

JR 2508 228

Date 8.22.2025

FILED-FULTON CO COMMON PLEAS
TRACY L ZIMMER, CLERK
AUG 22, 2025 PM 12:30

IN THE COMMON PLEAS COURT OF FULTON COUNTY, OHIO

Katrina Vanderveer,
Plaintiff

)

Case No. 25CV093

)

Judge Scott A. Haselman

-vs-

)

ORDER AND JUDGMENT ENTRY

Ohio Association of Public School
Employees etc., et al.
Defendants

)

The matter comes on for consideration of: (1) the State Employment Relations Board's (hereinafter "SERB") May 27, 2025 Motion to Dismiss; (2) the Ohio Association of Public School Employees (OAPSE)/American Federation of State, County and Municipal Employees (AFSCME) and its Local 660, Pike-Delta-York Local School District's June 23, 2025 Motion to Dismiss¹ (herein jointly referred to in the singular as "the Union"); (3) Plaintiff's June 12, 2025 Memorandum in Opposition to Defendant State Employment Relations Board's Motion to Dismiss Itself as a Party; (4) Plaintiff's July 3, 2025 Memorandum in Opposition to Defendant OAPSE, Local 660-Pike-Delta-York's Motion to Dismiss; and (5) the Union's August 11, 2025 Reply Memorandum.

A. Summary Of The Arguments:

1. SERB's Motion to Dismiss:

Only Count Five of the Complaint, which purportedly seeks "declaratory relief" concerning the extent of SERB's jurisdiction, involves SERB. However, SERB claims that Plaintiff is actually seeking an advisory opinion (i.e., that Plaintiff erroneously pleads in the alternative by claiming that: (1) SERB has no jurisdiction to resolve the contractual claims that

¹ It appears that the Union's Motion is mistitled to the extent that it refers to an incorrect local union number and the Lorain County Board of Developmental Disabilities.

are alleged in the Complaint; or (2) SERB has jurisdiction to resolve the contractual claims that are alleged in the Complaint).

In support of its argument, SERB specifically argues that: (1) “* * * SERB should not be required to be part of a lawsuit over which there is no case or controversy before SERB (such as the filing of an unfair labor practice charge)”; and (2) Plaintiff “* * * seeks no relief from SERB and has not filed an unfair labor practice charge with SERB on which it could determine if there was a matter over which it has jurisdiction.” SERB’s Motion to Dismiss, p. 5. As such, SERB requests that it be dismissed from this lawsuit pursuant to the terms of Ohio Rule of Civil Procedure 21.

2. The Union’s Motion to Dismiss:

The Union argues that R.C. Chapter 4117 establishes the framework for resolving public-sector labor disputes, with SERB being the agency “* * * with exclusive jurisdiction to determine whether the rights set forth in the statute have been violated, as well as to remedy any violations.” Union’s Motion to Dismiss, p. 3. Essentially, the Union asserts that Plaintiff is improperly attempting to “sidestep” SERB’s exclusive jurisdiction by styling her claims in the case at bar as arising under the common law rather than under the terms of R.C. Chapter 4117, and that this matter should be dismissed for lack of subject-matter jurisdiction pursuant to the terms of Civil Rule 12(B)(1) and 12(H)(3).

In that regard, the Union asserts that the jurisdictional issues in question have already been considered by the Tenth District Court of Appeals in *Darling v. AFSCME*, 10th Dist. No. 23AP-645, 2024-Ohio-2181, *appeal denied by* 175 Ohio St.3d 1472. In *Darling*, the Court determined that, where a plaintiff’s claims are inextricably intertwined with a claim under R.C. Chapter 4117, and dependent upon the collective bargaining rights contained in that Chapter,

those claims must be brought to SERB, not to court (although the Union further acknowledges that if SERB determines that there is no probable cause to believe that an unfair labor practice has occurred, a plaintiff would have an opportunity to pursue a later mandamus action).

