IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

BARBARA KOLKOWSKI,	)	CASE NO. 2021 CV 34
	)	
	)	JUDGE: DAVID A. SCHROEDER
Plaintiff,	)	MAGISTRATE: APRIL R. GRABMAN
	)	
vs.	)	**JUDGMENT ENTRY**
	)	
ASHTABULA AREA TEACHERS' ASSOCIATION, et al.,	)	
	)	
	)	
Defendants.	)	

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APRIL T. MARIOTTI
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COMMON PLEAS COURT
ASHTABULA CO OH

PROCEEDINGS:

1. Defendant Ashtabula Area City Schools Board of Education's Motion to Dismiss Plaintiff's First Amended Complaint Pursuant to Civ.R. 12(B)(1) and (6) and Memorandum in Support, filed July 9, 2021.

2. Defendants Ashtabula Area Teachers' Association and the Ohio Education Association Motion to Dismiss First Amended Complaint, filed July 12, 2021.

3. Plaintiff's Brief in Opposition to Ashtabula Area city School Board's Motion to Dismiss, filed July 27, 2021

4. Plaintiff's Brief in Opposition to AATA and the OEA's Motion to Dismiss, filed July 28, 2021.

5. Defendants Ashtabula Area Teachers' Association and the Ohio Education Association Reply in Support of Motion to Dismiss First Amended Complaint, filed August 10, 2021.

6. Defendant Ashtabula Area City Schools Board of Education's Reply Brief in

Support of the Motion to Dismiss filed August 10, 2021.

7. Plaintiff's Sur-Reply Opposing Motion to Dismiss filed September 2, 2021.

I. INTRODUCTION

This matter involves a complaint for declaratory and injunctive relief, which the Plaintiff initiated for being denied a request to retain her own counsel to represent her at a union initiated arbitration over an employment dispute. Plaintiff, a guidance counselor with the Ashtabula Area City Schools, filed a grievance over a change in her job duties in September of 2020. Plaintiff followed the union process of filing a grievance with Defendant Ashtabula Area School Board (hereinafter "the Board"). Plaintiff is not a member of Defendant Ashtabula Area Teachers' Association (hereinafter "AATA" or "the union"). However, it is undisputed that she is employed pursuant to the terms of a Collective Bargaining Agreement (hereinafter "CBA"), and is therefore a member of the bargaining unit exclusively represented by the AATA.

The Court has summarized the grievance process into five steps: (1) Level 1 Grievance; (2) Level 2 Grievance; (3) union review of the grievance for arbitration; (4) if determined by the union to be arbitration worthy, then demand for arbitration; and finally, (5) arbitration. According to all parties involved, there were no issues in steps one or two of the process. Steps three and four are the focus of the complaint herein.

After receiving a denial of her grievance at both Level 1 and Level 2, Plaintiff requested the AATA demand arbitration on her behalf. After review, the AATA determined that the grievance was arbitration worthy and proceeded to make a demand to the Board for arbitration. Step five of the process, the actual arbitration, has yet to occur. Plaintiff filed the within action

seeking declaratory and injunctive relief to allow to her to retain her own counsel to represent her at the arbitration.

Plaintiff alleges that she has a constitutional right to be represented by counsel of her choosing during the arbitration. The Board, the AATA, and the Ohio Department of Education (hereinafter "OEA") argue almost all of the same points as to why they believe Plaintiff's claims should be dismissed. First, Defendants argue that this is not a constitutional question, but a contract law question. They believe this comes down to the specific language in the CBA, which is binding on Plaintiff. Their position is that under the CBA the union provides the representation for arbitration, and that Plaintiff has no right to retain her own counsel to represent her at arbitration. Defendants also argue that once Plaintiff asked for the AATA to become involved, the grievance was turned over to the union and Plaintiff lost standing. Finally, they argue that since this is a question regarding an issue with the CBA, the SERB has exclusive jurisdiction over this matter.

The Court has considered the arguments presented in the respective memoranda, particularly the legal authorities cited, and the pleadings herein. The Motions to Dismiss filed by the Defendants are well-taken.

