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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

Alfred Sweet,

Plaintiff,

v.

California Association of Psychiatric Technicians; Stephanie Clendenin, in her official capacity as Acting Director of the California Department of State Hospitals; and Xavier Becerra, in his official capacity as Attorney general of California,

Defendants.

Case No. 2:19-cv-00349-JAM-AC

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CAPT'S MOTION TO DISMISS COUNT II OF THE COMPLAINT

Hearing Date: June 18, 2019
Hearing Time: 1:30 p.m.
Location: Courtroom 6

Judge: The Hon. John A. Mendez

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INTRODUCTION

The Ralph C. Dills Act ("Dills Act") is the California law governing labor relations between California state employees and the executive branch of California state government. The Dills Act provides for a single employee organization to act as the exclusive representative of employees in a bargaining unit, and if those employees choose to do so, select a union representative to negotiate and oversee the implementation of a collective bargaining agreement that covers the entire unit. *See* Cal. Gov't Code §3515.5 *et seq*.

Plaintiff Alfred Sweet is an Atascadero State Hospital ("ASH") employee who argues in Count II of the Complaint that the State of California's recognition of defendant California Association of Psychiatric Technicians ("CAPT") as Bargaining Unit 18's exclusive representative violates his First Amendment rights. However, binding Supreme Court precedent rejects Plaintiff's position. In *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), the Supreme Court held that that the framework of exclusive representation "in no way restrained [non-union members'] freedom to speak … or their freedom to associate or not to associate with whom they please, including the exclusive representative." *Id*. at 288; *see also id*. at 291 (the plaintiffs in *Knight* were "[u]nable to demonstrate an infringement of any First Amendment right").

Therefore, Count II should be dismissed as failing to state a viable claim.[1]

BACKGROUND

I. The Ralph C. Dills Act

The Dills Act was enacted in 1977 "to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours,

[1] A similar First Amendment challenge is being made in connection with EERA exclusive representative collective bargaining in the case of *Few v. UTLA*, No. 2:18-cv-9531-CJC-JEM. A motion to dismiss that claim is pending in *Few*.

and other terms and conditions of employment between the state and public employee organizations." Cal. Gov't Code §3512. The Dills Act also provides for "the right of state employees to join organizations of their own choosing and be represented by those organizations in their employment relations with the state." *Id.*

The Dills Act allows state employees "to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to permit the exclusive representative to receive financial support from those employees who receive the benefits of this representation." *Id*. After the exclusive representative is certified, "the recognized employee organization is the only organization that may represent that unit in employment relations with the state." Cal. Gov't Code § 3515.5.

In the pre-*Janus* landscape, once a union had been certified, employees contained in the bargaining unit chose whether to join the union and pay dues or pay a "fair share fee." Cal. Gov't Code § 3515.7; *see also* Cal. Gov't Code § 3515. State employers then deduct dues from the paychecks of employees and remit those funds to the union. Cal. Gov't Code §§ 1152, 3515.6, and 3515.7. Employee requests to cancel or change their dues deductions are to be directed to the union rather than the employer. Cal. Gov't Code §1157.12. Employers are instructed to rely on the union to determine which employees have authorized the deduction of dues and which have not. *Id*.

A certified union has the authority to set "reasonable" terms by which employees may withdraw from union membership. Cal. Gov't Code § 3515.5; *see also* Cal. Gov't Code § 3515. These terms allow union members to withdraw during a 30-day window prior to the expiration of the union memorandum of understanding with the public employer. *See* Cal. Gov't Code § 3513(i).

The Dills Act prohibits the exclusive representative, when acting in that capacity, from discriminating against employees who choose not to become union members by requiring such representatives to "fairly represent each and every employee in the … unit." *Id.* §3544.9; *see also County of L.A.*, 56 Cal.4th at 931 ("[A] union elected as an exclusive bargaining agent owes a duty of fair representation to all employees in the bargaining unit it represents, including employees who are not union members.") (emphasis in original). The Dills Act further provides that individual public employees "may at any time present grievances to [their] employer, and have those grievances adjusted, without the intervention of the exclusive representative[.]" Id. §3543(b).

On June 27, 2018, the framework for collecting "fair share fees" was upended with the Supreme Court's ruling in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018). That case established that public employees who choose not to become members of their unions are no longer required to pay fair share fees. 138 S.Ct. at 2486. Despite the abolishment of fair share fees, an exclusive representative under the Dills Act remains obligated to represent non-members and must represent non-members fairly.

