

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

MATTHEW SHELDON,)	CASE NO: 2025CVH30642
)	
Plaintiff,)	
)	
vs.)	
)	JUDGE MICHAEL V. REPELLA, II
OHIO ASSOCIATION OF PUBLIC)	
SCHOOL EMPLOYEES/AMERICAN)	
FEDERATION OF STATE, COUNTY)	
AND MUNICIPAL EMPLOYEES, LOCAL)	
541- CARROLLTON EXEMPTED)	PLAINTIFF’S MEMORANDUM IN
VILLAGE SCHOOLS, et al.,)	OPPOSITION TO DEFENDANT
)	OAPSE’S MOTION TO DISMISS
Defendants.)	

I. Introduction

Plaintiff Matthew Sheldon respectfully opposes Defendant Ohio Association of Public School Employees’ (“OAPSE’s” or “the Union’s”) Motion to Dismiss. Mr. Sheldon’s Amended Complaint seeks declaratory and injunctive relief relating to his membership agreement with the Union, and contractual claims well within this Court’s jurisdiction. The Amended Complaint adequately pleads claims for declaratory and injunctive relief, and Mr. Sheldon should not be penalized for proceeding with caution.

II. Factual and Procedural Background

The facts of this case are not in dispute. At its simplest, Mr. Sheldon is seeking a declaration that his membership contract with the Union—the contract that permitted the Union to continue to withdraw dues from his paycheck even after his Union membership had ended—is invalid and

imposes an impermissible penalty under Ohio law. Mr. Sheldon’s case now arrives in this Court because of decisions by federal courts, Ohio courts, and the State Employment Relations Board (“SERB”).

In its 2018 decision in *Janus v. AFSCME*, the U.S. Supreme Court held that the First Amendment protects public-sector employees from being compelled “to subsidize private speech on matters of substantial public concern” without prior affirmative consent. *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council*, 585 U.S. 878, 886 (2018). Following the *Janus* decision, public employees across the country, dissatisfied with their respective public unions and how their dues were being used, sought to “opt out” of their unions and the automatic payroll deduction by which dues were collected. These employees argued, as Mr. Janus had, that forced payment of money to public sector unions violated the First Amendment’s protection against compelled speech.

Litigation thus ensued in the federal courts. The public unions, seeking to retain dues, responded by arguing that unlike Mr. Janus, who was not a union member when he sued to enjoin the deduction of agency fees, current union members seeking to opt out had entered into voluntary membership contracts with their unions, often spanning several years. *See Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020). While a number of litigants have appealed to the U.S. Supreme Court, the Court has not taken up the question, and a majority of federal appellate courts have adopted the unions’ view that the *Janus* rule applies only to non-union members who either never joined or had opted out of union membership years earlier, but not to employees who had opted out of union membership but whose membership contract had not expired. In those cases, courts

have held that an employee’s ability to opt out of union membership after he has signed a contract with the union is governed solely by that contract and the applicable state contract law. *See Belgau* at 950 (“When ‘legal obligations . . . are self-imposed,’ state law, not the First Amendment, normally governs.”).

Thus, while employees retained an absolute First Amendment right to resign from public union membership at any time, *see, e.g., Knox v. SEIU, Local 1000*, 567 U.S. 298 (2012), in *Belgau*—and cases like it—employees who left the union before the contractual opt-out window were arguably contractually required to continue to pay dues to a union to which they no longer belonged. In essence, the federal courts have sent litigants back to state courts to hash out their contractual disputes there.

Following the federal courts’ guidance, a handful of former union members who were required to pay dues after their membership ended sought relief in state court, alleging, as Mr. Sheldon does in his Amended Complaint, that their individual contracts with their union were invalid under Ohio contract law, or to the extent that they were valid, the provision requiring the continued payment of dues after they have left the union is an unenforceable penalty and not liquidated damages. *See Darling v. Am. Fedn. of State, Cnty., and Mun. Employees*, 2024-Ohio-2181, *appeal not allowed*, 2024-Ohio-4713.

The union¹ in *Darling* argued that the Franklin County Common Pleas Court lacked jurisdiction to hear the state contractual claims because they could be considered as an unfair labor

¹ Although AFSCME was a named defendant in the *Darling* case, it was no longer a party when the case was dismissed.

practice, over which SERB has exclusive jurisdiction. The plaintiffs in *Darling* pointed out that all their claims arose independently under well-established state contract law and not under the SERB statute (R.C. 4117.01, *et seq.*) or the collective bargaining agreement between the union and the public employers. Nevertheless, the trial court held, and the Tenth District affirmed, that the contractual rights asserted could constitute an unfair labor practice, and therefore, those claims were subject to the exclusive jurisdiction of SERB. Ultimately, the Ohio Supreme Court declined jurisdiction on appeal.

Following the Tenth District's decision in *Darling*, another plaintiff, Necole Littlejohn, also seeking to stop due deductions taken out of her pay after she had resigned from her union, filed an unfair labor practice charge with SERB, which alleged the contractual theories identical to those alleged in this case (and to those in *Darling*). (A copy of Ms. Littlejohn's SERB charge is attached as Exhibit A.). SERB reviewed the charge and dismissed it, stating that based on federal court decisions², which it did not cite, the actions complained of were not an unfair labor practice. (A copy of the SERB Decision is attached as Exhibit B.). The SERB decision did not examine or even mention any of Ms. Littlejohn's contractual claims or defenses. *Id.* SERB's decision was not surprising, given that SERB's jurisdiction is limited to determining whether an unfair labor

² SERB did not specifically cite to *Belgau* or any other case, but apparently relied on the *Belgau* line of cases, which address First Amendment issues, not unfair labor practices.

practice listed in R.C. 4117.11 occurred, and not determining common law contractual rights.³

Mr. Sheldon is thus left with contractual rights, but no forum in which to enforce them. The federal courts have held that an employee's membership contract with his or her union is a matter of state contract law. The *Darling* court has held that SERB has exclusive jurisdiction over the contractual claims set forth in Mr. Sheldon's complaint because they may be unfair labor practices. SERB, for its part, declined to take action on Ms. Littlejohn's claims—identical to Mr. Sheldon's here—finding that they did not allege an unfair labor practice. Mr. Sheldon thus filed his complaint in this Court, seeking among other things, a declaration regarding where he might pursue the state contract rights relating to his union membership contract that the federal courts have recognized.

