IN THE COURT OF COMMON PLEAS
FULTON COUNTY, OHIO

KATRINA VANDERVEER.,	)	CASE NO: 25CV000093
	)	
Plaintiff,	)	
	)	
vs.	)	JUDGE SCOTT A. HASELMAN
	)	
OHIO ASSOCIATION OF PUBLIC SCHOOL EMPLOYEES/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 660- PIKE-DELTA-YORK, *et al.*,	)	**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT OAPSE, LOCAL 660-PIKE-DELTA-YORK'S MOTION TO DISMISS**
	)	
Defendants.	)	

I. Introduction

Plaintiff Katrina Vanderveer ("Plaintiff" or "Ms. Vanderveer") respectfully opposes Defendant Ohio Association of Public School Employees, Local 660-Pike-Delta-York Local School District's ("Local 660") Motion to Dismiss. Plaintiff's Complaint seeks declaratory and injunctive relief relating to her membership agreement with the union, and contractual claims well within this Court's jurisdiction. The Complaint adequately pleads claims for declaratory and injunctive relief, and Plaintiff 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, Plaintiff is seeking a declaration that her membership contract with her union—the contract that permitted the union to continue to

withdraw dues from her paychecks even after her union membership had ended—is invalid and imposes an impermissible penalty under Ohio law. Plaintiff'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). 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.").

Thus, while employees retained 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—employees who left the union before the contractual opt-out window were arguably contractually required to continue to pay dues to a union to which she no longer belonged. In essence, the federal courts have sent litigants back to state courts to hash out their contractual disputes there.

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 Plaintiff does in her Complaint, that her individual contract with the union was invalid under Ohio contract law, or to the extent that it was valid, the provision requiring the continued payment of dues after she 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[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

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

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 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]

Plaintiff 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 Plaintiff's complaint because they may be unfair labor practices. SERB, for its part, declined to take action on Ms. Littlejohn's claims—identical to Plaintiff's here—finding that they did not allege an unfair labor practice. Plaintiff thus filed her complaint in

[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.
[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.

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.

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. The Ohio Supreme Court's recent decision resolves this jurisdictional question.

In *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, the Ohio Supreme Court affirmed that courts of common pleas have jurisdiction to resolve contractual claims, even when those claims arise out of collective bargaining agreements. Slip Opinion No. 2025-Ohio-2052 at ¶ 2. Where *Lakewood* addressed an arbitration agreement within the CBA, this case is even further afield from SERB's jurisdiction, arising out of a contract separate from the CBA *or* R.C. 4117. *Id.*

The unanimous court reiterated that

> [e]xclusive jurisdiction to resolve unfair labor practice charges is vested in SERB in two general areas: (1) where one of the parties filed charges with SERB alleging an unfair labor practice under R.C. 4117.11 and (2) where a complaint brought before the common pleas court alleges conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11.

Id. a ¶ 13, quoting *State ex rel. Dept. of Mental Health v. Nadel*, 2003-Ohio-1632, ¶ 23. The court determined that "[i]f a party asserts rights that are independent of R.C. Chapter 4117, the party's

complaint may properly be heard in common pleas court." *Id.* at ¶ 17, quoting *Franklin Cty. Law Enforcement Assn.*, 59 Ohio St.3d 167 (1991), paragraph two of the syllabus.

In *Lakewood*, the CBA at issue included a grievance procedure, which provided "that it is the 'exclusive method of reviewing and settling disputes' between the city and the union or employees and that in the event a grievance goes to arbitration, decisions of arbitrators are 'conclusive and binding.'" *Id.*

In 2020, the union filed a grienvance on behalf of a fired employee and the parties began arbitration proceedings. *Id.* Before the arbitration hearing commenced, however, "the parties agreed to a last-chance agreement ('LCA'), under which the employee was reinstated." *Id.* Under the LCA, if the employee "were to violate any city work rule or policy 'pertaining to professional, respectful, and workplace appropriate behavior,' he would be 'subject to immediate termination without recourse to the grievance or arbitration provisions of the [CBA].'" *Id.* In 2021, the city again fired the employee and refused to arbitrate. *Id.* at ¶ 5. The union sued in the court of common please to compel arbitration and the city moved to dismiss. The trial court denied the motio and ordered the parties to arbitration. The city appealed and the Eighth District Court of Appeals reversed the trial court's decision on the basis that "while the union was not explicity seeking relief under R.C. Chapter 4117, it was substantially alleging that the city had interfered with [the employee's] collective bargaining rights by refusing to arbitrate. *Id.*

