

Case No. 15-0494

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IN THE SUPREME COURT OF OHIO

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GEORGIA B. COX,

*Plaintiff-Appellee,*

v.

DAYTON PUBLIC SCHOOLS BOARD OF EDUCATION,

*Defendant-Appellant.*

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Appeal from the Second District Court of Appeals,  
Montgomery County, Ohio,  
Appellate Case No. 26382

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**BRIEF OF AMICUS CURIAE OHIO EDUCATION ASSOCIATION  
IN SUPPORT OF DAYTON PUBLIC SCHOOLS BOARD OF EDUCATION'S  
MEMORANDUM IN SUPPORT OF JURISDICTION**

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## **INTRODUCTION**

The Ohio Education Association (“OEA”) submits this brief as *amicus curiae* in support of the statement of jurisdiction submitted by the Defendant-Appellant Dayton Public Schools Board of Education (“the Board”) and respectfully urges this Court to exercise its discretion to hear this matter and to reverse the decision of the Second District Court of Appeals. This case presents significant issues with potentially far-reaching ramifications, not only for school districts and unions representing educators but also for public and private-sector employers and labor organizations of all types. The Second District’s decision represents a significant departure from existing precedent regarding the right of individual employees to contest arbitration decisions on their grievances and regarding the applicable standards and relevant factors to be applied in judicial review of labor arbitration awards. Therefore, the OEA respectfully submits that this Court should use its discretion to consider and decide these important issues.

### **I. STATEMENT OF FACTS**

The Appellee, Georgia Cox, was employed by the Dayton Public Schools as a licensed intervention specialist, most recently at Meadowdale High School. In that position, she was assigned to teach eight multi-handicapped students. The Board alleged that on October 10, 2012, Ms. Cox struck a student. She was placed on administrative leave while the Board conducted an investigation, resulting in the District passing a resolution and issuing Ms. Cox a notice of their intention to consider termination of her employment contract. The Dayton Education Association (“DEA”), the labor organization representing the teachers in the Dayton Public Schools, filed a grievance on behalf of Ms. Cox under the collective bargaining agreement (“Agreement” or “Master Contract”) entered into between DEA and the Board. Ms. Cox also faced criminal charges arising from the matter.

Under Article 46.01.1 of the parties' Agreement, Ms. Cox had ten (10) days after receipt of the Board's notice of intent to terminate her contract to decide whether to proceed with a case under R.C. 3319.16 or have her case decided by an arbitrator pursuant to Article 3.07.2 D of the contract, the contract provision which details the procedures for arbitration. Ms. Cox decided to arbitrate her case under Article 3.07.2 D and filed a grievance challenging the notice of intent to terminate. Ms. Cox also filed two additional and separate grievances based on her pre-disciplinary rights provided by Article 48.03 of the agreement. The three (3) grievances were consolidated and heard by an arbitrator on September 17-19, 2013. The arbitrator denied all of the grievances and held that the Board had established good and just cause for termination, in a written award sent to counsel for the Board and counsel for DEA on December 10, 2013.

Acting pro se, Ms. Cox filed a motion to vacate the arbitrator's award under R.C. 2711.13 in the Montgomery County Court of Common Pleas on March 10, 2014. The Board responded with a Motion to Dismiss or Strike on April 8, 2014, arguing in part that Ms. Cox had no standing to challenge the arbitrator's award. The court agreed, referencing the Master Contract's provisions to conclude that Ms. Cox was not a party to the Agreement and thus lacked standing to challenge the award. Although the trial court concluded it was without jurisdiction to hear the matter on that basis, it concluded further that Ms. Cox had not complied with the service requirements of R.C. 2711.13.

