

**GREATER DAYTON REGIONAL  
TRANSIT AUTHORITY,**  
*Appellant,*

v.

**STATE EMPLOYMENT RELATIONS  
BOARD,**

*and*

**AMALGAMATED TRANSIT UNION,  
LOCAL 1385**  
*Appellees.*

: **CASE NO. 15-1205**  
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: On Appeal from the Tenth Appellate  
: District, Case No. 14AP-876  
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**APPELLEE STATE EMPLOYMENT RELATIONS BOARD'S MEMORANDUM IN  
RESPONSE TO APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION**

Ronald G. Linville (0025803)  
Jennifer E. Edwards (0079220)  
Jeremiah L. Hart (0087744)  
BAKER & HOSTETLER LLP  
Capitol Square, Suite 2100  
65 East State Street  
Columbus, Ohio 43215  
(614) 228-1541/(614) 462-2616 (fax)  
[rlinville@bakerlaw.com](mailto:rlinville@bakerlaw.com)  
[jedwards@bakerlaw.com](mailto:jedwards@bakerlaw.com)  
[jhart@bakerlaw.com](mailto:jhart@bakerlaw.com)  
*Counsel for Appellant Greater Dayton  
Regional Transit Authority*

MICHAEL DEWINE (0009181)  
Ohio Attorney General

Lisa M. Critser (0079262)  
Associate Assistant Attorney General  
Labor Relations Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215  
(614) 644-8462/(877) 690-1812 (fax)  
[lisa.critser@ohioattorneygeneral.gov](mailto:lisa.critser@ohioattorneygeneral.gov)  
*Counsel for Appellee State Employment  
Relations Board*

Joseph S. Pass (Pa. 88469)  
JUBELIRER, PASS AND INTRIERI, PC  
219 Fort Pitt Boulevard  
Pittsburgh, Pennsylvania 15222  
(412) 281-3850/(412) 281-1985 (fax)  
[jsp@jpilaw.com](mailto:jsp@jpilaw.com)  
*Counsel for Appellee Amalgamated Transit  
Union, Local 1385*

Christine A. Reardon (0034686)  
KALNIZ, IORIO & FELDSTEIN, CO.  
L.P.A.  
5550 West Central Avenue  
P.O. Box 352170  
Toledo, Ohio 43635-2170  
(419) 537-1954/(419) 535-7732 (fax)  
[creardon@kiflaw.com](mailto:creardon@kiflaw.com)  
*Counsel for Appellee Amalgamated Transit  
Union, Local 1385*

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Douglas E. Duckett (0022362)  
Duckett Law Firm, LLC  
2509 Erie Avenue  
Cincinnati, Ohio 45208-2032  
(513) 484-7216  
[douglas@duckettlawfirm.com](mailto:douglas@duckettlawfirm.com)  
*Counsel for Amicus Curiae Ohio Public  
Employer Labor Relations Association*

Marc A. Fishel (0039100)  
Fishel Hass Kim Albrecht LLP  
400 South Fifth Street, Suite 200  
Columbus, Ohio 43215-5492  
(614) 221-1216/(614) 221-8769 (fax)  
[mfishel@fishelhass.com](mailto:mfishel@fishelhass.com)  
*Counsel for Amicus Curiae Ohio Public  
Transit Authority*

**TABLE OF CONTENTS**

**Page #**

INTRODUCTION ..... 4

STATEMENT OF THE CASE AND FACTS..... 5

THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST ..... 7

    A. An aggrieved party’s mistake in filing its ULP appeal in the wrong  
    county is no basis for this Court to accept jurisdiction ..... 7

    B. There are no broad consequences that warrant review of this case  
    where the aggrieved party simply made a mistake by filing its ULP  
    appeal in the wrong county ..... 8

ARGUMENT ..... 9

Appellee SERB’s Proposition of Law No. 1:

*Under statutory construction principles, a statute is ambiguous when it is subject  
to more than one reasonable interpretation. .... 10*

Appellee SERB’s Proposition of Law No. 2:

*The phrase “transacts business” in R.C. 4117.13(D) is ambiguous because it  
has more than one reasonable interpretation ..... 11*

CONCLUSION..... 15

CERTIFICATE OF SERVICE ..... 16

## INTRODUCTION

Mistakenly filing an administrative appeal in the wrong jurisdiction does not warrant this Court's review. Here, Appellant Greater Dayton Regional Transit Authority ("GDRTA") simply made a mistake when it filed its appeal from a final State Employment Relations Board ("SERB") order in an unfair labor practice ("ULP") proceeding in Franklin County instead of Montgomery County. To avoid the consequences of its mistake, GDRTA now wants this Court to greatly expand the appeal rights of parties to a ULP proceeding in a way that would allow all ULP appeals to be filed in Franklin County.

