CI2025-02488

IN THE COURT OF COMMON PLEAS
LUCAS COUNTY, OHIO

Cindy DuPuis, *et al.*, Appellant, vs. American Federation of State, County and Municipal Employees, Local 2174 – Toledo Public School District, *et al.*, Appellees.	Trial Court No. CI-2025-02488 Judge: Lori L. Olender **NOTICE OF APPEAL** CL2025-00292

Appellants Cindy DuPuis and Tiffany Binder hereby give notice of their appeal to the Sixth District Court of Appeals from the judgment entry and opinion of the Lucas County Court of Common Pleas entered on October 10, 2025, granting Defendant State Employment Relations Board's Motion to Dismiss, and the judgment entry and opinion entered on November 4, 2025, grating Defendants Ohio Council 8, American Federation of State, County, and Municipal Employees, AFL-CIO and Local 2174's Motion to Dismiss. The latter November 4 judgment entry and opinions states that it is a final appealable order. Copies of the October 10, 2025 and November 4, 2025, judgment entries and opinions are attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This will certify that a true and accurate copy of the above *Notice of Appeal* has been served by e-mail to counsel of record for the Appellees this 4th day of December 2025 addressed to the following:

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IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Cindy Dupuis, et al.,	*	Case No. CI-202502488
	*	
	*	
Plaintiffs,	*	Judge Lori L. Olender
-vs-	*	
	*	
American Federation of State, County and Municipal Employees, Local 2174 – Toledo Public School District, et al.,	*	JUDGEMENT ENTRY AND OPINION
	*	
	*	
	*	
Defendants.	*	

This matter is before the Court on the Defendants State Employees Relations Board's (SERB) Motion to Dismiss filed on July 28, 2025. Plaintiffs' filed a Memorandum in Opposition on August 14, 2025 and SERB filed a reply on August 19, 2025. The matter before the Court is now decisional.

I. Background

Plaintiff's in this matter filed this action seeking declaratory and injunctive relief against Co-Defendant American Federation of State, County and Municipal Employees, AFSME's Local 2174, Toledo Public School District, and SERB.

The Plaintiffs in this matter, Cindy Dupuis and Tiffany Binder filed suit in order to recover dues paid to the Defendant Union in this matter. The Plaintiffs' argue that the Union has illegally taken those dues from them since the Plaintiffs resigned from the Union.

Here, SERB is named in Count six of the Complaint. The Complaint asks for "[a] declaration stating whether this Court or SERB has jurisdiction to grant relief relating to contractual disputes set forth in this Complaint."

II. SERB's Argument

SERB argues that they should be dismissed as a party pursuant to Civ.R. 21, since there is no case or controversy before SERB, there are no claims alleged over which SERB has jurisdiction, and there is no relief sought from SERB in the Complaint.

SERB argues that its jurisdiction is limited to that conferred by O.R.C. Chapter 4117. As noterd above, SERB argues that the claim directed at SERB, involving answering the question of "Whether SERB disclaims jurisdiction of breach of contract claims as to contract claims as to contracts setting forth contractual relationship between a union member and the union Defendants."

Based upon the Plaintiffs requested relief as to SERB, SERB argues that there is no case or controversy and that SERB would be issuing an advisory opinion in the matter and that is contrary to law. SERB argues that since only an advisory opinion is being sought, dismissal in the matter is appropriate.

III. Plaintiffs' Argument

The Plaintiffs' two main arguments as to why SERB is a necessary party are that "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)." Pl. Opp. Pp 102.

IV. Legal Standard

A motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6) is procedural and tests the sufficiency of the complaint. *Blausey v. VanNess*, 2011-Ohio-4680 at ¶9, citing *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.*, 65 Ohio St.3d 545, 605 N.E.2d 378. The complaint is to be construed in a light most favorable to the plaintiff, and material allegations are taken as admitted. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192, 532 N.E.2d 753.

In determining what causes of action a plaintiff has alleged in a complaint, the court is required to look to the actual nature or subject matter pleaded in the complaint, rather than labels used to identify a particular cause of action. *Funk v. Rent-All Mart, Inc.*, 91 Ohio St.3d 78, 81, 2001-Ohio-270, 742 N.E.2d 127. To sustain a motion to dismiss it must appear beyond doubt from the complaint that no set of facts exists which may entitle the plaintiff to the relief requested. *O'Brien v. Univ. Community Tenants Union*, 42 Ohio St.2d 242, 327 N.E.2d 753.