Ms. Cox filed a notice of appeal of the dismissal to the Second District Court of Appeals on September 10, 2014. She argued, inter alia, that the trial court erred in finding that she was not a party to the arbitration proceedings under R.C. Chapter 2711. The Second District erred when it accepted this argument and held that Cox had standing in this matter to pursue "judicial review of her termination" under the Master Contract between the parties. Reading into the

Agreement an independent right to arbitration that is unsupported by the express language of the collective bargaining agreement – contemplated by neither of the parties and inconsistent with past practice – the court fashioned a result incompatible with established precedent in this area. Based on this erroneous reading of the contractual provisions and the applicable law, the Second District reversed and remanded the case, with specific instructions to the trial court to determine whether Ms. Cox “clearly and unmistakably waived” her rights under R.C. Chapter 3319. This reasoning directly contradicts the limited review of arbitration awards provided for in R.C. Chapter 2711 and mistakes the applicability of the waiver doctrine cited by the court. The issue of a waiver of the employee’s statutory rights was not before the arbitrator and therefore cannot and should not have been considered in the trial court’s statutorily limited review of the arbitration award.

## **II. THE OEA’S INTERESTS IN THIS APPEAL**

The Ohio Education Association (“OEA”) is a professional association whose affiliated local associations represent more than 121,000 educators, faculty members and support professionals working in Ohio’s schools, colleges, and universities.<sup>1</sup> The OEA has a significant interest in protecting the integrity of the collective bargaining agreements between its local associations and public employers in this state and in maintaining the current, appropriately narrow and focused standard of review of arbitration awards under labor contracts. Therefore, the OEA has an important interest in this Court correcting the decision of the Second District Court of Appeals that misinterpreted R.C. Chapter 2711 by not only granting standing to

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<sup>1</sup> The DEA, the employee organization that represents Ms. Cox and other Dayton Public School employees, is a local association affiliated with the OEA. However, the OEA is not a party to the collective bargaining agreement between the DEA and the Board, nor was it involved in the arbitration of the grievances the DEA filed on Ms. Cox’s behalf. The OEA, in supporting the Board’s statement of jurisdiction and request for review by this Court as to the statutory interpretation questions, does not intend to adopt or support any arguments of the Board relating to the correctness of the arbitration award that might be raised, nor does the OEA take any position on that issue.

individual grievants to petition courts to review adverse arbitration outcomes but also modifying a court's statutorily mandated scope of review of an arbitration decision to include consideration of whether the employee knowingly waived her individual statutory rights.

The Second District's decision deviates sharply from the public policy set forth in R.C. Chapter 4117. If this Court were to allow that decision to stand, the resulting disruption to labor peace and the entire scheme of labor arbitration and judicial review of arbitration awards could be extraordinary. All members of public-sector employee organizations would have a new, independent basis for pursuing appeals of adverse arbitration decisions – decisions that Ohio public policy has, until now, rightly reserved for those employees' designated bargaining representatives. Further, the decision fundamentally changes the nature of judicial review of arbitration decisions, undermining the method of private dispute resolution that the parties have agreed upon.

The Second District's decision in this case disregards Ohio's consistent and strong public policy favoring arbitration and the private settlement of disputes over "expensive and time-consuming litigation." W.K. v. Farrell, 167 Ohio App. 3d 14, 853 N.E.2d 728, ¶ 29 (2<sup>nd</sup> Dist. 2006). It also drastically alters longstanding Ohio labor policy, potentially opening the door to untold numbers of appeals by employees where the parties' collective bargaining agreement does not provide an independent right to individual members to submit disputes to arbitration. This Court should recognize the principles, embodied in the case law and the general scheme of collective bargaining, that the administration of labor agreements and decisions about the grievance process are not placed with individual members but, rather, vested in their duly certified bargaining representatives.<sup>2</sup>

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<sup>2</sup> The Board also seeks consideration from this Court of the Second District's ruling on the procedural requirements for filing and service of a motion to vacate an arbitration award. While such issues may be significant in a particular

