

IN THE COURT OF APPEALS
SIXTH APPELLATE DISTRICT
STATE OF OHIO

CINDY DuPUIS, <i>et al.</i> ,)	
)	
Plaintiffs-Appellants,)	Appellate Case No. CL2025-00292
)	
v.)	
)	
AMERICAN FEDERATION OF)	Trial Court Case No. CI2025-02488
STATE, COUNTY AND MUNICIPAL)	
EMPLOYEES LOCAL 2174 TOLEDO)	
PUBLIC SCHOOL DISTRICT, <i>et al.</i> ,)	
)	
Defendants-Appellees.)	APPELLANT’S REPLY TO APPELLEE SERB’S BRIEF

I. Summary

Appellee State Employment Relations Board (“SERB”) makes two primary arguments. First, that Appellant Tiffany Binder (“Appellant” or “Mrs. Binder¹”) is asking SERB to issue an advisory opinion. This argument fails because Mrs. Binder’s brought a declaratory judgement action against SERB and SERB is a necessary party under Ohio’s declaratory judgement statute. Mrs. Binder asks SERB to admit what it has said in other cases—that it will not adjudicate her claims. And second, SERB argues that Mrs. Binder should file her claims in SERB if she wants it to adjudicate them. But SERB is not an available forum since Mrs. Binder’s claims are not unfair labor practices, which SERB has previously held. As such, Mrs. Binder respectfully requests that this Court reverse the lower court’s decision.

II. Facts

Appellant filed a Complaint in Common Pleas Court seeking declaratory relief relating to her membership contract with her former union, American Federation of State, County, and Municipal

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

Employees, Ohio, Council 8, AFL-CIO (“the Union”). (R. 1). Mrs. Binder is seeking a declaration that her membership contract with the Union—the contract that permitted the Union to continue to withdraw dues from her paycheck even after her Union membership had ended—is invalid and imposes an impermissible penalty under Ohio law. Fundamentally, Mrs. Binder seeks a forum in which she can bring her contractual claims. Accordingly, Mrs. Binder named SERB as a defendant to answer whether it has jurisdiction over the types of claims alleged in the complaint. In October, the trial court issued an order granting SERB’s Motion to Dismiss. (R. 9).

III. Law and Argument

A. Ohio’s declaratory judgment statute requires SERB’s involvement in this case because its rights and obligations will be affected.

SERB asserts that Mrs. Binder misjoined it to this case and asks the Court to issue an advisory opinion. SERB Response at 5–6. But that’s not the case. Mrs. Binder included SERB in this case to satisfy Ohio’s declaratory judgment statutory requirements. Revised Code 2721.12(A) requires that “all persons who have or claim any interest that *would be affected by the declaration* shall be made parties to the action or proceeding.” (Emphasis added.) “[O]nly those persons who are legally affected are proper parties to a lawsuit,” and “[a] party is legally affected by a cause of action if the party has a legal interest in rights that are the subject matter of the cause of action.” (Citation omitted.) *Rumpke Sanitary Landfill, Inc. v. State*, 2010-Ohio-6037, ¶ 14.

Here, SERB has a legal interest in the Court’s determination. Up to this point, the entire case has revolved around deciding the proper venue for Mrs. Binder’s claims. SERB was created by the Revised Code and a judicial determination on the claims Mrs. Binder asserted will directly impact SERB’s jurisdiction going forward. SERB “is charged with the exclusive duty to enforce the provisions of” R.C. 4117. *Portage Cty. Bd. of Commrs. v. Akron*, 2006-Ohio-954 ¶ 99. And “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.” *City of Cincinnati v. Whitman*, 44 Ohio St.2d 58, 61 (1975). Thus, SERB’s interest in this case is both practical and legal. No matter how this Court resolves that statutory question, the result will affect SERB’s jurisdiction and power to adjudicate claims. Thus, SERB must be a party to this case to speak for itself and either advocate for or disclaim its jurisdiction. Either way, this Court has the authority to interpret R.C. 4117 to determine the proper venue for Mrs. Binder’s claims. *See* R.C. 2721.03.

B. Mrs. Binder is not asking SERB to issue an advisory opinion—she is asking the Court to declare what the law is.

SERB correctly states that “courts and administrative tribunals do not issue advisory opinions.” SERB Response at 6, citing *Sheldon v. Ohio Assn. of Pub. School Emps.*, 2025-Ohio-5210, ¶ 30 (7th Dist.). But SERB wrongly claims that Mrs. Binder does not seek relief from SERB, rather only an advisory opinion. *See id.* But Mrs. Binder’s declaratory judgment cause of action is a valid claim involving SERB. “[A] declaratory judgment is a binding adjudication of the contested rights of litigants, though unaccompanied by consequential relief, whereas an advisory opinion is merely the opinion of a judge or judges of a court, which adjudicates nothing and is binding on no one.” *State ex rel. Draper v. Wilder*, 145 Ohio St. 447, 455 (1945). Mrs. Binder sought a binding adjudication on the issues presented, including the Court of Common Plea’s jurisdiction versus the SERB’s. She did not ask SERB to rule on the merits of the claims, just to state or deny its jurisdiction to hear them. Thus, there is a live controversy between the parties.

Ohio’s declaratory judgment statute authorizes anyone with an interest in a,

written contract, or other writing constituting a contract or any person whose rights, status, or other legal relations are affected by a constitutional provision, statute, rule . . . contract, or franchise may have determined any question of construction or validity arising under the instrument, constitutional provision, *statute*, rule,

ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

R.C. 2721.03. (Emphasis added.) Mrs. Binder, in bringing this case, sought to clarify her rights under the supposed contract with Defendant Union *and* her rights under the statute that controls SERB's jurisdiction—R.C. 4117.11.

It's true that Mrs. Binder's primary dispute is with the Union. She is seeking a judgment that the supposed contract between she and the Union violated Ohio contract law. But Mrs. Binder also seeks a declaration of whether her rights are governed exclusively by R.C. 4117.11, which would trigger SERB's jurisdiction. The determination of whether SERB has jurisdiction is the type of question that directly affects SERB.

Mrs. Binder does not have any other forum to bring these claims since they are not unfair labor practice—the courthouse doors must be open. SERB insists that Mrs. Binder has another forum to assert her claims—SERB. SERB Response at 7. But this argument fails because SERB has never actually stated that it has jurisdiction.

While Mrs. Binder did not bring any claims before SERB, similarly situated plaintiffs have brought identical claims before both SERB and courts of common pleas, only to be turned away by both. *See, e.g., Darling v. AFSCME*, 2024-Ohio-2181 (10th Dist.), and *Littlejohn v. AFSCME*, C.P. Hamilton, No. 24-03410. In a case with identical claims, SERB asserted that “no statute involving SERB's legal duties is involved or being challenged.” Def. SERB's Reply to Plaintiff's Memo. Oppo. to SERB's Mot. To Dismiss, *Chandler v. OAPSE*, C.P. Stark, No. 2025CV00690 (filed May 8, 2025) (same).

Thus, the real question is—did SERB reject jurisdiction in *Littlejohn*, rejecting the charge, or did it accept jurisdiction and deny the charge's merits. SERB has never answered that question. It

should, and that is why Mrs. Binder asked SERB to do so in her Complaint.

IV. Conclusion

Mrs. Binder properly filed her claims in the Court of Common Pleas, which has jurisdiction to resolve her case. But to get the relief she requested, Mrs. Binder had to include SERB as a defendant because it has a legal interest in the case's income and is thus a necessary party. Therefore, 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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