The Court is required to examine only the four corners of the complaint. *Haas v. Village of Stryker*, 2013-Ohio-2476, ¶24. "Outside evidentiary materials may not be considered." *McCallister v. New London*, 2001 Ohio App. LEXIS 4683, *2, citing *Thompson v. Central Ohio Cellular, Inc.*, 93 Ohio App.3d 530, 639 N.E.2d 462.

V. Analysis

SERB argues that the Plaintiffs are seeking an advisory opinion from the Court and that there is not a real case or controversy involving SERB. Differentiating advisory opinions and

declaratory judgements, Ohio courts have stated that "It has been said that 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, 62 N.E.2d 156, 160 (1945).

Further, "[C]ourts will not issue advisory opinions. Ohio courts will render an advisory opinion as to a moot issue only when the issue will always evade judicial review even though it is capable of repetition. *State ex rel. Kline v. Newton Falls Vill. Council*, 2023-Ohio-3841, ¶ 11 (Ct. App.) citing *State ex rel. Westfield Ins. Co. v. Mitrovich*, 11th Dist. Lake No. 2003-L-085, 2003-Ohio-5979, ¶ 9, citing *State ex rel. White v. Kilbane Koch*, 96 Ohio St.3d 395, 2002-Ohio-4848, 775 N.E.2d 508.

For a court to hear an action, the action must first be justiciable. *State v. Stambaugh,* 34 Ohio St.3d 34, 38, 517 N.E.2d 526 (1987), citing *Burger Brewing Co. v. Liquor Contol Comm.,* 34 Ohio St.2d 93, 97-98, 296 N.E.2d 261 (1973).

"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.'" *Reeves v. Chief of Police*, 6th Dist. Erie No. E-14-124, 2015-Ohio-3075, ¶ 6, quoting *Wagner v. Cleveland* (1988), 62 Ohio App.3d 8, 13, 574 N.E.2d 533. No justiciable controversy exists when the action has been rendered moot by subsequent developments. *Flast* v. *Cohen,* 392 U.S. 83, 95, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968), citing *California* v. *San Pablo & T.R. Co.,* 149 U.S. 308, 13 S. Ct. 876, 37 L. Ed. 747 (1893).

A "'case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome.'" *State ex re. Gaylor, Inc. v. Goodenow*, 125 Ohio St.3d 407,

2010-Ohio-1844, 928 N.E.2d 728,1.10, quoting Los *Angeles Cty. v. Davis*, 220 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed2d 642 (1979). "[i]n order for a justiciable question to exist, '[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.'" *Mid-American Fire & Cas. Co. v. Heasley*, 113 Ohio St.3d 133, 2007-Ohio-1248, 863 N.E.2d 142, ¶ 9, quoting *League for Preservation of Civ. Rights v. Cincinnati*, 64 Ohio App. 195, 197, 28 N.E.2d 660 (1st Dist.1940).

"Conversely, if an actual controversy exists because it is possible for a court to grant the requested relief, the case is not moot, and a consideration of the merits is warranted." *Id.* at ¶ 11.

"Under R.C. 2721.03, "any person * * * whose rights, status, or other legal relations are affected by a * * * statute * * * may have determined any question of construction or validity arising under the * * * statute * * * and obtain a declaration of rights, status, or other legal relations under it." To that end, declaratory relief is available to that person if he can show (1) that a real controversy exists between the parties, (2) the controversy is justiciable, and (3) speedy relief is necessary to preserve the parties' rights." *Brondes Ford Maumee Ltd. v. KJAMS, LLC*, 2017-Ohio-4015, 91 N.E.3d 306, ¶ 16 (6th Dist.), quoting *Moore v. City of Middletown*, 133 Ohio St.3 d 55, 2012-Ohio-3897, 975 N.E.2d 977, ¶ 49.

