

IN THE SUPREME COURT OF OHIO

Greater Dayton Regional Transit Authority,

Appellant-Appellant,

v.

State Employment Relations Board,

And

**Amalgamated Transit Union, AFL-CIO,
Local 1385,**

Appellees-Appellees.

Supreme Court Case No.: 15-1205

On Appeal from the Franklin County Court
of Appeals, Tenth Appellate District

Court of Appeals
Case No. 14AP-876

**APPELLEE, AMALGAMATED TRANSIT UNION, LOCAL 1385'S MEMORANDUM
OPPOSING APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION**

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I. THIS CASE IS NOT OF PUBLIC AND GREAT GENERAL INTEREST

Under the Ohio Constitution, Article IV, §2, the judgment of the Court of Appeals serves as the ultimate and final adjudication of a case unless the issue appealed involves a question of public or great general interest. This Honorable Court properly reserves its discretionary exercise of jurisdiction for those cases that pose questions of “immediate public significance” and not those that simply are important to the particular litigants involved. *Williamson v. Rubich* (1960), 171 Ohio St. 253, 255, 168 N.E.2d 876, 877 (quoting *Rice v. Sioux City Memorial Park Cemetery, Inc.* (1955), 349 U.S. 70, 78 n. 2, 75 S.Ct. 614, 619 n. 2). It has been recognized that “[i]f the case is not one of great public or general interest, the judgment of the Court of Appeals, although erroneous, is final and not subject to review.” *Kern v. Contract Cartage Co.*, 55 Ohio App. 481, 486, 9 N.E.2d 869, 872 (citation omitted).

Appellant, Greater Dayton Regional Transit Authority (“GDRTA”), attempts to improperly characterize its appeal of the Tenth District Court of Appeals (“Tenth District”) decision as a case of public or great general interest. This case is not of public or great general interest but rather one that is specific to these litigants. Put bluntly, GDRTA filed an appeal from an Order of the Ohio State Employment Relations Board (“SERB”) in the wrong court and is now requesting this Court to undo its fatal filing. In pursuit of this objective, GDRTA invites the Court to prostitute sacrosanct principles of statutory interpretation. Since the question herein is only relevant to the parties to this litigation, there is no question of immediate public significance or great general interest involved. Accordingly, the Court’s review of the merits of GDRTA’s appeal is not warranted

II. STATEMENT OF THE CASE AND FACTS

On April 24 and May 3, 2014, the Amalgamated Transit Union Local 1385 (“Union”) filed with SERB unfair labor practice charges against GDRTA based upon acts occurring in Montgomery County. (GDRTA Memorandum in Support, App. A, pp.1-2, ¶ 2.) In May 2014, SERB issued a Final Order finding that GDRTA committed unfair labor practices related to the processing of numerous grievances filed by the Union. On June 19, 2014, GDRTA filed an appeal of the SERB Order in the Franklin County Court of Common Pleas- the wrong court. SERB and the Union filed motions to dismiss, arguing that the Franklin County Court of Common Pleas lacked subject-matter jurisdiction because GDRTA failed to file its appeal consistent with the jurisdictional requirements of R.C. 4117.13(D). (*Id.* at p. 2, ¶4.)

Pursuant to Ohio Revised Code 4117.13(D), the Ohio General Assembly set forth the jurisdictional requirements that must be satisfied in order to perfect an appeal from a SERB Order issued in an unfair labor practice case. The requirements under R.C. 4117.13(D) are jurisdictional and specific to SERB Final Orders in unfair labor practice cases. Specifically, R.C. 4117.13(D) specifically provides:

Any person aggrieved by any Final Order of the Board granting or denying in whole or in part, the relief sought may appeal to the Court of Common Pleas of any county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, by filing in the court a Notice of Appeal setting forth the Order appealed from and the grounds of appeal.

Owing to the above, jurisdiction must be invoked in Common Pleas Court of the County in which the unfair labor practices were committed, where the person resides or “transacts business”. In the instant matter, there is no dispute the unfair labor practices were committed by GDRTA in Montgomery County and that GDRTA resides in Montgomery County. (GDRTA Memorandum in Support, App. B, pp. 1-2.) Therefore, the remaining jurisdictional question is

whether GDRTA “transacts business” in Franklin County within meaning of R.C. Chapter 4117. In a thinly veiled litigation prompted afterthought triggered by its defective filing in Franklin County, GDRTA clung to the sole remaining jurisdictional hook and claimed it “transacts business” in Franklin County.

