

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CHRISTOPHER RUEHMER,	:	APPEAL NO. C-200389
		TRIAL NO. A-2003087
MICHELLE LEHMAN,	:	
LINDSAY ANDERSON,	:	<i>OPINION.</i>
RACHEL BALDWIN,	:	
LINDA BOROWICZ,	:	
ALICIA ESSERT,	:	
CHARLES HAINS,	:	
MARCUS SHERMAN,	:	
DENNIS BARNETTE,	:	
and	:	
ROBERT NELSON,	:	
Plaintiffs-Appellants,	:	
vs.	:	
QUEEN CITY LODGE NO. 69, FRATERNAL ORDER OF POLICE,	:	
and	:	
DAN HILS, President of Queen City Lodge No. 69, Fraternal Order of Police,	:	
Defendants-Appellees.	:	

OHIO FIRST DISTRICT COURT OF APPEALS

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: July 9, 2021

Thomas Bruns and Christopher Wiest, for Plaintiffs-Appellants,

Lazarus & Lewis, LLC, Stephen S. Lazarus and R. Jessup Gage, for Defendants-Appellees.

MYERS, Presiding Judge.

{¶1} Plaintiffs-appellants Christopher Ruehmer, Michelle Lehman, Lindsay Anderson, Rachel Baldwin, Linda Borowicz, Alicia Essert, Charles Hains, Marcus Sherman, Dennis Barnette, and Robert Nelson (collectively referred to as plaintiffs) appeal from the trial court’s entry dismissing their complaint against defendants-appellees Queen City Lodge No. 69, Fraternal Order of Police (“FOP”) and Dan Hils, president of the FOP, for lack of subject-matter jurisdiction.

{¶2} In a single assignment of error, the plaintiffs argue that the trial court erred in determining that it did not have subject-matter jurisdiction over the claims asserted in the complaint. Because the plaintiffs’ claims arose out of and were inextricably intertwined with the collective-bargaining rights contained in R.C. Chapter 4117, we hold that the trial court correctly determined that the State Employment Relations Board (“SERB”) had exclusive jurisdiction over the claims, and we affirm its judgment.

Factual and Procedural Background

{¶3} The FOP is represented by legal counsel, who provides it with various legal services including, but not limited to, representing FOP members in employment disciplinary administrative proceedings and defending FOP members in civil litigation for claims arising out of their employment. The law firm of Lazarus & Lewis, LLC, (“Lazarus”) serves as legal counsel for the FOP.

{¶4} For the purposes of evaluating the FOP’s legal needs and potential providers of legal services, Hils appointed a Legal Services Committee. This committee determined that Lazarus was the best option to serve as legal counsel for

the FOP, and it issued a memorandum so recommending. The Executive Board of the FOP subsequently passed a motion granting Lazarus an additional 18-month contract as counsel for the FOP and disqualifying two of Lazarus's competitors from ever serving as counsel for the FOP.

{¶5} At a subsequent meeting of the FOP on July 27, 2020, a member of the FOP made the following motion:

I move that the decision to select FOP counsel be determined by a Department-wide vote, to occur within 45 days, and to reverse the decisions of the Executive Board awarding the legal services contract to Lazarus & Lewis and disqualifying Peter Stackpole and Zach Gottesman from consideration. This motion affords the entire membership the opportunity to select which legal firm represents us. After the passage of this motion, informational meetings can be held by each competing firm and we can all decide who gets the legal contract.

{¶6} Approximately 307 FOP members attended this meeting. But approximately 65 officers in attendance had to leave the meeting to begin their shift prior to a vote on the motion occurring. Following a vote, the FOP determined that the motion failed to pass because the votes in favor of the motion were less than 50 percent of the number of FOP members who signed in at the beginning of the meeting.

