

IN THE SUPREME COURT OF OHIO

MATTHEW SHELDON,	)	Case No. 2025-1708
	)	
Plaintiff-Appellant,	)	
	)	On appeal from the Seventh District
vs.	)	Court of Appeals, Carroll County
	)	
OHIO ASSOCIATION OF PUBLIC	)	Court of Appeals Case No.
SCHOOL EMPLOYEES/AMERICAN	)	25 CA 0985
FEDERATION OF STATE, COUNTY	)	
AND MUNICIPAL EMPLOYEES,	)	
LOCAL 541 CARROLLTON	)	
EXEMPTED VILLAGE SCHOOLS,	)	
et al.,	)	
	)	
Defendants-Appellants.	)	

REPLY BRIEF OF APPELLANT MATTHEW SHELDON

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SUMMARY OF ARGUMENT

Contrary to OAPSE's arguments, Appellant's rights to challenge contracts existed long before the General Assembly enacted R.C. 4117. And OAPSE's cited cases (*Franklin Cnty. Law Enforcement*, *Sutula*, and *Lakewood*) do not support exclusive SERB jurisdiction. Nor do OAPSE's cited SERB decisions.

OAPSE is mistaken when it claims that employees had no common-law contract claims to challenge a union's dues deduction contracts. Unions have been collecting dues since the mid-1800s, and SERB did not even exist until 1983. Courts had jurisdiction over such contract claims before SERB existed and still do.

SERB's explanation of the grounds for dismissal demonstrates that SERB did not have jurisdiction to decide the contractual claims presented in *Littlejohn*, and thus courts must decide this case.

ARGUMENT

I. Contrary to Appellee's claims, *Franklin Cnty. Law Enforcement* and *Lakewood* support court jurisdiction over common law contract claims such as Sheldon's claims.

In *Franklin Cnty. Law Enforcement*, (see OAPSE Br. at 10-12), the Court expressly recognized that "if a party asserts rights that are independent of R.C. Chapter 4117, then the party's complaint may properly be heard in common pleas court." *Franklin Cnty. L. Enf't Ass'n v. Fraternal Ord. of Police, Cap. City Lodge No. 9*, 59 Ohio St.3d 167, 171 (1991). However, the court affirmed the dismissal of the case, determining that SERB had exclusive jurisdiction, because

[a]lthough union members can have common-law contractual rights that exist independently of R.C. Chapter 4117, we note that plaintiffs did not

specify the FOP constitutional provision that was allegedly violated. It appears that they referred to the FOP constitution only to the extent that they contended R.C. 4117.19(C)(4) imposed a duty on the FOP to provide in its constitution for “the right of individual members to participate in the affairs of the organization * * *.” In other words, as pleaded, plaintiffs’ claim under the FOP constitution was inextricably intertwined with rights purportedly created and imposed by R.C. Chapter 4117. *Because plaintiffs’ claims were dependent on the framework established in R.C. Chapter 4117*, plaintiffs were limited to the remedies and procedures provided in that chapter and the common pleas court was without jurisdiction.

Id. at 171(emphasis added). By contrast, here the Appellants’ complaint clearly pled the specific contract “that was allegedly violated” and did not “contend” that R.C. Ch. 4117 imposed a duty on the union related to the subject contract. And the Appellant’s claims are not “inextricably intertwined with rights purportedly created and imposed by R.C. Chapter 4117.” *Id.*; *see also* OAPSE’s Appellee Br. at 12-17. Rather, Appellant’s asserted rights are independent of R.C. 4117.

In *Sutula*, (*see* OAPSE Br. at 12-13) the Court explained that SERB had exclusive jurisdiction over the dispute because, “if—as the union alleges—Cleveland has failed to comply with R.C. Chapter 4117 by ignoring a valid collective-bargaining agreement, the city is interfering with its employees’ statutory collective-bargaining rights and is refusing to bargain collectively.” *State ex rel. Cleveland v. Sutula*, 2010-Ohio-5039, ¶ 21.. Indeed, “the union previously filed unfair-labor-practice charges against Cleveland with SERB . . . under comparable circumstances” *Id.* In that charge, “SERB found probable cause to support the union’s claims and issued a complaint charging the city with unfair labor practices under R.C. 4117.11(A)(1) and (5).” *Id.* Again, by contrast, Appellant’s contract claims do not allege that the union

has failed to comply with R.C. 4117, but rather that the subject contract fails under state common law principles, regardless of R.C. 4117's existence.

