[Cite as *Bay v. Gallia-Vinton Educational Serv. Ctr.*, 2003-Ohio-7335.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

TAMI A. BAY,	:	
	:	
Plaintiff-Appellant,	:	Case No. 02CA9
	:	
v.	:	
	:	
GALLIA-VINTON EDUCATIONAL SERVICE CENTER,	:	DECISION AND JUDGMENT ENTRY
	:	
Defendant-Appellee.	:	**RELEASED 12/29/03**

APPEARANCES:

COUNSEL FOR APPELLANT:
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EVANS, P.J.

{¶1} This appeal comes to us, for the second time, from an administrative appeal to the Gallia County Court of Common Pleas. The common pleas court reviewed the decision of Defendant-Appellee Gallia-Vinton Educational Service Center to terminate the employment of Plaintiff-Appellant Tami A. Bay. Although appellant filed an affidavit pursuant to R.C. 2506.03, the lower court confined its review to the record and ruled that appellee's termination of appellant was supported by a preponderance of substantial, reliable,

and probative evidence and was not unconstitutional, illegal, arbitrary, capricious, or unreasonable. Accordingly, the lower court affirmed appellee's termination of appellant's employment contract.

{¶2} Because the trial court failed to consider appellant's affidavit filed pursuant to R.C. 2506.03, we find that the court erred as a matter of law. Further, because the transcript of appellant's termination hearing is incomplete on its face, the trial court was obligated to hold an evidentiary hearing according to R.C. 2506.03. Accordingly, we reverse the judgment of the common pleas court and remand for further proceedings consistent with this opinion.

{¶3} The procedural history of this case is somewhat muddled. In order to fully understand the issues being presented for our review, a comprehensive look into the case's procedural background will prove beneficial.

I. Background

{¶4} On February 2, 1998, Defendant-Appellee Gallia-Vinton Educational Service Center (hereinafter referred to as "GVESC" or "appellee") hired Plaintiff-Appellant Tami A. Bay as an administrative associate. Appellant's initial employment contract was for one year and expired on January 31, 1999. However, midway through that contract appellee awarded appellant with a new contract as well as a pay increase. The effective term of this second contract was from July 1, 1998 to June 30, 1999. A clause in the second contract provided that if appellant "is rehired at the end of one year, subsequent contract will be for a period of two years." In fact,

appellee "rehired" appellant on July 1, 1999, for a two-year term to end June 30, 2001, and the parties evidenced this with a written contract.

{¶5} According to appellee, during the course of this third contract the quality of appellant's work product suffered. By letter dated December 8, 1999, Dr. Ann Grooms, Superintendent of the GVESC and appellant's supervisor, notified appellant of certain deficiencies in her work and that failure to correct those deficiencies could result in the termination of her employment. On March 14, 2000, Grooms sent appellant a second letter notifying her that Grooms would be recommending the termination of her employment contract to the Governing Board of the GVESC at its meeting on April 6, 2000. In the letter, Grooms cited the reasons for the recommendation, pursuant to R.C. 3319.081, to be appellant's incompetency, inefficiency, neglect of duty, and other acts of misfeasance, malfeasance, and nonfeasance. The letter contained two attachments: 1) a catalog of appellant's poor work product, and 2) a summary of appellant's overall work performance. Grooms intended to present these attachments to the Board as evidence in support of her termination recommendation. In the last paragraph of the letter, Grooms indicated that appellant had a right to be at the meeting, to be represented by a person of her own choosing, and to tell the Governing Board why it should not accept Grooms' recommendation.

{¶6} On April 6, 2000, the Governing Board convened for its regular monthly business meeting. Present at the meeting were members

of the Governing Board, certain guests, appellant, appellant's attorney Jim Boulger, Grooms, as well as others who were present due to the fact that this was a public meeting. The minutes of the meeting recite the following:

{¶7} "The board entered into 'executive session.' The Governing Board invited [appellant] to appear before them to tell the Governing Board why it should not accept the Superintendent's recommendation to terminate her employment contract. [Appellant] chose to hold the hearing in a public session. A public hearing to consider [appellant's] employment contract with the board was held beginning at 7:35 p.m. and was concluded at 8:35 p.m. [Appellant] was represented by Jim Boulger, Attorney at Law. The Governing Board was represented by William Ennis, Attorney at Law.

