

DANIEL M. HORTON
IN THE COURT OF COMMON PLEAS

2007 MAR 30 SUMMIT COUNTY, OHIO

CITY OF AKRON,	SUMMIT COUNTY)	CASE NO. CV 2006-05-2759
	CLERK OF COURTS)	
Plaintiffs,)	JUDGE BOND
)	
-vs-)	
)	
STATE OF OHIO, et al.,)	ORDER
)	<u>Summary Judgment</u>
Defendants.)	
)	

- - -

This cause came before the Court upon Defendants FOP 7 and IAFF Local 330, et al.'s Motion for Summary Judgment, Plaintiffs City of Akron and Donald L. Plusquellic's Motion for Summary Judgment, and Defendant State of Ohio's Motion for Summary Judgment. The parties have filed briefs in opposition and reply briefs. Upon consideration thereof, this Court finds as follows.

Senate Bill 82, as passed by the Ohio Legislature and signed into law on January 27, 2006, enacts R.C. 9.481, which provides that "no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state." The City of Akron, as articulated in its City Charter sections 105a and 106(5b), has a residency requirement that classified employees must be residents of Akron within twelve months of appointment or promotion. The City of Akron has chosen to keep its residency requirement despite the passage of R.C. 9.481. On May 1, 2006, the City of Akron filed this action for declaratory relief. On May 2, 2006, the Fraternal Order of Police, Akron Lodge No. 7 and the Akron Firefighters Association, IAFF Local 330 filed an action, CV 2006-05-2797,

seeking to enforce R.C. 9.481 over the City of Akron's residency requirement. On June 14, 2006, the cases were consolidated.

Pursuant to Civ. R. 56(C), summary judgment is proper if: (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.* (1977), 50 Ohio St. 2d 317, 327. The party seeking summary judgment initially bears the burden of informing the trial court of the basis for the motion and identifying portions of the record demonstrating an absence of genuine issues of material fact as to the essential elements of the nonmoving party's claims. *Dresher v. Burt* (1996), 75 Ohio St. 3d 280, 293. The movant must point to some evidence in the record of the type listed in Civ. R. 56(C) in support of his motion. *Id.* Once this burden is satisfied, the nonmoving party has the burden, as set forth in Civ. R. 56(E), to offer specific facts showing a genuine issue for trial. *Id.*

The State premises its authority to pass R.C. 9.481 on Article II, Section 34 of the Ohio Constitution, which provides:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power.

The City of Akron premises its authority to retain its residency requirement on Article XVIII, Section 3 of the Ohio Constitution, which provides:

Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police,

sanitary and other similar regulations, as are not in conflict with general laws.

In *City of Rocky River v. State Employment Relations Bd.* (1989), 43 Ohio St. 3d 1, the Supreme Court of Ohio addressed the matter of how these constitutional provisions interact when the state passes a law under Article II, Section 34, that arguably interferes with a municipality's home rule powers under Article XVIII, Section 3. The state law at issue was a statutorily-mandated bargaining procedure.

[Article II, Section 34] constitutes a broad grant of authority to the legislature to provide for the welfare of all working persons, including local safety forces. The provision expressly states in "clear, certain and unambiguous language" that *no other provision* of the Constitution may impair the legislature's power under Section 34. This prohibition, of course, includes the "home rule" provision contained in Section 3, Article XVIII.

R.C. Chapter 4117, the Public Employees' Collective Bargaining Act, is indisputably concerned with the "general welfare" of employees. Therefore, pursuant to Section 34, Article II, the power of the General Assembly to adopt the Act *may not be affected in any way by the "home rule" amendment*. The binding arbitration provision of R.C. Chapter 4117 is a valid exercise of the legislative function under Section 34, Article II.

Id.

