[Cite as *Greater Dayton Regional Transit Auth. v. Amalgamated Transit Union, AFL-CIO, Local 1385*, 2026-Ohio-4601.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

GREATER DAYTON REGIONAL TRANSIT AUTHORITY	:	C.A. Nos. 30360; 30650
Appellant/Cross-Appellee	:	Trial Court Case No. 2018 CV 01904
v.	:	(Civil Appeal from Common Pleas Court)
AMALGAMATED TRANSIT UNION, AFL-CIO, LOCAL 1385	:	**FINAL JUDGMENT ENTRY & OPINION**
Appellee/Cross-Appellant		

. . . . . .

Pursuant to the opinion of this court rendered on November 20, 2026, the judgments of the trial court are vacated.

Costs to be paid by appellee/cross-appellant.

Pursuant to Ohio App.R. 30(A), the clerk of the court of appeals shall immediately send a copy of the court's ruling to each party and note that action on the docket. Additionally, pursuant to App.R. 27, the clerk of the court of appeals shall send a certified copy of this judgment, which constitutes a mandate, to the clerk of the trial court and note the service on the appellate docket.

For the court,



ROBERT G. HANSEMAN, JUDGE

LEWIS, P.J., and TUCKER, J., concur.

OPINION
MONTGOMERY C.A. Nos. 30360, 30650

RYAN A. CATES and LAUREN M. LARRICK, Attorneys for Appellant/Cross-Appellee
JOSEPH S. PASS, Attorney for Appellee/Cross-Appellant

HANSEMAN, J.

{¶ 1} Greater Dayton Regional Transit Authority ("RTA") appeals from the Montgomery County Common Pleas Court's judgment overruling its motion to dismiss and motion for summary judgment and sustaining the motion for summary judgment of Amalgamated Transit Union AFL-CIO Local 1385 ("the Union"). The Union cross-appeals from the trial court's judgment that overruled its motion for attorney fees. For the following reasons, the judgments of the trial court are vacated.

I. Facts and Course of Proceedings

{¶ 2} RTA is a public employer and operates a mass transit system that provides the Greater Dayton, Ohio, region with transportation services. In addition to regular fixed-route bus service and electric trolley service, RTA offers Project Mobility Paratransit Service ("PMOB"), the service relevant to this appeal.

{¶ 3} For many years, the Union and RTA have been parties to a series of collective bargaining agreements ("CBAs") that cover RTA's bus operators and other employees. Of relevance to this appeal, the CBA that was in effect between April 1, 2016, and March 31, 2019, contained a mandatory grievance and arbitration procedure that provided:

> All claims or disputes of employees or the Union regarding the application, interpretation, or violations of any provisions of this Agreement or the imposition of any discipline, including discharge, shall be settled under grievances.

{¶ 4} The 2016-2019 CBA also provided that "should any difference or differences arise between the parties which cannot be mutually adjusted under this agreement, the same shall be submitted upon the written request of either party to arbitration . . . ." The 2016-2019 CBA stated that "[t]he powers of the impartial arbitrator are limited to that of interpreting and applying the provisions of this agreement."

{¶ 5} If informal or formal discussions regarding a disputed issue did not produce a resolution, the CBA required arbitration by a single impartial arbitrator. The party seeking arbitration was required to notify the other party, in writing, within 30 working days that the party sought arbitration. The CBA also provided that if a grievance was not pursued within the time limits specified, further pursuit of the grievance was prohibited, and the grievance would be deemed settled. Additionally, the CBA provided that any written decision, with opinion, rendered by an arbitrator within a reasonable time following a hearing was "final and binding upon both parties."

{¶ 6} In 2017, the Union sought arbitration of a dispute regarding RTA's subcontracting of PMOB services to third-party vendors. After an evidentiary hearing, the arbitrator issued a written opinion on March 12, 2018. The arbitrator found in favor of the Union and against RTA. The arbitrator concluded that RTA violated Article IV – Subcontracting, paragraph 9, of the CBA, which required the RTA to provide written notice to the Union before subcontracting PMOB services with cabs.

{¶ 7} The arbitrator's award provided:

ARBITRATION AWARD AND REMEDY

> A. [RTA] is ordered to cease and desist all subcontracting of Union work, including PMOB services, unless subcontracting is permitted by the Collective Bargaining Agreement.

B. If [RTA] plans to subcontract PMOB work, [RTA] will give prior written notice to the Union. See, Joint exhibit 1, CBA: IV-Subcontracting.

C. [RTA] will make whole all PMOB operators for all wages lost as a result of RTA's contract violations in the total amount of $29,521.41 which represents the following invoices paid by [RTA] for subcontracting PMOB services:

Dayton Fast Club: Invoice #2002, 2003, 2004, 2005, 2006 and 2007: $22,920.00

Lyft: Invoice #6169, 6468, 6498, 6497, 6707, 7484 and 7686: $1,884.23

Anton's Cab Service LLC: Invoice #5840, 2878 and 2879: $4,717.18

Total: $29,521.41

The above amount, $29,521.41 shall be equally divided by the number of Union employees, who are operators in PMOB services. [RTA] shall pay each said Union employee his or her equal share.

{¶ 8} On July 19, 2018, on the Union's request for confirmation, the trial court confirmed the arbitration award. We affirmed the confirmation of the arbitration award on February 8, 2019, in *Greater Dayton Regional Transit Auth. v. Amalgamated Transit Union AFL CIO Local 1385*, 2019-Ohio-393 (2d Dist.).

