



Received: 2023-SC-0445 05/13/2024  
 Filed: 2023-SC-0445 05/14/2024  
 M. Katherine Bing, Clerk  
 Supreme Court of Kentucky

**Supreme Court of Kentucky**  
**CASE NO. 2023-SC-0445**

COURT OF APPEALS  
 CASE NO. 2022-CA-0029

**LEXINGTON-FAYETTE URBAN  
 COUNTY GOVERNMENT**

**APPELLANT**

v. APPEAL FROM FAYETTE CIRCUIT COURT  
 HON. KIMBERLY N. BUNNELL  
 CIVIL ACTION NO. 21-CI-01972

**FRATERNAL ORDER OF POLICE,  
 BLUEGRASS LODGE #4**

**APPELLEE**

**BRIEF FOR APPELLEE**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that Appellee has, this 13th day of May 2024, served a true and correct copy of this Brief by electronic filing and first-class mail, postage prepaid, upon (i) Hon. Kate Morgan, Clerk of the Court of Appeals, 669 Chamberlin Ave., Ste. B, Frankfort, KY 40601; (ii) Hon. Kimberly N. Bunnell, Fayette Circuit Court, 120 N. Limestone, Lexington, KY 40507; (iii) Jason P. Renzelmann and Jennifer L. Bame, Frost Brown Todd, LLC, 400 W. Market St., Ste. 3200, Louisville, KY 40202; (iv) Alexander L. Ewing, Frost Brown Todd, LLC, 9277 Centre Pt. Dr., Ste. 300, West Chester, OH 45069; (v) Megan J. Griffith, Kentucky League of Cities, 100 E. Vine St., Ste. 800, Lexington, KY 40507, (vi) Kathryn Meador, Jefferson County Attorney’s Office, 200 S. Fifth St., 300N, First Trust Centre, Louisville, KY 40202; and (vii) David F. Broderick, Broderick & Davenport, PLLC, 921 College St., P.O. Box 3100, Bowling Green, KY 42102.

Respectfully submitted,

**MATTMILLER CROSBIE, PLLC**

/s/ Nicholas A. Oleson

\_\_\_\_\_  
 Scott A. Crosbie  
 Nicholas A. Oleson  
*COUNSEL FOR APPELLEE*  
*FRATERNAL ORDER OF POLICE,*  
*BLUEGRASS LODGE #4*

## INTRODUCTION

This civil action involves a municipal ordinance “banning the use of no-knock warrants” in Lexington, Fayette County, Kentucky (the “*No-Knock Ordinance*”). Lexington-Fayette Urban County Government (“*LFUCG*”) violated its statutory obligation to “bargain collectively” when it passed and implemented the No-Knock Ordinance. KRS 67A.6902(1). Fraternal Order of Police, Bluegrass Lodge #4 (“*Lodge #4*”) had a statutory right to bargain over the No-Knock Ordinance because it implicated and affected “conditions of employment,” including the health and safety of members of the bargaining units. *Id.* The Court of Appeals correctly found that Lodge #4 “state[d] claims against LFUCG upon which relief can be granted,” and it properly “reverse[d] the order dismissing those claims.” The Supreme Court of Kentucky (this “*Court*”) should **AFFIRM** the decision of the Court of Appeals and **REMAND** this civil action to the Trial Court for further proceedings.

## STATEMENT CONCERNING ORAL ARGUMENT

Lodge #4 respectfully requests oral argument. This civil action explores the scope of collective bargaining for public sector employees. This Court has not yet examined the bargaining rights found in KRS Chapter 67A: “Police officers... of an urban-county government shall have... the right of self-organization, to form, join, or assist any labor organization, *to bargain collectively* through representatives of their own choosing *on questions of wages, hours, and other conditions of employment* free from interference, restraint, or coercion.” KRS 67A.6902(1) (emphasis added). Lodge #4 believes that oral argument will refine the critical issues before this Court, highlight the state and federal precedent behind its legal position, and help resolve this case of first impression.

**COUNTERSTATEMENT OF POINTS AND AUTHORITIES**

**INTRODUCTION**..... i

**STATEMENT CONCERNING ORAL ARGUMENT** ..... i

**COUNTERSTATEMENT OF POINTS AND AUTHORITIES** ..... ii

**COUNTERSTATEMENT OF THE CASE**.....1

**ARGUMENT**.....6

*Int’l Ass’n of Fire Fighters, Local Union 1052 v. Pub. Emp. Rels. Comm’n*, 778 P.2d 32 (Wash. 1989).....6

CR 12.02 .....6

*Grand Aerie Fraternal Ord. of Eagles v. Carneyhan*, 169 S.W.3d 840 (Ky. 2005) .....6

*Russell v. Johnson & Johnson, Inc.*, 610 S.W.3d 233 (Ky. 2020).....6

*Hardin v. Jefferson Cnty. Bd. of Educ.*, 558 S.W.3d 1 (Ky. App. 2018) .....6

KRS 67A.6902.....7

KRS 67A.6903 .....7

**I. STANDARD OF REVIEW** .....7

CR 12.02 .....7

*Browne v. Poole*, 680 S.W.3d 810 (Ky. 2023) .....7

*Brown-Forman Corp. v. Miller*, 528 S.W.3d 886 (Ky. 2017) .....7

*Fox v. Grayson*, 317 S.W.3d 1 (Ky. 2010) .....8

*MGG Inv. Grp. LP v. Bemak N.V., Ltd.*, 671 S.W.3d 76 (Ky. 2023) .....8

**II. LFUCG VIOLATED KRS CHAPTER 67A WHEN IT ENACTED THE NO-KNOCK ORDINANCE.** .....8

KRS 67A.6902.....8

KRS 67A.6904.....8

29 U.S.C. § 157.....8

29 U.S.C. § 158.....8

*NLRB v. Solutia, Inc.*, 699 F.3d 50 (1st Cir. 2012).....8

*Brewers & Maltsters, Loc. Union No. 6 v. NLRB*, 414 F.3d 36 (D.C. Cir. 2005).....9

*FirstEnergy Generation, LLC v. NLRB*, 929 F.3d 321 (6th Cir. 2019).....9

*Loc. Union 36, Int’l Bhd. of Elec. Workers v. NLRB*, 706 F.3d 73 (2d Cir. 2013).....9

*Ammerman v. Bd. of Educ.*, 30 S.W.3d 793 (Ky. 2000).....9

*In re Amazon.com, Inc.*, 852 F.3d 601 (6th Cir. 2017).....9

*River Cmty. Care, Inc. v. NLRB*, 193 F.3d 444 (6th Cir. 1999).....9

*Town of Narragansett v. Int’l Ass’n of Fire Fighters, Loc. 1589*, 380 A.2d 521 (R.I. 1977)  
.....10

*Metro. Council No. 23 v. City of Ctr. Line*, 327 N.W.2d 822 (Mich. 1982).....10

*Fire Fighters Union, Loc. 1186 v. City of Vallejo*, 526 P.2d 971 (Cal. 1974).....10

*Waterloo Educ. Ass’n v. Iowa Pub. Emp. Rels. Bd.*, 740 N.W.2d 418 (Iowa 2007) .....11

*Salem Police Emps. Union v. City of Salem*, 781 P.2d 335 (Or. 1989).....11

*Univ. Educ. Ass’n v. Univ. of Minnesota*, 353 N.W.2d 534 (Minn. 1984) .....11

KRS 67A.6910.....11

*Truckee Meadows Fire Prot. Dist. v. Int’l Ass’n of Fire Fighters, Loc. 2487*, 849 P.2d 343  
(Nev. 1993) .....11

*Grand Rapids Cmty. Coll. Fac. Ass’n v. Grand Rapids Cmty. Coll.*, 609 N.W.2d 835  
(Mich. App. 2000).....11

*AFSCME v. City of Lebanon*, 388 P.3d 1028 (Or. 2017) .....12

Wis. Stat. Ann. § 111.70 (West).....12

Ohio Rev. Code Ann. § 4117.08 (West).....12

43 Pa. Stat. Ann. § 1101.702 (West) .....12

*Unified Sch. Dist. No. 1 v. Wis. Emp. Rels. Comm’n*, 259 N.W.2d 724 (Wis. 1977).....12

*Commonwealth v. Harrelson*, 14 S.W.3d 541 (Ky. 2000).....13

*Commonwealth ex rel. Brown v. Stars Interactive Holdings (IOM) Ltd.*, 617 S.W.3d 792 (Ky. 2020) .....13

*Pontiac Police Officers Ass’n v. City of Pontiac*, 246 N.W.2d 831 (Mich. 1976).....13

**III. THE NO-KNOCK ORDINANCE IMPLICATED AND AFFECTED MANDATORY SUBJECTS OF COLLECTIVE BARGAINING.....13**

KRS 67A.6902.....14

*ASARCO, Inc. v. NLRB*, 805 F.2d 194 (6th Cir. 1986).....14

*Oil, Chem. & Atomic Workers Loc. Union No. 6-418 v. NLRB*, 711 F.2d 348 (D.C. Cir. 1983) .....14

*Omaha Police Union Loc. 101 v. City of Omaha*, 736 N.W.2d 375 (Neb. 2007).....14

*City of Sault Ste. Marie v. Fraternal Ord. of Police Lab. Council*, 414 N.W.2d 168 (Mich. App. 1987) .....14

*NLRB v. Gulf Power Co.*, 384 F.2d 822 (5th Cir. 1967) .....14

*Grand Aerie Fraternal Ord. of Eagles v. Carneyhan*, 169 S.W.3d 840 (Ky. 2005) .....15

*Morgan v. Bird*, 289 S.W.3d 222 (Ky. App. 2009).....15

*St. Bernard v. State Emp. Rels. Bd.*, 598 N.E.2d 15 (Ohio App. 1991) .....16

KRS 455.180.....16

*U.S. v. Ramirez*, 523 U.S. 65 (1998) .....16

*Regal Cinemas, Inc. v. NLRB*, 317 F.3d 300 (D.C. Cir. 2003).....17

*City of Newton v. Com. Emp. Rels. Bd.*, 181 N.E.3d 1083 (Mass. App. 2021).....17

*Pasco Police Officers’ Ass’n v. City of Pasco*, 938 P.2d 827 (Wash. 1997).....18

*NLRB v. Challenge-Cook Bros. of Ohio, Inc.*, 843 F.2d 230 (6th Cir. 1988).....18



*City of Miami v. FOP Miami Lodge 20*, 571 So. 2d 1309 (Fla. Dist. Ct. App. 1989).....24

*Claremont Police Officers Ass’n v. City of Claremont*, 139 P.3d 532 (Cal. 2006) .....24

*Oil, Chem. & Atomic Workers Loc. Union No. 6-418 v. NLRB*, 711 F.2d 348 (D.C. Cir. 1983) .....25

**V. LFUCG VIOLATED KRS CHAPTER 67A WHEN IT REFUSED TO BARGAIN OVER THE EFFECTS OF THE NO-KNOCK ORDINANCE. ....25**

*NLRB v. Okla. Fixture Co.*, 79 F.3d 1030 (10th Cir. 1996).....25

*NLRB v. Solutia, Inc.*, 699 F.3d 50 (1st Cir. 2012).....25

*Loc. Union 36, Int’l Bhd. of Elec. Workers v. NLRB*, 706 F.3d 73 (2d Cir. 2013) .....25

*Kitsap Cnty. v. Kitsap Cnty. Corr. Officers’ Guild, Inc.*, 372 P.3d 769 (Wash. App. 2016) .....26

*Claremont Police Officers Ass’n v. City of Claremont*, 139 P.3d 532 (2006).....26

*Int’l Ass’n of Fire Fighters, Loc. Union 1052 v. Pub. Emp. Rels. Comm’n*, 778 P.2d 32 (Wash. 1989) .....26

*Sch. Dist. of Drummond v. Wis. Emp. Rels. Comm’n*, 358 N.W.2d 285 (Wis. 1984) .....26

*Loc. 195, IFPTE v. State*, 443 A.2d 187 (N.J. 1982) .....26

*Lorain City Sch. Dist. Bd. of Educ. v. State Emp. Rels. Bd.*, 533 N.E.2d 264 (Ohio 1988) .....26