II. LAW

A. CIV.R. 12(B)(6) FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Both Motions to Dismiss are brought under Civ. R. 12(B)(1) and Civ. R. 12(B)(6). Factors to be considered when deciding whether to grant injunctive relief, are (1) whether the party seeking injunctive relief is likely to succeed on the merits, (2) whether issuing injunctive

relief will prevent irreparable harm for which there exists no adequate remedy at law, (3) whether and to what extent others will be injured by granting such relief, and (4) whether the public interest will be served by granting injunctive relief. *Cleveland v. Cleveland Elec. Illum. Co.* (1996), 115 Ohio App.3d 1, 12, 684 N.E.2d 343. *DeRosa v. Parker*, 2011-Ohio-6024, ¶ 56, 197 Ohio App. 3d 332, 348, 967 N.E.2d 767, 779.

"A Civ.R. 12(B)(6) motion to dismiss for failure to state a claim upon which relief can be granted will only be granted where the party opposing the motion is unable to prove any set of facts that would entitle him to relief. *Korodi v. Minot* (1987), 40 Ohio App.3d 1, 3, 531 N.E.2d 318, 321. Indeed, before a court may dismiss an action under this rule, " * * * it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242, 71 O.O.2d 223, 327 N.E.2d 753, syllabus. To make this determination, the court is required to interpret all material allegations in the complaint as true and admitted." *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641, 644 (1989)

B. CIV.R. 12(B)(1) LACK OF SUBJECT MATTER JURISDICTION

"The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint." *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641, 644 (1989).

III. ANALYSIS

A. SERB Has Exclusive Jurisdiction

Defendants argue that Plaintiff's claims should be dismissed because they arise out of certain rights that are enumerated in R.C. Chapter 4117. It is well established in Ohio that if an employee is seeking relief related to rights granted by R.C. Chapter 4117, then exclusive jurisdiction belongs to the SERB. Defendants refer to specific instances in Plaintiff's Complaint in which she references rights enumerated in R.C. 4117.03(A)(5) and R.C. 4117.10(A)(1).

Plaintiff argues that the SERB does not have exclusive jurisdiction because this is a constitutional and civil rights claim. Plaintiff claims that she is asserting a right that is independent of R.C. Chapter 4117. *See* First Amended Complaint at pg. 4. Plaintiff relies on two Ohio Supreme Court cases to support her argument. First is *Franklin Cty. Law Enf't Ass'n v. Fraternal Order of Police, Capital City Lodge No. 9*. 59 Ohio St.3d 167, 171, 572 N.E.2d 87, 91 (1991). The Court in *Franklin* stated, "Thus, as a matter of jurisdiction, if a party asserts rights that are independent of R.C. Chapter 4117, then the party's complaint may properly be heard in common pleas court. However, if a party asserts claims that arise from or depend on the collective bargaining rights created by R.C. Chapter 4117, the remedies provided in that chapter are exclusive. Of course, even if a common pleas court has jurisdiction, R.C. 4117.10(A) in some cases may preempt the party's independent claim." *Id.*

Second is *Gibney v. Toledo Bd. of Educ.* 40 Ohio St.3d 152, 156, 532 N.E.2d 1300, 1305 (1988). The Court in *Gibney* held, "Based on the foregoing, it is our view that the Supreme Court has rejected the use of exhaustion requirements in state-court Section 1983 actions unless Congress has provided otherwise. Furthermore, by imposing an exhaustion requirement on those

filing Section 1983 actions in our state courts, such as plaintiffs in the case at bar, we would be forcing such civil rights victims to comply with a requirement that is entirely absent from civil rights litigation of this sort in federal courts." *Id.*

This Court believes that both parties are correct to an extent. There is no question that some of Plaintiff's claims are asserted specifically pursuant to rights under R.C. Chapter 4117. *See* First Amended Complaint at pg. 5, paragraph 26. However, Plaintiff is also making an argument that her being denied the right to retain counsel is a violation of her constitutional rights. This Court will not entertain any of Plaintiff's claims filed pursuant to R.C. Chapter 4117. As stated previously, it is well settled law in Ohio that the SERB has exclusive jurisdiction over those matters. This Court will analyze further Plaintiff's claims that her First and Fourteen Amendment rights have been violated.

