

IN THE SUPREME COURT OF OHIO

GREATER DAYTON REGIONAL TRANSIT AUTHORITY,	:	Case No. 2015-1205
	:	
Appellant,	:	On Appeal from the
	:	Franklin County
v.	:	Court of Appeals,
	:	Tenth Appellate District
	:	
STATE EMPLOYMENT RELATIONS BOARD,	:	Court of Appeals
	:	Case No. 14-AP-876
	:	
And	:	
	:	
AMALGAMATED TRANSIT UNION, AFL-CIO, LOCAL 1385,	:	
	:	
Appellees.	:	

MERIT BRIEF OF APPELLEE, AMALGAMATED TRANSIT UNION, LOCAL 1385

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II. STATEMENT OF FACTS

The Greater Dayton Regional Transit Authority (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 correct its improper filing.

The salient facts giving rise to this appeal may be summarized as follows. GDRTA is a mass-transit provider located in Montgomery County, Ohio. GDRTA operators and maintenance employees are members of the Amalgamated Transit Union Local 1385 ("ATU 1385"). On April 24 and May 3, 2014, the union filed unfair labor practices charges against GDRTA with SERB based upon acts occurring in Montgomery County. SERB determined that probable cause existed to believe that GDRTA committed or was committing unfair labor practices. Therefore, SERB issued a Complaint and notice of hearing. SERB held a hearing on December 5, 2013 and on April 3, 2014, the SERB administrative law judge issued a recommendation that SERB find GDRTA in violation of R.C. 4117.11(A)(1), (5), and (6). On June 5, 2014, SERB adopted the recommendation.

On June 19, 2014, GDRTA appealed SERB's order to the Franklin County Court of Common Pleas. SERB and ATU 1385 filed motions to dismiss arguing that the common pleas court lacked subject-matter jurisdiction because GDRTA failed to satisfy the jurisdictional requirements of R.C. 4117.13(D). Specifically, ATU 1385 and SERB argued that jurisdiction was wanting under R.C. 4117.13(D) because GDRTA did not "transacts business" in Franklin County. GDRTA countered that it "transacts business" in Franklin County because it has contacts with entities in Franklin County and its employees frequently telephone, fax, and email entities located in Franklin County.

On September 28, 2014, the trial court filed a decision dismissing GDRTA's appeal for lack of subject-matter jurisdiction. GDRTA thereafter appealed the trial court decision to the Tenth Appellate District Court. The parties briefed the issues in dispute and conducted oral argument before a three member panel of the Court. On May 28, 2015, the Tenth District affirmed the trial court's decision dismissing the appeal for lack of jurisdiction under R.C. 4117.13 (D). GDRTA appealed to this Court and review was accepted on Proposition of Law II, which was framed as "R.C. 4117.13(D)'s Phrase "Transacts Business" Is Not Ambiguous And Must Be Given Its Common, Everyday Meaning".

All parties agree this case is governed by the application of R.C. 4117.13(D). Pursuant to R.C. 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. The requirements are jurisdictional and specific to SERB Final Orders. R.C. 4117.13(D) states:

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.

GDRTA concedes that the county in which it committed the unfair labor practices is Montgomery County. Likewise, GDRTA concedes it resides in Montgomery County. Therefore, the sole remaining jurisdictional hook available under the statute and that upon which GDRTA now desperately clings, is that it "transacts business" in Franklin County.

In an effort to convince the Courts to adopt its contorted misunderstanding of the term "transacts business" throughout this litigation, GDRTA has continually offered up shifting and often inconsistent arguments as to what that term means. Such endless thrashing around to "find"

a persuasive argument that might eventually stick, not only exposes GDRTA's argument as a litigation prompted afterthought, but reveals that GDRTA will go to any length to martinize the English language in order to achieve the result desired. Indeed, at every turn when GDRTA's argument is rejected, it simply redoubles its efforts to manufacture a new way to invite the Court to rescue it from a defective filing. For example, GDRTA initially argued to the trial court that application of Ohio's "long arm" statute governs the definition of the term "transact business". The trial court rejected this argument. When this argument was dismissed, GDRTA abandoned its "long arm statute" argument in favor of a wholly different take on what "transacts business" ought to mean. Before the Tenth District, GDRTA claimed the words of the statute are so plain and unambiguous the Court need not resort to traditional rules of statutory interpretation but rather merely apply the words' common and everyday meaning. In an act of utter irony, GDRTA labored for forty pages explaining how "clear" the words "transacts business" are. When this argument was rejected, GDRTA remained true to form and changed arguments yet again.