{¶ 9} By that time, the 2016-2019 CBA was to expire on March 31, 2019, and a successor CBA had not been agreed upon by the parties. On January 2, 2020, the successor CBA ("2019-2022 CBA") was ratified. In article I, section 1, of the 2019-2022 CBA, the parties agreed that it was effective March 31, 2019, through April 2, 2022. The 2019-2022

CBA provided for substantially similar grievance procedures, including the same arbitration clause, which stated: "All claims or disputes of employees or the Union regarding the application, interpretation, or violations of any provisions of this Agreement or the imposition of any discipline, including discharge, shall be settled under grievances." The power of the arbitrator to interpret and apply the CBA remained the same as well. Of importance, the 2019-2022 CBA allowed RTA to subcontract PMOB work if it first exhausted all available voluntary and mandatory work assignments.

{¶ 10} At some point in time, the Union had a dispute with RTA regarding RTA's subcontracting of PMOB work to third-party vendors. Crucially, the Union did not invoke the grievance process contained in both versions of the CBA. Instead, on October 22, 2020, in the civil case confirming the arbitration award, the Union filed a motion for the enforcement of the final order confirming the arbitration award. The Union specifically argued that RTA (1) failed to make the affected bargaining unit members whole for all lost wages incurred as a result of its subcontracting PMOB work, and (2) failed to comply with the arbitration award's requirement to "cease and desist" subcontracting PMOB work in violation of the CBA.

{¶ 11} On December 21, 2020, RTA moved to dismiss the Union's motion, arguing the trial court lacked subject matter jurisdiction. In an affidavit attached to RTA's motion, Mark Donaghy, then CEO of RTA, stated that, since the arbitration award, RTA had paid the full $29,521.41 due under the award, with interest, which the Union accepted without issue. In addition, Mr. Donaghy stated that every time RTA subcontracted for third-party cabs, it provided the Union notice. Mr. Donaghy further stated that the Union had not filed a grievance regarding any paratransit trips provided with notice.

{¶ 12} On June 21, 2021, the trial court granted RTA's motion to dismiss, in part, as it related to enforcing the RTA to pay the Union the $29,521.41 judgment. However, the trial

court overruled RTA's motion to dismiss regarding the "cease and desist" portion of the Union's motion to enforce. The trial court reasoned:

> That leaves the enforcement of the cease and desist order. The Court follows the *City of Cleveland [v. Laborers Internatl. Union Local 1099*, 2018-Ohio-161 (8th Dist.)] decision from the Eighth District. RTA's motion to dismiss that part of Local 1385's motion is DENIED. The Court is limited to enforcement of the alleged post-arbitration violations of the cease and desist order issued by the arbitrator and confirmed by this Court as the judgment of this Court. That enforcement requires an evidentiary hearing regarding whether RTA has violated the order and, if so, what damages are owed, if any, from the continued post-arbitration violations.

June 21, 2021, Decision, p. 5.

{¶ 13} After a number of scheduled trial dates and an unsuccessful mediation, on July 7, 2023, RTA moved for summary judgment. RTA argued that there was no genuine issue of material fact for trial, because the Union had failed to commence a grievance procedure or arbitration procedures. According to RTA, the motion to determine RTA's alleged post-arbitration-award violations of subcontracting transit services to third parties alleged new CBA violations that must be arbitrated.

{¶ 14} The Union filed a cross-motion for summary judgment on July 10, 2023, claiming that it was entitled to summary judgment. The Union relied on RTA's admission that it had never stopped using third-party transit providers to perform bargaining-unit paratransit work, including services in 2018 and 2019 after the arbitration award. On September 6, 2023, the trial court granted the Union's motion on liability only.

{¶ 15} Additional motions and cross-motions for summary judgment regarding damages followed. On December 18, 2024, the trial court granted damages in favor of the Union and against RTA totaling $495,859.33, together with pre- and post-judgment interest. The trial court also awarded the Union attorney fees and costs but reserved the amount for later determination. After further briefing from the parties, the trial court reconsidered the issue of attorney fees. After providing the parties with notice and a hearing, on October 14, 2025, the trial court overruled the Union's motion for attorney fees.

{¶ 16} RTA appeals from the trial court's order overruling its motion to dismiss and motion for summary judgment and sustaining the Union's motion for summary judgment. The Union cross-appeals from the trial court's order overruling its motion for attorney fees.

II. Discussion

{¶ 17} RTA argues that the trial court lacked subject matter jurisdiction to determine whether the RTA violated the confirmed arbitration award, which had ordered RTA to cease and desist subcontracting Union work unless otherwise permitted by the CBA. RTA claims that either the State Employment Relations Board ("SERB") or an arbitrator had exclusive jurisdiction to consider RTA's alleged instances of continued PMOB subcontracting, which formed the basis of the alleged violations of the cease-and-desist order. The Union contends that the trial court had jurisdiction to enforce its own orders and determine whether RTA had violated the collective bargaining agreement.

{¶ 18} RTA also claims that the trial court wrongly denied its motion for summary judgment because the Union failed to prove that RTA had not provided notice to the Union before subcontracting services. RTA also argues that only an arbitrator, not the trial court, can interpret the CBA. RTA further claims that the trial court's damages award exceeded the scope of the CBA because it awarded damages up to the ratification date of the

successor CBA instead of limiting the award to the March 31, 2019, effective date of the successor CBA.

{¶ 19} Additional arguments are made by both parties, but in light of our analysis, they do not need to be restated. For ease of discussion, the court begins with the issues regarding subject matter jurisdiction and summary judgment because the issues intertwine and both entail de novo review.

