No. 20-1621

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SUSAN BENNETT,

Plaintiff-Appellant,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, AFL-CIO; AFSCME LOCAL 672; MOLINE-COLE VALLEY SCHOOL DISTRICT NO. 40; ATTORNEY GENERAL KWAME RAOUL, in his official capacity; and ANDREA R. WAINTROOB, chair, JUDY BIGGERT, GILBERT O'BRIEN JR., LYNNE SERED, and LARA SHAYNE, members, of the Illinois Educational Labor Relations Board, in their official capacities,

Defendants-Appellees.

On Appeal from the United States District Court
for the Central District of Illinois
No. 4:19-cv-04087
Honorable Sara Darrow

APPELLANT'S BRIEF AND SHORT APPENDIX

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DISCLOSURE STATEMENT

1. The full name of every party the undersigned attorney represents in the case: Plaintiff-Appellant Susan Bennett.

2. The name of all law firms whose partners or associates have appeared on behalf of the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this Court: the Liberty Justice Center.

3. If the party or amicus is a corporation: not applicable.

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JURISDICTIONAL STATEMENT

The District Court had jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the First Amendment to the United States Constitution and, therefore, presents a federal question, and has jurisdiction under 28 U.S.C. § 1343 because relief is sought under 42 U.S.C. § 1983. On April 14, 2020, Bennett filed a timely Notice of Appeal from the District Court's April 2, 2020 Judgment, Short Appendix ("S.A.") 16 — denying Bennett's motion for summary judgment, granting the motions for summary judgment of the Union and the School District, and granting the motion to dismiss of the State defendants — issued in accordance with the court's April 2, 2020 Memorandum Opinion, S.A. 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. In *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018), the Supreme Court held that government employees have a First Amendment right not to be compelled by their employer to pay any fees to a union unless an employee "affirmatively consents" to waive that right. Did Bennett provide affirmative consent to waive her First Amendment right to not pay money to a union when she signed a union membership card prior to the Court's decision in *Janus*?

2. 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. Does this law violate the free speech and free association rights of Bennett by granting the union the power to speak/lobby on her behalf to her

employer, a government entity, even though she is no longer a member and does not wish to associate the union?

STATEMENT OF THE CASE

Plaintiff-Appellant Susan Bennett has been employed as a custodian by Defendant-Appellee Moline-Coal Valley School District No. 40 since August 2009. S.A. 2. The School District is an educational employer under Section 2(a) of the Illinois Educational Labor Relations Act ("IELRA"), 115 ILCS 5/1–21. S.A. 2. Defendant-Appellee American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, a Chicago based labor organization under Section 2(c) of IELRA, represents public sector workers employed by government employers in Illinois. S.A. 2. Defendant-Appellee AFSCME Local 672 is also organized under Section 2(c) of the IELRA and represents custodial and maintenance employees of the School District in Moline, Illinois. S.A. 2. The Illinois Educational Labor Relations Board ("IELRB") has certified Council 31 as the exclusive representative, pursuant to 115 ILCS 5/8, for the bargaining unit consisting of certain employees of the School District, including custodial and maintenance employees, such as Bennett. S.A. 2.

The Union and School District deduct union dues from Bennett's wages.

Bennett initially became a member of Council 31 and Local 672 (collectively, "the Union") in November 2009 by signing a membership and dues-deduction authorization card. S.A. 3. On August 21, 2017, Bennett signed another membership and dues-deduction authorization card. S.A. 3. At the time Bennett

signed both union membership cards, as a condition of her employment — and pursuant to the operating collective bargaining agreement between Council 31 and the School District, and Illinois state law, 115 ILCS 5/11 — she was required either to join the Union and pay union dues or pay agency or "fair-share" fees to the Union. S.A. 4.

The union membership card she signed contained a provision limiting her ability to stop the withholding of dues from her wages on behalf of Council 31 to a 15-day window corresponding to the anniversary of her signing the authorization card. S.A. 3. The deduction of agency fees and the limited opt-out window were both provisions of a collective bargaining agreement between Council 31 and the School District, entered into under color of state law. S.A. 4.

On June 27, 2018, the Supreme Court decided *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), holding that government employees have a First Amendment right not to be compelled by their employer to pay any fees to a union unless an employee "affirmatively consents" to waive that right. *Id*. at 2486. Such a waiver must be "freely given and shown by 'clear and compelling' evidence." *Id*.

After the Supreme Court issued its decision in *Janus*, Bennett sent a letter, dated November 1, 2018, to AFSCME International — an international union based in Washington, D.C. with which Council 31 is affiliated — seeking to resign her membership and stop union dues. S.A. 22. On November 5, 2018, Bennett sent a letter to David McDermott, Chief Financial Officer of the School District, informing her employer that she was resigning from her membership in "AFSCME (Local

672)" and asking the School District not to enforce "[a]ny previous authorizations of membership and/or the deduction of dues or fees." S.A. 22–23. On December 3, 2018, Mr. McDermott replied to Bennett's November 5, 2018, email stating that he believed, pursuant to her dues-deduction authorization card, she had to wait until the next enrollment period to withdraw, which he understood at that time to be August 2019. S.A. 23. Mr. McDermott recommended that Bennett contact her Union representative to ensure that she was following the proper legal procedures to withdraw. S.A. 23. On or around December 13, 2018, Rick Surber of Council 31 sent a letter to Bennett, advising her that she could not revoke her union dues authorization until a specific "window period" and her next opportunity to submit a written request to revoke these deductions would be from July 27, 2019 to August 11, 2019. S.A. 23–24. Council 31 and Local 672 accepted Bennett's resignation from union membership on March 4, 2019, but, based on a letter from the Union, the School District continued withholding union dues from her wages until her withdrawal window. S.A. 4, 24. On or around July 29, 2019, Bennett sent another letter to Mr. McDermott, of the School District, informing him that she wished to revoke her union dues authorization. S.A. 24–25. Council 31 and Local 672 treated this letter as a revocation of Bennett's union dues deduction authorization and stopped deducting union dues from her wages. S.A. 4. They kept all monies garnished from Plaintiff's wages over the course of her employment. S.A. 25.

Council 31 is the exclusive bargaining representative of Bennett.

Under Illinois law, 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 with respect to wages, hours, and terms and conditions of employment. 115 ILCS 5/3, 5/7, and 5/8. S.A. 29–36. Once a union is designated the exclusive representative of all employees in a bargaining unit, it negotiates wages, hours, and terms and 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 subjections. 115 ILCS 5/3, 5/7, and 5/8; S.A. 29–36. Council 31 is the exclusive representative of Bennett and her coworkers in the bargaining unit, with respect to wages, hours, terms and conditions of employment, pursuant to 115 ILCS 5/3, 5/7, and 5/8. S.A. 2, 29–36.

Procedural History

Bennett filed her complaint on April 26, 2019, alleging two counts: First, that the School District and the Union violated her First Amendment rights to free speech and freedom of association by withholding dues from her wages without her affirmative consent to waive her right to not pay the union. S.A. 4; Dkt. 1, Compl. p. 7–9. Second, that Illinois law granting the Union the power to speak on her behalf as her exclusive representative to her employer violated Bennett's free speech and free association rights. S.A. 4; Dkt. 1, Compl. p. 9–10. Bennett sought the following relief as to Count I: (1) An injunction against the Union to immediately allow Bennett to resign her union membership; (2) An injunction

against the School District from continuing to deduct, and against the Union from accepting, dues from Bennett's paychecks, unless she first provides freely-given affirmative consent to waive her right to not pay the union; (3) A declaratory judgment that because Bennett did not provide affirmative consent to waive her right to not pay money to the Union, the collective bargaining agreement, entered under color of and pursuant to Illinois law, violated her free-speech rights by purporting to limit her ability to revoke the authorization to withhold union dues from her paychecks to a window of time; (4) A declaratory judgment that the union card signed by Bennett does not constitute affirmative consent to waive her First Amendment right to not pay money to the Union announced in *Janus*; (5) A declaratory judgment that School District's practice of withholding union dues from Bennett's paycheck without her clear, affirmative consent to waive her right to not pay money to the union is unconstitutional; (6) Damages against the Union for all union dues collected from Bennett after the date of the Supreme Court's decision in *Janus* on June 27, 2018 until the School District stopped withholding such dues from her paycheck; and (7) Damages against the Union for all union dues collected from Bennett before June 27, 2018, subject only to the statute of limitations. S.A. 5; Dkt. 1, Compl. p. 10–12.

As to Count II, Bennett sought (1) injunctive relief against the Illinois Attorney General to prevent him from enforcing 115 ILCS 5/3; (2) injunctive relief against members of the Illinois Education Labor Relations Board, to prevent them certifying the Union as the exclusive representative in the bargaining unit; and (3)

declaratory relief to the effect that the exclusive representation provided for in 115 ILCS 5/3 is unconstitutional. S.A. 5; Dkt. 1, Compl. p. 11–12.

The State Defendants — Attorney General Kwame Raoul, Andrea R. Waintroob, Judy Biggert, Gilbert O'Brien Jr., Lynne Sered, and Lara Shayne — filed a motion to dismiss on June 27, 2019. Dkt. 14. The School District filed an answer on June 27, 2019. Dkt. 17. And the Union filed an answer on July 18, 2019. Dkt. 20. The parties filed a Joint Stipulated Record on September 19, 2019. S.A. 17–28. On October 18, 2019, Bennett filed her motion for summary judgment. Dkt. 27. On November 15, 2019, the Union filed its motion for summary judgment, Dkt. 30, and the School District filed its motion for summary judgment, Dkt. 32. On December 6, 2019, Bennett filed her combined response to the Union and School District's motions for summary judgment, response to the State Defendants' motion to dismiss, and reply in support of her motion for summary judgment. Dkt. 34. On December 30, 2019, the State Defendants filed their reply in support of their motion to dismiss, Dkt. 37, the Union filed its reply in support of its motion for summary judgment, Dkt. 38, and the School District filed its reply in support of its motion for summary judgment, Dkt. 39.

On March 31, 2020, the District Court denied Bennett's motion for summary judgment, granted the School District's and the Union's motions for summary judgment, and granted the State Defendants' motion to dismiss. S.A. 1, 16. Bennett filed a timely notice of appeal on April 14, 2020. Dkt. 44.

SUMMARY OF ARGUMENT

Government employees like Bennett have a First Amendment right not to pay any fees to a union "unless the employee affirmatively consents" to waive the right to not pay a union. *Janus.,* 138 S. Ct. at 2486. The Supreme Court in *Janus* required such a waiver to be "freely given" by affirmative consent and must be shown by "clear and compelling" evidence. *Id.* The Supreme Court has also required that a waiver of constitutional right can only be effective if the right in question is a "known right or privilege," *Johnson v. Zerbst,* 304 U.S. 458, 464 (1938), and that waiver must be "voluntary, knowing, and intelligently made." *D.H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 185–86 (1972). When Bennett signed the union membership agreement prior to the *Janus* decision, she could not have been effectively waiving her right to not pay a union because at the time she signed the union card she was forced into an unconstitutional choice between paying union dues as a member of the Union or paying agency fees as a non-member of the Union. The signing of the union card could not, therefore, constitute knowing, voluntary, affirmative consent to waive her right to not pay a union — a right at the time of signing the union card Bennett did not know she had.

In addition, citizens enjoy a First Amendment right not to be forced by government to associate with organizations or causes with which they do not wish to associate. *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984). Yet Illinois law grants public sector unions the power to speak on behalf of employees as their exclusive representative. 115 ILCS 5/3(b). Pursuant to this law and by agreement

between the Union and the School District, the Union purports to act as the exclusive representative of Bennett and other non-members. As the Supreme Court in *Janus* recognized, such an arrangement creates "a significant impingement on associational freedoms that would not be tolerated in other contexts." 138 S. Ct. at 2478. It should no longer be tolerated in this context either: Bennett's rights of speech and association are violated by a government-compelled arrangement whereby the Union lobbies her government employer on her behalf without her permission and in ways that she does not support.

