

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

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|--|---|--------------------------------------|
| Kevin Chandler, <i>et al.</i> , |) | |
| |) | |
| Appellant, |) | Trial Court No. <u>2025 CV 00690</u> |
| |) | |
| vs. |) | |
| |) | |
| Ohio Association of Public School |) | Judge: Taryn L. Heath |
| Employees/American Federation of State, |) | |
| County and Municipal Employees, |) | |
| Local 329 – Perry Local Schools, <i>et al.</i> , |) | |
| |) | |
| Appellees. |) | <u>NOTICE OF APPEAL</u> |
| |) | |

Now come Appellants Kevin Chandler, Amy Clark, and Charles C. Perry, Jr., and hereby give notice of their appeal to the Fifth District Court of Appeals from the final judgment entry of the Stark County Court of Common Pleas entered on August 18, 2025. A copy of the August 18, 2025 decision is attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This will Thocertify that a true and accurate copy of the above brief has been served by e-mail to counsel of record for the Appellees this 16th day of September 2025 addressed to the following:

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IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

LYNN M. TODARO
CLERK OF COURTS
STARK COUNTY, OHIO

2025 AUG 18 AM 8:53

KEVIN CHANDLER, et al.,

Plaintiffs,

v.

OHIO ASSOCIATION OF PUBLIC
SCHOOL EMPLOYEES/AMERICAN
FEDERATION OF STATE, COUNTY,
AND MUNICIPAL EMPLOYEES,
LOCAL 329 – PERRY LOCAL
SCHOOLS, et al.,

Defendants.

CASE NO. 2025 CV 00690

JUDGE TARYN L. HEATH

JUDGMENT ENTRY

1. Granting Defendant State Employment Relations Board's Motion to Dismiss;
2. Granting Ohio Association of Public School Employees/American Federation of State, County, and Municipal Employees Local 329's Motion to Dismiss; and
3. Granting Defendant American Federation of State, County, and Municipal Employees, Local 1880-Stark Area Regional Transit Authority's Motion to Dismiss

This matter came before the Court for consideration of the following matters:

1. A Notice of Appearance of Counsel for Defendant-Appellee State Employment Relations Board ("SERB") for Purposes of Filing Motion to Dismiss SERB as a Party and Motion to Dismiss filed on April 16, 2025 (the "SERB Motion to Dismiss");
2. Plaintiff Kevin Chandler ("Chandler"), Amy Clark ("Clark"), and Charles C. Perry, Jr.'s ("Perry") (collectively, "Plaintiffs") Memorandum in Opposition to the SERB Motion to Dismiss filed on May 2, 2025;
3. SERB's Reply Brief to the SERB Motion to Dismiss filed on May 8, 2025;
4. Defendant Ohio Association of Public School Employees ("OAPSE")/American Federation of State, County, and Municipal Employees Local 329 – Perry Local Schools Board of Education's ("AFSCME") (OAPSE and AFSCME are sometimes collectively referred to the "Local 329") Motion to Dismiss for Lack

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of Subject Matter Jurisdiction filed on May 28, 2025 (the “Local 329 Motion to Dismiss”);

5. Defendant American Federation of State, County, and Municipal Employees, Local 1880-Stark Area Regional Transit Authority’s (“Local 1880”) Motion to Dismiss for Lack of Subject Matter Jurisdiction filed on May 29, 2025 (the “Local 1880 Motion to Dismiss”);
6. Plaintiffs’ Memorandum in Opposition to the Local 329 Motion to Dismiss filed on June 12, 2025;
7. Plaintiffs’ Memorandum in Opposition to the Local 1880 Motion to Dismiss filed on June 12, 2025;
8. Local 329’s Reply Brief to the Local 329 Motion to Dismiss filed on June 20, 2025; and
9. Local 1880’s Reply Brief to the Local 1880 Motion to Dismiss filed on June 24, 2025.

The Court, having considered each of the foregoing and for the reasons that follow, hereby **GRANTS** the Local 329 Motion to Dismiss; **GRANTS** the Local 1880 Motion to Dismiss; and **GRANTS** the SERB Motion to Dismiss.

