

**IN THE COURT OF COMMON PLEAS  
 LUCAS COUNTY, OHIO**

CINDY DUPUIS, *et al.*,

Plaintiff,

vs.

AMERICAN FEDERATION OF STATE,  
 COUNTY AND MUNICIPAL  
 EMPLOYEES, LOCAL 2174 – TOLEDO  
 PUBLIC SCHOOL DISTRICT, et al.,

Defendants.

CASE NO: CI2025-02488

JUDGE LORI L. OLENDER

**PLAINTIFF’S MEMORANDUM IN**  
**OPPOSITION TO DEFENDANT**  
**STATE EMPLOYMENT**  
**RELATIONS BOARD’S MOTION**  
**TO DISMISS ITSELF AS A PARTY**

**I. Introduction**

Defendant State Employment Relations Board (“SERB”) filed its Motion to Dismiss Itself as a Party (“SERB MTD”) on July 28, 2025. SERB argues, in sum, that it should be dismissed from this suit because Plaintiffs ask this Court to issue an advisory opinion. SERB’s arguments fail for many reasons. First, dropping SERB from this action under Civ.R. 21 is improper because it remains a necessary party per Ohio’s declaratory judgment statute. And second, although declaratory judgment actions cannot contravene the rule against advisory opinions, they are appropriate “to decide ‘an actual controversy, the resolution of which will confer certain rights or

status upon the litigants.”” *Arnott v. Arnott*, 2012-Ohio-3208, ¶ 10, quoting *Corron v. Corron*, 40 Ohio St.3d 75, 79 (1988).

## **II. Background**

Plaintiff DuPuis is a member of Defendant Union’s bargaining unit. Compl. ¶ 14. After years of dissatisfaction with the Union, Plaintiff DuPuis resigned her union membership in August of 2023. *Id.* Plaintiff Binder was a member of Defendant Union’s bargaining unit until she resigned in April of 2024. *Id.* at ¶15. Plaintiff Binder resigned her union membership in August of 2023. *Id.* Despite Plaintiffs’ resignations, Defendant Union has continued to deduct union dues from Plaintiffs’ paychecks. *Id.* at ¶ 8–9.<sup>1</sup> Plaintiffs filed this suit to recover the dues Defendant Union has illegally taken from them since their resignations and to have this Court declare if it has jurisdiction over the claims set out in the Complaint. *Id.* at ¶ 128.

## **III. Law and Argument**

### **A. Standard of Review**

In construing a complaint upon a motion to dismiss for failure to state a claim, [the court] must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. . . . Then, before [the court] may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts warranting a recovery.

(Citations omitted.) *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988).

### **B. SERB is a necessary party to this action so Civil Rule 21 is inapplicable.**

Ohio’s declaratory judgment statute requires that “all persons who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding.”

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<sup>1</sup> Defendant Union stopped deducting dues from Plaintiff Binder once she left Toldeo Public Schools employ in April 2024. *Id.* at ¶ 9.

R.C. 2721.12(A). “[O]nly those persons who are legally affected are proper parties to a lawsuit,” and “[a] party is legally affected by a cause of action if the party has a legal interest in rights that are the subject matter of the cause of action.” (Citation omitted.) *Rumpke Sanitary Landfill, Inc. v. State*, 2010-Ohio-6037, ¶ 14. Here, SERB has a legal interest in the Court’s determination of SERB’s jurisdiction.

“[W]hen declaratory relief is sought which involves the validity or construction of a statute and affects the powers and duties of public officers, such officers should be made parties to the action or proceeding in which the relief is sought.” *City of Cincinnati v. Whitman*, 44 Ohio St.2d 58, 61 (1975). In *Whitman*, the Ohio Supreme Court held that the Director of Environmental Protection was a necessary party because the action sought to invalidate a fluoridization statute, and another statute required the “environmental protection agency [to] exercise general supervision of the operation and maintenance of the public water supply.” *Id.* at 60. Likewise, this case seeks clarification of SERB’s jurisdiction under R.C. 4117.02. This action’s result will affect and define SERB’s power to adjudicate cases like this one. Thus, under *Whitman*, SERB is a necessary party.

Further, Civ.R. 19(A) requires that a party be joined to a suit if “in [its] absence complete relief cannot be accorded among those already parties.” Since Civ.R. 12(B)(7) permits the court to dismiss a case if a necessary party is not joined per Civ. R. 19(A), it follows that necessary parties must be brought in either at the pleading stage or after. As explained above, SERB is a necessary party, so Civ.R. 19(A) also requires its presence in this case.

**C. This case presents an actual case or controversy that requires SERB’s participation for adjudication.**

SERB correctly states that “courts are generally unable to issue advisory opinions.” SERB Mot. to Dismiss at 2, citing *Kline v. Newton Falls*, 2023-Ohio-3841, ¶ 11 (11th Dist.). The Eleventh

District in *Kline* determined that a petition for writ of prohibition was moot and, therefore, “Kline’s writ action is no longer live nor justiciable.” *Kline* at ¶ 12. *See also State ex rel. White v. Kilbane Koch*, 2002-Ohio-4848, ¶ 18 (dismissing an appeal as moot and, therefore, any decision thereon would be an advisory opinion). SERB has not claimed that the issues before this Court are moot because they are not. “[A] declaratory judgment is a binding adjudication of the contested rights of litigants, though unaccompanied by consequential relief, whereas an advisory opinion is merely the opinion of a judge or judges of a court, which adjudicates nothing and is binding on no one.” *State ex rel. Draper v. Wilder*, 145 Ohio St. 447, 455 (1945). Plaintiffs here seek a binding adjudication on the issues presented, including the jurisdiction of this Court versus the jurisdiction of SERB. Plaintiffs are not asking SERB to rule on the merits of the claims, just to state or deny its jurisdiction to hear them. Thus, there is a live controversy between the parties.