*NLRB v. Centra, Inc.*, 954 F.2d 366 (6th Cir. 1992) .....27

*Sch. Comm. of Newton v. Labor Rels. Comm’n*, 447 N.E.2d 1201 (Mass. 1983).....27

*Gratiot Cmty. Hosp. v. NLRB*, 51 F.3d 1255 (6th Cir. 1995) .....27

*Grand Aerie Fraternal Ord. of Eagles v. Carneyhan*, 169 S.W.3d 840 (Ky. 2005) .....27

*Schell v. Young*, 640 S.W.3d 24 (Ky. App. 2021).....28

*Serv. Emps. Int’l Union, Loc. 226 v. Douglas Cnty. Sch. Dist. 001*, 839 N.W.2d 290 (Neb. 2013) .....28

KRS 67A.6903.....29

*Int’l Ass’n of Fire Fighters, Loc. 188 v. Pub. Emp. Rels. Bd.*, 245 P.3d 845 (Cal. 2011) .....29

*Am. Fed. of Tchrs. v. Ledbetter*, 387 S.W.3d 360 (Mo. 2012) .....29

*City & Borough of Sitka v. Int’l Bhd. of Elec. Workers, Loc. Union 1547*, 653 P.2d 332 (Alaska 1982).....29

*Central City Educ. Ass’n v. Ill. Educ. Lab. Rels. Bd.*, 599 N.E.2d 892 (Ill. 1992) .....29

*Law Enf’t Lab. Servs., Inc. v. Sherburne Cnty.*, 695 N.W.2d 630 (Minn. App. 2005) .....30

*Loc. 346, Int’l. Bhd. of Police Officers v. Lab. Rels Comm’n*, 462 N.E.2d 96 (Mass 1984) .....30

*Int’l Ass’n of Firefighters, Loc. 589 v. Helsby*, 59 A.D.2d 342 (N.Y. App. 1977) .....31

**VI. LFUCG VIOLATED THE CBAS WHEN IT ENACTED THE NO-KNOCK ORDINANCE. ....31**

KRS 67A.6908.....31

*Watkins v. Honeywell Int’l Inc.*, 875 F.3d 321 (6th Cir. 2017).....32

*Brown-Forman Corp. v. Miller*, 528 S.W.3d 886 (Ky. 2017) .....32

*KentuckyOne Health, Inc. v. Reid*, 522 S.W.3d 193 (Ky. 2017) .....32

F. Elkouri & E. Elkouri, *How Arbitration Works* (6th ed. 2003) .....32

CR 12.02 .....33

**VII. LFUCG VIOLATED THE CBAS WHEN IT REJECTED THE GRIEVANCE. ....33**

*Int’l Ass’n of Machinists & Aerospace Workers v. ISP Chems., Inc.*, 261 Fed. App’x 841 (6th Cir. 2008).....33

*AT&T Techs., Inc. v. Commc’ns Workers*, 475 U.S. 643 (1986) .....33

*Cleveland Elec. Illuminating Co. v. Util. Workers Union*, 440 F.3d 809 (6th Cir. 2006) ..33

*United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574 (1960).....35

*Toledo Police Patrolman’s Ass’n, Loc. 10, v. City of Toledo*, 713 N.E.2d 78 (Ohio App. 1998) .....36

CR 12.02 .....36

*United Steelworkers v. Am. Mfg. Co.*, 363 U.S. 564 (1960) .....36

*United Brick & Clay Workers of Am., Loc. No. 486 v. Lee Clay Prods Co.*, 488 S.W.2d 331 (Ky. 1972) .....37

*Sysco Minn., Inc. v. Teamsters Loc. 120*, 958 F.3d 757 (8th Cir. 2020).....38

*Dumont v. Saskatchewan Gov’t Ins.*, 258 F.3d 880 (8th Cir. 2001) .....38

*Vaca v. Sipes*, 386 U.S. 171 (1967) .....39

*Terwilliger v. Greyhound Lines, Inc.*, 882 F.2d 1033 (6th Cir. 1989) .....39

*Geddes v. Chrysler Corp.*, 608 F.2d 261 (6th Cir. 1979) .....39

*Am. Gen. Home Equity, Inc. v. Kestel*, 253 S.W.3d 543 (Ky. 2008) .....40

*NLRB v. Gulf Power Co.*, 384 F.2d 822 (5th Cir. 1967) .....40

*State v. Pub. Safety Emps. Ass’n*, 93 P.3d 409 (Alaska 2004).....40

*City of Detroit v. Detroit Fire Fighters Ass’n, Loc. 344*, 517 N.W.2d 240 (Mich. App. 1994) .....41

*Town of Narragansett v. Int’l Ass’n of Fire Fighters, Loc. 1589*, 380 A.2d 521 (R.I. 1977) .....41

*City of Covington v. Covington Lodge No. 1, Fraternal Ord. of Police*, 622 S.W.2d 221 (Ky. 1981) .....41

**VIII. THE NO-KNOCK ORDINANCE DISTURBED A COMPREHENSIVE SCHEME OF LEGISLATION.....42**

KRS 82.082 .....42

KRS 67A.070 .....42

*Lexington Fayette Cnty. Food & Beverage Ass’n v. Lexington-Fayette Urb. Cnty. Gov’t*, 131 S.W.3d 745 (Ky. 2004).....42

*Ky. Rest. Ass’n v. Louisville/Jefferson Cnty. Metro Gov’t*, 501 S.W.3d 425 (Ky. 2016)....42

*Louisville & N. R.R. Co. v. Commonwealth*, 488 S.W.2d 329 (Ky. 1972) .....42

*Whitehead v. Est. of Bravard*, 719 S.W.2d 720 (Ky. 1986).....43

KRS 455.180.....44

KRS 455.190.....44

KRS 455.200.....44

**CONCLUSION** .....**45**

**COUNTERSTATEMENT OF THE CASE**

Lexington-Fayette Urban County Government (“**LFUCG**”) operates the Lexington Police Department (“**LPD**”), a law enforcement agency situated in Lexington, Fayette County, Kentucky.<sup>1</sup> LFUCG employs two (2) bargaining units of police officers; the first is comprised of officers and sergeants, and the second is comprised of lieutenants and captains (together, “**LPD Officers**”).<sup>2</sup> See KRS 67A.6901(9) (“‘Police officer’ means an employee, sworn or certified, of an urban-county government who participates in the Law Enforcement Foundation Program Fund...”). Fraternal Order of Police, Bluegrass Lodge #4 (“**Lodge #4**”) is the exclusive representative of LPD Officers.<sup>3</sup> See KRS 67A.6901(4) (“‘Exclusive representative’ means the labor organization which has been designated by the cabinet as the representative of the majority of police officers... in appropriate units or has been so recognized by the urban-county government.”). LFUCG and Lodge #4 (together, the “**Parties**”) have a statutory duty to bargain in good faith “on questions of wages, hours, and other conditions of employment.” KRS 67A.6902(1); see also KRS 67A.6903 (“The urban-county government and... the exclusive representative of police officers... shall have the authority and the duty to bargain collectively.”).

The Parties have implemented two (2) separate collective bargaining agreements (the “**CBAs**”) for LPD Officers. See KRS 67A.6908(2) (“An agreement between the urban-county government and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this section....”). On July 5,

---

<sup>1</sup> Record on Appeal (“ROA”), Volume (“Vol.”) 3, page (“pg.”), 242.

<sup>2</sup> ROA, Vol. 3, pg. 243.

<sup>3</sup> ROA, Vol. 3, pg. 243-44.



No-Knock Ordinance established a mandatory “knock and announce” procedure for LPD Officers:<sup>10</sup>

(c) Any Lexington police officer charged with execution of a warrant upon any premises in order to gain entry shall:

(1) physically knock on an entry door to the premises in a manner and duration reasonably expected to be heard by the occupants;

(2) clearly and verbally announce, in a manner reasonably expected to be heard by the occupants, as law enforcement having a warrant; and

(3) absent exigent circumstances, wait a reasonable amount of time after knocking and announcing before entering the premises.

On May 13, 2021, Sergeant Jeremy Russell (“*Sgt. Russell*”), President of Lodge #4, sent an email to Mayor Linda Gorton (“*Mayor Gorton*”).<sup>11</sup> He demanded that LFUCG bargain in good faith over the No-Knock Ordinance and its effects on LPD Officers. Lodge #4 had serious concerns related to the No-Knock Ordinance; even Lawrence Weathers, Chief of LPD, opposed an absolute ban on no-knock warrants.<sup>12</sup> He testified that no-knock warrants remain a critical safety tool for LPD Officers.<sup>13</sup> On June 14, 2021, Sgt. Russell sent another email to Mayor Gorton and the Lexington-Fayette Urban County Council (the “*Council*”).<sup>14</sup> He demanded, for the second time, that LFUCG bargain over the proposed legislation and its effects on the bargaining units. On June 24, 2021, the Council approved the No-Knock Ordinance;<sup>15</sup> and, the following day, Mayor Gorton signed the

<sup>10</sup> ROA, Vol. 3, pg. 379; **Appendix 6**: No-Knock Ordinance.

<sup>11</sup> ROA, Vol. 3, pg. 246.

<sup>12</sup> ROA, Vol. 3, pg. 245.

<sup>13</sup> ROA, Vol. 3, pg. 245.

<sup>14</sup> ROA, Vol. 3, pg. 247.

<sup>15</sup> ROA, Vol. 3, pg. 247.

No-Knock Ordinance.<sup>16</sup> LFUCG completely defied its statutory obligation to “bargain collectively” when it passed and implemented the No-Knock Ordinance.

On June 30, 2021, Lodge #4 filed a Verified Petition for Declaratory Judgment and Injunctive Relief.<sup>17</sup> The same day, Lodge #4 filed a contractual grievance related to the No-Knock Ordinance (the “*Grievance*”) and invoked the five-step grievance procedure found in Article 11 of the CBAs (the “*Grievance Procedure*”).<sup>18</sup> The Grievance Procedure governs “[a]ny controversy between LFUCG and the Lodge concerning the meaning and application of any provisions of [the CBAs].”<sup>19</sup> The Grievance Procedure culminates in advisory arbitration:

If the Lodge is not satisfied with the answer obtained in Step 4, it may, within seven (7) days after receipt by the Lodge of the Step 4 answer, seek arbitration by notifying the other party of its intent to proceed to arbitration, and requesting a panel of seven (7) names from the Federal Mediation and Conciliation Service (FMCS) or the Kentucky Department of Labor.<sup>20</sup>

On August 14, 2021, Lodge #4 requested an arbitration panel from the Federal Mediation and Conciliation Service.<sup>21</sup> The next week, Lodge #4 received a letter from David Barberie, counsel for LFUCG.<sup>22</sup> The letter indicated, “LFUCG will not participate in the arbitration.” On August 31, 2021, Lodge #4 filed an Amended Complaint and Petition for Declaratory Judgment (the “*Amended Complaint*”).<sup>23</sup> The Amended Complaint alleged,

---

<sup>16</sup> ROA, Vol. 3, pg. 379; **Appendix 6**: No-Knock Ordinance.

<sup>17</sup> ROA, Vol. 1, pg. 18-42.

<sup>18</sup> ROA, Vol. 3, pg. 380; **Appendix 7**: Grievance Form.

<sup>19</sup> ROA, Vol. 3, pg. 370-78; **Appendix 8**: Ofc. CBA, Article 11; **Appendix 9**: Lt. CBA, Article 11.

<sup>20</sup> ROA, Vol. 3, pg. 370-78; **Appendix 8**: Ofc. CBA, Article 11; **Appendix 9**: Lt. CBA, Article 11.

<sup>21</sup> ROA, Vol. 3, pg. 251.

<sup>22</sup> ROA, Vol. 3, pg. 251.

<sup>23</sup> ROA, Vol. 3, pg. 242-80.