Relevant Procedural History

Plaintiffs filed their Complaint on March 26, 2025, relying, in large part, upon the Supreme Court of the United States’ decision in *Janus v. Am. Fedn. of State, Cnty., & Mun. Employees, Council 31*, 585 U.S. 878 (2018). In *Janus*, the Supreme Court determined that when “public employees are forced to subsidize a union, even if they choose not to join and strongly object to the positions the union takes in collective bargaining and related activities” such an “arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.” *Id.*, at 884-886.

More specifically, Plaintiffs’ Complaint alleges that Clark is employed as a bus aid for Perry Local Schools, was previously a member of Local 329, and resigned from union membership

in August of 2024, but “remains a member of the bargaining unit represented by” Local 329. Complaint, at ¶ 13. Chandler is also employed by Perry Local Schools, serves as a bus driver, and similarly resigned from Local 329, but “remains a member of the bargaining unit represented by” Local 329. *Id.*, at ¶ 14. Finally, Perry is employed by the Stark Area Regional Transit Authority (“SARTA”) as a service technician, resigned from Local 1880, but “remains a member of the bargaining unit represented by” Local 1880. For SERB’s part in Plaintiffs’ Complaint, Plaintiffs state that “SERB is named as a defendant of the government of the State of Ohio which administers the Ohio Public Employees’ Collective Bargaining Act” and as such SERB is “named as a defendant to assert whether SERB claims or disclaims jurisdiction over the breach of contract claims as to contracts setting forth the contractual relationship between a union member and the union Defendants.” *Id.*, at ¶¶ 18-19.

According to Plaintiffs, between 2019 and 2023, Clark, Chandler, and Perry signed off on their respective union deduction cards to “authorize deduction of dues from Plaintiffs’ salaries in exchange for the benefits of union membership” and they also resigned from union membership following the Supreme Court’s decision in *Janus*. Complaint, at ¶¶ 23-27. Plaintiffs state that Plaintiffs’ respective employers (Perry Local School District and SARTA) are parties to collective bargaining agreements with Local 329 and Local 1880, and those agreements authorize deduction of union membership dues from employees’ pay. *Id.*, at ¶ 34, 36. Separately, Plaintiffs state that the “Deduction Cards constitute Plaintiffs’ membership contract with their respective union” and “authorize deduction of dues from Plaintiffs’ salaries in exchange for the benefits of union membership.” *Id.*, at ¶¶ 29-30. However, Plaintiffs claim that the collective bargaining agreements do not allow Local 329 and Local 1880 “to charge non-union members for membership dues.” *Id.*, at ¶ 33.

Plaintiffs claim that they have each notified their respective union of their resignation and instructed the unions to “stop deducting union dues from Plaintiffs’ paycheck.” *Id.*, at ¶ 59. Despite this, Plaintiffs contend that Local 329 and Local 1880 have “refused to cease withdrawing dues as of the date of resignation, stating that Plaintiffs continue to be bound by Plaintiffs’ alleged contract” with the unions and that the opt-out window for membership has passed. *Id.*, at ¶ 68.

Based upon these and other facts, Plaintiffs bring twelve claims, some of which are against or with respect to SERB, Local 329, and Local 1880. SERB, Local 329, and Local 1880 have each separately sought dismissal of Plaintiffs’ Complaint and the SERB Motion to Dismiss, the Local 329 Motion to Dismiss, and the Local 1880 Motion to Dismiss are each fully briefed and ripe for adjudication by the Court.

Standard for a Civ.R. 12(B)(1) Motion

The Local 329 Motion to Dismiss and the Local 1880 Motion to Dismiss are both brought primarily pursuant to Civ.R. 12(B)(1), arguing that this Court lacks subject matter jurisdiction over Plaintiffs’ Complaint. “The standard of review for a dismissal pursuant to Civ.R. 12(B)(1) is whether any cause of action cognizable by the forum has been raised in the complaint.” *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). “In determining whether the plaintiff has alleged a cause of action sufficient to withstand a Civ.R. 12(B)(1) motion to dismiss, a court is not confined to the allegations of the complaint and may consider material pertinent to the inquiry without converting it into a motion for summary judgment.” *Moody v. Frazeyburg*, 2006-Ohio-3028, ¶ 9 (5th Dist.), citing *Southgate Dev. Corp. v. Columbia Gas Transm. Corp.*, 48 Ohio St.2d 211 (1976).

