**[Cite as *Amalgamated Transit Union, AFL-CIO, Local 697 v. Toledo Area Regional Transit Auth.*, 2013-Ohio-4412.]**

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Amalgamated Transit Union, AFL-CIO, Local 697

Appellant

v.

Toledo Area Regional Transit Authority

Appellee

Court of Appeals No. L-12-1260

Trial Court No. CI0201106508

**DECISION AND JUDGMENT**

Decided: September 27, 2013

* * * * *

Joseph S. Pass and Christine A. Reardon, for appellant.

Ronald G. Linville and Joseph C. Devine, for appellee.

* * * * *

**OSOWIK, J.**

**{¶ 1}** This is an appeal from a judgment of the Lucas County Court of Common Pleas that dismissed appellant's "Application/Petition to Compel Enforcement of Arbitration Agreement" for lack of subject-matter jurisdiction. For the following reasons, the judgment of the trial court is reversed and remanded.

**{¶ 2}** This appeal arises from the dismissal of the application to compel enforcement of arbitration (hereafter, "petition") filed by appellant, Amalgamated Transit Union, AFL-CIO, Local 697 ("ATU"), on November 14, 2011. In response to ATU's petition, appellee, Toledo Area Regional Transit Authority ("TARTA"), filed a motion to dismiss for lack of subject-matter jurisdiction on January 11, 2012. The trial court summarily granted TARTA's motion and dismissed the action in its entirety for lack of subject-matter jurisdiction on August 17, 2012. ATU timely appealed the dismissal.

**{¶ 3}** An appeal of a dismissal for lack of subject-matter jurisdiction under Civ.R. 12(B)(1) is reviewed de novo. *Newell v. TRW, Inc*., 145 Ohio App.3d 198, 200, 762 N.E.2d 419 (6th Dist.2001); *Ford v. Tandy Transp., Inc*., 86 Ohio App.3d 364, 375, 620 N.E.2d 996 (4th Dist.1993); *Pulizzi v. Sandusky*, 6th Dist. No. E-03-002, 2003-Ohio-5853. The principal inquiry is "whether the plaintiff has alleged any cause of action which the court has authority to decide." *McHenry v. Indus. Comm. of Ohio*, 68 Ohio App.3d 56, 62, 587 N.E.2d 414 (4th Dist.1990). *See also Newell, supra*, at 200. The trial court is not confined to the allegations of the complaint when determining its subject-matter jurisdiction under Civ.R. 12(B)(1), and it may consider pertinent material without converting the motion into one for summary judgment. *Southgate Dev. Corp. v. Columbia Gas Transm. Corp*., 48 Ohio St.2d 211, 358 N.E.2d 526 (1976), paragraph one of the syllabus.

**{¶ 4}** Appellant ATU is the exclusive representative of approximately 300 TARTA workers. At all relevant times, TARTA has provided both "fixed route" and

"non-fixed route paratransit" public transit services. TARTA relies upon fare revenues as well as local, state and federal funding to provide its services. On July 23, 1975, TARTA and ATU became parties to an agreement executed by the American Public Transit Association, the Amalgamated Transit Union, AFL-CIO, and the Transport Workers Union of America, AFL-CIO. In addition, on March 4, 1975, TARTA and ATU executed an agreement pursuant to Section13(c) of the Urban Mass Transportation Act ("UMTA") of 1964 (hereafter, "the section 13(c) agreement"), pursuant to which TARTA is required to make arrangements to preserve certain employee and collective bargaining rights as a condition precedent to receiving its federal funding.

**{¶ 5}** Paragraph 9 of the section 13(c) agreement, included as an addendum to the July 23, 1975 agreement, provides in relevant part:

> In the event of any labor dispute involving the Authority and the employees covered by this Agreement which cannot be settled within thirty (30) days after such dispute first arises, *such dispute may be submitted at the written request of either the Union or the Authority to a board of arbitration* selected in accordance with the existing collective bargaining agreement, if any, or if none, as hereinafter provided. * * * The term labor dispute shall be broadly construed and shall include, but not be limited to, any controversy concerning wages, salaries, hours, working conditions or benefits, including health and welfare, sick leave, insurance, or pension and retirement provisions, the making or maintaining of collective bargaining

agreements, the terms to be included in such agreements and the interpretation or application of such collective bargaining agreements, any grievances that may arise, and any controversy arising out of or by virtue of any provisions of this Agreement. (Emphasis added.)

