LAW OFFICES
DILLON & FINDLEY
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1049 W. 5th Avenue, Suite 100
Anchorage, Alaska 99501
TEL. (907) 277-5400 · FAX (907) 277-9896

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

STATE OF ALASKA,

Plaintiff/Counterclaim Defendant,

vs.

ALASKA STATE EMPLOYEES ASSOCIATION/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 52, AFL-CIO,

Defendant/Counterclaimant.

ALASKA STATE EMPLOYEES ASSOCIATION/AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES LOCAL 52, AFL-CIO,

Third-Party Plaintiff,

vs.

MICHAEL J. DUNLEAVY, in his official capacity as Governor of Alaska; KEVIN G. CLARKSON, in his official capacity as Attorney General of Alaska; KELLY TSHIBAKA, in her official capacity as Commissioner of the Alaska Department of Administration; and STATE OF ALASKA, DEPARTMENT OF ADMINISTRATION,

Third-Party Defendants.

Case No. 3AN-19-09971 CI

DECLARATION OF MOLLY C. BROWN IN SUPPORT OF ASEA'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

I, Molly C. Brown, hereby declare:

1. I am a partner at Dillon & Findley, PC, admitted to practice by the Bar of the State of Alaska, and one of the counsel to defendant/counterclaimant and third-party plaintiff ASEA in this action. I am over the age of 18 and competent to testify, and make this declaration based on personal knowledge of the facts stated herein.

2. True and correct copies of the following documents are attached as **Exhibits A through V**:

A. Alaska Attorney General Opinion - Guidance to Executive Branch departments regarding the rights and duties of public employees and public employers following the Supreme Court's decision in *Janus v. AFSCME Council 31,* September 7, 2018.

B. California Attorney General Opinion – Affirming Labor Rights and Obligations in Public Workplaces, available at https://oag.ca.gov/system/files/attachments/press_releases/AG%20Becerra%20Labor%20Rights%20Advisory%20FINAL.pdf.

C. Connecticut Attorney General Opinion – General Guidance Regarding the Rights and Duties of Public-Sector Employers and Employees in the State of Connecticut after *Janus v. AFSCME Council 31*, available at https://portal.ct.gov/AG/General/Guidance_on_Janus.

D. Connecticut, Illinois, Maryland, Massachusetts, New Mexico, Pennsylvania, Vermont, and Washington Attorneys General and Oregon Department of Justice Statement – Response to Liberty Justice Center letter, October 5, 2018.

E. District of Columbia Attorney General Opinion – Attorney General Advisory: Affirming Public Sector Labor Rights and Responsibilities After *Janus*, July 30,

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2018 available at http://oag.dc.gov/sites/default/files/2018-07/Post_Janus_Advisory_FINAL.pdf.

F. Illinois Attorney General Opinion – Guidance Regarding Rights and Duties of Public Employees, Public Employers, and Public Employee Unions after *Janus v. AFSCME Council 31,* July 20, 2018, available at http://www.illinoisattorneygeneral.gov/rights/Janus_Advisory_72018.pdf.

G. Maryland Attorney General Opinion – General Guidance on the Rights and Duties of Public-Sector Workers and Employers After Janus, available at http://www.marylandattorneygeneral.gov/news%20documents/After_Janus.pdf.

H. Massachusetts Attorney General Opinion – Attorney General Advisory, Affirming Labor Rights and Obligations in Public Workplaces, July 3, 2018, available at https://www.mass.gov/files/documents/2018/07/03/Attorney%20General%20Advisory%20-%20Rights%20of%20Public%20Sector%20Employees%20%287-3%29.pdf.

I. New Jersey Joint Opinion – Joint Guidance on the Rights of Public Sector Workers and Employers After Janus, August 22, 2018, available at https://nj.gov/labor/lwdhome/press/2018/20180822janus.html.

J. New Mexico Attorney General Opinion – Attorney General Advisory, Guidance for Public Sector Employers and Employees after *Janus v. AFSCME Council 31*, September 8, 2018, available at https://www.nmag.gov/attorney-general-advisory-on-janus-decision.pdf.

K. New York Attorney General Statement – Response to Liberty Justice Center letter, October 5, 2018.

L. New York Department of Labor Guidance for Public-Sector Employers and Employees in New York State, available at https://www.labor.ny.gov/formsdocs/factsheets/pdfs/janus-guidance.pdf.

M. Oregon Attorney General Opinion – Advisory: Affirming Labor Rights and Obligations in Public Workplaces, July 20, 2018, available at https://www.doj.state.or.us/wp-content/uploads/2018/07/AG_Advisory_on_Janus_Decision.pdf.

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N. Pennsylvania Attorney General Opinion – Guidance on the Rights and Responsibilities of Public Sector Employees and Employers Following the U.S. Supreme Court's *JANUS* Decision, August 3, 2018, available at https://www.attorneygeneral.gov/wp-content/uploads/2018/08/2018-08-03-AG-Shapiro-Janus-Advisory-FAQ.pdf.

O. Rhode Island Attorney General Opinion – Statement on Janus, September 4, 2018.

P. Vermont Attorney General Opinion – Advisory: Public Sector Labor Rights and Obligations Following *Janus,* August 9, 2018, available at https://ago.vermont.gov/wp-content/uploads/2018/08/Janus-Advisory-8.9.2018.pdf.

Q. Washington Attorney General Opinion – Attorney General Advisory: Affirming Labor Rights and Obligations in Public Workplaces, July 17, 2018, available at https://www.atg.wa.gov/news/news-releases/attorney-general-ferguson-issues-advisory-affirming-labor-rights-and-obligations.

R. *Montana Fed'n of Public Emps. v. Vigness*, No. DV 19-0217, Order Granting Preliminary Injunction (Mont. D. Ct. Apr. 11, 2019).

S. *In re Woodland Township Bd. of Educ., and Chatsworth Educ. Ass'n*, No. CO-2019-047, 45 NJPER ¶ 24, 2018 WL 4501733 (N.J. Pub. Emp't Relations Comm'n Aug. 31, 2018).

T. *AFSCME, Local 3277 v. Rio Rancho*, PELRB No. 113-18, Temporary Restraining Order and Preliminary Injunction (N.M. Pub. Emps. Lab. Relations Bd. Aug. 21, 2018).

U. *In re Ripley Union Lewis Huntington Sch. Dist. Bd. of Educ. and OAPSE/AFSCME Local 4, AFL-CIO Local 642*, Cessation of Union Dues Collection Grievance, AAA File No. 01-180004-6755 (Arb. W.C. Heekin, June 18, 2019).

V. *City of Madison (WI) and IBT, Local 695,* 48 LAIS 35, 2019 WL 3451442 (Arb. P.G. Davis, Feb. 13, 2019).

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I declare under penalty of perjury under the laws of the State of Alaska that the foregoing is true and correct.

Molly C. Brown

Molly C. Brown

SUBSCRIBED AND SWORN to before me this 25th day of September 2019, at Anchorage, Alaska.

Lisa M. Kusmider

Notary Public for the State of Alaska
My Commission Expires: 3/9/23

LISA M. KUSMIDER
My Commission Expires
NOTARY PUBLIC
Mar 9, 2023
STATE OF ALASKA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 25, 2019, a true and correct copy of the foregoing document was served by:

[✓] hand delivery
[✓] first class mail
[✓] email

on the following attorneys of record:

Tregarrick R. Taylor – hand delivered
Deputy Attorney General
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1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
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Lisa Kusmider

Lisa Kusmider

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INDEX TO EXHIBITS

Exhibit R — *Montana Fed'n of Public Emps. v. Vigness*, No. DV 19-0217, Order Granting Preliminary Injunction (Mont. D. Ct. Apr. 11, 2019)

Exhibit S — *In re Woodland Township Bd. of Educ., and Chatsworth Educ. Ass'n,* No. CO-2019-047, 45 NJPER ¶ 24, 2018 WL 4501733 (N.J. Pub. Emp't Relations Comm'n Aug. 31, 2018)

Exhibit T — *AFSCME, Local 3277 v. Rio Rancho*, PELRB No. 113-18, Temporary Restraining Order and Preliminary Injunction (N.M. Pub. Emps. Lab. Relations Bd. Aug. 21, 2018)

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Exhibit V — *City of Madison (WI) and IBT, Local 695*, 48 LAIS 35, 2019 WL 3451442 (Arb. P.G. Davis, Feb. 13, 2019)

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EXHIBIT A

MEMORANDUM

State of Alaska
Department of Law

TO: Heidi Drygas
Commissioner, Department of Labor & Workforce Development

Leslie Ridle
Commissioner, Department of Administration

FROM: Jahna Lindemuth
Attorney General

DATE: September 7, 2018

FILE NO.: 20182000675

TEL. NO.: 465-4239

SUBJECT: Guidance to Executive Branch departments regarding the rights and duties of public employees and public employers following the Supreme Court's decision in *Janus v. AFSCME Council* 31

The State of Alaska, including the Departments of Administration and Labor and Workforce Development, have received numerous inquiries from unions, employees, and management personnel regarding the impact of the United States Supreme Court's decision in *Janus v. AFSCME Council* 31, 585 U.S. ___, 138 S.Ct. 2448 (2018) on the rights and duties of Alaska public sector employees and employers. This will provide guidance to State officials regarding the impact of the *Janus* decision and clarify that the decision did not change the basic structure of Alaska labor law or the rights and obligations of public employees and employers.

By way of background, I note that the State has a well-established legal framework providing for collective bargaining rights for public employees. The public employees currently represented by Alaska labor unions pursuant to Alaska law include nearly the entire range of state and municipal employees, including law enforcement employees such as the Alaska State Troopers and Alaska Correctional Officers; Alaska teachers and university staff; public employees in the labor, trades and crafts; general government employees performing a wide range of office and clerical duties; child protection employees; professional employees; supervisory employees; Alaska Marine Highway employees; and many other types of public employees.

What did the Supreme Court decide in Janus?

The Supreme Court held that public employers may not deduct agency fees from a non-union member and a union may only collect such fees from a non-union member with a public employee's affirmative consent. The Court's decision reversed the long-standing Supreme Court precedent authorizing collective bargaining agreements that require public sector employees who decline union membership to pay fair share agency fees to a union that represents the employees.

Did the Janus decision invalidate any Alaska laws?

The decision invalidated one provision in the State's Public Employment Relations Act ("PERA") that permitted public employers and unions to negotiate a provision requiring payment of agency fees by non-union members. All other provisions of the State's PERA law remain in effect. In fact, the Supreme Court in *Janus* pointed out that its decision did not require the invalidation of state labor relations laws such as PERA.

What rights do public employees have regarding union organization and collective bargaining?

Under Alaska's PERA law, most public sector employees have the right to:

- Form, join or assist a labor union or refrain from such activity;
- Collectively bargain with a public employer through a labor representative of their own choosing regarding wages, hours, and conditions of employment;
- Engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection;
- Exercise these rights free from any interference, restraint, or coercion by a public employer;
- Exercise these rights free from any discrimination – a public employer may not discriminate in regard to hire or tenure of employment or any term or condition of employment in order to discourage or encourage union membership. AS 23.40.70-.260.

Does the Janus decision authorize a public employer to make unilateral changes to an existing collective bargaining agreement?

No. The Alaska PERA law prohibits a public employer from making unilateral changes to an existing collective bargaining agreement.

Does the Janus decision provide that a public employer may not continue to honor existing union membership dues authorizations?

No. The *Janus* decision addressed the issue of payment of agency fees by non-union members. It does not require existing union members to take any action; existing membership cards and payroll deduction authorizations by union members should continue to be honored.

Does the Janus decision require a public employer to provide employees' personal contact information to outside parties who may want to communicate with employees about the Janus decision?

No. The *Janus* decision does not require that outside parties be provided with personal information regarding state employees. Administrative Order No. 296 provides that no state entity shall disclose, unless required by law, the home address; personal email address; personal cell phone number; or personal telephone number of any State employee.

Where can additional information be obtained regarding Janus and Alaska public employee labor relations?

- Alaska executive branch agencies and public corporations should contact the Department of Administration, Division of Personnel & Labor Relations.
- Public employees represented by a labor union can contact their labor union representative.
- If public employees or unions believe that any of the rights established under PERA have been violated, they may contact the Alaska Labor Relations Agency.

EXHIBIT B

CALIFORNIA ATTORNEY GENERAL XAVIER BECERRA
ADVISORY

Affirming Labor Rights and Obligations in Public Workplaces

Attorney General Becerra re-affirms his full support for labor rights in California. Public employees in California (Including teachers, higher education and school employees, first responders, nurses, and city, county and state workers) provide essential services to the state's 40 million residents. The state's collective-bargaining laws help ensure such important conditions of employment as workplace safety, fair wages and hours, and protected leave. They also promote open communication between employers and employees, and the efficient operation of public workplaces across the state.

The Attorney General provides this advisory concerning the rights of public-sector employees following the United States Supreme Court's decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31 et al.* (AFSCME), 138 S.Ct. 2448 (2018). In *Janus*, the Supreme Court overturned four decades of legal precedent to rule that it is unconstitutional for public-sector unions to collect "agency fees"—also known as "fair-share" fees—from public employees who choose not to join the union. Therefore, a California public-sector employer may no longer automatically deduct a mandatory agency fee from the salary or wages of a non-member public employee who does not affirmatively choose to financially support the union.

In addition, other public-employee rights and public-employer obligations under California law are unchanged by the *Janus* decision. This means that, under California's public-sector collective-bargaining statutes, public employees in California continue to have the right to form, join, and participate in unions to represent them in matters of employer-employee relations. And public-sector employers are prohibited from retaliating or discriminating against employees for exercising their protected rights.

(Next page)

These rights and obligations are summarized below:[1]

Obligations of Public Employers

It remains unlawful for a public-agency employer to:

- Retaliate or discriminate against, or threaten to retaliate or discriminate against, employees for exercising their protected rights to engage in collective action (Gov. Code §§ 3502.1, 3506.5, 3519, 3543.5);
- Interfere with employees' exercise of their protected rights to engage in collective action, or deter or discourage employees or applicants for public-sector jobs from joining a union (Gov. Code §§ 3550, 3506, 3519, 3543.5);
- Refuse to meet and confer in good faith with a union (Gov. Code §§ 3505, 3506.5, 3517, 3519, 3543.5); and
- Interfere with the formation or administration of a union, or support or show preferential treatment for a union (Gov. Code §§ 3506.5, 3543.5, 3519).

Rights of Public Employees

Under California law, public employees retain the rights to:

- Form, join, and participate in the activities of their union for purposes of representation on wages, hours, and other conditions of employment (Gov. Code §§ 3502, 3515, 3543);
- Refrain from joining or participating in the activities of a union, or cancel or change deductions to the union (Gov. Code §§ 3502, 3515, 1153); and
- File an unfair practice charge with the Public Employment Relations Board (Gov. Code §§ 3509, 3514.5).

Payroll Deductions

Dues, initiation fees, and assessments for those public employees who choose to become union members may still be automatically deducted from members' salaries and wages. (Gov. Code §§ 3508.5, 3515.6, 3543.1.)

For information on filing a union grievance concerning wages, hours, and other conditions of employment, consult the applicable Bargaining Unit Contract.

For information on filing an unfair practice charge under the applicable state labor-relations law, visit the Public Employment Relations Board (PERB) website at www.perb.ca.gov.

[1] This summary, and the accompanying statutory references, are not intended to be a comprehensive description of all current California laws that govern, or otherwise pertain to, public-sector labor relations.

EXHIBIT C

The Office of Attorney General George Jepsen

STATE OF CONNECTICUT
ATTORNEY GENERAL GEORGE JEPSEN

General Guidance Regarding the Rights and Duties of Public-Sector Employers and Employees in the State of Connecticut after *Janus v. AFSCME Council 31.*

Connecticut has a long and important tradition of supporting the organized labor movement and the fundamental right of workers to organize. Public sector employees play a crucial role in communities across Connecticut. Each day they work hard to ensure public safety, to protect public health, to educate our children, and to provide other critical services to our residents.

The Supreme Court of the United States issued a decision in *Janus v. AFSCME Council 31*, 585 U.S. ___, 138 S. Ct. 2448 (2018) on June 27, 2018. The *Janus* decision overturned decades of well-established law and practice relating to the right of a union to receive the payment of fair share agency fees from public-sector employees who decline union membership. **The only change under *Janus* is that now public employers may not deduct agency fees from a non-member's wages, nor may a union otherwise collect agency fees from a non-member, without the non-member employee's affirmative consent.**

All other rights and obligations of public sector employees and employers under state law remain the same. Public-sector employees retain their statutory rights under Connecticut law to organize, to join unions, and to engage in collective action for mutual aid or protection under Connecticut law. C.G.S. §§ 5-270 *et seq.*; 7-467 *et seq*.

Public-Sector Employee Rights

Under Connecticut's collective bargaining laws post-*Janus*, public-sector employees retain the right to:

- Self-organize;
- To join or assist any employee organization;
- To bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment; and
- To engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. C.G.S. §§ 5-271(a), 7-468(a).

Employees also retain the right to be free from actual interference, restraint or coercion. Id. Namely, employers or their representatives or agents are prohibited from:

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- Interfering, restraining or coercing employees in the exercise of their rights guaranteed in either section 7-468 or section 5-271, whichever is applicable;
- Dominating or interfering with the formation, existence or administration of any employee organization;
- Discharging or otherwise discriminating against an employee because he or she has signed or filed any affidavit, petition or complaint or given any information or testimony under either sections 7-467 to 7-477, inclusive, or under sections 5-270 to 5-280, inclusive, whichever is applicable.
- Refusing to bargain collectively in good faith with an employee organization which has been designated in accordance with applicable state provisions as the exclusive representative of employees in an appropriate unit; and
- Such other acts as delineated in C.G.S. §§ 7-470 or 5-272.

