IN THE SUPREME COURT OF OHIO

OHIO COUNCIL 8, AFSCME, AFL-CIO, and LOCAL 1043, AFSCME, AFL-CIO,	:	**Case No. 2024-0031**
Appellants,	:	**On appeal from the Eighth District Court of Appeals, Cuyahoga County, Case No. 112456**
v.	:	
CITY OF LAKEWOOD,	:	
Appellee.	:	

MERIT BRIEF OF AMICUS CURIAE OHIO MANAGEMENT LAWYERS ASSOCIATION IN SUPPORT OF APPELLEE

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INTRODUCTION AND STATEMENT OF INTEREST OF AMICUS CURIAE

The Ohio Management Lawyers Association ("OMLA") is an Ohio non-profit corporation. Its stated purpose is "[t]o provide an organization [for the] discussion of common issues and problems, and promotion of the administration of justice with respect to employment, labor, and other areas of the law affecting employers." Its members regularly advise employers in Ohio on employment-law related issues, including those arising under collective bargaining agreements.

In 1983, the General Assembly enacted R.C. Chapter 4117, formally establishing a framework for the resolution of public sector labor disputes by creating specific procedures and remedies for the assertion of those rights and centralizing authority over that framework in the State Employment Relations Board ("SERB"). The question of whether SERB has exclusive jurisdiction over claims arising out of a collective bargaining agreement has been well-settled under this Court's precedent. In short, this Court has determined that SERB has sole jurisdiction over matters arising under R.C. Chapter 4117. The OMLA shares Appellee's interest in preserving the autonomy of SERB to decide those matters committed to it by the General Assembly through the enactment of R.C. Chapter 4117.

At issue here is whether SERB has exclusive jurisdiction arising from a dispute based on a last chance agreement. Last chance agreements are of particular importance to Ohio employers, unions and employees, who utilize these agreements as a tool to admonish an employee's otherwise terminable offense while allowing the employee an opportunity to course-correct by providing one last chance at employment. In the instant case, the last chance agreement arises from the R.C. Chapter 4117 bargaining relationship, and the union asserted a claim regarding the exercise of R.C. Chapter 4117 rights. As such, the union's underlying claim and the dispute regarding interpretation of the last chance agreement falls within the exclusive jurisdiction of SERB. If a party to a last chance agreement is permitted to circumvent SERB's jurisdiction, and

instead seek arbitration under R.C. Chapter 2711, SERB would be stripped of its ability to effectively administer Chapter 4117 to achieve consistent results, thus diminishing one of the key purposes underlying R.C. Chapter 4117.

STATEMENT OF FACTS AND THE CASE[1]

This case centers around a public employee, Michael Satink ("Satink"), whose employment was ultimately terminated after he violated the terms of a last chance agreement. The agreement was signed by Satink, his Union, and his employer.

Satink was an employee of the City of Lakewood (the "City") Department of Public Works — the Department responsible for maintaining and planning the City's infrastructure. The City is a "public employer" as defined by R.C. 4117.01(B). Satink was a "public employee" as defined by R.C. 4117.01(D). Ohio Council 8, American Federation of State, County, Municipal Employees, AFLICO and Local 1043, American Federation of State, County, and Municipal Employees, AFLICO (collectively, the "Union") exclusively represent a group of employees in the City's Department of Public Works, including Satink.

The City, the Union, and Satink were parties to a collective bargaining agreement ("CBA") created pursuant to R.C. Chapter 4117. The CBA contains terms outlining grievance and arbitration procedures to be followed by the parties in the event such procedures are invoked.

On November 4, 2020, the City terminated Satink's employment for insubordinate, disruptive, and intimidating actions in the workplace. The day after Satink's termination, pursuant to the CBA, the Union filed a grievance challenging the termination. After the grievance process failed to resolve the dispute, the Union moved the grievance to arbitration. An arbitration hearing was scheduled for March 11, 2021.

[1] The statements set forth in "Statement of Facts and the Case" herein are premised on the Eighth District's decision and the City's brief filed in the Eighth District.

