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NECOLE LITTLEJOHN

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vs.

**AMERICAN FEDERATION OF
STATE COUNTY AND
MUNICIPAL**

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DEMAND**

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**IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

NECOLE LITTLEJOHN
6506 Hamilton Ave. Apt. 1
Cincinnati, Ohio 45224

Plaintiff,

vs.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES, OHIO COUNCIL 8,
AFL-CIO
6800 North High Street
Worthington, Ohio 43085

Defendant.

) CASE NO:
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)
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) JUDGE:
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)

) COMPLAINT FOR DECLARATORY
) JUDGMENT AND INJUNCTIVE
) RELIEF AND IN THE
) ALTERNATIVE NOTICE OF
) APPEAL FROM SERB DECISION

Claimant NECOLE LITTLEJOHN, for her complaint hereby states as follows:

INTRODUCTION

1. In its 2018 decision in *Janus v. AFSCME*, the U.S Supreme Court held that the First Amendment protects public-sector employees from being compelled “to subsidize private speech on matters of substantial public concern” without prior affirmative consent. *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, __ U.S. __, 138 S.Ct. 2448, 2460, 201 L.Ed.2d 924 (2018).

2. The Court rejected the requirement that forced government employees either to pay monthly dues or agency fees, used to support union policies and union lawyers, even when employees objected to those policies and actions. Non-payment would trigger employment termination.

3. But “[c]ompelling individuals to mouth support for views they find objectionable violates [a] cardinal constitutional command, and in most contexts, any such effort would be universally condemned.” *Id.* at 2463. Janus made clear that unions and governments cannot continue to compel “free and independent individuals to endorse ideas they find objectionable.” *Id.* at 2464.

4. In light of *Janus*, Ms. Littlejohn has terminated her ostensible membership in Respondent AFSCME, Ohio Council 8, AFL-CIO (“the Union”) and the Respondent union has accepted that termination. Ms. Littlejohn has demanded, on multiple occasions, that the Union Respondents and her employer, the City of Cincinnati, stop the automatic deduction of membership dues from her paychecks and refund any union membership dues taken her membership termination. The Respondents have refused and instead have continued deducting union membership dues from Ms. Littlejohn’s wages as well as vacation time from her paid-time off balance, which they justified based upon the terms of the alleged agreements set forth in deduction card had signed.

5. Such ostensible agreements are based on a mutual mistake of law and have been vitiated through mutual rescission.

6. Even if such agreements have validity, any union claims to continued membership dues from non-members would be an unenforceable penalty.

7. Moreover, any ostensible agreements requiring Ms. Littlejohn to continue to pay union membership dues when she is not—in fact—a union member is invalid because it is an unconscionable contract of adhesion that does not include the amount of the membership dues, was not subject to negotiation, and is unreasonably favorable to the unions.

8. Ms. Littlejohn therefore asks this Board, pursuant to Ohio contract law, to stop these practices and to require the Union to reimburse her for its improper membership dues collection.

NATURE OF THE ACTION

9. Plaintiff Necole Littlejohn seeks to enforce her common law contractual rights of and defenses relating to a contract for union membership and the continued forced deduction of union dues from her paycheck after she had left the union.

10. Ms. Littlejohn is a former union member who resigned from union membership following the U.S. Supreme Court's 2018 decision in *Janus*, 138 S.Ct. 2448.

11. Upon information and belief, Ms. Littlejohn's union membership was evidenced by a membership and dues-deduction authorization card ("Deduction Card").

12. The term "dues" means "the official payments you make to an organization that you belong to." Cambridge Dictionary, *dues*, <https://tinyurl.com/CambridgeDues> (accessed Dec. 2, 2022); Collins, *dues*, <https://tinyurl.com/CollinsDues> (accessed Dec. 2, 2022) ("charges, as for membership of a club or organization").

13. Upon information and belief, the Deduction Cards used by the Union do not contain any information on the amount of the union membership dues deductions.

14. Upon information and belief, the Deduction Cards apply only to the deduction of union membership dues, in other words for members and not for non-members.

15. Upon information and belief, the Respondent employers are only authorized to deduct union membership dues based upon, and after receipt of, the signed Deduction Cards for the specific employee.

16. Upon information and belief, the Deduction Cards contain a separate provision authorizing the employer to deduct union membership dues in an unspecified amount.

17. Upon information and belief, none of the collective bargaining agreements (or any other documents) which are binding on the Plaintiffs allow the respective unions to charge non-union members for membership dues.

18. Unions are not permitted to assess union membership dues to non-union members for union membership. *See, e.g., Janus*, 138 S.Ct. 2448.

19. Upon information and belief, the City of Cincinnati deducted union membership dues from Ms. Littlejohn's paychecks without ever receiving Deduction Cards.¹

20. The Union—with the assistance of the City of Cincinnati—took union membership dues out of the Plaintiff's pay both before and after her resignation from the union and continues to do so.

21. Ms. Littlejohn is entitled to relief based on Ohio contract law principles, including rescission and unconscionable contract of adhesion as set forth herein.

22. Assuming *arguendo* the validity of the Union's claim of a contractual right to continue to take union membership dues, such payments are not valid as consequential damages and are not liquidated damages under Ohio law because liquidated damages must reflect the reasonable compensation for damages incurred; instead, the assessed union membership dues are an unenforceable penalty. *See Boone Coleman Constr., Inc. v. Piketon*, 145 Ohio St.3d 450, 2016-Ohio-628, 50 N.E.3d 502, ¶ 17-19.

