

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

CINDY DUPUIS

28969 Tracy Road
Walbridge, OH 43465

and

TIFFANY BINDER

614 Sackett Street
Maumee, OH 43537

Plaintiffs,

vs.

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES, LOCAL 2174-TOLEDO
PUBLIC SCHOOL DISTRICT,**

c/o Juana Gonzalez,
Toledo Public School District
1609 N. Summit St.
Toledo, OH 43604

and

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES**

6800 North High Street
Worthington, OH 43085-2512

and

**STATE EMPLOYMENT RELATIONS
BOARD**

65 East State Street, Suite 1200
Columbus, OH 43215

Defendants.

CASE NO: **CI2025-02488**

JUDGE: **Olender, Lori L.**

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

**JURY DEMAND ENDORSED
HEREIN.**

Plaintiffs hereby state the following:

INTRODUCTION

1. This is an action for damages and declaratory and injunctive relief on a contract.

2. Additionally, this action seeks a declaration regarding Plaintiffs' right under the Ohio Constitution to bring these claims and the forum in which those claims can be brought. Specifically, this action asks the Court to declare whether this Court or the State Employment Relations Board has jurisdiction to hear the contract claims asserted in this Complaint.

3. In its 2018 *Janus v. AFSCME* decision, the U.S Supreme Court held that the First Amendment protects public-sector employees from being compelled "to subsidize private speech on matters of substantial public concern" without prior affirmative consent. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 885–86 (2018).

4. The Court rejected the requirement that forced government employees either to pay monthly dues or fair share fees, used to support union policies and union lawyers, even when employees objected to those policies and actions.

5. *Janus* made clear that unions and governments cannot continue to compel "free and independent individuals to endorse ideas they find objectionable." *Id.* at 893. Under *Janus*, an employee must "clearly and affirmatively consent before any money is taken." *Id.* at 930.

6. In light of *Janus*, Plaintiffs terminated their membership in Defendant, American Federation of State, County and Municipal Employees, Local 2174 (collectively the "Union") and the Union accepted that termination.

7. Plaintiffs demanded, on multiple occasions, that the Union and Plaintiffs' employer, Toledo Public School District, stop the automatic deduction of membership dues from Plaintiffs' paychecks and refund any union membership dues taken after Plaintiffs' membership termination.

8. The Union has continued deducting union membership dues from Plaintiff DuPuis's wages, which the Union justified based upon the terms of the alleged agreements set forth in the deduction card Plaintiff had signed.

9. The Union continued deducting union membership dues from Plaintiff Binder's wages, which the Union justified based upon the terms of the alleged agreements set forth in the deduction card Plaintiff had signed, until Plaintiff Binder left her position with Defendant Toledo Public School District in April 2024.

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

11. Even if such agreements are valid, any claim to continued membership dues from non-members would be an unenforceable penalty and/or unjustly enrich the Union.

12. Moreover, any ostensible agreements requiring Plaintiffs to continue to pay union membership dues when Plaintiffs are not—in fact—union members, are invalid because they are unconscionable contracts of adhesion that do not include the amount of the membership dues, were not subject to negotiation, and are unreasonably favorable to the unions.

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

PARTIES

14. Plaintiff Cindy DuPuis is employed by the Toledo Public School District, as a treasury specialist. Plaintiff DuPuis was previously a member of the Union. Plaintiff resigned from any such union membership on August 31, 2023, but remains a member of the bargaining unit represented by the Union.

15. Plaintiff Tiffany Binder was formerly employed by the Toledo Public School District as an accounting clerk until April of 2024. Plaintiff Binder was previously a member of the Union. Plaintiff Binder resigned from any such union membership on August 31, of 2023.

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

17. Defendant State Employment Relations Board is an agency of the government of the state of Ohio and administers the Ohio Public Employees' Collective Bargaining Act.

18. SERB is named as a defendant to assert whether SERB disclaims jurisdiction over breach of contract claims as to contracts setting forth the contractual relationship between a former union member and the union Defendants.

JURISDICTION AND VENUE

19. Jurisdiction is proper because Article I, Section 16 of the Ohio Constitution provides that “[a]ll courts shall be open, and every person, for an injury done him in his land, good, person, or reputation, shall have remedy by due course of law and shall have justice administered without denial or delay.” Similarly, Article IV, Section 4(B) of the Ohio Constitution provides that the courts of common pleas “shall have such original jurisdiction over all justiciable matters . . . as may be provided by law.” 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).

20. The Supreme Court of Ohio has recently addressed the State Employment Relations Board's (SERB's) jurisdiction on actions stemming from contractual agreements rather than rights

granted by R.C. Chapter 4117 (Public Employees' Collective Bargaining). 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.

Ohio Council 8, AFSCME, AFL-CIO v. Lakewood, Slip Opinion No. 2025-Ohio-2052, ¶ 13, quoting *State ex rel. Dept. of Mental Health v. Nadel*, 2003Ohio-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. v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St.3d 167 (1991), paragraph two of the syllabus.

21. In a case nearly identical to this one before SERB, SERB determined that the types of allegations averred in this case did not constitute a statutory unfair labor practice. *Littlejohn v. AFSCME*, Case No. 24-03410 (Hamilton Cty. 2024).

22. Much like the plaintiff in *Lakewood*, Plaintiffs do “not allege that the [union] engaged in an unfair labor practice or conduct that constitutes an unfair labor practice.” *Lakewood*, Slip Opinion No. 2025-Ohio-2052, at ¶ 13. Instead, Plaintiffs’ allegations contained herein rely on Ohio’s common law governing contractual agreements.

23. Plaintiffs (1) have *not* filed charges with SERB alleging an unfair labor practice under R.C. 4117.11; (2) do *not* allege before this Court that the union engaged in an unfair labor

practice or conduct that constitutes an unfair labor practice, as confirmed by SERB; (3) *do* assert in this Complaint rights that are independent of R.C. Chapter 4117. “Therefore, SERB does not have exclusive jurisdiction over this case,” *id.* at ¶ 13, and Plaintiffs’ Complaint may properly be heard by this Court, *id.* at ¶ 17.

24. Venue is proper in this county pursuant Ohio Civil Rules 3(C)(2), (3), (5), and (6) and 3(F) because (a) Plaintiffs signed their membership cards here, (b) the dues were deducted from Plaintiffs’ paychecks here, and (3) the local Union 2174 is located here.

25. 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
construction or validity arising under the instrument, constitutional
provision, statute, . . . [or] 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).

FACTUAL BACKGROUND

26. Plaintiffs seek to enforce their common law contractual rights and defenses relating to a contract for union membership and the continued forced deduction of union dues from Plaintiffs’ paychecks after they had left the union.

27. Plaintiff DuPuis is a former union member who resigned from union membership following the U.S. Supreme Court’s 2018 decision in *Janus*, 585 U.S. 878.

28. Plaintiff Dupuis's union membership was evidenced by a membership and dues-deduction authorization card ("Deduction Card Contract"), which she signed on or about June 8, 2015. (Exhibit A-1) (copy of Deduction Card Contract).

29. Plaintiff Binder's union membership was evidenced by a membership and dues-deduction authorization card, which she signed on or about June 10, 2021. (Exhibit A-2) (copy of Deduction Card Contract).

30. The Deduction Card Contracts authorized Plaintiffs' employer to deduct union dues from Plaintiffs' paychecks and pay them directly to the Union. (Exhibits A-1 and A-2).

31. Upon information and belief, no one from the Union signed either Plaintiffs' Deduction Card Contracts.

32. The term "dues" means "the official payments you make to an organization that you belong to." Cambridge Dictionary, *dues*, <https://tinyurl.com/CambridgeDues> (accessed Dec. 12, 2024); Collins, *dues*, <https://tinyurl.com/CollinsDues> (accessed Dec. 12, 2024) ("charges, as for membership of a club or organization").

