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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No: 21-3749

Marcus Todd
Plaintiff - Appellant

v.

American Federation of State, County and Municipal
Employees, Council 5
Defendant - Appellee

Freedom Foundation
Amicus on Behalf of Appellant(s)

Appeal from U.S. District Court for the
District of Minnesota
(0:21-cv-00637-SRN)

JUDGMENT

Before COLLOTON, Chief Judge, LOKEN, and
SHEPHERD, Circuit Judges.

This appeal from the United States District
Court was submitted on the record of the district court,
briefs of the parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

January 15, 2025

Order Entered in Accordance with Opinion:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

APPENDIX B

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 21-3749

Marcus Todd,
Plaintiff - Appellant,

v.

American Federation of State, County and Municipal
Employees, Council 5,

Defendant - Appellee.

Freedom Foundation,
Amicus on Behalf of Appellant(s).

Appeal from United States District Court
for the District of Minnesota

Submitted: September 26, 2024
Filed: January 15, 2025

Before COLLOTON, Chief Judge, LOKEN and
SHEPHERD, Circuit Judges.

COLLOTON, Chief Judge.

Marcus Todd is a state employee in Minnesota who alleges that a union violated his rights under the First and Fourteenth Amendments by participating in the deduction of union dues from his paycheck. The district court^{*} granted the union's motion to dismiss the complaint, and we affirm.

I.

Appellant Todd is an employee of the Minnesota Department of Human Services. When he began working for the Department in 2014, Todd joined the American Federation of State, County, and Municipal Employees. By signing a union membership card, Todd authorized his employer to deduct union dues from his paycheck.

In June 2018, a revised union membership and dues-deduction authorization card was completed electronically with Todd's name, contact information, and electronic signature. The Union continued deducting dues from Todd's paycheck based on the 2018 card. Todd alleges that he never signed the 2018 membership card, and asserts that the union forged his signature.

Shortly thereafter, the Supreme Court decided *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 585 U.S. 878 (2018). The Court held that the First Amendment forbids a

^{*} The Honorable Susan Richard Nelson, United States District Judge for the District of Minnesota.

State to deduct a percentage of full union dues, generally called an “agency fee,” from nonconsenting public-sector employees who do not join the union. *Id.* at 929-30. *Janus* overruled *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), which held that the deduction of agency fees was constitutional.

In July 2020, Todd sent the union a letter purporting to resign his membership and demanding that the union discontinue deducting dues from his paycheck. The union responded that according to his union membership agreement, Todd could resign only during a designated annual opt-out period. On that basis, the union continued to deduct union dues until May 2021, when it notified the Department to discontinue the deductions.

Todd sued the union under 42 U.S.C. § 1983, seeking an award of damages “for union dues unlawfully deducted” from his paychecks “without clear and compelling evidence of [his] freely given waiver of First Amendment rights.” He also sought injunctive and declaratory relief. Todd sought broadly to recover all membership dues deducted before the decision in *Janus*—despite signing an authorization card in 2014—on the ground that he “never freely waived his First Amendment rights.” He also alleged that the union violated his free speech rights under *Janus* in 2020 by refusing to terminate his union membership outside of the designated annual opt-out period.

Todd raised two more claims based on his allegation that the union forged an authorization card

in 2018. He alleged that the union violated his rights under the First Amendment by causing a deduction in dues based on that authorization card—both before and after his attempt to resign from the union in July 2020. Todd also asserted tort claims under Minnesota law.

The district court dismissed the federal claims for failure to state a claim. The court reasoned that Todd voluntarily agreed to the deduction of dues before *Janus*, and that Todd agreed contractually to the opt-out period that limited his ability to terminate his union dues immediately. As to the claims alleging a forged authorization card, the court concluded that the union did not act under color of state law and thus could not be liable under § 1983. The court ruled that Todd’s claims for prospective relief were moot because Todd had resigned from the union, and there was no reasonable expectation that he would be subjected to a dues deduction in the future. The court declined to exercise supplemental jurisdiction over Todd’s claims under state law.

Todd acknowledges on appeal that his claims for prospective relief are moot, but he challenges the district court’s dismissal of his claims for retrospective relief. We review the district court’s decision *de novo*.

II.

Section 1983 provides a cause of action against a defendant whose actions were taken “under color of state law” and deprived another of a federal right. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 924 (1982).

The First and Fourteenth Amendments secure the right to be free from compelled subsidization of private speech, *Janus*, 585 U.S. at 893-94, but they prohibit only state action that abridges that right. See *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 808-09 (2019). A private entity is considered a state actor in only “limited circumstances,” *id.*, where the disputed acts have their “source in state authority.” *Lugar*, 457 U.S. at 939.

Recent decisions of this court directly resolve two of Todd’s claims on appeal. In *Hoekman v. Education Minnesota*, 41 F.4th 969 (8th Cir. 2022), we held that union members who objected to the deduction of union dues failed to allege state action that would support a claim under the First Amendment. Because the union collected dues based on a private agreement, not pursuant to any state statute, the union members could not show that the union violated their constitutional rights. *Id.* at 978. Todd’s claim against the union for all dues deducted before *Janus* likewise fails for lack of state action. Even if state action were present, we also held in *Burns v. School Service Employees Union Local 284*, 75 F.4th 857 (8th Cir. 2023), that a deduction of union dues under a valid contract between the union and a member does not violate the First Amendment. *Id.* at 860. *Hoekman* further held that a union’s refusal to grant a member’s request for immediate resignation was attributable to private agreements and private judgments rather than state action. 41 F.4th at 978. Todd’s analogous claim fails for the same reason.

Todd suggests that his remaining claims differ

from those at issue in *Hoekman* because he alleged that the union forged his signature on an authorization card in 2018. The allegation of forgery does not establish the existence of state action that was otherwise absent. Minnesota law prohibits forging a union membership card, Minn. Stat. § 609.63, subdiv. 1(3), and allows state employers to deduct union dues only with a member's signed authorization. Minn. Stat. § 179A.06, subdiv. 6. The union's alleged "private misuse of a state statute" to collect dues from Todd after forging his signature "does not describe conduct that can be attributed to the State." *Lugar*, 457 U.S. at 941. The union's allegedly "fraudulent act is by its nature antithetical to any 'right or privilege created by the State' because it is an express violation of existing state law." *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112, 1123 (9th Cir. 2022) (quoting *Lugar*, 457 U.S. at 937). There is thus no state action where the union "allegedly acted unlawfully." *Roudybush v. Zabel*, 813 F.2d 173, 177 (8th Cir. 1987).

* * *

For these reasons, the judgment of the district court is affirmed.

APPENDIX C

UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

Marcus Todd,
Plaintiff,

v.

American Federation of State, County,
and Municipal Employees, Council 5,
Defendant.

Case No. 21-cv-00637 (SRN/ECW)

ORDER

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SUSAN RICHARD NELSON, United States District
Judge

This matter is before the Court on the Motion to
Dismiss [Doc. No. 16] filed by Defendant American

Federation of State, County, and Municipal Employees, Council 5 (“the Union”). Based on a review of the files, submissions, and proceedings herein, and for the reasons below, the Court **GRANTS** the motion.

I. BACKGROUND

In 1977, the United States Supreme Court ruled that public-sector employers and labor unions representing public-sector employees could, consistent with the First Amendment, compel public-sector employees to contribute to a union’s collective bargaining costs even if the employees refused to join the union. *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977). Approximately forty years later, in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, __ U.S. __, 138 S. Ct. 2448 (2018), the Supreme Court overruled *Abood* and held that such “fair-share” or “agency” fee arrangements violate employees’ First Amendment rights.