STANDARD OF REVIEW

This Court reviews a grant of summary judgment de novo, with factual inferences construed in favor of the non-moving party. *Mazzei v. Rock-N-Around Trucking, Inc.*, 246 F.3d 956, 959 (7th Cir. 2001).

This Court reviews an order granting a motion to dismiss under Fed. R. Civ. P. 12(b)(6) de novo, construing the complaint in the light most favorable to the plaintiffs, "accepting as true all well-pleaded facts alleged, and drawing all possible inferences in [the plaintiffs'] favor." *Tamayo v. Blagojevich*, 526 F.3d 1074, 1081 (7th Cir. 2008). Dismissal under Rule 12(b)(6) is proper only where the plaintiff can prove no set of facts that would entitle him to relief. *Marshall-Mosby v. Corp. Receivables, Inc.*, 205 F.3d 323, 326 (7th Cir. 2000).

ARGUMENT

I. The Union and School District violated Bennett's First Amendment rights by deducting dues from her paycheck without affirmative consent to waive her right to not pay the Union.

In *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018), the Supreme Court explained that payments to a union could be deducted from a public employee's wages only if that employee "affirmatively consents" to waive the right to not pay a union:

> Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence. Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

Janus, 138 S. Ct. at 2486 (citations omitted).

In *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993), the Supreme Court explained that "[w]hen this Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule." *See also United States v. Security Industrial Bank,* 459 U.S. 70, 79 (1982) ("The principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student"); *Kuhn v. Fairmont Coal Co.,* 215 U.S. 349, 372 (1910) ("Judicial decisions have had retrospective operation

for near a thousand years"). Nothing in the Court's opinion in *Janus* indicates that the Court intended to stray from the general rule and apply its ruling in *Janus* proscriptively rather than retroactively. *See Molnar v. Booth,* 229 F.3d 593, 599 (7th Cir 2000) ("we apply the law as it now is, including the Supreme Court's intervening decisions").

The question in this case is whether Bennett's signature of the union membership card constitutes affirmative consent to waive her right to not pay the union. Supreme Court precedent dictates that the answer to this question is no.

A. Bennett's signing of the union membership card before the Supreme Court's decision in *Janus* does not constitute affirmative consent to waive her right to not pay the Union.

Supreme Court precedent provides that certain standards be met in order for a person to properly waive his or her constitutional rights. First, waiver of a constitutional right must be of a "known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). Second, the waiver must be freely given; it must be "voluntary, knowing, and intelligently made." *D. H. Overmyer Co. v. Frick Co.*, 405 U.S. 174, 185–86 (1972). Finally, waiver of fundamental rights will not be presumed. *Ohio Bell Tel. Co. v. Public Utilities Comm'n,* 301 U.S. 292, 307 (1937). Thus, "[c]ourts indulge every reasonable presumption against waiver of fundamental constitutional rights." *College Savings Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 682 (1999) (citing *Aetna Ins. Co. v. Kennedy ex rel. Bogash*, 301 U.S. 389, 393 (1937)).

Bennett's signing of the union membership card does not meet any of these

standards for waiver. First, she did not waive a known right or privilege because *Janus* had not yet been decided, so she was unaware that she was entitled to pay nothing to the Union. *See Curtis Pub. Co. v. Butts*, 388 U.S. 130, 144–45 (1967) (one cannot waive a right before knowing the relevant law). Second, she did not *freely* waive her right to pay nothing to the Union because when she began employment with the School District, she was forced to pay the Union either way: either in the form of an agency fee or in the form of membership dues. For the same reason, her waiver could not have been *voluntary*. Third, there is no clear and compelling evidence that Bennett wished to waive her constitutional right to pay no money to the Union. The mere fact that she signed the union membership card cannot serve as clear and compelling evidence that she wished to waive her right to pay nothing to the Union since she would have still been compelled to pay the Union without signing the membership card. Further, the union membership card she signed did not expressly indicate that Bennett was waiving her right to pay nothing to the Union, and can hardly be considered affirmative consent. Such a situation presumes waiver. Thus, Bennett did not waive her right to not pay the Union by signing the union membership card.

Since the *Janus* decision, Bennett has not signed any union authorization applications. Therefore, Bennett has not waived her right to not pay money to the Union by affirmative consent required by the *Janus* decision.

B. The fact that Bennett voluntarily signed the union membership card does not constitute affirmative consent to waive her right to not pay money to the Union.

The District Court ignored the waiver analysis set forth in *Janus*, relying instead on the fact that Bennett voluntarily chose to join the Union and was not coerced to do so. S.A. 7–9. The District Court misstated Bennett's position when it wrote that "Plaintiff argues her dues authorization was coerced because she was given the unconstitutional choice between paying the Union as a nonmember or a member." S.A. 7. Bennett, however, argued that under the proper waiver analysis, she did not freely or voluntarily waive her right to *not pay money* to the Union. That is not the same as claiming that she was coerced *to join* the Union. The question is not whether Bennett joined the Union, either by coercion or voluntarily. Rather, the question is whether by signing the union membership card Bennett provided affirmative consent to waive her right to pay no money to the Union. Bennett could not have knowingly, freely, or voluntarily waived her right *to pay no money* to the Union by signing the membership card because at the time she signed the membership card she would have had to pay money to the Union even if she declined to join. The District Court failed to properly apply waiver analysis, and therefore, this Court should reverse the decision of the District Court.

The District Court also found that Bennett's "signing a membership agreement suggests that she was not intending to assert her right to remain a no-fee paying nonmember." S.A. 9. But at the time Bennett signed the union membership card she would have had to pay money to the Union regardless of whether she joined and she

clearly did not know she had a right to pay nothing to the Union. The Court's insistence that Bennett's signing of the union membership card "suggests" that she did not intend to assert her right to pay nothing to the Union presumes waiver. But the Supreme Court held in *Janus* that waiver of the right to not pay money to a union may not be presumed, *Janus*, 138 S. Ct. at 2486; *see also Zerbst,* 304 U.S. at 464. Rather, waiver requires "clear and compelling evidence," *Janus*, 138 S. Ct. at 2486. Here the District Court presumed that Bennett intended to waive her right not to pay the union when she signed the union card even though at the time she did so, she had no choice but to pay money to the union. Further, there is nothing in the union membership card Bennett signed that makes clear her purported intention to waive her right to not pay money to the Union. The union card does not say — nor did the Union or the School District ever tell Bennett — that she had a right to not pay money to the Union. Nor does the union card explicitly say she is waiving her right to pay no money to the union by signing.

The District Court also misidentified the right that the Supreme Court protected in *Janus* and that Bennett is seeking to protect here by concluding that the appropriate right is "the right to not pay a fair-share fee." S.A. 9, 11. But the Supreme Court in *Janus* did not limit the right to not pay a union to fair share — or agency fees. Rather, the Court recognized that one has a right to not pay "an agency fee *nor any other payment to the union*" that cannot be waived without affirmative consent. *Janus*, 138 S. Ct. at 2486 (emphasis added). The District Court, at the insistence of the Union, omitted words from the Supreme Court's opinion in *Janus*

in order to deny Bennett the rights afforded by the Court in *Janus*.

The District Court also refused to apply Janus retroactively without pointing to any evidence in *Janus* itself that the Court did not intend to apply it retroactively. As explained, the general rule is that the Supreme Court's application of federal law "must be given full retroactive effect." *Harper*, 509 U.S. at 97. Rather, the District Court held that Bennett "points to no evidence that she would have chosen to not join the Union if she had known she had a First Amendment right to not pay a fair-share fee." S.A. 9, n.9. But not only does this not explain the District Court's reason for refusing to apply *Janus* retroactively, it ignores the waiver analysis under *Janus* requiring "clear and compelling evidence" that Bennett intended to waive her right to not pay money to the union. *Janus*, 138 S. Ct. at 2486. Indeed, the District Court presumed Bennett intended to waive her First Amendment right, which the Supreme Court has held one may not do. *Ohio Bell Tel. Co.,* 301 U.S. at 307. And it shifted the burden to Bennett to prove that she did not intend to waive her right, when that is the Union's burden.

The District Court further erred when it concluded that because Bennett signed the union membership card she had waived her right because she cannot abrogate a contract based on subsequent legal developments. S.A. 9. But the District Court's argument is circular. One cannot answer the question of whether Bennett *knowingly* or *involuntarily* waived her right to not pay money to the Union by signing the union membership card by asserting that Bennett signed the union membership card. In any event, the District Court cites *United States v. Brady*, 397

U.S. 742 (1970) and *United States v. Vela*, 740 F.3d 1150, 1154 (7th Cir. 2014) for the proposition that changes in intervening constitutional law do not invalidate a contract. But those cases are about plea deals taken by criminal defendants in the process of criminal litigation that the defendants later regretted because of subsequent judicial decisions. In *Brady*, the defendant pled guilty to kidnapping and was sentenced to 50 years' imprisonment. 397 U.S. at 743–44. He waived his right to trial, in part, he later claimed, because he would have been subject to the death penalty. *Id*. at 744. The Supreme Court later struck down the death penalty as a punishment for his offense. *Id*. at 746. He was, nonetheless, held to his guilty plea because a guilty plea is part of an adjudication. *Id*. at 748. The finality of judgments is not something a court undermines lightly, and the Supreme Court determined it could "see no reason on this record to disturb the judgment of those courts [who entered judgment against the defendant]." *Id*. at 749. There is nothing like that in this case. Bennett does not ask that this Court find its way around *res judicata*, only that it find an alleged contract between the parties does not constitute a waiver of her constitutional rights.

Similarly, in *Vela,* a criminal defendant entered a plea deal which waived his right to appeal "knowingly and voluntarily." *United States v. Vela,* 740 F.3d 1150, 1152 (7th Cir. 2014). The district court sentenced him using the United States Sentencing Guidelines "in effect at the time of sentencing, rather than those in effect at the time of the offense, even though it resulted in a higher [sentencing] range." *Id*. The Supreme Court then decided *Peugh v. United States,* 569 U.S. 530

(2013), holding that courts could not use amended sentencing guidelines if doing so would result in a longer sentence than what the guidelines recommended at the time of the offense. This Court, applying *Brady,* rejected the defendant's appeal. Again, the Supreme Court opinion did not change the law criminalizing the defendant's conduct; it merely altered the penalty.

The District Court's reliance on *Brady* and *Vela* — and the reliance of other district courts on such cases in evaluating similar claims to Bennett's — are misplaced. *Brady*, *Vela*, and similar cases are about *res judicata*, not whether a contract signed by a person constitutes waiver of a constitutional right. And whereas in those cases, the offer of a plea deal itself was constitutional, here the choice presented to Bennett was not. In the *res judicata* cases, either the party would plead guilty or go to trial. Even after the Supreme Court struck down the death penalty as unconstitutional, the criminal defendant's choices between pleading guilty or going to trial were the same. There was no "third option" the defendant could have taken that was unconstitutionally withheld from him. In contrast, in this case before *Janus*, Bennett was given the option of paying money to the Union as a member or as a non-member. She was not given the option of paying nothing to the Union. This is not a case where the Court's decision in *Janus* made Bennett's decision "less appealing" in retrospect, as the District Court insists. Op. 11. It was the deprivation of a constitutional option at all that prevented Bennett in this case from making a knowing, voluntary choice to waive her constitutional right to not pay the Union.

Bennett's signature of the union membership card does not constitute affirmative consent to waive her right to not pay money to the Union. The District Court erred in applying the waiver analysis required by the Supreme Court in *Janus* and other cases and therefore incorrectly denied Bennett's First Amendment claims by concluding that she waived her First Amendment right to not pay money to the Union.

C. Bennett is entitled to declaratory relief and damages in the amount of dues taken from her wages without her affirmative consent to waive her right to pay nothing to the Union.

Count I alleges a First Amendment violation for withholding money from Bennett's wages on behalf of the Union without her affirmative consent to waive her right to not pay the Union. Bennett's complaint sought injunctive and declaratory relief, and damages. S.A. 5; Dkt. 1, Compl. p. 10–12.