23. Ms. Littlejohn seeks damages and declaratory and injunctive relief under Ohio's declaratory judgment statute establishing that the union membership contracts unconscionably and unreasonably penalize her.

¹ To the extent that Ms. Littlejohn has access to a signed Deduction Cards, it is attached as Exhibit A.

24. In so doing, Ms. Littlejohn invokes her rights under Article I, Section 16 of the Ohio Constitution, which guarantees that “All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.”

25. In *Darling v. AFSCME*, Case No. 22-008864 (Franklin Cty. 2023) the court held that because claims like Ms. Littlejohn’s might be cast as unfair labor practices under R.C. 4117.11, those charges must be brought in the State Employment Relations Board (“SERB”).

26. Although *Darling* has been appealed to the Ohio Supreme Court, Ms. Littlejohn, pursuant to the Darling opinion and expressly without waiving her right to seek redress in court, filed an unfair labor practices charge with SERB, including the various contractual theories for which she seeks relief here. .

27. SERB reviewed the charge and dismissed it, stating that based on federal court decisions, which it did not cite, the actions complained of were not an unfair labor practice.

28. SERB did not examine or even mention any of Ms. Littlejohn’s contractual claims or defenses.

29. This is not surprising, given that SERB’s jurisdiction is limited to determining whether an unfair labor practice listed in R.C. 4117.11 occurred, and not determining common law contractual rights.

30. Ms. Littlejohn has thus been left with no forum but this court to assert her common law contract claims and defenses.

31. Indeed, Ohio courts have held that SERB order dismissing a charge because the actions alleged in it are not unfair labor practices are not appealable. See, e.g., *Bunce v. City of Lorain, Ohio*, 2004-Ohio-4948.

32. In the alternative, Ms. Littlejohn would ask this court to accept an appeal of SERB's decision.

PARTIES

33. Plaintiff Necole Littlejohn is employed by the City of Cincinnati as a medical assistant. She was previously a member of the American Federation of State, County, and Municipal Employees ("AFSCME"), Ohio Council 8, AFL-CIO. She resigned from any such union membership on June 21, 2022, but remains a member of the bargaining unit represented by AFSCME.

34. Defendant American Federation of State, County, and Municipal Employees, Ohio Council 8, AFL-CIO is a public sector labor union with its principal place of business in Franklin County Ohio.

FACTUAL BACKGROUND

35. On June 27, 2018, the United States Supreme Court decided *Janus v. AFSCME*, holding that agency-shop arrangements that require employees to fund public-sector unions, irrespective of union membership, violate "the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." *Janus*, 138 S. Ct. at 2468.

36. The *Janus* decision fundamentally changed the law regarding public employees' rights to abstain from compelled payments to the unions chosen to represent them.

37. Ms. Littlejohn is a public employee who was, at one time, a member of the Union.

38. When she joined the Union, Ms. Littlejohn signed a "Checkoff Agreement" that served as her membership contract and authorized her employer to deduct union dues from her paycheck and pay them to directly to the Union. (A copy of the Checkoff Agreement is attached as Exhibit A.)

39. On several occasions, most recently in June of 2022, Ms. Littlejohn notified the Union that she was resigning her membership and instructed both the Union and her employer to stop deducting Union dues from her paycheck. (A copy of Ms. Littlejohn's Resignation from Union Membership is attached as Exhibit B).

40. After receiving Ms. Littlejohn's notice, the Union acknowledged that Ms. Littlejohn was no longer a member of the Union.

41. The Union, however, refused to honor her request to stop deducting dues from her paycheck and also continue to deduct vacation time from her for Union purposes.

42. The mechanism for this continued extraction of dues from non-members is the public employers' automatic deduction of union membership dues from their employees' paychecks.

43. Once a person is no longer a member of an organization, he or she cannot—as a basic definitional matter—owe membership “dues.”

44. In fact, in the letter acknowledging Ms. Littlejohn's termination of union membership, the Unions urged her to reconsider and rejoin the union. (A copy of the Letter is attached as Exhibit C).

45. The letters touted benefits available only to members, most notably the ability to vote in union elections. (Id.)

46. Upon the termination of Ms. Littlejohn's union membership, the Union also terminated the “membership only” benefits for her. (Id.).

47. Upon information and belief, the Union did not provide Ms. Littlejohn with any information on the amount of union membership dues to be charged or vacation time to be deducted in advance of collecting said dues.

48. The Union has refused to cease withdrawing dues as of the date of resignation, stating that Ms. Littlejohn continues to be bound by her alleged contract with the union, and that those contracts allowed employees to opt-out of continued union membership dues payments only during certain times (“Opt-out Windows”) during the life of the contract. (Exhibit C).

49. For Ms. Littlejohn, this meant waiting months or even years for the expiration of the alleged contract before the union would stop withholding union membership dues.

50. Although following the SERB charge, the Union eventually agreed to stop its deductions, the Union refused to refund union membership dues back to the date of Ms. Littlejohn’s earlier resignations. (Exhibit C).

51. As a basis for these actions, the Union cited to the Ninth Circuit Court of Appeals’ decision in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), which held that while *Janus* applied to nonunion employees who sought relief from “fair share” fees, it did not apply to employees who had recently resigned their union membership and were bound by the terms of their alleged contracts with their unions.