*inter alia*, that LFUCG violated the CBAs when it (i) passed and implemented the No-Knock Ordinance, and (ii) refused to “participate in the arbitration” of the Grievance. On September 23, 2021, LFUCG filed a Renewed Motion to Dismiss (the “**Motion**”).<sup>24</sup> On December 8, 2021, the Fayette Circuit Court (the “**Trial Court**”) sustained the Motion and dismissed the Amended Complaint.<sup>25</sup> Lodge #4 filed a Notice of Appeal.<sup>26</sup> On June 23, 2023, the Court of Appeals rendered an Opinion Affirming, in Part, Reversing, in Part, and Remanding (the “**Opinion**”).<sup>27</sup> The Court of Appeals studied the Amended Complaint in the context of CR 12.02(f) and noted, “The order dismissing does not begin by examining the sufficiency of the allegations and whether they state a claim.”<sup>28</sup> *See Seiller Waterman, LLC v. RLB Props., Ltd.*, 610 S.W.3d 188, 195 (Ky. 2020) (“[W]hen ruling on a motion to dismiss, the court’s ‘attention... should be directed only to the sufficiency of the allegations in the complaint.’”) (quoting *Ewell v. Cent. City*, 340 S.W.2d 479, 480 (Ky. 1960)). The Court of Appeals concluded, “Lodge #4 did state claims against LFUCG upon which relief can be granted,” and it “reverse[d] the order dismissing those claims and remand[ed] for additional proceedings.”<sup>29</sup> In short, the Court of Appeals explained:

[W]e are reversing and remanding to allow the parties to flesh out the merits of the arguments and, after doing so, allow the circuit court to rule accordingly. The parties must have ample opportunity to explore discovery if desired and then present their arguments on what constitutes conditions of employment, effects of employment..., and whether injunctive relief is warranted.<sup>30</sup>

---

<sup>24</sup> ROA, Vol. 4, pg. 330-32.

<sup>25</sup> ROA, Vol. 4, pg. 451-63.

<sup>26</sup> ROA, Vol. 4, pg. 464-79.

<sup>27</sup> **Appendix 1**: Opinion.

<sup>28</sup> **Appendix 1**: Opinion, pg. 7.

<sup>29</sup> **Appendix 1**: Opinion, pg. 2.

<sup>30</sup> **Appendix 1**: Opinion, pg. 10.

On September 21, 2023, LFUCG filed a Motion for Discretionary Review. The Supreme Court of Kentucky (this “*Court*”) granted discretionary review of the Opinion.

### ARGUMENT

The Trial Court erred when it dismissed the Amended Complaint and resolved this intricate scope-of-bargaining controversy without any proof in the record. *See Int’l Ass’n of Fire Fighters, Local Union 1052 v. Pub. Emp. Rels. Comm’n*, 778 P.2d 32, 37 (Wash. 1989) (en banc) (“Scope-of-bargaining questions cannot be resolved so summarily.”) Lodge #4 stated “claim[s] upon which relief can be granted;”<sup>31</sup> the bargaining unit asserted its statutory bargaining rights found in KRS Chapter 67A and pled factual allegations “to identify the basis of its claim[s].” *Grand Aerie Fraternal Ord. of Eagles v. Carneyhan*, 169 S.W.3d 840, 845 (Ky. 2005) (quoting *Nat. Res. & Env’t. Prot. Cabinet v. Williams*, 768 S.W.2d 47, 51 (Ky. 1989)).<sup>32</sup> The Trial Court exceeded the narrow purview of CR 12.02(f), rejected the material allegations of the Amended Complaint, and dodged significant questions of fact, *e.g.*, whether the No-Knock Ordinance impairs the health and safety of LPD Officers. *See Hardin v. Jefferson Cnty. Bd. of Educ.*, 558 S.W.3d 1, 6 (Ky. App. 2018) (“For purposes of a CR 12.02(f) motion, this Court, like the circuit court, must accept as true the plaintiff’s factual allegations and draw all reasonable inferences in the plaintiff’s favor.”). The Trial Court also radically undercut the force of KRS Chapter 67A; it authorized urban county-governments to enact legislation on matters of “public

---

<sup>31</sup> CR 12.02(f).

<sup>32</sup> *Russell v. Johnson & Johnson, Inc.*, 610 S.W.3d 233, 241 (Ky. 2020) (“Our liberal pleading standard was recently demonstrated when we held that a complaint ‘couched in general and conclusory terms, complied with CR 8.01(1).’”) (quoting *KentuckyOne Health, Inc. v. Reid*, 522 S.W.3d 193, 197 (Ky. 2017)).

policy,” regardless of their statutory duty “to bargain collectively... on questions of wages, hours, and other conditions of employment.” KRS 67A.6902(1); *see also* KRS 67A.6903 (“The urban-county government... shall have the authority and the duty to bargain collectively.”). If this Court upholds its debilitating interpretation of KRS Chapter 67A, then urban-county governments need only mention some unfounded “public policy” to forever escape their bargaining obligation. The Court of Appeals rightfully held that Lodge #4 “state[d] claims against LFUCG upon which relief can be granted,”<sup>33</sup> and that it should have received “ample opportunity to explore discovery.”<sup>34</sup> In the end, this Court should **AFFIRM** the decision of the Court of Appeals and **REMAND** this civil action to the Trial Court for further proceedings.

#### **I. STANDARD OF REVIEW.**

A trial court may dismiss a complaint when it “fail[s] to state a claim upon which relief can be granted.” CR 12.02(f). The Supreme Court of Kentucky has explained, “A motion to dismiss... ‘admits as true the material facts of the complaint.’” *Browne v. Poole*, 680 S.W.3d 810, 812 (Ky. 2023) (emphasis added) (quoting *Fox v. Grayson*, 317 S.W.3d 1, 7 (Ky. 2010)); *see also Brown-Forman Corp. v. Miller*, 528 S.W.3d 886, 889 (Ky. 2017) (“The pleadings should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true.”) (quoting *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009)). “The trial court should deny the motion ‘unless it appears the pleading party would not be entitled to relief under any set of facts which could be proved[.]’” *Browne*, 680 S.W.3d at 812 (emphasis added) (quoting *Pari-Mutuel Clerks’*

<sup>33</sup> **Appendix 1**: Opinion, pg. 2.

<sup>34</sup> **Appendix 1**: Opinion, pg. 10.

*Union of Ky., Loc. 541 v. Ky. Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977)). “This exacting standard of review eliminates any need by the trial court to make findings of fact; ‘rather, the question is purely a matter of law.’” *Fox*, 317 S.W.3d at 7 (quoting *James v. Wilson*, 95 S.W.3d 875, 884 (Ky. App. 2002)). In sum, the trial court must ask, “if the facts alleged in the complaint can be proved, would the plaintiff be entitled to relief?” *Id.* “Since a motion to dismiss... is a pure question of law, a reviewing court owes no deference to a trial court’s determination; instead, an appellate court reviews the issue de novo.” *MGG Inv. Grp. LP v. Bemak N.V., Ltd.*, 671 S.W.3d 76, 82 (Ky. 2023) (quoting *Gregory v. Hardgrove*, 562 S.W.3d 911, 913 (Ky. 2018)).

## II. LFUCG VIOLATED KRS CHAPTER 67A WHEN IT ENACTED THE NO-KNOCK ORDINANCE.

LFUCG violated its statutory obligation to “bargain collectively” when it passed and implemented the No-Knock Ordinance. LPD Officers have a “right of self-organization, to form, join, or assist any labor organization, *to bargain collectively* through representatives of their own choosing *on questions of wages, hours, and other conditions of employment* free from interference, restraint, or coercion.” KRS 67A.6902(1) (emphasis added). LFUCG has a concomitant duty to bargain “*in good faith with respect to wages, hours, and other conditions of employment.*” KRS 67A.6904(3) (emphasis added). The Kentucky General Assembly (the “*Legislature*”) extracted the phrase “wages, hours, and other conditions of employment” from the National Labor Relations Act (the “*NLRA*”). *See* 29 U.S.C. § 157, 158(d). Those expansive terms delineate mandatory subjects of collective bargaining. *See NLRB v. Solutia, Inc.*, 699 F.3d 50, 60 (1st Cir. 2012) (“[A]n employer’s decisions about ‘wages, hours, and other terms and conditions of employment’ are mandatory subjects of bargaining.”); *Brewers &*

*Maltsters, Loc. Union No. 6 v. NLRB*, 414 F.3d 36, 40 (D.C. Cir. 2005) (“The duty to bargain is mandatory with respect to . . . wages, hours, and terms and conditions of employment.”). An employer violates its statutory duty to bargain in good faith “**when it takes unilateral action relative to any mandatory subject of collective bargaining.**” *FirstEnergy Generation, LLC v. NLRB*, 929 F.3d 321, 324 (6th Cir. 2019); *see also Loc. Union 36, Int’l Bhd. of Elec. Workers v. NLRB*, 706 F.3d 73, 81 (2d Cir. 2013) (“[I]t is axiomatic that an employer violates its duty to bargain under [the NLRA] by changing employees’ terms and conditions of employment without notifying and bargaining with the collective bargaining representative of its employees.”) (quoting *NLRB v. United Techs. Corp.*, 884 F.2d 1569, 1574-75 (2d Cir. 1989)). The No-Knock Ordinance implicated and affected “conditions of employment,” including the health and safety of LPD Officers; therefore, LFUCG violated KRS Chapter 67A when it passed and implemented the No-Knock Ordinance without collective bargaining.

Since the Legislature modeled KRS Chapter 67A after the NLRA, this Court should interpret the phrase “wages, hours, and other conditions of employment” consistent with federal law. *See Ammerman v. Bd. of Educ.*, 30 S.W.3d 793, 797-98 (Ky. 2000) (“The Kentucky Act is similar to Title VII of the 1964 federal Civil Rights Act and should be interpreted consistently with federal law.”).<sup>35</sup> The NLRA does not govern public sector employees,<sup>36</sup> but the Legislature replicated almost every component of the

<sup>35</sup> *See also In re Amazon.com, Inc.*, 852 F.3d 601, 610 (6th Cir. 2017) (“If the Kentucky Act is ‘similar to a Federal Act,’ its language ‘will normally be interpreted consistent with federal law.’”) (quoting *Starr v. Louisville Graphite, Inc.*, No. 2014-CA-000620-MR, 2016 WL 1612940, at \*3 (Ky. App. Apr. 22, 2016)).

<sup>36</sup> *See Ky. River Cmty. Care, Inc. v. NLRB*, 193 F.3d 444, 450 (6th Cir. 1999) (“Section 2(2) of the NLRA excludes from the definition of employer ‘any State or political subdivision thereof.’”) (quoting 29 U.S.C. § 152(2)).

federal act when it drafted KRS Chapter 67A.<sup>37</sup> The Trial Court disregarded the persuasive force of federal precedent on mandatory subjects of collective bargaining;<sup>38</sup> many states interpret the phrase “conditions of employment” consistent with federal law. *See Town of Narragansett v. Int’l Ass’n of Fire Fighters, Loc. 1589*, 380 A.2d 521, 522 (R.I. 1977) (“Because this language closely parallels that of the [NLRA], this court has recognized on numerous occasions the persuasive force of federal decisions construing the phrase ‘terms and conditions of employment.’”).<sup>39</sup> The Supreme Court of California has explained:

The [city] objects to the use of NLRA precedents because of the alleged differences between employment relations in the public and private sectors. Although we recognize that there are certain basic differences between employment in the public and private sectors, ***the adoption of legislation providing for public employment negotiation on wages, hours and working conditions just as in the private sector demonstrates that the Legislature found public sector and private sector employment relations sufficiently similar to warrant similar bargaining provisions.*** We therefore conclude that the bargaining requirements of the [NLRA] and cases interpreting them may properly be referred to for such enlightenment as they may render in our interpretation of the scope of bargaining under the [city] charter.

*Fire Fighters Union, Loc. 1186 v. City of Vallejo*, 526 P.2d 971, 977 (Cal. 1974) (en banc) (emphasis added). LFUCG pushes “a narrow reading of ‘conditions of employment;’”<sup>40</sup> it

---

<sup>37</sup> Compare KRS 67A.6902(1) (“Police officers... of an urban-county government shall have... the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing...”), with 29 U.S.C. § 157 (“Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing...”).