The Local 329 Motion to Dismiss

The Local 329 Motion to Dismiss seeks dismissal of the entirety of Plaintiffs' Complaint only with respect to Chandler and Clark, as Perry's claims do not relate to Local 329. Local 329 argues that since "Plaintiffs' claims are inextricably intertwined with the rights set forth in R.C. Chapter 4117, they must be considered in the first instance before [SERB], and this Court therefore lacks jurisdiction."

The Local 329 Motion to Dismiss urges this Court to follow persuasive, nonbinding authority from the Tenth District Court of Appeals. In *Darling v. Am. Fedn. of State, Cnty., & Mun. Employees*, 2024-Ohio-2181, ¶ 2 (10th Dist.), "employees filed a complaint alleging their employers continued to authorize automatic payroll deductions for union membership fees after the employees voluntarily resigned from each of their respective unions." In *Darling*, as here, the union "agreed to terminate their membership, [and] continued to authorize and receive membership dues deductions from each appellant's paycheck." *Id.*, at ¶ 4. The employees in *Darling* then "sought from the trial court a declaratory judgment that continued collection of union membership dues is unlawful under five contract-based causes of actions." *Id.*, at ¶ 6. In resolving whether the claims advanced by the employees in *Darling* were subject to the exclusive jurisdiction of SERB under R.C. Chapter 4117, the Tenth District Held:

In summary, although framed in contract law, the appellants allege violations of their rights under R.C. 4117.11(B)(1) and 4117.03(A)(1) to refrain from assisting OAPSE through the continued deduction of dues. (See Am. Compl. at ¶ 63, 64, 72.) None of these claims are independent of the "collective bargaining rights created by R.C. Chapter 4117." *Franklin Cty. Law Enforcement Assn.* at 171, 572 N.E.2d 87. See also *Ruehmer v. Queen City Lodge No. 69*, 1st Dist., 2021-Ohio-2904, 176 N.E.3d 350, ¶ 32 ("Artful pleading does not alter the essence of the claim—that the plaintiffs were restrained in the exercise of their voting rights and deprived of the right accorded to them under R.C. Chapter 4117 to participate in union activities.").

Id., at ¶ 20. The Tenth District went on to affirm the trial court's dismissal of those plaintiffs' claims in favor of SERB's jurisdiction under R.C. Chapter 4117.

Plaintiffs' Opposition to the Local 329 Motion to Dismiss correctly points out that all but two of Plaintiffs' claims advanced in their Complaint are for declaratory judgment. More specifically, throughout Plaintiffs' Complaint, Plaintiffs seek a declaration as to the jurisdiction and authority of SERB to hear and decide the issues presented. Plaintiffs also point out that Local 329's position regarding the exclusive jurisdiction of SERB to hear Plaintiffs' claims has previously been addressed by SERB in another case: *Necole Littlejohn v. Ohio Council 8, AFSCME, AFL-CIO*, SERB Case No. 2023-ULP-12-0146. There, SERB decided, based on uncited federal case law, that Littlejohn's claim did not constitute an unfair labor practice such that the matter was dismissed. Plaintiffs assert that if SERB dismisses their claims for failing to identify an unfair labor practice and a trial court, such as this one or the trial court in *Darling*, also summarily dismiss such a claim at the pleading stage, Plaintiffs' are left without recourse.

However, the Local 329 Motion to Dismiss makes an important distinction with respect to *Littlejohn*. Littlejohn did, in fact, file a charge of unfair labor practices with SERB. Plaintiffs' have not sought review of their claims by SERB and instead filed here first. The Local 329 Motion further claims that *Littlejohn* was not summarily decided and dismissed for want of jurisdiction, but rather was decided on the merits following an investigation.

