

SUPREME COURT OF OHIO

State ex rel. Ohio Civil Service Employees Ass'n v. State Employment Relations Board

104 Ohio St. 3d 122 (Ohio 2004) · Decided December 15, 2004

OPINION

MOYER, J.

Moyer, C.J. {¶ 1} This appeal tests the validity of an amendment to R.C. 3318.31, which the State Employment Relations Board (“SERB”) had applied to exclude certain employees from the collective-bargaining process. Because we conclude that the amendment to R.C. 3318.31 violated the one-subject rule of the Ohio Constitution, we affirm the court of appeals’ judgment granting the Ohio Civil Service Employees Association (“OCSEA”) a writ of mandamus. *123I {¶ 2} Pursuant to its collective-bargaining agreement with the state of Ohio, relator-appellee, OCSEA, is the exclusive bargaining representative for certain collective-bargaining units in Ohio. In 2001, OCSEA attempted to reach an agreement with the state to include within those units the employees of the Ohio School Facilities Commission (“OSFC”).

When these efforts proved unsuccessful, OCSEA filed three petitions for amendment of certification and three petitions for clarification of a bargaining unit with respondent-appellant, SERB. {¶ 3} While the six petitions were pending before SERB, the Ohio General Assembly enacted Am.Sub.H.B. No. 405. This legislation, which SERB refers to as a “budget corrections bill,” contains numerous provisions meant to balance and stabilize Ohio’s operating budget.

Among its provisions, Am.Sub.H.B. No. 405 authorized Ohio’s participation in a multistate lottery, R.C. 3770.02, transferred “rainy-day” and tobacco funds to the General Revenue Fund, 2001 HB 405, Sections 29 and 32, and addressed various other budgetary programs. All told, Am.Sub.H.B. No. 405 amended, enacted, or repealed over 90 sections of the Revised Code and enacted 44 uncodified provisions of law. {¶ 4} Am.Sub.H.B.

No. 405 also amended R.C. 3318.31, which governs the powers and responsibilities of OSFC. As amended, R.C. 3318.31(B) provides that “[t]he employees of [OSFC] shall be exempt from Chapter 4117. of the Revised Code and shall not be public employees as defined in section 4117.01 of the Revised Code.” Relying on this newly enacted amendment, the state filed with SERB a motion to dismiss the six petitions.

SERB granted the state’s motion, reasoning that “Am. Sub. H.B. No. 405 is clear. * * * The employees in question are exempt and are not public employees as defined in Ohio Revised Code 4117.01. No issues remain that warrant a hearing.”¹ {¶ 5} OCSEA thereafter filed a petition for a

writ of mandamus in the Franklin County Court of Appeals, asserting that SERB had improperly dismissed the six petitions and the unfair-labor-practice charge.

The magistrate determined that, although OCSEA brought the action in mandamus, the real object of the relief it *124sought was a declaration that the amended version of R.C. 3318.31 was unconstitutional. Reasoning that the court of appeals does not have original jurisdiction over actions for declaratory judgment, the magistrate recommended that the court of appeals dismiss the case. {¶ 6} After OCSEA filed objections to the magistrate's decision, the court of appeals, despite adopting the magistrate's findings of fact, rejected the magistrate's conclusions of law.

Specifically, the court of appeals determined that an action for declaratory judgment would not provide OCSEA with a plain and adequate remedy at law. As a result, it determined that OCSEA's petition for a writ of mandamus was the appropriate vehicle by which to challenge SERB'S dismissal order. {¶ 7} Having rejected the magistrate's recommendation to dismiss the case, the court of appeals addressed the constitutionality of the bill that had amended R.C.

3318.31. The court observed that "[t]he amendment to R.C. 3318.31 exempting OSFC employees from the provisions of the Public Employees Collective Bargaining Act does not share a common purpose with and has no discernible practical or rational relationship to the other provisions in the enacted bill." *State ex rel. Ohio Civ. Serv. Employees Assn. v. State Emp.*

Relations Bd., 152 Ohio App.3d 551, 2003-Ohio-2021, 789 N.E.2d 636, ¶ 29. Accordingly, the court held that Am.Sub.H.B. No. 405 violates the "one-subject rule" of the Ohio Constitution and issued a writ of mandamus ordering SERB to reinstate the six petitions within 30 days. {¶ 8} The cause is now before this court upon SERB'S appeal as of right. II {¶ 9} The threshold issue in this case is whether mandamus was the proper vehicle to challenge SERB'S dismissal order.