And in *Lakewood*, the Court recognized that even though the arbitration agreement was contained within the collective bargaining agreement (“CBA”), the lawsuit to compel arbitration was based on a “contractual right” that “exists independently of R.C. Ch. 4117.” *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052, ¶ 15. That describes Appellant’s complaint. See Appellant’s Br. at 12-15.

OAPSE next explains, citing *OCSEA, Local 11*, SERB No. 87-ULP-05-0217, 1989 WL 1703609 (May 12, 1989), *adopted, OCSEA, Local 11 (ROWLAND)*, SERB No. 87-ULP-05-0217, 1989 WL 1703833 (July 20, 1989), that unauthorized dues deductions—such as fraudulently induced dues collections—constitute an unfair labor practice. See OAPSE’s Appellee Br. at 15. In *OCSEA, Local 11*, the union coerced employees into joining the union by promising that the employees could leave the union *and* cease dues deductions *at any time*. *OCSEA, Local 11*, SERB No. 87-ULP-05-0217, 6 OPER ¶ 6397, 1989 WL 1703609 (May 12, 1989), *adopted, OCSEA, Local 11 (ROWLAND)*, SERB No. 87-ULP-05-0217 6 OPER ¶ 6627, 1989 WL 1703833 (July 20, 1989). That is a ULP in violation of R.C. 4117.11(B)(1) and (B)(6). *Id.*

But the question *here* is whether the contract between OAPSE and Mr. Sheldon was rescinded, or voided, or is void ab initio. If the courts ultimately decide that the contract is invalid, and OAPSE thereafter continues to collect dues, then an aggrieved former union member might reasonably assert a charge for a ULP. So far, that is not

this case.

OAPSE next asserts that R.C. 4117.09(B)(2) shows that the General Assembly relegates disputes over dues deduction contracts between an employee and a union to SERB. OAPSE's Appellee Br. at 24-25. The opposite is true. R.C. 4117.09(B)(2) "[a]uthorizes the *public employer* to deduct the periodic dues, initiation fees, and assessments of members of the exclusive representative upon presentation of a written deduction authorization by the employee." (emphasis added). It says nothing about the contract between the union and the employee. In fact, R.C. 4117.11(B)(1) removes from SERB's jurisdiction disputes between the union and employees relating to the "acquisition or retention" of members. That would seem to include the sign-up/deduction card/agreement that Appellant signed to join OAPSE. Thus, the proper place to resolve disputes over that "acquisition or retention" would be in the courts. See Appellant's Br. at 18-19.

OAPSE also contends that 4117.11(B)(1) ought to apply, relying on *Pattern Makers' League of N. Am., AFL-CIO v. N.L.R.B.*, 473 U.S. 95, 106–07 (1985). See OAPSE's Appellee Br. at 19. *Pattern Makers*, however says nothing about whether Ohio courts have jurisdiction to hear Appellant's Ohio common law contract claims. *Pattern Makers* is also inapposite because unlike Mr. Sheldon, the employer's associate that filed the Complaint involved the NLRB's jurisdiction.

II. Mr. Sheldon is entitled to litigate his pre-R.C. 4117 contract claims in court.

OAPSE cites *Hagerman v. City of Dayton*, 147 Ohio St. 313, 328–29 (1947) to argue that since "prior to 1959, dues-deduction authorizations for municipal

employees were prohibited in the State of Ohio,” Mr. Sheldon’s contract rights did not exist prior to R.C. 4117’s enactment. OAPSE’s Appellee Br. at 25. OAPSE misses the point. The test for SERB’s jurisdiction is not whether union deductions were allowed or prohibited by statute in the past, but whether R.C. 4117 created the right he now seeks to vindicate. Further, in *Hagerman*, the city’s Director of Finance sued *in common pleas court* to challenge a city ordinance, that conflicted with state law. The fact that the statute in effect when the Court decided *Hagerman* would have obviated the need for an employee to sue under contractual theories does not mean that the contractual theories did not exist.