Thus, if validly enacted under Article II, Section 34, R.C. 9481 would trump the City of Akron's residency requirement adopted under its home rule authority. The question becomes whether or not R.C. 9.481 is for the general welfare of employees and thus falls under the grant of authority given under Article II, Section 34. While the language of R.C. 9.481 mimics the constitutional language from Article II, describing itself as providing "for the comfort, health, safety, and general welfare of those public employees," that fact, by itself, is not dispositive of the issue. The next question that must be asked is whether or not the language of Article II, specifically the words "general

welfare," is clear and unambiguous. These words, if given their ordinary, broad meaning, would amount to a nearly limitless and unconditional grant of power. The issue requires closer examination.

The *Rocky River* Court performs that very examination by engaging in a discussion regarding the issue of constitutional construction and interpretation and the intent of the constitutional convention, only to arrive at the following:

But none of this really makes any difference. The language of Section 34 is so clear and unequivocal that resort to secondary sources, such as the constitutional debates, is actually unnecessary. Where the language of a statute or constitutional provision is clear and unambiguous, it is the duty of courts to enforce the provision as written. Debates of a constitutional convention are proper matter for consideration where they throw light on the correct interpretation of any provision of the Constitution, but if the provision is clear and may be read without interpretation, the discussion leading to its adoption is of no value, nor are the various statements by the members of the convention and the resolutions offered during the convention determinative of the meaning of the amendment.

Regardless of what was said or not said during the debates, the unalterable fact remains that Section 34, as it was ultimately adopted, transcends the limitations urged by appellant. If the framers of our Constitution had intended this section to apply only to minimum wage, almost half of the forty-one words contained in this section must be regarded as mere surplusage, since it further provides that laws may be passed "fixing and regulating the hours of labor * * * and providing for the comfort, health, safety and general welfare of all employes * * *." Are we to believe, as appellant apparently does, that these words were not intended to have meaning? To ask the question is to answer it.

Id. (citations and quotations omitted).

In *Rocky River*, the Supreme Court of Ohio has found that the language of Article II, Section 34, is clear and unambiguous, and that further examination of construction and interpretation are unnecessary. "Welfare" means well-being. Webster's Ninth New Collegiate Dictionary (1986). Black's Law Dictionary defines "general welfare" as health, peace, morals, and safety. Where the language of a statute or constitutional

provision is clear and unambiguous, it is the duty of courts to enforce the provision as written. *Bernardini v. Bd. of Edn.* (1979), 58 Ohio St. 2d 1. Given such an expansive reading, and because there is no constitutional construction analysis to engage in, this Court must find that R.C. 9.481 is for the general welfare of employees. Laws thus enacted under Article II, Section 34 of the Ohio Constitution trump the home rule provision, and a home rule analysis is never reached.

The ruling of this Court is reached because of its obligation to act within controlling precedent. But for this obligation, this Court's opinion would be adverse to the conclusion reached today. The Court points to the dissenting opinion of Justice Wright in *Rocky River* as offering a cogent and compelling analysis that is more insightful to the needs of a modern society than that offered by the majority opinion.

While the home rule arguments offered by the City of Akron are never reached, Plaintiffs also argue that R.C. 9.481 is unconstitutional because it violates the Uniformity Clause, Article II, Section 26, of the Ohio Constitution which provides "[a]ll laws of a general nature, shall have a uniform operation throughout the State." *State ex rel. Stanton v. Powell* (1924), 109 Ohio St. 383, provides:

Section 26, Art. II of the Constitution, was not intended to render invalid every law which does not operate upon all persons, property or political subdivisions within the state. It is sufficient if a law operates upon every person included within its operative provisions, provided such operative provisions are not arbitrarily and unnecessarily restricted. . . . A law operates as an unreasonable classification where it seeks to create artificial distinctions where no real distinction exists.