Union Dues and Agency Fees

The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and it does not impact any other bargained for provision contained in a collective bargaining agreement. **The *Janus* decision only impacts the payment of an agency fee from a non-member who declines union membership.** Therefore, existing membership cards or other agreements by union members to pay dues should continue to be honored.

Employees who are non-members and were paying agency fees as of June 27, 2018, however, may choose to become dues paying union members and their dues may be paid through a payroll deduction.

Access to Member Information

Under the Connecticut Freedom of Information Act ("FOIA"), except as otherwise provided by federal law or state statute, all records maintained or kept on file by any public agency shall be public records, subject to disclosure. C.G.S. § 1-210(a). Personnel or medical files and similar files, however, may not be disclosed if the determination is made that disclosure of such documents would constitute an invasion of personal privacy. C.G.S. § 1-210(b).

Some public-sector unions have negotiated for the right to include, or exclude, certain information from personnel files, and/or to prohibit disclosure of certain information under the Connecticut FOIA. For example, Article 9, Section 8, of the collective bargaining agreement for the Connecticut Correction Supervisors Unit (NP-8) prohibits disclosure of bargaining unit employees' personnel file where the request for disclosure is made by an inmate, or made by someone on behalf of the inmate.

Public-Sector employees who believe their rights to join or form a union have been violated may contact the Connecticut State Board of Labor Relations at (860) 263-6860 or visit https://www.ctdol.state.ct.us/csblr/ (https://www.ctdol.state.ct.us/csblr/) for more information.

Exhibit C
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EXHIBIT D

THE COMMONWEALTH OF MASSACHUSETTS
THE COMMONWEALTH OF PENNSYLVANIA
OFFICE OF THE ATTORNEY GENERAL

MAURA HEALEY
ATTORNEY GENERAL

JOSH SHAPIRO
ATTORNEY GENERAL

October 5, 2018

Patrick Hughes, President
Liberty Justice Center
190 South LaSalle Street, Suite 1500
Chicago, IL 60603

Dear Mr. Hughes:

Our offices together write to you in response to your recent letters sent to many of our states in which you threaten litigation unless we, "immediately cease and desist deducting any and all union payments, including membership dues and 'agency fees,' from employee paychecks, unless and until an employee clearly and affirmatively consents to paying membership dues or other fees."

Our letter today is prompted by our shared belief that your letter is a misleading attempt to undermine the rights of public employees to organize, to join unions, and to engage in collective action for mutual aid or protection. Public sector unions play a critical role in our communities and states, and we will continue to honor collective bargaining agreements in our states.

Your letter misstates the Supreme Court's holding of the *Janus* decision and contradicts various advisories and guidances that we have issued. Under *Janus,* public employers may no longer deduct *agency fees* from a nonmember's wages, nor may a union collect *agency fees* from a nonmember, without the employee's affirmative consent. However, all other rights and obligations of public sector employees and employers under state law(s) remain. Consistent with the *Janus* decision, we have made appropriate changes with respect to agency fees and are no longer deducting agency fees.

The *Janus* decision does not impact a public employer's obligation to withhold union dues from union member's wages. Public employers must continue to withhold union membership dues as required by specific collective bargaining agreements, consistent with state law. Accordingly, we have no intention to cease collecting union membership dues.

Sincerely,

Cynthia Mark
Chief, Fair Labor Division
Massachusetts Office of the Attorney General
One Ashburton Place
Boston, MA 02108

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Chief Deputy Attorney General
Fair Labor Section
Commonwealth of Pennsylvania
Office of Attorney General
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Perry Zinn Rowthorn
Deputy Attorney General
Connecticut Office of the Attorney General
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Jane R. Flanagan
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Washington Office of the Attorney General
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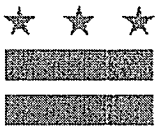
P.O. Box 40100
Olympia, WA 98504

EXHIBIT E

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Attorney General Advisory:
Affirming Public Sector Labor Rights and Responsibilities After *Janus*

District of Columbia public employees play a critical role in our communities. They work hard every day to ensure public safety, protect public health, educate our children, and to provide other critical services to our residents.

This Advisory responds to the recent ruling of the Supreme Court of the United States in *Janus v. AFSCME Council 31*, 585 U.S. __ (2018). The *Janus* decision overturns decades of settled law and practice regarding the right of public employee unions to require the payment of "fair share" agency fees from public sector employees who decline union membership. Under *Janus*, public employers may not deduct these fees from a non-member's wages, nor may a union collect agency fees from a non-member without the employee's affirmative consent. The Supreme Court's ruling does not, however, change existing public employee rights under District of Columbia law. District employees retain their rights under District law to organize, to join unions, and to engage in collective action for mutual aid or protection. This Advisory reiterates the rights of public sector employees that remain unchanged after *Janus*.

Collective Action Rights

- Under District law, the rights of District public employees to collectively bargain or engage in union activities are unaffected by the decision in *Janus*. District public employees maintain the right to:
  - Organize;
  - Form, join, or assist any labor organization, or to refrain from doing so; and
  - Bargain collectively through representatives of their own choosing. D.C. Official Code § 1-617.06(a).
- Employees also have the right to be free from threats, interference, coercion, or reprisal while exercising their protected rights to engage in such activities. D.C. Official Code § 1-617.04(a).

Dues & Agency Fees

- The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues should continue to be honored. The opinion only impacts the payment of an agency service fee by individuals who decline union membership.

- Under *Janus,* public employers may not deduct agency fees from a non-union member's wages without the employee's affirmative consent.

- Employees who are nonmembers and paying agency fees as of June 27, 2018 may choose to become a voluntary dues-paying member by contacting the union that serves as the exclusive representative for their bargaining unit and following the instructions given for becoming a voluntary dues paying member.

- Employees may pay dues through a payroll deduction. D.C. Official Code § 1-617.07.

Member Access & Information

- Some District unions have negotiated for the right of their members to use the employer's email systems and its premises to engage in protected concerted activity.

- Under some collective bargaining agreements, District employers are required to provide, in a timely manner, the collective bargaining representative with the names and work contact information of any newly hired employees.

- District employees have a right to keep their personal information protected from public disclosure by their employer. An employee's personal information, such as home address, personal email address, home or mobile telephone numbers, and other contact information is protected from disclosure (with limited exceptions). D.C. Official Code § 2-534(a)(2).

District workers who believe their labor rights have been violated may contact their union representative.

District workers who believe that they have experienced wage theft or other wage and hour violations can contact the Office of the Attorney General's Housing and Community Justice Section by phone at: (202) 442-9854.

EXHIBIT F

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

July 20, 2018

Guidance Regarding Rights and Duties of Public Employees, Public Employers, and Public Employee Unions after *Janus v. AFSCME Council 31*

In every community in Illinois, public sector employees provide important services. Illinois law has long recognized the rights of these employees. Illinois Attorney General Lisa Madigan issues this Guidance to address the specific impact of the United States Supreme Court's recent ruling in *Janus v. AFSCME Council 31,* 585 U.S. ___ (2018), on public sector employees in Illinois.

The Court's decision in *Janus* overturned the long-established principle that public employees who decline union membership may be required to pay a fair share agency fee to support collective bargaining and other representational activities that the union is required to provide to employee members and non-members alike. Before *Janus*, the laws of 22 states, including Illinois, permitted unions to negotiate for the deduction of such agency fees. Under *Janus,* these fees cannot be collected from employee non-members without their affirmative consent.

Janus does not change any of the other rights and obligations regarding public and educational employment under Illinois law. Public employees retain their rights under Illinois law to organize and join unions, and existing collective bargaining agreements remain in effect. This Guidance affirms those rights and provides initial direction on union dues and agency fees in light of the *Janus* decision.

Payroll Collection and Dues Checkoff

Under *Janus* public employers may not collect agency fees from non-members without their affirmative consent.

- Employees who are not currently union members may choose to become dues-paying union members.

- Employees who continue to decline union membership can continue to pay agency fees if the union offers that option and the employee provides consent. Otherwise no agency fee may be deducted.

The *Janus* decision does not impact collection of union dues from union members or any preexisting arrangements regarding these dues. Employee union members' existing choices as to membership cards, payroll deductions, and other agreements must be honored.

- Under Illinois law, public and educational employees may pay dues through a voluntary payroll deduction negotiated by their exclusive representative.

- Nothing in *Janus* changes the validity of existing union member employees' prior authorization of dues deductions or requires existing union members to reaffirm their prior authorization.

Collective Action Rights

The *Janus* decision also has no effect on the existing collective action rights of public and educational employees in Illinois. Just as prior to the decision, after *Janus* Illinois law continues to protect the rights of public employees to:

- Self-organize;
- Form, join, or assist any labor organization;
- Bargain collectively through representatives of their own choosing; and
- Engage in other concerted activities.[1]

Furthermore, public and educational employees may exercise any and all of these rights without interference, restraint or coercion from their employer.[2] Public and educational employers may not discriminate with regard to hiring, termination, or any other term or condition of employment in order to discourage union membership or support.[3] Public and educational employers also cannot refuse to bargain collectively in good faith with the union as exclusive representative.[4]

Access to Member Information

Under the Freedom of Information Act, private information, such as home addresses, home telephone numbers, personal cell phone numbers and personal email addresses, is protected from disclosure to third parties.[5]

However, exclusive bargaining representatives of public employees are entitled to access names and addresses of union members pursuant to state law.[6] Exclusive representatives of both public and educational employees may also be permitted access to similar information pursuant to collective bargaining agreements.

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[1] 5 ILCS 315/6(a); 115 ILCS 5/3(a); *see also* 5 ILCS 315/10(a)(1); 115 ILCS 5/14(a).
[2] 5 ILCS 315/6(a), 315/10(a)(1); 115 ILCS 5/14(a)(1).
[3] 5 ILCS 315/10(a)(2); 115 ILCS 5/14(a)(3).
[4] 5 ILCS 315/10(a)(4); 115 ILCS 5/14(a)(5).
[5] 5 ILCS 140/2(c-5) and 7(1)(b).
[6] 5 ILCS 315/6(c).

Resources

Public employees or unions who believe that any of the above rights have been violated may contact the Illinois Labor Relations Board by calling 312-793-6400 (Chicago) or 217-785-3155 (Springfield), or by visiting https://www2.illinois.gov/ilrb/Pages/default.aspx.

Educational employees or unions who believe that any of the above rights have been violated may contact the Illinois Educational Labor Relations Board by calling 312-793-3170 (Chicago) or (217) 782-9068 (Springfield), or by visiting https://www2.illinois.gov/sites/elrb/Pages/default.aspx.

Illinois residents, public bodies, and school districts with additional questions about the Janus decision or other labor or employment concerns may also contact the Illinois Attorney General's Workplace Rights Bureau at 1-844-740-5076.

EXHIBIT G

BRIAN E. FROSH
Attorney General

ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

GENERAL GUIDANCE ON THE RIGHTS AND DUTIES OF PUBLIC-SECTOR WORKERS AND EMPLOYERS AFTER JANUS

The United States Supreme Court's recent decision in *Janus v. AFSCME Council 31* overruled many decades of established law relating to the funding of public-sector unions that serve teachers, police, firefighters, and other public employees. Not surprisingly, the decision has generated confusion about the rights of Maryland's public-sector workers under Maryland's labor and collective bargaining laws. In *Janus*, the Supreme Court held that public employees who choose not to join a union may no longer be compelled by their employers to pay fair-share agency fees to their exclusive bargaining representative absent the employee's affirmative consent. Thus, absent consent, public employers may no longer deduct fair-share agency fees from the wages of their non-union-member employees. However, the Supreme Court's ruling does not change the existing rights of public employees under Maryland's labor and collective bargaining laws or the existing relationships between public-sector unions and their members. The purpose of this guidance is to provide initial information about the *Janus* decision and to reiterate the existing protections for public-sector workers in Maryland.[1]

The Effect of the Janus *Decision*

Although the *Janus* decision provides that public employers may no longer deduct fair-share fees (also known as service fees) from the wages of a non-union-member employee absent the employee's consent, *Janus* does not override existing agreements between a union and its members to pay union dues. In other words, the decision in *Janus* does not alter any pre-existing obligation of a public employer to deduct dues from union members and does not require unions to obtain new proof of membership or authorizations to deduct dues from employees who had already joined the union.

[1] This guidance applies to State employees and employers covered by the State Labor Relations Act, *see* Md. Code Ann., State Personnel and Pensions §§ 3-102, and to public school employees and employers covered under Title 6 of the Education Article. At least some of the information, however, will apply to other public-sector employees and employers as well.

Eligible public-sector employees who are not currently union members may join by contacting the union that serves as the exclusive representative for their bargaining unit and following the instructions given for becoming a voluntary dues paying member.

Public-Sector Employee Rights

Under Maryland's collective bargaining laws, many public-sector employees have statutory collective bargaining rights, and *Janus* does not change or impair those rights.

For example, eligible State government employees covered by the State Labor Relations Act (including eligible employees of State colleges and universities) have the right, among other things, to:

- Form, join, support, or participate in any employee organization. *See* Md. Code Ann., State Personnel and Pensions ("SPP") § 3-301(a)(1).
- Be fairly represented by their exclusive representative, if any, in collective bargaining. SPP § 3-301(a)(2).
- Engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection. SPP § 3-301(a)(3).
- Be free from employer interference, restraint, or coercion in the exercise of their rights under Title 3 of the State Personnel & Pensions Article, as well as to be free from other unfair labor practices. SPP § 3-306(a).

Local public school employees have similar rights to:

- "Form, join, and participate in the activities of employee organizations of their own choice for the purpose of being represented on all matters that relate to salaries, wages, hours, and other working conditions." Md. Code Ann., Educ. ("ED") §§ 6-402(a), 6-503(a).

The First Amendment also provides public sector employees with the right to freely associate—including the right to form, join and belong to unions, and to discuss the advantages of joining. This right is separate and distinct from Maryland's collective bargaining laws, and provides an additional layer of protection for public-sector employees who wish to engage in lawful union activity.

Recent Legislation to Provide Public-Sector Unions with Access to Employees

During the 2018 legislative session, the General Assembly enacted amendments to Maryland's public-sector labor laws to guarantee exclusive bargaining representatives access to employee orientation and employee contact information.

For example, after October 1, 2018, State employers must:

- Permit exclusive representatives to attend new employee programs, such as orientation and training, and to address new employees in attendance for at least 20 minutes. Employers must encourage new employees to attend the portion of the program designated for the employee organization (but may not require such attendance). SPP § 3-307.
- Provide an exclusive representative with the following information about an employee in the bargaining unit it represents within 30 days after the employee begins: name, position classification, unit, position identification number, home and work addresses, home and work telephone numbers, and work email address. An employee organization also may request this information for all employees in its bargaining unit once every 120 days (unless a more frequent timeframe is negotiated). SPP § 3-208; *see also* § 3-2A-08 (higher education employees). Current law, before the amendments go into effect, allow unions to obtain some of this information, on request, twice a year.

Similarly, as of July 1, 2018, local school employers must:

- Provide exclusive bargaining representatives with access to "new employee processing." ED §§ 6-407.1(a)(1)(i), 6-509.1(a)(1)(i).
- Provide an exclusive representative with the following information about an employee in the bargaining unit it represents within 30 days after the employee begins (or by the first pay period of the month after the date of hire): name, position classification, home and work site addresses, home and worksite telephone numbers, personal cell phone number, and work e-mail address. Employers are also required to provide this same information at least once every 120 days (unless a more frequent time frame is negotiated). ED §§ 6-407.2(a)-(b), 6-509.2(a)-(b).

With some exceptions, the Maryland Public Information Act otherwise precludes the government from disclosing to third parties certain personal information about public-sector employees, including—for example—their home addresses. *See, e.g.*, Md. Code Ann., Gen. Provisions § 4-331.

Maryland's State Labor Relations Boards

The State of Maryland has three labor relations boards that resolve disputes arising under the State's collective bargaining laws (including unfair labor practice complaints):

- The State Labor Relations Board has jurisdiction over the principal departments within the Executive Branch and various other agencies and departments. *See* http://laborboards.maryland.gov/state-labor-board/.

- The State Higher Education Labor Relations Board has jurisdiction over Maryland's institutions of higher education, including the constituent institutions of the University System of Maryland, Morgan State University, St. Mary's College of Maryland, and Baltimore City Community College. *See* http://laborboards.maryland.gov/ higher-education-board/.
- The Public School Labor Relations Board has jurisdiction over county boards of education and the Baltimore City Board of School Commissioners. *See* http://laborboards.maryland.gov/566-2/.

EXHIBIT H

THE COMMONWEALTH OF MASSACHUSETTS
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MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
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Attorney General Advisory:
Affirming Labor Rights and Obligations in Public Workplaces

Public sector employees—including firefighters, police, teachers, social workers, and sanitation workers—play a critical role in our communities and across Massachusetts. They work hard every day to ensure public safety, protect public health, educate our children, and to provide other critical services to our residents.

The Attorney General issues this Advisory in response to the recent ruling of the Supreme Court of the United States in *Janus v. AFSCME Council 31,* 585 U.S. ___ (2018). The *Janus* decision overturns decades of well-established law and practice relating to the right of a union to require the payment of fair share agency fees from public sector employees who decline union membership. Under *Janus,* public employers may not deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the employee's affirmative consent.

All other rights and obligations of public sector employees and employers under state law remain. Public employees retain their statutory rights under Massachusetts law to organize, to join unions, and to engage in collective action for mutual aid or protection under Chapter 150E of the Massachusetts General Laws. The Attorney General's Office issues this advisory in affirmation of those rights and to provide initial guidance on the issue of union dues and agency fees.

