JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:18-cv-09531-JLS-DFM Date: February 10, 2020
Title: Thomas Few v. United Teachers Los Angeles et al.

Present: **HONORABLE JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero	N/A
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (Doc. 73) AND GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (Doc. 72)

Before the Court are cross Motions for Summary Judgment, one filed by Plaintiff Thomas Few (Pl.'s MSJ, Doc. 73-1) and the other filed by Defendant United Teachers Los Angeles ("UTLA") (Def's. MSJ, Doc. 72-1). The parties opposed each other's Motions (Opp'n to Pl.'s MSJ, Doc. 77; Opp'n to Defs.' MSJ, Doc. 76) and filed replies (Reply ISO Pl.'s MSJ, Doc. 80; Reply ISO Defs.' MSJ, Doc. 79). Defendant Austin Beutner[1] separately opposed Plaintiff's Motion for Summary Judgment. (Beutner Opp., Doc. 78.)

For the following reasons, the Court GRANTS Defendant's Motion and DENIES Plaintiff's Motion.[2]

[1] The named Defendants are: (1)UTLA; (2) Austin Beutner, in his official capacity as Superintendent of LAUSD; and (3) and Xavier Becerra, in his official capacity as Attorney General of California.

[2] These matters were previously set for hearing on February 7, 2020. (Doc. 81.) On January 14, 2020, the Court entered an order accepting the parties' stipulated waiver of oral argument. (Doc. 83.)

I. BACKGROUND

The critical facts of this case are uncontested, and the parties stipulated to them in their Joint Statement of Undisputed Facts. (JSUF, Doc. 71.)

Few has been employed by the Los Angeles Unified School District ("LAUSD") as a special education teacher since August 2016. (JSUF ¶ 1.) On September 8, 2016, Few completed and signed a "United Teacher Los Angeles Membership Application" which included the authorization of a payroll deduction in the amount of Few's union dues. (*Id*. ¶ 2; 2016 Application, JSUF Ex. A, Doc. 71-1.) On February 13, 2018, he filled out another document wherein he separately signed and dated a "United Teachers Los Angeles (UTLA) Membership Authorization" and "Dues Payment and Dues Authorization." (JSUF ¶ 3; 2018 Authorization, JSUF Ex. B, Doc. 71-2.) That document stated in relevant part:

> (1) I hereby request and voluntarily accept membership in UTLA and I agree to abide by its Constitution and Bylaws. I authorize UTLA to act as my exclusive representative in collective bargaining over wages, benefits, and other terms and conditions of employment with my employer.
> (2) I hereby (1) agree to pay regular monthly dues uniformly applicable to members of UTLA; and (2) request and voluntarily authorize my employer to deduct from my earnings and to pay over to UTLA such dues. This agreement to pay dues shall remain in effect and shall be irrevocable unless I revoke it by sending written notice via U.S. mail to UTLA during the period not less than thirty (30) days and not more than sixty (60) days before the annual anniversary date of this agreement or as otherwise required by law. This agreement shall be automatically renewed from year to year unless I revoke it in writing during the window period, irrespective of my membership in UTLA.

(2018 Authorization.) "From the time he began his employment through October 31, 2018, LAUSD deducted union dues of approximately eighty-six dollars ($86) per month from Few's paychecks and remitted them to UTLA." (JSUF ¶ 13.)

On approximately June 4, 2018, Few mailed to UTLA a letter which stated "I resign membership in all levels of [UTLA] and all affiliated labor organizations" and included a request to thereafter pay pro-rated dues only in exchange for "representation" and not for any "nonchargeable activities." (JSUF ¶ 4; June 2018 Letter, JSUF Ex. C, Doc. 71-3.) On June 27, 2018, the Supreme Court decided *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018), overruling *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) and its progeny, and holding that collection of agency fees from non-union members without their affirmative consent violated the First Amendment.[3]