**{¶ 6}** The protective arrangements set forth in the section 13(c) agreement are reviewed for compliance annually by the United States Department of Labor when TARTA applies for federal funding for its non-fixed route paratransit service.

**{¶ 7}** Subsequently, ATU was party to a collective bargaining agreement ("CBA") with TARTA that established the terms and conditions of employment for all of TARTA's paratransit service drivers. The CBA was effective October 1, 2009, through November 30, 2010. The CBA's terms were extended twice, first to January 29, 2011, and then until May 31, 2011, while the parties attempted to negotiate a new labor agreement. However, the parties were not able to come to terms and the CBA expired on May 31, 2011. On June 6, 2011, ATU sent a letter notifying TARTA that it was submitting the dispute over the terms and conditions of a new labor agreement to binding arbitration pursuant to paragraph 9 of the section 13(c) agreement.

**{¶ 8}** The June 6, 2011 letter notified TARTA that the ATU's legal counsel would serve as the ATU-appointed member to the board of arbitration established pursuant to paragraph 9 of the section 13(c) agreement. TARTA did not appoint a member to the board of arbitration or comply with any of the requirements of the agreement relative to ATU's demand for interest arbitration. On September 14, 2011, TARTA confirmed to

ATU that it was refusing to participate in interest arbitration as demanded by ATU. Thereafter, ATU provided TARTA with written notice, as required by R.C. 2711.03, that a complaint was going to be filed. On November 14, 2011, ATU filed in the Lucas County Court of Common Pleas the complaint underlying this appeal, requesting an order directing the parties to promptly proceed to binding interest arbitration in accordance with paragraph 9 of the section 13(c) agreement.

**{¶ 9}** On January 11, 2012, TARTA filed its motion to dismiss for lack of subject-matter jurisdiction, citing various provisions of R.C. 4117 and asserting that the claim falls within the exclusive jurisdiction of the State Employee Relations Board ("SERB"). TARTA asserted that the parties' section 13(c) agreement is inapplicable to their negotiations for a successor CBA and that the dispute should instead be resolved pursuant to the procedures set forth under Ohio collective bargaining law. In further support, TARTA asserted that the claim falls within the exclusive jurisdiction of SERB because it arises from the collective bargaining rights created in R.C. Chapter 4117, that the claim alleges conduct which, if proven, would constitute an unfair labor practice, and that SERB's exclusive jurisdiction is unaffected by the section 13(c) agreement.

**{¶ 10}** On August 17, 2012, the trial court dismissed the complaint for lack of subject-matter jurisdiction, finding simply that "the [SERB] has exclusive jurisdiction as regards the disputes at issue."

**{¶ 11}** ATU sets forth the following as its sole assignment of error:

> The Lucas County Court of Common Pleas, per the Honorable J. Ronald Bowman, erred in its Judgment Entry dated August 17, 2012 dismissing the Application/Petition to Compel Enforcement of Arbitration filed by the Plaintiff/Appellant Amalgamated Transit Union, AFL-CIO, Local 697 (hereinafter the "ATU"). The Trial Court erred as a matter of law in concluding that the action should be dismissed for lack of subject matter jurisdiction.