<sup>38</sup> ROA, Vol. 4, pg. 456-58.

<sup>39</sup> See also *Metro. Council No. 23 v. City of Ctr. Line*, 327 N.W.2d 822, 827 (Mich. 1982) (“[I]t has been held in numerous Michigan decisions that federal precedent in distinguishing between mandatory and permissive subjects is relevant and persuasive.”).

<sup>40</sup> Brief for Appellant, pg. 15.

imposes artificial limits on the scope of bargaining in the public sector.<sup>41</sup> See *Waterloo Educ. Ass'n v. Iowa Pub. Emp. Rels. Bd.*, 740 N.W.2d 418, 422 (Iowa 2007) (“[T]he United States Supreme Court has construed the NLRA to provide a relatively broad scope of mandatory bargaining under the phrase... ‘conditions of employment.’”). The phrase “conditions of employment” is inclusive, not exclusive, and it must “be broadly construed so that the purpose of resolving labor disputes through negotiation c[an] best be served.” *Univ. Educ. Ass'n v. Univ. of Minnesota*, 353 N.W.2d 534, 53 (Minn. 1984).<sup>42</sup> This Court should also consider the absence of a right to strike in the public sector.<sup>43</sup> The Supreme Court of Nevada has reasoned, “***An interpretation of the statute as requiring a relatively broad scope of negotiations also serves to balance the absence of the right to strike by public employees.***” *Truckee Meadows Fire Prot. Dist. v. Int’l Ass’n of Fire Fighters, Loc. 2487*, 849 P.2d 343, 349 (Nev. 1993) (emphasis added); see also *Grand Rapids Cmty. Coll. Fac. Ass’n v. Grand Rapids Cmty. Coll.*, 609 N.W.2d 835, 839 (Mich. App. 2000) (“[W]e are guided in our analysis by the basic proposition that because public employees are restricted from striking, the scope of the bargaining obligation for public employers is to be broadly construed.”). In sum, this Court should broadly construe the scope of bargaining in the public sector, consistent with robust federal precedent interpreting the NLRA.

---

<sup>41</sup> Brief for Appellant, pg. 14-15.

<sup>42</sup> See also *Salem Police Emps. Union v. City of Salem*, 781 P.2d 335, 339 (Or. 1989) (en banc) (“If negotiation and mediation are to be effective means of resolving labor disputes, the scope of the definition of those matters subject to mandatory negotiation and mediation must be broad enough to encompass all matters over which labor disputes are likely to arise.”) (quoting *Portland Fire Fighters Ass’n, Loc. 43 v. City of Portland*, 751 P.2d 770, 774 (Or. 1988)).

<sup>43</sup> See KRS 67A.6910 (“No police officer... of an urban-county government shall engage in, and no police officer labor organization... shall sponsor or condone, any strike.”).

The Legislature granted LPD Officers the same bargaining rights found in the NLRA. LFUCG contends, “the scope of negotiations in the public sector is more limited than in the private sector...”<sup>44</sup> This argument discounts the explicit text of KRS Chapter 67A. The Legislature did not restrict or confine the scope of bargaining when it enacted our public sector bargaining framework. *See AFSCME v. City of Lebanon*, 388 P.3d 1028, 1032 (Or. 2017) (en banc) (“Basically, in enacting PECBA, the legislature extended to public employees in Oregon the same benefits and protections that federal law had long afforded to employees in the private sector under the [NLRA].”). LFUCG also ignores a critical distinction between KRS Chapter 67A and similar laws in other jurisdictions. A number of state legislatures have enacted “management rights” provisions in their public sector bargaining statutes.<sup>45</sup> *See Unified Sch. Dist. No. 1 v. Wis. Emp. Rels. Comm’n*, 259 N.W.2d 724, 729-30 (Wis. 1977) (“Management rights clauses... are a recognized and widely used means of distinguishing the scope of collective bargaining in the public sector from that of bargaining in the private sector.”). For example, the Pennsylvania General Assembly included a “management rights” provision in its Public Employees Relations Act: “Public employers shall not be required to bargain over matters of inherent

---

<sup>44</sup> Brief for Appellant, pg. 19.

<sup>45</sup> These provisions still mandate bargaining (some establish a lesser “meet and confer” obligation) when the function or decision affects a mandatory subject of collective bargaining. *See, e.g.*, Wis. Stat. Ann. § 111.70 (West) (“A municipal employer is not required to bargain with public safety employees... on subjects reserved to management... except insofar as the manner of exercise of such functions affects the wages, hours, and conditions of employment of the public safety employees...”); Ohio Rev. Code Ann. § 4117.08 (West) (“The employer is not required to bargain on subjects reserved to the management... except as affect wages, hours, terms and conditions of employment...”); 43 Pa. Stat. Ann. § 1101.702 (West) (“Public employers, however, shall be required to meet and discuss on policy matters affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by public employee representatives.”).

managerial policy, which shall include but shall not be limited to such areas of discretion or policy as the functions and programs of the public employer....” 43 Pa. Stat. Ann. § 1101.702 (West). Here, the Legislature did not enact a so-called “management rights” provision in KRS Chapter 67A, and this Court should not presume that it intended to restrict the scope of bargaining in the public sector. *See Commonwealth v. Harrelson*, 14 S.W.3d 541, 546 (Ky. 2000) (“We are not at liberty to add or subtract from the legislative enactment....”); *Commonwealth ex rel. Brown v. Stars Interactive Holdings (IOM) Ltd.*, 617 S.W.3d 792, 798 (Ky. 2020) (“[W]e assume that the Legislature meant exactly what it said, and said exactly what it meant.”). The Michigan Supreme Court has decided:

If the Legislature deems it appropriate to redefine the scope of the collective bargaining obligation of the public employers generally or of particular public employers and the representatives of their employees to include ‘wages, hours, and *some* other terms and conditions of employment,’ it may do so.

***This Court cannot properly decide ad hoc that what has uniformly been regarded a ‘condition’ of employment is not such a condition as applied to a particular public employer although it continues to be such a condition for other employers, public and private.***

*Pontiac Police Officers Ass’n v. City of Pontiac*, 246 N.W.2d 831, 836 (Mich. 1976) (emphasis added). The Legislature purposefully adopted the expansive bargaining rights found in the NLRA; therefore, LPD Officers enjoy “the same benefits and protections that federal law ha[s] long afforded to employees in the private sector[.]” *City of Lebanon*, 388 P.3d at 1032.

**III. THE NO-KNOCK ORDINANCE IMPLICATED AND AFFECTED MANDATORY SUBJECTS OF COLLECTIVE BARGAINING.**

LFUCG had a statutory duty to bargain in good faith over the No-Knock Ordinance because it implicated and affected “conditions of employment,” including the

health and safety of LPD Officers. KRS 67A.6902(1). LFUCG claims, “bargaining is not required here because the Ordinance does not directly concern any ‘condition of employment’ within the meaning of KRS 67A.6902.”<sup>46</sup> This conclusion is simply incorrect. The phrase “conditions of employment” includes the health and safety of LPD Officers. *See ASARCO, Inc. v. NLRB*, 805 F.2d 194, 198 (6th Cir. 1986) (“Employee safety, as a condition of employment, is a mandatory subject of collective bargaining.”); *Oil, Chem. & Atomic Workers Loc. Union No. 6-418 v. NLRB*, 711 F.2d 348, 360 (D.C. Cir. 1983) (“Employee health and safety indisputably are mandatory subjects of collective bargaining, about which the unions in each of these cases have insisted on negotiating.”). This analysis transcends federal precedent; many states consider health and safety “conditions of employment,” or mandatory subjects of collective bargaining, in the public sector. *See, e.g., Omaha Police Union Loc. 101 v. City of Omaha*, 736 N.W.2d 375, 383 (Neb. 2007) (“[I]t can be fairly said that response time does relate to officer safety and, thus, the manner in which it is determined affects a condition of employment.”); *City of Sault Ste. Marie v. Fraternal Ord. of Police Lab. Council*, 414 N.W.2d 168, 170 (Mich. App. 1987) (“The issues of employee workload and safety, however, constitute conditions of employment and hence are mandatory subjects of bargaining.”). Furthermore, LFUCG has already conceded that its statutory obligation to “bargain collectively” extends to the health and safety of LPD Officers. KRS 67A.6903. The Parties negotiated specific provisions in each of the CBAs related to the health and safety of LPD Officers. *See NLRB v. Gulf Power Co.*, 384 F.2d 822, 824 (5th Cir. 1967) (“[T]he parties by their own actions in the past have clearly indicated that they consider

---

<sup>46</sup> Brief for Appellant, pg. 20.





Lodge #4 did not waive its statutory right to “bargain collectively” over the No-Knock Ordinance. KRS 67A.6902(1). LFUCG argues, “Even if the decision to enact the Ordinance were subject to mandatory bargaining under KRS 67A..., that bargaining still would not be required because the CBA itself contains a management rights clause...”<sup>54</sup> This contention defies state and federal precedent. The D.C. Circuit has found, “Although a union may waive its statutory protection against an employer’s unilateral changes in subjects of mandatory bargaining, *we will not infer such a waiver from a general contractual provision unless the waiver is ‘clear and unmistakable.’*” *Regal Cinemas, Inc. v. NLRB*, 317 F.3d 300, 312 (D.C. Cir. 2003) (emphasis added) (quoting *Honeywell Int’l, Inc. v. NLRB*, 253 F.3d 125, 133 (D.C. Cir. 2001)); *see also City of Newton v. Com. Emp. Rel. Bd.*, 181 N.E.3d 1083, 1093 (Mass. App. 2021) (“A broadly framed ‘management rights clause’ does not ‘provide a basis for inferring a clear and unmistakable waiver.’”) (quoting *Sch. Comm. of Newton v. Lab. Rel. Comm’n*, 447 N.E.2d 1201, 1210 (Mass. 1983)). The Court of Appeals correctly held, “absent proof of its clear and convincing waiver of the right to collectively bargain with LFUCG over this subject, LFUCG’s argument will not justify dismissing either Count 1 or Count 2.”<sup>55</sup> In short, Lodge #4 granted LFUCG the basic ability to “promulgate, at its discretion, policies, rules, regulations, and orders *which are not inconsistent with [the CBAs]*.”<sup>56</sup> The No-Knock Ordinance is inconsistent with Article 1 of the CBAs because LFUCG had an explicit duty to “bargain promptly upon request... on matters within the scope of

---

<sup>54</sup> Brief for Appellant, pg. 37.

<sup>55</sup> **Appendix 1**: Opinion, pg. 11.

<sup>56</sup> ROA, Vol. 3, pg. 328-39.

representation.”<sup>57</sup> See *Pasco Police Officers’ Ass’n v. City of Pasco*, 938 P.2d 827, 834 (Wash. 1997) (en banc) (“Courts will not ‘infer from a general contractual provision that the parties intended to waive a statutorily protected right unless the undertaking is ‘explicitly stated.’ More succinctly, the waiver must be clear and unmistakable.”) (quoting *Metro. Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983)). Moreover, Lodge #4 specifically reserved a contractual right to bargain with LFUCG on questions of health and safety in Article 14 of the CBAs.<sup>58</sup> LFUCG maintains, “the CBA... does not expressly address the issue of warrant execution;”<sup>59</sup> however, the Sixth Circuit has decided, “*silence in the collective bargaining agreement does not constitute a waiver.*” *NLRB v. Challenge-Cook Bros. of Ohio, Inc.*, 843 F.2d 230, 233 (6th Cir. 1988) (emphasis added). LFUCG had a clear, statutory obligation to bargain over the No-Knock Ordinance because it implicated and affected “conditions of employment,” including the health and safety of LPD Officers.