52. The Union thus contended that under *Belgau*, Ms. Littlejohn had preemptively contractually waived their rights under *Janus* when they joined the union, or when they renewed their union membership. Accordingly, notwithstanding the Plaintiffs resignation from the union, the unions contend that the Plaintiffs continued to be bound by their alleged contracts with their respective unions (even though the unions recognized that the Plaintiffs were no longer union members) and must continue to pay union membership dues until the next Opt-out Window.

53. *Belgau* is inapplicable to these claims because (1) *Belgau*’s contractual holdings are based on different contracts and on California laws, (2) it is not binding on the Supreme Court

of Ohio, (3) its reasoning is incorrect and inapposite on key issues in this charge, and (4) it is factually distinguishable from the evidence anticipated to be proffered in this charge.

OHIO'S COLLECTIVE BARGAINING LAW

54. R.C. Chapter 4117 sets forth Ohio's collective bargaining law for public employees.

55. R.C. 4117.04 requires that public employers recognize and bargain with an exclusive representative of the bargaining unit:

(A) Public employers shall extend to an exclusive representative designated under section 4117.05 of the Revised Code, the right to represent exclusively the employees in the appropriate bargaining unit and the right to unchallenged and exclusive representation for a period of not less than twelve months following the date of certification and thereafter, if the public employer and the employee organization enter into an agreement, for a period of not more than three years from the date of signing the agreement. For the purposes of this section, extensions of agreements shall not be construed to affect the expiration date of the original agreement.

(B) A public employer shall bargain collectively with an exclusive representative designated under section 4117.05 of the Revised Code for purposes of Chapter 4117 of the Revised Code.

56. R.C. 4117.03 allows public employees to “refrain from [] joining an employee organization.”

57. The state employment relations board “shall decide in each case the unit appropriate for the purposes of collective bargaining. The determination is final and not appealable to any court.” R.C. 4117.06(A).

58. Ohio law mandates that the employee may only bargain with the relevant employer through the designated union. *See Thompson v. Marietta Educ. Ass'n*, 972 F.3d 809, 812 (6th Cir.

2020), *cert. denied*, __ U.S. __, 141 S.Ct. 2721, 210 L.Ed.2d 882 (2021).

59. Thus, while a public employee may refrain from joining a union or choose to leave a union, they are not free to opt-out of the bargaining unit that is represented by that union.

60. Likewise, unions that are chosen as the bargaining unit representative are required to represent all members of the bargaining unit fairly, whether those bargaining unit members are union members or not.

61. In the case of Ms. Littlejohn, the Union is her exclusive representative for purposes of collective bargaining and grievances as set forth in R.C. 4117.05.

62. In other words, while Ms. Littlejohn may choose not to join the union that is recognized as the exclusive representative of her bargaining unit, she may not opt-out of the bargaining unit. Likewise, the Union that has been designated as the exclusive representative for a bargaining unit cannot refuse to represent the members of that bargaining unit.

63. Ohio's declaratory judgment statute provides that

[s]ubject to division (B) of section 2721.02 of the Revised Code, any person interested under a * * * written contract, or other writing constituting a contract * * * may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

R.C. 2721.03.

64. Before the Supreme Court's ruling in *Janus*, Ms. Littlejohn was required to either join the Union and pay full union membership dues or pay "fair-share fees" to the union. *See* R.C. 4117.09(C).

65. The collective bargaining agreements between the Union and the City of Cincinnati statutorily required to contain a provision authorizing the public employer to deduct periodic dues of union members (but not non-members fair share fees) “upon presentation of a written deduction authorization by the employee.” R.C. 4117.09(B)(2).

66. Ms. Littlejohn opposed and continues to oppose paying union membership dues because she is no longer a member of the Union and because she disagrees with the Union’s political advocacy and collective-bargaining activities. Like the plaintiff in *Janus*, she has been compelled by law and by their public employers’ continued deduction of union membership dues from their paychecks to provide monetary support for speech with which they disagree.

67. Before the *Janus* decision, Ms. Littlejohn had no meaningful choice regarding whether or not to support the Union financially. She was required to fund the union either through union membership dues or fair share fees. Accordingly, she reluctantly joined the Union in 2017.

68. When she became aware of the change in the law after *Janus*, however, she resigned from their unions and were no longer members of said unions.

69. Accordingly, she demanded a cessation of union membership dues withdrawals and demanded refunds retroactively to the dates of their resignations.

70. The Union, however, through automatic union membership dues withdrawal and a refusal to recognize Ms. Littlejohn’s rights under *Janus* and continued to compel her to subsidize its speech, even after she was no longer a member.

71. The union Respondents and employer Respondents were acting under color of state law by imposing these mandatory union membership dues payments on the Plaintiffs. *See, e.g.*, R.C. 4117.09(B)(2) and (C); *Lugar v. Edmondson Oil Co. Inc.*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982) (holding private parties subject to liability under 42 U.S.C. § 1983 when acting

under an unconstitutional statute).

72. Under the U.S. Supreme Court's holding in *Janus*, an employee must "clearly and affirmatively consent before any money is taken." *Janus*, 138 S.Ct. at 2486.

73. Here, to the extent that Ms. Littlejohn ever consented to the withdrawal of union membership dues from her paychecks, that consent was clearly revoked by her resignation.

74. The Union's Collective Bargaining Agreement ("CBA") does not allow for the continued deduction of union membership dues from non-members as described below. (The Collective Bargaining Agreement is voluminous, and therefore not attached to this pleading. It is, however, publicly available at serb.ohio.gov/PDF/Contracts/2021/21-MED-05-0739.pdf

75. For example, the CBA between the Union and the City of Cincinnati permits the employer to "deduct union dues" from employee wages only with signed written authorizations.

