

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,
STATE EMPLOYMENT RELATIONS BOARD,	:	Tenth Appellate District
	:	
And	:	Court of Appeals
AMALGAMATED TRANSIT UNION, AFL-CIO, LOCAL 1385,	:	Case No. 14-AP-876
	:	
Appellees.	:	

**REPLY BRIEF
OF APPELLANT GREATER DAYTON REGIONAL TRANSIT AUTHORITY**

RONALD G. LINVILLE* (0025803)

**Counsel of Record*

JENNIFER E. EDWARDS (0079220)

JEREMIAH L. HART (0087744)

Baker & Hostetler LLP

Capitol Square, Suite 2100

65 East State Street

Columbus, Ohio 43215-4260

614-228-1541; 614-462-2616 fax

rlinville@bakerlaw.com

Counsel for Appellant Greater Dayton
Regional Transit Authority

JOSEPH S. PASS* (0093158)

**Counsel of Record*

Jubelirer, Pass and Intrieri, PC

219 Fort Pitt Boulevard

Pittsburgh, PA 15222

412-281-3850

jsp@jpilaw.com

CHRISTINE A. REARDON (0034686)

Kalniz, Iorio & Feldstein Co., L.P.A.

5550 W. Central Ave.

P.O. Box 352170

Toledo, Ohio 43635

Counsel for Appellee Amalgamated Transit
Union, AFL-CIO, Local 1385

MICHAEL DEWINE (0009181)

Ohio Attorney General

ERIC E. MURPHY* (0083284)

State Solicitor

**Counsel of Record*

MICHAEL J. HENDERSHOT (0081842)

Chief Deputy Solicitor

LORI FRIEDMAN (0018480)

Assistant Attorney General

30 East Broad Street, 17th Floor

Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

eric.murphy@ohioattorneygeneral.gov

Counsel for Appellee

State Employment Relations Board

TABLE OF CONTENTS

I. INTRODUCTION 1

II. SERB MINIMIZES WHAT IS AT STAKE IN THIS CASE BY DISTORTING THE RESULT OF THE LOWER COURTS’ HOLDINGS..... 3

III. SERB INTERPRETS A STATUTE THAT DOES NOT EXIST. 4

 A. SERB Altered The General Assembly’s Definition Of “Person” To Support Its Distributive Rule Argument.....5

 B. SERB Narrows The Statute By Adding Modifiers.....7

IV. SERB IGNORES CRITICAL LEGAL DISTINCTIONS TO TRY TO ESCAPE THE COMMON, EVERYDAY MEANING OF “TRANSACTS BUSINESS.” 8

 A. SERB Ignores The Distinction Between Personal And Subject Matter Jurisdiction.....8

 B. SERB Minimizes The Clear Distinction Between Jurisdiction And Venue.....10

V. SERB MANUFACTURES A NEW TERM OF ART TO TRY TO ESCAPE THE COMMON, EVERYDAY MEANING OF “TRANSACTS BUSINESS.” 12

VI. SERB RELIES ON IRRELEVANT DICTIONARY DEFINITIONS. 15

VII. SERB’S POLICY ARGUMENTS ARE UNPERSUASIVE..... 18

VIII. CONCLUSION..... 20

TABLE OF AUTHORITIES

Cases	Page
<i>Arbaugh v. Y & H Corp.</i> , 546 U.S. 500, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006).....	11
<i>Brentwood at Hobart v. NLRB</i> , 675 F.3d 999 (6th Cir.2012)	11
<i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462, 105 S.Ct. 2174, 85 L.E.2d 528 (1985).....	9
<i>Cheap Escape Co., Inc. v. Haddox, LLC</i> , 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601	8
<i>Connor v. McGough</i> , 46 Ohio St.3d 188, 546 N.E.2d 407 (1989)	19
<i>Dillon v. Farmers Ins. of Columbus, Inc.</i> , 145 Ohio St.3d 133, 2015-Ohio-5407, 47 N.E.3d 794	7
<i>F.A.A. v. Cooper</i> , ___ U.S. ___, 132 S.Ct. 1441, 182 L.Ed.2d 497 (2012).....	12, 15
<i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i> , 466 U.S. 408, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).....	9
<i>Hodak v. Madison Capital Mgt., LLC</i> , 348 Fed.Appx. 83 (6th Cir.2009).....	12
<i>In re Z.R.</i> , 144 Ohio St.3d 380, 2015-Ohio-3306, 44 N.E.3d 239	11
<i>Kentucky Oaks Mall Co. v. Mitchell’s Formal Wear, Inc.</i> , 53 Ohio St.3d 73, 559 N.E.2d 477 (1990)	7, 15, 16, 18
<i>Kolb v. Chrysler Corp.</i> , 357 F.Supp. 504 (E.D.Wis. 1973).....	17
<i>Maryhew v. Yova</i> , 11 Ohio St.3d 154, 156, 464 N.E.2d 538 (1984)	8
<i>Morrison v. Steiner</i> , 32 Ohio St.2d 86, 290 N.E.2d 841 (1972)	11

<i>Nibert v. Ohio Dept. of Rehab. & Corr.</i> , 84 Ohio St.3d 100, 1998-Ohio-506, 702 N.E.2d 70 (1998)	10
<i>Salinas v. U.S.</i> , 522 U.S. 52, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997).....	7
<i>SERB v. Akron City School Dist. Bd. of Edn.</i> , 83 Ohio App.3d 719, 615 N.E.2d 711 (10th Dist. 1992)	6, 20
<i>South Community, Inc. v. SERB</i> , 38 Ohio St.3d 224, 527 N.E.2d. 864 (1988)	8
<i>State ex rel. v. Mowrey</i> , 45 Ohio St.3d 347, 544 N.E.2d 657 (1989)	19
<i>State ex rel. Lee v. Karnes</i> , 103 Ohio St.3d 559, 2004-Ohio-5718, 817 N.E.2d 76	7
<i>State ex rel. Ohio Academy of Trial Lawyers v. Sheward</i> , 86 Ohio St.3d 451, 715 N.E.2d 1062 (1999)	19
<i>State v. Hairston</i> , 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471	19
<i>State v. Perez</i> , 124 Ohio St.3d 122, 2009-Ohio-6179, N.E.2d 104	13
<i>Western Exp. Co. v. Wallace</i> , 144 Ohio St. 612, 60 N.E.2d 312 (1945)	6
<i>Youghiogheny & Ohio Coal Co. v. Oszust</i> , 23 Ohio St.3d 39, 491 N.E.2d 298, 299 (1986)	13
Statutes	
R.C. 4117.12(C).....	10
R.C. 4117.13(D).....	passim
29 U.S.C. § 160(f).....	1, 3, 4, 10, 18
Other Authorities	
<i>Black’s Law Dictionary</i> 1341 (5th Ed.1979)	16, 17