Standard of Review – Summary Judgment

{¶ 20} Appellate review of a trial court's decision on summary judgment is de novo. *See, e.g.*, *Coterel v. Reed*, 2016-Ohio-7411, ¶ 11 (2d Dist.). "In a de novo review, the trial court's decision is not given deference by the reviewing appellate court; the same standard that the trial court should have used is applied, and we examine the evidence to determine whether as a matter of law no genuine issues of material fact exist for trial." (Footnote omitted.) *Id*., citing *Riverside v. State*, 2016-Ohio-2881, ¶ 21 (2d Dist.), citing *Dupler v. Mansfield Journal Co., Inc*., 64 Ohio St.2d 116 (1980).

{¶ 21} Civ.R. 56(C) provides that summary judgment may be granted when the moving party demonstrates that (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. *Harless v. Willis Day Warehousing Co*., 54 Ohio St.2d 64, 65-66 (1978).

Standard of Review – Subject Matter Jurisdiction

{¶ 22} "Whether a trial court had subject-matter jurisdiction is a question of law that we review de novo." *Smith v. Ohio State University*, 2024-Ohio-764, ¶ 11. In a de novo review, an appellate court will conduct an independent review of the trial court's decision

without giving deference. *State v. Wolfe*, 2022-Ohio-215, ¶ 12 (2d Dist.). The standard of review for a Civ.R. 12(B)(1) dismissal is whether any cause of action has been raised in the complaint or motion before the trial court. *Tipp City Edn. Assn. v. Tipp City Exempted Village School District Bd. of Edn.*, 2023-Ohio-4000, ¶ 8 (2d Dist.), citing *State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80 (1989). Stated another way, "'[an action] may only be dismissed under Civ.R. 12(B)(1) when it raises no cause of action that is cognizable by the forum.'" *Akron Assn. of Classified Personnel v. Akron City School Dist. Board of Edn.*, 2022-Ohio-3216, ¶ 9 (9th Dist.), quoting *Jones v. Summit Cty. Job & Family Servs.*, 2016-Ohio-4940, ¶ 5 (9th Dist.).

{¶ 23} "Subject matter jurisdiction refers to the constitutional or statutory power of a court to adjudicate a particular class or type of case." *Corder v. Ohio Edison Co.*, 2020-Ohio-5220, ¶ 14. "Subject-matter jurisdiction is a condition precedent to a court's power to adjudicate and render judgment in a case, and 'in the absence of subject-matter jurisdiction, a court lacks the authority to do anything but announce its lack of jurisdiction and dismiss.'" *State v. Hudson*, 2022-Ohio-1435, ¶ 22, quoting *Pratts v. Hurley*, 2004-Ohio-1980, ¶ 21.

{¶ 24} "The Ohio Constitution provides that '[t]he courts of common pleas and divisions thereof shall have such original jurisdiction over all justiciable matters . . . as may be provided by law.'" *Id.* at ¶ 23, quoting Ohio Const., art. IV, § 4(B). "Therefore, the general subject-matter jurisdiction of Ohio courts of common pleas is defined statutorily by the legislature." *Id*.

{¶ 25} Turning to the relevant statutes, since RTA claims that SERB has exclusive jurisdiction, we begin our analysis with Chapter 4117, which governs SERB.

Chapter 4117 and the State Employment Relations Board (SERB)

{¶ 26} Citing R.C. 4117.10(A), RTA argues that all claims based on alleged violations of a CBA fall under the exclusive jurisdiction of SERB. R.C. 4117.10(A) provides, in part, that "[a]n 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. If the agreement provides for a final and binding arbitration of grievances, public employers, employees, and employee organizations are subject solely to that grievance procedure and the state personnel board of review or civil service commissions have no jurisdiction to receive and determine any appeals relating to matters that were the subject of a final and binding grievance procedure."

{¶ 27} By authorizing the common pleas courts to enforce arbitration awards rendered under CBAs, the Revised Code empowers the courts to hear certain matters involving CBAs. When a CBA has been executed, R.C. 4117.09(B)(1) requires the CBA to "contain a provision that [p]rovides for a grievance procedure which may culminate with final and binding arbitration of unresolved grievances, and disputed interpretations of agreements, and which is valid and enforceable under its terms when entered into in accordance with this chapter." The statute further provides: "*A party to the agreement may bring suits for violation of agreements or the enforcement of an award by an arbitrator in the court of common pleas of any county wherein a party resides or transacts business*." (Emphasis added.) R.C. 4117.09(B)(1).

{¶ 28} "If a party asserts rights that are independent of Chapter 4117, 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 Assn. v. Fraternal Order of Police, Capital City Lodge*, 59 Ohio St.3d 167 (1991), paragraph two of

the syllabus. "The State Employment Relations Board (SERB) has exclusive jurisdiction to decide matters committed to it pursuant to R.C. Chapter 4117." *Id.*, paragraph one of the syllabus.

{¶ 29} The test for SERB's jurisdiction is "whether one of the parties filed charges with SERB alleging an unfair labor practice under R.C. 4117.11 or whether one of the parties filed a complaint before a common pleas court alleging conduct that constitutes an unfair labor practice specifically enumerated in R.C. 4117.11." *Ohio Council 8, AFSCME, AFL-CIO v. Lakewood*, 2025-Ohio-2052, ¶ 30 (SERB did not have exclusive jurisdiction when union's motion to compel arbitration did not allege an unfair labor practice).