III. Law and Argument

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.

A. Mr. Sheldon's Amended Complaint adequately states claims for declaratory relief.

Ohio's declaratory judgment law provides that

[s]ubject to division (B) of section 2721.02 Of the Revised Code, any person

³ Ms. Littlejohn subsequently filed her claims in common pleas court, which summarily granted the union's motion to dismiss. Her case is pending on appeal in the First District Court of Appeals.

interested under a . . . written contract, or other writing constituting a contract . . . 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. 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, the Union received dues from Mr. Sheldon while he was a member, and after he resigned from the Union based on the written agreement between Mr. Sheldon and the Union. (A copy of Mr. Sheldon’s Deduction Card is attached as Exhibit C.). Mr. Sheldon is challenging “the validity and construction” of that agreement.

Specifically, Mr. Sheldon raises alternative claims for declaratory judgment, alleging that the parties mutually repudiated the contract, that the contract should be rescinded for mutual mistake, or that the continued imposition of dues constitutes an unenforceable penalty for Mr. Sheldon’s breach of the contract, and that the contract that does not disclose the price of the goods or services—in this case, the dues to be collected—is unconscionable.

Taking the claims one by one, the Amended Complaint adequately pleads a declaratory judgment cause for each, an action squarely within this Court’s jurisdiction. For example, Mr. Sheldon alleges that he resigned from Union membership, that the Union acknowledged and accepted his resignation, and that the Union expressly withheld any further benefits of membership to him. Am. Compl. at ¶¶ 51–61. In other words, Mr. Sheldon has alleged that both parties have

refused to perform under the contract, and that it is therefore subject to rescission under Ohio law. *See, e.g., Haman Ents., Inc. v. Sharper Impressions Painting Co.*, 2015-Ohio-4967, ¶ 19 (10th Dist.). The Union obviously has a different view. This is sufficient to state a claim.

Next, Mr. Sheldon alleged that the contract should be rescinded (and his dues refunded) based on mutual mistake. Mr. Sheldon and the Union originally entered into the contract before the Supreme Court decided *Janus*. Although Mr. Sheldon had the option not to join the Union in the first place, in the pre-*Janus* world, there was no economic incentive to do so because he would have been required to pay agency fees regardless of whether he was a member. “A mutual mistake of fact or law regarding a material term of a contract is grounds for rescission.” *Quesinberry v. Quesinberry*, 2022-Ohio-635, ¶ 36 (2d Dist.), *appeal not accepted*, 2022-Ohio-2490. Mr. Sheldon has adequately pled that both parties were mistaken as to the law and enforceability of agency fees, which was material to his membership.

Mr. Sheldon next alleges that the Union’s ability to keep receiving dues after he has resigned his membership is an unenforceable contractual penalty. Ohio law permits liquidated damages only when they represent a reasonable measure of compensation for the contract’s breach. *Boone Coleman Constr., Inc. v. Piketon*, 2016-Ohio-628, ¶¶ 17–19. Mr. Sheldon alleges—and the Union does not dispute—that the Union kept receiving dues from Mr. Sheldon after he resigned his membership. These dues deductions continue today even though the Union no longer provides any services that it is not otherwise obligated to provide by statute as the exclusive bargaining unit representative under R.C. 4117. Am. Compl. at ¶¶ 60–63. If the membership contract between Mr. Sheldon and the Union is valid—and the Union seems to believe it is—then Mr. Sheldon’s

resignation from the Union outside of his contractual window breached that contract.

Despite no longer providing services, the Union continued to receive dues paid through forced paycheck deductions from Mr. Sheldon. Ohio courts have held that “[p]enalty provisions in contracts are held invalid on public policy grounds because a penalty attempts to coerce compliance.” *Satterfield v. Adams Cnty./Ohio Valley School Dist.*, 1996 WL 655789, *7 (4th Dist. Nov. 6, 1996), citing *Lake Ridge Academy v. Carney*, 66 Ohio St.3d 376, 381(1993). Mr. Sheldon thus adequately alleges that the continued withdrawal of dues subjected him to an unreasonable penalty. Construing the Amended Complaint’s factual allegations as true, this is more than enough to withstand a motion to dismiss.

Count Four of Mr. Sheldon’s Complaint alleges that the membership contract is a contract of adhesion. Mr. Sheldon’s dues deduction card—the contract at issue—did not disclose the amount of dues he would be required to pay, and there was an “absence of a meaningful choice” considering that pre-*Janus*, he would have been required to pay agency fees, combined with “contract terms that are unreasonable favorable” to the Union. *See Sabo v. Hollister Water Assn.*, 2007-Ohio-7178, ¶ 34 (4th Dist.), citing *Collins v. Click Camera & Video, Inc.*, 86 Ohio App.3d 826, 834 (2d Dist. 1993). Mr. Sheldon may or may not ultimately prevail on this claim when the Court weighs evidence regarding the choice he had or whether those terms were unreasonably favorable to the Union. But Mr. Sheldon has sufficiently pled the claim to withstand a motion to dismiss.

Count Five is a standard unjust enrichment claim, pled in the alternative in case the Court determines that no valid contract was ever formed. Mr. Sheldon pled that he paid the Union dues

while he was not a member, that the Union was aware of his payments, that he received nothing in return, and that under those circumstances, it is unjust to allow the Union to retain the dues. This satisfies the pleading requirement for an unjust enrichment claim. *See Barger v. Elite Mgt. Services, Inc.*, 2018-Ohio-3755, ¶ 15 (1st Dist.).

B. This Court has jurisdiction to hear this case, and the Ohio Constitution's Open Courts Clause requires the Court to exercise jurisdiction.

This leaves the Court with a complaint for declaratory judgment and injunctive relief on a written agreement, matters that are well within its jurisdiction. In cases where the defendant has challenged the court's subject matter jurisdiction, the test is whether the complaint states *any* cause of action cognizable by the forum. *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989).

