[Cite as *Benevolent Emps. of the Hamilton Cty. Sheriff v. State Emp. Relations Bd.*, 2012-Ohio-5905.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Benevolent Employees of the Hamilton County Sheriff,	:	
Appellant-Appellee,	:	
v.	:	No. 12AP-377
State Employment Relations Board,	:	(C.P.C. No. 11CVF-02-1791)
Appellee-Appellee,	:	(REGULAR CALENDAR)
The Hamilton County Sheriff,	:	
Appellee-Appellant.	:	
Benevolent Employees of the Hamilton County Sheriff,	:	
Appellant-Appellee,	:	No. 12AP-379
v.	:	(C.P.C. No. 11CVF-02-1791)
State Employment Relations Board,	:	(REGULAR CALENDAR)
Appellee-Appellant,	:	
The Hamilton County Sheriff,	:	
Appellee-Appellee.	:	

D E C I S I O N

Rendered on December 13, 2012

Hardin, Lazarus, & Lewis, LLC, Stephen S. Lazarus, and *R. Jessup Gage*, for Benevolent Employees of the Hamilton County Sheriff.

Michael DeWine, Attorney General, and *Lisa M. Critser*, for State Employment Relations Board.

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Kathleen H. Bailey*, for The Hamilton County Sheriff.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Appellants, the Hamilton County Sheriff ("Sheriff" or "Employer") and the State Employment Relations Board ("SERB") (collectively, "appellants"), appeal the judgment of the Franklin County Court of Common Pleas reversing a Directive by SERB, which withdrew an order for conciliation.

I. BACKGROUND

{¶ 2} On April 15, 2009, SERB certified appellee, Benevolent Employees of the Hamilton County Sheriff ("Union"), as the exclusive bargaining representative for certain individuals employed by the Sheriff. On March 11, 2010, SERB approved an Amendment of Certification that changed the title of one position included within the bargaining unit. The description of the certified bargaining unit specified the positions included within the unit, as follows:

> Account Clerk 1, Account Clerk 2, Administrative Secretary 1 * * *, Application Analyst 1, Business Service Officer 1, Clerk 2, Computer Programmer/Analyst, Computer Operator, Correction Classification Specialist, Corrections Instructor, Court Data Entry Operator 2, Data Entry Operator 2 (spt), Identification Technician, Inventory Purchasing Specialist, Mechanic 2, Mechanic 3, Personal Aide 1, Process Officer 2, Receptionist 2, Secretary 2 * * *, Network Administrator 2, Social Service Specialist, Station Engineer, Statistics Clerk, Training Assistant, Data Entry 1 and Data Entry 2.

The description excluded from the bargaining unit the following:

> All supervisory, management level, professional, confidential, seasonal, casual and fiduciary employees, members of the existing Laundry and Maintenance, Enforcement Officers, Enforcement Supervisors, Corrections Officers and Corrections Supervisors bargaining units, *employees who cannot be combined with this unit because of Revised Code 4117.06 (including full-time deputy sheriffs appointed under Revised Code 311.04)*, all other employees not listed above as "Included" in the unit, and students.

(Emphasis added.)

{¶ 3} On June 22, 2010, the Union filed a Notice to Negotiate for a collective bargaining agreement and, on behalf of the parties, the Union requested a fact-finding panel pursuant to R.C. 4117.14(C)(3). The fact-finder conducted a hearing and filed his report. Although the Union voted to accept the fact-finder's report, the Sheriff voted to reject it. On December 16, 2010, SERB issued a letter ordering the parties to conciliation pursuant to Ohio Adm.Code 4117-9-06(A), which provides, in part, that deputy sheriffs are prohibited from striking and are, instead, subject to mandatory conciliation to resolve disputes, absent an agreed-upon dispute resolution procedure. *See also* R.C. 4117.14(D)(1) ("If the parties are unable to reach agreement within seven days after the publication of findings and recommendations from the fact-finding panel * * *, then the * * * [p]ublic employees, who are members of a police * * * department * * * [or] deputy sheriffs * * * shall submit the matter to a final offer settlement procedure pursuant to a board order issued forthwith to the parties to settle by a conciliator selected by the parties.").