UTLA responded on or about July 13, 2018, stating that under the 2018 Authorization, Few was permitted to terminate his UTLA membership and become a "Dues Paying Non-Member," but would be required to continue paying dues until he provided written notice to UTLA during the open revocation period set forth in the 2018 Authorization. (JSUF ¶ 5; July 2018 Letter, JSUF Ex. D, Doc. 71-4.) On approximately August 8, 2018, Few sent another letter to UTLA, referencing the *Janus* decision and again attempting to resign from UTLA. (JSUF ¶ 6; August 2018 Letter, JSUF Ex. E, Doc. 71-5.) On or about October 10, 2018, Few sent yet another letter making clear his desire to resign from UTLA and cease payment of union dues or fees. (JSUF ¶ 7; Few October 2018 Letter, JSUF Ex. F, Doc. 71-6.) On October 19, 2018 UTLA sent another responsive letter to Few, reiterating the position it took in its July 2018 Letter. (JSUF ¶ 8; UTLA October 2018 Letter, JSUF Ex. G, Doc. 71-7.)

But on November 21, 2018, UTLA changed tack and sent Few a letter stating that "the Union considers [Few] to have resigned from membership in the Union as of the date it received" his June 2018 Letter. (JSUF ¶ 9; November 2018 Letter, JSUF Ex. H, Doc. 71-8.) The November 2018 Letter went on to state that:

> With respect to your dues payment obligation, you signed a separate agreement with the Union, apart from your agreement to become a member, committing you

[3] "Prior to the U.S. Supreme Court's decision in Janus v. AFSCME, Council 31 on June 27, 2018, bargaining unit workers who were not UTLA members were required to pay fair-share fees to UTLA, pursuant to the Educational Employment Relations Act. LAUSD deducted fair-share fees from wages. Compulsory fair-share fees were less than membership dues. LAUSD stopped deducting, and UTLA stopped receiving, fair-share fees after Janus." (JSUF ¶ 14.)

> to pay an amount equivalent to dues to the Union "irrespective of your membership status" for a one-year time period. That affirmative consent for the deduction of dues -subject to an annual revocation period - is separately enforceable and effective apart from your membership status. Nevertheless, rather than expend dues money on litigation, and because our prior correspondence to you may have inadvertently generated confusion, the Union has requested the District to stop deducting union dues from your future paychecks and is with this letter providing you a check payable to you in the amount of $433.31. That amount reimburses you for all moneys deducted from your paychecks after your June 4, 2018 request to renege on your dues commitment, with interest.

(November 2018 Letter.)

The final dues deduction from Few's paycheck occurred on October 31, 2018. (JSUF ¶ 11.) And, consistent with the November 2018 Letter, Few was reimbursed for all dues deductions that occurred after his June 2018 Letter. (JSUF ¶ 10.) On approximately December 5, 2018, Few's counsel sent a letter to UTLA acknowledging that Few had received and deposited the check, but that he "maintain[ed] that the deductions taken from his paycheck were unconstitutional and should be refunded 'since the commencement of his employment.'" (JSUF ¶ 12; December 2018 Letter, JSUF Ex. I, Doc. 71-9.)

Few filed the instant suit on November 9, 2018. (Compl., Doc. 1.) In his First Amended Complaint ("FAC"), he brought two claims for violation of his First Amendment rights to free speech and freedom of association caused by (1) UTLA and LAUSD Superintendent Beutner's deduction of union dues from his pay and refusal to allow him to withdraw from the union, and (2) California state law, which forced him to continue to associate with UTLA absent his affirmative consent to so associate. (FAC ¶¶ 32-64, Doc. 38.) On May 8, 2019 the Court granted UTLA's motion to dismiss Few's second claim, finding that it was barred by the Supreme Court's holding in *Minnesota State Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271 (1984). *Babb v. California*

Teachers Ass'n, 378 F. Supp. 3d 857, 888 (C.D. Cal. 2019).[4] In the Motions presently before the Court, Few and UTLA each seek summary judgment on Few's first claim.