### **III. REASONS THIS CASE IS OF GREAT IMPORTANCE**

This case is of great importance because the Second District's decision inappropriately enlarges the scope of judicial review of arbitration awards, creates new rights in individual employee/union members that are not contemplated by existing law and imposes new obligations on labor organizations, resulting in uncertainty for employers dealing with a designated collective bargaining representative. The Second District Court of Appeals ignored the long-standing labor policy and legal principle that, absent explicit agreement to the contrary, exclusive standing to make decisions in the processing of grievances – and to dispute or defend them in court – is vested in the designated representative. It also ignores the weight and effect to be given to contract language collectively bargained between the parties and misapplies the policy enunciated by this Court, that an aggrieved employee does not have standing to petition a court to vacate an arbitration award under R.C. 2711.10 unless the applicable collective bargaining agreement expressly gives the employee an independent right to submit disputes to arbitration. See Leon v. Boardman Twp., 100 Ohio St. 3d 335, 800 N.E.2d 12 (2003).

In enacting R.C. 4117, the Public Employees Collective Bargaining Act, the Ohio General Assembly established the exclusivity of a designated bargaining representative and its right to administer the collective bargaining agreement. That statutory regime generally supersedes other rights, obligations, or remedies of individual employees provided by other law. However, the doubt now cast on the relationship between individual statutory rights and rights bargained for collectively by a designated representative by the Second District's decision calls for this Court's review. Ohio's public-sector labor unions and employers should be able to count on a degree of consistency in how their collective bargaining agreements will be administered.

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case, the matter is not of significant importance to the OEA as an organization and it expresses no opinion on the Board's propositions of law relating to the procedural issues.

This Court's review is also necessary to clarify and enunciate when the collectively-bargained rights of members prevail over the claims of individual employees.

**IV. ARGUMENT REGARDING DEFENDANT-APPELLANT'S PROPOSITIONS OF LAW**

**Appellant Dayton Public Schools Board of Education's First Proposition of Law:**

Rights a public employee may otherwise have under the law are superseded by the obligations, rights, and remedies contained in R.C. Chapter 4117.

**Appellant Dayton Public Schools Board of Education's Second Proposition of Law:**

An employee does not have standing to petition a court to vacate or modify an arbitration award pursuant to R.C. Chapter 2711 unless the collective bargaining agreement under which the award was issued expressly gives the employee an independent right to submit disputes for arbitration.

**Appellant Dayton Public Schools Board of Education's Third Proposition of Law:**

R.C. 3319.16 does not confer standing on a teacher to petition a court to vacate or modify an arbitration award issued under the collective bargaining agreement negotiated by her bargaining representative and her employer unless the agreement expressly makes the teacher a party to the arbitration.

**R.C. Chapter 4117's Relation to Other Laws**

Some historical context is necessary before examining these propositions of law in light of the current appeal. When the General Assembly enacted Ohio's public employee collective bargaining law, the intent evident by the statute's plain language was for the newly established procedures to prevail over individual causes of action outside of those listed in Chapter 4117. Those provisions further prevail over the rights provided to educators under R.C. Chapter 3319. See State ex rel. Rollins v. Board of Ed., Cleveland Heights-University Heights City School Dist., 40 Ohio St.3d 123, 126, 532 N.E.2d 1289 (1988) ("R.C. 4117.10(A) has been consistently interpreted by the lower courts and the Attorney General to allow a collective bargaining agreement to prevail over a conflicting provision in R.C. Chapter 3319.").

One of the purposes underlying the collective bargaining law, which at the time of its enactment was called “the strongest public sector employee statute in the nation,” was exclusivity in representation of its members in negotiating terms and conditions of employment. See O’Reilly & Gath, *Structures and Conflicts: Ohio’s Collective Bargaining Law for Public Employees*, 44 Ohio St. L.J. 891 (1983); R.C. 4117.05. Where an individual employee previously may have been able to act on her own in the absence of a labor agreement, those rights now may be abrogated by the statute to the extent covered by the contract negotiated by the duly chosen bargaining representative. Teachers working under a collective bargaining agreement negotiated by their representative are not parties to that agreement and, without an explicit individual right of action provided by the agreement, have no standing to vacate the arbitrator’s decision upholding their termination. See Wilson v. Toledo Bd. of Ed., 6<sup>th</sup> Dist. Lucas No. L-85-425, 1986 WL 11639 (Oct. 17, 1986); Coleman v. East Cleveland City School Dist. Bd. of Ed., 8<sup>th</sup> Dist. Cuyahoga No. 86975, 2006-Ohio-4885; see also Morrison v. Summit County Sheriff’s Dept., 9<sup>th</sup> Dist. Summit No. C.A. 20313, 2001 WL 688895 (June 20, 2001).

