

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

Matthew Sheldon
3019 Steubenville Road,
Carrollton, Ohio 44615

Plaintiff,

vs.

OHIO ASSOCIATION OF PUBLIC
SCHOOL EMPLOYEES/AMERICAN
FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, LOCAL
541- CARROLLTON EXEMPTED
VILLAGE SCHOOLS, c/o Tracy Moyer,
President, c/o CARROLLTON EXEMPTED
VILLAGE SCHOOLS
205 Scio Road SW
Carrollton, Ohio 44615,

and

c/o OHIO ASSOCIATION OF PUBLIC
SCHOOL EMPLOYEES/AMERICAN
FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES
6805 Oak Creek Drive, Columbus, Ohio
43229-1591

And

STATE EMPLOYMENT RELATIONS
BOARD
65 East State Street, Suite 1200
Columbus, OH 43215

Defendants.

CASE NO. 2025CVH30642

JUDGE MICHAEL V. REPELLA, II

AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

Plaintiff hereby states as follows:

INTRODUCTION

1. This is an action for declaratory and injunctive relief on a contract.
2. It is also an action seeking a declaration regarding the Plaintiff's right under the Ohio Constitution to bring Plaintiff's claims and the forum in which those claims can be brought. Specifically, this action asks the Court to declare whether this Court or the State Employment Relations Board has jurisdiction to hear the contract claims asserted in this Complaint.
3. 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*, 585 U.S. 878, 138 S.Ct. 2448, 2460, 201 L.Ed.2d 924 (2018).
4. 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.
5. 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.

6. In light of *Janus*, Plaintiff terminated Plaintiff's ostensible membership in Defendant the Ohio Association of Public Employees/American Federation of State, County and Municipal Employees, Local 541 ("the Union") and the Defendant union has accepted that termination. Plaintiff has demanded, on multiple occasions, that the Union Defendants and Plaintiff's employer, Carrollton Exempted Village Schools, stop the automatic deduction of membership dues from Plaintiff's paychecks and refund any union membership dues taken after Plaintiff's membership termination. Despite temporarily halting the deductions, Defendant has since resumed deducting union membership dues from Plaintiff's wages, which they justified based upon the terms of the alleged agreements set forth in the deduction card had signed.

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

8. Even if such agreements have validity, any union claims to continued membership dues from non-members would be an unenforceable penalty and/or provide the Union unjust enrichment.

9. Moreover, any ostensible agreements requiring Plaintiff to continue to pay union membership dues when Plaintiff 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.

10. In a similar case brought before the State Employment Relations Board ("SERB"), SERB asserted that the types of allegations averred in this case did not constitute unfair labor practices and were outside of its jurisdiction. However, in another case the Court determined that Ohio courts have no jurisdiction over these types of allegations because SERB had exclusive

jurisdiction over such claims. Plaintiff asserts that common pleas courts have jurisdiction over the contract claims brought herein.

11. Plaintiff therefore asks this Court, pursuant to Ohio contract law, to stop these practices and to require the Union to reimburse Plaintiff for its improper membership dues collection.

PARTIES

12. Plaintiff Matthew Sheldon is employed by the Carrollton Exempted Village Schools, as a custodian. Plaintiff was previously a member of the Union. Plaintiff resigned from any such union membership in December of 2023, but remains a member of the bargaining unit represented by the Union.

13. Defendant Union is a public sector labor union with its principal place of business in Franklin County, Ohio.

14. Defendant SERB is an agency of the government of the State of Ohio which administers the Ohio Public Employees' Collective Bargaining Act through a three-member Board.

15. SERB is named as a defendant to respond to Plaintiff's declaratory judgment claim regarding its jurisdiction over the breach of contract claims as to contracts setting forth the contractual relationship between a union member and the Union. In prior litigation, the Tenth District Court of Appeals held that identical claims were subject to SERB's exclusive jurisdiction over "unfair labor practices." In a subsequent case, again, with identical claims, the plaintiff filed first in SERB, which found that the allegations did not state unfair labor practices.