{¶8} "Appellant and her attorney had received prior notice dated March 14, 2000 of the hearing and the reasons for the Superintendent's recommendation to terminate [appellant's] employment with the Board. In addition to the reasons set forth in attachment #1 of the March 14 letter, the Superintendent provided additional reasons to the Board and to [appellant]. Mr. Boulger waived prior receipt of these reasons and they were accepted by the Board for its consideration.

{¶9} "Available at the hearing for review by [appellant] and her legal counsel and for review by the Board was the Superintendent's examples of [appellant's] work product and performance as set forth in the Superintendent's notice to [appellant]. The Board called upon the Superintendent to present her evidence to backup her recommendation

for termination. The Superintendent referred to her notice to [appellant] along with its attachments and the backup material consisting of [appellant's] work product and work performance. Mr. Boulger was then given the opportunity to cross-examine the Superintendent and did so. After his cross-examination was complete, the Board was given an opportunity to ask the Superintendent any questions it may have.

{¶10} "At that point, [appellant] was given the opportunity to present to the Board her reasons why [it] should not accept the Superintendent's recommendation. She had seventeen (17) exhibits with her, *** [which] were made available to the Board for its review and the Board requested that it be provided with copies. Upon the conclusion of her testimony, the Board [sic] attorney was given the opportunity to ask [appellant] questions. Neither party had any additional witnesses to present. The Board then provided an opportunity to anyone present to make a statement with regard to the Superintendent's recommendation. The following persons made statements on behalf of [appellant}: Brigitte Puckett, Ernest Hamilton and Sharon Bittner. The hearing was then concluded."

{¶11} Following the hearing, the Governing Board again entered into "executive session" to discuss personnel and legal issues. Upon returning, the Governing Board approved a resolution terminating appellant's employment contract. The minutes include a copy of the resolution which purports to terminate appellant's contract pursuant to the provisions of R.C. 3319.081, for incompetency, inefficiency,

neglect of duty, and other acts of misfeasance, malfeasance, and nonfeasance. Appellant's last day of work was to be April 7, 2000.

{¶12} On April 13, 2000, appellant filed pursuant to R.C. 2506 a notice of appeal with the Gallia County Court of Common Pleas. Pursuant to R.C. 2506.02, appellant filed a praecipe, requesting the secretary of the Governing Board of the GVESC to file a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision appealed from. It is worth mentioning at this point that the secretary of the Governing Board never filed such a transcript. Rather, it is apparent from the record that appellee and appellant each filed what they titled a "Transcript of Record." These are actually voluminous compilations of appellant's work product evidencing each party's respective position. That is, the "Transcript of Record" filed by appellee contains copies of appellant's work product that shows incompetence, while the "Transcript of Record" filed by appellant contains copies of her work that supports that she was doing an adequate job. Meanwhile, the secretary of the Governing Board never filed an actual transcript of the Governing Board's termination hearing as requested by appellant's praecipe filed pursuant to R.C. 2506.02; thus, the record, as it stands, is without a transcript, verbatim or otherwise, of the testimony and cross examination from either appellant or Grooms, each of whom testified at the board's termination hearing; it is without a transcript of the questions posed by the Governing Board to both

appellant and Grooms; and it is without any transcript of what was said on behalf of appellant by others present at the hearing. However, we know that evidence was presented to the Governing Board as indicated by the minutes of the meeting.

{¶13} With that said, in May 2000, after appellant had filed her notice of appeal, appellee held a meeting and passed a motion that purported to "non-renew" appellant's second contract "on the basis that the second contract was a limited contract; should have been for a period of two years and does expire on June 30, 2000."

