[Cite as *Warren v. Warren Mun. Civil Serv. Comm.*, 2002-Ohio-6929.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

CITY OF WARREN, OHIO, et al.,	:	**O P I N I O N**
Plaintiffs-Appellants,	:	**CASE NO. 2001-T-0068**
- vs -	:	
THE WARREN MUNICIPAL CIVIL SERVICE COMMISSION, et al.,	:	
Defendants-Appellees.	:	

Administrative Appeal from the Court of Common Pleas, Case No. 00 CV 1558

Judgment: Affirmed.

James R. Ries, Assistant Warren Law Director, 391 Mahoning Avenue, N.W., Warren, OH 44483 (For Plaintiffs-Appellants).

The Warren Municipal Civil Service Commission, pro se, 391 Mahoning Avenue, N.W., Warren, OH 44483 (Plaintiff-Appellee).

Dennis Haines and *Barry Laine,* Green, Haines, Sgambati, Murphy & Macala Co., LPA, Youngstown, OH 44501-0849 (For Defendant-Appellee, Judith A. Geist).

DIANE V. GRENDELL, J.

{¶1} The city of Warren, Ohio ("appellants"), a non-charter city, appeals the May 29, 2001 decision of the Trumbull County Common Pleas Court. In that decision, the common pleas court affirmed the Warren Municipal Civil Service Commission's

("appellees") decision to set aside the layoff of city employee Judith Geist ("Geist"). For the following reasons, we affirm the decision of the common pleas court in this matter.

{¶2} In December of 1999, appellants originally attempted to layoff Geist and eighteen other employees due to financial difficulties. However, those layoffs were set-aside in a subsequent hearing conducted by appellees. The unresolved issues of that matter are subject to a separate appeal currently before this court. See *Warren v. Warren Mun. Civ. Serv. Comm.*, 11th Dist. No. 2001-T-0069. Subsequently, in a letter dated March 10, 2000, appellants again notified employee Geist that, due to financial difficulties, she would be laid off from her job as an executive secretary in the city's administration department effective March 27, 2000. Pursuant to her rights under R.C. Chapter 124, Geist appealed her pending layoff to appellees.

{¶3} Geist's appeal focused on the calculation of 'retention points' used by appellants to determine the order in which city employees in the same classification would be laid off. Both parties stipulate to the fact that from July 16, 1984 thru February 26, 1992, Geist served as a Deputy Clerk for the Warren City Council. The parties also agree that from February 27, 1992, thru her layoff in 2000, Geist served as both a Secretary and an Executive Secretary I in the city's Administration Department.

{¶4} In her appeal, Geist claimed that while appellants properly considered her time spent as an executive secretary in calculating her retention points, appellants should have also included her time spent as a deputy clerk of council in their calculations pursuant to Ohio Adm.Code 123:1-41-09 and 123:1-47-01(25). Appellees agreed with Geist, stating in a letter dated August 23, 2000, that Geist's layoff should be set aside due to a "miscalculation of retention points" by appellants. Appellants

appealed this decision to the common pleas court on August 29, 2000. As mentioned above, the common pleas court affirmed appellees' decision on May 29, 2001. This timely appeal followed, and appellants assert three assignments of error for our review:

{¶5} "[1.] The trial court erred by affirming the decision of the Civil Service Commission, and finding it not to be "unlawful", because the Commission's finding that appellee Geist's layoff of March 27, 2000 was subject to the "Retention Points" provisions of Chapter 123:1-41 of the Ohio Administrative Code was contrary to law.

{¶6} "[2.] Assuming that the "Retention Points" provisions of Chapter 123:1-41 of the Ohio Administrative Code were applicable to the layoff in question, the trial court erred by affirming the decision of the Civil Service Commission, and finding it not to be "unlawful", because the Commission's finding that the 306 retention points granted to appellee Geist were not properly calculated in accordance with Section 123:1-41-09 of the Ohio Administrative Code was contrary to law.

