

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Teamsters Local Union No. 348 et al.,	:	
Appellee-Appellant,	:	
State Employment Relations Board,	:	
Intervenor-Appellant,	:	
v.	:	No. 10AP-728 (C.P.C. No. 09CVF-12-18092)
Cuyahoga Falls Clerk of Court, Municipal District,	:	(REGULAR CALENDAR)
Appellant-Appellee.	:	

D E C I S I O N

Rendered on May 19, 2011

Doll, Jansen, Ford & Rakay, and Susan D. Jansen, for appellant Teamsters Local Union No. 348; Michael DeWine, Attorney General, Katie Tesner and Anne Light Hoke, for intervenor-appellant State Employment Relations Board.

Brian A. Reali and John A. Scavelli, for appellee City of Stow.

APPEAL from the Franklin County Court of Common Pleas.

BRYANT, P.J.

{¶1} Appellee-appellant, Teamsters Local Union No. 348 ("Union") and intervenor-appellant, the State Employment Relations Board ("SERB"), appeal from a judgment of the Franklin County Court of Common Pleas that reversed a SERB order

concluding a group of deputy clerks, who are employees of appellant-appellee, City of Stow, and work in the office of the Stow Municipal Court Clerk of Courts, are "public employees" permitted to engage in collective bargaining pursuant to R.C. 4117.01(C)(8). Because (1) the common pleas court correctly determined SERB erred in adding a minimum quantum requirement to the statute, but (2) the common pleas court erred in treating all of the employees at issue as fungible, we affirm in part and reverse in part.

I. Facts and Procedural History

{¶2} On March 10, 2008, the Union filed a Request for Recognition with SERB, seeking to represent "[a]ll full-time Deputy Clerk of Courts, Secretarial/Deputy Clerk, Criminal Bookkeeper and Civil Bookkeeper" in the office of the Clerk of Courts, Cuyahoga Falls Municipal Court District. In a letter dated April 24, 2008, two judges of the Cuyahoga Falls Municipal Court objected to the Request for Recognition, contending "the employees requesting recognition are not 'public employees' pursuant to R.C. 4117.01(C)(8)." Alternatively, they asserted the proposed unit is not appropriate for purposes of a collective bargaining pursuant to R.C. 4117.06. The Clerk of Courts did not object. SERB scheduled the matter for a hearing to determine whether the employees in question are "public employees" and, if so, the appropriate bargaining unit.

{¶3} On September 19, 2008, the City of Stow filed a motion to intervene, noting the Cuyahoga Falls Municipal Court, under R.C. 1901.01(E), would become the Stow Municipal Court on January 1, 2009. As a result, the employees of the Cuyahoga Falls Municipal Court would become employees of the City of Stow. The Cuyahoga Falls Municipal Court and its judges also filed a motion to intervene. SERB granted both motions.

{¶4} In November 2008, an Administrative Law Judge ("ALJ") of SERB conducted an evidentiary hearing. In a recommended determination filed March 25, 2009, the ALJ concluded the employees in question are "public employees" within the meaning of R.C. 4117.01(C) and recommended SERB grant the Union's Request for Recognition. The Cuyahoga Falls Municipal Court, its judges and the City of Stow filed exceptions to the ALJ's recommended determination, and the Union responded. On November 12, 2009, SERB adopted the ALJ's findings of facts and conclusions of law and issued an order granting the Union's Request for Recognition.

{¶5} Pursuant to R.C. 119.12, the city of Stow appealed from SERB's order to the common pleas court; SERB intervened. In a July 2, 2010 decision and final judgment, the common pleas court concluded the employees at issue are not "public employees" because they fall within the provision of R.C. 4117.01(C)(8) that excludes from the definition of "public employees" those in the office of the clerk of courts "who perform a judicial function." Because it determined SERB misconstrued the statutory exception, the common pleas court concluded not only did reliable, probative, and substantial evidence not support SERB's decision but the decision was contrary to law. Accordingly, the trial court reversed and vacated SERB's directive certifying exclusive representative and entered final judgment in favor of the city of Stow and against the Union and SERB.

II. Assignments of Error

{¶6} The Union appeals, assigning the following errors:

1. The Court of Common Pleas erred as a matter of law in reversing SERB's Directive finding certain employees of the Clerk of Courts, Stow Municipal Court District to be public employees under R.C. 4117.01(C).