{¶14} On June 7, 2000, appellee filed with the trial court what it titled a "Motion to Dismiss." The basis of that motion came from R.C. 3319.081, which governs employment contracts for nonteaching employees of school districts in Ohio.[1] Appellee argued that it would "rescind its action terminating [appellant's] employment contract upon a finding by [the trial court] that [appellant] was legally non-renewed by [appellee] effective June 30, 2000, and shall pay to [appellant] her salary from April 7, 2000 to June 30, 2000." The trial court, by way of judgment entry dated August 8, 2000, adopted the proposal set

[1] **{a}** R.C 3319.081 provides the following:
{b} "Except as otherwise provided in division (G) of this section, in all school districts wherein the provisions of Chapter 124 of the Revised Code do not apply, the following employment contract system shall control for employees whose contracts of employment are not otherwise provided by law:
{c} "(A) Newly hired regular nonteaching school employees, ***, shall enter into written contracts for their employment which shall be for a period of not more than one year. If such employees are rehired, their subsequent contract shall be for a period of two years.
{d} "(B) After the termination of the two-year contract provided in division (A) of this section, if the contract of a nonteaching employee is renewed, the employee shall be continued in employment, and the salary provided in the contract may be increased but not reduced unless such reduction is part of a uniform plan affecting the nonteaching employees of the entire district."

out in appellee's motion: it essentially reformed the series of contracts to conform to R.C. 3319.081(A) and (B). Therefore, it held that appellant's term of employment in effect ended on June 30, 2000, and it ordered appellee to compensate appellant at her contractual pay rate from April 7, 2000 through June 30, 2000.

{¶15} That judgment entry became the subject matter of the first appeal in this case when appellant timely filed an appeal to this Court on September 18, 2000. See *Bay v. Gallia-Vinton Educational Service Center*, Gallia App. No. 00CA13, 2001-Ohio-2602 (*Bay I*). The issue before us at that time was whether the trial court erred by granting appellee's Motion to Dismiss and by reforming appellant's employment contracts to conform to R.C. 3319.083. In sustaining appellant's assignment of error, we made three rulings with respect to the common pleas court's judgment.

{¶16} First, that the appropriate standard of review for the common pleas court to apply to appeals from administrative hearings is specific: "The common pleas court considers the 'whole record,' including any new or additional evidence admitted under R.C. 2506.03, and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence."

{¶17} Second, that the trial court based its decision entirely on circumstances that had occurred after appellant filed her notice of appeal; further, none of the evidence pertaining to appellee's non-renewal of the second contract was part of the "transcript" concerning

the termination of appellant. We stated that we found "nothing in the record, or in any documents filed with the trial court or this Court, *averring* that any of the enumerated exceptions set forth in R.C. 2506.03 apply. ***. Accordingly, we find that the trial court erred as a matter of law by considering evidence outside the transcript of the hearing concerning the termination of appellant." *Bay I*, supra (Emphasis added.)

{¶18} Third, that appellee was without authority to modify its decision after appellant had filed a notice of appeal with the common pleas court. See *Bay I*, supra.

{¶19} Consequently, we remanded the case to the common pleas court with implicit guidance that the objective of a court of common pleas in reviewing a decision of a school board is simply to "affirm, disaffirm, or modify the action of the school board." R.C. 3319.081(C).

{¶20} During the time that this case was pending in our Court, a new judge assumed the bench in the common pleas court. Thus, upon remand, he asked each party to attend a pre-trial hearing, presumably to become acquainted with the case. At the hearing's conclusion, the court granted appellant leave to file objections, appellee to file response thereto, and appellant to file a rebuttal response by January 28, 2002. Appellant filed what she entitled "Objections/Assignments of Error," which contained an affidavit from appellant averring, inter alia, that "neither Ms. Grooms nor [I], nor any other person who spoke to the board was placed under oath [at appellant's termination

hearing]. My attorney attempted to examine Ms. Grooms, but was repeatedly interrupted and admonished by the board's attorney stating the time constraints were not going to permit this type of cross examination." See R.C. 2506.03(A)(2)(c) and 2506.03(A)(3). Appellee filed a response to appellant's Objections/Assignments of Error; however, appellant did not file a rebuttal.