VENUE

16. Venue is proper in this county pursuant Ohio Civil Rules 3(C)(3), (5), and (6) because (a) Plaintiff signed the membership card there and (b) the dues were deducted from Plaintiff's paycheck there.

17. Venue is also proper in this county pursuant to Rule 3(C)(1) because the local Union 541 is located in Carroll County and, upon information and belief, its president resides there.

FACTS

18. Plaintiff seeks to enforce Plaintiff's common law contractual rights of and defenses relating to a contract for union membership and the continued forced deduction of union dues from Plaintiff's paycheck after Plaintiff had left the union.

19. Plaintiff 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.

20. Plaintiff's union membership was evidenced by a membership and dues-deduction authorization card ("Deduction Card"), which Plaintiff signed on or about August 19th, 2016. (A copy of the Deduction Card is attached as Exhibit A).

21. Upon information and belief, no one from the Union signed the Deduction Card.

22. 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. 12, 2024); Collins, *dues*, <https://tinyurl.com/CollinsDues> (accessed Dec. 12, 2024) ("charges, as for membership of a club or organization").

23. The Deduction Card constitutes Plaintiff's membership contract with the Union.

24. Through it, Plaintiff authorizes the deduction of dues from Plaintiff's salary in exchange for the benefits of Union membership.

25. The Deduction Card used by the Union does not contain any information on the amount of the union membership dues deductions.

26. Upon information and belief, the Plaintiff's employer is only authorized to deduct union membership dues based upon, and after receipt of, the signed Deduction Cards for a specific employee.

27. Upon information and belief, none of the collective bargaining agreements (or any other documents) which are binding on the Plaintiff allows the Union to charge non-union members for membership dues.

28. Pursuant to its Collective Bargaining Agreement with the Union, which is the exclusive bargaining representative under R.C. 4117.04, *et seq.*, Carrollton Exempted Village Schools deducted union membership dues from Plaintiff's paychecks.

29. The Union received those union membership dues out of the Plaintiff's pay both before and after Plaintiff's resignation from the union and continues to do so.

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

31. 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.

32. Plaintiff seeks damages and declaratory and injunctive relief under Ohio’s declaratory judgment statute establishing that the union membership contract unconscionably and unreasonably penalizes Plaintiff.

33. In so doing, Plaintiff asserts Plaintiff’s 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.”

Ohio Currently Lacks a Clear Forum in Which to Bring Contractual Claims Relating to Union Membership

34. Part of the relief sought in this action is a declaration regarding the proper forum for contractual claims relating to public union membership.

35. Federal courts have declined to apply the *Janus* ruling to mandate that union members who terminate their union membership and seek a refund of their union membership dues receive a refund.

36. Specifically, in suits that followed *Janus*, public unions, seeking to retain dues, argued that unlike Mr. Janus, who was not a union member when he sued to enjoin the deduction of agency fees, current union members seeking to opt-out and obtain a refund of their membership dues based on a First Amendment claim had waived that claim because they had entered into voluntary membership contracts with their unions, often spanning several years. *See Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020).

37. A majority of federal appellate courts have adopted the unions' view that the *Janus* rule applies only to non-union members who either never joined or had opted-out of union membership years earlier, but not to employees who had opted out of union membership but whose membership contract had not expired. In those cases, courts have held that an employee's ability to opt-out of union membership after he has signed a contract with the unions is governed solely by that contract and the applicable state contract law. *See Belgau*, 975 F.3d at 950 (9th Cir. 2020) ("When 'legal obligations ... are self-imposed,' state law, not the First Amendment, normally governs.").

38. Thus, while public employees have an absolute First Amendment right to resign from public union membership at any time, *see, e.g., Knox v. SEIU, Local 1000*, 567 U.S. 298 (2012), in *Belgau*—and cases like it—the federal courts have held that employees who left the union before the contractual opt-out window were required by state contract law to continue to pay dues to a union to which they longer belonged until they successfully opted-out during an approved opt-out window.