Moreover, where employees have voted to be represented collectively by a labor organization, they are subject to the terms of the collectively-bargained agreement between the parties to that contract – that is, the union, as the exclusive representative, and the employer. The law then requires the employer to bargain in good faith with the union, rather than individually with employees, on all matters pertaining to wages, hours, and other terms and conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. R.C. 4117.08(A). The trade-off for the lack of some autonomy for individual employees is the greater strength in numbers when dealing with an employer and the resulting advantage for the employees as a group. For example, public-sector bargaining unit

members generally can expect improved health insurance and pension benefits gained through collective bargaining as compared to their non-unionized counterparts.<sup>3</sup> Where the agreement has not explicitly made the member a party to the arbitration proceeding, the union acts on behalf of the member and is properly considered a party for the purposes of R.C. Chapter 2711. It is the labor organization that has negotiated the agreement, that is responsible for interpreting the contract in a manner consistent with those negotiations and the best interests of all of its members and that bears the expense of the proceedings. Therefore, it is the union, not an individual employee, that must and should make the determination on whether to arbitrate a particular grievance and, more to the point, whether to seek to vacate an adverse award.

**The Second District improperly conferred standing on the Plaintiff/Appellee Georgia Cox as an individual aggrieved employee.**

The court's analysis of Ms. Cox's rights under Chapters 2711 and 3319 and of the interplay between those two statutes ignores critical and relevant portions of the Master Contract between the DEA and the Board. Courts and arbitrators must endeavor to interpret collective bargaining agreements in a manner that "gives all of its terms a reasonable and effective meaning, rather than a meaning that leaves part of the agreement unreasonable or of no effect." See 20 Williston on Contracts, Section 55:20 (4th ed. 2004); Mastro Plastics Corp. v. NLRB, 350 U.S. 270, 279 (1956)("Like other contracts, [collective bargaining agreements] must be read as a whole and in the light of the law relating to it when made."). Article 46 of the Master Contract provides, at 46.01.1: "Any employee who has received a notice of intention to terminate his/her contract by the BOARD shall have the right, within ten (10) days of the receipt of the notice, to

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<sup>3</sup> See Keefe, *Debunking the Myth of the Overcompensated Public Employee*, Economic Policy Institute (September 15, 2010), available at [http://www.epi.org/publication/debunking\\_the\\_myth\\_of\\_the\\_overcompensated\\_public\\_employee/](http://www.epi.org/publication/debunking_the_myth_of_the_overcompensated_public_employee/) (accessed March 31, 2015).

either proceed with a case under Section 3319.16, Revised Code, or to have his/her case decided by an arbitrator pursuant to Article 3.07.2 D (Arbitration).” (Capitals in original; emphasis added.) The first sentence of Article 3.07.2 D plainly states, “Only the ASSOCIATION shall have the right to appeal any grievance, as defined in Section 3.01 to arbitration.” This provision expressly limits a member’s independent right to press a grievance to arbitration and indicates that the parties to the arbitration are the DEA and the Board, not any individual grievant.

The Second District’s conferral of standing to Ms. Cox in this case rests on a mistaken reading and application of the principles set forth by this Court in Leon v. Boardman Township. In that case, this Court rejected the reasoning of the lower court in Barksdale v. Ohio Department of Administrative Services, 78 Ohio App. 3d 325, 329, 604 N.E.2d 798 (10<sup>th</sup> Dist. 1992), which had concluded that an employee working under a collective bargaining agreement is the “real party in interest.” Considering an argument nearly identical to the one Ms. Cox made to the trial court, this Court found the reasoning to be a “legal anomaly,” holding instead that aggrieved employees do not have standing to petition under R.C. Chapter 2711 unless the agreement expressly gives the employee an independent right to submit disputes to arbitration. Leon, 100 Ohio St. 3d at 337-40, ¶¶ 9, 18.