Essentially, the Union is arguing that: (1) Plaintiff is asserting that it violated Ohio law by receiving payroll deductions from her wages after she resigned her union membership; (2) SERB has made it clear that a union's receipt of dues deduction without a valid authorization from the employee violates an employee's rights (i.e., R.C. 4117.09(B)(2) requires that all collective bargaining agreements contain a clause requiring public employers to deduct union dues, but only where an employee has provided a valid "written deduction authorization"); and (3) in *Darling, supra*, before finding that the plaintiff's claims fell within SERB's exclusive jurisdiction, the Court summarized the matters to be addressed as falling into three categories that are also applicable in the case at bar: "First, whether OAPSE breached its agreement with its former members, the appellants. Second, whether compelled payroll deductions for membership dues violate the rights guaranteed to public employees under R.C. Chapter 4117. And third, whether the public employers' actions violated their respective collective bargaining agreements." *Darling, supra*, ¶19.

3. Plaintiff's Oppositions to the Motions to Dismiss:

a. Addressing SERB's claims:

In response to SERB's Motion, Plaintiff argues that: (1) SERB is a necessary party to Plaintiff's action for declaratory relief; (2) Plaintiff's use of alternative pleading was appropriate since Ohio Rule of Civil Procedure 8(E)(2) specifically permits alternative/inconsistent pleading; and (3) the declaratory judgment action, which is a binding adjudication of contested rights, decides an actual controversy that exists between the parties (i.e., that the Court would not be

issuing an advisory opinion since “[t]he law is unclear whether this Court or SERB has jurisdiction over Plaintiff’s claims.” Plaintiff’s June 12, 2025 Memorandum in Opposition, p. 5).

In that regard, Plaintiff argues that SERB has a legal interest in the Court’s determination of SERB’s jurisdiction since this action may determine SERB’s jurisdiction over cases or disputes involving the factual circumstances like those that are alleged to have occurred in the case at bar. Plaintiff specifically asserts that the *Darling* Court determined that SERB has exclusive jurisdiction over such cases because Defendant Union’s conduct may be an unfair labor practice, but that in other similar disputes, SERB has determined that the facts pled did not amount to an unfair labor practice within its jurisdiction and therefore dismissed the charge. Plaintiff’s June 12, 2025 Memorandum in Opposition, p. 3. Essentially, Plaintiff argues that she is seeking a declaration as to SERB’s jurisdictional limit so that she may ultimately obtain a resolution of the underlying claims involving the alleged retention of her “union dues”.

b. Addressing the Union’s claims:

In response to the Union’s Motion, Plaintiff argues that: (1) she is seeking a declaration that her membership contract with the Union, which permitted the Union to withdraw dues from her paycheck even after her union membership had ended, was invalid and imposed an impermissible penalty; (2) the *Darling* Court incorrectly found that the plaintiff’s claims in that case constituted an unfair labor practice, thereby rendering those claims subject to SERB’s exclusive jurisdiction; (3) that in the *Littlejohn* matter, which was alleged to be a factual situation that was similar to the case at bar, but where the claimant presented her claims to SERB, “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 an unfair labor practice”, such that plaintiffs are “* * * left with contractual rights, but no forum in which to enforce them” (in a later portion of

Plaintiff's filing she argues that, in the *Littlejohn* matter, SERB “* * * dismissed that charge, finding that the alleged conduct was not an unfair labor practice, so the charge lacked merit” and that if the charge “* * * was not an unfair labor practice, then SERB did not have exclusive jurisdiction over claims relating to that conduct”); (4) the Ohio Supreme Court's recent decision in *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052, which addressed to an issue surrounding arbitration, is supportive of her position; (5) under the terms of R.C. 2721.03, Ohio's declaratory judgment statute, she is challenging “the validity and construction” of the agreement under which the Union received dues from her; and (6) the Ohio Constitution's Open Courts Clause requires that this Court exercise its jurisdiction over her claims. See, Plaintiff's Memorandum in Opposition to Union's Motion to Dismiss, pp. 4, 8, 11.