Moreover, Mr. Sheldon seeks to vindicate his common law contract rights—rights which all persons have under Ohio law. Sheldon is not seeking to enforce any new rights created by R.C. 4117. *See* Appellant’s Br. at 8–12 (discussing common law contract claims and rights). By OAPSE’s logic, employees had no rights to challenge union membership dues or other union actions during the decades preceding 1959 since before then “dues-deduction authorizations for municipal employees were prohibited in the State of Ohio.” *See* Appellee OAPSE’s Br. at 25.¹

Last year in *Lakewood*, this Court clarified that a CBA’s arbitration provision was enforceable and the dispute was beyond SERB’s jurisdiction because, in part, “even if R.C. Ch. 4117 did not exist, the parties would still have the right to include

¹ The American Federation of Labor (A.F. of L. or AFL) was founded in Ohio in 1886. Formation of the American Federation of Labor, Library of Congress (Dec. 2023) available at <https://guides.loc.gov/this-month-in-business-history/december/american-federation-of-labor>.

arbitration provisions in their collective-bargaining agreement. . . .” *Lakewood*, 2025-Ohio-2052 at ¶ 27. By OAPSE’s logic, the union there—Ohio Council 8 (an affiliate of OAPSE)—could not enforce the arbitration provision in court before 1959 since it could not have done so when dues deductions were illegal. Moreover, Ohio Council 8 would not have been able to enforce its arbitration remedy in SERB before 1983 when SERB was created. *See* Appellant’s Br. at 17.

Amicus City of Columbus helpfully points out that “a common pleas court ‘may still lack jurisdiction over a particular case if that jurisdiction is *explicitly* removed by, for example, another statute.” Amicus City of Col. Br. at 10 (citing *State ex rel. T.B. v. Brown*, 2025-Ohio-4484, ¶ 24, citing *Ohio High School Athletic Assn. v. Ruehlman*, 2019-Ohio-2845, ¶ 9)(emphasis added). Here no statute has explicitly removed jurisdiction of the common pleas courts over common law contract claims between employees and unions. R.C. 4117 did not create or eliminate Mr. Sheldon’s contract rights, so common pleas courts still have jurisdiction. *Compare* Amicus SERB’s Br. at 12 (“SERB ‘is a creature of statute’ and its powers are limited to those ‘conferred on it by statute.’”) (internal citations omitted).

III. OAPSE’s cited SERB decisions are inapposite.

The SERB decisions OAPSE cites are inapposite. In the first case, *In re Hamilton County Sheriff’s Office*, SERB No. 2021-ALJ-003 (Jan. 8, 2021), the union complainant invoked SERB’s jurisdiction, specifically referencing R.C. 4117.11(A)(1) and (5). The employer and the union resolved the charge via a written Settlement Agreement (recognized by SERB via a dismissal entry), which included a stipulation that SERB would retain jurisdiction over this ULP charge if either party breached

the agreement. *See also id.* at *2 (Adm.Code 4117-7-06, authorizes SERB to retain jurisdiction in such situations.). The ULP Charge in *In the Matter of State Employment Relations Board* explicitly invoked two statutory provisions of R.C. 4117, which SERB had the authority to resolve and settle. Appellants agree that SERB has the jurisdiction to resolve disputes that arise from the settlement of a ULP, but that does not mean that SERB has jurisdiction to resolve “[a] purely contractual dispute” between the union and an employee. *See Op.3, In re Upper Arlington Edn. Assn.*, SERB No. 92-010, fn. 1 (June 25, 1992).

In *In re New Lexington Ed. Assn./Ohio Federation of Teachers*, SERB No. 95-009, 1995 WL 17827470 (June 26, 1995), the complainant invoked SERB’s jurisdiction under R.C. 4117.11(B)(3). The issue was “[w]hether the Charged Party, New Lexington Education Association, committed an unfair labor practice in violation of O.R.C. §4117.11(B)(3) by bargaining in bad faith when failing to sign the final package agreed to by the parties in negotiations for a successor collective bargaining agreement.” *Id.* at *3. There is no question that SERB has jurisdiction to resolve ULP charges involving the negotiation of a CBA. *See id.* at *10 (“[F]ailure to sign a collective bargaining agreement, once reached, may constitute the foundation for a refusal to bargain unfair labor practice charge”) That is not this case.

