IN THE SUPREME COURT OF OHIO

OHIO COUNCIL 8, AFSCME, AFL-CIO, and LOCAL 1043, AFSCME, AFL-CIO,	:	Case No. 2024-0031
Plaintiffs/Appellees/Appellants,	:	
v.	:	On Appeal from the Court of Appeals of Cuyahoga County Ohio, Eighth District Court of Appeals, Case No. 112456
CITY OF LAKEWOOD,	:	
Defendant/Appellant/Appellees.	:	

BRIEF OF *AMICUS CURIAE* OHIO ASSOCIATION OF PROFESSIONAL FIRE FIGHTERS IN SUPPORT OF APPELLANTS OHIO COUNCIL 8, AFSCME, AFL-CIO, AND LOCAL 1043, AFSCME

Kimm A. Massengill-Bernardin
General Counsel (0059292)
Ohio Council 8, AFSCME, AFL-CIO
6800 North High Street
Worthington, Ohio 43085
P: (614) 841-1918 Fax: (614) 430-7960
Email: kmassengillbernardin@afscme8.org

Attorney for Ohio Council 8, AFSCME, AFL-CIO and Local 1043, AFSCME, AFL-CIO

David P. Frantz (0091352)
Stephen S. Zashin (0064557)
Sarah J. Moore (0065381)
Zashin & Rich Co., L.P.A.
950 Main Avenue, 4th Floor
Cleveland, Ohio 44113
P: (216) 696-4441 Fax: (216)696-1618
Email: dpf@zrlaw.com
Email: ssz@zrlaw.com
Email: sjm@zrlaw.com

Attorneys for City of Lakewood

Henry A. Arnett (0011379)
counsel@oapff.org
Colleen M. Arnett (0096961)
carnett@livornoandarnett.com
Livorno and Arnett Co., LPA
1335 Dublin Road, Suite 108-B
Columbus, Ohio 43215
Phone: (614) 224-7771
Fax: (614) 224-7775

Attorneys for *Amicus Curiae* OAPFF

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R.C. CHAPTER 4117 DOES NOT PREVENT PARTIES TO A COLLECTIVE BARGAINING AGREEMENT ("CBA") FROM SEEKING ENFORCEMENT OF AN ARBITRATION CLAUSE IN THAT AGREEMENT PURSUANT TO R.C. 2711.03 AND THE STATE EMPLOYMENT RELATIONS BOARD DOES NOT HAVE EXCLUSIVE JURISDICTION OVER THE ENFORCEMENT OF AN ARBITRATION CLAUSE IN A CBA.

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I. INTEREST OF *AMICUS CURIAE*

This *amicus curiae* brief is being submitted by the Ohio Association of Professional Fire Fighters (OAPFF) in support of the Appellants in this case, Ohio Council 8, AFSCME, AFL-CIO and Local 1043, AFSCME, AFL-CIO (hereafter collectively referred to as AFSCME).

The OAPFF represents more than 12,500 active firefighters and first responders in the State of Ohio and the more than 280 Locals that represent and collectively bargain on behalf of those firefighters. The OAPFF is dedicated to protecting firefighters and first responders and defending their statutory rights as well as the rights they have under their collective bargaining agreements.

The lower court's decision is contrary to law and has a significant adverse impact on the rights of firefighters and their union representatives to enforce their collective bargaining agreements. Most firefighter collective bargaining agreements contain a grievance procedure and additional language allowing the union to seek arbitration if a grievance is not resolved through the grievance process. But sometimes, and this case is a perfect example, an employer will refuse to submit to the arbitration process. When that happens, the union's recourse is to file an action in common pleas court to compel arbitration. See, e.g., *Youngstown Pro. Firefighters, IAFF Loc. 312 v. City of Youngstown*, 2024-Ohio-940 (7th Dist.); *Laborer's Int'l Union, Local Union No. 860 v. Cuyahoga Cty. Common Pleas Court,* 2019-Ohio-3190 (8th Dist.); *Toledo Police Command Officers' Ass'n v. City of Toledo,* 2014-Ohio-4119 (6th Dist.); *Ohio Patrolmen's Benevolent Association v. MetroHealth System*, 87 Ohio App.3d 16 (8th Dist. 1993); and *Perry Twp. Bd. of Trs. v. FOP*, 2011-Ohio-6148 (5th Dist.). Such an action is specifically authorized by R.C. §§ 2711.03 and 4117.09.

