the same salary plus any increments that may be authorized by the board, unless such employee notifies the board in writing to the contrary on or before the first day of June, or unless such board, **on or before the last day of March** of the year in which the contract of employment expires, either reemploys such employee for a succeeding term or gives written notice of its intention not to reemploy the employee. (Emphasis added)

Thus, March 31 is a critical date for boards of education and administrators whose contracts are expiring. Consequently, the General Assembly has provided administrators with the right, upon request, to meet with their boards of education in executive session, prior to any action by the board of education on the contract, to enable the administrator to hear the reasons why the board of education is "considering renewal or nonrenewal of the contract." Of course, that enables the administrator to respond and to have a dialogue with his/her employer (board of education) that is otherwise not legally available.

In the instant case, Ms. Carna was informed by the assistant superintendent that she was going to be recommended for nonrenewal. It is very likely that the nonrenewal recommendation was based on the fact that she had been accused (albeit falsely) of engaging in testing irregularities. She, Ms. Carna, obviously desired to meet with her board of education prior to any action on her contract to explain to the Teays Valley Board of Education the same thing that

was explained to the Ohio Department of Education. Of course, the Ohio Department of Education ultimately found that Ms. Carna had not engaged in any testing irregularities.

Ms. Carna had every reason to believe that her request for a meeting, in executive session, would be honored. R.C. § 3319.02(D)(4) promised her that meeting upon request. The assistant superintendent did not tell her that her request was “too early.”

Because Ms. Carna’s request for a meeting with the Teays Valley Board of Education was never honored, she was deprived of the right promised to her under R.C. § 3319.02(D)(4) to meet with her employer (Teays Valley Board of Education), in executive session, prior to any action on its part to nonrenew her contract. The consequence for the Teays Valley Board of Education not affording Ms. Carna with the right to meet with it, in executive session, is set forth at R.C. § 3319.02(D)(5) in relevant part, as follows:

However, if a board fails to provide evaluations pursuant to division (D)(2)(c)(i) or (ii) of this section, **or if the board fails to provide at the request of the employee a meeting** as prescribed in division (D)(4) of this section, the employee automatically shall be reemployed . . . . (Emphasis added)

The Court of Appeals affirmed the summary judgment granted by the trial court to the Teays Valley Board of Education and, by judicial fiat, added a provision to R.C. § 3319.02(D)(4) that the employee’s request for a meeting with his/her board of education must be made “at a time reasonably related to the board’s impending decision.” On page 10 of its Decision, the Court of Appeals stated, in part, as follows:

Although appellant’s request in July 2007 occurred before the board took action to renew or nonrenew her contract, we agree with the trial court that the statute **implies** that the request must occur not at any time before the board takes action, but **at a time reasonably related to the board’s impending decision.** (Emphasis added)

The Court of Appeals overstepped its authority by reading an “implication” into the statute and then judicially creating the vague provision that the request must occur “at a time

reasonably related to the board's impending decision." The Court of Appeals attempted to justify its judicial modification of R.C. § 3319.02(D)(4) by stating, in relevant part, as follows:

Although we recognize that appellant may deem our interpretation of the statute constrained, we believe that our interpretation comports with the plain meaning and intent of the statute. (At pg. 12 of the Court of Appeals' Decision.)

Unfortunately, the Court of Appeals' interpretation does not reflect the plain meaning and intent of the statute. The plain meaning and intent of the statute is to give an administrator an opportunity to meet with his/her employer (board of education) before his/her employer (board of education) takes action on his/her contract. The meaning and intent of the statute has been frustrated by the Court of Appeals judicially creating obstacles for the administrator. Furthermore, neither the trial court nor the Court of Appeals recognized that R.C. § 3319.02 is a remedial statute that must be liberally construed in favor of administrators. *State, ex rel. Smith v. Etheridge*, 65 Ohio St. 3d 501.

The R.C. § 3319.02(D)(4) procedure is not complicated. A board of education knows which administrator contracts are expiring and it, the board of education, determines when it is going to meet to consider the renewal or nonrenewal of those administrator contracts. It, the board of education, can confer with its statutory executive officer (the superintendent) or the assistant executive officer (its assistant superintendent) to inquire as to which administrators have requested a meeting and then inform the administrator of the date of the meeting at which the reasons for the renewal or nonrenewal will be discussed in executive session. In other words, the meeting can be scheduled for any time before March 31.