Further, Article IV, Section 4(B) of the Ohio Constitution provides that courts of common pleas "shall have such original jurisdiction over all justiciable matters . . . as may be provided by law." Ohio Const., art. IV, § 4. And by statute, common pleas courts have general original subject-matter jurisdiction over civil actions, including breach of contract actions. R.C. 2305.01; *State ex rel. Cleveland Elec. Illum. Co. v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 447, 449 (2000). If that was not enough, the declaratory judgment law, R.C. 2721.01, *et seq.*, expressly provides that courts have jurisdiction to hear this type of dispute. There is plainly a justiciable controversy between the parties regarding the validity and enforceability of the contract between them and the post-membership dues that the Union has refused to refund.

The Union insists that SERB, not this Court, is the proper forum to resolve this dispute. Union Mot. to Dismiss at 12. The Union's argument fails for three reasons. First, the Union's Motion demonstrates why declaratory judgment is needed. There is a clear disagreement about the proper

forum to bring claims like the ones Mr. Sheldon brought. Previous cases show the confusion that clouds this area of law, and a declaratory judgment would clear the way forward.

Second, the Union rightly points out that in a similar case, another plaintiff, Ms. Littlejohn, brought the five same contract claims before SERB. Union Mot. To Dismiss at 11. SERB dismissed that charge, finding that the alleged conduct was not an unfair labor practice. *In re Ohio Council 8, AFSCME, AFL-CIO*, SERB No. 2023-ULP-12-0146 (June 20, 2024). But it is also clear that SERB has exclusive jurisdiction over unfair labor practice charges under R.C. 4117.11. *Franklin Cnty. Law Enf't Ass'n v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St.3d 167, 170 (1991). So, if the conduct alleged in Ms. Littlejohn's charge is not an unfair labor practice, then SERB did not have exclusive jurisdiction over claims relating to that conduct. Likewise, SERB does not have exclusive jurisdiction here since, after all, Mr. Sheldon's claims "mirror" Ms. Littlejohn's. Union Mot. to Dismiss at 11.

In cases like this, there is little distinction between SERB declining to prosecute an unfair labor practice charge for jurisdictional or merit-based reasons. SERB may exercise its statutory jurisdiction to investigate the charge without taking jurisdiction of the alleged charge. This is like a federal district court that exercises its jurisdiction to determine if it has subject matter jurisdiction over the case. The court can exercise a sort of provisional jurisdiction to determine if it has subject matter jurisdiction without violating the law.

Third, the Ohio Supreme Court has "expressly acknowledged . . . that a plaintiff may raise in the common pleas courts rights that exist independently of R.C. Chapter 4117, 'even 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. Here, Counts One through Five of the Amended Complaint are common law contract claims. *See* Am. Compl. at 11. Those rights and claims exist independent of *any* statute, let alone R.C. 4117. Thus, this Court remains an open forum for Mr. Sheldon.

More fundamentally though, the Ohio Constitution provides that “[a]ll courts shall be open, and every person, for an injury done him in his land, good, person, or reputation, shall have remedy by due course of law and shall have justice administered without denial or delay.” Ohio Const., art. I, § 16. The Ohio Supreme Court confirmed this truism in *State ex rel. Cincinnati Enquirer v. Bloom*, 2024-Ohio-5029, ¶¶ 36–37. Although *Bloom* primarily addressed the public’s right to access judicial hearings, the Court affirmed that Section 16 mandates “that all persons shall have remedy for the redress of grievances.” *Id.* at ¶ 37, quoting *E. W. Scripps Co. v. Fulton*, 100 Ohio App. 157, 171 (8th Dist. 1955) (Hurd, J., concurring). Dismissing this case will strip Mr. Sheldon of his constitutional right, as no other forum or court is available for him to seek redress. Since the federal courts have directed dissident union members to the state courts, and SERB has determined that their claims are not statutory unfair labor practices, this Court is the only forum in which Mr. Sheldon can seek relief for his contractual claims. Dismissing his well-pled complaint would deprive Mr. Sheldon of his right to have access to court to determine basic questions of contract law.

IV. Conclusion

For the above reasons, the Union's Motion to Dismiss should be DENIED.

Respectfully submitted,

/s/ Jay R. Carson

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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 Defendants on this 15th day of April 2025.

/s/ Jay R. Carson

Jay R. Carson (0068526)

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

NECOLE LITTLEJOHN
6506 Hamilton Ave. #1
Cincinnati, Ohio 45224

Claimant,

vs.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
OHIO COUNCIL 8, AFL-CIO
6800 North High Street
Worthington, Ohio 43085

and

CITY OF CINCINNATI
City Hall
801 Plum St.
Cincinnati, OH 45202

Respondents.

CASE NO:

SUMMARY OF CHARGE AND
RELIEF REQUESTED

Claimant NECOLE LITTLEJOHN, for her charge hereby states as follows:

INTRODUCTION

1. In its 2018 decision in *Janus v. AFSCME*, the U.S Supreme Court held that the First Amendment protects public-sector employees from being compelled “to subsidize private speech on matters of substantial public concern” without prior affirmative consent. *Janus v. Am. Fed’n of State, Cnty. & Mun. Emps., Council 31*, __ U.S. __, 138 S.Ct. 2448, 2460, 201 L.Ed.2d 924 (2018).

2. The Court rejected the requirement that forced government employees either to pay monthly dues or agency fees, used to support union policies and union lawyers, even when

employees objected to those policies and actions. Non-payment would trigger employment termination.

3. But “[c]ompelling individuals to mouth support for views they find objectionable violates [a] cardinal constitutional command, and in most contexts, any such effort would be universally condemned.” *Id.* at 2463. Janus made clear that unions and governments cannot continue to compel “free and independent individuals to endorse ideas they find objectionable.” *Id.* at 2464.