Plaintiff Marcus Todd is a security counselor who works for the Minnesota Department of Human Services (“DHS”) in St. Peter, Minnesota. (Compl. [Doc. No. 1] ¶ 10.) When he began working for DHS in 2014, prior to *Janus*, Todd faced the choice of whether to join the local union organization, the American Federation of State, County, and Municipal Employees (“AFSCME”), Council 5 (the “Union”) and pay full membership dues, or decline to join and pay fair-share fees, an arrangement permitted by Minnesota’s Public Employment Labor Relations Act (“PELRA”), Minn. Stat. § 179A.06. (Compl. ¶¶ 11, 12, 19.) Alleging that he joined the Union “against his will,” Todd further

asserts that his membership “provides no value to him” and he “disagrees with much of [the Union’s] political advocacy.” (*Id.* ¶ 18.) By virtue of signing the Union membership agreement in 2014, Todd authorized his employer, DHS, to deduct Union dues from his paychecks which DHS transmitted to the Union on his behalf. (*See id.*, Ex. 1 § A.)

Todd contends that in June 2018, the Union or one of its agents forged his signature on a new membership agreement (the “2018 membership agreement”). (*Id.* ¶ 20.) Beginning with his July 6, 2018 paycheck, the Union began deducting dues consistent with the allegedly forged 2018 membership agreement. (*Id.*) Two years later, in July 2020, Todd sent the Union written notification in which he resigned his membership and demanded that his dues deductions cease. (*Id.* ¶ 25.) Although the Union “processed” Todd’s resignation, it continued to deduct union dues from his paychecks. (*Id.* ¶ 26.) The 2018 membership agreement only permitted members to opt out of dues payments during a designated annual period in May. (*Id.*) As applicable here, the opt-out date was in May 2021. (*Id.*) In August 2020, Todd again wrote the Union, demanding that it cease authorizing dues deductions, and asserted that his signature on the 2018 membership application was forged. (*Id.* ¶ 27.) The Union continued deducting dues. (*Id.*)

In September 2020, Todd’s legal counsel wrote to the Union, demanding that it stop authorizing his dues deductions. (*Id.* ¶ 28; *id.*, Ex. 5.) Legal counsel for the Union responded, expressing the Union’s belief that it

made proper deductions under the terms of the 2018 membership agreement. (*Id.* ¶ 29, *id.*, Ex. 6.) Also, the Union observed that it had been making dues deductions pursuant to the 2018 membership agreement for over two years without Todd’s objection. (*Id.*) Finally, the Union’s counsel further advised Todd that he could revoke his authorization for the dues deductions during the next optout period between May 6 and May 21, 2021. (*Id.*)

In March 2021, Todd brought this action against the Union under 42 U.S.C. § 1983, seeking an award of damages “for union dues unlawfully deducted” from his paychecks “without clear and compelling evidence of [his] freely given waiver of First Amendment rights.” (*Id.* ¶ 38.) Todd’s § 1983 claims apply to deductions made during the following periods: (1) pre-*Janus*, (Count 1); (2) post-*Janus* and prior to his July 2020 Union resignation, (Count 2); and (3) post-resignation, beginning in July 2020 and into the future (Count 3). Also under § 1983, Todd seeks a ruling that the Union’s 15-day opt-out window is unconstitutional (Count 4). In addition to his federal claims, Todd asserts state law claims for conversion (Count 5), unjust enrichment (Count 6), civil theft (Count 7), tortious interference with contractual relations (Count 8), and unlawful wage deductions under Minn. Stat. § 181.79 (Count 9).

The Union viewed Todd’s filing of this lawsuit as a continuing request to revoke his dues-deduction authorization, and thus instructed DHS to discontinue Todd’s dues deductions as of his May 7, 2021 paycheck—the first paycheck within the May 6

through 21, 2021 opt-out period. (Altendorfer Decl. [Doc. No. 19] ¶¶ 3–4.)

The Union now moves to dismiss Todd’s claims pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). It argues that his § 1983 claims in Counts 1 and 4 fail because *Janus* is inapplicable to employees who chose to join a union in exchange for receiving the benefits of union membership. (Def.’s Mem. [Doc. No. 18] at 6–10 & n.5; Def.’s Reply [Doc. No. 23] at 1–6.) In addition, although denying that forgery occurred, the Union contends that Todd’s claims in Counts 2 and 3 fail because the Union’s allegedly illegal conduct in forging a dues-deduction authorization, as Plaintiff alleges, is not “state action”—a necessary element for a § 1983 claim—and the Union is not a state actor. (Def.’s Mem. at 10–15; Def.’s Reply at 7–12.) Further, the Union asserts that because it has stopped authorizing Todd’s dues deductions, his claims for prospective relief are now moot. (Def.’s Mem. at 15–16; Def.’s Reply at 12–13.) Finally, if the Court grants the dismissal of Todd’s § 1983 claims, the Union moves for the dismissal without prejudice of Todd’s supplemental state law claims for lack of jurisdiction. (Def.’s Mem. at 17.)

II. DISCUSSION

Relying on Rule 12(b)(1), the Union argues that the portion of Todd’s § 1983 claims in Counts 1 through 4 for which he seeks declaratory and injunctive relief must be dismissed because Todd’s dues deductions have ended. (*Id.* at 5 & n.3.) As to all other forms of relief in Counts 1 through 4, the Union

moves to dismiss pursuant to Rule 12(b)(6), arguing that Todd fails to state a claim upon which relief can be granted. (*Id.*)

A. Standard of Review

A court deciding a motion under Rule 12(b)(1) must first determine whether the defendant is mounting a facial attack or a factual attack on the court's subject matter jurisdiction. *Branson Label, Inc. v. City of Branson*, 793 F.3d 910, 914 (8th Cir. 2015). If it is a facial attack, the court looks to the pleadings to consider whether the plaintiff has alleged a sufficient basis for jurisdiction and accepts all factual allegations as true. *See id.* Conversely, if it is a factual attack, the court may consider "matters outside the pleadings, such as testimony and affidavits." *Id.* at 914-15 (quoting *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980)). Here, the Union presents a factual attack with respect to Todd's claims for prospective relief because its argument is based on matters outside the pleadings, namely, a declaration regarding the current discontinuation of dues deductions from Todd's paychecks. (Altendorfer Decl. ¶¶ 4–6.) The Court will therefore consider this declaration in connection with the portion of the Union's motion that is based on Rule 12(b)(1).

When considering a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), the Court accepts the facts alleged in the complaint as true, and views those allegations in the light most favorable to the plaintiff. *Hager v. Ark. Dep't of Health*, 735 F.3d 1009, 1013 (8th Cir. 2013). However, the Court need

not accept as true wholly conclusory allegations or legal conclusions couched as factual allegations. *Id.* In addition, the Court ordinarily does not consider matters outside the pleadings on a motion to dismiss. *See* Fed. R. Civ. P. 12(d). Here, the Court properly considers the allegations in the Complaint, along with the exhibits attached to it.

To survive a motion to dismiss, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although a complaint need not contain “detailed factual allegations,” it must contain facts with enough specificity “to raise a right to relief above the speculative level.” *Id.* at 555. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements,” are insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). Where a motion to dismiss is based on an affirmative defense, the moving party must show that it is entitled to the defense on the face of the complaint. *Dadd v. Anoka Cty.*, 827 F.3d 749, 754 (8th Cir. 2016).