B. CONTRACT v. CONSTITUTION

The pertinent part of the CBA contains the following language:

> Level Four: Arbitration
> In these proceedings, the aggrieved **shall** be represented by the Association. Each party shall have the right to subpoena witnesses. The decision of the arbitrator shall be binding on both parties. The parties shall equally share the expenses of the arbitrator. Each, however, shall be responsible for any additional expenses incurred including fees and expenses of its representatives.

CBA at pg. 75-76. Then further down on pg. 76, the contract continues with the following pertinent language:

> F. Rights of the Grievant and the Association
> 1. **The grievant has the right to Association representation at all meetings and hearings involving the grievance.**

2. The Association has the exclusive right to be present for the adjustment of any and all grievance . Any remedy must be with the agreement of the Association.
3. It shall be the exclusive right of the Association to issue forms to the grievant.
4. **<u>The Association shall have the exclusive right to determine whether to proceed to the arbitration step of the procedure.</u>**
5. The Association shall receive copies of all communications in the processing of grievances.

Defendants' position is that this language in the CBA governs the grievance procedure and arbitration proceedings at issue, and that this case is an application of contract law, not a question of a statutory right violation. Defendants make it a point to highlight that this language in the CBA was produced as a result of negotiations between the AATA and the Board.

Plaintiff's position is that this clause in the agreement constitutes compelled representation in violation of her constitutional rights to free speech and free association, as well as her right to retain counsel. Plaintiff also argues that she has a statutory right pursuant to R.C. 4117.03(A)(5). As stated above, it is this Court's position that all claims brought pursuant to R.C. Chapter 4117 belonging exclusively to the SERB. This then brings us to Plaintiff's argument that her constitutional rights have been violated.

Defendants rely heavily on three main cases to support their position that Plaintiff's First and Fourteenth Amendment Rights have not been denied or violated. The first two cases are *Minnesota State Bd. for Community Colleges v. Knight*, 465 U.S. 271, 104 S.Ct. 1058, 79 L.Ed.2d 299 (1984), which relied on *Smith v. Arkansas State Hwy. Emp., Local 1315*, 441 U.S. 463, 99 S.Ct. 1826, 60 L.Ed.2d 360 (1979). The Court in *Smith* found that the Arkansas State Highway Commission did not violate the First Amendment rights with a grievance process that required all grievances to be submitted directly to the designated employee representative, rather

than the union as a whole, prior to being considered by the commission. *Id.* The employee union filed suit to allege the commission was violating their individual union member rights by mandating that the grievances be submitted directly to the employee representative. *See id.* The U.S. Supreme Court held that the government was allowed to decide who they would listen or respond to when it came to employee grievances. *See id.* "... the First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize the association and bargain with it." *Id.*

Knight involved a group of faculty instructors at a Minnesota college who were not members of the union that challenged the constitutionality of the exclusive representation clause to "meet and confer" that was authorized by the Minnesota Public Employment Relations Act. *See Minnesota State Bd. for Community Colleges v. Knight*, 465 U.S. 271, 104 S.Ct. 1058, 79 L.Ed.2d 299 (1984). More specifically, the Minnesota Statute ... "grants professional employees, such as college faculty, the right to 'meet and confer' with their employers on matters related to employment that are outside the scope of mandatory negotiations." *Id.* Further, the statute requires these professional employees select someone to represent them at these sessions with their employer. *Id.* "If professional employees in an appropriate bargaining unit have an exclusive representative to 'meet and negotiate' with their employer, that representative serves as the 'meet and confer' representative as well. Indeed, the employer may neither 'meet and negotiate' nor 'meet and confer' with any members of that bargaining unit except through their exclusive representative." *Id* at 274-275. The group of faculty members argued that this "exclusive representation" part of the statute violated their First and Fourteenth Amendment Rights. *Id.* The U.S. Supreme Court rejected this argument. *Id.* The Court, relying on *Smith*,

held:

> Appellees' speech and associational rights, however, have not been infringed by Minnesota's restriction of participation in "meet and confer" sessions to the faculty's exclusive representative. The state has in no way restrained appellees' freedom to speak on any education-related issue or their freedom to associate or not to associate with whom they please, including the exclusive representative. Nor has the state attempted to suppress any ideas.
>
> It is doubtless true that the unique status of the exclusive representative in the "meet and confer" process amplifies its voice in the policymaking process. But that amplification no more impairs individual instructors' constitutional freedom to speak than the amplification of individual voices impaired the union's freedom to speak in *Smith v. Arkansas State Highway Employees, Local 1315*, supra. Moreover, the exclusive representative's unique role in "meet and negotiate" sessions amplifies its voice as much as its unique role in "meet and confer" sessions, yet the Court summarily affirmed the District Court's approval of that role in this case. Amplification of the sort claimed is inherent in government's freedom to choose its advisers. A person's right to speak is not infringed when government simply ignores that person while listening to others.