4. In light of *Janus*, Ms. Littlejohn has terminated her ostensible membership in Respondent AFSCME, Ohio Council 8, AFL-CIO (“the Union”) and the Respondent union has accepted that termination. Ms. Littlejohn has demanded, on multiple occasions, that the Union Respondents and her employer, the City of Cincinnati, stop the automatic deduction of membership dues from her paychecks and refund any union membership dues taken her membership termination. The Respondents have refused and instead have continued deducting union membership dues from Ms. Littlejohn’s wages as well as vacation time from her paid-time off balance, which they justified based upon the terms of the alleged agreements set forth in deduction card had signed.

5. Such ostensible agreements are based on a mutual mistake of law and have been vitiated through mutual rescission.

6. Even if such agreements have validity, any union claims to continued membership dues from non-members would be an unenforceable penalty.

7. Moreover, any ostensible agreements requiring Ms. Littlejohn to continue to pay union membership dues when she is not—in fact—a union member is invalid because it is an

unconscionable contract of adhesion that does not include the amount of the membership dues, was not subject to negotiation, and is unreasonably favorable to the unions.

8. Ms. Littlejohn therefore asks this Board, pursuant to Ohio contract law, to stop these practices and to require the Union to reimburse her for its improper membership dues collection and vacation deductions.

JURISDICTION

9. SERB has concurrent jurisdiction over this matter to the extent that it relates to it relates a member of a collective bargaining unit dispute with the exclusive collective bargaining representative and the public employer. Further, in *Darling v. AFSCME*, Case No. 22-008864 (Franklin Cty. 2023) the court held that claims like Ms. Littlejohn's may amount to unfair labor practices and therefore must be brought in SERB. Although that order is currently on appeal, Ms. Littlejohn brings her claim here in the interest of judicial economy and without waiving whatever rights she may have to pursue her claim in court.

NATURE OF THE ACTION

10. Ms. Littlejohn is a former union member who resigned from union membership following the U.S. Supreme Court's 2018 decision in *Janus*, 138 S.Ct. 2448.

11. Upon information and belief, Ms. Littlejohn's union membership was evidenced by a membership and dues-deduction authorization card ("Deduction Card").

12. The term "dues" means "the official payments you make to an organization that you belong to." Cambridge Dictionary, *dues*, <https://tinyurl.com/CambridgeDues> (accessed Dec. 2, 2022); Collins, *dues*, <https://tinyurl.com/CollinsDues> (accessed Dec. 2, 2022) ("charges, as for membership of a club or organization").

13. Upon information and belief, the Deduction Cards used by the Union do not contain any information on the amount of the union membership dues deductions.

14. Upon information and belief, the Deduction Cards apply only to the deduction of union membership dues, in other words for members and not for non-members.

15. Upon information and belief, the Respondent employers are only authorized to deduct union membership dues based upon, and after receipt of, the signed Deduction Cards for the specific employee.

16. Upon information and belief, the Deduction Cards contain a separate provision authorizing the employer to deduct union membership dues in an unspecified amount.

17. Upon information and belief, none of the collective bargaining agreements (or any other documents) which are binding on Ms. Littlejohn allows the Unions to charge non-union members for membership dues.

18. Unions are not permitted to assess union membership dues to non-union members for union membership. *See, e.g., Janus*, 138 S.Ct. 2448.

19. Upon information and belief, the City of Cincinnati deducted union membership dues from Ms. Littlejohn's paychecks without ever receiving a deduction cards.

20. The Union—with the assistance of the City of Cincinnati—took union membership dues out of the Plaintiff's pay both before and after her resignation from the union and continues to do so.

21. Ms. Littlejohn is entitled to relief based on Ohio contract law principles, including rescission and unconscionable contract of adhesion as set forth herein.

22. Assuming *arguendo* the validity of the Union's claim of a contractual right to continue to take union membership dues, such payments are not valid as consequential damages

and are not liquidated damages under Ohio law because liquidated damages must reflect the reasonable compensation for damages incurred; instead, the assessed union membership dues are an unenforceable penalty. *See Boone Coleman Constr., Inc. v. Piketon*, 145 Ohio St.3d 450, 2016-Ohio-628, 50 N.E.3d 502, ¶ 17-19.

23. Ms. Littlejohn seeks damages and declaratory and injunctive relief under Ohio's declaratory judgment statute establishing that the union membership contracts unconscionably and unreasonably penalize her.

PARTIES

24. Necole Littlejohn is employed by the City of Cincinnati as a medical assistant. She was previously a member of the American Federation of State, County, and Municipal Employees ("AFSCME"), Ohio Council 8, AFL-CIO. She resigned from any such union membership on June 21, 2022, but remains a member of the bargaining unit represented by AFSCME.

25. Respondent American Federation of State, County, and Municipal Employees, Ohio Council 8, AFL-CIO is a public sector labor union with its principal place of business in Franklin County Ohio.

26. The City of Cincinnati is a political subdivision of the State of Ohio that operates the hospital that employs Ms. Littlejohn, subject to a collective bargaining agreement.

FACTUAL BACKGROUND

27. On June 27, 2018, the United States Supreme Court decided *Janus v. AFSCME*, holding that agency-shop arrangements that require employees to fund public-sector unions, irrespective of union membership, violate "the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." *Janus*, 138 S. Ct. at 2468.

28. The *Janus* decision fundamentally changed the law regarding public employees' rights to abstain from compelled payments to the unions chosen to represent them.

29. Ms. Littlejohn is a public employee who was, at one time, a member of the Union.

30. Ms. Littlejohn joined the Union by in 2016 and again in 2017 signing a "Check-off Card," which she was told was mandatory for her employment with the City of Cincinnati. Copies of the Check-off Cards are attached as Exhibit A.

31. On several occasions, most recently in June of 2022, Ms. Littlejohn notified the Union that she was resigning her membership and instructed both the Union and her employer to stop deducting Union dues from her paycheck. A copy of her 2022 Resignation Letter is attached as Exhibit B.

32. After receiving Ms. Littlejohn's notice, the Union acknowledged that Ms. Littlejohn was no longer a member of the Union. Copies of the Union's Responses to Ms. Littlejohn's Resignations are attached as Exhibit C.

33. The Union, however, refused to honor her request to stop deducting dues from her paycheck and also continue to deduct vacation time from her for Union purposes.