B. Pre-*Janus* Membership Dues (Count 1)

The Court begins with Todd’s claim in Count 1 that the Union violated his First Amendment rights by deducting dues from the time of his employment until June 27, 2018, when the Supreme Court decided *Janus*. The Union argues that dismissal is proper pursuant to Rule 12(b)(6) because *Janus* applies only to non-union employees, not union members like Todd. (Def.’s Mem. at 9 & n.5; Def.’s Reply at 1–5.)

1. Inapplicability of *Janus* to Union Member

Todd joined the Union upon his hiring in 2014, and for nearly all of the period from his hiring through the issuance of the *Janus* decision, his 2014 initial union membership agreement governed the deduction of dues. (Compl. ¶¶ 11–13.) As the Court stated in *Hoekman v. Education Minnesota*, 519 F. Supp. 3d 497, 507 (D. Minn. 2021), *appeal docketed*, No. 21-1372 (8th Cir. Feb. 16, 2021), *Janus* addressed the First Amendment rights of *non-union* members, not those who chose to join the union (and receive the full benefits of membership) rather than pay fair-share fees (without the full benefits of membership). In fact, in *Janus*, the Supreme Court noted that “[s]tates can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions.” 138 S. Ct. at 2485 n.27. Thus, as this Court has previously held, “[n]othing in *Janus* suggests that its holding, which expressly pertains to union-related deductions from ‘a nonmember’s wages,’ should apply to similar collections from a union member’s wages.” *Hoekman*, 519 F. Supp. 3d at 507 (quoting *Loescher v. Minn. Teamsters Pub. & Law Enft Emps.’ Union, Local No. 320*, 441 F. Supp. 3d 762, 773 (D. Minn. 2020), *appeal dismissed sub nom. Loescher v. Minn. Teamsters Pub. & Law Enft*, No. 20-1540, 2020 WL 5525220 (8th Cir. May 15, 2020)).

Todd cites three cases in support of his assertion that the Eighth Circuit has “broad[ly] applied” the principles of *Janus* “to people who were not even in a union, much less agency fee payers.” (Pl.’s Opp’n [Doc.

No. 22] at 13) (citing *Telescope Media Grp. v. Lucero*, 936 F.3d 740, 750–53 (8th Cir. 2019); *B.W.C. v. Williams*, 990 F.3d 614 (8th Cir. 2021; *Mo. Broadcasters’ Ass’n v. Schmitt*, 946 F.3d 453, 463 (8th Cir. 2020) (Stras, J., concurring)). He warns that “if this Court holds that *Janus* is limited only to the agency-fee-payer scenario, then it will be at odds with the circuit court.” (*Id.*)

The authority on which Todd relies, however, does not demonstrate that the Eighth Circuit has “broadly applied” *Janus* to facts similar to those alleged here. In *Telescope Media Group*, 936 F.3d at 750–51, the Eighth Circuit cited *Janus* for general First Amendment principles involving compelled speech, and found that wedding videographers could not be compelled to produce videos of same-sex marriages. In *B.W.C.*, 990 F.3d at 617–18, the Eighth Circuit rejected a First Amendment challenge to Missouri’s religious exemption form for mandatory school immunizations. Similarly to *Telescope Media Group*, the court merely cited *Janus* in a general overview of First Amendment principles, and found “little risk” that recipients of the religious exemption form “would believe that the parents were compelled to ‘mouth support for views they find objectionable.’” *Id.* (citing *Janus*, 138 S. Ct. at 2463). And in Judge Stras’ concurrence in *Missouri Broadcasters*, he stated that *Janus* suggests a more exacting legal standard applies to regulations on commercial speech than the lesser protections of the *Central Hudson* standard the majority applied. 946 F.3d at 463–64 (Stras, J., concurring) (citing *Central Hudson Gas & Elec. Corp. v. Pub. Serv. Comm’n of N.Y.*, 447 U.S. 557, 563

(1980)). None of these decisions involved union membership and none support the expansion of *Janus* to a union member like Todd.

Nor is the Court persuaded by Todd’s reference to an August 2019 opinion letter from the Alaska Attorney General that broadly interpreted *Janus*. (Pl.’s Opp’n at 14–15.) Todd neglects to note that in October 2019, a state district court enjoined the implementation of the opinion letter, concluding that the Attorney General’s opinion was incorrect, and ultimately entered summary judgment in favor of the union and against the state. *See Alaska v. Alaska State Emps. Ass’n/AFSCME Local 52*, No. 3AN-19-09971CI, 2019 WL 7597328, at *1–7 (Alaska Super. Ct., 3d Jud. Dist. Oct. 3, 2019), TRO (Oct. 3, 2019), Prelim. Inj. (Nov. 5, 2019), Order Granting Summ. J. (Feb. 8, 2021), *appeal filed* (Alaska Sept. 2, 2021) (No. S-18172).

While Todd frames his decision to become a union member as an unconstitutional choice between “join[ing] the Union and pay[ing] 100% dues,” “or pay[ing] [a fair-share] fee of nearly that amount [without joining the Union] and get[ting] no say in [the Union’s] misuse of his fee payments,” (Compl. ¶¶ 11–12), he does not challenge the mechanics of whether he actually signed the 2014 membership agreement, as he does with the 2018 membership agreement. And Todd acknowledges that he was given a “choice” to join, albeit a Hobson’s choice, in his opinion. (*Id.* ¶ 11.) Simply because he wishes that a third option—not joining the Union and paying nothing—had been available to him between 2014 and

June 2018 “does not establish coercion.” *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 962 (10th Cir. 2021) (rejecting argument that plaintiff faced a “false dichotomy” of paying union dues or agency fees, as regretting the decision of joining the union did not render voluntary choice nonconsensual) (citing *Belgau v. Inslee*, 975 F.3d 940, 950 (9th Cir. 2020)), *pet. for cert. docketed* (U.S. May 18, 2021) (No. 20-1606). In short, Todd does not plausibly allege that he was compelled to join the Union from his hiring 2014 until the issuance of *Janus* in June 2018.

The Court therefore finds that *Janus* does not afford Todd relief for his § 1983 claim based on pre-*Janus* membership dues he voluntarily agreed to pay. (See Compl. ¶ 11.) This Court and others that have considered a union member’s *Janus*-based claims have reached the same conclusion. *E.g.*, *Hoekman*, 519 F. Supp. 3d at 507; *Hendrickson*, 992 F.3d at 962; *Molina v. Pa. Soc. Serv. Union*, __ F. Supp. 3d __, 2020 WL 2306650, at *7– 8 (M.D. Pa. May 8, 2020); *Creed v. Alaska State Emps. Ass’n/AFSCME Local 52*, 472 F. Supp. 3d 518, 525–26 (D. Alaska 2020).