2. The Court of Common Pleas erred as a matter of law in finding SERB's Directive is not supported by reliable, probative, and substantial evidence and is not in accordance with law.

SERB also appeals, assigning the following error:

THE COMMON PLEAS COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW WHEN IT REVERSED AND VACATED SERB'S DIRECTIVE WHICH FOUND DEPUTY CLERKS OF THE STOWE [sic] MUNICIPAL COURT DISTRICT TO BE "PUBLIC EMPLOYEES" UNDER R.C. 4117.01(C)(8).

Because all the assigned errors raise the same issue, we address them jointly.

III. Standard of Review

{¶7} A common pleas court, in reviewing an order of an administrative agency under R.C. 119.12, must consider the entire record to determine whether reliable, probative, and substantial evidence supports the agency's order and the order is in accordance with law. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110-11. The common pleas court's "review of the administrative record is neither a trial de novo nor an appeal on questions of law only, but a hybrid review in which the court 'must appraise all the evidence as to the credibility of the witnesses, the probative character of the evidence, and the weight thereof.'" *Lies v. Veterinary Med. Bd.* (1981), 2 Ohio App.3d 204, 207, quoting *Andrews v. Bd. of Liquor Control* (1955), 164 Ohio St. 275, 280. The common pleas court must give due deference to the administrative agency's resolution of evidentiary conflicts, but "the findings of the agency are by no means conclusive." *Conrad* at 111. The common pleas court conducts a de novo review of questions of law, exercising its independent judgment in determining whether the administrative order is "in

accordance with law." *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 471, 1993-Ohio-182.

{¶8} An appellate court's review of an administrative decision is more limited than that of a common pleas court. *Pons v. Ohio State Med. Bd.*, 66 Ohio St.3d 619, 621, 1993-Ohio-122. The appellate court is to determine only whether the common pleas court abused its discretion. *Id.*; *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219 (defining an abuse of discretion). Absent an abuse of discretion, a court of appeals may not substitute its judgment for that of an administrative agency or the common pleas court. *Pons* at 621. An appellate court, however, has plenary review of purely legal questions. *Big Bob's, Inc. v. Ohio Liquor Control Comm.*, 151 Ohio App.3d 498, 2003-Ohio-418, ¶15.

IV. Statutory Framework – Ohio's Public Employees Collective Bargaining Act

{¶9} R.C. Chapter 4117, the Ohio Public Employees Collective Bargaining Act, establishes "a comprehensive framework for the resolution of public-sector labor disputes by creating a series of new rights and setting forth specific procedures and remedies for the vindication of those rights." *State ex rel. Cleveland v. Sutula*, 127 Ohio St.3d 131, 2010-Ohio-5039, ¶16, quoting *Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police, Capital City Lodge No. 9* (1991), 59 Ohio St.3d 167, 169 (internal quotation marks omitted). Pursuant to R.C. 4117.03(A)(4), public employees have the right to "[b]argain collectively with their public employers * * *, and enter into collective bargaining agreements." Although the definition of "public employee" generally includes "any person holding * * * employment in the service of a public employer," the statute contains several exceptions. R.C. 4117.01(C). Relevant here, R.C. 4117.01(C)(8) exempts from the

definition of "public employee," and thus exempts from the right to engage in collective bargaining, "[e]mployees and officers of the courts, * * * and employees of the clerks of courts who perform a judicial function."

V. "Public Employee" – Judicial Function

{¶10} Because a deputy clerk who performs a judicial function is not entitled to collectively bargain, the seminal issue raised in all the assigned errors is the meaning of "judicial function." Appellants assert the common pleas court erred in concluding the employees at issue perform judicial functions that exclude them from the definition of "public employees" entitled to engage in collective bargaining. They argue SERB's directive correctly interpreted R.C. 4117.01(C)(8), and the common pleas court erred in determining otherwise.

A. Responsibilities of the Employees Seeking Collective Bargaining

{¶11} The record indicates the clerk's office is divided into two divisions, civil and criminal/traffic. Of the 14 employees seeking certification, 11 persons have the title "deputy clerk of court," five assigned to the civil division and six assigned to the criminal/traffic division. The remaining three employees hold the title secretary/deputy clerk, title criminal bookkeeper, or title civil bookkeeper. All of the employees seeking certification nonetheless are "deputy clerks" whom the clerk of courts appointed under R.C. 1901.31(H).