II. Plaintiff's Lawsuit

Plaintiff is a psychiatric technician employed by the Department of State Hospitals, working at the Atascadero State Hospital in Atascadero, CA, and he is a member of Bargaining Unit 18, represented by CAPT. Complaint ¶3 (Doc. 1). After the *Janus* ruling on June 27, 2018, Plaintiff attempted to resign from CAPT by submitting a letter of resignation. *See, e.g., id.* ¶23. (For purposes of this motion, CAPT assumes the truth of these allegations.)

Plaintiff's Complaint brings claims against CAPT, DSH Director Stephanie Clendenin, and California Attorney General Xavier Becerra. Count I alleges that CAPT is refusing to allow plaintiff to withdraw from the union and terminate the deduction of membership dues from his

paycheck. *Id*. ¶¶33-50. Count II alleges that the designation of CAPT as the exclusive representative of Sweet's bargaining unit violates his First Amendment rights of speech and association because he does not want to be represented by CAPT. *Id*. ¶¶51-61.

LEGAL STANDARD

In order to avoid dismissal under Rule 12(b)(6), a plaintiff must plead facts sufficient to "'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id*.

"In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv*., 572 F.3d 962, 969 (9th Cir. 2009).

I. *Knight* Is Established Supreme Court Precedent Regarding Exclusive Representation-Based Collective Bargaining in Public Employment

Count II alleges that CAPT's designation as the exclusive representative of his bargaining unit forces "compels Mr. Sweet to associate with the union and, through its representation of him, it compels him to petition the government with a certain viewpoint, despite that viewpoint being in opposition to Mr. Sweet's own goals and priorities for the State of California." Complaint ¶59 (Doc. 1). According to plaintiff, this results in "an unconstitutional abridgment of Mr. Sweet's right under the First Amendment not to be compelled to associate with speakers and organizations without his consent." *Id*. ¶60.

Plaintiff is now attempting to use Supreme Court's issuance of *Janus* as an opportunity to challenge California's system of exclusive representative collective bargaining as provided for in the Dills Act. However, Plaintiff's theory that exclusive representation collective bargaining violates

the First Amendment rights of bargaining unit workers is foreclosed by the Supreme Court's decision in *Knight*, as every court to consider the issue thus far has found.

A. *Knight* and *Mentele* Foreclose Plaintiff's First Amendment Claims

In *Knight*, the Supreme Court held that a system of exclusive union representation does not violate the First Amendment rights of individuals who are not members of the union. 465 U.S. at 273, 278-79. The state law granted their bargaining unit's elected representative the exclusive right to "meet and negotiate" over employment terms. *Id*. at 274. The state law also granted the unit's representative the exclusive right to "meet and confer" with campus administrators about employment-related policy matters outside the scope of mandatory negotiations. *Id*. at 274-75. Only the designated representative had the right to participate in the "meet and negotiate" and "meet and confer" processes, and the designated representative's views were treated as the faculty's "official collective position." *Id*. at 273, 276.

The district court rejected the *Knight* plaintiffs' constitutional challenge with respect to the meet-and-negotiate process. *See id*. at 278. On appeal, the Supreme Court summarily affirmed the lower court's rejection of the *Knight* plaintiffs' "attack on the constitutionality of exclusive representation in bargaining over terms and conditions of employment." *Id*. at 278-79; *Knight v. Minnesota Cmty. Coll. Faculty Ass'n*, 460 U.S. 1048 (1983). The district court also concluded that the meet-and-confer process violated the rights of faculty members who had not joined the union that served as their exclusive representative. In a separate, full opinion, the Supreme Court reversed the district court's judgment with respect to the meet-and-confer process, holding that even with respect to matters not involving terms and conditions of employment subject to bargaining, exclusive representation does not infringe the First Amendment speech or associational rights of non-member employees. *Knight*, 465 U.S. at 278, 288.

The *Knight* Court began its analysis by recognizing that government officials have no obligation to negotiate or confer with faculty members, and that the meet-and-confer process (like the meet-and-negotiate process) was not a "forum" to which plaintiffs had any First Amendment right of access. Id. at 280-82. The Court explained that non-members also had no constitutional right "as members of the public, as government employees, or as instructors in an institution of higher education" to "force the government to listen to their views." *Id*. at 283. The government, therefore, was "free to consult or not to consult whomever it pleases." *Id*. at 285; *see also Smith v. Arkansas State Highway Employees*, 441 U.S. 463, 464-66 (1979) (government did not violate speech or associational rights of union supporters by accepting grievances filed by individual employees while refusing to recognize union's grievances).