33. The dues deducted from Plaintiffs' salaries were given in exchange for the benefits of union membership.

34. Upon information and belief, the Deduction Card Contract used by the Union does not contain any information on the amount of the union membership dues deductions.

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

36. Upon information and belief, Plaintiffs' employer is only authorized to deduct union membership dues based on, and after receipt of, signed deduction cards for a specific employee.

37. Pursuant to the Deduction Card Contract, Toledo Public School District deducted union membership dues from Plaintiffs' paychecks.

38. Upon information and belief, none of the collective bargaining agreements (or any other documents) that are binding on Plaintiffs allow the Union to charge non-union members for membership dues.

39. The Union received those union membership dues out of the Plaintiffs' pay both before and after Plaintiffs' resignations from the Union and continues to take dues from Plaintiff DuPuis.

40. On several occasions, last on March 6, 2025, Plaintiff DuPuis notified the Union that Plaintiff DuPuis had resigned her membership and instructed both the Union and her employer to stop deducting Union dues from her paycheck. (Exhibit B-1) (copies of Plaintiff DuPuis's letters).

41. On several occasions, most recently on March 2, 2024, Plaintiff Binder notified the Union that Plaintiff Binder had resigned her membership and instructed both the Union and her employer to stop deducting Union dues from Plaintiffs' paycheck. (Exhibit B-2) (copies of Plaintiff Binder's letters).

42. The Union eventually stopped taking dues from Plaintiff Binder's paycheck, but only because she stopped working for Toledo Public School District. After receiving Plaintiffs' notices, the Union acknowledged that Plaintiffs were no longer members of the Union. (Exhibits C-1 and C-2) (copies of Union's letters). The Union, however, refused to honor either Plaintiffs' request to stop deducting dues from Plaintiffs' paychecks. Once Plaintiffs are no longer members of an organization, they cannot—as a basic definitional matter—owe “membership dues.”

43. Upon the termination of Plaintiffs' union membership, the Union also terminated the "members only" benefits for Plaintiffs.

44. On numerous occasions, most recently on March 21, 2025, the Union refused to permanently cease withdrawing dues as of the date of resignation, stating that Plaintiff DuPuis continues to be bound by Plaintiff's alleged contract with the union, and that that contract allows employees to opt-out of continued union membership dues payments only during certain "Opt-out Windows" during the life of the contract. (Exhibit C-1).

45. Upon information and belief, when Plaintiff DuPuis sought to opt out in the summer of 2023, a Union representative informed her that she would have to wait for her opt-out window, which did not begin until May of 2024.

46. Plaintiff DuPuis most recently sent one of her resignation letters to the Union on May 8, 2025. (Exhibit B-1). Still, the Union refused to stop taking dues. (Exhibit C-1).

47. Upon information and belief, Plaintiff Binder first sought to opt out of the Union on August 31, 2023. (Exhibit B-2)

48. On September 28, 2023, the Union refused to permanently cease withdrawing dues as of the date of resignation, stating that Plaintiff Binder continues to be bound by Plaintiff's alleged contract with the union, and that that contract allows employees to opt-out of continued union membership dues payments only during the designated "Opt-out Windows" during the life of the contract.

49. Plaintiff Binder requested that the Union stop taking her dues a total of seven different times. (Exhibit B-2). Plaintiff Binder left her position with Toledo Public Schools in April of 2024. She sent her final resignation letter to the Union on May 2, 2024. (Exhibit B-2).

50. For both Plaintiffs, this meant waiting months for the expiration of the alleged contracts before the Union would stop withholding union membership dues.

51. Ohio law requires that public employers recognize and bargain with an exclusive representative of the bargaining unit.

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

53. 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*, 141 S.Ct. 2721 (2021).

54. 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.

55. 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.

56. The Union is and was Plaintiffs’ exclusive representative for purposes of collective bargaining and grievances as set forth in R.C. 4117.05.

57. 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.

58. Before the Supreme Court’s ruling in *Janus*, Plaintiff DuPuis 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).¹

59. Before the *Janus* decision, Plaintiff DuPuis had no meaningful choice regarding whether to support the Union financially. Plaintiff DuPuis was required to fund the union either through union membership dues or fair share fees. Plaintiff DuPuis reluctantly renewed her union membership in 2015.

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

61. Accordingly, Plaintiffs demanded a cessation of union membership dues withdrawals and demanded refunds retroactively to the date of Plaintiffs’ resignation.

62. The Union, however, through automatic union membership dues withdrawal and a refusal to recognize Plaintiffs’ rights under *Janus* even after Plaintiff was no longer a member.

63. Here, to the extent that Plaintiffs ever consented to the withdrawal of union membership dues from Plaintiffs’ paychecks, that consent was clearly revoked by Plaintiffs’ resignation. The Union’s Collective Bargaining Agreement (“CBA”) does not allow for the continued deduction of union membership dues from non-members. (The Collective Bargaining Agreement is voluminous, and therefore not attached to this pleading. It is, however, publicly available at [<https://tinyurl.com/5n8s93ju>].

¹ Since Plaintiff Binder did not join the Union until after the *Janus* decision, some of these allegations do not apply to her.

64. For example, the CBA between the Union and Toledo Public School District permits the employer to “deduct any Union dues” from employee wages only with signed “proper legal authorization.”

65. There is thus a live dispute between the parties regarding the obligations under the contracts between the Union and Plaintiffs that can be properly resolved through an action in this Court.

66. Since the CBA does not authorize dues deductions from non-members, this case is based solely on common law contract claims and does not fall within SERB’s jurisdiction as set out in R.C. 4117.

67. By refusing to return the Plaintiffs’ union membership dues even though the Plaintiffs have terminated their membership in the Union, the Union has acted in bad faith, vexatiously, wantonly, obdurately, or for oppressive reasons.

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

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

69. In *Darling v. AFSCME*, the court held that because such contractual claims might be cast as unfair labor practices under R.C. 4117.11, those charges must be brought in the SERB. *Darling v. Am. Fedn. of State, Cnty., and Mun. Employees*, 2024-Ohio-2181(10th Dist.), *appeal not allowed*, 243 N.E.3d 89 (Ohio 2024).

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

71. In *Littlejohn v. AFSCME*, Case No. 24-03410 (Hamilton Cty. 2024), a claimant, expressly without waiving plaintiff’s right to seek redress in court, filed an unfair labor practice

charge with SERB, including the various contractual theories for which the Plaintiffs seek relief here.

72. SERB reviewed the charge and dismissed it, stating that based on federal court decisions, which it did not cite, the actions complained of were not a statutory unfair labor practice.

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

74. 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.

75. In a similar case out of Carroll County, *Sheldon v. OAPSE et al.*, the plaintiff brought the same five contract claims and SERB admitted that "no statute involving SERB's legal duties is involved or being challenged." No. 2025CVH30642 (C.C.P Carroll County, filed Jan. 17, 2025. (Exhibit D at p. 3) (a copy of SERB's reply brief in *Sheldon*).

76. Then, in *Lakewood*, the Ohio Supreme Court reaffirmed 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." *Lakewood*, Slip Opinion No. 2025-Ohio-2052, ¶ 17.

77. Because of *Lakewood*, the Tenth District's opinion in *Darling* can no longer be good law.

78. Plaintiffs' claims are rooted in common law contract law, and, under *Lakewood*, this Court is the proper venue for Plaintiffs' claims.

79. Ohio courts have held that a SERB order dismissing a charge because the actions alleged in it are not unfair labor practices are not appealable. *See, e.g., Bunce v. City of Lorain, Ohio*, 2004-Ohio-4948.