I. INTRODUCTION

This case is about an Ohio statute. According to this Court, Ohio statutes say what they mean and mean what they say. As a result, the Ohio statute in this case is to be construed according to the Ohio legislature’s specifically selected words, giving appropriate consideration to the context in which they were used along with the statute’s grammar and structure. The principles found in this Court’s binding precedent guide the search for the Ohio statute’s meaning and ensure the quest remains closely tethered to the words used by the Ohio General Assembly, acting as the representative of Ohio’s citizens.

But you wouldn’t know that from SERB’s brief. After arguing for more than a year-and-a-half that R.C. 4117.13(D) is ambiguous and that the language of Section 160(f) of the NLRA settled the Ohio statute’s meaning, SERB reversed its position before this Court. SERB’s drastically different approach signals the Solicitor General’s implicit recognition that either the lower courts’ holdings or SERB’s arguments in the lower courts (or both) are lacking. Now SERB, an Ohio agency, ironically relies on everything but Ohio law to convince this Court that a statute enacted by the Ohio legislature is not ambiguous and yet also does not mean what it clearly says.

SERB argues the Ohio statute’s key phrase—“transacts business”—should be buried under “transplanted” meanings uprooted from personal jurisdiction statutes and cases, though the Ohio General Assembly used the phrase in this subject matter jurisdiction statute. SERB claims “transacts business” means the same thing in the Ohio statute that it does in various federal venue statutes, but the Ohio statute is not a venue statute. SERB defines “transacts business” by reference to federal cases construing the term in federal antitrust statutes (which results in a different meaning than is found in the federal personal jurisdiction and venue statutes). But the

Ohio statute, R.C. 4117.13(D), is not an antitrust statute. SERB also says the meaning of “transacts business” in the Ohio statute mirrors its meaning in a 1932 North Dakota statute addressing foreign corporations’ amenability to suit in the state. But the Ohio statute is neither a North Dakota statute nor does it address personal jurisdiction over foreign corporations. SERB champions the term “transacts business” as a legal term of art with a single well-known meaning in the law yet assigns at least eight different meanings to the phrase throughout its brief. And SERB invokes a bevy of policy arguments in favor of narrowly construing R.C. 4117.13(D)’s key phrase and yet insists the Ohio statute is unambiguous.¹ SERB’s arguments seek to divert this Court’s attention from R.C. 4117.13(D)’s phrase “transacts business,” its context, and its structure with arguments that, while intellectually interesting, are irrelevant and unpersuasive. The Court should reject SERB’s misguided invitation to creatively explore all of the possible meanings “transacts business” might have nationwide, in every substantive context, at any point in time.

Unlike SERB, GDRTA has consistently argued that R.C. 4117.13(D) means exactly what it says. Like this Court, GDRTA defines R.C. 4117.13(D)’s key phrase “transacts business” by resorting to dictionary definitions of the phrase’s terms. And, unlike SERB, GDRTA supports its arguments with the binding precedent of this Court, demonstrating how Ohio statutes are to be interpreted. The Court should treat R.C. 4117.13(D) like the Ohio statute it is, find that it means what it says, and, consistent with this Court’s precedent, give its key phrase “transacts business” its common, everyday meaning as supported by dictionaries current at the time the General Assembly enacted R.C. 4117.13(D). GDRTA therefore respectfully requests that the contrary decision of the Tenth District, below, be reversed.

¹ This brief focuses primarily on SERB’s arguments because the majority of ATU’s arguments are recycled from its brief in the Tenth District and are fully rebutted in GDRTA’s Merit Brief.

II. SERB MINIMIZES WHAT IS AT STAKE IN THIS CASE BY DISTORTING THE RESULT OF THE LOWER COURTS' HOLDINGS.

SERB attempts to distract this Court from what is most important—the meaning of R.C. 4117.13(D)'s “transacts business”—by presenting a distorted description of what is at stake here. By claiming that the lower courts did not actually adopt a permanent physical presence test but instead left “the question open,” SERB minimizes the importance of this case and the violence done to appeal rights under R.C. 4117.13(D) by the lower courts' judgments. (Merit Brief of Appellee SERB (“SERB Br.”) at 31-32). ATU does the same. (Merit Brief of Appellee, ATU (“ATU Br.”) at 14). Both are wrong. SERB's and ATU's characterization of the impact of the lower courts' judgments is both imprecise and inconsistent with their positions in those courts.²

The lower courts unquestionably imported a permanent physical presence requirement into Ohio law. The trial court, errantly holding that federal cases interpreting NLRA § 160(f) require a permanent physical presence to “transact business” in a forum, stated that it “adopts the reasoning and holdings of [the federal] cases.” (Decision Granting Appellees' Motion to Dismiss, Appx. 33). The Tenth District, in turn, expressly stated: “[W]e find 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 such case law requires a physical presence in the county.” (Tenth Appellate District Decision, Appx. 14-15, ¶ 27).

