



4. Ms. Cogar brings this case under 42 U.S.C § 1983 and 28 U.S.C. § 2201(a), seeking declaratory relief that the state law on which the union and school district rely to withdraw dues from her wages without her consent violates the First Amendment as applied to her, damages in the amount of the dues deducted from her paychecks from the union, and injunctive relief prohibiting the union and the school district from continuing to withhold dues from her wages without her consent.

### **PARTIES**

5. Plaintiff Denise Cogar is employed by Defendant Perry Local School District.

6. Defendant Ohio Association of Public School Employees (OAPSE), Local 367 is an employee organization as defined by Section 4117.01(D) of the Ohio Revised Code and the exclusive representative, as defined by Section 4117.01(E) of the Code, for the bargaining unit that includes Ms. Cogar at Perry Local School District. Local 367 is a local affiliate of the Ohio Association of Public School Employees, AFSCME Local 4, AFL-CIO, with offices at 6805 Oak Creek Drive, Columbus, Ohio 43229-1591.

7. Defendant Perry Local School District has offices at 4325 Manchester Road, Perry, Ohio 44081. It is a public school district serving around 1,500 students in Lake County, Ohio. It is a public employer as defined by Section 4117.01(B) of the Ohio Revised Code.

8. Defendant Attorney General Dave Yost is sued in his official capacity as Ohio Attorney General. The Attorney General is charged with the enforcement of Ohio laws, including Section 4117 of the Ohio Revised Code. His office is in Columbus, Ohio.

## JURISDICTION AND VENUE

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

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

## FACTS

11. The Perry Local School District and OAPSE Local 367 have entered into a collective bargaining agreement as authorized by Chapter 4117 of the Ohio Revised Code, which governs collective bargaining between public employers, including school districts, and unions. Their current collective bargaining agreement originally applied from 2020 through 2023 but was modified and extended through June 30, 2026.<sup>1</sup>

12. Ohio law authorizes a public employer “to deduct the periodic dues, initiation fees, and assessments of members of the exclusive representative upon presentation of a written deduction authorization by the employee.” O.R.C. § 4417.09(B).

13. And the collective bargaining agreement between the union and the school district contains a provision required by Section 4417.09(B)(2) that obligates the school district to deduct union dues from employees’ wages and remit them to the union upon receipt of the employee’s voluntary authorization.

14. The collective bargaining agreement further provides that the dues deduction authorization is irrevocable for one year from when the employee signed it and will automatically renew unless the employee submits a written revocation to

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<sup>1</sup> Available at: <https://serb.ohio.gov/static/PDF/Contracts/2020/20-MED-02-0126.pdf>.

OAPSE during the ten-day period before the anniversary date of the execution of the authorization.

15. Plaintiff Denise Cogar is employed by Perry Local School District as a paraprofessional.

16. She became a member of OAPSE Local 367 by signing a membership application on September 19, 2001. **Exhibit A.**

17. The membership application Ms. Cogar signed provides that the dues deduction authorization “shall remain in effect during my employment unless withdrawn by me in the manner provided in the Collective Bargaining Agreement between the Employer and OAPSE or, where there is no provision for withdrawal in the Agreement, only during a 10 day period from August 22 through August 31.”

18. Perry Local School District then began withholding dues from Ms. Cogar’s paychecks on behalf of OAPSE Local 367, as provided in Ohio law and the district’s collective bargaining agreement with the union.

19. On November 18, 2022, Ms. Cogar sent a notice to the union that she was rescinding her union membership and requesting that dues stop being withheld from her paychecks. **Exhibit B.** She also notified the school district of her request to stop dues. **Exhibit C.**

20. On December 21, 2022, a representative from Local 367 emailed Ms. Cogar confirming that she had withdrawn her union membership and that Local 367 would instruct Perry Local School District to stop withholding dues. **Exhibit D.**

21. Starting with the pay period ending December 31, 2022, the district stopped withholding union dues from Ms. Cogar’s paychecks.

