

IN THE COURT OF COMMON PLEAS, MORROW COUNTY, OHIO

**UNITED ELECTRICAL RADIO
AND MACHINE WORKERS OF
AMERICA** :

Plaintiff, :

- vs.- :

**HIGHLAND LOCAL SCHOOL
DISTRICT BOARD OF
EDUCATION** :

Defendant. :

Case No: 2017-CV -00309

JUDGE TOM C. ELKIN.

**JUDGMENT ENTRY
FINAL APPEALABLE ORDER**

FILED
2018 JUN 15 AM 9:21
MORROW COUNTY
CLERK OF COURT
KIMBERLY L. BOOD

* * * * *

This matter comes before the Court on upon the Motion for Summary Judgment filed by Plaintiff, United Electrical Radio and Machine Workers of America, on March 29, 2018 and the Motion for Summary Judgment filed by Defendant, Highland Local School District Board of Education, on April 26, 2018. The Plaintiff filed a Memorandum Contra to Defendant’s Motion on May 14, 2018. Defendant, Highland Local School District Board of Education filed a Brief in Opposition to Plaintiff’s Motion for Summary Judgment on April 25, 2018 and a Reply To Plaintiff’s Memorandum In Opposition To Cross Motion For Summary Judgment on May 29, 2018. The parties presented oral argument on their respective Motions on June 13, 2018.

The Court finds that:

1. Caroline Myles and Joanie Manning were hired by the Highland Local School District Board of Education on August 8, 2016 pursuant to a Limited Contract-Classified Employee for a period of one (1) year to drive a bus.
2. By a letter dated May 11, 2017, the Highland Local School District notified both Caroline Myles and Joanie Manning that neither of them would be reemployed at the expiration of each employee’s limited contract (8/31/2017).

3. Caroline Myles and Joanie Manning were classified employees and were part of the bargaining unit covered by the collective bargaining agreement.

4. ARTICLE 36.01 – DISCIPLINE AND DISCHARGE of the collective bargaining agreement states:

No employee shall be disciplined or discharged except for just cause. The Employer shall inform an employee of his/her right to Union representation at any conference or discussion that may lead to or involve potential disciplinary action. If the Employer concludes that the employee represents an immediate danger to persons or property, the Employer may place the employee on a paid suspension pending the conference to determine disciplinary action. In all cases, other than the aforementioned, the employee shall have the right to consult with his/her Union steward before he/she is required to leave the workplace.

5. § 3319.081 O.R.C. Contracts for nonteaching employees states:

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:

(A) Newly hired regular nonteaching school employees, including regular hourly rate and per diem 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.

6. § 4117.10 O.R.C. Terms of agreement; grievance arbitration, procedure; approval by legislative body; office of collective bargaining states in part:

(A) An agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs the wages, hours, and terms and conditions of public employment covered by the agreement. If the agreement provides for a final and binding arbitration of grievances, public employers, employees, and employee organizations are subject solely to that grievance procedure and the state personnel board of review or civil service commissions have no jurisdiction to receive and determine any appeals relating to matters that were the subject of a final and binding grievance procedure. Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees.

7. ARTICLE 7.01 – GRIEVANCE PROCEDURE of the collective bargaining agreement states:
 - A. A “grievance” is a complaint that the Employer has violated, misrepresented, or misapplied a term of this written Agreement, or Board policy that directly deals with employees in the bargaining unit. Board Policy and any grievances that do not allege violation, misrepresentation or misapplication of a term of the written Agreement shall not be subject to arbitration. However, nothing shall prevent the Union from arbitrating a Board policy that violates an *express provision* of this written agreement. (emphasis added)
8. ARTICLE 7.04 – GRIEVANCE PROCEDURE - Step Two-Arbitration of the collective bargaining agreement states:
 - A. If the Union is not satisfied with the disposition at Step One of a grievance involving a violation of this Agreement, it may request an arbitration hearing before an arbitrator. The Unions request for arbitration shall be within thirty (30) calendar days following the receipt of the disposition of the grievance.
9. Plaintiff contends that the language in ARTICLE 36.01 – DISCIPLINE AND DISCHARGE supersedes Section 3319.081 ORC and required the Defendant to have “just cause” for not reemploying Caroline Myles and Joanie Manning.
10. Plaintiff further contends that the Plaintiff’s action was a violation of the collective bargaining agreement.
11. Plaintiff further contends that Caroline Myles and Joanie Manning have a grievance and are entitled to arbitration.
12. Defendant contends that the language in ARTICLE 36.01 – DISCIPLINE AND DISCHARGE does not specifically address not reemploying an employee on a limited one (1) year contract at the end of that employee’s year of work.
13. The Defendant further contends that it did not violate the collective bargaining agreement by not reemploying Caroline Myles and Joanie Manning without having “just cause” to do so.
14. The Defendant further contends that Caroline Myles and Joanie Manning have no grievance and are not entitled to arbitration.