The Ohio Constitution confers upon the Supreme Court of Ohio and the Ohio courts of appeals concurrent, original jurisdiction over writs of mandamus — i.e., written orders, in the name of a state or other competent legal authority, that command a public officer or agency to perform an official act. Sections 2 and 3, Article IV, Ohio Constitution; R.C. 2731.01.

To be entitled to a writ of mandamus, a relator must demonstrate that (1) the relator has a clear legal right to the relief requested, (2) the respondent is under a clear legal duty to perform the requested act, and (3) the relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Natl. City Bank v. Bd. of Edn.*

(1977), 52 Ohio St.2d 81, 84, 6 O.O.3d 288, 369 N.E.2d 1200. {¶ 10} The third requirement for mandamus relief — that relators lack a plain and adequate remedy in the ordinary course of law — has recently occasioned some confusion and represents the crux of the initial disagreement between the *125parties. OCSEA contends, and the court of appeals agreed, that OCSEA lacked a plain and adequate remedy in the ordinary course of law.

SERB, by contrast, argues that OCSEA had two plain and adequate legal remedies: (1) an action for declaratory judgment and (2) an appeal from the SERB order to the court of common pleas. SERB raised the former remedy in the court of appeals; however, it did not raise the latter. “ ‘Ordinarily, reviewing courts do not consider questions not presented to the court whose judgment is sought to be reversed.’ ” See *State ex rel.*

Quarto Mining Co. v. Foreman (1997), 79 Ohio St.3d 78, 81, 679 N.E.2d 706, quoting *Goldberg v. Indus. Comm.* (1936), 131 Ohio St. 399, 404, 6 O.O. 108, 3 N.E.2d 364. We conclude, therefore, that SERB waived the argument that OCSEA had an adequate remedy at law by appealing the dismissal order to the court of common pleas.

Accordingly, we limit our threshold inquiry to whether OCSEA had a plain and adequate remedy in an action for declaratory judgment. {¶ 11} It is well settled that “if the allegations of a complaint for a writ of mandamus indicate that the real objects sought are a declaratory judgment and a prohibitory injunction, the complaint does not state a cause of action in mandamus.” *State ex rel.*

Grendell v. Davidson (1999), 86 Ohio St.3d 629, 634, 716 N.E.2d 704. Because neither the Supreme Court of Ohio nor the Ohio courts of appeals have original jurisdiction over claims for declaratory judgment, *State ex rel. Ministerial Day Care Assn. v. Zelman*, 100 Ohio St.3d 347, 2003-Ohio-6447, 800 N.E.2d 21, ¶ 22, these courts lack jurisdiction over actions that, although styled in mandamus, actually seek a declaration of rights, status, or other legal relations.

State ex rel. Phillips v. Lorain Cty. Bd. of Elections (2001), 93 Ohio St.3d 535, 537, 757 N.E.2d 319. {¶ 12} SERB contends that OCSEA’s mandamus action was a disguised request for a declaration that the amendment to R.C. 3318.31 was unconstitutional and, therefore, the court of appeals should have dismissed it for want of jurisdiction.

In addition, SERB argues that the availability of an action for declaratory judgment is a plain and adequate remedy at law, thus prohibiting the issuance of a writ of mandamus. In response, OCSEA advances two arguments.

First, counsel for OCSEA asserted at oral argument that “there are at least four nonconstitutional grounds upon which this case can be decided in full by a writ of mandamus without need for any other relief, and that’s what distinguishes this case from [the declaratory judgment] cases.” OCSEA thus urges us to first consider affirming the judgment of the court of appeals on nonconstitutional grounds.

OCSEA suggests that if we affirm on such grounds, we need not reach the issue of whether its mandamus action was a disguised action for declaratory judgment. We disagree. *126{¶ 13} Actions for declaratory judgment may be predicated on constitutional or nonconstitutional grounds. See R.C. 2721.02 (broadly authorizing parties to bring actions for declaratory judgments

for a declaration of “rights, status, and other legal relations whether or not further relief is or could be claimed”).

That OCSEA advances nonconstitutional theories is, therefore, immaterial to whether it had an adequate remedy at law by way of a declaratory judgment action. The relevant inquiry, rather, is whether OCSEA had a plain and adequate remedy at law by way of an action for a declaratory judgment — no matter the constitutional or nonconstitutional nature of the theories used to obtain that judgment.

We thus reject the notion that the instant case is distinguishable from our previously decided declaratory judgment cases simply because OCSEA also raised nonconstitutional arguments. {¶ 14} Second, OCSEA asserts that it could not have obtained complete relief in an action for declaratory judgment.