**{¶ 12}** ATU now asserts that TARTA seeks to avoid its contractual commitment to proceed to binding interest arbitration under the parties' section 13(c) agreement. By granting the motion to dismiss, ATU argues, the trial court disregarded the allegations of the complaint, which set forth the elements of an action to enforce the terms of a contractual agreement between ATU and TARTA. The complaint, ATU asserts, identifies the original agreement entered into by TARTA in 1975, as well as the annual requests by TARTA to obtain federal funding pursuant to the UMTA. According to ATU, the section 13(c) agreement that ATU seeks to enforce did not arise under Ohio public sector labor law and R.C. Chapter 4117 as TARTA argues. ATU argues that the section 13(c) agreement is a contractual promise TARTA made in order to obtain federal transit funding and nothing in R.C. Chapter 4117 addresses such promises undertaken by TARTA for the purpose of obtaining federal funding. Therefore, ATU asserts, the

determination of its claim on the section 13(c) agreement is a matter for the state court and not SERB.

**{¶ 13}** The record reflects that ATU's action was brought pursuant to the Ohio Arbitration Act, R.C. 2711.03, and that the union sought to enforce TARTA's promise made in the parties' section 13(c) agreement to participate in interest arbitration. As set forth above, TARTA refused to perform under the written agreement for arbitration. The record further reflects that the complaint identifies the original agreement entered into by TARTA in 1975, as well as the annual requests by TARTA to obtain federal funding pursuant to the UMTA. The section 13(c) agreement, ATU asserts, did not arise under Ohio public sector labor law set forth in R.C. Chapter 4117 as the trial court concluded. ATU therefore contends that the matter of enforcement of a section 13(c) agreement is a matter to be resolved in state court pursuant to state law. The 13(c) agreement in this matter is a contractual promise that TARTA made in order to obtain federal transit funding, ATU asserts, and nothing in R.C. Chapter 4117 speaks to the promises undertaken by TARTA for the purpose of obtaining that funding.

**{¶ 14}** R.C. 2711.03, the statute under which ATU brought this action, provides in relevant part that "a party aggrieved by the alleged failure of another to perform under a written agreement for arbitration may petition any court of common pleas having jurisdiction of the party so failing to perform for an order directing that the arbitration proceed in the manner provided for in the written agreement."

**{¶ 15}** Additionally, R.C. 2711.16 provides that "[j]urisdiction of judicial proceedings provided for by sections 2711.01 to 2711.14, inclusive, of the Revised Code, is generally in the courts of common pleas."

**{¶ 16}** TARTA asserted in its motion to dismiss, as it does on appeal, that ATU's claim arose out of the collective bargaining rights created pursuant to R.C. Chapter 4117 and not by section 13(c) of the UMTA, and therefore is within the exclusive jurisdiction of SERB.

**{¶ 17}** However, ATU alleged in its complaint, and asserts on appeal, that the dispute between the parties was over enforcement of a contractual right that was established by a multi-party agreement entered into in 1975, long before R.C. Chapter 4117 became law, and was not a collective bargaining agreement. TARTA's obligation to submit to interest arbitration did not arise under R.C. Chapter 4117, which specifically *excludes* Ohio public sector transit authorities and labor unions that enter into section 13(c) agreements from the group of public sector employees required to submit contract disputes to interest arbitration. In other words, ATU asserts, the right to interest arbitration does not exist for these parties under R.C. Chapter 4117.

**{¶ 18}** Specifically, R.C. 4117.10(A) excepts from SERB jurisdiction cases involving section 13(c) agreements created pursuant to the UMTA, including the requirement to participate in interest arbitration of labor disputes:

> (A) An agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs the wages,

hours, and terms and conditions of public employment covered by the agreement. * * * Except for sections 306.08, 306.12, 306.35, and 4981.22 of the Revised Code and arrangements entered into thereunder, and section 4981.21 of the Revised Code as necessary to comply with section 13(c) of the "Urban Mass Transportation Act of 1964," 87 Stat. 295, 49 U.S.C.A. 1609(c), as amended, and arrangements entered into thereunder, this chapter prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in this chapter or as otherwise specified by the general assembly.