4. The Union's Reply in Support of its Motion to Dismiss:

In response to Plaintiff's arguments, the Union asserts that: (1) the *Darling* decision “* * * reflects a straightforward application of Ohio Supreme Court precedents concerning SERB's exclusive jurisdiction”, that is, “whether a claim ‘alleg[es] conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11’”; (2) Plaintiff is arguing that she “* * * can sidestep SERB's exclusive jurisdiction simply by styling the claims under Ohio contract law, rather than as claims under R.C. Chapter 4117”; (3) the Ohio Supreme Court's recent decision in *Lakewood, supra*, is not supportive of Plaintiff's argument because, among other things: (a) R.C. 4117.09(B)(1) specifically permits a party to a collective bargaining agreement to bring suit for violation of the agreement in the court of common pleas of any county wherein a party resides or transacts business; and (b) the city's refusal to arbitrate in *Lakewood, supra*, did not constitute an unfair labor practice under the terms of R.C. 4117.11; and (4) as Plaintiff pleads facts alleging that the Union committed an unfair labor practice under R.C. 4117.11(B)(1), there is no express

grant of jurisdiction which would allow Plaintiff to bring her claims in this Court, and the deduction of union dues from an employee's paycheck is specifically addressed in R.C. 4117.09(B)(2), Plaintiff's claims are not independent of the rights set forth in R.C. Chapter 4117, and this Court is without jurisdiction to hear Plaintiff's claims. See, Union Reply in Support of Its Motion to Dismiss, pp. 2, 4.

B. Applicable Law:

1. Method for determining whether a Court has subject matter jurisdiction over an issue:

When a party files a Civil Rule 12(B)(1) Motion to Dismiss, the court must first address that issue since subject matter jurisdiction is a threshold question that must be determined before the Court purports to reach the underlying issues that may exist in a case. *Young v. Ohio State University Hospital*, 10th Dist. No. 16AP-527, 2017-Ohio-2673, ¶12, *appeal denied by* 151 Ohio St.3d 1505.

In determining whether the Court has subject matter jurisdiction over an issue, the Court must determine whether the claims asserted raise an issue that is cognizable within the Court's jurisdiction, and in making that determination, the Court is not confined to consideration of the allegations that are contained in the complaint, but instead, the Court may consider any available material that is pertinent to that inquiry. *Dargart v. Ohio Dept. of Transportation*, 171 Ohio App.3d 439, 2006-Ohio-6179, ¶12 (6th Dist.); *Southgate Development Corp. v. Columbia Gas Transmission Corp.*, 48 Ohio St.2d 211, at ¶1 of the syllabus.

2. SERB's jurisdiction:

The test for the jurisdiction of the State Employment Relations Board ("SERB") has always been, and remains today, whether one of the parties filed charges with SERB alleging an unfair labor practice under R.C. 4117.11 or whether one of the parties filed a complaint before a common pleas court alleging conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11. * * *.

When a party does not allege an unfair labor practice or conduct that constitutes an unfair labor practice but instead raises a claim that is independent of the rights created by R.C. Ch. 4117, jurisdiction is not exclusive to SERB and may be exercised by a common pleas court.

Lakewood, supra, ¶1.

Furthermore, the mere fact that a plaintiff couches his or her claims for relief as sounding in common law, or as an action for declaratory relief, does not remove SERB's exclusive jurisdiction if the claims allege conduct that would constitute an unfair labor practice under the terms of R.C. 4117.11. *Ohio Historical Soc. v. SERB*, 66 Ohio St.3d 466, 469 (1993) ("R.C. Chapter 4117 'was meant to regulate in a comprehensive manner the labor relations between public employees and employers.' * * *. The Declaratory Judgments Act, R.C. Chapter 2721, was not intended to be used to circumvent such comprehensive agency processes."); *Gallant v. Toledo Public Schools*, 84 Ohio App.3d 378, 385-386 (1992) (any breach of contract claims that arise from or depend upon the collective bargaining rights that are created by R.C. Chapter 4117 are subject to the remedies that are provided in that chapter, and are within SERB's jurisdiction).