{¶ 4} On December 20, 2010, the Sheriff filed a motion for immediate withdrawal of the conciliation order, arguing that the employees within the bargaining unit are not statutorily eligible for conciliation. The Union opposed the Sheriff's motion and submitted evidence to demonstrate that the employees in the bargaining unit were "deputy sheriffs" and "members of a police department," eligible for conciliation pursuant to R.C. 4117.14(D)(1) and Ohio Adm.Code 4117-9-06(A). On January 26, 2011, SERB found that the certified bargaining-unit description did not support the order of

conciliation and issued a Directive granting the Employer's motion and withdrawing the order of conciliation.

{¶ 5} The Union filed a timely appeal of SERB's January 26, 2011 Directive to the Franklin County Court of Common Pleas pursuant to R.C. 119.12, 2505.03, 2506.01, and 4117.02(P). The Sheriff and SERB, in addition to defending SERB's Directive on the merits, argued that the trial court lacked jurisdiction over the Union's appeal. They specifically claimed that SERB's Directive fell under R.C. 4117.06(A), which states that SERB's determinations of unit appropriateness are final, conclusive, and not appealable to the court of common pleas, and that the Directive was neither the result of an adjudication in a quasi-judicial proceeding nor a final order. The trial court rejected appellants' jurisdictional arguments and went on to find that SERB's Directive was not supported by reliable, probative or substantial evidence and was not in accordance with law. Specifically, the court held that SERB incorrectly determined that the description of the certified bargaining unit did not support an order of conciliation. Accordingly, the trial court reversed SERB's Directive and remanded with instructions that this matter proceed to conciliation. SERB and the Sheriff appealed the trial court's determination, and this court has consolidated the appeals.

II. ASSIGNMENTS OF ERROR

{¶ 6} Appellants present the following assignments of error for review:

> [I.] The common pleas court erred by finding it had jurisdiction over the subject matter of this case because [SERB] has exclusive jurisdiction pursuant to R.C. 4117.06(A) and [SERB's] Directive dated January 26, 2011 was not a final appealable order.
>
> [II.] The common pleas court erred by reversing [SERB's] Directive dated January 26, 2011, and remanding the matter to [SERB] for conciliation because the Directive was reasonable and not in conflict with the explicit language of R.C. Chapter 4117.

III. DISCUSSION

A. First Assignment of Error

{¶ 7} In their first assignment of error, appellants argue that the trial court erred by determining that it possessed jurisdiction to hear the Union's appeal. As in the trial court, appellants maintain that R.C. 4117.06(A) precludes jurisdiction by the trial court, and that the SERB Directive was not a final adjudication in a quasi-judicial proceeding. An appellate court reviews a common pleas court's ruling on a motion to dismiss for lack of subject matter jurisdiction de novo. *See The Univ. of Toledo v. Ohio State Emp. Relations Bd.*, 10th Dist. No. 11AP-834, 2012-Ohio-2364, ¶ 8.

{¶ 8} A court of common pleas has power to review proceedings of administrative agencies and officers only to the extent granted by law. *AT&T Communications of Ohio, Inc. v. Lynch*, 132 Ohio St.3d 92, 2012-Ohio-1975, ¶ 8, citing Ohio Constitution, Article IV, Section 4(B). Thus, a court of common pleas may only review actions of administrative agencies when some specific statutory authority grants the court jurisdiction. *Total Office Prods. v. Dept. of Adm. Servs.*, 10th Dist. No. 05AP-955, 2006-Ohio-3313, ¶ 12, citing *Abt v. Ohio Expositions Comm.*, 110 Ohio App.3d 696, 699 (10th Dist.1996).

{¶ 9} SERB's adjudications are generally subject to judicial review pursuant to R.C. 119.12. *S. Community, Inc. v. State Emp. Relations Bd.*, 38 Ohio St.3d 224, 226 (1988); R.C. 4117.02(P) ("[e]xcept as otherwise specifically provided in this section, [SERB] is subject to Chapter 119. of the Revised Code"). R.C. 119.12 provides that, absent exceptions irrelevant to this appeal, a party adversely affected by an order of an agency, pursuant to an adjudication, may appeal to the Franklin County Court of Common Pleas. " '[T]he general provisions of R.C. 119.12 govern the appealability of an adjudication order issued by SERB,' except where R.C. Chapter 4117 provides for *specific* procedures to initiate an appeal from a particular adjudication order, or where R.C. Chapter 4117 *specifically* prohibits an appeal from an adjudication order issued by SERB." (Emphasis sic.) *Groveport-Madison Local Edn. Assn., OEA/NEA v. State Emp. Relations Bd.*, 62 Ohio St.3d 501, 504 (1992), quoting *Ohio Historical Soc. v. State Emp. Relations Bd.*, 48 Ohio St.3d 45, 46 (1990).