{¶ 30} R.C. 4117.11 defines unfair labor practices of public employers and employee organizations (e.g., unions). A public employer, its agents, or its representatives may not:

> (1) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code or an employee organization in the selection of its representative for the purposes of collective bargaining or the adjustment of grievances;
>
> (2) Initiate, create, dominate, or interfere with the formation or administration of any employee organization, or contribute financial or other support to it; except that a public employer may permit employees to confer with it during working hours without loss of time or pay, permit the exclusive representative to use the facilities of the public employer for membership or other meetings, or permit the exclusive representative to use the internal mail system or other internal communications system;

(3) Discriminate in regard to hire or tenure of employment or any term or condition of employment on the basis of the exercise of rights guaranteed by Chapter 4117. of the Revised Code; . . .

(4) Discharge or otherwise discriminate against an employee because he has filed charges or given testimony under Chapter 4117. of the Revised Code;

(5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117. of the Revised Code;

(6) Establish a pattern or practice of repeated failures to timely process grievances and requests for arbitration of grievances;

(7) Lock out or otherwise prevent employees from performing their regularly assigned duties where an object thereof is to bring pressure on the employees or an employee organization to compromise or capitulate to the employer's terms regarding a labor relations dispute;

(8) Cause or attempt to cause an employee organization, its agents, or representatives to violate division (B) of this section.

R.C. 4117.11(A)(1) through (8).

{¶ 31} An employee organization, its agents or representatives, or public employees may not:

(1) Restrain or coerce employees in the exercise of the rights guaranteed in Chapter 4117. of the Revised Code. . . . ;

(2) Cause or attempt to cause an employer to violate division (A) of this section;

(3) Refuse to bargain collectively with a public employer if the employee organization is recognized as the exclusive representative or certified as the exclusive representative of public employees in a bargaining unit;

(4) Call, institute, maintain, or conduct a boycott against any public employer, or picket any place of business of a public employer, on account of any jurisdictional work dispute;

(5) Induce or encourage any individual employed by any person to engage in a strike in violation of Chapter 4117. of the Revised Code or refusal to handle goods or perform services; or threaten, coerce, or restrain any person where an object thereof is to force or require any public employee to cease dealing or doing business with any other person, or force or require a public employer to recognize for representation purposes an employee organization not certified by the state employment relations board;

(6) Fail to fairly represent all public employees in a bargaining unit;

(7) Induce or encourage any individual in connection with a labor relations dispute to picket the residence or any place of private employment of any public official or representative of the public employer;

(8) Engage in any picketing, striking, or other concerted refusal to work without giving written notice to the public employer and to the state employment relations board not less than ten days prior to the action. The notice shall state the date and time that the action will commence and, once the notice is given, the parties may extend it by the written agreement of both.

R.C. 4117.11(B)(1) through (8).

{¶ 32} "When a party does not allege an unfair labor practice or conduct that constitutes an unfair labor practice but instead raises a claim that is independent of the rights created by R.C. Ch. 4117, jurisdiction is not exclusive to SERB and may be exercised by a common pleas court." *Lakewood*, 2025-Ohio-2052, at ¶ 1. In this case, the Union's motion alleged that RTA violated the cease-and-desist order by continuing to subcontract PMOB services to non-union contractors. Violating the cease-and-desist order of the confirmed arbitration award, or even the CBA itself, is not defined as an unfair labor practice. There is no indication in the record before us that RTA's conduct, as alleged, constituted an unfair labor practice. Instead, the Union's motion to enforce the arbitration award stated:

> RTA failed to comply with the Gardner Award's requirement to "cease and desist" subcontracting PMOB work in violation of the CBA. Rather, RTA continued to subcontract PMOB work in violation of the parties' contract, the Gardner Award, the trial court's July 19, 2018 order and the 2nd Appellate District's February 8, 2019 order. This continued violation resulted in further economic damages. In order to make the affected bargaining unit members whole for all lost wages sustained by RTA's failure to cease and desist subcontracting as required by the Gardner Award, the trial court, and the 2nd Appellate District Court, RTA owes the affected bargaining unit members no less than $225,810.52 in back pay.

October 22, 2020, Union Motion, ¶ 30.

{¶ 33} In our view, applying *Lakewood*, we do not agree with RTA that SERB had exclusive jurisdiction to hear the Union's motion to enforce the arbitration award. However, that does not end our inquiry. RTA further argues that the trial court did not have the subject matter jurisdiction to consider the Union's allegations that RTA had violated the CBA. RTA

points out that to determine whether it had violated the "cease and desist" order, the trial court was required to, and did, interpret the CBA, which was in the arbitrator's exclusive powers.

Arbitration and the CBAs

{¶ 34} While R.C. 4117.09(B)(1) provides the common pleas court with jurisdiction to hear an action alleging a violation of agreements or seeking enforcement of an arbitration award, nothing in that division, Chapter 4117, or Chapter 2711 provides a trial court with jurisdiction to interpret a CBA to determine, in the first instance, whether a party violated the CBA, as opposed to an arbitrator making that determination.

{¶ 35} In *Lakewood,* the Supreme Court of Ohio made clear that its decision "does *not* mean that a party may bring any claim for a violation of a collective-bargaining agreement in a court of common pleas." (Emphasis in original.) *Lakewood*, 2025-Ohio-2052, at ¶ 19. Rather, "under R.C. 4117.09(B)(1), if a collective-bargaining agreement contains an arbitration provision, that provision governs and arbitration is required." *Id*.

