

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

ERICH MANDEL,)	
)	
Plaintiff,)	No. 1:18-cv-08385
)	Honorable John Robert Blakey
v.)	
)	
SEIU LOCAL 73 and COMMUNITY CONSOLIDATED SCHOOL DISTRICT 15,)	
)	
Defendants.)	

INITIAL JOINT STATUS REPORT

Plaintiff Erich Mandel, Defendant SEIU Local 73 (“Union”), and Defendant Board of Education for Community Consolidated School District No. 15 (“District”) submit this Joint Status Report in the above-captioned case.

1. Type of Initial Status Report

This is a joint report filed on behalf of all parties.

2. Service of Process

All parties in this case have been served. Defendant Community Consolidated School District 15 was served on January 4, 2019 (Dkt. 008). Defendant SEIU Local 73 was served on January 7, 2019 (Dkt. 009).

3. The Nature of the Case

A. Attorneys of record

Plaintiff Erich Mandel is represented by the Liberty Justice Center, located at 190 S. LaSalle St., Ste. 1500, Chicago, IL 60603. Lead trial attorney for Plaintiff is Jeffrey M. Schwab. Mr. Schwab is a member of the general bar of the Northern District of Illinois. Assisting him is James J. McQuaid, who is likewise a member of the general bar of the Northern District of Illinois. Neither Mr. Schwab nor Mr. McQuaid are members of the trial bar.

Defendant SEIU Local 73 is represented by the following counsel:

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The lead trial attorney for Defendant SEIU Local 73 is Robert E. Bloch. Mr. Bloch is a member of the State Bar of Illinois and the general and trial bars of the Northern District of Illinois. Scott A. Kronland is a member of the State Bars of California and New York, is not a member of the general or trial bars of this Court, and has filed a *pro hac vice* motion (Dkt. 012). Eileen B. Goldsmith is a member of the State Bar of California, is not a member of the general or trial bars of the Northern District of Illinois, and has filed a *pro hac vice* motion (Dkt. 013). George A. Luscombe, III, is a member of the State Bar of Illinois and the general bar of this Court, but not the trial bar.

Defendant Board of Education for Community Consolidated School District No. 15 is represented by the following counsel:

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The lead trial attorney for the District is Jason T. Manning. Mr. Manning is a member of the State Bar of Illinois and the trial and general bars of the Northern District of Illinois. Mr. Schaeffer is a member of the State Bar of Illinois and the general bar of the Northern District of Illinois, but not the trial bar.

B. Basis for federal jurisdiction

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

C. Nature of the claims asserted

Plaintiff's Statement

Plaintiff alleges that all Defendants have violated his First Amendment rights to free speech and freedom of association to not join or financially support a union without his affirmative consent, per the Supreme Court's ruling in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018).

Union's Statement

Mr. Mandel was a voluntary member of the Union, having voluntarily signed a membership card when he had no obligation to do so. He also voluntarily signed a written authorization to have Union dues deducted from his pay. He now brings a claim under 42 U.S.C. §1983 alleging that the Union violated his First Amendment rights by failing to process his August 2018 request to terminate dues deductions. He further alleges that he is entitled to recover all dues that were deducted from his pay pursuant to his written authorization throughout his employment with District 15.

The Union already sent Mr. Mandel a check for all dues deducted from his pay from the date of his attempt to resign from the Union on August 21, 2018, with interest. The Union also instructed District 15 to cease deducting Union dues from Mr. Mandel's pay.

The Union anticipates asserting the following principal defenses:

- Plaintiff's union membership and dues deduction authorization were voluntary, and therefore his claim is barred by doctrines of waiver, estoppel, and/or consent.
- Mootness, the lack of a live case or controversy, waiver and/or estoppel because the Union already instructed District 15 to cease deducting dues from his pay and sent him a refund of dues deducted after August 21.

District's Statement

The District adopts the Union's statement and defenses. Further, as set forth in the District's Answer, Affirmative Defenses, and Cross-Claim, the District acted at all times pursuant to the relevant Collective Bargaining Agreements with the Union, Illinois state law, operative federal law governing the relevant constitutional standards, and pursuant to the terms of Plaintiff's express written dues deduction authorization. Upon receiving instructions from the Union to cease

deducting Union dues from Mr. Mandel's pay, the District immediately terminated those payroll deductions.

The District has asserted seven affirmative and separate defenses in its answer to the complaint: (1) Plaintiff's claims are barred by contract; (2) Plaintiff's claims are barred by the doctrine of mootness; (3) Plaintiff's claims are barred by the operative statute of limitations; (4) Plaintiff claims are barred by the equitable doctrines of estoppel, acquiescence, consent, and/or waiver; (5) The District acted in good faith and is immune from liability for the Section 1983 claim alleged by Plaintiff; (6) Plaintiff's complaint fails to state a claim against the District under 42 U.S.C. § 1983; and (7) The District reserves the right to amend its answer and assert any additional defenses it discovers.

The District has asserted a cross-claim against the Union for indemnification pursuant to the terms of the relevant Collective Bargaining Agreements. Although the District denies that Plaintiff is entitled to any relief, in the event he obtains a judgment against the District, the District is entitled to indemnification from the Union for any and all relief Plaintiff obtains against the District.

D. Major legal and factual issues anticipated

Plaintiff's Statement

Plaintiff's position is that there are only limited factual issues in this case. Specifically, those factual issues relate to the amount of dues that Defendant Community Consolidated School District 15 on behalf of Defendant SEIU Local 73, and any dues authorization document signed by Plaintiff that authorizes Defendant Community Consolidated School District 15 to withhold union dues on behalf of Defendant SEIU Local 73, and limiting Plaintiff's ability to withdraw his

membership in the union and stop the withholding of union dues from his paycheck to a designated time period.