Collective Action Rights

- Under Massachusetts law, the rights of public sector employees are unaffected by the decision in *Janus*. These employees maintain the right to:
    - organize;
    - form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment; and
    - engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection. M.G.L. c. 150E, § 2.
- Employees also have the right to be free from threats, interference or coercive statements when exercising their protected rights to engage in concerted activity. M.G.L. c. 150E, § 10.

- Public employers are forbidden from interfering in the formation of a union, discriminating against or terminating an employee based on union membership or activity, and refusing to bargain in good faith with the union. M.G.L. c. 150E, § 10.

Dues & Agency Fees

- The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues should continue to be honored. The opinion only impacts the payment of an agency service fee by individuals who decline union membership.

- Under *Janus,* public employers may not deduct agency fees from a nonmember's wages without the employee's affirmative consent.

- Employees who are nonmembers and paying agency fees as of June 27, 2018 may choose to become a dues paying union member.

- Employees may pay dues through a payroll deduction. Under existing state law, employees may authorize a payroll deduction by notifying his/her employer in writing. *See* M.G.L. c. 180, § 17A. This writing may be a signed union card, or an electronic writing, signature or voice recording consistent with M.G.L. c. 110G, § 2.

- Public employers may not threaten or coerce employees regarding union membership. M.G.L. c. 150E, § 10.

Member Access & Information

- Many public sector unions have negotiated for the right of their members to use the employer's email systems and its premises to engage in protected concerted activity.

- Under M.G.L. c. 150E, and under many collective bargaining agreements, public employers are required to provide, in a timely manner, the collective bargaining representative with the names and contact information of any newly hired employees.

- Public employees have the right to keep their personal information protected by their employer. An employee's personal information, such as home address, personal email address, home or mobile telephone numbers, and other contact information is protected from disclosure to third parties (with limited statutory exceptions, including collective bargaining representatives). *See* M.G.L. c. 4, § 7 (26)(o); and M.G.L. c. 66, § 10.

Workers who believe their rights to join or form a union have been violated may contact the Massachusetts Department of Labor Relations at (617) 626-7132 or visit www.mass.gov/dlr.

Workers who believe their right to earned wages have been violated may call the AGO's Fair Labor Division Hotline, 617-727-3465.

EXHIBIT I

Aug-22-18 Joint Guidance on the Rights of Public Sector Workers and Employers After Janus

TEL: 609.984.2841

FAX: 609.777.3634

Email: MediaCalls

-News Release-

Joint Guidance on the Rights of Public Sector Workers and Employers After *Janus*

On June 27, 2018, the United States Supreme Court issued its decision in *Janus v. AFSCME Council 31*, 585 U.S. ___ (2018). This advisory clarifies the rights of public sector employers and employees following that decision. While the *Janus* decision concluded that public sector employees who decline union membership are

not required to make "agency fee" payments to public unions unless they provide consent, *Janus* does not otherwise determine the rights and obligations of New Jersey's public sector employees and employers.

Janus, Union Dues, and Agency Fees

For over 40 years, the payments that public sector employees who had declined membership made to unions were governed by *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). Under *Abood*, states could—and New Jersey did—require these union nonmembers to pay "agency fees," or a percentage of the union dues in return for the services the union provided them. As this guidance explains, *Janus* does not affect the union dues that members pay. *Janus* does, however, govern agency fees paid by union nonmembers.

The *Janus* decision does not speak to the rights of union members, which are still governed by the same New Jersey statutes and contracts:

- Public sector employees, including nonmembers who paid agency fees as of June 27, 2018, may still decide to become a dues paying union member. Union members may still choose to pay their dues through a payroll deduction. J.S.A. 52:14-15.9e. Nothing in *Janus* impacts any agreements between a union and its members to pay union dues.

- An employee may authorize a payroll deduction by notifying his/her employer in writing. N.J.S.A. 52:14-15.9e. This writing may be in the form of a signed union card, or an electronic writing, or a signature consistent with N.J.S.A. 12A:12-2.

- Existing membership cards or other agreements by union members to pay dues should be honored. While *Janus* states that employees must provide clear and affirmative consent before payments may be deducted, these signed union cards, electronic writings, and signatures discussed above satisfy that requirement.

The *Janus* decision does speak to the rights of employees who *declined* union membership:

- Under *Janus*, public employers may no longer deduct agency fees from a nonmember's wages without first obtaining the employee's clear and affirmative Public sector employers should cease taking agency fee deductions from current union nonmembers as soon as feasible, if they have not already done so.

Other Rights of Public Sector Employees, Employers, and Unions

- *Janus* does not impact the ongoing constitutional and statutory rights of employees to, among other things, organize; form, join, or assist any employee organization for the purpose of negotiating collectively through

representatives; and engage in lawful, concerted activities for the purpose of collective negotiations or other mutual aid or protection. J. Const., article I, cl. 19; N.J.S.A. 34:13A-5.3 et seq.

- Employees also have the right to be free from threats, interference, and coercion when deciding whether or not to join a union, and when exercising their rights to engage in concerted activity. J.S.A. 34:13A-5.4, 5.14.

- Employers are forbidden from interfering in the formation of a union, discriminating against or terminating an employee based on union membership or activity, and refusing to negotiate in good faith with the union. J.S.A. 34:13A-5.4. Employers may not encourage or discourage an employee from joining, forming or assisting an employee organization. N.J.S.A. 34:13A-5.14.

- Public employers are required to provide the collective negotiating representative with the names and contact information of newly hired N.J.S.A. 34:13A-5.13.

- Employees have the right to keep their personal information protected from disclosure, with exceptions for collective negotiating representatives. J.S.A. 34:13A-5.13, 47:1A-1.

- Workers who believe their rights to join or form a union have been violated may contact the Public Employment Relations Commission. https://www.state.nj.us/perc

Department of Labor and Workforce Development: 1 John Fitch Plaza, P.O. Box 110 Trenton, NJ 08625-0110
Email: Constituent.Relations@dol.nj.gov

EXHIBIT J

STATE OF NEW MEXICO
OFFICE OF THE ATTORNEY GENERAL

HECTOR H. BALDERAS
ATTORNEY GENERAL

TANIA MAESTAS
Chief Deputy of Civil Affairs

SHARON PINO
Chief Deputy of Criminal Affairs

Attorney General Advisory
Guidance for Public Sector Employers and Employees after *Janus v. AFSCME Council 31*

New Mexico has a long and important tradition of supporting the organized labor movement and the rights of workers to organize. Our unionized public sector employees - including teachers, firefighters, police officers, child welfare workers, and other public employees - provide vital services that benefit all of our communities in New Mexico.

The United States Supreme Court's recent decision in *Janus v. AFSCME Council 31*, 585 U.S. ____, 138 S.Ct. 2448 (2018) overturns decades of well-established law and the practice of unions to receive payment for fair share agency fees from public sector employees who decline union membership. After *Janus*, there has been confusion. This Advisory is intended to provide clarity to public sector employers and employees.

The only change under *Janus* is that public employers may no longer deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the nonmember employee's affirmative consent[1]. All other rights and obligations of public employees and employers remain the same under the Public Employee Bargaining Act ("PEBA"), NMSA 1978, Sections 10-7E-1 to -26 (2003, as amended through 2005).

Collective Action Rights

- The rights of public employees not affected by *Janus* under New Mexico law are:
  - The right to organize;
  - The right to choose a labor organization;
  - The right to join a labor organization;
  - The right to engage in lawful, concerted activities for the purpose of collective bargaining; and
  - The right to be represented by a labor organization of their own choosing for the purpose of bargaining collectively on questions of wages, hours and other terms and conditions of employment.

[1] Footnote 6 in *Janus* indicates that if a public employee requests to use a union's grievance or arbitration procedure on its behalf, a union can charge for the reasonable cost of using such procedure.

- Public employers shall not discriminate against a public employee because of the employee's membership in a labor organization or "interfere with, restrain or coerce a public employee in the exercise of a right guaranteed pursuant to the Public Employee Bargaining Act." NMSA 1978, § 10-7E-19 (2003).

Dues and Agency Fees

- The *Janus* decision does not affect any agreements between a union and its members to pay union dues. Existing agreements by union members to pay dues should continue to be honored.
- The *Janus* opinion *only* impacts the payment of an agency service fee, often referred to as fair share fees, by individuals who decline union membership. Under *Janus*, public employers may *not* deduct agency fees from a nonmember's wages nor may the union collect agency fees from a nonmember, without the nonmember employee's affirmative consent.
- Employees who are nonmembers and paying agency fees may choose to become dues-paying union members.
- Union member employees may pay dues through a payroll deduction.

Member Access and Information

- Many public sector unions have negotiated for the rights of their members to use the employer's premises and equipment to engage in protected concerted activity. Nothing in the *Janus* opinion affects those rights.
- Employers should continue to honor any agreements or contracts that are not contrary to the *Janus* prohibition on deducting agency fees from a nonmember's wages without that employee's affirmative consent.

Workers who believe their rights have been violated may contact their employer or their union.

EXHIBIT K

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
28 LIBERTY STREET
NEW YORK, NY 10005

BARBARA D. UNDERWOOD
ATTORNEY GENERAL

Labor Bureau
212.416.8700
labor.bureau@ag.ny.gov

October 5, 2018

Patrick Hughes, President
Liberty Justice Center
190 South LaSalle Street, Suite 1500
Chicago, IL 60603

Dear Mr. Hughes:

We write in response to your September 6, 2018 letter, in which you threaten litigation unless New York State government employers "immediately cease and desist deducting any and all union payments, including membership dues and 'agency fees,' from employee paychecks, unless and until an employee clearly and affirmatively consents to paying membership dues or other fees."

Your letter misstates the Supreme Court's holding in *Janus v. AFSCME Council 31*, 585 U.S. ____, 138 S.Ct. 2448 (2018). The only question before the Court in *Janus* concerned the deduction of agency fees from nonmembers, and the Court's decision was limited to holding that public employers may no longer deduct agency fees from a nonmember's wages. However, all other rights of public employees and obligations of public employers under New York law remain in full effect. In particular, the *Janus* decision does not affect a public employer's obligation to withhold union dues from union members' wages. Accordingly, public employers must continue to withhold union membership dues as required by specific collective bargaining agreements, consistent with state law. *See* N.Y. Civ. Serv. Law § 208(1)(b).

Your letter appears to be a misleading attempt to undermine the rights of public employees to organize and join unions and to be represented by a union in order to bargain collectively with employers over the terms and conditions of employment. The decision in *Janus* does not affect these fundamental rights of public employees, and they remain firmly protected under New York law. N.Y. Civ. Serv. Law §§ 202, 203. Public sector unions play a critical role in New York communities, and New York State employers will continue to honor collective bargaining agreements. While the New York Office of the State Comptroller has made appropriate changes

with respect to agency fees. New York State will continue to follow state laws with respect to all other rights of public employees.

Sincerely,

ReNika Moore
Labor Bureau Chief
New York State Office of the Attorney General

EXHIBIT L

Guidance for Public-Sector Employers and Employees in New York State

New York State has a long and important tradition of supporting the organized labor movement and the fundamental right of workers to organize. Public-sector employees play a crucial role in communities across New York State. Each day they work hard to ensure public safety, protect public health, and to provide other critical services to New York residents.

The Supreme Court of the United States issued a decision in *Janus v. AFSCME Council 31,* 585 U.S. ____, 138 S.Ct. 2448 (2018) on June 27, 2018. The *Janus* decision overturned decades of established law and practice relating to the right of a union to receive the payment of fair share agency fees from public-sector employees who decline union membership. As a result, there has been much confusion and this Guidance is intended to provide clarity to employers and employees. The only change under *Janus* is that public employers may not deduct agency fees from a non-member's wages, nor may a union otherwise collect agency fees from a non-member, without the non-member employee's affirmative consent. All other rights and obligations of public-sector employers and employees under state law remain unchanged. For example, unions have, in the past, presented dues deduction cards, or other similar evidence of union membership such as membership lists, to public employers and those employers previously collected union dues from its employees on that basis. The decision in *Janus* does not require a union to obtain new dues deduction cards or obtain other evidence of union membership or remove a public employer's obligation to collect dues from members of a union. Public employee unions are not required to produce dues authorizations cards for members from whom the employer has previously deducted dues.

Collective Bargaining

- Under New York law, the rights of public-sector employees to collectively bargain are unaffected by the decision in *Janus*. Employees maintain the right to:
    - organize;
    - form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment; and
    - engage in lawful, concerted activities for the purpose of collective bargaining.
- Employees also continue to have the right to be free from threats, interference or coercive statements when exercising their protected rights to engage in concerted activity.
- Public employers are forbidden from interfering in the formation of a union, discriminating against or terminating an employee based on union membership or activity, and refusing to bargain in good faith with a union.

Union Dues & Agency Fees

- The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues must be honored. The *Janus* decision only impacts the mandatory collection of an agency fee by individuals who decline union membership.
- Employees who are non-members and paying agency fees may choose to become dues paying union members.
- Employees may pay dues through a payroll deduction.

Member Access & Personal Information

- Under many collective bargaining agreements, and under Civil Service Law § 208, public employers are required to provide in a timely manner, the collective bargaining representative with the names and contact information of any newly hired employees.
- Public employees have the right to keep their personal information protected by their employer. An employee's personal information, such as home address, personal email address, home or mobile telephone numbers, and other contact information is protected from disclosure (with limited exceptions).

Employees who believe their rights have been violated should contact their employer or their union.

EXHIBIT M

ELLEN F. ROSENBLUM
ATTORNEY GENERAL

FREDERICK M. BOSS
DEPUTY ATTORNEY GENERAL

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Attorney General Advisory: Affirming Labor Rights and Obligations in Public Workplaces

Public sector employees play a critical role throughout the state of Oregon. They work hard every day to ensure public safety, protect public health, educate our children, and provide other critical services to Oregonians.

The Attorney General issues this advisory in response to the recent ruling of the Supreme Court of the United States in *Janus v. AFSCME Council 31,* 585 US ___, 138 S Ct 2448 (2018). The *Janus* decision overturns decades of well-established law and practice relating to the right of a union to require the payment of fair share agency fees from public sector employees who decline union membership. Under *Janus,* public employers may not deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the employee's affirmative consent.

All other rights and obligations of public sector employees and employers under state law remain. Public employees retain their statutory rights under Oregon law to organize, to join unions, and to engage in collective action for mutual aid or protection under the Oregon Public Employee Collective Bargaining Act (PECBA). The Attorney General's Office issues this advisory to clarify those rights and to provide information on the issue of union dues and agency fees.

Collective Action Rights and Restrictions

- Under Oregon law, public sector employees maintain the right to:
    - Organize;
    - Form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with their public employer on matters concerning employment relations, ORS 243.662; and
    - Be free from interference, restraint or coercion when exercising their protected rights to engage in collective bargaining, ORS 243.672(1)(a).

- Public employers are prohibited from:

- Interfering with or assisting in the formation, existence or administration of any employee organization, ORS 243.672(1)(b);

- Discriminating in regard to hiring, tenure or any terms or condition of employment for the purpose of encouraging or discouraging membership in an employee organization, ORS 243.672(1)(c); and

- Refusing to bargain collectively in good faith with the exclusive representative of the employees, ORS 243.672(1)(e).

Dues & Agency Fees

- The *Janus* opinion only applies to the payment of an agency service fee by individuals who decline union membership. The *Janus* decision does not impact any agreements to pay union dues between a union and its members to pay union dues. Existing membership cards or other agreements by union members to pay dues should continue to be honored.

- Under *Janus,* public employers may not deduct agency fees from a nonmember's wages without the employee's affirmative consent. Employees who are nonmembers and paying agency fees as of the date of the opinion (June 27, 2018) may choose to become dues-paying union members.

- Employees may pay dues through a payroll deduction. Under state law, employees may authorize a payroll deduction by notifying their employer in writing. ORS 292.055.

- Public employers may not interfere with, restrain or coerce employees regarding union membership. ORS 243.672(1)(a).

Member Access & Information

- Many public sector unions have negotiated provisions allowing for the use of the employer's facilities and equipment for meetings, communication and administration of the collective bargaining agreement.

- Under PECBA and often in collective bargaining agreements, public employers are required to provide the collective bargaining representative with the names and contact information of any newly hired employees, in a timely manner.

- Public employees' personal information, including home addresses, is exempt from disclosure to third parties by their employer (with limited exceptions, including disclosure to collective bargaining representatives). *See* ORS 192.355(2)(a) and ORS 192.345(7).

Workers who believe their rights have been violated may contact their union or call the Employment Relations Board at 503-378-3807.

EXHIBIT N

PENNSYLVANIA OFFICE OF ATTORNEY GENERAL JOSH SHAPIRO

GUIDANCE ON THE RIGHTS AND RESPONSIBILITIES OF PUBLIC SECTOR EMPLOYEES AND EMPLOYERS FOLLOWING THE U.S. SUPREME COURT'S *JANUS* DECISION

Public sector employees – police and firefighters, teachers, social workers, sanitation workers and many others – play a critical role in communities across the Commonwealth of Pennsylvania. They work hard each and every day to ensure public safety, protect public health, educate our children and provide other critical services to residents of Pennsylvania. Since the U.S. Supreme Court's decision in *Janus v. AFSCME Council 31,* 585 U.S. ___ (2018), the Office of Attorney General has received numerous inquiries regarding the impact the decision has on Pennsylvania public sector employees and employers. This guidance will answer some of those questions and clarify that the decision changes few rights of employees or obligations of employers.

What is the *Janus* decision?

The *Janus* decision overturns prior Supreme Court precedent that public sector employees who decline union membership may be required through collective bargaining to pay a fair share agency fee.

What does the *Janus* decision change?

The only change under *Janus* is that, as of June 27, 2018, public sector employers may no longer deduct fair share fees from a nonmember's wages, without the nonmember employee's "affirmative consent." Nothing in the decision precludes employees who are nonmembers from becoming dues paying union members or consenting to continue to pay a fee to the union. All other rights and obligations of public sector employers and employees under state law remain unchanged.