22. However, months later, a representative from Local 367 informed Ms. Cogar that the union had made a mistake: the union should have continued to withhold dues from Ms. Cogar’s paychecks because she had not requested that dues be stopped during the relevant “opt-out window,” which the representative stated



was from August 22 to August 31 under her membership agreement. Perry Local School District again began withholding dues from Ms. Cogar's paycheck for the pay period ending April 30, 2023.

23. On August 19, 2023, Ms. Cogar again sent a letter<sup>2</sup> to Local 367 requesting that dues stop being withheld from her paycheck, believing—based on the U.S. Postal Service estimate—that the letter would arrive during the opt-out window beginning August 22. **Exhibit E.**

24. However, the union did not honor her request to stop withholding dues. Rather, Local 367 sent Ms. Cogar a letter on September 6, 2023, which denied her request to stop withholding dues. It stated: “You should also be aware that your request to have dues deduction authorization cancelled does not satisfy the requirements set forth on the membership application you signed.” **Exhibit F.** It did not explain why.

25. Upon further discussion with Local 367 representatives, Ms. Cogar was told that the reason the union denied her request to stop dues deductions was because the union received her letter on August 21, 2023, one day before her opt-out window. Yet Local 367 made no effort to inform Ms. Cogar during the following ten-day window which would have allowed her to follow the union's procedure.

26. Local 367 continued to instruct the school district to withhold dues from Ms. Cogar's paychecks even after the end of the opt-out window, and the district continues to deduct union dues from her paychecks now.

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<sup>2</sup> Although the date under Ms. Cogar's signature says “7/28/2023” the letter was mailed August 19, 2023.

## COUNT I

**Relying on Section 4417.09(B)(2) of the Ohio Revised Code, OAPSE Local 367 and the Perry Local School District violated Ms. Cogar’s First Amendment rights by withholding union dues from her wages without her affirmative consent.**

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

28. In *Janus v. AFSCME*, the Supreme Court held the First Amendment guarantees public employees a right to refrain from subsidizing a union and its speech. 138 S. Ct. at 2486. “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.” *Id.* For an employee’s waiver of his or her First Amendment right not to pay to be effective, it must be freely given and shown by “clear and compelling” evidence. *Id.* “Unless employees clearly and affirmatively consent *before* any money is taken from them, this standard cannot be met.” *Id.* (emphasis added).

29. After Ms. Cogar submitted her union resignation and request to stop the withholding of dues in November 2022, Local 367 confirmed that she was no longer a union member and instructed the school district to stop withholding dues. And union dues were not withheld from Ms. Cogar’s paychecks for four months (8 pay periods).

30. Nonetheless, in April 2023, the district began deducting union dues from her paychecks again based on the union’s instruction and assertion that it had made a mistake in informing the school district to stop withholding dues from Ms. Cogar’s wages in December 2022.

31. But in April 2023, Ms. Cogar was not a union member, and she did not provide affirmative consent to either the union or the school district to withhold union dues from her wages.

32. The Supreme Court set forth in *Janus* that the First Amendment requires that a nonmember employee must provide affirmative consent before money can be withheld from her wages on behalf of a union.

33. Therefore, the withholding of dues starting in April 2023 violated Ms. Cogar's First Amendment rights as set forth in *Janus*.

34. Ohio law requires the collective bargaining agreement between a public employer and an exclusive representative provide that the employer withhold dues on behalf of the union. Ohio Rev Code § 4417.09(B)(2).

35. As a result, the school district deducted dues from Ms. Cogar's paycheck at the instruction of Local 367 under color of state law.

36. The actions of the union and the school district violate Ms. Cogar's First Amendment rights. And Section 4417.09(B)(2) of the Ohio Revised Code is unconstitutional as applied to Ms. Cogar.

