IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

SHANNON SWANNER, Plaintiff, vs. OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 771- LORAIN COUNTY BOARD OF DEVELOPMENTAL DISABILITIES, et al., Defendants.	)	CASE NO: 25CV215411 JUDGE MELISSA C. KOBASHER **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES' MOTION TO DISMISS**

I. Introduction

Plaintiff Shannon Swanner ("Plaintiff" or "Mrs. Swanner") respectfully opposes Defendant Ohio Association of Public School Employees' ("OAPSE's" or "the Union's") Motion to Dismiss. Mrs. Swanner's Amended Complaint seeks declaratory and injunctive relief relating to her membership agreement with the Union, and contractual claims well within this Court's jurisdiction. The Amended Complaint adequately pleads claims for declaratory and injunctive relief, and Mrs. Swanner should not be penalized for proceeding with caution.

II. Factual and Procedural Background

The facts of this case are not in dispute. At its simplest, Mrs. Swanner is seeking a declaration that her membership contract with the Union—the contract that permitted the Union to continue to withdraw dues from her paycheck even after her Union membership had ended—is invalid and imposes an impermissible penalty under Ohio law. Mrs. Swanner's case now arrives in this Court because of decisions by federal courts, Ohio courts, and the State Employment Relations Board ("SERB").

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,* 585 U.S. 878, 886 (2018). Following the *Janus* decision, public employees across the country, dissatisfied with their respective public unions and how their dues were being used, sought to "opt out" of their unions and the automatic payroll deduction by which dues were collected. These employees argued, as Mr. Janus had, that forced payment of money to public sector unions violated the First Amendment's protection against compelled speech.

Litigation thus ensued in the federal courts. The public unions, seeking to retain dues, responded by arguing 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 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). The U.S. Supreme Court has not spoken on the issues and 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 union is governed solely by that contract and the applicable state contract law. *See Belgau* at 950 ("When 'legal obligations . . . are self-imposed,' state law, not the First Amendment, normally governs.").

Following the federal courts' guidance, a handful of former union members who were required to pay dues after their membership ended sought relief in state court, alleging, as Mrs. Swanner

does in her Amended Complaint, that their individual contracts with their union were invalid under Ohio contract law, or to the extent that they were valid, the provision requiring the continued payment of dues after they have left the union is an unenforceable penalty and not liquidated damages. *See Darling v. Am. Fedn. of State, Cnty., and Mun. Employees,* 2024-Ohio-2181, *appeal not allowed*, 2024-Ohio-4713.

The union[1] in *Darling* argued that the Franklin County Common Pleas Court lacked jurisdiction to hear the state contractual claims because they could be considered an unfair labor practice, over which SERB has exclusive jurisdiction. The plaintiffs in *Darling* pointed out that all their claims arose independently under well-established state contract law and not under the SERB statute (R.C. 4117.01, *et seq*.) or the collective bargaining agreement between the union and the public employers. Nevertheless, the trial court held, and the Tenth District affirmed, that the contractual rights asserted could constitute an unfair labor practice, and therefore, those claims were subject to the exclusive jurisdiction of SERB. Ultimately, the Ohio Supreme Court declined jurisdiction on appeal.

Following the Tenth District's decision in *Darling,* another plaintiff, Necole Littlejohn, also seeking to stop due deductions taken out of her pay after she had resigned from her union, filed an unfair labor practice charge with SERB, which alleged the contractual theories identical to those alleged in this case (and to those in *Darling*). (A copy of Ms. Littlejohn's SERB charge is attached as Exhibit A.). SERB reviewed the charge and dismissed it, stating that based on federal court decisions[2], which it did not cite, the actions complained of were not an unfair labor practice. (A

[1] Although AFSCME was a named defendant in the *Darling* case, it was no longer a party when the case was dismissed.
[2] SERB did not specifically cite to *Belgau* or any other case, but apparently relied on the *Belgau* line of cases, which address First Amendment issues, not unfair labor practices.