After weeks of negotiations, on March 8, 2021, the parties entered into a last chance agreement ("LCA"), in which they agreed that: (1) the LCA would be entered in lieu of the Union's grievance and the scheduled arbitration hearing, and (2) Satink would return to work at the Department of Public Works under certain terms and conditions. More specifically, the LCA provides that "[i]f, during the terms of this Agreement, Satink violates any City work rule or policy pertaining to professional, respectful, and workplace appropriate behavior when performing assigned work responsibilities, he shall be ***subject to immediate termination without recourse to the grievance or arbitration provisions of the Collective Bargaining Agreement."*** (LCA, ¶ 7) (emphasis added). Satink further agreed that "his continued employment [was] contingent upon his meeting any and all terms of [the LCA]." (LCA, ¶ 8).

The LCA specifically references, works in concert with, and amends the CBA as to Satink. (LCA ¶¶ 4, 7). In addition, the CBA provides that "all pre-arbitration grievance settlements reached by the Union and the City shall be final, conclusive, and binding on the City, the Union, and employee[s]." (CBA, Art. 10, § 10.04). The LCA is just that—a pre-arbitration grievance settlement reached by the Union and the City. Thus, the LCA is final and binding on the City, the Union, and Satink.

Months later, Satink engaged in conduct which violated a City "work rule or policy pertaining to professional, respectful, and workplace appropriate behavior when performing assigned work responsibilities." (LCA, ¶ 7). As a result, the City terminated Satink's employment on November 4, 2021, for violating the LCA.

Despite the LCA's explicit provision that Satink is "subject to immediate termination ***without recourse to the grievance or arbitration provisions of the Collective Bargaining Agreement***," the Union filed a grievance alleging "wrongful termination" on November 10, 2021.

On November 17, 2021, the City rejected the obligation to process the grievance, pointing to the terms of the LCA and specifically that the Union and Satink relinquished their rights to a grievance and arbitration procedure in exchange for Satink's return to work. Thereafter, the City rejected the Union's attempt to move the grievance to arbitration.

On April 13, 2022, the Union filed an application and motion to compel arbitration under R.C. 2711.03 with the trial court. The trial court issued a two-sentence judgment granting the Union's motion to compel arbitration. The Eighth District Court of Appeals reversed, correctly holding that the Union's claim falls within the exclusive jurisdiction of SERB.

Because the question of SERB's jurisdiction resolved the dispute, the Eighth District did not examine the second issue — whether Satink and the Union waived their right to compel arbitration under the plain language of the LCA. Had it done so, the LCA would serve as an additional basis to reject the Union's motion to compel arbitration under R.C. Chapter 2711 because the LCA unambiguously provides that Satink and the Union relinquished their ability to seek recourse in the grievance and arbitration procedures outlined in the CBA.

ARGUMENT

I. THE CITY'S PROPOSITION OF LAW: Common pleas courts lack subject matter jurisdiction over disputes alleging interference with the exercise of grievance and arbitration rights under R.C. Chapter 4117.

A. Last Chance Agreements, Generally

Last chance agreements are common in the public employment context. *See, e.g.*, *McCollins v. Cuyahoga Cty.*, 2014-Ohio-4481, ¶ 8 (8th Dist.); *Crosier v. Ohio Dep't of Rehab. & Correction*, 2018-Ohio-820, ¶ 5 (10th Dist.); *Williams v. Metro*, 2018-Ohio-2507, ¶ 1 (1st Dist.); *Hopkins v. City of Columbus*, No. 2:12-CV-336, 2014 WL 1121479, at *4 (S.D. Ohio Mar. 20, 2014). The employer, employee, and collective bargaining unit of which the employee is a member

are typically parties to last chance agreements. *Voss Steel Emps. Union v. Voss Steel Corp*., 16 F.3d 1223, fn.1 (6th Cir. 1994).

Last chance agreements are most often negotiated after an employee has violated a term of his or her collective bargaining agreement or a workplace policy and is facing termination as a result. *See, e.g., Summers v. Keebler Co*., 133 F. App'x 249, 250 (6th Cir. 2005) (employee entered into a last chance agreement after she violated a term in her CBA); *Williams*, 2018-Ohio-2507 at ¶ 1 ("[Employee] had been disciplined at work for engaging in a physical altercation, and was offered a "Last Chance and Settlement Agreement[.]").

Under a last chance agreement, the employee bargains for reinstatement to his position after violating his collective bargaining agreement or a workplace policy. *Mararri v. WCI Steel, Inc.*, 130 F.3d 1180, 1182 (6th Cir. 1997) (in entering into the LCA, the employee "bargained to be reinstated to his position"). In other words, "[t]he employee is given 'one last chance' to correct his errant behavior, in exchange for which he agrees to certain conditions." *Voss Steel Corp*., 16 F.3d 1223, fn.1. Last chance agreements often contain conditions which provide that an employee's failure to abide by the agreement is "***grounds for immediate dismissal, without the opportunity to file a grievance protesting the employer's action***." *Id.* (emphasis added).