"This Court has held that '[t]here exist two reasons for dismissing a complaint for declaratory judgment: (1) no real controversy or justiciable issue exists between the parties or (2) the declaratory judgment will not terminate the uncertainty or controversy, per R.C. 2721.07.'" *St. Nikola Macedonian Orthodox Church v. Zoran*, 9th Dist. Summit No. 22666, 2006-Ohio-2561. ¶ 12. citing *Indiana Ins. Co. v. Forsmark* (2005), 60 Ohio App. 3d 277, 2005-Ohio-1635. 826 N.E.2d 915, ¶ 10. A proceeding for a declaratory judgment must be based upon an actual controversy.

The proceeding does not lie to obtain a judgment which is merely advisory or which answers a moot or abstract question." *Cincinnati Metro. Hous. Auth. v. Cincinnati Dist. Council*, 22 Ohio App.2d 39, 43, 257 N.E.2d 410 (1st Dist.1969).

In Plaintiffs' Memorandum in Opposition to SERB's Motion to Dismiss, the Plaintiffs' state "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." Pl. Opp., p. 3.

In regard to R.C. 4117.11, the Ohio Supreme Court has stated:

> 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. *See State ex rel. Dept. of Mental Health v. Nadel*, 2003-Ohio-1632, ¶ 23, 98 Ohio St. 3d 405, 786 N.E.2d 49. 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.

Ohio Council 8 v. City of Lakewood, 2025-Ohio-2052, ¶ 1.

Plaintiffs argue that SERB is a necessary party in this action citing to *Rumpke Sanitary Landfill, Inc. v. State,* 2010-Ohio-6037 and *City of Cincinnati v. Whitman*, 44 Ohio St.2d 58, 61 (1975). SERB argues that the reliance on *Rumpke* is misplaced for the general proposition that SERB is a necessary part in this action. SERB argues that in this instance, they have a practical interest in the outcome of this litigation, however SERB does not have a legal interest.

Rumpke distinguished practical interests verses legal interests. A party with only a practical interest in litigation is not a necessary party. The *Rumpke* Court went on to state:

> Civ.R. 19(A) provides that a person shall be joined as a party in an action if "(1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may * * * as a practical matter

> impair or impede his ability to protect that interest." Because Colerain has no legal interest in the outcome of Rumpke's challenge to the authority of the General Assembly to enact Am.Sub.H.B. No. 562, its absence did not prevent Rumpke or the state from being accorded complete relief in that action. Thus, the court of appeals properly affirmed the trial court's denial of the state's motion to dismiss the case for failure to join Colerain as a necessary party pursuant to Civ.R. 19(A).
>
> Although Colerain Township is involved in litigation against Rumpke, it is not the only township affected by the amendment to R.C. 519.211. Virtually any township would be similarly affected, as would any county be affected by the amendment to R.C. 303.211. Should Colerain prevail, potentially any township and county would be a necessary party to a constitutional challenge to legislation premised on a one-subject-rule violation. This would be a distorted reading of our ruling and create unmanageable litigation in cases of this type.

Rumpke Sanitary Landfill, Inc. v. State, 2010-Ohio-6037, ¶¶ 23-24, 128 Ohio St. 3d 41, 46-47, 941 N.E.2d 1161, 1167.

SERB also argues that the reliance on *Cincinnati v. Whitman*, 44 Ohio St. 2d 58, 337 N.E.2d 773 (1975) is factually distinguishable from the present matter.

Whitman found that "The Director of Environmental Protection is a necessary party in a declaratory judgment action brought to adjudicate the constitutionality of R C. 6111.13 and 6111.30." The Court reasoned that:

> Properly, when 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. *Langer* v. *State* (1939), 69 N. D. 129, 284 N. W. 238; *Harvey Payne, Inc.*, v. *Slate Co.* (1961), 342 Mass. 368, 173 N. E. 2d 285; *Mobile* v. *Gulf Development Co.* (1965), 277 Ala. 431, 171 So. 2d 247; *Aerated Products Co.* v. *Godfrey* (1943), 263 App. Div. 685, 35 N. Y. S. 2d 124, reversed on other grounds, 290 N. Y. 92, 48 N. E. 2d 275.
>
> Joinder of such officers assures that the parties will be properly adverse, that the issues involved will be fully presented, that the uncertainty or controversy will be terminated, and that the public interest will be adequately protected without a multiplicity of suits.

