In the
Supreme Court of Ohio

OHIO COUNCIL 8, AFSCME, AFL-CIO, AND LOCAL 1043, AFSCME, AFL-CIO,	:	Case No. 2024-0031
	:	On Appeal from the
	:	Cuyahoga County
Appellants,	:	Court of Appeals,
	:	Eighth Appellate District
v.	:	
	:	Court of Appeals
CITY OF LAKEWOOD,	:	Case No. 23-112456
	:	
Appellee.	:	

MERIT BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL DAVE YOST IN SUPPORT OF APPELLANTS

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INTRODUCTION

"[N[o statute yet known pursues its stated purpose at all costs." *Henson v. Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017) (internal punctuation omitted). That is surely true of jurisdictional statutes as well. *See, e.g., Kucana v. Holder*, 558 U.S. 233, 252 (2010). In this appeal, the Eighth District erred by concluding that the Revised Code provisions assigning exclusive jurisdiction to the State Employment Relations Board over certain disputes extends to a near-limitless horizon. That judgment is error. If the Eighth District is right, *no* dispute in the public-labor context is beyond the Board's jurisdiction. While the Board has "exclusive jurisdiction to decide matters committed to it," *Franklin Cty. Law Enforcement Ass'n v. Fraternal Ord. of Police*, 59 Ohio St. 3d 167, syl. ¶1 (1991), the Board's creating statute commits some matters to the courts of common pleas. Most directly, the statute mandates that collective-bargaining agreements contain a grievance procedure *enforceable in common pleas court*. R.C. 4117.09(B)(1). Yet if the Eighth District's rule is correct, the common-pleas language has no meaning, and the Board has been underselling its jurisdiction for its four-decade history. But the Eighth District's rule—which leaves no labor disputes to be resolved in the common-pleas courts—is wrong, and the Board has been correctly limiting its investigations and hearings to the questions truly within its jurisdiction. This Court should say so and reverse. The Attorney General files this brief to explain why his statutory client does not have jurisdiction over this dispute.

STATEMENT OF *AMICUS* INTEREST

The Attorney General is Ohio's chief law officer. R.C. 109.02. He is also the "legal adviser" to the State Employment Relations Board. R.C. 4117.02(H). The Attorney General submits this brief to aid the Court's review and to draw the proper jurisdictional line between the Board and the common pleas courts.

In many cases, the Attorney General fights to preserve the exclusive jurisdiction of a State agency, sometimes even by filing an extraordinary writ against a judge. *See, e.g.*, *Pivonka v. Corcoran*, 162 Ohio St. 3d 326, 2020-Ohio-3476, ¶¶21–22; *State ex rel. Dir., Ohio Dep't of Ag. v. Forchione*, 148 Ohio St. 3d 105, 2016-Ohio-3049; *State ex rel. Wilkinson v. Reed*, 99 Ohio St. 3d 106, 2003-Ohio-2506; *State ex rel. Williams v. Bozarth*, 55 Ohio St. 2d 34 (1978); *see also State ex rel. Rocky Ridge Dev., L.L.C. v. Winters*, 151 Ohio St. 3d 39, 2017-Ohio-7678; *State ex rel. Taft-O'Connor '98 v. Franklin Cty. Ct. of Common Pleas,* 83 Ohio St. 3d 487 (1998). That includes defending the exclusive jurisdiction of the State Employment Relations Board. *See, e.g.*, *State ex rel. Ohio Civil Serv. Employee's Ass'n v. State*, 146 Ohio St. 3d 315, 2016-Ohio-478; *Reed*, 99 Ohio St. 3d 106. Of course, not every lawsuit that a party alleges to be within the exclusive jurisdiction of an administrative agency actually is beyond a court's power to adjudicate. *See, e.g.*, *Highland Tavern, L.L.C. v. DeWine*, 173 Ohio St. 3d 59, 2023-Ohio-2577, ¶23; (plurality opinion); *Corder v. Ohio Edison Co.*, 162 Ohio St. 3d 639, 2020-Ohio-5220, ¶15. The Attorney General files this brief to explain why

this case is not within the exclusive jurisdiction of his client, the State Employment Relations Board.

STATEMENT

A. Ohio's public labor laws channel many disputes to the State Employment Relations Board, but reserve contract disputes for resolution in the common-pleas courts.

Passed in 1983, the labor statutes for public employers "provide a process whereby employees will be consulted about decisions which have a profound impact on them and, thus, industrial peace will be preserved and promoted." *Lorain City Sch. Dist. Bd. of Educ. v. State Emp't Relations Bd.*, 40 Ohio St.3d 257, 263 (1988). The mechanics of that project are in Revised Code Chapter 4117. That Chapter "established a comprehensive framework for the resolution of public-sector labor disputes by creating a series of new rights and setting forth specific procedures and remedies for the vindication of those rights. The chapter regulate[s] in a comprehensive manner the labor relations between public employees and employers." *State ex rel. Casey v. Brown*, 172 Ohio St. 3d 655, 2023-Ohio-2264, ¶31 (internal quotation marks omitted); *see also Franklin Cty. Law Enforcement Assn. v. Fraternal Order of Police*, 59 Ohio St.3d 167, 169 (1991). One part of the comprehensive framework channels allegations that an employer or union breached one of the duties created by Chapter 4117 to the State Employment Relations Board. *See, e.g.*, *State ex rel. Murray v. State Emp't Relations Bd.*, 156 Ohio St. 3d 70, 2018-Ohio-5131, ¶¶1–2 (describing unfair-labor practice charge against union); *Ft. Frye Teachers Assn., OEA/NEA*