{¶7} The plaintiffs filed a complaint against the FOP and Hils seeking a declaratory judgment and injunctive relief. The complaint alleged that the FOP failed to follow Article XII, Section 4 of the FOP Constitution in determining whether

the motion concerning the selection of counsel for the FOP had passed. Article XII, Section 4 of the FOP Constitution provides that “[t]he meetings of this Lodge shall be governed, in all cases not provided for in the Constitution and By-Laws, by the latest edition of Robert’s Rules of Order.” The complaint further alleged that Article VIII of Robert’s Rules of Order, which provides in relevant part that “[w]hen a quorum is present, a majority vote, that is a majority of the votes cast, ignoring blanks, is sufficient for the adoption of any motion that is in order” should have governed the determination as to whether the vote on the motion had passed. According to the complaint, if Article VIII of Robert’s Rules of Order had been applied, the motion would have passed because a majority of FOP members who voted on the motion voted in favor of it. The complaint sought a declaration that the motion had passed by a majority of the votes cast and asked the court to compel the FOP to conduct a department-wide vote to select legal counsel within 45 days.

{¶8} The complaint additionally contained a claim for unlawful retaliation, alleging that the FOP threatened various members with expulsion for participating in this action in violation of Article 1, Section 16 of the Ohio Constitution and Ohio public policy. It did not allege any actual retaliation.

{¶9} The FOP and Hils filed a Civ.R. 12(B)(1) motion to dismiss the complaint for lack of subject-matter jurisdiction. They contended that SERB had exclusive jurisdiction over the plaintiffs’ claims because the claims concerned unfair labor practices and directly implicated R.C. Chapter 4117, which established SERB and its exclusive jurisdiction over the resolution of public-sector labor disputes. The trial court granted the motion to dismiss, finding that it lacked subject-matter

jurisdiction because the plaintiffs' claims were inextricably intertwined with the rights created by R.C. Chapter 4117 and fell within the exclusive jurisdiction of SERB.

{¶10} The plaintiffs appealed the trial court's granting of the motion to dismiss.

Subject-Matter Jurisdiction

{¶11} In a single assignment of error, the plaintiffs argue that the trial court erred as a matter of law in determining that it lacked subject-matter jurisdiction.

{¶12} We review a trial court's dismissal under Civ.R. 12(B)(1) for lack of subject-matter jurisdiction de novo. *Brown v. Cincinnati Public Schools*, 1st Dist. Hamilton No. C-150345, 2016-Ohio-4675, ¶ 5. In reviewing a Civ.R. 12(B)(1) dismissal, we "must determine if the plaintiff has alleged 'any cause of action cognizable by the forum.'" *Id.* at ¶ 8, quoting *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989). Unlike a trial court's review of a motion to dismiss filed under Civ.R. 12(B)(6), "the trial court is not confined to the allegations of the complaint when determining its subject-matter jurisdiction pursuant to a Civ.R. 12(B)(1) motion to dismiss, and it may consider material pertinent to such inquiry without converting the motion into one for summary judgment." *Id.*, quoting *Southgate Dev. Corp. v. Columbus Gas Transm. Corp.*, 48 Ohio St.2d 211, 358 N.E.2d 526 (1976), paragraph one of the syllabus.

{¶13} Because the trial court's dismissal was based on its finding that the claims asserted in the plaintiffs' complaint were inextricably intertwined with the rights created by R.C. Chapter 4117, a brief discussion of R.C. Chapter 4117 (titled Public Employees' Collective Bargaining) is instructive before we turn to the merits of the plaintiffs' argument.

{¶14} Upon enactment, R.C. Chapter 4117 “established 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.” *Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police, Capital City Lodge No. 9*, 59 Ohio St.3d 167, 169, 572 N.E.2d 87 (1991). SERB was created by R.C. 4117.02(A), and it was given exclusive jurisdiction over causes of action concerning the rights and obligations set forth in R.C. Chapter 4117. The rights of public employees, as well as restrictions on public employers, are contained in R.C. 4117.03, and include such things as the right to form and participate in employee organizations, to engage in activities for the purpose of collective bargaining, to be represented by an employee organization, and to present grievances and have them adjusted without the intervention of a bargaining representative. R.C. 4117.11 sets forth various unfair labor practices that public employees and employers have a right to be free from, and R.C. 4117.12 provides that “[w]hoever violates section 4117.11 of the Revised Code is guilty of an unfair labor practice remediable by the state employment relations board as specified in this section.” The procedures set forth in R.C. Chapter 4117 “do not provide for the filing of a private action in the common pleas court,” and the Supreme Court of Ohio has long held that “SERB has exclusive jurisdiction to decide matters committed to it pursuant to R.C. Chapter 4117.” *Franklin Cty. Law Enforcement Assn.* at 170.