2. Defense of Good Faith

In addition, as the Union notes, even if Todd could show that the Union violated his First Amendment rights, pre-*Janus*, his claim for the repayment of back dues “would still be subject to a good faith defense.” (Def.’s Mem. at 9 n.5) (quoting *Hoekman*, 519 F. Supp. 3d at 507). Private actors, such as the Union, who act in good faith reliance on a state statute and Supreme Court case law upholding the statute’s

constitutionality have an affirmative defense to § 1983 liability. *Hoekman*, 519 F. Supp. 3d at 507 (citing *Crockett v. NEA-Alaska*, 367 F. Supp. 3d 996, 1008 (D. Alaska 2019); *Janus v. Am. Fed’n of State, Cty. & Mun. Emps., Council 31*; *AFL-CIO*, 942 F.3d 352, 364 (7th Cir. 2019) (“*Janus* Remand”); *Danielson v. Inslee*, 945 F.3d 1096, 1098 (9th Cir. 2019), *cert. denied*, No. 19-1130, 2021 WL 231555 (U.S. Jan. 25, 2021); *Lee v. Ohio Educ. Ass’n*, 951 F.3d 386, 389 (6th Cir. 2020), *cert. denied*, No. 20-422, 2021 WL 231559 (U.S. Jan. 25, 2021); *Wholean v. CSEA SEIU Local 2001*, 955 F.3d 332, 334 (2d Cir. 2020); *Diamond v. Penn. State Educ. Ass’n*, 972 F.3d 262, 271 (3d Cir. 2020); *Doughty v. State Emps.’ Ass’n of N.H., SEIU Local 1984, CTW, CLC*, 981 F.3d 128, 133 (1st Cir. 2020)); *Brown v. Am. Fed’n of State, Cnty., and Mun. Emps., Council No. 5*, 519 F. Supp. 3d 512 (D. Minn. 2021).

Prior to *Janus*, Todd was free to choose between joining the Union and paying full membership dues, or refusing to join and paying fair-share fees, an arrangement permitted by Minnesota’s PELRA, Minn. Stat. § 179A.06, subds. 3 & 6. The Supreme Court’s decision in *Abood* supported PELRA’s constitutionality. Moreover, there is no plausible allegation here indicating that the Union acted with malice, with the knowledge that PELRA was unconstitutional, or otherwise acted in bad faith when it instructed DHS to withdraw Todd’s membership dues from his paychecks between 2014 and June 2018. Therefore, even if *Janus* provided support for Todd’s claims related to membership dues deductions during this period, the Union has established a good faith affirmative defense to this claim.

For all of these reasons, the Union’s motion is granted as to this claim and the Court dismisses Count 1 with prejudice.

C. Post-*Janus* Membership Dues (Counts 2 & 3)

In Counts 2 & 3, Todd asserts claims under § 1983 based on dues deductions made pursuant to the 2018 membership agreement—post-*Janus*, including after Todd had submitted his union resignation letter. (Compl. ¶¶ 58, 69.) He alleges that he did not consent to these deductions because the Union or one of its agents forged his signature on the 2018 membership agreement. (*Id.* ¶¶ 20–22, 56–57, 65.) Further, Todd contends that the Union instructed DHS to make the deductions from his paycheck without clear and compelling evidence that Todd had voluntarily waived his First Amendment rights, even after he resigned from the Union and informed it of the forged signature. (*Id.* ¶ 58, 69.)

As noted, the Union contends that these § 1983 claims fail as a matter of law under Rule 12(b)(6) because, even taking Todd’s allegations as true, the Union could not have been acting “under color of state law” when it committed this alleged forgery, an illegal activity, and then asked DHS to make the deductions from Todd’s paychecks based on a forged signature. (Def.’s Mem. at 10–15; Def.’s Reply at 7–12.)

Section 1983 provides a remedy for constitutional injuries inflicted by a party who acts under color of state law. 42 U.S.C. § 1983. To prevail on a § 1983

claim, a plaintiff must establish the following elements: “(1) violation of a constitutional right, (2) committed by a state actor, (3) who acted with the requisite culpability and causation to violate the constitutional right.” *Shrum ex rel. Kelly v. Kluck*, 249 F.3d 773, 777 (8th Cir. 2001). Because the statute addresses harms caused by governmental actors, in order to hold a private party liable under § 1983, the requirement for action under color of state law, or “state action,” must be satisfied. *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 931–32 (1982). To determine whether a private party qualifies as a state actor, courts consider whether it exercised “powers traditionally exclusively reserved to the State,” *Manhattan Comm. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928–29 (2019), such that the private actor’s conduct is “fairly attributable to the state.” *Lugar*, 457 U.S. at 937; *Wickersham v. City of Columbia*, 481 F.3d 591, 597 (8th Cir. 2007). The Supreme Court has stated that “very few” functions meet this requirement, but such functions have included, for example, “running elections and operating a company town.” *Manhattan Comm. Access*, 139 S. Ct. at 1928–29.

Whether the conduct at issue is “fairly attributable to the state,” involves the application of a two-part test to determine whether the conduct involves (1) a state policy and (2) a state actor. *Roudybush v. Zabel*, 813 F.2d 173, 176 (8th Cir. 1987) (citing *Lugar*, 457 U.S. at 940–41). The state policy component “requires that ‘the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by

the State or by a person for whom the State is responsible.” *Id.* (quoting *Lugar*, 457 U.S. at 940–41). The state actor component “requires that the defendant [] be a person who may fairly be said to be a state actor.” *Id.* (quoting *Lugar*, 457 U.S. at 937).

1. State Policy

As to whether the conduct here is attributable to a state policy, in the Complaint’s general factual allegations, Todd cites PELRA, Minn. Stat. §§ 179A.06, subd. 6, and 179A.20, subd. 1, which permits employers to deduct union dues pursuant to union member agreements, and asserts that the Union and non-party DHS were acting under color of state law when they deducted dues pursuant to an agreement that was signed without a waiver of his constitutional rights. (Compl. ¶¶ 38–39.) In his claim-specific allegations in Counts 2 and 3, Todd does not challenge the state’s *general* authority to deduct dues pursuant to a private agreement, nor does he allege that PELRA is unconstitutional. Rather, he alleges that his constitutional harm stems from the Union forging his signature on the 2018 membership agreement and using the forged agreement to authorize dues deductions without his consent, including after he tendered his resignation from the Union. (*Id.* ¶¶ 56–60, 62–71.) Thus, the essence of Todd’s claim is that he signed a private agreement “without a constitutional waiver of rights.” *See Belgau*, 975 F.3d at 946–47 (finding that claimed constitutional harm was based on a private union membership agreement).

The Supreme Court has held that “private misuse

of a state statute does not describe conduct that can be attributed to the State.” *Lugar*, 457 U.S. at 941. To the extent the Union misused PELRA to obtain union dues based on forgery, as Todd alleges, such conduct cannot be attributable to the state. In fact, under Minnesota law, the act of forgery is a criminal felony, Minn. Stat. § 609.63, making it “contrary to the relevant policy articulated by the State.” *Id.* at 940; see *Roudybush*, 813 F.2d at 177 (“[T]he state, by enacting the criminal statute, has expressly condemned [the conduct in question].”).

The Eighth Circuit does not appear to have addressed constitutional claims against a union involving dues deductions made pursuant to a forged union membership application. However, its decision in *Roudybush*, 813 F.2d at 177, which also involved constitutional claims against private parties, provides guidance here. In *Roudybush*, the court applied the *Lugar* test to § 1983 claims premised upon conduct that violated state law. *Id.* at 174–76. The plaintiffs, sureties on a supersedeas bond, brought a § 1983 action against private-party judgment creditors, asserting that the creditors, along with state officials, had unlawfully used Iowa’s execution of judgment procedures to take the plaintiffs’ property without due process. *Id.* The Eighth Circuit found the plaintiffs’ § 1983 claims failed because “[s]tate policy is not implicated when an injured party claims that a private party has violated a constitutional post-judgment procedural statute in the course of depriving the injured party of his property.” *Id.* at 177. As in *Roudybush*, Todd does not contend that a state statute is unconstitutional. Rather, his focus is on the Union’s

alleged unlawful conduct in forging his 2018 membership application, which does not implicate state policy.