The Ohio Supreme Court overruled the Eighth District, holding that the common pleas court had jurisdiction over the case. The court noted that "[i]n its application and motion to compel arbitration, the union [did] not allege that the city engaged in an unfair labor practice or conduct that constitutes an unfair labor practice. Therefore, SERB does not have exclusive jurisdiction over

[the] case." *Id.* at ¶ 13.

Additionally, the court rejected the argument that the claims arose from or were dependent on the collective bargaining rights created by R.C. Chapter 4117. *Id.* at ¶ 27. While the union "allege[d] a violation of the CBA by the city; it [did] not allege" a violation of R.C. Chapter 4117. *Id.* at ¶ 29. The court further explained that "even if R.C. Ch. 4117 did not exist, the parties would still have the right to include arbitration provisions in their collective-bargaining agreement . . . ." *Id.* Thus, SERB did not have exclusive jurisdiction over *the alleged violation of the CBA*.

Here, Vanderveer's contract claims are even further distant from R.C. Chapter 4117 than the alleged CBA violation in *Lakewood*. Ms. Vanderveer (1) *did not* file charges with SERB alleging an unfair labor practice under R.C. 4117.11; (2) *did not* allege before the trial Court that the union engaged in an unfair labor practice or conduct that constitutes an unfair labor practice, *as confirmed by SERB*; (3) *did* assert in the Complaint rights that are independent of R.C. Chapter 4117; and (4) *did not* allege a violation of the CBA or any actions not tangentially related to the CBA. Simply put, Ms. Vanderveer's claims would still exist if R.C. 4117 had never been enacted. Apply the Ohio Supreme Court's holding in *Lakewood*, "SERB does not have exclusive jurisdiction over this case…." *Id.* at ¶ 13.

B. Plaintiff's Complaint adequately states claims for declaratory relief that this court has jurisdiction over.

Ohio's declaratory judgment law 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 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 union received dues from Plaintiff while she was a member of the union, and after she resigned from the union based on the written agreement between Plaintiff and her union. Plaintiff challenges "the validity and construction" of those agreements.

Specifically, Plaintiff raises alternative claims for declaratory judgment, alleging that the parties mutually repudiated the contract, that the continued imposition of dues constitutes an unenforceable penalty for Plaintiff's breach of the contract, and that the contract—which does not disclose the amount of the dues to be collected— is unconscionable.

Taking the claims one by one, the Complaint adequately pleads a declaratory judgment cause for each. For example, Ms. Vanderveer 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 her. Compl. at ¶¶ 52–58. In other words, Ms. Vanderveer 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.

Ms. Vanderveer next alleges that the union's ability to keep receiving dues after she had resigned her 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. Ms. Vanderveer alleged—and

the union does not dispute—that the union kept receiving dues from her after she resigned her membership. These dues deductions continue even though the union is no longer providing any services that it is not otherwise obligated to provide by statute as the exclusive bargaining unit representative under R.C. 4117. Compl. at ¶¶ 53–66. If the membership contract between Ms. Vanderveer and the union is valid—and the union seems to believe it is—then Ms. Vanderveer's resignation from the union outside of her contractual window breached that contract. The question then becomes whether the union is entitled to continue to receive dues until the next opt-out window as liqudated damages or whterh the continued deduction of dues is a contractual penalty.

Despite no longer providing services, the union continued to receive dues paid through forced paycheck deductions from Plaintiff. 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). Ms. Vanderveer thus adequately alleged that the continued withdrawal of dues subjected them to an unreasonable penalty. Construing the Complaint's factual allegations as true, this is more than enough to withstand a motion to dismiss on jurisdictional grounds.

