[Cite as *State ex rel. Braxton v. Nichols*, 2010-Ohio-681.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 93653, 93654 and 93655

STATE OF OHIO, EX REL. RONAYE BRAXTON, ET AL.

RELATOR

vs.

TRACEY NICHOLS, DIR. DEPT., ET AL.

RESPONDENTS

JUDGMENT: WRIT GRANTED IN PART AND DENIED IN PART

Writ of Mandamus
Motion Nos. 428611 and 428669
Order No. 431008

RELEASE DATE: February 23, 2010

ATTORNEY FOR RELATOR

Kevin P. Prendergast
27999 Clemens Road
Suite One
Westlake, Ohio 44145

ATTORNEYS FOR RESPONDENT

Robert J. Triozzi
Director of Law
By: Steven Moody
Assistant Director of Law
City of Cleveland
Department of Law
601 Lakeside Avenue
Room 106
Cleveland, Ohio 44114

MARY EILEEN KILBANE, J.:

{¶ 1} On July 22, 2009, the relators, Ronaye Braxton (Case No. 93653), Pierre C. Betts (Case No. 93654), and Carla Edwards (Case No. 93655) commenced these mandamus actions against the respondents: Tracey Nichols, the Director of the City of Cleveland's Department of Economic Development; Larry Benders, the Executive Director of the City of Cleveland's Division of Workforce Development; Lucille Ambroz, the Secretary of the City of Cleveland's Civil Service Commission; and the City of Cleveland (hereinafter "the City"). The relators each allege that the City of Cleveland improperly terminated them from

their positions. They each make a claim for a hearing before the Civil Service Commission, two claims for reinstatement to their jobs, and a very extensive claim for public records under R.C. 149.43.

{¶ 2} On October 19, 2009, this court ordered that all three of the cases be consolidated and issued a briefing schedule. Pursuant to that order, both sides filed motions for summary judgment on November 23, 2009. The relators filed their brief in opposition to the respondents' summary judgment motion on December 10, 2009, and the respondents filed their brief in opposition on December 14, 2009. For the following reasons, this court grants the respondents' motion for summary judgment in part and denies the relators' motion for summary judgment in part by denying the claims for reinstatement; this court grants the relators' motion for summary judgment in part and denies the respondents' motion for summary judgment in part by granting the claim for a hearing; and the court makes additional orders for the public records claim.

Factual Background

{¶ 3} As of early January 2009, all three relators were classified employees of the City in the Department of Economic Development, Division of Workforce Development, which provides services for unemployed and underemployed individuals to help them obtain jobs. The respondents allege that at the time the City and Cuyahoga County were working to merge their workforce development offices to reduce costs. As part of this process, Larry

Benders examined all employment positions and reclassified some individuals to reflect their actual duties and laid off some employees.

{¶ 4} Ronaye Braxton was a Personnel Administrator for the Division of Workforce Development. On January 21, 2009, in a letter signed by both Nichols and Benders, Braxton was notified that she was being involuntarily terminated because of the elimination of her position resulting from the merger. This letter further informed her, inter alia, that she would be placed at the head of the eligibility list for her classification for two years and that she had a right to apply for other positions with the City. On January 26, 2009, Braxton through her attorney filed an appeal with the City's Civil Service Commission. In this letter she listed various reasons for her appeal, including that her duties were assigned to employees with less seniority in violation of Civil Service Rule 8.20, that temporary appointees were performing her duties in violation of Civil Service Rule 8.22, that the termination was discriminatory in violation of Civil Service Rule 8.20, and that the termination was not in accord with the procedure under applicable state law, the City Charter, the City's Ordinances, due process, and the rules of the Civil Service Commission. She also made an extensive public records request.[1]

[1] The public records request made by each of the relators are nearly identical. These requests sought the following: (1) the complete civil service, personnel, departmental and divisional files maintained for every employee of the Division; (2) the Civil Service Job Description for every position in the Division as of 12-1-2008; (3) the Civil Service Job Description for every position in the Division as of 1-23-2009; (4) any

{¶ 5} Pierre Betts, as of January 4, 2009, was a Manager of Human Resources ("HR") Programming and Planning Management and had more than ten years of seniority with the City; he states that at that time there were several employees in the same classification, but with less seniority. On January 5, 2009, Benders reclassified Betts' position to HR Contract Administrator "to more properly reflect the duties that you have been performing." (January 5, 2009 letter.) However, this reclassification meant that Betts then had the lowest seniority for his new classification. On January 21, 2009, in a letter nearly identical to the ones received by the other relators, Betts was notified that he was being involuntarily terminated because the merger resulted in the elimination of his position. On January 26, 2009, Betts, through his attorney, in a letter nearly identical to those of the other relators, filed his appeal to the Civil Service