Courts in other jurisdictions have considered and rejected similar § 1983 claims involving dues deductions made pursuant to allegedly forged membership applications, finding that such conduct fails to meet *Lugar*'s state policy requirement. *See Jarrett v. Marion Cnty.*, No. 6:20-cv-01049-MK, 2021 WL 65493, at *2–3 (D. Or. Jan. 6, 2021) (finding the alleged harm centered around the forgery of the plaintiff's signature on a membership card, not a state statute or policy, and could not be attributed to the state), *report & recommendation adopted*, 2021 WL 233116, at *1 (D. Or. Jan. 22, 2021), *appeal filed*, No. 21-35133 (9th Cir. Feb. 19, 2020); *Zielinski v. Serv. Emps. Int'l Union Local 503*, 499 F. Supp. 3d 804 (D. Or. 2020) (dismissing with prejudice § 1983 claims for failing to meet first prong of *Lugar*, as the alleged harm stemmed from a forged private agreement and not a state policy or statute), *appeal filed*, No. 20-36076 (9th Cir. Dec. 15, 2020); *Schiewe v. SEIU Local 503*, No. 3:20-cv-00519-JR, 2020 WL 5790389, at *2 (D. Or. Sept. 20, 2020) (finding no state policy at issue where the alleged constitutional harm—forgery by the union and consequent faulty authorization of dues withdrawals—was an exclusively private act); *Wright v. SEIU Local 503*, 491 F. Supp. 3d 872, 878 (D. Or. 2020) (holding that first prong of *Lugar* not met where plaintiff alleged that constitutional deprivation resulted from forged union membership and there was no allegation that the state was responsible for the alleged forgery); *Yates v. Wash. Fed. of State Emps.*,

466 F. Supp. 3d 1197, 1204 (W.D. Wash. 2020) (finding no state action where claim was based on forged membership signature, noting that statute permitting employers to deduct membership dues did not permit unions to forge signatures), *appeal filed*, No. 20-35879 (9th Cir. Oct. 8, 2020).

Consistent with this authority, the Court finds that the constitutional harms alleged in Counts 2 and 3 stem from private acts—the Union’s alleged forgery and its continued authorization of dues deductions based on forgery—and not from the exercise of a right or privilege created by the state. *Lugar*, 457 U.S. at 940–41. Minnesota’s PELRA permits employers like DHS to deduct union dues from wages, but it does not permit unions to forge signatures on membership agreements in order to obtain union dues. Accordingly, the Court finds that Todd fails to satisfy *Lugar*’s first prong for attributing conduct to the state, which requires that the harm originate from a state policy.

2. State Actor

Whether a private party may be characterized as a state actor under *Lugar*’s second prong requires a “close nexus” between not only the state and the private party, “but between the state and the alleged deprivation itself.” *Wickersham*, 481 F.3d at 597 (citing *Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass’n*, 531 U.S. 288, 291 (2001)). Where the private party acts with the state’s mere approval or acquiescence, there is no such nexus. *Id.* (citing *Blum v. Yaretsky*, 457 U.S. 991, 1004–05 (1982)). However, where the private party acts together with or obtains significant aid from

state officials to further the challenged action, the private entity may be considered a state actor. *Id.* (citing *Lugar*, 457 U.S. at 937).

The state's involvement here was merely to effectuate "the private choice of the parties," in a ministerial payroll processing role that was "neither significant nor coercive." *Belgau*, 975 F.3d at 947. Neither Minnesota nor DHS participated in the decision to enter into bargained-for agreements, and the signing of a union application, whether forged or genuine, did not involve any state action. Although Minnesota law permitted DHS to deduct Todd's union dues from his paychecks, *see* Minn. Stat. § 179A.06, subd. 6, Todd fails to allege that the state had any involvement in shaping the terms of the agreement or in facilitating the alleged forged signature. Accordingly, the Court finds that the Union was not a state actor, as there is no close nexus between the state and the conduct at issue, and the state provided no significant aid in effectuating the alleged forgery and violating Todd's First Amendment rights. *See Quezambra v. Domestic Workers Local 3930*, 445 F. Supp. 3d 695, 702–05 (D.C. Cal. 2020), *appeal filed*, No. 20-55643 (9th Cir. June 23, 2020) (finding that no allegations suggested that the union's unilateral actions in reporting its membership roll or forging signatures could be attributed to the state).

In sum, Todd fails to meet the two-part *Lugar* test to determine whether a private party meets § 1983's under-color-of-state-law requirement. Todd does not plausibly allege that the harmful conduct here was attributable to a state policy, nor that the Union can

be characterized as a state actor. *Lugar*, 457 U.S. at 940–41. Accordingly, the Court grants the Union’s Motion to Dismiss Counts 2 and 3 with prejudice.

D. Opt-Out Window (Count 4)

As noted earlier, in Count 4 of his Complaint, Todd asserts a § 1983 claim based on the annual 15-day opt-out window in which to terminate dues deductions. (Compl ¶¶ 74–81.) He contends that under *Janus*, in order for an opt-out system to be constitutional, it must allow for immediate opt-out. (*Id.* ¶ 77.) Among his requested remedies, Todd seeks injunctive and declaratory relief, allowing him to opt out of the deductions “immediately.” (*Id.* ¶ 81.)

The Supreme Court has held, in a case arising under Minnesota law, that when “[t]he parties themselves . . . determine the scope of their legal obligations” and place “self-imposed” restrictions upon themselves, enforcing such agreements does not run afoul of the First Amendment. *Cohen v. Cowles Media Co.*, 501 U.S. 663, 669-70 (1991). Relying on *Cohen*, the Third Circuit and Tenth Circuit have rejected the same claim Todd makes here—that *Janus* provides union members the right to terminate union dues at any time, regardless of the specific opt-out provisions of a union membership agreement. *Fischer v. Gov. of N.J.*, 842 Fed. App’x 741, 752 (3d Cir. 2021), *pet. for cert. docketed* (U.S. June 16, 2021) (No. 20-1751); *Hendrickson*, 992 F.3d at 964 (same). As the Third Circuit observed, “Changes in decisional law, even constitutional law, do not relieve parties from their pre-existing contractual obligations.” *Fischer*, 842 Fed.

App'x at 752 (citations omitted). This Court rejected a similar argument about opt-out periods in *Hoekman*, 519 F. Supp. 3d at 509–10, and upheld an annual seven-day revocation period, noting that other courts have upheld similar systems, post-*Janus*. See, e.g., *Fisk v. Inslee*, 759 F. App'x 632, 634 (9th Cir. 2019) (fifteen-day window); *Creed*, 472 F. Supp. 3d at 525 (ten-day window).

Because “the state common law of contracts is a ‘law of general applicability,’” a party cannot rely on the First Amendment in order to “disregard promises that would otherwise be enforced under state law.” *Fischer*, 842 Fed. App'x at 752. (citing *Cohen*, 501 U.S. at 672). *Janus* did not nullify Todd’s contractual obligations by permitting him to terminate his union dues immediately. *Id.* at 753 (“Because *Janus* does not abrogate or supersede Plaintiffs’ contractual obligations, which arise out of longstanding, common law principles of ‘general applicability,’ *Janus* does not give Plaintiffs the right to terminate their commitments to pay union dues unless and until those commitments expire under the plain terms of their membership agreements.”) (citations omitted).