{¶12} The job duties of the deputy clerks vary depending on the division to which each belongs. The civil division deputy clerks answer phone calls, docket civil complaints and other case filings, and handle various fees and payments in civil matters. Upon request of a party or attorney in a civil case, the civil deputy clerks issue subpoenas by

signing a properly completed subpoena form. Civil deputy clerks spend approximately one percent of their time issuing subpoenas.

{¶13} The criminal/traffic division deputy clerks are responsible for arranging for jailed defendants to appear at arraignment, entering case information into a computerized records system, calculating court costs, receipting money in criminal and traffic cases, and docketing case filings. They spend up to five percent of their time signing arrest warrants that accompany criminal complaints, and they accept returns of service on executed search warrants, which entails completing a checklist. They also are authorized to grant a continuance of up to one week in minor misdemeanor traffic cases only; they have no authority to grant a continuance in other criminal cases.

{¶14} The secretary/deputy clerk spends 60 percent of her time on deputy clerk duties and 40 percent of her time on secretarial duties. In general, the secretary/deputy clerk is responsible for issuing subpoenas, preparing felony cases for bindover to the common pleas court, entering payroll data into the computer system, handling purchase orders, and transcribing memoranda and letters from the clerk and chief deputy clerk. The two bookkeepers balance deposits, ensure incoming and disbursed monies are properly recorded, and send overdue fines to a third-party collections agency.

{¶15} All deputy clerks are cross-trained for the various job duties, and they rotate duties weekly within their assigned divisions.

B. Meaning of "Judicial Function"

{¶16} Although R.C. 4117.01(C)(8) contains the phrase "judicial function," the statute does not define it. In its Directive Certifying Exclusive Representative, SERB relied on a two-pronged test to determine whether any given task is a "judicial function." SERB's

test asks (1) "whether the function involved independent judgment and discretion," and (2) "whether it involved the determination of a fact or legal principle affecting the rights of one or more parties." (SERB Directive, 5.) SERB thus determined "a judicial function is performed when the act in question involves the exercise of independent judgment and discretion in the determination of a fact or legal principle affecting the rights of one or more of the parties." (SERB Directive, 6.) Although SERB concluded "the plain language of [R.C. 4117.01(C)(8)] does not require a minimum quantum with which one must perform a judicial function," it nonetheless determined an employee "must perform a judicial function on a substantial and regular basis" in order to be exempt from the right to engage in collective bargaining. (SERB Directive, 6.)

{¶17} The common pleas court rejected SERB's test as too broad, describing it as a test that "essentially demand[s] that exempted clerk employees serve as surrogate judges." (Decision and Final Judgment, 5.) The common pleas court also disagreed with SERB's employing the "substantial and regular basis" requirement, concluding it violates the basic rules of statutory construction because it "adds words that are not in the statute." (Decision and Final Judgment, 6.) Although the common pleas court did not apply a universal definition of judicial function, it concluded deputy clerks who determine probable cause in issuing an arrest warrant perform a "judicial function" because the act requires "independent judgment." (Decision and Final Judgment, 10.) The common pleas court further concluded all deputy clerks "must be viewed as fungible – doing the same work – and therefore all perform 'judicial functions.'" (Decision and Final Judgment, 14.)

{¶18} The meaning of a phrase in a statute is a matter of statutory interpretation and thus is a question of law. *State v. Consilio*, 114 Ohio St.3d 295, 2007-Ohio-4163, ¶8.

Although this court generally exercises plenary review on questions of law, appellants correctly note SERB is entitled to deference on interpreting R.C. Chapter 4117. *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, paragraph two of the syllabus. Judicial review of SERB's construction of the statute thus is "limited to whether SERB's policy is unreasonable or in conflict with the explicit language of R.C. Chapter 4117." *State Emp. Relations Bd. v. Miami Univ.*, 71 Ohio St.3d 351, 353, 1994-Ohio-189.