{¶21} In an entry filed February 5, 2002, the common pleas court made note of the convoluted procedural nature of this case. It stated that, although its August 8, 2000 entry purports to rule on appellee's Motion to Dismiss, it in fact never made a decision concerning the Motion to Dismiss. "As such, and in conjunction with the reversal and remand by the Appellate Court, this Court must now determine where this case is, where it needs to go and how it is to get there in order to adjudicate the appeal of Plaintiff/Appellant." Further, the common pleas court stated that "in order to bring this case back to where it needs to be, there must be a ruling on Defendant/Appellee's Motion to Dismiss, and then proceed from there." Thus, although the parties had agreed, with the court's permission, to submit objections and responses, the lower court ruled that those filings were premature and overruled them to that extent. Accordingly, the common pleas court scheduled an oral hearing on appellee's Motion to Dismiss and ordered that each party compile an agreement concerning the procedural issues as well as the dispositive issues which required resolution in the case.

{¶22} After neither party complied with that instruction, the common pleas court, by way of entry dated June 17, 2002, proceeded to determine the matter. In its judgment, the lower court ruled that its review should be limited to the transcript, and because none of the exceptions enumerated in R.C. 2506.03 apply, there was no need for an evidentiary hearing. It stated: "There were no documents filed with the trial court when the administrative appeal was filed, averring that any of the enumerated exceptions set forth in said section apply. As such, this Court is without authority to consider the objections filed by Plaintiff-Appellant after this case was remanded and as such were therefore overruled and are hereby overruled as not being properly before the Court for consideration. This is based on the fact that since no exceptions pursuant to R.C. 2506.03 apply, then further evidence and/or an oral hearing of the appeal are not proper. Only the record/transcript must be reviewed."

{¶23} The common pleas court ruled that appellee's Motion to Dismiss addressed the matter of non-renewal of Bay's contract. Hence, the trial court dismissed it and proceeded to rule on the merits of appellee's termination of Bay's employment contract. It ruled, without considering appellant's R.C. 2506.03 affidavit, that such termination was not unconstitutional, illegal, arbitrary, capricious, or unreasonable, but that it was based on substantial, probative, and reliable evidence. Accordingly, the trial court affirmed the actions of the Governing Board in terminating Bay's contract with appellee.

{¶24} It is from this judgment that Bay appeals.

II. The Appeal

{¶25} Appellant timely filed her appeal and assigned the following assignments of error for our review.

{¶26} First Assignment of Error: "The trial court erred to the prejudice of the appellant in deciding that it was without authority to consider Plaintiff/Appellant's Objections/Assignments of Error and overruling same when said Objections/Assignments of Error were filed pursuant to the court's direction and supported by an affidavit competent under [R.C.] 2506.03 []. This action denied to Plaintiff/Appellant due process of law and was erroneous as a matter of law."

{¶27} Second Assignment of Error: "The court of Common Pleas erred to the prejudice of the appellant in finding that the resolution terminating appellant's employment was supported by the preponderance of substantial, reliable, and probative evidence."

{¶28} In her First Assignment of Error, appellant argues the affidavit filed in conjunction with her "Objections/Assignments of Error" following our remand to the common pleas court sets forth several enumerated exceptions that would allow supplementation of the record pursuant to R.C. 2506.03. In her Second Assignment of Error, appellant argues that the common pleas court erred in finding that appellee's termination was supported by a preponderance of substantial, reliable, and probative evidence because the evidence adduced at the termination hearing is not reliable or probative.

{¶29} We find appellant's assignments of error have merit. Therefore, we reverse the judgment of the common pleas court and remand the case for proceedings consistent with this opinion.