Todd argues, however, that the opt-out period here was unreasonably short, citing *Lopez v. Union de Trabajadores de la Industria Electrica y Riego*, 392 F. Supp. 3d 263 (D. P.R. 2019), for the proposition that “[a]t least one court has held that a plaintiff can state a Section 1983 claim based on the refusal to process a resignation from a union.” (Pl.’s Opp’n at 18.) But *Lopez* is inapposite because the plaintiff there had alleged he was required to join the union and pay full

membership dues as a condition of his employment. 392 F. Supp. 3d at 276. Here, however, Todd alleges that he was given the choice of whether to join the Union and pay full membership dues, or remain a non-member, and pay the lower fair-share fees. (Compl. ¶ 11.) And again, as noted above, this Court and others have upheld opt-out periods of similar duration to the period at issue here.

For all of the foregoing reasons, the Union’s Motion to Dismiss is granted with respect to Count 4, which the Court dismisses with prejudice.

E. Claims for Declaratory and Injunctive Relief

Finally, in each of Todd’s § 1983 counts, he seeks injunctive and declaratory relief (Compl. ¶¶ 54, 61, 73, 81) to “prevent future violations of his rights” by the Union. (*Id.* ¶¶ 54, 61, 73.) However, the Union has since directed DHS to stop the deductions from Todd’s paychecks. (Def.’s Mem. at 15–16; Altendorfer Decl. ¶¶ 3–4.) Accordingly, it argues that because there is no real and immediate threat of injury, Todd’s claims for prospective relief have become moot and must be dismissed under Rule 12(b)(1).¹

¹ Todd argues that the Court should not consider the Altendorfer Declaration because it constitutes material outside the pleadings, which may not be considered under Rule 12(b)(6). (Pl.’s Opp’n at 29 n.7.) But the Union moves to dismiss Todd’s claims for prospective relief pursuant to Rule 12(b)(1). (Def.’s Mot. [Doc. No. 16] at 1.) As the Court noted earlier, because the Union presents a factual attack on the Court’s jurisdiction, the Court

Rule 12(b)(1) permits a party to move for dismissal of any claim over which the court lacks subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). In order to invoke the Court’s jurisdiction over his claims for injunctive and declaratory relief, Todd bears the burden of demonstrating the Court’s subject matter jurisdiction. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006); *Buckler v. United States*, 919 F.3d 1038, 1044 (8th Cir. 2019). Article III of the Constitution grants courts the authority to adjudicate “Cases” and “Controversies.” U.S. Const., Art. III, § 2. Thus, in order to invoke federal jurisdiction, a plaintiff must demonstrate standing by suffering an injury that is fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (citations omitted). Furthermore, an actual controversy must exist not only “at the time the complaint is filed,” but at “all stages” of the litigation. *Alvarez v. Smith*, 558 U.S. 87, 92 (2009).

A case becomes moot—and thus, no longer a “Case” or “Controversy” under Article III—“when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citation omitted). However, a defendant cannot automatically moot a case simply by changing its conduct once it is sued. *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283,

may consider matters outside the pleadings, such the Altendorfer Affidavit, when considering this portion of the Union’s motion. *Branson Label*, 793 F.3d at 914–15.

289 (1982). Rather, “a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000).

Todd argues that the Union’s voluntary cessation of the challenged conduct does not render his claims for prospective relief moot because the Union could resume dues deductions once the case is dismissed. (Pl.’s Opp’n at 27) (citing *Knox v. Serv. Emps. Int’l Union*, 567 U.S. 298, 307 (2012); *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)).

Lisa Altendorfer, the Union’s IT and Building Resource Manager, attests that the Union treated the filing of this lawsuit as Todd’s continuing request to revoke his dues deduction authorization. (Altendorfer Decl. ¶¶ 1, 3.) Consequently, the Union stopped Todd’s dues authorization consistent with the May 2021 opt-out window, as set forth in the 2018 membership agreement. (*Id.* ¶ 4.) Beginning with Todd’s May 7, 2021 paycheck, dues have no longer been deducted. (*Id.*) There is no evidence that Todd has rejoined the Union and no risk to Todd that his dues will be deducted in the future unless he chooses to rejoin the Union. In other words, there is no reasonable expectation that Todd will be subject to the same action again. Accordingly, the Court finds his claims for declaratory and injunctive relief are moot. *See Hendrickson*, 992 F.3d at 958 (finding claim for declaratory judgment moot after cessation of dues

deductions because such relief “would serve only to announce that the defendants had harmed him but would have no real-world effect.”) (citation omitted); *see also Schiewe*, 2020 WL 4251801, at *3–4 (D. Or. July 23, 2020) (holding claims for prospective relief moot where deductions had stopped, notwithstanding plaintiff’s forgery allegations); *Mayer v. Wallingford-Swathmore Sch. Dist.*, 405 F. Supp. 3d 637, 641–42 & n.28 (E.D. Pa. 2019) (citing 13 other district court cases finding prospective relief moot when deductions cease).

Defendant’s motion is therefore granted in this respect.

F. State Law Claims

Subject matter jurisdiction in this case is based on the existence of a federal cause of action. Jurisdiction over Todd’s state law claims rests exclusively on supplemental jurisdiction under 28 U.S.C. § 1367, which confers jurisdiction over state claims that form part of the same “case or controversy” as the federal claims. When a Court has dismissed all of a plaintiff’s federal claims over which it has original jurisdiction, it has the discretion to decline to exercise supplemental jurisdiction over the remaining state law claims. 28 U.S.C. § 1367(c)(3) (“The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if— . . . (3) the district court has dismissed all claims over which it has original jurisdiction”); *Wilson v. Miller*, 821 F.3d 963, 970 (8th Cir. 2016). In deciding whether to exercise supplemental jurisdiction over pendent state law

claims, courts consider the factors of judicial economy, convenience, fairness, and comity. *Wilson*, 821 F.3d at 970–71 (citing *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988)). Here, in terms of judicial economy, the Court has dismissed Todd’s federal claims well before trial, and none of the other factors weigh in favor of retaining jurisdiction. Accordingly, the Court dismisses Todd’s state law claims without prejudice.

III. CONCLUSION

Based on the submissions and the entire file and proceedings herein, **IT IS HEREBY ORDERED** that

1. Defendant’s Motion to Dismiss [Doc. No. 16] is **GRANTED**.
2. Counts 1–4 of the Complaint [Doc. No. 1] are **DISMISSED WITH PREJUDICE**.
3. Counts 5–9 of the Complaint [Doc. No. 1] are **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 10, 2021

s/Susan Richard Nelson
SUSAN RICHARD NELSON
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT District of Minnesota

Marcus Todd,
Plaintiff,

v.

American Federation of State, County,
and Municipal Employees, Council 5,
Defendant.

JUDGMENT IN A CIVIL CASE

Case Number:
21-cv-637 SRN/ECW

- ☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- ☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Defendant's Motion to Dismiss [Doc. No. 16] is **GRANTED**.
2. Counts 1–4 of the Complaint [Doc. No. 1] are

DISMISSED WITH PREJUDICE.

3. Counts 5–9 of the Complaint [Doc. No. 1] are
DISMISSED WITHOUT PREJUDICE.

Date: 11/12/2021

KATE M. FOGARTY, CLERK

APPENDIX E

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-3749

Marcus Todd
Appellant

v.

American Federation of State, County and
Municipal Employees, Council 5
Appellee

Freedom Foundation
Amicus on Behalf of Appellant(s)

Appeal from U.S. District Court for
the District of Minnesota
(0:21-cv-00637-SRN)

MANDATE

In accordance with the opinion and judgment of
January 15, 2025, and pursuant to the provisions of
Federal Rule of Appellate Procedure 41(a), the formal
mandate is hereby issued in the above-styled matter.

February 27, 2025

Acting Clerk, U.S. Court of Appeals, Eighth Circuit

APPENDIX F

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 21-3749

Marcus Todd
Appellant

v.