Id. While the case at hand is slightly factually different in the sense that Plaintiff wants her own counsel at arbitration and not a "meet and confer" session, *Knight* makes clear that having a designated "exclusive representative" is not an infringement on ones ability of freedom of speech or association. *See id.* In the case at hand, at no point was Plaintiff denied the ability to speak to or the ability to be present at the proceeding. To the contrary, she was to be present at the arbitration and have a representative provided through the union. Further, the CBA provides that each party shall have the right to subpoena witnesses for the arbitration.

Even more factually similar to the case at hand is a recent case that arose out of the Sixth Circuit Court of Appeals, *Thompson v. Marietta Education Assn.*, 972 F.3d 809, 813–14, cert.

denied sub nom. *Thompson v. Marietta Ed. Assn.*, 2021 WL 2301972. *Thompson* involved a high school Spanish Teacher employed by Marietta High School. *See id.* "The Marietta Board of Education governs the town's public schools. And the Marietta Education Association, a teacher's union, serves as the exclusive bargaining representative for the school district's employees." *Id.* at 812. Thompson was not a member of the association, and she ... "sued the Marietta Education Association and the Marietta Board of Education, arguing that Ohio's scheme of exclusive public-sector union representation violates the First Amendment." *Id.* Specifically, she argued that she is not a member of the association and did not agree with its policies or beliefs. *Id.* However, under R.C. 4117.05(A), the union was her "exclusive representative" for purposes of bargaining with her employer. *Id.*

The Court held in *Thompson*:

> *Knight* controls here. If allowing exclusive representatives to speak for all employees at "meet and confer" sessions does not violate the First Amendment, we see no basis for concluding that the result should be different where the union engages in more traditional collective-bargaining activities. It appears that every other circuit to address the issue has agreed. See, e.g., *Reisman v. Associated Faculties of Univ. of Maine*, 939 F.3d 409 (1st Cir. 2019); *Mentele v. Inslee*, 916 F.3d 783 (9th Cir. 2019); *Bierman v. Dayton*, 900 F.3d 570 (8th Cir. 2018); *Hill v. Serv. Emps. Int'l Union*, 850 F.3d 861 (7th Cir. 2017); *Jarvis v. Cuomo*, 660 F. App'x 72 (2d Cir. 2016) (summary order). Thompson responds, arguing that *Knight* did not involve a compelled-representation challenge. But in *Knight*, the Court framed the question presented in broad terms: whether the "restriction on participation in the nonmandatory-subject exchange process violates the constitutional rights of professional employees within the bargaining unit who are not members of the exclusive representative and who may disagree with its views." 465 U.S. at 273, 104 S.Ct. 1058. Even assuming plaintiff's compelled-representation theory is technically distinguishable, such a cramped reading of *Knight* would functionally overrule the decision. And that is something lower court judges have no authority to do.

Id. The Court went on to later state:

> Thompson's second claim fares no better. She argues that Ohio's system of exclusive representation unconstitutionally burdens her First Amendment right to engage with the government through speech, association, and petition. Thompson's theory seems to be that by allowing the Marietta Education Association to serve as her exclusive representative, Ohio unconstitutionally tilts the playing field against her speech. But this argument conflicts with two Supreme Court decisions. First, we consider *Smith v. Arkansas State Highway Employees*, Local 1315, 441 U.S. 463, 99 S.Ct. 1826, 60 L.Ed.2d 360 (1979) (per curiam). There, the Court held that the First Amendment imposes no "affirmative obligation on the government to listen, to respond[,] or ... [to] bargain." *Id.* at 465, 99 S.Ct. 1826. And since the government has no obligation to bargain with Thompson, it is difficult to see how the government's decision to bargain with someone else violates her rights.
>
> Second, in *Knight*, the Supreme Court recognized that it was "doubtless true that the unique status of the exclusive representative ... amplifies its voice in the policymaking process." 465 U.S. at 288, 104 S.Ct. 1058. But amplification "is inherent in government's freedom to choose its advisers." *Id.* And a "person's right to speak is not infringed when government simply ignores that person while listening to others." *Id.* Thus, *Knight* again forecloses Thompson's claim.
>
> This case presents First Amendment questions of considerable importance. But they are controlled by a fair reading of the Supreme Court's precedents.