{¶15} However, R.C. Chapter 4117 “was not meant to give SERB exclusive jurisdiction over claims that a party might have in a capacity other than as a public employee, employer, or union asserting collective bargaining rights.” *Id.* at 171. So where a party asserts rights that are independent of the rights set forth in R.C.

Chapter 4117, “the party’s complaint may properly be heard in common pleas court.” *Id.* at paragraph two of the syllabus. But where an asserted claim arises from or depends on the collective-bargaining rights in R.C. Chapter 4117, or is inextricably intertwined with the rights established in R.C. Chapter 4117, SERB has exclusive jurisdiction over the claim. *Id.*

{¶16} Here, the trial court found that the claims filed in the court of common pleas fell within the exclusive jurisdiction of SERB because they were “inextricably intertwined with rights created by R.C. Chapter 4117.” The plaintiffs argue that the claims asserted in the complaint concern a violation of the FOP’s constitution and are independent of the rights set forth in R.C. Chapter 4117. The FOP and Hils, however, characterize the plaintiffs’ claims as allegations that the FOP failed to provide adequate representation in collective bargaining, thus falling directly under R.C. Chapter 4117. They also argue that even if not directly covered by a provision of R.C. Chapter 4117, the claimed violations in voting procedure are so intertwined with rights under R.C. Chapter 4117 that SERB has exclusive jurisdiction.

{¶17} We consider plaintiffs’ declaratory-judgment and retaliation claims separately to determine whether the trial court properly found that it lacked subject-matter jurisdiction.

1. Declaratory-Judgment Claim

{¶18} In their first claim, which sought a declaration that the motion to select legal counsel for the FOP by a department-wide vote had passed, the plaintiffs alleged that the FOP failed to follow the union constitution when determining whether the motion had passed. The complaint specifically asserted that Article XII, Section 4 of the FOP Constitution provides that the latest edition of Robert’s Rules of

Order governs all matters not provided for in the union constitution and by-laws, and that, had Robert's Rules of Order been followed, the motion would have passed because a majority of the votes cast were cast in favor of the motion.

{¶19} The Supreme Court of Ohio considered whether a claim asserting a violation of a union constitution fell within the jurisdiction of SERB or the court of common pleas in *Franklin Cty. Law Enforcement Assn.*, 59 Ohio St.3d 167, 572 N.E.2d 87. In that case, the plaintiffs (the Franklin County Law Enforcement Association and certain employees of the Franklin County Sheriff's Department) contended that a partial settlement that had been reached between the FOP, the county commissioners, and the sheriff concerning the resolution of outstanding issues between the sheriff and his employees was an attempt by the defendants "to defeat the rights of the employees to a fair vote at SERB." *Id.* at 167-168. The complaint further alleged that the partial settlement violated R.C. 325.17, which gives the sheriff, who had not approved the partial settlement, the authority to fix the compensation of his employees. And it additionally alleged that the FOP had scheduled a vote on the settlement without providing the employees time to read the agreement beforehand in violation of R.C. 4117.19(C)(4) and the FOP's own constitution. The plaintiffs sought injunctive relief to restrain the FOP from conducting a vote on the partial settlement, as well as declaratory relief to determine "the validity of the tentative partial agreement entered into between the FOP and the Commissioners, and the respective rights of the parties with respect thereto, *vis-a-vis* the provisions of R.C. §§ 325.17 and 4117.19(C)(4)." *Id.* at 168.

