

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**VANESSA E. CARBONELL;
ROBERTO A. WHATTS OSORIO;
ELBA Y. COLÓN NERY;
BILLY NIEVES HERNÁNDEZ;
NÉLIDA ÁLVAREZ FEBUS;
LINDA DUMONT GUZMÁN;
SANDRA QUIÑONES PINTO;
YOMARYS ORTIZ GONZÁLEZ;
CARMEN BERLINGERI PABÓN;
MERAB ORTIZ RIVERA;
JANET CRUZ BERRIOS,**

Plaintiffs,

v.

JOSEPH GONZÁLEZ in his official capacity
as Commissioner of the Puerto Rico Police
Bureau;
MICHELLE MOURE, in her official
capacity as Human Resources Manager of the
Puerto Rico Police Bureau;
**UNION OF ORGANIZED CIVILIAN
EMPLOYEES,**

Defendants.

CIVIL NO. 22-1236 (WGY)

**Constitutional Violation Action (42 U.S.C.
§ 1983), Declaratory Judgment, Injunctive
Relief, Compensatory, Nominal, and
Punitive Damages. Jury Trial Demanded.**

REPLY TO OPPOSITION TO MOTION FOR CONTEMPT

Come now, Plaintiffs Vanessa E. Carbonell (“Carbonell”), Roberto A. Whatts Osorio (“Whatts”), Elba Y. Colón Nery (“Colón”), Billy Nieves Hernández (“Nieves Hernández”), Nélide Álvarez Febus (“Álvarez”), Linda Dumont Guzmán (“Dumont”), Sandra Quiñones Pinto (“Quiñones”), Yomarys Ortiz González (“Ortiz González”), Carmen Berlingeri Pabón (“Berlingeri”), Merab Ortiz Rivera (“Ortiz Rivera”), and Janet Cruz Berrios (“Cruz”) (collectively, “Plaintiffs”), on their own behalf, through the undersigned counsel, and respectfully state and allege, as follows:

I. Background

On September 19, 2024, the court issued a Memorandum and Order (“Order”), allowing Plaintiffs’ Motion for Summary Judgment against Defendant Joseph González¹, in his official capacity as Commissioner of the Puerto Rico Police Bureau (“PRPB” or “The Public Employer”) and Michelle Moure, in her official capacity as PRPB Human Resources Manager. The court declared the Public Employer’s practice of withholding (not paying) the \$25 supplemental health benefit from non-union members based solely on their non-membership in the Union of Organized Civilian Employees (“the Union”) is unconstitutional (Dkt. 147). The court also issued an order of Permanent Injunction: “The Public Employer, its officers, agents, servants, employees, attorneys, and all other persons who are in active concert or participation with them, are prospectively ENJOINED from withholding the \$25.00 supplemental health benefit paid to Union members from non-union members eligible to be part of the Union, based solely upon union membership.” Order at 53-54. On December 8, 2024, Plaintiffs filed a “Motion for Contempt and for Sanctions and Memorandum of Law in Support”, seeking a finding of contempt and damages against the Public Employer for its non-compliance with the court’s order of permanent injunction because none of the “non-union members” employees had (and still have not) received the \$25 supplemental health benefit in their wages as the court had ordered more than two months (now five months) previously (Dkt. 151). On January 30, 2025, the Public Employer responded with a “Motion in Compliance with Order & Opposition to Motion for Contempt” (Dkt. 161).² The instant reply follows.

¹ Joseph González recently replaced Antonio López Figueroa as PRPB Commissioner. He automatically substitutes López Figueroa under Fed. R. Civ. 25(d).

² The Public Employer originally requested, and was granted, a 30-day extension of time until January 21, 2025 to respond to Plaintiffs’ Motion (Dkts. 154, 155). On January 23, 2025, 2 days after the deadline to respond had elapsed, the Public Employer requested additional time (until January 30, 2025) to respond (Dkt. 160). As of this writing, the court has not ruled on the Public

II. The expenses involved in complying with the court’s Order were foreseen and budgeted.

The Public Employer now claims—for the first time—that it has not complied with the Order because it first needs to identify “additional funds in their budget” from which to pay for the monthly \$25 employer contribution for Plaintiffs and other eligible union nonmembers. Opp’n at 2 (Dkt. 161). The Public Employer goes as far as to justify its noncompliance by characterizing the implications of the court’s Order as an “unexpected expense[].” Opp’n at 2.³ But the facts belie any notion of the expenditure being “unexpected.” Rather, it was anticipated and budgeted.

For starters, Article 11 Section 1 of the collective bargaining agreement (“CBA”) between the Public Employer and the Union requires that the \$25 monthly contribution be awarded to *all* bargaining unit members, regardless of union membership:

“The parties agree as to the following employer contributions, *for members of the Appropriate Unit*.

1. \$25.00 monthly effective as of January 1, 2014
2. \$25.00 monthly effective as of July 1, 2014
3. \$25.00 monthly effective as of July 1, 2015.”