copy of the SERB Decision is attached as Exhibit B.). The SERB decision did not examine or even mention any of Ms. Littlejohn's contractual claims or defenses. *Id.* SERB's decision was 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.[3]

Mrs. Swanner is thus left with contractual rights, but no forum in which to enforce them. The federal courts have held that an employee's membership contract with his or her union is a matter of state contract law. The *Darling* court has held that SERB has exclusive jurisdiction over the contractual claims set forth in Mrs. Swanner's complaint because they may be unfair labor practices. SERB, for its part, declined to take action on Ms. Littlejohn's claims—identical to Mrs. Swanner's here—finding that they did not allege an unfair labor practice. Mrs. Swanner thus filed her complaint in this Court, seeking among other things, a declaration regarding where she might pursue the state contract rights relating to her union membership contract that the federal courts have recognized.

I. Law and Argument

In deciding a motion to dismiss, the court presumes that the complaint's factual allegations are true and makes all reasonable inferences in the nonmoving party's favor. *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2016-Ohio-478, ¶ 12, citing *Mitchell v. Lawson Milk Co.,* 40 Ohio St.3d 190, 192 (1988). To grant the motion, "it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to the relief sought." *Sherman v.*

[3] Ms. Littlejohn subsequently filed her claims in common pleas court, which summarily granted the union's motion to dismiss. Her case is pending on appeal in the First District Court of Appeals.

Ohio Pub. Employees Retirement Sys., 2020-Ohio-4960, ¶ 17.

A. Mrs. Swanner's Amended Complaint adequately states claims for declaratory relief that this court has jurisdiction over.

Ohio's declaratory judgment statute provides that "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 contract] 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). Here, the Union received dues from Mrs. Swanner while she was a member, and after she resigned from the Union based on the written agreement between Mrs. Swanner and the Union. (A copy of Mrs. Swanner's Deduction Card is not attatched because she did not keep a copy of it when she submisted it to the Union.). Mrs. Swanner is challenging "the validity and construction" of that agreement.

Specifically, Mrs. Swanner raises alternative claims for declaratory judgment, alleging that the parties mutually repudiated the contract, that the contract should be rescinded for mutual mistake, or that the continued imposition of dues constitutes an unenforceable penalty for Mrs. Swanner's breach of the contract, and that the contract—that does not disclose the price of the dues to be collected—is unconscionable.

Taking the claims one by one, the Amended Complaint adequately pleads a declaratory judgment cause for each, an action squarely within this Court's jurisdiction. For example, Mrs. Swanner alleges that she resigned from Union membership, that the Union acknowledged and accepted her resignation, and that the Union expressly withheld any further benefits of membership to him. Am. Compl. at ¶¶ 51–61. In other words, Mrs. Swanner has alleged that both parties have refused to perform under the contract, and that it is therefore subject to rescission under Ohio law.

See, e.g., *Haman Ents., Inc. v. Sharper Impressions Painting Co.*, 2015-Ohio-4967, ¶ 19 (10th Dist.). The Union has a different view and this controversy is sufficient to state a claim.

Next, Mrs. Swanner alleged that the contract should be rescinded (and her dues refunded) based on mutual mistake. Mrs. Swanner and the Union originally entered into the contract before the Supreme Court decided *Janus*. Although Mrs. Swanner had the option not to join the Union in the first place, in the pre-*Janus* world, there was no economic incentive to do so because she would have been required to pay agency fees regardless of whether she was a member. "A mutual mistake of fact or law regarding a material term of a contract is grounds for rescission." *Quesinberry v. Quesinberry*, 2022-Ohio-635, ¶ 36 (2d Dist.), *appeal not accepted*, 2022-Ohio-2490. Mrs. Swanner has adequately pled that both parties were mistaken as to the law and enforceability of agency fees, which was material to her membership. Again, this invokes a legal question subject to this court's jurisdiction.