v. State Emp. Relations Bd., 102 Ohio St. 3d 283, 2004-Ohio-2947, ¶9 (deciding unfair-labor-practice by employer). The other part of the framework enforces contract rights through arbitration to vindicate the contractual terms of employment, which are often set between the employer and a union. *See, e.g.*, *Bd. of Trustees of Miami Twp. v. Fraternal Ord. of Police*, 81 Ohio St. 3d 269 (1998); *Queen City Lodge No. 69, Fraternal Ord. of Police, Hamilton Cty., Ohio, Inc. v. Cincinnati*, 63 Ohio St. 3d 403 (1992).

B. A Lakewood city employee and his union file a grievance, and successfully compel arbitration of the grievance.

This case involves the second part of the framework. The union representing a terminated employee of the Lakewood Public Works Department sought to challenge that firing through a contractual grievance process. *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, ___ Ohio App. 3d ___, 2023-Ohio-4212, ¶4 (App. Op.). The City refused to arbitrate. *Id*. The union then filed a motion in common-pleas court to compel arbitration. *Id.* at ¶5. In response, the City then filed a motion to dismiss the case for lack of subject-matter jurisdiction. *Id*. The trial court rejected that motion and granted the application to compel arbitration.

C. The Eighth District reverses, holding that the dispute belongs before the Board.

On the City's appeal, the Eighth District reversed. The court described the employee's claims as "premised on the … allegations that there is a CBA that the City has failed to comply with." *Id.* at ¶15. According to the Eighth District, because the City

"refus[ed] to arbitrate" the single grievance at issue here, "the City interfered with" the employee's "statutory collective-bargaining rights." *Id.* And that linkage, the court concluded, made the claim "entirely dependent on and … directly within the scope of the collective bargaining rights created by R.C. Chapter 4117." *Id.*

Judge Forbes dissented. In her view, the "question before" the court asked whether the request to compel arbitration was a suit "for violating" the collective-bargaining agreement's "arbitration provision," or was instead a request to enforce a right that arose from "the collective bargaining rights created by R.C. Chapter 4117." *Id.* at ¶30 (Forbes, J., dissenting). Judge Forbes concluded that the claim involved a "violation of the CBA," and nothing more. *Id.* at ¶28. She would therefore have affirmed the trial court's judgment compelling arbitration of the single employee's claim. *See id*. (A side note about the appellate proceedings: The order compelling arbitration was a final, appealable order. *See, e.g.*, *Russell v. RAC Natl. Prod. Serv., L.L.C.*, 2014-Ohio-3392, ¶14 (4th Dist.); *Palumbo v. Select Mgmt. Holdings, Inc*., 2003-Ohio-6045, ¶ 14 (8th Dist.).)

ARGUMENT

***Amicus Curiae* Ohio Attorney General's Proposition of Law:**

> *A common-pleas court has subject-matter jurisdiction to hear a request to arbitrate a grievance related to a single employee pursuant to a collective-bargaining agreement when the employer refuses to honor that agreement.*

Plain text and judicial precedent show the Eighth District's error. And nothing in the Eighth District's opinion rebuts the plain conclusion dictated by the text and this Court's precedents.

I. The statute setting out the State Employment Relations Board's jurisdiction reserves to common pleas courts suits to enforce contractual grievance procedures.

The respective jurisdiction of the Board and the common pleas courts is a statutory question. Nothing in this case raises any question about the General Assembly's constitutional power to assign certain disputes to the Board and other disputes to the courts. *Compare, e.g.*, Ohio Const. art. IV, §2(B)(g); *Incorporated Vill. of New Bremen v. Pub. Utilities Comm'n*, 103 Ohio St. 23, 31 (1921); *State ex rel. Yaple v. Creamer*, 85 Ohio St. 349, 403 (1912). Instead, this case asks only whether the General Assembly has declared by statute that a dispute over one public employee's grievance under a collective-bargaining agreement should be heard in a common-pleas court or before the State Employment Relations Board.

The Ohio Constitution gives the General Assembly the power to define the limits of the common-pleas courts' jurisdiction. Ohio Const. art. IV, §4(B); *Corder v. Ohio Edison Co.*, 162 Ohio St. 3d 639, 2020-Ohio-5220, ¶15; *State v. Wilson*, 73 Ohio St.3d 40, 42 (1995).

Exercising that power, the "General Assembly has given the common pleas courts subject-matter jurisdiction over all civil cases that it has not expressly excluded from their jurisdiction." *Pivonka v. Corcoran*, 162 Ohio St. 3d 326, 2020-Ohio-3476, ¶21; R.C. 2305.01. On the flip side, when a court of common pleas lacks subject-matter jurisdiction, "it is almost always because a statute explicitly removed that jurisdiction." *Ohio High School Athletic Ass'n v. Ruehlman*, 157 Ohio St.3d 296, 2019-Ohio-2845, ¶9.