3. Rules involving actions for declaratory relief:

R.C. 2721.03 states, in pertinent part, as follows:

* * * any person interested under a * * * written contract, or other writing constituting a contract or any person whose rights, status, or other legal relations are affected by a * * * statute * * * (or) contract * * * may have determined any question of construction or validity arising under the instrument * * * statute * * * (or) * * * contract * * * and obtain a declaration of rights, status, or other legal relations under it.

With respect to actions for declaratory relief, and those that seek advisory opinions, the difference often comes down to the issue of justiciability. In that regard, "Courts * * * are not authorized to issue advisory opinions to prevent future disputes. * * *. Thus, a trial court may dismiss a complaint for declaratory relief if no real, justiciable controversy exists, or if the

declaratory judgment will not terminate the uncertainty or controversy. * * *. ‘A real, justiciable controversy is a “genuine dispute between parties having adverse legal interests of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.”’ * * *. Resolution of that controversy must confer certain rights or status upon the litigants.” *Brondes Ford Maumee Ltd. v. KJAMS*, 6th Dist. No. L-16-1210, 2017-Ohio-4015, ¶17 (internal citations omitted), *cause dismissed* by 150 Ohio St.3d 306; *see also, Reinbolt v. National Fire Ins. Co. of Hartford*, 158 Ohio App.3d 453, 2004-Ohio-4845, ¶¶13-16 (6th Dist.) (declaratory judgment is appropriate if there “* * * is a ‘genuine dispute between parties having adverse legal interest of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.’ * * *. The controversy must be a real or actual controversy. * * *. The resolution of that controversy must confer certain rights or status upon the litigations. * * *. An action will not lie to obtain a judgment which is merely advisory in nature or which answers a moot or abstract question.” (Internal citations omitted)).

C. Legal Analysis And Decision:

1. The Court is without jurisdiction to hear Plaintiff’s claims against the Union:

In the case at bar, while Plaintiff has attempted to frame her causes of action against the Union for purportedly retaining her “dues” as arising under the common law (i.e., Count One asserting that the Plaintiff’s contract with the Union was repudiated; Count Two asserting that the contract imposes an “unenforceable penalty”; Count Three asserting that Plaintiff’s contract with the Union was an unconscionable adhesion contract; and Count Four asserting that claims of unjust enrichment (Complaint ¶¶86-121)), those claims are clearly and inextricably intertwined with the provisions of R.C. Chapter 4117, and are dependent upon the collective

bargaining rights that are described therein See, Complaint ¶¶6-11, 18-33, 50-73, 76-85²; *Darling, supra*, ¶22; R.C. 4117.09(B)(2) (specifically stating that a collective bargaining agreement between an employer and union must contain a provision which “[a]uthorizes the public employer to deduct the periodic dues * * * upon presentation of a written deduction authorization by the employee.”).

Likewise, while public employees have the right, pursuant to R.C. 4117.03(A)(1), to “[f]orm, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in, * * * any employee organization of their own choosing”, under the terms of R.C. 4117.11(B)(1), it is an unfair labor practice for a public-employee union to “[r]estrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code”.