B. The Last Chance Agreement Depends on R.C. Chapter 4117 and Falls within SERB's Jurisdiction

As noted above, Satink, the Union and the City resolved Satink's earlier grievance by entering into the LCA. In other words, Satink bargained to be reinstated to his position under the LCA. *See Marrari*, 130 F.3d 1180, 1182. The LCA provided that upon violation of the LCA, Satink is "subject to immediate termination ***without recourse to the grievance or arbitration provisions of the Collective Bargaining Agreement.***" Satink violated the LCA and was terminated. Thereafter, the Union submitted a grievance alleging "wrongful termination." The City

rejected the obligation to process the grievance, pointing to the terms of the LCA and specifically that the Union and Satink had relinquished their rights to a grievance and arbitration procedure in exchange for Satink's return to work.

At this juncture, the Union had two viable options at its disposal (as exclusive remedies under R.C. Chapter 4117): (1) file an unfair labor practice charge with SERB (based on the City's failure to process a grievance); or (2) file a grievance challenging the City's rejection of the termination grievance and, thereby, put the interpretation of the LCA before an arbitrator under the CBA's grievance process. Rather than utilize either of these options, the Union filed an application and motion to compel arbitration with the trial court on April 13, 2022 under R.C. 2711.03. The Union's decision to seek redress from the trial court was improper because the trial court wholly lacked jurisdiction to resolve the dispute.

"With limited exception, the Ohio Revised Code bestows exclusive jurisdiction on SERB for the resolution of disputes between public employers and employees where those disputes arise from the employment relationship." *Williams*, 2018-Ohio-2507, ¶ 9, citing *Mun. Constr. Equip. Operators' Labor Council v. Cleveland*, 2016-Ohio-5934, ¶14 (8th Dist.). "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." *State ex rel. Cleveland v. Sutula*, 127 Ohio St.3d 131, 2010-Ohio-5039, ¶ 16.

Here, the Union alleged that the City ignored the CBA by refusing to arbitrate the grievance submitted after Satink violated the LCA. *Ohio Council 8, AFSCME, AFL-CIO v. City of Lakewood*, 2023-Ohio-4212, ¶ 11 (8th Dist.) ("Decision"). This is an allegation that the City interfered with Satink's statutory collective-bargaining rights and refused to bargain collectively. Decision, ¶ 15; *see also Williams*, ¶ 9 (finding that whether termination after an LCA is appropriate "is a

determination that SERB has exclusive jurisdiction to make"). An employer's improper refusal to process a grievance constitutes an unfair labor practice under R.C. 4117.11(A)(1), which prohibits employers from interfering with, restraining, or coercing employees in the exercise of their rights under R.C. Chapter 4117. *See State ex rel. Staple v. SERB*, 2024-Ohio-140, ¶ 20, 23 (10th Dist.) (affirming the finding that employer violated R.C. 4117(A)(1) by refusing to submit grievance to arbitration); *Fasone v. Clinton Twp.*, 1997 Ohio App. LEXIS 5138, *4-5 (10th Dist. Nov. 13, 1997). Such a claim falls squarely within the scope of the collective bargaining rights created by R.C. Chapter 4117. *See Sutula*, 2010-Ohio-5039 (holding that the trial court lacked jurisdiction where the union claimed that the city failed to abide by an agreement reached through collective bargaining).

Furthermore, SERB's jurisdiction is not limited to unfair labor practice claims. This Court has made clear that "SERB has exclusive jurisdiction over matters within R.C. Chapter 4117 in its entirety, not simply over unfair labor practices." *Sutula*, quoting *Assn. of Cleveland Fire Fighters, Local 93 of the Int'l Assn. of Fire Fighters v. Cleveland*, 156 Ohio App.3d 368, 2004-Ohio-994, ¶ 12 (8th Dist.).