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Civil Service Eligible List for any position in the Division; (5) the complete civil service, personnel, departmental and divisional files maintained for every City employee who maintains the classification of Grant Administrator, or Manager of HR Programming and Planning, or Personnel Administrator, or Manager of HR Programming and Management, or HR Contract Administrator; (6) any intergovernmental agreements between the City and Cuyahoga County relating to the Division since 1-1-2008; (7) any Civil Service Eligible List for the positions of Grant Administrator, or Manager of HR Programming and Planning, or Personnel Administrator, or HR Contract Administrator, or Manager of HR Programming and Management; (8) any organizational chart for the Division; (9) any personnel request prepared for any position in the Division from 1-1-2008 through the date of response to the public records request; (10) the minutes from any meeting and copies of any board actions taken by the City/Cuyahoga Workforce Investment Board, including its subcommittees from 2006 to the date of response; and (11) any letters, email or other written communication exchanged between the Civil Service Commission and the Division from 1-1-2008 through the date of the response.

Commission and specifically stated that his termination violated Civil Service Rules 8.20 and 8.22. This letter contained the extensive public records request.

{¶ 6} Carla Edwards, as of January 4, 2009, was a Manager of HR Programming and Planning Management with over ten years of seniority. She further states that there were other employees in the same classification, but with less seniority than her. On January 5, 2009, Benders reclassified her position as Grant Administrator "to more properly reflect the duties you have been performing." Again, this reclassification meant that Edwards then had the lowest seniority for her new classification. Then on January 21, 2009, Edwards received the letter informing her that her position had been eliminated. On January 26, 2009, she too filed her appeal to the Civil Service Commission specifically citing Civil Service Rules 8.20 and 8.22. The letter also contained the extensive public records request.

{¶ 7} In April 2009, the relators' lawyer inquired about the status of the public records request, but he received no response. In May he inquired about the status of the Civil Service Commission appeals. The relators filed this mandamus action on July 22, 2009.

{¶ 8} In their filings with this court, the respondents have argued that the relators were laid off for economic reasons, rather than terminated, despite the language of involuntary terminations used in the January 21, 2009 letters. The respondents further contend that because the relators were laid off, they were not

entitled to hearings. Thus, the respondents admit that the Civil Service Commission never scheduled a hearing. On September 1, 2009, the City responded to the public records request in a letter to the relators' attorney. This letter stated that there were 5,376 pages responsive to the requests and that the copying fee at five cents a page totaled $268.80. Upon payment of the copying fee, the City would provide the records to the attorney. This letter further indicated that the Civil Service Commission was still "gathering records" and that upon receipt of those records, the City would notify the attorney. As of December 14, 2009, the 5,376 pages of records were ready and available upon payment.

Mandamus Principles

{¶ 9} The requisites for mandamus are well established: (1) the relator must have a clear legal right to the requested relief, (2) the respondent must have a clear legal duty to perform the requested relief and (3) there must be no adequate remedy at law. *State ex rel. Ney v. Niehaus* (1987), 33 Ohio St.3d 118, 515 N.E.2d 914 and *State ex rel. Harris v. Rhodes* (1978), 54 Ohio S.2d 41, 374 N.E.2d 641. Moreover, mandamus is an extraordinary remedy which is to be exercised with caution and only when the right is clear. It should not issue in doubtful cases. *State ex rel. Taylor v. Glasser* (1977), 50 Ohio St.2d 165, 364 N.E.2d 1; *State ex rel. Shafer v. Ohio Turnpike Comm.* (1953), 159 Ohio St. 581, 113 N.E.2d 14; *State ex rel. Connole v. Cleveland Bd. of Edn.* (1993), 87 Ohio

App.3d 43, 621 N.E.2d 850; and *State ex rel. Dayton-Oakwood Press v. Dissinger* (1940), 32 Ohio Law Abs. 308.

The Hearing Claim

{¶ 10} The court will first examine the relators' claim for a hearing before the Civil Service Commission. The City through its Charter and the Rules of the Civil Service Commission provide a right to a hearing for laid-off employees. Section 121 of the Cleveland City Charter provides in pertinent part as follows: "Any person in the classified service, who is * * * dismissed from the service of the City, may file a written appeal from the decision of the Civil Service Commission within ten days from and after the date of the * * * dismissal. * * * The Commission shall set the appeal for hearing within thirty days from and after the filing of the same with the Commission * * * ."

{¶ 11} Similarly, Cleveland Civil Service Commission Rule 8.50 provides in pertinent part as follows: " Whenever any employee is laid off in violation of Rule 8.00, he/she may file with the Commission within ten (10) calendar days of receiving notice of layoff, a request for a hearing. Such notice must state with specificity which rules regarding lay off have been violated. [New paragraph] Within fourteen (14) days of receipt of the request of an employee, the Commission shall hold a hearing or refer the matter to a Civil Service Referee on the alleged violation of the layoff rules."