Thus, similar to the analysis used by the *Darling* Court, “* * * although framed in contract law, the (Plaintiff) allege(s) violations of (her) rights under R.C. 4117.11(B)(1) and 4117.03(A)(1) to refrain from assisting OAPSE through the continued deduction of dues. * * *. None of these claims are independent of the ‘collective bargaining rights created by R.C. Chapter 4117.’” *Darling, supra*, ¶20. Likewise, if the Union is found to have “* * * improperly instructed the employers to continue to deduct membership dues after the employees’ resignation, it would have caused an employer to interfere with or restrain the

² For example, Plaintiff asserts that: (1) she is seeking “* * * to enforce Plaintiff’s common law contractual rights of and defenses relating to a contract for union membership and the continued forced deduction of union dues from Plaintiff’s paycheck after Plaintiff had left the union” (Complaint, ¶18 (emphasis added)); (2) “[p]ursuant to its Collective Bargaining Agreement with the Union, which is the exclusive bargaining representative under R.C. 4117.04, *et seq.*, Pike-Delta-York Local School District deducted union membership dues from Plaintiff’s paychecks.” (Complaint, ¶28); (3) “The collective bargaining agreement between the Union and Pike-Delta-York Local School District was statutorily required to contain a provision authorizing the public employer to deduct periodic dues of union members (but not non-members fair share fees) ‘upon presentation of a written deduction authorization by the employee.’ R.C. 4117.09(B)(2).” (Complaint, ¶76); (4) “For example, the CBA between the Union and Pike-Delta-York Local School District permits the employer to “deduct Association dues” from employee wages only with signed written authorizations.” (Complaint, ¶82).

employees' right not to assist or participate in the union – an unfair labor practice under R.C. 4117.11(B)(2).” *Darling, supra*, ¶17.

Furthermore, while Plaintiff asserts that SERB, in addressing the *Littlejohn* matter, reviewed the charge and found that the actions complained of were not an unfair labor practice, and that SERB did not mention any of Ms. Littlejohn’s contractual claims or defenses, from a review of SERB’s decision in the *Littlejohn* matter, the Court believes that SERB actually went much further in its analysis than Plaintiff indicates. In that regard, SERB’s Dismissal of Littlejohn’s Unfair Labor Practice Charge, stated, in pertinent part, as follows:

Pursuant to R.C. 4117.12, the State Employment Relations Board (SERB) conducted an investigation of this charge. The investigation revealed no probable cause existed to believe the Charged Party violated R.C. 4117.11. Information gathered during the investigation reveals that the Union did not commit an unfair labor practice. Ms. Littlejohn did not submit her request to stop dues deductions during the 25 to 10 days prior to the date she signed her Dues Authorization and Membership Card and Checkoff Agreement. Based on the federal court decisions cited above, the Union is within its rights to specify the time period within which members must submit valid requests to stop dues deductions and does not attempt to cause the Employer to commit an unfair labor practice charge by refusing to stop dues deductions. As a result, the Union has not violated R.C. 4117.11(B)(1) or (2).

Accordingly, the charge is dismissed with prejudice for lack of probable cause to believe the statute has been violated.

SERB Dismissal, attached to Plaintiff’s July 3, 2025 Memorandum in Opposition as Exhibit B.

SERB’s Dismissal of Littlejohn’s Unfair Labor Practice Charge did not indicate that, as a legal matter, claims asserting the wrongful collection of union dues would fall outside of SERB’s jurisdiction, or that the wrongful collection of union dues could never constitute an unfair labor practice. Rather, SERB’s Dismissal makes it clear that SERB’s investigation determined, as a factual matter, that the union’s activities in *Littlejohn* did not give rise to probable cause to believe that the union had committed an unfair labor practice because the union was permitted to

specify the time period that its members must submit valid requests to stop dues deductions, and that Ms. Littlejohn simply did not submit her request to stop her dues deduction during the requisite time period.