Does the *Janus* decision authorize a public sector employer to require proof of union membership or change dues collection agreements?

No. The *Janus* decision does not impact any agreements between a union and its members to pay union dues or any negotiated payroll dues deduction provisions in collective bargaining agreements. Existing membership cards and other agreements by union members to pay dues must continue to be honored. Public employee unions are not required to produce dues authorization cards for members from whom the employer has previously deducted dues.

Does the *Janus* decision authorize a public sector employer to change unilaterally terms of a collective bargaining agreement?

No. An employer cannot unilaterally change the terms of a collective bargaining agreement or a binding past practice, such as demanding new dues authorization cards for payroll deductions from union members. The *Janus* decision does not require existing union members to take any action to continue to be a member in a public sector union.

Did the *Janus* decision affect collective action rights?

No. Public sector employees retain their statutory rights under Pennsylvania law to organize and join unions; to collectively bargain through representatives of their own free choice on questions of wages, hours and other terms and conditions of employment; and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection – or to refrain from doing so. Employees have the right to be free from threats, interference or coercive statements when exercising their protected right to engage in concerted activity.

After the *Janus* decision, can public employers interfere with public sector employees' collective action rights?

No. Public sector employers are forbidden from interfering in the formation, existence or administration of a union, discriminating against or terminating an employee based on union membership or activity, or refusing to bargain in good faith with the union.

JOSH SHAPIRO
ATTORNEY GENERAL

EXHIBIT O

Greetings,

Rhode Island has a rich history and strong bond with labor and the labor unions since they worked the first water-powered cotton spinning mill at Slater Mill that launched the Industrial Revolution.

In the face of harsh conditions in the factories that built the American economy, employees began to organize. Bound together with common purpose, labor unions sought worker protections, fought to improve conditions, and stood up to any factory owner who merely saw them as cogs in a profit machine.

Public sector employees play as critical a role throughout Rhode Island today as their counterparts in the private sector did more than 150 years ago. Our public sector employees ensure our public safety, protect our public health, educate our children, and provide a myriad of other critical services that others are unwilling or unable to provide.

The right to collectively bargain is among the most important rights enjoyed by workers, and has, throughout our history, done more than almost any other initiative to ensure safety in the workplace and humane working conditions.

Despite the immense contributions by public and private sector unions, there continues to be anti-union animus among many in Rhode Island. And, there are now outside special interest groups who are looking to exploit a recent Supreme Court decision to further undermine support for labor unions.

On June 27, 2018, the United States Supreme Court issued its decision in Janus v. American Federation of State, County and Municipal Employees, Council 31 et al. In this decision, the Supreme Court overturned the long-established principle that public employees who decline union membership may be required to pay a fair share agency fee to support collective bargaining and other representational activities that the union is required to provide to employee members and non-members alike.

The Janus decision holds that public employers may not deduct agency fees from a non-member's wages, nor may a union collect agency fees from a non-member's wages without the employee's affirmative consent. This decision only affects non-union members who previously paid fair share agency fees to the union.

Despite this narrow ruling, there is a push by those with a political agenda to exploit the Janus decision by spreading misinformation and encouraging public sector employees on how to disaffiliate from their collective bargaining units.

As we approach Labor Day - a day set aside nationally to honor the hard work and sacrifice of workers across the country - it is critically important that our public sector employees not fall victim to this politically-motivated campaign.

If you are contacted about disaffiliating from your public-sector union in the wake of the Janus decision, it is critical that you seek advice either from your union, or from some other reliable source. No worker should rely solely upon any outside group seeking to have the worker waive such a critical right.

Exhibit O
Page 1 of 2

As we get set to celebrate and honor the immeasurable contributions of Rhode Island's working men and women, I am proud to stand with our private and public sector labor unions as they continue to fight for better wages, safer workplaces, and benefits that create a stronger and fairer economy for all.

May God bless you and may God bless our great nation.

Peter F. Kilmartin

The Honorable Peter F. Kilmartin
Office of the Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400
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Exhibit O
Page 2 of 2

EXHIBIT P

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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
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VERMONT ATTORNEY GENERAL ADVISORY:
Public Sector Labor Rights and Obligations Following *Janus*

Public sector employees - including firefighters, police officers, teachers, public health employees, and other state workers - play a vital role in our communities across Vermont. They work hard every day to ensure public safety, protect public health, educate our children, and provide other essential services to Vermonters.

Attorney General T.J. Donovan issues this Advisory in response to the recent United States Supreme Court decision in Janus v. AFSCME Council 31, 585 U.S. ___ (2018). Janus overturns decades of well-established law and practice relating to public employers' deduction of fair share agency fees from public sector employees who decline union membership. Under Janus, a public employer may not deduct agency fees from a nonmember's wages without the employee's affirmative consent.

All other collective bargaining rights and obligations of public sector employees and employers remain the same under state law. Public employees retain their statutory rights under Vermont law to organize, join unions, and engage in collective action for mutual aid and protection. The Vermont Attorney General's Office issues this Advisory in affirmation of those rights and to provide initial guidance on the issue of union dues and agency fees.

Collective Action Rights

- Under Vermont law, the rights of public sector employees are unaffected by the *Janus* decision. These employees maintain the right to:
  - Organize.
  - Form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment.[1]
  - Engage in lawful, concerted activities for the purpose of bargaining or other mutual aid or protection.[2] 3 V.S.A. §§ 903(a), 1012; 16 V.S.A. § 1982; 21 V.S.A. § 1721.
- Public employees also have the right to be free from threats, interference or coercive statements when exercising their protected rights to engage in concerted activity. 3 V.S.A. §§ 961, 966, 1026, 1031; 16 V.S.A. § 1982; 21 V.S.A. §§ 1726, 1728.

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[1] Certain classes of public sector employees may not be entitled to all of these enumerated rights including state workforce classified managers, confidential employees, and deputy sheriffs.
[2] A State employee may not strike or recognize a picket line while in the performance of his or her official duties. 3 V.S.A. § 903(b).

- Public employers are forbidden from interfering in the formation of a union, discriminating against or terminating an employee based on union membership or activity, and refusing to bargain in good faith with the union. 3 V.S.A. §§ 961, 1016, 1026; 16 V.S.A. §§ 1982, 2001; 21 V.S.A. §§ 1725, 1726.

Dues and Agency Fees

- An employee whose position is within the bargaining unit of a union, and who chooses to be a member of the union, pays membership dues. An employee whose position is within the bargaining unit of the union, but who chooses not to be a member of the union, previously paid an agency fee to the union.
- The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues should continue to be honored. The *Janus* opinion only impacts the collection of agency service fees by public employers from individuals who decline union membership.
- Under *Janus*, a public employer may not deduct any agency fees from a nonmember's wages without the employee's affirmative consent.
- Employees who are nonmembers and paying agency fees as of June 27, 2018, may choose to become a dues-paying union member.
- Public employers may not threaten or coerce employees regarding union membership. 3 V.S.A. §§ 961, 966, 1026, 1031; 16 V.S.A. § 1982(c), 21 V.S.A. §§ 1726, 1728.
- Membership dues may still be collected through a payroll deduction.

EXHIBIT Q

Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE • PO Box 40100 • Olympia, WA 98504-0100

Attorney General Advisory: Affirming Labor Rights and Obligations in Public Workplaces

Public sector employees play a critical role throughout the State of Washington. They work hard every day to ensure public safety, protect public health, educate our children, and to provide other critical services in our communities.

The Attorney General issues this Advisory in response to the recent ruling of the Supreme Court of the United States in *Janus v. AFSCME Council 31,* 585 U.S._____(2018). The *Janus* decision overturns decades of well-established law and practice relating to the right of a union to require the payment of fair share agency fees from public sector employees who decline union membership. Under *Janus,* public employers may not deduct agency fees from a nonmember's wages, nor may a union collect agency fees from a nonmember, without the employee's affirmative consent.

All other rights and obligations of public sector employees and employers under state law remain. Public employees retain their statutory rights under Washington law to organize, to join unions, and to be represented by such organizations in matters concerning their employment.[1] The Attorney General issues this advisory in affirmation of those rights and to provide initial guidance on the issue of union dues and agency fees.

Collective Action Rights

- Under Washington law, the rights of public sector employees are unaffected by the decision in *Janus*. These employees maintain the right to:
  - organize;
  - form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment; and
  - to be free from interference, restraint, or coercion when exercising their protected rights to engage in collective activity.

[1] For a list of the Washington state collective bargaining laws, see https://perc.wa.gov/laws-rules/.

- Public employers are prohibited from interfering in the formation or administration of a union, encouraging or discouraging membership in a union by discriminating in regards to hiring, tenure of employment or any term or condition of employment, and refusing to bargain in good faith with the union.

Dues and Agency Fees

- The *Janus* decision does not impact any agreements between a union and its members to pay union dues, and existing membership cards or other agreements by union members to pay dues should continue to be honored. The opinion only impacts the payment of an agency service fee by individuals who decline union membership.

- Under *Janus,* public employers may not deduct agency fees from a nonmember's wages without the employee's affirmative consent.

- Employees who are nonmembers and paying agency fees as of June 27, 2018 may choose to become a dues paying union member.

- Employees may pay dues through a payroll deduction. Under existing state law, employees may authorize a payroll deduction by notifying their employer in writing.

Member Access and Information

- Many public sector unions have negotiated provisions allowing for the use of the employer's facilities and equipment for meetings, communication, and administration of the collective bargaining agreement.

- Under ESB 6229 and RCW 41.56.037, public employers are required to provide exclusive bargaining representatives reasonable access to new employees in the bargaining unit for the purpose of presenting information about their exclusive bargaining representative to the new employee.

- Public employees have the right to keep their personal information, including home addresses, protected from disclosure to third parties consistent with the Public Records Act, RCW 42.56 (with limited exceptions, including release to exclusive bargaining representatives to fulfill their obligations to represent all bargaining unit employees).

- Workers who believe their rights to join or form a union have been violated may contact the Public Employment Relations Commission. https://perc.wa.gov/.

EXHIBIT R

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

MONTANA FEDERATION OF PUBLIC EMPLOYEES, Plaintiff, v. DWIGHT VIGNESS, and YELLOWSTONE COUNTY, Defendants.	Case No. DV 19-0217 Dept. 7 Judge Colette B. Davies **ORDER GRANTING PRELMINARY INJUNCTION**

This matter comes before the Court on the Plaintiff Montana Federation of Public Employees' (Union) motion for a preliminary injunction against Defendants Dwight Vigness and Yellowstone County (County). The matter is fully briefed, came before the Court for oral argument March 20, 2019, and is ripe for decision. Both parties were represented by counsel. For the reasons fully set forth below, the Union's motion for a preliminary injunction is **GRANTED.**

BACKGROUND

This dispute arises from a February 7, 2019 directive Yellowstone County issued to the Union for employees following the United States Supreme Court decision of *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 585 U.S. __ (2018).

In *Janus*, the United States Supreme Court held that requiring nonunion members to pay agency fees to subsidize a public-sector union violates the First Amendment unless the employee affirmatively agrees to pay the fees. *Janus*, 138 S. Ct. at 2459-60. In that case, a public employee objected to payment of agency fees to the union he refused to join because he opposed many of the union's public policy positions. *Id.* at 2461. Overturning *Abood v. Detroit Board of Education*, the *Janus* Court held:

> Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. . . . Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

Id. at 2486 (emphasis added)(internal citations omitted).

Following this decision, on August 20, 2018, the Yellowstone County Commissioners wrote to the executive director of the Union. In the letter, the County acknowledged that while *Janus* expressly applies to non-members' payment of agency fees, it was concerned that *Janus* likewise implicitly applies to union members' payment of dues. The letter stated, "There is likely nothing in *Janus* that expressly requires all public employers to stop collecting full dues from all their member employees if they previously consented to being a member of the union, but there is a compelling argument that it may implicitly require that." Based on this interpretation of the scope of *Janus*, the County concluded the letter by taking the position that

union members must waive their First Amendment rights before the County will continue to withhold union dues from employee members.

This letter was followed on February 7, 2019, by a new authorization form created by the County. The form indicates that it applies to employees hired after June 27, 2018 (the date on which *Janus* was decided). The form requires new employees to elect between "voluntarily and affirmatively waiv[ing] First Amendment Rights" before the County will deducted any union dues or refusing to "waive [] First Amendment rights":

> I _____ (employee name) authorize Yellowstone County to deduct membership dues and transmit these funds to the Montana Federation of Public Employees union. With this authorization, I voluntarily and affirmatively waive my First Amendment Rights. I offer this waiver freely and represent that I was not influenced or coerced when making this decision. I understand that this election will not adversely affect my employment in any way."
>
> M.C.A. 39-31-203. Deduction of dues from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.
>
> Or
>
> I _____ (employee name) do not authorize Yellowstone County to deduct membership dues and transmit these funds to the Montana Federation of Public Employees union. I do not waive my First Amendment rights. I offer this decision freely and represent that I was not influenced or coerced when making this decision. I understand that this election will not adversely affect my employment in any way."

This authorization form and the directive to provide it to employees is the basis for the Union's motion for preliminary injunction. The parties dispute the scope of the *Janus* decision and whether it applies only to nonmembers and payment of agency or fair share fees or whether it also applies to union members and payment of membership dues.

While the letter from the County Commissioners indicated it would require an affirmative consent to waive First Amendment rights from all employees – current union members, prospective new members, and nonunion members – the authorization form itself seemingly applies only to employees hired after June 27, 2018. The form, sent to the executive director of

the Union, was accompanied by the February 7, 2019 email which stated that the authorization for consent must be completed before money would be deducted by the County for the Union. Thus, the scope of the form's application was in doubt.

At the hearing on the motion for this injunction, the Union clarified that it has not given this form to anyone – current union members or prospective members – and has no intention of doing so. The County clarified its intent, despite the August 2018 letter, is to require this form only for new hires. The County also advised that, to date, it has not refused to collect or pay any dues to the Union on the basis that this form has not been signed.

The parties agree the County cannot deduct, nor can the Union request, agency or fair share fees from any nonunion employee without a waiver, as that question was squarely decided by *Janus*.

Based on the County's newly required authorization form, the Union filed an unfair labor practice (ULP) charge with the Montana Board of Personnel Appeals (BOPA). Pending the BOPA's decision in the ULP complaint, the Union filed this separate judicial action to enjoin the County from its unilateral attempt to require execution of this waiver form before payment of dues. Because the BOPA lacks injunctive authority, this separate judicial proceeding was filed to determine whether a preliminary injunction is appropriate. *See* §§ 39-31-401, et seq., MCA.

STANDARDS FOR PRELIMINARY INJUNCTION

By statute, in relevant part, this Court may issue a preliminary injunction:

> (1) When it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually; [*or*]
>
> (2) When it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant.

§ 27-19-201, MCA.

The subsections are disjunctive, so the Court may issue an injunction upon a finding that the movant has satisfied either prong. *Porter v. K & S Partnership*, 192 Mont. 175, 181, 627 P.2d 836, 839 (1981). Accordingly, the court may grant an injunction upon a finding that a party has a valid claim and is likely to succeed on the merits or upon a showing that the moving party will suffer irreparable harm before his rights can be fully litigated. Upon a showing of either prong, the Court may grant a preliminary injunction to preserve the status quo pending trial. *Id.* If the Court issues the injunction, it has a duty to minimize injury to all parties until a final decision on the merits is reached. *Id.* at 182, 627 P.2d at 840.

While the Court has broad discretion, a preliminary injunction is an extraordinary remedy. *Citizens for Balanced Use v. Maurier*, 2013 MT 166, ¶ 11, 303 P.3d 794, 797. The Court must not "anticipate the ultimate determination of the questions of right involved." *Porter*, 627 P.2d at 840. Instead it "should decide merely whether a sufficient case has been made out to warrant the preservation of the . . . rights in status quo until trial, without expressing a final opinion as to such rights." *Id.* The status quo is defined as "the last actual, peaceable, uncontested condition preceding the controversy at issue." *Davis v. Westphal*, 2017 MT 276, ¶ 24, 405 P.3d 73, 85.

Here, Plaintiff asks the Court to issue an injunction to maintain the status quo preceding the dispute, but not to decide the ultimate merits of the ULP.

The status quo is a temporary injunction preventing the County from requiring implementation of its new waiver of rights form pending resolution of the ULP.

While the question of whether the County's authorization form and interpretation of *Janus* is the subject of the ULP before BOPA, this Court must still consider these matters in the context of the injunctive relief sought.

The Union's Position:

The Union argues that the *Janus* decision applies only to nonmembers and agency fees and has no bearing whatsoever on members and union dues. Moreover, the Union argues that its members do not waive First Amendment rights by joining a union, so the "waiver" required oversteps and erroneously expands and misinterprets *Janus*. The Union expresses concern that the proposed waiver of rights authorization discourages employees from participating in a union and interferes with the Union's right to manage its relationship with its members and prospective members. It further argues that the unilateral directive requiring the waiver's execution by employees violates the collective bargaining agreement between the parties, as any desire to change the procedure by which members' dues are deducted is subject to mandatory bargaining under the agreement.

The County's Position:

The County responds by restricting its directive to new employees, who by definition are, in fact, nonmembers and argues that under *Janus*, there is no legal authority to prohibit the County from requiring the Union to mandate that its new members sign the waiver of rights before the County will withhold union dues from paychecks. The County further argues that its decision to require the affirmative waiver of rights is not subject to collective bargaining, as *Janus* constitutionally requires it. The County argues that an injunction is improper both because

the Union will not succeed on the merits on the ULP and because the Union will suffer no irreparable harm warranting an injunction at this stage of the dispute.