### **PRAYER FOR RELIEF**

Plaintiff Denise Cogar respectfully requests that this Court:

a. Declare that the withholding of dues from Ms. Cogar's paycheck starting in April 2023 by Perry Local School District on behalf of OAPSE Local 367 violated her First Amendment rights;

b. Declare that Ohio Rev Code § 4417.09(B)(2) is unconstitutional as applied to Ms. Cogar to the extent that it authorizes Perry Local School District and OAPSE Local 367 to withhold dues from Ms. Cogar's wages when she was not a member of the union and had not given her affirmative consent;

- c. Enjoin Perry Local School District and OAPSE Local 367 from withholding union dues from Ms. Cogar's wages;
- d. Award damages against OAPSE Local 367 for all union dues collected from her since her paycheck on April 30, 2023;
- e. Award her costs and attorneys' fees under 42 U.S.C. § 1988; and
- f. Award her any further relief to which she may be entitled and such other relief as this Court may deem just and proper.

## COUNT II

**In the alternative, OAPSE Local 367 and the Perry Local School District, relying on Section 4417.09(B)(2) of the Ohio Revised Code, violated Ms. Cogar's First Amendment rights by continuing to withhold union dues from her wages without her affirmative consent after her opt-out window.**

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

38. In the alternative to Count I, OAPSE Local 367 and the Perry Local School District violated Ms. Cogar's First Amendment rights as set forth in *Janus* when they continued to withhold dues from her wages after her opt-out window at the end of August 2023, even though Ms. Cogar was no longer a union member and had twice requested that the union stop withholding dues, including in a letter allegedly received by the union one day before her opt-out window.

39. Local 367 was on notice that Ms. Cogar wished her dues to stop after the end of her next window—from both her November 2022 request and her August 2023 request.

40. Ms. Cogar sent her second request on August 19, 2023, believing that it would arrive at the union's office during her opt-out window, August 22 through August 31. Local 367 alleged that it received that request on August 21, 2023, one

day before her window and on that basis denied her request to stop the school district's withholding of dues from her paychecks.

41. And although Local 367 knew Ms. Cogar wished to stop paying dues at the end of her opt-out window and allegedly received her request one day before that ten-day window, Local 367 waited until September 6, 2023—16 days after allegedly receiving her request to stop dues—to notify Ms. Cogar of the deficiency. And even at that point, Local 367 did not explain how Ms. Cogar's request was deficient; she had to further inquire from the union why her request was deficient.

42. Local 367 could have notified Ms. Cogar of this alleged minor deficiency in her request to stop dues during the ten-day window immediately following the union's alleged receipt of her request, allowing her the opportunity to correct it. Or the union could have honored her request to stop dues after the end of her opt-out window.

43. Instead, the union and the school district continue to withhold dues from Ms. Cogar's paycheck, based on the authority set forth in Section 4417.09(B)(2) of the Ohio Revised Code, and will continue to collect dues from Ms. Cogar for at least the next year, despite her clear requests to stop.

44. The Supreme Court's decision in *Janus* requires that a nonmember provide affirmative consent to withhold from her wages on behalf of a union.

45. In August 2023, when Ms. Cogar requested that dues deductions stop, according to the union itself she was not a union member.

46. And the union and the school district did not have Ms. Cogar's affirmative consent to withhold dues starting after her opt-out window ended on August 31, 2023.

47. Therefore, the union and the school district violated Ms. Cogar's First Amendment rights as set forth in *Janus*.

48. The school district deducted dues from Ms. Cogar's paycheck at the demand of Local 367 under color of state law. *See* Ohio Rev Code § 4417.09(B)(2).

49. The actions of the union and the school district to continue collecting dues after August 31, 2023, violate Ms. Cogar's First Amendment rights. To the extent Section 4417.09(B)(2) of the Ohio Revised Code authorizes these deductions, it is unconstitutional as applied to Ms. Cogar.