34. The mechanism for this continued extraction of dues from non-members is the public employers' automatic deduction of union membership dues from their employees' paychecks.

35. Once a person is no longer a member of an organization, he or she cannot—as a basic definitional matter—owe membership "dues."

36. In fact, in the letter acknowledging Ms. Littlejohn's termination of union membership, the Unions urged her to reconsider and rejoin the union. (Ex. C).

37. The letters touted benefits available only to members, most notably the ability to vote in union elections. (Id.)

38. Upon the termination of Ms. Littlejohn's union membership, the Union also terminated the "membership only" benefits for her. (Id.).

39. Upon information and belief, the Union did not provide Ms. Littlejohn with any information on the amount of union membership dues to be charged or vacation time to be deducted in advance of collecting said dues.

40. The Union has refused to cease withdrawing dues as of the date of resignation, stating that Ms. Littlejohn continues to be bound by her alleged contract with the union, and that those contracts allowed employees to opt-out of continued union membership dues payments only during certain times ("Opt-out Windows") during the life of the contract. (Ex. C).

41. For Ms. Littlejohn, this means waiting months or even years for the expiration of the alleged contract before the union would stop withholding union membership dues.

42. The Union further uniformly refused to refund union membership dues back to the date of Ms. Littlejohn's earlier resignations. (Ex. C).

43. As a basis for these actions, the unions cited to the Ninth Circuit Court of Appeals' decision in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), which held that while *Janus* applied to nonunion employees who sought relief from "fair share" fees, it did not apply to employees who had recently resigned their union membership and were bound by the terms of their alleged contracts with their unions.

44. The Union thus contended that under *Belgau*, Ms. Littlejohn had preemptively contractually waived their rights under *Janus* when they joined the union, or when they renewed their union membership. Accordingly, notwithstanding the Plaintiffs resignation from the union,

the unions contend that the Plaintiffs continued to be bound by their alleged contracts with their respective unions (even though the unions recognized that the Plaintiffs were no longer union members) and must continue to pay union membership dues until the next Opt-out Window.

45. *Belgau* is inapplicable to this charge because (1) Belgau's contractual holdings are based on different contracts and on California laws, (2) it is not binding on the Supreme Court of Ohio, (3) its reasoning is incorrect and inapposite on key issues in this charge, and (4) it is factually distinguishable from the evidence anticipated to be proffered in this charge.

OHIO'S COLLECTIVE BARGAINING LAW

46. R.C. Chapter 4117 sets forth Ohio's collective bargaining law for public employees.

47. R.C. 4117.04 requires that public employers recognize and bargain with an exclusive representative of the bargaining unit:

(A) Public employers shall extend to an exclusive representative designated under section 4117.05 of the Revised Code, the right to represent exclusively the employees in the appropriate bargaining unit and the right to unchallenged and exclusive representation for a period of not less than twelve months following the date of certification and thereafter, if the public employer and the employee organization enter into an agreement, for a period of not more than three years from the date of signing the agreement. For the purposes of this section, extensions of agreements shall not be construed to affect the expiration date of the original agreement.

(B) A public employer shall bargain collectively with an exclusive representative designated under section 4117.05 of the Revised Code for purposes of Chapter 4117 of the Revised Code.

48. R.C. 4117.03 allows public employees to “refrain from [] joining an employee organization.”

49. The state employment relations board “shall decide in each case the unit appropriate for the purposes of collective bargaining. The determination is final and not appealable to any court.” R.C. 4117.06(A).

50. Ohio law mandates that the employee may only bargain with the relevant employer through the designated union. *See Thompson v. Marietta Educ. Ass’n*, 972 F.3d 809, 812 (6th Cir. 2020), *cert. denied*, __ U.S. __, 141 S.Ct. 2721, 210 L.Ed.2d 882 (2021).

51. Thus, while a public employee may refrain from joining a union or choose to leave a union, they are not free to opt-out of the bargaining unit that is represented by that union.

52. Likewise, unions that are chosen as the bargaining unit representative are required to represent all members of the bargaining unit fairly, whether those bargaining unit members are union members or not.

53. In the case of Ms. Littlejohn, the Union is her exclusive representative for purposes of collective bargaining and grievances as set forth in R.C. 4117.05.

54. In other words, while Ms. Littlejohn may choose not to join the union that is recognized as the exclusive representative of her bargaining unit, she may not opt-out of the bargaining unit. Likewise, the Union that has been designated as the exclusive representative for a bargaining unit cannot refuse to represent the members of that bargaining unit.

55. Ohio’s declaratory judgment statute provides that

[s]ubject to division (B) of section 2721.02 of the Revised Code, any person interested under a * * * written contract, or other writing constituting a contract * * * 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.

56. Before the Supreme Court's ruling in *Janus*, Ms. Littlejohn was required to either join the Union and pay full union membership dues or pay "fair-share fees" to the union. See R.C. 4117.09(C).

57. The collective bargaining agreements between the Union and the City of Cincinnati statutorily required to contain a provision authorizing the public employer to deduct periodic dues of union members (but not non-members fair share fees) "upon presentation of a written deduction authorization by the employee." R.C. 4117.09(B)(2).

58. Ms. Littlejohn opposed and continues to oppose paying union membership dues because she is no longer a member of the Union and because she disagrees with the Union's political advocacy and collective-bargaining activities. Like the plaintiff in *Janus*, she has been compelled by law and by their public employers' continued deduction of union membership dues from their paychecks to provide monetary support for speech with which they disagree.

59. Before the *Janus* decision, Ms. Littlejohn had no meaningful choice regarding whether or not to support the Union financially. She was required to fund the union either through union membership dues or fair share fees. Accordingly, she reluctantly joined the Union in 2017.

60. When she became aware of the change in the law after *Janus*, however, she resigned

from their unions and were no longer members of said unions.

61. Accordingly, she demanded a cessation of union membership dues withdrawals and demanded refunds retroactively to the dates of their resignations.

62. The Respondents, however, through automatic union membership dues withdrawal and a refusal to recognize Ms. Littlejohn's rights under *Janus*, and have continued to compel her to subsidize their respective former unions' speech.