After filing this lawsuit, on July 29, 2019, within the 2017 union membership card's revocation window, Bennett revoked her dues deduction authorization and the School District stopped deducting dues from her paychecks. The District Court found that at that point Bennett's requests for injunctive relief under Count I became moot. S.A. 5 n.5. Bennett does not disagree that her requests for injunctive relief under Count I are moot. But Bennett's remaining requests for relief under Count I — damages and declaratory relief — are not moot.

Bennett alleges she is entitled to damages in the form of union dues taken from her paychecks — both before the Supreme Court's decision in *Janus*, on June 27, 2018, and after — because her signing of the union membership card did not

constitute affirmative consent to waive her right to not pay money to the Union, as explained above. The declaratory relief Bennett seeks is a necessary foundation to her theory for damages. The fact that Bennett was eventually allowed to stop union dues from being taken from her paycheck during her revocation window does not moot her claims for damages for union dues taken from her paycheck prior to her revoking her dues deduction authorization.

Applying the rule of *Janus* retrospectively to the moment when Bennett signed her union dues authorization, the Union and the School District needed to secure Bennett's *affirmative consent* to *knowingly* and *voluntarily* waive her right not to pay money to a union. This Union and School District did not do. Because they did not secure Bennett's waiver after the Supreme Court's *Janus* decision, the Union could not compel her to continue to pay union dues. Because the dues authorization does not provide a waiver to her right to not pay money to the Union, any money withheld from Bennett before the *Janus* decision was also unconstitutional and therefore needs to be returned.

The Union's liability for dues paid by Bennett, therefore, extends backward before *Janus*; limited only, if at all, by a statute of limitations defense.[1] Monies or property taken from individuals under statutes later found unconstitutional must be returned to their rightful owner. *Harper*, 509 U.S. at 97. In *Harper*, taxes collected from individuals under a statute later declared unconstitutional were returned. *Id.* at 98-99. Fines collected from individuals pursuant to statutes later

[1] The parties agree that the statute of limitations period covered by this case goes back to April 26, 2017. S.A. 25.

declared unconstitutional also must be returned. *See Pasha v. United States*, 484 F.2d 630, 632–33 (7th Cir. 1973); *United States v. Lewis*, 478 F.2d 835, 846 (5th Cir. 1973); *Neely v. United States*, 546 F.2d 1059, 1061 (3d Cir. 1976). "Fairness and equity compel [the return of the unconstitutional fine], and a citizen has the right to expect as much from his government, notwithstanding the fact that the government and the court were proceeding in good faith[.]" *United States v. Lewis*, 342 F. Supp. 833, 836 (E.D. La. 1972).

Under *Harper* and these precedents, the Union has no basis to keep the monies it seized from Bennett's wages before the Supreme Court put an end to this unconstitutional practice. This, quite clearly, remains a live controversy. Similarly, Bennett's requests for declaratory relief are necessary in order for the court to grant her damages claims. In order to grant damages, the Court would also need to grant at least two of her requests for declaratory relief: (1) Bennett's signing of the union dues deduction authorization did not constitute her affirmative consent to waive her First Amendment rights upheld in *Janus*, and (2) withholding union dues from Bennett's paycheck was unconstitutional because she did not provide affirmative consent. And Bennett's third request for declaratory relief — that making her wait until a window of time to stop withholding union dues violated her free-speech rights because she did not provide affirmative consent to waive her right to not pay money to the Union — is directly related to her damages claim for dues withheld from her paycheck before she could withdraw her dues authorization during the revocation window. Thus, although Bennett's injunctive relief is moot,

her request for relief in the form of damages and declaratory relief is not moot.

Although the District Court did not reach this argument, the Union asserted before the District Court that Bennett's claim for damages was barred because the Union is entitled to a "good faith" defense from Section 1983 liability. But even if that is true — which Bennett disputes — a "good faith" defense would not bar all of Bennett's claim for damages; only damages in the form of union dues taken prior to the Supreme Court's decision in *Janus* on June 27, 2018. Any dues taken after June 27, 2018, that Bennett seeks as damages is not covered by the "good faith" defense since the Union could not have had a good faith belief after *Janus* that taking dues without Bennett's affirmative consent to waive her right to not pay money to the Union was constitutional. Should Defendants attempt to assert a good-faith defense in their briefs Bennett preserves her argument that Defendants do not have a good-faith defense to a § 1983 violation.[2]

For these reasons, this Court should reverse the District Court's order granting summary judgment to the Union and the School District and denying Bennett's motion for summary judgment as to Count I.[3]

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[2] Bennett recognizes that this Court's decision in *Janus v. AFSCME, Council 31*, 942 F.3d 352 (7th Cir. 2019) ("*Janus II*") may control, but Bennett seeks to preserve her argument that a "good faith" defense is not available to the Union in this case. Even if *Janus II* does control, Bennett reserves the right to argue that *Janus II* should be overturned.

[3] The District Court assumed, without deciding, that Defendants' conduct constituted state action under § 1983 and the First and Fourteenth Amendments. S.A. 7 n.6. To be absolutely clear, Defendants' conduct constituted state action. As this Court has held, where AFSCME, Council 31 is "a joint participant with the state in [an] agency-fee arrangement" and the state employer "deducted . . . fees from the employees' paychecks and transferred that money to the union," that conduct "amount[ed] to state action." *Janus II,* 942 F.3d at 361. *See also Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 486 (1988): "[W]hen

II. Forcing Bennett to associate with the Union as her exclusive representative violates her First Amendment rights to free speech and freedom of association.

Recognizing Council 31 as Bennett's exclusive representative for bargaining purposes violates her First Amendment rights to free speech and freedom of association. Bennett cannot be forced to associate with a group with which she disagrees.

A. Forcing Bennett to have the Union serve as her exclusive representative is unconstitutional.

Under Illinois law, as a condition of her employment, Bennett must allow the Union to speak/lobby to her employer on her behalf as her exclusive representative (115 ILCS 5/8) on matters including wages, hours, and terms and conditions of employment (115 ILCS 5/3) — matters that the Supreme Court recognizes to be of inherently public concern. *Janus*, 138 S. Ct. at 2473. When IELRB certifies Council 31 to represent the bargaining unit, it forces all employees in that unit to associate with Council 31. 115 ILCS 5/8. This compelled association authorizes the Union to speak on behalf of the employees even if the employees are not members, even if the employees do not contribute fees, and even if the employees disagree with the Union's positions and speech — again, on matters of inherently public concern.

This arrangement has two constitutional problems: it is both compelled speech — the union speaks on behalf of the employees, as though its speech is the

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private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found."

employees' own speech — and compelled association — the union represents everyone in the bargaining unit without any choice or alternative for dissenting employees not to associate.

Legally compelling Bennett to associate with Council 31 demeans her First Amendment rights. Indeed, "[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning. . . . [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) (internal quotation marks omitted)). Exclusive representation forces the employees "to voice ideas with which they disagree, [which] undermines" First Amendment values. *Janus*, 138 S. Ct. at 2464. The exclusive representation requirement takes away Bennett's "choice . . . not to propound a particular point of view," a matter "presumed to lie beyond the government's power to control" in the same way that compelling a parade organizer to accept an unwanted group carrying its own banner. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 575 (1995). The fact that Bennett must speak out to distance herself from the Union's speech on her behalf escalates, not diminishes, her constitutional injury. *Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.*, 475 U.S. 1, 20–21 (1986) (plurality opinion); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974).

Exclusive representation is also forced association: Bennett is forced to associate

with Council 31 as her exclusive representative simply by the fact of her employment in this particular bargaining unit. "Freedom of association . . . plainly presupposes a freedom not to associate." *Roberts*, 468 U.S. at 623. Yet Bennett has no such freedom, no choice about her association with Council 31; it is imposed upon her by the State's laws.

Exclusive representation is therefore subject to at least exacting scrutiny, if not strict scrutiny. *See Knox v. SEIU, Local 1000*, 567 U.S. 298, 310–11 (2012). It must "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Id.* at 310. This the Defendants cannot show.

Unions and state governments have proffered various claimed interests for compelling the association of employees and, thereby, restricting First Amendment rights. One interest often proffered is "labor peace," meaning the "avoidance of the conflict and disruption that it envisioned would occur if the employees in a unit were represented by more than one union" because "inter-union rivalries would foster dissension within the work force, and the employer could face 'conflicting demands from different unions.'" *Janus*, 138 S. Ct. at 2465.

This justification is particularly inapplicable to Bennett because she does not seek to introduce a competing union into the bargaining mix but only to ensure that the Union does not speak on her behalf. Furthermore, in *Janus* the Supreme Court assumed, without deciding, that labor peace might be a compelling state interest, but the Court rejected it as a justification for agency fees. The interest should,

likewise, be rejected as a justification for exclusive representation. The Supreme Court recognized that "it is now clear" that the fear of "pandemonium" if the union could not charge agency fees was "unfounded." *Janus*, 138 S. Ct. at 2465. To the extent that individual bargaining is claimed to raise the same concerns of pandemonium, this too, remains insufficient. The Supreme Court rejected the invocation of this rationale due to the absence of evidence of actual harm. *Id.*

The "labor peace" concept was borrowed by *Abood v. Detroit Bd. Of Educ.*, 431 U.S. 209, 220–21 (1977), from the Court's jurisprudence concerning Congress's Commerce Clause power to regulate economic affairs. *See, e.g., N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 41–42 (1937). That the promotion of labor peace might justify congressional regulation of economic affairs, subject only to rational-basis review, says nothing about whether labor-peace interests suffice to clear the higher bar of First Amendment scrutiny. The Court's cases recognize that the First Amendment does not permit government to "substitute its judgment as to how best to speak for that of speakers and listeners" or to "sacrifice speech for efficiency." *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 791, 795 (1988). But that is in essence what the labor peace rationale does.

It may be that the School District finds it convenient to negotiate with a single agent, and the Union may find it convenient to accrue all bargaining power to itself, but that, in and of itself, is not enough to overcome First Amendment rights. The rights to speech and association cannot be limited by appeal to administrative convenience. *Police Dep't of Chicago v. Mosley*, 408 U.S. 92, 102 n.9 (1972) (in free

speech cases, a "small administrative convenience" is not a compelling interest); *see also Tashjian v. Republican Party*, 479 U.S. 208, 218 (1986) (holding that a state could "no more restrain the Republican Party's freedom of association for reasons of its own administrative convenience than it could on the same ground limit the ballot access of a new major party").

While it may be quicker or more efficient for the School District to negotiate only with the Union, "the Constitution recognizes higher values than speed and efficiency." *Stanley v. Illinois*, 405 U.S. 645, 656 (1972). Even if the School District could claim that it saves monetary resources by negotiating only with the Union, the preservation of government resources is not an interest that can justify First Amendment violations. In other contexts where the state's burden was only rational basis review, the Supreme Court has rejected such justifications. *See, e.g., Romer v. Evans*, 517 U.S. 620, 635 (1996) (rejecting the "interest in conserving public resources" in a case applying only heightened rational basis review); *see also Plyler v. Doe*, 457 U.S. 202, 227 (1982) ("a concern for the preservation of resources standing alone can hardly justify the classification used in allocating those resources"). Such claimed interests are not enough to leave Bennett "shanghaied for an unwanted voyage." *Janus*, 138 S. Ct. at 2466.

Janus has already dispatched "labor peace" and the so-called "free-rider problem" as sufficiently compelling interests to justify this sort of mandate. 138 S. Ct. at 2465-69. And Bennett is not seeking the right to form a rival union or to force the government to listen to her individual speech; she only wishes to disclaim the

Union's speech on her behalf.

B. The District Court's reliance on *Knight* is misplaced.

The District Court mistakenly relied on *Minnesota State Board for Community Colleges v. Knight,* 465 U.S. 271 (1984), and its related line of cases, to erroneously conclude that the Union's exclusive representation of Bennett does not impinge upon her First Amendment rights. *Knight* does not decide, however, whether such employees can be forced to associate with the Union; therefore, the case is inapposite. As the *Knight* court framed the issue, "The question presented . . . is whether this restriction on participation in the nonmandatory-subject exchange process violates the constitutional rights of professional employees." 465 U.S. at 273.