At the core of resolution of the Local 329 Motion to Dismiss is Ohio Const., art. I, § 16, which states: "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay." "[T]his one provision contains many important constitutional principles—'open courts,' 'right to remedy,' and 'due course of law.'" *State ex rel. Cincinnati*

Enquirer v. Bloom, 2024-Ohio-5029, quoting *Ruther v. Kaiser*, 134 Ohio St.3d 408, 2012-Ohio-5686, 983 N.E.2d 291, ¶ 10. This Court is therefore mindful of the fact that Plaintiffs must have a forum within which to seek redress and relief.

However, SERB has broad jurisdiction over labor matters. See *Lorain City School Dist. Bd. of Educ. v. State Emp. Relations Bd.*, 40 Ohio St.3d 257, 260 (1988) (“It was clearly the intention of the General Assembly to vest SERB with broad authority to administer and enforce R.C. Chapter 4117. See, e.g., R.C. 4117.02, 4117.06, 4117.07, 4117.12, 4117.14, 4117.16 and 4117.19. This authority must necessarily include the power to interpret the Act to achieve its purposes.”). Furthermore, though this Court is a court of general jurisdiction, “the jurisdiction it may exercise must be found either expressly or by necessary implication in statutory enactments. If the General Assembly has provided a remedy for the enforcement of a specific new right, a court may not on its own initiative apply another remedy it deems appropriate.” *Franklin Cnty. Law Enft Ass’n v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St.3d 167, 169 (1991), quoting *Fletcher v. Coney Island, Inc.*, 165 Ohio St. 150, 154 (1956)

To answer the question of whether Plaintiffs’ Complaint infringes upon the exclusive jurisdiction of SERB, “the dispositive test is whether the claims ‘arise from or depend on the collective bargaining rights created by R.C. Chapter 4117.’” *State ex rel. Cleveland v. Sutula*, 2010-Ohio-5039, ¶ 20, quoting *Franklin Cnty. Law Enft Ass’n*. Merely casting a collective bargaining right claim as a breach of contract, declaratory judgment, or injunction claim “does not vest that court with jurisdiction ... R.C. Chapter 4117–related claims.” *Id.*, at ¶ 23. “Any claim which is independent of R.C. Chapter 4117, such as a breach of contract or enforcement, still falls solely within the jurisdiction of SERB if the asserted claim arises from or is dependent on the collective bargaining rights created by R.C. Chapter 4117.” (Citation omitted) *Id.* Notably, the

Supreme Court of Ohio in *Sutula* went on to grant a “writ of prohibition preventing Judge Sutula from exercising further jurisdiction in the underlying case.” *Id.*, at ¶ 25.

In this case, although Plaintiffs dispute the validity of any collective bargaining agreement and its application to non-members, Plaintiffs’ Complaint states: “Pursuant to its Collective Bargaining Agreement with Union 329, which is the exclusive bargaining representative under R.C. 4117.04, *et seq.*, Perry Local Schools deducted union membership dues from [Clark and Chandler’s] paychecks.” Complaint, at ¶ 34. With respect to Perry, Plaintiffs’ Complaint similarly states: “Pursuant to its Collective Bargaining Agreement with Union 1880, which is the exclusive bargaining representative under R.C. 4117.04, *et seq.*, Stark Area Regional Transit Authority deducted union membership dues from Plaintiff Perry’s paychecks.” Complaint, at ¶ 36. From this, it cannot be said that Plaintiffs’ claims – which center on union dues deductions – exist in a vacuum, separate and apart from any collective bargaining agreement, and therefore outside of SERB’s jurisdiction under R.C. Chapter 4117. Therefore, the Local 329 Motion to Dismiss is **GRANTED**.

The Local 1880 Motion to Dismiss

Like the Local 329 Motion to Dismiss, the Local 1880 Motion to Dismiss seeks dismissal of Plaintiffs’ Complaint, under Civ.R. 12(B)(1), for lack of subject matter jurisdiction. The Local 1880 Motion to Dismiss argues in the same vein as the Local 329 Motion to Dismiss that SERB possesses exclusive subject matter jurisdiction over the claims raised in Plaintiffs’ Complaint. For the same reasons stated by the Court in adjudicating the Local 329 Motion to Dismiss, which are incorporated here by reference, the Local 1880 Motion to Dismiss is likewise **GRANTED**.