{¶20} The trial court dismissed the plaintiffs' complaint, finding that it lacked subject-matter jurisdiction because the asserted claims fell "squarely under

the ambit of the collective bargaining act.” *Id.* The court of appeals reversed the trial court’s judgment, finding that the declaratory relief sought was “an alternative to other remedies” and that “the validity of the tentative partial agreement under R.C. 325.17 could not be conclusively determined by a legislatively created agency like SERB.” *Id.* The Supreme Court of Ohio subsequently reversed the court of appeals, finding that the court of common pleas lacked jurisdiction on all claims. It stated that:

More fundamentally, plaintiffs simply have not asserted any claims that fall outside the scope of R.C. Chapter 4117. That chapter was meant to regulate in a comprehensive manner the labor relations between public employees and employers. Necessarily, then, it was not meant to give SERB exclusive jurisdiction over claims that a party might have in a capacity other than as a public employee, employer, or union asserting collective bargaining rights. Thus, as a matter of jurisdiction, 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. However, if a party asserts claims that arise from or depend on the collective bargaining rights created by R.C. Chapter 4117, the remedies provided in that chapter are exclusive. Of course, even if a common pleas court has jurisdiction, R.C. 4117.10(A) in some cases may preempt the party’s independent claim.

Id. at 170-171.

{¶21} The court’s treatment of the plaintiffs’ third claim, which alleged that the FOP had violated its constitution by scheduling a vote on the settlement without

providing the employees time to read the agreement beforehand, is relevant to our analysis in this case. The court pointed out that in support of that claim, the plaintiffs expressly relied on R.C. 4117.19(C)(4), and additionally attempted to justify the claim by reliance on the FOP constitution. *Id.* at 171. The court noted that “[although] union members can have common-law contractual rights that exist independently of R.C. Chapter 4117, plaintiffs did not specify the FOP constitutional provision that was allegedly violated,” and that “plaintiffs’ claim under the FOP constitution was inextricably intertwined with rights purportedly created and imposed by R.C. Chapter 4117.” *Id.*

{¶22} The FOP and Hils argue that the holding in *Franklin Cty. Law Enforcement Assn.* on this third claim extends to all claims involving a dispute between a union and its members over the interpretation of the union’s constitution and by-laws. We do not read the court’s holding so broadly. In our view, the court found that the asserted constitutional violation was inextricably intertwined with the rights in R.C. Chapter 4117 because “plaintiffs’ claims were dependent on the framework established in R.C. Chapter 4117.” *Id.* As the *Franklin Cty. Law Enforcement Assn.* court noted, the plaintiffs alleged both violations of the statute and the union constitution in support of the same claim.

{¶23} In the present case, plaintiffs alleged only a violation of the union constitution, not a specific violation of R.C. Chapter 4117. That, however, does not end the inquiry. We must determine whether, as the FOP and Hils contend, the claim arises out of and is inextricably intertwined with the rights of R.C. Chapter 4117. Following our review of the record, we find that it is.

{¶24} R.C. 4117.11 sets forth what are considered to be unfair labor practices both by the public employer and by the union and public employees. As to the latter, R.C. 4117.11(B) provides in relevant part:

It is an unfair labor practice for an employee organization, its agents, or representatives, or public employees to:

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code. This division does not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein, or an employer in the selection of his representative for the purpose of collective bargaining [sic] or the adjustment of grievances.

* * *

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

{¶25} R.C. 4117.03 sets forth the rights of public employees, and it provides that:

(A) Public employees have the right to:

(1) Form, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in, except as otherwise provided in Chapter 4117. of the Revised Code, any employee organization of their own choosing;

(2) Engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection;

(3) Representation by an employee organization;

(4) Bargain collectively with their public employers to determine wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement, and enter into collective bargaining agreements;

(5) Present grievances and have them adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of the collective bargaining agreement then in effect and as long as the bargaining representatives have the opportunity to be present at the adjustment.

{¶26} We find that the plaintiffs' first claim arises from and is dependent on, and is inextricably intertwined with, the rights contained in this provision, specifically the right to "[f]orm, join, assist, or participate in, or refrain from forming, joining, assisting, or participating in * * * any employee organization of their own choosing," as set forth in R.C. 4117.03(A)(1). The plaintiffs have the right to participate in the FOP. This includes partaking in all union activities, including voting on union matters. By alleging a failure to properly tabulate the results of a vote to select legal counsel for the union, plaintiffs are in effect accusing the FOP and Hils of impeding their right to participate in the union by restraining the plaintiffs in the exercise of their voting rights. And this conduct, if proven, would constitute an unfair labor practice under R.C. 4117.11(B)(1), which prohibits an employee organization such as the FOP from "[r]estrain[ing] or coerce[ing] employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code." When the plaintiffs' claim is broken down, it is apparent that they simply have not asserted a

claim “in a capacity other than as a public employee, employer, or union asserting collective bargaining rights,” that is independent of the rights in R.C. Chapter 4117. *See Franklin Cty. Law Enforcement Assn.*, 59 Ohio St.3d at 171, 572 N.E.2d 87.