This Court in Leon discussed at some length the important practical and policy considerations underlying this rule, reviewing existing state and federal case law in this area and explaining as follows:

The concepts developed in these cases are in large part the product of a synthesis of labor relations policy and contract law. Sound labor policy disfavors an individualized right of action because it tends to vitiate the exclusivity of union representation, disrupt industrial harmony, and, in particular, impede the efforts of the employer and union to establish a uniform method for the orderly administration of employee grievances. But while this policy may serve as a justification for permitting, or even presuming, the contractual subordination of individual employee rights under a collective bargaining agreement, it does not go

so far as to require such a result. There is nothing in the national or state labor policy that precludes a collective bargaining agreement from giving the arbitral right to the aggrieved employee, rather than to his or her union. Thus, the proposition that emerges from these cases is that an aggrieved worker whose employment is governed by a collective bargaining agreement that provides for binding arbitration will generally be deemed to have relinquished his or her right to act independently of the union in all matters related to or arising from the contract, except to the limited extent that the agreement explicitly provides to the contrary.

Leon, ¶ 17, 100 Ohio St. 3d at 335 (internal citations omitted). The principles and policies this Court outlined in Leon remain vital, and the same result – that an individual bargaining unit member may not act independently of his or her union in matters relating to arbitration – should apply here to Ms. Cox’s attempt to vacate the award in the arbitration case on her grievances.

**Appellant Dayton Public Schools Board of Education’s Fourth Proposition of Law:**

The question of whether an employee clearly and unmistakably waived individual statutory rights is not a proper consideration in determining whether an arbitration award issued under a collective bargaining agreement should be vacated or modified pursuant to R.C. Chapter 2711.

**Appellant Dayton Public Schools Board of Education’s Fifth Proposition of Law:**

A court reviewing a motion to vacate or modify an arbitration award pursuant to R.C. Chapter 2711 must base its decision solely upon the record of the arbitration proceeding.

National and state labor policies weigh heavily in favor of resolving labor contract disputes – which necessarily include disputes over employee discipline and discharge – through private, collectively bargained procedures. The federal courts and this Court have been clear in their near-uniform instruction to lower courts to limit their review of arbitration awards to consider only a few, narrow enumerated grounds. See United Paper Workers Int’l Union v. Misco, Inc., 484 U.S. 29, 36 (1987); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593, 598-99 (1960); Goodyear v. Local Union 200, 42 Ohio St.2d 516, 520, 330 N.E.2d 703 (1975).

In addition to these policies, R.C. 2711.10 and 2711.11 expressly limit an Ohio court's authority to set aside or modify arbitration decisions. R.C. 2711.10 permits a reviewing court to vacate an arbitration decision "upon the application of *any party to the arbitration*" (emphasis added) if: a) the award was "procured by corruption, fraud, or undue means;" b) "[t]here was evident partiality or corruption on the part of the arbitrators;" c) the arbitrator was "guilty of misconduct in refusing to postpone the hearing...refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;" or d) the arbitrators "exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." Similarly, R.C. 2711.11 permits a court to modify an arbitrator's award only when "[t]here was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award," the arbitrator has "awarded upon a matter not submitted to [him], unless it is a matter not affecting the merits of the decision upon the matters submitted," or, the award is "imperfect in matter of form not affecting the merits of the controversy."