#### IV. LFUCG COULD NOT AVOID ITS STATUTORY OBLIGATION TO “BARGAIN COLLECTIVELY” IN THE LAWMAKING PROCESS.

LFUCG is not immune from collective bargaining in the lawmaking process; the government, through its exclusive representative,<sup>60</sup> must follow its statutory obligation “to bargain collectively... on questions of wages, hours, and other conditions of employment.” KRS 67A.6902(1); see also *AFSCME Loc. #74 v. Warren*, 895 N.E.2d 238,

<sup>57</sup> ROA, Vol. 3, pg. 359-61; **Appendix 2**: Ofc. CBA, Article 1; **Appendix 3**: Lt. CBA, Article 1.

<sup>58</sup> ROA, Vol. 3, pg. 362-69; **Appendix 4**: Ofc. CBA, Article 14; **Appendix 5**: Lt. CBA, Article 14.

<sup>59</sup> Brief for Appellant, pg. 40.

<sup>60</sup> LFUCG has identified “the Mayor’s representative and designee as the sole representative of LFUCG for the purposes of collective bargaining negotiations.” ROA, Vol. 3, pg. 243-44.

251 (Ohio App. 2008) (“The residency ordinance undercuts the right to collectively bargain all of the terms and conditions of public-sector employment... by imposing a condition of employment rather than allowing the parties to negotiate the condition as part of the collective-bargaining agreement.”). LFUCG claims, “the decision to adopt the Ordinance is predominantly a matter of public policy relating to public safety and welfare, which by itself precludes any obligation to bargain as a matter of law.”<sup>61</sup> LFUCG entirely disrespects the force of its statutory duty to “bargain collectively.” See KRS 67A.6903 (“The urban-county government... shall have the authority and the duty to bargain collectively.”). The Michigan Supreme Court has explained:

The enactment of an ordinance, however, *despite its validity and compelling purpose, cannot remove the duty to bargain...* if the subject of the ordinance concerns the ‘wages, hours or other terms and conditions of employment’ of public employees. If the residency ordinance were to be read to remove a mandatory subject of bargaining from the scope of collective bargaining negotiations, *the ordinance would be in direct conflict with state law and consequently invalid.*

*Detroit Police Officers Ass’n v. City of Detroit*, 214 N.W.2d 803, 810 (Mich. 1974)

(emphasis added). If this Court removes collective bargaining from the lawmaking process, then LFUCG can subvert the CBAs by municipal ordinance. The Supreme Court of Pennsylvania has warned:

[A]n employer commits an unfair labor practice if it refuses to collectively bargain with a union representing its employees over these mandatory topics. ...

The fact that a public employer changes benefits through the enactment or repeal of an ordinance does not alter this calculus. Indeed, if this were the case, a public employer could grant benefits through ordinances and simply unilaterally repeal them when so desired. ... [I]n *Ellwood City*... we explained that *[the Acts]’s specific exercise of the Commonwealth’s police power through the granting of collective bargaining rights is not*

---

<sup>61</sup> Brief for Appellant, pg. 12.

***subservient to ordinances created through general police powers:***  
 “Indeed, if this were the case, ***a borough could eviscerate the very essence of statutorily-mandated collective bargaining by legislating in areas which are traditionally subject to mutual agreement*** through collective bargaining under its power to regulate the health, safety, and general welfare of its citizens.”

*City of Erie v. Pa. Lab. Rels. Bd.*, 32 A.3d 625, 635 (Pa. 2011) (emphasis added) (quoting *Borough of Ellwood City v. Pa. Lab. Rels. Bd.*, 998 A.2d 589, 601-02 (Pa. 2010)).

LFUCG inflates the burden of collective bargaining; it argues, “A public employee union could grind to a halt any policy change it opposed... by alleging some indirect effect on public employees’ working conditions.”<sup>62</sup> This Court should disregard its hyperbolic remarks. LFUCG had ***two (2) months*** from the introduction of the No-Knock Ordinance (May 4, 2021), before its eventual ratification (June 24, 2021), to satisfy its statutory obligation to bargain in good faith over the decision to ban no-knock warrants and its impact on LPD Officers. *See Int’l Ass’n of Fire Fighters, Loc. 188 v. Pub. Emp. Rels. Bd.*, 245 P.3d 845, 852 (Cal. 2011) (en banc) (“The obligation to bargain ‘in good faith’ means that the parties must genuinely seek to reach agreement... and it recognizes that a public employer has the ultimate power to reject employee proposals on any particular issue.”). Nonetheless, the Legislature has already decided that, regardless of the potential burden on the lawmaking process, “police officers... of an urban-county government shall have, and shall be protected in the exercise of, the right... to bargain collectively....”. KRS 67A.6902(1); *see also Int’l Ass’n of Fire Fighters, Local Union 1052 v. Pub. Emp. Rels. Comm’n*, 778 P.2d 32, 36 (Wash. 1989) (en banc) (“When staffing levels have a demonstratedly direct relationship to employee workload and safety... we believe that...

---

<sup>62</sup> Brief for Appellant, pg. 33.

requiring an employer to bargain over them will achieve the balance of public, employer and union interests that best furthers the purposes of the public employment collective bargaining laws.”). LFUCG must respect its statutory obligation to “bargain collectively” in the lawmaking process.

The Trial Court erred when it resolved this intricate scope-of-bargaining controversy without any proof in the record. The Trial Court summarily ruled, “Even if the Court applied a balancing test like the one used by several sister states, the test weighs heavily in favor of finding the No-Knock Ordinance a matter of inherent managerial right.”<sup>63</sup> See *Int’l Ass’n of Fire Fighters, Local Union 1052*, 778 P.2d at 37 (“Scope-of-bargaining questions cannot be resolved so summarily.”). The Iowa Supreme Court has explained:

[I]n cases involving statutes with expansive NLRA-type scope-of-bargaining provisions, there is a conflict between the expansive concepts of employee rights and traditional public employer prerogatives. These are two highly territorial pikes at large in the legal pond of collective bargaining, each with the capacity of devouring the other. In order to avoid the predominance of either management or employee rights, state courts have concluded that they have no other choice but to engage in balancing of some kind.

*Waterloo Educ. Ass’n v. Iowa Pub. Emp. Rels. Bd.*, 740 N.W.2d 418, 423 (Iowa 2007).

LFUCG asserts, “The question of whether a proposal is subject to mandatory bargaining is ‘purely one of law,’ based on ‘a legal question of statutory construction’ of the bargaining statutes....”<sup>64</sup> The Washington Supreme Court has declared, “***This approach is inconsistent with... [the] well-settled practice of determining scope-of-bargaining questions only after being fully apprised of the facts of each case.***” See *Int’l Ass’n of*

---

<sup>63</sup> ROA, Vol. 4, pg. 459.

<sup>64</sup> Brief for Appellant, pg. 30.

*Fire Fighters, Local Union 1052*, 778 P.2d at 35 (emphasis added). LFUCG misjudges the fact-sensitive nature of this scope-of-bargaining controversy. *See St. Bernard v. State Emp. Rels. Bd.*, 598 N.E.2d 15, 17-18 (Ohio App. 1991) (“Whether a public employer’s unilateral action ‘affect[s] wages, hours, terms and conditions of employment’ ... is generally a factual question which varies depending upon the employer, the employees, and the circumstances of the case.”).<sup>65</sup> Here, the Trial Court should have, at minimum, conducted a full evidentiary hearing. *See Toledo Police Patrolman’s Ass’n., Local 10 v. Toledo*, 713 N.E.2d 78, 88 (Ohio App. 1998) (“[T]he judge relied on safety studies, testimony, a report, and a survey to determine that implementation of the one-officer patrol units involved an alleged violation of [the Act].”). The Legislature has also authorized the Kentucky Labor Cabinet to hear complaints of unfair labor practices;<sup>66</sup> in fact, many jurisdictions have assigned a fact-finding role to some type of quasi-judicial body, usually an employment relations board or labor arbitrator. *See, e.g., City of Allentown v. Int’l Ass’n of Fire Fighters Local 302*, 157 A.3d 899, 913 (Pa. 2017) (“The testimony and documentary evidence from the arbitration proceedings... clearly establishes an unambiguous and powerful link between shift staffing and firefighter health and safety.”).<sup>67</sup> At the end of the day, the Trial Court erred when it dodged a key

---

<sup>65</sup> *See also Bd. of Trs. of Univ. of Ill. v. Ill. Educ. Lab. Rels. Bd.*, 862 N.E.2d 944, 950 (Ill. 2007) (“[T]he determination of whether an issue is a subject of mandatory bargaining is ‘very fact-specific,’ and the Boards are ‘eminently qualified to resolve’ that question.”).

<sup>66</sup> *See* KRS 67A.6906. Lodge #4 has filed a complaint with the Kentucky Labor Cabinet.

<sup>67</sup> *See also, e.g., Fire Fighters Union v. City of Vallejo*, 526 P.2d 971, 979 (Cal. 1974) (en banc) (“[W]e believe the proper course must be to submit the issue to the arbitrators so that a factual record may be established. The nature of the evidence presented... should largely disclose whether the manpower issue primarily involves the workload and safety of the men....”); *City of Everett v. Pub. Emp. Rels. Comm’n*, 451 P.3d 347, 351 (Wash. App. 2019) (“The unrebutted testimony of the fire department chiefs and captains

factual question: whether no-knock warrants have “*a demonstrably direct relationship to*” the health and safety of LPD Officers. *Int’l Ass’n of Fire Fighters, Local Union 1052*, 778 P.2d at 36 (emphasis added). Lodge #4 had an inherent right to show the full extent of its bargaining interest before the Trial Court reached the merits of this scope-of-bargaining controversy. The Court of Appeals properly held, “further pleadings or proof is necessary to a final and correct decision of” this civil action.<sup>68</sup>

The Trial Court also erred when it deferred to the “public safety” justification for the No-Knock Ordinance. The Court of Appeals rightly questioned, “[t]he circuit court’s touchstone of local government’s power to enact ordinances it declares as public policy..., coupled with [its] legal conclusion LFUCG was freed thereby from contractual and statutory duties....”<sup>69</sup> See *Int’l Ass’n of Fire Fighters Local 302*, 157 A.3d at 914 (“[W]e conclude that a minimum shift staffing mandate, given its direct and significant impact on firefighter health and safety, is simply not a managerial prerogative that should be insulated from the give-and-take of collective bargaining.”). LFUCG contends, “While this inquiry is often referred to as a ‘balancing test,’ it does not call for weighing of costs and benefits, or an assessment of the efficacy of the policy, as the FOP has suggested.”<sup>70</sup> This position is mistaken. Since LFUCG has an explicit statutory duty “*to negotiate in*

---

supports PERC finding a demonstrably direct relationship between workload and safety. The testimony established the increased demand to respond to calls resulted in safety risks to the crews on duty for each shift.”); *City of Manistee v. Manistee Fire Fighters Ass’n, Local 645*, 435 N.W.2d 778, 781 (Mich. App. 1989) (“The record in this case is replete with testimony that the use of only two-man, on-duty shifts... causes increased pressure, stress and fatigue on fire fighters. ... Therefore, the MERC decision that minimum manning requirements are a mandatory subject for bargaining is supported by... substantial evidence on the record.”).

<sup>68</sup> Brief for Appellant, pg. 12.

<sup>69</sup> **Appendix 1**: Opinion, pg. 8.

<sup>70</sup> Brief for Appellant, pg. 17.

**good faith with respect to... conditions of employment,”** it cannot hide behind a “policy decision” in the scope-of-bargaining context. KRS 67A.6904(3) (emphasis added).