Mrs. Swanner next alleges that the Union's ability to keep receiving dues after she has resigned her membership is an unenforceable contractual penalty. Ohio law permits liquidated damages only when they represent a reasonable measure of compensation for the contract's breach. *Boone Coleman Constr., Inc. v. Piketon,* 2016-Ohio-628, ¶¶ 17–19. Mrs. Swanner alleges—and the Union does not dispute—that the Union kept receiving dues from Mrs. Swanner after she resigned her membership. These dues deductions continue today even though the Union no longer provides any services that it is not otherwise obligated to provide by statute as the exclusive bargaining unit representative under R.C. 4117. Am. Compl. at ¶¶ 61–63. If the membership contract between Mrs. Swanner and the Union is valid—and the Union seems to believe it is—then Mrs. Swanner's resignation from the Union is a breach of that contract.

Despite no longer providing services, the Union continued to receive dues paid through forced

paycheck deductions from Mrs. Swanner. Ohio courts have held that "[p]enalty provisions in contracts are held invalid on public policy grounds because a penalty attempts to coerce compliance." *Satterfield v. Adams Cnty./Ohio Valley School Dist*., 1996 WL 655789, *7 (4th Dist. Nov. 6, 1996), citing *Lake Ridge Academy v. Carney*, 66 Ohio St.3d 376, 381(1993). Mrs. Swanner thus adequately alleges that the continued withdrawal of dues subjected her to an unreasonable penalty. Construing the Amended Complaint's factual allegations as true, this is more than enough to withstand a motion to dismiss on jurisdictional grounds.

Count Four of Mrs. Swanner's Amended Complaint alleges that the membership contract is a contract of adhesion. Mrs. Swanner's dues deduction card—the contract at issue—did not disclose the amount of dues she would be required to pay, and there was an "absence of a meaningful choice" considering that pre-*Janus*, she would have been required to pay agency fees, combined with "contract terms that are unreasonable favorable" to the Union. *See Sabo v. Hollister Water Assn.*, 2007-Ohio-7178, ¶ 34 (4th Dist.), citing *Collins v. Click Camera & Video, Inc.*, 86 Ohio App.3d 826, 834 (2d Dist. 1993). Mrs. Swanner may or may not ultimately prevail on this claim when the Court weighs evidence regarding the choice she had or whether those terms were unreasonably favorable to the Union. But the quesiton Mrs. Swanner presents falls squarely within the Court's jurisdiciotn and thus she has sufficiently pled the claim to withstand a motion to dismiss.

Count Five is a standard unjust enrichment claim, pled in the alternative in case the Court determines that no valid contract was ever formed. Mrs. Swanner pled that she paid the Union dues while she was not a member, that the Union was aware of her payments, that she received nothing in return, and that under those circumstances, it is unjust to allow the Union to retain the dues. This satisfies the pleading requirement for an unjust enrichment claim, which this Court has jurisdiction

over. *See Barger v. Elite Mgt. Services, Inc.*, 2018-Ohio-3755, ¶ 15 (1st Dist.).

B. This Court has jurisdiction to hear this case, and the Ohio Constitution's Open Courts Clause requires the Court to exercise jurisdiction.

This leaves the Court with a complaint for declaratory judgment and injunctive relief on a written agreement, matters that are well within its jurisdiction. In cases where the defendant has challenged the court's subject matter jurisdiction, the test is whether the complaint states *any* cause of action cognizable by the forum. *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989).

Further, Article IV, Section 4(B) of the Ohio Constitution provides that courts of common pleas "shall have such original jurisdiction over all justiciable matters . . . as may be provided by law." Ohio Const., art. IV, § 4. 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). If that was not enough, the declaratory judgment law, R.C. 2721.01, *et seq*., expressly provides that courts have jurisdiction to hear this type of dispute. There is plainly a justiciable controversy between the parties regarding the validity and enforceability of the contract between them and the post-membership dues that the Union has refused to refund.