39. In essence, the federal courts have sent litigants back to state courts to hash out their contractual disputes there.

40. In *Darling v. AFSCME*, Case No. 22-008864 (Franklin Cty. 2023) the court held, however, that because such contractual claims might be cast as unfair labor practices under R.C. 4117.11, those charges must be brought in the SERB. *Darling v. Am. Fedn. of State, Cnty., and Mun. Employees*, 2024-Ohio-2181, *appeal not allowed sub nom. Darling v. Am. Fedn. of State, Cty. & Mun. Emps.*, 243 N.E.3d 89 (Ohio 2024).

41. The *Darling* plaintiffs sought a jurisdiction appeal at the Ohio Supreme Court, which declined to take the case. *Id.*

42. Pursuant to the *Darling* court's direction, other plaintiffs have sought to raise their contractual issues before SERB.

43. In *Littlejohn v. AFSCME*, Case No. 24-03410 (Hamilton Cty. 2024), a claimant, expressly without waiving Plaintiff's right to seek redress in court, filed an unfair labor practices charge with SERB, including the various contractual theories for which the Plaintiff seeks relief here.

44. 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.

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

46. 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.

47. Ohio courts have held that a 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.

48. Union members like Plaintiff who wish to assert legal claims challenging the validity or enforcement of their contracts with unions are potentially without a forum—federal, state, or administrative—in which to seek relief.

FACTUAL BACKGROUND

49. Plaintiff is a public employee who was, at one time, a member of the Union.

50. When Plaintiff joined the Union, Plaintiff signed a “Checkoff Agreement” or “Deduction Card” that served as Plaintiff’s membership contract and authorized Plaintiff’s employer to deduct union dues from Plaintiff’s paycheck and pay them to directly to the Union. (Exhibit A.).

51. On several occasions, most recently in September of 2024, Plaintiff notified the Union that Plaintiff was resigning Plaintiff’s membership and instructed both the Union and Plaintiff’s employer to stop deducting Union dues from Plaintiff’s paycheck.

52. At one point, Plaintiff’s Union president told Plaintiff that the only way he could get out of the Union immediately was with a religious exemption.

53. After receiving Plaintiff’s notice, the Union acknowledged that Plaintiff was no longer a member of the Union.

54. On several occasions, the Union would not permit Plaintiff to attend union meetings.

55. Upon information and belief, after Plaintiff’s attempt to have the Union stop deducting dues in January of 2024, the Union stopped its dues deduction for approximately two months from April to May of 2024.

56. The Union, however, resumed deducting dues from Plaintiff’s paycheck for Union purposes around May 8th, 2024.

57. 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.

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

59. In fact, in the letter acknowledging Plaintiff’s termination of union membership, the Unions urged Plaintiff’s to reconsider and rejoin the union. (A copy of the Letter is attached as Exhibit B).

60. The letter touted benefits available only to members, most notably the ability to vote in union elections. *Id.*

61. Upon the termination of Plaintiff’s union membership, the Union also terminated the “membership only” benefits for Plaintiff. *Id.*

62. Upon information and belief, the Union did not provide Plaintiff with any information on the amount of union membership dues to be charged.

63. The Union has refused to permanently cease withdrawing dues as of the date of resignation, stating that Plaintiff continues to be bound by Plaintiff’s alleged contract with the union, and that that contract 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 B).

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

OHIO’S COLLECTIVE BARGAINING LAW

65. R.C. Chapter 4117 sets forth Ohio’s collective bargaining law for public employees.

66. 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.

R.C. 4117.04.

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

68. 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).

69. 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).

70. 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.

71. 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.

72. The Union is Plaintiff's exclusive representative for purposes of collective bargaining and grievances as set forth in R.C. 4117.05.

73. In other words, while Plaintiff may choose not to join the union that is recognized as the exclusive representative of Plaintiff's bargaining unit, Plaintiff 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.

74. 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.

75. Before the Supreme Court's ruling in *Janus*, Plaintiff 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).

76. The collective bargaining agreement between the Union and Carrollton Exempted Village Schools were 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).