{¶27} Our determination is in accord with the Supreme Court of Ohio’s application of *Franklin Cty. Law Enforcement Assn.* in subsequent cases in which it considered the issue of whether jurisdiction over particular claims fell to SERB or to the court of common pleas. The court has consistently maintained that the dispositive test to be applied in determining jurisdiction is whether the asserted claims arise from or are dependent on the collective-bargaining rights in R.C. Chapter 4117. *State ex rel. Cleveland v. Sutula*, 127 Ohio St.3d 131, 2010-Ohio-5039, 937 N.E.2d 88, ¶ 20; *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 146 Ohio St.3d 315, 2016-Ohio-478, 56 N.E.3d 913, ¶ 56.

{¶28} In *Sutula*, a union representing a group of city employees filed a complaint in the court of common pleas after it was unable to reach an agreement on a collective-bargaining agreement with the city following lengthy negotiations pursuant to R.C. Chapter 4117. The complaint alleged that the city had a duty to perform in accordance with a prestrike settlement offer that the city asserted was no longer in existence after initially being rejected by the union. The city filed a motion to dismiss, arguing that SERB had exclusive jurisdiction over the complaint. After the trial court denied the motion to dismiss, the city filed a complaint for a writ of prohibition in the Eight District Court of Appeals. The court of appeals dismissed the complaint.

{¶29} The *Sutula* court reversed the dismissal and granted the writ after finding that the trial court lacked jurisdiction over the claims. *Sutula* at ¶ 25. It held

that the claims asserted in the union’s complaint arose from and were dependent on the collective-bargaining rights set forth in R.C. Chapter 4117. *Id.* at ¶ 17. In so concluding, the court examined the conduct alleged in the complaint (that the city failed to abide by an agreement reached through collective-bargaining negotiations conducted pursuant to R.C. Chapter 4117) and found that the alleged conduct constituted unfair labor practices under R.C. 4117.11(A)(1) and (A)(5). *Id.* at ¶ 21. That the claims were not couched as unfair labor practices did not prevent SERB from acquiring jurisdiction, as the court clarified that “SERB has exclusive jurisdiction over matters within R.C. Chapter 4117 in its entirety, not simply over unfair labor practices claims.” *Id.* at ¶ 20, quoting *Assn. of Cleveland Fire Fighters, Local 93 of the Internatl. Assn. of Fire Fighters v. Cleveland*, 156 Ohio App.3d 368, 2004-Ohio-994, 806 N.E.2d 170, ¶ 12 (8th Dist.).

{¶30} In *State ex rel. Ohio Civ. Serv. Emps. Assn.*, the court considered whether a court of common pleas or SERB had “jurisdiction to determine whether employees of privately owned or operated prisons are public employees, as defined by R.C. 4117.01(C).” *State ex rel. Ohio Civ. Serv. Emps. Assn.*, 146 Ohio St.3d 315, 2016-Ohio-478, 56 N.E.3d 913, at ¶ 1. In that case, a labor union representing Ohio’s public employees had filed a complaint in the court of common pleas alleging various claims concerning 2011 Am.Sub.H.B. No. 153, which dealt with the operation, management, and sale of state correctional facilities. As relevant to this appeal, the complaint sought as an alternative to the asserted claims a declaratory judgment that employees who worked at certain correctional facilities were public employees, as defined by R.C. 4117.01(C). *Id.* at ¶ 7. The trial court granted a motion to dismiss the claim for a declaratory judgment after finding that it lacked subject-matter

jurisdiction to determine whether the named employees were public employees. *Id.* at ¶ 8. On appeal, the Tenth District Court of Appeals affirmed the dismissal of the declaratory-judgment claim. *Id.* at ¶ 9.