The SERB Motion to Dismiss

The SERB Motion to Dismiss correctly points out that SERB is named as a party-Defendant to Plaintiffs' Complaint as a mechanism of alternative relief where SERB either has jurisdiction to resolve the contractual claims raised in Plaintiffs' Complaint or that SERB does not have such jurisdiction. The SERB Motion to Dismiss presents an interesting wrinkle – especially given the Court's disposition of the Local 329 Motion to Dismiss and the Local 1880 Motion to Dismiss. SERB is arguing that it is entitled to dismissal as a party “since there is no case or controversy before SERB, **no claim alleged over which SERB has jurisdiction**, and no relief sought from SERB.” (Emphasis added.)

The second ground identified from the SERB Motion to Dismiss seems to be an acknowledgement by SERB that it has no jurisdiction over Plaintiffs' claims. Such a conclusion is proper, since “SERB has exclusive jurisdiction to decide matters committed to it pursuant to R.C. Chapter 4117.” *State ex rel. Blaine v. State Emp. Relations Bd.*, 2025-Ohio-2233, ¶ 57 (10th Dist.), quoting *E. Cleveland v. E. Cleveland Firefighters Local 500, I.A.F.F.*, 70 Ohio St.3d 125, 127 (1994).

However, if SERB's position is that it has no jurisdiction over any of Plaintiffs' claims, and the Court adopts the Local 329 and Local 1880 positions, the Court is, in effect, determining SERB's jurisdiction contrary to what SERB is informing the Court (i.e., that it has no jurisdiction). On the other hand, if the Court adopts the view expressed in the SERB Motion to Dismiss, then Ohio Const., art. I, § 16 is once again invoked. This seems to prove Plaintiffs' point – that SERB will disclaim jurisdiction, this Court will dismiss Plaintiffs' Complaint, and Plaintiffs' will be left without a forum within which to seek recourse.

That said, briefing on dispositive motions at the pleading stage should not substitute for formal administrative pronouncements and, again, Plaintiffs have filed first in this Court rather than bringing their claims before SERB. Therefore, for the reasons articulated above with respect to the Local 329 Motion to Dismiss and the Local 1880 Motion to Dismiss, the SERB Motion to Dismiss is **GRANTED**.

Conclusion

Recognizing the fundamental that Ohio Const., art. I, § 16 ensures all allegedly aggrieved parties in this State have access to a forum within which to seek redress, the Court is at the same time mindful of the history of R.C. Chapter 4117 and the purpose for which it was enacted – to “minimize public-sector labor conflict and to provide a mechanism for resolving disputes when they arise.” *State ex rel. Blaine*, at ¶ 56. In this regard, as noted, “SERB has exclusive jurisdiction to decide matters committed to it pursuant to R.C. Chapter 4117.” *Id.*

While the SERB Motion to Dismiss seems to abandon any declaration of jurisdiction over the subject matter of Plaintiffs’ Complaint, the Court is also cognizant of the fact that, unlike *Littlejohn*, Plaintiffs’ claims have not previously been brought before SERB. For the reasons set forth above, the Local 329 Motion to Dismiss and the Local 1880 Motion to Dismiss are both **GRANTED**. Similarly, the SERB Motion to Dismiss is likewise **GRANTED**.

IT IS SO ORDERED.

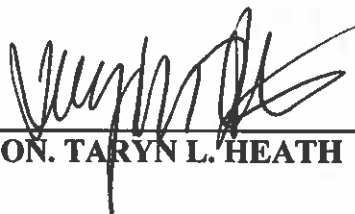


JUDGE TARYN L. HEATH

cc. Atty. Carson/Atty. Tryon/Atty. Mizner (via email)
Atty. Friedman (via email)
Atty. Drabick (via email)
Atty. Massengill-Bernardin/Atty. Evans (via email)

**NOTICE TO CLERK
FINAL APPEALABLE ORDER
NO JUST CAUSE FOR DELAY**

IT IS HEREBY ORDERED that this Judgment Entry and notice shall be served on all counsel and parties of record within three (3) days after docketing of this Entry and the service shall be noted on the docket.



HON. TARYN L. HEATH