{¶ 12} In the instant case, each of the relators within five days of their involuntary termination submitted a "Notice of Appeal, Request for Hearing" with the Civil Service Commission. (January 26, 2009 letter.) They each alleged multiple reasons for their appeals, including (1) the layoffs violated procedural due process by not providing for a pre-deprivation hearing, (2) they were not provided with the specific reasons for the layoffs as required by Section 128 of the Charter, (3) the reclassification of the two employees was not done in conformity with applicable laws and was a pretext to terminate them, (4) their duties were assigned to employees with less seniority in violation of Civil Service Rule 8.20,[2] (5) their duties were assigned to temporary employees in violation of Civil Service Rule 8.22, the City Charter and prior court orders, (6) the layoffs and reclassifications discriminated against the employees in violation of Civil Service Rule 8.20, (7) the City continued to employ temporary employees in the laid-off employees classifications in violation of Civil Service Rule 8.22,[3] (8) the layoffs and reclassifications were not accomplished in accordance with the procedures

[2] Rule 8.20 provides in pertinent part as follows: "the appointing authority may lay off any appointee in such classification; provided, however, that where two (2) or more persons are employed in a classification, they shall be laid off in the inverse order of their appointment in such classification, unless otherwise first approved by the Commission for good cause shown, and provided further that no lay offs shall be affected or influenced by politics, religion, gender, or race, and provided further that no layoff shall be used as a substitute for disciplinary action."

[3] Rule 8.22 governs the termination of temporary appointments and generally provides that when an eligible list exists for a classification with temporary employees, the temporary appointments shall terminate.

established under applicable state law, the Charter, Cleveland Codified Ordinances and the Civil Service Rules, and (9) the layoffs and reclassifications were not taken by the appropriate appointing authority under the Charter and the Rules. These notices of appeal fulfill the requirements of Civil Service Rule 8.50. They were filed within ten days of the lay off, and they state with specificity which rules regarding layoff were violated.

{¶ 13} Moreover, the cases cited by the relators also indicate the right to a hearing. *Hasman v. City of Cleveland* (Nov. 20, 1980), Cuyahoga App. No. 41568 and *Manlou v. City of Cleveland Civil Service Comm.*, Cuyahoga App. No. 85213, 2005-Ohio-2850. In *Hanson*, the plaintiff was laid off for lack of work in her classification, essentially the same reason for the layoffs in the instant cases. The procedural posture of *Hanson* was first an appeal/hearing to the Civil Service Commission in which the application of Civil Service Rule 8.20 was contested, as well as whether the Civil Service Commission gave the required approval before the layoff. When Hanson lost at the hearing, she appealed to the common pleas court. Then the case came to this court. Similarly, in *Manlou* when the City laid off Manlou for lack of work, the first step was an appeal to the Civil Service Commission. Again Civil Service Rule 8.20 and the need for the Civil Service Commission's prior approval of the layoffs were issues raised. Cf. *Poole v. Maloney* (1983), 9 Ohio App.3d 198, 459 N.E.2d 247 (Municipal employees have the right to appeal their layoffs.)

{¶ 14} The respondents counter by arguing that the Civil Service Commission did not schedule a hearing because the relators were not terminated (pg. 4 of respondents' motion for summary judgment) and because they did not make a prima facie showing that the procedure for effecting the layoffs was flawed. This is unpersuasive. The January 21, 2009 letters did not say that the relators were laid off. Those letters used the term involuntary termination. The Civil Service Rules do not require a prima facie showing of some flaw in the process. They merely require the employee to "state with specificity which rules regarding layoff have been violated." (Rule 8.50.) The relators fulfilled that requirement. They also submitted that the process was flawed and was not in accord with the applicable law and rules. Furthermore, the respondents cite no authority for their position, and that position seems inconsistent with case law from this court.