{¶ 10} Appellants primarily argue that R.C. 4117.06(A) precludes the trial court's exercise of jurisdiction over this matter. R.C. 4117.06(A) sets forth a specific prohibition against appeals from certain SERB orders and states that SERB "shall decide in each case the unit appropriate for the purposes of collective bargaining" and that SERB's determination in that regard "is final and conclusive and not appealable to the court." By R.C. 4117.06(A), the General Assembly "has deemed SERB to be the appropriate final authority to determine from among a number of competing bargaining units which one is appropriate." *S. Community* at 227. Accordingly, R.C. 4117.06(A) represents an exception to the right of appeal granted by R.C. 4117.02(P). *See S. Community, Inc. v. State Emp. Relations Bd.*, 10th Dist. No. 86AP-929 (Apr. 7, 1987).

{¶ 11} Appellants argue that the determination of whether a bargaining unit must use conciliation depends entirely upon the composition of the bargaining unit and is, therefore, an unappealable issue arising under R.C. 4117.06(A). The Union disagrees. The question thus resolves to whether or not SERB's Directive, which held that the description of the certified bargaining unit did not support an order of conciliation, constitutes a determination of unit appropriateness. We hold that it does not.

{¶ 12} This court has had many opportunities to consider the contours of R.C. 4117.06(A). Most recently, this court addressed that issue in *Univ. of Toledo,* which involved a union's petition for clarification of a bargaining unit described to include tenure and tenure-track faculty at The University of Toledo ("University"). The petition requested SERB to determine whether seven individuals who became full-time faculty members of the University's College of Nursing as a result of the University's merger with the Medical University of Ohio belonged in the bargaining unit. Although College of Nursing faculty members employed prior to the merger were included in the bargaining unit, the seven former Medical University faculty members were not members of the union or any other labor organization. In response to the union's petition, SERB clarified the existing bargaining unit to include the seven professors. The University appealed, but the Franklin County Court of Common Pleas dismissed the appeal for lack of jurisdiction under R.C. 4117.06(A).

{¶ 13} In *Univ. of Toledo*, this court reversed the trial court's dismissal after distinguishing between a request for clarification of a bargaining unit and a request for amendment of a bargaining unit. We noted that SERB's own rules "recognize a distinction between altering the bargaining unit description and clarifying whether an employee [or group of employees] fits within the existing occupations included in a bargaining unit." *Id.* at ¶ 30, citing Ohio Adm.Code 4117-5-01(E)(1) and (2). We held that "[i]n the final analysis, the purpose of the motion determines whether SERB's decision is appealable to the common pleas court." *Id.* at ¶ 33. A petition that requests SERB to reanalyze unit appropriateness by reexamining the jobs included in the bargaining unit falls under R.C. 4117.06(A). *See id.* at ¶ 31-33. In *Univ. of Toledo*, however, the union's petition "did not seek to alter or amend the description of the bargaining unit by adding or deleting an entire job classification." *Id.* at ¶ 33. Instead, the petition sought only clarification of whether the full-time faculty members, previously employed by the Medical University, fell within the existing description of the bargaining unit. We therefore held that "SERB's clarification that the College of Nursing faculty members belonged within the unit *** was not a determination regarding bargaining unit appropriateness under R.C. 4117.06(A), but a determination that the appropriate bargaining unit, comprised of tenured and tenured-track faculty members, included the College of Nursing faculty members." *Id.*

{¶ 14} SERB argues that this court's decision in *Cardinal Joint Fire Dist. v. Ohio State Emp. Relations Bd.*, 10th Dist. No. 05AP-264, 2005-Ohio-4355, is more instructive than *Univ. of Toledo* for purposes of this case. SERB maintains that *Cardinal* compels the determination that its Directive here dealt directly with unit appropriateness and falls squarely within the scope of R.C. 4117.06(A).

