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IN THE COURT OF APPEALS
SIXTH APPELLATE DISTRICT
STATE OF OHIO

CINDY DUPUIS, *et al.*,	)	
	)	
Plaintiff-Appellant,	)	
	)	Appellate Case No. CL2025-00292
v.	)	
	)	
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 2174 TOLEDO PUBLIC SCHOOL DISTRICT, *et al.*,	)	Trial Court Case No. CI2025-02488
	)	
	)	**APPELLANT'S REPLY TO**
Defendants-Appellees.	)	**APPELLEE AFSCME'S BRIEF**

I. Summary

Appellee American Federation of State, County and Municipal Employees' ("AFSCME") arguments fail for multiple reasons, but fundamentally, AFSCME focuses on what it characterizes as the "style" of Appellant Tiffany Binder's ("Appellant" or "Mrs. Binder")[1] claims rather than addressing their merits. In other words, AFSCME does not address *why* this case, which does not arise out of or seek to invoke R.C. 4117's protections or remedies, is something other than a garden variety contract case. Absent an invocation of the rights created by R.C. 4117, the State Employment Relations Board ("SERB") does not have jurisdiction over Mrs. Binder's claims. Instead, AFSCME confuses issues, focusing on the dues deductions, the symptom, and ignores the actual disease—the enforceability of the membership contract. For these reasons, this Court should

[1] A motion to dismiss Ms. DuPuis from this case is currently pending before this Court.

reverse the trial court's dismissal.

II. Facts

Mrs. Binder filed her Complaint in the common pleas court seeking declaratory relief relating to her membership and deduction authorization contract with her former union, AFSCME, Local 2174 Toledo Public School District. (R. 1). Mrs. Binder seeks a declaration that her contract with AFSCME is invalid and imposes an impermissible penalty under Ohio contract law. That contract permitted AFSCME to withdraw dues from Mrs. Binder's paycheck, and AFSCME relied on it to continue withdrawing dues even after Mrs. Binder's Union membership had ended. Fundamentally, Mrs. Binder seeks a forum in which she can bring her contractual claims.

III. Law and Argument

A. Because Mrs. Binder alleges common law contract claims—not conduct that would constitute a violation of R.C. 4117—SERB has no jurisdiction.

AFSCME claims that Mrs. Binder "alleges claims that if true, could constitute a ULP under R.C. 4117.11(B)(1)." AFSCME Br. at 5, and that Mrs. Binder is attempting to circumvent SERB by bringing her claims as common law contract claims instead of unfair labor practices. *See* AFSCME Br. at 9–10. AFSCME is wrong on both counts. At its core, Mrs. Binder's claims are that her contract with AFSCME is void—in all aspects. As such, she has sought relief based on common-law contract principles. The Dues Deduction Contract Mrs. Binder signed is separate from the CBA or R.C. 4117—it established rights and duties for her and AFSCME beyond what the law requires. Therefore, Mrs. Binder is pursuing her claims, which federal courts have labeled private contract claims, in common pleas court because only that court has jurisdiction to adjudicate common law contract claims. *See, e.g.,* R.C. 2721.03; *see also Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020) ("These facts speak to a contractual obligation, not a First

Amendment violation.").

Assuming arguendo that AFSCME is correct that improperly taking Mrs. Binder's funds could trigger an unfair labor practice, *see* AFSCME Br. at 5, SERB can only issue a cease-and-desist order—it has no jurisdiction to invalidate the contract in its entirety. Only the common pleas court has jurisdiction to do that. Indeed, while SERB has exclusive jurisdiction over unfair labor practices, certain actions can result in both an unfair labor practice and other legal claims. There are multiple examples of this.

