IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

KEVIN CHANDLER, *et al.*, Plaintiffs, vs. OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 329- PERRY LOCAL SCHOOLS, *et al.*, Defendants.	)	CASE NO: 2025-CV-00690 JUDGE TARYN L. HEATH PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT AFSCME, LOCAL 329- PERRY LOCAL SCHOOL'S MOTION TO DISMISS

I. Introduction

Plaintiffs respectfully opposes Defendant OAPSE/AFSCME Local 4, AFL-CIO, and its Local 329 Perry Local Schools Board of Education's ("Local 329") Motion to Dismiss[1]. Plaintiffs' Complaint seeks declaratory and injunctive relief relating to their membership agreements with their respective unions, and contractual claims well within this Court's jurisdiction. The Complaint adequately pleads claims for declaratory and injunctive relief, and Plaintiffs 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, Plaintiffs are seeking a declaration that their membership contracts with their unions—the contracts that permitted the unions to

[1] Local 329's Motion to Dismiss is substantially similar to Defendant American Federation of State, County and Municipal Employees, Local 1880-Stark Area Regional Transit Authority's ("Local 1880") Motion to Dismiss. Because Defendants have filed two motions to dismiss, Plaintiffs' are filing separate responses to each motion. However, recognizing the similarities between the two motions, Plaintiffs' responses are substantively the same.

continue to withdraw dues from their paychecks even after their union membership had ended—are invalid and impose an impermissible penalty under Ohio law. Plaintiffs' 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 unions, seeking to retain dues, successfully argued that *Janus'* holding was limited the narrow field of plaintiff like Mr. Janus, who was not a union member when he sued to enjoin the deduction of agency. *See Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020). While a number of litigants have appealed to the U.S. Supreme Court, the Court has not taken up the question, and 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 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 Plaintiffs do in their Complaint, that their individual contracts with their unions 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 (10th Dist.), *appeal not allowed*, 2024-Ohio-4713.

The union[2] 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[3], which it did not cite, the actions complained of were not an unfair labor practice. (A 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

[2] Although AFSCME was a named defendant in the *Darling* case, it was no longer a party when the case was dismissed.
[3] 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.

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.[4]

Plaintiffs are 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 Plaintiffs' complaint because they may be unfair labor practices. SERB, for its part, declined to take action on Ms. Littlejohn's claims—identical to Plaintiffs' here—finding that they did not allege an unfair labor practice. Plaintiffs' thus filed their complaint in this Court, seeking, among other things, a declaration regarding where they might pursue the state contract rights relating to their union membership contract that the federal courts have recognized.

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

A. Plaintiffs' Complaint adequately states claims for declaratory relief that this court has jurisdiction over.

Ohio's declaratory judgment law provides that "any person interested under a . . . written contract, or other writing constituting a contract . . . may have determined any question of

[4] 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.

construction or validity arising under . . . contract and obtain a declaration of rights, status, or other legal relations under it." R.C. 2721.03. The law 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 unions received dues from Plaintiffs while they were members of their respective unions, and after they resigned from the unions based on the written agreement between Plaintiffs and their unions. Plaintiffs are challenging "the validity and construction" of those agreements.

Specifically, Plaintiffs raise 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 Plaintiffs' breach of the contracts, and that the contracts—that does not disclose the price of the dues to be collected— are unconscionable.

Taking the claims one by one, the Complaint adequately pleads a declaratory judgment cause for each, an action squarely within this Court's jurisdiction. For example, Plaintiffs allege that they resigned from union membership, that the unions acknowledged and accepted their resignations, and that the unions expressly withheld any further benefits of membership to them. Compl. at ¶¶ 57–82. In other words, Plaintiffs have alleged that both parties have refused to perform under the contracts, and that they are 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 unions have a different view and this controversy is sufficient to state a claim.

Next, Plaintiffs alleged that the contracts should be rescinded (and their dues refunded) based on mutual mistake. Plaintiffs Clark and Chandler and their unions originally entered into the contracts before the Supreme Court decided *Janus*. Although they had the option not to join the

unions in the first place, in the pre-*Janus* world, there were no economic incentive to do so because they would have been required to pay agency fees regardless of whether they were member.s "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. Plaintiffs have adequately pled that both parties were mistaken as to the law and enforceability of agency fees, which were material to their memberships. Again, this invokes a legal question subject to this court's jurisdiction.