{¶ 36} The Union is correct in its general assertion that courts have jurisdiction to enforce arbitration awards. R.C. 2711.12 (once a trial court grants an order confirming an arbitration award, "the court must enter judgment in conformity therewith."); R.C. 2711.14(C) ("[t]he judgment so entered shall have in all respects the same effect as, and be subject to all laws relating to, a judgment in an action [and] . . . may be enforced as if rendered in an action in the court in which it is entered."). Courts also have jurisdiction to enforce their own orders in a contempt proceeding. R.C. 2705.02; *State ex rel. Shoop v. Mitrovich*, 4 Ohio St.3d 220, 221 (1983) ("Clearly, the court of common pleas may enforce its own orders in a contempt proceeding."). But that is not what happened in this case. Here, the trial court did

not conduct a contempt proceeding. It instead granted the Union damages for numerous instances of subcontracting that were never arbitrated.

{¶ 37} Each party, in various sections of its brief, contends that the other party waived the right to challenge the trial court's decision because the court failed to file findings of fact and conclusions of law. We do not agree, because the plain language of Civ.R. 52 applies to trials to the court and expressly excludes summary judgment under Civ.R. 56. *See* Civ.R. 52 ("Findings of fact and conclusions of law required by this rule and by Civ.R. 41(B)(2) and Civ.R. 23(G)(3) are unnecessary upon all other motions including those pursuant to Civ.R. 12, Civ.R. 55 and Civ.R. 56"); *National Collegiate Student Loan Trust 2005-3 v. Dunlap*, 2018-Ohio-2701, ¶ 46 (4th Dist.); *Mosley v. General Motors Corp*., 2002-Ohio-6000, ¶ 47 (7th Dist.) (trial court not required to issue findings of fact and conclusions of law on summary judgment); *Paramount Supply Co. v. Sherlin Corp*., 16 Ohio App.3d 176, 180 (8th Dist. 1984). Therefore, the arguments regarding waiver are without merit, and we will not address them.

{¶ 38} There are four principles, common to both state and federal courts, applicable to reviewing a dispute's "arbitrability": (1) "'arbitration is a matter of contract and a party cannot be required to so submit to arbitration any dispute which he has not agreed to so submit'"; (2) arbitrability is a legal question for a court to decide; (3) when deciding whether a particular claim is arbitrable, a court may not rule on the potential merits of the underlying claim; and (4) when a "'contract contains an arbitration clause, there is a presumption of arbitrability in the sense that "[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute."'" *Council of Smaller Ents. v. Gates, McDonald & Co*., 80 Ohio St.3d 661, 665-666 (1998), quoting *AT&T Technologies,*

Inc. v. Communications Workers of Am., 475 U.S. 643, 648-649, 650 (1986), quoting *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960); *Academy of Medicine of Cincinnati v. Aetna Health, Inc*., 2006-Ohio-657.

{¶ 39} RTA argues that no genuine issue of material fact existed and that it was entitled to judgment as a matter of law, because the CBA contained an arbitration clause that required mandatory arbitration. This argument also runs to the trial court's subject matter jurisdiction. The Union counters, in part, that the trial court's judgment was correct and that awarding damages up to January 2, 2020, was proper on account of the successor CBA's ratification date.

CBA's Effective Date vs. Ratification Date

{¶ 40} It is undisputed that the 2016-2019 CBA expired March 31, 2019, and the 2019-2022 CBA was ratified on January 2, 2020. It is also undisputed that the trial court awarded $495,859.33 in damages to the Union for subcontracting events that occurred between March 2018 and December 2019. For the trial court to make this determination, it necessarily believed the Union's ratification assertion, which necessarily encompassed a finding that there was no CBA in effect from March 31, 2019, to January 2, 2020, when the successor CBA was ratified.

{¶ 41} "For purposes of determining arbitrability, when a contract is formed can be as critical as whether it was formed. That is the case where, as here, the date on which an agreement was ratified determines the date the agreement was formed, and thus determines whether the agreement's provisions were enforceable during the period relevant to the parties' dispute." *Granite Rock Co. v. International Bhd. of Teamsters*, 561 U.S. 287, 304 (2010). Trial courts have jurisdiction to determine whether the parties agreed to arbitrate the dispute at issue. *Id.* at 305 (court of appeals erred in holding that it was not necessary for

the district court to determine the CBA's ratification date in order to decide whether the parties agreed to arbitrate Granite Rock's claim or the union's ratification-date defense).

{¶ 42} Here, the 2019-2022 CBA provides:

> **LABOR AGREEMENT**
>
> March 31, 2019 through April 2, 2022
>
> **ARTICLE I – PARTIES AND RECOGNITION/MANAGEMENT RIGHTS**
>
> **Section 1**
>
> THIS AGREEMENT entered into on the 1st day of April, 2019 by and between the GREATER DAYTON REGIONAL TRANSIT AUTHORITY, its successors or assigns, party of the first part, hereinafter called the "Authority" and the AMALGAMATED TRANSIT UNION AFL-CIO, LOCAL 1385, its successors or assigns, party of the second part, hereinafter called the "Union" witnesseth:
>
> That the parties hereto, in consideration of the mutual covenants and agreements herein contained, contract and agree with each other that this Agreement, which shall become effective as of the 31st day of March, 2019 shall thereafter constitute the complete entire Agreement between the parties hereto.