Cincinnati v. Whitman, 44 Ohio St. 2d 58, 61, 337 N.E.2d 773, 775 (1975).

Plaintiffs argues that this case and *Whitman* are similarly situated, stating "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." Pl. Opp., p. 2.

There is no case or controversy involving SERB in this matter. This case is distinguishable from *Whitman*. This case is not challenging the statute conferring legal duties to SERB, nor are the legal duties conferred to SERB involved or challenged in the suit.

The Court also finds SERB's argument regarding the holding in *Rumpke* persuasive. SERB does have a practical interest in this litigation, however, there is no present case or controversy involving SERB in this suit. Plaintiffs seem to state as much in their opposition stating, "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." *Id.*, p. 3. SERB does not have legal interest in this suit. The Plaintiffs are not challenging or disputing any action taken by SERB. The Plaintiff is not requesting any form of recovery from SERB. While SERB certainly has a practical interest in the question posed by the Plaintiffs, there is no legal interest involved in this litigation. The Court agrees that any ruling regarding the requested relief by the Plaintiffs to the count directed toward SERB would be tantamount to an advisory opinion.

As this Court will not issue an advisory opinion and there is no case or controversy involving SERB in this matter, the Court finds SERB's Motion to Dismiss well-taken and grants the same.

JUDGMENT ENTRY

It is therefore **ORDERED, ADJUDGED, and DECREED** that SERB's Motion to Dismiss is GRANTED.

Lori L Olender

October 17, 2025

Judge Lori L. Olender

cc: Lori Friedman
Jay Carson
David Tyron

THIS IS A FINAL APPEALABLE ORDER

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Cindy Dupuis, et al.,	*	Case No. CI-202502488
Plaintiffs,	*	Judge Lori L. Olender
-vs-	*	
American Federation of State, County and Municipal Employees, Local 2174 – Toledo Public School District, et al.,	*	JUDGEMENT ENTRY AND OPINION
Defendants.	*	

This matter is before the Court on the Defendants Ohio Council 8, American Federation of State, County, and Municipal Employees, AFL-CIO ("Ohio Council 8") and Local 2174, American Federation of State, County, and Municipal Employees, AFL-CIO ("Local 2174") Motion to Dismiss filed on September 8, 2025. Plaintiffs' filed a Memorandum in Opposition on September 22, 2025. Ohio Council 8 and Local 2174 filed a reply on September 26, 2025. The matter before the Court is now decisional.

I. Background

Plaintiff's in this matter filed this action seeking declaratory and injunctive relief against Ohio Council 8, Local 2174, and the State Employment Relations Board ("SERB") on July 9, 2025.

Plaintiff, Cindy Dupuis, is employed by the Toledo Public School District as a Treasury Specialist.[1] Ms. Dupuis was a member of Defendant Union Local 2174. [2] Ms. Dupuis resigned her membership from the union on August 31, 2023, but remained a member of the bargaining unit represented by the Union.[3]

Plaintiff Tiffany Binder was employed by the Toledo Public School District as an accounting clerk until April of 2024.[4] Ms. Binder was a member of Local 2174 until she resigned her union membership on August 31, 2023.[5]

Ms. Binder and Dupuis both signed dues deduction authorization cards that allowed the Plaintiffs' employer to deduct union dues from the Plaintiffs' paychecks and pay the union dues directly to the Union from the paycheck.[6] Pursuant to the dues deduction authorization card, Toledo Public School District deducted union membership dues from the Plaintiffs' paychecks.[7]

Following the Plaintiffs' resignation from the Union, the Union dues continued to be deducted from the Plaintiffs' paychecks. At various times the Plaintiffs notified the Union of their resignation and instructed both the Union and Toledo Public School District to stop deducting Union dues from their paychecks.[8] Plaintiffs have repeatedly attempted to have the Union stop deducting dues but the Plaintiffs have been met with resistance from the Union.[9] The Union repeatedly cites the "opt-out" window in the Contract in order to avoid having the dues deducted.[10]

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[1] Compl. ¶ 14.
[2] *Id.*
[3] *Id.*
[4] *Id.* at ¶ 15.
[5] *Id.*
[6] *Id.* ¶¶ 28-34.
[7] *Id.* at ¶ 37.
[8] *Id.* at ¶¶ 40-41.
[9] See *Id* at ¶¶ 40-50.
[10] *Id.* at ¶ 48.

