

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
STATE OF OHIO**

NECOLE LITTLEJOHN	:	Appellate Case No. C250020
	:	
Plaintiff-Appellant,	:	
	:	Trial Court Case No. A2403410
v.	:	
	:	
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, OHIO COUNCIL 8, AFL-CIO	:	
	:	
Defendant-Appellee.	:	

APPELLANT’S REPLY BRIEF

ORAL ARGUMENT REQUESTED

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REPLY

A. Ms. Littlejohn is Not Seeking to Appeal SERB's Decision.

The Appellee Union first argues that SERB's decision finding no unfair labor practice is not appealable. Ms. Littlejohn agrees. Indeed, SERB's lack of jurisdiction over these facts is exactly why Ms. Littlejohn filed a suit for declaratory judgment and breach of contract in the trial court. Her complaint plainly states the declaratory and contractual relief she seeks. The trial court dismissed that complaint and those counts. It is that dismissal that Ms. Littlejohn appeals here.¹

It is not surprising that SERB declined to exercise jurisdiction over Ms. Littlejohn's claims as a matter of law. Accepting all of her facts as true—her contractual claims simply did not state an unfair labor practice. Instead, those claims arise out of Ohio's common law of contract law and the declaratory judgment process set forth in R.C. do not implicate the collective bargaining system created by R.C. 4117. That SERB's decision apparently intended to cite to *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020) or similar federal decisions is baffling and would appear to be erroneous because those cases spoke only to the application of the First

¹ In the interest of submitting a "belt-and-suspenders" complaint, Ms. Littlejohn did plead in the alternative an appeal of the SERB decision. See T.d., Compl. at ¶125, 6/30/24. But the gravamen of the Complaint and the issues Ms. Littlejohn has raised on appeal relate to her contractual claims and her right to a forum in which to pursue them.

Amendment. Regardless, Ms. Littlejohn agrees that because SERB's decision was jurisdictional and not on the merits, it is not appealable. Nor can it be res judicata as to the merits of Ms. Littlejohn's contractual claims because those claims were never litigated in SERB. SERB merely stated that Ms. Littlejohn's claims did not state an unfair labor practice.

By insisting that any contractual claims related to union membership lie within SERB's exclusive province while at the same time denying that her claims are ULP's, the Union seeks to deny Ms. Littlejohn—and other like her—*any* forum in which to challenge its imposition of “post-membership” dues. The federal courts adopted union arguments in *Belgau* that continued payment of dues under a union membership contract after an employee has left the union did not present a First Amendment problem but was instead private contractual issue between the Union and its former member. *Belgau*, 975 F.3d at 950-51. Plaintiffs similarly situated to Ms. Littlejohn therefore sought to challenge the imposition of post-membership dues under the state common law of contracts in *Darling v. AFSCME*, Case No. 22-008864 (Franklin Cty. 2023). In *Darling*, the union argued that the common pleas court could not hear the case because the contractual claims set forth in that complaint were in essence an unfair labor practice over which SERB had exclusive jurisdiction. The *Darling* court agreed, holding that the because the facts and claims alleged---which are essentially identical Ms. Littlejohn's—could be an unfair labor

practice, SERB had exclusive jurisdiction. Thus, Ms. Littlejohn first brought her claims in SERB. Understanding the high likelihood that her claims were, in fact, not unfair labor practices, Ms. Littlejohn specifically noted that she filed her charge with SERB in the interest of judicial economy and reserved her rights to seek redress for declaratory and contractual claims in common pleas court. (T.d., Compl. at ¶26).

After SERB quite sensibly determined that her claims did not involve any rights under R.C. 4117, Ms. Littlejohn brought her contractual claims in the forum designated both by statute and common to hear them—the common pleas court. *See* R.C. 2305.01 (codifying original jurisdiction of common pleas courts); R.C. 2721.03 (codifying common pleas courts’ jurisdiction to determine “any question of construction or validity arising under the . . . contract, [] and obtain a declaration of rights, status, or other legal relations under it.”); *see also, State ex rel. Lipinski v. Cuyahoga Cty. Court of Common Pleas, Prob. Div.*, 74 Ohio St.3d 19, 22 (1995)(“Absent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging the court’s jurisdiction has an adequate remedy by way of appeal.”)