In the instant appeal, GDRTA attempts to manufacture jurisdiction under 4117.13(D) by advancing a wholly new argument by claiming the interpretation of "transacts business" as found by the trial court and Tenth District is judicial activism run wild. Specifically, GDRTA claims the trial court and Tenth District erred because it interpreted the phrase "transacts business" to require a "physical presence" in the County in which it transacts business. On this score, GDRTA's scattershot results oriented tactics are again laid bare in its appeal to this Court. For example, the trial court initially dismissed the appeal for lack of jurisdiction precisely because GDRTA lacked a "physical presence" in Franklin County and therefore did not "transact business" within the meaning of 4117.13(D). The "physical presence" finding served as the core holding of the trial court's initial opinion, yet GDRTA never so much as hinted to the Tenth

District that the “physical presence” pronouncement was incorrect. Indeed, upon review of GDRTA’s arguments and lengthy briefs before the Tenth District, not one word is whispered of the “physical presence” argument now being advanced herein. Remarkably, in over forty pages of legal briefing, GDRTA neglected to even mention this argument to the Tenth District. Put differently, if the “physical presence” holding of the trial court was so significant, as GDRTA now claims, one would have expected GDRTA to at the very least mention it before the Tenth District. GDRTA said nothing! Yet, before this Court, GDRTA for the first time contends the lower courts’ “physical presence” interpretation represents the undoing of the Ohio General Assembly.

In sum, GDRTA prostitutes the term “transacts business” so fraudulently that it has left the words “transact business” outright battered. Rather than acknowledge that the meaning ascribed by the lower courts is supported by revered tools of statutory construction, GDRTA engaged in a herculean struggle doing syntactic gymnastics in an attempt to prove “transacts business” is unambiguous. The result of GDRTA’s Sisyphean efforts trying to define the salient words at issue herein yield a limitless construction of “transacts business” that, if adopted, will allow SERB orders to be appealed in any County in Ohio. Put simply, should GDRTA’s position obtain, the jurisdictional requirements set forth at 4117.13(D) would be rendered meaningless.

In the end, this case is very simple. GDRTA appealed to the wrong court and now desperately comes to this Court to remedy the improper filing. In GDRTA’s quest to achieve this end, it urges the Court to dispense with traditional tools of statutory interpretation in favor of adopting a boundless definition of “transacts business” that is unsupported by decisional law, irrational and otherwise practically untenable.

For these reasons, Appellee, ATU Local 1385 respectfully requests the Court AFFIRM the decision of the Court of Appeals for the Tenth Appellate District and dismiss GDRTA's appeal.

III. ARGUMENT

THE TENTH APPELLATE DISTRICT COURT DID NOT ERR BY HOLDING GDRTA DOES NOT "TRANSACT BUSINESS" IN FRANKLIN COUNTY FOR PURPOSES OF SECURING JURISDICTION UNDER R.C. 4117.13 (D)

The parties agree that the specific procedure involving an appeal from a Final Order of the SERB in an unfair labor practice case is governed exclusively by R.C. 4117.13(D). *South Community, Inc. v. State Employment Relations Board*, 38 Ohio St. 3d 224, 226, 527 N.E.2d 864 (1988). In *South Community, Inc.* this Court held, "[t]he procedure for an appeal from a final order in an unfair labor practice proceeding is outlined in R.C. 4117.13(D)." *Id.* at 226. R.C. 4117.13(D) states:

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.

Since GDRTA concedes Montgomery County is where it resides and where the unfair labor practices occurred, the instant dispute boils down to the application of the jurisdictional words "transact business" as used in R.C. 4117.13(D). Accordingly, the disposition of this case turns squarely on the question of whether GDRTA "transacts business" in Franklin County for purposes of satisfying jurisdiction under R.C. 4117.13(D). As both the trial court and Tenth District Court correctly held, GDRTA does not "transact business" in Franklin County for the

purpose of securing jurisdiction in that County under R.C. 4117.13(D). Accordingly, the decision of the Tenth Appellate District Court must be affirmed.

a. GDRTA does not “transact business” in Franklin County for purposes of achieving jurisdiction under R.C. 4117.13(D).