The plaintiffs in *Knight* were community college faculty who dissented from the certified union. *Id.* at 278. The Minnesota statute at issue required that their employer "meet and confer" with the union alone regarding "non-mandatory subjects" of bargaining. The statute explicitly prohibited negotiating separately with dissenting employees. *Id.* at 276. The plaintiffs filed their suit claiming a constitutional right to take part in these negotiations.

The Court explained the issue it was addressing: "[A]ppellees' principal claim is that they have a right to force officers of the State acting in an official policymaking capacity to listen to them in a particular formal setting." *Id.* at 282. Confronted with this claim, the Court held that "[a]ppellees have no constitutional right to force the government to listen to their views. They have no such right as members of the

public, as government employees, or as instructors in an institution of higher education." *Id.* at 283.

The First Amendment guarantees citizens a right to speak. It does not deny government, or anyone else, the right to ignore such speech. Unlike the plaintiffs in *Knight*, plaintiff here do not claim that her employer — or anyone else — should be compelled to listen to her views. Instead, she asserts a right against the compelled association forced on her by exclusive representation. *Knight* is inapposite.

The central issue of the *Knight* decision is whether plaintiffs could compel the government to negotiate with them instead of, or in addition to, the union. That question is fundamentally different from Bennett's claim that the government cannot compel her to associate with the Union by authorizing the Union to bargain on her behalf.

Knight is, therefore, not responsive to the question Bennett now raises: whether someone else can speak in her name, with her imprimatur granted to it by the government. She does not contest the right of the government to choose whom it meets with, to "choose its advisors," or to amplify the Union's voice. She does not demand that the government schedule meetings with her, engage in negotiation, or any of the other demands made in *Knight*. She only asks that the Union not do so in her name.[4]

[4] In the alternative, Bennett reserves the right to argue on appeal that *Knight* should be overturned. *Knight* asserted that exclusive representation "in no way restrained [plaintiff's] . . . freedom to associate," *Knight*, 465 U.S. at 288. However, the Supreme Court in *Janus* stated that exclusive representation "substantially restricts the rights of individual employees," *Janus*, 138 S. Ct. at 2460. *Knight* is therefore, in error on this point and should be overturned to bring greater clarity to the doctrine.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed. Bennett's motion for summary judgment should be granted, the Union and the School District's motions for summary judgment should be denied, and the state defendants' motion to dismiss should be denied.

Dated: May 26, 2020

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the type-volume limitations imposed by Fed. R. App. P. 32 and Circuit Rule 32 for a brief produced using the following font: Proportional Century Schoolbook Font 12 pt body text, 11 pt for footnotes. Microsoft Word for Mac was used. The length of this brief was 7840 words.

/s/ Jeffrey M. Schwab
Jeffrey M. Schwab

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2020, I electronically filed the foregoing Appellants' Brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Jeffrey M. Schwab
Jeffrey M. Schwab

REQUIRED SHORT APPENDIX

Contents

Certificate

Pursuant to Circuit Rule 30(d), I hereby certify that this short appendix includes all the materials required by Circuit Rules 30(a) and (b).

/s/ Jeffrey M. Schwab
Jeffrey M. Schwab

Counsel for Plaintiff-Appellant

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

SUSAN BENNETT, Plaintiff, v. AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, AFL-CIO; AFSCME LOCAL 672; BOARD OF EDUCATION MOLINE-COAL VALLEY SCHOOL DISTRICT NO. 40;[1] ATTORNEY GENERAL KWAME RAOUL, in his official capacity; and ANDREA R. WAINTROOB, chair, JUDY BIGGERT, GILBERT O'BRIEN JR., LYNNE SERED, and LARA SHAYNE, members, of the Illinois Educational Labor Relations Board, in their official capacities, Defendants.	)	Case No. 4:19-cv-04087-SLD-JEH

ORDER

Before the Court are Defendants Attorney General Kwame Raoul, Andrea R. Waintroob, Judy Biggert, Gilbert O'Brien Jr., Lynne Sered, and Lara Shayne's ("State Defendants") Motion to Dismiss, ECF No. 14;[2] Defendants American Federation of State, County, and Municipal Employees, Council 31, AFL-CIO ("Council 31") and AFSCME Local 672's ("Local 672") (collectively, "the Union") Motion for Summary Judgment, ECF No. 30; Defendant Board of

[1] Defendant Board of Education of Moline-Coal Valley School District No. 40 was incorrectly named Moline-Cole Valley School District No. 40 in the caption of the Complaint, ECF No. 1. *See* Not. of Correction, ECF No. 3; Sch. Dist. Answer 1, ECF No. 17.

[2] On July 22, 2019, the parties agreed that the State Defendants' Motion to Dismiss be considered, along with the anticipated joint statement of stipulated facts, as a motion for summary judgment. Agreed Mot. Stay Briefing Mot. Dismiss 1–2, ECF No. 21. On August 2, 2019, the Court granted the agreed motion and will treat the State Defendants' Motion to Dismiss as one for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 12(d).

Education Moline-Coal Valley School District No. 40's ("School District") Motion for Summary Judgment, ECF No. 32; and Plaintiff Susan Bennett's Motion for Summary Judgment, ECF No. 27. For the reasons that follow, Defendants' motions are GRANTED and Plaintiff's motion is DENIED.

BACKGROUND[3]

Plaintiff has been employed as a custodian by the School District since August 2009. Council 31, a Chicago based labor organization under Section 2(c) of the Illinois Educational Labor Relations Act ("IELRA"), 115 ILCS 5/1−21, represents public sector workers employed by government employers in Illinois. Local 672 is also organized under Section 2(c) of the IELRA and represents custodial and maintenance employees of the School District out of its Moline, Illinois location. The School District is an Illinois public school district with its principal office located in Moline, Illinois. The School District is an educational employer under Section 2(a) of the IELRA. Attorney General Raoul is sued in his official capacity as the representative of the State of Illinois charged with the enforcement of state laws, including the IELRA. Waintroob, Biggert, O'Brien Jr., Sered, and Shayne, are members of the Illinois Educational Labor Relations Board ("IELRB") and are sued in their official capacities. The IELRB has certified Council 31 as the exclusive representative, pursuant to 115 ILCS 5/8, for the bargaining unit consisting of the School District's custodial and maintenance employees.

School District employees may become union members but joining the Union has never been a condition of employment. Union members had the right to vote on whether to ratify a

[3] The facts related here are taken from the Joint Stipulated Record, ECF No. 26, the exhibits attached to it, the State Defendants' Background, State Defs.' Mem. Supp. Mot. Dismiss 1–3, ECF No. 15; the Union's Statement of Facts, Union's Br. Supp. Mot. Summ. J. 2–5, ECF No. 31; and the School District's Statement of Undisputed Material Facts, Sch. Dist.'s Br. Supp. Mot. Summ. J. 2–3, ECF No. 33. *See* Pl.'s Combined Resp. Defs.' Mots. 2, ECF No. 34 (indicating no objection to the facts recited in the Defendants' motions).

collective bargaining agreement, the opportunity to serve on bargaining committees, the right to vote in union elections, and the right to be nominated for or elected to union office. Plaintiff, who has been employed by School District since August 2009 in a bargaining unit position represented by Council 31, initially became a member of the Union in November 2009 by signing a membership and dues-deduction authorization card ("2009 Card") that stated: "I hereby authorize my employer to deduct the amount as certified by the Union as the current rate of dues. This deduction is to be turned over to AFSCME, AFL-CIO." 2009 Card, Joint Stip. R. Ex 1, ECF No. 26-1. On August 21, 2017, Plaintiff signed a Council 31 membership and dues-deduction authorization card ("2017 Card") that stated:

> I hereby affirm my membership in AFSCME Council 31, AFL-CIO and authorize AFSCME Council 31 to represent me as my exclusive representative on matters related to my employment.
>
> I recognize that my authorization of dues deductions, and the continuation of such authorization from one year to the next, is voluntary and not a condition of my employment.
>
> I hereby authorize my employer to deduct from my pay each pay period that amount that is equal to dues and to remit such amount monthly to AFSCME Council 31 ("Union"). This voluntary authorization and assignment shall be irrevocable for a period of one year from the date of authorization and shall automatically renew from year to year unless I revoke this authorization by sending written notice . . . to my Employer and to the Union postmarked not more than 25 days and not less than 10 days before the expiration of the yearly period described above, or as otherwise provided by law.

2017 Card, Joint Stip. R. Ex 2, ECF No. 26-2.

The Union requires yearly dues commitments to facilitate the School District's dues-deductions process and to help budget and make advance financial commitments, such as renting offices, hiring staff, and entering into contracts with other vendors. The Union and the School District have agreed to three consecutive collective bargaining agreements ("CBA") since July 1, 2014, with the current collective bargaining agreement ("Current CBA") set to expire on June

30, 2020. The School District deducted union dues from wages earned by Plaintiff and the other union members in her bargaining unit and remitted them to Council 31. The School District had no role, authority, or discretion in determining union membership, the amount of dues deductions, or the opt-out window. The Union informed the School District as to who was and who was not a member and the amount of any dues deduction to be withheld from employees' paychecks.

Prior to June 27, 2018, nonmember employees were required to pay "fair-share fees" to the Union pursuant to Article XV, Section 2 of both the 2014–2017 CBA and the 2017–2018 CBA and 5 ILCS 315/6(e).[4] The School District and Council 31 stopped enforcing the fair-share-fee requirement of the 2017–2018 CBA and stopped deducting and collecting fair-share fees immediately after the Supreme Court issued its decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018). The Current CBA contains no fair-share-fee requirement.

In August 2018, Plaintiff attended a union membership meeting, at which time she voted on whether to ratify the Current CBA. On March 4, 2019, Plaintiff resigned her union membership and on July 29, 2019, within the 2017 Card's revocation window, revoked her dues-deduction authorization. The School District stopped deducting dues from her wages.

On April 26, 2019, Plaintiff filed suit pursuant to 42 U.S.C. § 1983 and the First and Fourteenth Amendments (1) alleging that the School District and the Union violated Plaintiff's First Amendment rights to free speech and freedom of association, Compl. ¶¶ 37–45, ECF No. 1; (2) seeking a judgment declaring that (i) Defendants' collective bargaining agreement, entered

[4] For some reason, the parties cite to the fair-share fee provision in the Illinois Public Labor Relations Act rather than the IELRA's version at 115 ILCS 5/11. Joint Stip. R. ¶ 27.

under color of and pursuant to Illinois law, violated Plaintiff's free speech rights by purporting to limit the ability of Plaintiff to revoke the dues-deduction authorization to a window of time without affirmative consent, *id*. at 10(a)–11(a); (ii) the 2017 Card signed by Plaintiff—when such authorization was based on an unconstitutional choice between paying the union as a member or paying the union as a nonmember—did not meet the standard for affirmative consent required to waive the First Amendment right announced in *Janus*, *id*. at 11(b); and (iii) the exclusive representation provided for in 115 ILCS 5/3 is unconstitutional, *id*. ¶¶ 46–56; (3) seeking to enjoin (i) the Illinois Attorney General from enforcing 115 ILCS 5/3, *id*. at 11(g); and (ii) Waintroob, Biggert, O'Brien Jr., Sered, and Shayne as members of the IELRB from certifying a union as the exclusive representative in a bargaining unit, *id*. at 12(h). Plaintiff also seeks damages against the Union for all dues collected from her, before and after the Supreme Court's decision in *Janus*. *Id*. at 12(i), (j).[5] The parties move for summary judgment on all claims.

DISCUSSION

I. Legal Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The court must view the evidence "in the light most favorable to the non-moving party[] and draw[] all reasonable inferences in that party's favor, " *McCann v. Iroquois*

[5] Plaintiff also seeks a judgment declaring that the School District's practice of withholding union dues from Plaintiff's paycheck is unconstitutional, to prohibit further deductions, and to require the Union to allow Plaintiff to immediately resign her union membership. Compl. 11(c)–(e). To satisfy Article III's requirement that courts consider only actual cases or controversies, prospective injunctive relief is only available if plaintiffs demonstrate a real and immediate threat of future injury. *City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983); *UWM Student Ass'n v. Lovell*, 888 F.3d 854, 860 (7th Cir. 2018) (same). Plaintiff has resigned from the union and dues are no longer being deducted from her wages, Joint Stip. R. ¶ 39, so Plaintiff's requests for injunctive relief are MOOT.