The Court's view of the Dismissal of Littlejohn's Unfair Labor Practice Charge, and of SERB's legal jurisdiction to consider unfair labor practice charges that are brought by an employee who claims that the union refuses to cease dues deductions from an employee who has withdrawn from the union, is supported by the issuance of SERB's decision in *SERB v. Ohio Civil Service Employees Association/American Federation of State, County and Municipal Employees, Local No. 11*, SERB Matter 87-ULP-05-0217, 6 Ohio Pub. Employee Rep. ¶6629, 1989 WL 1703833. In that decision, certain employees filed an unfair labor practice charge with SERB asserting that the union had committed a violation of R.C. 4117.03(A) and R.C. 4117.11(B)(1) by refusing requests to cease dues deductions. SERB conducted the investigation required by the terms of R.C. 4117.12, found probable cause to believe that an unfair labor practice had been committed, and issued a complaint against the union. Ultimately, SERB found that the union had committed an unfair labor practice as described above. This is indicative of the fact that exclusive jurisdiction lies with SERB when an employee asserts that a union wrongfully refuses their request to cease dues deductions. *See also, SERB v. Ohio Civil Service Employees Association/American Federation of State, County and Municipal Employees, Local No. 11*, SERB Matter 87-ULP-05-0217, 6 Ohio Pub. Employee Rep. ¶6397, 1989 WL 1703609 (SERB found, after the filing of a charge by affected employees, that the union's conduct and actions surrounding its refusal to permit the employees to withdraw from the union, and to cease dues deductions, constituted an unfair labor practice, and SERB ordered the union to remit "* * * all dues withheld from the date of each respective request to withdraw and cease dues deductions

through the date of compliance with this ORDER, together with interest at 8% per annum and *
* * to * * * cease further dues deductions.”).

Thus, for the reasons set forth herein, the Court finds that it is without subject matter jurisdiction to hear Plaintiff’s claims against the Union. As such, it is hereby ORDERED, ADJUDGED AND DECREED that Plaintiff’s claims against the Union shall be, and are hereby, dismissed, without prejudice. Ohio Rule of Civil Procedure 41(B)(4)(a) (a dismissal for lack of subject matter jurisdiction is a failure otherwise than on the merits).

2. **Plaintiff’s claims against SERB merely seek an advisory opinion since there is not an actual controversy or dispute that exists between Plaintiff and SERB, there is not a justiciable controversy, and Plaintiff is asking the Court to rule on something that is hypothetical and of an abstract nature:**

While the Court has found, in connection with the Union’s Motion to Dismiss, that the Court does not have subject matter jurisdiction over this matter given SERB’s exclusive jurisdiction to hear matters alleging conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11, that does not mean that an actual controversy or dispute exists between Plaintiff and SERB, or that the Court is in a position to “order” SERB to exercise jurisdiction over Plaintiff’s claims. With respect to the question of subject matter jurisdiction/justiciability, the Sixth District Court of Appeals has stated, in pertinent part, as follows:

* * * Article IV, Section 4(B) of the Ohio Constitution provides that “the courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters.” “For a cause to be justiciable, there must exist a real controversy presenting issues which are ripe for judicial resolution and which will have a direct and immediate impact on the parties.” * * *. “[T]he danger or dilemma of the plaintiff must be present, not contingent on the happening of hypothetical future events * * * and the threat to his position must be actual and genuine and not merely possible or remote.” * * *. “The court is required to raise justiciability sua sponte.”

* * *

In addition to standing, “[I]nherent in determining whether a complaint sets forth a justiciable issue is the question of ripeness.” * * *. “Ripeness ‘is peculiarly a question of timing.’” * * *. “The ripeness doctrine is motivated in part by the desire ‘to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements * * *.’” * * *. “The prerequisite of ripeness is a limitation on jurisdiction that is nevertheless basically optimistic as regards the prospects of a day in court: the time for judicial relief is simply not yet arrived, even though the alleged action of the defendant foretells legal injury to the plaintiff.”