### **PRAYER FOR RELIEF**

In the alternative to the relief sought under Count I, Plaintiff Denise Cogar respectfully requests that this Court:

a. Declare that the withholding of dues from Ms. Cogar's paycheck starting after August 31, 2023, by Perry Local School District on behalf of OAPSE Local 367 violated her First Amendment rights;

b. Declare that Ohio Rev Code § 4417.09(B)(2) is unconstitutional as applied to Ms. Cogar to the extent that it authorizes Perry Local School District and OAPSE Local 367 to withhold dues from Ms. Cogar's wages after her opt-out window, when she was no longer a member and without her affirmative consent;

c. Enjoin Perry Local School District and OAPSE Local 367 from withholding union dues from Ms. Cogar's wages in reliance on Ohio Rev Code § 4417.09(B)(2);

d. Award damages against OAPSE Local 367 in the amount of all union dues collected from her since August 31, 2023;

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

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

Dated: February 20, 2024

Respectfully submitted,

/s/ Jacob Huebert

Jacob Huebert (IL Bar No. 6305339)  
Jeffrey M. Schwab (IL Bar. No. 6290710)\*  
James J. McQuaid (IL. Bar. No. 6321108)\*  
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jmcquaid@libertyjusticecenter.org

*Attorneys for Plaintiff*

\* motions for admission *pro hac vice* to be submitted

Cogar v. OAPSE Local 367, *et al.*  
Complaint

# Exhibit A



## Application

Columbus, Ohio 43229 • (614)890-4770 • (800)76-OAPSE • (800)786-2773

5/20  
K10

Dues, contributions or gifts to OAPSE are not tax deductible as charitable contributions for Federal Income Tax purposes. However, they may be tax deductible as ordinary and necessary business expenses.

I hereby authorize the Ohio Association of Public School Employees as bargaining agent on matters of wages, hours, working conditions or other matters that may affect my employment. I further authorize and direct the Employer to deduct OAPSE State dues and Local dues as set forth herein or as increased from my salary or wages and remit the same to the OAPSE State Treasurer. This authorization shall remain in effect during my employment unless withdrawn by me in the manner provided in the Collective Bargaining Agreement between the Employer and OAPSE or, where there is no provision for withdrawal in the Agreement, only during a 10 day period from August 22 through August 31. I agree that any withdrawal of dues deduction authorization shall be in writing, executed and delivered during the revocation period by written notice served upon the Chief Fiscal Officer of the Employer and the OAPSE State Treasurer. I further agree that dues deduction may not be revoked at any other time or in any other manner except as provided herein.

*Katherine Cojor*  
Applicant's Signature

9/19/01  
Date

Cogar v. OAPSE Local 367, *et al.*  
Complaint

# Exhibit B

Denise Cogar  
604 Ribbonwood Oval  
Madison, OH 44057

November 18, 2022

Jim Haase  
Treasurer, Local 367  
Perry Local Schools

Dear Mr. Haase,

It is with regret that I inform you that I am resigning as a member OAPSE Local 367. I have been a participating and contributing member of the organization for the last 23 years. However, for personal reasons, I find it necessary that I have to resign from my membership effective immediately.

I would greatly appreciate your acknowledgment and release of all further dues, fees, and obligations. I thank you so much for all the lessons and experiences you have given me throughout the years of my membership. I wish the organization continued success.

Sincerely,  
Denise Cogar

Cogar v. OAPSE Local 367, *et al.*  
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# Exhibit C

Date: November 20, 2022

Employer: Perry Board of Education  
4325 Manchester Rd  
Perry, Ohio 44081

Payroll Officer:

Attached is a copy of my resignation from the union indicating the date I ended membership as is permitted under the U.S. Supreme Court ruling, *Janus v. AFSCME*.

*"States and public-sector unions may no longer extract agency fees from nonconsenting employees."*

*"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."*

I am not a member, and I do not consent to any union payment. Any previously-assumed authorization for a payment to the union was not a voluntary and knowing waiver of my First Amendment rights, and even if it were, is hereby withdrawn.

Please discontinue this deduction.

*Denise M Cogar*  
Signature

11/18/2022  
Date

Job Title: Paraprofessional

Contact Info: Denise M Cogar

604 Ribbonwood Oval, Madison, Ohio 44057

440-417-4346

Cogar v. OAPSE Local 367, *et al.*  
Complaint

# Exhibit D

From: Prior, Denise <PriorD@perry-lake.org>  
Sent: Wednesday, December 21, 2022 1:40 PM  
To: Cogar, Denise <CogarD@perry-lake.org>  
Subject: Union withdrawal

Hello

I have contacted the OAPSE State office of the Accounting department, and they confirmed that your withdrawal did go through. I have let Lew Galante know that your union dues will stop and not be withdrawn. Lew will make sure that Cami is informed of this.