Mem'l Hosp., 622 F.3d 745, 752 (7th Cir. 2010) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)), and determine whether there is sufficient evidence favoring the non-moving party for a factfinder to return a verdict in its favor. *Anderson*, 477 U.S. at 249. Since the parties have stipulated to a set of facts, the Court views each party's motion in the light most favorable to the non-moving party and determines whether the movant is entitled judgment as a matter of law. 42 U.S.C. § 1983 provides a cause of action against "[e]very person who, under color of any statute, ordinance, regulation . . . subjects, or causes to be subjected, any [person] . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." Freedom of speech and association are protected by the First Amendment, which is made applicable to the states through the Fourteenth Amendment.

II. Analysis

In *Janus*, the Supreme Court held that the Illinois Public Labor Relations Act's ("IPLRA") enforcement of a collective bargaining agreement's fair-share fee provision violated the free speech rights of nonmembers because it "compel[ed] them to subsidize private speech on matters of substantial public concern" without their consent. *Janus*, 138 S. Ct. at 2459–61. While a nonmember may choose to pay a fair-share fee, one may not be collected "unless the employee affirmatively consents to pay[,] . . . [thereby] waiving [his] First Amendment rights." *Id*. at 2486.

Here, Plaintiff argues the Union's previous offer to employees—to be a fair-share-fee paying nonmember or a dues-paying member—was an unconstitutional choice under *Janus* and failed to provide her with an opportunity to affirmatively waive her First Amendment right to not pay the Union a portion of her wages. Pl.'s Mem. Supp. Mot. Summ. J. 3–6, ECF No. 28. She

also argues that the IELRA's exclusive representative provisions violate her First Amendment rights to freedom of speech and freedom of association. *Id*. at 7–9.

A. Union Dues[6]

Plaintiff argues that after *Janus*, payments to a union could no longer be deducted from a public employee's wages without the employee's affirmative consent to waive his First Amendment right to not pay a union. Pl.'s Mem. Supp. Mot. Summ. J. 3–6. The Union argues *Janus* held that *nonmembers* could no longer be constitutionally required to pay fair-share fees, but that it had no effect on *union members*' obligations to pay fees pursuant to voluntarily signed membership agreements. Union's Br. Supp. Mot. Summ. J. 5−10, ECF No. 31.

1. Coercion

Plaintiff argues her dues authorization was coerced because she was given the unconstitutional choice between paying the Union as a nonmember or a member. "[B]etween paying something for nothing and paying more for benefits she did not consider worth the cost, she decided to take the latter option." Pl.'s Mem. Supp. Mot. Summ. J. 4.[7] The Union, relying on similar cases filed throughout the country after *Janus*, argues that Plaintiff chose to join the Union and cannot void the dues-deduction authorization commitment on grounds of coercion. Union's Br. Supp. Mot. Summ. J. 5–8.[8] Coercion is defined as the "[c]ompulsion of a free agent by physical, moral, or economic force or threat of physical force." *Coercion*, Black's Law

[6] The parties debate whether Defendants' conduct constituted state action under section 1983 and the First and Fourteenth Amendments to the Constitution. While far from clear, the Court will assume state action for purposes of the order.

[7] The Union calls attention to the missing factual basis for Plaintiff's claim—there is no evidence "that she only joined the Union because of the then-applicable fair-share fee requirement." Union's Br. Supp. Mot. Summ. J. 7–8. Instead, the evidence shows Plaintiff voluntarily became a union member and received membership benefits in exchange. *See* Joint Stip. R. ¶¶ 10, 13, 41–43 (listing benefits such as "home mortgage assistance," . . . "access to scholarship programs" and "discounts on wireless phone plans, auto insurance, life insurance, and legal services.") Once Plaintiff resigned her membership, she no longer had membership rights or access to members-only benefits.

[8] "[E]mployees shall . . . have the right to refrain from any or all [collective bargaining] activities." 115 ILCS 5/3(a).

Dictionary (11th ed. 2019). "Economic duress . . . is an affirmative defense to a contract, which releases the party signing under duress from all contractual obligations. Duress occurs where one is induced by a wrongful act or threat of another to make a contract under circumstances that deprive one of the exercise of one's own free will." *Krilich v. Am. Nat'l Bank & Tr. Co. of Chi.*, 778 N.E.2d 1153, 1162 (Ill. App. Ct. 2002) (citation omitted).

Plaintiff does not factually or legally support her coercion claim and courts faced with similar challenges post-*Janus* have rejected coercion arguments. *See Oliver v. Serv. Emps. Int'l Union Local 668*, 415 F. Supp. 3d 602, 606−08 (E.D. Pa. 2019) (rejecting the plaintiff's argument that she was coerced because a state statute made union membership voluntary); *Babb v. Cal. Teachers Ass'n*, 378 F. Supp. 3d 857, 877 (C.D. Cal. 2019) ("Plaintiffs voluntarily chose to pay membership dues in exchange for certain benefits, and the fact that [they] would not have opted to pay union membership fees if *Janus* had been the law at the time of their decision does not mean their decision was therefore coerced." (brackets and quotation marks omitted)); *Bermudez v. Serv. Emps. Int'l Union, Local 521*, No. 18-cv-04312-VC, 2019 WL 1615414, at *2 (N.D. Cal. Apr. 16, 2019) (rejecting plaintiffs' state law claims for a refund of their membership dues because the decision to pay dues was not coerced or wrongfully collected but based on a valid contract term); *Belgau v. Inslee*, 359 F. Supp. 3d 1000, 1016–17 (W.D. Wash. 2019) (holding that neither statute nor collective bargaining agreement compelled involuntary dues deductions and the "notion that the [p]laintiffs may have made a different choice if they knew the Supreme Court would later invalidate public employee agency fee arrangements in *Janus* does not void their previous knowing agreements" (quotation marks and brackets omitted)); *Cooley v. Cal. Statewide Law Enf't Ass'n*, No. 2:18-cv-02961-JAM-AC, 2019 WL 331170, at *3 (E.D.

Cal. Jan. 25, 2019) (same). Accordingly, Plaintiff has not shown she was under pressure to sign the 2017 Card or otherwise demonstrated that she was coerced.

2. Knowing and Voluntary Waiver

Relatedly, Plaintiff argues she did not knowingly and voluntarily waive her First Amendment right to not pay the Union because *Janus* had not been decided when she signed the 2017 Card. Pl.'s Mem. Supp. Mot. Summ. J. 4–6; *see Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) ("A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege"). After all, a waiver of a constitutional right "must be freely given and shown by clear and compelling evidence." Pl.'s Mem. Supp. Mot. Summ. J. 3 (quoting *Janus*, 138 S. Ct. at 2486) (quotation marks omitted). The Union shifts the discussion to better describe the "right" waived here.[9] While obligated under a union agreement, Plaintiff did not have a right to not pay a fair-share fee without giving affirmative consent. Perhaps Plaintiff is actually arguing that her 2017 Card involuntarily and unknowingly waived her right to take advantage of *Janus*. But signing a membership agreement suggests that she was not intending to assert her right to remain a no-fee paying nonmember. And the right created in *Janus* was unknown in 2017 when Plaintiff signed the dues-deduction authorization card. "[C]hanges in intervening law—even constitutional law—do not invalidate a contract." *Smith v. Bieker*, No. 18-cv-05472-VC, 2019 WL 2476679, at *2 (N.D. Cal. June 13, 2019) (citing *Brady v. United States*, 397 U.S. 742, 757

[9] Relying on *Harper v. Virginia Department of Taxation*, 509 U.S. 86, 97 (1993), Plaintiff argues *Janus* applies retroactively, meaning that the Union and the School District were required "to secure Plaintiff's affirmative consent for the knowing and voluntary waiver of her rights not to join a union. . . . Because they did not[,] . . . the Union could not compel her to be a member . . . or to continue to pay [U]nion dues. . . . Plaintiff's union card is void under *Janus*." Pl.'s Mem. Supp. Mot. Summ. J. 5–6. The evidence indicates Plaintiff "affirm[ed her] membership in [the Union]" and that her "authorization of dues deductions . . . [wa]s voluntary." Joint. Stip. R. ¶ 13. Again, Plaintiff points to no evidence that she would have chosen to not join the Union if she had known she had a First Amendment right to not pay a fair-share fee. Plaintiff's argument that the Court should apply *Janus* retroactively to void her voluntarily entered membership and dues-deduction authorization card is rejected.

(1970)). Parties may enter into mutually beneficial contracts that by implication foreclose future opportunities.

For instance, courts routinely uphold plea agreements that waive defendants' rights to appeal or collaterally attack their convictions even when the Supreme Court modifies constitutional criminal law or procedures in their favor. "[O]ne major purpose of an express waiver is to account in advance for unpredicted future developments in the law." *Oliver v. United States*, 951 F.3d 841, 845 (7th Cir. 2020). "By binding oneself one assumes the risk of future changes in circumstances in light of which one's bargain may prove to have been a bad one." *Id*. (quotation marks omitted). A defendant may regret his plea agreement because he did not anticipate a Supreme Court ruling, but that "does not render his decision to plead guilty involuntary." *United States v. Vela*, 740 F.3d 1150, 1154 (7th Cir. 2014). If incarcerated defendants cannot rescind agreements as involuntary in light of subsequently developed constitutional caselaw, civil litigants disputing property rights should fare no differently. Accordingly, Plaintiff's obligation to pay union dues pursuant to the 2017 Card remains enforceable despite the new constitutional right identified in *Janus*. *See also Jared Allen v. Ohio Civil Serv. Emps. Ass'n AFSCME, Local 11*, No. 2:19-cv-3709, 2020 WL 1322051, at *9 (S.D. Ohio Mar. 20, 2020) ("Plaintiffs have not identified any cases where an individual voluntarily entered into a contract with full information as to the rights he/she was giving up, waived those rights, and subsequently was permitted to break that contract based on a change in the law applicable to those rights."); *Smith v. Superior Court, Cty. of Contra Costa*, No. 18-cv-05472-VC, 2018 WL 6072806, at *1 (N.D. Cal. Nov. 16, 2018) (rejecting the plaintiff's attempt to invalidate his union contract after *Janus* because it was "not the rights clarified in *Janus* that are relevant[. The plaintiff's] First Amendment right to opt out of union membership was clarified

in 1977, and yet he waived that right by affirmatively consenting to be a member of Local 2700." (citing *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 235-36 (1977), *overruled by Janus*, 138 S. Ct. at 2464)).

The fact that Plaintiff did not sign a waiver of the later-identified First Amendment right to not pay a fair-share fee does not invalidate her agreement to join the Union.[10] The 2017 Card was not the product of coercion and was not involuntary simply because *Janus* made union membership less appealing.

B. Exclusive Representation

Representatives selected by a bargaining unit "shall be the exclusive representative of all the employees in such unit to bargain on wages, hours, terms and conditions of employment." 115 ILCS 5/3(b). Plaintiff argues that this exclusive representation is unconstitutional because the Union uses it to compel her "speech [when] []the union speaks on behalf of the employees, as though its speech is the employees' own speech[]" and her "association [because] []the union represents everyone in the bargaining unit without any choice or alternative for dissenting employees not to associate.[]" Pl.'s Mem. Supp. Mot. Summ. J. 7. She asserts exclusive representation is subject to "at least exacting scrutiny, if not strict scrutiny." *Id.* at 8 (citing *Knox v. Serv. Emps. Intl Union, Local 1000*, 567 U.S. 298, 310 (2012) (discussing standard of review for mandatory associations)).

State Defendants contend that requiring exclusive representation does not create a mandatory association, State Defs.' Mem. Supp. Mot. Dismiss 5, ECF No. 15, and that *Janus* did not otherwise disturb the "bedrock principle of labor law" that permits a majority of employees to select an exclusive representative to represent all employees of the bargaining unit, *id*. at 3–7.

[10] Even after Plaintiff resigned her union membership, she was required to fulfill her commitment to pay union dues under the dues-deduction authorization card. Joint Stip. R. ¶¶ 13, 24, 25, 33–36, 38.