For example, a public employer's illegal discrimination against a unionized employee could be an unfair labor practice, violating R.C. 4117.11(A)(3), a violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000d, and a violation of Ohio's human rights law, triggering a claim in common pleas court. An employer punching a union organizer could be both an unfair labor practice, R.C. 4117.11(A) (1), (2), and a common law tort of assault and battery. A public employer forbidding discussion on its property of work conditions could be an unfair labor practice, R.C. 4117.11(A) (1) or (2), and a violation of the First Amendment, triggering a 41 U.S.C. 1983 claim. If a union official threatens an employee to join the union, that would be an unfair labor practice, R.C. 4117(B)(1), and also constitute a criminal action, R.C. 2905.11, and a civil claim for extortion, R.C. 2307.60.

The Ohio General Assembly enacted R.C. 4117 to establish "a comprehensive framework for the resolution of public-sector labor disputes by creating a series of new rights and setting forth specific procedures and remedies for the vindication of those rights"—not to enforce previously existing common law contract rights between private parties. *Franklin Cty, Law Enforcement Assn. v. Fraternal Ord. of Police, Cap. City Lodge No. 9*, 59 Ohio St. 3d 167, 169 (1991). The U.S. Supreme Court recently applied this reasoning to the National Labor Relations Act, holding that

the act did not preempt state tort claims even though the actions arose in the context of a strike, because the union did not take "reasonable precautions" to protect the employer's property. *Glacier Northwest, Inc. v. Internatl. Bhd. of Teamsters Local Union No. 174*, 598 U.S. 771 780 (2023). While the *Glacier Northwest* decision necessarily turned on statutory provisions of the National Labor Relations Act, the principle remains that labor preemption statutes do not necessarily bar other remedies simply because the dispute is somehow related to labor. *See also Smith v. Evening News Ass'n,* 371 U.S. 195 (1962) (holding that a state court had jurisdiction over an action by an employee against an employer for damages resulting from an alleged violation of a collective bargaining agreement, even though the alleged conduct of the employer was an unfair labor practice within the jurisdiction of the National Labor Relations Board).

SERB has exclusive jurisdiction only over charges of unfair labor practices where (1) a complainant filed charges with SERB alleging an unfair labor practice under R.C. 4117.11 or (2) where a complaint in the common pleas court "alleges conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11." *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052, ¶ 8. The Ohio Supreme Court recently affirmed that the "test for SERB's jurisdiction has always been, and remains today," that two-part inquiry. *Id.* at ¶ 30.

Here, there is no dispute that Mrs. Binder has not filed charges with SERB alleging an unfair labor practice, and contrary to AFSCME's claims, SERB has found that the alleged conduct does not constitutes an unfair labor practice specifically enumerated in R.C. 4117.11. *See Littlejohn v. Ohio Council 8, AFSCME, AFL-CIO*, 2023-ULP-12-0146 (SERB Charge, filed Dec. 7, 2023). And Mrs. Binder's common law contract claims do not assert a violation of R.C. 4117.11 and so are not claims of an unfair labor practice.

Whether or not SERB "took jurisdiction," AFSCME Br. at 8, in *Littlejohn* remains unclear.

Regardless, it is secondary to the fact that SERB determined that no unfair labor practice occurred. There, SERB ruled that "the Union has not violated R.C. 4117.11(B)(1) or (2)." *Littlejohn v. Ohio Council 8, AFSCME, AFL-CIO*, SERB No. 2023- ULP-12-0146 (June 20, 2024).[2] But critically, SERB dismissed the charge "for lack of probable cause to believe *the statute has been violated*." *Id*. (emphasis added). And that is the crux of the matter—this is a contract claim, not a violation of statute claim.

Likewise, SERB does not have exclusive jurisdiction to address the facts here. AFSCME readily admits that (1) Mrs. Binder's Complaint raises claims and requests relief identical to ones that SERB dismissed and (2) that SERB dismissed such claims because there was no probable cause to believe that the union "had committed a ULP in violation of R.C. 4117.11." AFSCME Br. at 7. SERB's jurisdiction depends on—and is in fact limited to—remedying violations of R.C. 4117. But just because there is no remedy at SERB for conduct that does not violate or even implicate R.C. 4117 does not mean that no other remedies are available.