{¶19} SERB's interpretation of R.C. 4117.01(C)(8) has two components: (1) the two-pronged test to determine "judicial function," and (2) the frequency with which the judicial function is performed. In attempting to define "judicial function," SERB noted R.C. 4117.01, which exempts "supervisors" from collective bargaining and defines "supervisor" as a position requiring "the use of independent judgment." R.C. 4117.01(F). Because the statute provides separate exemptions for supervisors and for clerk employees who perform a judicial function, SERB concluded the General Assembly must have intended those terms to have distinct meanings. See, e.g., *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, 96 Ohio St.3d 250, 2002-Ohio-4172, ¶26 (stating "[a] basic rule of statutory construction requires that 'words in statutes should not be construed to be redundant, nor should any words be ignored,' " so that "[n]o part should be treated as superfluous unless that is manifestly required"); *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶7 (avoiding interpreting a statute as containing "surplusage" and instead giving "effect to the words used"). Accordingly, SERB interpreted "judicial function" to require not just the mere use of independent judgment and discretion, but rather "the exercise of independent judgment and discretion in the determination of a fact or legal principle

affecting the rights of one or more of the parties." (SERB Directive, 6.) We cannot say SERB's interpretation of R.C. 4117.01(C)(8) is unreasonable.

{¶20} SERB, however, additionally decided the employee must perform a judicial function on a "substantial and regular basis" in order to be exempt from the right to engage in collective bargaining. SERB accurately noted the plain language of the statute "does not require a minimum quantum with which one must perform a judicial function." (SERB Directive, 6.) SERB nonetheless included the "substantial and regular basis" requirement to avoid the "possibility of endless abuse" by public employers occasionally delegating a judicial function to each employee to prevent any employee from engaging in collective bargaining. (SERB Directive, 6.) SERB is not entitled to deference on its extended interpretation of the statute's requirements.

{¶21} As the common pleas court correctly pointed out, SERB's including the "substantial and regular basis" requirement adds language not found in the statute. See, e.g., *State ex rel. Lorain v. Stewart*, 119 Ohio St.3d 222, 2008-Ohio-4062, ¶36 (noting Supreme Court's refusal to add language to a statute), citing *State v. Hughes*, 86 Ohio St.3d 424, 427, 1999-Ohio-118 (stating that "[i]n construing a statute, [the court] may not add or delete words"). Even SERB freely acknowledges nothing in the plain language of the statute supports such an interpretation. Further, SERB's justification for adding the "substantial and regular basis" requirement to the statute is questionable in light of the general presumption that a public official "duly perform[s] the function that the law calls upon him to perform." *Toledo v. Levin*, 117 Ohio St.3d 373, 2008-Ohio-1119, ¶28, citing *State ex rel. Shafer v. Ohio Turnpike Comm.* (1953), 159 Ohio St. 581, 590 (stating "in the absence of evidence to the contrary, public officers, administrative officers and public

boards, within the limits of the jurisdiction conferred by law, will be presumed to have properly performed their duties and not to have acted illegally but regularly and in a lawful manner"); *Wheeling Steel Corp. v. Evatt* (1944), 143 Ohio St. 71, paragraph seven of the syllabus (stating "[t]he action of an administrative officer or board within the limits of the jurisdiction conferred by law is presumed, in the absence of proof to the contrary, to be valid and to have been done in good faith and in the exercise of sound judgment").

{¶22} Accordingly, the first half of SERB's interpretation of R.C. 4117.01(C)(8) properly sets the scope of "judicial function" as it relates to the deputy clerks. Deputy clerks who engage in the exercise of independent judgment and discretion in the determination of a fact or legal principle affecting the rights of one or more of the parties are performing a judicial function. As no "minimum quantum" of judicial functions is required, any of the deputy clerks who perform a judicial function as part of their employment may be excluded from the right to engage in collective bargaining under R.C. 4117.01(C)(8).

C. Job Duties Qualifying as "Judicial Functions"

{¶23} The record is clear that most of the work of the deputy clerks is ministerial in nature. The possible exceptions relate to issuing subpoenas and arrest warrants. Only the civil division deputy clerks occasionally issue subpoenas as part of their employment. Although a subpoena commands a person to appear in court, the Supreme Court of Ohio held that "[i]ssuing subpoenas is a ministerial, not a judicial function." *State v. Warner* (1990), 55 Ohio St.3d 31, 45. Thus, the civil division deputy clerks do not perform any tasks that meet the SERB interpretation of "judicial function."