III. Standard of Review

{¶30} Although we have previously heard an appeal in this case and accurately laid out the standard of review for courts to employ when reviewing the decision of an administrative agency, we feel it beneficial to begin our analysis with a statement of that standard once again.

{¶31} As an employee of the GVESC, appellant retained certain statutory rights in her employment. See R.C. 3319.081. Thus, R.C. 3319.081(C) provides that "contracts as provided for in this section may be terminated by a majority vote of the board of education. Such contracts may be terminated only for violation of written rules and regulations as set forth by the board of education or for incompetency, inefficiency, ***, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance." That section states further that "[t]he action of the board of education terminating the contract of an employee *** shall be served upon the employee by certified mail. Within ten days following receipt of such notice ***, the employee may file an appeal *** with the court of common pleas of the county in which such school board is situated. After hearing the appeal the common pleas court may affirm, disaffirm, or modify the action of the school board." R.C. 3319.081(C). Because this statute confers on appellant the right to continued employment absent good

cause for discharge, she has a legitimate property interest in her employment and the protections of procedural due process safeguard any deprivation of that interest by the state. See *Glass v. Springfield Local School Dist. Bd. of Edn.* (Mar. 2, 1983), 9th Dist. No. 10832.

{¶32} R.C. Chapter 2506 governs appeals from orders and decisions of administrative offices and agencies. See R.C. 2506.01-2506.04. This section governs appeals from decisions of a school board to terminate an employment contract of a nonteaching employee under R.C. 3319.081. See *Robinson v. Springfield Local School Dist. Bd. of Edn.* (2001), 144 Ohio App.3d 38, 45, 759 N.E.2d 444; *Kiel v. Green Local School Dist. Bd. of Edn.* (1994), 69 Ohio St.3d 149, 152, 630 N.E.2d 716.

{¶33} The Supreme Court of Ohio, in *Henley v. Youngstown Bd. of Zoning Appeals*, 90 Ohio St.3d 142, 2000-Ohio-493, 735 N.E.2d 433, provided guidance as to the appropriate standard for courts of common pleas to apply in administrative appeals. "The common pleas court considers the 'whole record,' including any new or additional evidence admitted under R.C. 2506.03, and determines whether the administrative order is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence." Id. at 147, 735 N.E.2d 433; see *Smith v. Granville Twp. Bd. of Trustees*, 81 Ohio St.3d 608, 1998-Ohio-340, 693 N.E.2d 219; *Dudukovich v. Lorain Metro. Hous. Auth.* (1979), 58 Ohio St.2d 202, 389 N.E.2d 1113.

{¶34} On the other hand, the standard of review to be employed by appellate courts is "more limited in scope." *Kisil v. Sandusky* (1984), 12 Ohio St.3d 30, 34, 465 N.E.2d 848. "[R.C. 2506.03] grants a more limited power to the court of appeals to review the judgment of the common pleas court only on 'questions of law,' which does not include the same extensive power to weigh 'the preponderance of substantial, reliable and probative evidence,' as is granted to the common pleas court." Id. at fn. 4.

{¶35} "It is incumbent on the trial court to examine the evidence. Such is not the charge of the appellate court. *** The fact that the court of appeals *** might have arrived at a different conclusion than the administrative agency is immaterial. Appellate courts must not substitute their judgment for those of an administrative agency or a trial court absent the approved criteria for doing so." *Lorain City School Dist. Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 261, 533 N.E.2d 264.

{¶36} Within the foregoing framework, we will examine appellant's assignments of error.

1. First Assignment of Error

{¶37} In her First Assignment of Error, appellant argues that R.C. 2506.03 allows the common pleas court to consider matters submitted outside the transcript because she filed an affidavit pursuant to R.C. 2506.03. Appellant asserts that her affidavit sets forth 1) that appellant was not notified and so was not permitted to attend all meetings of the Board members at which her termination was discussed

prior to the April 6, 2000 regular meeting, see R.C. 2506.03(A)(2)(1); 2) that the testimony given by both Grooms and appellant was not given under oath, see R.C. 2506.03(A)(3); and 3) that appellant was not permitted to cross examine Grooms, see R.C. 2506.03(A)(2)(c). Further, appellant argues that the transcript was inadequate because it is not a report of all the evidence presented by appellant at her termination hearing. See R.C. 2506.03(A)(1) and 2506.02.