So the question is whether a statute explicitly removes common-pleas jurisdiction for the kinds of claim here—the city's claim that it need not arbitrate its decision to terminate a worker who belonged to the public union. The answer is no, and that answer follows from the plain text, several aids to reading that text, and this Court's precedents.

A. The plain text of the labor-relations statutes assigns some labor issues to the State Employment Relations Board and others to the common-pleas courts.

This Court's review could well "start[] and stop[]" with the unambiguous language of the statute. *Johnson v. Montgomery*, 151 Ohio St. 3d 75, 2017-Ohio-7445, ¶15; *see also In re Adoption of A.C.B.*, 159 Ohio St. 3d 256, 2020-Ohio-629, ¶8. The statutes that create and govern the Board explicitly reserve common-pleas jurisdiction for "violations" of collective-bargaining "agreements." R.C. 4117.09(B)(1). Such suits may be filed "in the court of common pleas of any county wherein a party resides or transacts business." *Id*. To be sure, the statute also gives the Board power to remedy "unfair labor practice[s] … specified" in Chapter 4117. *See* R.C. 4117.12(A). That language gives the Board "exclusive

jurisdiction to decide matters committed to it." *Franklin Cty. Law Enforcement Ass'n v. Fraternal Ord. of Police*, 59 Ohio St. 3d 167, syl. ¶1 (1991). But, as the contract-enforcement provision makes plain, the General Assembly did not commit breach-of-contract suits to the Board; it instead committed them to the State's 88 county courts of common pleas. In other words, the statute does not confer jurisdiction on the Board for the kind of dispute the Eighth District jettisoned from the court system.

Of course, not every violation of a collective-bargaining agreement is an unfair labor practice. *See, e.g.*, *State ex rel. Stacy v. Batavia Loc. Sch. Dist. Bd. of Educ.*, 105 Ohio St. 3d 476, 2005-Ohio-2974; *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St. 3d 447 (1996); *State ex rel. Johnson v. Cleveland Hts./Univ. Hts. Sch. Dist. Bd. of Educ.*, 73 Ohio St. 3d 189 (1995); *Whitley v. Canton City Sch. Dist. Bd. of Educ.*, 38 Ohio St. 3d 300, 301 (1988). Therefore, a claim that alleges breach of a collective-bargaining agreement—if it does not also allege an unfair labor practice—belongs in common-pleas court, not in front of the State Employment Relations Board.

The nature of state agencies as creatures of statute affects what the text means for the Board's power. The Commission, like other state agencies, "is a creature of statute and is limited to the powers with which it is thereby invested." *Steward v. Evatt*, 143 Ohio St. 547, syl. ¶1 (1944). It "has no authority to act beyond its statutory powers." *Disc. Cellular, Inc. v. Public Utilities Comm'n*, 112 Ohio St. 3d 360, 2007-Ohio-53, ¶51; *cf. NFIB v. OSHA*, 142 S. Ct. 661, 665 (2022) (*per curiam*); *Merck Sharp & Dohme Corp. v. Albrecht*, 139

S. Ct. 1668, 1679 (2019) (citation omitted). And it "cannot circumvent" the statute by exercising power that "the General Assembly itself did not prescribe." *Direct Energy Bus., L.L.C. v. Duke Energy Ohio, Inc.*, 161 Ohio St. 3d 271, 2020-Ohio-4429, ¶19. So the explicit directive that claims for breach of a collective-bargaining agreement must be filed in common pleas court forecloses any argument that such disputes belong exclusively in the State Employment Relations Board. *See, e.g.*, *Corder*, 162 Ohio St. 3d 639, ¶26; *Allstate Ins. Co. v. Cleveland Elec. Illuminating Co.*, 119 Ohio St. 3d 301, 2008-Ohio-3917, ¶14; *cf. State v. Brown*, 142 Ohio St. 3d 92, 2015-Ohio-486, ¶8 (probate court had no power to issue warrant statute because statute limited that power to other courts).

B. Context confirms the plain text's meaning.

The conclusion apparent from plain text is equally apparent in what the statutes *does not* say. What the statute does not say is that the Board has exclusive jurisdiction over all matters related to collective bargaining. If the Assembly had wanted to make the Board the exclusive arbiter of all labor disputes, "it could have expressly enacted such a rule." *State ex rel. CNN, Inc. v. Bellbrook-Sugarcreek Local Sch.*, 163 Ohio St. 3d 314, 2020-Ohio-5149, ¶24. And "it would not have been difficult to find language which would express that purpose." *Lake Shore Elec. R. Co. v. Public Utilities Commission of Ohio*, 115 Ohio St. 311, 319 (1926). For example, the Revised Code makes an administrative process before the Department of Medicaid the "sole remedy" for claims involving repayment from third-party settlements. R.C. 5160.37(P). Similarly, the Code routes through the

Elections Commission all "complaints" about violations of the political-campaign statutes. R.C. 3517.151(A). And, analogously, the Code confers on the Court of Claims "exclusive jurisdiction" over legal claims against the State. R.C. 2743.03(A)(1). Because the General Assembly "chose not to" repose similar exclusivity in the State Employment Relation Board "as it did expressly in" these other circumstances, this Court cannot "make a different choice." *State v. Bryant*, 160 Ohio St. 3d 113, 2020-Ohio-1041, ¶18. In other words, if the General Assembly wanted to make the Board the exclusive forum for all facets of all labor disputes, "it had at hand readymade language" in the Ohio Elections Commission statute. *Thryv, Inc. v. Click-To-Call Techs., LP*, 140 S. Ct. 1367, 1375 (2020). But the Assembly did not put that readymade language into the statute.

