

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

2019 OCT -2 AM 11:17  
CLERK OF COURT  
B-11-17

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

ASEA'S REPLY IN SUPPORT OF MOTION FOR  
TEMPORARY RESTRAINING ORDER

1           Given the Court’s stated intention to rule on Alaska State Employees Association /  
2 AFSCME Local 52, AFL-CIO’s (“ASEA’s”) request for a TRO today, ASEA submits  
3 this brief reply to clarify a few points raised in the State and third-party defendants’  
4 opposition, filed yesterday at the close of business.

5  
6           First, the State and third-party defendants do not seriously dispute that their  
7 actions violate state law and the State’s collective bargaining agreement with ASEA.  
8 Their position rests on their assertion that their actions are required by *Janus v. AFSCME*,  
9 *Council 31*.<sup>1</sup> But they fail to even attempt to respond to the overwhelming judicial,  
10 administrative, and arbitral authority that uniformly rejects their expansive  
11 misinterpretation of *Janus*.<sup>2</sup> The State and third-party defendants also have no response  
12 to the Court’s explanation in *Janus* itself that, under its holding, “States can keep their  
13 labor-relations systems exactly as they are—only they cannot *force nonmembers* to  
14 subsidize public-sector unions.”<sup>3</sup> The Attorney General’s August 27, 2019 opinion letter  
15 and the Governor’s subsequent Administrative Order No. 312 address dues deductions  
16 that union members have already voluntarily and affirmatively authorized in writing. *See*  
17 *Metcalf* Decl., Sept. 25, 2019, Exhibit A (ASEA Membership and Dues Authorization  
18  
19  
20

21           <sup>1</sup> 138 S.Ct. 2448 (June 27, 2018).

22           <sup>2</sup> *See* ASEA’s Mot. for TRO and Prelim. Injunction at 15-16, 25-26 & nn.52, 91-92  
23 (citing authorities).

24           <sup>3</sup> 138 S.Ct. at 2485 n.27 (emphasis added); *see* ASEA’s Mot. for TRO and Prelim.  
25 Injunction at 27-31.

1 Card: "I hereby voluntarily authorize and direct my Employer to deduct [union dues]  
2 from my pay .... My decision ... is voluntary and not a condition of my employment."").  
3  
4 *Janus* does not require any change to the current system for authorizing and collecting  
5 those dues.

6 Second, the State and third-party defendants assert that ASEA members' written  
7 membership and dues authorization agreements are not enforceable contracts under state  
8 law because the members receive no consideration in return for their voluntary  
9 commitments to pay dues for a one-year period. State's Opp. to TRO at 25. To the  
10 contrary, ASEA members receive membership rights and members-only benefits from  
11 ASEA in exchange for their voluntary dues commitments. *See* Metcalfe Decl., Sept. 25,  
12 2019, ¶6 (summarizing some of those rights and benefits). The courts have consistently  
13 recognized that union membership/dues authorization agreements like those at issue here  
14 are binding contracts between unions and their members.<sup>4</sup>  
15  
16

17  
18 <sup>4</sup> *See Crockett v. NEA-Alaska*, 367 F. Supp. 3d 996, 1008 (D. Alaska 2019)  
19 ("Plaintiffs['] ... agreement to become union members in exchange for benefits created a  
20 contract between them and their unions that remains enforceable after *Janus*."); *Belgau v.*  
21 *Inslee*, 2018 WL 4931602, at \*5 (W.D. Wash. Oct. 11, 2018) ("*Belgau I*") ("Here, unlike  
22 in *Janus*, the Plaintiffs entered into a contract with the Union to be Union members and  
23 agreed in that contract to pay Union dues for one year."); *Smith v. Superior Court, Cty. of*  
24 *Contra Costa*, 2018 WL 6072806, at \*1 (N.D. Cal. Nov. 16, 2018) ("*Smith I*") (plaintiff  
25 who signed membership agreement "formed a contract with [the union] in which he  
agreed to pay dues for a year"); *Fisk v. Inslee*, 2017 WL 4619223, at \*4 (W.D. Wash.  
Oct. 16, 2017) (signed card with dues authorization agreement was "a valid contract"),  
*aff'd*, 759 F.App'x 632 (9th Cir. 2019); *Cooley v. Cal. Statewide Law Enforcement Assn.*,  
2019 WL 331170, at \*3 (Jan. 25, 2019) ("*Cooley I*"); *Bermudez v. Service Employees*

1 Third, while the State and third-party defendants do not dispute that under Alaska  
2 law union membership and the decision to authorize dues deductions are not conditions  
3 of employment, they allege that an unnamed State employee asserted to them that he or  
4 she was “told the dues were not optional.” State’s Opp. to TRO at 13. If that were true,  
5 and a State employee was told by her employer or by ASEA that joining ASEA and  
6 paying dues was a mandatory condition of employment, that statement would violate  
7 Alaska law, and the employee could bring a complaint and obtain relief before the Alaska  
8 Labor Relations Agency. AS 23.40.110(c) makes it an unfair labor practice for “[a] labor  
9 or employee organization or its agents” to “restrain or coerce ... an employee in the  
10 exercise of the right[]” to join or not join a union. *See also* AS 23.40.080. State law  
11 protects employees from coercion by vesting the Alaska Labor Relations Agency with  
12 authority to investigate, compel testimony, and adjudicate unfair labor practices charges.  
13 AS 23.40.110-.180. The First Amendment does not require more. Actions taken in  
14 violation of state law do not constitute state action that can violate the First Amendment.<sup>5</sup>

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16 Finally, the State and third-party defendants rely heavily on cases that are  
17 inapposite because they address “maintenance of membership” provisions in collective  
18 bargaining agreements that required union members to remain members *and* continue to

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22 *Inter. Union, Local 521*, 2019 WL 1615414, at \*2 (April 16, 2019); *see also Stines v.*  
23 *Oregon State Employees Ass’n*, 287 Or. 643, 651 (1979) (one-year dues deduction  
24 authorization signed by public sector employee was “her contract with the union”).

25  
26 <sup>5</sup> *See Collins v. Womancare*, 878 F.2d 1145, 1151-52 (9th Cir. 1989).

1 pay full dues for the duration of the collective bargaining agreement where the *employees*  
2 *themselves never agreed* to do so.<sup>6</sup> There is no “maintenance of membership” provision  
3 in ASEA’s collective bargaining agreement with the State. ASEA collects only those  
4 dues that an individual employee has voluntarily and affirmatively agreed to pay.<sup>7</sup>

6 For all the reasons set forth in ASEA’s Motion, the Court should grant a  
7 temporary restraining order halting implementation of the Attorney General’s August 27,  
8 2019 opinion letter (including the implementation of Administrative Order No. 312) and  
9 enjoining any changes to the State’s dues deduction procedures pending the resolution of  
10 this litigation.

12 DATED this 2nd day of October 2019, at Anchorage, Alaska.

14 DILLON & FINDLEY, P.C.  
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22 <sup>6</sup> See *McCahon v. Pa. Tpk. Comm’n*, 491 F.Supp.2d 522, 525 (M.D. Pa. 2007);  
23 *Debont v. City of Poway*, 1998 WL 415844, at \*5 (S.D. Cal. Apr. 14, 1998).

24 <sup>7</sup> See ASEA’s Mot. for TRO and Prelim. Injunction at 7-9, 34-37; *Fisk v. Inslee*,  
25 759 F.App’x 632, 633 (9th Cir. 2019).

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### CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 2, 2019, a true and correct copy of the foregoing document was served by:

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