

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SALVATORE PRESTA, MICHAEL GEBERT,
KIMBERLY LOVE, JOEL MARCANO, and
MARGO MORTON,

Plaintiffs,

v.

COOK COUNTY COLLEGE TEACHERS
UNION AFT LOCAL 1600; SOUTH
SUBURBAN COLLEGE; ATTORNEY
GENERAL KWAME RAOUL, in his official
capacity, ANDREA R. WAINTROOB, chair,
JUDY BIGGERT, GILBERT O'BRIEN, JR.,
LYNNE SERED, and LARA SHAYNE, in
their official capacities as members of
the Illinois Educational Labor Relations
Board

Defendants.

No. 20-CV-2723

COMPLAINT

1. This action challenges Defendants' unlawful scheme of withholding money from the paychecks of public employees to fund the speech of a labor union without those employees' affirmative consent and appointing that union to speak for unwilling public employees.

2. Government employees have a First Amendment right not to be compelled by their employer to pay any fees to that union unless an employee "affirmatively consents" to waive that right. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018). "[W]aiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by 'clear and compelling' evidence." *Id.*

3. The union dues deduction authorizations signed by Plaintiffs before the Supreme Court's decision in *Janus* do not constitute affirmative consent to waive Plaintiffs' First Amendment right not to pay union dues or fees because they do not

meet the Court's standard for waiver. Therefore, Defendants have violated Plaintiffs' First Amendment rights by withholding union dues from their paychecks.

4. Further, Illinois state law requires that a union serve as an exclusive bargaining agent for all employees in a bargaining unit, including those employees who are not members of the union. 115 ILCS 5/3(b).

5. The First Amendment protects "[t]he right to eschew association for expressive purposes," *Janus*, 138 S. Ct. at 2463, and "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Roberts v. United States Jaycees*, 468 U. S. 609, 623 (1984).

6. Plaintiffs do not wish to associate with Defendant Cook County College Teachers Union AFT Local 1600 ("the Union"), including having the Union serve as their exclusive bargaining representative. Yet, Defendants, under color of state law, are forcing Plaintiffs to associate with the Union against their will. This constitutes "a significant impingement on associational freedoms that would not be tolerated in other contexts." *Janus*, 138 S. Ct. at 2478.

7. Therefore, Plaintiffs bring this case under 42 U.S.C § 1983 and 28 U.S.C. § 2201(a), seeking declaratory and injunctive relief, as well as damages in the amount of the dues previously deducted from their paychecks.

PARTIES

8. Plaintiffs are employees of Defendant South Suburban College ("the College"), in the positions of police officers, detective, and dispatchers.

9. Defendant Cook County College Teachers Union AFT Local 1600 ("the Union") is a labor union with offices in this district at 1901 West Carroll Avenue, Suite 200, Chicago, Illinois 60612. The Union is a labor organization under Section 2(c) of the Illinois Educational Labor Relations Act, 115 ILCS 5/2(c).

10. Defendant College is located at 15800 South State Street, South Holland, Illinois 60473-1200. It is an educational employer under Section 2(a) of the Illinois Educational Labor Relations Act, 225 ILCS 5/2(a).

11. Defendant Attorney General Kwame Raoul (“the Attorney General”) is sued in his official capacity as the representative of the State of Illinois charged with the enforcement of state laws, including the Illinois Educational Labor Relations Act, which requires the Union to be the “exclusive representative” of Plaintiffs, whether they are union members or not. 115 ILCS 5/3(b). He has an office located at 100 West Randolph Street, Chicago, Illinois 60601.

12. Defendant Andrea Waintroob is sued in her official capacity as Chair of the Illinois Educational Labor Relations Board (“IELRB”), and Defendants Judy Biggert, Gilbert O’Brien Jr., Lynne Sered, and Lara Shayne are all sued in their official capacities as members of the IELRB. The IELRB is charged under the Illinois Educational Labor Relations Act with certifying employee representatives for collective bargaining purposes (115 ILCS 5/8), determining the appropriateness of the bargaining unit (115 ILCS 5/7), and certifying only one employee representative per bargaining unit (115 ILCS 5/8). The IELRB has certified the Union as the exclusive bargaining representative for the employee unit which includes all Plaintiffs. The IELRB has an office located at 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103.

JURISDICTION AND VENUE

13. This case raises claims under the First and Fourteenth Amendments of the U.S. Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

14. Venue is proper because a substantial portion of the events giving rise to the claims occurred in the Northern District of Illinois. 28 U.S.C. 1391(b)(2).

FACTS

Defendants are acting under color of state law.

15. Acting under color of state law, the College and the Union entered into a collective bargaining agreement.

16. The Illinois Educational Labor Relations Act provides that “Employers shall make payroll deductions of employee organization dues, initiation fees, assessment, and other payments for an employee organization that is the exclusive representative . . . in accordance with the terms of an employee’s written authorization.” Such deductions “shall be paid to the exclusive representative.” 115 ILCS 5/11.1.