76. There is thus a live dispute between the Parties regarding the Respondents' obligations under the contracts between the unions and Plaintiffs that can be properly resolved through a declaratory judgment action.

77. Ms. Littlejohn is therefore entitled to a declaration that the Union's practice of continuing to collect union membership dues from her after she resigned from the union is unlawful, and a refund of the money that was forcibly taken from them in violation of her constitutional and contractual rights.

**COUNT ONE:
THE COURT SHOULD DECLARE THAT THE CONTRACTS BETWEEN THE
PLAINTIFFS AND THE UNIONS ARE RESCINDED BASED ON MUTUAL
REPUDIATION**

78. Ms. Littlejohn restates the foregoing allegations and incorporates them here as if fully re-written.

79. To the extent that the Union claims that any contracts or assignments of wages (via

the Deduction Cards)—and specifically the Opt-out Windows contained therein remain in force even after the Plaintiffs have resigned from the unions, the Plaintiff seeks a declaration that her contract with the Union were effectively rescinded and an order returning them to the financial situation as it existed at the time of the registration based on mutual repudiation.

80. Ms. Littlejohn has unambiguously rescinded any contracts with the Union and any assignment of wages.

81. The Union has, in turn, recognized and acknowledged that Ms. Littlejohn is no longer a union member and has refused to provide any benefits or other consideration to her beyond the exclusive representation that they are required by law to provide to members and non-members alike.

82. When both parties repudiate or otherwise refuse to perform under a contract, Ohio courts treat the contract as rescinded. *See e.g., Haman Ents., Inc. v. Sharper Impressions Painting Co.*, 2015-Ohio-4967, 50 N.E.3d 924, ¶ 19 (10th Dist.).

83. A party's assent to rescission can be inferred from their actions. *Id.*

84. In this case, by acknowledging that the Plaintiffs are no longer union members and withholding any purported benefits of union membership from Ms. Littlejohn has effectively rescinded any alleged contract with her.

85. The CBA does not provide for the deduction of union membership dues from nonmembers.

86. Despite this rescission and the Union's termination of union member benefits to the Ms. Littlejohn, the Unions still claims the right—through state actors—to seize union membership dues from her.

87. There is therefore a dispute over the validity or interpretation of the contracts

between the Plaintiff and the Union.

88. The Plaintiff is entitled to a declaration that any contracts they may have had with the unions or any assignment of wages have been rescinded as of the date of the Plaintiff's resignations and terminations of membership, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts, and an order that the Respondents restore the Plaintiff to her financial positions as of the date of their resignations by refunding all union membership dues collected after the date of the resignation.

89. Ohio courts have held that a claim regarding continued dues deduction when the employee is no longer a Union member, in essence allege an unfair labor practice under R.C. 4117.11(B), and are subject to SERB's jurisdiction. *See Darling v. AFSCME*, Franklin Cty. CP, Case No. 22 CV 008864 (Order Granting Mot. to Dismiss, 10/23/2023).

90. While the contract rights she was seeking to enforce were plainly not within SERB's jurisdiction, in light of the Darling decision and without waiving her right to proceed on her contractual claims in court, Ms. Littlejohn initially sought relief through SERB.

91. SERB, however, held that the facts alleged did not constitute an unfair labor practice and did not address Ms. Littlejohn's contractual claims and defenses. (A copy of the SERB Decision is attached as Exhibit D).

**COUNT TWO:
THE COURT SHOULD DECLARE THAT THE CONTRACTS BETWEEN THE
PLAINTIFF AND THE UNIONS IS RESCINDED BASED ON MUTUAL MISTAKE**

92. Ms. Littlejohn restates the foregoing and incorporate them here as if fully re-written.

93. In the alternative, to the extent that the Union claims that their contract with Ms. Littlejohn—and specifically the Opt-out Windows contained in that contracts— remain in force even after she resigned from the Union, the Plaintiff seeks a declaration that her contract with the

Union was effectively rescinded and an order returning them to the financial situation as of the date of resignation based on the doctrine of mutual mistake of law and fact.

94. Assuming Ms. Littlejohn entered into a valid contract or assignment of wages for payment of union membership dues, when she did so, both Ms. Littlejohn and the Respondents understood that the controlling law thereof was that set forth in *Abood v. Detroit Bd. Of Ed.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977), which allowed unions to require all employees in the bargaining unit to pay either union membership dues or non-member fair share fees to the union through their employers.

95. Based on the law when Ms. Littlejohn entered into any contract or assignment, she understood that she would be liable for union membership dues or non-member fair share fees whether or not they joined the applicable union.

96. After Ms. Littlejohn entered into any contract or assignment, the law changed by virtue of the holding in *Janus*, which held that “States and public-sector unions may no longer extract agency fees from nonconsenting employees.” *Janus*, 138 S.Ct. at 2486.

97. The status of the law under *Abood* was an important component in the parties’ understanding of the import of joining or not joining the respective unions and the unions’ permitted usage of the funds.

98. The foregoing was a material term or basis for Ms. Littlejohn’s respective decision in whether or not to join the union in 2017.

99. “A mutual mistake of fact or law regarding a material term of a contract is grounds for rescission.” *Quesinberry v. Quesinberry*, 2022-Ohio-635, 185 N.E.3d 1163, ¶ 36 (2d Dist.), *appeal not accepted*, 167 Ohio St.3d 1467, 2022-Ohio-2490, 191 N.E.3d 437.