80. Former union members like Plaintiffs who wish to assert legal claims challenging

the validity or enforcement of their contracts with unions are potentially without a forum—federal, state, or administrative—in which to seek relief.

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

81. Plaintiffs restate the above allegations and incorporate them here as if fully rewritten.

82. To the extent that the Union claims that any contract or assignment of wages (via the Deduction Card Contract)—and specifically the Opt-out Windows contained therein remain in force even after Plaintiffs resigned from the Union, Plaintiffs seek a declaration that Plaintiffs' contracts with the Union were effectively rescinded and an order returning Plaintiffs to their financial situation as it existed at the time of the resignation based on mutual repudiation.

83. Plaintiffs' have unambiguously rescinded any contracts with the Union and any assignments of wages.

84. The Union has, in turn, recognized and acknowledged that Plaintiffs are no longer union members and have refused to provide any benefits or other consideration to Plaintiffs beyond the exclusive representation that it is required by law to provide to members and non-members alike.

85. 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, ¶ 19 (10th Dist.).

86. A party's assent to rescission can be inferred from the party's actions. *Id.*

87. In this case, by acknowledging that Plaintiffs are no longer members of the union and withholding any purported benefits of union membership from Plaintiffs, the Union has

effectively rescinded any alleged contracts with Plaintiffs.

88. Despite these rescissions and the Union's termination of union member benefits to Plaintiffs, the Union still claims the right to seize union membership dues from Plaintiffs.

89. There is, therefore, a dispute over the validity or interpretation of the contracts between Plaintiffs and the Union.

90. Plaintiffs are entitled to a declaration that any contracts they may have had with the Union or any assignments of wages have been rescinded as of the date of Plaintiffs' resignations and termination of membership, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contract, and an order that the Union restore Plaintiffs to Plaintiffs' financial positions as of the date of their resignation by refunding all union membership dues collected after the date of the resignation.

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

91. Plaintiff DuPuis restates the above allegations and incorporates them here as if fully rewritten.

92. In the alternative, to the extent that the Union claims that its contract with Plaintiff DuPuis, and specifically the Opt-out Windows contained in that contract, remain in force even after Plaintiff resigned from the Union, Plaintiff DuPuis seeks a declaration that Plaintiff DuPuis's contract with the Union was effectively rescinded and an order returning her to the financial situation as of the date of resignation based on the doctrine of mutual mistake of law and fact.

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

94. After Plaintiff DuPuis entered any contract or assignment, the law changed by virtue of the holding in *Janus*, which held that “States and public-sector unions may no longer extract agency fees from nonconsenting employees.” *Janus*, 585 U.S. at 929.

95. The status of the law before *Janus* was an important component in the parties’ understanding of the import of joining or not joining the Union and the Union’s permitted usage of the funds.

96. The foregoing was a material term or basis for Plaintiff’s decision in whether to join the union in 1999.

97. “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.

98. Plaintiff DuPuis is entitled to a declaration that any contract with the Union and/or assignment of wages have been rescinded as of the date of Plaintiff DuPuis’s resignation, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contract, and an order that the Union restore Plaintiff DuPuis to her financial position as of the date of resignation by refunding all union membership dues collected after the date of the resignation.

**COUNT THREE:
THE COURT SHOULD DECLARE THAT THE CONTRACTS BETWEEN PLAINTIFFS
AND THE UNION IMPOSE AN UNENFORCEABLE PENALTY**

99. Plaintiffs restate the above allegations and incorporate them here as if fully rewritten.

100. In the alternative, to the extent that Plaintiffs’ resignations from the Union and termination of any signed Deduction Card Contracts constitute a breach of contract, the Union’s

continued deduction of union membership dues constitutes an unreasonable and unenforceable penalty for such breach of contract.

101. Ohio law permits liquidated damages only when they represent a reasonable measure of compensation for the contract's breach. *Boone*, 2016-Ohio-628, at ¶ 17–19.

102. 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 in original.) *Id.*, quoting *Piper v. Stewart & Inlow*, 1978 WL 217430, *1 (5th Dist. June 14, 1978).

103. In this case, the continued payment of union membership dues in an amount never specified in the Deduction Card Contracts—presumably subject to increase by unilateral determination by the Union—and imposed upon Plaintiffs without advance knowledge, is not related to any additional cost or damages sustained by the Union.

104. The Union stopped providing those services to Plaintiffs that it was not otherwise required by law to provide to members and non-members alike on or about the dates of Plaintiffs' resignations.

105. The Union was therefore immediately relieved of those costs associated with servicing additional union members and thus—assuming that Plaintiffs' resignations constituted a breach of Plaintiffs' contracts with the Union—suffered no damages from those breaches.

106. The additional union membership dues that the Union received from Plaintiffs after their resignation are thus unenforceable penalties.

107. The continued union membership dues payments are not consequential damages because a contracting party "is not [] 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, ¶ 33 (10th Dist.). Since the Deduction Card Contracts do not specify the amount to be deducted, Plaintiffs could not have foreseen what might be the probable result of a breach at the time of signing the Deduction Cards.

108. Plaintiffs are entitled to a declaration that the Union's continued withdrawal of union membership dues from their paychecks is an unenforceable penalty, a refund of all post-resignation union membership dues collected, and a permanent injunction enjoining any further union membership dues deductions.

**COUNT FOUR:
THE COURT SHOULD DECLARE PLAINTIFFS' CONTRACTS WITH THE UNION
TO BE UNCONSCIONABLE CONTRACTS OF ADHESION**

109. Plaintiffs restate the above allegations and incorporate them by reference here as if fully rewritten.

110. Any agreements, assignments of wages, or Deduction Card Contracts signed by

Plaintiffs are substantively unconscionable because not including any amounts and requiring monthly membership dues deduction for a full year without possible termination upon leaving the union is “unfair and commercially unreasonable,” *Porpora v. Gatliff Bldg. Co.*, 2005-Ohio-2410, ¶ 8 (9th Dist.).

111. Upon information and belief, Plaintiffs’ Deduction Card Contracts requires Plaintiffs to abide by the AFSCME’s by-laws and constitution, which imprecisely set out the dues scheme. Upon information and belief, Plaintiffs did not have access to AFSCME’s bylaws or constitution when they signed their Deduction Card Contracts and therefore could not know the amount of dues they would owe.

112. Additionally, any such agreements, assignments of wages, or Deduction Card Contracts are unconscionable because the Plaintiffs—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 [Union].” *Sabo v. Hollister Water Assn.*, 2007-Ohio-7178, ¶ 34 (4th Dist.), citing *Collins v. Click Camera & Video, Inc.*, 86 Ohio App.3d 826, 834 (2d Dist. 1993).

113. Further, “price is an essential element of a contract that must be proven for the contract to be enforceable.” (Internal quotation marks omitted.) *Ross v. Belden Park Co.*, 1998 WL 347064, *3 (5th Dist. June 1, 1998). Any alleged contracts between Plaintiffs and the Union had no stated amount—or price—to be deducted as union membership dues.

114. Accordingly, any such agreements, assignments of wages, or Deduction Card Contracts are invalid and unconscionable.

115. Plaintiffs are entitled to a declaration that any contracts Plaintiffs may have had

with the Union or any assignments of wages is an unenforceable contracts of adhesion, a permanent injunction enjoining any further deduction of union membership dues pursuant to the purported contracts, and an order that the Union restore the Plaintiffs to the financial situation as it existed at the time of Plaintiffs' resignations by refunding all union membership dues collected after the date of the resignations.