{¶38} In *Bay I*, we cautioned that the common pleas court, in applying its standard of review, is "not to consider evidence outside of the record unless it comports with R.C. 2506.03." See *Dvorak v. Municipal Civ. Serv. Comm. of City of Athens* (1976), 46 Ohio St.2d 99, 346 N.E.2d 157 (holding that the court of common pleas may not consider matters outside the transcript of the hearing below unless one of the conditions specified in R.C. 2506.03 applies).

{¶39} R.C. 2506.03(A), in relevant part, provides the following.

{¶40} "[T]he court shall be confined to the transcript *** unless it appears, on the face of the transcript or by affidavit filed by appellant, that one of the following applies:

{¶41} "(1) The transcript does not contain a report of all evidence admitted or proffered by the appellant;

{¶42} "(2) The appellant was not permitted to appear and be heard in person, or by his attorney, in opposition to the final order, adjudication, or decision appealed from ***.

{¶43} "(3) The testimony adduced was not given under oath;

{¶44} "(4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from ***.

{¶45} "(5) The officer or body failed to file with the transcript, conclusions of fact supporting the final order, adjudication, or decision appealed from;

{¶46} "If any circumstances described in divisions (A)(1) to (5) of this section applies, the court shall hear the appeal upon the transcript and such additional evidence as may be introduced by any party. ***."

{¶47} In *Bay I*, we stated that "[we found] nothing in the record, or in any documents filed with the trial court or this Court, *averring* that any of the enumerated exceptions set forth in R.C. 2506.03 apply." *Bay I*, supra. (Emphasis added.) Thus, since appellant had not filed an affidavit at that point setting forth an enumerated exception in R.C. 2506.03, the trial court erred as a matter of law by considering evidence outside the transcript of the hearing concerning appellant's termination. Further, it was apparent in *Bay I* that the common pleas court never ruled on the merits of appellee's termination of appellant's employment contract, nor had it considered the evidence contained in the transcripts filed by each party. Thus, upon remand, we instructed the common pleas court to limit its review to the record in ruling on the propriety of appellant's termination.

{¶48} It is imperative that we outline our interpretation of the "transcript" in this case. As we mentioned above, upon filing her

notice of appeal in the common pleas court, appellant promptly filed a praecipe pursuant to R.C. 2506.02. That section reads in pertinent part that "after filing the notice of appeal, the officer or body from which the appeal is taken, upon the filing of a praecipe, shall prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision appealed from." Moreover, "case law in Ohio supports the view that the burden is on the administrative agency to produce the transcript for appeal." *Smith v. Chester Twp. Bd. of Trustees* (1979), 60 Ohio St.2d 13, 17, 396 N.E.2d 743; see, e.g., *Fleischmann v. Medina Supply Co.* (1960), 111 Ohio App. 449, 173 N.E.2d 168; *Sofer v. Cincinnati Met. Housing Authority* (1975), 44 Ohio App.2d 113, 335 N.E.2d 872.

{¶49} Appellant's praecipe requested the secretary of the Governing Board to comply with R.C. 2506.02 by filing with the common pleas court "a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order" terminating appellant's employment. The secretary never filed a transcript. Instead, each party filed a "Transcript of Record." From the face of these "Transcripts of Record," and after careful inspection, we find that these "transcripts" fail to set forth "a complete transcript of all the original papers, testimony, and evidence offered, heard and taken" into the Governing Board's consideration in terminating appellant's

employment. See R.C. 2506.02; see, also, *Glass v. Springfield Local School Dist. Bd. of Edn.* (Mar. 2, 1983), 9th Dist. No. 10832.