{¶ 15} Accordingly, this court holds that the relators have a right to a hearing before the Civil Service Commission to contest their layoffs and that the Civil Service Commission has the duty to conduct that hearing. There is no adequate remedy at law. This court issues a writ of mandamus and orders the Cleveland Civil Service Commission to schedule and conduct hearings for the relators pursuant to the Civil Service Rules.[4]

[4]Throughout this entire matter the parties have used the terms, layoff, terminate, dismiss, eliminate, and deprivation almost interchangeably. Thus, it has not always been easy to discern exactly their theories and defenses. This court rules that at the

The Reinstatement Claims

{¶ 16} The relators also seek immediate reinstatement to their positions based on the respondents' failure to conduct pre-deprivation hearings and on illegal terminations.[5] First, the relators argue that under *Cleveland Bd. of Educ. v. Loudermill* (1985), 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494, and Cleveland City Charter Section 128(m), they had right to pre-deprivation hearings before the respondents laid them off. Alternatively, the relators argue that the respondents illegally terminated them, bacause, inter alia, the Civil Service Commission did not conduct necessary and required steps before the respondents effected the reclassifications and layoffs, the Civil Service Commission did not provide pre-deprivation hearings or post-deprivation hearings, and the respondents retained temporary employees and employees with less seniority than the relators to perform the relators' jobs. Indeed, the respondents actions were so egregious that the relators should be immediately reinstated to their positions.

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very least the relators have established a right to a hearing under the Civil Service Rules. This does not preclude the relators from arguing before the Civil Service Commission that they are also appealing based on their rights as stated in the City Charter.

[5]In their complaints the relators titled their first claim as "Failure to conduct a pre-disciplinary hearing." However, subsequently, the relators have framed this count in terms of pre-deprivation.

{¶ 17} However, there is an adequate remedy at law which precludes the reinstatement mandamus claims. Appeal to a city civil service commission of layoffs by city employees is an adequate remedy which precludes such employees from seeking mandamus for reinstatement with back pay and benefits. *State ex rel. Shine v. Garofalo* (1982), 69 Ohio St.2d 253, 431 N.E.2d 680; *State ex rel. Cartmell v. Dorrian* (1982), 70 Ohio St.3d 128, 435 N.E.2d 1112; *State ex rel. Cartmell v. Dorrian* (1984), 11 Ohio St.3d 177, 464 N.E.2d 556; *State ex rel. Weiss v. Indus. Comm.*(1982), 65 Ohio St.3d 470, 605 N.E.2d 37; and *State ex rel. Connole v. Cleveland Bd. of Edn.* (1993), 87 Ohio App.3d 43, 621 N.E.2d 850. See, also, *Holmes v. City of Cleveland Civil Service Comm.,* Cuyahoga App. No. 93191, 2010-Ohio-76 (reinstatement is generally not an appropriate remedy for a due process violation prior to termination.)

{¶ 18} Accordingly, this court denies the relators' claims for reinstatement.

Public Records Claim

{¶ 19} The public records claim presents a problematic procedural posture. The respondents have assembled over 5300 pages in response to the public records request. Moreover, it appears that the respondents have made no redactions on these records. This court's prior order directed the respondents to file under seal any records on which they made redactions; they have filed

nothing. However, apparently the relators and their attorney have neither taken possession of the records nor inspected them.[6]

{¶ 20} In order to resolve this impasse, the court directs the relators and their attorney within three weeks of this journal entry to inspect the records and take copies of any records desired. R.C. 149.43(B)(1) provides that "upon request, a public office * * * shall make copies of the requested public records available at costs." Accordingly, the relators shall pay five cents per page for copies of any records they take. *State ex rel. Strothers v. Murphy* (1999), 132 Ohio App.3d 645, 725 N.E.2d 1185 and *State ex rel. Mayrides v. City of Whitehall* (1990), 62 Ohio App.3d 225, 575 N.E.2d 224. Pursuant to their right to inspect the records, the relators need not take all of the records provided. Also, within three weeks of this journal entry, the relators shall certify to this court whether the records fully satisfied the request or whether there are still records outstanding under the January 26, 2009 request. If the request has been fulfilled, the relators are to submit their motion for statutory damages and attorney's fees under R.C. 149.43 at that time. Respondents shall then have two weeks to file their brief in opposition.

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[6] The court notes that in the relators' January 26, 2009 letters making the public records request, the relators' attorney asked "to review the documents" and sought "to inspect the records prior to obtaining copies." However, the public records claim in the complaint sought to compel the City "to turn over the public records."

{¶ 21} Accordingly, this court grants the relators' motion for summary judgment on their mandamus claim for a hearing before the Cleveland Civil Service Commission, denies the respondents' motion for summary judgment on the hearing claim, and issues a writ of mandamus ordering the Cleveland Civil Service Commission to schedule and conduct a hearing on each of the three relators' notice of appeal/request for a hearing as made in their January 26, 2009 letters. The court grants the respondents' motion for summary judgment on the relators' claims for reinstatement whether for illegal termination or failure to conduct a pre-deprivation hearing and denies the relators' motion for summary judgment on those claims. This court denies those two claims. The court holds in abeyance its ruling on the claim for public records until the parties have fulfilled this court's instructions.

MARY EILEEN KILBANE, JUDGE

KENNETH A. ROCCO, P.J., and
ANN DYKE, J., CONCUR