**COUNT FIVE:
UNJUST ENRICHMENT**

116. Plaintiffs restate the above allegations and incorporate them here as if fully rewritten.

117. Any contracts, agreements, or assignments of wages between Plaintiffs and the Union have been rescinded or otherwise terminated.

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

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

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

121. Accordingly, Plaintiffs are entitled to damages in the form of a refund of Plaintiffs' union membership dues, plus interest.

COUNT SIX:
DECLARATORY RELIEF REGARDING JURISDICTION OF SERB

122. Plaintiffs restate the above allegations and incorporate them here as if fully rewritten.

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

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

125. Plaintiffs aver that SERB does not have jurisdiction to resolve the contractual claims set forth in this Complaint. That is because Plaintiffs aver that such contractual claims are *not* unfair labor practices within SERB's jurisdiction.

126. Yet, the *Darling*, *Littlejohn*, and *Sheldon* courts have held—prior to *Lakewood* clarifying the analysis—that SERB has exclusive jurisdiction over the claims asserted in this Complaint.

127. Given the difference of opinion between Plaintiffs, SERB, and other common pleas courts, SERB is a person needed for just adjudication to either assert or deny jurisdiction over the claims asserted in this Complaint. See Civ. R. 19(A).

128. Plaintiffs ask this Court to declare whether, pursuant to R.C. 4117.02, *et seq*, and the Ohio Constitution's open courts and jurisdictional provision, this Court and/or SERB has jurisdiction to grant relief relating to contractual disputes set forth in this Complaint.

WHEREFORE, Plaintiffs pray for the following relief:

- A. A declaration that the Union's continued deduction of union membership dues from Plaintiffs' paychecks is unlawful;
- B. A declaration that Plaintiffs' contracts with the Union were rescinded or terminated upon Plaintiffs' resignations or is otherwise invalid;
- C. A refund of all union membership dues improperly withheld;
- D. Because the Union has acted in bad faith, vexatiously, wantonly, obdurately, or for oppressive reasons, an award of Plaintiffs' costs;
- E. A declaration stating whether this Court or SERB has jurisdiction to grant relief relating to contractual disputes set forth in this Complaint; and
- F. Any further relief the Court deems just and equitable.

Plaintiffs demand a jury on all issues so triable.

Respectfully submitted,

/s/ Jay R. Carson

Jay R. Carson (0068526)

David C. Tryon (0028954)

Alex M. Certo (0102790)

J. Simon Peter Mizner (0105077)

THE BUCKEYE INSTITUTE

88 East Broad Street, Suite 1300

Columbus, Ohio 43215

(614) 224-4422

Email: legal@buckeyeinstitute.org

j.carson@buckeyeinstitute.org

a.certo@buckeyeinstitute.org

mizner@buckeyeinstitute.org

Attorneys for Plaintiffs



PUBLIC SECTOR AUTHORIZATION
MEMBERSHIP AND CHECKOFF CARD
AUTHORIZATION/MEMBERSHIP
LOCAL 2174, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, AFL-CIO



I request and hereby accept, upon execution of this authorization card, membership in the American Federation of State, County and Municipal Employees, AFL-CIO (herein called AFSCME) and the appropriate subordinate body(s)(the Union), and authorize the subordinate body(s) to represent me and in my behalf to negotiate and conclude all agreements as to rates of pay, wages, hours and all other terms and conditions of employment. It is agreed that such membership shall be in accordance with the provisions of the Constitution of AFSCME and its subordinate bodies. It is further agreed that my membership may only be revoked by me during the thirty (30) to forty-five (45) day period prior to the expiration of any labor agreement with my employer, by giving written notice to a subordinate body with proof of service. My membership shall not terminate until thirty (30) days after receipt of said notice by the Union. I understand that this membership agreement is separate from my checkoff agreement.



CHECKOFF AGREEMENT



You are hereby authorized and directed to deduct from my wages, my membership fee, initiation fee if any, assessment or an equivalent amount or fee, which shall be remitted by you to a subordinate body of AFSCME, in accordance with the applicable collective bargaining agreement. This checkoff Authorization and Assignment may only be revoked by me by my giving, and the appropriate subordinate body and my employer receiving written notice of revocation during the thirty (30) to forty-five (45) day period prior to the expiration date of any collective bargaining agreement covering my employment. This Authorization and Assignment will continue after revocation and shall not terminate until thirty (30) days after receipt of said timely written notice by the employer and Union or termination of any current labor agreement, whichever is later. I understand that this checkoff commitment is separate from my membership agreement. This checkoff Authorization and Assignment supersedes all previous authorizations and assignments.

Dues, contributions or gifts to AFSCME are not deductible for federal income tax purposes. Dues paid to AFSCME, however, may qualify as business expenses and may be deductible in limited circumstances subject to various restrictions imposed by the Internal Revenue Service.

I understand that at times the labor agreement with my employer may vary the above agreed to terms of membership and/or checkoff or be silent. I agree that the above membership and checkoff authorization shall control in any and all circumstances absent a specific contrary checkoff or membership provision in the labor agreement covering my employment.

Print Name CINDY DUPUIS Social Security No. [REDACTED]
Address 28969 Tracy Rd City Walbridge
State OH Zip Code 43465-9771 Tel. No. [REDACTED]
Email [REDACTED]
Employer Toledo Public Classification Group 10 Treasury Specialist
Date 6-8-15 Signature Cindy Dupuis
(Revised 5/99)



PUBLIC SECTOR

MEMBERSHIP AUTHORIZATION

LOCAL 2174, AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

I request and hereby accept membership in the American Federation of State, County and Municipal Employees, AFL-CIO (herein called AFSCME) and the appropriate subordinate body(s) (the Union) and authorize the subordinate body(s) to act as my exclusive bargaining representative for purposes of collective bargaining with respect to rates of pay, wages, hours and all other terms and conditions of employment with my employer. I agree that my membership shall be in accordance with the provisions of the Constitution of AFSCME and its subordinate bodies. It is further agreed that my membership may be revoked by me by giving written notice of my desire to withdraw from union membership to a subordinate body. I understand that my membership authorization is separate from my checkoff agreement and that I may only revoke dues authorization in accordance with the procedure set forth below.

Print Name Tiffany Binder
Address 614 Sackett St. City Maumee State OH Zip 43537
Employee Signature Tiffany Binder Date 6/10/21



AUTHORIZATION/ AGREEMENT FOR PAYROLL DEDUCTION



Effective immediately, I hereby voluntarily authorize and direct my employer to deduct from my wages each pay period, or such other period as set forth in the applicable collective bargaining agreement, the amount of dues, initiation fees or assessments certified by the Union and as they may be adjusted periodically by the Union which shall be remitted to a subordinate body of AFSCME. This voluntary authorization and assignment shall be irrevocable, regardless of whether I am or remain a member of the Union, for a period of one year from the date of execution and for year to year thereafter, unless I give the Employer and the Union written notice of revocation not less than ten (10) days and not more than twenty five (25) days before the end of any yearly period; provided however, if the applicable collective bargaining agreement specifies an annual revocation window period of longer than fifteen (15) days, then only that longer period shall apply. The applicable collective bargaining agreement is available upon request.

This Agreement supersedes any prior checkoff agreement/card I signed. I recognize that my authorization of dues deductions, and the continuation of such authorization from one year to the next, is voluntary and not a condition of my employment. I understand that I have a right to retain employment without joining the union or paying union dues.

Payments to the Union are not deductible as charitable donations for federal income tax purposes. However, they may be tax deductible as ordinary and necessary business expenses.