Post-*Janus* decisions.

Given that *Janus* was only recently decided, neither the Montana Supreme Court nor the Ninth Circuit Court of Appeals have examined its scope. Thus, whether *Janus* applies to union members and prospective union members is a novel question in Montana.

However, a handful of other jurisdictions have considered this question, and to date, all seem to agree that *Janus* is limited to nonmembers and the withholding of agency or fair share fees and not to withholding union dues. *See, e.g., Belgau v. Inslee*, No. 18-5620 RJB, 2019 U.S. Dist. LEXIS 25293 (W.D. Wash. Feb. 15, 2019); *Cooley v. Cal. Statewide Law Enforcement Ass'n*, No. 2:18-cv-02961-JAM-AC, 2019 U.S. Dist. LEXIS 1245 (E.D. Cal. Jan. 25, 2019); *In re Woodland Township Board of Education, and Chatsworth Education Ass'n*, Docket No. CO-2019-047 (N.J. Pub. Emp't Relations Comm'n Aug. 31, 2018); *Afscme, Local 3277 v. Rio Rancho*, No. 113-18 (N.M. Pub. Emp. Labor Relations Bd. Aug. 21, 2018).

For example, multiple courts have rejected claims by public-sector union members who sought post-*Janus* discontinuation of their union dues mid-contract year or refunds of prior union dues payments on the basis that they did not affirmatively consent to waiving their First Amendment rights. *See, e.g., Belgau v. Inslee*, 2019 U.S. Dist. LEXIS 25293; *Cooley v. Ca. Statewide Law Enforcement Ass'n*, 2019 U.S. Dist. LEXIS 1245. The court in *Belgau* explained the limited scope, "Plaintiffs seek a broad expansion of the holding in *Janus*. *Janus* does not apply here – Janus was not a union member, unlike the Plaintiffs here, and Janus did not agree to a dues deduction, unlike the Plaintiffs here." *Belgau*, 2019 U.S. Dist. LEXIS 25293 at *30.

Likewise, in *Cooley*, the district court denied a motion for preliminary injunction filed by a union member, holding:

> The plaintiff in *Janus* was not a union member, never agreed to be a union member, and never affirmatively agreed – beyond by virtue of his public employment – to have any union-related fees deducted from his paycheck . . . Put simply, the relationship between unions and their voluntary members was not at issue in *Janus*. . . . Here, unlike in *Janus*, [Plaintiff previously] agreed to become a dues-paying member of the Union.

2019 U.S. Dist. LEXIS 1245 at *7.

This Court also considered opinions from labor boards from other jurisdictions that unlike Montana's BOPA, have injunctive authority, and exercised it to prevent employers from requiring affirmative authorization to collect dues from union members. *See, e.g., In re Woodland Township Board of Education, and Chatsworth Education Ass'n*, Docket No. CO-2019-047 (N.J. Pub. Emp't Relations Comm'n Aug. 31, 2018); *Afscme, Local 3277 v. Rio Rancho*, No. 113-18 (N.M. Pub. Emp. Labor Relations Bd. Aug. 21, 2018).

For example, in *Afscme, Local 3277 v. Rio Rancho,* a public employer, following the *Janus* ruling, refused to collect both fair share payments from non-members, as well as membership dues from union members, unless they affirmatively re-authorized dues deductions. N.M. Pub. Emp't Relations Comm'n No. 113-18, ¶¶ 9-19 (Aug. 21, 2018). The board granted a preliminary injunction against the employer and ordered it to honor the CBA and to collect union dues from members. *Id.* Order at ¶ 1. The board determined that the "City's interpretation of *Janus* is an outlier . . . The City introduced no competent legal authority in at [*sic*] any jurisdiction that extends *Janus* beyond its plain meaning rendering agency fees assessed against non-members unconstitutional, to challenge on the same basis dues deduction previously authorized by union members." *Id.* at ¶ 21.

Similarly, *In re Woodland Township Board of Education, and Chatsworth Education Ass'n,* the New Jersey Public Employment Relations Commission granted an injunction against a school board which unilaterally sent a letter to union members after the *Janus* decision requiring they affirmatively consent to payroll deduction of union dues. Docket No. CO-2019-047, p. 15 (Aug. 31, 2018). The Commission found that "*Janus* holds that deductions of representation or agency fees from non-members only are unlawful. The decision does not mandate members (as the Board represents it does) to authorize 'dues deductions' after having done so previously." *Id.* at 14.

The New Jersey Commission further explained that while nonmembers may waive their First Amendment rights by consenting to pay agency fees despite their decision not to associate with the union, union members actually exercise, rather than waive, their First Amendment rights by paying dues. *Id.* Lastly, the Commission found that the board's letter to employees seeking reauthorization of membership dues caused irreparable harm because it encouraged union members to reconsider or terminate their membership. *Id.* at 15.

The Union is Likely to Prevail on the Merits and Suffer Irreparable Harm Absent an Injunction.

This Court is persuaded by the line of authority emerging post-*Janus*. The County has offered no countervailing authority, nor was the Court able to independently locate any support to expand *Janus* to union members and payment of dues. This Court finds that *Janus'* application is limited to nonmembers' payment of fees. The County's interpretation of *Janus* to require potential new employees wishing to join the union to sign a waiver of rights appears to be an unreasonable expansion of the United States Supreme Court's holding.

Further, the Court finds the *Woodland* authority particularly compelling, especially given the similarity in facts to the instant matter. The County's requirement that employees, whether

new employees or existing union members, "waive" First Amendment rights by joining a union and agreeing to pay dues turns the *Janus* analysis inside out. As the United States Supreme Court explained, the First Amendment protects both the freedom to associate *and* to eschew association. *Janus*, 138 S. Ct. at 2463-64. This fundamental tenet was a lynchpin to its decision to protect Janus from being compelled to contribute agency fees to a union which he did not support. Absent an express waiver, such forced financial support was found to violate his First Amendment rights, given Janus' freedom *not to* associate.

Conversely, then, union members have the First Amendment right *to* associate with a union. Thus, members who do support a union actually "exercise," rather than "waive," their First Amendment rights by joining. The County's notion that a new employee must either "waive" rights by joining the union or preserve rights by refusing to join misses the mark. The County's belief that it must obtain union members' affirmative waiver of First Amendment rights to withhold union dues from those members' paychecks is an expansion of *Janus*.

Moreover, the County's unilateral insistence that the Union collect affirmative waivers invades the Union's authority to manage its relationship with its members and prospective members. More critically, however, the language used by the County in its waiver to require an existing member or a prospective member to agree to "waive" First Amendment rights by joining and consenting to dues discourages new members from joining and causes existing members to reconsider membership when, rather than waiving rights, they are exercising rights. Lastly, to the extent that the County wishes to change how dues are withheld and how new employees become members, it must do so through collective bargaining, not unilateral edict.

For these reasons, the Court finds the Union has a substantial likelihood of prevailing on the merits because the County's directive and its proposed waiver of rights likely constitute an ULP.

The Court also finds the Union has shown irreparable harm through the likely ULP. As explained, the language of the waiver discourages both new and ongoing membership by inaccurately claiming that membership dues are a waiver of First Amendment rights. Such discouragement cannot be monetarily quantified or easily repaired following final litigation of the ULP matter.

Accordingly, the Court finds a preliminary injunction is proper pursuant to § 27-19-201(1) and (2), MCA. Although the moving party need only establish one basis to support the injunction, the Courts finds the Union has shown both a likelihood of prevailing upon the merits, as well as irreparable harm. This Court thus grants the preliminary injunction, and to minimize injury to all parties, returns this matter to the status quo, which is the point in time before the February 7, 2019 email and directive went to the Union.

BOND PURSUANT TO § 27-19-306(1).

The Union asks the Court not to require a bond as a condition of the injunction. At oral argument, the County was asked about whether it felt a bond would be warranted if the Court were to grant the injunction. The County agreed that no bond would be necessary. Accordingly, this Court exercises its discretion and requires no bond in this matter.

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WHEREFORE:

IT IS HEREBY ORDERED: the County is enjoined from requiring employees to sign its proposed waiver of rights pending resolution of the ULP complaint before the BOPA.

DATED this 9th day of April, 2019.

COLETTE B. DAVIES, District Court Judge

cc: Kevin Gillen
James Molloy
Karl Englund

CERTIFICATE OF SERVICE
This is to certify that the foregoing was duly served upon the parties or their counsel of record at their address this 9 day of April, 2019.

By: _____
Judicial Assistant to Colette B. Davies

EXHIBIT S

45 NJPER ¶ 24, 45 New Jersey Pub. Employee Rep. ¶ 24, 2018 WL 4501733

New Jersey Public Employment Relations Commission

Woodland Township Board of Education, Respondent, and Chatsworth Education Association, Charging Party
No. CO-2019-047
I.R. NO. 2019-3
ROTH
August 31, 2018

Related Index Numbers
24.1951 Dues and Assessments, Agency Fees, Political or Ideological Refunds, Procedures for Obtaining
74.31 Types of Orders, Cease and Desist
74.373 Types of Orders, Interim Relief, Likelihood of Success
74.374 Types of Orders, Interim Relief, Irreparable Nature of Harm
74.375 Types of Orders, Interim Relief, Absence of Substantial Harm

Appearances:
Amy R. Guerin, of counsel, for the Respondent, Parker McCay
Steven R. Cohen, of counsel, for the Charging Party, Selikoff & Cohen, attorneys
Keith Waldman, of counsel, for the Charging Party, Selikoff & Cohen, attorneys
Hop T. Wechsler, on the brief, for the Charging Party, Selikoff & Cohen, attorneys

Judge / Administrative Officer
ROTH

Ruling

PERC's Designee granted a union's request for interim relief from a school employer's purported statutory violation, i.e., its letter asking union members to provide new written authorizations to make dues deductions. The Designee determined that the union demonstrated a substantial likelihood of success on the merits of its unfair practice charge. The Designee directed the employer to immediately retract the letter to union members, to continue allowing union members' voluntary dues deductions, and to cease and desist from encouraging union members to revoke dues deduction authorizations.

School employer must revoke letter concerning dues deductions

Meaning

The Designee explained that, in order to obtain interim relief, the moving party must demonstrate that it has a substantial likelihood of prevailing in a final PERC decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted.

Case Summary

The school employer and the union are parties to a series of negotiations agreements that include a provision governing union payroll dues deductions from union members. Under the provision, a new employee who chooses to join the union will sign a written authorization for the employer to deduct membership dues from his or her compensation. In July 2018, the employer sent a letter asking negotiations unit employees to provide new written authorizations to make dues deductions by a certain date. The letter stated that the employer was required to obtain such authorizations pursuant to the decision of the U.S. Supreme Court in Janus v. AFSCME, 138 S.Ct. 2448 (2018). The union brought an unfair practice charge alleging that the employer violated EERA provisions, as amended by the Workplace Democracy Enhancement Act. The charge was accompanied by

Exhibit S

an application for interim relief, which PERC's Designee granted. The Designee determined that the union demonstrated a substantial likelihood of success on the merits of its unfair practice charge and also demonstrated irreparable harm. The grant of interim relief here would not injure the public interest, the Designee concluded. The Designee directed the employer to immediately retract the letter to union members, to continue allowing union members' voluntary dues deductions, and to cease and desist from encouraging union members to revoke dues deduction authorizations.

The Designee interpreted the pertinent statutory provisions as requiring the employer to continue deducting union members' dues unless it receives employee revocation notices. The Designee found that the Janus holding – that deductions of representation or agency fees from non-members only are unlawful – does not mandate union members to authorize "dues deductions" after having done so previously.

Full Text

Interlocutory Decision

On August 10, 2018, Chatsworth Education Association (Association) filed an unfair practice charge against Woodland Township Board of Education (Board), together with an application for interim relief, a proposed Order to Show Cause with Temporary Restraints, a proposed Order Granting Preliminary Injunction, certification, exhibits and a brief. The charge alleges that on or about July 30, 2018, the Board sent a letter to the employees in the collective negotiations unit (comprised of certificated and non-certificated staff) represented by the Association, ". . . demanding that they provide new written authorization to make dues deductions by no later than August 15, 2018." An attached copy of the letter, on Board letterhead, advises "staff members" desirous of having deductions made from their compensation, ". . . for the purpose of paying dues and/or fees to the *bona fide* employee organization that you designate [to] please sign and return this authorization with your signature . . . no[t] later than August 15, 2018." The letter advises that the Board is "required" to obtain such authorizations ". . . pursuant to the U.S. Supreme Court's decision in Janus v. AFSCME [138 S.Ct. 2448, 585 U.S. ___ (2018)] (Janus) and consent requirements of N.J.S.A. 52:14-15.9e." [1] The returnable form is part of the one-page document.

The charge alleges that within a short time after a unit employee is hired, ". . . each member of the Association submitted a written request to the Board, by and through its disbursing officer, indicating his or her desire to have deductions made from his or her compensation for the purpose of paying dues to the Association." The charge alleges that the Board is aware of each member's decision authorizing deductions and is required to maintain records of those requests.

The charge alleges that on August 1, 2018, the Association President, who received a copy of the Board letter, issued an email to the Board Superintendent advising that if the Board did not cease and desist ". . . from its reauthorization demand" and did not continue membership deductions as it historically has done, the Association would proceed with legal remedies.

The charge alleges that the Board's conduct violates section 5.4a(1) and (2) [2] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act), including its recent amendment at section 5.14(a) [3] [Workplace Democracy Enhancement Act].

The application seeks an Order requiring the Board to cease and desist from interfering with, restraining or coercing employees in the exercise of rights protected by the Act; immediately retract the memorandum sent to Association members; notify members in writing that no new "opt-in" is required and advise them that unless it (the Board) receives timely notification from them expressing a wish to withdraw membership, it will continue voluntary dues deduction; restraining the Board from conduct that encourages members to revoke authorization dues deductions; requiring the Board to make whole the Association for losses incurred as a consequence of the Board's unlawful action.

On August 13, 2018, and acting in my temporary absence as Designee, Commission Acting General Counsel issued an Order to Show Cause with Temporary Restraints enjoining the Board from interfering with, restraining or coercing employees in the exercise of rights guaranteed to them by the Act; failing to continue to treat Association members as members, including the continuation of voluntary dues deductions, regardless of whether members have provided written reauthorization of dues deductions, pursuant to the Board's letter; engaging in any conduct that encourages unit members to resign or relinquish their membership in the Association; and engaging in any conduct that encourages negotiations unit members to revoke authorization of dues deductions to the Association. The Temporary Restraint also enjoins the Board from failing to continue treating Association members, ". . . as members in all respects," including the continuation of voluntary dues deductions, regardless of whether any member returned the Board's letter. The Order and cover letter further advises that the Board may seek to dissolve or modify the temporary restraints; that the Board's answering brief, together with proof of service, was due on August 22, 2018 (changed upon Board request to August 24th) and argument on the application shall take place in-person on August 29, 2018 in the Commission's Trenton offices.

On August 21st, Counsel for the Board filed a letter advising that it hadn't received a copy of the executed Order with Temporary Restraints from the Board until August 20th and requesting an extension of time until August 24th to file its opposing documents. The request was approved. On August 22nd, the Board filed a Motion to Dissolve Temporary Restraints, together with a certification and brief. On the same date, I wrote to the parties advising that I would first hear argument on the Board's motion on the return date of the Order. On August 24th, the Board filed its papers opposing the Order to Show Cause, together with certifications and a brief.

On the return date, the parties appeared and argued their cases on the record. The following facts appear.

The Board and Association have signed a series of collective negotiations agreements, the most recent of which extends from July 1, 2017 through June 30, 2020. Article VII (Deductions from Salary) provides:

A. Association Payroll Dues Deduction

a. Such deduction will be in compliance with N.J.S.A. 52:14-15.9e and under rules established by the State Department of Education. Said monies together with current records of any corrections shall be transmitted to the NJEA.

b. The NJEA or its representative shall certify to the Board, in writing, the current rate of membership dues. If the Association changes the rate of its membership dues, the Association shall give the Board written notice prior to the effective date of such change.

B. Local, State and National Services

The Board agrees to deduct from members' salaries money for local, state and/or national Association services as said members individually and voluntarily authorize the Board to deduct and to transmit the monies promptly to such Association or Associations.

The practice among the parties has been that shortly after the hiring of new Board (unit) employees, they are provided membership applications to join the Association and affiliated organizations. If the employee chooses to join the Association, he or she completes, signs and returns the application form, which provides a written authorization to the Board to deduct from his or her compensation membership dues, payable to the Association. The Association sends the authorization to the NJEA, which then sends the authorization to the Board. The form, entitled in bold print, "NJEA-NEA ACTIVE MEMBERSHIP APPLICATION," solicits the employee's name and other personal information, and facts regarding employment location, position(s), length of workweek, salary, etc. It also provides in a pertinent part immediately above a "required" signature line and date:

I hereby request and authorize the disbursing officer of the above school district to deduct from my earnings, until notified of termination, an amount required for current year membership dues and such amounts as may be required in each subsequent year . . . to be paid to such person as may from time to time be designated by the local association. The authorization may be terminated only by prior written notice from me effective January 1 or July 1 of any year. I waive all right and claim for monies so deducted and transmitted and relieve the board of education and its officers from any liability therefore.

Upon a review of Board files, ". . . it was discovered that the Board does not have any written authorization from any Association member to deduct Association dues from their paychecks."

On or about July 30, 2018, the Board sent letters to its employees, providing in a pertinent part:

Pursuant to the United States Supreme Court's decision in Janus v. AFSCME and the consent requirements of N.J.S.A. 52:14-15.9e, the District is required to obtain written authorization bearing either a physical or electronic signature, for each employee who desires to have deductions made from their compensation for the purpose of paying dues and/or fees to a bonafide employee organization.