Plaintiffs argue that because R.C. 9.481 creates arbitrary distinctions between both full-time and part-time employees, and public and private employees, it fails the Uniformity Clause. The Supreme Court of Ohio has more recently revisited the question

of “unreasonable classifications” with regard to the Uniformity Clause. In *Austintown Township Bd. of Trustees v. Tracy* (1996), 76 Ohio St. 3d 353, the Court explains:

[T]he fact that the Uniformity Clause does not bar classifications which are neither arbitrary nor unreasonable does not necessarily mean that a classification which *is* deemed to be arbitrary or unreasonable, necessarily violates the Uniformity Clause. This is so because arbitrary classifications violate the Uniformity Clause only where those classifications are contained in a statute first deemed to be special or local as opposed to general.

A statute is of general nature “if the subject does or may exist in, and affect the people of, every county, in the state” *Desenco, Inc. v. City of Akron* (1999) 84 Ohio St. 3d 535. Because R.C. 9.481 is applicable to every part of the state and to all persons in the same category, it is a general statute and in uniform operation throughout the state. As such it does not violate the Uniformity Clause.

Plaintiffs further argue that R.C. 9.481 violates the Due Process Clause and the Equal Protection Clause of the Ohio Constitution because of these same arbitrary distinctions. These arguments are not well taken. *Avon Lake City School Dist. v. Limbach* (1988), 35 Ohio St. 3d 118, provides:

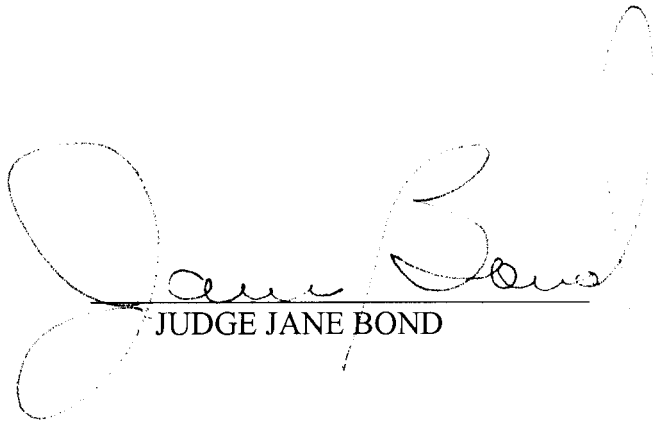
While there may be occasions where a political subdivision may challenge the constitutionality of state legislation, it is not entitled to rely upon the protections of the Fourteenth Amendment. A political subdivision . . . receives no protection from the Equal Protection or Due Process Clauses vis-a-vis its creating state.

As a political subdivision, The City of Akron cannot rely on the Equal Protection Clause or the Due Process Clause for its claims against the State of Ohio.

This Court finds that no genuine issue as to any material fact remains and that Defendants are entitled to judgment as a matter of law. The Court hereby finds R.C. 9.481 constitutional and denies the City of Akron and Donald L. Plusquellic injunctive

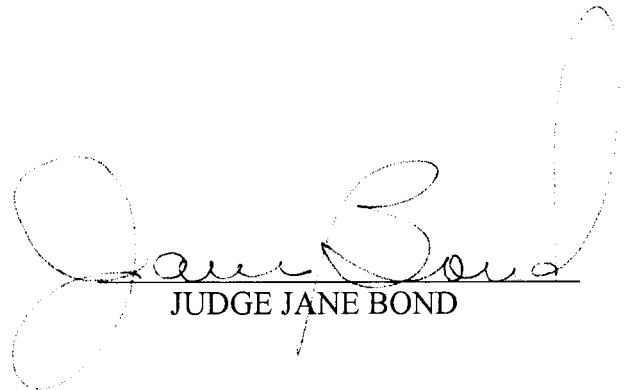
relief. The City of Akron's Charter Sections 105a and 106(5b) must succumb to state law. Therefore Defendant State of Ohio's Motion for Summary Judgment and Defendants FOP 7 and IAFF Local 330, et al.'s Motion for Summary Judgment are GRANTED. Plaintiffs City of Akron and Donald L. Plusquellic's Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.



JUDGE JANE BOND

Pursuant to Civ.R. 58(B), the Clerk of Courts shall serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal.



JUDGE JANE BOND

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