In support, they and the Union cite *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 271 (1984), *D'Agostino v. Baker*, 812 F.3d 240, 244 (1st Cir. 2016), *Hill v. Serv. Emps. Int'l Union,* 850 F.3d 861 (7th Cir. 2017), and cases that have considered the issue after *Janus*.

Mandatory associations that force membership and financial support for group speech "implicate the First Amendment freedom of association, which includes the freedom to choose not to associate, and the First Amendment freedom of speech, which also includes the freedom to remain silent or to avoid subsidizing group speech with which a person disagrees." *Kingstad v. State Bar of Wis.*, 622 F.3d 708, 712–13 (7th Cir. 2010) "Despite [a] general rule against 'forced speech,'. . . the Supreme Court has found that certain mandatory associations—agency shops, agricultural marketing collectives, and integrated or mandatory bars—are permitted under the First Amendment because the forced speech serves legitimate governmental purposes for the benefit of all members." *Id.* at 713. "Mandatory associations are subject to exacting scrutiny, meaning they require a compelling state interest that cannot be achieved through significantly less-restrictive means." *Hill,* 850 F.3d at 863.

In *Knight*, non-union college instructors objected to the union's exclusive right to bargain on educational policies, topics beyond the scope of a typical labor relations statute. The Court held that "[t]he state ha[d] in no way restrained [instructors'] 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. Nor has the state attempted to suppress any ideas." *Knight*, 465 U.S. at 288. Additionally, the instructors were free to not join the union and to form advocacy groups. *Id*. at 289. Plaintiff argues that the instructors in *Knight* sought a right to force the government to listen to their policy views in a formal setting, whereas she only seeks to not be

associated with the Union. Pl.'s Combined Resp. Defs.' Mots. 21, ECF No. 34. This is a distinction without a difference—regardless of a nonmember's motivation to contest the association, the effect on First Amendment rights necessarily resulting from exclusive representation is not sufficient to invalidate it.

Similarly, in *D'Agostino*, nonmembers bristled at exclusive-bargaining representation. The court concluded that "exclusive bargaining representation by a democratically selected union d[id] not, without more, violate the right of free association on the part of dissenting non-union members of the bargaining unit." *D'Agostino*, 812 F.3d at 244. Further, it rejected that a nonmember's association with a union resulted in compelled speech.

> [T]he relationship is one that is clearly imposed by law, not by any choice on a dissenter's part, and when 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. And the freedom of the dissenting [employees] to speak out publicly on any union position further counters the claim that there is an unacceptable risk the union speech will be attributed to them contrary to their own views; they may choose to be heard distinctly as dissenters if they so wish, and . . . the higher volume of the union's speech has been held to have no constitutional significance.

Id. The employees were not "compelled to act as public bearers of an ideological message they disagree[d] with," *id*. (citing *Wooley v. Maynard*, 430 U.S. 705 (1977)), required "to modify the expressive message of any public conduct they may choose to engage in," *id*. (citing *Hurley v. Irish–Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557 (1995)), or "under any compulsion to accept an undesired member of any association they may [have] belong[ed] to," *id*. (citing *Boy Scouts of Am. v. Dale*, 530 U.S. 640 (2000)).

In *Hill,* non-union employees asserted that the IPLRA's exclusive-bargaining provisions created an unconstitutional association. *Hill*, 850 F.3d at 863. The court, relying on *Knight* and

D'Agostini, concluded that "the IPLRA[] . . . d[id] not compel an association that trigger[ed] heightened First Amendment scrutiny." *Id.* at 865.[11]

Plaintiff also suggests the exclusive-bargaining representation set forth in 115 ILCS 5/3(b) imposes too great a burden on the First Amendment principles identified in *Janus*. But it is clear that *Janus* did not reach the issue and instead, reaffirmed the traditional labor system. "States can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions." *Janus,* 138 S. Ct. at 2485 n.27.

> [T]he State may require that a union serve as exclusive[-]bargaining agent for its employees—itself a significant impingement on associational freedoms that would not be tolerated in other contexts. We simply draw the line at allowing the government to go further still and require all employees to support the union irrespective of whether they share its views.

Id. at 2478. On remand, the Seventh Circuit reiterated the viability of exclusive union representation. "[T]he union still enjoys the power and attendant privileges of being the exclusive representative of an employee unit." *Janus v. Am. Fed'n of State, Cty. & Mun. Emps., Council 31*, 942 F.3d 352, 358 (7th Cir. 2019). It is "[t]he principle . . . [that] lies at the heart of our system of industrial relations." *Id*. at 354. This leaves *Knight*, *Hill,* and exclusive representation undisturbed. *See also Mentele v. Inslee*, 916 F.3d 783, 789 (9th Cir. 2019) (holding that the state's "authorization of an exclusive[-]bargaining representative d[id] not infringe [an employee]'s First Amendment rights"); *Bierman v. Dayton*, 900 F.3d 570, 574 (8th Cir. 2018) (applying *Knight,* because *Janus* did not consider *Knight* or the constitutionality of exclusive representation, to conclude that statute permitting it "did not impinge on the right of

[11] Plaintiff argues the *Hill* plaintiffs were not considered "full-fledged" public employees, *Hill*, 850 F.3d at 862 n.1, a status that necessarily narrowed the scope of the union's representation to only those "terms and conditions of employment that [we]re within the State's control," 20 ILCS 2405/3(f). Plaintiff does not explain how this distinction impacted the court's decision, Combined Resp. Defs.' Mots. 22, and the Court will not speculate, especially in light of *Knight's* controlling precedent involving "full-fledged" employees.

association"). As the IELRA does not create a mandatory association, "it is not subject to heightened scrutiny," *Hill*, 850 F.3d at 866, and is not an unconstitutional impingement on Plaintiff's freedom to associate as protected by the First Amendment, *Knight*, 465 U.S. at 288.

CONCLUSION

Accordingly, the State Defendants' Motion to Dismiss, ECF No. 14, the Union's Motion for Summary Judgment, ECF No. 30, and the School District's Motion for Summary Judgment, ECF No. 32, are GRANTED. Plaintiff's Motion for Summary Judgment, ECF No. 27, is DENIED. This action is DISMISSED WITH PREJUDICE. The Clerk is directed to enter judgment and close the case.

Entered this 31st day of March, 2020.

s/ Sara Darrow
SARA DARROW
CHIEF UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

for the
Central District of Illinois

Susan Bennett,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**Case Number: 19-4087**
	)	
Council 31 of the American Federation of State, County, and Municipal Employees, AFL-CIO, AFSCME Local 672, Moline Coal Valley School District No. 40, Kwame Raoul, Andrea Waintroob, Judy Biggert, Gilbert O'Brien, Jr., Lynne Sered, Lara Shayne,	)	
	)	
Defendants,	)	
	)	
Moline-Coal Valley School District No. 40,	)	
	)	
Cross Claimant,	)	
	)	
vs.	)	
	)	
AFSCME Local 672, Council 31 of the American Federation of State, County, and Municipal Employees, AFL-CIO,	)	
Cross Defendants	)	

JUDGMENT IN A CIVIL CASE

DECISION BY THE COURT. This action came before the Court, and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Bennett's action against Council 31 of the American Federation of State, County, and Municipal Employees, AFL-CIO ("Council 31"), AFSCME Local 672, Moline Coal Valley School District No. 40, Kwame Raoul, Andrea Waintroob, Judy Biggert, Gilbert O'Brien, Jr., Lynne Sered, and Lara Shayne is dismissed and she recovers nothing on her claims. Moline-Coal Valley School District No. 40's cross claim against Council 31 and AFSCME Local 672 is dismissed and it receives nothing on its claim.

Dated: 4/2/20

s/ Shig Yasunaga
Shig Yasunaga, Clerk, U.S. District Court

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
ROCK ISLAND DIVISION

SUSAN BENNETT,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, AFL-CIO; AFSCME LOCAL 672; MOLINE-COLE VALLEY SCHOOL DISTRICT NO. 40; ATTORNEY GENERAL KWAME RAOUL, in his official capacity; and ANDREA R. WAINTROOB, chair, JUDY BIGGERT, GILBERT O'BRIEN JR., LYNNE SERED, and LARA SHAYNE, members, of the Illinois Educational Labor Relations Board, in their official capacities,

Defendants.

Case No. 4:19-cv-04087-SLD-JEH

JOINT STIPULATED RECORD

The undersigned parties—Plaintiff Susan Bennett, Defendant AFSCME Council 31, Defendant AFSCME Local 672, and Defendant Board of Education of Moline-Coal Valley School District No. 40—hereby stipulate that the following facts are true for purposes of cross-motions for summary judgment only. In the event that the Court denies both parties' cross-motions for summary judgment, the parties reserve the right to request a brief period of discovery prior to trial.

1. Plaintiff Susan Bennett ("Plaintiff") has been employed by the Board of Education of Moline-Coal Valley School District No. 40 ("School District") as a custodian since August 2009.
2. Defendant AFSCME Council 31 ("Council 31") is a labor organization based in Chicago, Illinois that represents public sector workers employed by numerous state and local

government employers in Illinois. Council 31 is a labor organization under Section 2(c) of the Illinois Educational Labor Relations Act, 115 ILCS 5/2(c).

3. Defendant Local 672 ("Local 672") is a labor organization based in Moline, Illinois that represents custodial and maintenance employees of the School District. Local 672 is affiliated with Council 31.

4. Local 672 is a labor organization under Section 2(c) of the Illinois Educational Labor Relations Act, 115 ILCS 5/2(c).

5. Defendant School District is an Illinois public school district with its principal office located in Moline, Illinois, and serves approximately 7,300 students across multiple buildings—one high school, one alternative high school, two middle schools, ten elementary schools and one early childhood center, as well as the District office and the Wharton Field House. The School District is an educational employer under Section 2(a) of the Illinois Educational Labor Relations Act, 115 ILCS 5/2(a).

6. Defendant Attorney General Kwame Raoul is sued in his official capacity as the representative of State of Illinois charged with the enforcement of state laws, including the Illinois Educational Labor Relations Act. 115 ILCS 5/3(b). His offices are located in Chicago and Springfield, Illinois.

7. As of the date of this stipulation, Defendants Andrea R. Waintroob (chair), Judy Biggert, Gilbert O'Brien Jr., Lynne Sered, and Lara Shayne, are members of the Illinois Educational Labor Relations Board ("IELRB"). They are sued in their official capacities.

8. The IELRB has certified Defendant Council 31 as the exclusive representative, pursuant to 115 ILCS 5/8, for the bargaining unit consisting of certain employees of the School District, including custodial and maintenance employees.

9. Since the beginning of Plaintiff's employment with the School District in August 2009, Plaintiff has been employed in a bargaining unit position represented by Council 31.

10. Plaintiff initially became a member of Council 31 and Local 672 (collectively, "the Union") in November 2009 by signing a membership and dues-deduction authorization card that stated in relevant part as follows: "I hereby authorize my employer to deduct the amount as certified by the Union as the current rate of dues. This deduction is to be turned over to AFSCME, AFL-CIO." A true and correct copy of Plaintiff's 2009 membership and dues-deduction authorization card is attached as Exhibit 1.

11. The Union presented Plaintiff with a blank copy of the membership and dues-deduction authorization card attached as Exhibit 1 and asked Plaintiff to sign it.

12. The membership and dues-deduction authorization card attached as Exhibit 1 was drafted by Council 31. The School District did not draft or approve the terms of this membership card, nor can it. The terms of union membership and dues deductions are solely within the purview of the Union and its members and potential members.

13. On August 21, 2017, Plaintiff signed a Council 31 membership and dues-deduction authorization card that stated in relevant part as follows:

> I hereby affirm my membership in AFSCME Council 31, AFL-CIO and authorize AFSCME Council 31 to represent me as my exclusive representative on matters related to my employment.
>
> I recognize that my authorization of dues deductions, and the continuation of such authorization from one year to the next, is voluntary and not a condition of my employment.
>
> I hereby authorize my employer to deduct from my pay each pay period that amount that is equal to dues and to remit such amount monthly to AFSCME Council 31 ("Union"). This voluntary authorization and assignment shall be irrevocable for a period of one year from the date of authorization and shall automatically renew from year to year unless I revoke this authorization by sending written notice by the United States

> Postal Service to my Employer and to the Union postmarked not more than 25 days and not less than 10 days before the expiration of the yearly period described above, or as otherwise provided by law.