63. The Union and Employer were acting under color of state law by imposing these mandatory union membership dues payments on the Plaintiffs. *See, e.g.*, R.C. 4117.09(B)(2) and (C); *Lugar v. Edmondson Oil Co. Inc.*, 457 U.S. 922, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982) (holding private parties subject to liability under 42 U.S.C. § 1983 when acting under an unconstitutional statute).

64. Under the U.S. Supreme Court's holding in *Janus*, an employee must "clearly and affirmatively consent before any money is taken." *Janus*, 138 S.Ct. at 2486.

65. Here, to the extent that Ms. Littlejohn ever consented to the withdrawal of union membership dues from her paychecks, that consent was clearly revoked by their resignations.

66. The Union's Collective Bargaining Agreement ("CBA") does not allow for the continued deduction of union membership dues from non-members as described below.

67. For example, the CBA between the Union and the City of Cincinnati permits the employer to "deduct union dues" from employee wages only with signed written authorizations. (Ex. B).

68. There is thus a live dispute between the Parties regarding the Respondents' obligations under the contracts between the unions and Plaintiffs that can be properly resolved through a declaratory judgment action.

69. Ms. Littlejohn is therefore entitled to a determination the Respondents' practice of continuing to collect union membership dues from employees after those employees have resigned from the union is unlawful, a permanent injunction enjoining such involuntary withdrawal of funds, and a refund of the money that was forcibly taken from her in violation of her constitutionally protected rights.

**COUNT ONE: THE COURT SHOULD DECLARE THAT THE CONTRACTS
BETWEEN THE PLAINTIFFS AND THE UNIONS ARE RESCINDED BASED ON
MUTUAL REPUDIATION**

70. Ms. Littlejohn restates the foregoing allegations and incorporates them here as if fully re-written.

71. To the extent that the Union claims that any contracts or assignments of wages (via the Deduction Cards)—and specifically the Opt-out Windows contained therein remain in force even after the Plaintiffs have resigned from the unions, the Plaintiff seeks a declaration that her contract with the Union were effectively rescinded and an order returning them to the financial situation as it existed at the time of the registration based on mutual repudiation.

72. Ms. Littlejohn has unambiguously rescinded any contracts with the Union and any assignment of wages.

73. The Union has, in turn, recognized and acknowledged that Ms. Littlejohn is no longer a union member and has refused to provide any benefits or other consideration to her beyond the exclusive representation that they are required by law to provide to members and non-members alike.

74. When both parties repudiate or otherwise refuse to perform under a contract, Ohio courts treat the contract as rescinded. *See e.g., Haman Ents., Inc. v. Sharper Impressions Painting Co.*, 2015-Ohio-4967, 50 N.E.3d 924, ¶ 19 (10th Dist.).

75. A party's assent to rescission can be inferred from their actions. *Id.*

76. In this case, by acknowledging that the Plaintiffs are no longer union members and withholding any purported benefits of union membership from Ms. Littlejohn has effectively rescinded any alleged contract with her.

77. The CBA does not provide for the deduction of union membership dues from nonmembers.

78. Despite this rescission and the Union's termination of union member benefits to the Ms. Littlejohn, the Unions still claims the right—through state actors—to seize union membership dues from her.

79. There is therefore a dispute over the validity or interpretation of the contracts between the Plaintiff and the union Respondents.

80. The Plaintiff is entitled to a declaration that any contracts they may have had with the unions or any assignment of wages have been rescinded as of the date of the Plaintiff's resignations and terminations of membership, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts, and an order that the Respondents restore the Plaintiff to her financial positions as of the date of their resignations by refunding all union membership dues collected after the date of the resignation.

81. Ohio courts have held that a claim regarding continued dues deduction when the employee is no longer a Union member, in essence allege an unfair labor practice under R.C. 4117.11(B), and are subject to SERB's jurisdiction. *See Darling v. AFSCME*, Franklin Cty. CP, Case No. 22 CV 008864 (Order Granting Mot. to Dismiss, 10/23/2023).

**COUNT TWO: THE COURT SHOULD DECLARE THAT THE CONTRACTS
BETWEEN THE PLAINTIFF AND THE UNIONS IS RESCINDED BASED ON
MUTUAL MISTAKE**

82. Ms. Littlejohn restates the foregoing and incorporate them here as if fully re-written.

83. In the alternative, to the extent that the Union claims that their contract with Ms. Littlejohn—and specifically the Opt-out Windows contained in that contracts— remain in force even after she resigned from the Union, the Plaintiff seeks a declaration that her contract with the Union was effectively rescinded and an order returning them to the financial situation as of the date of resignation based on the doctrine of mutual mistake of law and fact.

84. Assuming Ms. Littlejohn entered into a valid contract or assignment of wages for payment of union membership dues, when she did so, both Ms. Littlejohn and the Respondents understood that the controlling law thereof was that set forth in *Abood v. Detroit Bd. Of Ed.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977), which allowed unions to require all employees in the bargaining unit to pay either union membership dues or non-member fair share fees to the union through their employers.

85. Based on the law when Ms. Littlejohn entered into any contract or assignment, she understood that she would be liable for union membership dues or non-member fair share fees whether or not they joined the applicable union.

86. After Ms. Littlejohn entered into any contract or assignment, the law changed by virtue of the holding in *Janus*, which held that “States and public-sector unions may no longer extract agency fees from nonconsenting employees.” *Janus*, 138 S.Ct. at 2486.

87. The status of the law under *Abood* was an important component in the parties’ understanding of the import of joining or not joining the respective unions and the unions’ permitted usage of the funds.

88. The foregoing was a material term or basis for Ms. Littlejohn’s respective decision in whether or not to join the union in 2017.

89. “A mutual mistake of fact or law regarding a material term of a contract is grounds for rescission.” *Quesinberry v. Quesinberry*, 2022-Ohio-635, 185 N.E.3d 1163, ¶ 36 (2d Dist.), *appeal not accepted*, 167 Ohio St.3d 1467, 2022-Ohio-2490, 191 N.E.3d 437.