LFUCG must submit proof to establish that its proffered justification (*e.g.*, public safety) for the unilateral action (*e.g.*, the enactment of legislation) trumps its bargaining

obligation found in KRS Chapter 67A. The Massachusetts Appeals Court has declared,

**“To reserve to the sole discretion of management a core subject of collective bargaining... on public safety policy grounds requires a clearer showing that public safety is being affected by the... proposal.”** *Local 2071, Int’l Ass’n of Firefighters v. Town of Bellingham*, 854 N.E.2d 1005, 1012 (Mass. App. 2006). LFUCG relies, in large

part, on the holding of *San Jose Peace Officer’s Ass’n*;<sup>71</sup> it misstates the persuasive value of this decision. *See San Jose Peace Officer’s Ass’n v. City of San Jose*, 78 Cal. App. 3d

935, 946 (Cal. App. 1978). In *San Jose Peace Officer’s Ass’n*, the court addressed the use of deadly force against **fleeing** suspects. *See id.* (“The danger posed to a police officer by

a suspected criminal must be balanced against difficult considerations of when an escaping criminal should pay the price of death for ignoring a peace officer’s command

to stop.”). The court explained, “It is important to note that... [the] use of force policy does not restrict a police officer’s right to defend himself from the threat of great bodily

harm.” *Id.* Here, LFUCG stripped a critical safety tool from LPD Officers; its decision triggered a “core subject of collective bargaining.” *Local 2071, Int’l Ass’n of Firefighters*,

---

<sup>71</sup> LFUCG also places significant weight on the holdings of *FOP Miami Lodge 20*, and *Claremont Police Officers Ass’n*. *See City of Miami v. FOP Miami Lodge 20*, 571 So. 2d 1309 (Fla. Dist. Ct. App. 1989) (drug testing policy); *Claremont Police Officers Ass’n v. City of Claremont*, 139 P.3d 532 (Cal. 2006) (racial profiling policy). Those decisions are easily distinguishable from this controversy; neither of those policies impacted the health and safety of members of the bargaining units.

854 N.E.2d at 1012; *see also Oil, Chem. & Atomic Workers Loc. Union No. 6-418 v. NLRB*, 711 F.2d 348, 360 (D.C. Cir. 1983) (“Employee health and safety indisputably are mandatory subjects of collective bargaining....”). LFUCG violated KRS Chapter 67A when it passed and implemented the No-Knock Ordinance without collective bargaining.

**V. LFUCG VIOLATED KRS CHAPTER 67A WHEN IT REFUSED TO BARGAIN OVER THE EFFECTS OF THE NO-KNOCK ORDINANCE.**

If this Court finds that LFUCG lawfully enacted the No-Knock Ordinance without collective bargaining, regardless of its substantial impact on the health and safety of LPD Officers, then LFUCG still violated KRS Chapter 67A when it refused to bargain over the distinct effects of a total ban on no-knock warrants. First of all, this Court should clarify that KRS Chapter 67A mandates bargaining over the effects of a management decision. *See NLRB v. Okla. Fixture Co.*, 79 F.3d 1030, 1035 (10th Cir. 1996) (“The subject matter of mandatory bargaining has been interpreted to include the ‘effects’ of management decisions.”); *NLRB v. Solutia, Inc.*, 699 F.3d 50, 68 (1st Cir. 2012) (“The Supreme Court has recognized that the duty to bargain a decision and the duty to bargain its effects are two separate obligations under the [NLRA].”). The Second Circuit has explained:

[T]he [NLRA] requires that employers engage in collective bargaining with their employees prior to changing employees’ “wages, hours, and other terms and conditions of employment.” The [NLRA] specifies that employers are required to engage in bargaining not only over the decision itself (“decision bargaining”), ***but also over the effects that the decision might have upon employees’ terms and conditions of employment*** (“effects bargaining”).

*Loc. Union 36, Int’l Bhd. of Elec. Workers v. NLRB*, 706 F.3d 73, 81 (2d Cir. 2013) (emphasis added) (citation omitted) (quoting *First Nat’l Maint. Corp. v. NLRB*, 452 U.S. 666, 674 (1981)). The concept of “effects bargaining” transcends federal precedent interpreting the NLRA; it applies with equal force to public sector labor relations. *See*

*Kitsap Cnty. v. Kitsap Cnty. Corr. Officers' Guild, Inc.*, 372 P.3d 769, 771 (Wash. App. 2016) (“If an employer makes a unilateral decision regarding a permissive bargaining subject, the employer is still required to bargain over the effects of the decision on a mandatory subject such as wages, hours, and working conditions.”).<sup>72</sup> The Supreme Court of Ohio has declared:

***[W]e hold that a public employer must bargain with its employees regarding a management decision to the extent that such decision “affects wages, hours, terms and conditions of employment.” ... Contrary to appellee’s admonitions, this does not mean that management rights would be abrogated. Requiring appellee to bargain does not require that an agreement be reached. It does, however, provide a process whereby employees will be consulted about decisions which have a profound impact on them and, thus, industrial peace will be preserved and promoted.***

*Lorain City Sch. Dist. Bd. of Educ. v. State Emp. Rels. Bd.*, 533 N.E.2d 264, 269 (Ohio 1988) (emphasis added). LFUCG violated KRS Chapter 67A when it refused to bargain over the effects of the No-Knock Ordinance.

LFUCG does not challenge its fundamental obligation to participate in “effects bargaining;” instead, it claims, “the FOP never identified any distinct ‘effects’ it wished

---

<sup>72</sup> See also *Claremont Police Officers Ass’n v. City of Claremont*, 139 P.3d 532, 538 (Cal. 2006) (“[W]e agree with the Association that there is a long-standing distinction under the [NLRA] between an employer’s unilateral management decision and the effects of that decision..., the latter of which are subject to mandatory bargaining.”); *Int’l Ass’n of Fire Fighters, Loc. Union 1052 v. Pub. Emp. Rels. Comm’n*, 778 P.2d 32, 34 (Wash. 1989) (en banc) (“[A]n employer’s decisions on nonmandatory subjects may have effects on mandatory subjects. If the union so requests, such effects must be submitted to negotiation.”); *Sch. Dist. of Drummond v. Wis. Emp. Rels. Comm’n*, 358 N.W.2d 285, 292 (Wis. 1984) (“[B]oth the employer’s proposal and the effect or impact of that proposal on the employees’ wages, hours and conditions of employment are subjects for bargaining.”); *Loc. 195, IFPTE v. State*, 443 A.2d 187, 196 (N.J. 1982) (“We have held that, although substantive policy decisions may be non-negotiable matters, procedural aspects of the decision are negotiable.”).

to bargain, apart from its demand to bargain the enactment of the Ordinance itself.”<sup>73</sup> LFUCG essentially contends that Lodge #4 waived its statutory right to bargain over the effects of the No-Knock Ordinance. This argument is completely meritless. *See NLRB v. Centra, Inc.*, 954 F.2d 366, 371 (6th Cir. 1992) (“[A] union may waive its statutory right to bargain, but such waiver must be clear and unmistakable.”). The Massachusetts Supreme Judicial Court has clarified the general standard for “waiver by inaction:”

A party may show that the other party ***clearly and unmistakably waived its right to bargain*** over an unlawful unilateral change where the other party had ***actual notice*** of the proposed change, a ***reasonable opportunity to negotiate*** over it, and ***unreasonably or inexplicably failed to bargain or to request bargaining***.

*Sch. Comm. of Newton v. Labor Rels. Comm’n*, 447 N.E.2d 1201, 1210 (Mass. 1983) (emphasis added); *see also Gratiot Cmty. Hosp. v. NLRB*, 51 F.3d 1255, 1260 (6th Cir. 1995) (“Waiver will be found if the evidence shows that the Union received sufficient notice of the proposed change, and yet failed to protest or demand bargaining on the issue.”) (quoting *YHA, Inc. v. NLRB*, 2 F.3d 168, 173 (6th Cir. 1993)). Lodge #4 clearly asserted its statutory right to bargain over the effects of a total ban on no-knock warrants.<sup>74</sup> On June 14, 2024, Sgt. Russell sent an email to Mayor Gorton and the Council; he wrote, “The FOP demands negotiations about how the proposed ordinance banning no-knock warrants... fails to safeguard the health and safety of our Members.

---

<sup>73</sup> Brief for Appellant, pg. 35.

<sup>74</sup> Lodge #4 also pled “effects bargaining” in the Amended Complaint; it claimed, “The No-Knock Ordinance implicates and *affects* conditions of employment and mandatory subjects of collective bargaining.” ROA, Vol. 3, pg. 248. *See Grand Aerie Fraternal Ord. of Eagles v. Carneyhan*, 169 S.W.3d 840, 845 (Ky. 2005) (“All that our procedure presently requires is that the Complaint set out ‘facts or conclusions... sufficiently to identify the basis of the claim.’”) (quoting *Nat. Res. & Env’t Prot. Cabinet v. Williams*, 768 S.W.2d 47, 51 (Ky. 1989)).

Further, *the effects of this unilateral rule change on our Members are also mandatory subjects of collective bargaining.*<sup>75</sup> This communication does not signify “a ‘conscious relinquishment’ of the right to bargain.” *Gratiot Cmty. Hosp.*, 51 F.3d at 1260 (quoting *YHA, Inc.*, 2 F.3d at 173). LFUCG argues, “this [email]... does not identify any ‘effects’ or implementation details... over which the FOP requested to bargain.”<sup>76</sup> Lodge #4 satisfied its initial obligation “to make a timely bargaining request;”<sup>77</sup> however, the next day, LFUCG responded, “collective bargaining is simply not appropriate for this subject matter.”<sup>78</sup> The Court should not allow LFUCG to challenge the sufficiency of the request when it refused to bargain over the effects of the No-Knock Ordinance. *See Solutia, Inc.*, 699 F.3d at 64 (“[A] union is ‘not required to go through the motions of requesting bargaining[ ]’ ... if it is clear that an employer has made its decision and will not negotiate.”) (quoting *Regal Cinemas, Inc. v. NLRB*, 317 F.3d 300, 314 (D.C. Cir. 2003)); *Centra, Inc.*, 954 F.2d at 372 (“If... an employer has no intention of changing its mind, the notice constitutes nothing more than informing the union of a *fait accompli*.”). Lodge #4 invoked its statutory right to bargain over the effects of the No-Knock Ordinance.

---

<sup>75</sup> ROA, Vol. 3, pg. 247 (emphasis added). *See Schell v. Young*, 640 S.W.3d 24, 33 (Ky. App. 2021) (“[A] court may consider, among other things, ‘matters incorporated by reference or integral to the claim’ without converting a motion to dismiss to a motion for summary judgment.”) (quoting Charles A. Wright & Arthur R. Miller, 5B Fed. Prac. & Proc. § 1357 (3d ed. 2020)).

<sup>76</sup> Brief for Appellant, pg. 37.

<sup>77</sup> *Serv. Emps. Int’l Union, Loc. 226 v. Douglas Cnty. Sch. Dist. 001*, 839 N.W.2d 290, 301 (Neb. 2013) (“[T]he employer must show that ‘the union failed to make a timely bargaining request before the change was implemented.’”) (quoting *NLRB v. Unbelievable, Inc.*, 71 F.3d 1434, 1441 (9th Cir. 1995)).

<sup>78</sup> ROA, Vol. 3, pg. 247.