A true and correct copy of Plaintiff's 2017 membership and dues-deduction authorization card is attached as Exhibit 2.

14. The Union presented Plaintiff with a blank copy of the membership and dues-deduction authorization card attached as Exhibit 2 and asked Plaintiff to sign it.

15. The membership and dues-deduction authorization card attached as Exhibit 2 was drafted by Council 31. The School District did not draft or approve the terms of this membership card.

16. Defendant Council 31, on behalf of Defendant Local 672, and the Board of Education entered into a collective bargaining agreement effective from July 1, 2014 through June 30, 2017 (the "2014-2017 CBA") or until the completion of a successor agreement. A true and correct copy of that collective bargaining agreement is attached as Exhibit 3.

17. Defendant Council 31, on behalf of Defendant Local 672, and the Board of Education entered into a collective bargaining agreement effective from July 1, 2017 through June 30, 2018 (the "2017-2018 CBA"), or until the completion of a successor agreement. A true and correct copy of that collective bargaining agreement is attached as Exhibit 4.

18. Defendant Council 31, on behalf of Defendant Local 672, and the Board of Education entered into a collective bargaining agreement effective from July 1, 2018 through June 30, 2020 (the "Current CBA"), or until the completion of a successor agreement. A true and correct copy of that collective bargaining agreement is attached as Exhibit 5.

19. At all times prior to June 27, 2018, School District employees in the bargaining unit represented by Council 31 had the choice of being union members or fair share fee

payers. Joining the Union was never a condition of employment. However, if an employee chose not to join the Union, prior to June 27, 2018, that employee would still have been required to pay fair share fees to the Union.

20. Plaintiff did not attempt to revoke either her 2009 or 2017 dues-deduction authorization card at any time prior to June 27, 2018.

21. Plaintiff did not sign any dues-deduction authorization agreement at any time after June 27, 2018.

22. Article XV, Section 1 of the Current CBA provides in relevant part that:

> The Employer shall honor employees' individually authorized dues deduction forms, and shall make such deductions from the employee's earnings in the amounts certified by the Union for union dues, assessments, or fees; and PEOPLE contributions, and remit such deductions to the Union at the address designated in writing to the Employer by the Union. Authorized deductions shall be revocable in accordance with the terms under which an employee voluntarily authorized said deductions provided that an employee is annually given a reasonable period to revoke.

Exhibit 5, page 21.

23. After becoming a member of the Union, Plaintiff could resign her membership at any time.

24. According to the terms of the membership and dues-deduction authorization card that Plaintiff signed on August 21, 2017, Plaintiff authorized an amount that is equal to dues to be deducted from her paycheck—that authorization was irrevocable for a period of one year from the date of the authorization. After the end of the one-year irrevocability period, the authorization would automatically renew from year to year unless Plaintiff revoked the authorization by sending written notice by the United States Postal Service to the School District and to Council 31, postmarked not more than 25 days and not less than 10 days before the end of any yearly period as described in the dues-deduction

authorization, measured from the date on which Plaintiff signed the card—which was August 21.

25. Thus, although Plaintiff could resign her membership in the Union at any time, she was obligated under the terms of her agreement to continue paying dues to the Union until she revoked the authorization by sending written notice by the United States Postal Service to the School District and to Council 31, postmarked not more than 25 days and not less than 10 days before August 21.

26. At all times relevant to the Complaint, the School District deducted union dues from the wages of union members in the bargaining unit represented by Council 31 that included Plaintiff, and remitted those dues to Council 31.

27. Prior to June 27, 2018, the School District collected fair share fees from nonmembers of Council 31 and remitted those fees to Council 31 pursuant to Article XV, Section 2 of both the 2014-2017 CBA and the 2017-2018 CBA, 5 ILCS 315/6(e), and *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977).

28. The School District and Council 31 stopped enforcing the fair-share-fee requirement of the 2017-2018 CBA and stopped deducting and collecting fair-share fees immediately after the Supreme Court issued its decision in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448, on June 27, 2018. The Current CBA contains no fair-share-fee requirement.

29. On November 1, 2018, Plaintiff sent a letter to AFSCME International—an international union based in Washington, D.C. with which Council 31 is affiliated—seeking to resign her membership. Exhibit 6.

30. On November 5, 2018, Plaintiff sent a letter to David McDermott, Chief Financial Officer of the School District, informing her employer that she was resigning from her

membership in "AFSCME (Local 672)" and asking the School District not to enforce "[a]ny previous authorizations of membership and/or the deduction of dues or fees." Exhibit 7.

31. The School District, under the terms of the collective bargaining agreements with Union (including the 2014-2017 CBA, the 2017-2018 CBA, and the Current CBA), has no role, authority, or discretion in determining union membership, the amount of dues deductions, or the opt-out window. The Union informs the School District as to who is and who is not a member and the amount of any dues deduction to be withheld from employees' paychecks.

32. On December 3, 2018, Mr. McDermott replied to Plaintiff's November 5, 2018, email stating that he believed, pursuant to her dues-deduction authorization card, she had to wait until the next enrollment period to withdraw, which he understood at that time to be August 2019. Mr. McDermott recommended that Plaintiff contact her Union representative to ensure that she was following the proper legal procedures to withdraw. A true and correct copy of Mr. McDermott's reply is attached as Exhibit 8.

33. On or around December 13, 2018, Rick Surber of Council 31 sent a letter to Plaintiff, acknowledging that Plaintiff had "contacted AFSCME Council 31 regarding the status of your union membership," and advising Plaintiff in relevant part that:

> As you were informed during the phone call, your union membership will stop as soon as AFSCME Council 31 receives written notice of your decision to resign. Although you may cancel your union membership at any time, your signed membership card committed you to paying an amount equal to dues to support the work of the union for one year. Our union asks members to make this commitment so that we can properly budget and provide all workers with the representation they need. As stated on the card you signed, your commitment to having dues equivalents deducted can only be revoked in writing during a specified 'window period.' Your window period is based on the date you signed your card, and is a period from 25 days before the anniversary date of your signature to 10 days before the anniversary date of your signature. Your signature date was

8/21/2017, therefore your next opportunity to submit a written request to revoke these deductions will be from 7/27/2019 to 8/11/2019.

A true and correct copy of this letter is attached as Exhibit 9.

34. Council 31 and Local 672 accepted Plaintiff's resignation from union membership on March 4, 2019.

35. Also on March 4, 2019, the School District received a letter from Union's counsel discussing Plaintiff's request to withdraw from the Union and directing the School District to continue to withhold dues from Ms. Bennett's paycheck. Specifically, the letter stated in pertinent part as follows:

> "Based upon legal precedent and the collective bargaining agreement, the District should continue to withhold dues from Ms. Bennett until she gives notice to the Union within the appropriate window period as defined by her authorization card. In the event Ms. Bennett gives notice to the Union consistent with the terms of the agreement Ms. Bennett entered into with the Union, the Union will promptly notify the District that dues deductions should cease."

A true and correct copy of this letter is attached as Exhibit 10.

36. On or around July 29, 2019, Plaintiff sent a letter to David McDermott, Chief Financial Officer, Comptroller, and Treasurer of the School District, stating that "[e]ffective immediately, I have resigned my membership from the AFSCME Local 672." In that letter, Plaintiff also informed the School District that "you are no longer authorized to enforce any authorization I may have apparently given pursuant to a signed authorization form, or any authorization that Employer has inferred on my behalf, allowing Employer to make an automatic payroll deduction for Union dues or fees." A true and correct copy of this letter is attached as Exhibit 11. Mr. McDermott received a copy of this letter on or about July 30, 2019. Council 31 and Local 672 have treated this letter as a revocation of Plaintiff's dues-deduction authorization in the card that Plaintiff signed on August 21,

2017. Upon receiving confirmation from the Union that the School District should stop deducting Plaintiff's union dues from her paychecks, the School District immediately stopped her dues deductions from all future payroll cycles.

37. Although Plaintiffs seek damages in the form of the return of all dues collected from Plaintiff before June 27, 2018, the parties agree that the statute of limitations period covered by this case is April 26, 2017 through the present.

38. At all relevant times until July 31, 2019, an amount equal to dues was deducted from each of Plaintiff's paychecks, pursuant to the dues-deduction authorizations that Plaintiff signed. During the applicable limitations period, the amount deducted was $23.74 per paycheck in 2017, $24.37 per paycheck in 2018, and $24.93 per paycheck in 2019 until July 31, 2019.

39. The deductions of an amount equal to dues from Plaintiff's paycheck have ceased as of August 1, 2019. The last such deduction was on July 31, 2019, which covered the Plaintiff's pay period for the period of July 15, 2019 through July 31, 2019.

40. The authorization for a member to have dues deducted for a set period of time, even if the member resigns from union membership in the interim, is important for Council 31 and its affiliated local unions because it allows the union to budget and plan effectively. Specifically, it allows the union to more effectively plan and make advance financial commitments, such as renting offices, hiring staff, and entering into contracts with other vendors. This commitment also makes administering dues deductions easier for the union and the employers that deduct union dues than that task would be if members could authorize and deauthorize deductions at will.

41. By signing a card like the 2009 and 2017 Union membership and dues-deduction authorization cards that Plaintiff signed, workers agree to become Union members and obtain membership rights. Those rights include the right to vote on whether to ratify a collective bargaining agreement, the opportunity to serve on bargaining committees, the right to vote in union elections, and the right to be nominated for or elected to union office.

42. In August 2018, Plaintiff attended a union membership meeting, at which a vote was taken on whether to ratify the Current CBA. A true and correct copy of the sign-in sheet for that ratification vote meeting is attached as Exhibit 12. The check mark to the left of Plaintiff's name reflects that she voted in the ratification election.

43. Members of Council 31 and Local 672 also have access to members-only benefits that are offered to all AFSCME members, including home mortgage assistance; access to apply for a low-rate credit card; access to scholarship programs for union members and certain family members; and discounts on wireless phone plans, auto insurance, life insurance, and legal services.

44. Since Council 31 has accepted Plaintiff's resignation from union membership, Plaintiff no longer has membership rights or access to members-only benefits, such as those set forth in Paragraphs 41 and 43.

Respectfully submitted,

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(115 ILCS 5/3) (from Ch. 48, par. 1703)

Sec. 3. Employee rights; exclusive representative rights.

(a) It shall be lawful for educational employees to organize, form, join, or assist in employee organizations or engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or bargain collectively through representatives of their own free choice and, except as provided in Section 11, such employees shall also have the right to refrain from any or all such activities.

(b) Representatives selected by educational employees in a unit appropriate for collective bargaining purposes shall be the exclusive representative of all the employees in such unit to bargain on wages, hours, terms and conditions of employment. However, any individual employee or a group of employees may at any time present grievances to their employer and have them adjusted without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, provided that the bargaining representative has been given an opportunity to be present at such adjustment.

(c) Employers shall provide to exclusive representatives, including their agents and employees, reasonable access to and information about employees in the bargaining units they represent. This access shall at all times be conducted in a manner so as not to impede normal operations.

(1) Access includes the following:

(A) the right to meet with one or more employees on the employer's premises during the work day to investigate and discuss grievances and workplace-related complaints without charge to pay or leave time of employees or agents of the exclusive representative;

(B) the right to conduct worksite meetings during lunch and other non-work breaks, and before and after the workday, on the employer's premises to discuss collective bargaining negotiations, the administration of collective bargaining agreements, other matters related to the duties of the exclusive representative, and internal matters involving the governance or business of the exclusive representative, without charge to pay or leave time of employees or agents of the exclusive representative;

(C) the right to meet with newly hired employees, without charge to pay or leave time of the employees or agents of the exclusive representative, on the employer's premises or at a location mutually agreed to by the employer and exclusive representative for up to one hour either within the first two weeks of

employment in the bargaining unit or at a later date and time if mutually agreed upon by the employer and the exclusive representative; and

(D) the right to use the facility mailboxes and bulletin boards of the employer to communicate with bargaining unit employees regarding collective bargaining negotiations, the administration of the collective bargaining agreements, the investigation of grievances, other workplace-related complaints and issues, and internal matters involving the governance or business of the exclusive representative.