Order at 12 (emphasis added). This court also already noted that the “monthly \$25 health benefit [was] previously paid by the Public Employer under the Collective Bargaining Agreement to union and non-union members alike.” Order at 3. The Public Employer, therefore, agreed to incur the expense of awarding the benefit to all bargaining unit members without regard to their union membership status.

Employer’s request at Dkt. 160. The Public Employer had a total of 53 days to respond to Plaintiffs’ Motion.

³ The Public Employer could have requested a stay of the Order alleging an inability to perform on budgeting grounds, if compliance truly required incurring an unbudgeted and unexpected expense. *See e.g. Martinez Rodriguez v. Jimenez*, 537 F. 2d 1, 2 (1st Cir. 1976) (discussing the standard for evaluating a request to stay a court order due to irreparable injury). But it never did because compliance entails neither irreparable damage nor an unforeseen expense.

The Public Employer also budgeted for this expense and disbursed the money accordingly. An indication of this is Plaintiff Nieves Hernández's experience, who was *never* a union member but still received the \$25 monthly employer contribution. Order at 20. The Public Employer terminated Nieves Hernández's \$25 monthly employer contribution only when he demanded an end to nonmember forced fee deductions in the wake of *Janus v. AFSCME, Council 31*, 585 U.S. 878 (2018). Order at 20-21. Nieves Hernández's case demonstrates the Public Employer budgeted for the \$25 monthly employer contribution *and* disbursed it to union nonmembers pursuant to the CBA's terms.

Article 11 Section 2 of the CBA even lays out the process for the Public Employer to budget for the \$25 monthly contribution for all bargaining unit members (both union and nonunion employees):

The budget request shall include specific line items along with the total sum of money necessary to fulfill the scheduled monetary contribution increases to the employer contributions to the health insurance plan. The Police will send the budget request to the Office of Budget and Management. The Office of Budget and Management is responsible for structuring the final number to the budget. Once submitted to the Legislative Assembly the Agency pledges to go before the legislature to justify the budget and the employer contribution increases as submitted.

Order at 12-13. As seen, the CBA details the budgeting method for the \$25 monthly employer contribution.

The Public Employer's incredulous excuse of not being able to comply because the court's order caught it by surprise lacks credibility. Nothing about awarding the benefit to union nonmembers—and complying with the CBA's terms—can be labeled as “unexpected.” The funds, prior to *Janus*, were always budgeted accordingly and disbursed to bargaining unit members pursuant to the CBA's terms. The Public Employer failed to provide any evidence to the contrary in its Opposition. The fact that the Public Employer unconstitutionally ended the benefit mandated

by the CBA for all bargaining unit employees for union-disassociating employees does not suddenly make compliance with the CBA's terms (and the court Order) an unforeseen expense.

III. Conclusion

The court should reject the Public Employer's unfounded justification for noncompliance and find it in contempt of the permanent injunction order.⁴ The court should use its discretion to "fashion sanctions that will ensure compliance with [its] orders and at the same time correct some of the damage done by their violators." *Boyd v. López-Vidal*, 2025 U.S. Dist. LEXIS 24836, at *23 (D.P.R. Feb. 10, 2025) (internal citations omitted). The court should ensure compliance by imposing a recurring fine on the Public Employer and as a corrective measure require it to compensate Plaintiffs and any eligible employee for the employer benefit wrongfully withheld from them since the court's Order and the Public Employer's full compliance with the permanent injunction order.

WHEREFORE, Plaintiffs respectfully request 1) that the Public Employer be held in civil contempt for violating the court's September 19, 2024 Order and Permanent Injunction; 2) that the Public Employer be ordered to award Plaintiffs, and all eligible nonunion member employees, the monthly \$25 supplemental health contribution denied to them for declining union membership, as ordered by the court in its September 19, 2024 Order; 3) that the court impose on the Public Employer a \$1,000 fine for each pay period in which it violates the court's permanent injunction order; 4) that the Public Employer be ordered to compensate Plaintiffs and all eligible nonunion member employees for the monetary amount, equivalent to the health contribution denied, between

⁴ The Public Employer awarded itself unlimited time "to announce more specific dates for the conclusion of this process to identify the additional necessary funds and bring the agency in full compliance with the judgment entered in this case." Opp'n at 2. The court should reject the Public Employer's invitation for the court to accept an indefinite timeframe for future compliance with the court's Order.

the court's September 19, 2024 Order and the date the Public Employer complies with the court's Order and Permanent Injunction; 5) that the Public Employer pay the reasonable costs and attorneys' fees Plaintiffs incurred in bringing its "Motion for Contempt and for Sanctions" and this Reply.

CERTIFICATE OF SERVICE

It is hereby certified that the undersigned attorney electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties and attorneys of record. It is further certified that the undersigned attorney served Defendant Union of Organized Civilian Employees via regular mail at: 78 Calle Padial, Caguas, PR 00725.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 20th day of February, 2025.

s/ Heidi E. Schneider

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