The Court of Appeals stated that it agreed "with the trial court's analysis that appellant's July 2007 request is not the type of request that the statute contemplates" and, in part, quoted the trial court as follows:

The statutory scheme contemplates an administrator's requesting a meeting after three things occur: (1) the superintendent or his designee conducts the final evaluation of the administrator; (2) the administrator learns of the superintendent's intended recommendation, as indicated on the final evaluation under division (D)(2)(c)(ii); and (3) the board notifies the administrator of the contract's expiration date and her right to request a meeting. An administrator's request for a meeting during a conversation some seven months before the administrator's final evaluation and the superintendent's official recommendation to the board is not a basis for alleging a violation of division (D)(4). (pp. 10-11 of Court of Appeals' Opinion quoting from pp. 14-15 of the trial court's decision.)

Thus, the trial court and the Court of Appeals are of the opinion that three things must occur before an administrator may request a meeting with the board of education and those are (1) a final evaluation, (2) the superintendent's recommendation set forth on the final evaluation, and (3) board notification that the administrator's contract is expiring and of her right to request a meeting.

What happens, however, if the superintendent inadvertently fails to state his recommendation on the final evaluation? According to the trial court and the Court of Appeals, it would be premature for the administrator to request a meeting with the board of education before she receives that recommendation.

What if the board of education fails to notify the administrator of her contract expiration and of her right to request a meeting? Once again, according to the trial court and the Court of Appeals, the three prerequisites to requesting a meeting have not occurred and it would be premature for the administrator to request a hearing.

What if a board of education notifies an administrator in October that her contract is expiring that following July and that she has a right to request a meeting with the board of education? Must she wait until after her final evaluation and the superintendent's recommendation (assuming there is one) before she requests the meeting that the board of

education has already told her she is entitled to? According to the trial court and the Court of Appeals, she must wait.

What if an administrator receives her final evaluation five days prior to a board of education meeting scheduled for March 31, but has not yet received a notice from the board notifying her that her contract is expiring and that she may request a meeting with the board? Must that administrator wait until after she receives the notice from the board of education to request the meeting, which, according to statute, only has to be given prior to taking action to renew or nonrenew? According to the trial court and the Court of Appeals, it would be premature for an administrator to request to meet with the board of education before she actually receives notice of her right to request the meeting.

The above examples illustrate the problems that the trial court and the Court of Appeals have created by their judicial modification of R.C. § 3319.02. The problems are not only for administrators but for boards of education and trial courts who now have to wrestle with the Court of Appeals' ruling that the administrator's request for a meeting in executive session must be made "at a time reasonably related to the board's impending decision" (pg. 10 of Court of Appeals' Decision).

### CONCLUSION

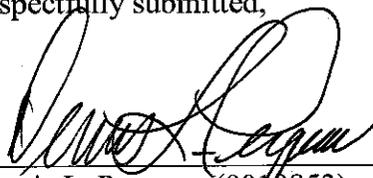
The Court of Appeals has taken a statute [R.C. § 3319.02(D)(4)], which is a remedial statute that must be liberally construed in favor of administrators, *Etheridge, supra*, and has, by judicial fiat, amended the statute in such a way that the plain meaning and intent have been frustrated. Ms. Carna had a legal right under R.C. § 3319.02(D)(4) to one meeting, in executive session, with her employer (Teays Valley Board of Education) to discuss her contract renewal or nonrenewal (or in other words, her future). She requested that meeting but the Court of Appeals

has excused the Teays Valley Board of Education from providing that meeting because, according to it, her request was "too early."

Now, administrators in Ohio must try to figure out "just when" to request their statutory right to a meeting, in executive session, with their employer (board of education) and are at risk of not being afforded that meeting.

Accordingly, the Court of Appeals' decision must be reversed.

Respectfully submitted,



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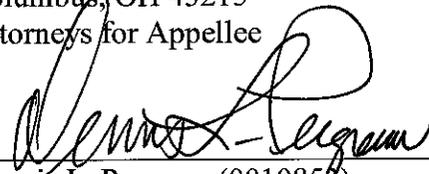
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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Brief on Behalf of Amici Curiae Ohio Association of Elementary School Administrators and Ohio Association of Secondary School Administrators in Support of Appellant State ex rel. Stacey L. Carna was served upon the following by regular U.S. Mail, postage prepaid, this 25<sup>th</sup> day of August, 2011.

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