II. LEGAL STANDARD

Summary judgment is proper "if the [moving party] shows that there is no genuine dispute as to any material fact and the [moving party] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In deciding a motion for summary judgment, "[t]he role of the court is not to resolve disputed issues of fact *but to assess whether there are any factual issues to be tried*." *Myers v. Allstate Indem. Co.*, 109 F. Supp. 3d 1331, 1335 (C.D. Cal. 2015) (emphasis added). "It is well-settled in this circuit and others that the filing of cross-motions for summary judgment, both parties asserting that there are no uncontested issues of material fact, does not vitiate the court's responsibility to determine whether disputed issues of material fact are present." *United States v. Fred A. Arnold*, Inc., 573 F.2d 605, 606 (9th Cir. 1978); *accord Fair Hous. Council*, 249 F.3d at 1136. "[E]ach [cross-motion] motion must be considered on its own merits." *Fair Hous. Council*, 249 F.3d at 1136 (quoting William W. Schwarzer, et al., *The Analysis and Decision of Summary Judgment Motions*, 139 F.R.D. 441, 499 (Feb. 1992). And "[t]he court must consider the appropriate evidentiary material identified and submitted in support of both motions, and in opposition to both motions, before ruling on each of them." *Id. at* 1134.

In so doing, courts must view the evidence in the light most favorable to the non-moving party and draw all justifiable inferences in that party's favor. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A factual dispute is "genuine" where "the evidence is such that a reasonable jury could return a verdict for the nonmoving party[,]" and a fact is "material" if it "might affect the outcome of the suit under the governing law." *Id.* at 248.

[4] The citation to the Court's prior order is under the name *Babb v. California Teachers Ass'n.* because the Court disposed of Few's second claim as part of an omnibus order addressing similar claims brought in various post-*Janus v. AFSCME* cases.

The moving party bears the initial burden of demonstrating the absence of a genuine dispute of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "Where the moving party will have the burden of proof on an issue at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party." *Saenz v. Branch*, No. 16-5959 CRB (PR), 2017 WL 6343485, at *3 (N.D. Cal. Dec. 12, 2017). "Once the moving party carries its initial burden, the adverse party 'may not rest upon the mere allegations or denials of the adverse party's pleading,' but must provide affidavits or other sources of evidence that 'set forth specific facts showing that there is a genuine issue for trial.'" *Devereaux v. Abbey*, 263 F.3d 1070, 1076 (9th Cir. 2001) (quoting Fed. R. Civ. P. 56(e)).

III. DISCUSSION

Few brings his remaining claim under 42 U.S.C. § 1983, asserting that under *Janus*, Defendants acted in concert and under color of California state law to deprive him of his First Amendment rights by refusing to end his union membership and deducting union dues from his paycheck absent "his affirmative consent." (FAC ¶¶ 32-38; Pl.'s MSJ at 6-9) He contends that he was unable to freely give such affirmative consent because (1) "[f]rom August 2016 to February 13, 2018, … he was not given the option of paying nothing to the union as a non-member of the union;" (2) "[f]rom February 13, 2018 until … June 2, 2018[5], [he was faced with] an unconstitutional choice between union membership or the payment of union agency fees without the benefit of membership;" and (3) after June 2, 2018, he had already expressly requested withdrawal from the union (FAC ¶¶ 41-42, 44.) He also takes issue with the fact that he was permitted to withdraw from the union only during the annual, 30-day open revocation period. (Pl.'s MSJ at 9; FAC ¶ 39.)

Few challenges as unconstitutional the provisions of California law that he asserts authorized the acts of UTLA and Beutner. (*Id.* ¶ 47.) Those are California Government Code § 3543.1 and California Education Code §§ 45060, 45168. (*Id.*) He asserts that

[5] Few's references to June 2, 2018 in the FAC are clearly intended to refer to his letter to UTLA, dated June 4, 2018.

these statutory provisions "give [UTLA] the authority to set the terms by which employees may join or withdraw from union membership" and permit the union to take actions "implying that union membership is sanctioned by the school district." (*Id.* ¶ 45.)