Contrary to SERB's current representations, the practical result of the lower courts' decisions is that Ohio courts must now require a person appealing an adverse SERB order in an

² Ironically, in the Tenth District, SERB argued that the trial court adopted a permanent physical presence requirement. (Brief of Appellee SERB in the Tenth District Court of Appeals, R. 33 (“SERB 10th Dist. Br., R. 33”) at 11). And, relying on cases decided under the NLRA, SERB argued an employer does not “transact business” in a forum under R.C. 4117.13(D) unless it has a permanent physical presence there. (SERB 10th Dist. Br., R. 33 at 16-30). So did ATU. (Brief of Appellee ATU in the Tenth District Court of Appeals, R. 32 (“ATU 10th Dist. Br., R. 32”) at 18-20).

unfair labor practice case to a court in a county where the person “transacts business” to demonstrate a permanent physical presence in the forum county. This requirement has no support in R.C. 4117.13(D)’s language or Ohio case law.³ Thus, SERB’s mishandling of the lower courts’ decisions notwithstanding, the very integrity of an Ohio statute enacted by the Ohio General Assembly is at stake in this case. GDRTA respectfully requests that this Court honor the will of the General Assembly as expressed in the plain and unambiguous language of R.C. 4117.13(D) and enforce the statute’s common, everyday meaning.

III. SERB INTERPRETS A STATUTE THAT DOES NOT EXIST.

SERB attempts to convince this Court that R.C. 4117.13(D)’s “transacts business” does not mean what it says with several arguments based upon its own, newly-created version of the statute. First, SERB creates a new definition of R.C. 4117.13(D)’s term “person” so it can more easily apply its so-called “distributive rule” in a manner inconsistent with Ohio law. Second, SERB adds words to R.C. 4117.13(D) not included by Ohio’s General Assembly. Third, SERB speculates about what the meaning of R.C. 4117.13(D) would be if the General Assembly had chosen to use the phrase “transacts any business” in place of “transacts business.” None of these arguments are about R.C. 4117.13(D) as written by the General Assembly. Accordingly, they all must be rejected.

³ ATU inexplicably claims that GDRTA is objecting to the lower courts’ physical presence test for the first time in this Court. (ATU Br. at 3-4, 11). ATU should read more carefully. A substantial portion of GDRTA’s brief before the Tenth District was dedicated to arguing the impropriety of the permanent physical presence requirement first adopted by the trial court. (Brief of Appellant GDRTA in the Tenth District Court of Appeals, R. 31 (“GDRTA 10th Dist. Br., R. 31”) at 41) (“Given the important, fundamental difference between R.C. 4117.13(D) and NLRA § 160(f), the lower court erred by holding that R.C. 4117.13(D) includes a physical presence requirement.”).

A. SERB Altered The General Assembly’s Definition Of “Person” To Support Its Distributive Rule Argument.

SERB claims that the “or” connector in R.C. 4117.13(D)’s sentence allowing an aggrieved person to appeal to the court of common pleas located “where the person resides *or* transacts business” should be read distributively. (Emphasis added.) (SERB Br. at 27-28). R.C. 4117.01(A) and R.C. 1.59 define “person” to include several different entities; and R.C. 4117.13(D) allows a “person” to appeal both where he “resides” and “transacts business.” According to SERB, the distinct entities included in R.C. 4117.13(D)’s definition of “person” should be distributed to or matched with either “resides” or “transacts business” so that an entity either “resides” or “transacts business” for purposes of R.C. 4117.13(D)—but not both. (SERB Br. at 27).⁴ SERB’s distributive rule argument only holds up, however, because SERB altered the General Assembly’s statutory definition of the term “person.”

SERB’s distributive rule argument is based on a misrepresentation of the statutory definition of the term “person.” For purposes of R.C. 4117.13(D), a “person” is an “individual, corporation, business trust, estate, trust, partnership, [] association,” “employee organization[], public employee[], and public employer[.]” (Emphasis added.) R.C. 4117.01(A); R.C. 1.59. SERB conveniently replaces “and” in this definition of “person” with “or.” (SERB Br. at 27) (“‘[P]erson’ in the phrase ‘where the person resides or transacts business,’ R.C. 4117.13(D), means ‘individual, corporation,’ ‘employee organization[], public employee[], [or] public employer[.]’” (Emphasis added.)). Based on this altered definition, SERB applies the distributive rule to allow individuals to appeal SERB orders where they reside and public employers to appeal them only where they transact business. (SERB Br. at 27). This completely ignores that

⁴ Throughout this discussion, SERB focuses on “individuals” versus “corporations,” seemingly forgetting that this case is not about the appeal rights of corporations but about those of public employers and employee organizations.

the General Assembly defined “person” in R.C. 4117.01(A) to include *all* of the statutorily identified individuals and entities, including public employers. If the General Assembly desired “person” to mean something less than R.C. 4117.01(A)’s full statutory definition, it would have written it that way. This Court should reject SERB’s distributive rule argument because it relies on a definition of “person” that does not exist in R.C. 4117.

SERB’s distributive rule also errantly equates the place a public employer (or a corporation) transacts business with its residence. But this Court has explained:

For many purposes, a corporation is regarded as having a residence—a certain and fixed domicil. In this state, where corporations are required to designate in their certificates of incorporation the place of the principal office, such office is the domicil or residence of the corporation. The principal office of a corporation, which constitutes its residence or domicil, is not to be determined by the amount of business transacted here or there, but by the place designated in the certificate.

(Internal citation and quotations omitted.) *Western Exp. Co. v. Wallace*, 144 Ohio St. 612, 618, 60 N.E.2d 312 (1945). And an Ohio court concluded appellate jurisdiction over an appeal was proper under R.C. 4117.13(D) when a union brought it in Franklin County because the union’s parent (and not the local union) both resided *and* transacted business in the county. *See SERB v. Akron City School Dist. Bd. of Edn.*, 83 Ohio App.3d 719, 722, 615 N.E.2d 711 (10th Dist. 1992). Thus, any interpretation of R.C. 4117.13(D) that denies the reality that public employers (and corporations) may have residences that are separate and distinct from the places where they transact business must be rejected.⁵

⁵ SERB’s distributive rule argument is not only misleading and contrary to this Court’s precedent, it is also a prime example of the inconsistency that characterizes SERB’s entire brief. In its distributive rule argument, SERB claims corporations and public employers cannot “both reside and transact business.” (SERB Br. at 27-28). And yet just a few pages earlier SERB contradictorily argues that an employer transacts business for purposes of R.C. 4117.13(D) where it resides or is “at home.” (SERB Br. at 17-19). SERB’s internal inconsistencies undercut its credibility.