Both the trial court and the Tenth District Court of Appeals (“Tenth District”) held that the Franklin County Court of Common Pleas lacked subject matter jurisdiction because GDRTA did not “transacts business” in Franklin County for purposes of securing jurisdiction under R.C. 4117.13(D). As a threshold matter, the Tenth District found the phrase “transacts business” ambiguous and as such applied the framework set forth at R.C. 1.49 for determining legislative intent. The Tenth District then concluded that because R.C. 4117.13(D) mirrors §160(f) of the National Labor Relations Act (“NLRA”), it was appropriate to look to federal precedent interpreting “transacts business” as used under the NLRA. Employing this interpretive tool as guidance, the Tenth District examined federal precedent interpreting this phrase and concluded that a physical presence is required in the jurisdiction in order to satisfy the “transacts business” requirement at R.C. 4117.13(D). (*Id.* at p. 8.) Since GDRTA plainly has no physical presence in Franklin County, the Tenth District properly held that GDRTA failed to satisfy the jurisdictional requirements of R.C. 4117.13(D) and therefore affirmed the trial court’s decision to dismiss the appeal.

The lower courts’ conclusion the phrase “transacts business” is ambiguous and that federal case law interpreting the NLRA may be used for guidance when interpreting R.C. Chapter 4117 are hallmark applications of well settled law. Indeed, there is no unique issue presented by this appeal and it certainly does not present a question of public or great general

interest. Nothing warrants this Court’s further review of the matter. For these reasons and the reasons that follow, the Court should decline jurisdiction over this appeal.

III. ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law I: Where The Words Of A Statute Are Susceptible Of More Than One Reasonable Interpretation, The Statute Is, As A Matter Of Law, Ambiguous.

The paramount goal of statutory interpretation is to ascertain and give effect to the legislature’s intent in enacting the statute. *Yonkings v. Wilkinson*, 86 Ohio St. 3d 225, 227, 714 N.E.2d 394, 396 (1999), citing *State v. S.R.*, 63 Ohio St. 3d 590, 594, 589 N.E.2d 1319, 1323 (1992). In making this determination, “the court first looks to the language in the statute and the purpose to be accomplished’.” (Citation omitted.) *State ex rel. Pennington v. Gundler*, 75 Ohio St. 3d 171, 173, 661 N.E.2d 1049, 1051 (1996). In the absence of a definition of a word or phrase used in a statute, words are to be given their common, ordinary, and accepted meaning. *State v. Black*, 142 Ohio St. 3d 332, 340, 2015-Ohio-513, 30 N.E.3d 918, ¶ 39, citing *Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948), paragraph five of the syllabus. “[T]o determine the common, everyday meaning of a word, [courts] have consistently used dictionary definitions.” *Campus Bus Serv. v. Zaino*, 98 Ohio St. 3d 463, 466, 2003-Ohio-1915, 786 N.E.2d 889, ¶ 21, citing *State v. Wells*, 91 Ohio St.3d 32, 34, 740 N.E.2d 1097 (2001).

“It is only where the words of a statute are ambiguous, uncertain in meaning, or conflicting that a court has the right to interpret a statute.” *State ex rel. Toledo Edison Co. v. Clyde*, 76 Ohio St.3d 78, 81, 668 N.E.2d 498 (1997). “A statute is ambiguous when it is reasonably susceptible to more than one meaning.” *Black*, at ¶ 38, citing *State v. Jordan*, 89 Ohio St.3d 488, 492, 733 N.E.2d 601 (2000). As such, ambiguity exists where “the language is subject to [more than one] reasonable, but conflicting, interpretation[.]” *Clyde*, 76 Ohio St. 3d 508 at 513,

668 N.E.2d 498. When construing an ambiguous statute, a court may consider a number of factors to determine legislative intent, including: (1) the object sought to be attained,(2) the circumstances under which the statute was enacted, (3) the legislative history, (4) the common law or former statutory provisions, including law upon the same or similar subjects, (5) the consequences of particular construction, and (6) the administrative construction of the statute. *Cline v. Ohio Bur. of Motor Vehicles*, 61 Ohio St.3d 78, 81, 676 N.E.2d 519 (1997); R.C. 1.49.

GDRTA asserts the Tenth District declared the phrase “transacts business” ambiguous “simply because it was able to construct an alternative so-called ‘reasonable’ definition for the phrase.” (GDRTA Memorandum in Support, p.7.) GDRTA misapprehends the Tenth District’s opinion. In finding ambiguity in the phrase “transacts business,” the Tenth District did not rely solely on the existence of multiple definitions. In fact, the Tenth District acknowledged that “merely because a word might have more than one definition does not render it necessarily ambiguous.” (*Id.* at App A, ¶ 18.) Instead, the Tenth District found, “[r]esorting to dictionary definitions, and case law that uses such dictionary definitions[] as GDRTA urges the court to do, reveals materially differing definitions [of “transacts business”] that, if applied to the present case, would result in different outcomes.” (*Id.* at ¶ 15.)