Beadle v. O’Konski-Lewis, 6th Dist. No. L-15-1216, 2016-Ohio-4749, ¶¶10, 12 (internal citations omitted), *appeal denied by* 148 Ohio St.3d 1410; *see also, Fulton Railroad Co., v. Cincinnati*, 1st Dist. No. C-150373, 2016-Ohio-3520, ¶¶8-9 (a declaratory judgment action, like any other cause of action, must meet the requirements of justiciability, as it is “[t]he duty of every judicial tribunal to decide actual controversies between parties legitimately affected by specific facts, and to render judgments that can be carried into effect. * * *. To this end, courts must ‘avoid the imposition of judgment of premature declarations or advice upon potential controversies.’ * * *. An actual, justiciable controversy is more than a disagreement; the parties must have adverse legal interests. * * *. Further, for a justiciable issue to exist, the danger or dilemma of the plaintiff must be present, and it must not be contingent on the happening of a hypothetical future event.” (internal citations omitted)); *State ex rel. Ebersole v. Delaware County Board of Elections*, 140 Ohio St.3d 487, 2014-Ohio-4077, ¶44 (“* * * the ‘case or controversy’ requirement is a predicate requirement for a court to exercise subject-matter jurisdiction”).

With respect to the claims that have been asserted against SERB in the case at bar, Plaintiff argues that “SERB is named as a defendant to assert whether SERB claims or disclaims jurisdiction over breach of contract claims as to contracts setting forth the contractual relationship between a union member and the union Defendants.” (Complaint, ¶15). However,

when it comes to the invocation and exercise of SERB's jurisdiction, R.C. 4117.12 sets forth the procedures that are to be followed.

In that regard, R.C. 4117.12(B) states, in pertinent part, that "[w]hen anyone files a charge with the board alleging that an unfair labor practice has been committed, the board or its designated agent shall investigate the charge. If the board has probable cause for believing that a violation has occurred, the board shall issue a complaint and shall conduct a hearing concerning the charge." Thus, there is a three-step process that is involved when a party wants SERB to consider what is thought to be an unfair labor practice: (1) a charge alleging an unfair labor practice must be filed with SERB; (2) SERB or its agent is to investigate the facts surrounding the charge; and (3) if SERB concludes that there is probable cause to believe that an unfair labor practice has occurred, SERB is to file a complaint and conduct a hearing. R.C. 4117.12. However, as SERB correctly argues, Plaintiff has not undertaken the first step that is necessary to invoke SERB's jurisdiction – the filing of a charge with SERB. *See*, SERB's Motion to Dismiss, p. 5; Plaintiff's Memorandum in Opposition to SERB's Motion to Dismiss, p. 8 (Plaintiff acknowledging that "* * * she did not bring any claims before SERB").³

³ Plaintiff's Memorandum in Opposition to SERB's Motion to Dismiss claims that, in other common pleas cases where the same types of claims have been filed against a union and SERB, in its reply to the plaintiff's brief in opposition to SERB's motion to dismiss, SERB argued that "no statute involving SERB's legal duties is involved or being challenged." Plaintiff's Memorandum in Opposition to SERB's Motion to Dismiss, p. 8. Plaintiff in the case at bar then goes on to claim that SERB's argument in those other common pleas court cases "* * * evidences it view that SERB does not have jurisdiction over such contract claims" and that "* * * SERB's statement should be read as a disclaimer of jurisdiction." Plaintiff's Memorandum in Opposition to SERB's Motion to Dismiss, p. 9. While the Court is not aware of the exact context in which SERB's statements in those other cases were made, nothing about those purported statements appear to be inconsistent with the position that SERB has taken here (i.e., that the legal claims that have been filed against it in the court of common pleas should be dismissed because the process described in R.C. 4117.12(B), has not been used to institute a proceeding before SERB) or which would otherwise indicate that SERB was denying the ability to consider any of Plaintiff's claims, if an action was actually instituted before SERB.

With that said, Plaintiff claims that “* * * some Ohio courts have held that SERB has exclusive jurisdiction over such cases because the Union’s conduct may be an unfair labor practice. Yet when facts nearaly (sic) identical to those in (Plaintiff’s) Complaint were presented to SERB, it determined as a matter of law that the facts pled did not amount to an unfair labor practice within its jurisdiction and therefore dismissed the charge” and that “[w]hile she did not bring any claims before SERB, as noted above and in her Complaint, similarly situated plaintiffs have brought similar claims before both SERB and courts of common pleas, only to be turned away”. Plaintiff’s Memorandum in Opposition to SERB’s Motion to Dismiss, pp. 3, 8.