B. SERB Narrows The Statute By Adding Modifiers.

Not satisfied with the General Assembly's chosen language in R.C. 4117.13(D), SERB repeatedly attempts to narrow the meaning of "transacts business." SERB argues that when the General Assembly included "transacts business" in R.C. 4117.13(D), it did not really mean that an adverse SERB order could be appealed in any county where the aggrieved party "transacts business," but just in those counties where the aggrieved party transacts "substantial" business or its "ordinary" business or "the business the entity is formed to conduct." (SERB Br. at 6-8). But that is not what the General Assembly said. And what the General Assembly said is what it meant. *State ex rel. Lee v. Karnes*, 103 Ohio St.3d 559, 2004-Ohio-5718, 817 N.E.2d 76, ¶ 27. It is axiomatic that a court tasked with construing a statute "may not restrict, constrict, qualify, narrow, enlarge, or abridge the General Assembly's wording." (Internal citation and quotations omitted.) *Dillon v. Farmers Ins. of Columbus, Inc.*, 145 Ohio St.3d 133, 2015-Ohio-5407, 47 N.E.3d 794, ¶ 17. Thus, this Court should reject SERB's attempt to amend R.C. 4117.13(D) through litigation and its argument that R.C. 4117.13(D)'s "transacts business" should be given any meaning narrower than its common, everyday meaning.

SERB also highlights that the phrase "transacts business" in R.C. 4117.13(D) does not contain the term "any" and claims the absence of "any" indicates the General Assembly's intent that "transacts business" be narrowly construed. (SERB Br. at 8-9). ATU does the same. (ATU Br. at 16-17). The use of the word "any" in a statute certainly emphasizes the General Assembly's intent that the statute be given its broadest possible application. *See, e.g., Kentucky Oaks Mall Co. v. Mitchell's Formal Wear, Inc.*, 53 Ohio St.3d 73, 75, 559 N.E.2d 477 (1990); *Salinas v. U.S.*, 522 U.S. 52, 56-57, 118 S.Ct. 469, 139 L.Ed.2d 352 (1997). But the converse is not necessarily true: the absence of "any" does not mean the phrase should be artificially narrowed as SERB and ATU suggest. SERB's suggestion that the General Assembly would

have used the phrase “transacts any business” if R.C. 4117.13(D) was to be broadly construed is a pointless effort in interpreting a statute that does not exist.

Here, the General Assembly chose to use the unrestricted phrase “transacts business” in R.C. 4117.13(D) and expected that phrase to be given its common, everyday meaning. This Court should follow its own rules of statutory construction and construe R.C. 4117.13(D) consistent with the meaning the General Assembly intended for “transacts business,” thereby giving no consideration to what R.C. 4117.13(D) might mean if it contained a different phrase, like “transacts any business.”

IV. SERB IGNORES CRITICAL LEGAL DISTINCTIONS TO TRY TO ESCAPE THE COMMON, EVERYDAY MEANING OF “TRANSACTS BUSINESS.”

A. SERB Ignores The Distinction Between Personal And Subject Matter Jurisdiction.

SERB invites this Court to superimpose critical personal jurisdiction-related concepts onto R.C. 4117.13(D), a subject matter jurisdiction statute. This Court must decline that invitation. As this Court has recognized, R.C. 4117.13(D) defines courts of common pleas’ power to hear appeals of SERB’s adverse orders in unfair labor practice cases and thus delineates the courts’ subject matter jurisdiction. *South Community, Inc. v. SERB*, 38 Ohio St.3d 224, 226, 527 N.E.2d. 864 (1988). Subject matter jurisdiction is but one type of jurisdiction, however. Personal jurisdiction is a distinct form of jurisdiction concerning a court’s power over the parties to a controversy rather than its power to adjudicate the specific controversy. *See, e.g., Maryhew v. Yova*, 11 Ohio St.3d 154, 156, 464 N.E.2d 538 (1984). While both subject matter jurisdiction and personal jurisdiction are critical to a court’s effective operation, they are not the same.

As this Court well knows and as the parties have recognized throughout the proceedings in the lower courts, subject matter jurisdiction is typically created by statute and represents the legislature’s determination of which cases a court has power to decide. *See, e.g., Cheap Escape*

Co., Inc. v. Haddox, LLC, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶ 6. Now, however, SERB misguidedly applies tenets of personal jurisdiction, which has roots in the Fourteenth Amendment’s Due Process Clause, to its interpretation of R.C. 4117.13(D). *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-472, 105 S.Ct. 2174, 85 L.E.2d 528 (1985). SERB does so by painting R.C. 4117.13(D)’s grant of subject matter jurisdiction with a veneer of personal jurisdiction’s specific and general due process rights. A court exercises specific personal jurisdiction over a defendant when a controversy arises out of the defendant’s contacts with the forum by analyzing the number and quality of the defendant’s contacts with that forum. *Id.* at 471-478. By contrast, general personal jurisdiction grows out of a defendant’s continuous and systematic contacts with a forum, not just from a single connection to a forum that gave rise to the controversy at hand. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 fn. 9, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984).

Without identifying general jurisdiction as a concept related to personal jurisdiction, SERB nonetheless asserts that a general jurisdictional element must be read into R.C. 4117.13(D) because the statute allows an aggrieved party to appeal an adverse SERB decision to a court where it “transacts business,” which may not be where the conduct forming the underlying unfair labor practice occurred. (SERB Br. at 18). SERB characterizes this general (personal) jurisdiction concept as meaning a litigant is “at home in the forum” and argues that, because general personal jurisdiction existed prior to R.C. 4117.13(D)’s enactment, the General Assembly “transplanted these general-jurisdiction concepts” into R.C. 4117.13(D). (*Id.* at 20).