Nothing in this Section shall prohibit an employer and exclusive representative from agreeing in a collective bargaining agreement to provide the exclusive representative greater access to bargaining unit employees, including through the use of the employer's email system.

(2) Information about employees includes, but is not limited to, the following:

(A) within 10 calendar days from the beginning of every school term and every 30 calendar days thereafter in the school term, in an Excel file or other editable digital file format agreed to by the exclusive representative, the employee's name, job title, worksite location, home address, work telephone numbers, identification number if available, and any home and personal cellular telephone numbers on file with the employer, date of hire, work email address, and any personal email address on file with the employer; and

(B) unless otherwise mutually agreed upon, within 10 calendar days from the date of hire of a bargaining unit employee, in an electronic file or other format agreed to by the exclusive representative, the employee's name, job title, worksite location, home address, work telephone numbers, and any home and personal cellular telephone numbers on file with the employer, date of hire, work email address, and any personal email address on file with the employer.

(d) No employer shall disclose the following information of any employee: (1) the employee's home address (including ZIP code and county); (2) the employee's date of birth; (3) the employee's home and personal phone number; (4) the employee's personal email address; (5) any information personally identifying employee membership or membership status in a labor organization or other voluntary association affiliated with a labor organization or a labor federation (including whether employees are members of such organization, the identity of such organization, whether or not employees pay or authorize the payment of any dues of moneys to such organization, and the amounts of such dues or moneys); and (6) emails or other communications between a labor organization and its members.

As soon as practicable after receiving a request for any information prohibited from disclosure under this subsection (d), excluding a request from the exclusive

bargaining representative of the employee, the employer must provide a written copy of the request, or a written summary of any oral request, to the exclusive bargaining representative of the employee or, if no such representative exists, to the employee. The employer must also provide a copy of any response it has made within 5 business days of sending the response to any request.

If an employer discloses information in violation of this subsection (d), an aggrieved employee of the employer or his or her exclusive bargaining representative may file an unfair labor practice charge with the Illinois Educational Labor Relations Board pursuant to Section 14 of this Act or commence an action in the circuit court to enforce the provisions of this Act, including actions to compel compliance, if an employer willfully and wantonly discloses information in violation of this subsection. The circuit court for the county in which the complainant resides, in which the complainant is employed, or in which the employer is located shall have jurisdiction in this matter.

This subsection does not apply to disclosures (i) required under the Freedom of Information Act, (ii) for purposes of conducting public operations or business, or (iii) to the exclusive representative.

(Source: P.A. 101-620, eff. 12-20-19.)

(115 ILCS 5/7) (from Ch. 48, par. 1707)

Sec. 7. Recognition of exclusive bargaining representatives - unit determination. The Board is empowered to administer the recognition of bargaining representatives of employees of public school districts, including employees of districts which have entered into joint agreements, or employees of public community college districts, or any State college or university, and any State agency whose major function is providing educational services, making certain that each bargaining unit contains employees with an identifiable community of interest and that no unit includes both professional employees and nonprofessional employees unless a majority of employees in each group vote for inclusion in the unit.

(a) In determining the appropriateness of a unit, the Board shall decide in each case, in order to ensure employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors as historical pattern of recognition, community of interest, including employee skills and functions, degree of functional integration, interchangeability and contact among employees, common supervision, wages, hours and other working conditions of the employees involved, and the desires of the employees. Nothing in this Act, except as herein provided, shall interfere with or negate the current representation rights or patterns and practices of employee organizations which have historically represented employees for the purposes of collective bargaining, including but not limited to the negotiations of wages, hours and working conditions, resolutions of employees' grievances, or resolution of jurisdictional disputes, or the establishment and maintenance of prevailing wage rates, unless a majority of the employees so represented expresses a contrary desire under the procedures set forth in this Act. This Section, however, does not prohibit multi-unit bargaining. Notwithstanding the above factors, where the majority of public employees of a craft so decide, the Board shall designate such craft as a unit appropriate for the purposes of collective bargaining.

The sole appropriate bargaining unit for tenured and tenure-track academic faculty at each campus of the University of Illinois shall be a unit that is comprised of non-supervisory academic faculty employed more than half-time and that includes all tenured and tenure-track faculty of that University campus employed by the board of trustees in all of the campus's undergraduate, graduate, and professional schools and degree and non-degree programs (with the exception of the college of medicine, the college of pharmacy, the college of dentistry, the college of law, and the college of veterinary medicine, each of which shall have its own separate unit), regardless of current or historical representation rights or patterns or the application of any other factors. Any decision, rule, or regulation promulgated by the Board to the contrary shall be null and void.

(b) An educational employer shall voluntarily recognize a labor organization for collective bargaining purposes if that organization appears to represent a majority of employees in the unit. The employer shall post notice of its intent to so recognize for a period of at least 20 school days on bulletin boards or other places used or reserved for employee notices. Thereafter, the employer, if satisfied as to the majority status of the employee organization, shall send written notification of such recognition to the Board for certification. Any dispute regarding the majority status of a labor organization shall be resolved by the Board which shall make the determination of majority status.

Within the 20 day notice period, however, any other interested employee organization may petition the Board to seek recognition as the exclusive representative of the unit in the manner specified by rules and regulations prescribed by the Board, if such interested employee organization has been designated by at least 15% of the employees in an appropriate bargaining unit which includes all or some of the employees in the unit intended to be recognized by the employer. In such event, the Board shall proceed with the petition in the same manner as provided in paragraph (c) of this Section.

(c) A labor organization may also gain recognition as the exclusive representative by an election of the employees in the unit. Petitions requesting an election may be filed with the Board:

(1) by an employee or group of employees or any labor organizations acting on their behalf alleging and presenting evidence that 30% or more of the employees in a bargaining unit wish to be represented for collective bargaining or that the labor organization which has been acting as the exclusive bargaining representative is no longer representative of a majority of the employees in the unit; or

(2) by an employer alleging that one or more labor organizations have presented a claim to be recognized as an exclusive bargaining representative of a majority of the employees in an appropriate unit and that it doubts the majority status of any of the organizations or that it doubts the majority status of an exclusive bargaining representative.

The Board shall investigate the petition and if it has reasonable cause to suspect that a question of representation exists, it shall give notice and conduct a hearing. If it finds upon the record of the hearing that a question of representation exists, it shall direct an election, which shall be held no later than 90 days after the date the petition was filed. Nothing prohibits the waiving of hearings by the parties and the conduct of consent elections.

(c-5) The Board shall designate an exclusive representative for purposes of collective bargaining when the representative demonstrates a showing of majority

interest by employees in the unit. If the parties to a dispute are without agreement on the means to ascertain the choice, if any, of employee organization as their representative, the Board shall ascertain the employees' choice of employee organization, on the basis of dues deduction authorization or other evidence, or, if necessary, by conducting an election. All evidence submitted by an employee organization to the Board to ascertain an employee's choice of an employee organization is confidential and shall not be submitted to the employer for review. The Board shall ascertain the employee's choice of employee organization within 120 days after the filing of the majority interest petition; however, the Board may extend time by an additional 60 days, upon its own motion or upon the motion of a party to the proceeding. If either party provides to the Board, before the designation of a representative, clear and convincing evidence that the dues deduction authorizations, and other evidence upon which the Board would otherwise rely to ascertain the employees' choice of representative, are fraudulent or were obtained through coercion, the Board shall promptly thereafter conduct an election. The Board shall also investigate and consider a party's allegations that the dues deduction authorizations and other evidence submitted in support of a designation of representative without an election were subsequently changed, altered, withdrawn, or withheld as a result of employer fraud, coercion, or any other unfair labor practice by the employer. If the Board determines that a labor organization would have had a majority interest but for an employer's fraud, coercion, or unfair labor practice, it shall designate the labor organization as an exclusive representative without conducting an election. If a hearing is necessary to resolve any issues of representation under this Section, the Board shall conclude its hearing process and issue a certification of the entire appropriate unit not later than 120 days after the date the petition was filed. The 120-day period may be extended one or more times by the agreement of all parties to a hearing to a date certain.

(c-6) A labor organization or an employer may file a unit clarification petition seeking to clarify an existing bargaining unit. The Board shall conclude its investigation, including any hearing process deemed necessary, and issue a certification of clarified unit or dismiss the petition not later than 120 days after the date the petition was filed. The 120-day period may be extended one or more times by the agreement of all parties to a hearing to a date certain.

(d) An order of the Board dismissing a representation petition, determining and certifying that a labor organization has been fairly and freely chosen by a majority of employees in an appropriate bargaining unit, determining and certifying that a labor organization has not been fairly and freely chosen by a majority of employees in the bargaining unit or certifying a labor organization as the exclusive representative of employees in an appropriate bargaining unit because of a determination by the Board that the labor organization is the historical bargaining

representative of employees in the bargaining unit, is a final order. Any person aggrieved by any such order issued on or after the effective date of this amendatory Act of 1987 may apply for and obtain judicial review in accordance with provisions of the Administrative Review Law, as now or hereafter amended, except that such review shall be afforded directly in the Appellate Court of a judicial district in which the Board maintains an office. Any direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision.

No election may be conducted in any bargaining unit during the term of a collective bargaining agreement covering such unit or subdivision thereof, except the Board may direct an election after the filing of a petition between January 15 and March 1 of the final year of a collective bargaining agreement. Nothing in this Section prohibits the negotiation of a collective bargaining agreement covering a period not exceeding 3 years. A collective bargaining agreement of less than 3 years may be extended up to 3 years by the parties if the extension is agreed to in writing before the filing of a petition under this Section. In such case, the final year of the extension is the final year of the collective bargaining agreement. No election may be conducted in a bargaining unit, or subdivision thereof, in which a valid election has been held within the preceding 12 month period.

(Source: P.A. 95-331, eff. 8-21-07; 96-813, eff. 10-30-09.)

(115 ILCS 5/8) (from Ch. 48, par. 1708)

Sec. 8. Election - certification. Elections shall be by secret ballot, and conducted in accordance with rules and regulations established by the Illinois Educational Labor Relations Board. An incumbent exclusive bargaining representative shall automatically be placed on any ballot with the petitioner's labor organization. An intervening labor organization may be placed on the ballot when supported by 15% or more of the employees in the bargaining unit. The Board shall give at least 30 days notice of the time and place of the election to the parties and, upon request, shall provide the parties with a list of names and addresses of persons eligible to vote in the election at least 15 days before the election. The ballot must include, as one of the alternatives, the choice of "no representative". No mail ballots are permitted except where a specific individual would otherwise be unable to cast a ballot.

The labor organization receiving a majority of the ballots cast shall be certified by the Board as the exclusive bargaining representative. If the choice of "no representative" receives a majority, the employer shall not recognize any exclusive bargaining representative for at least 12 months. If none of the choices on the ballot receives a majority, a run-off shall be conducted between the 2 choices receiving the largest number of valid votes cast in the election. The Board shall certify the results of the election within 6 working days after the final tally of votes unless a charge is filed by a party alleging that improper conduct occurred which affected the outcome of the election. The Board shall promptly investigate the allegations, and if it finds probable cause that improper conduct occurred and could have affected the outcome of the election, it shall set a hearing on the matter on a date falling within 2 weeks of when it received the charge. If it determines, after hearing, that the outcome of the election was affected by improper conduct, it shall order a new election and shall order corrective action which it considers necessary to insure the fairness of the new election. If it determines upon investigation or after hearing that the alleged improper conduct did not take place or that it did not affect the results of the election, it shall immediately certify the election results.

Any labor organization that is the exclusive bargaining representative in an appropriate unit on the effective date of this Act shall continue as such until a new one is selected under this Act.

(Source: P.A. 92-206, eff. 1-1-02.)