The statute's overall structure buttresses the conclusion that common-pleas courts retain jurisdiction over claims that an employer breached a collective-bargaining agreement through a single instance of refusing to process a labor grievance. A statute's "structure" or "design" is often an important aspect of its meaning. *See, e.g.*, *State ex rel. More Bratenahl v. Vill. of Bratenahl*, 157 Ohio St. 3d 309, 2019-Ohio-3233, ¶12; *Lingle v. State*, 164 Ohio St. 3d 340, 2020-Ohio-6788, ¶15. The law's explicit definition for unfair-labor practices related to processing grievances shows that a single failure to process is not an unfair labor practice. Only an employer's "pattern or practice of repeated failures to timely process grievances" is an unfair practice. R.C. 4117.11(A)(6). Therefore, a single employer's failure to process a grievance *cannot* be challenged before the Board because

the statute explicitly requires *more* to constitute an unfair labor practice. In common parlance, a pattern requires more than "proving two predicate acts." *H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 236 (1989). And because the "pattern or practice" definition serves "as a *floor* below which the [employer's unfair-labor-practice] liability could not fall," *F.D.I.C. v. Meyer*, 510 U.S. 471, 482 (1994), the Board could not exercise jurisdiction over a claim composed of a single unprocessed grievance. With the pattern-or-practice limit, the statute marks liability "thus far but not beyond." *United States v. 12 200-Foot Reels of Super 8mm. Film*, 413 U.S. 123, 127 (1973). At the very least, a case about one unprocessed grievance is outside the Board's jurisdiction.

Finally, another part of the labor-relations statutes confirms the reading that common-pleas courts have jurisdiction over claims that a party breached a collective-bargaining agreement. *See, e.g.*, *State v. Bryant*, 160 Ohio St. 3d 113, 2020-Ohio-1041, ¶¶17–18 (examining neighboring statutory provisions); *Risner v. Ohio Dep't of Nat. Res., Ohio Div. of Wildlife*, 144 Ohio St. 3d 278, 2015-Ohio-3731, ¶19 (same). A neighboring provision in the labor-relations statutes explains that a Board finding that a public official committed an unfair labor practice is no barrier to "any party to a collective bargaining agreement … seeking enforcement or damages for a violation thereof against the other party to the agreement." R.C. 4117.11(C). That specific reservation bolsters a reading of the general provision that reserves breach-of-contract claims for the common-pleas court. Both provisions reserve questions related to labor disputes to a forum outside the State

Board. That is, R.C. 4117.11(C) shows that the Board's jurisdiction sweeps in less than all public-labor-relations disputes. Reading these two provisions in harmony means that the explicit reservation for contract claims in R.C. 4117.09 equals no Board jurisdiction over such claims. *See, e.g.*, *State ex rel. Horizon Sci. Acad. of Lorain, Inc. v. Ohio Dep't of Educ.*, 164 Ohio St. 3d 387, 2021-Ohio-1681, ¶¶16–18. In short, reading the labor-relations laws to direct all labor disputes to the Board "fits poorly with the remainder of the statutory scheme." *Cyan, Inc. v. Beaver Cty. Emps. Ret. Fund*, 583 U.S. 416, 429 (2018).

The statute's plain meaning finds further support in two federal analogies.

The first is in the National Labor Relations Act, which served as the model for Ohio's collective-bargaining laws. *See, e.g.*, *State Emp't Relations Bd. v. Miami Univ.*, 71 Ohio St.3d 351, 353 (1994); *Ohio Ass'n of Public Sch. Emp., Chapter 643, AFSCME/AFL-CIO v. Dayton City Sch. Dist. Bd. Of Educ.*, 59 Ohio St. 3d 159, 161 (1991). Under that federal law, "Congress deliberately chose to leave the enforcement of collective agreements to the usual processes of the law." *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 513 (1962) (internal quotation marks omitted). Correspondingly, the U.S. Supreme Court has "decline[d] to adopt a rule that exclusive jurisdiction lies in the [Board] over any … suit whose hypothetical accompanying claim against the employer might be raised before the Board." *Breininger v. Sheet Metal Workers Int'l Ass'n Loc. Union No. 6*, 493 U.S. 67, 84 (1989). Applying that principle, the Supreme Court has repeatedly held that, even though the same conduct might violate the unfair-labor-practices law and some independent source