{¶ 15} *Cardinal* stemmed from SERB's determination of the appropriate bargaining unit for full-time firefighters employed by the Cardinal Joint Fire District ("Cardinal"). In 1998, when Cardinal employed only part-time firefighters, SERB certified Ohio Council 8, AFSCME ("AFSCME"), as the exclusive bargaining representative of firefighters employed by Cardinal. Thereafter, in 2002, Cardinal began employing full-time firefighters. AFSCME did not request that SERB amend the

bargaining unit, nor did AFSCME make any other changes reflecting that Cardinal was employing full-time firefighters. In 2004, Canfield Professional Firefighters Association ("CPFA") requested recognition as the exclusive bargaining representative for Cardinal's full-time firefighters, and SERB certified CPFA, as requested. The Franklin County Court of Common Pleas reversed the certification, and SERB and CPFA appealed to this court.

{¶ 16} CPFA argued to this court that the trial court erred by not dismissing the appeals for lack of jurisdiction because, pursuant to R.C. 4117.06(A), SERB's order certifying CPFA as the exclusive bargaining representative for the full-time firefighters was not appealable. This court agreed that SERB's order constituted a determination of unit appropriateness and, thus, fell within the dictates of R.C. 4117.06(A), precluding appellate review. We stated, "the issue is whether CPFA is a unit appropriate for full-time firefighters employed at Cardinal, which is dependent on the determination of whether or not full-time firefighters were included in the original 1998 certification." *Id.* at ¶ 13. The threshold question in *Cardinal* was whether a specific job classification, i.e., full-time firefighter, fell within the 1998 bargaining unit description. SERB held that it did not and proceeded to certify a different, appropriate bargaining unit to cover the full-time firefighters. Having determined that the full-time firefighters were not part of the bargaining unit certified in 1998, SERB was faced with the choice of amending the existing bargaining unit to include the full-time firefighters or certifying another appropriate bargaining unit to represent them. This court held that "the determination regarding the appropriate unit for full-time firefighters, who SERB determined were not currently represented, is a determination within SERB's exclusive and final jurisdiction" under R.C. 4117.06(A). *Id.* Consistent with *Cardinal* is the Supreme Court of Ohio's holding in *S. Community*, where the court stated that R.C. 4117.06(A) applies to a choice by SERB between competing bargaining units.

{¶ 17} Here, as in *Univ. of Toledo*, the parties do not seek to alter or amend the description of the certified bargaining unit by adding or deleting job classifications. There is no dispute as to the positions that fall within the bargaining unit. Those positions are clearly set forth in the amended certification. Nor is there a dispute as to

the identities of the employees who fill those positions and are, therefore, members of the bargaining unit. In short, the makeup of the bargaining unit is not at issue, and the SERB Directive did not determine the appropriate bargaining unit for any employee or job classification. Unlike in *Cardinal*, SERB did not choose between alternative bargaining units. Instead, it looked to the description of the undisputed certified bargaining unit to clarify the effect of the exclusionary language contained therein.

{¶ 18} The trial court reasoned that a determination of whether bargaining-unit members were "deputy sheriffs" is akin to a determination of whether individuals are "public employees" subject to R.C. Chapter 4117, a determination that is outside the scope of R.C. 4117.06(A) and, therefore, appealable. *See OCSEA, AFSCME Local 11, AFL-CIO v. State Emp. Relations Bd.*, 10th Dist. No. 98AP-337 (Oct. 27, 1998); *S. Community* at 227. In *OCSEA*, the union petitioned to represent employees of the Ohio Public Defender in the classifications of Assistant Public Defender 1, 2, 3, and 4, and to add those classifications to an existing bargaining unit. SERB, however, determined that the assistant public defenders were fiduciary employees, excluded from the definition of "public employee" in R.C. 4117.01(C) and not subject to the Public Employees' Collective Bargaining Act. SERB therefore found it unnecessary to reach issues relating to the appropriate bargaining unit. The union appealed, but the Franklin County Court of Common Pleas dismissed the appeal for lack of jurisdiction.

{¶ 19} In *OCSEA*, this court held that the trial court erred by concluding that it lacked subject matter jurisdiction. We stated as follows:

> The board decided below, in part, that assistant public defenders were fiduciary employees and therefore, not public employees subject to the Ohio Public Employees' Collective Bargaining Act. In reaching this conclusion, the board applied R.C. 4117.01(C)(9) which excludes from the definition of public employee those persons acting in a fiduciary capacity. The board then concluded it was unnecessary to reach the issues relating to the appropriate bargaining unit.
>
> Clearly, the board made no determination under R.C. 4117.06(A).