IV. SERB ’s explanation of SERB’s grounds for dismissal show why SERB lacks jurisdiction over Mr. Sheldon’s case.

According to SERB, there are three reasons for SERB to dismiss ULP charges. Appellee SERB’s Br. at 4–5. Two are based on legal grounds and one on factual grounds. First, SERB will dismiss charges that, even if true, do not constitute a

statutory violation. *Id.* Second, SERB will dismiss charges “if the parties’ initial submissions reflect that the alleged misconduct simply did not occur.” *Id.* at 5. And third, “SERB dismisses charges if they fall outside of its statutory jurisdiction.” *Id.* (citing Op.3 *In re Upper Arlington Edn. Assn.*, fn. 1).

SERB points to the Littlejohn charge it dismissed for lack of “probable cause.” Appellee SERB’s Br. at 6. SERB explains that *Littlejohn*’s factual allegations are similar to Mr. Sheldon’s, none of which were contested. Thus, SERB must have dismissed *Littlejohn* on one of the two *legal* grounds; but SERB did not explain which one. Either way, SERB had no jurisdiction to take action other than to dismiss for lack of probable cause. First, if there is no statutory violation, there is no jurisdiction. The second legal ground is similar—SERB dismisses charges that explicitly “fall outside of [SERB’s] statutory jurisdiction.” Appellee SERB’s Br. at 5. SERB’s dismissal completely ignored Ms. Littlejohn’s common law contract claims. *In re Littlejohn*, SERB No. 2023-ULP-12-0146 (June 20, 2024). And that is not surprising because, as SERB has recognized, “[a] purely contractual dispute, which encompasses no arguable statutory violation, would be a candidate for dismissal for lack of probable cause.” Op.3 *In re Upper Arlington Edn. Assn.*, fn. 1 (cited in Appellee SERB’s Br. at 5). Both *Littlejohn* and this case assert a “purely contractual dispute,” one which should be decided by the courts, not SERB. *See id.*

V. OAPSE asserts that Mr. Sheldon’s allegations, if true, constitute an unfair labor practice, but that assertion does not divest the courts of jurisdiction.

OAPSE, and the amici filing in support, assert that Mr. Sheldon’s claims, if true, are unfair labor practices. *See, e.g.*, Appellee OAPSE’s Br. at 1; Amicus AFSCME

Council 8's Br. at 8; Amicus City of Col. Br. at 3. This is question begging and fails to address the jurisdictional issues presented. OAPSE seems to suggest that *Littlejohn* already resolved those claims in its dismissal, sub silencio, when it found there was no probable cause. But SERB's only reasoning relied on *unnamed* federal cases, and not on the Appellant's cited cases relating to Ohio's common law contract law. SERB's no probable cause decision was little more than a star chamber decision. But more importantly, just because SERB could opine on contractual issues, it does not mean it has jurisdiction to resolve pre-R.C. 4117 claims. It does not. Once the courts determine that the underlying contracts are invalid based on common law claims, SERB would have jurisdiction to entertain employees' ULP charges that the union has unlawfully continued to collect their dues post-resignation.

VI. The merits of the Appellant's claim are not before the Court; but Amici's discussion of the merits shows the need for a full adjudication in the courts, not SERB.

Appellant agrees that the merits of this case are not before the court. However, Amici Ohio AFL-CIO, Ohio Association of Professional Fire Fighters, and International Association of Fire Fighters dedicate 19 pages of their brief to address Appellant's contract claims. Yet SERB in the *Littlejohn* case provided not a single word of discussion of those claims. Amici are quite correct: These serious contractual issues require serious briefing and a serious court opinion addressing the claims. The courts have been addressing these common law claims since the 1800s (*see* Appellant's Br. at 17-18) and they should continue to do so now.

CONCLUSION

For the above reasons, the Court should reverse the judgment of the Seventh District Court of Appeals and remand the case for consideration on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above memorandum in support of jurisdiction was served this 17th day of August 2026 via e-mail on:

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