For 30 years, R.C. Chapter 4117 has provided public employers and employees with a comprehensive framework for resolving labor disputes. Ohio's Collective Bargaining Act, supplemented by R.C. 119.12, sets forth the exact steps a party must take to appeal a final SERB order in an ULP proceeding. Specifically, R.C. 4117.13(D) requires a person aggrieved by a final SERB order to file its ULP appeal with the court of common pleas in the county where the ULP occurred, or where the person resides or transacts business. Since R.C. Chapter 4117's enactment, only four other cases have required examination of the jurisdictional provision of R.C. 4117.13(D). In short, there is no real confusion about where ULP appeals should be filed.

In dismissing GDRTA's ULP appeal for lack of subject matter jurisdiction, both the Franklin County Court of Common Pleas ("trial court") and the Tenth District Court of Appeals ("appellate court" or "Tenth District") properly applied well-established law in construing R.C. 4117.13(D). Thus, this appeal does not present a unique issue. Nor does this appeal present a question of public or great general interest or involve a substantial constitutional issue. Nothing about this appeal warrants this Court's further review. For these reasons and the reasons below, the Court should decline jurisdiction over this appeal.

## STATEMENT OF THE CASE AND FACTS

GDRTA appeals from a Tenth District judgment in which the appellate court affirmed the dismissal of GDRTA's ULP appeal for lack of subject matter jurisdiction.

GDRTA is a mass-transit provider headquartered in Montgomery County, Ohio. (Appellate Decision, ¶ 2) GDRTA operators and maintenance employees are members of Appellee Amalgamated Transit Union Local 1385 ("Union"). (*Id.*) On April 24 and May 3, 2013, the Union filed ULP charges with SERB against GDRTA based upon acts occurring in Montgomery County. (*Id.*) The Union alleged GDRTA repeatedly refused to process the Union's grievances pursuant to the parties' collective bargaining agreement in violation of R.C. 4117.11(A)(1), (5) and (6).

After finding probable cause to believe GDRTA committed or was committing ULPs, SERB issued a complaint and notice of hearing. (App. Dec. at ¶ 3.) A record hearing was held on December 5, 2013. (*Id.*) On April 3, 2014, the SERB administrative law judge issued a proposed order recommending that SERB find GDRTA committed ULPs in violation of R.C. 4117.11(A)(1), (5) and (6). (*Id.*) SERB adopted the recommendation on June 5, 2014. (*Id.*)

On June 19, 2014, GDRTA appealed SERB's order to the Franklin County Court of Common Pleas. (*Id.* at ¶ 4.) SERB and the Union filed motions to dismiss arguing the trial court lacked subject matter jurisdiction because GDRTA failed to file its appeal in a county where GDRTA "transacts business" as required by R.C. 4117.13(D). (*Id.*) In response, GDRTA argued it transacted business in Franklin County because it had contracts with entities in Franklin County; it had employees who travel to Franklin County to conduct business; and its employees telephoned, faxed and emailed entities in Franklin County. (*Id.*)

On September 8, 2014, the trial court dismissed GDRTA's appeal for lack of subject matter jurisdiction. (*Id.* at ¶ 5.) The trial court found the phrase "transacts business" as used in R.C. 4117.13(D) was ambiguous. (*Id.*) The trial court then relied upon persuasive federal case law interpreting NLRA Section 160(f), 29 U.S.C. 160(f), after which R.C. 4117.13(D) is modeled, to find it did not have jurisdiction over GDRTA's appeal because GDRTA had no physical facilities or employees located in Franklin County. (*Id.*) The trial court entered its final appealable order and entry on October 1, 2014. (*Id.* at ¶ 6.)