of rights, the National Labor Relations Board does not have exclusive jurisdiction over the latter disputes. *See, e.g.*, *Belknap, Inc. v. Hale*, 463 U.S. 491, 512 (1983); *Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180 (1978); *Farmer v. Carpenters,* 430 U.S. 290 (1977); *Linn v. Plant Guard Workers,* 383 U.S. 53 (1966). Indeed, the Court has reversed lower court decisions that gave the National Labor Relations Board's jurisdiction too wide a berth. *See, e.g.*, *Smith v. Evening News Ass'n*, 371 U.S. 195 (1962); *Gen. Elec. Co. v. Loc. 205, United Elec., Radio & Mach. Workers of Am.*, 353 U.S. 547 (1957). The lessons of these cases can inform the answer here. Just as federal law does not reserve for the National Labor Relations Board every dispute that relates to unfair-labor-relations allegations, Ohio law does not reserve for the State Employment Relations Board every claim that touches on unfair-labor practices.

A second analogy in federal law comes from the rules about federal courts' jurisdiction over a claim "arising under" federal law. 28 U.S.C. §1331. Applying that statute, the U.S. Supreme Court has never treated the phrase "federal issue" as a "password opening federal courts to any state action embracing a point of federal law." *Grable & Sons Metal Prod., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005); *see also Gunn v. Minton*, 568 U.S. 251, 258–59 (2013). In other words, not every case with a federal issue "arises under" federal law. For example, "a controversy in respect of lands has never been regarded as presenting a federal question merely because one of the parties to it has derived his title under an act of Congress." *Shulthis v. McDougal*, 225 U.S. 561, 570 (1912).

Returning the analogy to the Ohio statute, a dispute that exists only because the parties have a collective-bargaining agreement is not automatically within the Board's exclusive jurisdiction. The Ohio statute does not track but-for cause; it only steers to the Board those disputes that aim to enforce collective-bargaining rights themselves.

C. This Court's many precedents applying the labor-relations statutes align with the plain text and context.

This Court's precedents trace the same line as the statutes. The Court has consistently defined two types of disputes over which the Board has exclusive jurisdiction: "(1) where one of the parties filed charges with [the Board] alleging an unfair labor practice under R.C. 4117.11 and (2) where a complaint brought before the common pleas court alleges conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11." *State ex rel. Cleveland v. Sutula*, 127 Ohio St.3d 131, 2010-Ohio-5039, ¶16 (internal quotation marks omitted). As that framing reveals, "if a party asserts rights that are independent of R.C. Chapter 4117, then the party's complaint may properly be heard in common pleas court. However, if a party asserts claims that arise from or depend on the collective bargaining rights created by R.C. Chapter 4117, the remedies provided in that chapter are exclusive." *Franklin Cty. Law Enforcement Ass'n v. Fraternal Ord. of Police*, 59 Ohio St. 3d 167, 171 (1991). That formulation dates back to the 1991 decision in *Fraternal Order of Police* and traces a consistent thread from then through the most recent decision in *Russo*. *See Franklin Cty.*, 59 Ohio St. 3d 167 at 171; *Ohio Hist. Soc. v. State Emp't Relations Bd.*, 66 Ohio St. 3d 466, 469 (1993); *E. Cleveland v. E. Cleveland*

Firefighters Loc. 500, I.A.F.F., 70 Ohio St. 3d 125, 129 (1994); *Fraternal Order of Police v. Franklin Cty. Ct. of Common Pleas* 76 Ohio St. 3d 287, 287 (1996); *State ex rel. Rootstown Loc. Sch. Dist. Bd. of Educ. v. Portage Cty. Ct. of Common Pleas*, 78 Ohio St. 3d 489, 493 (1997); *State ex rel. Ohio Dep't of Mental Health v. Nadel*, 98 Ohio St. 3d 405, 2003-Ohio-1632, ¶24; *State ex rel. Wilkinson v. Reed*, 99 Ohio St. 3d 106, 2003-Ohio-2506, ¶20; *Sutula*, 127 Ohio St.3d 131, at ¶16; *State ex rel. Ohio Civ. Serv. Emps. Assn. v. State*, 146 Ohio St. 3d 315, 2016-Ohio-478, ¶57; *State ex rel. The City of Cleveland v. Russo*, 156 Ohio St. 3d 449, 2019-Ohio-1595, ¶17. A look at each of those cases illuminates that the Board only has exclusive jurisdiction when a party alleges an unfair labor practice, not merely when a party alleges a labor dispute.

Start with the case that first articulated the test. As the Court said, the employees there "were asserting collective bargaining rights" in "every respect" when they charged the union with breaching its duty to "fairly represent" them and scheming to defeat their right to a "fair vote … on union representation." *Franklin Cty.*, 59 Ohio St. 3d at 171. In other words, the complaint turned on rights to collective representation *created* in 1983 when the General Assembly codified public-sector collective bargaining, not to some other source of rights.

Two years later, the Court adjudicated a dispute about whether the Ohio Historical Society was a public employer for purposes of collective bargaining. That dispute, of course, turned on the definition of public employer in Chapter 4117, and therefore turned

"entirely on the provisions" of that chapter. *Ohio Hist. Soc.*, 66 Ohio St. 3d at 469. As in *Franklin County*, the dispute could not have arisen before the General Assembly passed the 1983 public-sector bargaining statutes.