{¶24} The criminal/traffic division deputy clerks, on the other hand, occasionally sign arrest warrants attached to criminal complaints. The testimony at the hearing indicated the procedure for signing arrest warrants recently had changed. Deputy clerks used to sign a line specifically indicating probable cause was shown. Although the deputy clerks no longer sign a line specific to probable cause, they still sign the arrest warrants. The criminal/traffic deputy clerk who testified at the hearing stated she did not believe she was making an independent judgment about probable cause when she signed an arrest warrant.

{¶25} In order to issue a valid arrest warrant, probable cause is required. See *Whitely v. Warden, Wyo. State Penitentiary* (1971), 401 U.S. 560, 564, 91 S.Ct. 1031, 1035 (holding that before a warrant for either arrest or search can issue, the Fourth Amendment probable cause provisions "require that the judicial officer issuing such a warrant be supplied with sufficient information to support an independent judgment that probable cause exists for the warrant"); Crim.R. 4(A)(1). The record does not indicate that, before the deputy clerks sign them, anyone other than the deputy clerks reviews the arrest warrants to determine whether probable cause supports the warrant. As a result, placing the function of signing arrest warrants exclusively with the deputy clerks has the effect of placing the duty of determining probable cause with those deputy clerks, even if individual deputy clerks do not believe any independent judgment is being exercised while fulfilling that function. Determining whether probable cause exists is a judicial function. See *Whitely*; *State v. Nathan*, 2d Dist. No. 18911, 2001-Ohio-1826 (stating that, in the context of search warrants, finding probable cause "requires a weighing of the

evidence," and that issuing a search warrant involves "a judicial function of determining whether probable cause exists").

{¶26} Perhaps tellingly, SERB in applying its two-part test did not conclude signing arrest warrants did not involve "independent judgment" but rather determined the deputy clerks did not perform the function on a "substantial and regular basis." Because R.C. 4117.01(C)(8) has no minimum performance requirements, a criminal/traffic deputy clerk who even occasionally signs arrest warrants is engaged in a "judicial function." As a result, deputy clerks who sign arrest warrants are excluded from the group of "public employees" entitled to engage in collective bargaining.

{¶27} The common pleas court took the analysis one step further and concluded all the deputy clerks at issue "must be viewed as fungible – doing the same work – and therefore all perform 'judicial functions.' " (Decision and Final Judgment, 14.) In essence, the trial court determined that if one deputy clerk performs a judicial function, they all do.

{¶28} SERB's stated policy dictates "all public-employee determinations" involve "a case-by-case inquiry that the finder of fact should examine in light of all the surrounding circumstances." (SERB Directive, 6.) SERB's policy represents a reasonable approach to ascertaining whether an individual employee meets the definition of "public employee," an approach to which we will defer. See *State Emp. Relations Bd. v. Miami Univ.* The record further indicates a clear division in the responsibilities of the civil deputy clerks as compared to the criminal/traffic deputy clerks. Only the criminal/traffic deputy clerks issue arrest warrants and, in that task, perform a judicial function. Although the deputy clerks are cross-trained for the various responsibilities of the clerk's office, the record indicates they rotate only within their assigned division. Should anyone other than

the criminal/traffic deputy clerks engage in a judicial function in the future, the employer can petition for clarification of the bargaining unit. See, e.g., *State ex rel. Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd.*, 104 Ohio St.3d 122, 2004-Ohio-6363, ¶2.

VI. Disposition

{¶29} Based on the foregoing, the common pleas court erred to the extent it concluded that all deputy clerks, being fungible, perform a judicial function and thus do not qualify as "public employees" within the meaning of R.C. Chapter 4117. The record contains reliable, probative, and substantial evidence that only the criminal/traffic division deputy clerks perform a judicial function. Because they do, they are excluded from the definition of "public employee" pursuant to R.C. 4117.01(C)(8). The remaining civil division deputy clerks, bookkeepers, and secretary/deputy clerk do not perform a judicial function and therefore meet the definition of a "public employee" permitted to engage in collective bargaining. We thus sustain in part and overrule in part appellants' assignments of error, we affirm in part and reverse in part the judgment of the Franklin County Court of Common Pleas, and we remand with instructions to remand this matter to SERB for further proceedings consistent with this decision.

*Judgment affirmed in part
and reversed in part; cause
remanded. with instructions.*

SADLER and TYACK, JJ., concur.