GDRTA appealed the trial court's decision to the Tenth District on October 28, 2014. GDRTA argued the trial court erred by finding "transacts business" as contained in R.C. 4117.13(D) ambiguous. (*Id.*) Specifically, GDRTA argued the phrase "transacts business" is not ambiguous because it is not susceptible to more than one reasonable interpretation and the trial court erred when it searched for statutory meaning beyond the common, everyday meaning. (*Id.* at ¶ 14.) The appellate court rejected GDRTA's arguments. (*Id.* at ¶ 15.) Instead, the appellate court found the phrase "transacts business" as used in R.C. 4117.13(D) is ambiguous because there is more than one reasonable interpretation of the phrase. (*Id.* at ¶ 18) Further, the appellate court found the trial court properly relied on federal case law interpreting NLRA Section 160(f) to define the phrase "transacts business" and properly found that for jurisdiction to be invoked there must be a physical presence in the county in which the appeal is filed. (*Id.* at ¶ 23, 27.) Thus, the appellate court affirmed the trial court judgment dismissing GDRTA's ULP appeal for lack of subject matter jurisdiction. (*Id.* at ¶ 41.)

GDRTA now seeks further review in this Court.

## **THIS CASE IS NOT OF PUBLIC OR GREAT GENERAL INTEREST**

This case does not involve a matter of public or great general interest and does not merit review. Contrary to GDRTA's arguments, the Tenth District's decision does not "artificially limit" the appeal rights of an aggrieved party in a ULP proceeding or depart from the well-established rules of statutory construction. Instead, the Tenth District's opinion properly applied the well-established rules of statutory construction to uphold the General Assembly's intent in enacting the jurisdictional provision in R.C. 4117.13(D). Simply put, this case does not warrant review for the following reasons.

### **A. An aggrieved party's mistake in filing its ULP appeal in the wrong county is no basis for this Court to accept jurisdiction.**

There is no true confusion as to where an aggrieved party should file its appeal from a final SERB order in a ULP proceeding. In the 30 years since R.C. Chapter 4117's enactment, only four other cases have required examination of the jurisdictional provision in R.C. 4117.13(D). *State Emp. Relations Bd. v. Akron City School Dist. Bd. of Edn.*, 83 Ohio App.3d 719, 615 N.E.2d 711 (10th Dist.1992); *Manchester Edn. Assn. v. Manchester Local School Dist. Bd. of Edn.*, Franklin C.P. No. 85CV-03-1333, 1985 WL 263515 (June 19, 1985); *East Holmes Teachers Assn. v. East Holmes Local School Dist. Bd. of Edn.*, Franklin C.P. No. 85CV-02-661, 1985 WL 263518 (Aug. 13, 1985); *Cuyahoga Falls Edn. Assn. v. Cuyahoga Falls City School Dist. Bd. of Edn.*, Franklin C.P. No 88CV 03 2185, 1989 WL 515869 (Feb. 28, 1989). In each of these cases, the aggrieved party filed its appeal in the Franklin County Court of Common Pleas. In three of the cases, the appeals were dismissed for lack of subject matter jurisdiction because the aggrieved parties filed their appeals in the wrong county. *Manchester Edn. Assn.* at \*1-\*2 (holding the court did not have jurisdiction because both parties resided and transacted business in Summit County and the alleged ULP occurred in Summit County); *East Holmes Teachers*

*Assn.* at \*1 (holding the court did not have jurisdiction because the parties were located in Holmes County and all events leading to appellant's complaint took place in Holmes County); *Cuyahoga Falls Edn. Assn.* at \*1 (holding pursuant to R.C. 4117.13(D), the appeal must be filed in the county where the alleged ULP occurred, which was not Franklin County). In the fourth case, the Franklin County Court of Common Pleas found it had jurisdiction because the aggrieved party resided and transacted business in Franklin County although the ULP occurred in a different county. *Akron City School Dist. Bd. of Edn.* at 722.

Here, GDRTA simply made a mistake when it filed its ULP appeal in Franklin County instead of Montgomery County. Unfortunately, GDRTA's mistake proved fatal to its appeal because it was not corrected within the fifteen day appeal period allowed by R.C. 119.12. A mistake made by one party to an appeal is not a matter of public or great general interest. No broad consequences result from such a mistake.

**B. There are no broad consequences that warrant review of this case where the aggrieved party simply made a mistake by filing its ULP appeal in the wrong county.**

GDRTA's attempt to label this case as one of public and great general interest simply because of the large number of public employers and employees misses the mark. The fact that this issue was raised in only four cases over a 30 year timespan shows that the law is well settled and that no further review is warranted. In fact, this problem is unlikely to recur because future counsel should have little difficulty understanding what the law states and where to file an appeal from a SERB ULP order. In sum, because the lower court decisions do not present a question of public or great general interest or involve a substantial constitutional issue, no further review is needed.