Under this claim, Few seeks (1) declaratory relief in the form of a holding that the statutory provisions are unconstitutional, (2) prospective injunctive relief ordering his removal from UTLA and the cessation of all dues deductions, and (3) retrospective "damages in the amount of all dues deducted and remitted to UTLA since the commencement of his employment." (*Id.* ¶¶ 47-52; *see also* Prayer for Relief, FAC at 11.)

As the dispositive facts in this matter are undisputed, the Court is left to resolve only questions of law. These are questions of law which this Court, and others, have repeatedly addressed; and the answers to these questions of law have not changed. As explained below, Few's claims for declaratory and prospective injunctive relief are moot, and his claim for damages fails as a matter of law.

A. Declaratory and Injunctive Relief

As noted above, UTLA has already processed Few's resignation from the union, treating him as though he revoked both his membership and dues authorizations as of the date of his June 2018 Letter, and ceasing all dues deductions. Thus, UTLA argues that because "Plaintiff is no longer a UTLA member, all dues deductions have ended, and there is no plausible likelihood that dues deductions will recur," and so, "Plaintiff's claim for prospective [declaratory and injunctive] relief is therefore no longer justiciable." (Def's. MSJ at 7.) The argument is well-taken as this Court has reached that conclusion more than once on similar facts. *See, e.g., Seager v. United Teachers Los Angeles*, No. 2:19-cv-00469-JLS-DFM, 2019 WL 3822001, at *2 (C.D. Cal. Aug. 14, 2019); *Babb*, 378 F. Supp. 3d at 886 (finding a nearly identical claim, including a challenge to California Education. Code § 45060[6] moot because the individual "would have to rejoin his union for his claim to be live, which … seem[ed] a remote possibility"). The

[6] In *Babb*, the union members were challenging as unconstitutional the fact that § 45060(a) requires resignation from a union to be in writing. *See Babb*, 378 F. Supp. 3d at 885.

reasoning of those decisions extends to each statutory provision that Few challenges and each injunction that he seeks. This is because a claim "becomes moot when a plaintiff actually receives all of the relief he or she could receive on the claim through further litigation." *Chen v. Allstate Ins. Co.*, 819 F.3d 1136, 1144 (9th Cir. 2016). That is exactly the case here. *See Mayer v. Wallingford-Swarthmore Sch. Dist.*, 405 F. Supp. 3d 637, 641 (E.D. Pa. 2019) (collecting cases reaching the same conclusion).

Few argues that UTLA cannot moot his claim by ceasing its alleged illegal activity after his initiation of this lawsuit, especially in light of the Ninth Circuit's unpublished decision in *Fisk v. Inslee*, 759 F. App'x 632, 633 (9th Cir. 2019). (Pl.'s MSJ at 10-13.) He asserts that although Defendants released him from the union and ceased dues collections, they continue to enforce their policies as to other public employees, making declaratory relief appropriate. (*Id*. at 13.) Few's arguments are aimed at the "voluntary cessation" and "capable of repetition, yet evading review" exceptions to the mootness doctrine, neither of which can save his claim for prospective relief.

As the Court explained in *Babb*, 378 F. Supp. 3d at 886, and *Yohn v. California Teachers Ass'n, No.* SACV 17-202-JLS-DFM, 2018 WL 5264076, at *4 (C.D. Cal. Sept. 28, 2018), voluntary cessation of challenged activity still yields mootness where, as here, it is "absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur."[7] Unlike the case at bar, voluntary cessation did not moot the lawsuit in *Fisk* and the cases cited therein because those cases involved putative class actions. *See Fisk*, 759 F.App'x at 633; *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975) (noting that there were surely class members with a "continuing live interest in the case"); see also *County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) (explaining that "the termination of a class representative's claim does not moot the claims of the unnamed members of the class"). Similarly, as to the "capable of repetition, yet evading review" doctrine, "in the absence of a class action … [it is] limited to the situation where two elements combine[]: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation

[7] As UTLA has, in the wake of *Janus*, halted the collection of agency fees, Few could not again be faced with having to choose between being a dues-paying member or an agency fees-paying non-member.

that the *same complaining party* would be subjected to the same action again." *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (emphasis added).

