

[Cite as *Bunce v. City of Lorain*, 2004-Ohio-4948.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CHRIS BUNCE

Appellant

v.

CITY OF LORAIN, OHIO

Appellee

C.A. No. 04CA008422

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 03CV135881

DECISION AND JOURNAL ENTRY

Dated: September 22, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

WHITMORE, Judge.

{¶1} Plaintiff-Appellant Chris Bunce has appealed the decision of the Lorain County Court of Common Pleas that affirmed the decision of the State Employment Relations Board dismissing his complaint of unfair labor practices against Defendant-Appellee the City of Lorain. This Court affirms.

I

{¶2} On April 1, 2003, Appellant filed an unfair labor practice (“ULP”) charge with SERB wherein he alleged that Appellee had engaged in unfair labor practices in contravention of R.C. 4117.11(A)(1). At the time the alleged unfair labor practices occurred, Appellant was employed by Appellee. The State

Employment Relations Board (“SERB”) investigated the allegations set forth in Appellant’s charge. On July 24, 2003, SERB dismissed Appellant’s ULP charge, stating that it lacked jurisdiction over the matter. Appellant appealed the decision of SERB to the Lorain County Court of Common Pleas. Appellee filed a motion to dismiss Appellant’s appeal on November 14, 2004, wherein it argued that SERB’s dismissal was not an adjudication and, therefore, not subject to review by the trial court. On December 11, 2003, the trial court granted Appellee’s motion.

{¶3} Appellant has timely appealed the trial court’s decision, asserting two assignments of error.

II

Assignment of Error Number One

“THE TRIAL COURT ERRED WHEN IT GRANTED [APPELLEE’S] MOTION TO DISMISS THE APPEAL FOR LACK OF JURISDICTION OVER THE SUBJECT MATTER FOR THE REASON THAT [SERB’S] DISMISSAL OF APPELLANT’S [ULP CHARGE] CONSTITUTED A FINAL, APPEALABLE ORDER.”

{¶4} In his sole assignment of error, Appellant has argued that the trial court erred when it granted Appellee’s motion to dismiss Appellant’s appeal of SERB’s dismissal of his ULP charge. Specifically, Appellant has argued that SERB’s determination that it did not have jurisdiction over Appellant’s ULP charge was a final, appealable order and subject to review by the trial court. We disagree.

{¶5} A trial court reviews a SERB determination of a ULP charge to determine whether or not there was substantial evidence to support the decision made by SERB. *Akron v. State Emp. Relations Bd.* (Jan. 15, 1992), 9th Dist. No. 15107, at 4, citing *Lorain City Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, at paragraph one of the syllabus. An appellate court’s role in reviewing a SERB decision is limited to determining whether or not the trial court’s review of SERB’s determination was an abuse of discretion. *Akron*, supra, at 4; *Lorain City Bd. of Edn.*, 40 Ohio St. 3d at 260-261.

{¶6} Ohio’s “Public Employee’s Collective Bargaining” statute is codified at Chapter 4117 of the Revised Code. In essence, R.C. 4117.11 designates certain conduct performed either by an employer or an employee representative as an unfair labor practice. The statute further designates SERB as the government body vested with the jurisdiction and authority to remedy the unfair labor practice. R.C. 4117.12(A). R.C. 4711.12(B) sets forth the adjudication procedure SERB must undertake once a ULP charge is filed:

“[SERB] or its designated agent shall investigate the charge. If [SERB] has probable cause for believing that a violation has occurred, [it] shall issue a complaint and shall conduct a hearing concerning the charge.” R.C. 4711.12(B).

{¶7} If, based upon a preponderance of the evidence presented at the hearing, SERB determines that the person or entity named in the ULP charge has not engaged in an unfair labor practice, SERB “shall state its findings of fact and issue an order dismissing the complaint.” R.C. 4711.12(B)(3).

{¶8} R.C. 4711.13 sets forth the procedure for judicial enforcement and review of unfair labor practice adjudications by SERB. R.C. 4711.13 states that an aggrieved party may appeal a decision by SERB to the court of common pleas of any county where the unfair labor practice in question was alleged to have occurred, or where the aggrieved party resides or transacts business. R.C. 4711.13.

{¶9} It is important to note that not all decisions by SERB are appealable. The Ohio Supreme Court has held that judicial review of SERB decisions “applies only to the enforcement and review of SERB’s final order resulting from an adjudication on the merits of an unfair labor practice case. It does not grant this right to appeal quasi-prosecutorial determinations to proceed or not proceed with unfair labor practice complaints.” *Ohio Assn. of Pub. School Emp., Chapter 643, AFSCME, AFL-CIO v. Dayton City School Dist. Bd. of Educ.* (1991), 59 Ohio St.3d 159, 160. The Ohio Supreme Court likened the role of SERB during the investigative and evaluative stage as that of a public prosecutor investigating an allegation of illegal conduct. *Id.*, at 160. As such, the decision not to prosecute is discretionary, and typically not subject to judicial review. *Id.*, citing *State ex rel. Murr v. Meyer* (1987), 34 Ohio St.3d 46.

{¶10} Appellant has argued that SERB dismissed his ULP charge because SERB determined that he was not a “public employee” and thus he did not fall under SERB’s jurisdiction. He has further argued that SERB’s determination as

such is a final appealable order subject to review by the trial court and this Court. Appellee has argued that SERB's dismissal of Appellant's ULP charge was not an adjudication on the merits and, therefore, not subject to review by the trial court or this Court.

{¶11} Our review of the record reveals that in response to Appellant's appeal to the trial court, SERB filed records from its investigation of Appellant's ULP charge with the trial court. Included in its filing was a copy of the original ULP charge filed with SERB by Appellant, a list of investigatory questions from SERB to Appellant, Appellant's answers to SERB's investigatory questions, and a copy of SERB's dismissal of Appellant's ULP charge. In its dismissal, SERB stated the following:

“Pursuant to [R.C. 4117.12], [SERB] has conducted an investigation of this charge. The Charging Parties do not allege a violation covered under [R.C. 4117], they are not in a bargaining unit, and the charges are not within the jurisdiction of SERB. Accordingly, the charges are dismissed with prejudice for lack of jurisdiction.”

{¶12} It is clear from the record and SERB's notice of dismissal that SERB did investigate the merits of Appellant's ULP charge. It is also clear from the record that SERB determined that the alleged conduct was not an unfair labor practice as defined by R.C. 4117.12 and, therefore, SERB was without jurisdiction.

{¶13} We reject Appellant's argument that SERB dismissed his ULP charge based on SERB's legal determination that he was not a “public employee.”

Instead, this Court finds that SERB made a quasi-prosecutorial determination based upon its investigation of Appellant's ULP charge and decided not to file a complaint against Appellee.

{¶14} As SERB's decision was not an adjudication on the merits but rather a quasi-prosecutorial determination, SERB's dismissal of Appellant's ULP charge is not subject to review by the trial court or this Court. As a result, this Court concludes that the trial court did not abuse its discretion when it dismissed Appellant's appeal of SERB's dismissal of his ULP charge against Appellee. Appellant's sole assignment of error lacks merit.

III

{¶15} Appellant's sole assignment of error is overruled. The judgment of the trial court is affirmed.

Judgment affirmed.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

Exceptions.

BETH WHITMORE
FOR THE COURT

SLABY, J.
CONCURS

CARR, P. J.
CONCURS IN JUDGMENT ONLY

APPEARANCES:

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