Because Mrs. Binder has not filed an unfair labor practice charge with SERB, and her Complaint alleges a common law contract claim, R.C. Chapter 4117 does not deprive the court of common pleas of jurisdiction, and AFSCME's motion to dismiss should have been denied.

B. Mrs. Binder's common law contract rights do not arise from, and are independent of, R.C. Chapter 4117, because those rights existed before the enactment of R.C. Chapter 4117.

AFSCME admits that SERB does not have jurisdiction over claims that do not arise from and are not dependent on collective-bargaining rights created by R.C. Ch. 4117. Pet Br. at 8, citing *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052, ¶ 17. By contrast, common pleas courts *do* have jurisdiction over "rights that exist independently of R.C. Chapter 4117, 'even

[2] Affirmed in *Littlejohn v. Ohio Council 8, AFSCME, AFL-CIO*, No. 250020 (1st Dist. 2025).

though they may touch on the collective bargaining relationships.'" *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2016-Ohio-478, ¶ 54, citing *Franklin Cnty. Law Enf't Ass'n*, at 172. *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052, ¶ 30 (confirming that the "test for SERB's jurisdiction has always been, and remains today," the two-part inquiry discussed above). At its simplest, the question is whether a plaintiff would still have the rights she claims if R.C. Chapter 4117 did not exist.

In this case, Mrs. Binder's contractual rights existed before the enactment of R.C. Chapter 4117. And if the General Assembly repealed R.C. Chapter 4117 today, the Dues Deduction Contract would still exist, as would Mrs. Binder's common law rights to enforce or challenge the validity of that contract. Counts One through Four of the Complaint are common law contract claims.[3] (R. 1). Those rights and claims exist independent of *any* statute, let alone R.C. 4117.

AFSCME's reliance on the Tenth District's non-binding opinion in *Darling v. Am. Fed'n of State, Cnty., & Mun. Emps.*, 2024-Ohio-2181 (10th Dist.), is unpersuasive, for two reasons. First, contrary to the Tenth District's decision, the Supreme Court of Ohio has not "broadly defined" SERB's jurisdiction. *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 2016-Ohio-478, ¶ 54 ("The principles announced in *Franklin Cty. Law Enforcement Assn.* are not so broad as to place *all* claims that touch on R.C. Chapter 4117 within SERB's exclusive jurisdiction."). In *Franklin Cty. Law Enforcement Assn.*, the Ohio Supreme Court recognized that each of the plaintiff's claims specifically derived from R.C. Chapter 4117 and would not exist *absent the statute*. *Franklin Cnty. L. Enf't Ass'n*, 59 Ohio St. 3d at 171. But the Court made clear that "union members can have common-law contractual rights that exist independently of R.C. Chapter 4117. . . ." *Id.* In that case, the plaintiffs "did not specify" the contract provisions that the union had breached—thus they did

[3] Count Two related only to for Plaintiff Cindy DuPuis.

not allege a common law breach of contract claim. *Id.* Instead, they only referred to the contract to contend that "R.C. 4117.19(C)(4) imposed a duty on the [union] to provide in its constitution for 'the right of individual members to participate in the affairs of the organization . . . .'" *Id.*

Contrary to the plaintiffs in *Franklin Cty. Law Enforcement Assn*, Mrs. Binder has pled purely contractual claims. She does not allege that AFSCME violated any duty created by R.C. Chapter 4117, or that her Dues Deduction Contract is reliant on that chapter. As with any membership contract, Mrs. Binder has always had the right to enter into such contract and get out of it if the contract violates substantive law. That right did not come into existence when R.C. Chapter 4117 was enacted and, as with her gym membership, it would not disappear if R.C. Chapter 4117 were repealed.