## ARGUMENT

At issue here is the interpretation of the phrase “transacts business” as contained in R.C. 4117.13(D). R.C. Chapter 4117 does not define the phrase. Both lower courts found the phrase to be ambiguous because there is more than one reasonable interpretation of the phrase. As a result, the lower courts looked to Section 160(f) of the National Labor Relations Act (“NLRA”), 29 U.S.C. 151 *et seq.*, and cases interpreting that provision, to define “transacts business.” The language of Section 160(f) is essentially identical to that of R.C. 4117.13(D). *See Ohio Assn. of Pub. School Emp., Chapter 643, AFSCME/AFL-CIO v. Dayton City School Dist. Bd. of Edn.*, 59 Ohio St.3d 159, 161, 572 N.E.2d 80 (1991), citing 29 U.S.C. 160 (finding that the procedures for ULP cases mandated by R.C. 4117.12 and 4117.13 are substantively identical to those established in the NLRA to govern ULP cases before the NLRB); *Moore v. Youngstown State Univ.*, 63 Ohio App.3d 238, 242, 578 N.E.2d 536 (10th Dist.1989) (finding that R.C. 4117.13(D) is akin to Section 160(f) of the NLRA). Upon review of the persuasive federal case law, both courts concluded that the phrase “transacts business” as contained in R.C. 4117.13(D) should be interpreted in the same manner that federal courts construe “transacts business” in NLRA Section 160(f). In order to confer jurisdiction in a particular count, that interpretation requires a physical presence of the aggrieved party in that county.

In contrast, GDRTA argues the phrase “transacts business” is not ambiguous. Under the guise of giving the phrase “transacts business” its common, everyday meaning, GDRTA urges the adoption of an expansive interpretation of the phrase that would allow all aggrieved parties to file ULP appeals in Franklin County. However, the expansive interpretation urged by GDRTA renders R.C. 4117.13(D) meaningless. If the General Assembly had intended the expansive interpretation advocated by GDRTA, it would not have enacted R.C. 4117.13(D), which

specifically *limits* where ULP appeals can be filed. Without R.C. 4117.13(D), ULP appeals would be subject to R.C. Chapter 119 and could be filed in Franklin County. See R.C. 4117.02(P); R.C. 119.12. Instead, by including R.C. 4117.13(D), the General Assembly intended a different result for ULP appeals than the one advocated for by GDRTA.

The lower courts' holdings that 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 unremarkable applications of well-established law.

**Appellee SERB's Proposition of Law No. 1:**

*Under statutory construction principles, a statute is ambiguous when it is subject to more than one reasonable interpretation.*

The determination whether a statute is ambiguous has been addressed by this Court and by the appellate courts. "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." *In re Adoption of Baby Boy Brooks*, 136 Ohio App.3d 824, 829, 737 N.E.2d 1062 (10th Dist.2000), quoting *State ex rel. Burrows v. Indus. Comm.*, 78 Ohio St.3d 78, 81, 676 N.E.2d 519 (1997). Ambiguity in a statute exists when its language is subject to more than one reasonable interpretation. *Cline v. Ohio Bur. of Motor Vehicles*, 61 Ohio St.3d 93, 96, 573 N.E.2d 77 (1991); *In re Adoption of Baby Boy Brooks*, 136 Ohio App.3d at 829, citing *State ex rel. Toledo Edison Co. v. Clyde*, 76 Ohio St.3d 508, 513, 668 N.E.2d 498 (1996). 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 laws upon the same or similar subjects, (5) the consequences of a particular construction, and (6) the administrative construction of the statute. *Cline* at 97; 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 mischaracterizes 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.” (App. Dec., ¶ 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 that, if applied to the present case, would result in different outcomes.” (*Id.* at ¶ 15.)

A careful review of the Tenth District’s opinion shows that to find the phrase “transacts business” ambiguous it 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 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 not accept jurisdiction.