Count Three of the Complaint alleges that the membership contract is a contract of adhesion. Plaintiff'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" because there was no possible negotiation on the terms of the contract and the "contract terms [] are unreasonabl[y] 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). Ms. Vanderveer 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 questions presented fall squarely within the Court's jurisdiction. Ms. Vanderveer has therefore sufficiently pled the claim to withstand a motion to dismiss.

Count Five is a standard unjust enrichment claim, pleaded in the alternative in case the Court determines that no valid contract was ever formed. Ms. Vanderveer pled that she paid the union dues while she was not a member, that the union was aware of the 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.).

C. 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 establishes 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 and declaratory judgment actions like the one here. 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 union has refused to refund.

The union insists that SERB, not this Court, is the proper forum to resolve this dispute. *E.g.,* Local 660 Mot. to Dismiss at 6. 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 Plaintiff brought. Previous cases show the confusion that clouds this area of law, and a declaratory judgment would clear the way forward. Indeed, the case presents this Court with the opportunity to apply the Ohio Supreme Court's recent holding in *Lakewood* to clarify the bounds of SERB's exclusive jurisdiction.

Second, the union rightly points out that in a similar case, another plaintiff, Ms. Littlejohn, brought the same five contract claims before SERB. *E.g.,* Local 660 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. Likewise, SERB does not have exclusive jurisdiction here since, after all, Plaintiff's claims "mirror" Ms. Littlejohn's. Local 660 Mot. to Dismiss at 7.

There is little distinction between SERB declining to prosecute an unfair labor practice charge for jurisdictional or merit-based reasons. SERB may exercise its statutory jurisdiction to investigate the charge without taking jurisdiction of the alleged charge. If the facts do not—as a matter of law—constitute an unfair labor practice, as was the case in *Littlejohn*, SERB properly

decines to prosecute. Like a federal court exercising its jurisdiction to determine if it has subject matter jurisdiction, the court here can issue a declaratory judgment as to whether it or SERB has subject matter jurisdiction over the mertis of the case.

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 Four of the Complaint are common law contract claims. *See* Compl. at ¶¶ 1, 7–11. Those rights and claims exist independent of *any* statute, let alone R.C. 4117. Thus, this Court remains an open forum for Plaintiffs.

What Plaintiff asks this Court to do is not without precedent. In *Corder v. Ohio Edison Co.*, the plaintiff 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 plaintiff's property rights in *Corder*, Ms. Vanderveer's contract rights will 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. 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). Dismissing this case will deprive Ms. Vanderveer of her constitutional right, as no other forum or court is available for her 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 Plaintiff can seek relief for her contractual claims. Dismissing the well-pleaded complaint would deprive Plaintiff of her 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
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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 2nd day of July 2025.

/s/ Jay R. Carson
Jay R. Carson (0068526)

One of the Attorneys for Plaintiff

EXHIBIT A

State of Ohio
State Employment Relations Board
65 East State Street, 12th Floor
Columbus, Ohio 43215-4213
(614) 644-8573
ULP@SERB ohio gov

Case No 2023-ULP-12-0146

STATE EMPLOYMENT RELATIONS BOARD

2023 DEC 11 P 12:19

with Attachment

UNFAIR LABOR PRACTICE CHARGE

INSTRUCTIONS: File *one original and one copy* of this form with the State Employment Relations Board at the above address. Serve *one copy* on the party against whom the charge is brought See Ohio Administrative Code Rule 4117-1-02 If more space is required for any item, attach additional sheets, please number the items accordingly.