Plaintiffs raise six counts in their Complaint, with five of those counts relating to Ohio Council 8 and Local 2174, the Plaintiffs seek "A declaration that the Union's continued deduction of union membership dues from Plaintiffs' paychecks is unlawful; A declaration that Plaintiffs' contracts with the Union were rescinded or terminated upon Plaintiffs' resignations or is otherwise invalid; A refund of all union membership dues improperly withheld; Because the Union has acted in bad faith, vexatiously, wantonly, obdurately, or for oppressive reasons, an award of Plaintiffs' costs.

II. Ohio Council 8 & Local 2174 Argument

Ohio Council 8 and Local 2174 ("Unions") move this Court to dismiss the Plaintiffs claims pursuant to Civ.R. 12(B)(1) due to lack of subject matter jurisdiction. The Unions argue that Ms. Dupuis and Ms. Binder's claims actually allege unfair labor practices "ULPs"). The Defendants argue that the claimed ULPs fall within the Ohio State Employment Relation Board's ("SERB") exclusive jurisdiction under O.R.C. Chapter 4117.

The Unions argue that the Ohio Constitution does not provide a common pleas court with subject matter jurisdiction when the claims alleged involve collective bargaining rights established by the Ohio Legislature under O.R.C. Chapter 4117 which vested SERB with exclusive jurisdiction of those claims.

III. Plaintiff's Argument

The Plaintiffs first argue that *Ohio Council 8 v. City of Lakewood*, a recent Ohio Supreme Court decision, supports this Court adjudicating this matter. The Plaintiffs argue that this case is a contract claim and that the holding in *Lakewood* supports the distinction of SERB's jurisdiction with contract claims. Notably, the *Lakewood* court provides:

> "[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 v. City of Lakewood, 2025-Ohio-2052, ¶ 13 quoting State ex rel. Ohio Dept. of Mental Health v. Nadel, 98 Ohio St.3d 405, 2003-Ohio-1632, ¶ 23.

The Plaintiffs argue that, consistent with the holding in *Lakewood*, this Court has jurisdiction because no charges alleging ULPs were filed with SERB, the Complaint does not allege that the Union engaged in an ULP, the Complaint does assert right that arise outside of O.R.C. Chapter 4117, and the Complaint does not allege a violation of the collective bargaining agreement.

Plaintiffs next argue that Article IV, Section 4(B) of the Ohio Constitution, the "Open Courts Clause" gives this Court original subject matter jurisdiction over civil actions, including breach of contract actions and that here there is a "justiciable controversy between the parties regarding the validity and enforceability of the contracts between them and the post-membership dues that the union has refused to refund." Pl's. Opp., p. 8.

Lastly, the Plaintiffs argue that claims one through five in the Complaint adequately plead a cause for declaratory judgment. The Plaintiffs further argue that the law provides that common pleas courts have jurisdiction to hear the matter and provide the requested relief.

IV. Legal Standard

"The standard of review for dismissals for want of subject matter jurisdiction is 'whether any cause of action cognizable by the forum has been raised in the complaint.'" *Kopp v. Begley*, 2d Dist. Miami No. 2004 CA 28, 2005-Ohio-1210, ¶12, quoting *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 537 N.E.2d 641. 80, 42 Ohio St. 3d 77, 537 N.E.2d 641 (1989). A court "shall dismiss an action if the court lacks subject matter jurisdiction." Civ.R. 12(H)(3); *see also State ex*

rel Nat'l Employee Benefit Servs., Inc. v. Court of Common Pleas of Cuyahoga Cty, 49 Ohio St.3d 49, 50, 550 N.E.2d 941 (1990).