The letter solicits those desirous of having money deducted for that purpose to complete, sign and return the attached form to the Board Business Administrator by August 15, 2018.

On July 31, 2018, Association President Tracy Derkas, a Board teacher and unit employee, received the Board's letter seeking written authorization for dues deductions. Neither she nor any officer of Association received advanced notice of the Board's intention to solicit authorizations or an advanced copy of its letter.

On August 1, 2018, Derkas emailed Board Superintendent Misty Weiss, with a copy to the Business Administrator, demanding that the Board "cease and desist" from seeking authorizations from members, writing that Janus addresses only, ". . . whether involuntary fair share fee or agency fees are permitted and holds that they are not." She wrote that if the Board insisted that, ". . . existing members affirmatively opt-in," the Association would pursue its legal remedies. She requested a written reply not later than August 6, 2018.

On August 6, 2018, Derkas phoned Weiss. Weiss said she had not received Derkas's August 1 email. Derkas re-sent her email, setting forth a new reply date of August 7, 2018. Weiss subsequently replied to Derkas that her email had been forwarded to Board Counsel.

On August 20, 2018, Superintendent Weiss wrote to Derkas, advising that Janus placed "a responsibility" on the district to have "clear and compelling evidence that employees clearly and affirmatively consent to the deduction or collection of an agency fee or any other payment to the union from their wages." The Superintendent also wrote that the WDEA requires written authorization from employees for deductions of membership dues to a *bona fide* employee organization, citing N.J.S.A. 52:14-15.9e. The penultimate paragraph provides that the Board's [July 30] letter:

. . . reflects the School District's obligation to verify that all future payroll deductions for either union dues or agency fees will fully meet the requirements of the Janus decision and the WDEA. As a public employer, we must have written documentation from every employee authorizing us to make deductions from their salary . . .

The Superintendent wrote that she "encourages" Derkas to have members return the letter as quickly as possible.

Analysis

A charging party may obtain interim relief in certain cases. To obtain relief, the moving party must demonstrate that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm

will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. DeGioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 36 (1971); *State of New Jersey (Stockton State College)*, P.E.R.C. No. 76-6, 1 NJPER 41 (1975); *Little Egg Harbor Tp.*, P.E.R.C. No. 94, 1 *NJPER* 37 (1975).

A public employer violates 5.4a(1) of the Act if its actions tend to interfere with an employee's statutory rights and lack a legitimate and substantial business justification. *New Jersey College of Medicine and Dentistry*, P.E.R.C. No. 79-11, 4 NJPER 421, 422 (¶4189 1978); *N.J. Sports Exposition Auth.*, P.E.R.C. No. 80-73, 5 NJPER 550, 551 (¶10285 1979). In *Fairview Free* Public Library, P.E.R.C. No. 99-47, 25 NJPER 20, 21 (¶3007 1998), the Commission explained:

[W]e must first determine whether the disputed action tends to interfere with the statutory rights of employees. . . . If the answer to that question is yes, we must then determine whether the employer has a legitimate operational justification. If the employer does have such a justification, we will then weigh the tendency of the employer's conduct to interfere with employee rights against the employer's need to act.

The Commission need not determine whether an action actually interfered or was intended to interfere with employee rights. *Commercial Tp. Bd. of Ed.*, P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd 10 *NJPER* 78 (¶15043 App. Div. 1983).

A public employer violates 5.4a(2) if its conduct dominates or interferes with the formation, existence or administration of an employee organization. In *Atlantic Community College*, P.E.R.C. No. 87-33, 12 NJPER 764 (¶17291 1986), the Commission explained:

Domination exists when the organization is directed by the employer, rather than the employees. . . . Interference involves less severe misconduct than domination, so that the employee organization is deemed capable of functioning independently once the interference is removed. It goes beyond merely interfering with an employee's section 5.3 rights; it must be aimed instead at the employee organization as an entity. [12 *NJPER* at 765]

The Commission has also written that the type of activity prohibited by 5.4a(2) must be, ". . . pervasive employer control or manipulation of the employee organization itself." *North Brunswick Tp. Bd. of Ed.*, P.E.R.C. No. 80-122, 6 NJPER 193, 194 (¶11095 1980).

In *State of New Jersey (Local 195)*, P.E.R.C. No. 85-72, 11 NJPER 53 (¶16028 1984), the Commission found that the State violated 5.4a(1) and (2) of the Act when it discontinued dues deductions of an employee transferred between two negotiations units who did not execute a revocation or withdrawal notice. The employee had signed a dues deduction authorization, ". . . making known to [his employer] his desire to have deductions made from his compensation for the purpose of paying dues to [the union], a *bona fide* employee organization of which [the employee] is a member," pursuant to N.J.S.A. 52:14-15.9e. *Id.*, 11 *NJPER* at 53-54. *See also, Passaic Cty. and SEIU, Local No. 389*, P.E.R.C. No. 88-64, 14 NJPER 125 (¶19047 1988) [app. dism. App. Div. Dkt. No. A-2911-87T1 (6/22/88)].

In this case, the legal right underpinning the Association's claim is the unfettered continuation of membership dues deductions that originated in the unit employees' initial written authorizations (soon after their hire dates) and were forwarded to the Board, pursuant to N.J.S.A. 52:14-15.9e. The only prescribed method of revocation under the statute is the employee's "notice of withdrawal" to the "disbursing officer" — the Board Business Administrator.

The Board neither contests its receipt of those authorizations, nor its past possession of them for an unspecified period of time. No anecdotal facts indicate that any unit employee has contested a dues deduction. The Board claims only — under less than clear circumstances — not to possess the authorizations *now*. These circumstances do not provide lawful justification under the statute for the Board's direct solicitation of Association members to re-authorize deductions. In other words, I read the statute to require the Board to continue deducting members' dues unless it receives employee revocation notice(s). *See* Local 195, IFPTE

v. State, 88 N.J. 33 (1982); *City of Jersey City*, I.R. No. 97-20, 23 *NJPER* 354 (¶28167 1997). (The Commission has jurisdiction to interpret State statutes, and specifically, N.J.S.A. 52:14-15.9(e)). In fact, the authorization form signed by the Association members and provided to the Board sets forth that statement clearly.

The Board's citation of Janus in its letter to employees further undermines the legitimacy of the solicitation. Janus holds that deductions of representation or agency fees from non-members only are unlawful. The decision does not mandate members (as the Board represents it does) to authorize "dues deductions" after having done so previously. The Court in Janus wrote:

Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor any other attempt be made to collect such a payment unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed [citations omitted]. Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met. [Janus, slip. op. at 48]

It is axiomatic that members *exercise* their First Amendment rights by authorizing dues deductions. The Association members in this case exercised those rights and "consented" by having previously signed the authorization forms.

The WDEA prohibits public employers from encouraging unit employees to resign or relinquish their membership in their exclusive representative employee organization. It also prohibits public employers from encouraging unit members to revoke their authorization of the deduction of "fees" to an exclusive employee organization. Section 5.14(a). The WDEA provides that a violation of this section violates 5.4a(1) of the Act. Section 5.14(c).

The Board's letter seeking reauthorization of membership dues by August 15, 2018 prompts employees to reconsider or discourage their membership in the Association. The Board asserts that its letter to employees does not threaten cessation of deductions. During argument, Board Counsel acknowledged that a member's repeated failure to return the reauthorization form would eventually culminate in an "administrative determination" on continuing deductions. I infer that the "determination" would be a cessation of deductions. For these reasons, I believe that the letter, having a tendency to interfere with protected rights, would violate the WDEA and section 5.4a(1) of the Act. And for all the reasons set forth, I find that the Association has a substantial likelihood of success on the merits of its 5.4a(1) charge in a final Commission decision.

I also find that the Association has demonstrated irreparable harm. In *New Jersey Dept. of Law and Public Safety*, I.R. No. 83-2, 8 *NJPER* 425 (¶13197 1982), a charge filed by the majority representative alleged that the State had undermined its status as representative by dealing with a minority organization over terms and conditions of employment. Finding that the union had a substantial likelihood of success on the factual and legal merits of the charge, the Designee observed:

I am also convinced that CWA does suffer some harm for which interim relief is appropriate. As the cases cited above [here omitted], especially Lullo v. International Assoc. of Fire Fighters, 55 N.J. 409 (1970) establish, relief provided at the terminal point of an unfair practice proceeding cannot remedy the loss of prestige and power the exclusive representative suffers during the time another organization is permitted to act on behalf of unit employees concerning terms and conditions of employment. [*Id.*, 8 *NJPER* at 428]

In this matter, I find that the Board letter, discouraging or tending to discourage membership, or, as prohibited in the WDEA, encouraging unit employees to revoke their authorization of dues deductions, cannot be remedied after completion of litigation of this case. Interim and sustained unlawful encouragement undermines the Association's status as majority representative, implicating its power and prestige to represent its membership.

I also find that hardship to the Association if interim relief is not granted, outweighs hardship to the Board in granting such relief. Discouragement of membership, revocations of authorization, loss of membership, diminished capacity to serve effectively as majority representative in administering and negotiating collective negotiations agreements are singly and collectively, serious threats to the viability of the Association. On the other hand, the Board, now relieved of the duty to deduct agency fees, is

Exhibit S

concerned solely with liability for membership dues deductions. (That concern appears unwarranted because employees have relieved the Board of that liability by signing the authorization form). The Board has received those authorizations, even if it does not currently possess them. The Board need only comply with its duty under N.J.S.A. 52:14-15.9e in the event it receives lawful employee revocations of membership. That obligation constitutes little, if any, hardship.

Finally, I find that the public interest in granting interim relief will not be injured. Our statute guarantees that public employees have the right to form, join and assist any employee organization. Section 5.3. Our Legislature's most recent amendment, the WDEA, further protects employees against employer discouragement of those rights. Granting interim relief, as I do, promotes the legislated public interest.

Order

The Board shall immediately retract the letter sent directly to Association members by promptly informing them in writing that no new authorization of dues is required and that their authorizations shall continue unless and until it receives timely notification from such members expressing their desire to withdraw from Association membership.

The Board shall continue to treat members as members in all respects including the continuation of voluntary dues deductions.

The Board shall cease and desist from engaging in any conduct to encourage negotiations unit members to revoke authorization of dues deductions to the Association and affiliated organizations.

The Board shall cease and desist from encouraging or discouraging employees from joining, forming or assisting the Association.

This Order shall remain in effect until the resolution of this case.

1 The statute, "Deduction from compensation to pay dues to certain employee organizations," as amended on May 18, 2018, provides, in a pertinent part:
Whenever any person holding employment, whose compensation is paid by this State or by any county, municipality, Board of education or authority in this State, or by any Board, body, agency or commission thereof shall indicate in writing, including by electronic communications, and which writing or communication may be evidenced by the electronic signature of the employee, as the term electronic signature is defined in section 2 of P.L. 2001, c.116 (C.12A:12-2), to the proper disbursing officer his desire to have any deductions made from his compensation, for the purpose of paying the employee's dues to a bona fide employee organization, designated by the employee in such request, and of which said employee is a member, such disbursing officer shall make such deduction from the compensation of such person and such disbursing officer shall transmit the sum so deducted to the employee organization designated by the employee in such request.
Employees who have authorized the payroll deduction of fees to employee organizations may revoke such authorization by providing written notice to their public employer during the 10 days following each anniversary date of their employment. Within five days of receipt of notice from an employee of revocation of authorization for the payroll deduction of fees, the public employer shall provide notice to the employee organization of an employee's revocation of such authorization. An employee's notice of revocation of authorization for the payroll deduction of employee organization fees shall be effective on the 30th day after the anniversary date of employment. . . .

2 These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization."

3 This provision directs public employers, "not [to] encourage negotiations unit members to resign or relinquish membership in an exclusive representative employee organization and shall not encourage negotiations unit members to revoke authorization of the deduction of fees to an exclusive representative employee organization."

Statutes Cited

138 S.Ct. 2448

End of Document

EXHIBIT T

STATE OF NEW MEXICO
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

SUSANA MARTINEZ
Governor

THOMAS J. GRIEGO
Executive Director

Duff Westbrook, Chair
Roger E. "Bart" Bartosiewicz, Vice-Chair
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August 21, 2018

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Re: ***AFSCME, Local 3277 v. Rio Rancho, PELRB No. 113-18; via e-mail and mail.***

Dear counsel:

Enclosed you will find the Temporary Restraining Order and Preliminary Injunction in the above referenced case.

Sincerely,

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Matthew J. Abousleman
Operations Manager

STATE OF NEW MEXICO
PUBLIC EMPLOYEES LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, COUNCIL 18, LOCAL 3277, AFL-CIO,

Petitioner,

v. PELRB No. 113-18

CITY OF RIO RANCHO,

Respondent.

TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

THIS MATTER comes before the Public Employee Labor Relations Board (Thomas J, Griego, Hearing Officer) on the Petitioner's Motion for a Temporary Restraining Order and Preliminary Injunction. After hearing oral argument on August 17, 2018 and having considered those arguments, the pleadings and being otherwise fully informed in the premises, the Hearing Officer FINDS that the Motion is well taken and will be GRANTED. Specifically, the Hearing Officer FINDS:

1. The Public Employee Labor Relations Board (PELRB) has asserted its jurisdiction to grant pre-hearing injunctive relief pursuant to NMSA 1978, § 10-7E-23(A) (2003). See, *AFSCME Council 18, NMCPSO & Santa Fe County*, PELRB Case No. 303-14, (May 7, 2014) (The County of Santa Fe and the NMCPSO were enjoined from executing a planned CBA pending the results of a representation petition.); *NEA-NM v. West Las Vegas School District*, 21-PELRB-13 (Aug. 19, 2013) (Board voted 2-1 to grant a pre-adjudication injunction because of a School District's announced intent to unilaterally impose a schedule change not agreed to by the union.) Pre-adjudication injunction is an

extraordinary remedy that must be justified under the circumstances. See *CWA Local 7911 v. Sierra County*, PELRB Case No. 133-08, Hearing Examiner's letter decision on Motion for Immediate Injunction (Aug. 19, 2008).

2. The parties have been afforded an opportunity to present all factual information to the Hearing Officer, and have made all legal argument that they believe is relevant. I do not take into consideration testimony of witnesses under oath at the hearing on August 17, 2018.

3. The Petitioner and Respondent are parties to a collective bargaining agreement ("CBA") that remains in effect through June 30, 2020. See Affidavit of Joel Villarreal, Exhibit 1 to Motion and Exhibit A thereto, at Art. 1.2 (recognition clause).

4. The Petitioner ("Union") is the exclusive bargaining representative for the bargaining unit of blue and white collar employees employed by the City of Rio Rancho ("Employer" or "Respondent"). *Id.*

5. For the reasons outlined below, Plaintiffs have satisfied all elements necessary for a preliminary injunction. See *National Trust for Historic Preservation v. City of Albuquerque,* 117 N.M. 590, 595, 874 P.2d 798, 803 (Ct. App. 1994) ("To obtain a preliminary injunction, a plaintiff must show that (1) the plaintiff will suffer irreparable injury unless the injunction is granted; (2) the threatened injury outweighs any damage the injunction might cause the defendant; (3) issuance of the injunction will not be adverse to the public's interest; and (4) there is a substantial likelihood plaintiff will prevail on the merits.")

6. The U.S. Supreme Court recently held that "States and public-sector unions may no longer extract *agency fees from nonconsenting employees*" and that "[n]either an agency fee nor any other payment to the union may be deducted from a *nonmember's* wages, nor may any

other attempt be made to collect such a payment, unless the employee affirmatively consents to pay." *Janus v. American Federation of State, County, and Municipal Employees, Council 31, et al.* Decided June 27, 2018, slip op. at 48.

7. The *Janus* Decision is narrowly written with its effects limited to payments by non-members of an "agency fee" or "fair share" fee; it has no application to the payment of dues by members of the union or the use of payroll deduction of those dues and the First Amendment rights of union members having previously authorized dues deductions payable to the union are unaffected because the First Amendment is implicated only by a non-member authorizing agency fees to be deducted automatically from wages. See *Janus* slip op. at 48("Neither an *agency fee nor any other payment to the union* may be deducted from a *non-member's* wages, nor may any attempt be made to collect *such a payment*, unless the [non-member] employee affirmatively consents to pay. By agreeing to pay, *non-members are waiving their First Amendment rights*, and such a waiver cannot be presumed." (Emphasis added, bracketed language added, internal citations omitted. See *also, Id.* at 1 ("We conclude that this arrangement violates the free speech rights of *nonmembers* by compelling them to subsidize private speech on matters of substantial public concern." (emphasis added)). See also, *Id.* at 48.

8. Following the *Janus* decision, Petitioner sent notice to the Respondent on July 2, 2018 requesting that the City stop all fair share fees deductions and further requested that any fair share fees deducted after the date of the Supreme Court Decision be reimbursed to nonmembers. The Petitioner also requested that the Employer continue the deduction of dues for union members, with any questions to be directed to the Petitioner. See Affidavit of Joel Villarreal ¶ 4 & Exhibit B thereto.

9. On July 5, 2018, the Employer sent notice to "All City Staff" informing them that it

would no longer deduct fair share payments from non-members. However, the Employer also informed staff that it would stop deducting membership dues from union members unless they affirmatively re-authorized dues deductions.

10. Prior to the Respondent sending out this July 5, 2018, letter, Sheila Allen, President of AFSCME Local 3277 memorialized a conversation she had with Deputy City Manager John C. Craig and HR Director Ty Ryburn, concerning their planned notice regarding *Janus,* by an email in which she quoted CBA Article 7.4 and its process for terminating membership. Allen Affidavit, Exhibit 2, & Exhibit A thereto.

11. On July 10, 2018, Sheila Allen, sent an email to the bargaining unit encouraging employees to either stay in or to join the union and listed a number of items the local union had bargained in the past. *Id.* ¶ 6 & Exhibit B thereto.