Second, the *Darling* court's holding rests, in part, on allegations implicating R.C. 4117. The court cited the allegation that the plaintiffs averred that "they have been compelled by *law,*" i.e. R.C. 4117, to support the defendant union financially and to subsidize its speech. (Emphasis added.) *Darling*, 2024-Ohio-2181, ¶ 18, quoting (Am. Compl. at ¶¶ 64, 68, *Darling*, 2024-Ohio-2181). Such allegations regarding R.C. 4117 were included in *Darling* and *Franklin Cty. Law Enforcement Assn*, but not in Mrs. Binder's allegations, create an arguable assertion of SERB's jurisdiction. Again, Mrs. Binder has not so averred.

Third, AFSCME attempts to distinguish two federal cases Mrs. Binder cited in her oping brief, *Littler v. OAPSE*, 88 F.4th 1176 (6th Cir. 2023) and *Hoekman v. Education Minnesota*, 41 F.4th 969, 978 (8th Cir. 2022), from this case on the grounds that those cases were First Amendment Section 1983 cases. *See* AFSCME Br. at 7–8. But the purpose of citing those cases is to show that the Dues Deduction Contract is a private contract based on common law, not state statute. *See* Pet.

Br. at 11. Therefore, the underlying claims in those cases are insignificant for this case's purposes.

Because Mrs. Binder's contractual rights existed before, and thus do not arise from, the enactment of R.C. Chapter 4117, they are independent of R.C. Chapter 4117. Therefore, this court has jurisdiction over Mrs. Binder's claims.[4]

C. The court of common pleas has jurisdiction over Mrs. Binder's request for declaratory relief because Ohio law specifically grants the court such jurisdiction.

Ohio's declaratory judgment law grants any person interested in a written contract the right to have "any question of construction or validity" of the contract determined by a court, and the right to "obtain a declaration of rights, status, or other legal relations under it." R.C. 2721.03. The law further provides that common pleas courts have jurisdiction to "declare rights, status, and other legal relations whether or not further relief is or could be claimed" R.C. 2721.02(A). Here, AFSCME received dues from Mrs. Binder while she was a member, and after she resigned from AFSCME, based on the written membership and deduction authorization agreement. Mrs. Binder challenged the validity and construction of that agreement, and the court of common pleas may "determine[] any question of construction or validity arising under" a statute. R.C. 2721.03. That includes determining whether Mrs. Binder's claims belong before it or SERB.

AFSCME relies on *Franklin Cnty. Sheriff's Dept.* for the proposition that "a court of common pleas is without jurisdiction to render a declaratory judgment determining rights that are established or limited by R.C. 4117.11, where the State Employment Relations Board is asked to make the same determination in the context of an unfair labor practice charge." AFSCME Br. at 10, quoting *Franklin Cnty. Sheriff's Dept. v. Fraternal Order of Police, Capital City Lodge No. 9*,

[4] AFSCME asks this court to rely upon the non-binding decision in other cases. Notably, AFSCME failed to bring to this court's attention that *Sheldon v. Ohio Association of Public School Employees*, 2025-Ohio-5210 (7th Dist. Ct. App.), *on appeal* 2025-1708, is pending before the Ohio Supreme Court.

59 Ohio St.3d 173 (1991), syllabus. But that quote misses the mark. Unlike the plaintiffs in that case, Mrs. Binder did not ask SERB to make the same determination that she brought to the court of common pleas. As such, the court of common pleas maintains its ability to render a declaratory judgment.

IV. Conclusion

Mrs. Binder has always had the right to challenge contracts to which she is a party in common please courts. The General Assembly granted SERB limited jurisdiction to address R.C. 4117's "new rights," *Franklin Cty, Law Enforcement Assn.,* 59 Ohio St. 3d at 169, not Mrs. Binder's pre-existing common law rights. For the above reasons, the Court of Common Pleas' Dismissal should be reversed.

Respectfully submitted,

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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 Appellees this 17th day of February 2026 addressed to the following:

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