

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

LUKAS DARLING, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	Case No. 22 CV 8864
-vs-	:	Judge Page
	:	
AMERICAN FEDERATION OF STATE,	:	
COUNTY, AND MUNICIPAL	:	
EMPLOYEES, <i>et al.</i> ,	:	
	:	
Defendants,	:	

DECISION AND ENTRY ON DEFENDANT OHIO ASSOCIATION OF PUBLIC-SCHOOL EMPLOYEES' MOTION TO DISMISS

This case is before the Court on Defendant Ohio Association of Public-School Employees' (OAPSE) Motion to Dismiss for Lack of Subject-Matter Jurisdiction. The issue presented is whether the Ohio State Employment Relations Board (SERB) has exclusive jurisdiction over Plaintiffs Chelsea Kolacki, Kristy Kolacki, Laura Langsdale, Steven Tulga, and Ronnie Legg's (together "Plaintiffs") claims for declaratory judgment and unjust enrichment.

For the reasons set forth in this decision, the Court grants OAPSE's motion.

I. FACTS

This case arises from the Plaintiffs' resignation from membership with some of the union Defendants. Each Plaintiff resigned after the February 26, 2018 decision in *Janus v. AFSCME, Council 31*, __ U.S. __, 138 S. Ct. 2448, 201 L. Ed. 2d 924 (2018). In *Janus*, the United States Supreme Court held that State and public sector unions may not collect dues from non-consenting or non-member employees because doing so violates the First Amendment by forcing those employees to fund speech related activities of unions. *Janus* at 2459-2460, 2486.

Prior to *Janus*, each Plaintiff, by virtue of their membership with the union Defendants,

paid dues. With the assistance of the Plaintiffs' employers, those dues were automatically deducted from the Plaintiffs' paychecks. OAPSE asserts that those dues are part of a contract between them and any member. The payment of dues entitles members to certain benefits. Those benefits were terminated upon the Plaintiffs' resignations.

OAPSE continued to charge the Plaintiffs membership dues after acknowledging the termination of their memberships. OAPSE has taken the position that union membership contracts signed by each Plaintiff, which only allowed the Plaintiffs to opt-out of their agreement to pay dues during certain times ("Opt-Out Windows"), allow them to continue to collect dues until each Plaintiff opts out at the proper time.

The Plaintiffs' complaint attempts to challenge the union contracts and conduct through a claim for declaratory judgment. That claim asks the Court to declare that the Plaintiffs' resignation from OAPSE allowed for complete rescission of any membership contracts and that the continuing exaction of union dues from the Plaintiffs constitutes an invalid and punitive liquidated damages provision. OAPSE has moved to dismiss the amended complaint and asserts that the SERB has exclusive jurisdiction over the Plaintiffs' claims because they are dependent on rights created and contained within R.C. Chapter 4117.

II. LEGAL STANDARD

"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*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989); *PNC Bank, Nat'l Ass'n v. Botts*, 10th Dist. Franklin No. 12AP-256, 2012-Ohio-5383, ¶ 21. Trial courts are not confined to the allegations within the complaint when determining subject matter jurisdiction under Civil Rule 12(B)(1) and may consider pertinent material. *Botts* at 21.

III. ANALYSIS

OAPSE's motion to dismiss argues that because the Plaintiffs' contract and declaratory judgment claims implicate collective bargaining representation and R.C. Chapter 4117, the SERB has exclusive jurisdiction over such claims regardless of how they have been pled. The Plaintiffs respond that their claims have nothing to do with collective bargaining because they seek a declaration on the rights and responsibilities of their contracts with the union Defendants.