As an initial matter, it goes without saying that subject matter jurisdiction also existed as a legal concept prior to 1983. More to the point, personal jurisdiction—in all of its forms, including both specific and general—is inapposite to this case. R.C. 4117.13(D) unquestionably establishes subject matter jurisdiction. (Appx. 19 at ¶ 40); (SERB 10th Dist. Br., R. 33 at 40).

See also Nibert v. Ohio Dept. of Rehab. & Corr., 84 Ohio St.3d 100, 101-102, 1998-Ohio-506, 702 N.E.2d 70 (1998) (finding that restrictions in an administrative appeal statute go to subject matter jurisdiction).

SERB cites no authority (because there is none) to support the notion that the General Assembly intended R.C. 4117.13(D)'s meaning to be influenced by the tenets of personal jurisdiction or intended to “transplant[]” the concept of general jurisdiction into the meaning of “transacts business.” While SERB relies on federal personal jurisdiction cases to support its “transplant” argument, these cases all turn on Due Process considerations—considerations that have no bearing on the subject-matter-jurisdiction-limiting phrase “transacts business.” When the General Assembly enacted R.C. 4117.13(D), it intentionally enacted a statute defining subject matter jurisdiction. The specific language of R.C. 4117.13(D) should be construed in that context, not in a context superimposed onto it more than 30 years later in an effort to dodge its common, everyday meaning.⁶

B. SERB Minimizes The Clear Distinction Between Jurisdiction And Venue.

After consistently arguing below that the distinction between jurisdiction and venue prohibits an Ohio court from transferring GDRTA's appeal from Franklin County to Montgomery County, SERB now minimizes that distinction. (SERB Br. at 12); (SERB 10th Dist. Br., R. 33 at 36-40). SERB acknowledges that Section 160(f) of the NLRA—which SERB argues supports its contention that “transacts business” requires a permanent physical presence—

⁶ When making its personal jurisdiction arguments, SERB also makes the structural argument that “transacts business” must have a narrow meaning because R.C. 4117.12(C) permits courts to enforce SERB orders through preliminary injunctions and it is easier for local courts to determine whether preliminary relief is appropriate and thereby enforce it when granted. (SERB Br. at 20-21). SERB's argument disregards that the General Assembly included the emergency relief provisions in R.C. 4117.12 knowing full well the scope of R.C. 4117.13(D)'s jurisdictional grant and that the emergency relief provisions are no less effective if “transacts business” is given its common, everyday meaning.

is a venue statute and that R.C. 4117.13(D) is a subject matter jurisdiction statute yet minimizes this difference as “not significant.” (SERB Br. at 12). ATU likewise minimizes the fundamental difference between subject matter jurisdiction and venue. (ATU Br. at 10-11). Both are wrong.

Contrary to SERB’s unsupported pronouncement and repeated attempts to blur the line between subject matter jurisdiction and venue, this Court has recognized that “jurisdiction and venue are distinct legal concepts.” *In re Z.R.*, 144 Ohio St.3d 380, 2015-Ohio-3306, 44 N.E.3d 239, ¶ 16. Venue statutes are intended to limit where a suit may be heard, while statutes defining a court’s subject matter jurisdiction limit its power to decide particular types of cases. *Morrison v. Steiner*, 32 Ohio St.2d 86, 290 N.E.2d 841 (1972), paragraph one of the syllabus. Relying on a recent pronouncement by the U.S. Supreme Court that the distinction between jurisdiction and venue is critical, the Sixth Circuit reiterated that distinction in *Brentwood at Hobart v. NLRB*, 675 F.3d 999, 1002 (6th Cir.2012).⁷

Venue and subject matter jurisdiction statutes’ distinct purposes necessarily form the context in which the respective kinds of statutes (particularly R.C. 4117.13(D)) should be construed. When the General Assembly enacted R.C. 4117.13(D), it enacted a statute dealing with subject matter jurisdiction to be applied by the courts as a subject matter jurisdiction statute, not a venue statute. Thus, absent a clear legislative intent to the contrary, it is inappropriate to construe “transacts business” in a subject matter jurisdiction statute identically to the same phrase in a venue statute simply because the phrase arguably has an established meaning for venue purposes. The statutes were intended to operate in different ways to achieve distinct goals.

⁷ SERB’s conflation of venue and subject matter jurisdiction is precisely the evil warned of and remedied by the U.S. Supreme Court in *Arbaugh* and the Sixth Circuit in *Brentwood* and is why, in the federal system, a statute is jurisdictional in nature only if Congress clearly identifies it to be. *See Arbaugh v. Y & H Corp.*, 546 U.S. 500, 515-516, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006); *Brentwood* at 1003.

SERB's attempt to blur the line between these legal doctrines is yet another effort to distract this Court from the key question of this case and escape the common, everyday meaning of R.C. 4117.13(D)'s "transacts business" through creative, yet imprecise, analysis inconsistent with its arguments below.

V. SERB MANUFACTURES A NEW TERM OF ART TO TRY TO ESCAPE THE COMMON, EVERYDAY MEANING OF "TRANSACTS BUSINESS."

SERB not only mishandles legal doctrines to escape the common, everyday meaning of "transacts business," but it also claims "transacts business" was a term of art with an established meaning at the time R.C. 4117.13(D) was enacted. (SERB Br. at 9, 26). As a result, SERB claims, the phrase's established meaning was "transplanted" by the General Assembly into R.C. 4117.13(D)'s grant of subject matter jurisdiction, carrying with it concepts from various areas of the law. (Id.). SERB's argument has no merit—"transacts business" was not and is not a term of art with a generally accepted meaning that should be transplanted into R.C. 4117.13(D).