(Footnote deleted.) *Id.* We held that "[w]hile it is true that a determination that certain employees are not public employees necessarily precludes such employees from being accredited into a bargaining unit, it does not mean that such a determination involves a decision under R.C. 4117.06(A) as to the appropriateness of a bargaining unit." *Id.*

{¶ 20} SERB maintains that, pursuant to R.C. 4117.14(D)(1), whether a bargaining unit must use conciliation depends entirely upon the composition of the bargaining unit. While we agree with SERB's premise thus far, we disagree with its conclusion that the question whether a bargaining unit must use conciliation, therefore, arises under R.C. 4117.06(A). As this court held in *Univ. of Toledo*, not every SERB determination regarding the composition of a bargaining unit constitutes a determination of unit appropriateness. For example, clarification of a bargaining unit does not fall within the scope of R.C. 4117.06(A) because it does not involve any substantial change in the content of the unit, in terms of what work is being performed by the employees, and is essentially a ruling that a particular position is or is not already covered by the wording of an existing unit description. *Univ. of Toledo* at ¶ 29. *See also* Ohio Adm.Code 4117-5-01(E)(2). Amendment of a bargaining unit, on the other hand, alters the composition of the unit by adding, deleting or changing terminology in the unit description. *Id.* at ¶ 30, citing Ohio Adm.Code 4117-5-01(E)(1). Amendment of a bargaining unit, unlike clarification of a bargaining unit, falls under R.C. 4117.06(A). *See id.* at ¶ 33.

{¶ 21} SERB's Directive here did not involve the appropriateness of the bargaining unit, did not involve alteration to the bargaining unit description, and did not impact the composition of the bargaining unit. SERB's Directive involved nothing more than whether the undisputed members of the bargaining unit were entitled to conciliation based on their disputed status as deputy sheriffs. Whether the members are eligible for conciliation does not involve a question of unit appropriateness, and R.C. 4117.06(A) does not operate to preclude appellate review of SERB's Directive.

{¶ 22} Appellees also argue that the trial court lacked jurisdiction over this appeal because SERB's Directive was a ministerial act, rather than an adjudicatory act, did not arise out of a quasi-judicial proceeding, and was not a final order. Under R.C. 119.12,

only an adverse order of an agency pursuant to an adjudication is appealable. An adjudication is "the determination by the highest or ultimate authority of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person, but does not include * * * acts of a ministerial nature." R.C. 119.01(D). Pursuant to Ohio Constitution, Article IV, Section 4(B), courts of common pleas may only review administrative decisions resulting from quasi-judicial proceedings. A proceeding does not qualify as quasi-judicial where there is no requirement for notice, hearing, and an opportunity for the introduction of evidence. *M.J. Kelley Co. v. Cleveland*, 32 Ohio St.2d 150 (1972), paragraph two of the syllabus. An adjudication under R.C. 119.12 fulfills the definition of a quasi-judicial proceeding. *See In re Seltzer*, 10th Dist. No. 91AP-677 (May 19, 1992), *rev'd on other grounds*, 67 Ohio St.3d 220 (1993).

{¶ 23} SERB's Directive was a determination by the highest authority of the agency and constituted a determination of the rights of the employees within the bargaining unit to proceed with conciliation. Nevertheless, SERB maintains that its issuance and withdrawal of the conciliation order were ministerial acts and, therefore, were not adjudications. A ministerial act is an act performed in a given state of facts, in a prescribed manner, in obedience to a legal mandate, and without regard to or the exercise of the actor's own judgment about the propriety of the act. *State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 618 (1902). SERB maintains that the issuance and/or withdrawal of a conciliation order is obligated by a given state of facts and that it maintains no discretion with respect to that decision. Although SERB may lack discretion whether or not to order conciliation when the statutory requirements of R.C. 4117.14(D)(1) are satisfied, the question here was whether those requirements were, in fact, met. In order to determine whether or not to order conciliation, SERB was required to determine whether the employees within the bargaining unit qualified as deputy sheriffs or members of a police department, a decision SERB based solely on the description of the certified bargaining unit. In essence, SERB issued a clarification of the bargaining unit, expressing its opinion that deputy-sheriff status is mutually exclusive with membership in the bargaining unit. We cannot conclude that SERB's

determination that members of the bargaining unit could not be considered deputy sheriffs—the sole rationale for withdrawing the conciliation order—was a ministerial act.