100. Ms. Littlejohn is entitled to a declaration that any contract with the unions and/or

assignment of wages have been rescinded as of the date of the Plaintiff's resignations, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts and ordering that the Respondents restore the Plaintiff to their respective financial positions as of the date of their resignations by refunding all union membership dues collected after the date of the resignation.

**COUNT THREE:
THE COURT SHOULD DECLARE THAT THE CONTRACTS BETWEEN THE
PLAINTIFFS AND THE UNIONS IMPOSE AN UNENFORCEABLE PENALTY**

101. The Plaintiffs restates the foregoing allegations and incorporate them here as if fully re-written.

102. In the alternative, to the extent that Ms. Littlejohn's resignation from the Union and termination of any signed Deduction Cards constitute a breach of contract, the Union's continued withdrawal of union membership dues constitutes an unreasonable and unenforceable penalty for such breach of contract.

103. Ohio law permits liquidated damages only when they represent a reasonable measure of compensation for the contract's breach. *Boone*, 145 Ohio St.3d 450, 2016-Ohio-628, 50 N.E.3d 502, at ¶ 17-19.

104. Conversely, Ohio law defines a penalty as:

“a sum inserted in a contract, not as the measure of compensation for its breach, but rather as a punishment for default, or by way of security for actual damages which may be sustained by reason of nonperformance, and it involves the idea of punishment. A penalty is an agreement to pay a stipulated sum on breach of contract, irrespective of the damage sustained. Its essence is a payment of money stipulated as in terrorem of the offending party, *while the essence of liquidated damages is a genuine covenanted pre-estimate of damages*. The amount is fixed and is not subject

to change; however, if the stipulated sum is deemed to be a penalty, it is not enforceable, and the non-defaulting party is left to the recovery of such actual damages as he can prove.” (Emphasis sic.) *Id.*, quoting *Piper v. Stewart & Inlow*, 5th Dist. Licking No. CA-2530, 1978 WL 217430, *1 (June 14, 1978).

105. In this case, the continued payment of union membership dues in an amount never specified in the Deduction Card—presumably subject to increase by unilateral determination by the union—and imposed upon the union members without advance knowledge, is not related to any additional cost or damages sustained by the unions.

106. The Union stopped providing those services to Ms. Littlejohn that it was not otherwise required by law to provide to members and non-members alike on or about the dates of the Plaintiff’s resignations.

107. The unions were therefore immediately relieved of those costs associated with servicing additional union members and thus—assuming that the Plaintiffs’ resignations constituted a breach of their contracts with the unions—suffered no damages from those breaches.

108. The additional union membership dues that the unions have received from the Plaintiffs after their respective resignations are thus unenforceable penalties.

109. The continued union membership dues payments are not consequential damages because a contracting party “is not, however, liable in the event of breach for loss that he did not at the time of contracting have reason to foresee as a probable result of such a breach.” *Williams v. Gray Guy Grp., L.L.C.*, 2016-Ohio-8499, 79 N.E.3d 1146, ¶ 33 (10th Dist.). Since the Deduction Card does not specify the amount to be deducted, the employee cannot have foreseen what might be the probable result of a breach at the time of signing the Deduction Card.

110. The Plaintiff is entitled to a declaration that the unions’ continued withdrawal of

union membership dues from their paychecks is an unenforceable penalty, a refund of all post-resignation union membership dues collected, and a permanent injunction enjoining any further union membership dues deductions.

**COUNT FOUR:
THE COURT SHOULD DECLARE THE PLAINTIFFS' CONTRACTS WITH THE
UNIONS TO BE UNCONSCIONABLE CONTRACTS OF ADHESION**

111. Ms. Littlejohn restates the foregoing allegations and incorporate them by reference here as if fully re-written.

112. Any contract, assignment of wages or Deduction Card signed by Ms. Littlejohn is substantively unconscionable because not including any amounts and requiring monthly membership dues deduction every month for a full year without possible termination thereof upon leaving the union is “unfair and commercially unreasonable.” *Porpora v. Gatliff Bldg. Co.*, 160 Ohio App.3d 843, 2005-Ohio-2410, 828 N.E.2d 1081, ¶ 8 (9th Dist.).

113. Additionally, any such contract, assignment of wages, or Deduction Card is unconscionable because the Plaintiff—by virtue of the Ohio Revised Code, the collective bargaining agreements in place, and the mandatory recognition of only one bargaining unit—created “the absence of meaningful choice on the part of [Plaintiffs]” which was “combined with contract terms that are unreasonably favorable to the [unions].” *Sabo v. Hollister Water Assn.*, 2007-Ohio-7178, ¶ 34 (4th Dist.), citing *Collins v. Click Camera & Video, Inc.*, 86 Ohio App.3d 826, 834, 621 N.E.2d 1294 (2d Dist. 1993).

114. Further, “price is an essential element of a contract that must be proven for the contract to be enforceable.” *Ross v. Belden Park Co.*, No. 1996CA00429, 1998 WL 347064, *3 (5th Dist. June 1, 1998) (internal quotation marks omitted). Any alleged contract between the Plaintiffs and Respondents had no stated amount—or price—to be deducted as union membership

dues. Upon information and belief, there is no other document incorporated by reference into the Deduction Card which shows the essential price element.