We considered a similar argument in *State ex rel. Dayton Fraternal Order of Police Lodge No. 44 v. State Emp. Relations Bd.* (1986), 22 Ohio St.3d 1, 22 OBR 1, 488 N.E.2d 181 (“Dayton FOP”), in which employees challenged a statute, known as the “Dayton Amendment,” that operated to exclude sergeants, lieutenants, captains, and district chiefs of the Dayton Police and Fire Departments from the collective-bargaining process.

The Fraternal Order of Police (“FOP”) filed a Request for Voluntary Recognition with SERB, seeking certification of a proposed bargaining unit that would include those individuals excluded by the Dayton Amendment. Applying the terms of the Dayton Amendment, SERB dismissed the request. {¶ 15} On appeal to this court, the FOP sought a writ of mandamus ordering SERB to reinstate its Request for Voluntary Recognition.

The FOP argued that the Dayton Amendment applied exclusively to the Dayton Police Department and, consequently, offended the Equal Protection Clause of the United States Constitution and its counterpart in the Ohio Constitution.

In considering the threshold issue of whether the POP had an adequate remedy through an action for declaratory judgment,* we reaffirmed the well-settled principle that “ ‘where declaratory judgment would not be a complete remedy unless coupled with ancillary relief in the nature of mandatory injunction, the availability of declaratory injunction is not an appropriate basis to deny a writ to which the relator is otherwise entitled.’ ” *Dayton FOP*, 22 Ohio St.3d at 8, 22 OBR 1, 488 N.E.2d 181, quoting *State ex rel.*

Fenske v. McGovern (1984), 11 Ohio St.3d 129, 11 OBR 426, 464 N.E.2d 525, paragraph two of the syllabus. Applying this principle, we issued a writ of mandamus ordering SERB to reinstate the petitions, after finding that FOP could not have received a complete remedy unless coupled with a mandatory injunction. *127{¶ 16} One scholar has explained the rationale underlying the principle that a declaratory judgment is not always an adequate remedy as follows: “A declaratory

action, which merely announces the existence of a duty to be performed, has generally not been deemed as adequate as the writ of mandamus, which compels performance.” 1 Antieau, *The Practice of Extraordinary Remedies* (19.87) 300, Section 2.06.

Because a mandatory injunction is an extraordinary remedy, it does not constitute an adequate remedy in the ordinary course of the law. *State ex rel. Zupancic v. Limbach* (1991), 58 Ohio St.3d 130, 133, 568 N.E.2d 1206; *State ex rel. Fenske v. McGovern*, 11 Ohio St.3d 129, 11 OBR 426, 464 N.E.2d 525, paragraph one of the syllabus; *State ex rel. Pressley v. Indus.*

Comm. (1967), 11 Ohio St.2d 141, 40 O.O.2d 141, 228 N.E.2d 631, paragraph six of the syllabus. {¶ 17} Applying this principle to the instant case, we conclude that a declaration that Am.Sub.H.B. No. 405 is unconstitutional would not have provided OCSEA with a complete remedy unless coupled with a mandatory injunction.

Because SERB had dismissed the six petitions, it would be under no obligation to reinstate the petitions if a trial court held that Am.Sub.H.B. No. 405 was unconstitutional; only a declaratory judgment coupled with a mandatory injunction ordering the reinstatement of the six petitions would provide complete relief.

Accordingly, we reject SERB’S argument that OCSEA had a plain and adequate remedy in the ordinary course of law by way of an action for declaratory judgment. {¶ 18} The dissent cites *State ex rel. Ohio Academy of Trial Lawyers v. Sheward* (1999), 86 Ohio St.3d 451, 516, 715 N.E.2d 1062 (Moyer, C.J., dissenting) to support the conclusion that relator is essentially seeking a declaratory judgment and prohibitory injunction.

The facts in the case at bar, however, are distinguishable from the facts in *Sheward*. In that case, relators had no “true dispute, or controversy, with the individual common pleas judges they [had] named as respondents.” *Id.*, 86 Ohio St.3d at 525, 715 N.E.2d 1062 (Moyer, C.J., dissenting). Nor did the relators in *Sheward* allege that the respondents had failed to comply with any duty required of them by law.

Id. They instead sought a writ ordering Ohio judges to rule that the entirety of comprehensive legislation contained in Am.Sub.H.B. No. 350 was unconstitutional, both as to existing cases and cases that might arise in the future. {¶ 19} In the instant case, specific individuals employed by the Ohio School Funding Commission had been affected by the refusal of SERB to entertain their petitions to be recognized as members of a collective-bargaining unit.