"R.C. Chapter 4117 established a comprehensive framework for the resolution of public-sector labor disputes by creating new rights and setting forth specific procedures and remedies for the vindication of those rights." *Franklin County Law Enforcement Ass'n v. Fop*, 59 Ohio St. 3d 167, 169, 572 N.E.2d 87 (1991). The remedies within R.C. Chapter 4117 for unfair labor practices are exclusive, and that chapter does not provide for the filing of a private action in a common pleas court. *Id.* at 170; *See also Carter v. Trotwood-Madison City Bd. of Educ.*, 181 Ohio App. 3d 764, 2009-Ohio-1769, 910 N.E.2d 1088, ¶ 51 (Because R.C. Chapter 4117 contains a comprehensive framework for resolution of public sector labor disputes, no private right of action is allowed in a common pleas court.).

Thus, SERB has exclusive jurisdiction to decide matters committed to it pursuant to R.C. Chapter 4117, and if a party asserts a claim that arises from or is dependent upon the collective bargaining rights set forth in R.C. Chapter 4117, the remedies within that chapter are exclusive. *State ex rel. City of Cleveland v. Russo*, 156 Ohio St. 3d 449, 2019-Ohio-1595, ¶ 13. "Exclusive jurisdiction to resolve charges of unfair labor practices is vested in SERB in two general areas: (1) where one of the parties files charges with SERB alleging an unfair labor practice under R.C. 4117.11; or (2) where a complaint brought before the common pleas court alleges conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11. *The State ex rel. Fop*,

Ohio Labor Council v. Court of Common Pleas, 76 Ohio St. 3d 287, 289, 667 N.E.2d 929 (1996).

However, complaints asserting rights other than those in R.C. Chapter 4117 may proceed in common pleas court. *Russo* at ¶ 14. “[T]he dispositive test for determining whether SERB has exclusive, original jurisdiction is whether the claims arise from or depend on the collective bargaining rights created by R.C. Chapter 4117.” (Internal Quotations Omitted) *State ex rel. Ohio Civ. Serv. Emples. Ass’n v. State*, 146 Ohio St. 3d 315, 2016-Ohio-478, 56 N.E.3d 913, ¶ 56-57. Claims that are independent of R.C. Chapter 4117, such as breach of contract, are still within the exclusive jurisdiction of SERB if they arise from or are dependent on collective bargaining rights created by R.C. Chapter 4117. *State ex rel. Cleveland City Sch. Dist. Bd. of Educ. v. Pokorny*, 105 Ohio App. 3d 108, 663 N.E.2d 719, * 110 (8th Dist.); *See also Ruehmer v. Queen City Lodge No. 69*, 2021-Ohio-2904, 176 N.E.3d 350, ¶ 32 (1st Dist.) (“Artful pleading does not alter the essence of the claim – that the plaintiffs were restrained in the exercise of their voting rights and deprived of the right accorded to them under R.C. Chapter 4117 to participate in union activities.) and *State ex rel. City of Cleveland v. Sutula*, 127 Ohio St. 3d 131, 2010-Ohio-5039, 937 N.E.2d 88, ¶ 19-24 (Common pleas court’s statutory jurisdiction over actions for declaratory judgment and specific performance did not give it jurisdiction over a union’s R.C. Chapter 4117 related claims when a party was alleging clear collective bargaining violations.) and *Hormann v. Cleveland Bd. of Educ.*, 8th Dist. Cuyahoga No. 71165, 1998 Ohio App. LEXIS 4802, * 7-8 (A common pleas court lacked jurisdiction over claims for defamation arising from statements within memoranda written for a disciplinary process pursuant to a collective bargaining agreement.); *But see State ex rel. Rootstown Sch. Dist. Bd. of Educ. v. Portage County Court of Common Pleas*, 78 Ohio St. 3d 489, 494, 678 N.E.2d 1365 (1997) (Common pleas court had jurisdiction over the intervening respondents’ constitutional claims because they did not arise from or depend on R.C. Chapter 4117

collective bargaining rights.) *and Keller v. City of Columbus*, 100 Ohio St. 3d 192, 2003-Ohio-5599, 797 N.E.2d 964, ¶ 14 (“Plaintiffs’ claims are based on the Public Records Act, independent of R.C. Chapter 4117, and are therefore not within the exclusive jurisdiction of SERB.”).