**{¶ 19}** Therefore, consistent with the above-quoted section, R.C. Chapter 4117 prevails over a conflicting law *unless* such law falls within one of the exceptions listed in R.C. 4117.10(A). One of the listed exceptions as set forth above is laws pertaining to R.C. 306.12, as necessary to comply with section 13(c) of the UMTA. This case falls within that enumerated exception. Specifically, R.C. 306.12 outlines the guaranteed rights of employees of transit systems such as TARTA that are controlled and operated by public boards:

> Any board of county commissioners operating a transit system or any county transit board shall, if it acquires any existing transit system, assume all the employer's obligations under any existing labor contract between the employees and management of the system. The board shall, if it acquires, constructs, controls, or operates any such facilities, negotiate

> arrangements to protect the interest of employees affected by such acquisition, construction, control, or operation. * * * Such arrangements may include provisions for the submission of labor disputes to final and binding arbitration.

**{¶ 20}** TARTA long ago entered into the protective arrangement set forth in the section 13(c) agreement in exchange for the receipt of federal funds. The exceptions set forth in R.C. 4117.10 and 306.12, take section 13(c) agreements out of the exclusive jurisdiction of SERB under R.C. 4117.

**{¶ 21}** The issue of where jurisdiction over enforcement of section 13(c) agreements lies has been addressed by a series of federal court decisions, most notably the United States Supreme Court in *Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union, AFL-CIO-CLC*, 457 U.S. 15, 102 S.Ct. 2202, 72 L.Ed.2d 639 (1982), wherein the court discussed the purposes of the UMTA.

**{¶ 22}** While the issue in *Jackson Transit Auth.* was whether Congress intended to create federal causes of action for breaches of section 13(c) agreements and collective bargaining contracts, *see Jackson Transit Auth*. at 29, the court noted, "it is reasonable to conclude that Congress expected the § 13(c) agreement and the collective-bargaining agreement, like ordinary contracts, to be enforceable by private suit upon a breach." *Id*. at 20-21. The court concluded that the contracts at issue in that case were to be governed by state, not federal, law. *Id*. at 29. The court explained therein, "[c]ongress designed

§ 13(c) as a means to accommodate state law to collective bargaining, not as a means to substitute a federal law of collective bargaining for state labor law." *Id*. at 28.

**{¶ 23}** We note that numerous state courts have concluded that "arrangements under section 13(c) of the Urban Mass Transportation Act are not collective bargaining contracts," but are "contracts albeit contracts required by federal statute." *Dallas Area Rapid Transit v. Plumme*r, 841 S.W.2d 870, 874 (Tex.1992). Section 13(c) agreements "are valid and enforceable in state courts." *Id. See also Local Div. 732, Amalgamated Transit Union v. Metro. Atlanta Rapid Transit,* 251 Ga. 15, 303 S.E.2d 1 (1983) (where the court held that interest arbitration agreements entered into pursuant to Section 13(c) are enforceable under state law despite the fact that under Georgia state law, governmental entities generally were not permitted to bargain collectively with employee representatives); *Stockton Metro. Transit Dist. v. Amalgamated Transit Union* , 132 Cal.App.3d 203, 183 Cal.Rptr. 24 (1982) (unions were free to pursue a contract action in state court); *Municipality of Metro. Seattle v. Div. 587, Amalgamated Transit Union* , 118 Wash.2d 639, 826 P.2d 167 (1992) (in the absence of a specific legislative declaration prohibiting such a provision, the parties are free to agree to interest arbitration).

**{¶ 24}** *Jackson Transit Auth.* concluded that legislative history indicates Congress intended section 13(c) agreements and collective-bargaining contracts between UMTA aid recipients and transit unions to be governed by state law applied in state courts. *Jackson Transit Auth.* at 29.

**{¶ 25}** While we conclude that section 13(c) of UMTA was not intended to replace state labor law, we also find that SERB's jurisdiction to enforce the Public Employees Collective Bargaining Act does not authorize TARTA to disregard the promises it made in the section 13(c) agreement as a condition of receiving federal funds. Each year, when TARTA applies for its federal transit grants, it affirms that it will comply with the section 13(c) agreement. Accordingly, based on the foregoing, we find that appellant ATU has alleged a cause of action which the court of common pleas has authority to decide. Appellant's sole assignment of error is found well-taken.

