

ORIGINAL

IN THE SUPREME COURT OF OHIO

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

REPLY 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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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.

The Appellee Board of Education has, in its Brief, failed to focus on the Decision issued by the Court of Appeals from which this appeal was filed and jurisdiction accepted.

At page 7 of its Decision, the Court of Appeals stated, in part, as follows:

In the case of sub judice, whether appellant has a clear legal right to reinstatement depends upon the meaning of the request provisions contained in R.C. 3319.02(D). Thus, the crux of this case is whether appellant's July 2007 request to meet with the Board constituted a request for "a meeting as prescribed in division (D)(4)."

At 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.

The proposition of law advanced by Ms. Carna in her Memorandum in Support of Jurisdiction is as follows:

Where a school district informs a principal that her contract will be nonrenewed, and the principal then requests a meeting with the school board prior to a vote on nonrenewal of her contract, the district cannot ignore this request and deny the requested meeting without violating Section 3319.02(D)(4) of the Ohio Revised Code and triggering the automatic renewal provisions of Section 3319.02(D)(5).

The proposition of law set forth in the Brief on behalf of the Amici Curiae is as follows:

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.

Thus, the issue decided by the Court of Appeals, and, consequently, the issue before this Court, pertains solely to the “timing” of Ms. Carna’s request under R.C. 3319.02(D)(4) to meet with her employer (Board of Education) in executive session prior to any action by the Board of Education on her contract. The Court of Appeals held that her request was too early.

The Board of Education has advanced some arguments on issues upon which it feels it can prevail, notwithstanding the fact that the arguments pertain to issues that are not before this Court and which are not in dispute. For example, at page 12 of its Brief, the Board of Education argues, in part, as follows:

Thus, for example, Ms. Carna’s July 11, 2007 request to meet could not and was not intended to compel the meeting to occur when the request was made.

Ms. Carna has never argued that the Board of Education was compelled to meet with her in July 2007. Quite to the contrary, the issue is whether the Board of Education was obligated to provide her with a meeting, in executive session, prior to March 31, 2008, notwithstanding the fact that her request was made on July 11, 2007.

The Board of Education also advances arguments that are irrelevant and incorrect. For example, at page 16 of its Brief, the Board of Education makes the following argument:

Both Ms. Carna and the Amici characterize the R.C. 3319.02(D)(4) meeting as one that occurs before the school board votes to renew or nonrenew the administrator’s contract. (Appellant’s Merit Brief, p. 15; Amici Brief, p. 6). (Emphasis added.) In fact, though, nothing in R.C. 3319.02 mandates an R.C. 3319.02(D)(4) meeting before the school board’s vote. R.C. 3319.02 requires only that, before it acts to renew or nonrenew, the school board notify the administrator of her right to request a meeting. R.C. 3319.02(d)(4). (Emphasis added).

Once again, this is an issue that is not before this Court, but does evidence that the Board of Education does not understand the purpose of R.C. 3319.02 as the Board of Education is arguing that the meeting can occur after the Board of Education takes action to renew or nonrenew the

administrator's contract. The Board of Education does not recognize that the meeting would, at that point, be meaningless. R.C. 3319.02(D)(4) provides, in part, as follows:

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. (Emphasis added.)

The purpose of the meeting in executive session is to discuss the reasons why a board of education is **considering** renewal or nonrenewal of the contract, not to discuss the reasons why the board of education has already voted to renew or nonrenew. Consequently, that meeting is to occur prior to the board of education taking action to renew or nonrenew.

The Board of Education also argues that Ms. Carna should have tried to figure out when the Board of Education would be meeting and then show up at the Board of Education meeting. Once again, that is not an issue that was addressed by the Court of Appeals and is irrelevant to the issue before this Court. Furthermore, it was her right to meet in executive session, not in open session.

The Board of Education has, by arguing issues that were not decided by the Court of Appeals and are not before this Court, attempted to shift the focus from the error made by the Court of Appeals to irrelevant arguments.

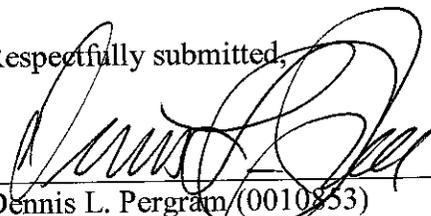
CONCLUSION

The Amici Curiae OAESA and OASSA continue to be concerned that their members are at risk of not being provided an audience with their employer (board of education) during the year that their contract is up for renewal if they do not submit their request for a meeting with their board of education, in executive session, at precisely the right time (whatever that right time is). Until the Decision by the Court of Appeals, they had every reason to believe that under R.C. 3319.02(D)(4) they would be provided with a meeting with their board of education prior to any

action to renew or nonrenew their contract as long as the request for the same was made prior to any board action.

R.C. 3319.02(D)(4), a remedial statute that is to be liberally construed in favor of administrators (*State ex rel. Smith v. Etheridge*, 65 Ohio St. 3d. 501), should not have been judicially amended by the Court of Appeals. Therefore, the Decision by the Court of Appeals must be reversed.

Respectfully submitted,



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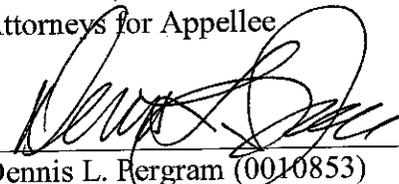
Association of Secondary School Administrators

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Reply 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 11th day of October, 2011.

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