NOTE: If you wish to file unfair labor practice charges against both the employer and the union, then separate Unfair Labor Practice Charge forms must be filled out. For the form(s) to be filed against the union, fill out all sections of this form For the form(s) to be filed against the employer, fill out all sections except section four, which is used to identify the employer for charges filed against the union or its representative(s)

1. Party Filing Charge: (*Check One*)

☐ Employee Organization/Union ☑ Employee ☐ Employer ☐ Other_____

Name Necole Littlejohn	
Address 6506 Hamilton Ave. #1	Telephone work ( ) home [redacted]
City, County, State, Zip Cincinnati, Ohio 45224	E-mail [redacted]

2. Name of Person Representing the Party Filing Charge:
(Representative must file a Notice of Appearance form)
Jay R. Carson

Address 6055 Rockside Woods Blvd	Telephone [redacted]
City, State, Zip Cleveland, Ohio 44131	E-mail jrcarson@wegmanlaw.com

3. Party Against Whom This Charge is Brought: (*Check Only One*)

☑ Employee Organization/Union ☐ Employer ☐ Other_____

Name American Federation of State, County, and Municipal Employees, Ohio Council 8, AFL-CIO	
Address 6800 North High Street	Telephone (614)841-1918
City, County, State, Zip Worthington, Ohio 43085	E-mail Not available

4. Employer: *(If different from item 1 or 3)*
City of Cincinnati

Address City Hall, 801 Plum St	Telephone (513)352-2400
City, County, State, Zip Cincinnati, Ohio 45202	E-mail citymanager@cincinnati-oh gov

5. Basis of Charge: Check all the boxes that apply (See item #5 on the instructions for a link to the information needed to complete this section).

Charges against employers (A)(1) ☐ (A)(2) ☐ (A)(3) ☐ (A)(4) ☐ (A)(5) ☐ (A)(6) ☐ (A)(7) ☐ (A)(8) ☐

Charges against unions (B)(1) ☑ (B)(2) ☑ (B)(3) ☐ (B)(4) ☐ (B)(5) ☐ (B)(6) ☐ (B)(7) ☐ (B)(8) ☐

Jurisdictional Work Dispute O R C 4117 11(D) ☐

6. Statement of Facts: Provide a detailed statement of the facts explaining the alleged violation(s) Include who, what, where, when, how, and all dates If you need more space, you may attach a separate sheet containing the Statement of Facts

See attached Summary of Charge

A failure to provide the above information could result in the charge being dismissed for failure to provide a clear and concise statement.

DECLARATION

I declare that I have read the contents of this Unfair Labor Practice Charge and that the statements it contains are true and correct to the best of my knowledge and belief

To distinguish originals, please do not use black ink for signatures.

12/07/23
Date

Signature of Person Confirming the Content of Form

Jay R. Carson
Print or Type Name

THIS UNFAIR LABOR PRACTICE CHARGE WILL NOT BE ACCEPTED FOR FILING UNLESS THE PROOF OF SERVICE IS FULLY COMPLETED AND BEARS AN ORIGINAL SIGNATURE OF A REPRESENTATIVE OF THE PARTY FILING THE CHARGE.

PROOF OF SERVICE

I certify that an exact copy of the foregoing Unfair Labor Practice Charge has been sent or delivered to

American Federation of State, County, and Municipal Employees, Ohio Council 8, AFL-CIO,
(Name and complete address of party against whom this charge is brought)

6800 North High Street, Worthington, Ohio 43085

By ☑ Regular U S. Mail ☐ Certified U S Mail ☐ Hand Delivery ☐ Other _____

this 7th (day) of December (month), 2023 (year)

Signature of Person Confirming Service of Form

Jay R. Carson
Print or Type Name

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD
2023 DEC 11 P 12:19

NECOLE LITTLEJOHN 6506 Hamilton Ave. #1 Cincinnati, Ohio 45224 Claimant, vs. AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, OHIO COUNCIL 8, AFL-CIO 6800 North High Street Worthington, Ohio 43085 and CITY OF CINCINNATI City Hall 801 Plum St. Cincinnati, OH 45202 Respondents.	)	CASE NO: SUMMARY OF CHARGE AND RELIEF REQUESTED

Claimant NECOLE LITTLEJOHN, for her charge 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 recission.

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 contact law, to stop these practices and to require the Union to reimburse her for its improper membership dues collection and vacation deductions.