12. In light of the foregoing the preponderance of the evidence does not support a conclusion that the Petitioner agreed with Respondent as to the form and method of dues re-authorization in the City's July 5, 2018 letter.

13. On July 17, 2018, the Employer reaffirmed its decision to unilaterally stop member dues deductions as well as fair share deductions by an email to employees reminding them to contact HR "to inform them of your decision regarding union membership" attaching a copy of the July 5, 2018 letter. See Villarreal Affidavit, Exhibit 1 at 5 & Exhibit C thereto.

14. Article 27.1 of the CBA provides that when any part or provision of the agreement is declared invalid the "validity of the remaining portions shall not be affected." *Id* & Exhibit A thereto.

15. Article 7 of the CBA entitled "Union Security" contains separate provisions relating to fair share deductions (Article 7.2) and for membership dues (Articles 7.1 and 7.4). *Id.*

16. Article 7.1 provides, in part: "During the life of this Agreement and upon receipt of a voluntary authorization for dues deduction card, the City will deduct each pay period, from the pay of each employee who has executed an authorization card, membership dues levied by the Union."

17. Article 7.4, regarding termination of deduction, provides in part: "Only a letter submitted by the employee and acknowledged by Union President's signature will allow termination of Union membership dues ...." *Id.*

18. The City's July 5, 2018, memo requiring all employees, members and non-members alike to make a new election regarding the deduction of their dues "regardless of their respective status and previous payroll deductions" and turn in a new form does not accord with Article 7.4 of the CBA. *Id.* ¶ 5 & Exhibit C thereto; see also Affidavit of Sheila Allen, attached hereto as Exhibit 2, at ¶¶ 3-4 & Exhibit A thereto.

19. The City also ceased collecting any dues for the paychecks delivered July 13, 2018, and, for those employees who resubmitted dues authorization, "doubled up" on their dues on the following paycheck. Villarael Affidavit, Exhibit 1, at ¶ 6 & Exhibit C thereto; see also Allen Affidavit, Exhibit 2, at ¶ 4 & Exhibit A thereto.

20. The City's actions resulted in the cessation of union dues for sixty of the Union's 158 members thereby causing irreparable harm to the local union. During which time, no employee has contacted the Union President to cease membership in the Union, as is required by Article 7.4 of the CBA. See Allen Affidavit Exhibit 2, ¶ 8.

21. The City's interpretation of *Janus* is an outlier contrary the post-*Janus* guidelines issued by of Attorneys General in New Mexico, Connecticut, Illinois, Maryland, Oregon and Pennsylvania. Exhibit 3 and Attorney General of New Mexico general guidelines letter introduced at the hearing. The City introduced no competent legal authority in at any

jurisdiction that extends *Janus* beyond its plain meaning rendering agency fees assessed against non-members unconstitutional, to challenge on the same basis dues deduction previously authorized by union members. I decline to follow the City's entreaty to ignore the Attorneys General letters because they do address the specific contract provisions at issue here. That argument does not persuade because the City's action was not premised on contractual construction so much as it was premised on the First Amendment rights of its employees – the very issue decided by the *Janus* Court and common to all of the Attorneys General letters.

22. The injury described above is ongoing and unless the parties return to the *status quo ante* each new pay period will repeat a new harm thus this TRO and Preliminary injunction intends to prevent future harm. Because this is a case in which the imminent harm or conduct is of a continuous nature, the constant recurrence of which renders a remedy at law inadequate, except by a multiplicity of suits, the injury is irreparable at law and relief by injunction is therefore appropriate. See, *City of Sunland Park*, 2000-NMCA-044, ¶ 19; *Winrock Enterprises, Inc. v. House of Fabrics of New Mexico, Inc.*, 1978-NMSC-038, ¶ 6, 91 N.M. 661 579 P.2d 787.

23. The threatened injury outweighs any damage the injunction might cause the defendant; Fair share fees charged to non-union members is to be distinguished from dues paid by full members of the union. Indeed, PEBA provides that dues deduction for members is a mandatory subject of bargaining, whereas fair share was a permissive subject. Section 10-7E-17(C) (emphasis added). The public employer shall honor payroll deductions until the authorization is revoked in writing by the public employee *in accordance with the negotiated agreement and* for so long as the labor organization is certified as the exclusive representative. Therefore, I find that the harm to the union's status as exclusive

representative and abrogation of the contract strike at the heart of the PEBA Section 10-7E-2 : The purposes of the PEBA stated therein being to guarantee public employees the right to organize and bargain collectively with their employers, to promote harmonious and cooperative relationships between public employers and public employees and to protect the public interest by ensuring, at all times, the orderly operation and functioning of the state and its political subdivisions. There is no certain threat of harm to the public or to the City if the injunction issues. Perceived prospective violation of the rights of employees who opted to discontinue dues is too speculative to outweigh the harm to the Petitioner if the injunction does not issue. Any employee who wishes to discontinue dues deductions may take immediate steps called for in the parties' CBA to cease those deductions. Furthermore, it would be inequitable to permit the City to take unilateral action, contrary to the parties' CBA that has the effect of weakening the union both financially and, perhaps more importantly, in terms of its numerical support among those it is presumed to represent, based on nothing more than an expansive reading of *Janus* that is not warranted by a plain reading of the holding in the case itself. In contrast, there is no harm to the City in issuing the injunction, as their actions were not required by *Janus'* clear holding that it applies only to non-members and the injunction would merely return the City to the position it would be in had it not embarked on a course based on a peculiar extension of *Janus* to bargaining unit member that cannot be justified by the plain holding of the case. Indeed, an injunction may save the City money, as an unlawful refusal to collect dues is typically remedied by an order requiring the employer to pay the lost dues to the union with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010), and without recouping the money owed for past

dues from employees. *Id.* at 5; *Space Needle LLC*, 362 NLRB No. 11 (Jan. 30, 2015).

24. Because of the foregoing, and because the net effect of the injunction is to require the City to follow the CBA and PEBA, issuing the TRO and Preliminary Injunction as prayed for is not contrary to the public interest. Both require the City to honor payroll deduction provisions in the collective bargaining agreement. Nothing in *Janus* in any way alters that. Because both parties are bound by their agreement, any ambiguity the local union President may arguably have interjected into this dispute does not provide a persuasive reason for allowing the City to ignore it and unilaterally create its collateral procedure for cancelling dues. Neither am I persuaded by the City's argument that because employees did not have the same choice of paying no fees at all or union dues as now exists after *Janus* for two reasons. First, circumstances often change after contracts are executed. That's why contracts exist at all; to bind parties to certain courses despite changing circumstances, except where legal impossibility exists. Here, it is not legally impossible to perform Article 7.4 because the Fair Share payment provision may be ignored without affecting the union dues deductions part of that article. Second, because Fair Share is a permissible subject of bargaining under the PEBA, the choice to pay no fees in fact *did* exist at the time the contract was entered into See, § 10-7E-9(G) of the PEBA:

> "A rule promulgated by the board or a local board shall not require, directly or indirectly, as a condition of continuous employment, a public employee covered by the Public Employee Bargaining Act to pay money to a labor organization that is certified as an exclusive representative. The issue of fair share shall be left a permissive subject of bargaining by the public employer and the exclusive representative of each bargaining unit."

25. Petitioner has a substantial likelihood of success on the merits, because the City does not credibly dispute that it violated Articles 7.1 and 7.4 of the CBA, essentially arguing instead that it had a good reason for doing so. Pursuant to Article 7.1, "During the life of

this Agreement and upon receipt of a voluntary authorization for dues deduction card, the City will deduct each pay period, from the pay of each employee who has executed an authorization card, membership dues levied by the Union." Pursuant to Article 7.4, "Only a letter submitted by the employee and acknowledged by Union President's signature will allow termination of Union membership dues ...." Contrary to those provisions, during the life of the CBA, the City has unilaterally and without bargaining ceased dues deductions for members for whom it had already received dues deduction authorizations and required those employees to resubmit authorizations in violation of the CBA.

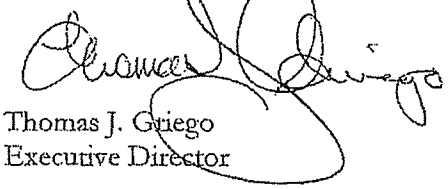
26. In light of the foregoing, I conclude that other remedies at law will be inadequate to address the immediate harm here, the character of the interest to be protected, (both individual union members right to association without interference or coercion by the employer as well as the Union's protected rights as the exclusive representative) the apparent misconduct by the employer and the interests of third parties all weigh in favor of granting immediate injunctive relief. Returning the parties to *status quo ante* is a practical solution in light of the minimal hardship likely to result to the City if an injunction is granted.

IT IS THEREFORE ORDERED that the Motion for Preliminary Injunction is GRANTED as follows:

1. Defendant City of Rio Rancho shall continue to honor the parties' collective bargaining agreement, in particular the provisions requiring withholding authorized union dues deductions from its employees' wages and shall reimburse the union for the difference in dues lost to the union as a result of the City's July 5, 2018 and July 17, 2018 letters.
2. The City shall honor only those requests to cease dues deductions from those employees

complying with the provisions of Section 7.4 of the parties CBA except for the words in the first paragraph that "fair share fees will be deducted instead", which was rendered invalid by operation of the *Janus* decision.

PUBLIC EMPLOYEE LABOR RELATIONS BOARD



Thomas J. Griego
Executive Director

Dated: August 21, 2018

EXHIBIT U

IN THE MATTER OF ARBITRATION	**X**	
	X	
BETWEEN	**X**	
	X	
RIPLEY UNION LEWIS HUNTINGTON SCHOOL DISTRICT BOARD OF EDUCATION	**X**	**CESSATION OF**
	X	**UNION DUES COLLECTION**
	X	**GRIEVANCE**
	X	
AND	**X**	
	X	
OAPSE/AFSCME LOCAL 4 AFL-CIO LOCAL 642	**X**	
	X	
	X	

AAA File No.: 01-180004-6755

HEARING: March 12, 2019; Ripley, Ohio

AWARD: The grievance is sustained as herein provided.

ARBITRATOR: William C. Heekin

APPEARANCES

For the Board

Ryan M. LaFlamme, Attorney

For OAPSE

Thomas C. Drabick, Jr.,
OAPSE Director of
Legal Services

ADMINISTRATION

By way of a letter dated January 15, 2019, from Suzanne B. Singer of the American Arbitration Association ("AAA"), the undersigned was informed of his designation to serve as arbitrator regarding a matter which was then in dispute between the Parties. Accordingly, on March 12, 2019, a transcribed arbitration hearing went forward where testimony as well as document evidence was presented. Therefore, upon receipt of post-hearing briefs, the record was closed and the matter is now ready for final resolution.

BACKGROUND

The approximately forty-one classified, non-teaching school employees of Ripley Union Lewis Huntington School District, Board of Education ("the Board", "the District", or "RULH") are represented in collective bargaining by the Ohio Association of Public School Employees AFSCME Local 4, Local 642 ("the Union", "the Association", "OAPSE", or "Local 642"). Accordingly, the Board and OAPSE ("the Parties") are each signatory to the instant collective bargaining agreement ("the CBA", Joint Exhibit – 1).

Prior to the start of the arbitration hearing, the Parties agreed to the following "**STIPULATIONS OF FACT**" ("the Stipulations"):

* * *

1. The Ohio Association of Public School Employees ("OAPSE") is the "deemed certified" representative of non-instructional school employees (i.e., building and maintenance; school bus drivers; custodian; aides; full time cooks; and, secretaries), employed by the Ripley, Union Lewis Huntington Local School District Board of Education (RULH or Board).
2. The relationship between OAPSE and the Board is controlled by the terms and conditions of a collective bargaining agreement effective July 1, 2017 through June 20, 2020. (A copy of the collective bargaining agreement is attached hereto as Joint Exhibit 1).
3. In this labor grievance arbitration, OAPSE challenges the Board's cessation of dues collection and remittance to Union of dues collected

from the payroll earnings of school bus driver Donna I. Fizer ("Fizer").

4. Fizer signed an OAPSE Membership Application on October 15, 2008. That application contains the following language: "I hereby authorize the Ohio Association of Public School Employees as bargaining agent on matters of wages, hours, working conditions or other matters that may affect my employment. I further authorize and direct the Employer to deduct OAPSE State dues and Local dues as set forth herein or as increased from my salary or wages and remit the same to the OAPSE State Treasurer. The authorization shall remain in effect during my employment unless withdrawn by me in the manner provided in the Collective Bargaining Agreement between the Employer and OAPSE or, where there is no provision for withdrawal in the Agreement, only during a 10-day period from August 22 through August 31. I agree that any withdrawal of dues deduction authorization shall be in writing, executed and delivered during the revocation period by written notice served upon the Chief Fiscal Officer of the Employer and the OAPSE State Treasurer." (See, Joint Exhibit 2, attached hereto.)
5. With respect to dues collections by the Board, the collective bargaining agreement between OAPSE and the Board provides, in relevant part at Article 2, as follows: "A. Payroll deduction of Association, State and Local dues shall be authorized by completing a written authorization and submitting it to the Treasurer by October 15. Such authorization shall remain in effect unless revoked in writing and copy served to the Treasurer of the Board, and Treasurer of Local #642, and the State Association. Such revocation can only be during the ten (10) days prior to October 15th of the year in which the contract expires. B. Deductions shall be in twenty-six (26) equal installments. The Treasurer shall transmit all dues, along with a list of member deductions made, to the State Association. The Association and its members will hold harmless the Board, its members, and employees from any and all claims which might arise from the implementation of this section." (CBA attached hereto as Joint Exhibit 1, page 1, Article 2, paragraphs A & B.)
6. By letter dated, September 18, 2018, and received by the Treasurer office on October 1, 2018, Fizer notified the Board Treasurer's Office that she no longer wanted to pay dues to OAPSE. The timing of her request was not in compliance with the collective bargaining agreement or the OAPSE Membership Application. (See Joint Exhibit 3, attached hereto)
7. The Board Treasurer stopped collection of OAPSE dues from Fizer's payroll earnings. The last dues deduction and remittance to OAPSE by the Board Treasurer was from Fizer's September 21, 2018, payroll earnings. (See, Joint Exhibit 4 attached hereto.)

8. On November 13, 2018, OAPSE filed a grievance challenging the Board's cessation of dues collections from Fizer. The grievance stated: "The board and/or its delegate have violated the CBA by revoking the deduction of Union dues without proper authority and not within the appropriate period found in the CBA. Violation of Art. 2, 1 Sec. A and any other article that may apply. Informal was held via phone with Bd. Treasurer. Remedy Requested: Cease & desist. Immediately resume deducting dues and make OAPSE whole for all lost dues." (See, Grievance, attached hereto as Joint Exhibit 5.)
9. On or about December 3, 2018, the Board Superintendent responded to the grievance. The response stated, in relevant part: "According to the union member, the request was initiated because of the 'Janus Decision' from June of 2018 (where the Supreme Court ruled that nonunion workers could not be forced to pay fees to public sector union). In consideration of the aforementioned Supreme Court 'Janus Decision', I am declining the grievance at Step 1 Level in regards to 'OAPSE Contract Article 2, Section A'. The district has consulted with our legal counsel in regards to this issue. As per their advice, the district will honor the Supreme Court 'Janus Decision' and the correlating employee request for union dues to cease being withheld from her paycheck. RULH School District and our legal counsel understand the decision to cease deducting union dues from the employee paycheck is in conflict with 'Article 2, Section A' of the collective bargaining agreement. Consequently, the issue at hand is whether the 'Janus Decision' supersedes the negotiated contract." (See Grievance Response, Joint Exhibit 6, attached hereto.)
10. By agreement of the parties, on December 19, 2018, the grievance was advanced to labor arbitration. (See, Joint Exhibit 7, attached hereto.)
11. Labor Arbitrator William C. Heekin was selected by parties under Article 4 of the collective bargaining agreement and the rules of the American Arbitration Association. An arbitration hearing was scheduled for March 12, 2019, at the Board of Education, 502 South Second Street, Ripley, Ohio. (See, Notice of Hearing, attached hereto as Joint Exhibit 8.)
12. The Opinion of the Court is *Janus* is attached hereto as Joint Exhibit 9.
13. In light of the *Janus* decision, the issues for resolution in this labor arbitration are, in addition to any issues the parties' wish to raise in the briefs, as follows: i) does Janus interfere with or supersede the withdraw window contained in the collective bargaining Agreement; ii) does Janus interfere with the membership agreement between OAPSE and Fizer which provides for a dues deduction authorization and revocation of that authorization; iii) did Fizer properly revoke her dues deduction authorization under the OAPSE membership application and the collective bargaining agreement between OAPSE and RULH; iv) by ceasing collection of dues from Fizer's payroll

earnings, has the Board violated its collective bargaining agreement with OAPSE, and if so, what shall the remedy be?

14. The parties stipulate that the grievance is timely and properly before the Arbitrator for resolution
15. The parties to the following exhibits for use at hearing and in briefs:
    1. Collective Bargaining Agreement, July 1, 2017 through June 30, 2020;
    2. Donna L. Fizer OAPSE Membership Application, October 15, 2008;
    3. September 18, 2018 withdraw letter of Donna L. Fizer
    4. OAPSE Membership Accounting Detail for Donna L. Fizer;
    5. OAPSE Grievance, November 13, 2018;
    6. Grievance Response from Superintendent, December 3, 2018;
    7. Joint Submission to AAA, December 19, 2018;
    8. AAA Notice of Hearing, January 22, 2018;
    9. Opinion of the Court *Janus v. AFSCME.*

* * *

Thus, as referred to in the Stipulations a transcribed arbitration hearing was held at the Board's administrative office on March 12, 2019, where the following witnesses gave sworn testimony: Donna Fizer; Jeff Rowley, who for six years has been the Board's treasurer; and Karen Bailey, the OAPSE field representative who for years has serviced Local 642.

