

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

ARIADNA RAMON BARO

Plaintiff,

v.

LAKE COUNTY FEDERATION OF
TEACHERS LOCAL 504, IFT-AFT/AFL-
CIO and WAUKEGAN COMMUNITY
UNIT SCHOOL DISTRICT #60

Defendants.

No. _____

COMPLAINT

1. Government employees have a First Amendment right not to be compelled to pay any dues or fees to a union unless an employee affirmatively consents to waive that right. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018).

2. “A waiver is ordinarily an intentional relinquishment or abandonment of a *known* right or privilege.” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (emphasis added). In order to ensure that the person knows of his rights, *Johnson* imposed an affirmative obligation on the responsible official to inform the person of those rights before asking the person whether he wished to waive them. *Id.* at 465.

3. Plaintiff Ariadna Ramon Baro is employed by Defendant Waukegan Community Unit School District #60 (the “District”) located in Waukegan, Illinois. When Ms. Baro began her employment with the District in August 2019, neither the District nor Lake County Federation of Teachers, Local 504, IFT-AFT/AFL-CIO (the “Union” or “Local 504”) informed her of her right *not* to pay dues or fees to Local 504. Instead, a presentation by representatives of Local 504 made at her orientation on August 20, 2019 – more than a year after *Janus* was decided – left Ms. Baro

with the impression that she was required to join and pay money to Local 504. She could not, therefore, have made a knowing and intelligent waiver of her right to not pay money to the union.

4. Ms. Baro, therefore, brings 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 her paychecks.

PARTIES

5. Plaintiff Ariadna Ramon Baro is J-1 Visa holder employed by the District as an English-as-a-second-language teacher for high school students. She is from Barcelona, Spain. The 2019-2020 school year is her first of three years that she will be employed by the District under a cultural exchange program.

6. Defendant Lake County Federation of Teachers, Local 504, IFT-AFT/AFL-CIO is a labor union with offices at 248 Ambrogio Drive, Gurnee, Illinois 60031. Local 504 is the certified exclusive representative for the bargaining unit to which Ms. Baro belongs. The Union is a labor organization under Section 2(c) of the Illinois Educational Labor Relations Act, 115 ILCS 5/2(c).

7. Defendant District has offices at 1201 North Sheridan Road, Waukegan, Illinois 60085. It serves nearly 17,000 students in preschool through grade twelve through its fifteen elementary schools, five middle schools, and a high school program. It is an educational employer under Section 2(a) of the Illinois Educational Labor Relations Act, 115 ILCS 5/2(a).

JURISDICTION AND VENUE

8. 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.

9. 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

10. Plaintiff Ariadna Ramon Baro is employed by the District as a as an English-as-a-second-language teachers for high school students. She is a J-1 Visa holder from Barcelona, Spain employed by the District under a cultural exchange program. The 2019-2020 school year is her first of three years that she will be employed by the District.

11. In August 2019, she attended an orientation meeting held by the District. During the orientation, the District provided information and training. The District also gave Local 504 time at the orientation meeting to speak about the union. During that presentation, Local 504's representative told them how much money they would have to pay and gave them a form to sign. Ms. Baro was not told that joining or paying the union was optional. Believing it to be required, she filled out the union membership form and turned it in to the representative. **Exhibit A**. At the time she signed the union membership agreement, she was unaware of the Supreme Court's *Janus* decision.

12. A few days later, Ms. Baro learned that union membership and paying the union was optional, not required.

13. On August 30, 2019, she sent letters both to the District and the Union resigning her membership. **Exhibits B** and **C**.

14. On September 13, 2019, a pair of the union representatives emailed the teachers of Ms. Baro's school, including Ms. Baro, to invite them to join the union. One of the representatives, Nathaniel Weber, stated "Just to clarify, you will pay union dues regardless of whether or not you are a member." **Exhibit D**. This statement by Mr. Weber is not true, but Ms. Baro did not know it was not true. In fact, the Supreme Court held in *Janus*, 138 S. Ct. at 2486, that requiring a government employee to pay money to a union with his or her consent violates the First Amendment.

15. Ms. Baro believed the statement by Mr. Weber that she would have to pay dues regardless of her union membership status meant that her request to resign was effectively denied.

16. In January 2020, on her second paycheck of the month, the District began deducting dues from Ms. Baro's paycheck and remitting them to the Union.

17. On February 3, Ms. Baro again contacted her union representative and the payroll department of the District and explained that she wanted to resign her membership and stop paying dues. The payroll department of the District told Ms. Baro that they could not stop dues and she must speak to the Union. The Union President, Andy Friedlieb, contacted her explaining that she would have to wait until August to resign her membership and stop union dues from being deducted. **Exhibit E.**

18. The District continues to withhold union dues from Ms. Baro's paycheck on behalf of the Union.

COUNT I

By holding Ms. Baro to the union card she signed without a knowing waiver of her rights, Local 504 and the District are violating her First Amendment rights to free speech and freedom of association.

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

20. Requiring a government employee to join a union or to pay dues or fees to a union violates that employee's First Amendment rights to free speech and freedom of association unless the employee provides "affirmative consent . . . freely given" to waive his or her rights. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018). "[S]uch a waiver cannot be presumed." *Id.* "A waiver is ordinarily an intentional relinquishment or abandonment of a *known* right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (emphasis added).