**{¶ 26}** On consideration whereof, the judgment of the Lucas County Court of Common Pleas is reversed and this matter is remanded for further proceedings. Costs of this appeal are assessed to appellee pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

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JUDGE

Thomas J. Osowik, J.
CONCUR.

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JUDGE

James J. Jensen, J.,
DISSENTS.

**JENSEN, J.**

**{¶ 27}** Because I agree with the trial court's conclusion that it lacked subject-matter jurisdiction over ATU's claim, I respectfully dissent from the majority decision.

**{¶ 28}** The majority does not explain the history underlying the section 13(c) agreement, which I believe is important in considering this jurisdictional issue. In the years leading up to the enactment of the Urban Mass Transportation Act, privately-owned transportation companies were collapsing. *Jackson Transit Auth. v. Local Div. 1285, Amalgamated Transit Union, AFL-CIO, CLC*, 457 U.S. 15, 17, 102 S.Ct. 2202, 72

L.Ed.2d 639 (1982). Congress believed that this was a national problem and it intervened to incentivize a shift from private ownership of transit systems to public ownership at a state or local level. *Id.* It enacted the Urban Mass Transportation Act of 1964. As part of that act, federal funds would be available to local governments acquiring private transit systems. *Id.* At that time, however, many states—including Ohio—had not adopted public employees' collective bargaining statutes. Moreover, the National Labor Relations Act was inapplicable to public employers. *Id.* at 23. There was concern, therefore, that the acquisition of private transit systems by local governments would be curbed if provisions were not in place to protect rights that had been granted to transit employees under existing collective bargaining agreements ("CBAs"). *Id.* at 17. To alleviate that concern, Congress conditioned federal grants on certification that "fair and equitable" arrangements were in place to preserve rights granted by existing CBAs and to protect those employees against a "worsening" of their employment positions after acquisition. UMTA, Section 13(c).

**{¶ 29}** In enacting UMTA, however, Congress expressed a clear intent "that labor relations between transit workers and local governments would be controlled by state law." *Jackson Transit Auth.* at 24. This was crucial to its passing. The United States Supreme Court described the congressional hearings on UMTA as follows:

> Before both Committees, Members of Congress expressed concern about the effect of the statute on state laws. And Secretary [of Labor] Wirtz explained to both Committees that, while attempts would be made to

accommodate state law to the preservation of collective-bargaining rights, state law would control local transit labor relations. The Secretary told the House Committee that "this proposal is submitted on this basis, . . . that the State laws must control." Urban Mass Transportation Act of 1963, Hearings on H.R. 3881 before the House Committee on Banking and Currency, 88th Cong., 1st Sess., 482 (1963) (House Hearings). A Committee member raised the issue again; the Secretary repeated that "State laws would be controlling in the situation," though he suggested that there "would be few, if any, situations" where state law and § 13(c) could not be reconciled. House Hearings, at 486. When similar concerns were expressed during his testimony before the Senate Committee, the Secretary reiterated: "I should like it quite clear that I think that there could be no superseding here of State law." Senate Hearings, at 313. *Id.*

**{¶ 30}** UMTA did pass, and public transit systems entered into "section 13(c) agreements" that offered the required protections. TARTA entered into such an agreement with ATU, AFL-CIO, and the Transport Workers Union of America, AFL-CIO, on July 23, 1975. TARTA and ATU also executed an addendum to that agreement on March 4, 1975, which contains the arbitration provision upon which ATU now relies.

**{¶ 31}** Section 13(c) agreements were designed "merely to maintain the *status quo* by preserving existing rights of public employees upon acquisition of a transit system and not to create any new rights or enhance prior rights under pre-acquisition labor