As gathered from the stipulations and the hearing record, this dispute began when on October 1, 2018, Donna Fizer – a school employee bus driver for approximately twenty-five years and an OAPSE member since at least 2001 – hand delivered the following unsigned letter dated September 18, 2019, at the Board's office (Joint Exhibit – 3):

* * *

To Whom It May Concern:

I am an employee at Ripley-Union Lewis-Huntington Local Schools and am in the OAPSE/642.

With this letter, I am notifying you that I am immediately withdrawing my union membership as is my right under the First Amendment as expressed by the Supreme Court ruling in *Janus v. AFSCME.*

> I ask that you notify me immediately in writing if you are not willing to honor my rights, provide me with the legal reasons for your refusal, and outline the process I need to undertake to withdraw my membership.
>
> Sincerely,
>
> Donna Fizer

* * *

On this occasion, Jeff Rowley, the Board Treasurer, personally spoke with Ms. Fizer as he stated in his arbitration hearing testimony (TR., p. 18):

* * *

> Q. And what did you take this letter to mean?
>
> A. That she was adamant about withdrawing her membership and dues withdrawal from the Union, or whatever, and at that time, she actually told me that she had been in contact with the Ohio Right to Work Foundation, or whatever, and had talked to an attorney, and she, basically, threatened to sue us, under the First Amendment, if I didn't stop her dues at that point in time.

* * *

Accordingly, it is undisputed that Donna Fizer signed an OAPSE "Membership Application" document on October 23, 2001, which included her union dues payroll deduction authorization (Employer Exhibit – A). In addition, in 2008 Ms. Fizer signed and submitted another such document which included the same authorization (Joint Exhibit – 2).

Subsequent to Donna Fizer having visited the Board's office on October 1, 2018, and the submission of her letter dated September 18, 2018 (Joint Exhibit – 3), the Board ceased the ". . . collection of OAPSE dues from Fizer's payroll earnings . . ." (Stipulation 7, Joint Exhibit – 4). In response, "on November 13, 2018, OAPSE filed a grievance challenging the Board's cessation of dues collections from Fizer . . ." (Stipulation 8, Joint Exhibit – 5), which was appealed to arbitration hereunder.

DISCUSSION AND FINDINGS

A dispute has arisen concerning the Board having acted to cease deducting union membership dues from the payroll account of employee Donna Fizer. OAPSE contends that the Board violated Article 2, Section A, of the CBA when it ceased deducting union membership dues from the paycheck of Donna Fizer, a Local 642 bargaining unit employee of the District. OAPSE submits that *Janus* did not interfere with or supersede the union membership dues, "Payroll deduction"/"revocation" window period requirement of Article 2, Section A. The Board contends that, in light of the US Supreme Court *Janus* decision and the First Amendment of the Constitution, it did not violate Article 2, Section A, of the CBA when it honored the request of employee Donna Fizer to immediately cease the "payroll deduction" of her union membership dues. The Board bases this contention on its position that *Janus* supersedes the union membership dues check off, withdrawal window period requirement of Article 2, Section A. The Board asserts that under *Janus* it cannot without the "affirmative consent" of Donna Fizer by way of ". . . 'clear and compelling evidence' . . ." continue to deduct union membership dues from her employee paycheck. The Board urges that *Janus* essentially allows Ms. Fizer to immediately withdraw the authorization she had previously given regarding her OAPSE membership dues payroll deduction, since it was given on Constitutionally suspect grounds. It takes issue with the great emphasis which the Union has placed on the fact that *Janus* pertained to an agency fee payor, public sector employee.

In addressing this matter, the undersigned overwhelmingly finds that OAPSE met its burden to establish that the Board, in having immediately ceased withdrawing union membership dues from the payroll account of school employee Donna Fizer, violated the CBA since this

action was taken outside of the Article 2, "Association Rights", Section A, employee revocation window period:

* * *

> Payroll deduction of Association, State and Local dues shall be authorized by completing a written authorization and submitting it to the Treasurer by October 15. Such authorization shall remain in effect unless revoked in writing and copy served to the Treasurer of the Board, and Treasurer of Local #642, and the State Association. Such revocation can only be during the ten (10) days prior to October 15th of the year in which the contract expires.

* * *

This conclusion is based on two determinations. First, the Board action at issue is determined to have not been in accordance with the clear and unambiguous language of this provision of the CBA, where without question the subject employee, Donna Fizer, did not act to revoke her union dues "Payroll deduction"/"authorization" ". . . in writing and copy served to the Treasurer of the Board, and Treasurer of Local 642, and the State Association . . . during the ten (10) days prior to October 15th of the year in which the contract expires". Essentially, that this immediate cessation of union dues deduction action was not in keeping with Article 2, Section A, of the CBA is not in dispute.

Second, it is determined that *Janus* (Stipulation 15, Joint Exhibit – 9) does not supersede or interfere with the herein applicability of Article 2, Section A, as to Donna Fizer having sought to immediately end her voluntarily entered into union dues deduction arrangement outside of the withdrawal window period that is mandated by this provision of the CBA. Accordingly, *Janus* involved the wholly separate matter of a public sector employee, Mark Janus, who was not a union member and had not authorized the taking of an agency fee from his paycheck on behalf of the public sector labor organization who represented him in collective bargaining. Indeed "agency fee", "agency shop", "Fair share fee" are terms which appear throughout the *Janus*

majority opinion. In essence, the Court in *Janus* never addressed union membership dues payments or the relationship between a union and its members. In other words, *Janus* is found to be about the Constitutionality of compelling a public sector employee who is not a union member to pay an agency fee to a union, where the Court majority held that this amounted to a denial of the employee's First Amendment right of free speech. In short, *Janus* deals with the Constitutionality of a public sector employee being compelled by state law to pay an agency fee to the union that represents he or she in collective bargaining. Therefore, *Janus* is determined to have not addressed the instant situation of a public sector employee who voluntarily chose to become a union member and voluntarily authorized the payroll deduction of her union membership dues, who later revoked this authorization whereby the applicable collective bargaining agreement provides for a window period as to exactly when the payroll deduction can cease.

Therefore, it cannot be held that *Janus* interferes with or supersedes the Article 2, Section A, union dues revocation window period requirement on the basis of the following passage that appears on the last page of the Court's majority opinion as the Board has argued:

* * *

> This procedure violates the First Amendment and cannot continue. Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. *Johnson v. Zerbst,* 304 U.S. 458, 464 (1938); see also *Knox*, 567 U.S., at 312-313. Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence. *Curtis Publishing Co. v. Butts,* 388 U.S. 130, 145 (1967) (plurality opinion); see also *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.,* 527 U.S. 666, 680, 682 (1999). Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

* * *

Basically, the undersigned accepts the argument made by OAPSE that the "Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages . . ." wording is stand alone *dicta*. Accordingly, in light of the entirety of *Janus* being specific to the Constitutionality of a non-union member, public sector employee being compelled to pay an agency fee to a union, it cannot be held to invalidate the union membership dues revocation window period requirement of Article 2, Section A, which is at issue in this matter.

Thus, to the extent that *Janus* provides guidance regarding the Constitutionality of a voluntarily entered into union membership dues check-off, labor contract provision such as Article 2, Section A; it is found that Donna Fizer did "affirmatively consent" "by 'clear and compelling' evidence" to union membership dues being deducted from her paycheck. This follows since the record firmly establishes Ms. Fizer to have voluntarily become a union member many years ago, where she gave written authorization both in 2001 (Employer Exhibit – A) and in 2008 (Joint Exhibit – 2) for her OAPSE membership dues to be deducted from her paycheck. Accordingly, the undersigned cannot find that Article 2, Section A, requires periodic payroll deduction re-authorization as the Board contends, especially where the record strongly suggests this to have not been the practice. In addition, it is noted that Donna Fizer was a union member who attended union meetings (TR., p. 9). Moreover, Ms. Fizer testified to having made the choice to join OAPSE, where in doing so she paid a higher fee amount – as compared to the agency fee she had previously been charged – in order to receive the "little perks" of union membership (TR., p. 23). Furthermore, Jeff Rowley, the Board Treasurer, testified that Donna Fizer prior to October 1, 2018, had not sought to revoke her union membership (TR., p. 20). Basically, all of this, together, is held to establish that Ms. Fizer did "affirmatively consent" to union dues being deducted from her paycheck, thereby waiving her First Amendment right to not

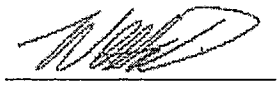
be compelled to pay such dues. In the end, the undersigned finds that the "revocation" window period requirement of Article 2, Section A, is what governs the outcome of this dispute as to Donna Fizer having made the choice to revoke her union dues "Payroll deduction".

To summarize as to the "issues for resolution In this labor arbitration" set out in Stipulation 13, it is found that *Janus* does not "interfere with or supersede the withdraw window contained in the collective bargaining Agreement" and that "by ceasing collection of dues from Fizer's payroll earnings . . . the Board violated its collective bargaining agreement with OAPSE". In addition, it is determined that "Fizer did not properly revoke her dues deduction authorization under . . . the collective bargaining agreement between OAPSE and RULH". Also, as to "the membership agreement between OAPSE and Fizer" (Employer Exhibit – A, Joint Exhibit – 2), this is understood to support the undisputed fact that Donna Fizer had previously provided written authorization for the Board to deduct her union dues. Thus, it was only necessary to herein interpret and address Article 2, Section A, of the CBA and *Janus*.

Based upon all of the foregoing, the undersigned finds that the Union was able to meet its burden to establish by a preponderance of the evidence that the Board violated Article 2, Section A, of the CBA when it ceased deducting union membership dues from the paycheck of school employee, Donna Fizer. Therefore, the grievance must be, and is, sustained. Accordingly, the Board is directed to cease and desist regarding its non-adherence to Article 2, Section A, in this matter and to "Immediately resume deducting dues and make OAPSE whole for all lost dues" as requested in the grievance (Stipulation 8, Joint Exhibit – 5).

AWARD

The grievance is sustained as herein provided.



William C. Heekin
June 18, 2019
Cincinnati, Ohio

EXHIBIT V

48 LAIS 35, 2019 WL 3451442

Labor Arbitration Information System

Arbitration Awards - Summaries

Madison (WI), City of and IBT, Local 695
No. Case No. 256.0012
No. Award No. 7954
February 13, 2019

Editor's Note: This document was acquired from the arbitrator with permission to publish.

Related Index Numbers
83.009 City
122.017 Nonpayment of Union Dues
122.036 Union Rights
122.039 Union Shops

Appearances:

Erin Hillson, for the Employer

Kyle A. McCoy, Sr., for the Union

Arbitrator
Peter G. Davis

Ruling
The city violated the labor agreement when it stopped collecting and remitting dues from certain union members.

Meaning
The Supreme Court's use of the term "nonmembers" rather than "employees" in *Janus v. American Federation of State, County and Municipal Employees, Council 31* meant that the scope of Janus "does not extend to dues checkoff provisions applicable to union members," ruled the arbitrator, adding that, "if the Court had intended the reach of its decision to extend to dues checkoff, it would have had to grapple with the question of whether voluntary pre-Janus check-off authorizations (such as those present here) met the 'affirmative consent' standard. There is no such discussion in the Court's decision."

Case Summary
The city's ceasing the collection and remittance of dues from certain union members constituted a contract violation. The union grieved when the city, in wake of the Supreme Court's decision on the deduction of union membership dues in Janus v. American Federation of State, County and Municipal Employees, Council 31, 138 S.Ct. 2448 (June 27, 2018), advised all employees that they had the right to end such deductions and honored the requests of union members who wanted an end to the deductions. The arbitrator ruled that the city violated the labor agreement. He found that the Court's use of the term "nonmembers" rather than "employees" meant the scope of Janus "does not extend to dues checkoff provisions applicable to union members," adding that, "if the Court had intended the reach of its decision to extend to dues checkoff, it would have had to grapple with the question of whether voluntary pre-Janus check-off authorizations (such as those present here) met the 'affirmative consent' standard. There is no such discussion in the Court's decision." Based on the foregoing, the arbitrator directed the city to immediately

resume the deduction and remittance of dues to the union, "and that the city shall pay the union an amount equal to the dues the city failed to remit to the union."

Selected by the parties. Case No. 256.0012; Type: MA; Award No. 7954. Hearing held in Madison, Wisconsin, November 27, 2018. Post-hearing briefs filed by January 29, 2019. Award issued on February 13, 2019.

Arbitration Award

Pursuant to the terms of their 2014-2018 collective bargaining agreement, the parties asked me to serve as the arbitrator of a union security grievance. Hearing was held in Madison, Wisconsin, on November 27, 2018. A transcription of the hearing was prepared, the parties filed written argument, and the record was closed on January 29, 2019.

Issue

The parties did not agree on a statement of the issue but did agree that I had the authority to frame the issue after considering their respective positions. Having done so, I conclude the following issue before me is:

Did the City violate the bargaining agreement when it stopped collecting and remitting dues from certain Union members and, if so, what is the remedy?

Discussion

The Union serves as the collective bargaining representative of certain transit employees of the City. The parties' 2014-2018 bargaining agreement states in part:

3.1 Dues Check Off. The Employer agrees to deduct, biweekly or monthly, as certified by the Union, membership dues from the pay of those employees who individually request in writing that such deduction be made.

Prior to the June 27, 2018 issuance of Janus v. American Federation of State, County, and Mun. Employees, Council 31, 138 S.Ct. 2448 (June 27, 2018) by the United States Supreme Court, the City was deducting Union membership dues from the paychecks of all employees who had previously provided individual written requests pursuant to Article 3.1 above. [1] Following its review of the Janus decision, the City concluded that it had potential liability if it did not advise all such employees they had the right to end those payroll deductions for membership dues. Over the objection of the Union, the City proceeded to so advise all such employees, and several individuals indicated they wanted to end the payroll deduction. The City honored those requests.

While it is always prudent for the City to be concerned about liability, in this instance that concern is misplaced. Both parties agree that the focal point of the Janus decision was the constitutional First Amendment free speech rights of public sector employees who were *not members* of a labor organization but who were nonetheless contractually obligated to make payments to a union that served as the collective bargaining representative. Both parties further agree the Court concluded *nonmembers* cannot be compelled to make payments to their collective bargaining representative and must affirmatively and voluntarily consent to do so. The City nonetheless believes there is language in the Court's decision that indicates the "affirmative consent" standard is also applicable to dues checkoff for *union members*, and that the already existing written individual employee dues checkoff requests do not meet that standard. A close reading of the Court's decision does not support the City's belief.

The Court summarized its holding at page 48 of the decision which states: Neither an agency fee nor any other payment to the union may be deducted from a *nonmember ' s* wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, *nonmembers* are waiving their First Amendment rights, and such a waiver cannot be presumed. (emphasis added)

The Court's use of the term "nonmembers" rather than "employees" persuades me the scope of the Janus decision does not extend to dues checkoff provisions applicable to union members. Further, if the Court had intended the reach of its decision to extend to dues checkoff, it would have had to grapple with the question of whether voluntary pre-Janus checkoff authorizations (such as those present here) met the "affirmative consent" standard. There is no such discussion in the Court's decision. Therefore, I conclude that the City's interpretation of Janus is not correct.

The Union contends the City's actions warrant an award requiring City payment of the dues improperly not deducted and remitted, as well as City resumption of compliance with Article 3.01. The City asserts that even if its interpretation of Janus is rejected, the contractual hold harmless language in Article 3.01 insulates it from any financial liability.

The last sentence of Article 3.1 states "[t]he Employer shall be saved harmless in the event of any legal controversy with regard to the application of this provision." A conventional understanding of the intent of this language makes it applicable to a scenario in which the City faces a lawsuit as a consequence of honoring/following Article 3.1 – not where, as here, the City has decided not to honor/follow said Article. I have no persuasive basis for departing from the conventional understanding of this "hold harmless" language and conclude it does not insulate the City from remedial liability.

Should the hold harmless argument be rejected, the City then contends that all but one of the authorizations in dispute were nonetheless timely revoked and thus that its financial liability is very limited. Consistent with § 111.70 (3)(a)6, Stats., the authorizations in question allow for revocation once a year provided timely written notice was given to the City and the Union. As the Union points out, there is no evidence the Union received the required timely written notice and, on that basis alone, none of the revocations are valid.

Further, it does not appear[2] any of the revocations were received by the City "at least sixty (60) days, but not more than seventy-five (75) days" before the month and day the employee originally authorized dues checkoff. Therefore, none of the revocations are valid and none of them serve to reduce the City's liability.

Lastly, the City argues that I ought not order resumption of dues deductions because the employees in question would not be able to revoke their authorizations for potentially multiple years. As discussed above, by law and by the terms of these authorizations, individual employees have the right to revoke the dues checkoff authorizations once a year. Thus, the City's concern is unfounded.

In light of the foregoing, it is my award that the City immediately resume the deduction and remittance of dues to the Union and that the City shall pay the Union an amount equal to the dues the City failed to remit to the Union. I will retain jurisdiction over this matter for at least 60 days from the date of this award to resolve any remedial issues.

Peter G. Davis

Footnotes

1 While current Wisconsin law prohibits the existence of contractual dues checkoff provisions for most municipal public-sector unions, Section 111.70(3)(a)6, Stats. makes clear that such provisions remain viable for public safety and transit employee unions so long as 'the municipal employer has been presented with an individual order therefor, signed by the municipal employee personally, and terminable by at least the end of any year of its life....' The dues checkoff authorizations provided to the City by Union members are compliant with Wisconsin law.

2 Although the parties' briefs make reference to the timing of the communications from employees to the City, the communications themselves are not in the record.

End of Document