Print Name Tiffany Binder
Address 614 Sackett St City Maumee
State OH Zip Code 43537-2861 Personal Cell# [REDACTED]
Personal Email [REDACTED] Last 4 Digits of Your Social Security No. [REDACTED]
Employer TPS Job Title Sec II
Worksite/Building Whitaker Shift Day
Signature Tiffany Binder Date 6/10/21

* By providing my cell phone number, I understand that the Union and its affiliates may use automated calling technologies and/or text message me on my cell phone on a periodic basis. The Union will not charge for text message alerts; carrier message and data rates may apply to such texts.

(Revised 12/18) (Council)

Contract book given

August 31, 2023

Steve Kowalik
420 South Reynolds Rd
Toledo, Ohio 43615-0901

Dr Mr. Kowalik, Regional Director,

I have reviewed the checkoff revocation policy for AFSCME Ohio Council 8.

As of this date I am requesting my union dues be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were.

I will seek legal counsel if necessary.

Cindy DuPuis
E090236, Toledo Public Schools

October 16, 2023

Steve Kowalik
420 South Reynolds Rd
Toledo, Ohio 43615-0901

Dr Mr. Kowalik, Regional Director,

This is my second notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were.

I will seek legal counsel if necessary.

Cindy DuPuis
E090236, Toledo Public Schools

November 10, 2023

AFSCME- Local 2174 Regional Director
420 South Reynolds Rd
Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my third notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023, Second one in October and now this one.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were.

I will seek legal counsel if necessary.

Cindy DuPuis

E090236, Toledo Public Schools

December 12, 2023

AFSCME- Local 2174 Regional Director

420 South Reynolds Rd

Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my fourth notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023, another in October, another in November and now this one.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

I have reached out and am seeking legal counsel.

Cindy DuPuis

E090236, Toledo Public Schools

March 12, 2024

AFSCME- Local 2174 Regional Director
420 South Reynolds Rd
Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my fifth notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

I have reached out and am seeking legal counsel.

Cindy DuPuis

E090236, Toledo Public Schools

April 18, 2024

AFSCME- Local 2174 Regional Director
420 South Reynolds Rd
Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my fifth notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

I have reached out and am being advised by legal counsel.

Cindy DuPuis

E090236, Toledo Public Schools

May 2, 2024

AFSCME- Local 2174 Regional Director
420 South Reynolds Rd
Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my 7th notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

I have reached out and am being advised by legal counsel.

Cindy DuPuis

E090236, Toledo Public Schools

June 1, 2024

AFSCME- Local 2174 Regional Director

420 South Reynolds Rd

Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my 8th notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

I have reached out and am being advised by legal counsel that this June month is the month I signed your card so it should definitely be the month you STOP taking my dues. If not, further legal action will be taken.

Cindy DuPuis

E090236, Toledo Public Schools

July 11, 2024

AFSCME- Local 2174 Regional Director

420 South Reynolds Rd

Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my 9th notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

Per your rule of opting out only at the date of my signed union card, June is the month. As of my last paystub dated 7-5-24 no union dues should have been taken since this pay was from 6-15-24 through 6/28/24. STOP taking my dues. If not, further legal action will be taken.

Cindy DuPuis

E090236, Toledo Public Schools

August 1, 2024

AFSCME- Local 2174 Regional Director

420 South Reynolds Rd

Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my 10th notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

Per your rule of opting out only at the date of my signed union card, June was the month. As of my last paystub dated 8-1-24 no union dues should have been taken since this pay was from 7/13/24 through 7/26/24. STOP taking my dues. If not, further legal action will be taken.

Cindy DuPuis

E090236, Toledo Public Schools

September 13, 2024

AFSCME- Local 2174 Regional Director

420 South Reynolds Rd

Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my 11th notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

Per your rule of opting out only at the date of my signed union card, June was the month. As of my last paystub dated 8-13-24 no union dues should have been taken since this pay was from 8/24/24 through 9/06/24. STOP taking my dues. I know that you have had correspondence sent from my attorney and that the set deadline has long passed. Anything taken from July forward is rightfully my money that you now owe me.

Cindy DuPuis

E090236, Toledo Public Schools

October 3, 2024

AFSCME- Local 2174 Regional Director
420 South Reynolds Rd
Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my 12th notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

Per your rule of opting out only at the date of my signed union card, June was the month. As of my last paystub dated 9-27-24 no union dues should have been taken since this pay was from 9/07/24 through 9/20/24. STOP taking my dues. I know that you have had correspondence sent from my attorney and that the set deadline has long passed. We will continue with this fight to stop my union dues from being taken and from retrieving any moneys due to me.

Cindy DuPuis

E090236, Toledo Public Schools

November 11, 2024

AFSCME- Local 2174 Regional Director

420 South Reynolds Rd

Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my 13th notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

Per your rule of opting out only at the date of my signed union card, June was the month. As of my last paystub dated 11-08-24 no union dues should have been taken since this pay was from 10/19/24 through 11/01/24. STOP taking my dues. I know that you have had correspondence sent from my attorney and that the set deadline has long passed. We will continue with this fight to stop my union dues from being taken and from retrieving any moneys due to me.

Cindy DuPuis

E090236, Toledo Public Schools

March 06, 2025

AFSCME- Local 2174

Dawn Bailey, Regional Director

420 South Reynolds Rd

Toledo, Ohio 43615-0901

Dear, Dawn Bailey, Regional Director,

This is my 17th notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

I have already received this letter of January 24, 2025 and again February 28, 2025 when you sent me it back in November of 2023. Per your letter than, I should have been able to opt out in June of 2024 per my signed union card. I see that you copied my president, she too is aware of my request to opt out per her email correspondence with me in late June 2024 (see that email included) and yet you still continue to take my dues.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

Per your rule of opting out only at the date of my signed union card, June was the month. As of my last paystub dated 02-28-25 no union dues should have been taken since this pay was from 02/08/25 through 02/21/25. This is well point the "rule" of June since my first request was in August of 2023 STOP taking my dues.

I know that you have had correspondence sent from my attorney and that the set deadline has long passed. We will continue with this fight to stop my union dues from being taken and from retrieving any moneys due back to me.

I do not wish any phone calls to talk about this, (since no phone call or nothing was asked when I first requested this in August of 2023). I am long past any discussion or changing my mind, just release me from my union dues.

Cindy DuPuis

E090236, Toledo Public Schools

August 31, 2023

Steve Kowalik
420 South Reynolds Rd
Toledo, Ohio 43615-0901

Dr Mr. Kowalik, Regional Director,

I have reviewed the checkoff revocation policy for AFSCME Ohio Council 8.

As of this date I am requesting my union dues be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were.

I will seek legal counsel if necessary.

Tiffany Binder
E602668, Toledo Public Schools

October 16, 2023

Steve Kowalik
420 South Reynolds Rd
Toledo, Ohio 43615-0901

Dr Mr. Kowalik, Regional Director,

This is my second notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were.

I will seek legal counsel if necessary.

Tiffany Binder
E602668, Toledo Public Schools

November 10, 2023

AFSCME- Local 2174 Regional Director
420 South Reynolds Rd
Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my third notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023, Second one in October and now this one.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were.

I will seek legal counsel if necessary.

Tiffany Binder
E602668, Toledo Public Schools

December 12, 2023

AFSCME- Local 2174 Regional Director

420 South Reynolds Rd

Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my fourth notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023, another in October, another in November and now this one.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

I have reached out and am seeking legal counsel.

Tiffany Binder

E602668, Toledo Public Schools

March 12, 2023

AFSCME- Local 2174 Regional Director

420 South Reynolds Rd

Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my fifth notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

I have reached out and am seeking legal counsel.

Tiffany Binder

E602668, Toledo Public Schools

April 18, 2023

AFSCME- Local 2174 Regional Director

420 South Reynolds Rd

Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my fifth notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

I have reached out and am being advised by legal counsel.