LFUCG also claims that it “offered to meet and confer with the FOP to discuss” the No-Knock Ordinance.<sup>79</sup> This argument is entirely misleading. LFUCG had a statutory duty to “*bargain collectively*,” not the lesser duty to “*meet and confer*,” over the effects of the No-Knock Ordinance. *See* KRS 67A.6903 (“The urban-county government... shall have the authority and the duty to bargain collectively.”). “The obligation to bargain ‘in good faith’ means that *the parties must genuinely seek to reach agreement...* and it recognizes that a public employer has the ultimate power to reject employee proposals on any particular issue.” *Int’l Ass’n of Fire Fighters, Loc. 188 v. Pub. Emp. Rels. Bd.*, 245 P.3d 845, 852 (Cal. 2011) (en banc) (emphasis added); *see also Am. Fed. of Tchrs. v. Ledbetter*, 387 S.W.3d 360, 366 (Mo. 2012) (en banc) (“[I]f the obligation of the Act is to produce more than a series of empty discussions, bargaining must mean more than mere negotiation. It must mean negotiation with a *bona fide* intent to reach an agreement if agreement is possible.”) (quoting *Atlas Mills, Inc.*, 3 N.L.R.B. 10, 21 (1937)). “A ‘meet and confer,’ or ‘meet and discuss,’ obligation imposes *only the duty to meet at reasonable times and to discuss recommendations or proposals* submitted by the employee organization.” *City & Borough of Sitka v. Int’l Bhd. of Elec. Workers, Loc. Union 1547*, 653 P.2d 332, 337 n.13 (Alaska 1982); *see also Central City Educ. Ass’n v. Ill. Educ. Lab. Rels. Bd.*, 599 N.E.2d 892, 900 (Ill. 1992) (“The Pennsylvania statute differs from the Illinois statute in a very important way. The Pennsylvania statute requires that an employer *meet and discuss* matters affecting... conditions of employment, while in Illinois the employer must *bargain* over decisions that directly affect... conditions of employment.”). Lodge #4 did not waive its statutory right to “*bargain collectively*” when

---

<sup>79</sup> Brief for Appellant, pg. 5.



considerations do not have any impact on the decision to ban no-knock warrants. If the Court allows “effects bargaining” over the No-Knock Ordinance, Lodge #4 will address whether, and to what extent, LPD Officers, following the orders of a supervisor, can refuse to execute an arrest or search warrant, without fear of disciplinary action, if they believe, in good faith, that “knocking and announcing” might pose a safety risk to themselves or others. Lodge #4 will also seek a rule mandating that, if LFUCG intends to execute an arrest or search warrant, and the situation would otherwise meet the criteria of KRS 455.180(1) (e.g., the subject of the warrant is “a violent offender”), it will assign the task to a specialized unit with sufficient manpower to alleviate the threat of a violent confrontation. *See Int’l Ass’n of Firefighters, Loc. 589 v. Helsby*, 59 A.D.2d 342, 345 (N.Y. App. 1977) (“[The] employees could properly insist upon negotiating a rule mandating that the equipment be operated only when sufficient manpower is assigned thereto so that the operation can be carried out in safety.”). The Court of Appeals properly found that Lodge #4 “stat[ed] a claim upon which relief can be granted” with respect to “effects bargaining,” and this Court should remand Count II of the Amended Complaint to the Trial Court.

**VI. LFUCG VIOLATED THE CBAS WHEN IT ENACTED THE NO-KNOCK ORDINANCE.**

LFUCG breached Article 14 of the CBAs when it passed and implemented the No-Knock Ordinance. *See* KRS 67A.6908(3) (“Suits for violation of agreements between an urban-county government and a labor organization representing police officers... may be brought by the parties to the agreement in the Circuit Court of the urban-county government.”). The Sixth Circuit has explained, “a collective-bargaining agreement is first and foremost a contract, which should be interpreted ‘according to ordinary

principles of contract law, at least when those principles are not inconsistent with federal labor policy.” *Watkins v. Honeywell Int’l Inc.*, 875 F.3d 321, 324 (6th Cir. 2017) (quoting *M&G Polymers USA, LLC v. Tackett*, 574 U.S. 427, 435 (2015)). Lodge #4 sufficiently pled a violation of Article 14 of the CBAs;<sup>81</sup> it asserted, in part, that LFUCG defied its contractual duty to “safeguard the health and safety of [LPD Officers]” when it imposed an absolute ban on no-knock warrants.<sup>82</sup> *See Brown-Forman Corp. v. Miller*, 528 S.W.3d 886, 889 (Ky. 2017) (“The pleadings should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true.”); *KentuckyOne Health, Inc. v. Reid*, 522 S.W.3d 193, 197 (Ky. 2017) (“Under CR 8.01(1), a complaint merely needs to contain... a short and plain statement of the claim showing that the pleader is entitled to relief....”). The Court of Appeals aptly noted, “Of course, whether there was a breach remains, even now, an unresolved question of fact for a jury, assuming the answer cannot be resolved by motion practice under CR 56 or otherwise.”<sup>83</sup> LFUCG claims, “The ‘health and safety’ requirements addressed in Article 14 are limited to matters related to protective equipment provided to officers... and similar matters....”<sup>84</sup> LFUCG has not offered any proof to justify its unilateral, self-serving interpretation of Article 14 of the CBAs. *See, e.g.*, F. Elkouri & E. Elkouri, *How Arbitration Works*, 453 (6th ed. 2003) (“Where the meaning of a term is in dispute, it will be deemed, if there is no evidence to the contrary, that the parties intended it to have the same meaning as that given during the negotiations leading up to the agreement.”). The Parties negotiated a Grievance

---

<sup>81</sup> ROA, Vol. 3, pg. 242-80.

<sup>82</sup> ROA, Vol. 3, pg. 362-69; **Appendix 4**: Ofc. CBA, Article 14; **Appendix 5**: Lt. CBA, Article 14.

<sup>83</sup> **Appendix 1**: Opinion, pg. 9.

<sup>84</sup> Brief for Appellant, pg. 42.

Procedure to resolve this “controversy” related to “the meaning and application” of the CBAs.<sup>85</sup> The Trial Court erred when it dismissed the Amended Complaint for “failure to state a claim upon which relief can be granted.” CR 12.02(f).

**VII. LFUCG VIOLATED THE CBAS WHEN IT REJECTED THE GRIEVANCE.**

LFUCG breached Article 11 of the CBAs when it refused to arbitrate the Grievance. LFUCG asserts, “the circuit court correctly held that the grievance procedure did not apply because the dispute did not arise out of any provision of the CBA, as nothing in the CBA applies to warrant execution.”<sup>86</sup> First of all, LFUCG ignores the “strong presumption” of “grievability” or “arbitrability” in the labor relations context.<sup>87</sup>

The Supreme Court has explained:

[I]t has been established that where the contract contains an arbitration clause, there is a presumption of arbitrability in the sense that “[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.

*AT&T Techs., Inc. v. Commc’ns Workers*, 475 U.S. 643, 650 (1986) (emphasis added) (quoting *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 583 (1960)).

This strong presumption of arbitrability “*is particularly applicable where the arbitration clause provides for arbitration of any controversy involving the interpretation of the CBA.*” *Cleveland Elec. Illuminating Co. v. Util. Workers Union*, 440 F.3d 809, 814 (6th

<sup>85</sup> ROA, Vol. 3, pg. 370-78; **Appendix 8**: Ofc. CBA, Article 11; **Appendix 9**; Lt. CBA, Article 11.

<sup>86</sup> Brief for Appellant, pg. 44.

<sup>87</sup> The terms “grievability” and “arbitrability” share a common meaning. *See Int’l Ass’n of Machinists & Aerospace Workers v. ISP Chems., Inc.*, 261 Fed. App’x 841, 846-47 (6th Cir. 2008) (“This follows from the fact that under the CBA, all unresolved grievances are subject to arbitration; hence, the definition of what is grievable is also the definition of what is arbitrable....”).

Cir. 2006) (emphasis added). The Sixth Circuit has reasoned, “[I]n cases involving broad arbitration clauses... *only an express provision* excluding a particular grievance from arbitration or ‘*the most forceful evidence of a purpose* to exclude the claim from arbitration can prevail.’” *Id.* (emphasis added) (quoting *United Steelworkers v. Mead Corp.*, 21 F.3d 128, 131 (6th Cir.1994)). Here, the Parties negotiated a broad arbitration clause; it governs “[a]ny controversy between LFUCG and the Lodge *concerning the meaning and application* of any provisions of the [CBAs].”<sup>88</sup> The Grievance, without question, stated a “controversy” related to the “meaning and application” of several different provisions of the CBAs.<sup>89</sup> In short, the Grievance alleged that LFUCG violated its contractual duty to “safeguard the health and safety of [LPD Officers]” when it passed and implemented the No-Knock Ordinance. The resolution of this claim undoubtedly invokes the “meaning and application” of Article 14, Section 1 of the CBAs.<sup>90</sup> LFUCG violated Article 11 of the CBAs when it refused to “participate in the arbitration” of the Grievance.<sup>91</sup>

Lodge #4 presented a grievable controversy related to the “meaning and application” of the CBAs. LFUCG argues, “there is no provision of the CBA addressing execution of warrants, so the grievance procedure would not apply.”<sup>92</sup> LFUCG misjudges the inherent scope of the Grievance Procedure. The Supreme Court has explained:

[I]t is not unqualifiedly true that a collective-bargaining agreement is simply a document by which the union and employees have imposed upon

---

<sup>88</sup> ROA, Vol. 3, pg. 370-78; **Appendix 8**: Ofc. CBA, Article 11; **Appendix 9**: Lt. CBA, Article 11.

<sup>89</sup> ROA, Vol. 3, pg. 380; **Appendix 7**: Grievance Form.

<sup>90</sup> ROA, Vol. 3, pg. 362-69; **Appendix 4**: Ofc. CBA, Article 14; **Appendix 5**: Lt. CBA, Article 14.

<sup>91</sup> ROA, Vol. 3, pg. 251.

<sup>92</sup> Brief for Appellant, pg. 45.

management limited, express restrictions of its otherwise absolute right to manage the enterprise, *so that an employee’s claim must fail unless he can point to a specific contract provision upon which the claim is founded. There are too many people, too many problems, too many unforeseeable contingencies to make the words of the contract the exclusive source of rights and duties.*

*Warrior & Gulf Nav. Co.*, 363 U.S. at 579 (emphasis added) (quoting Archibald Cox, *Reflections Upon Labor Arbitration*, 72 Harv. L. Rev. 1482, 1488-89 (1959)). The

Supreme Court has further reasoned:

[A] collective bargaining agreement... is more than a contract; it is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate. ...

[T]he grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties. The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement. ...

*Apart from matters that the parties specifically exclude, all of the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement.* The grievance procedure is, in other words, a part of the continuous collective bargaining process.

*Id.* at 579-81. LFUCG distorts the contractual test of a grievable controversy; it demands that Lodge #4 identify a specific “provision of the CBA addressing execution of warrants.”<sup>93</sup> LFUCG should ask whether Lodge #4 has alleged a disagreement “concerning the *meaning and application* of any provisions of the [CBAs].”<sup>94</sup> The Parties have certainly encountered a grievable controversy related to the “meaning and

<sup>93</sup> Brief for Appellant, pg. 45.

<sup>94</sup> ROA, Vol. 3, pg. 370-78; **Appendix 8**: Ofc. CBA, Article 11; **Appendix 9**; Lt. CBA, Article 11.

application” of Article 14, Section 1 of the CBAs.<sup>95</sup> They dispute whether LFUCG violated its contractual obligation to “safeguard the health and safety of [LPD Officers]” when it passed and implemented the No-Knock Ordinance.<sup>96</sup> LFUCG has not identified “an express provision excluding [this] particular grievance from arbitration,” and it has not offered “the most forceful evidence of a purpose to exclude [this claim] from” the Grievance Procedure. *Cleveland Elec. Illuminating Co.*, 440 F.3d at 814 (quoting *Mead Corp.*, 21 F.3d at 131); *see also Toledo Police Patrolman’s Ass’n, Loc. 10, v. City of Toledo*, 713 N.E.2d 78, 84 (Ohio App. 1998) (“Because we conclude... that the trial court was correct, in part, the lack of a provision referring specifically to the assignment of patrol officers does not affect the arbitrability of the dispute in the instant case.”). This Court should find that Lodge #4 “state[d] a claim upon which relief can be granted” under Article 11 of the CBAs. CR 12.02(f).

The Trial Court erred when it addressed the substantive merits of the Grievance. The Trial Court should have ordered LFUCG to arbitrate the Grievance; it should not have resolved whether LFUCG violated Article 14, Section 1 of the CBAs when it passed and implemented the No-Knock Ordinance. *See United Steelworkers v. Am. Mfg. Co.*, 363 U.S. 564, 567-68 (1960) (“The function of the court is very limited when the parties have agreed to submit all... questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract.”). The Court of Appeals (at the time, the highest court of Kentucky) has adopted the federal “policy of judicial deference to arbitration and

---

<sup>95</sup> ROA, Vol. 3, pg. 380; **Appendix 7**: Grievance Form.

<sup>96</sup> ROA, Vol. 3, pg. 362-69; **Appendix 4**: Ofc. CBA, Article 14; **Appendix 5**: Lt. CBA, Article 14.