{¶ 24} SERB also argues that this appeal does not stem from a quasi-judicial proceeding. R.C. 4117.02(K)(3) requires SERB to do the following:

> Hold hearings pursuant to this chapter and, for the purpose of the hearings and inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel the attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate these powers to any members of [SERB] or any administrative law judge employed by [SERB] for the performance of its functions[.]

SERB contends that R.C. Chapter 4117 does not require a hearing to determine whether a bargaining unit is eligible for conciliation and, therefore, maintains that its order withdrawing the conciliation order did not arise out of a quasi-judicial proceeding.

{¶ 25} Under R.C. 119.06, "[n]o adjudication order shall be valid unless an opportunity for a hearing is afforded in accordance with sections 119.01 to 119.13 of the Revised Code." The required hearing need not be an evidentiary hearing where the issue to be determined is a legal issue. *In re Mingo Junction Safety Forces Assn., Local No. 1*, 74 Ohio App.3d 313, 317 (10th Dist.1991). Here, SERB afforded the Union the opportunity to present written arguments in opposition to the Sheriff's motion and to submit evidentiary materials in support of its position. Additionally, the statutory provisions concerning conciliation are found in R.C. 4117.14, which sets forth the procedures for negotiation, termination or modification of a collective bargaining agreement between a public employer and an exclusive bargaining representative. Conciliation is available only after intervention in the collective-bargaining process by SERB, the appointment of a mediator, appointment of a fact-finding panel, an evidentiary hearing (unless the parties stipulate facts and waive hearing), and publication of the findings and recommendations of the fact-finding panel. *See* R.C. 4117.14 and Ohio Adm.Code 4117-9-05. As part of those statutory and administrative procedures, which include requirements for hearings and notice, the fact that the issue

of conciliation does not, in and of itself, require a hearing does not take the proceedings in this case out of the quasi-adjudicatory context.

{¶ 26} Finally, appellants argue that SERB's Directive was not a final order under R.C. 2505.02 because it did not affect a substantial right. *See Ohio Historical Soc.*, 48 Ohio St.3d at 47, citing *Hamilton Cty. Bd. of Mental Retardation & Dev. Disabilities v. Professionals Guild of Ohio,* 46 Ohio St.3d 147 (1989), paragraph three of the syllabus (holding that a SERB order must satisfy R.C. 2505.02 to be appealable). R.C. 2505.02 defines a final order, in part, as an order affecting a substantial right in an action that, in effect, determines the action and prevents a judgment. A substantial right is a right that "the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1). The SERB Directive, which bars the bargaining-unit members from conciliation and, effectively, forces them to strike in order to resolve their underlying negotiation impasse, affects a substantial right of the bargaining-unit members, guaranteed by statute. We, therefore, reject appellants' argument that the Directive did not qualify as a final order under R.C. 2505.02.

{¶ 27} Having rejected each of appellants' jurisdictional arguments, we conclude that the trial court did not err by determining it had subject matter jurisdiction to decide this appeal. Accordingly, we overrule appellants' first assignment of error.

B. Second Assignment of Error

{¶ 28} We now turn to appellants' second assignment of error, by which they contend that the trial court erred by reversing SERB's Directive because the Directive was reasonable and did not conflict with R.C. Chapter 4117. In an R.C. 119.12 appeal, the trial court reviews an administrative order to determine whether it is supported by reliable, probative, and substantial evidence and is in accordance with law. In applying this standard, the court must "give due deference to the administrative resolution of evidentiary conflicts." *Univ. of Cincinnati v. Conrad*, 63 Ohio St.2d 108, 111 (1980).