Tiffany Binder

E602668, Toledo Public Schools

May 2, 2023

AFSCME- Local 2174 Regional Director

420 South Reynolds Rd

Toledo, Ohio 43615-0901

Dear, Regional Director,

This is my 7th notice to you on my request to stop my union dues.

My first request was sent to you the end of August, 2023.

As of this date I still see those dues being taken out of my pay.

I want my union dues to be stopped for AFSCME Local 2174 through Toledo Public Schools.

I realize that other AFSCME Local 2174 members from Toledo Public Schools requested their dues to be revoked and indeed they were. So please revoke mine.

I have reached out and am being advised by legal counsel.

Tiffany Binder

E602668, Toledo Public Schools



420 South Reynolds Road
Toledo, Ohio 43615-0901
Telephone: (419) 539-6000
Fax: (419) 539-6008
Toll Free: (800) 361-6748

Matthew Butler
Regional Director

November 15, 2023

R. Sean Grayson
President

Marcia Knox
First Vice President

William Maurice Brown
Secretary-Treasurer

David Kovacs
Recording Secretary

Vice Presidents

Akron
John Asher
Shelia Fambro

Athens
John Ackison
Patricia Senters

Cincinnati
Emily Bell
Christopher McDonald

Cleveland
Jamie Bailey
Gail Elmore

Columbus
Kenneth Haynes
Angela Williams

Dayton
Jeffrey Hasty
Kelly Yeaney

Toledo
Donald D. Czerniak
Randy V. Desposito

Youngstown
Thomas R. Connelly
DJ Sferra

At-Large
Traci R. Poellnitz

Retiree
Sandra Coutcher
Floyd E. Wright

Trustees
John Henry, Jr.
Ramon J. Mendoza, II
Todd Rogers

Cindy DuPuis
28969 Tracy Rd
Walbridge, Ohio 43405

Dear Ms. DuPuis:

You are receiving this letter because you sent a written request to Ohio Council 8, AFSCME to drop your union membership. The Council will instruct the membership services departments of Council 8, AFSCME International and your local union to remove your name from the membership roster.

Union dues deduction will not be stopped at this time because your letter does not revoke the dues checkoff authorization card which you signed and because any dues revocation request would need to be made and received by the union in accordance with the union's current procedures and within a window period which you agreed to when you signed the authorization card. Attached is a copy of the union's current dues revocation procedure and a copy of the authorization card you signed. The union's current procedure will allow you to revoke your dues deduction authorization on an annual basis during a window period close in time to the date you signed your authorization card. If you have any questions about this procedure, please feel free to call my office.

Rather than drop your membership or your dues deductions, Council 8 would like you to consider remaining a member of the union. If you want a strong union to represent yourself and your co-workers over pay, benefits and working

Exhibit C-1 Page 1 of 7

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO



conditions, we need all of the employees to stick together. As a member of the union, did you know you are entitled to members only benefits including tuition free college for yourself, your spouse and children, lower interest credit cards and home mortgage loan rates and a host of discounted products including cell phone service. I have enclosed information about these and other members only benefits for your review. If you decide you want to remain a member, simply call me back and let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Butler", with a stylized flourish at the end.

Matthew Butler
Regional Director

cc: File

Juana Gonzalez, President, AFSCME Local 2174

Enc. (3)

AFSCME OHIO COUNCIL 8

6800 North High Street
Worthington, Ohio 43085
(614) 841-1918

January 25, 2019

Dear Member,

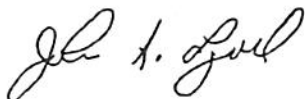
Please be advised that Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter AFSCME) has agreed to wave its contractual right to enforce its current dues checkoff revocation period, as set forth the collective bargaining agreement, the dues checkoff authorization card you signed or both, that allows dues revocation to be effective only if written notice of revocation is received from a bargaining unit employee during a 15-day window period tied to the expiration date of the collective bargaining agreement and has adopted instead the following dues revocation policy containing a annual revocation window period tied to the date the dues authorization card was signed:

Any voluntary dues authorization and assignment shall be irrevocable, regardless of whether an employee has revoked union membership, for a period of one year from the date of the execution of the dues checkoff authorization and for year to year thereafter, unless the employee gives the Employer and the Union written notice of revocation not less than ten (10) days and not more than twenty five (25) days before the end of any yearly period; provided however, if the applicable collective bargaining agreement specifies an annual revocation window period of longer than fifteen (15) days, then only that longer period shall apply.

To the extent the current collective bargaining agreement does not expressly limit the period for dues revocation to a particular window period or provides for revocation more frequently than the annual revocation period defined above, the collective bargaining agreement will control.

If you have any questions regarding the above, please feel free to contact your Ohio Council 8 staff representative or regional director.

John A. Lyall
President



cc: file
M. Knox
R. Moncrease



420 South Reynolds Road
Toledo, Ohio 43615
Telephone: (419) 539-6000
Fax: (419) 539-6008
Toll Free: (800) 361-6748

Dawn Bailey
Regional Director

R. Sean Grayson
President

Marcia Knox
First Vice President

William Maurice Brown
Secretary-Treasurer

David Kovacs
Recording Secretary

Vice Presidents

Akron
John Asher
Sheila Fambro

Athens
John Ackison
Patricia Senters

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Emily Bell
Jeremy McCleese

Cleveland
Jamie Bailey
Gail Elmore

Columbus
William Harmon
Kenneth Haynes

Dayton
Jeffrey Hasty
Kelly Yeane

Toledo
Donald D. Czerniak
Randy V. Desposito

Youngstown
Thomas R. Connelly
DJ Sferra

At-Large
Traci R. Poellnitz

Retirees
Floyd E. Wright
Sandra Couter

Trustees
John Henry, Jr.
Ramon J. Mendoza, II
Todd Rogers

February 28, 2025

Cindy DuPuis

28969 Tracy Rd

Walbridge, Ohio 43405

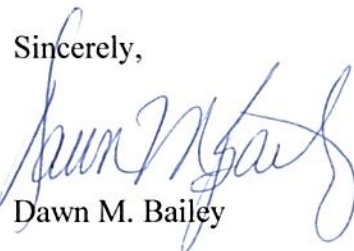
Dear Ms. DuPuis:

You are receiving this letter because you sent a written request to Ohio Council 8, AFSCME to drop your union membership. The Council will instruct the membership services departments of Council 8, AFSCME International and your local union to remove your name from the membership roster.

Union dues deduction will not be stopped at this time because your letter does not revoke the dues checkoff authorization card which you signed and because any dues revocation request would need to be made and received by the union in accordance with the union's current procedures and within a window period which you agreed to when you signed the authorization card. Attached is a copy of the union's current dues revocation procedure and a copy of the authorization card you signed. The union's current procedure will allow you to revoke your dues deduction authorization on an annual basis during a window period close in time to the date you signed your authorization card. If you have any questions about this procedure, please feel free to call my office.

Exhibit C-1 Page 4 of 7

Rather than drop your membership or your dues deductions, Council 8 would like you to consider remaining a member of the union. If you want a strong union to represent yourself and your co-workers over pay, benefits and working conditions, we need all of the employees to stick together. As a member of the union, did you know you are entitled to members only benefits including tuition free college for yourself, your spouse and children, lower interest credit cards and home mortgage loan rates and a host of discounted products including cell phone service. I have enclosed information about these and other members only benefits for your review. If you decide you want to remain a member, simply call me back and let me know.