The Court next addressed the question of when a lower court held that the Board had jurisdiction over a labor dispute. There, a firefighters' union challenged management rules about overtime. *E. Cleveland*, 70 Ohio St. 3d at 125. The parties arbitrated that dispute, and the common-pleas court confirmed the arbitrator's decision. *Id*. at 126. But the Eighth District reversed, reasoning that the dispute "arguably" constituted an unfair labor practice that fell within the Board's exclusive purview. *Id*. This Court reversed, explaining that the Eighth District had "ignored the clear language" of the labor-relations statutes, which were "never meant to foreclose parties to a collective bargaining agreement from settling differences in interpreting provisions of their agreement through the process of binding arbitration." *Id*. at 128. Underscoring the lower court's error, this Court explained that the statute did not contemplate that the Board would "decide every grievance arising out of disputes related to the interpretation of terms to a collective bargaining agreement, no matter how innocuous." *Id.* at 129.

Starting in 1996, the Court issued several writs to stop common-pleas courts from acting in cases that raised claims of unfair-labor practices. The first underlying case involved several bargaining units' allegations that their union committed an unfair labor practice by removing an employee from a union-representative position. *Fraternal Order*

of Police, 76 Ohio St. 3d at 287. This Court treated that allegation as asserting "conduct which would constitute unfair labor practices," and therefore issued a writ to protect the Board's exclusive jurisdiction. *Id.* at 289.

The next year the Court denied a requested writ against a common-pleas court that had been asked to decide the contract rights of certain school employees after a collective-bargaining agreement expired. The Court denied the writ and held that the employees' contract rights in those circumstances derived from the chapter about school employees, not from the chapter governing labor-relations disputes. *Rootstown*, 78 Ohio St. 3d at 493. The Court denied the writ despite the employees' parallel claims of unfair labor practices filed before the Board. *See id.* at 489–90.

After a multi-year gap, the Court again issued a writ to block a common-pleas court from adjudicating a union members' claim that his union did not fairly represent him. A union's duty of fair representation, of course, derives from the labor-relations statutes. By statute, a union commits an unfair labor practice when it fails to "represent all public employees in a bargaining unit." R.C. 4117.11(B)(6). So a union member's claim of inadequate representation "falls solely within" the Board's "exclusive jurisdiction." *Nadel*, 98 Ohio St. 3d 405, at ¶24.

Later that year, the Court again issued a writ to prevent a common-pleas court from deciding an unfair-labor-practice question--this time by stopping a court from enjoining the Lima Prison closure. The union challenged the decision to close the prison

in common-pleas court, in part, as a failure to "collectively bargain" the closure. *Wilkinson*, 99 Ohio St. 3d 106, at ¶20. The dispute, that is, had nothing to do with a breach of the parties' collective-bargaining agreement. Indeed, the Court noted that the union's complaint contained "no allegation" about the collective-bargaining agreement's grievance procedure. *Id.* at ¶24.

The Court yet again issued a writ preventing a common-pleas court from hearing a labor dispute a few years after *Reed*. This time, the dispute centered on whether the City of Cleveland was bound to a union's last pre-strike offer for a collective-bargaining agreement. *Sutula*, 127 Ohio St.3d 131 at ¶¶ 3–7. The union sought an order compelling the City to cooperate with the union in "preparing a new collective bargaining agreement." *Id.* at ¶ 7. This Court had no trouble concluding that the dispute fell within the Board's jurisdiction because the union alleged that the City "refus[ed] to bargain collectively" by "failing to execute and implement" a valid collective-bargaining agreement. *Id.* at ¶¶21, 22. Thus, the Court found the "union's attempt to recast its common pleas court case as a simple contract action … unavailing." *Id.* at ¶23. Or, as the Court would say later, the union's claims "arose directly out of rights created by R.C. Chapter 4117." *State ex rel. Ohio Civ. Serv. Emps. Assn.*, 146 Ohio St. 3d 315, at ¶57 (describing the dispute in *Sutula*).

The next time the Board's jurisdiction arose before this Court was in 2016, when a union representing prison guards at a private prison aimed to litigate the guards' status

as public employees. That question—the flip side of the question in *Ohio Historical Society*—"depend[ed] entirely on the provisions of R.C. Chapter 4117," and therefore had to be litigated in before the Board. *Id*. at ¶57.

Finally, in 2019, the Court issued a writ to prevent a common-pleas court from litigating a question that fell within the Board's exclusive jurisdiction. This time, the dispute involved the shift start times for firefighters. The union there claimed management's order changing those start times "violated" the statute defining unfair labor practices because the change should have been "subject to collective bargaining." *Russo*, 156 Ohio St. 3d, at ¶5. That request, this Court said, triggered the Board's jurisdiction because it alleged that the City was required to "*negotiate* changes in hours and shift times." *Id*. at ¶22 (emphasis added). A claim about what must be negotiated is the essence of the Board's exclusive jurisdiction.