115. Accordingly, any such contract, assignment of wages, or Deduction Card is invalid, and unconscionable.

116. Ms. Littlejohn is entitled to a declaration that any contracts she may have had with the Union or any assignment of wages are unenforceable contracts of adhesion, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts and ordering that the Respondents restore the Plaintiff to the financial situation as it existed at the time of her resignation by refunding all union membership dues collected after the date of the resignation.

117. The Union could have made the contract fair and enforceable and can do so prospectively through execution of a fair and enforceable Deduction Card, by providing the ‘price’ element, notifying the party of the option of direct payment to the union rather than automatic dues deductions, allowing that dues deductions can be cancelled at any time, and correcting any other practices which the court determines to be unfair or improper.

**COUNT FIVE:
THE RESPONDENT UNION HAVE BEEN UNJUSTLY ENRICHED**

118. Ms. Littlejohn restates the foregoing allegations and incorporate them here as if fully re-written.

119. Any contract, agreement or assignment of wages has been rescinded or otherwise terminated.

120. By continuing to deduct union membership dues from the Plaintiff’s paychecks after she resigned from union membership, the Unions has been unjustly enriched.

121. Specifically, the Union continued to deduct union membership dues while at the

same time not providing services.

122. Ms. Littlejohn has demanded the refund of her union membership dues after she terminated her membership, but the Union has refused.

123. The Union has thus retained a benefit under circumstances where it is inequitable to do so.

124. Accordingly, Ms. Littlejohn is entitled to damages in the form of a refund of her union membership dues, plus interest.

**COUNT SIX:
IN THE ALTERNATIVE, MS. LITTLEJOHN APPEALS SERB'S DECISION**

125. In the alternative, Ms. Littlejohn respectfully gives notice of her appeal of SERB's decision and asks this Court to treat this action as an administrative appeal subject to R.C. 4117 and 119. A copy of SERB's decision is attached as Exhibit D.

WHEREFORE, Ms. Littlejohn prays for the following relief:

A. A Declaration that the Respondents continued withdrawal of union membership dues from Plaintiffs' paychecks is unlawful;

B. A Declaration that the Plaintiff's contracts with their respective unions were rescinded or terminated upon the Plaintiff's resignations or are otherwise invalid;

C. A refund of all union membership dues improperly withheld;

D. An award of Plaintiff's costs and attorneys' fees; or

E. In the alternative, reversal of SERB's decision;

F. Any further relief the Board deems just and equitable.

Respectfully submitted,

/s/ Jay R. Carson

Jay R. Carson (0068526)

David C. Tryon (0028954)

The Buckeye Institute

88 East Broad Street, Suite 1300

Columbus, Ohio 43215

(614) 224-4422

Email: j.carson@buckeyeinstitute.org

d.tryon@buckeyeinstitute.org

Attorneys for Claimant

EMPLOYEES, AF CIO

I hereby authorize, upon execution of this authorization card, membership in the American Federation of State, Local, and Municipal Employees, AF CIO (a labor union) and the appropriate and concludes all agreements as to dues and any other financial obligations of my union and its subordinate bodies. It is further agreed that my dues shall be deducted from my salary or other compensation at the rate of \$1.00 per month prior to the expiration of any labor contract. I understand that this membership agreement is irrevocable for the term of the contract.



CHECKOFF AGREEMENT



You are hereby authorized and directed to deduct from my wages, my membership fee, initiation fee if any, dues, and any other financial obligations of my union and its subordinate bodies. This checkoff authorization and assignment may only be revoked by me by my written notice to the appropriate bargaining agent and my employer receiving written notice of revocation during the thirty (30) day period prior to the expiration date of any collective bargaining agreement covering my employment. This authorization and assignment will continue after revocation and shall not terminate until thirty (30) days after receipt of written notice by the employer and Union or termination of any current labor agreement, whichever is later. I understand that this checkoff commitment is separate from my membership agreement. Dues paid to AFSCME, however, may qualify as business expense and may be deductible in limited circumstances subject to various restrictions imposed by the Internal Revenue Service.

I understand that at times the labor agreement with my employer may vary the above agreed to terms of membership and/or checkoff or be silent. I agree that the above membership and checkoff authorization shall control in any and all circumstances absent a specific contrary checkoff or membership provision in the labor agreement covering my employment.

Print Name Wade Littlejohn Social Security No. 8380
Address 1080 Dennington Ct #8 City Cincinnati
State OH Zip Code 45240 Tel. No. 513-378-1828
Email Wade.Littlejohn@Cincinnati-oh.gov
Employer CHD Classification Medical Assistant
Date 3-30-17 Signature Wade Littlejohn

EXHIBIT
A

NEW



PUBLIC SECTOR AUTHORIZATION
MEMBERSHIP AND CHECKOFF CARD
AUTHORIZATION/MEMBERSHIP
LOCAL 1043, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO



I request and hereby accept, upon execution of this authorization card, membership in the American Federation of State, County and Municipal Employees, AFL-CIO (herein called AFSCME) and the appropriate subordinate body (the Union, and authorizes the subordinate body(s) to represent me and in my behalf to negotiate and conclude all agreements as to rates of pay, wages, hours and all other terms and conditions of employment. It is agreed that such membership shall be in accordance with the provisions of the Constitution of AFSCME and its subordinate bodies. It is further agreed that my membership may only be revoked by me during the thirty (30) to forty-five (45) day period prior to the expiration of any labor agreement with my employer, by giving written notice to a subordinate body with proof of service. My membership shall not terminate until thirty (30) days after receipt of said notice by the Union. I understand that this membership agreement is separate from my checkoff agreement.