Sincerely,

Dawn M. Bailey
Regional Director

cc: File

Juana Gonzalez, President, AFSCME Local 2174

Enc. (3)



420 South Reynolds Road
Toledo, Ohio 43615
Telephone: (419) 539-6000
Fax: (419) 539-6008
Toll Free: (800) 361-6748

Dawn Bailey
Regional Director

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President

Marcia Knox
First Vice President

William Maurice Brown
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Kenneth Haynes

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Jeffrey Hasty
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Youngstown
Thomas R. Connelly
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At-Large
Traci R. Poellnitz

Retirees
Floyd E. Wright
Sandra Cautcher

Trustees
John Henry, Jr.
Ramon J. Mendoza, II
Todd Rogers

March 21, 2025

Cindy DuPuis

28969 Tracy Rd

Walbridge, Ohio 43405

Dear Ms. DuPuis:

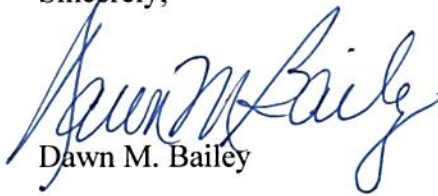
You are receiving this letter because you sent a written request to Ohio Council 8, AFSCME to drop your union membership. The Council will instruct the membership services departments of Council 8, AFSCME International and your local union to remove your name from the membership roster.

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Exhibit C-1 Page 6 of 7

Rather than drop your membership or your dues deductions, Council 8 would like you to consider remaining a member of the union. If you want a strong union to represent yourself and your co-workers over pay, benefits and working conditions, we need all of the employees to stick together. As a member of the union, did you know you are entitled to members only benefits including tuition free college for yourself, your spouse and children, lower interest credit cards and home mortgage loan rates and a host of discounted products including cell phone service. I have enclosed information about these and other members only benefits for your review. If you decide you want to remain a member, simply call me back and let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dawn M. Bailey".

Dawn M. Bailey
Regional Director

cc: File

Juana Gonzalez, President, AFSCME Local 2174

Enc. (3)



420 South Reynolds Road
Toledo, Ohio 43615-0901
Telephone: (419) 539-6000
Fax: (419) 539-6008
Toll Free: (800) 361-6748

Matthew Butler
Regional Director

September 28, 2023

R. Sean Grayson
President

Marcia Knox
First Vice President

Eddie W. Lawson
Secretary-Treasurer

Julie Albers
Recording Secretary

Vice Presidents

Akron
Shelia Fambro
Vonda Johnson

Athens
John Ackison
Patricia Waller

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Cleveland
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Bonnie Perry

Columbus
Kenneth Haynes
Angela Williams

Dayton
Sean Harber
Jeffrey Hasty

Toledo
Donald D. Czerniak
Randy V. Desposito

Youngstown
Thomas R. Connelly
Daniel Sferra

At-Large
Traci R. Poellnitz

Retiree
Sandra Coutcher
Floyd E. Wright

Trustees
William M. Brown
Ramon J. Mendoza, II
Todd Rogers

Tiffany Binder

614 Sackett St

Maumee, Ohio 43537

Dear Ms. Binder:

You are receiving this letter because you sent a written request to Ohio Council 8, AFSCME to drop your union membership. The Council will instruct the membership services departments of Council 8, AFSCME International and your local union to remove your name from the membership roster.

Union dues deduction will not be stopped at this time because your letter does not revoke the dues checkoff authorization card which you signed and because any dues revocation request would need to be made and received by the union in accordance with the union's current procedures and within a window period which you agreed to when you signed the authorization card. Attached is a copy of the union's current dues revocation procedure and a copy of the authorization card you signed. The union's current procedure will allow you to revoke your dues deduction authorization on an annual basis during a window period close in time to the date you signed your authorization card. If you have any questions about this procedure, please feel free to call my office.

Rather than drop your membership or your dues deductions, Council 8 would like you to consider remaining a member of the union. If you want a strong union to represent yourself and your co-workers over pay, benefits and working



conditions, we need all of the employees to stick together. As a member of the union, did you know you are entitled to members only benefits including tuition free college for yourself, your spouse and children, lower interest credit cards and home mortgage loan rates and a host of discounted products including cell phone service. I have enclosed information about these and other members only benefits for your review. If you decide you want to remain a member, simply call me back and let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew Butler", with a stylized flourish at the end.

Matthew Butler
Regional Director

cc: File

Juana Gonzalez, President, AFSCME Local 2174

Enc. (3)

AFSCME OHIO COUNCIL 8

6800 North High Street
Worthington, Ohio 43085
(614) 841-1918

January 25, 2019

Dear Member,

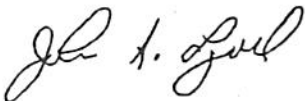
Please be advised that Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (hereinafter AFSCME) has agreed to wave its contractual right to enforce its current dues checkoff revocation period, as set forth the collective bargaining agreement, the dues checkoff authorization card you signed or both, that allows dues revocation to be effective only if written notice of revocation is received from a bargaining unit employee during a 15-day window period tied to the expiration date of the collective bargaining agreement and has adopted instead the following dues revocation policy containing a annual revocation window period tied to the date the dues authorization card was signed:

Any voluntary dues authorization and assignment shall be irrevocable, regardless of whether an employee has revoked union membership, for a period of one year from the date of the execution of the dues checkoff authorization and for year to year thereafter, unless the employee gives the Employer and the Union written notice of revocation not less than ten (10) days and not more than twenty five (25) days before the end of any yearly period; provided however, if the applicable collective bargaining agreement specifies an annual revocation window period of longer than fifteen (15) days, then only that longer period shall apply.

To the extent the current collective bargaining agreement does not expressly limit the period for dues revocation to a particular window period or provides for revocation more frequently than the annual revocation period defined above, the collective bargaining agreement will control.

If you have any questions regarding the above, please feel free to contact your Ohio Council 8 staff representative or regional director.

John A. Lyall
President



cc: file
M. Knox
R. Moncrease

IN THE COURT OF COMMON PLEAS
CARROLL COUNTY, OHIO

MATTHEW SHELDON

Plaintiff,

v.

OHIO ASSOCIATION OF PUBLIC
SCHOOL EMPLOYEES/AMERICAN
FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES,
LOCAL 541 - CARROLLTON
EXEMPTED VILLAGE SCHOOLS, *et al.*,

Defendants.

:
: **CASE NO. 2025CVH30642**
:
: **JUDGE MICHAEL V. RAPELLA II**
:
:
:
:
:
:
:
:
:

**DEFENDANT-APPELLEE STATE EMPLOYMENT RELATIONS BOARD'S REPLY
TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO STATE EMPLOYMENT
RELATIONS BOARD'S RENEWED MOTION TO DISMISS**

Defendant State Employment Relations Board ("SERB") asks this Court to grant its renewed motion to dismiss itself as a party. Contrary to Plaintiff Matthew Sheldon's ("Sheldon") position, SERB is not a necessary party since no relief is sought from SERB and no action was brought before SERB under R.C. Chapter 4711. Instead, Sheldon seeks from SERB an advisory opinion only, which under these circumstances SERB should not be forced to provide. To hold otherwise puts SERB in the impossible position of having to defend a lawsuit where there is no

case or controversy before SERB and no appropriate remedy sought from SERB. As SERB stated in its renewed motion, there is no reason for SERB to remain a party defendant.

A. SERB IS NOT A NECESSARY PARTY AND SHOULD NOT BE MADE TO RENDER AN ADVISORY OPINION.

Sheldon erroneously argues that SERB is a necessary party to this lawsuit under R.C. 2721.12(A), the declaratory judgment statute. For support, Sheldon cites *Rumpke Sanitary Landfill, Inc. v. State*, 128 Ohio St.3d 41 (2010). In *Rumpke*, Colerain Township tried to intervene in a lawsuit filed by Rumpke, a sanitary landfill, for declaratory and injunctive relief against the State of Ohio. The lawsuit alleged that new legislation violated the one-subject rule. The Ohio Supreme Court held that although the Township may have a practical interest in the lawsuit, it had no legal interest in the General Assembly's authority to enact laws and was not a necessary party.