{¶ 29} On appeal to this court, the standard of review is more limited. Unlike the court of common pleas, a court of appeals does not determine the weight of the evidence. *See Rossford Exempted Village School Dist. Bd. of Edn. v. State Bd. of Edn.*,

63 Ohio St.3d 705, 707 (1992), citing *Lorain City Bd. of Edn. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 260-61 (1988). In reviewing the trial court's determination that the board's order was supported by reliable, probative, and substantial evidence, this court's role is limited to determining whether the trial court abused its discretion. *Lorain* at 261. The term "abuse of discretion" connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). However, with respect to whether the board's order was in accordance with law, this court exercises plenary review. *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.*, 63 Ohio St.3d 339, 343 (1992).

{¶ 30} The issue of whether conciliation is required in this case depends upon whether members of the bargaining unit are "deputy sheriffs" or "members of a police department." Because a full-time deputy sheriff fulfills the statutory definition of a "member of a police department" in R.C. 4117.01(N), we address only whether the employees qualified as deputy sheriffs.

{¶ 31} The Sheriff's General Order 100, effective May 8, 1991, states that "[a]ll personnel employed by [the Sheriff] shall be administered, and sign, an oath of office as a Deputy Sheriff." It also provides that all "[p]ositions within the [Hamilton County Sheriff's Department], *regardless of title or classification*, will be established in one of the following categories: Sworn Law Enforcement Deputy[;] Sworn Corrections Deputy[;] Sworn Civilian Deputy." (Emphasis added and deleted.) The Sheriff's policy was, therefore, that all employees were deputy sheriffs, regardless of their job classifications. R.C. 311.04(B)(1) delineates a specific process for the appointment of deputy sheriffs and states, in pertinent part, as follows:

> [T]he sheriff may appoint, in writing, one or more deputies. At the time of the appointment, the sheriff shall file the writing upon which the appointment is made with the clerk of the court of common pleas, and the clerk of the court shall enter it upon the journal of the court.

{¶ 32} In opposition to the Sheriff's motion to withdraw the order of conciliation, the Union submitted evidence in an attempt to demonstrate that the employees within

the bargaining unit were "deputy sheriffs," appointed pursuant to R.C. 311.04(B)(1). Specifically, the Union produced copies of forms captioned "APPOINTMENT OF DEPUTY SHERIFF(S)" that bargaining unit members were required to sign upon hire by the Sheriff. The forms, signed by the Sheriff and a judge of the Hamilton County Court of Common Pleas, state as follows:

> This day appeared in open Court, Simon L. Leis, Jr., Sheriff of Hamilton County, Ohio, and presents the name(s) of personnel who are duly appointed Deputy Sheriff to perform and have authority to fulfill the job duties as set forth in the classification and Job Description.

The forms further state that the "[*a*]*ppointed Deputy Sheriff(s)* have executed an Oath of Office and have been duly sworn." (Emphasis added.) Some of the forms predate the certification of the bargaining unit, while others post-date the certification. Thus, there is no indication in the record that the Sheriff altered its policy regarding the appointment of employees as deputy sheriffs as a result of the exclusionary language in the bargaining-unit certification.

{¶ 33} While they do not contest the evidence filed by the Union, appellants argue that the bargaining unit description precludes the finding that any member of the bargaining unit is a deputy sheriff, entitled to conciliation. The Union, on the other hand, maintains that the exclusionary language in the bargaining-unit description should be read to preclude the addition of other sworn deputies, but that it does not invalidate the deputy-sheriff status of employees who held positions expressly included in the bargaining unit.

{¶ 34} Upon review of the evidence presented to SERB, the trial court found that the members of the bargaining unit had been validly appointed as deputy sheriffs in compliance with both R.C. 311.04(B)(1) and the Sheriff's General Order. Appellants do not dispute that finding or the reliable, probative, and substantial evidence upon which it is based. Rather, appellants argue that the trial court failed to properly defer to SERB's interpretation of R.C. Chapter 4117. Appellants correctly note that SERB is entitled to deference on its interpretation of R.C. Chapter 4117. *See Teamsters Local Union No. 348 v. Cuyahoga Falls Clerk of Court, Mun. Dist.*, 10th Dist. No. 10AP-728,

2011-Ohio-2416, ¶ 18. "Judicial review of SERB's construction of the statute thus is 'limited to whether SERB's policy is unreasonable or in conflict with the explicit language of R.C. Chapter 4117.' " *Id.*, quoting *State Emp. Relations Bd. v. Miami Univ.*, 71 Ohio St.3d 351, 353 (1994). SERB specifically contends that it based its determination that conciliation was unavailable on an interpretation of R.C. 4117.14(D)(1), which provides that members of a police department and deputy sheriffs are required to submit to conciliation, and R.C. 4117.01(N), which defines members of a police department, in part, as full-time deputy sheriffs. We disagree. Although SERB quoted those statutes in its Directive, its ultimate conclusion, consistent with the Sheriff's argument that the parties agreed to exclude deputy sheriffs from the bargaining unit, was that "[*t*]*he bargaining-unit description* in the earlier Board certifications does not support the order of conciliation." (Emphasis added.) That conclusion does not stem from an interpretation of R.C. Chapter 4117.