21. In order to ensure that the person knows of his rights, *Johnson* imposed an affirmative obligation on the responsible official to inform the person of those rights before asking the person whether he wished to waive them. *Id.* at 465.

22. The responsibility to make a person aware of their rights before he or she can choose to waive them is especially acute when the circumstances otherwise create pressure for

them to forego their rights, *see Estelle v. Smith*, 451 U.S. 454, 467 (1981), or where there is a substantial power imbalance between the parties, *see Fuentes v. Shevin*, 407 U.S. 67, 95 (1972).

23. Similarly, union officials in agency shops were obligated before *Janus* to make new employees aware of their First Amendment right to pay a fair-share fee in lieu of full membership. *Marquez v. Screen Actors Guild*, 525 U.S. 33, 43 (1998). If a union was required to provide notice of the employee's right to be a fair-share payer, then it is at least obligated now to not withhold dues from an employee unless that employee has been informed of his or her right to not pay dues or fees to the union.

24. Thus, under the doctrine of *Janus*, *Johnson*, and *Marquez*, public employers and exclusive-representative unions cannot presume government workers have knowledge of their right not to pay money to the union under *Janus*. Public employers and exclusive representative unions may not withhold union dues or fees from public workers unless those workers have been informed, and thus have knowledge of their right not to pay dues or fees to a union.

25. The District and the Union failed to meet these constitutional standards in Ms. Baro's case. She was not informed by either the Union or the District of her right to not join or pay money to the Union. As a Spanish citizen working on a J-1 visa, Ms. Baro would especially have no reason to have knowledge of American constitutional law, making it all the more imperative that the District and the Union inform her of her rights. To make matters worse, Ms. Baro was later given false information by a union representative, asserting (wrongly) that teachers would have to pay union dues regardless of whether they were members or not.

26. Rather than being empowered with full information to make an informed decision about whether to waive her *Janus* rights, she was rushed into a pressured decision with incomplete information. When she contacted the Union, informing them that she had not understood her *Janus* rights, she was told that she would have to continue paying dues until August 2020.

27. This dues deduction until a limited "opt-out window" is authorized by 115 ILCS 5/11.1(a).

28. As a result, the District is deducting dues from Ms. Baro's paycheck and giving them to Local 504 under color of state law.

29. Local 504 is acting in concert with the District to collect union dues from Ms. Baro's paycheck without her knowing waiver and refuses to allow her to cancel her dues. In doing so, Local 504 is acting under color of state law.

30. The actions of Local 504 and the District constitute a violation of Ms. Baro's First Amendment rights to free speech and freedom of association not to join or financially support a union without her affirmative consent freely given after knowing waiver.

31. Ms. Baro is entitled to an injunction under 42 U.S.C. § 1983 ordering the District to immediately stop deducting union dues from her paycheck.

32. Ms. Baro is entitled under 42 U.S.C. § 1983 to damages in the amount of all dues deducted and remitted to Local 504 from April 2019 to present.

33. Ms. Baro is entitled to a declaration that the District and Local 504 may not withhold union dues or fees from government employees unless those employees have been informed of their First Amendment rights to not pay money to the union.

COUNT II

In the alternative, Local 504 and the District are violating Ms. Baro's First Amendment rights by failing to respect her right to promptly withdraw her waiver.

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

35. *Janus* sets the baseline for public employees as nonmembership in a union, and characterizes a decision to join a union as a waiver of the employee's First Amendment rights, citing *Johnson v. Zerbst*. 138 S. Ct. at 2486.

36. In addition to the body of doctrine requiring knowing, intelligent waiver, *Johnson's* progeny also spell out a right to promptly withdraw waiver of a constitutional right. *United States v. Mortensen*, 860 F.2d 948, 950 (9th Cir. 1988). Consent to waive a constitutional right may be

withdrawn if timely made, in good faith and in circumstances where no substantial harm would occur to another party. *See United States v. Neville*, 985 F.2d 992, 1000 (9th Cir. 1993).

37. Ms. Baro promptly withdrew her waiver of her right not to join the union. She wrote the union within 10 days saying she did not want to become a member after learning that she did not have to join the Union.

38. Her withdrawal of waiver, if the Union and the District had respected it, would not have caused substantial harm to either. It would have been the simplest administrative matter for the union to cancel her membership application. No payroll deduction had been processed at that point and no money withdrawn. The union could have respected her decision without anything more than mild inconvenience, much less substantial harm.

PRAYER FOR RELIEF

Ms. Baro respectfully requests that this Court:

a. Declare that her signing of a union card cannot provide a basis for her affirmative consent to waive her First Amendment rights upheld in *Janus* because such authorization was given without knowing and intelligent waiver of her First Amendment rights;

b. Declare that the Union and the District may not withhold union dues or fees from public workers unless those workers have been informed, and thus have knowledge of their right not to pay dues or fees to a union;

c. Alternatively, declare that her withdrawal of her waiver was timely given, made in good faith, and would not have caused substantial harm to other parties and therefore should have been respected by Local 504;

d. Enjoin the District from continuing to deduct Local 504 union dues from her paycheck;

e. Award damages against Local 504 for all union dues collected from her;

f. Award her costs and attorneys' fees under 42 U.S.C. § 1988; and

g. Award her any further relief to which she may be entitled and such other relief as this Court may deem just and proper.

Dated: April 3, 2020

Respectfully submitted,

/s/ Jeffrey M. Schwab

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