In closely analogous factual circumstances, a number of district courts have likewise explained the inapplicability of *Fisk* and the above-discussed mootness exceptions. *See, e.g., Grossman v. Hawaii Gov't Employees Ass'n/AFSCME Local 152*, No. 18-CV-00493-DKW-RT, 2020 WL 515816, at *11-*12 (D. Haw. Jan. 31, 2020) (citing *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990)) (stating that *Fisk* and the cases relied on therein were inapposite in a post-*Janus*, non-class action suit because "Article III denies federal courts the power to decide questions that cannot affect the rights of litigants in the case before them"); *Stroeder v. Serv. Employees Int'l Union*, No. 3:19-CV-01181-HZ, 2019 WL 6719481, at *3 (D. Or. Dec. 6, 2019) (reaching the same conclusion). Moreover, the Supreme Court recently "reject[ed] the notion that *Gerstein* supports a freestanding exception to mootness outside the class-action context." *United States v. Sanchez-Gomez*, 138 S. Ct. 1532, 1538 (2018). There, the Supreme Court reiterated its prior holding that the "mere presence of allegations that might, if resolved in [a plaintiff's] favor, benefit other similarly situated individuals cannot save [that plaintiff's] suit from mootness once their individual claims have dissipated." *Id*. at 1540 (citing *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 73 (2013)) (internal quotations and alterations omitted). Thus, because Few has not brought a putative class action, his claim is non-justiciable.

Accordingly, the Court concludes that Few's claims for prospective relief from further union membership and dues deductions, and his request for relief from further enforcement of §§ 3543.1, 45060, 45168 are moot.

B. Retrospective Damages

The Court also concludes that Plaintiff's First Amendment claim for dues already deducted pursuant to the agreement fails as a matter of law[8]. Essentially, Plaintiff argues

[8] Few concedes that any claim for recovery of the already-refunded dues deductions made between UTLA's receipt of his June 2018 Letter requesting resignation from the union and the final October 31, 2018 deduction, is moot. (Opp'n to Defs.' MSJ at 12.) The Court concurs.

that his voluntary decision to join UTLA should now be viewed as involuntary because when he signed his union application and dues authorizations, he did not know *Janus* would be decided shortly thereafter. *Janus*'s holding that mandatory non-member agency fees are unconstitutional means that whereas employees like Few previously were faced with electing to become either (1) a dues-paying union member or (2) an agency-fees-paying non-member, they now have a third option – they can be non-members who pay nothing to the union. But that does not change the reality of Few's decision to join UTLA and the legality of the pre-*Janus* dues deducted thereunder.

Besides, even assuming that such deductions would now be illegal under *Janus*, the Ninth Circuit recently held that a good faith defense bars recovery of pre-*Janus* dues payments:

> Because the Union's action was sanctioned not only by state law, but also by directly on-point Supreme Court precedent [(*Abood*)], we hold that the good faith defense shields the Union from retrospective monetary liability as a matter of law. In so ruling, we join a growing consensus of courts across the nation.

Danielson v. Inslee, 945 F.3d 1096, 1104 (9th Cir. 2019). In light of the Ninth Circuit's ruling in *Danielson*, the Court concludes that the good faith defense is operative here. Accordingly, Few's First Amendment claim for return of pre-June 4, 2018 dues, paid pursuant to his voluntary union membership agreement, fails as a matter of law.

Mayer v. Wallingford-Swarthmore Sch. Dist., 405 F. Supp. 3d 637, 642 (E.D. Pa. 2019) (citing *Molina v. Pennsylvania Soc. Serv. Union*, 392 F. Supp. 3d 469, 480 (M.D. Pa. 2019)) ("Plaintiff has been refunded for the dues deducted after he resigned from the Union, and therefore he no longer has an interest in the outcome of the litigation as to these claims.").

IV. CONCLUSION

For the foregoing reasons, the GRANTS UTLA's Motion and DENIES Few's Motion on Few's remaining claim in this matter. Defendants shall submit a proposed judgment within **fourteen (14) days** of the date of this Order.

Initials of Preparer: tg