{¶ 43} When a successor CBA contains an express statement of the parties—such as "this Agreement, which shall become effective as of the 31st day of March, 2019"—even if the CBA is ratified at a later date, the effective date of the CBA controls, and the terms apply and govern the parties from the effective date. *Lennox Industries, Inc. v. Clifton*, 1974 WL 183892 (10th Dist. Apr. 30, 1974) (CBA effective on its effective date even though it was ratified on a subsequent date); *Summit Cty. Children's Serv. Bd. v. Local No. 4546, Communications Workers of Am.*, 2003-Ohio-726 (9th Dist.) (same); *Local 377 v. Humility*

of Mary Health Partners, 296 F.Supp.2d 851 (N.D.Ohio 2003) (effective date stated in a CBA applied and later execution date did not control); *Atchley v. Heritage Cable Vision Assocs*., 101 F.3d 495 (7th Cir. 1996) (CBA's effective date controlled instead of the execution date); *Flynn v. Interior Finishes, Inc*., 425 F.Supp.2d 38, 46 (D.D.C. 2006), citing *Brewer v. Natl. Sur. Corp*., 169 F.2d 926, 928 (10th Cir. 1948) ("It is competent for the parties to agree that a written contract shall take effect as of a date earlier than that on which it was executed, and when this is done, the parties will be bound by such agreement.").

{¶ 44} Therefore, as stated in the 2019-2022 CBA, the agreement was effective on March 31, 2019, and it governed the portion of the parties' dispute between March 31, 2019, to January 2, 2020. As a practical matter, while there was a gap between the expiration of the 2016-2019 CBA and execution of the 2019-2022 CBA, by the time the Union filed its motion to enforce the cease-and-desist order on October 22, 2020, the successor CBA had been ratified, and its terms governed a portion of the alleged subcontracting violations. From March 31, 2019, RTA was permitted to subcontract PMOB services under the 2019-2022 CBA. While the trial court lacked jurisdiction to evaluate the Union's claims of post-arbitration award violations, as discussed further below, as a matter of law, the trial court erred in awarding damages to the Union for alleged subcontracting violations that occurred from March 31, 2019, onward.

The 2016-2019 CBA and the 2019-2022 CBA Required Arbitration

{¶ 45} Regardless, the 2016-2019 CBA and the successor 2019-2022 CBA required arbitration of the Union's allegations that RTA violated the cease-and-desist order. RTA claims that to determine a violation of the cease-and-desist order, the trial court had to look to the CBA and apply it to the alleged subcontracting violations.

{¶ 46} Here, both CBAs contain the same arbitration clause: "All claims or disputes of employees or the Union regarding the application, interpretations or violations of any provisions of this Agreement . . . shall be settled under grievances."

{¶ 47} Both CBAs grant the same power to the arbitrator: "The powers of the impartial arbitrator are limited to that of interpreting and applying the provisions of this agreement."

{¶ 48} Both CBAs also contain a clause in article I, section 2, that provides: "Should any difference or differences arise between the parties which cannot be mutually adjusted under this Agreement, the same shall be submitted upon the written request of either party to arbitration in accordance with the provisions of Article XXXI herein." Article XXXI of both CBAs addresses grievances and arbitration.

{¶ 49} The relevant portion of the confirmed arbitration award stated:

> A. [RTA] is ordered to cease and desist all subcontracting of Union work, including PMOB services, unless subcontracting is permitted by the Collective Bargaining Agreement.
>
> B. If [RTA] plans to subcontract PMOB work, [RTA] will give prior written notice to the Union. See, Joint exhibit 1, CBA: IV-Subcontracting.

{¶ 50} The trial court had jurisdiction to determine the arbitrability of the Union's claims regarding the alleged instances of subcontracting that occurred between March 2018 and December 2019. *Academy of Medicine of Cincinnati v. Aetna Health, Inc*., 2006-Ohio-657, ¶ 5 (the question of whether a particular claim is arbitrable is one of law for the court to decide). However, that was the limit of the trial court's jurisdiction.

{¶ 51} The Union argues that it had arbitrated the subcontracting dispute in 2017, so RTA's continued subcontracting of PMOB services violated the arbitration award's cease-and desist order. The Union appears to assume that the award had a preclusive effect and

that arbitrating later subcontracting issues was unnecessary, assumptions that the trial court appears to have implicitly accepted without analysis. Regardless of whether the Union's pending grievances against RTA differ in any real way from those previously arbitrated in 2018, we conclude that the Union's claims of continued PMOB subcontracting should have been submitted to arbitration under the terms of the CBAs.

{¶ 52} On this point, we find the decision in *AG Communications Systems Corp. v. International Bhd. of Elec. Workers, Local Union No. 21*, 2005 WL 731026 (N.D.Ill. 2005), to be instructive, where the court explained:

> It is "well-established that 'the preclusive effect of the first arbitrator's decision is an issue for a later arbitrator to consider.'" [*Indep. Lift Truck Builders Union v. NACCO Materials Handling Group, Inc.*, 202 F.3d 965, 968 (7th Cir. 2000)], quoting *Brotherhood of Maintenance of Way Employees v. Burlington Northern R.R. Co*., 24 F.3d 937, 940 (7th Cir.1994); *see also Consolidation Coal Co. v. United Mine Workers*, 213 F.3d 404, 407 (7th Cir.2000) ("[T]he question of the preclusive force of the first arbitration is, like any other defense, itself an issue for a subsequent arbitrator to decide."); *Production and Maintenance Employees' Local 504, Laborers' Int'l Union v. Roadmaster Corp*., 916 F.2d 1161, 1162 (7th Cir.1990) ("Whether more than one arbitrator can take a crack at interpreting the contract is itself a question of contractual interpretation."). The CBA at issue here expressly states that all grievances "relating to the interpretation or application of specific provisions of this Agreement . . . shall be submitted at the request of the parties to an Arbitration Board . . . ." (CBA ¶ 4.) By this clause, the parties agreed to have all disputes concerning the construction and interpretation of the CBA submitted to arbitration. *NACCO*,

202 F.3d at 968, citing [*W.R. Grace & Co. v. Local Union 759, Internatl. Union of United Rubber, Cork, Linoleum, & Plastic Workers*, 461 U.S. 757, 764 (1983)]. Under such circumstances, "the union is entitled to an order compelling arbitration even if the doctrine of claim preclusion in federal law might forbid successive litigation had the first arbitrator been a judge." *Roadmaster Corp*., 916 F.2d at 1163; *NACCO*, 202 F.3d at 968.