**Appellee SERB’s Proposition of Law No. 2:**

*The phrase “transacts business” in R.C. 4117.13(D) is ambiguous because it has more than one reasonable interpretation.*

GDRTA argues that the phrase “transacts business” is not ambiguous because it has only one reasonable interpretation and must be given its common, everyday meaning. (GDRTA Memorandum in Support, p.7). However, GDRTA’s own arguments illustrate there is more than one reasonable interpretation of the phrase “transacts business.” GDRTA has identified at least three different “common, everyday” meanings of the phrase. To the trial court, GDRTA asserted “transacts business” has the same meaning as “transacting any business” under R.C. 2307.382(A)(1). (Trial Court Decision, p. 3.) To the Tenth District, GDRTA asserted that an employer “transacts business” when it prosecutes negotiations or has commercial, industrial, or professional dealings including the buying and selling of commodities or services. (App. Dec., ¶ 13.) GDRTA arrived at this “common, everyday meaning” by combining (1) the interpretation of “transact” in “transacting any business” from R.C. 2307.382(A)(1), Ohio’s long-arm statute that is interpreted broadly to establish personal jurisdiction over non-Ohio resident defendants, with (2) the interpretation of “business” in “business manager” from R.C. 124.11(A)(7), Ohio’s civil service law. *See Kentucky Oaks Mall v. Mitchell’s Formal Wear, Inc.*, 53 Ohio St.3d 73, 75-76, 559 N.E.2d 477 (1990) (defining “transact”); *Czechowski v. Univ. of Toledo*, 10th Dist. Franklin No. 98AP-366, 1999 WL 152584, \*3 (Mar. 18, 1999) (defining “business”). (App. Dec., ¶ 11-13.)

Now, to this Court, GDRTA argues the common, everyday meaning of “transacts business” in R.C. 4117.13(D) is “broad, encompassing the complete spectrum of commercial activity.” (GDRTA Memorandum in Support, p.7) In addition to *Kentucky Oaks* and *Czechowski*, GDRTA crafts this new, common, everyday meaning of “transacts business” by relying on (1) the definition of “business” in *City of Westerville v. Kuehnert*, 50 Ohio App.3d 77, 553 N.E.2d 1085 (10th Dist.1988), a case it tried to preclude from consideration before the Tenth District

(App. Dec., ¶ 17.); (2) the definition of “business” from Black’s Law Dictionary (5th ed. 1979); and (3) the interpretation of the phrase “engaged in business” as used in R.C. 5711.03 and 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 mentioned by GDRTA. (GDRTA Memorandum in Support, p.7-9.) Presumably, GDRTA believes each of the different “common, everyday” definitions of “transacts business” are reasonable.

Furthermore, in urging the adoption of its (both old and new) expansive definition of the phrase “transacts business,” GDRTA ignores the fact that Ohio courts 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. Thus, through its arguments, GDRTA suggests that the combination of its multiple definitions of “transacts business” produces a feasible “common, everyday” definition of the phrase. However, GDRTA’s contortions of the phrase “transacts business” result only in a mutational definition that defies logic and legal interpretation.

Applying the well-established precedent outlined previously, both the trial court and the Tenth District properly held that R.C. 4117.13(D) is ambiguous because the phrase “transacts business” is subject to more than one reasonable interpretation. The trial court found “transacts business” meant any business, the majority of its business, business related to its main purpose or business related only to the ULP. (Tr. Ct. Dec., p.3; App. Dec., ¶ 13.) The Tenth District found the phrase could mean the prosecution of negotiations or commercial, industrial or professional dealings including the buying and selling of commodities or services, as asserted by GDRTA; or to carry on the trade in which a person is engaged, relying upon the definition of “transact” in *Kentucky Oaks* and the definition of “business” in *Kuehnert*. (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) had more than one reasonable interpretation and was ambiguous.