American Federation of State, County and
Municipal Employees, Council 5
Appellee

Freedom Foundation
Amicus on Behalf of Appellant(s)

Appeal from U.S. District Court for
the District of Minnesota
(0:21-cv-00637-SRN)

ORDER

The petition for rehearing en banc is denied. The
petition for rehearing by the panel is also denied.

February 20, 2025

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

APPENDIX G

UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

Marcus Todd,
Plaintiff,

v.

American Federation of State, County, and
Municipal Employees, Council 5;
Minnesota Department of Human Services,
Defendants.

Court File No. _____

COMPLAINT JURY TRIAL DEMANDED

INTRODUCTION

1. Since mid-2018, Defendant American Federation of State, County, and Municipal Employees, Council 5 has used Plaintiff Marcus Todd's forged signature to force him into membership and deduct dues from his paycheck. DHS has complied with Council 5's demand for dues from Mr. Todd's paycheck. When Mr. Todd demanded that the dues deductions cease, Council 5 refused, even going so far as to falsely claim to Mr. Todd that it doesn't matter that his signature is a forgery—he has to pay anyway.

2. And even if there were no forgery involved, the Application fails to advise Mr. Todd of his First Amendment right to not pay anything to a government union, so it cannot constitute a valid waiver of First Amendment rights under *Janus v. AFSCME, Council 31*, 148 S. Ct. 2448 (2018).

3. This lawsuit seeks to stop this illegal practice and recoup the money taken from Mr. Todd's paycheck without his informed consent. Under the Supreme Court's decision in *Janus*, Council 5 never had valid consent to take any money from Mr. Todd's paycheck, and thus Council 5's actions violate the First Amendment.

4. Because Council 5's actions in taking Mr. Todd's dues demonstrate an intentional disregard for Mr. Todd's rights, Mr. Todd seeks an injunction, compensatory damages, punitive damages, and recoverable costs and attorney fees in this action.

PARTIES

5. Plaintiff Marcus Todd resides in Nicollet County, Minnesota.

6. Defendant AFSCME Council 5 is a local union organization and unincorporated Minnesota association affiliated with the American Federation of State, County, and Municipal Employees. Its offices are located at 300 Hardman Avenue South, South Saint Paul, Minnesota 55075.

7. Defendant Minnesota Department of Human

Services is a state agency with its main office located at 540 Cedar Street, Saint Paul, Minnesota 55101.

JURISDICTION AND VENUE

8. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

9. Venue is proper because a substantial part of the events giving rise to the claims occurred in the District of Minnesota. *See* 28 U.S.C. § 1391(b)(2).

STATEMENT OF THE CLAIM

Marcus Todd Joined AFSCME Before *Janus* Because He Was Forced Into an Unconstitutional Choice

10. Mr. Todd is a security counselor who works for the Minnesota Department of Human Services at DHS' Minnesota Sex Offender Program (MSOP) in St. Peter.

11. In 2014, when Mr. Todd began working for DHS, he was forced into an unconstitutional choice: join Council 5 and pay 100% dues, or pay an agency fee of nearly that amount and get no say in Council 5's misuse of his fee payments.

12. Against his will, Mr. Todd joined Council 5 in 2014, but Mr. Todd never provided informed consent to join Council 5, and he never knowingly or voluntarily waived any right not to be a member of Council 5 and not to pay dues.

13. Council 5 and DHS deducted dues from Mr. Todd's paycheck from 2014 forward.

After *Janus* in 2018, AFSCME Forged Mr. Todd's Signature on a Dues Checkoff and Deducted Dues Based on That Forgery

14. *Janus* was decided on June 27, 2018. Not surprisingly, around the same time, Council 5 began scrambling to "paper" its memberships by getting DHS employees to sign paper "Welcome Cards."

15. Mr. Todd was aware, at that time, that Council 5 had representatives approaching other employees at MSOP St. Peter to sign them up for union membership. At the time, Mr. Todd recalls the union's representatives visiting with other DHS employees at the MSOP St. Peter location with these paper applications in hand.

16. Mr. Todd recalls that Council 5's representatives who were discussing membership with other DHS employees in MSOP St. Peter used paper applications and did not bring iPads or any other electronic device to sign up employees for union membership.

17. Mr. Todd is informed and believes that electronic or computer devices were not permitted in the facility for Council 5's purposes.

18. Mr. Todd had only been forced into membership in 2014 and did not give consent or waive any rights at that time, and he never had any interest

in becoming a member of AFSCME, as membership provides no value to him, and Mr. Todd disagrees with much of Council 5's political advocacy.

19. In addition, Council 5's representation of Mr. Todd during collective bargaining is not consideration for his membership, as Council 5 has a pre-existing legal duty to represent Mr. Todd at the bargaining table, and a promise to perform a pre-existing legal duty does not establish consideration.

20. Council 5 or one of its agents or principals forged Mr. Todd's signature on a membership and/or dues checkoff application in June 2018, prior to his July 6, 2018 paycheck. Council 5 began to deduct dues based on the forged "Application" from Mr. Todd's paycheck beginning with the July 6, 2018 paycheck.

21. The signature on what Council 5 claims is Mr. Todd's application does not come close to matching Mr. Todd's signature. A copy of the "Application" is attached hereto as Exhibit 1, and several comparators with Mr. Todd's authentic signature are attached as Exhibit 2.

22. Since *Janus* was decided, and specifically since Mr. Todd's July 6, 2018 paycheck, Council 5 has deducted dues from Mr. Todd's paycheck based on a forgery and without his consent in violation of the First Amendment.

23. Before the 2018 forgery, Mr. Todd never gave free and informed consent to be a member of Council 5. He was never adequately informed of his First

Amendment right to refuse membership or his right to not have any money taken from him without his consent via agency fees. Council 5's deductions of dues from Mr. Todd's paycheck prior to the 2018 forgery violate the First Amendment.

24. In July 2020, after discussing the possibility of withdrawing from union membership with a coworker, Mr. Todd requested his union card from Council 5 so that he could obtain the information needed to resign his union membership and stop dues deductions.

25. On July 16, 2020, Mr. Todd sent Council 5 a written notification that he was resigning his union membership and demanded that dues deductions cease. That notification is attached hereto as Exhibit 3.

26. Council 5 processed Mr. Todd's union resignation, but has refused to stop dues deductions until after Mr. Todd sends subsequent notice during an opt-out window in May 2021.

27. Mr. Todd again wrote to Council 5 on August 14, 2020 demanding stoppage of his dues deduction. Mr. Todd demonstrated again that the application on which Council 5 was relying was a forgery. A copy of this letter is attached as Exhibit 4. Council 5 still refused to stop dues deductions.

28. Mr. Todd's counsel wrote to Council 5 on September 15, 2020 demanding yet again that Council 5 stop dues deductions. A copy of this letter is attached as Exhibit 5.

29. Rather than stop dues deductions, Council 5's attorney responded via letter, indicating that Council 5 believed it had a right to keep Mr. Todd's dues, even if they were obtained by use of a forgery. A copy of this letter is attached as Exhibit 6.

30. In the year 2018, before July 6, 2018, DHS and Council 5 deducted \$352.26 in dues from Mr. Todd's paychecks without his clear, voluntary, knowing waiver of his First Amendment rights.

31. Before 2018, from 2014 through 2018, DHS and Council 5 deducted additional dues from Mr. Todd's paycheck in an amount to be determined at trial.

32. From July 6, 2018 through February 14, 2021, DHS and Council 5 have deducted approximately \$1,930.82 from Mr. Todd's paychecks without his consent.