Id.

As the Court held in *Thompson*, the Supreme Court's precedent is pretty clear on this issue. Based on this Court's reading of *Knight*, *Smith*, and *Thompson*, Plaintiff has not had any constitutional rights violated by being limited to the representative provided by the union. The government, or the Board in this matter, has an obligation under the CBA to participate in arbitration. The Board is not saying they won't participate in arbitration, they are saying they won't participate in arbitration with counsel of Plaintiff's choice. The Board has the right to

choose who they will listen to and bargain with according to established past precedent set by the higher courts. Just as *Knight* foreclosed Thompson's claim, *Knight*, *Smith* and *Thompson* foreclose Plaintiff's First and Fourteenth Amendment claims here

This leads to the next question, is arbitration different than a "bargaining meeting" or a "meet and confer session". Plaintiff also argues that she has a constitutional and statutory right to her own counsel pursuant to the precedent of *Powell v. State of Ala.*, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932) and *Does v. Munoz*, 507 F.3d 961, 963. *Powell* recognizes an individuals constitutional right to be represented by counsel in a matter filed in a court of law. To determine what type of proceeding arbitration is, it is important to look at how one can proceed to arbitration.

As stated above, the right to arbitration is highlighted in the CBA that was binding on Plaintiff, which is not in dispute. R.C. 4117.09(A)(B)(1), provides the following:

> (A) The parties to any **collective bargaining agreement shall reduce the agreement to writing and both execute it.**
> (B) The **agreement shall contain** a provision that:
> (1) Provides for a grievance procedure which **may culminate with final and binding arbitration of unresolved grievances**, and disputed interpretations of agreements, and **which is valid and enforceable under its terms when entered into in accordance with this chapter**. No publication thereof is required to make it effective. A party to the agreement may bring suits for violation of agreements or the enforcement of an award by an arbitrator in the court of common pleas of any county wherein a party resides or transacts business.

A plain reading of the statute makes it clear that the right to arbitration is a contractual right that is outlined in each individual CBA, and that it is not a statutory right that a public sector employee is automatically entitled to. Again, the CBA at-hand states that the the aggrieved **<u>shall</u>** be represented by the Association at the arbitration process. A similar exclusive representation

clause was at issue in *Williams v. McMackin*, 3rd Dist. Marion No. 9-91-43, 1992 WL 82529, *1. The CBA at issue in that case provided:

> The Employer recognizes the Union as the sole and exclusive bargaining representative in all matters establishing and pertaining to wages, hours, and other terms and conditions of employment for all full and part-time employees * * *. [Emphasis added.]
> That agreement further provides that an employee is entitled to the "presence of a union steward" upon request at a predisciplinary hearing if he reasonably believes that the interview may be used to support disciplinary action against him.

Id. While the Court found that the employee has a property interest in his/her employment and is entitled to certain due process rights, they still did not find that an employee is entitled to private counsel at such a hearing. *See id.* The Court stated:

> There is no evidence in the record to suggest that appellee in this case requested the presence of a union steward at his predisciplinary hearing. Instead, he claimed that he had a right to have his private counsel present. Nothing in the collective bargaining agreement gives appellee such a right.

Id. Because arbitration is a contractual right governed by the CBA, there is no reason to treat it any different than a bargaining meeting, meet and confer session , or a pre-disciplinary hearing. To put it simply, the arbitration process, as well as an employee's rights for arbitration, are governed by the CBA. There is nothing in the CBA in the case-at-hand that gives Plaintiff, or any other employee governed by this CBA, the right to have private counsel present at arbitration.