77. Plaintiff opposed and continues to oppose paying union membership dues because Plaintiff is no longer a member of the Union and because Plaintiff disagrees with the Union's political advocacy and collective-bargaining activities. Like the plaintiff in *Janus*, Plaintiff 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.

78. Before the *Janus* decision, Plaintiff had no meaningful choice regarding whether to support the Union financially. Plaintiff was required to fund the union either through union membership dues or fair share fees. Upon information and belief, Plaintiff reluctantly joined the Union in August of 2016.

79. When Plaintiff became aware of the change in the law after *Janus*, however, Plaintiff resigned from the Union and was no longer a member of the Union.

80. Accordingly, Plaintiff demanded a cessation of union membership dues withdrawals and demanded refunds retroactively to the date of Plaintiff's resignation.

81. The Union, however, through automatic union membership dues withdrawal and a refusal to recognize Plaintiff's rights under *Janus*, continued to compel Plaintiff to subsidize its speech, even after Plaintiff was no longer a member.

82. The union Defendant was acting under color of state law by imposing these mandatory union membership dues payments on Plaintiff. *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).

83. 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.

84. Here, to the extent that Plaintiff ever consented to the withdrawal of union membership dues from Plaintiff's paychecks, that consent was clearly revoked by Plaintiff's

resignation. 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 [<https://tinyurl.com/42kb3j7y>]).

85. For example, the CBA between the Union and Carrollton Exempted Village Schools permits the employer to "deduct union dues" from employee wages only with signed written authorizations.

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

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

88. By refusing to return the Plaintiff's union membership dues even though the Plaintiff has terminated Plaintiff's membership in the Union, the Union has acted in bad faith, vexatiously, wantonly, obdurately, or for oppressive reasons.

COUNT ONE:
THE COURT SHOULD DECLARE THAT THE CONTRACT BETWEEN THE
PLAINTIFF AND THE UNION IS RESCINDED BASED ON MUTUAL REPUDIATION

89. Plaintiff restates the foregoing allegations and incorporates them here as if fully re-written.

90. To the extent that the Union claims that any contract or assignment of wages (via

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

91. Plaintiff has unambiguously rescinded any contract with the Union and any assignment of wages.

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

93. 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.).

94. A party’s assent to rescission can be inferred from the party’s actions. *Id.*

95. In this case, by acknowledging that the Plaintiff is no longer a Union member and withholding any purported benefits of union membership from Plaintiff, Union has effectively rescinded any alleged contract with Plaintiff.

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

97. Despite this rescission and the Union’s termination of union member benefits to the Plaintiff, the Union still claims the right—through state actors—to seize union membership dues from Plaintiff.

98. There is therefore a dispute over the validity or interpretation of the contract between the Plaintiff and the Union.

99. The Plaintiff is entitled to a declaration that any contract he may have had with the unions or any assignment of wages have been rescinded as of the date of the Plaintiff's resignation and termination of membership, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contract, and an order that the Defendant Union restore the Plaintiff to Plaintiff's financial positions as of the date of his resignation by refunding all union membership dues collected after the date of the resignation.

100. At least one Ohio court held that a claim regarding continued dues deduction when the employee is no longer a Union member, in essence alleges an unfair labor practice under R.C. 4117.11(B), and is 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). *Darling v. Am. Fedn. of State, Cnty., and Mun. Employees*, 2024-Ohio-2181, *appeal not allowed sub nom. Darling v. Am. Fedn. of State, Cty. & Mun. Emps.*, 243 N.E.3d 89 (Ohio 2024).

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

101. Plaintiff restates the foregoing allegations and incorporates them here as if fully re-written.

102. In the alternative, to the extent that the Union claims that its contract with the Plaintiff and specifically the Opt-out Windows contained in that contract—remain in force even after Plaintiff resigned from the Union, the Plaintiff seeks a declaration that Plaintiff's contract

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

103. Assuming Plaintiff entered a valid contract or assignment of wages for payment of union membership dues, when Plaintiff did so, both Plaintiff and the Defendant 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.