agreements." *Finocchi v. Greater Cleveland Reg'l Transit Auth.*, 85 Ohio App.3d 572, 580, 620 N.E.2d 872 (8th Dist.1993). (Emphasis sic.) In other words, they did not create collective bargaining rights that did not already exist. *United Transp. Union, AFL-CIO v. Brock*, 815 F.2d 1562, 1565 (D.C.Cir.1987). But the Ohio legislature has since enacted Chapter 4117 (effective Apr. 1, 1984), which requires public employers to collectively bargain with its employees, and created the state employee relations board ("SERB"). SERB has exclusive jurisdiction over claims arising from or depending on the collective bargaining rights created by Chapter 4117. R.C. 4117.02; *State ex rel. Williams v. Belpre City School Dist. Bd. of Educ.*, 41 Ohio App.3d 1, 6, 534 N.E.2d 96 (4th Dist.1987); *State ex rel. Cleveland v. Sutula*, 127 Ohio St.3d 131, 2010-Ohio-5039, 937 N.E.2d 88, ¶ 20. Thus, after TARTA and the unions entered into the 13(c) protective agreement, Ohio adopted a statutory scheme providing protections that went above and beyond what the federal government sought to guarantee in enacting section 13(c). Moreover, Ohio essentially codified 13(c) assurances in Chapter 306 of the Revised Code, which further protects transit system employees should the legislature eliminate public employees' collective bargaining rights, as it recently sought to do. 2011 Am.Sub.S.B. No.5, repealed by voter referendum on November 8, 2011.

**{¶ 32}** So while 13(c) protective agreements may have played an important role in assuring private transit company employees that they would not lose bargained-for rights upon being publicly acquired, the Ohio legislature now offers those employees two additional layers of protection. *See Local Div. 589, Amalgamated Transit Union,*

*AFL-CIO, CLC v. Commonwealth of Massachusetts*, 666 F.2d 618, 634 (1st Cir.1981) (recognizing that state law may modify section 13(c) assurances without bringing about an unfair or inequitable result.)

**{¶ 33}** Turning back to the present case, ATU and TARTA entered into a CBA in 2009 after TARTA acquired the non-fixed route paratransit provider. The parties used the Chapter 4117 procedures to negotiate that CBA. That CBA defines a procedure for grievance arbitration, but not for interest arbitration. In its efforts to renegotiate the terms of the 2009 CBA, ATU filed with SERB a notice to negotiate on July 10, 2010. It was not until these negotiations failed that ATU abandoned the Chapter 4117 bargaining process and asserted the arbitration provision of the 13(c) agreement.

**{¶ 34}** I realize that ATU maintains that the 13(c) agreement outlines the applicable arbitration procedures. But to the extent that ATU argues that an alternate arbitration provision applies to the parties' negotiations (and not the procedure outlined in R.C. 4117.14), this does not eliminate SERB's jurisdiction. ATU may make this argument before SERB and SERB can then determine whether the 13(c) agreement contains a valid mutually agreed upon alternative dispute settlement procedure ("MAD"). *In re Ft. Jennings Educ. Ass'n.*, SERB No. 1986-014, 1986 WL1167139 (Apr. 11, 1986) (noting that SERB has jurisdiction to determine whether contractual issue arbitration provision is valid); *In re Mun. Constr. Equip. Operator's Labor Council*, SERB No. 2008-004 (Aug. 27, 2008) (finding that parties' CBA contained a valid MAD that must be used in place of the statutory procedure).

**{¶ 35}** Finally, ATU argues that R.C. 4117.10(A) makes clear that Chapter 4117 prevails over all conflicting laws except the provisions of the revised code relating to UMTA (i.e., R.C. 306.08, 306.12, 306.35, 4981.21, and 4981.22). And based on this, ATU argues, Chapter 4117 is inapplicable. I find no merit to this argument because there is no conflict here between R.C. Chapter 4117 and the enumerated statutes. The statutes pertinent to this matter (Chapter 306) authorize and require no more than section 13(c) itself: that public transit authorities protect the existing rights of employees when they acquire a private transit system. The statutes permit, but do not require, interest arbitration. Chapter 4117, on the other hand, places upon public employers the duty to collectively bargain. This matter, therefore, arises under Chapter 4117, thus it follows that Chapter 4117 procedures must be utilized and SERB has exclusive jurisdiction.

**{¶ 36}** For these reasons, I would affirm the trial court's dismissal of ATU's complaint.