To be sure, two statements in this long line of cases read far more capaciously than the consistent boundary the holdings draw between claims alleging an unfair labor practice and claims alleging a breach of contract. Neither snippet should be read out of context to confer more power on the Board than the statute's plain directive that contract disputes belong in the courts of common pleas.

Start with the earlier statement from 1991 in *Franklin County*. There, the Court described as falling within the Board's jurisdiction "claims that arise from or depend on the collective bargaining rights created by R.C. Chapter 4117." *Franklin Cty.*, 59 Ohio St.

3d at 171. Taking this language out of context, a litigant might contend that a breach-of-collective-bargaining claim "arises" from Chapter 4117 because the reason management and unions have such agreements is Chapter 4117. But such a reading would expand the holding of that case and violate the way courts read caselaw. That reading would break from the holding of *Franklin County* itself, which reasoned that the plaintiffs there "were asserting collective bargaining rights," not merely rights with some connection to Chapter 4117. *Id*. at 171. Nor would reading that passage accord with how courts read caselaw. "[T]he language of an opinion is not always to be parsed as though [the court] were dealing with language of a statute." *Reiter v. Sonotone Corp.*, 442 U.S. 330, 341 (1979). Instead, language in an opinion must be read as situated in a "particular context" and performing "particular work." *Nat'l Pork Producers Council v. Ross*, 143 S. Ct. 1142, 1144 (2023).

Next, consider the 1996 statement from *Fraternal Order* describing a court of appeals case. That description opined that "a breach of contract or enforcement, still falls solely within" the Board's jurisdiction "if the asserted claim arises from or is dependent on the collective bargaining rights created by" Chapter 4117. 76 Ohio St. 3d at 290 (citing *State ex rel. Cleveland City Sch. Dist. Bd. of Educ. v. Pokorny*, 105 Ohio App. 3d 108, 110 (8th Dist. 1995). That description carries little force. For starters, it never fleshes out the key question—what counts as a claim that depends on or arises from the rights created in Chapter 4117. The statement is incomplete for good reason. In *Fraternal Order* itself, the

Court treated the allegations as asserting "conduct which would constitute unfair labor practices." *Id.* at 289. That characterization means the Court had no occasion to consider its dicta's hypothetical breach-of-contract claim that itself connected to rights created in Chapter 4117. In the cited case, the Eighth District also had no occasion to consider that hypothetical. Instead, that court held that a teacher's claim for leave was both "preempted" by her collective-bargaining agreement, and also had to be pursued though a grievance procedure. *Pokorny*, 105 Ohio App. 3d at 110–11. In other words, the teacher there aimed to circumvent *both* the contractual grievance procedure *and* the Board's process for resolving unfair labor practices. All in all, this passage in *Fraternal Order* is dicta about dicta, and should not guide this or other cases about the Board's jurisdiction.

II. The contract dispute here belongs in common-pleas court.

Under the statute and this Court's precedents, this is an easy case. The union's claim that Lakewood breached the collective-bargaining agreement is the kind of dispute explicitly covered by the statute's command that efforts to remedy "violations" of collective-bargaining agreements can be filed in common-pleas courts. R.C. 4117.09(B)(1). And the substance of that breach—the claim that a single refusal to process a grievance—is explicitly beneath the floor of unfair-labor-practice liability set by the "pattern or practice" threshold in the statute's definitions. R.C. 4117.11(A)(6). Finally, if the single-event allegation here were within the Board's jurisdiction, that outcome would break from this Court's three-decade-old insistence that the Board would not "decide

every grievance arising out of disputes related to the interpretation of terms to a collective bargaining agreement, no matter how innocuous." *E. Cleveland*, 70 Ohio St. 3d at 129. Indeed, in *East Cleveland* the Court *reversed* a lower court that "ignored the clear language of" the statute when it thought the Board had jurisdiction over an arbitrator's decision about overtime. *Id.* at 128. The dispute here also fits this Court's statements that the Board *lacks* jurisdiction over "simple contract action[s]" and does not extend to "every claim touching upon" Chapter 4117. *Sutula*, 127 Ohio St.3d 131, at ¶23; *Ohio Civ. Serv. Emps. Assn.*, 146 Ohio St. 3d 315, at ¶63.

III. The Eighth District's reasoning does not support its judgment.

The decision below went astray by deploying a but-for test to define the Board's exclusive jurisdiction. The Eighth District's analysis started by quoting the longstanding test from *Franklin County* that, "if a party asserts claims that arise from or depend on the collective bargaining rights created by R.C. Chapter 4117, the remedies provided in that chapter are exclusive." App. Op. ¶12. Then the Eighth District claimed to apply that test by comparing this dispute to one of this Court's precedents and a sister court's precedent. Both comparisons miss the mark.