However, the Court of Appeals ruling in this case essentially negates those two clear,

concise sections of Ohio law and leaves firefighter unions with no remedy at all should an employer refuse to submit to arbitration despite a request made by the firefighter union to arbitrate a grievance. Accordingly, *Amicus Curiae* joins with Appellants and urges this Court to reverse the decision of the Court of Appeals.

II. STATEMENT OF FACTS

The Brief of Appellants sets forth in detail the relevant facts in this case. For purposes of this *Amicus Curiae* brief, those facts can be summarized as follows.

AFSCME and the City of Lakewood have a collective bargaining agreement which contains a grievance and arbitration procedure. When a member of the bargaining unit represented by AFSCME was terminated, a grievance was filed challenging the termination and, when denied by the City, was submitted by AFSCME to arbitration. When the City refused to submit to arbitration, AFSCME filed a motion to compel arbitration in the Common Pleas Court. The Common Pleas Court granted the motion to compel arbitration.

However, the City appealed to the Court of Appeals. That Court, in an opinion issued on November 22, 2023, found that the Common Pleas Court had no jurisdiction to entertain a motion to compel arbitration, instead ruling that, because the Union's claims allegedly arose from rights created in R.C. Chapter 4117, only the State Employment Relations Board (SERB) had jurisdiction to hear the claim.

AFSCME filed a notice of appeal to this Court, and this Court accepted jurisdiction to hear the appeal.

III. ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Appellants' Proposition of Law No. 1

R.C. CHAPTER 4117 DOES NOT PREVENT PARTIES TO A COLLECTIVE BARGAINING AGREEMENT (“CBA”) FROM SEEKING ENFORCEMENT OF AN

ARBITRATION CLAUSE IN THAT AGREEMENT PURSUANT TO R.C. 2711.03 AND THE STATE EMPLOYMENT RELATIONS BOARD DOES NOT HAVE EXCLUSIVE JURISDICTION OVER THE ENFORCEMENT OF AN ARBITRATION CLAUSE IN A CBA.

Revised Code 2711.03 reads in part as follows:

> (A) *The party aggrieved by the alleged failure of another to perform under a written agreement for arbitration may petition any court of common pleas having jurisdiction of the party so failing to perform for an order directing that the arbitration proceed in the manner provided for in the written agreement*. Five days' notice in writing of that petition shall be served upon the party in default. Service of the notice shall be made in the manner provided for the service of a summons. The court shall hear the parties, and, upon being satisfied that the making of the agreement for arbitration or the failure to comply with the agreement is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the agreement. (Emphasis added.)

Despite this statute clearly granting the Court of Common Pleas the jurisdiction to hear and decide AFSCME's claim, the Court of Appeals ruled that the Lower Court had no jurisdiction, with SERB supposedly having exclusive jurisdiction over the motion to compel arbitration.

SERB "has exclusive jurisdiction to decide matters committed to it pursuant to R.C. Chapter 4117." *Franklin Cty. Law Enforcement Assn v. FOP*, 50 Ohio St.3d 167 (1991). The issue of when SERB has exclusive jurisdiction over a claim was discussed by this Court in ¶16 of *State ex rel. Cleveland v. Sutula*, 127 Ohio St.3d 131, 2010-Ohio-5039:

> "The State Employment Relations Board has exclusive jurisdiction to decide matters committed to it pursuant to R.C. Chapter 4117." (Citation omitted). "Exclusive jurisdiction to resolve unfair labor practice charges is vested in SERB in two general areas: (1) where one of the parties filed charges with SERB alleging an unfair labor practice under R.C. 4117.11 and (2) where a complaint brought before the common pleas court alleges conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11." *State ex rel. Ohio Dept. of Mental Health v. Nadel*, 98 Ohio St.3d 405, 2003-Ohio-1632, 786 N.E.2d 49, ¶ 23; *E. Cleveland v. E. Cleveland Firefighters Local 500, I.A.F.F.* (1994), 70 Ohio St.3d 125, 127-128, 637 N.E.2d 878. Therefore, "if a party asserts claims that arise from or depend on the collective bargaining rights created by R.C. Chapter 4117, the remedies provided in that chapter are exclusive." *Franklin Cty. Law Enforcement Assn.*, 59 Ohio St.3d 167, 572 N.E.2d 87, at paragraph two of the syllabus.