CHECKOFF AGREEMENT



You are hereby authorized and directed to deduct from my wages, my membership fee, initiation fee if any, dues and an equivalent amount or fee, which shall be remitted by you to a subordinate body of AFSCME, in accordance with the applicable collective bargaining agreement. This checkoff Authorization and Assignment may only be revoked by me by my giving, and the appropriate subordinate body and my employer receiving written notice of revocation during the thirty (30) to forty-five (45) day period prior to the expiration date of any collective bargaining agreement covering my employment. This Authorization and Assignment will continue after revocation and shall not terminate until thirty (30) days after receipt of said thirty written notice by the employer and Union or termination of any current labor agreement, whichever is later. I understand that this checkoff commitment is separate from my membership agreement. This checkoff Authorization and Assignment supersedes all previous authorizations and assignments.

Dues, contributions or gifts to AFSCME are not deductible for federal income tax purposes. Dues paid to AFSCME, however, may qualify as business expenses and may be deductible in limited circumstances subject to various restrictions imposed by the Internal Revenue Service.

I understand that at times the labor agreement with my employer may vary the above agreed to terms of membership and/or checkoff or be silent. I agree that the above membership and checkoff authorization shall control in any and all circumstances absent a specific contrary checkoff or membership provision in the labor agreement covering my employment.

Print Name Neicole Littlejohn Social Security No. 287748380
Address 1086 Remington Ct #8 City Cincinnati
State OH Zip Code 45240 Tel. No. 513-578-1828
Email neicole.littlejohn@cincinnati.oh.gov
Employer CHD Classification Medical Assistant
Date 2.19.16 Signature Neicole Littlejohn
(Printed Name)

President
American Federation of State, County and Municipal Employees Council 8 (AFSCME)
6800 North High Street
Worthington, OH 43085-2512

AFSCME 8 President:

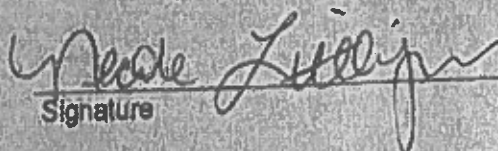
Effective immediately, I resign any membership I may have in all levels of American Federation of State, County and Municipal Employees Council 8 (AFSCME).

Pursuant to the U.S. Supreme Court's decision(s) in *Janus v. AFSCME* and/or *Harris v. Quinn*, I further direct you to immediately cease the deduction of all union dues, fees, and political contributions from my wages and to refund any such funds deducted from my wages without my express authorization. Any consent for such deductions I may have previously provided is revoked, effective immediately.

I understand that AFSCME 8 has arranged to be the sole provider of workplace representation services for all employees in my bargaining unit. I understand further that, in exchange for the privilege of acting as the exclusive bargaining representative, AFSCME 8 must continue to represent me fairly and without discrimination in dealings with my employer and cannot, under any circumstances, deny me any wages, benefits, or protections provided under the collective bargaining agreement with my employer.

Further exaction of union dues or fees against my will violates my constitutional rights. If you refuse to honor my request to cease dues deductions, I request that you:

- Provide me with a copy of any dues deduction authorization — written, electronic, or oral — the union has on file for me; and
- Inform me, in writing, of exactly what steps I must take to effectuate my constitutional rights and stop the deduction of dues/fees.

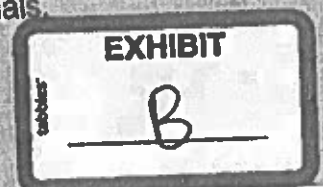

Signature

6-21-22
Date

NECOLE LITTLEJOHN
City Of Cincinnati
Medical Assistant

6506 Hamilton Ave Apt 1
Cincinnati, OH 45224

Do not contact me with any future membership solicitations or union materials.





1213 Tennessee Avenue
Cincinnati, Ohio 45229-1097
Telephone: (513) 641-2900
Fax: (513) 641-2948
Toll Free: (800) 361-6715

Renita Jones-Lee
Regional Director

July 1, 2022

R. Sean Grayson
President

Marcia Knox
First Vice President

Eddie W. Lawson
Secretary-Treasurer

Julie Albers
Recording Secretary

Vice Presidents

Akron
Sheila Fembro
Vonda Johnson

Athens
John Aklison
Patricia Walter

Cincinnati
Emily Bell
Christopher McDonald

Cleveland
Valerie Calaway
Bonnie Perry

Columbus
Kenneth Haynes
Angela Williams

Dayton
Sean Harber
Jeffrey Hasty

Toledo
Donald D. Czerniak
Randy V. Desposito

Youngstown
Thomas R. Connelly
Pamela S. Shelton

At-Large
Traci R. Poellnitz

Retiree
Sandra Coutscher
Floyd E. Wright

Trustees
William Brown
Ramon J. Mendoza
Todd Rodgers

Necole Littlejohn
6506 Hamilton Ave. Apt 1
Cincinnati, Ohio 45224

Dear Ms. Littlejohn:

You are receiving this letter because you sent a written request to Ohio Council 8, AFSCME to drop your union membership. The Council will instruct the membership services departments of Council 8, AFSCME International and your local union to remove your name from the membership roster. I will also contact the City of Cincinnati to stop deducting union release time.

Union dues deduction will not be stopped at this time because your letter does not revoke the dues checkoff authorization card which you signed and because any dues revocation request would need to be made and received by the union in accordance with the union's current procedures and within a window period which you agreed to when you signed the authorization card. Attached is a copy of the union's current dues revocation procedure and a copy of the authorization card you signed. The union's current procedure will allow you to revoke your dues deduction authorization on an annual basis during a window period close in time to the date you signed your authorization card. If you have any questions about this procedure, please feel free to call my office.