The *Knight* Court then went on to consider whether Minnesota's public employee labor relations act violated those First Amendment rights that non-members could properly assert—namely, the right to speak and the right to "associate or not to associate." 465 U.S. at 288. The Court concluded that Minnesota's law "in no way restrained appellees' freedom to speak on any education-related issue or their freedom to associate or not to associate with whom they please, including the exclusive representative." *Id*. (emphasis added).

Non-members' speech rights were not infringed by Minnesota's system of exclusive representation because, while the exclusive representative's status "amplifie[d] its voice in the policymaking process," that amplification did not "impair[] individual instructors' constitutional freedom to speak." As the Court explained, such amplification is "inherent in government's freedom to choose its advisers" and "[a] person's right to speak is not infringed when government simply ignores that person while listening to others." *Id*.

The Supreme Court found no infringement of non-members' associational rights because they were "free to form whatever advocacy groups they like" and were "not required to become

members" of the organization acting as the exclusive representative. 465 U.S. at 289. The Court acknowledged that non-members may "feel some pressure to join the exclusive representative" to serve on its committees and influence its positions. *Id*. at 289-90. But the Court held that this "is no different from the pressure to join a majority party that persons in the minority always feel." *Id*. at 290. Such pressure "is inherent in our system of government; it does not create an unconstitutional inhibition on associational freedom." *Id*.

Knight was clear in its determination that exclusive representation did not violate the speech or associational rights of non- members of a union that has been designated as their exclusive representative. The Court held that it does not do so—thereby foreclosing the claim plaintiff asserts in Count II. *See id*. at 288 ("[T]he First Amendment guarantees the right both to speak and to associate. *Appellees' speech and associational rights, however, have not been infringed* ...") (emphasis added); *id*. at 290 n.12 (non-members' "speech and associational freedom have been wholly unimpaired").

The Ninth Circuit recently agreed that *Knight* forecloses the claim that exclusive representative collective bargaining, by itself, violates the First Amendment. *See Mentele v. Inslee*, 916 F.3d 783, 2019 WL 924815, at *4-5 (9th Cir. 2019). Not only is *Mentele* binding precedent, but every other court to consider the issue has concluded that *Knight* forecloses any claim that a democratic system of exclusive representative collective bargaining violates the First Amendment. *See Bierman v. Dayton*, 900 F.3d 570 (8th Cir. 2018); *Hill v. Serv. Employees Int'l Union*, 850 F.3d 861 (7th Cir. 2017), *cert. denied*, 138 S.Ct. 446 (2017); *Jarvis v. Cuomo*, 660 F. App'x 72 (2d Cir. 2016), cert. denied, 137 S.Ct. 1204 (2017); *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir. 2016), cert. denied, 136 S.Ct. 2473 (2016); *Reisman v. Associated Faculties*, 2018 WL 6312996 (D. Me. Dec. 3, 2018); *Uradnik v. Inter Faculty Organization*, 2018 WL 4654751 (D.

Minn. Sept. 27, 2018), *aff'd*, No. 18-3086 (8th Cir. Dec. 3, 2018); *Mentele v. Inslee*, 2016 WL 3017713 (W.D. Wash. May 26, 2016).

B. *Janus* Did Not Disturb Settled Precedent that Public Employers May Use Exclusive Representative Collective Bargaining

Plaintiff relies on the Supreme Court's recent decision in *Janus*. *See* Complaint ¶¶52, 55-56 (Doc. 1). But *Janus* held only that public employees who are not union members cannot be required to pay "fair share" or "agency" fees to an exclusive representative for collective bargaining representation. Janus did not hold that exclusive representation itself violates the First Amendment. 138 S.Ct. at 2460. As the Eighth Circuit recently explained, *Janus* "never mentioned *Knight*, and the constitutionality of exclusive representation standing alone was not at issue." *Bierman*, 900 F.3d at 574.

However, the *Janus* decision expressly distinguished between forcing employees to pay fair share fees to an exclusive representative and the underlying system of exclusive representation. *Janus*, 138 S.Ct. at 2465, 2467. As the majority opinion stated, while the States may no longer require public employees to pay fair-share fees to their exclusive representatives, they can otherwise "keep their labor-relations systems exactly as they are," including by "requir[ing] that a union serve as exclusive bargaining agent for its employees." *Id*. at 2478, 2485 n.27; *see also id*. at 2466, 2485 n.27 (states may "follow the model of the federal government," in which "a union chosen by majority vote is designated as the exclusive representative of all the employees"); id. at 2471 n.7 ("[W]e are not in any way questioning the foundations of modern labor law."). *Janus* observed that exclusive representation might not be permissible "in other contexts," but recognized that in the collective bargaining context, the imposition of a duty of fair representation on the exclusive representative avoids any constitutional questions. *Id*. at 2469, 2478.