In an ironic display of legal drafting, GDRTA claims the words “transact business” are so clear and unambiguous they need no interpretation, yet spends an arduous fifty pages attempting to define what they mean. By contrast, both the trial court and Tenth Appellate District Court recognized that such words are not free of ambiguity, and appropriately employed sacrosanct tools of statutory interpretation to determine the intent of the Ohio Legislature. In this regard, the Tenth District correctly opined:

Statutory interpretation is a question of law that we review de novo. *State v. Banks*, 10th Dist. No. 11AP-69, 2011-Ohio-4252, ¶ 13. The paramount goal of statutory construction is to ascertain and give effect to the legislature's intent in enacting the statute. *Yonkings v. Wilkinson*, 86 Ohio St.3d 225, 227 (1999). In so doing, the court must first look to the plain language of the statute and the purpose to be accomplished. *State ex rel. Pennington v. Gundler*, 75 Ohio St.3d 171, 173 (1996). Words used in a statute must be accorded their usual, normal, and customary meaning. *Id.*, citing R.C. 1.42. If the words in a statute are "free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation." *State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, ¶ 12, quoting *Slingluff v. Weaver*, 66 Ohio St. 621 (1902), paragraph two of the syllabus. "An unambiguous statute is to be applied, not interpreted." *Sears v. Weimer*, 143 Ohio St. 312 (1944), paragraph five of the syllabus.

* * *

Ambiguity in a statute exists only if its language is susceptible of more than one reasonable interpretation. *Id.*, citing *State ex rel. Toledo Edison Co. v. Clyde*, 76 Ohio St.3d 508, 513 (1996). When construing an ambiguous statute, the court may consider a number of factors, including legislative history, the circumstances under

which the statute was enacted, and the administrative construction of the statute. R.C. 1.49; *Family Medicine Found., Inc. v. Bright*, 96 Ohio St.3d 183, 2002-Ohio-4034, ¶ 9.

(Appx. at pps. 7-8)

As the Tenth District recognized, the threshold question is whether the words used in the statute are ambiguous. If not, the words must simply be applied. If the words at issue are ambiguous, the Court must necessarily employ the traditional tools of statutory construction to afford the words the proper meaning. In this regard, both lower courts recognized the folly of GDRTA's rote assertion such words are unambiguous and as a result prudently employed traditional tools of statutory interpretation to arrive at a well-reasoned, well supported construction of "transacts business" as used in R.C. 4117.13(D). The Tenth District's decision to apply such interpretative tools squares on all fours with *Meeks v. Papadopulos*, 404 N.E.2d 159, 162 (Oh. 1980) in which this Court opined, "[w]here a statute is found to be subject to various interpretations, . . . a court called upon to interpret its provisions may invoke rules of statutory construction in order to arrive at legislative intent." *Id.* at

Following the lesson enunciated in *Meeks*, the question is whether the words "transacts business" are subject to various interpretations. If the words at issue are subject to various interpretations, the Court must engage in statutory construction in order to arrive at the legislative intent. The Tenth District confronted this question head on and, as urged by GDRTA, analyzed the relevant case law and dictionary definitions and concluded that such words undeniably yield various interpretations. Indeed, the Tenth District carefully examined the various meanings each word has within the dictionary usage as well as the decisional law where these words were parsed by the Courts. For example, and as urged by GDRTA, the Tenth

District scrutinized the words “transacts” and “business” as used in *Ky. Oaks Mall Co. v. Mitchell's Formal Wear*, 53 Ohio St. 3d 73, 559 N.E.2d 477, 1990 Ohio LEXIS 338 (Ohio 1990) and *Czechowski v. University of Toledo*, 1999 Ohio App. LEXIS 1137, 1999 WL 152584 (Ohio Ct. App., Franklin County, Mar. 18, 1999). Initially, when the Tenth District carefully parsed the entire holding in these two cases cited by GDRTA, the Court exposed that GDRTA had cherry picked certain words from the opinion, lifting particular verbiage favorable to its claim of unambiguity. The Court went on however to explain that an honest reading of these holdings produce the unavoidable conclusion that term “transacts business” is ambiguous. The Tenth District held:

After reviewing GDRTA's arguments, relevant case law, and R.C. 4117.13(D), we find that the trial court did not err when it found the term "transacts business" ambiguous. We fail to find that "transacts business" has a single common and everyday meaning, as GDRTA suggests. Resorting 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.