The Court of Appeals here misunderstood and misapplied the standard for SERB having exclusive jurisdiction as set forth in *Sutula*.

First, it is clear that SERB does not have jurisdiction because a party filed an unfair labor practice charge with it. No unfair labor practice charge was ever filed.

Second, it is also clear that the motion to compel arbitration brought in the Common Pleas Court did not allege conduct that would constitute an unfair labor practice under R.C. 4117.11. Revised Code 4117.11(A) states that it is an unfair labor practice for a public employer, its agents, or representatives to "(6) Establish a pattern or practice of repeated failures to timely process grievances and requests for arbitration of grievances...." Notably, the statute does not make it an unfair labor practice for a public employer to make a one-time refusal to submit to arbitration. See *Ohio Patrolmen's Benevolent Association v. MetroHealth System*, 87 Ohio App.3d 16 (8th Dist. 1993). In fact, SERB itself has stated in another case pending in this Court that "The City's refusal to take a single request to arbitration is not an unfair labor practice" and that "Ohio's collective bargaining laws were not intended to punish a public employer for merely one refusal to arbitrate." *State of Ohio, ex rel Christopher R Staple, v. State Employment Relations Board*, Case No. 2024–0279, Brief of Respondent State Employment Relations Board, p. 12.

Thus, there is no merit to the argument that SERB has exclusive jurisdiction because an unfair labor practice charge was or could have been filed. Therefore, the issue becomes whether the remedies provided in R.C. Chapter 4117 are exclusive because AFSCME asserted claims that arise from or depend on the collective bargaining rights created by Chapter 4117. To resolve this issue, first it must be determined if there are in fact remedies for AFSCME provided by and in Chapter 4117. As noted in *Sutula*, above, "if a party asserts claims that arise from or depend on

the collective bargaining rights created by R.C. Chapter 4117, the remedies provided in that chapter are exclusive."

Second, it must be discerned whether AFSCME's claim arose from and depends on rights created by Chapter 4117.

Finally, Chapter 4117 itself must be reviewed to see if it provides an exception for what would otherwise be SERB's exclusive jurisdiction.

As to the first component for determining the issue of exclusive jurisdiction, should AFSCME be left to the remedies provided by Chapter 4117? The problem with this is that there are no such remedies. One can search the Court of Appeals decision in vain for any suggestion as to what remedies from SERB would be available for AFSCME when the City refused to comply with the collective bargaining agreement. The Court of Appeals was unable to cite any remedy from SERB that AFSCME might have for the City's refusal to proceeding with arbitration because there are none.

No one can seriously claim that SERB has the authority to hear and decide motions to compel arbitration. Nor does it have any authority to enforce an order compelling arbitration. SERB may have exclusive jurisdiction to decide matters committed to it pursuant to R.C. Chapter 4117, but motions to compel arbitration do not fall within matters committed to it.

It was never intended that SERB would decide any and all contractual violation claims, yet that is essentially the result if the Court of Appeals decision were allowed to stand. The Court of Appeals decision, basically saying that AFSCME is relegated to only the remedies provided by SERB, essentially leaves AFSCME with no remedy at all. This Court should clarify that SERB does not have exclusive jurisdiction over a claim when SERB has no authority to hear that claim and can provide no remedy for the aggrieved party.

The Court of Appeals also erred by finding that AFSCME's claim arose from and was dependent on the statutory rights created by Chapter 4117. In this respect, it appears that the Court of Appeals felt that anytime a collective bargaining agreement was violated, the employee's or the union's statutory rights were somehow violated. The Court of Appeals stated the following:

> This claim is premised on the Union's allegations that there is a CBA that the City has failed to comply with. That is, if – as the Union alleges – the City ignored the CBA by refusing to arbitrate the grievance, then the City interfered with [the employee's] statutory collective-bargaining rights and refused to bargain collectively. This claim is entirely dependent on and falls directly within the scope of the collective bargaining rights created by R.C. Chapter 4117. ¶15.

Contrary to the Court of Appeals ruling, a violation of the terms of the collective bargaining agreement does not equate with a violation of the rights established by Chapter 4117.