*Mid-Am. Cellular*, 989 F.2d 966, 968-69 (8th Cir.1993)). Lodge #4 did not invoke litigation of its contractual claims before it asserted its fundamental right to arbitrate those claims in the Grievance Procedure. On June 30, 2021, Lodge #4 filed the Grievance; it alleged, in part, that LFUCG violated Article 14, Section 1 of the CBAs when it passed and implemented the No-Knock Ordinance.<sup>102</sup> Lodge #4 attempted to exhaust the Grievance Procedure, but LFUCG refused to arbitrate the Grievance.<sup>103</sup> *See Vaca v. Sipes*, 386 U.S. 171, 184 (1967) (“[An] employee must at least attempt to exhaust exclusive grievance and arbitration procedures established by the bargaining agreement.”).<sup>104</sup> On August 31, 2021, Lodge #4 filed the Amended Complaint;<sup>105</sup> it did not pursue its contractual claims in the Trial Court until after LFUCG repudiated the Grievance Procedure. *See id.* at 185 (“An obvious situation in which the employee should not be limited to the exclusive remedial procedures established by the contract occurs when the conduct of the employer amounts to a repudiation of those contractual procedures.”).<sup>106</sup> The Court of Appeals properly found, “There is nothing that supports LFUCG’s claim of waiver.”<sup>107</sup> Lodge #4 did not “ask[ ] for a judicial ruling as to breach,

---

<sup>102</sup> ROA, Vol. 3, pg. 380; **Appendix 7**: Grievance Form.

<sup>103</sup> ROA, Vol. 3, pg. 251.

<sup>104</sup> *See also Terwilliger v. Greyhound Lines, Inc.*, 882 F.2d 1033, 1039 (6th Cir. 1989) (“[T]he exhaustion requirement is subject to a number of exceptions [where] doctrinaire application of the exhaustion rule would defeat the overall purposes of federal labor relations policy.”) (quoting *Glover v. St. Louis-San Francisco Ry.*, 393 U.S. 324, 329-30 (1969)).

<sup>105</sup> ROA, Vol. 3, pg. 242-80.

<sup>106</sup> *See also Geddes v. Chrysler Corp.*, 608 F.2d 261, 263 (6th Cir. 1979) (“Employers are normally estopped from seeking dismissal of a claim based on failure to exhaust remedies when they have taken the position that those remedies are not available to the employees.”).

<sup>107</sup> **Appendix 1**: Opinion, pg. 12.

invoking KRS 67A.6908(3),”<sup>108</sup> or perform any “offensive maneuver” on its contractual claims, before LFUCG refused to arbitrate the Grievance. *See Am. Gen. Home Equity, Inc. v. Kestel*, 253 S.W.3d 543, 556 (Ky. 2008). Lodge #4 did not act inconsistent with its contractual right to enforce the Grievance Procedure.

This Court should not allow LFUCG to avoid its contractual obligation to arbitrate the Grievance. LFUCG claims, “[t]he FOP’s effort to divert this controversy to grievance arbitration is merely an improper attempt to expand the CBA...,”<sup>109</sup> and “[t]he government’s sovereign authority... is not constrained by any terms of the CBA...”<sup>110</sup> These arguments ignore the explicit terms of the CBAs. LFUCG negotiated specific provisions related to the health and safety of LPD Officers.<sup>111</sup> *See NLRB v. Gulf Power Co.*, 384 F.2d 822, 824 (5th Cir. 1967) (“[T]he parties by their own actions in the past have clearly indicated that they consider safety rules and practices a bargainable issue by including several important provisions in [the CBA].”). LFUCG also pledged to arbitrate “[a]ny controversy... concerning the meaning and application of any provisions of the [CBAs].”<sup>112</sup> LFUCG cannot sidestep its express, contractual obligation to arbitrate this important controversy over the meaning and application of those specific provisions related to the health and safety of LPD Officers. *See State v. Pub. Safety Emps. Ass’n*, 93 P.3d 409, 417 (Alaska 2004) (“[W]e hold that the legislature intended all mandatory subjects of bargaining on which agreement has been reached to be presumptively subject

---

<sup>108</sup> Brief for Appellant, pg. 43.

<sup>109</sup> Brief for Appellant, pg. 45.

<sup>110</sup> Brief for Appellant, pg. 45.

<sup>111</sup> ROA, Vol. 3, pg. 362-69; **Appendix 4**: Ofc. CBA, Article 14; **Appendix 5**: Lt. CBA, Article 14.

<sup>112</sup> ROA, Vol. 3, pg. 370-78; **Appendix 8**: Ofc. CBA, Article 11; **Appendix 9**: Lt. CBA, Article 11.

to the agreement’s grievance-arbitration procedure.”). LFUCG seeks to forbid arbitration of any subject it considers a “managerial prerogative,” regardless of the explicit terms of the CBAs. This Court should reject its effort to subvert labor arbitration in the public sector. The Michigan Supreme Court has decided:

Detroit asserts that the mandatory bargaining requirement in the public sector is “universally recognized as subject to preemption by managerial prerogative.” Such an assertion overstates the case. It may be true that, in certain instances, the bargaining requirement is subject to managerial preemption. However, where such disputes involve those issues articulated in the statute or within the limited exceptions recognized by the cases, that managerial prerogative must give way. ***Thus, where the issue involves the safety of the fire fighter, the managerial prerogative is limited by the duty to submit to... arbitration.***

*City of Detroit v. Detroit Fire Fighters Ass’n*, Loc. 344, 517 N.W.2d 240, 250 (Mich. App. 1994) (emphasis added).<sup>113</sup> LFUCG also misinterprets the narrow holding of *Covington Lodge No. 1*,<sup>114</sup> in short, this precedent does not bar arbitration of disputes “concerning the meaning and application” of a collective bargaining agreement. See *City of Covington v. Covington Lodge No. 1, Fraternal Ord. of Police*, 622 S.W.2d 221, 223 (Ky. 1981). In *Covington Lodge No. 1*, the Supreme Court of Kentucky only found that a municipality should retain the power to negotiate the actual terms of a collective bargaining agreement. See *id.* at 221 (“[The agreement] contained a provision for the negotiation of a successive agreement. ... It also provided for binding arbitration in the event the parties

---

<sup>113</sup> See also *Town of Narragansett v. Int’l Ass’n of Fire Fighters*, Loc. 1589, 380 A.2d 521, 522 (R.I. 1977) (“Because there was evidence before the arbitration board which proved... that minimum manpower affects both the workload and safety of the firefighter..., it is clear that minimum manpower requirements are within the purview... of the Act and are therefore arbitrable.”).

<sup>114</sup> Brief for Appellant, pg. 46.

could not agree as to any or all terms of a new contract.”). LFUCG violated Article 11 of the CBAs when it refused to arbitrate the Grievance.

### VIII. THE NO-KNOCK ORDINANCE DISTURBED A COMPREHENSIVE SCHEME OF LEGISLATION.

LFUCG exceeded the bounds of its “home rule” power when it enacted the No-Knock Ordinance. The “home rule” statute declares, “A city may exercise any power and perform any function within its boundaries... that is in furtherance of a public purpose of the city and *not in conflict with a constitutional provision or statute.*” KRS 82.082(1) (emphasis added).<sup>115</sup> This statute also clarifies, “A power or function is in conflict with a statute if it is expressly prohibited by a statute or there is a comprehensive scheme of legislation on the same general subject embodied in the Kentucky Revised Statutes.” KRS 82.082(2).<sup>116</sup> The Supreme Court of Kentucky has declared, “The true test of the concurrent authority of the state and local government to regulate a particular area is the absence of conflict.” *Lexington Fayette Cnty. Food & Beverage Ass’n v. Lexington-Fayette Urb. Cnty. Gov’t*, 131 S.W.3d 745, 750 (Ky. 2004) In short, “[a]n ordinance... *cannot forbid what a statute expressly permits.*” *Ky. Rest. Ass’n v. Louisville/Jefferson Cnty. Metro Gov’t*, 501 S.W.3d 425, 428 (Ky. 2016) (emphasis added) (quoting *City of Harlan v. Scott*, 162 S.W.2d 8, 9 (Ky. 1942)); *see also Louisville & N. R.R. Co. v. Commonwealth*, 488 S.W.2d 329, 331 (Ky. 1972) (“A conflict exists between an ordinance and a statute when the ordinance... prohibits conduct which is permitted by the

---

<sup>115</sup> *See also* KRS 67A.070(1) (“Urban-county governments may enact and enforce within their territorial limits such tax, licensing, police, sanitary and other ordinances not in conflict with the Constitution and general statutes of this state.”).

<sup>116</sup> *See also* KRS 67A.070(2) (“Urban-county government ordinances shall be deemed to conflict with general statutes of this state only... [w]hen there is a comprehensive scheme of legislation on the same subject embodied in a general statute.”).

statute.”). Yet, even in the absence of conflict, the “home rule” statute bars municipal action when “*there is a comprehensive scheme of legislation on the same general subject* embodied in the Kentucky Revised Statutes.” KRS 82.082(2) (emphasis added). If the Legislature “has enacted a broad and detailed scheme regulating” a particular subject (e.g., no-knock warrants), then it has implicitly preempted the entire field of policymaking. *See Whitehead v. Est. of Bravard*, 719 S.W.2d 720, 722 (Ky. 1986). LFUCG disturbed a comprehensive scheme of legislation when it ratified a total ban on no-knock warrants.

LFUCG violated KRS 82.082, KRS 67A.070, and KRS 95.019 when it passed and implemented the No-Knock Ordinance. On April 9, 2021, Governor Andrew G. Beshear and the Legislature enacted Senate Bill 4 (*i.e.*, KRS 455.180, *et seq.*), “specific legislation on the issue of” no-knock warrants. *Ky. Rest. Ass’n*, 501 S.W.3d at 430. Senate Bill 4 permits arrest and search warrants “authorizing entry without notice” when “[a] court finds by clear and convincing evidence that... [t]he crime alleged is a crime that would qualify a person, if convicted, as a violent offender... [and] giving notice prior to entry will endanger the life or safety of any person....” KRS 455.180(1). The No-Knock Ordinance stands in direct conflict with Senate Bill 4; it imposes a complete ban on no-knock warrants, regardless of the clear, statutory ratification of these important safety mechanisms. *See Ky. Rest. Ass’n*, 501 S.W.3d at 428 (“In other words, what the statute makes legal, the Ordinance makes illegal and, thus, prohibits what the statute expressly permits.”). Furthermore, the No-Knock Ordinance disturbs “a comprehensive scheme of legislation on the same general subject” of no-knock warrants. KRS 82.082(2). The Court of Appeals correctly observed, “Senate Bill 4 does not ‘merely amend[ ] KRS 455, which



*Ky. Rest. Ass'n*, 501 S.W.3d at 430 (emphasis added) (citations omitted). This Court should find that LFUCG exceeded the bounds of its “home rule” power when it passed and implemented the No-Knock Ordinance.

**CONCLUSION**

In the end, this Court should **AFFIRM** the decision of the Court of Appeals and **REMAND** this civil action to the Trial Court for further proceedings.

Respectfully submitted,

**MATTMILLER CROSBIE, PLLC**

/s/ Nicholas A. Oleson

---

Scott A. Crosbie  
Nicholas A. Oleson  
201 East Main Street, Suite 800  
Lexington, Kentucky 40507  
Telephone: (859) 287-2400  
Facsimile: (859) 287-2401  
scrosbie@mattmillercrosbie.com  
noleson@mattmillercrosbie.com  
*COUNSEL FOR APPELLEE*  
*FRATERNAL ORDER OF POLICE,*  
*BLUEGRASS LODGE #4*

**WORD-COUNT CERTIFICATE**

The undersigned hereby certifies, pursuant to RAP 15(C) and RAP 31(G)(1), that this document complies with the word limit of RAP 31(G)(3) because, excluding the parts of the document exempted by RAP 15(D) and RAP 31(G)(5), this document contains 13,794 words.

Respectfully Submitted,

**MATTMILLER CROSBIE, PLLC**

*/s/ Nicholas A. Oleson*

---

Scott A. Crosbie  
Nicholas A. Oleson  
*COUNSEL FOR RESPONDENT  
FRATERNAL ORDER OF POLICE,  
BLUEGRASS LODGE #4*