(Appx. at p. 10)

The Tenth District did precisely what it was charged with doing- it determined whether the words were subject to various interpretations and thus ambiguous.

Once concluding these words are subject to various interpretations and therefore ambiguous, the Tenth District, as required by this Court, was duty bound to invoke rules of statutory construction to glean the legislative intent. As the Tenth District again appropriately noted, “R.C. 1.49 provides that if a statute is ambiguous, in determining the intention of the legislature, we "may consider among other matters: (A) The object sought to be attained; (B) The circumstances under which the statute was enacted; (C) The legislative history; (D) The common law or former statutory provisions, including laws upon the same or similar subjects; (E) The

consequences of a particular construction; (F) The administrative construction of the statute." (Appx. at p. 11).

Within the above framework, both the trial court and Tenth District determined the Ohio Legislature intended to adopt the requirements of § 160(f) of the NLRA when it enacted R.C. 4117.13(D). A review of the legislative history establishes that § 160(f) became effective when the NLRA was originally enacted on July 5, 1935. *See* 29 U.S.C. § 160(f). The Ohio Public Employees Collective Bargaining Act—the legislation that enacted R.C. 4117.13(D)—did not become effective until April 1, 1984—almost 49 years after the enactment of the NLRA. Given that R.C. 4117.13(D) uses virtually identical language and was adopted subsequent to §160(f) of the NLRA, the Ohio Legislature unquestionably intended to adopt and incorporate the jurisdictional requirements for judicial review of SERB final orders. Again, this is precisely why the lower courts turned to the federal precedent interpreting the words “transacts business”. This Court recognized “...that the procedures for unfair labor practice cases mandated by R.C. 4117.12 and 4117.13 are substantively identical to those established in Section 10 of the National Labor Relations Act to govern unfair labor practice cases before the National Labor Relations Board.” *Ohio Ass'n of Public School Employees, Chapter 643 v. Dayton City School Dist. Bd. of Educ.*, 59 Ohio St. 3d 159 (1991). Since the specific statute in question was modeled verbatim after the federal counterpart at 29 U.S.C. 160(f), the lower courts herein quite appropriately turned to federal decisional law interpreting the same verbiage used at Section 106(f) of the NLRA.

Since the statutes are identical, the lower courts considered it instructive, if not necessary, to examine how the federal courts interpret and apply the term “transacts business”. On appeal to this Court however, GDRTA takes issue with the lower courts’ reliance on federal precedent

interpreting and applying this exact same language. The Tenth District, quite appropriately, dismissed GDRTA's objection out of hand. Citing to precedent issued by this Court, the Tenth District indicated:

Importantly, the Supreme Court, as well as this court, have found it proper to look to NLRB's interpretations of NLRA in interpreting R.C. Chapter 4117. *See, e.g., State ex rel. Glass, Molders, Pottery, Plastics & Allied Workers Internatl. Union, Local 333, AFL-CIO, CLC v. State Emp. Relations Bd.*, 70 Ohio St.3d 252, 254 (1994) (with respect to bargaining-unit determination, R.C. Chapter 4117 is analogous to NLRA); *State Emp. Relations Bd. v. Miami Univ.*, 71 Ohio St.3d 351, 353 (1994), citing *State Emp. Relations Bd. v. Aden Local School Dist. Bd. of Edn.*, 66 Ohio St.3d 485, 496 (1993) (because R.C. Chapter 4117's treatment of unfair labor practices cases is modeled to a large extent on NLRA, NLRB's experience can be instructive, although not conclusive); *Liberty Twp. v. Ohio State Emp. Relations Bd.*, 10th Dist. No. 06AP-246, 2007-Ohio-295, ¶ 8, citing *Miami Univ.* at 353 (noting that while NLRB cases are not binding on SERB, SERB has used federal case law for guidance in the past); *In re Wheeland*, 10th Dist. No. 94APE10-1424 (June 6, 1995), citing *Miami Univ.* (because R.C. Chapter 4117 was modeled after NLRA, the NLRA's cases interpreting NLRA can be instructive in interpreting R.C. Chapter 4117).