Unlike in *Sheward*, the relator presented a claim that a specific public entity had failed to perform its clear legal duty to consider specific petitions. The case at bar presents far more than only a “ ‘general and abstract question, whether an act of the legislature be unconstitutional.’ ” *Id.*, 86 Ohio St.3d at 525, 715 N.E.2d 1062 *128(Moyer, C.J., dissenting), quoting *Foster v. Wood Cty.*

Commrs. (1859), 9 Ohio St. 540, 543, 1859 WL 29. {¶ 20} Rather, we have jurisdiction to entertain this cause because the relators seek an order mandating SERB, a public agency, to comply with the affirmative statutory duties required of it by R.C. 4117.07(A) (“When a petition is filed * * * (1) [h]y any employee or group of employees, or any individual or employee organization acting in their behalf, * * * the board shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, provide for an appropriate hearing”). {¶ 21} The threshold issue having been resolved in favor of OCSEA, we next consider the validity of the amendment to R.C.

3318.31 in Am.Sub.H.B. No. 405. Ill A {¶ 22} In the court of appeals, OCSEA raised numerous challenges to the application of amended R.C. 3318.31. Among its challenges, OCSEA argued that (1) SERB had applied Am.Sub.H.B. No. 405 retrospectively in violation of R.C. 1.48, which requires the prospective application of statutes unless the General Assembly has expressly stated otherwise, (2) R.C.

4117.10(A) provides that R.C. Chapter 4117 preempts any conflicting law — in this case, the amendment to R.C. 3318.31 — except as specified by the General Assembly, (3) pursuant to R.C. 4117.10(A), the collective-bargaining agreement governs the terms and conditions of public employees covered by the agreement and preempts conflicting statutes, and (4) applying R.C.

3318.31(B), as amended by Am.Sub.H.B. No. 405, violates the Due Process and the Retroactivity Clauses of the Ohio Constitution. {¶ 23} The court of appeals declined to address these arguments. Instead, the court relied exclusively on the one-subject rule of the Ohio Constitution to invalidate the amendment to R.C. 3318.31 in Am.Sub.H.B. No. 405. It is that issue that is presented by SERB in this appeal, thus leaving the remaining arguments raised by OCSEA for consideration only if we reverse the court of appeals on the one-subject issue (in which case a remand for review of those arguments might be appropriate). {¶ 24} We acknowledge that by considering the constitutionality of Am.Sub.

H.B. No. 405 before considering OCSEA’s nonconstitutional arguments, the court of appeals frustrated the general policy against deciding a case on constitutional grounds without first determining whether it could dispose of the cause on nonconstitutional grounds. *Kinsey v. Bd. of Trustees of Police and Firemen’s Disability & Pension Fund of Ohio* (1990), 49 Ohio St.3d 224, 225, 551 N.E.2d *129989.

Nevertheless, this court generally does not consider issues that the court of appeals did not reach. See *Bowen v. Kil-Kare, Inc.* (1992), 63 Ohio St.3d 84, 89, 585 N.E.2d 384. In accordance with this general practice, we limit our inquiry to whether Am.Sub.H.B. No. 405 violates the one-subject rule of the Ohio Constitution. B {¶ 25} Section 15(D), Article II of the Ohio Constitution provides, “No bill shall contain more than one subject * * *.” Added to our constitution in 1851 as part of the Second Constitutional Convention, the one-subject rule has its roots “in the same

concerns over the General Assembly's dominance of state government that formed the most significant theme of the Constitution of 1851." State ex rel.

Ohio Academy of Trial Lawyers v. Sheward (1999), 86 Ohio St.3d 451, 495, 715 N.E.2d 1062. Advocates of the one-subject rule sought to impose "concrete limits on the power of the General Assembly to proceed however it saw fit in the enactment of legislation." Id. at 495, 715 N.E.2d 1062.

The one-subject rule is thus a product of "the drafters' desire to place checks on the legislative branch's ability to exploit its position as the overwhelmingly pre-eminent branch of state government prior to 1851." Id. {¶ 26} The Ohio Constitution is one of 41 state constitutions that have a one-subject provision. 1A Singer, Statutes and Statutory Construction (6th Ed.2002) 2, Section 17:1.