It should be noted that the Court of Appeals does not specify exactly what statutory right created by Chapter 4117 was allegedly violated by the City. It just generally refers to an interference with statutory collective-bargaining rights, implying that a violation of the collective bargaining agreement constitutes a refusal to bargain collectively. But AFSCME does not want to bargain this matter. It has no interest in sitting down at the table and negotiating whether the City should proceed with arbitration. The collective bargaining agreement requiring that the City proceed with arbitration has already been agreed to. When the City violated the agreement, AFSCME simply sought to enforce the City's agreement. AFSCME's claim is that the City violated the contract; it does not claim that the City violated any rights established by Chapter 4117. Accordingly, the Court of Appeals erred in ruling that SERB has exclusive jurisdiction.

But even if you assume that SERB had the authority to hear the Union's claim and provide a remedy, and that the claim made by AFSCME arose from and was dependent upon

rights created by Chapter 4117, the Court of Appeals still erred in ruling that SERB had exclusive jurisdiction. This is so because Chapter 4117 specifically provides that in this instance SERB's jurisdiction is *not* exclusive.

Case law clearly establishes that it is the courts or the arbitrators themselves who decide whether a matter is arbitrable. See *Belmont County Sheriff v. FOP, Ohio Labor Council, Inc.*, 104 Ohio St. 3d 568, 2004-Ohio-7106. The General Assembly did not take that authority away from the courts and arbitrators when it enacted Chapter 4117. To the contrary, R.C. 4117.09 reads in part as follows:

> (A) The parties to any collective bargaining agreement shall reduce the agreement to writing and both execute it.
> (B) The agreement shall contain a provision that:
>> (1) Provides for a grievance procedure which may culminate with final and binding arbitration of unresolved grievances, and disputed interpretations of agreements, and which is valid and enforceable under its terms when entered into in accordance with this chapter. No publication thereof is required to make it effective. *A party to the agreement may bring suits for violation of agreements or the enforcement of an award by an arbitrator in the court of common pleas of any county wherein a party resides or transacts business*. (Emphasis added).

This statute accomplishes two things. First, while the parties do not necessarily have to agree to final and binding arbitration in a collective bargaining agreement, if they do so agree then that arbitration procedure is valid and enforceable. Therefore, public employers and public employee labor organizations can enforce arbitration procedures through a motion to compel arbitration filed with the common pleas court just like other employers and labor organizations.

Perhaps more importantly, this statute also provides an unequivocal exception to SERB's exclusive jurisdiction, that exception being that a party to a collective bargaining agreement may bring suit for violation of the agreement in the court of common pleas. AFSCME did exactly what is authorized by this statute. You simply cannot say that SERB has exclusive jurisdiction

when the Act itself expressly authorizes the courts to exercise jurisdiction in claims such as that raised by AFSCME. The Court of Appeals erred when it ruled that SERB has exclusive jurisdiction when the law itself provides otherwise.

IV. CONCLUSION

We are dealing with several statutes that are straightforward. Revised Code 2711.03 and 4117.09 make it clear that SERB does not have exclusive jurisdiction to decide motions to compel arbitration. The Court of Appeals erred when it ruled SERB had exclusive jurisdiction, which is particularly troubling given the fact that SERB doesn't even have any authority to decide whether a matter is arbitrable and then compel a party to proceed with arbitration. For the reasons stated above, the Court of Appeals decision should be reversed and the judgment of the Cuyahoga County Court of Common Pleas reinstated.

Respectfully submitted,

/s Henry A. Arnett
Henry A. Arnett (0011379)
counsel@oapff.org
/s Colleen M. Arnett
Colleen M. Arnett (0096961)
carnett@livornoandarnett.com
Livorno and Arnett Co., LPA
1335 Dublin Road, Suite 108-B
Columbus, Ohio 43215
Phone: (614) 224-7771
Fax: (614) 224-7775

Attorneys for *Amicus Curiae* OAPFF

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Brief was served by email upon the following this 6th day of May, 2024:

Kimm A. Massengill-Bernardin
General Counsel (0059292)
Ohio Council 8, AFSCME, AFL-CIO
6800 North High Street
Worthington, Ohio 43085
Email: kmassengillbernardin@afscme8.org

David P. Frantz (0091352)
Stephen S. Zashin (0064557)
Sarah J. Moore (0065381)
Zashin & Rich Co., L.P.A.
950 Main Avenue, 4th Floor
Cleveland, Ohio 44113
Email: dpf@zrlaw.com
Email: ssz@zrlaw.com
Email: sjm@zrlaw.com

/s Henry A. Arnett
Henry A. Arnett (0011379)