Rather than drop your membership or your dues deductions, Council 8 would like you to consider remaining a member of the union. If you want a strong union to represent yourself and your co-workers over pay, benefits and working conditions, we need all of the employees to stick together. As a member of the union, did you know you are entitled to members only benefits including tuition free college for yourself, your spouse and children, lower interest credit cards and home mortgage loan rates and a host of discounted products including cell phone service. I have enclosed information about these, and other members only benefits for your review. If you decide you want to remain a member, simply call me back and let me know.

Sincerely,

Renita Jones-Lee
Renita Jones-Lee
Regional Director

CC: Tom West, President Local 1543



AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES AFL-CIO

EXHIBIT

C



1213 Tennessee Avenue
Cincinnati, Ohio 45228-1097
Telephone: (513) 841-2900
Fax: (513) 841-2948
Toll Free: (800) 381-6716

Ronita Jones-Street
Regional Director

July 29, 2021

Necole Littlejohn
6506 Hamilton Ave. Apt 1
Cincinnati, Ohio 45224

Dear Ms. Littlejohn:

You are receiving this letter because you sent a written request to Ohio Council 8, AFSCME to drop your union membership. The Council will instruct the membership services departments of Council 8, AFSCME International and your local union to remove your name from the membership roster.

Union dues deduction will not be stopped at this time because your letter does not revoke the dues checkoff authorization card which you signed and because any dues revocation request would need to be made and received by the union in accordance with the union's current procedures and within a window period which you agreed to when you signed the authorization card. Attached is a copy of the union's current dues revocation procedure and a copy of the authorization card you signed. The union's current procedure will allow you to revoke your dues deduction authorization on an annual basis during a window period close in time to the date you signed your authorization card. If you have any questions about this procedure, please feel free to call my office.

Rather than drop your membership or your dues deductions, Council 8 would like you to consider remaining a member of the union. If you want a strong union to represent yourself and your co-workers over pay, benefits and working conditions, we need all of the employees to stick together. As a member of the union, did you know you are entitled to members only benefits including tuition free college for yourself, your spouse and children, lower interest credit cards and home mortgage loan rates and a host of discounted products including cell phone service. I have enclosed information about these, and other members only benefits for your review. If you decide you want to remain a member, simply call me back and let me know.

Sincerely,

Ronita Jones-Street
Regional Director

CC: Tom West, President Local 1543

R. Sean Grayson
President

Marcia Knox
First Vice President

Eddie W. Lawach
Secretary/Treasurer

Julie Alberts
Recording Secretary

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Akron
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Patricia Walker

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Christopher McDonald

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Valerie Coleman
Bridget Perry

Columbus
Kathleen Haynes
Angela Williams

Dayton
Sean Barber
Jeffrey Hasty

Toledo
Donald D. Ozment
Randy V. Desposito

Youngstown
Thomas R. Goddard
Patricia S. Shelton

Al-Leno
Traci R. Powell

Revere
Floyd E. Wright
Sandra Coulter

Traction
William Brown
Ramon J. Mayfield, II

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of
Necole Littlejohn,
Charging Party,
v.

Ohio Council 8, AFSCME, AFL-CIO,
Charged Party.

Case Number: 2023-ULP-12-0146

DISMISSAL OF UNFAIR LABOR PRACTICE CHARGE

Before Chair Zimpher, Vice Chair Collins, and Board Member Walter: June 20, 2024.

Necole Littlejohn (Charging Party) filed an unfair labor practice charge against the Ohio Council 8, AFSCME, AFL-CIO (Charged Party). The Charging Party alleged the Charged Party violated R.C. 4117.11(B)(1) and (2) by interfering with her rights and by attempting to cause an unfair labor practice.

Pursuant to R.C. 4117.12, the State Employment Relations Board (SERB) conducted an investigation of this charge. The investigation revealed no probable cause existed to believe the Charged Party violated R.C. 4117.11. Information gathered during the investigation reveals that the Union did not commit an unfair labor practice. Ms. Littlejohn did not submit her request to stop dues deductions during the 25 to 10 days prior to the date she signed her Dues Authorization and Membership Card and Checkoff Agreement. Based on the federal court decisions cited above, the Union is within its rights to specify the time period within which members must submit valid requests to stop dues deductions and does not attempt to cause the Employer to commit an unfair labor practice charge by refusing to stop dues deductions. As a result, the Union has not violated R.C. 4117.11(B)(1) or (2).

Accordingly, the charge is dismissed with prejudice for lack of probable cause to believe the statute has been violated.

It is so directed.

ZIMPHER, Chair; COLLINS, Vice Chair; and WALTER, Board Member, concur.



W. CRAIG ZIMPHER, CHAIR



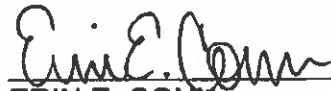
DISMISSAL OF UNFAIR LABOR PRACTICE CHARGE

Case No. 2023-ULP-12-0146

June 20, 2024

Page 2 of 2

I certify that this document was filed and a copy served upon each party or the representative of each party by registered e-mail, on this 20th day of June, 2024.

A handwritten signature in black ink, appearing to read "Erin E. Conn", is written over a horizontal line.

ERIN E. CONN

ADMINISTRATIVE OFFICER

June 20, 2024:4