90. Ms. Littlejohn is entitled to a declaration that any contract with the unions and/or assignment of wages have been rescinded as of the date of the Plaintiff’s resignations, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts and ordering that the Respondents restore the Plaintiff to their respective financial positions as of the date of their resignations by refunding all union membership dues collected after the date of the resignation.

**COUNT THREE: THE COURT SHOULD DECLARE THAT THE CONTRACTS
BETWEEN THE PLAINTIFFS AND THE UNIONS IMPOSE AN
UNENFORCEABLE PENALTY**

91. Ms. Littlejohn restates the foregoing allegations and incorporate them here as if fully re-written.

92. In the alternative, to the extent that Ms. Littlejohn’s resignation from the Union and termination of any signed Deduction Cards constitute a breach of contract, the Union’s continued withdrawal of union membership dues constitutes an unreasonable and unenforceable penalty for such breach of contract.

93. Ohio law permits liquidated damages only when they represent a reasonable measure of compensation for the contract’s breach. *Boone*, 145 Ohio St.3d 450, 2016-Ohio-628, 50 N.E.3d 502, at ¶ 17-19.

94. Conversely, Ohio law defines a penalty as:

“a sum inserted in a contract, not as the measure of compensation for its breach, but rather as a punishment for default, or by way of security for actual damages which may be

sustained by reason of nonperformance, and it involves the idea of punishment. A penalty is an agreement to pay a stipulated sum on breach of contract, irrespective of the damage sustained. Its essence is a payment of money stipulated as in terrorem of the offending party, *while the essence of liquidated damages is a genuine covenanted pre-estimate of damages*. The amount is fixed and is not subject to change; however, if the stipulated sum is deemed to be a penalty, it is not enforceable, and the non-defaulting party is left to the recovery of such actual damages as he can prove.”

(Emphasis sic.) *Id.*, quoting *Piper v. Stewart & Inlow*, 5th Dist. Licking No. CA-2530, 1978 WL 217430, *1 (June 14, 1978).

95. In this case, the continued payment of union membership dues in an amount never specified in the Deduction Card—presumably subject to increase by unilateral determination by the union—and imposed upon the union members without advance knowledge, is not related to any additional cost or damages sustained by the unions.

96. The Union stopped providing those services to Ms. Littlejohn that it was not otherwise required by law to provide to members and non-members alike on or about the dates of the Plaintiff’s resignations.

97. The unions were therefore immediately relieved of those costs associated with servicing additional union members and thus—assuming that the Plaintiffs’ resignations constituted a breach of their contracts with the unions—suffered no damages from those breaches.

98. The additional union membership dues that the unions have received from the Plaintiffs after their respective resignations are thus unenforceable penalties.

99. The continued union membership dues payments are not consequential damages because a contracting party “is not, however, liable in the event of breach for loss that he did not

at the time of contracting have reason to foresee as a probable result of such a breach.” *Williams v. Gray Guy Grp., L.L.C.*, 2016-Ohio-8499, 79 N.E.3d 1146, ¶ 33 (10th Dist.). Since the Deduction Card does not specify the amount to be deducted, the employee cannot have foreseen what might be the probable result of a breach at the time of signing the Deduction Card.

100. The Plaintiff is entitled to a declaration that the unions’ continued withdrawal of union membership dues from their paychecks is an unenforceable penalty, a refund of all post-resignation union membership dues collected, and a permanent injunction enjoining any further union membership dues deductions.

COUNT FOUR: THE COURT SHOULD DECLARE THE PLAINTIFFS’ CONTRACTS WITH THE UNIONS TO BE UNCONSCIONABLE CONTRACTS OF ADHESION

101. Ms. Littlejohn restates the foregoing allegations and incorporate them by reference here as if fully re-written.

102. Any contract, assignment of wages or Deduction Card signed by Ms. Littlejohn is substantively unconscionable because not including any amounts and requiring monthly membership dues deduction every month for a full year without possible termination thereof upon leaving the union is “unfair and commercially unreasonable.” *Porpora v. Gatliff Bldg. Co.*, 160 Ohio App.3d 843, 2005-Ohio-2410, 828 N.E.2d 1081, ¶ 8 (9th Dist.).

103. Additionally, any such contract, assignment of wages, or Deduction Card is unconscionable because the Plaintiff—by virtue of the Ohio Revised Code, the collective bargaining agreements in place, and the mandatory recognition of only one bargaining unit—created “the absence of meaningful choice on the part of [Plaintiffs]” which was “combined with contract terms that are unreasonably favorable to the [unions].” *Sabo v. Hollister Water Assn.*, 4th Dist. Athens No.06CA8, 2007-Ohio-7178, ¶ 34, citing *Collins v. Click Camera & Video, Inc.*, 86 Ohio App.3d 826, 834, 621 N.E.2d 1294 (2d Dist. 1993).

104. Further, “price is an essential element of a contract that must be proven for the contract to be enforceable.” *Ross v. Belden Park Co.*, No. 1996CA00429, 1998 WL 347064, *3 (5th Dist. June 1, 1998) (internal quotation marks omitted). Any alleged contract between the Plaintiffs and Respondents had no stated amount—or price—to be deducted as union membership dues. Upon information and belief, there is no other document incorporated by reference into the Deduction Card which shows the essential price element.

105. Accordingly, any such contract, assignment of wages, or Deduction Card is invalid, and unconscionable.

106. Ms. Littlejohn is entitled to a declaration that any contracts she may have had with the unions or any assignment of wages are unenforceable contracts of adhesion, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts and ordering that the Respondents restore the Plaintiff to the financial situation as it existed at the time of her resignation by refunding all union membership dues collected after the date of the resignation.

107. The Union could have made the contract fair and enforceable, and can do so prospectively through execution of a fair and enforceable Deduction Card, by providing the ‘price’ element, notifying the party of the option of direct payment to the union rather than automatic dues deductions, allowing that dues deductions can be cancelled at any time, and correcting any other practices which the court determines to be unfair or improper.

COUNT FIVE: THE RESPONDENT UNION HAS BEEN UNJUSTLY ENRICHED

108. Ms. Littlejohn restates the foregoing allegations and incorporate them here as if fully re-written.

109. Any contract, agreement or assignment of wages has been rescinded or otherwise terminated.

110. By continuing to deduct union membership dues from the Plaintiff's paychecks after she resigned from union membership, the Unions has been unjustly enriched.