{¶31} While acknowledging that “[t]he 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,” the Supreme Court of Ohio held that the union’s claim that employees who worked at certain correctional facilities were public employees, as defined by R.C. 4117.01(C), arose from or depended on the collective-bargaining rights in R.C. Chapter 4117. *Id.* at ¶ 54 and 58.

{¶32} Like the claims asserted in *Sutula* and *State ex rel. Ohio Civ. Serv. Emps. Assn.*, the first claim in this case does not directly allege an unfair labor practice. But the conduct alleged in support of the claim is conduct that, if proven, would constitute an unfair labor practice under R.C. 4117.11(B)(1), and, consequently, the claim arises from and depends on the collective-bargaining rights in R.C. Chapter 4117. Artful pleading does not alter the essence of the claim—that the plaintiffs were restrained in the exercise of their voting rights and deprived of the right accorded to them under R.C. Chapter 4117 to participate in union activities.

{¶33} We have also found several cases from our sister districts to be instructive and supportive of our determination that the claim at issue in this case falls within the jurisdiction of SERB.

{¶34} In *Murray v. Columbus*, 10th Dist. Franklin No. 13AP-912, 2014-Ohio-2790, a former lieutenant with the Columbus Police Department filed a complaint against the city of Columbus, the police chief, the public safety director, his union, and the union president alleging, as relevant to this appeal, that the city and the

union fraudulently represented to a federal district court in separate litigation that the parties had reached a settlement of plaintiff's grievance, intentionally misled plaintiff regarding the resolution of the grievance, and engaged in a civil conspiracy to deceive plaintiff on the status of his grievance. The trial court dismissed the plaintiff's complaint after determining that it lacked subject-matter jurisdiction over several of the asserted claims because the claims fell within the exclusive jurisdiction of SERB, and that, with respect to the remaining claims over which it had jurisdiction, plaintiff had failed to state claims upon which relief could be granted.

{¶35} On appeal, the Tenth District held that all claims asserted by plaintiff fell within the exclusive jurisdiction of SERB. It found that the defendants' conduct as alleged by the plaintiff—falsely claiming that a grievance had been settled and misleading plaintiff regarding the resolution of the grievance—constituted, if proven, an unfair labor practice under R.C. 4117.11(B)(6) and 4117.11(A)(8). *Id.* at ¶ 19 and 22. As to the asserted civil-conspiracy claim, the court stated that “[t]he fact that appellant has pleaded the claim as a civil conspiracy does not alter the nature and character of the underlying conduct or confer subject matter jurisdiction on the court of common pleas.” *Id.* at ¶ 23.

{¶36} As in *Murray*, the plaintiffs in this case attempted to confer subject-matter jurisdiction on the court of common pleas by pleading their claim as a failure to follow the union constitution when determining the results of a vote, as opposed to alleging an unfair labor practice or a violation of a right accorded to public employees under R.C. Chapter 4117. But the conduct supporting the allegation—that the FOP and Hils failed to properly tabulate the results of a vote on a motion, thus

restraining the plaintiffs' right to vote and participate in union activities—is conduct that, if proven, constitutes an unfair labor practice under R.C. 4117.11(B)(1).

{¶37} The claims and the alleged conduct on the part of the defendants in *Murray* and the case at bar are distinguishable from the claims and conduct alleged in other cases from our sister districts that have found that claims fell within the jurisdiction of the court of common pleas, rather than SERB. In *Bd. of Trumbull Cty. Commrs. v. Gatti*, 2017-Ohio-8533, 100 N.E.3d 68 (11th Dist.), Gatti, an employee of the Trumbull County Engineer's Office and a member of the union representing Engineer Office employees, was involved in a workplace accident. *Id.* at ¶ 2. Following the accident, Gatti was on various periods of leave from work and collected workers' compensation benefits. The Engineer's Office also provided hospitalization benefits to Gatti during his leave, although Gatti was required by a collective-bargaining agreement to pay a proportionate share of the advanced hospitalization-insurance premiums. Gatti failed to pay the balance on the premiums, and the county filed suit against him for breach of contract and unjust enrichment. *Id.* at ¶ 4-5. Gatti moved to dismiss the complaint for lack of subject-matter jurisdiction, arguing that SERB had exclusive jurisdiction. The trial court denied the motion to dismiss, and the Eleventh District affirmed. *Id.* at ¶ 6. It found that no allegations had been made relating to an unfair labor practice, and that the complaint concerned remuneration for an employee's share of a hospitalization-insurance premium. *Id.* at ¶ 15. The court held that "[a]lthough appellant's duty to pay his share and appellees' right to reimbursement arise out of the CBA, there is no provision under R.C. Chapter 4117 that creates such rights or obligations," and "[i]n

our view, therefore, appellees' right to reimbursement is independent of the rights created by R.C. Chapter 4117." *Id.*