Once again, SERB pays lip service to an important legal principle and then vitiates that principle by supporting it with inconsistent and unsupportable analysis. The meaning of a legal term of art has limited reach. While a term of art may have a generally accepted meaning in one substantive area of law, it can have a very different meaning in another substantive area or context. As the U.S. Supreme Court has recognized, legal terms of art can have "chameleon-like" qualities depending upon the contexts in which they are found. *F.A.A. v. Cooper*, ___ U.S. ___, 132 S.Ct. 1441, 1449-1550, 182 L.Ed.2d 497 (2012). For example, the phrase "for cause" is generally understood in the employment context to mean an employment agreement's defined standards or an employer's work rules that, if violated, will result in termination of an employee's employment. *See, e.g., Hodak v. Madison Capital Mgt., LLC*, 348 Fed.Appx. 83, 89-91 (6th Cir.2009). But the same phrase—"for cause"—carries a different, but equally well-

understood, meaning in the context of trial practice. In that context, “for cause” is one of the reasons a juror may be struck from a venire. *See State v. Perez*, 124 Ohio St.3d 122, 2009-Ohio-6179, 920 N.E.2d 104, ¶ 139-140. Similarly, the labor law term of art “just cause” has a widely accepted and generally understood meaning within the context of imposing discipline under a collective bargaining agreement. Yet, as this Court has recognized, that term of art has a different meaning when used in the unemployment compensation context. *Youghioghney & Ohio Coal Co. v. Oszust*, 23 Ohio St.3d 39, 40-41, 491 N.E.2d 298, 299 (1986). Thus, a term of art’s meaning is limited to the substantive area of the law in which it developed and is consistently applied.

SERB recognizes that a term of art’s meaning exists only within the substantive context in which it developed, using “cost” as an example. (SERB Br. at 10). According to SERB “cost” “has many and expansive meanings when considered without *context*. But in a statute about *expenses for litigating*, the word has a specific, narrower meaning.” (Emphasis added.) (Id.). Confusingly, SERB surveys four specific substantive contexts (labor, corporate, personal jurisdiction, and venue) to support its argument that “transacts business” is a term of art in the law generally. If, as SERB asserts, a term of art’s meaning is limited to a given substantive context, then any generally accepted meaning of “transacts business” developed in any context other than subject matter jurisdiction statutes is not only unimportant but also irrelevant to the phrase’s meaning as used in R.C. 4117.13(D).

Even if SERB’s survey were relevant, however, it shows that “transacts business” was not a general term of art in 1983 when the General Assembly enacted R.C. 4117.13(D). At that time, “transacts business” had a different meaning in each of the four substantive areas of law SERB surveyed. According to SERB, a person did not “transact business” in a forum under the NLRA in 1983 without a physical presence in the forum. (Id. at 11). A person could “transact

business” under Ohio’s business licensing statute in 1983, however, without a physical presence in the forum, so long as the person conducted “substantial business activity” there. (Id. at 13). Statutes from across the country limiting court jurisdiction over corporations “transacting or doing business” in a forum provided that a corporation “transacts business” in a forum when it performs its “regular business” there. (Id. at 14). And under the 1983 federal venue statute, a corporation was engaged in “doing business”—which, obviously, is not the phrase used by the General Assembly in R.C. 4117.13(D)—when it had sufficient contacts with the forum to permit the forum to require licensure or registration there. (Id. at 17). SERB’s own examples demonstrate that in 1983, the phrase “transacts business” had four different meanings in four different substantive areas of the law.⁸ The phrase cannot, therefore, be the generally accepted term of art with an acquired meaning SERB claims it to be.

If four different meanings in four different substantive areas of the law does not sufficiently establish that “transacts business” is not a term of art, SERB further undercuts its argument by variously defining the phrase “transacts business” throughout its brief. SERB contends that “transacts business” means: 1) transacting an entity’s business (Id. at 2); transacting an entity’s ordinary business (Id. at 6-7); 3) engaging in substantial activity related to an entity’s ordinary business (Id. at 7); 4) engaging in the business the entity was formed to conduct (Id. at 9); 5) having a permanent physical presence in a forum (Id. at 12); 6) the same thing as “doing business” (Id. at 14-15); 7) something different than “doing business” (Id. at 15-16); and 8) being a resident or “at home” in a forum (Id. at 17-18, 23). If “transacts business” has varying meanings depending on the area of law or the kind of statute in which it is found, it cannot be a term of art in the law generally as SERB claims. And because “transacts business” is

⁸ Once again, SERB attempts to pollute the meaning of “transacts business” as it is used in a subject matter jurisdiction statute with notions of personal jurisdiction and venue, which of course, are not relevant.

not a legal term of art in the law generally and has no specific acquired meaning, there is nothing to transplant into R.C. 4117.13(D) as SERB argues.⁹

SERB, relying on the U.S. Supreme Court case *F.A.A. v. Cooper*, also claims it is inappropriate to seek the meaning of undefined statutory terms in “standard general-purpose dictionaries” when the statutory language in question is a term of art because these definitions may be misleading. (Id. at 26). *See Cooper*, 132 S.Ct. at 1449. SERB’s argument is unpersuasive and is, again, misleading. GDRTA illustrated the common, everyday meaning of “transacts business” not only with standard general-purpose dictionaries but also with Black’s. (Merit Brief of Appellant GDRTA (“GDRTA Br.”) at 13-15). As the Supreme Court recognized in *Cooper*, Black’s is not a standard general-purpose dictionary but provides *legal* definitions. *Cooper* at 1449. Thus, if “transacts business” were a legal term of art in the law generally at the time the General Assembly enacted R.C. 4117.13(D), Black’s would have recognized it. *Id.* But, as demonstrated above, the meaning of “transacts business” varied depending on the substantive context in which it was found and was accordingly not a term of art in 1983. Thus, SERB’s suggestion to the contrary notwithstanding, it is entirely appropriate to look to dictionaries—both standard general-purpose and legal—to discern the common, everyday meaning of “transacts business” as used in R.C. 4117.13(D).