The Second District's decision in this case impermissibly adds to these statutory bases for vacating or modifying an arbitration decision. It takes the apparently unprecedented action of instructing the trial court on remand to attempt to discern from the record at arbitration whether Ms. Cox clearly and unmistakably waived her statutory rights. First, a common pleas court may only base its decision on the record of the arbitration proceeding. Arrow Uniform Rental, LP v. K & D Group Inc., 11<sup>th</sup> Dist. Lake No. 2010-L-152, 2011-Ohio-6203, ¶ 32. Further, this Court has held that "the vacation, modification, or correction of an award may only be made on the grounds listed in R.C. 2711.10 and 2711.11." Id. at ¶ 40 (citing Warren Edn. Ass'n. v. Warren

City Bd. of Ed., 18 Ohio St.3d 170, 173, 480 N.E.2d 456 (1985)). The trial court in this case correctly held that Ms. Cox’s lack of party standing presents an insurmountable jurisdictional bar to her challenging the arbitrator’s decision; party status is as a condition precedent to relief under R.C. 2711.10 or 2711.11. Ms. Cox is therefore statutorily barred from the relief she seeks.

**The Second District incorrectly applied the  
“clear and unmistakable waiver” doctrine.**

The Second District’s citation to and reliance on the U.S. Supreme Court’s decision in Wright v. Universal Maritime Service Corp., 525 U.S. 70 (1988) is misplaced, both regarding the principles of that case and regarding their application to the facts of the present matter. Wright involved “the question whether a general arbitration clause in a collective-bargaining agreement (CBA) requires an employee to use the arbitration procedure for an alleged violation of the Americans with Disabilities Act.” Id. at 72. Justice Scalia, writing for the Court, acknowledged the general presumption in favor of arbitrability of disputes where there is a collective bargaining agreement but concluded that this presumption “does not extend beyond the reach of the principal rationale that justifies it, which is that arbitrators are in a better position than courts *to interpret the terms of a CBA*” and this does not apply to claims involving statutory rights outside of the scope of a labor contract. Id. at 78 (emphasis in original). He then noted that a collective bargaining agreement permissibly could include a “union-negotiated waiver of employees’ statutory right to a judicial forum for claims of employment discrimination.” However, the applicable collective-bargaining agreement must “contain a clear and unmistakable waiver of the covered employees’ rights to a judicial forum.” Id. at 80-82. See also, e.g., Mastro Plastics, 350 U.S. 280-83 (a union may waive employees’ rights under Section 7 of the National Labor Relations Act, including the right to strike, but the waiver must be explicit).

The Court's ruling in Wright makes clear that the question of a waiver of a right to proceed in a judicial forum on a statutory claim is one that is made by the employees' collective bargaining representative in the collective bargaining agreement itself, not by an individual member in a particular, individual case. Therefore, there is no basis under Wright for evaluating whether an individual employee has made a clear and unmistakable waiver of her right to proceed through the statutory processes rather than through arbitration when considering the propriety of the arbitration award.

As the Board noted in its filing before this Court, the question of whether or not Ms. Cox as the grievant waived her right to proceed through the statutory procedures was not presented to the arbitrator, nor was there any reason for it to have been. It is true that the applicable collective bargaining agreement gives an individual teacher protesting her discharge the option of selecting the statutory procedures of R.C. 3319.16 or through the contractual grievance and arbitration process. Article 46.01.1 of the Master Contract preserves the right of "Any employee who has received a notice of intention to terminate his/her contract by the BOARD [...] to either proceed with a case under Section 3319.16, Revised Code, or to have his/her case decided by an arbitrator pursuant to Article 3.07.2 D (Arbitration)." Section 3319.16 does not simply provide a cause of action; it is a separate and distinct procedure, involving a referee, a hearing with a stenographic record provided by the board of education, and a decision by the referee which then must be acted upon by the board.

Nothing in the contract requires any particular form or means for a teacher to designate her choice between the statutory and contractual processes. There is no basis in the contract or in the law for the Second District's decision to apply the "clear and unmistakable waiver" standard to a teacher's determination on this question. In this case, Ms. Cox's choice certainly can be

inferred from her participation in the grievance and arbitration process and her failure to object to it. (It also is notable that she did not bring this argument to the appellate court, which raised it, *sua sponte*, and did not otherwise protest the fact of the arbitration – she only disputed the adverse outcome.) However, the issue of whether Ms. Cox or any other individual teacher voluntarily chose arbitration over the statutory procedure does not provide a basis for vacating an arbitration award under the legal standards already discussed.