In finding “transacts business” ambiguous, the Tenth District relied on: (1) the existence of multiple dictionary definitions (*Id.* at ¶¶ 16-18), (2) the different outcomes resulting from application of those definitions (*Id.* at ¶¶ 15, 18), and (3) the equal reasonableness of each definition and its resultant outcome (*Id.* at ¶18). The Tenth District concluded that the application of the multiple definitions resulted in more than one reasonable interpretation of the phrase “transacts business” as used in R.C. 4117.13(D). (*Id.* at ¶¶ 15-18.)

The Tenth District, as well as the trial court, properly applied well-established law to find the phrase “transacts business” ambiguous. Therefore, no further review of the matter is required and this Court should decline jurisdiction.

Proposition of Law II: R.C. 4117.13(D)’s Phrase “Transact Business” Is Ambiguous Because It Has More Than One Reasonable Interpretation.

Both the trial court and the Tenth District properly held the phrase “transacts business” is ambiguous as used in R.C. 4117.13(D). The lower courts correctly concluded that the term is ambiguous because it is subject to more than one reasonable interpretation. The trial court found “transacts business” may mean any business, the majority of its business, business related to its main purpose or business related only to the ULP. (Appellant’s Memorandum in Support, App. A, ¶ 13.) The Tenth District determined the phrase could mean the prosecution of negotiations or commercial, industrial or professional dealings including the buying and selling of commodities or services- a definition asserted by GDRTA. Furthermore, relying upon the definition of “transact” in *Kentucky Oaks Mall v. Mitchell’s Formal Wear, Inc.*, 53 Ohio St.3d 73, 75-76, 559 N.E.2d 477 (1990) and the definition of “business” in *City of Westerville v. Kuehnert*, 50 Ohio App.3d 77, 553 N.E.2d 1085 (10th Dist.1988), Ohio courts have held that it means to carry on the trade in which a person is engaged. (App. Dec., ¶ 13, 18.) As the Tenth District held, both GDRTA’s interpretation of “transact business” and its own are equally reasonable and neither could be eliminated by statutory context. (*Id.* at ¶ 18.) As a result, the phrase “transacts business” as used in R.C. 4117.13(D) necessarily has more than one reasonable interpretation and therefore is ambiguous.

Indeed, as noted *supra*, the principal goal of statutory interpretation is to ascertain and give effect to the legislature’s intent in enacting the statute. In order to properly ascertain this

intent, an analysis of the dictionary definition of “transacts business”, at the time of the statute’s enactment is required. *Wilkinson*, 86 Ohio St. 3d 225 at 227, 714 N.E.2d 394. In this regard, R.C. 4117.13(D) was enacted on April 1, 1984. Therefore, the then current Edition of Black’s Law Dictionary must be referenced. At that time, the Fifth Edition of Black’s Law Dictionary, published in 1979, governed. The 5th edition of Black’s Law Dictionary defines the term, “transacting business” in both of the following ways:

Term ‘transacting business,’ within statute providing that no foreign corporation transacting business in State without a certificate of authority shall maintain an action in State if it has not obtained a certificate of authority, is not susceptible of precise definition automatically resolving every case; each case must be dealt with on its own circumstances to determine if foreign corporation has engaged in local activity or only in interstate commerce.

* * *

Test of whether or not a corporation is transacting business, in a district, for purpose of section of the Clayton Act providing that an action may be brought against a corporation in any district wherein it transacts business, is the practical everyday business or commercial concept of doing business of any substantial character.

(Citations omitted.) Black’s Law Dictionary 1355 (5th Ed.1979).

Consistent with Black’s Law Dictionary, “transacting business” does not have “a common, ordinary, and accepted meaning[]”; rather, as the dictionary plainly reveals, there are two completely different definitions to be applied depending on the respective substantive body of law. *Black*, 142 Ohio St.3d 332, 2015-Ohio-513, 30 N.E.3d 918, at ¶ 39.

Finally, the ever-changing and self-serving definitions offered up by GDRTA’s in the courts below inherently illustrate that the phrase “transacts business” is subject to several different interpretations and therefore ambiguous. For example, over the course of this litigation, GDRTA has offered at least three different “common, everyday” meanings of the phrase. For

example, before the trial court, GDRTA claimed “transacts business” has the same meaning as “transacting any business” under R.C. 2307.382(A)(1). (GDRTA Memorandum in Support, App. B, p. 3.)