The Seventh Circuit has previously denied attempts to avoid arbitration on the basis that the issue raised in the grievance has been decided in a prior arbitration. In *NACCO*, for example, a union filed suit seeking a court order requiring an employer to arbitrate a dispute over the employer's right to make unilateral changes to retiree medical benefits. *NACCO*, 202 F.3d at 966. The employer had refused to arbitrate the grievance, asserting that the grievance and suit was precluded by an earlier arbitration on the same issue and the CBA's finality clause. *Id*. at 967. In ordering the parties to proceed to arbitration, the Seventh Circuit did not address the merits of the employer's preclusion argument, but instead held that "the preclusive effect of an arbitrator's decision is an issue for a subsequent arbitrator to decide." *Id*. at 968. AGCS's attempts to distinguish *NACCO* factually from the current case are of no avail. Although *NACCO* involved different circumstances—notably, the fact that the second arbitration occurred five years prior to the grievance at issue and involved a predecessor of the defendant employer—the court did not base its broader conclusion on the specific facts of the case. Rather, the court broadly held that issues of preclusion are properly determined by an arbitrator, not a court.

AG Communications at *7-8.

{¶ 53} In *AG Communications*, the court further observed:

> Other courts have similarly concluded that the doctrine of *res judicata* in the arbitration context is an issue for the arbitrator. *Little Six Corp. v. United Mine Workers*, 701 F.2d 26, 29 (4th Cir.1983) ("[T]he question of the preclusive effect of [a prior] arbitration award is itself arbitrable."); *New Orleans Steamship Ass'n v. General Longshore Workers*, 626 F.2d 455, 465 (5th Cir.1980) ("Whether the [arbitration] award can be given an effect akin to res judicata or stare decisis with regard to future disputes that may arise between the parties, neither the district court nor this court should decide. If the parties do not agree, that issue itself is a proper subject for arbitration."), *aff'd sub nom. Jacksonville Bulk Terminals, Inc. v. Int'l Longshoremen's Ass'n*, 457 U.S. 702, 102 S.Ct. 2672, 73 L.Ed.2d 327 (1982); *Local 103, Int'l Union of Elec., Radio and Mach. Workers v. RCA Corp*., 516 F.2d 1336, 1339 (3d Cir.1975) ("It is the function of the arbitrator, not the court, to decide whether the 'same question or issue' had been the subject of [previous] arbitration . . . ."); *Teamsters Local 623 v. United Parcel Service, Inc*., 786 F.Supp. 509, 513 (E.D.Pa.1992) ("Allowing the issue of *res judicata* . . . to remain with the arbitrator, will promote the strong congressional policy in favor of arbitration of grievances under a collective bargaining agreement."); *Teamsters, Chauffeurs, Warehousemen and Helpers Local No. 490 v. Lucky Stores, Inc*., No. 94 C 2177, 1994 WL 721432, *3 (N.D.Cal. Dec. 28, 1994) ("The preclusive effect of a prior labor arbitrator's award generally is a matter for a subsequent arbitrator to determine . . .").

AG Communications, 2005 WL 731026, at *8. Therefore, in our opinion, the trial court lacked jurisdiction to determine that because the Union had previously arbitrated the 2017 PMOB subcontracting issue, it could consider the merits of the new instances of continued subcontracting.

{¶ 54} Additionally, we are unpersuaded by the Union's argument that the arbitration award's cease-and-desist order gave the trial court jurisdiction to determine the merits of subcontracting claims that arose after the award. The order is not so tailored. Instead, the order required RTA to cease subcontracting unless the CBA permitted it and to give notice in writing before doing so.

{¶ 55} On this point, we agree with RTA that the trial court lacked jurisdiction to determine whether post-arbitration-award subcontracting events violated the cease-and-desist order because the trial court interpreted the CBAs on an arbitrable issue. Trial courts do not have jurisdiction to interpret a CBA when the CBA clearly grants an arbitrator the power to interpret the CBA. *O'Malley v. Laborers' Internatl. Union of N. Am. Local 860*, 2024-Ohio-3103 (8th Dist.); *State ex rel. Wilkinson v. Reed*, 99 Ohio St.3d 106, ¶ 21 (2003) (citing cases where trial courts lack jurisdiction to consider merits of claims); *Crawford v. Kirtland Local School Dist. Bd. of Edn.*, 2018-Ohio-4569, ¶ 31 (11th Dist.) ("if the application of the law is dependent on an analysis or interpretation of a collective bargaining agreement, the trial court lacks subject matter jurisdiction over the matter"), citing *Gudin v. W. Res. Psych. Hosp*., 2001 WL 664389, *3 (10th Dist. June 14, 2001); *Adams Cty./Ohio Valley Local School v. OAPSE/AFSCME, Local 572*, 2017-Ohio-6929 (4th Dist.) (reversing trial court that independently analyzed CBA to conclude that CBA did not prohibit the employer from subcontracting); *AT&T Technologies*, 475 U.S. at 649.