JURISDICTION

9. SERB has concurrent jurisdiction over this matter to the extent that it relates to it relates a member of a collective bargaining unit dispute with the exclusive collective bargaining representative and the public employer. Further, in *Darling v AFSCME*, Case No. 22-008864 (Franklin Cty. 2023) the court held that claims like Ms. Littlejohn's may amount to unfair labor practices and therefore must be brought in SERB. Although that order is currently on appeal, Ms. Littlejohn brings her claim here in the interest of judicial economy and without waiving whatever rights she may have to pursue her claim in court.

NATURE OF THE ACTION

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 Ms. Littlejohn allows the 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 a deduction cards.

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.

PARTIES

24. 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.

25. Respondent 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.

26. The City of Cincinnati is a political subdivision of the State of Ohio that operates the hospital that employs Ms. Littlejohn, subject to a collective bargaining agreement.

FACTUAL BACKGROUND

27. 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.

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

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

30. Ms. Littlejohn joined the Union by in 2016 and again in 2017 signing a "Check-off Card," which she was told was mandatory for her employment with the City of Cincinnati. Copies of the Check-off Cards are attached as Exhibit A.

31. 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 her 2022 Resignation Letter is attached as Exhibit B.

32. After receiving Ms. Littlejohn's notice, the Union acknowledged that Ms. Littlejohn was no longer a member of the Union. Copies of the Union's Responses to Ms. Littlejohn's Resignations are attached as Exhibit C.

33. 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.

34. 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.

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

36. In fact, in the letter acknowledging Ms. Littlejohn's termination of union membership, the Unions urged her to reconsider and rejoin the union. (Ex. C).

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

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

39. 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.

40. 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. (Ex. C).

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

42. The Union further uniformly refused to refund union membership dues back to the date of Ms. Littlejohn's earlier resignations. (Ex. C).

43. As a basis for these actions, the unions 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.

44. 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.

45. *Belgau* is inapplicable to this charge 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

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

47. 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.

48. R.C. 4117.03 allows public employees to "refrain from [] joining an employee organization."

49. 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).

50. 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).

51. 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.

52. 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.

53. 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.

54. 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.

55. 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.

56. 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).

57. 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).

58. 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.

59. 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.

60. 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.

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

62. The Respondents, however, through automatic union membership dues withdrawal and a refusal to recognize Ms. Littlejohn's rights under *Janus*, and have continued to compel her to subsidize their respective former unions' speech.

63. The Union and Employer 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).

64. 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.

65. 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 their resignations.

66. The Union's Collective Bargaining Agreement ("CBA") does not allow for the continued deduction of union membership dues from non-members as described below.

67. 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. (Ex. B).

68. 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.

69. Ms. Littlejohn is therefore entitled to a determination the Respondents' practice of continuing to collect union membership dues from employees after those employees have resigned from the union is unlawful, a permanent injunction enjoining such involuntary withdrawal of funds, and a refund of the money that was forcibly taken from her in violation of her constitutionally protected rights.

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

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

71. 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.

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

73. 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.

74. 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.).

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

76. 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.

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

78. Despite this recission 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.

79. There is therefore a dispute over the validity or interpretation of the contracts between the Plaintiff and the union Respondents.

80. 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.

81. 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).

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

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

83. 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.

84. 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.

85. 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.

86. 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.

87. 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.

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

89. "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.

90. 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

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

92. 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.

93. 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.

94. 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).

95. 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.

96. 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.

97. 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.

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

99. 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.

100. 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

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

102. 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.).

103. 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.*, 4th Dist. Athens No.06CA8, 2007-Ohio-7178, ¶ 34, citing *Collins* v. *Click Camera & Video, Inc.*, 86 Ohio App.3d 826, 834, 621 N.E.2d 1294 (2d Dist. 1993).

104. 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.

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

106. Ms. Littlejohn is entitled to a declaration that any contracts she may have had with the unions 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.

107. 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 HAS BEEN UNJUSTLY ENRICHED

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

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

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

111. Specifically, the Union continued to deduct union membership dues while at the same time not providing services.

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

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

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

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. A permanent injunction barring further deductions;

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

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

Respectfully submitted,

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EXHIBIT B

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

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.

ERIN E. CONN
ADMINISTRATIVE OFFICER

June 20, 2024:4