VI. SERB RELIES ON IRRELEVANT DICTIONARY DEFINITIONS.

SERB and GDRTA both appropriately rely on dictionary definitions to demonstrate the meaning of R.C. 4117.13(D)’s “transacts business.” (GDRTA Br. at 13-15); (SERB Br. at 7). In *Kentucky Oaks*, 53 Ohio St.3d at 75-76, 559 N.E.2d 477, this Court relied on Black’s definition

⁹ It also bears noting that SERB’s “term of art” argument places an unbearable standard on the General Assembly. SERB’s argument assumes that in 1983 the General Assembly had knowledge of and understood how the phrase “transacts business” was used in every substantive area of every state’s law and all of federal law. Such an assumption of legislative omniscience is unreasonable and misguided.

of “transact” to determine the meaning of the phrase “transacting any business” in Ohio’s long-arm statute.¹⁰ Like this Court, GDRTA relied on Black’s definition of the words “transact” and “business” to determine the meaning of the R.C. 4117.13(D)’s “transacts business.” According to SERB, however, GDRTA, and by implication this Court in *Kentucky Oaks*, should not have used Black’s definition for the independent term “transact” and instead should have relied on Black’s case-based definitions of the phrase “transacts business.” (SERB Br. at 7, 25). But Black’s case-based definitions would have made no sense in *Kentucky Oaks* and makes no sense here.

Black’s defines the phrase “transacting business” by referencing case law, but not Ohio case law and not labor case law. Instead, it defines the phrase “transacts business” by reference to various state business licensing statutes for foreign businesses and federal antitrust cases. *Black’s Law Dictionary* 1341 (5th Ed.1979). SERB’s reliance on Black’s case-based definitions of the phrase is improper for several reasons.

First, SERB’s preferred case-based definitions of “transacting business” are expressly limited to the statutory context in which those cases were decided. *See id.* For example, Black’s states that the term “[t]ransacting business,” *within statute providing* that no foreign corporation transacting business in State without a certificate of authority shall maintain an action in State . . . is not susceptible of precise definition” (Emphasis added.) *Id.* In another example, Black’s states that the “[t]est of whether or not a corporation is transacting business, in a district, *for purposes of section of the Clayton Act* . . . is the practical everyday business or commercial concept of doing business of any substantial character.” (Emphasis added.) *Id.* Both of these case-based definitions for “transacting business”—the only two offered by Black’s—are

¹⁰ GDRTA understands that *Kentucky Oaks* is a personal jurisdiction case interpreting the Ohio long-arm statute. But GDRTA relies on *Kentucky Oaks* to demonstrate this Court’s process of defining undefined statutory terms with relevant dictionary definitions, not, as SERB does throughout its brief, to apply a layer of personal jurisdiction concepts to a subject matter jurisdiction statute.

expressly limited to the area of law addressed by each applicable case. There is no indication that the Ohio General Assembly intended for “transacts business” in R.C. 4117.13(D) to have the same meaning as the phrase “transacting business” in foreign business licensing statutes or antitrust statutes. SERB’s argument to the contrary is an obvious effort to escape the plain meaning of the terms “transact” and “business” as evidenced in Black’s independent definition of those terms.

Furthermore, the cases Black’s cites to support the definition of “transacting business” under the Clayton Act recognize that the phrase has different meanings in other areas of the law. For example, one court stated: “[C]ourts have made it clear that ‘transacting business’ as used in the antitrust laws has a meaning *independent* of other definitions of the terms *in other state and federal laws.*” (Emphasis added.) *Kolb v. Chrysler Corp.*, 357 F.Supp. 504, 508 (E.D.Wis. 1973). And Black’s itself concludes that the meaning of “transacting business” in statutes restricting unlicensed corporations’ ability to maintain suits in states where they were allegedly “transacting business” “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.” *Black’s Law Dictionary* at 1341. Thus, contrary to SERB’s argument, Black’s case-based definitions are totally irrelevant to the meaning of the phrase “transacts business” as used in R.C. 4117.13(D).

While admirable, SERB’s definitional acrobatics are unnecessary because this Court has previously defined “transact” and because Black’s provides appropriate definitions of the individual terms in the phrase “transacts business.” Applying those definitions, an employer “transacts business” when it prosecutes negotiations or has dealings related to its employment, occupation, profession, or commercial activity engaged in for gain or livelihood. *Id.* at 179, 1341. This definition is supported not only by Black’s primary definitions of the terms “transact”

and “business” but also by this Court’s precedent demonstrating that a dictionary’s primary entries—not nuanced, case-based definitions applicable only in a narrow area of the law—should be relied upon when seeking the common, everyday meaning of statutory language. *See Kentucky Oaks*, 53 Ohio St.3d at 75-76, 559 N.E.2d 477. SERB’s focus on Black’s narrow, niche definitions is an inappropriate miscue. Instead, this Court should define “transacts business” according to its common, everyday meaning as evidenced by Black’s primary definitions of the phrase’s independent terms.

VII. SERB’S POLICY ARGUMENTS ARE UNPERSUASIVE.

SERB also attempts to distract the Court’s attention from the common, everyday meaning of “transacts business” as used in R.C. 4117.13(D) with a variety of policy-based arguments. While SERB inaccurately faults GDRTA for making policy arguments, it asserts clear policy arguments to support its own position.¹¹ Doing so defies this Court’s consistent guidance that policy-based arguments are only appropriate when a statute is ambiguous. Here, the parties finally agree that the statute is unambiguous.