To the Tenth District, GDRTA claimed an employer “transacts business” when it prosecutes negotiations or has commercial, industrial, or professional dealings including the buying and selling of commodities or services. (*Id.*, App. A, ¶ 13.) Remarkably, GDRTA arrived at this particular “common, everyday” meaning by melding (1) the interpretation of “transact” in “transacting any business” in Ohio’s long-arm statute with (2) the interpretation of “business” in “business manager” in Ohio’s civil service law. *See Kentucky Oaks Mall* (defining “transact”); *Czechowski v. Univ. of Toledo*, 10th Dist. Franklin No. 98AP-366, 1999 WL 152584, *3 (Mar. 18, 1999) (defining “business”); (GDRTA Memorandum in Support, App. A, ¶ 11-13.)

Finally, GDRTA now argues before this Court that the common everyday meaning of “transacts business” means “broad, encompassing the complete spectrum of commercial activity.” (GDRTA Memorandum in Support, p.7.) GDRTA cobbled together this most recent vintage of “transacts business” by relying on (1) the definition of “business” in *Kuehnert* - a case GDRTA tried to preclude from consideration before the Tenth District (2) the definition of “business” found in Black’s Law Dictionary (5th Ed.1979); and (3) the interpretation of the phrase “engaged in business” as used in R.C. 5711.03, 5711.04 and construed by *U.S. Nuclear Corp. v. Lindley*, 61 Ohio St.2d 339, 402 N.E.2d 1178 (1980), a case never before raised by GDRTA. Put another way, GDRTA’s claim that “transacts business” is not ambiguous because it has “only one reasonable interpretation” is belied by its ever changing attempts at trying to define just exactly what it wants that term to mean. GDRTA’s position is reminiscent of Lewis

Carroll's famous work, *Through the Looking Glass*, in which Humpty Dumpty famously said, "[w]hen I use a word, it means just what I choose it to mean — neither more nor less."

Quite apart from GDRTA's ever changing positions concerning what "transacts business" means, GDRTA completely ignores the unwavering commitment of Ohio courts to strictly and narrowly construe the filing requirements for administrative appeals. *Hughes v. Ohio Dept. of Commerce*, 114 Ohio St.3d 47, 2007 Ohio 2877, 868 N.E.2d 246, ¶ 17. For example, under R.C. 119.12, a licensee may file an administrative appeal in "the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident * * *." The term "place of business" is not defined; however, it has been strictly and narrowly construed. In *Althoff v. State Bd. of Psychology*, 4th Dist. Gallia No. 04CA16, 2006-Ohio-502, ¶ 15, the Fourth District Court of Appeals found a licensee's place of business was in Franklin County, where he rendered services regulated by the board on a consistent, full-time basis, not in Gallia County, where he rendered services as a contract employee for a short period of time only twice per month. Therefore, in *Althoff*, the Fourth District found the Gallia County Court of Common Pleas properly held that it lacked jurisdiction pursuant R.C. 119.12 and dismissed the administrative appeal. *Id.*

The Miami County Court of Common Pleas arrived at the same conclusion in *Duchon v. The Ohio State Dental Bd.*, Miami Cty. C.P. Case No. 07-564 (July 30, 2007). In *Duchon*, the appellee agency filed a motion to dismiss because the appellant's notice of appeal was not filed in the county in which the appellant's place of business was located. The appellant had an office in Lucas County, where he worked four days per week, and appellant saw patients as an independent contractor in an office in Miami County one day per week. Further, the address provided to the administrative agency by the appellant was the Lucas County address. Relying

upon *Althoff* and *Hughes*, the court found it did not have jurisdiction because the appellant's place of business was in Lucas County.

In both *Althoff* and *Duchon*, the courts used a strict and narrow construction of the phrase "place of business" to determine which common pleas court had jurisdiction over the administrative appeal. In each case, the court found the licensee's place of business was in the county where the licensee regularly, consistently and most-often provided services. The counties where each appellant had only minimal contact, providing services only two days per month (*Althoff*) or one day per week (*Duchon*), were not places of business for purposes of R.C. 119.12. Applying the rationale of the above to the facts of this case renders GDRTA's claim it transacts business in Franklin County specious at best. In the end, GDRTA's claim must be seen for what it is— a desperate and transparent attempt to cure the fatal error of filing an appeal in the wrong court.

The decision of the Tenth District rests squarely on sound interpretative tools of statutory construction. Therefore, no further review of the matter is required and this Court should not accept jurisdiction.

IV. CONCLUSION

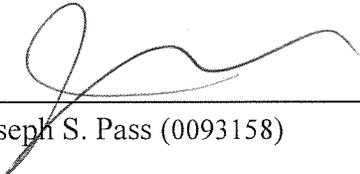
For the reasons set forth above, the Court should not accept jurisdiction over GDRTA's appeal.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Memorandum Opposing Appellant's Memorandum in Support of Jurisdiction was served upon the following by regular U.S. mail this 20th day of August, 2015:



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