{¶7} "[3.] Assuming that the "Retention Points" provisions of Chapter 123:1-41 of the Ohio Administrative Code were applicable to the layoff in question, the trial court erred by affirming the decision of the Civil Service Commission, and finding it not to be "arbitrary" or "capricious", because the Commission's finding that the 306 retention points were not properly calculated after that Commission had verified those same 306 retention points was contrary to law."

{¶8} Construing the language of R.C. 2506.04, we distinguish the standard of review to be applied by common pleas courts and courts of appeals in R.C. Chapter 2506 administrative appeals. The common pleas court considers the "whole record," including any new or additional evidence admitted under R.C. 2506.03, and determines

whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence. See *Smith v. Granville Twp. Bd. of Trustees* (1998), 81 Ohio St.3d 608, 612, citing *Dudukovich v. Lorain Metro. Hous. Auth.* (1979), 58 Ohio St.2d 202, 206-207.

{¶9} The standard of review to be applied by the court of appeals in an R.C. 2506.04 appeal is "*more limited* in scope." (Emphasis added.) *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 34. "This statute grants a more limited power to the court of appeals to review the judgment of the common pleas court only on 'questions of law,' which does not include the same extensive power to weigh 'the preponderance of substantial, reliable and probative evidence,' as is granted to the common pleas court." Id. at fn. 4; *Akwen Ltd. v. Ravenna Zoning Bd. of Appeals*, 11th Dist No. 2001-P-0029, 2002-Ohio-1475. "It is incumbent on the common pleas court to examine the evidence. Such is not the charge of the appellate court. The fact that this court might have arrived at a different conclusion than the administrative agency is immaterial. Appellate courts must not substitute their judgment for those of an administrative agency or a common pleas court absent the approved criteria for doing so." *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 261.

{¶10} An appeal to the court of appeals, pursuant to R.C. 2506.04, requires that this court affirm the common pleas court, unless this court holds, as a matter of law, that the decision of the common pleas court is not supported by a preponderance of reliable, probative and substantial evidence. *Kisil*, supra, at 34.

{¶11} In their first assignment of error, appellants argue that when "a municipal employee is laid off by a municipal corporation, such layoff must be done consistent with the applicable provisions of R.C. 124.321 to R.C. 124.327 and the rules of the applicable municipal civil service." Appellants also cite the language contained in the Ohio Revised Code ("R.C.") and the Ohio Administrative Code ("OAC"), chapter and verse, distinguishing the entities of the municipal civil service commission and the director of administrative services. In doing so, appellants attempt to claim that because they are different entities, the rules established by the director of administrative services in the Ohio Administrative Code are inapplicable and unable to be considered by the Warren Civil Service Commission. Appellants are incorrect in their assertion.

{¶12} R.C. 124.40(A) authorizes a municipal civil service commission to "prescribe, amend, and enforce rules **not inconsistent with this chapter** for the classification of positions in the civil service of such city ***, for appointments, ***, layoffs, ***; and for standardizing positions and maintaining efficiency therein." *Vincent v. Zanesville Civ. Serv. Comm.* (1990), 54 Ohio St.3d 30. Furthermore, a civil service commission of a non-charter municipality "may exercise all authority granted to the director of administrative services relative to state employment, except that it may not prescribe, amend, and enforce rules which are inconsistent with Chapter 124 of the Ohio Revised Code." *Vincent*, supra, at 32.

{¶13} In the case before us, the record indicates that appellees, serving on behalf of a non-chartered city, do not have a specific procedure governing layoff seniority calculations in their rules and regulations. However, the preamble to appellees' rules and regulations states: "Whenever the Municipal Rules are in Conflict

with the Civil Service Laws of the State of Ohio, the State rules shall take precedence." This is consistent with the general relationship between a non-chartered city and the Ohio Revised Code. Noting that R.C. 124.321 provides that a civil service employee may be laid off in accordance with statutory law and "the rules of the director of administrative services", appellees proceeded to fill the void in their rules and regulations with those contained in the Ohio Revised Code and the Ohio Administrative Code. In doing so, appellees adhered to R.C. 124.325(A) which states: "Retention points to reflect the length of service and efficiency in service for all employees affected by a layoff shall be verified by the director of administrative services." R.C. 124.325(F) also states: "The director shall promulgate rules, ***, to establish a system for the assignment of retention points for each employee in a classification affected by a layoff ***." Appellees also went on to note, in their January 3, 2001 "findings of fact and conclusions of law", that the method for calculating retention points is set forth in Ohio Adm.Code 123:1-41-09.