{¶38} Similarly, in *Cleveland Patrolmen's Assn. v. White*, 109 Ohio App.3d 329, 672 N.E.2d 195 (8th Dist.1996), the Eighth District held that the court of common pleas had jurisdiction over a complaint alleging violations of a city charter and city ordinances in the alleged improper hiring of nonpolice personnel to perform clerical police duties. The court found that the complaint did not allege a violation of the parties' collective-bargaining agreement, but instead only alleged violations of the city's own charter and codified ordinances that concerned civil service eligibility lists and hiring pursuant to competitive examinations. *Id.* at 335. It further found that "the complaint in mandamus asserts rights independent of the collective bargaining agreement," and that "the collective bargaining agreement does not specifically address civil service eligibility lists or hiring pursuant to competitive examinations." *Id.* It accordingly determined that the dispute raised in the complaint did not arise out of, and was not connected with, the collective-bargaining agreement and did not fall within the jurisdiction of SERB. *Id.* at 336-337.

{¶39} Unlike the claims asserted in *Gatti* and *White*, the plaintiffs' first claim alleging that the FOP and Hils violated the union constitution by failing to properly tabulate the results of a vote, is inextricably intertwined with the collective-bargaining rights in R.C. Chapter 4117. As we have discussed, the plaintiffs' allegations are in effect contending that the FOP and Hils restrained their right to vote and to participate in union activities. And this conduct, if proven, would constitute an unfair labor practice under R.C. 4117.11(B)(1).

{¶40} Because the plaintiffs' first claim not only arises from and is dependent on the collective-bargaining rights in R.C. Chapter 4117, but also alleges conduct that would constitute an unfair labor practice if proven, we hold that the trial court did not err in determining that the claim fell within the exclusive jurisdiction of SERB and that it lacked subject-matter jurisdiction over the claim.

2. Unlawful-Retaliation Claim

{¶41} The plaintiffs' complaint additionally contained a claim for unlawful retaliation. The complaint alleged that, prior to this lawsuit being filed, the FOP threatened the plaintiffs with expulsion from the FOP for participating in the litigation, that Article 1, Section 16 of the Ohio Constitution protects people from retaliation for seeking judicial relief in the courts, and that Ohio public policy prohibits retaliation by labor unions against members for seeking judicial relief.

{¶42} While the plaintiffs couched this claim as a violation of the Ohio Constitution and Ohio public policy, we find that it arises from, and is inextricably intertwined with, the rights set forth in R.C. Chapter 4117. *See Franklin Cty. Law Enforcement Assn.*, 59 Ohio St.3d at 171, 572 N.E.2d 87. The threatened expulsion from the FOP for participating in this lawsuit directly implicates an employee's right to join and participate in the union. *See R.C. 4117.03(A)(1)*.

{¶43} We accordingly find that the trial court did not err in dismissing the plaintiffs' claim for unlawful retaliation based on its determination that it lacked subject-matter jurisdiction over the claim, which fell within the exclusive jurisdiction of SERB. The plaintiffs' assignment of error is overruled.

Conclusion

{¶44} Because the claims asserted in the plaintiffs' complaint arise out of and are inextricably intertwined with the rights set forth in R.C. Chapter 4117, they fell within the exclusive jurisdiction of SERB. The trial court, therefore, did not err in dismissing the claims for lack of subject-matter jurisdiction, and its judgment is affirmed.

Judgment affirmed.

BERGERON and HENDON, JJ., concur.

SYLVIA SIEVE HENDON, retired, from the First Appellate District, sitting by assignment.

Please note:

The court has recorded its own entry on the date of the release of this opinion.