However, as set forth above, when SERB addressed Ms. Littlejohn’s claims, SERB did not find that, as a matter of law, it lacked jurisdiction over claims regarding the purported withholding of union dues, but instead, SERB found that the factual circumstances at issue in that matter did not give rise to probable cause for finding that the union had committed an unfair labor practice (i.e., claimants were not “turned away”, the applicable procedures were followed and SERB simply found that there was no probable cause to find that the union at issue in *Littlejohn* had committed an unfair labor practice because of the specific factual circumstances that were involved in that matter). *City of East Cleveland v. East Cleveland Firefighters Local 500, I.A.F.F.*, 70 Ohio St.3d 125, 127, 1994-Ohio-174 (“* * * SERB has exclusive jurisdiction to determine the validity, or lack thereof, of unfair labor practices.”); *State ex rel. Hall v. State Emp. Relations Board*, 122 Ohio St.3d 528, 2009-Ohio-3603, ¶19 (the determination of whether there are reasonable grounds to believe that an unfair labor practice has occurred “* * * is generally factual, and courts cannot substitute their judgment for that of SERB if there is conflicting evidence.”). The 1989 administrative decisions from SERB, which were discussed above, are also indicative of SERB’s ability to consider unfair labor practice claims that are

associated with a union's purportedly wrongful refusal to cease dues deductions after the invocation of the SERB's involvement through the use of the procedures that are described in R.C. 4117.12.


Moreover, Plaintiff's claim that "[a]bsent this Court's decision on SERB's jurisdiction, Plaintiff can never have her day in court" (Plaintiff's Memorandum in Opposition to SERB's Motion to Dismiss, p. 6) ignores the fact that, if the matter is presented to SERB, and SERB were to determine that there were no probable causes to believe that the Union's activities constituted an unfair labor practice, Plaintiff would have the opportunity to pursue a mandamus action. *State ex rel. Portage Lakes Education Association v. State Employment Relations Board*, 95 Ohio St.3d 533, 2002-Ohio-2839, ¶35 (while a probable cause determination by SERB under R.C. 4117.12(B) is not reviewable by direct appeal, "[a]n action in mandamus is the appropriate remedy to obtain juridical review of orders by the State Employment Relations Board and dismissing unfair labor practice charges for lack of probable cause.' * * *. Mandamus will issue to correct an abuse of discretion by SERB in dismissing unfair labor practice charges.").

Put simply, Plaintiff is asking this Court to rule upon hypothetical future events which may, or may not occur. In circumstances such as these, it is within SERB's purview to determine, once a charge asserting that an unfair labor practice has occurred has been submitted, whether there is probable cause to believe that an unfair labor practice has actually occurred. The Court cannot simply issue an order that requires SERB to accept jurisdiction over, and to hear, Plaintiff's claims, since to do so would short circuit the statutory procedures that are described in R.C. 4117.12. Furthermore, given the procedures described in R.C. 4117.12, any attempt by this Court to issue a declaratory judgment regarding SERB's jurisdiction to hear this matter would not actually end the uncertainty or controversy (if any), and it would not confer any real rights

upon either of the litigants (i.e., the requirements and procedures described in R.C. 4117.12, which are within SERB's purview, would remain).

Thus, for the reasons set forth above, the Court finds that Plaintiff's claims against SERB in this matter do not present a justiciable controversy, and that Plaintiff is merely seeking an advisory opinion. As such, it is hereby ORDERED, ADJUDGED AND DECREED that Plaintiff's claims against the SERB shall be, and are hereby, dismissed, without prejudice.

IT IS SO ORDERED.



Judge Scott A. Haselman

cc: All counsel of record and
any unrepresented parties