Sheldon cites *Rumpke* for the general proposition that a necessary party to a declaratory judgment action includes those persons “who have or claim any interest that would be affected by the declaration.” *Id.* at ¶ 15; R.C. 2721.12(A). But this rule is not without its limitations. Even in *Rumpke*, the Court distinguished between an entity having a practical interest versus a legal interest in the litigation. Like the township in *Rumpke*, SERB has only a practical interest in this litigation but not a legal one since there is neither an actual controversy that involves SERB nor relief sought from SERB. In the prayer for relief, Sheldon seeks a “refund of all union membership dues improperly withheld,” plus costs and attorney fees from the Union and nothing from SERB. SERB cannot possibly render an opinion here as to whether it has jurisdiction where it has not been presented with an unfair labor practice charge to investigate and to determine whether probable cause exists.

Sheldon minimizes the fact that it is essentially asking SERB to render an advisory opinion, which it should not be required to do. *See State ex rel. Kilne v. Newton Falls Village Council*,

2023-Ohio-3841, ¶ 11 (11th Dist.). (“Generally, courts will not issue advisory opinions.”). The fact that Sheldon seeks a declaratory judgment does not mean that SERB is a necessary party that must remain in the lawsuit. The Ohio Supreme Court has stressed that “in keeping with the long-standing tradition that a court does not render advisory opinions, [courts] allow the filing of a declaratory judgment only to decide ‘an actual controversy, the resolution of which will confer certain rights or status upon the litigants.’” *Mid-American Fire & Cas. Co. v. Heasley*, 113 Ohio St.3d 133, 136 (2007). However, “[n]ot every conceivable controversy is an actual one. *Id.*

Sheldon’s reliance on *Cincinnati v. Whitman*, 44 Ohio St.3d 58 (1975) is misplaced. In that case, the Court held that the director of the Ohio Environmental Protection Agency (“Ohio EPA”) had to be joined as a necessary party to an action challenging the constitutionality of a statute that imposed legal duties on the Ohio EPA’s director. *Whitman* is factually distinguishable from this case because no statute involving SERB’s legal duties is involved or being challenged. Unlike *Whitman*, there is no reason to include SERB in this lawsuit. Therefore, SERB asks this Court to dismiss it as an improper party pursuant to Civ.R. 21, as argued in SERB’s renewed motion to dismiss.

B. SHELTON CANNOT USE CIVIL RULE 8(E)(2) TO PLEAD IN THE ALTERNATIVE THE QUESTION OF WHETHER SERB HAS JURISDICTION IN THE LAWSUIT.

Although Civ.R. 8(E)(2) permits a party to plead in the alternative to assert inconsistent claims or theories of recovery, the rule cannot be used to force an entity that has no case or controversy before it to render an advisory opinion as to whether it has jurisdiction. In the cases Sheldon cites, the plaintiffs simply pled two different claims or theories of recovery, or an inconsistent defense and counterclaim, both of which Civ.R. 8(E)(2) permits. *Simbo v. M8 Realty, LLC*, 2019-Ohio-4361, ¶ 23 (8th Dist.) (The defendant presented a counterclaim involving the

issue of non-payment of rent, which was inconsistent with his defenses); *Yaklevich v. Kemp, Schaeffer & Rowe Co., L.P.A.*, 68 Ohio St.3d 294, 301, fn. 6 (1994) (Where the lawsuit involved the claims of abuse of process and malicious prosecution). Because those parties pleaded inconsistent legal theories, the courts correctly allowed the use of alternative pleading under Civ.R. 8(E)(2). Sheldon's attempt to use Civ.R. 8(E)(2) to assert competing allegations of jurisdiction here is erroneous.

C. SHELDON IS NOT PRECLUDED FROM HAVING HIS DAY IN COURT

Sheldon argues that without SERB's answering the question of its jurisdiction, he "can never have his day in court." (Sheldon's Motion in Opposition, p. 6). Sheldon's statement is an incorrect exaggeration. By filing this lawsuit and, if necessary, by having the ability to appeal any adverse decision, Sheldon is already having his day in court. Sheldon, however, claims that SERB must decide the question of its jurisdiction since other court decisions in which SERB was not named a party defendant have granted the Union's motions to dismiss for lack of jurisdiction. *See Darling v. Am. Fed'n of State, Cnty., & Mun. Emps.*, 2024-Ohio-2181 (10th Dist.), *appeal not allowed sub nom. Darling v. Am. Fedn. of State, Cty. & Mun. Emps.*, 2024-Ohio-4713 (Ohio, Oct.1, 2024) and *Littlejohn v. AFSCME*, Hamilton C.P. No. A2403410 (Dec. 16, 2024), *on appeal, Littlejohn v. AFSCME*, C2500020 (1st Dist.).

The *Darling* and *Littlejohn* courts did dismiss the plaintiff's complaints, but the *Littlejohn* case is on appeal. *Id.* The *Darling* court stressed that even if a court lacks jurisdiction in this type of case, recourse may still be available at SERB. In *Darling*, the plaintiff alleged claims like those presented here, involving union dues deductions. The common pleas court dismissed the complaint, holding that it lacked subject matter jurisdiction, and that proper jurisdiction was with

SERB. The appellate court affirmed the common pleas court's dismissal for lack of jurisdiction and stressed that the plaintiff could still seek redress at SERB. ("Following this decision, if the appellants choose to seek relief from SERB, we note this decision pertains only to jurisdiction, and not to the merits of the arguments." *Id. at* ¶ 21.)

Littlejohn had also filed an unfair labor practice charge with SERB, which SERB dismissed. Sheldon claims that because SERB dismissed that unfair labor practice charge, SERB has already held that it lacks jurisdiction over this type of case. But SERB has not made such a broad holding as Sheldon suggests. Instead, SERB's dismissal entry was based on Littlejohn's failure to submit her dues deduction request in a timely fashion. As SERB explained: "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." *In re Littlejohn v. AFSCME*, SERB Case No. 2023-ULP-12-0146. (Dismissal Entry). Littlejohn chose not to file a mandamus action challenging SERB's determination, which is yet another way in which a party may seek redress if SERB dismisses an unfair labor practice charge.

Contrary to Sheldon's position, he is in no way deprived of his right to access the courts under Article I, Section 16 of the Ohio Constitution. Sheldon has the right to appeal any adverse court decision.

CONCLUSION

For the foregoing reasons, SERB, through counsel, respectfully moves this Court to dismiss SERB as a party to these proceedings.

Respectfully submitted,

DAVE YOST (0056290)
Ohio Attorney General



LORI FRIEDMAN (0018480)
Principal Assistant Attorney General
Executive Agencies Section – Labor Relations Unit
615 W. Superior Ave, 11th Floor
Cleveland, Ohio 44113-1899
(216) 787-4196 (phone)/(866) 478-7363 (fax)
Lori.Friedman@OhioAGO.gov

*Counsel for Defendant State Employment Relations
Board*

CERTIFICATE OF SERVICE

I certify that the above *Defendant State Employment Relation Board's Reply to Plaintiff's Memorandum in Opposition to State Employment Relations Board Renewed Motion to Dismiss* will be served on the parties listed below, via the court's electronic e-filing system:

Jay R. Carson
David C. Tryon
J. Simon Peter Mizner
88 East Broad St., Suite 1300
Columbus, Ohio 43215
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Attorneys for Plaintiff The Buckeye Institute