111. Specifically, the Union continued to deduct union membership dues while at the same time not providing services.

112. Ms. Littlejohn has demanded the refund of her union membership dues after she terminated her membership, but the Union has refused.

113. The Unions has thus retained a benefit under circumstances where it is inequitable to do so.

114. Accordingly, Ms. Littlejohn is entitled to damages in the form of a refund of her union membership dues, plus interest.

WHEREFORE, Ms. Littlejohn prays for the following relief:

A. A Declaration that the Respondents continued withdrawal of union membership dues from Plaintiffs' paychecks is unlawful;

B. A Declaration that the Plaintiff's contracts with their respective unions were rescinded or terminated upon the Plaintiff's resignations or are otherwise invalid;

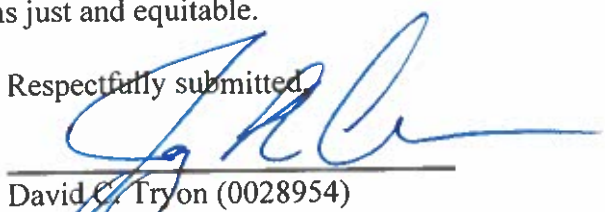
C. A refund of all union membership dues improperly withheld;

D. A permanent injunction barring further deductions;

E. An award of Plaintiff's costs and attorneys' fees; and

F. Any further relief the Board deems just and equitable.

Respectfully submitted,



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Attorneys for Claimant

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of
Necole Littlejohn,
Charging Party,
v.

Ohio Council 8, AFSCME, AFL-CIO,
Charged Party.

Case Number: 2023-ULP-12-0146

DISMISSAL OF UNFAIR LABOR PRACTICE CHARGE

Before Chair Zimpher, Vice Chair Collins, and Board Member Walter: June 20, 2024.

Necole Littlejohn (Charging Party) filed an unfair labor practice charge against the Ohio Council 8, AFSCME, AFL-CIO (Charged Party). The Charging Party alleged the Charged Party violated R.C. 4117.11(B)(1) and (2) by interfering with her rights and by attempting to cause an unfair labor practice.

Pursuant to R.C. 4117.12, the State Employment Relations Board (SERB) conducted an investigation of this charge. The investigation revealed no probable cause existed to believe the Charged Party violated R.C. 4117.11. Information gathered during the investigation reveals that the Union did not commit an unfair labor practice. Ms. Littlejohn did not submit her request to stop dues deductions during the 25 to 10 days prior to the date she signed her Dues Authorization and Membership Card and Checkoff Agreement. Based on the federal court decisions cited above, the Union is within its rights to specify the time period within which members must submit valid requests to stop dues deductions and does not attempt to cause the Employer to commit an unfair labor practice charge by refusing to stop dues deductions. As a result, the Union has not violated R.C. 4117.11(B)(1) or (2).

Accordingly, the charge is dismissed with prejudice for lack of probable cause to believe the statute has been violated.

It is so directed.

ZIMPHER, Chair; COLLINS, Vice Chair; and WALTER, Board Member, concur.



W. CRAIG ZIMPHER, CHAIR

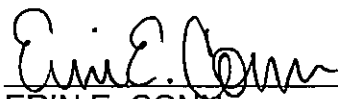
DISMISSAL OF UNFAIR LABOR PRACTICE CHARGE

Case No. 2023-ULP-12-0146

June 20, 2024

Page 2 of 2

I certify that this document was filed and a copy served upon each party or the representative of each party by registered e-mail, on this 20th day of June, 2024.

A handwritten signature in black ink, appearing to read "Erin E. Conn", is written over a horizontal line.

ERIN E. CONN
ADMINISTRATIVE OFFICER

June 20, 2024:4

Membership Application

Ohio Association of Public School Employees • 6805 Oak Creek Drive, Columbus, Ohio 43229 • (614)890-4770 • (800)76-OAPSE • (800)786-2773

Complete Entire Form / Print Firmly in Ink

[WHITE COPY - State Office] • [YELLOW COPY - School Treasurer] • [PINK COPY - Local Treasurer] • [GOLD COPY - New Member]

Soc. Sec. No. [Redacted] **Local No.** [Redacted] **Employer** Carrollton Exempted Schools

Last Name Sheldon **First Name** Matt **Middle Initial** A

Street Address 120 12th St. LOT A

City Carrollton **State** OHIO **ZIP Code** 44615

(Area Code)Home Phone 4 **(Area Code)Work Phone** 9 **M or F** M

Hours per Day 4 **Months per Year** 9 **Annual Salary** [Redacted]

Job Classification/Position Held Custodian **County of Residence** Carroll

Date of Birth	[Redacted]
State Dues	\$ [Redacted]
State Dues Paid	\$ [Redacted]
Local Dues	\$ [Redacted]
Balance DUE	\$ [Redacted]

Dues, contributions or gifts to OAPSE are not tax deductible as charitable contributions for Federal Income Tax purposes. However, they may be tax deductible as ordinary and necessary business expenses.

I hereby authorize the Ohio Association of Public School Employees as bargaining agent on matters of wages, hours, working conditions or other matters that may affect my employment. I further authorize and direct the Employer to deduct OAPSE State dues and Local dues as set forth herein or as increased from my salary or wages and remit the same to the OAPSE State Treasurer. This authorization shall remain in effect during my employment unless withdrawn by me in the manner provided in the Collective Bargaining Agreement between the Employer and OAPSE or, where there is no provision for withdrawal in the Agreement, only during a 10 day period from August 22 through August 31. I agree that any withdrawal of dues deduction authorization shall be in writing, executed and delivered during the revocation period by written notice served upon the Chief Fiscal Officer of the Employer and the OAPSE State Treasurer. I further agree that dues deduction may not be revoked at any other time or in any other manner except as provided herein.

Applicant's Signature Matt Sheldon **Date** 08/19/2010

Signed Up By [Redacted] **Date** [Redacted]