C. **Plaintiff Lacks Standing**

Finally, Defendants argue that Plaintiff did not have right to retain her own counsel because the grievance was not hers to bring to arbitration, but the unions. Plaintiff's position is

that the grievance was hers, and not the unions. Plaintiff argues that when she requested the union to review her grievance for arbitration, that she preserved her right under *Johnson v. Metro Health Med. Ctr. (Dec. 20, 2001)* to have her own representation. While Plaintiff certainly says this in her letter to the AATA dated November 5, 2020, this Court does not agree with Plaintiff's application of *Johnson* that she can do so. The Court in *Johnson* found:

> Johnson correctly argues that public employees have a statutory right under R.C. 4117.03(A)(5) to "present grievances and have them adjusted, without intervention of the bargaining representative, * * * ." However, we interpret this right to exist only before the employee invokes union representation. Once the employee chooses union representation, that employee lacks standing on all matters including an appeal.
>
> **This conclusion recognizes the necessity of subordinating the individual interests of a complainant to the collective good of a greater body.** A union is no more than its members. **By choosing to pursue this matter with the benefit of union representation under the collective bargaining agreement Johnson sacrificed her right as a party in interest, and the union obtained the right to pursue this matter for the benefit of all employees under the collective bargaining agreement. Johnson's union, not Johnson, was the sole party in interest adverse to MetroHealth.**
>
> This conclusion further recognizes a distinction between a party in interest and an interested party. **Clearly Johnson remained interested in the arbitration decision; however, when she asked for her union's help, she called upon the collective power of her fellow members, and ceased to stand alone. The necessary and just price paid by Johnson was subordination of her individual rights to those of her fellow union members.** Accordingly, we extend our decision in Stafford and Coleman to the case at hand.

Id. Plaintiff argues that the CBA gives her the authority to pursue arbitration because arbitration is demanded by the aggrieved person "if the bargaining unit member remains aggrieved" . The Court does not interpret this phrase the same as Plaintiff. Looking at the process chronologically, this is another factor or element that has to be completed **before** the matter is turned over to the

union, not vise versa. This does not give her the final authority to demand arbitration. Again, that right remains exclusive to the union. The CBA provides that the association shall have the exclusive right to determine whether to proceed to arbitration. Based on the reading of *Johnson*, there is nothing in the CBA at-hand that gives Plaintiff the right to demand arbitration through the union, while also preserving a right to private counsel for the aribtration. To do so would be to invoke the old saying, "to have your cake and eat it too."

Plaintiff also relies heavily on *Gaydosh v. Trumbull Cty.*, 11th Dist. No. 2016-T-0109, 2017-Ohio-5859, 94 N.E.3d 932. The Court in Gaydosh stated, "Second, we find Mr. Gaydosh lacks standing on this issue. The Ohio courts of appeals considering this issue have found that, once an employee subject to a collective bargaining agreement authorizes his or her union to pursue a grievance, the cause of action belongs to the union, and the employee lacks standing to prosecute the case." *Id.* at ¶ 23.

Plaintiff attempts to distinguish her claim from the claim in *Gaydosh* by arguing that she did not accept the Union's assistance. However, the Court finds quite to the contrary. By requesting the AATA's review of the grievance, she was in fact doing just that. The Court's reading of the CBA is that an aggrieved party is not entitled to demand arbitration without going through the AATA. This is a necessary and required step.

The concept and reasoning behind the terms placed in a CBA is important to understand. The Ohio Supreme Court in *Leon v. Boardman Twp.*, 100 Ohio St.3d 335, 2003-Ohio-6466, 800 N.E.2d 12, provided the following insight:

> The concepts developed in these cases are in large part the product of a synthesis of labor relations policy and contract law. Sound labor policy