{¶14} As a reviewing court, we note the long accepted principle that "considerable deference should be accorded to an agency's interpretation of rules the agency is required to administer." *State ex.rel. Celebreze v. Natl. Lime & Stone Co.* (1994), 68 Ohio St.3d 377, 382.

{¶15} Appellees' power in this case is derived from the above-mentioned sections of the Ohio Revised Code and the Ohio Administrative Code. The record indicates that in the absence of their own layoff provisions, and according to the language contained in their preamble, appellees properly adopted the retention point provisions of the Revised Code and Ohio Administrative Code. Thus, this court will not

disturb appellees' decision to use the aforementioned sections of the R.C. and the OAC, pertaining to layoff procedures, for the unchartered city of Warren, Ohio. The common pleas court's decision to approve appellees' adoption and use of the above-mentioned sections was proper. Appellants' first assignment of error is not well taken and is without merit.

{¶16} In their second assignment of error, appellants argue that the common pleas court erred in accepting appellees' ruling that Geist's layoff be set aside due to the miscalculation of retention points. Having held that appellees properly adopted the layoff provisions of the Revised code and the Ohio Administrative Code, we now proceed to examine the specific statutory language pertaining to retention points.

{¶17} R.C. 124.322 states in pertinent part: "The director of administrative services shall promulgate rules, ***, establishing a method for determining layoff procedures and an order of layoff and the displacement and recall of laid-off *** employees." Also, R.C. 124.325(F) states: "The director shall promulgate rules, ***, to establish a system for the assignment of retention points for each employee in a classification affected by a layoff ***." Subsequently, the following method for computing retention points was created:

{¶18} "Employees shall be laid off using the following process for systematic consideration of continuous service. An employee's total retention points shall be the sum of the base retention points plus the retention points assigned for continuous service." Ohio Adm.Code 123:1-41-08(A).

{¶19} "Employees shall be assigned a base of one hundred retention points. Computation of retention points for continuous full-time service shall be made by

crediting each employee with one retention point for each bi-weekly pay period of continuous service. For the purposes of calculating retention points, full-time service shall include service as a full-time permanent, *** employee." Ohio adm.Code 123:1-41-09(A).

{¶20} Under Ohio Adm.Code 123:1-41-08, appellants were responsible for the computation of Geist's retention points. Once appellants had completed their calculations, Ohio Adm.Code 123:1-41-08 required appellants to forward the calculations to appellees for verification. The record indicates that appellants submitted their calculations to appellees on February 29, 2000. In their Feb. 29th calculations, appellants did not include Geist's service as a Deputy Clerk of Council. Appellants' initial calculations produced a total of 306 retention points for Geist. The record indicates that Geist needed 482 points to retain her position. Based on the numbers provided to them by appellants, appellees verified the calculations as correct on March 8, 2000. Appellants then proceeded to issue a letter to Geist indicating that she would be laid off effective March 27, 2000. Pursuant to R.C. Chapter 124, Geist properly appealed the ruling on March 17, 2000, claiming that appellants wrongly omitted her time as a deputy clerk from their calculations. Following a May 31, 2000 hearing, appellees found that appellants had improperly omitted Geist's time as a deputy clerk, and that Geist actually had 505 retention points, an amount sufficient to set aside the layoff.

{¶21} The primary focus of appellants' argument is on the definition of "continuous, full-time permanent employee" as defined by Ohio Adm.Code 123:1-47-01(A).

{¶22} "Continuous Service-Means the uninterrupted service of an employee ***, where no break in service occurs." Ohio Adm.Code 123:1-47-01(A)(25).