17. The Act further provides that “the exclusive representative and an educational employee may agree to reasonable limits of the right of the employee to revoke their [dues deduction] authorization.” 115 ILCS 5/11.1.

18. In addition, the Act states that “the educational employer must commence dues deductions . . . no later than 30 days after receiving notice from the employee organization.” 115 ILCS 5/11.1.

19. The collective bargaining agreement requires the College to deduct from the employee's wages the required amount of monthly union dues and remit them to the Union.

20. The College acted under color of state law when it deducted fees from employees’ paychecks and transferred that money to the Union.

21. As a joint participant in that arrangement, the Union also acted under color of state law. *See Janus v. AFSCME Council 31*, 942 F.3d 352, 361 (7th Cir. 2019).

Plaintiffs seek to resign from and stop paying dues to the Union.

22. All Plaintiffs are employees of the College and have signed union membership cards with the Union prior to the Supreme Court's *Janus* decision. Their cards all provide that Plaintiffs' dues deductions would occur "regardless of whether [Plaintiffs are] or remain a member of the Union," and that in order to withdraw from the Union, Plaintiffs must "send[] written notice to the Union by the United States Postal Service postmarked between August 1 and August 31."¹ **Exhibit A.**

23. Plaintiff Salvatore Presta joined Defendant Union prior to June 27, 2018. His dues deduction started in December of 2010. Defendant College withheld union dues from Plaintiff Presta's paycheck on behalf of Defendant Union until September 1, 2019.

24. Plaintiff Michael Gebert joined Defendant Union prior to June 27, 2018. His dues deduction started in May of 2018. Defendant College withheld union dues from Plaintiff Gebert's paycheck on behalf of Defendant Union until September 1, 2019.

25. Plaintiff Kimberly Love joined Defendant Union prior to June 27, 2018. Her dues deduction started in roughly May of 1992. Defendant College withheld union dues from Plaintiff Love's paycheck on behalf of Defendant Union until September 1, 2019.

26. Plaintiff Joel Marcano joined Defendant Union prior to June 27, 2018. His dues deduction started in May of 2018. Defendant College withheld union dues from Plaintiff Marcano's paycheck on behalf of Defendant Union until September 1, 2019.

¹ Plaintiffs Morton and Marcano are not in possession of union cards that they signed, but, upon information and belief, they signed union cards substantially similar to the other Plaintiffs, and Defendant Union is in possession of these union cards.

27. Plaintiff Margo Morton joined Defendant Union prior to June 27, 2018. Her dues deduction began in 2007. Defendant College withheld union dues from Plaintiff Morton's paycheck on behalf of Defendant Union until September 1, 2019.

28. On June 27, 2018, the U.S. Supreme Court decided *Janus v. AFSCME*, 138 S. Ct. 2448 (2018). That opinion held that "States and public-sector unions may no longer extract agency fees from nonconsenting employees."

29. Between November 6, 2018, and November 8, 2018, each of the Plaintiffs sent a letter to the Union resigning from the Union and revoking all automatic union dues deductions. **Exhibit B.**

30. In several letters dated November 15, 2018, the president of the Union informed the Plaintiffs that their "dues revocation window" is between August 1 and August 31, and therefore their dues would continue to be deducted until that time. The president also stated in this letter that the basis for the continued unconsented deduction of dues was the agreements Plaintiffs signed prior to the *Janus* decision. **Exhibit C.**

31. The Union notified the college and effective September 1, 2019, the College ceased deducting union dues from Plaintiffs on behalf of the Union.

32. The College has deducted union dues from all Plaintiffs' paychecks and remitted that money to the Union between the time that Plaintiffs joined the Union and September 1, 2019.

The Union is Plaintiffs' exclusive bargaining representative.

33. Under the Illinois Educational Labor Relations Act, a union selected by public employees in a unit appropriate for collective bargaining purposes is the exclusive representative of all the employees in such unit to bargain on wages, hours, and terms and conditions of employment. 115 ILCS 5/3.

34. Once a union is designated the exclusive representative of all employees in a bargaining unit, it negotiates wages, hours, and terms of conditions of employment for all employees, even employees who are not members of the union or who do not agree with the positions the union takes on those subjects.

35. Defendant Union is the exclusive representative of Plaintiffs in the bargaining unit, with respect to wages, hours, and terms and conditions of employment, pursuant to 115 ILCS 5/3, 5/7, and 5/8.

COUNT I

Defendants College and Union violated Plaintiffs' rights to free speech and freedom of association protected by the First Amendment of the United States Constitution.