Thus, although we agree that the legislature has never expressed that R.C. Chapter 4117 need be interpreted in "lockstep" with NLRA, there is nothing that prohibits a court from looking to NLRA for guidance when interpreting R.C. Chapter 4117, and other Ohio cases have done so. Therefore, we reject GDRTA's assertion that the trial court was prohibited from following federal case law in interpreting R.C. Chapter 4117.

(Appx. at p. 13)

GDRTA also took a stab at undermining the Court's reliance on federal precedent by suggesting the words "transacts business" as used in §160(f) of the NLRA are different than the words "transacts business" as used in R.C. 4117.13(D) because the former relates to venue and the latter to jurisdiction. The Tenth District quickly dispatched this argument as well, indicating,

“...we fail to see how this distinction would render the definition of "transacts business," as used in §160(f), any less comparable to "transacts business," as used in R.C. 4117.13(D).”

The Tenth District’s affirmation of the significance of relying on federal precedent on this issue is entirely appropriate, if not required. *See Moore v. Youngstown State University*, 578 N.E.2d 536, 538 (Oh. Ct. App. 1989) As the Tenth District ultimately concluded, “[t]he Supreme Court in both *Adena* and *Miami Univ.* clearly signaled that Ohio courts can utilize NLRA and federal cases that interpret NLRA when interpreting R.C. Chapter 4117. Therefore, GDRTA’s argument, in this respect, is without merit.”

b. The Physical Presence requirement is supported by sound federal precedent interpreting the same statutory language found at 4117. 13 (D)

No doubt recognizing the futility of its argument that lower courts cannot rely on federal law to interpret the terms “transact business”, GDRTA changed course and now argues, for the first time, that the “physical presence” requirement is improper. As noted at the outset, despite the “physical presence” requirement being the central thrust of the trial court’s opinion, GDRTA never mentioned it before the Tenth District Court.

The above notwithstanding, both lower courts recognized the need to employ traditional tools of statutory construction and analyzed federal decisional law on the specific meaning of “transacts business” as used within the NLRA. As the trial court found and as the Tenth District affirmed, both the Fourth Circuit and the Fifth Circuit of the U.S. Court of Appeals have interpreted the words “transacts business”. *See Davlan Engineering, Inc. v. NLRB*, 718 F.2d 102, 103 (4th Cir. 1983); *see also Bally’s Park Place, Inc. v. NLRB*, 546 F.3d 318, 321 (5th Cir. 2008). In both cases, the courts found that an appellant’s lack of a physical presence in the forum was particularly relevant to finding that it did not “transact[] business” in the forum. *See*

id. Both courts also found that the limiting nature of § 160(f) of the NLRA would be effectively eviscerated if the phrase “transacts business” was broadly construed so as to include mere travel within the forum or purchases from, sales to, and contractual agreements with persons in the forum. *See Id.* When this rationale is applied to the facts of the instant appeal, GDRTA’s argument that it “transacts business” in Franklin County immediately evaporates.

For example, as explained by the trial court and affirmed by the Tenth District, in *Davlan Engineering*, the U.S. Court of Appeals for the Fourth Circuit found that the employer’s interactions with the Fourth Circuit were not sufficient to satisfy the “transacts business” requirement. *See Davlan Engineering, Inc.*, 718 F.2d at 103. In *Davlan*, the employer “maintain[ed] sales representatives who solicit[ed] business for the company in [the Fourth Circuit], and it . . . purchased goods shipped from establishments in [the Fourth Circuit].” *Id.* Furthermore, the appellant was “under contract to supply smoke grenades to a branch of the United States Army which [was] located in [the Fourth Circuit].” *Id.* That particular contract “constitute[d] the lion’s share” of the employer’s business and “necessitated that [its] executives travel to the forum, that Army personnel based in [the Fourth Circuit] give instructions to [the appellant] . . . , and that numerous telephone calls be made between [the Fourth Circuit] and St. Louis.” *Id.* The employer even made numerous shipments between its “operations in St. Louis and the Army facilities in [the Fourth Circuit].” *Id.* However, despite these interactions, which are far greater, more qualitative and extensive than those claimed by GDRTA herein, the court concluded that these contacts were insufficient to demonstrate the employer actually “transact[ed] business” in the Fourth Circuit. *See id.*