{¶ 35} Like SERB, the trial court based its determination, not on an interpretation of R.C. Chapter 4117, but on the language of SERB's certification. The trial court also relied on the evidence presented by the Union, all of which suggested that the employees in the bargaining unit were deputy sheriffs, eligible for conciliation under R.C. 4117.14(D)(1). The evidence demonstrated that the Sheriff appointed the employees as deputy sheriffs according to the requirements set forth in R.C. 311.04(B)(1). Additionally, the Sheriff's own policy states that all employees of the Sheriff are sworn deputy sheriffs, regardless of their title or job classification. Although the Sheriff's policy was in effect prior to the certification of the bargaining unit, the certification contains no statement disclaiming the deputy-sheriff status of any employee. Furthermore, the Sheriff continued to appoint employees whose positions fell within the bargaining unit as deputy sheriffs after SERB's certification.

{¶ 36} In addition to the evidence discussed above, the Union submitted an affidavit from one of its attorneys, Stephen S. Lazarus. Mr. Lazarus stated that the Union was aware that SERB had previously determined that members of this bargaining unit were deputy sheriffs, that the Employer did not express a contention that the exclusionary language it proposed to include in the certification would preclude

consideration of the bargaining-unit members as deputy sheriffs, and that the Union did not intend for the certification language to exclude the bargaining-unit members' status as deputy sheriffs.

{¶ 37} The trial court found ambiguity in the language excluding from the bargaining unit "employees who cannot be combined with this unit because of Revised Code 4117.06 (including full-time deputy sheriffs appointed under Revised Code 311.04)." The court stated that "it is equally plausible to read this language as excluding non-bargaining unit employees who are deputy sheriffs from being included in this unit, rather than providing that the unit members themselves are not deputy sheriffs." (Emphasis sic.) We agree with the trial court's finding of ambiguity. The bargaining-unit description lists the specific job classifications included within the bargaining unit, all of which are filled by employees whom the Sheriff has appointed and sworn as deputy sheriffs.

{¶ 38} SERB's reading of the exclusionary language, as flatly excluding deputy sheriffs from the bargaining unit, is nonsensical. First, the employees whose job classifications are set forth in the description of the bargaining unit are undisputedly part of the bargaining unit and need not "be combined with" it. Further, nothing in R.C. 4117.06 precludes these employees, regardless of their deputy-sheriff status, from being combined together in this bargaining unit. Were we to read the exclusionary language as flatly excluding deputy sheriffs, the undisputed members of the bargaining unit would be excluded from it. Nothing in the certification or in the evidence presented suggests an agreement to include within the bargaining unit employees who had been appointed as deputy sheriffs, but to strip those employees of their deputy-sheriff status and the rights that accompany that status as a result of their inclusion in the bargaining unit. We agree with the trial court and the Union that the exclusionary language may be reasonably read as excluding the addition of additional deputy sheriffs, in circumstances that would be precluded by R.C. 4117.06, rather than as stripping those employees undisputedly within the bargaining unit of their rights as deputy sheriffs.

{¶ 39} For these reasons, we discern no abuse of discretion in the trial court's determination that SERB's Directive was not supported by reliable, probative, and

substantial evidence. To the contrary, the reliable, probative, and substantial evidence before SERB established that the employees within the bargaining unit were, in fact, deputy sheriffs, appointed pursuant to R.C. 311.04. We further agree with the trial court that SERB's Directive, determining that the description of the bargaining unit in the certification did not support conciliation, was not in accordance with applicable law. For these reasons, we overrule appellants' second assignment of error.

IV. CONCLUSION

{¶ 40} Having overruled both of appellants' assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

TYACK and SADLER, JJ., concur.