The major legal issue is whether, in light of the *Janus* decision, Plaintiff's First Amendment rights are violated by being compelled to continue to pay union dues to Defendant SEIU Local 73 and may not cease paying those dues until a designated time period based on an authorization that Plaintiff signed before the Supreme Court's *Janus* decision, at a time when Plaintiff could not have "affirmatively consented" because he was never given the option of paying nothing to the union as a non-member or know that he had a right not to pay the union.

Union's Statement

The Union anticipates the following major legal and factual issues:

- Whether Mr. Mandel can challenge his Union membership as unlawfully coerced when he made a voluntary choice to become a Union member.
- Whether the Union has a good faith defense to any liability for dues paid by Mr. Mandel during the period when he was a voluntary Union member.
- Whether sending Mr. Mandel a refund of all dues deducted from his pay from the date of his attempt to resign from the Union, with interest, and instructing District 15 to cease deducting union dues from Mr. Mandel's pay, has mooted or otherwise disposes of Mr. Mandel's claim for declaratory and injunctive relief.

District's Statement

In addition to the major legal and factual issues set forth by the Union, which issues the District adopts, the District anticipates the following additional major legal and factual issues:

- Whether the Supreme Court's *Janus* fair-share decision applies to dues deducted from the paycheck of a voluntary dues-paying Union member who had a free choice to decline union membership.
- Whether the terms of Plaintiff's contracts with the Union and the Union's contracts with the District preclude Plaintiff from asserting claims for alleged constitutional violations.
- Whether the District has a good faith defense to any liability for union dues deducted pursuant to direction it received from Plaintiff, the Union, Illinois law, and/or the terms of the applicable Collective Bargaining Agreement.
- Whether the District is immune from liability because Plaintiff cannot identify a custom or policy implemented by the District that led to his alleged constitutional harm.

E. Damages and other relief

Plaintiffs seek declaratory relief that Plaintiff's signing of the union card before the Supreme Court's *Janus* decision does not provide a basis for his affirmative consent to waive his First Amendment rights upheld in *Janus* because such authorization was based on an unconstitutional choice between paying the union as a member or paying the union as a non-member, and therefore limiting the ability of Plaintiff to revoke the authorization to withhold union dues from his paycheck to a window of time is unconstitutional, and continuing to withhold union dues from Plaintiff's paycheck violated Plaintiff's First Amendment rights.

Plaintiff also seeks injunctive relief against further dues deduction absent his affirmative consent.

Plaintiff seeks monetary damages from Defendant SEIU Local 73 in the form of the return of all dues withheld from his paycheck after the Supreme Court's *Janus* decision because the authorization Plaintiff signed before *Janus* did not constitute "affirmative consent" required by *Janus*, and therefore all dues withheld after *Janus* were done so in violation of Plaintiff's First Amendment rights, and in the form of all dues withheld before the *Janus* decision because Plaintiff was never given the option of paying nothing to the union as a non-member.

Finally, Plaintiff seeks an award of costs and attorneys' fees under 42 U.S.C. § 1988.

The Union's position is that Plaintiff should take nothing from his complaint.

The District's position is that Plaintiff should obtain no relief whatsoever, whether monetary or non-monetary.

4. Pending Motions and Case Plan

A. Pending motions

There are no current pending motions. The Union anticipates filing an early motion for judgment on the pleadings or summary judgment. The District also anticipates filing an early motion for judgment on the pleadings or summary judgment.

B. MIDP compliance

All undersigned counsel certify compliance with the MIDP Standing Order.

C. Proposed case management plan

The parties do not anticipate needing any expert discovery, confidentiality orders, or HIPAA waivers. The parties anticipate a need for limited fact discovery, pertaining mainly to Plaintiff's requests to leave Defendant SEIU Local 73 and to have Defendant School District cease deducting union dues from his paycheck; the amount of dues withheld from Plaintiffs' paychecks, and any authorization signed by Plaintiff to withhold union dues from his paycheck.

The Union and District anticipate requiring written discovery and to take Plaintiff's deposition. Finally, the parties anticipate that this case will be resolved by way of a dispositive motion. In the event this case does proceed to trial, Plaintiff waives his right to a jury trial.

The current deadlines are required by either Fed. R. Civ. P. 12(a)(1)(A) or the Court's Mandatory Initial Discovery Pilot (MIDP) Standing Order:

Answer (Community Consolidated District 15): due January 25, 2019

Answer (SEIU Local 73): due January 28, 2019

Plaintiff's MIDP discovery answers: due February 25, 2019

Defendant District 15's MIDP discovery answers: due February 25, 2019

Defendant SEIU Local 73's MIDP discovery answers: due February 27, 2019

The parties propose the following additional deadlines:

All Rule 26(a) disclosures: due March 22, 2019

Deadline for discovery requests: April 19, 2019

Fact discovery completion: October 25, 2019

Dispositive motions: no later than November 22, 2019 (As noted above, the Union and District anticipate filing an early motion for judgment on the pleadings or summary judgment.)

Responses: due December 20, 2019

Replies: due January 3, 2020

Trial date: February 24, 2020

The parties do not request a jury trial. While the parties do not anticipate this matter going to trial, if this case did go to trial, the parties anticipate the trial lasting no more than two days.

5. Consent to Proceed Before a Magistrate Judge

The parties do not consent to proceed before a magistrate judge.

6. Status of Settlement Discussions

Defendant SEIU Local 73 has refunded a portion of Plaintiff's union dues and has allegedly stopped collecting fees from him. As to the remainder of the dues, and Plaintiff's injunctive claims, Plaintiff does not see any benefit to further discussions.

Dated: January 28, 2019.

Respectfully Submitted,

By: /s/ Jeffrey Schwab

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