As such, both *Knight* and *Janus* require the rejection of plaintiffs' claim that the exclusive representation model of collective bargaining violates the First Amendment.

C. The Dills Act Does Not Compel Plaintiff To Speak or To Associate with CAPT Within the Meaning of the First Amendment

Even if plaintiff's First Amendment claim were not foreclosed by *Knight*, it still would be meritless. Plaintiff does not allege that he is required to personally do or say anything to join or endorse CAPT or its speech. And neither support for CAPT or CAPT's speech is attributed to plaintiff in the sense that matters for First Amendment purposes, because reasonable people would not believe that all bargaining unit employees would necessarily *agree with* the exclusive representative or its positions.

In *Rumsfeld v. FAIR*, 547 U.S. 47 (2006), for example, law schools were required to "'associate' with military recruiters in the sense that they interact[ed] with them." *Id*. at 69. Nonetheless, there was no impingement of the law schools' First Amendment rights because the presence of military recruiters on campus would not lead reasonable people to believe the "law schools agree[d] with any speech by recruiters." *Id*. at 65; *see also Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 457-59 (2008) (Roberts, C.J., concurring) (explaining that certain cases involved "forced association" because outsiders would believe that parties "endorsed" or "agreed with" another party's message); *Jarvis v. Cuomo*, 2015 WL 1968224, at *6 (N.D.N.Y. Apr. 30, 2015) (explaining that "[t]he public's perception is relevant in forced association cases").

This same reasoning applies in this case as well. Under the Dills Act, the chosen exclusive representative serves as the representative of the bargaining unit collectively and as a whole, rather than serving as the individual representative or agent of any particular bargaining unit member. *See, e.g., Reisman*, 2018 WL 6312996, at *5 ("The Union is not … [a non-member's] individual agent. Rather, the Union is the agent for the bargaining-unit which is a distinct entity

separate from the individual employees who comprise it."). Indeed, when negotiating or enforcing a collective bargaining agreement, the exclusive representative must often weigh the competing interests of different employees in the bargaining unit and determine what is best for the unit as a whole.

Because different viewpoints exist within every democratic system and because exclusive representatives represent the bargaining unit as a whole, public employers in systems of exclusive representation-based collective bargaining like that established by the Dills Act reasonably understand that not all unit employees necessarily agree with the union that a majority has designated as the exclusive representative. *See Knight*, 465 U.S. at 276 ("The State Board considers the views expressed … to be the faculty's official collective position. It recognizes, however, that not every instructor agrees with the official faculty view.…"). Moreover, just as reasonable people understand that the views of a parent-teacher association, alumni association, elected congressional representative, or bar association are not necessarily shared by every parent, alumnus, constituent, or attorney, reasonable people understand that individuals in the bargaining unit represented by CAPT do not necessarily agree with every position taken by CAPT. *See, e.g., Lathrop v. Donohue*, 367 U.S. 820, 859 (1961) (Harlan, J., concurring) ("[E]veryone understands or should understand that the views expressed are those of the State Bar as an entity separate and distinct from each individual.").

For these reasons, CAPT's views are not attributed or imputed to individual bargaining unit employees in a First Amendment sense. *D'Agostino*, 812 F.3d at 244 (Souter, J., sitting by designation) ("[W]hen an exclusive bargaining agent is selected by majority choice, it is readily understood that employees in the minority, union or not, will probably disagree with some positions taken by the agent answerable to the majority."); *Jarvis*, 2015 WL 1968224, at *6 ("[The Union's] representation of Plaintiffs would not be likely to create the perception that

Plaintiffs endorse [the Union's] expressive activities.… A reasonable person would not perceive that the activities of [the Union], as a majority-elected representative, … are identical with the views of the providers it represents."). Because such attribution is a necessary element of plaintiff's compelled speech and association claim, Count II fails for this separate reason as well.

CONCLUSION

For the reasons stated above, Count II of the Complaint should be dismissed.

Dated: April 22, 2019

Respectfully submitted,

CALIFORNIA ASSOCIATION OF PSYCHIATRIC TECHNICIANS

/s/ *Sean H. Bedrosian*

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