{¶23} "Permanent employee-Means any person holding a position that requires working a regular schedule of twenty-six consecutive bi-weekly pay periods, **or** any other regular schedule of comparable consecutive pay periods, which is not limited to a specific season or duration." Ohio Adm.Code 123:1-47-01(A)(60).

{¶24} Appellants argue that Geist was not a permanent employee because her appointment as a deputy clerk was limited to two years each term, and thus was limited to a 'specific season or duration'. We disagree. Ohio Adm.Code 123:1-47-01(A)(60) provides two alternatives for a person to qualify as a permanent employee. To wit, "(1) any person holding a position that requires a regular schedule of twenty-six consecutive bi-weekly pay periods **or** (2) any other regular schedule ***." It is uncontested that Geist was a "full time" employee during her tenure as a deputy clerk. The deputy clerk's position required Geist to work a regular schedule of twenty-six consecutive bi-weekly pay periods. As a result, appellees determined that Geist satisfied the first prong of the definition contained in Ohio Adm.Code 123:1-47-01(A)(60). Appellees also determined that the seasonal and durational requirements were only applicable to individuals who worked less than twenty-six consecutive bi-weekly pay periods.

{¶25} In their brief, appellants state that "the evidence applicable to this appeal is uncontroverted and not in dispute." The record in this case indicated that "It is uncontested that Geist was a full time employee from 1984 until her lay off [sic] on March 27, 2000." It is also uncontested that Geist's term as a deputy clerk ran from July 16, 1984 to February 26, 1992. On the very next day, February 27, 1992, it is

uncontroverted that Geist began serving as a secretary/executive secretary for the Administration Department. Based on the preceding facts, appellees ruled that Geist's employment satisfied the continuous full-time permanent employee definitions in Ohio Adm.Code 123:1-41-01(A). As a result, appellees determined that Geist possessed the points necessary to retain her position with appellants.

{¶26} Appellate courts and courts of common pleas "must not substitute their judgment for those of an administrative agency." *Henley v. Youngstown Bd. of Zoning Appeals* (2000), 90 Ohio St.3d 142, 147. There is nothing in the record that would indicate a misapplication of the law by appellees in this case. Also, the facts in this case are uncontested and uncontroverted. This court will not attempt to substitute its judgment for that of appellees. The evidence in this case is uncontroverted and uncontested. Thus, we hold that the common pleas court's finding, regarding Geist's employment status and retention points, was supported by a preponderance of reliable, probative, and substantial evidence. Appellants' second assignment of error is not well taken and is without merit.

{¶27} In their third assignment of error, appellants claim that appellees' correction of the verified retention points was "arbitrary and capricious." As discussed in our previous analysis, appellants provided the original number of 306 retention points to appellees. Pursuant to the Ohio Adm.Code, appellees had no duty to go beyond the information given to them by appellants in verifying the calculations. As the initial documents supplied by appellants did not contain Geist's service as a deputy clerk, appellees were without cause for suspicion. Once Geist properly raised the issue of miscalculation on appeal, appellees became aware of Geist's previous service and

proceeded to correct appellants' miscalculation. The undisputed facts of this case support the common pleas court's decision to uphold such a correction. Thus, we cannot say that appellees' conduct in this case was arbitrary or capricious.

{¶28} Appellants also attempt to invoke the doctrine of estoppel in this case. However, the doctrine of estoppel is a doctrine of equity and has been held not to apply to classified individuals in civil service positions. See *Chubb v. Ohio Bur. of Workers' Comp.* (1998), 81 Ohio St.3d 275. Based on our previous analysis, we hold that the common pleas court was correct in finding that appellees' decision, to re-calculate Geist's retention points, was proper. Appellants' third assignment of error is without merit.

{¶29} For the foregoing reasons, we hold appellants' first, second, and third assignments of error to be without merit. The decision of the common pleas court in this matter is hereby affirmed.

Judgment affirmed.

WILLIAM M. O'NEILL, P.J., and JUDITH A. CHRISTLEY, J., concur.