> disfavors an individualized right of action because it tends to vitiate the exclusivity of union representation, disrupt industrial harmony, and, in particular, impede the efforts of the employer and union to establish a uniform method for the orderly administration of employee grievances. *See Fleming*, supra, 255 N.J.Super. at 140–141, 604 A.2d 657; *Melander*, supra, 194 Cal.App.3d at 547, 239 Cal.Rptr. 592. *See, also, Coleman v. Cleveland School Dist.* (2001), 142 Ohio App.3d 690, 692–693, 756 N.E.2d 759. But while this policy may serve as a justification for permitting, or even presuming, the contractual subordination of individual employee rights under a collective bargaining agreement, it does not go so far as to require such a result. **There is nothing in the national or state labor policy that precludes a collective bargaining agreement from giving the arbitral right to the aggrieved employee, rather than to his or her union.** *See, e.g., Vaca v. Sipes*, supra, 386 U.S. at 184, 87 S.Ct. 903, 17 L.Ed.2d 842, fn. 10 ("Occasionally, the bargaining agreement will give the aggrieved employee, rather than his union, the right to invoke arbitration."); *Retail Clerks Internatl. Assn., Local Unions Nos. 128 & 633 v. Lion Dry Goods, Inc.* (C.A.6, 1965), 341 F.2d 715, 720–721 (despite national policy favoring arbitration, only individual employees, and not the union, may arbitrate grievances under a collective bargaining agreement that gives the right of arbitration to "any individual employee who may have a grievance"). Thus, the proposition that emerges from these cases is that **an aggrieved worker whose employment is governed by a collective bargaining agreement that provides for binding arbitration will generally be deemed to have relinquished his or her right to act independently of the union in all matters related to or arising from the contract, except to the limited extent that the agreement explicitly provides to the contrary.**

Id. at ¶ 17. The bottom line here is that the CBA that is binding upon Plaintiff does not give her, or any other employee employed pursuant to this CBA, the right to demand arbitration. The right to demand arbitration belongs to the union. In Plaintiff's own grievance summaries, she lays out issues that may effect other guidance counselors employed in the district. So while Plaintiff certainly remains an interested party in the arbitration, she is no longer a party in interest. The union, not Plaintiff, is the sole party in interest adverse to the Board for purposes of arbitration. Based on *Johnson, Gaydosh*, and *Leon*, this Court finds that Plaintiff lacks standing because she

is not a party to the arbitration.

IV. CONCLUSION

Analyzing all of the pleadings, motions, responses, and exhibits submitted in this matter, the Court finds that Plaintiff is unable to prove any set of facts that would entitle her to relief. This Court does not have jurisdiction to hear claims related to Plaintiff's statutory rights enumerated in R.C. Chapter 4117. Further, after careful analysis of well settled precedent, the Court finds that Plaintiff is unable to prove any set of facts that would entitle her to the relief requested. Plaintiff is not suffering irreparable harm because she, while not a party to the arbitration herself, is still entitled to be present and have representation provided by the AATA.

The public policy in honoring what is in the CBA is vital to so many employment contracts and the public interest as a whole. Numerous benefits are provided to employees that have the benefit of a union because of the specific bargaining power that a union has with employers. To simply ignore the language of the CBA would strip employers and unions of one of their most essential functions. This Court is not willing to do that.

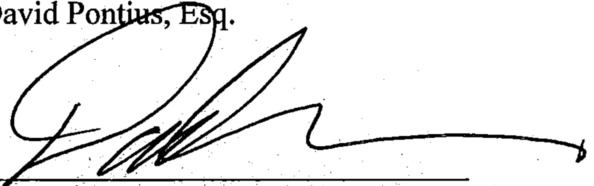
ORDER:

1. Defendant Ashtabula Area City Schools Board of Education's Motion to Dismiss Plaintiff's First Amended Complaint Pursuant to Civ.R. 12(B)(1) and (6) and Memorandum in Support, filed July 9, 2021 is **GRANTED**.

2. The Defendants Ashtabula Area Teachers' Association and the Ohio Education Association Motion to Dismiss First Amended Complaint, filed July 12, 2021 is **GRANTED**.

THIS IS A FINAL APPEALABLE ORDER. Within three (3) days of the entry of this judgment upon the journal, the Clerk of Courts shall serve notice in accordance with Civ. R. 5, of such entry and the date upon every party who is not in default for failure to appear and shall note the service in the appearance docket.

The Clerk is directed to serve notice of this judgment and its date of entry upon: Jay R. Carson, Esq.; Ira Mirkin, Esq.; Casey P. Pitts, Esq.; David Pontius, Esq.



DAVID A. SCHROEDER, JUDGE
18