104. Based on the law when Plaintiff entered any contract or assignment, Plaintiff understood that Plaintiff would be liable for union membership dues or non-member fair share fees whether or not he joined the applicable union.

105. After Plaintiff entered 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.

106. 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 union’s permitted usage of the funds.

107. The foregoing was a material term or basis for Plaintiff’s respective decision in whether to join the union in 2016.

108. “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.

109. Plaintiff 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 resignation, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contract and ordering that the Defendant Union restore the Plaintiff to Plaintiff's financial positions as of the date of resignation by refunding all union membership dues collected after the date of the resignation.

**COUNT THREE:
THE COURT SHOULD DECLARE THAT THE CONTRACT BETWEEN THE
PLAINTIFF AND THE UNION IMPOSES AN UNENFORCEABLE PENALTY**

110. Plaintiff restates the foregoing allegations and incorporate them here as if fully rewritten.

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

112. 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.

113. 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.

Id., (quoting *Piper v. Stewart & Inlow*, 5th Dist. Licking No. CA-2530, 1978 WL 217430,

*1 (June 14, 1978)) (emphasis sic.).

114. 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 Union.

115. The Union stopped providing those services to Plaintiff that it was not otherwise required by law to provide to members and non-members alike on or about the date of the Plaintiff's resignation.

116. The Union was therefore immediately relieved of those costs associated with servicing additional union members and thus—assuming that Plaintiff's resignation constituted a breach of Plaintiff's contract with the Union—suffered no damages from those breaches.

117. The additional union membership dues that the Union received from the Plaintiff after their respective resignations are thus unenforceable penalties.

118. 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.

119. The Plaintiff is entitled to a declaration that the Union's 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 PLAINTIFF'S CONTRACT WITH THE
UNION TO BE AN UNCONSCIONABLE CONTRACT OF ADHESION**

120. Plaintiff restates the foregoing allegations and incorporate them by reference here as if fully re-written.

121. Any contract, assignment of wages, or Deduction Card signed by Plaintiff is substantively unconscionable because not including any amounts and requiring monthly membership dues deduction for a full year without possible termination 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.).

122. 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 [Plaintiff]" which was "combined with contract terms that are unreasonably favorable to the [Union]." *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)).

123. 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 Plaintiff and Defendants 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.

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

125. Plaintiff is entitled to a declaration that any contract Plaintiff may have had with the Union or any assignment of wages is an unenforceable contract of adhesion, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contract and ordering that the Defendant Union restore the Plaintiff to the financial situation as it existed at the time of Plaintiff’s resignation by refunding all union membership dues collected after the date of the resignation.

126. 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 other 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: UNJUST ENRICHMENT

127. Plaintiff restates the foregoing allegations and incorporate them here as if fully rewritten.

128. Any contract, agreement or assignment of wages between Plaintiff and the Union

has been rescinded or otherwise terminated.

129. By continuing to deduct union membership dues from the Plaintiff's paychecks after Plaintiff resigned from union membership, the Union has been unjustly enriched.

130. Specifically, the Union continued to deduct union membership dues while at the same time not providing services beyond those service the law requires to all members of the bargaining unit, regardless of their membership status.

131. Plaintiff has demanded the refund of Plaintiff's union membership dues after Plaintiff terminated Plaintiff's membership, but the Union has refused.

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

133. Accordingly, Plaintiff is entitled to damages in the form of a refund of Plaintiff's union membership dues, plus interest.

**COUNT SIX:
DECLARATORY RELIEF REGARDING JURISDICTION OF SERB**

134. Plaintiff restates the foregoing allegations and incorporate them here as if fully rewritten.

135. R.C. 4117.02 creates the SERB and grants it jurisdiction to hear and determine claims of unfair labor practices set forth in R.C. 4117.11.

136. SERB has determined in another case that contractual claims and defenses are not unfair labor practices as described by R.C. 4117.11. See *Littlejohn v. AFSCME*, Case No. 24-03410 (Hamilton Cty. 2024).