This Court may consider material outside of the complaint in assessing a Civ.R. 12(B)(1) motion where that material is pertinent to determining subject-matter jurisdiction without converting the motion to one for summary judgment. *See, e.g., Southgate Dev. Corp. v. Columbia Gas Transp. Corp.* 48 Ohio St. 2d 211, 358 N.E.2d 526 (976), at 214; *Pulizzi v. City of Sandusky*, 6th Dist. Erie No. E-00-002, 2003-Ohio-5853. Subject-matter jurisdiction involves a court's power to hear and decide a case on the merits. *Lowery v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 14AP-730, 2015-Ohio-869, ¶ 6, citing *Vedder v. Warrensville Hts.*, 8th Dist. Cuyahoga No. 81005, 2002-Ohio-5567, ¶ 14. In deciding a Civ.R. 12(B)(1) motion, a court must dismiss for lack of subject-matter jurisdiction if the complaint fails to allege any cause of action cognizable in the forum. *Brown v. Levin*, 10th Dist. Franklin No. 11AP-349, 2012-Ohio-5768, ¶ 14.

In deciding a motion to dismiss, the court presumes that the complaint's factual allegations are true and makes all reasonable inferences in the nonmoving party's favor. *State ex rel. Ohio Civ. Serv. Emps. Assn.* v. *State*, 2016-Ohio-478, ¶ 12, citing *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). To grant the motion, "it must appear beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to the relief sought." *Sherman* v. *Ohio Pub. Employees Retirement Sys.*, 2020-Ohio-4960, ¶ 17.

V. Analysis

"R.C. Chapter 4117 established a comprehensive framework for the resolution of public-sector labor disputes by creating new rights and setting forth specific procedures and remedies for the vindication of those rights." *Franklin County Law Enforcement Ass'n v. Fop*, 59 Ohio St. 3d

167, 169, 572N.E.2d87 (1991). The remedies within R.C. Chapter 4117 for unfair labor practices are exclusive, and that chapter does not provide for the filing of a private action in a common pleas court. *Id.* at 170; *See also Carter v. Trotwood-Madison City Bd. of Educ*, 181 Ohio App. 3d 764, 2009-Ohio-1769, 910 N.E.2d 1088, ¶ 51 (Because R.C. Chapter 4117 contains a comprehensive framework for resolution of public sector labor disputes, no private right of action is allowed in a common pleas court.).

Thus, SERB has exclusive jurisdiction to decide matters committed to it pursuant to R.C. Chapter 4117, and if a party asserts a claim that arises from or is dependent upon the collective bargaining rights set forth in R.C. Chapter 4117, the remedies within that chapter are exclusive. *State ex rel. City of Cleveland v. Russo*, 156 Ohio St. 3d 449, 2019-Ohio-1595, ¶ 13. "Exclusive jurisdiction to resolve charges of unfair labor practices is vested in SERB in two general areas: (1) where one of the parties files charges with SERB alleging an unfair labor practice under R.C. 4117.11; or (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. *The State ex rel. Fop, Ohio Labor Council v. Court of Common Pleas*, 76 Ohio St. 3d 287, 289, 667 N.E.2d 929 (1996).

O.R.C. § 4117.11(B) provides a statutory list of what is considered an unfair labor practice, providing in part:

> **(B)** It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:
>
> > **(1)** Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117 of the Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances.

* * *

(6) Fail to fairly represent all public employees in a bargaining unit . . .

As such O.R.C. §4117.11(B)(1) makes it an unfair labor practice for an employee organization, its agents, or representatives to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in R.C. Chapter 4117. R.C. 4117.03(A)(1) gives public employees the right to participate in or refrain from participating in any employee organization of their choosing.

The Supreme Court of Ohio in *Ohio Council 8 v. City of Lakewood*, discussed the jurisdiction of SERB, stating that:

> 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. *See State ex rel. Dept. of Mental Health v. Nadel*, 2003-Ohio-1632, ¶ 23, 98 Ohio St. 3d 405, 786 N.E.2d 49. 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.

Ohio Council 8 v. City of Lakewood, 2025-Ohio-2052, ¶ 1.

The Court will note that the Plaintiffs did not file charges with SERB alleging an unfair labor practice in the Complaint. The issue before the Court is whether or not the conduct of the Defendant Union constitutes an unfair labor practice and raises a claim that is independent of the rights created by R.C. Chapter 4117.