The universally recognized purpose of these provisions is to prevent so-called "logrolling" — "the practice of several minorities combining their several proposals as different provisions of a single bill and thus consolidating their votes so that a majority is obtained for the omnibus bill where perhaps no single proposal of each minority could have obtained majority approval separately.' " Id. at 142-143, 11 OBR 436, 464 N.E.2d 153, quoting 1A Sutherland, Statutes and Statutory Construction (4th Ed.1972), Section 17.01.

These provisions prevent such a practice "by disallowing unnatural combinations of provisions in acts, i.e., those dealing with more than one subject, on the theory that the best explanation for the unnatural combination is a tactical one-logrolling. By limiting each bill to a single subject, the bill will have unity and thus the purpose of the provision will be satisfied." Id. at 143, 11 OBR 436, 464 N.E.2d 153. {¶ 27} Our role in the enforcement of the one-subject provision is limited.

To avoid interfering with the legislative process, we must afford the General Assembly "great latitude in enacting comprehensive legislation by not construing the one-subject provision so as to unnecessarily restrict the scope and operation of laws, or to multiply their number excessively, or to prevent legislation from embracing in one act all matters properly connected with one general subject." Id. at 145, 11 OBR 436, 464 N.E.2d 153.

Precisely because we endeavor to avoid interfering with the legislative process, we presume that statutes are constitutional. See Hoover v. Franklin Cty. Bd. of Commrs. (1985), 19 Ohio St.3d 1, 6, 19 OBR 1, 482 N.E.2d 575. {¶ 28} True to that legislative deference, we have stated that " '[t]he mere fact that a bill embraces more than one topic is not fatal, as long as a common purpose or relationship exists between the topics.' " Sheward, 86 Ohio St.3d at 496, 715 N.E.2d 1062, quoting Hoover, 19 Ohio St.3d at 6, 19 OBR 1, 482 N.E.2d 575.

To conclude that a bill violates the one-subject rule, a court must determine that the bill includes a disunity of subject matter such that there is "no discernible practical, rational or legitimate reason

for combining the provisions in one Act.” *Beagle v. Walden* (1997), 78 Ohio St.3d 59, 62, 676 N.E.2d 506.

Thus, “the one-subject provision is not directed at plurality but at disunity in subject matter.” *State ex rel. Dix v. Celeste* (1984), 11 Ohio St.3d 141, 146, 11 OBR 436, 464 N.E.2d 153. {¶ 29} Our review of legislation is not so deferential, however, as to effectively negate the one-subject provision. Despite our reluctance to interfere with the legislative process, we “will not * * * abdicate [our] duty to enforce the Ohio Constitution.” *Dix*, 11 Ohio St.3d at 144, 11 OBR 436, 464 N.E.2d 153.

Indeed, despite earlier cases in which we described the one-subject rule as “directory” in nature, “recent decisions of this court make it clear that we no longer view the one-subject rule as toothless. * * * The one-subject rule is part of our Constitution and therefore must be enforced.” *Simmons-Harris v. Goff* (1999), 86 Ohio St.3d 1, 15, 711 N.E.2d 203. {¶ 30} Application of the one-subject rule is complicated when the challenged provision is part of an appropriations bill, which of necessity contains many different provisions.

We addressed the one-subject rule in the context of an appropriations bill in *Simmons-Harris*. In that case, we considered whether the Ohio School Voucher Program should be stricken from an appropriations bill as violative of the one-subject rule. *Id.* at 14-17, 711 N.E.2d 203. At the outset of our analysis, we acknowledged that “appropriations bills * * * are different from other Acts of the General Assembly [because they] encompass many items, all bound by the thread of appropriations.” *Id.* at 16, 711 N.E.2d 203. {¶ 31} Nevertheless, we held in *Simmons-Harris* that there was “a ‘blatant disunity between’ the School Voucher Program and most other items contained in [the Act]” and that there was “ ‘no rational reason for their combination.’ ” *Id.*, quoting *Hoover*, 19 Ohio St.3d at 6, 19 OBR 1, 482 N.E.2d 575.

In support of our conclusion, we noted that the program “was created in a general appropriations bill consisting of over one thousand pages, of which it comprised only ten pages.” *131*Id.* Such legislation, we reasoned, was little more than a “rider” — a provision included in a bill that is “ ‘so certain of adoption that the rider will secure adoption not on its own merits, but on [the merits of] the measure to which it is attached.’ ” *Id.*, quoting *Dix*, 11 Ohio St.3d at 143, 11 OBR 436, 464 N.E.2d 153. {¶ 32} Similar to the statute at issue in *Simmons-Harris*, the amendment to R.C.