{¶50} The minutes of the Governing Board's termination hearing explicitly state that both Superintendent Grooms and appellant testified at the hearing; however, neither appellant's nor appellee's "Transcript of Record" contain a verbatim transcription of this testimony. It is true that a "verbatim stenographic transcript of testimony is not mandated by R.C. 2506.02 ***." *Glass*, supra. However, there is not even a summary of any testimony given before the Governing Board for the common pleas court to review. Further, it is obvious from what each party filed that several of the deficiencies in R.C. 2506.03 are present, i.e., the transcript does not contain a report of all evidence admitted or proffered by appellant, R.C. 2506.03(A)(1), and the testimony adduced was not given under oath, R.C. 2506.03(A)(3). Thus, the least we can say about the transcript in this case is that it contains gaps and omissions of some of the evidence offered, heard, and taken into consideration by the Governing Board in reaching its conclusion and, therefore, is, on its face, incomplete.

{¶51} R.C. 2506.03 provides the proper remedy when an administrative body files a deficient or incomplete transcript. *McCann v. Lakewood* (1994), 95 Ohio App.3d 226, 238, 642 N.E.2d 48. Thus, the Supreme Court of Ohio, in *Dvorak*, instructed that where "an appeal is taken to the Court of Common Pleas under R.C. Chapter 2506, the hearing is confined to the transcript of the administrative body,

unless one of the conditions specified in R.C. 2506.03 appears on the face of the transcript or by affidavit." *Dvorak v. Municipal Civ. Serv. Comm.*, supra, at paragraph one of the syllabus. The Supreme Court of Ohio held further that "[w]here an affidavit is filed pursuant to R.C. 2506.03, in an R.C. Chapter 2506 appeal, the reviewing court must consider its contents in its disposition of the case." *Dvorak v. Municipal Civ. Serv. Comm.*, at paragraph two of the syllabus. It is clear from that mandatory language that R.C. 2506.03 "provides for the liberal supplementation of the record when the transcript provided under R.C. 2506.02 is inadequate or incomplete." *Glass*, supra.

{¶52} Appellee argues that in *Bay I*, we stated that "[w]e find nothing in the record, or in any documents filed with the trial court or this Court, averring that any of the enumerated exceptions set forth in R.C. 2506.03 apply." While that was true in the first appeal, on remand appellant filed an affidavit at the common pleas court's direction, setting forth several deficiencies in the transcript pursuant to R.C. 2506.03. Appellee has not cited, nor has our research revealed, any support that appellant was prohibited from filing an affidavit at that time. This is so because the court had never ruled on the actual merits of her termination. In fact, at least one court has held that "there is no time limit set out in Revised Code Chapter 2506 limiting a party's right to submit additional evidence." *Eckmeyer v. Kent City School Dist. Bd. of Edn.* (Nov. 3, 2000), 11th Dist. No. 99-P-0117.

{¶53} We agree with the court in *Eckmeyer* for two reasons. First, had the legislature intended for a time limit to apply to affidavits filed pursuant to R.C. 2506.03, one would have been included in the statute. Second, in the case sub judice the secretary of the Governing Board did not file a transcript in the common pleas court as requested by appellant's praecipe. Thus, appellant did not have an opportunity to review a transcript for any defects until both parties filed their "Transcripts of Record." We further note the procedural conundrum that befell this litigation from the very beginning by appellee's Motion to Dismiss and later "non-renewal" of appellant's contract that was the subject of *Bay I*. This litigation had become so chaotic that there was confusion regarding what the proper avenue was to pursue on remand.

{¶54} We stress that our review of this case is limited to "questions of law." Our aim is to provide guidance to the common pleas court on the proper process to follow when hearing an administrative appeal. In a case such as this, the process takes a more significant role because appellant retains a due process right in her continued employment, and those rights should not be cut short, but rather should be at the forefront of the entire process, from the administrative hearing and through the appellate courts.