Plaintiffs next allege that the unions's ability to keep receiving dues after Plaintiffs had resigned their memberships 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. Plaintiffs alleged—and the unions do not dispute—that the unions kept receiving dues from Plaintiffs after they resigned their memberships. These dues deductions for Plaintiffs Clark and Chandler continue today even though the unions are no longer providing any services that they are not otherwise obligated to provide by statute as the exclusive bargaining unit representative under R.C. 4117. Compl. at ¶¶ 6–7, 57–82. If the membership contracts between Plaintiffs and the unions are valid—and the unions seems to believe they are—then Plaintiffs' resignation from the unions outside of their contractual windows breached that contract.

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). Plaintiffs thus adequately alleged that the continued withdrawal of dues subjected them to an unreasonable penalty.

Count Four of Plaintiffs' Complaint alleges that the membership contract is a contract of adhesion. Plaintiffs' dues deduction cards—the contracts at issue—did not disclose the amount of dues they would be required to pay, and there was an "absence of a meaningful choice" considering that pre-*Janus*, Plaintiffs' Clark and Chandler would have been required to pay agency fees, combined with "contract terms that are unreasonable favorable" to the unions. *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). Plaintiffs 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 unions. But the questions Plaintiffs present fall squarely within the Court's jurisdiction and thus they have sufficiently pled the claim to withstand a motion to dismiss.

Count Five is an unjust enrichment claim, pleaded in the alternative in case the Court determines that no valid contracst were ever formed. Plaintiffs pled that they paid the union dues while they were not members, that the unions were aware of their payments, that they received nothing in return, and that under those circumstances, it is unjust to allow the unions 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 contracts between them and the post-membership dues that the unions have refused to refund.

The unions insist that SERB, not this Court, is the proper forum to resolve this dispute. *E.g.,* Local 1880 Mot. to Dismiss at 5–6; Local 329 Mot. to Dismiss at 8. The unions's argument fails for three reasons. First, the unions's Motions demonstrate why declaratory judgment is needed. There is a clear disagreement about the proper forum to bring claims like the ones Plaintiffs brought. Previous cases show the confusion that clouds this area of law, and a declaratory judgment would clear the way forward.

Second, the unions rightly points out that in a similar case, another plaintiff, Ms. Littlejohn, brought the same five contract claims before SERB. *E.g.,* Local 1880 Mot. to Dismiss at 7–8; Local 329 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 only has exclusive jurisdiction 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. It then follows that SERB does not have exclusive jurisdiction here since, after all, Plaintiffs' claims are "nearly, if not identical,"

to Ms. Littlejohn's. Local 1880 Mot. to Dismiss at 7.

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 Complaint are common law contract claims. *See* Compl. at ¶¶ 1, 10–12. Those rights and claims exist independent of *any* statute, let alone R.C. 4117. Thus, this Court remains an open forum for Plaintiffs.

What Plaintiffs asks this Court to do is not without precedent. In *Corder v. Ohio Edison Co.*, the plaintiffs sought a declaratory judgment on a public utility company's right under an easement to use herbicides to remove certain plants. 2020-Ohio-5220, ¶ 10. The Ohio Supreme Court determined that PUCO lacked authority to answer that question—a court of general jurisdiction was needed. *Id.* at ¶ 27. *Corder* turned on whether PUCO had exclusive jurisdiction to "decide the scope of an easement owned by a public utility." *Id.* Relying on the common law, the Court held that "such a determination requires an adjudication of competing property rights that may be made only by a court." *Id.* Contract law, like property law, is an area deeply rooted in and controlled by common law. Like the plaintiffs' property rights in *Corder*, Plaintiffs' contract rights would be severely harmed without judicial intervention here. Thus, this Court can make a similar determination on SERB's jurisdiction, and dismissal is inappropriate because this Court has jurisdiction to hear the case.

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; see also, *State ex rel. Cincinnati Enquirer v. Bloom,* 2024-Ohio-5029, ¶¶ 36–37. Dismissing this case will strip Plaintiffs of their constitutional right, as no other forum or court is available for them to seek redress. 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 Plaintiffs can seek relief for their contractual claims. Dismissing the well-pleaded complaint would deprive Plaintiffs of their right to have access to court to determine basic questions of contract law.

IV. Conclusion

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

Respectfully submitted,

/s/ Jay R. Carson
Jay R. Carson (0068526)
David C. Tryon (0028954)
J. Simon Peter Mizner (0105077)
The Buckeye Institute
88 East Broad Street, Suite 1300
Columbus, Ohio 43215
(614) 224-4422
Email: j.carson@buckeyeinstitute.org
d.tryon@buckeyeinstitute.org
mizner@buckeyeinstitute.org
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

This 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 12th day of June 2025.

/s/ Jay R. Carson
Jay R. Carson (0068526)
One of the Attorneys for Plaintiff