3318.31 was an extremely small portion of Am.Sub.H.B. No. 405, which can be loosely described as an appropriations bill. The bill consists of 226 pages, of which the amendment to R.C. 3318.31 is but a single sentence. Surrounding that sentence are over 100 different provisions of law, including provisions that provide property-tax exemptions for Edison program grantees, modify Local Government Fund and Tobacco Master Settlement Agreement Fund distributions, expand use of the Corporate and Uniform Commercial Code Filing Fund, revise provisions of the TANF Housing Program within the Department of Development, authorize transfers from the Budget

Stabilization Fund to the General Revenue Fund, and reduce the cigarette tax discount. {¶ 33} Despite the disunity between the foregoing budget-related items and the exclusion of OSFC employees from the collective-bargaining process, SERB asserts that the items in Am.Sub.H.B.

No. 405 are all bound by appropriations, thus uniting to form a single subject for purposes of Section 15(D), Article II of the Ohio Constitution. This argument, however, stretches the one-subject concept to the point of breaking. Indeed, SERB’S position is based on the notion that a provision that impacts the state budget, even if only slightly, may be lawfully included in an appropriations bill merely because other provisions in the bill also impact the budget.

Such a notion, however, renders the one-subject rule meaningless in the context of appropriations bills because virtually any statute arguably impacts the state budget, even if only tenuously. We flatly rejected this proposition in *Simmons-Harris*, 86 Ohio St.3d at 16, 711 N.E.2d 203. {¶ 34} Further, SERB has offered little guidance regarding the manner in which the amendment to R.C.

3318.31 affects the state budget, aside from the general averment that the amendment “is related to the pay schedules applicable to [employees of OSFC].” Instead, SERB’S argument is primarily aimed at persuading us that an appropriations bill can survive scrutiny under the one-subject rule. Of that there can be no doubt.

In the instant case, however, the record is devoid of any explanation whatever as to the manner in which the amendment to R.C. 3318.31 will clarify or alter the appropriation of state funds. Accordingly, we can discern no common purpose or relationship between the budget-related items in Am.Sub.H.B. No. 405 and the exclusion of OSFC employees from the collective-bargaining process. {¶ 35} Finally, SERB contends that, unlike the School Voucher Program in *Simmons-Harris*, the amendment to R.C.

3318.31 in Am.Sub.H.B. No. 405 is not *132leading edge or controversial legislation and, therefore, did not require separate discussion by the members of the General Assembly. See *Dix*, 11 Ohio St.3d at 143, 11 OBR 436, 464 N.E.2d 153 (“By limiting each bill to one subject, the issues presented can be better grasped and more intelligently discussed”).

Although the School Voucher Program is admittedly broader in scope and more progressive in objective than the amendment to R.C. 3318.31, the importance of the amendment to those affected by it, however few, cannot be doubted.

We decline to adopt a rule that requires a correlation between the degree of legislative attention given to a statutory provision within a proposed bill and the number of people affected by it. IV {¶ 36} For the foregoing reasons, we hold that Am.Sub.H.B. No. 405 violates the one-subject rule of the Ohio Constitution with regard to the amendment to R.C. 3318.31.

Accordingly, we affirm the judgment of the court of appeals severing the amendment to R.C. 3318.31 from Am.Sub.H.B. No. 405 and saving the nonoffending provisions in the Act. Because the amendment to R.C. 3318.31 was the basis upon which SERB dismissed OCSEA's six petitions, OCSEA has a clear legal right to the reinstatement of its six petitions, and SERB has a clear legal duty to reinstate them.

We therefore affirm the judgment of the court of appeals. Judgment affirmed. Resnick, F.E. Sweeney and O'Donnell, JJ., concur. Pfeifer, J., concurs in Parts III and IV of the opinion and in judgment. Lundberg Stratton and O'Connor, JJ., dissent..

On the same day that the state filed its motion to dismiss, OCSEA filed with SERB an unfair-labor-practice charge, alleging that the state had committed a series of unfair labor practices in violation of R.C. 4117.11(A)(1), (2), and (5). SERB also dismissed the charge that the state had committed unfair labor practices, finding that the "[information gathered during the investigation reveals the Charged Party was seeking confirmation of the intent of the legislation, which is not a violation of the statute." The court of appeals denied OCSEA's request for a writ ordering SERB to vacate its order dismissing the unfair-labor-practice charge and to find probable cause to believe that the state had committed an unfair labor practice.

OCSEA did not appeal the court of appeals' judgment, and, therefore, the issue is not before us.