36. The allegations contained in all preceding paragraphs are incorporated herein by reference.

37. Requiring a government employee to pay money to a union violates that employee's First Amendment rights to free speech and freedom of association unless the employee "affirmatively consents" to waive his or her rights. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018). "[W]aiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by 'clear and compelling' evidence." *Id.*

38. Plaintiffs never provided affirmative consent to waive their right not to pay money to Defendant Union.

39. The actions of Defendants College and Union constitute a violation of Plaintiffs' First Amendment rights to free speech and freedom of association to not join or financially support a union without their affirmative consent.

40. The union membership cards signed by Plaintiffs prior to the *Janus* decision do not constitute a waiver of Plaintiffs' rights not to pay money to the Union because they were not waived with knowledge of Plaintiffs' rights, were not freely given, and cannot be shown by clear and compelling evidence.

41. At the time Plaintiffs signed the union membership cards, they were given an unconstitutional choice of either paying union dues as a member or paying agency fees as a non-member, and were not given the option of paying nothing to the Union. *Janus* made clear that this false dichotomy is unconstitutional. *Janus*, 138 S. Ct. at 2486.

42. If Plaintiffs had a choice between paying union dues as a member of the Union or paying nothing to the Union as a non-member, they would have chosen to pay nothing as a non-member.

43. Plaintiffs have no adequate remedy at law.

COUNT II

State law forces Plaintiffs to associate with Defendant Union in violation of their First Amendment rights to free speech and freedom of association.

44. The allegations contained in all preceding paragraphs are incorporated herein by reference.

45. "Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any such effort would be universally condemned." *Janus*, 138 S. Ct. at 2463.

46. The Supreme Court has repeatedly affirmed that "[f]orcing free and independent individuals to endorse ideas they find objectionable is always

demeaning, and for this reason . . . a law commanding ‘involuntary affirmation’ of objected-to beliefs would require ‘even more immediate and urgent grounds’ than a law demanding silence.” *Janus*, 138 S. Ct. at 2464 (2018) (quoting *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 633 (1943)).

47. Therefore, courts should scrutinize compelled associations strictly, because “mandatory associations are permissible only when they serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.” *Knox v. SEIU*, 567 U.S. 298, 310 (2012).

48. In the context of public sector unions, the Supreme Court has recognized that “[d]esignating a union as the employees’ exclusive representative substantially restricts the rights of individual employees. Among other things, this designation means that individual employees may not be represented by any agent other than the designated union; nor may individual employees negotiate directly with their employer.” *Janus*, 138 S. Ct. at 2460.

49. Under the Illinois Educational Labor Relations Act, the State of Illinois allows only one union representative to collectively bargain with a government employer for each employee bargaining unit. 115 ILCS 5/8.

50. The IELRB has certified Defendant Union as Plaintiffs’ exclusive representative for collective bargaining purposes, and the College has accepted this certification.

51. Under color of state law, Defendant Union has acted as Plaintiffs' exclusive representative in negotiating the terms and conditions of their employment.

52. Under color of state law, the College has negotiated the terms and conditions of Plaintiffs' employment with Defendant Union.

53. This designation compels Plaintiffs to associate with the Union and through its representation of them compels them to petition the government with a certain viewpoint, despite that viewpoint being in opposition to Plaintiffs' own goals and priorities.

54. The exclusive representation provisions of 115 ILCS 5/3, 5/7, and 5/8 are, therefore, unconstitutional abridgements of Plaintiffs' right under the First Amendment not to be compelled to associate with speakers and organizations without their consent.

55. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

a. Enter a judgment declaring that the union membership cards signed by Plaintiffs do not meet the standard for affirmative consent required to waive First Amendment rights announced in *Janus*;

b. Enter a judgment declaring that Defendant College's practice of withholding union dues from Plaintiff's paycheck in the absence of affirmative consent is unconstitutional;

- c. Enter a judgment declaring that the exclusive representation provided for in 115 ILCS 5/3, 5/7, and 5/8 is unconstitutional;
 - d. Enjoin Defendant Attorney General Kwame Raoul from enforcing the provisions of 115 ILCS 5/3, 5/7, and 5/8;
 - e. Enjoin Defendants Andrea R. Waintroob, Judy Biggert, Gilbert O'Brien Jr., Lynne Sered, and Lara Shayne, in their capacity as members of the IELRB, from certifying a union as the exclusive representative in a bargaining unit;
 - f. Award damages against Defendant Union for all union dues collected from Plaintiffs without their affirmative consent;
 - g. Award Plaintiffs their costs and attorneys' fees under 42 U.S.C. § 1988;
- and
- h. Award any further relief to which Plaintiffs may be entitled.

Dated: May 5, 2020

Respectfully Submitted,

**Salvatore Presta, Michael Gebert,
Kimberly Love, Joel Marcano, and
Margo Morton**

By: /s/ Jeffrey Schwab

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