Additionally, as found by the trial court and affirmed by the Tenth District, in *Bally’s Park Place*, the U.S. Court of Appeals for the Fifth Circuit likewise concluded that an

employer's contacts did not demonstrate it "transact[ed] business" in the Fifth Circuit. *See Bally's Park Place, Inc.*, 546 F.3d at 320-21. In that case, the employer "profit[ed] financially from patrons who travel[ed] from the [Fifth Circuit] to its New Jersey casinos; [contacted Fifth Circuit residents] by mail solicitation and the Internet, . . . advertise[d] to [Fifth Circuit] customers; and it enter[ed] into business contracts with [Fifth Circuit] residents because customers [were] permitted to make room reservations via an on-line website." *See id.* The court explained that "[i]f such contacts were sufficient, though, the statutory provision that [it] found to create some limit to the number of Circuits to which a particular appeal may be taken, would become no limitation at all." *Id.* at 320. As such, the court found that the employer's extensive contacts therein did not establish it "transact[ed] business" in the Fifth Circuit because "[a] contrary conclusion would allow almost any corporation to obtain judicial review of an NLRB final order in any Circuit Court of Appeals, [which] is not what the review statute permits." *Id.*

Federal case law interpreting the phrase "transacts business", as adopted by the Tenth District makes clear the analysis should be concerned about the type of contacts with the forum—not the volume of mere incidental interactions. As both lower courts concluded, GDRTA has no physical presence of any kind whatsoever in Franklin County nor does it have any qualitative presence in Franklin County.

Most compelling however is that absolutely none of GDRTA's transit routes serve Franklin County. GDRTA's core mission is the provision of mass transit to the citizens of Montgomery County. Not one single route, hub, transit center, stop, or bus is dispatched or located in Franklin County, nor does GDRTA have ANY physical presence in Franklin County. On this score, it is worth observing that the *amicus* brief filed by Ohio Public Transportation Transit Association indicates that GDRTA provides transit services in not only Montgomery

County but Greene, Warren and Miami Counties. (OPTA Amicus brief at p. 9) Assuming this fact as true, OPTA underscores the above point. If GDRTA, as a mass transit authority, provides transit service to Greene, Warren and Miami Counties as part of its core mission, it necessarily has buses, employees, equipment, stops, and passengers located in those counties and thus has a physical presence in that particular county. As such, had GDRTA brought its appeal in any one of those other counties (i.e. Green, Warren or Miami) the jurisdictional question under R.C. 4117.13 (D) is much less problematic. However, to suggest GDRTA “transacts business” in Franklin County where no such transit services are provided and absolutely no physical presence exist is outright untenable. GDRTA tries to wiggle lose from this limitation by claiming, albeit erroneously, that the Tenth District requires a “**permanent**” physical presence. GDRTA’s insertion of the word “permanent” is nowhere to be found in the Tenth District’s opinion. This artificially manufactured term is yet another example of GDRTA misreading, if not misrepresenting the law. It is an apparition erected by GDRTA to create the appearance the Tenth District required something that it, in fact, did not. Indeed, there was no finding by the Tenth District that requires a “permanent” physical presence in order to satisfy jurisdiction under the “transacts business” prong of R. C. 4117.13 (D).

When GDRTA’s incidental interactions with Franklin County are compared with the employer’s contacts with the Fourth and Fifth Circuits in *Davlan Engineering* and *Bally’s* respectively, it is clear GDRTA does not “transact business” in Franklin County. Both GDRTA and the employers in *Davlan and Ballys* made purchases from, and entered into contracts with, businesses located in the respective forums. Employees of both GDRTA and the employers in *Davlan Engineering* and *Bally’s* engaged in telecommunications with persons located within the respective forums. Furthermore, executives of both employers traveled to the respective forums

for business-related purposes. By contrast, GDRTA provides absolutely no public transit services whatsoever in Franklin County, while the bulk of the employer's business in *Davlan Engineering* involved the sale of smoke grenades to a U.S. Army location in the Fourth Circuit. Drawing on the lessons enunciated in *Davlan Engineering* and *Bally's*, the Tenth District correctly held that GDRTA does not "transact business" in Franklin County because its incidental interactions with Franklin County are far fewer and more incidental than those found insufficient in the leading cases in the federal sector.