137. Article I, Section 16 of the Ohio Constitution provides that "All courts shall be open, and every person, for an injury done him in his land, good, person, or reputation, shall have remedy by due

course of law and shall have justice administered without denial or delay.” Similarly, Article IV, Section 4(B) of the Ohio Constitution provides that the courts of common pleas “shall have such original jurisdiction over all justiciable matters * * * as may be provided by law.” Section 4, Article IV, Ohio Constitution. And by statute, common pleas courts have general original subject-matter jurisdiction over civil actions, including breach-of-contract actions. R.C. 2305.01; *State ex rel. Cleveland Elec. Illum. Co. v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 447, 449 (2000).

138. Nevertheless, as alleged herein, *Darling* court held that contract claims such as those averred herein are within the exclusive jurisdiction of SERB.

139. 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. The statute further provides that common pleas courts have jurisdiction to “declare rights, status, and other legal relations whether or not further relief is or could be claimed” R.C. 2721.02(A).

140. Pursuant to Ohio Civil Rule 8(c)(2), Plaintiff pleads the following in the alternative.

ALTERNATIVE I

141. Plaintiff avers that SERB does not have jurisdiction to resolve the contractual claims set forth in Count I of this Complaint.

142. Plaintiff avers that SERB does not have jurisdiction to resolve the contractual

claims set forth in Count II of this Complaint.

143. Plaintiff avers that SERB does not have jurisdiction to resolve the contractual claims set forth in Count III of this Complaint.

144. Plaintiff avers that SERB does not have jurisdiction to resolve the contractual claims set forth in Count IV of this Complaint.

145. Plaintiff avers that SERB does not have jurisdiction to resolve the contractual claims set forth in Count V of this Complaint.

146. Plaintiff avers that SERB does not have jurisdiction to resolve the contractual claims set forth in Count VI of this Complaint.

ALTERNATIVE II

147. Plaintiff avers that SERB has jurisdiction to resolve the contractual claims set forth in Count I of this Complaint.

148. Plaintiff avers that SERB has jurisdiction to resolve the contractual claims set forth in Count II of this Complaint.

149. Plaintiff avers that SERB has jurisdiction to resolve the contractual claims set forth in Count III of this Complaint.

150. Plaintiff avers that SERB has jurisdiction to resolve the contractual claims set forth in Count IV of this Complaint.

151. Plaintiff avers that SERB has jurisdiction to resolve the contractual claims set forth in Count V of this Complaint.

152. Plaintiff avers that SERB has jurisdiction to resolve the contractual claims set forth in Count VI of this Complaint.

RELIEF REQUESTED UNDER COUNT SIX UNDER EITHER ALTERNATIVE I OR II

153. Plaintiff asks this Court to declare whether pursuant to R.C. 4117.02, *et seq.*, and the Ohio Constitution's open courts and jurisdictional provision, this Court or SERB has jurisdiction to grant relief relating to contractual disputes set forth in this Complaint. Plaintiff asks this Court to declare that it has jurisdiction to resolve the claims asserted in this Complaint.

WHEREFORE, Plaintiff prays for the following relief:

A. A Declaration that the Defendant's Union's continued withdrawal of union membership dues from Plaintiff's paychecks is unlawful;

B. A Declaration that the Plaintiff's contract with his union was rescinded or terminated upon the Plaintiff's resignation or are otherwise invalid;

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

D. Because the Union has acted in bad faith, vexatiously, wantonly, obdurately, or for oppressive reasons, an award of Plaintiff's costs and attorneys' fees;

E. A declaration stating whether this Court or SERB has jurisdiction to grant relief relating to contractual disputes set forth in this Complaint; and

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

Respectfully submitted,

/s/ Jay R. Carson

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The foregoing Amended Complaint was served on all counsel of record via the Court's electronic filing system, this 12th day of March 2025.

/s/ Jay R. Carson
One of the Attorneys for the Plaintiff