{¶55} From the lower court's judgment entry, it is apparent that the court never considered appellant's R.C. 2506.03 affidavit. However, the long standing precedent in this state is that "[w]here an appellant files an affidavit stating that there were deficiencies in

the hearing on which the administrative decision is based, the court of common pleas *must consider this* and afford the appellant a hearing to correct the deficiencies outlined in R.C. 2506.03. See *Dawson v. Richmond Hts. Local School Bd.* (1997), 121 Ohio App.3d 482, 487, 700 N.E.2d 359, 362-362 (when appellant's affidavit accurately alleges R.C. 2506.03 infirmities in the administrative hearing, the common pleas court must hold a hearing); *Dvorak v. Mun. Civ. Serv. Comm.* (1976), 46 Ohio St.2d 99, 104, 75 O.O.2d 165, 167, 346 N.E.2d 157, 160; *Neague v. Worthington City School Dist.* (1997), 122 Ohio App.3d 433, 442-443, 702 N.E.2d 107, 113-114." *Robinson v. Springfield Local School Dist. Bd. of Edn.*, 144 Ohio App.3d at 47, 759 N.E.2d 444. Thus, since the court did not even consider appellant's affidavit, we hold that the common pleas court erred as a matter of law.

{¶56} As we noted earlier, we can accurately say that the transcript filed here is incomplete on its face. "If that transcript is deficient or incomplete, R.C. 2506.03 provides for the trial court to conduct an evidentiary hearing to 'fill in the gaps.'" *Stein v. Geauga Cnty. Bd.*, 11th Dist. No. 2002-G-2439, 2003-Ohio-2104, at ¶14. Moreover the court is "obligated to conduct an evidentiary hearing *** 'where the transcript of the administrative proceeding is incomplete, either because it did not contain all of the evidence which actually was presented or because the appealing party's right to be heard and present evidence was infringed in some manner.'" Id. at ¶23 (Christley, J., concurring, quoting *Schoell v. Sheboy* (1973), 34 Ohio App.2d 168, 172, 296 N.E.2d 842). In the case sub judice, both

reasons to hold a hearing in the common pleas court exist. Thus, at the hearing, the court is required to hear such additional evidence as may be introduced by either party. Id. at ¶14. "The court of common pleas' authority to hear additional evidence under R.C. 2506.03 resembles a de novo hearing, requiring the court of common pleas to weigh the evidence presented to determine whether there is preponderance of reliable, probative, and substantial evidence supporting the agency's decision." Id. (Citation omitted.)

{¶57} Therefore, since appellant filed an affidavit competent under R.C. 2506.03, and because the transcript was deficient on its face, upon remand the court should conduct such a hearing and allow each party to introduce additional evidence that pertains to those deficiencies.

{¶58} Appellant's First Assignment of Error is sustained.

2. Second Assignment of Error

{¶59} Because our ruling on appellant's First Assignment of Error is dispositive of the appeal, we dismiss appellant's Second Assignment of Error as moot. See App.R. 12(A)(1)(c).

III. Conclusion

{¶60} Accordingly, because the trial court erred by not considering appellant's affidavit, and because the transcript is incomplete on its face, the common pleas court erred as a matter of law. Accordingly, appellant's First Assignment of Error is sustained. Consequently, we dismiss appellant's Second Assignment of Error as moot.

{¶61} Upon remand, we envision the trial court will direct the Governing Board of the GVESC to certify a transcript of appellant's termination hearing as required by R.C. 2506.02. Further, the trial court should consider appellant's affidavit and conduct a hearing and allow each party to present "such additional evidence as may be introduced ***. At the hearing, any party may call as if on cross-examination, any witness who previously gave testimony in opposition to such party." R.C. 2506.03. Thus, the cause is remanded for further proceedings not inconsistent with this opinion.

Judgment reversed

and cause remanded.

Abele, J., and Kline, J.: Concur in Judgment Only.

FOR THE COURT

BY: _____
David T. Evans
Presiding Judge