B. SERB Lacks Exclusive Jurisdiction Over Ms. Littlejohn’s Claim.

Under R.C. 4117, SERB undeniably has exclusive jurisdiction over unfair labor practices. But the Ohio Supreme Court has held that SERB’s exclusive jurisdiction exists only as to those rights created by that statute. *Franklin Cty. Law*

Enf't Assn. v. Fraternal Order of Police, Capital City Lodge No. 9, 59 Ohio St.3d 167, 171 (1991); see also *Keller v. Columbus*, 2003-Ohio-5599, ¶ 14 (“SERB does not have exclusive jurisdiction over every claim that can somehow be cast in terms of an unfair labor practice”). In issuing its decision finding as a matter of law that the facts set forth in Ms. Littlejohn’s SERB filing did not state an unfair labor practice, SERB renounced any exclusive jurisdiction over the matter. As the Ohio Supreme Court has repeatedly held, SERB’s jurisdiction is exclusive only as to claims and remedies created by R.C. 4117. See *E. Cleveland v. E. Cleveland Firefighters Local 500, I.A.F.F.*, 70 Ohio St.3d 125, 127–29 (1994)(“to hold that only SERB has jurisdiction to hear or determine anything that ‘arguably’ constitutes an unfair labor practice is neither a complete nor totally correct statement of the law set forth in R.C. Chapter 4117 or the decisions of this court.”)

Instead, this case plainly presents a declaratory judgment question regarding the enforceability of a contract. The Union continued to withdraw dues from Ms. Littlejohn’s after she had unambiguously resigned from Union membership. (T.d., Compl. at ¶¶ 31-40, 6/30/24). The Union premised its continued withdrawal of post-membership dues on its membership contract with Ms. Littlejohn and the Ninth Circuit’s decision in *Belgau* that such arrangements were matters of private contract and thus did not implicate the First Amendment in the way that the facts presented in *Janus v. Am. Fedn. Of State, Cty., & Mun. Emps., Council 31*, 585 U.S. 878 (2018)

had. *Id.* This is thus a classic declaratory judgment action, authorized by statute and raising common law claims and defenses that were well-established decades before 4117's enactment.

But most importantly, in this case, SERB has undeniably stated that the claims that Ms. Littlejohn seeks to have adjudicated are *not* unfair labor practices and thus not within its jurisdiction. Note that SERB's order did not rule on any facts relating to those claims but rather stated that because the Union's withdrawal of post-membership dues was apparently authorized by federal law, there could be no unfair labor practice. SERB was silent—again, quite properly—as to whether Ms. Littlejohn had adequately pled a declaratory claim regarding the membership.

C. The Ohio Constitution's Open Courts Provision will Not Allow the Union to Have it Both Ways.

As Ms. Littlejohn spelled out in her initial brief, 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.” Ohio Const., art. I, § 16. Since the federal courts have directed dissident union members to the state courts, and SERB has determined that Ms. Littlejohn's claims, even assuming all of the facts pled are true, lay outside of its bailiwick, the common pleas court is the only forum in which Ms. Littlejohn can seek relief. This is the role which the common law, Ohio's constitution, Ohio's statutes creating the common pleas courts, and Ohio's

declaratory judgment statute envision for the courts. The Ohio Constitution will not allow the Union to have it both ways—a system in which the only remedy available is through SERB while SERB expressly disclaims its ability to grant a remedy under the facts pled.

CONCLUSION

For all the foregoing reasons, the trial court’s decision should be reversed and the case remanded for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on the 9th day of June 2025, counsel for Appellant Necole Littlejohn served the foregoing Reply Brief on all counsel of record by email to kmassengillbernardin@afscme8.org, and mevans@afscme8.org.

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CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with the word-count provision set forth in First District Local Rules 19(B)(1). This Brief is printed using the Times New Roman 14-point type face using Microsoft word processing software and contains 1337 words.

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