R.C. 4117.11(B)(1) makes it an unfair labor practice for an employee organization, its agents, or representatives to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in R.C. Chapter 4117. R.C. 4117.03(A)(1) gives public employees the right to participate in or refrain from participating in any employee organization of their choosing.

In *Murray*, the appellant pursued claims for fraud and civil conspiracy for being intentionally misled about the settling of his grievance by the Fraternal Order of Police (FOP) and the appellee. *Murray v. City of Columbus*, 10th Dist. Franklin No. 13AP-912, 2014-Ohio-2790, ¶ 20. The court reasoned that because the appellant could not possibly prove his fraud or civil conspiracy claims without establishing conduct on behalf of the FOP and the appellee that would also constitute unfair representation under R.C. 4117.11(B)(6), the SERB had exclusive jurisdiction over the matter. *Id.* at 20-24, 32, *citing Ass’n of Cleveland Fire Fighters, Local 93 v. City of Cleveland*, 156 Ohio App. 3d 368, 2004-Ohio-994, 806 N.E.2d 170 (8th Dist.) (“Even though SERB does not have jurisdiction over any claim that is only “arguably” cast as an unfair labor practice, it should have jurisdiction over any complaint in which it can be shown that, even under the liberal pleading standards of Civ.R. 8(F), relief can be obtained only by proving a violation of a right protected under R.C. Chapter 4117.”).

Here, the Plaintiffs’ amended complaint alleges that OAPSE continues to take membership dues from the Plaintiffs despite acknowledging in writing that the Plaintiffs’ membership with OAPSE has been terminated. Though framed as common law contract claims in the Plaintiffs’ amended complaint, OAPSE’s conduct in continuing to exact dues without providing membership

or membership benefits is dependent on facts, that if true, would also violate the Plaintiffs' right to refrain from assisting or participating in an employee organization under R.C. 4117.11(B)(1) and R.C. 4117.03(A)(1). That same conduct also implicates the concept of payment without representation, a possible violation of R.C. 4117.11(B)(6). Since the Plaintiffs must necessarily prove these violations of R.C. Chapter 4117 to succeed on their claim for declaratory judgment, and because their claims arise from and assert the occurrence of unfair labor practices covered by R.C. Chapter 4117, the Court must conclude that the SERB has exclusive jurisdiction over them.

IV. CONCLUSION

After reviewing the briefs and arguments of the parties, the Court finds that the OAPSE's motion to dismiss is well-taken, and it is **GRANTED**. The Plaintiffs' complaint is dismissed without prejudice. *See Masjid Omar Ibn El Khattab Mosque v. Salim*, 10th Dist. Franklin No. 12AP-807, 2013-Ohio-2746, ¶ 28 ("A dismissal for lack of subject-matter jurisdiction operates as a failure otherwise than on the merits."); Civ.R. 41(B)(4).

IT IS SO ORDERED.

Copies to all parties.

Franklin County Court of Common Pleas

Date: 10-03-2023

Case Title: LUKAS DARLING ET AL -VS- AMERICAN FEDERATION OF
STATE COUNTY AND ET AL

Case Number: 22CV008864

Type: ORDER

It Is So Ordered.

The image shows a circular official seal of the Franklin County Court of Common Pleas, Ohio. The seal features a central emblem with a landscape and the text "COMMON PLEAS COURT" at the top and "FRANKLIN COUNTY, OHIO" at the bottom. A banner at the bottom reads "ALL THINGS ARE POSSIBLE". A handwritten signature in black ink is written over the seal.

/s/ Judge Jaiza Page

Court Disposition

Case Number: 22CV008864

Case Style: LUKAS DARLING ET AL -VS- AMERICAN
FEDERATION OF STATE COUNTY AND ET AL

Case Terminated: 18 - Other Terminations

Motion Tie Off Information:

1. Motion CMS Document Id: 22CV0088642023-06-0999980000

Document Title: 06-09-2023-MOTION TO DISMISS -
DEFENDANT: OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOY

Disposition: MOTION GRANTED