Moreover, SERB’s arguments are unpersuasive. SERB argues that courts should not need to analyze evidence of the amount of business an employer conducts in a forum to assess whether it has subject matter jurisdiction over a dispute. (SERB Br. at 2-3, 34). Courts instead, SERB argues, should be left to resolve the substance of the parties’ disputes. (Id.). Of course, courts have “authority and responsibility” to assess parties’ contacts with a forum to determine whether personal jurisdiction exists over an out-of-state party under the Ohio long-arm statute

¹¹ GDRTA’s arguments that SERB labels as “policy arguments” are not policy arguments at all. (SERB Br. at 32). Rather, GDRTA points out that § 160(f) of the NLRA, a venue statute, is fundamentally different than R.C. 4117.13(D), a subject matter jurisdiction statute, and those statutes were enacted to achieve differing policy goals. Consequently, the very contexts in which each of the statutes were enacted are different and, given such differences, it is not appropriate to adopt the meaning of “transacts business” in § 160(f) of the NLRA as the meaning of R.C. 4117.13(D)’s “transacts business.”

and are frequently called on to assess whether they have subject matter jurisdiction over other disputes. *See, e.g., Connor v. McGough*, 46 Ohio St.3d 188, 190, 546 N.E.2d 407 (1989). SERB's insinuation that Courts would be unduly burdened by or are incapable of assessing a litigant's contacts with a forum to determine whether a statute's jurisdictional requisites are met is inaccurate and insults the competency of Ohio courts.

SERB also makes the policy argument that jurisdictional rules should reign in, rather than expand, opportunities for forum shopping. (SERB Br. at 22). Ohio, of course, has a general policy against forum shopping. *See, e.g., State ex rel. Aycock v. Mowrey*, 45 Ohio St.3d 347, 352, 544 N.E.2d 657 (1989). Thus, forum shopping was certainly considered by the General Assembly at the time it enacted R.C. 4117.13(D) and yet, cognizant of those considerations, it used its chosen language in R.C. 4117.13(D). Thus, the intent of the General Assembly allowing parties—both employers and unions, among others—to select appellate fora under R.C. 4117.13(D) is embodied in the statute's clear and unambiguous language. *See, e.g., State v. Hairston*, 101 Ohio St.3d 308, 2004-Ohio-969, 804 N.E.2d 471, ¶ 11-12. It is not the role of this Court to second guess the General Assembly's policy judgment regardless of whether the Court agrees with the wisdom of that judgment. *See, e.g., State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 86 Ohio St.3d 451, 455-46, 715 N.E.2d 1062 (1999). Rather, this Court should enforce R.C. 4117.13(D)'s clear and unambiguous language and leave it to the General Assembly, if it so chooses, to address any forum shopping concerns inherent in that language.

SERB suggests that GDRTA proposes a rule under which employers, but not employees or unions, would have the ability to shop for appellate fora when faced with an adverse unfair labor practice order from SERB. (SERB Br. at 3). Initially, GDRTA is not asking this Court to condone forum shopping; GDRTA is asking this Court to enforce the clear and unambiguous language of a statute to allow it to exercise all of the rights the General Assembly saw fit to give

it through that statute. But these rights are not unilaterally granted to employers. Under the clear language of R.C. 4117.13(D), unions, too, can appeal an adverse SERB order in an unfair labor practice proceeding to any common pleas court sitting in a county where the union transacts business. In fact, in *Akron City School Dist. Bd. of Edn.*, 83 Ohio App.3d at 719, 615 N.E.2d 711, the union did just that, filing an appeal in Franklin County where its parent company transacted its business though the underlying unfair labor practice took place in Summit County.

SERB, and ATU as well, lace their briefs with other policy arguments. For example, SERB asserts that this Court should interpret jurisdictional statutes to avoid “ancillary litigation” and that it is easier for local courts to decide local labor disputes. (SERB Br. at 20-21). *See also* (ATU Br. at 4, 16). These arguments, and all of SERB’s and ATU’s other policy arguments, must be rejected for the same reason SERB’s forum shopping concerns are irrelevant—the statute is clear and unambiguous, and the will of the General Assembly is expressed through the statute’s clear and unambiguous language. And in Ohio, the General Assembly, not the courts, makes the policy determinations.

VIII. CONCLUSION

SERB’s arguments are varied and creative, but they all have a single purpose—to distract this Court from the common, everyday meaning of R.C. 4117.13(D)’s “transacts business.” This Court should not be distracted, but should instead analyze “transacts business” in context and give it its common, everyday meaning. It is undisputed that GDRTA engaged in an average of 1.7 business transactions per week in Franklin County and spent nearly \$600,000 pursuant to contracts with 32 Franklin County businesses. GDRTA thus “transacts business” in Franklin County under the common, everyday meaning of the phrase. GDRTA therefore respectfully requests that this Court reverse the Tenth District and remand this matter to the trial court for further proceedings.

Respectfully submitted,

/s/ Ronald G. Linville

Ronald G. Linville (0025803)

Counsel of Record

Jennifer E. Edwards (0079220)

Jeremiah L. Hart (0087744)

BAKER & HOSTETLER LLP

Capitol Square, Suite 2100

65 East State Street

Columbus, OH 43215-4260

Telephone: 614.228.1541

Facsimile: 614.462.2616

Email: rlinville@bakerlaw.com

jedwards@bakerlaw.com

jhart@bakerlaw.com

*Counsel for Appellant Greater Dayton Regional
Transit Authority*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of Appellant Greater Dayton Regional Transit Authority was served by regular U.S. mail this 13th day of June, 2016 upon the following:

Michael DeWine (0009181)
Attorney General of Ohio
Eric E. Murphy* (0083284)
State Solicitor

**Counsel of Record*

Michael J. Hendershot (0081842)
Chief Deputy Solicitor
Lori Friedman (0018480)
Assistant Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

Counsel for Appellee
State Employment Relations Board

Joseph S. Pass (0093158)
Jubelirer, Pass and Intrieri, PC
219 Fort Pitt Boulevard
Pittsburgh, PA 15222

Christine A. Reardon (0034686)
Kalniz, Iorio & Feldstein Co., L.P.A.
5550 W. Central Ave.
P.O. Box 352170
Toledo, Ohio 43635

Counsel for Appellee
Amalgamated Transit Union, AFL CIO,
Local 1385

/s/ Ronald G. Linville
Ronald G. Linville
Counsel of Record
Greater Dayton Regional Transit Authority