In a similar case, *Darling v. Am. Fed'n of State*, the Tenth District Court of Appeals addressed the issue of whether the trial court erred in dismissing the plaintiffs' complaints for lack of subject-matter jurisdiction. In *Darling*, the Plaintiffs were public school employees who had

resigned their membership from their respective union, OAPSE. *Darling v. Am. Fed'n of State*, 2024-Ohio-2181, ¶ 2, 246 N.E.3d 82, 83 (Ct. App.). Factually, the case is very similar to the issues here, the factual background of *Darling* included:

> While OAPSE agreed to terminate their membership, it continued to authorize and receive membership dues deductions from each appellant's paycheck. (Am. Compl. at ¶ 46.) OAPSE informed the appellants they were bound by their union membership contract, which only permitted the revocation of payroll deduction authorization for membership dues during specified periods each [***3] year, referred to as "optout windows." OAPSE informed the appellants it would honor their requests and cease collecting membership dues at the next soonest opt-out window. (Am. Compl. at ¶ 46-47.)
>
> In response, the appellants argued that any consent to the continued withdrawal of membership dues was unequivocally revoked when they resigned from the union, which the union recognized when it received their resignations and timely terminated their membership benefits, and the continued unauthorized deductions constituted compelled speech in violation of *Janus*. (Am. Compl. at ¶ 7, 68-71.) This lawsuit followed.
>
> The appellants sought from the trial court a declaratory judgment that continued collection of union membership dues is unlawful under five contract-based causes of actions. In response, OAPSE filed a motion to dismiss pursuant to Civ.R. 12(B)(1). The union asserted the entirety of the complaint is subject to the exclusive jurisdiction of the Ohio State Employment Relations Board ("SERB"), as the claims relate to collective bargaining rights covered by Chapter 4117 of the Ohio Revised Code. (June 9, 2023 Mot. at 1.)

Id at ¶¶ 4-6.

Ultimately, the *Darling* court held that:

> Three issues are therefore implicated by the conduct described in the complaint. 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.
>
> 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. *See also Ruehmer v. Queen City Lodge No. 69*, 2021-Ohio-2904, ¶ 32, 176 N.E.3d 350 ("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 ¶¶ 19-20.

The Court will note that it is clear the Ms., Dupuis and Ms. Binder had originally signed valid dues authorization cards. *See* Ex. A-1 &2. Further, the CBA provided the Plaintiffs with the proper timelines to opt-out. The CBA provided Ms. Dupuis and Ms. Binder specific time frames for when each plaintiff could revoke their dues authorization by providing notice to the Union. In Ms. Dupuis' case, that notice had to be provided thirty to fort-five days before the current CBA's expiration (May 16, 2024 and May 31, 2024) or during the ten to twenty-five day period preceding the anniversary date of her dues authorization card.

Here, while Ms. Dupuis and Ms. Binder's claims are brought as contract claims, those claims arise from the CBA and implicate and are covered under R.C. §4117.11(B)(1). "If a party asserts claims that arise from or depend on the collective bargaining rights created by R.C. Chapter 4117, the remedies provided in that chapter are exclusive." *Franklin Cty. Law Enf't Ass'n v. Fop*, 59 Ohio St. 3d 167, 171, 572 N.E.2d 87, 91 (1991).

In Plaintiffs' Complaint in paragraphs 28-49, the Plaintiffs allege that the Union continued to deduct Union dues after each Plaintiff had resigned from the Union and had attempted to rescind their dues deduction authorization. While the language of the Complaint contemplates contract law, O.R.C. §4117(B)(1) must be implicated. The Court finds the holding in *Darling* persuasive and agrees that, while artful, the pleading alleges an unfair labor practice as defined in O.R.C. §4117(B)(1).

The Court finds that the conduct alleged in the Complaint constitutes an unfair labor practice enumerated in R.C. 4117.11. Since the conduct alleged constitutes a ULP, SERB has

exclusive jurisdiction over the matter and this court lacks subject-matter jurisdiction, The Court finds Ohio Council 8 and Local 2174's Motion to Dismiss pursuant to Civ.R. 12(B)(1) for lack of subject-matter jurisdiction well-taken and granted.

JUDGMENT ENTRY

It is therefore **ORDERED, ADJUDGED, and DECREED** that Ohio Council 8 and Local 2174's Motion to Dismiss is GRANTED.

Lori L Olender

October 31, 2025

Judge Lori L. Olender

cc: Lori Friedman Jay Carson
David Tyron