{¶ 56} At oral argument, the Union contended that it was not required to arbitrate every instance of RTA's continued subcontracting of PMOB services after the arbitration award; however, we are unpersuaded by the argument because the Union could simply have arbitrated a "continuing violation." *See, e.g.*, *Monee Nursery & Landscaping Co. v. Internatl. Union of Operating Engineers, Loc. 150, AFL-CIO*, 348 F.3d 671 (7th Cir. 2003) (affirming denial of motion to vacate arbitration award that addressed continuing violation of CBA that spanned between 1993 and 2000 after union's scope letter to arbitrator noted the violation as "continuing").

{¶ 57} We are also unpersuaded by the Union's reliance on *City of Cleveland v. Laborers Internatl. Union Local 1099*, 2018-Ohio-161 (8th Dist.). We find *Laborers International* distinguishable from the instant matter. In *Laborers International*, the trial court's damages award to the union supplemented the arbitrator's award, which had granted "reasonable and demonstratable lost back pay" without stating any specific amount. *Id.* at ¶ 2. Here, the Union received an award for a specific amount of money based on the subcontracting events that were part of the grievance and before the arbitrator. Additionally, in *Laborers International*, before the union filed its motion for a specific amount of damages in the trial court, the union returned to the arbitration process and requested a hearing regarding the specific amount of back pay that should be awarded. *Id* at ¶ 5. The arbitrator determined that it lacked jurisdiction. *Id* at ¶ 6. Clearly here, the Union did not return to the arbitration process before filing in the trial court. Based on these significant distinctions, we conclude that the trial court erred in determining that *Laborers International* was the applicable legal precedent to follow. *Laborers International* did not grant the trial court jurisdiction to hear new facts and award additional damages regarding alleged instances of subcontracting that were never presented to the arbitrator.

{¶ 58} Even had the trial court possessed jurisdiction to consider the Union's claims, we would still conclude that it erred in overruling RTA's motion for summary judgment and granting the Union's. The record in this case reveals that the Union provided the trial court with various invoices from RTA's subcontracting from March 2018 through December 2019. There was no evidence that RTA failed to provide notice to the Union before it subcontracted each service, as required by the arbitration award. There was no genuine issue of material fact, and had the Union's claims been properly before the trial court, RTA would have been entitled to judgment in its favor as a matter of law.

{¶ 59} To the extent that the RTA and the Union disagree about the scope of the arbitration award or whether it was ambiguous, that was another issue for the arbitrator to clarify, not for the court to clarify in interpreting its own confirmed arbitration award. "[T]here are a number of well-recognized exceptions to the *functus officio* rule. An arbitrator can (1) correct a mistake which is apparent on the face of his award; (2) decide an issue which has been submitted but which has not been completely adjudicated by the original award; or (3) clarify or construe an arbitration award that seems complete but proves to be ambiguous in its scope and implementation." *Brown v. Witco Corp*., 340 F.3d 209, 218-219 (5th Cir. 2003). While we do not need to determine whether the confirmed arbitration award was ambiguous in this case, we think that this case may have been less costly and time consuming for the parties had one of them requested clarification of the arbitration award's order after it was issued. Nevertheless, we hold that a trial court lacks jurisdiction to clarify an arbitration award after it is confirmed.

{¶ 60} For all of the forgoing reasons, we sustain RTA's first, second, third, fourth and fifth assignments of error.

III. The Union's Cross-Appeal – Attorney Fees

{¶ 61} The Union objects to the trial court's denial of attorney fees. After the Union prevailed on summary judgment, the trial court initially awarded attorney fees but did not ascertain the amount due. The assigned judge retired, and the successor judge reconsidered the issue and overruled the Union's request. The Union claims that the trial court violated the law of the case doctrine and abused its discretion in denying attorney fees.

{¶ 62} The Union seeks attorney fees on the basis that RTA allegedly acted in bad faith in the proceedings. Ohio follows the "American Rule," which generally prohibits a prevailing party in a civil action from recovering attorney fees as litigation costs. *Becker v. Direct Energy, LP*, 2018-Ohio-4134, ¶ 108 (2d Dist.) citing *Wilborn v. Bank One Corp*., 2009-Ohio-306, ¶ 7. "This rule has limited exceptions, including the one asserted here, i.e., that a prevailing party may be awarded attorney fees after demonstrating the unsuccessful litigant's bad faith." *Id*., citing *Wilburn* at ¶ 7, citing *Pegan v. Crawmer*, 79 Ohio St.3d 155, 156 (1997).

{¶ 63} Here we have concluded that the trial court lacked jurisdiction over the Union's claims, for which it should have sought arbitration. Lacking jurisdiction over the Union's substantive claims, the trial court necessarily lacked jurisdiction over the request for attorney fees that derived from those claims. Moreover, as a result of the disposition of RTA's appeal, the Union is not a prevailing party and thus cannot invoke the exception to the general rule prohibiting attorney fees. *See Martcheva v. Dayton Bd. of Edn.*, 2021-Ohio-3524, ¶ 88 (2d Dist.) (affirming denial of party's request for attorney fees because the party had not prevailed in the action). The Union was not entitled to attorney fees. The Union's assignment of error in its cross-appeal is overruled.

IV. Conclusion

{¶ 64} The trial court's judgments are vacated.

. . . . . .

LEWIS, P.J., and TUCKER, J., concur.