The decision in Haynes v. Ohio Turnpike Commission, 177 Ohio App. 3d 1, 893 N.E.2d 850 (8<sup>th</sup> Dist. 2008), another case upon which the Second District relied, does not bear on this case. There, a bargaining unit employee filed a grievance through his union protesting his discharge. While the grievance was pending, he also filed a complaint in the common pleas court for wrongful termination under R.C. 4112. The Turnpike Commission defendants moved to dismiss, claiming that the employee's sole remedy lay in the contractual grievance procedure. Id. ¶ 5. Citing Wright, the Eighth District held that the *collective bargaining agreement* did not contain a clear and unmistakable agreement to arbitrate statutory claims,<sup>4</sup> which are distinct from rights arising from the contract. Id. ¶ 18. Because the court concluded that the grievance addressed the employee's disagreement "with the discipline imposed," while his lawsuit alleged discrimination on the basis of age, it held that Haynes was not required to exhaust grievance procedures prior to the lawsuit. However, it did not by any means hold, or even suggest, that the question of a clear and unmistakable waiver applies to an individual employee, rather than to the union in the collective bargaining process.

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<sup>4</sup> Specifically, the Haynes court found, "*the collective-bargaining agreement*, while mentioning that the employer may not discriminate based on age, *does not contain a clear and unmistakable agreement to arbitrate statutory claims.*" 177 Ohio App. 3d at 5-6 (emphasis added).

In this case, the procedure contemplated at R.C. 3319.16 and the provisions of the agreement at issue differ sharply from the statute and contract at issue in Haynes. Here, the Master Contract allows for the affected member to choose to proceed under the R.C. 3319.16 framework but also offers the option to use the bargained-for benefit of the matter being heard by an arbitrator. This Court has held that provisions of an agreement entered into under R.C. 4117.10(A) on matters of wages, hours, or other terms and conditions of employment prevail over laws and procedures in conflict with that agreement, including Chapter 3319. Cuyahoga Falls Ed. Ass'n v. Cuyahoga Falls City School Dist. Bd. of Ed., 61 Ohio St.3d 193, 196-197, 574 N.E.2d 442 (1991). Therefore, the matter of waiver is inapplicable here and instead the grievant's consent to arbitration is not at issue. The trial court properly ruled that Ms. Cox's motion to vacate the arbitration award under R.C. 2711 is unavailing because she was not a party to the collective bargaining agreement and not a formal party to the arbitration proceeding, although of course she was affected by the award. The lack of a specific "waiver" of her right to proceed under the statute does not provide a basis for overturning that award. The OEA respectfully urges this Court to review, and to reverse, the Second District's conclusion to the contrary.

## **V. CONCLUSION**

The decision below effectively amends the limited scope of review of arbitration awards that the Ohio legislature afforded the state's common pleas courts. By conferring standing under R.C. 2711 to arbitration grievants, it provides a new action for employees to individually challenge their collective bargaining rights afforded by contract. Finally, the decision misinterprets the relationship between the nature of collective bargaining rights under R.C. 4117.10(A) and all other laws not specifically enumerated in that statute.

Therefore, OEA respectfully requests this Court to accept jurisdiction over this matter to reverse the Second District Court of Appeal's decision, and to render a ruling that is consistent with Ohio and national labor policy promoting industrial peace and the consistent and orderly administration of collective bargaining agreements between Ohio's public employers and labor organizations.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

This certifies that a true and accurate copy of the foregoing brief of Amicus Curiae Ohio Education Association was sent to Georgia B. Cox, Plaintiff-Appellee, 4191 Mapleleaf Drive, Dayton, OH 45416 by regular U.S. mail, postage prepaid, and Beverly A. Meyer, Counsel for Defendant-Appellant Dayton Public Schools Board of Education, via electronic mail to bameyer@cgwlaw.com, this 6<sup>th</sup> day of April, 2015.

/s/ Susan D. Jansen