Accordingly, based upon the federal appellate decisional law on this precise issue, the Tenth District correctly affirmed "...find[ing] the trial court did not err when it relied upon federal case law to define "transacts business," as used in R.C. 4117.13(D), and found that such case law requires a physical presence in the county." If this Honorable Court were to abandon the sound reasoning adopted by the lower courts, and subscribe to GDRTA's boundless and self-serving definition of "transacts business", the limiting nature of R.C. 4117.13(D) would be eviscerated- a result the courts in *Davlan Engineering*, *Bally's* and the lower courts herein refused to countenance.

Though GDRTA desperately clings to its assertion it "transacts business" in Franklin County by advancing incidental purchases, e-mail, occasional travel, and donations involving Franklin County, such incidental interactions are clearly insufficient to demonstrate it actually "transacts business" in Franklin County necessary to establish jurisdiction within the meaning of R.C. 4117.13 (D). If mere purchase orders, occasional travel, e-mail, and donations were sufficient to establish "transacts business" in a given county, the jurisdictional limitations in R.C. 4117.13(D) would serve as no limitation at all. Accepting GDRTA's construction, licking a stamp and placing it in the mail bound for Columbus would suffice to establish "transacts

business” under R.C. 4117.13(D). Under the cavernous definition offered up by GDRTA, despite the absence of any substantial or rational nexus to the situs, the parties or events giving rise to the unfair labor practices, public employers, and unions for that matter, would simply contend they “transact business” in any Ohio county by virtue of e-mails and purchases orders and thereby engage in forum shopping to “select” the most favorable county in which to advance its SERB appeal. The repercussions of this boundless definition will be significant. A quick example is illustrative. Assuming this Court opens up the definition as urged by GDRTA, and the ATU is involved in a future SERB proceeding, in order to preserve the option of selecting the forum in which it desires to appeal, the union need only include its international body as a party to the litigation. The “ATU international” has affiliates, similar to Local 1385, in almost every County in Ohio. As such, regardless of what county that particular local union “transacts business”, because the newly crafted contours of “transacts business” is so liberally defined, the union will be free to assert, correctly, that because the ATU international and its affiliate “transacts business” in other- perhaps all- counties in Ohio, jurisdiction under 4117.13 (D) is appropriate. Simply put, it opens up a whole new frontier for forum shopping for Unions. This writer seriously doubts this is what the Ohio General Assembly intended.

Owing to the dynamic of the current marketplace, with web access, electronic mail, social media platforms, teleconferencing, every business entity is ubiquitous and thus on this basis alone could, under GDRTA’s definition, establish it “transacts business” in every single forum across the state, if not country. Such a result is absurd and was not intended when R.C. 4117.13 (D) was adopted. Rather, the language of R.C. 4117.13(D) was clearly intended to limit the courts that have jurisdiction to hear SERB appeals. Had R.C. 4117.13(D) been intended to confer jurisdiction as expansively as GDRTA contends, the Ohio Legislature would have drafted

the statute to permit appeals of SERB final orders in *any* Court of Common Pleas, rather than conferring jurisdiction upon a court only when one of three specific requirements are met.

In the end, ascribing the meaning of “transact business” urged by GDRTA not only contravenes sound precedent on this issue, it would effectively re-write O.R.C. 4117.13(D) to grant an appellant the discretion of choosing jurisdiction in any County where it desires to challenge a SERB decision. Such a result is clearly at odds with the jurisdictional underpinnings of O.R.C. 4117.13(D).

IV. CONCLUSION

The Tenth Appellate District Court did not err in affirming the Franklin County Court of Common Pleas’ decision denying jurisdiction over GDRTA’s appeal of SERB’s final order because GDRTA does not “transact business” in Franklin County within the meaning of R.C. 4117.13(D). Accordingly, Appellee, ATU Local 1385 respectfully requests the Court AFFIRM the Tenth Appellate District Court’s decision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **MERIT BRIEF OF APPELLEE, ATU LOCAL 1385** was served upon counsel for the Appellant and Appellee, SERB this 4th day of May, 2016, via US Mail, addressed as follows:

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