Because the lower courts properly found "transacts business" to be ambiguous, it was appropriate for both courts to look to NLRA Section 160(f) and federal case law construing it for guidance in interpreting "transacts business" as used in R.C. 4117.13(D). Ohio courts and SERB have often looked to the NLRA for guidance in construing the provisions of R.C. Chapter 4117. See *Ohio Ass'n of Public School Emp., Chapter 643, AFSCME/AFL-CIO v. Dayton City School Dist. Bd. of Edn.*, 59 Ohio St.3d 159, 161, 572 N.E.2d 80 (1991) (noting the procedures for ULP cases under R.C. 4117.12 and 4117.13 are substantively identical to those in NLRA Section 160 and using federal case law interpreting the NLRA in construing R.C. 4117.13); *State Emp. Relations Bd. v. Adena Local School Dist. Bd. of Edn.*, 66 Ohio St.3d 485, 495-496, 613 N.E.2d 605 (1993) (finding R.C. Chapter 4117's treatment of ULP cases is modeled after the NLRA and utilizing case law interpreting the NLRA to construe R.C. Chapter 4117); *In re Cuyahoga Cty. Sheriff's Dept.*, SERB 90-017, 1990 WL 10528635, at 3-108 (Aug. 30, 1990) ("The National Labor Relations Act (NLRA) and decisions of the National Labor Relations Board (NLRB) are not binding on SERB, but often prove instructive, especially in construing similar provisions with those in Chapter 4117."); *In re Tuscarawas Twp. Bd. of Trustees*, SERB 2009-001, 2009 WL 7039914, at 3-5 (Aug. 31, 2009) ("It is well-settled that SERB may look to NLRB decisions for guidance \* \* \*").

Furthermore, regardless of ambiguity, it was still appropriate for the lower courts to look to NLRA Section 160(f) and the federal cases construing it for guidance because they show the

meaning of the phrase “transacts business” at the time the General Assembly enacted R.C. Chapter 4117. For instance, this Court previously found a different provision within R.C. 4117.13 to be clear and unambiguous by looking at two other comparable statutes, R.C. 4112.06(A) and NLRA Section 160(f), during its analysis. *Ohio Ass’n of Public School Emp., Chapter 643, AFSCME/AFL-CIO* at 161. *See also State ex rel. Republic Steel Corp. v. Ohio Civil Rights Comm.*, 44 Ohio St.2d 178, 182-184, 339 N.E.2d 658 (1975) (without finding R.C. 4112.05(B) ambiguous, this Court looked to 42 U.S.C. 2000e, and the federal case law construing it, for guidance in interpreting the statute). As in those cases, it was likewise proper for the lower courts to consider the language in NLRA Section 160(f) in this case.

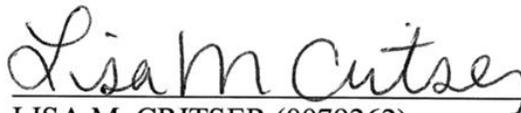
The Tenth District, as well as the trial court, properly applied well-established law in finding the phrase “transacts business” ambiguous and looking to the NLRA and federal case law construing it for guidance in interpreting R.C. 4117.13(D). Therefore, no further review of the matter is required and this Court should not accept jurisdiction.

### CONCLUSION

For all the reasons above, the Court should decline to accept jurisdiction over this appeal.

Respectfully submitted,

MICHAEL DEWINE (0009181)  
Ohio Attorney General



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LISA M. CRITSER (0079262)  
Associate Assistant Attorney General  
Labor Relations Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215-3400  
(614) 644-8462/(877) 690-1812 (fax)  
[lisa.critser@ohioattorneygeneral.gov](mailto:lisa.critser@ohioattorneygeneral.gov)

*Counsel for Appellee SERB*

**CERTIFICATE OF SERVICE**

I certify that the foregoing *Memorandum in Response* was served August 20, 2015, by regular U.S. mail, upon (1) Ronald L. Linville, Esq., Jennifer E. Edwards, Esq., Jeremiah L. Hart, Esq., Baker Hostetler LLP, Capitol Square, Suite 2100, 65 E. State Street, Columbus, Ohio 43215, Counsel for Appellant Greater Dayton Regional Transit Authority; (2) Christine Reardon, Esq., Kalniz, Iorio & Feldstein Co., L.P.A., 5550 W. Central Avenue, P.O. Box 352170, Toledo, Ohio 43635, and (3) Joseph S. Pass, Esq., Jubelirer, Pass and Intrieri, PC, 219 Fort Pitt Boulevard, Pittsburgh, Pennsylvania 15222, Counsel for Appellee ATU Local 1385; (4) Douglas E. Duckett, Esq., Duckett Law Firm, LLC, 2509 Erie Avenue, Cincinnati, Ohio 45208-2032, Counsel for Amicus Curiae Ohio Public Employer Labor Relations Association; and (5) Marc A. Fishel, Esq., Fishel Hass Kim Albrecht LLP, 400 South Fifth Street, Suite 200, Columbus, Ohio 43215-5492, Counsel for Amicus Curiae Ohio Public Transit Authority.

  
\_\_\_\_\_  
LISA M. CRITSER (0079262)