The Eighth District first cited *Sutula*, and described it as holding that the "trial court lacked jurisdiction because the union claimed that the city failed to abide by an agreement reached through collective-bargaining negotiations." App Opp. ¶15 (citing *Sutula*, 127 Ohio St.3d 131, at ¶¶17, 25). That mischaracterizes *Sutula*. As noted above,

Sutula was no simple breach-of-contract claim. Rather than enforce a contract, the union there sought an order to compel the employer to cooperate in "preparing a *new* collective bargaining agreement" because the employer had (or so the union alleged) "refused to bargain collectively." *Id.* at ¶¶17, 21, 22 (emphasis added). This Court even went out of its way to criticize the union for trying "to recast its common pleas court case as a simple contract action." *Id.* at ¶23. And that is exactly how this Court would later describe *Sutula*, characterizing the claims in there as arising "directly out of rights created by R.C. Chapter 4117." *Ohio Civ. Serv. Emps. Assn.*, 146 Ohio St. 3d 315, at ¶57. *Sutula* points to a holding quite opposite from the one the Eighth District reached.

The Eighth District also pinned its rationale to an Eleventh District case, *Staple v. Ravenna*, but it does nothing to solve the problems with the analysis. App. Op. ¶15 (citing *Staple v. Ravenna*, 2022-Ohio-261, ¶17 (11th Dist.)). To be sure, *Staple* read the Board's jurisdiction broadly when it concluded that a request to arbitrate "stem[med] from a labor dispute and resolution process set forth in the CBA, which stem[med] from rights created in Chapter 4117." *Staple*, 2022-Ohio-261, ¶17. That logic has several problems.

First, *Staple*'s logic directly contradicts this Court's holdings in both *East Cleveland* and *Ohio Civil Service.* In *East Cleveland*, the Court held that the statutes do not empower the Board to "decide every grievance arising out of disputes related to the interpretation of terms to a collective bargaining agreement." 70 Ohio St. 3d at 129. And in *Ohio Civil Service*, this Court reiterated that the statutes do not "assign [the Board] exclusive

jurisdiction over all issues touching on that chapter's provisions. Instead, the General Assembly targeted specific issues for [the Board] to address in the first instance." 146 Ohio St. 3d 315, at ¶52.

Second, the erroneous language in *Staple* was unnecessary, as the court also concluded that the employee lacked standing to enforce the collective-bargaining agreement. *Staple*, 2022-Ohio-261, ¶18. That means, of course, that any analysis of *where* the employee had to litigate his claim that the employer breached the agreement was irrelevant.

Third, the *Staple*'s logic would extend Board jurisdiction almost infinitely. A contract dispute between a union and its law firm might "stem from" the union's power to represent large groups of employees, and that union's existence might in turn "stem from" Chapter 4117, which empowered unions generally. That would hardly give the Board the power to resolve the dispute between the union and the law firm. "In a philosophical sense, the consequences of an act go forward to eternity." *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 266 n.10 (1992). "Law, however, is not philosophy." *CSX Transp., Inc. v. McBride*, 564 U.S. 685, 707 (2011). Chapter 4117, like most statutes, does not enact a butterfly-effect but-for test for Board jurisdiction.

In contrast to the Eighth District's conclusion (and *Staple*'s), the vast majority of other appellate decisions have had little trouble distinguishing a right that arises by operation of the Revised Code and a right that arises from the collective-bargaining

agreement itself. These courts routinely hear employment disputes that fall outside the Board's jurisdiction. *See, e.g.*, *Career & Tech. Ass'n v. Auburn Vocational Sch. Dist. Bd. of Educ.*, 2022-Ohio-2737, ¶¶28–29, 45 (11th Dist.) (teacher pay); *Bd. of Trumbull Co. Comm'rs v. Gatti*, , 2017-Ohio-8533, ¶15 (11th Dist.) (insurance premiums); *State ex rel. Union Twp. v. Union Twp. Pro. Firefighters, IAFF Loc. 3412*, 2013-Ohio-1611, ¶11 (3d Dist.) (enforcing conciliator's award); *See I.A.F.F. Local 92 v. Toledo*, 136 Ohio App. 3d 56, 62 (6th Dist. 1999) (work assignments); *Cf. State ex rel. Int'l Union of Operating Engineers, Loc. 20 v. State Emp't Relations Bd.*, ___ Ohio App. 3d ___, 2023-Ohio-1253, ¶21 (wages during COVID-19 lockdown); *Crable v. Ohio Dep't of Youth Servs.*, 2010-Ohio-788, ¶12 (10th Dist.) (wrongful discharge and breach of employment contract); *Moore v. Youngstown State Univ.*, 63 Ohio App. 3d 238, 242 (10th Dist. 1989) (salary range). As these cases show, many public-labor disputes raise issues that must be litigated in common-pleas court.

* * *

The Court should use this opportunity to wipe away any lingering confusion about the scope of the Board's jurisdiction. As this case demonstrates, fuzzy jurisdictional lines simply waste party and court resources in litigating the forum instead of the substance. The statute distinguishes claims for unfair-labor practices from mere efforts to enforce the *product* of labor negotiations. This Court can help all litigants and lower courts by reiterating that demarcation and therefore to avoid "the sort of vague boundary

that is to be avoided in the area of subject-matter jurisdiction wherever possible." *Sisson v. Ruby*, 497 U.S. 358, 375 (1990) (Scalia, J., concurring in judgment).

CONCLUSION

For these reasons, the Court should reverse the Eighth District's decision.

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