Here, any challenged interpretation of the LCA by the Union should have been decided exclusively under R.C. Chapter 4117. First, but for the parties' bargaining obligations arising under R.C. Chapter 4117, there would be no CBA. Second, R.C. 4117.10(A) states that if the collective bargaining agreement provides for final and binding arbitration of grievances, then the parties "are subject ***solely to that grievance procedure***" (emphasis added). In accordance with 4117.10(A), the CBA specifically provides that "all pre-arbitration grievance settlements reached by the Union and the City shall be final, conclusive and binding on the City, the Union and the employee(s)." (CBA, Art. 10, § 10.04). In addition, the CBA contains a grievance and arbitration

procedure, which defines "grievance" to include disputes over "***the interpretation and/or application of and/or compliance" of language the parties negotiated, such as the language the parties negotiated in the LCA*** (CBA, Art. 10, § 10.02) (emphasis added). Thus, in accordance with the exclusive remedies provided under R.C. Chapter 4117, the Union could have filed a grievance regarding the interpretation and application of the LCA or a charge with SERB alleging interference with grievance rights, but it failed to do so.

"It is a well-established principle of Ohio law that, prior to seeking court action in an administrative matter, the party must exhaust the available avenues of administrative relief through administrative appeal…The purpose of the doctrine…is to permit an administrative agency to apply its special expertise…and in developing a factual record without premature judicial intervention. The judicial deference afforded administrative agencies is to…prepare the way, if the litigation should take its ultimate course, for a more informed and precise determination by the Court." *Carter v. Trotwood-Madison City Bd. of Edn.*, 181 Ohio App.3d 764, 2009-Ohio-1769 (2d Dist.), ¶28 (quotations omitted). To ensure consistent application of Chapter 4117 throughout Ohio, this principle should not be disregarded and SERB should be entrusted to perform its duty.

This Court's ruling in *Sutula* was based on the finding that the General Assembly intended for R.C. Chapter 4117 to provide a "comprehensive framework for the resolution of public-sector labor disputes," giving SERB sole authority to decide such matters. *Sutula*, ¶ 16. This sound reasoning applies to claims arising from a collective bargaining agreement negotiated under the auspices of R.C. Chapter 4117 and the exercise of R.C. Chapter 4117 rights. *Id*. It should be applied here.

C. Satink and the Union Agreed to the Last Chance Agreement, which Unambiguously Forecloses Their Ability to Arbitrate Satink's Second Terminable Offense

While the trial court's decision to rule on the Union's motion to compel arbitration was improper, once the trial court decided it had jurisdiction, it had a duty to interpret and abide by the plain language of the LCA. Here, the LCA clearly incorporates the CBA by reference:

> If, during the terms of this Agreement, Satink violates any City work rule or policy pertaining to professional, respectful, and workplace appropriate behavior when performing assigned work responsibilities, he shall be subject to immediate termination without recourse to the grievance or arbitration provisions of the Collective Bargaining Agreement.

(LCA, ¶ 7). Thus, the LCA and CBA must be read in conjunction. *Fouty v. Ohio Dep't of Youth Servs*., 2006-Ohio-2957, ¶ 66 (10th Dist.) (Where a last chance agreement incorporates another employment agreement by reference, the court "must read the two documents together to ascertain the intent of the parties."); *Blazek v. City of Lakewood*, 576 F. App'x 512, 515 (6th Cir. 2014). Thus, where a last chance agreement incorporates a collective bargaining agreement by reference, the last chance agreement essentially acts as an addendum to the collective bargaining agreement.

The CBA initially gave Satink and the Union the right to follow the arbitration and grievance procedures outlined in Section 10, and the LCA modified that right by providing that an additional violation would result in Satink's "immediate termination without recourse to the grievance or arbitration provisions of the Collective Bargaining Agreement."

Further, Section 7 of the LCA is clear and unambiguous where it provides that Satink "shall be subject to immediate termination without recourse to grievance or arbitration." There is only one reasonable way to interpret this language—if Satink violates the LCA, he is subject to immediate termination without recourse to the grievance or arbitration process. Because the provision expressly excludes the issue of Satink's second termination from arbitration, it should

have been enforced and provides another (alternative) basis to dismiss the Union's application and motion to compel arbitration under R.C. Chapter 2711.

CONCLUSION

The Court of Appeals correctly denied the Union's application and motion to compel arbitration under R.C. Chapter 2711 on the basis of SERB's exclusive jurisdiction over the matter. The dispute arising from the LCA, which the parties negotiated and agreed to, falls within the exclusive jurisdiction of SERB. But, even if it did not, the unambiguous language of the LCA serves as an additional basis to reject the Union's application and motion to compel arbitration pursuant to Chapter 2711.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail on June 25, 2024 upon the following:

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