**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

**CAROL A. KATTER**,

**Plaintiff,**

**v.**

**Case No. 2:07-CV-43**
**JUDGE GREGORY L. FROST**
**Magistrate Judge Abel**

**OHIO EMPLOYMENT RELATIONS BOARD, CRAIG R. MAYTON, KAREN L. GILLMOR, and MICHAEL G. VERICH,**

**Defendants.**

**OPINION & ORDER**

This matter comes before the Court for consideration of a motion for summary judgment (Doc. # 12) filed by Plaintiff Carol A. Katter ("Plaintiff"), a memorandum in opposition (Doc. # 17) filed by Defendant Ohio Employment Relations Board ("Defendant"), and a reply. (Doc. # 18.) Also before the Court is Defendant's motion for summary judgment (Doc. # 9), a memorandum in opposition (Doc. # 13), and a reply. (Doc. # 17.) For the reasons that follow, this Court grants Plaintiff's motion (Doc. # 12) and denies Defendant's motion. (Doc. # 9.)

**A. Background**

Plaintiff has been a teacher in the St. Marys City Schools ("School") since 1986. Plaintiff is Roman Catholic. She has been a member of the Holy Rosary Church her entire life. Because of her religious beliefs, Plaintiff never joined the St. Marys Education Association/Ohio Education Association/National Education Association ("Union"). Namely, Plaintiff objects to supporting the Union because the Union supports abortion rights. Thus, Plaintiff believes that if she supported the Union, she too would be supporting abortion. Consequently, Plaintiff alleges that if she were a member in the Union, she would violate her obligations to the Church, commit

sin against God, and potentially lose her eternal life.

Until August 2005, Plaintiff's decision not to join the Union posed no problem with the School. Then on August 20, 2005, the Union and the School entered into a new collective bargaining agreement ("Agreement"). As a result of the Agreement, Plaintiff was required to either join the Union or pay an agency fee to the Union as a condition of employment.

Pursuant to Ohio Revised Code Chapter 4117, Plaintiff filed an application for a religious exemption with the State Employment Relations Board ("SERB"). *See* Ohio Rev. Code Ann. § 4117.09(C). Ohio Rev. Code § 4117.09(C) permits SERB to exempt a bargaining unit member from payment of dues or fair share fees to her union if she is a "public employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion or religious body which has historically held conscientious objections to joining or financially supporting an employee organization. . . ." Plaintiff requested in her application that the Union redirect her fair share fees to a charity. *See* § 4117.09(C) (stating that [t]he employee shall be required, in lieu of the fair share fee, to pay an amount of money equal to the fair share fee to a nonreligious charitable fund exempt from taxation under section 501(c)(3) of the Internal Revenue Code mutually agreed upon by the employee and the representative of the employee organization. . .").

When determining whether to grant Plaintiff's exemption, Defendant followed the guidelines set forth in § 4117.09(C). Plaintiff was able to verify with Defendant her membership and adherence to the tenants and teachings of the Holy Rosary Church. Plaintiff, however, was unable to provide Defendant with documentation that the Holy Rosary Church "has historically held conscientious objections to joining or financially supporting an employee organization." §

4117.09(C). Thus, pursuant to the statutory directive, on May 18, 2006, Defendant denied Plaintiff's request for a religious exemption. *See* § 4117.09(C) stating that SERB may not grant exemptions to public employees who hold sincere religious objections to joining or financially supporting employee organizations, but who are *not* members and adherents of religions that historically have held conscientious objections to such support).

On January 22, 2007, Plaintiff filed her Complaint (Doc. # 2) in the current case. Pursuant to 42 U.S.C. § 1983, Plaintiff alleges that Defendant acting under the color of state law discriminated against her on the basis of her religious preference. Specifically, Plaintiff alleges that § 4117.09(C) violates the establishment clause and free exercise clause of the First Amendment. Plaintiff contends that her First Amendment rights were violated when Defendant denied her an accommodation because she is not a member of a church with doctrines approved by the State of Ohio. Furthermore, Plaintiff claims that Defendant violated her rights under the equal protection clause of the Fourteenth Amendment when Defendant denied her an accommodation while previously granting accommodations to members of churches with doctrines approved by Defendant.

Plaintiff now requests the following relief: (1) a declaratory judgment, pursuant to 28 U.S.C. § 2201 declaring that § 4117.09(C) is unconstitutional and that Plaintiff is retroactively entitled to an exemption; (2) a permanent injunction that enjoins Defendant and its members from applying § 4117.09(C) in a way that discriminates on the basis of religion, and that requires Defendant to retroactively grant Plaintiff a religious exemption; and (3) costs and attorneys' fees incurred in the litigation of this case.

After Plaintiff filed her Complaint, the Union granted Plaintiff's requested

accommodation on January 24, 2007 by agreeing to send all of Plaintiff's fees to a mutually agreed upon charity. The Union also agreed to accommodate Plaintiff in future years if Plaintiff provides the Union with a fair share fee form indicating her fair share fee status each membership year. Moreover, on January 31, 2007, the Union informed Plaintiff that it agreed to make her accommodation retroactive to the date that Plaintiff applied for an exemption.

## B. Discussion

### 1. Standard of Review

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The initial burden of showing the absence of any such "genuine issue" rests with the moving party: it must inform the district court of the basis for its motion, and identify those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact. Fed. R. Civ P. 56(e).

The burden then shifts to the non-moving party who "must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250 (1986) (quoting Fed. R. Civ. P. 56(e)). The non-moving party cannot rest on its pleadings or merely reassert its previous allegations. Fed. R. Civ. P. 56(e). It is insufficient "simply [to] show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586 (1986). Rather, Rule 56(e) "requires the nonmoving party to go beyond the [unverified] pleadings" and present some type of evidentiary

material in support of its position. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986).

In viewing the evidence, the Court must draw all reasonable inferences in favor of the non-moving party, who must set forth specific facts showing that there is a genuine issue of material fact for trial. *Muncie Power Prods., Inc. v. United Techs. Auto., Inc.*, 328 F.3d 870, 873 (6th Cir. 2003) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)); *Hamad v. Woodcrest Condo. Ass'n*, 328 F.3d 224, 234 (6th Cir. 2003). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *See Muncie*, 328 F.3d at 873 (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). Consequently, the central issue is "'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Hamad*, 328 F.3d at 234-35 (quoting *Anderson*, 477 U.S. at 251-52).

The Court must therefore grant a motion for summary judgment if Plaintiff, who has the burden of proof at trial, fails to make a showing sufficient to establish the existence of an element that is essential to his case. *See Muncie*, 328 F.3d at 873 (citing *Celotex Corp.,* 477 U.S. at 324.) However, in ruling on a motion for summary judgment, "a district court is not . . . obligated to wade through and search the entire record for some specific facts that might support the nonmoving party's claim." *InterRoyal Corp. v. Sponseller*, 889 F.2d 108, 111 (6th Cir. 1989).

**2. Standing**

Defendant claims that Plaintiff lacks standing to challenge the constitutionality of § 4117.09(C). Specifically, Defendant contends that Plaintiff cannot show how a favorable