The Ohio Supreme Court in *State ex rel. Clark v. Greater Cleveland Regional Transit Auth.* (1990), 48 Ohio St. 3d 19, 548 N.E.2d 940, addressed the interplay between public employees' statutory rights and provisions of a collective bargaining agreement that purport to preempt those statutory rights pursuant to R.C. 4117.10(A). The issue before the court in *Clark* was whether certain public employees of the Greater Cleveland Regional Transit Authority were entitled to previously earned vacation credit pursuant to R.C. 9.44 when those employees were covered by a collective bargaining agreement that included a vacation-eligibility provision. The Court held that "R.C. 9.44 imposes a mandatory duty on any political subdivision of the state of Ohio to credit employees with prior service vacation credit, absent a collective bargaining agreement entered into pursuant to R.C. Chapter 4117 which specifically excludes rights accrued under R.C. 9.44. (R.C. 4117.10[A], construed.)" *Id.* at syllabus. In construing R.C. 4117.10(A), the Court noted that "when the agreement makes *no specification* about a matter pertaining to wages, hours and terms and conditions of employment, the parties are governed by all state or local laws or ordinances addressing such terms and conditions of employment." (Emphasis *sic.*) *Id.* at 22, 548 N.E.2d at 943. In determining that the employees were entitled to their previously earned vacation credit pursuant to R.C. 9.44, the Court reasoned that despite a provision in the collective bargaining agreement addressing the computation of vacation leave, the provision did not specifically address the question of *prior* service vacation credit.

The question for the court to answer in this matter is whether the collective bargaining agreement specifically addressed the issue of not renewing an employee at the expiration of his or her limited one year contract. Section 3319.081 O.R.C. specifically addresses the issue of not renewing a nonteaching employee. Under Section 3319.081 O.R.C. the employer can choose to not renew a nonteaching employee at the expiration of his first year of work without "just cause". ARTICLE 36.01 DISCIPLINE AND DISCHARGE applies to an employee who has committed malfeasance, misfeasance or nonfeasance to make him or her subject to a disciplinary process. A wayward employee may only be discharged for "just cause". Discharge and nonrenewal of an employee are two distinctly different actions on the part of an employer.

The Court further finds based upon the above statement of fact and law that:

1. The collective bargaining contract does not specifically address the issue of limited one (1) year contracts for nonteaching employees.

2. The Highland Local School District Board of Education was entitled to not renew the contracts of Caroline Myles and Joanie Manning pursuant to Section 3319.081 O.R.C.
3. The Highland Local School District Board of Education did not violate the terms of the collective bargaining agreement.
4. Caroline Myles and Joanie Manning do not have a proper grievance against the Highland Local School District Board of Education.
5. This matter is not subject to arbitration.
6. There are no genuine issues of law or fact in this matter.
7. Summary Judgment pursuant to Civ. Rule 56 for the Defendant, Highland Local School District Board of Education, is appropriate in that reasonable minds can come to but one conclusion and that conclusion is adverse to the Plaintiff.

Therefore it is ORDERED and ADJUDGED that:

1. Upon the above finding of fact and law that this matter is not subject to arbitration, the Motion Summary for Judgment filed by Defendant, Highland Local School District Board of Education, is granted.
2. Upon the above finding of fact and law that this matter is not subject to arbitration, the Motion for Summary Judgment filed by Plaintiff, United Electrical Radio and Machine Workers of America, is denied.
3. Costs to Plaintiff.
4. The Clerk is directed to enter this Judgment upon the Journal, and shall within three (3) days thereafter, in compliance with Civil Rule 58(B), serve the parties directly (John Britton on behalf of the Defendant, Highland Local School District Board of Education and Richard L. Stoper, Jr., attorney for the Plaintiff, United Electrical Radio and Machine Workers of America) in a manner prescribed by Civil Rule 5(B) and note the service in the Appearance Docket.

Tom C. Elkin
JUDGE TOM C. ELKIN

Date: 6/14/2018