Ohio’s declaratory judgment statute authorizes anyone with an interest in a, written contract, or other writing constituting a contract or any person whose rights, status, or other legal relations are affected by a constitutional provision, statute, rule . . . contract, or franchise 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. Plaintiffs now seek to clarify their rights under the supposed contract with Defendant Union *and* their rights under the statute that controls SERB, R.C. 4117.11.

In *Keller v. Columbus*, 100 Ohio St.3d 192, 196–197 (2003), the plaintiffs asked for a declaratory judgment that their union’s collective bargaining agreement’s record retention

provisions violated state records laws. The Court reasoned that to the extent the CBA was valid, “the complaint states a claim upon which declaratory relief can be granted.” *Id.* Now, Plaintiffs seek a judgment that the supposed contracts between them and the Union violate Ohio contract law. Further, Plaintiffs seek a declaration of their rights under R.C. 4117.11 to know whether this Court can adjudicate those claims. That is the controversy before this Court.

To bring a declaratory action a plaintiff must have standing, and that “depends upon whether the party has alleged such a ‘personal stake in the outcome of the controversy \* \* \*’ as to ensure that ‘the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.’” (Cleaned up.) *Ohio Pyro, Inc. v. Ohio Dept. of Com.*, 115 Ohio St.3d 375, 381 (2007), citing *State ex rel. Dallman v. Franklin Cty. Court of Common Pleas*, 35 Ohio St.2d 176, 178–179 (1973).

Plaintiffs’ rights turn on the declaratory action. While Plaintiffs did not bring any claims before SERB, similarly situated plaintiffs have brought similar claims before both SERB and courts of common pleas, only to be turned away. *See, e.g., Darling*, 2024-Ohio-2181 (10<sup>th</sup> Dist.), and *Littlejohn*, C.P. Hamilton, No. 24-03410. In a similar case in Carroll County, the plaintiff brought the same five contract claims as Plaintiff DuPuis.<sup>2</sup> Amended Complaint, *Sheldon v. OAPSE*, C.P. Carroll, No. 2025CVH30642 (filed Mar. 13, 2025).<sup>3</sup> In its reply to the plaintiff’s brief in opposition to SERB’s motion to dismiss, SERB asserted that “no statute involving SERB’s legal duties is involved or being challenged.” Def.-Appel. SERB’s Reply to Plaintiff’s Memo. Opp. to SERB’s Renewed Mot. To Dismiss, *Sheldon v. OAPSE*, C.P. Carroll, No. 2025CVH30642 (filed Apr. 21, 2025); *see also* Def. SERB’s Reply to Plaintiff’s Memo. Opp. to SERB’s Mot. To

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<sup>2</sup> Plaintiff Binder only brought four contract claims.

<sup>3</sup> *Sheldon* was dismissed on another party’s motion.

Dismiss, *Chandler v. OAPSE*, C.P. Stark, No. 2025CV00690 (filed May 8, 2025) (same).<sup>4</sup>

SERB's assertion in *Sheldon* and *Chandler* evidences its view that SERB does not have jurisdiction over these contract claims. That supports this Court's jurisdiction over such contract claims. While SERB may argue that this justifies its dismissal from this case, SERB's statement should be read as a disclaimer of jurisdiction. Thus, the Court should rely on SERB's previous statement as a basis for declaring the Court's jurisdiction here. Without a declaration from this Court, Plaintiffs and plaintiffs like them may never get their day in court.<sup>5</sup> There is an actual controversy over the proper forum to bring these types of claims.

**D. This Court has jurisdiction to determine Plaintiff's declaratory judgment action.**

Finally, what Plaintiffs ask this Court to do is not without precedent. In *Corder v. Ohio Edison Co.*, the plaintiffs sought a declaratory judgment on a public utility companies right under an easement to use herbicides to remove certain plants. 2020-Ohio-5220, ¶ 10. The Ohio Supreme Court, determined that PUCO did not have 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 common law, the Court held that “such a determination requires an adjudication of competing property rights that may be made only by a court.” *Id.* Contract law, like property law, is an area deeply rooted in and controlled by common law. Like the plaintiffs' property rights in *Corder*, Plaintiffs' contract rights would be severely harmed without judicial intervention here. Thus, this Court can make a similar determination on SERB's jurisdiction, and dismissal is inappropriate because this Court has

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<sup>4</sup> *Chandler* is an ongoing case.

<sup>5</sup> SERB has not challenged this Court's authority to determine if SERB has jurisdiction to adjudicate the issues presented in the Complaint, nor has SERB questioned the authority of this Court to declare its own jurisdiction.

jurisdiction to hear the case.

#### **IV. Conclusion**

For the above reasons, SERB's Motion to Dismiss Itself as a Party should be denied.

Respectfully submitted,

/s/ Jay R. Carson

Jay R. Carson (0068526)

David C. Tryon (0028954)

J. Simon Peter Mizner (0105077)

The Buckeye Institute

88 East Broad Street, Suite 1300

Columbus, Ohio 43215

(614) 224-4422

Email: j.carson@buckeyeinstitute.org

d.tryon@buckeyeinstitute.org

mizner@buckeyeinstitute.org

*Attorneys for Plaintiff*

#### **CERTIFICATE OF SERVICE**

This will certify that a true and accurate copy of the above brief has been served by e-mail to counsel of record for Defendants this 14th day of August 2025.

/s/ Jay R. Carson

Jay R. Carson (0068526)

*One of the Attorneys for Plaintiff*