The Union insists that SERB, not this Court, is the proper forum to resolve this dispute. Union Mot. to Dismiss at 12. The Union's argument fails for three reasons. First, the Union's Motion demonstrates why declaratory judgment is needed. There is a clear disagreement about the proper forum to bring claims like the ones Mrs. Swanner brought. Previous cases show the confusion that clouds this area of law and a declaratory judgment would clear the way forward.

Second, the Union rightly points out that in a similar case, another plaintiff, Ms. Littlejohn, brought the five same contract claims before SERB. Union Mot. to Dismiss at 11. SERB dismissed that charge, finding that the alleged conduct was not an unfair labor practice so the charge lacked

merit. *In re Ohio Council 8, AFSCME, AFL-CIO*, SERB No. 2023-ULP-12-0146 (June 20, 2024). But it is also clear from R.C. 4117.11 that SERB has exclusive jurisdiction only over unfair labor practice charges. *Franklin Cnty. Law Enf't Ass'n v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St.3d 167, 170 (1991). So, if the conduct alleged in Ms. Littlejohn's charge was not an unfair labor practice, then SERB did not have exclusive jurisdiction over claims relating to that conduct. Likewise, SERB does not have exclusive jurisdiction here since, after all, Mrs. Swanner's claims "mirror" Ms. Littlejohn's. Union Mot. to Dismiss at 11.

And like like a federal district court that exercises its jurisdiction to determine if it has subject matter jurisdiction over a case, SERB may exercise its statutory jurisdiction to investigate the charge without taking jurisdiction of the alleged charge. The court can exercise a sort of provisional jurisdiction to determine if it has subject matter jurisdiction without violating the law.

Third, the Ohio Supreme Court has "expressly acknowledged . . . that a plaintiff may raise in the common pleas courts rights that exist independently of R.C. Chapter 4117, 'even though they may touch on the collective bargaining relationships.'" *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2016-Ohio-478, ¶ 54, citing *Franklin Cnty. Law Enf't Ass'n*, at 172. Here, Counts One through Five of the Amended Complaint are common law contract claims. *See* Am. Compl. at ¶ 11. Those rights and claims exist independent of *any* statute, let alone R.C. 4117. Thus, this Court remains an open forum for Mrs. Swanner.

More fundamentally though, the Ohio Constitution provides that "[a]ll courts shall be open, and every person, for an injury done him in her land, good, person, or reputation, shall have remedy by due course of law and shall have justice administered without denial or delay." Ohio Const., art. I, § 16. The Ohio Supreme Court confirmed this truism in *State ex rel. Cincinnati Enquirer v. Bloom,* 2024-Ohio-5029, ¶¶ 36–37. Although *Bloom* primarily addressed the public's right to

access judicial hearings, the Court affirmed that Section 16 mandates "that all persons shall have remedy for the redress of grievances." *Id.* at ¶ 37, quoting *E. W. Scripps Co. v. Fulton*, 100 Ohio App. 157, 171 (8th Dist. 1955) (Hurd, J., concurring). Simply put, Ohio's constitution guarantees Mrs. Swanner a right to a remedy—" granted at a meaningful time and in a meaningful manner." *Arbino v. Johnson & Johnson*, 116 Ohio Ast. 3d 468, 477 (2007). Since the federal courts have directed dissident union members to the state courts, and SERB has determined that their claims are not statutory unfair labor practices, this Court is the only forum in which Mrs. Swanner can seek relief for her contractual claims. Dismissing her well-pled complaint would deprive Mrs. Swanner of her right to have access to court to determine basic questions of contract law.

II. Conclusion

For the above reasons, the Union's Motion to Dismiss should be DENIED.

Respectfully submitted,

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CERTIFICATE OF SERVICE

There will certify that a true and accurate copy of the above brief has been served by e-mail to counsel of record for Defendants on this 5th day of May 2025.

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