This should take care of the matter. Please let me know if you would like to rejoin the union at a later date.

Have a Merry Christmas  
Denise

Cogar v. OAPSE Local 367, *et al.*  
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# Exhibit E



Ohio Association of Public School Employees  
AFSCME Local 4  
6805 Oak Creek Drive  
Columbus, Ohio 43229-1591

Denise Cogar  
604 Ribbonwood Oval  
Madison, Ohio 44057  
440-417-4346

OAPSE State Treasurer,

I withdrew as a member of #367 on or around 11/20/2022. Due to not being within the proper 10 day time frame of August 22-31, dues were not revoked. Therefore, I am requesting again, within the appropriate time frame, to stop all deductions going to OAPSE.

Per the contract agreement (signed on 09/19/2001), I am also sending this request to the CFO of Perry Local Schools. I appreciate your attention to this matter.

Respectfully,

Denise Cogar  
07/28/2023

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Columbus, OH 43229

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 Columbus, OH 43229

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 Account #: XXXXXXXXXXXXX5255  
 Approval #: 09376C  
 Transaction #: 471  
 AID: A0000000031010 Chip  
 AL: VISA CREDIT  
 PIN: Not Required CHASE VISA

Tracking #: 70190140000093826123

Cogar v. OAPSE Local 367, *et al.*  
Complaint

# Exhibit F



## Ohio Association of Public School Employees

*American Federation of State, County and Municipal Employees, AFL-CIO*

OAPSE/AFSCME Local 4/AFL-CIO, 6805 Oak Creek Drive, Columbus, Ohio 43229-1591  
(614)890-4770 • (800)786-2773 • (614)890-3540 FAX  
[www.oapse.org](http://www.oapse.org)

September 6, 2023

Joseph P. Rugola  
*Executive Director*

Denise Cogar  
604 Ribbonwood Oval  
Madison OH 44057

Lois Carson  
*State President*

Dear Denise,

Michael Lang  
*State Vice President*

We are in receipt of a recent notice from you indicating that you wish to withdraw from membership in our Union and to stop your dues deduction authorization.

Sandra Wheeler  
*State Secretary*

While we acknowledge your withdrawal from membership, we hope that you will consider the fact that OAPSE members in Ohio make *thousands of dollars more each year than those doing exactly the same jobs without our union's representation. We only stay strong when those who benefit from OAPSE do their part to support that work.* Additionally, OAPSE members and their families enjoy many other benefits from membership, including low cost education courses, access to home mortgages, credit cards and discounts to major Ohio theme parks. Also, you must be a union member to vote on a contract with your employer, attend meetings and vote in local union elections or run for office. For better wages, benefits, job security, and a decent retirement income, remain part of our union and carry your share of the load. You should also be aware that your request to have dues deduction authorization cancelled does not satisfy the requirements set forth on the membership application you signed.

If you have any questions, please contact us at (614) 890-4770 or (800) 786-2773.

Thank you.

Very truly yours,

Kelly McKinniss  
Administrative Assistant - Accounting

cc: Denise Prior, Local 367 President  
James Haase, Local 367 Treasurer  
Lloyd Rains, OAPSE Regional Director  
Trina Hostutler, OAPSE Field Representative

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Cleveland/Canton Field Office, 9555 Vista Way, Suite 230, Garfield Heights, Ohio 44125 • (330)659-7335 / (855)607-6554  
Dayton Field Office, 1299 Lyons Road, Dayton, OH 45458 • (614)890-4770 / (800)786-2773  
Toledo Field Office, 2340 Detroit Ave; Garden Floor, Maumee, Ohio 43537 • (419)887-5758 / (800)265-1810