33. DHS continues to make these illegal deductions, Council 5 continues to receive these deductions, and Mr. Todd's damages continue to accrue.

**The Application Is Not Valid Consent to
Continued Dues Deductions Once Any Consent
Was Explicitly Revoked in July 2020**

34. The Application on which Council 5 relies to continue taking money from Mr. Todd without his consent states that dues deductions can only be terminated if an employee "revoke[s] [the

authorization] by sending written notice to both [his] employer and Minnesota AFSCME Council 5 during the period not less than thirty (30) and not more than forty-five (45) days before the annual anniversary date of this authorization.”

35. Therefore, the Application only provides a 15-day window in which an employee can stop the unlawful deduction of union dues within an entire calendar year. Council 5 does not impose a comparable administrative limit on itself for *beginning* dues deductions.

36. The Application also fails to meaningfully inform employees of their First Amendment rights by merely stating that “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.” The Application does not provide enough information to constitute “clear and compelling” evidence of voluntary consent to dues deductions—especially not for future years.

37. The Application, even if it were not a forgery, does not constitute a valid waiver of First Amendment rights under *Janus*. And, the Application does not constitute a valid reason for Council 5 to continue taking Mr. Todd’s money after he explicitly revoked any authorization in July 2020.

Council 5 and DHS Act Under Color of State Law

38. The law of Minnesota authorizes Council 5, DHS, and their affiliates to extract money from public employees via dues checkoff and the employer and union's collective bargaining agreement without clear and compelling evidence of the employee's freely given waiver of First Amendment rights. *See* Minn. Stat. § 179A.06, Subd. 6; Minn. Stat. § 179A.20, Subd. 1.

39. Council 5, DHS, and their affiliates were acting under color of state law at all relevant times by deducting dues from Mr. Todd's paychecks without clear and compelling evidence of his freely given waiver of First Amendment rights.

Article III Standing

40. Mr. Todd has Article III standing to bring his claims.

41. He has suffered injury-in-fact because money was taken from his paychecks by DHS and Council 5 without his consent, both before and after his resignation and demand for dues stoppage from Council 5.

42. Further, Mr. Todd has suffered injury-in-fact by being prohibited from terminating his dues deduction authorization and stopping unconstitutional dues deductions because of Council 5's unduly burdensome and unreasonable window period for resigning from union membership.

43. Mr. Todd's injuries were caused by Defendants' unconstitutional behavior, and the

injuries will be redressed by a refund of the money that Council 5 and DHS have extracted and continue to unconstitutionally extract from Mr. Todd, appropriate penalties and fees, declaratory relief, and an injunction against continued violations.

44. Absent injunctive relief from the Court, Council 5 and DHS' deprivations of Mr. Todd's First Amendment rights are capable of repetition.

CAUSES OF ACTION

45. Plaintiff has set forth a short and plain statement showing his entitlement to relief that is substantially plausible under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662, and *Johnson v. City of Shelby*, 135 S.Ct. 346 (2014), and further identifies discrete claims for relief, which include but are not limited to the following.

46. This Court has pendent jurisdiction to determine Plaintiff's state law claims under 28 U.S.C. § 1367. *See Knight v. Alsop*, 535 F.2d 466 (8th Cir. 1976).

Count One **42 U.S.C. §§ 1983, 1988** **28 U.S.C. § 2201**

Council 5 and DHS' Pre-*Janus* Deductions

47. Plaintiff incorporates the preceding paragraphs by reference.

48. In 2014, Plaintiff was unconstitutionally

forced to choose to either pay 100% of dues and have a nominal voice within Council 5, or pay nearly that amount and have no vote at all.

49. Had Plaintiff been informed of his First Amendment right not to pay anything to the union as a non-member at the time, he would have so chosen.

50. Thus, Plaintiff never freely waived his First Amendment rights by joining Council 5 against his will in 2014.

51. Council 5 and DHS deducted dues payments from Plaintiff's paycheck prior to *Janus* without clear and compelling evidence of Plaintiff's freely given waiver of First Amendment rights.

52. Because of these deductions, Plaintiff was forced to subsidize Council 5's speech, with which he disagrees.

53. Council 5 and DHS' deductions thus violate the First Amendment pursuant to *Janus*.

54. Plaintiff is entitled to money damages, penalties, punitive damages, fees, injunctive relief, and declaratory relief to redress, remedy, and prevent future violations of his rights by Council 5 and DHS.

Count Two
42 U.S.C. §§ 1983, 1988
28 U.S.C. § 2201

Council 5 and DHS' Post-*Janus* and Pre-

Resignation Deductions

55. Plaintiff incorporates the preceding paragraphs by reference.

56. In June 2018, Council 5 forged Plaintiff's signature on an Application.

57. From July 6, 2018 through July 2020, when Plaintiff tendered his resignation, Council 5 illegally deducted dues from Plaintiff's paycheck based on a forged Application.

58. Council 5 and DHS deducted dues payments from Plaintiff's paycheck after *Janus* and before Plaintiff's tendered resignation in July 2020 without clear and compelling evidence of Plaintiff's freely given waiver of First Amendment rights.

59. Because of these deductions, Plaintiff was forced to subsidize Council 5's speech, with which he largely disagrees.

60. Council 5 and DHS' deductions thus violate the First Amendment pursuant to *Janus*.

61. Plaintiff is entitled to money damages, penalties, punitive damages, fees, injunctive relief, and declaratory relief to redress, remedy, and prevent future violations of his rights by Council 5 and DHS.

Count Three
42 U.S.C. §§ 1983, 1988
28 U.S.C. § 2201

Council 5 and DHS' Post-Resignation Deductions

62. Plaintiff incorporates the preceding paragraphs by reference.

63. In July 2020, even though he never freely waived his First Amendment rights to not subsidize Council 5, to ensure the illegal dues deductions stopped, Plaintiff tendered his resignation to Council 5 and demanded that Council 5 stop dues deductions.

64. Council 5 refused to stop dues deductions.

65. In August 2020, Plaintiff informed Council 5 that the Application it was relying on for dues deductions was a forgery, and again demanded that Council 5 stop dues deductions. Council 5 refused to stop dues deductions.

66. In September 2020, Plaintiff's counsel again demanded that Council 5 stop dues deductions from Plaintiff's paycheck.

67. Council 5's response was that it would continue deducting dues until Plaintiff opted out of dues deductions during a 15-day period in May 2021. Council 5 responded, in part, that it could continue doing so even if the Application was a forgery.

68. Council 5 refused to stop dues deductions.

69. Council 5 and DHS deducted dues payments

from Plaintiff's paycheck after his resignation from Council 5, and even after being notified that the Application was a forgery, without clear and compelling evidence of Plaintiff's freely given waiver of First Amendment rights.

70. Because of these deductions, Plaintiff was forced to subsidize Council 5's speech, with which he largely disagrees.

71. Council 5 and DHS' deductions thus violate the First Amendment pursuant to *Janus*. Even if the Application were not a forgery (which it is), the Application is not a sufficient waiver of First Amendment rights under *Janus*.

72. Council 5's dues deductions even after knowledge that the Application was a forgery constitute intentional, malicious, willful, and/or reckless disregard for Plaintiff's First Amendment rights.

73. Plaintiff is entitled to money damages, penalties, punitive damages, fees, injunctive relief, and declaratory relief to redress, remedy, and prevent future violations of his rights by Council 5 and DHS.

Count Four
42 U.S.C. §§ 1983, 1988
28 U.S.C. § 2201

**Council 5's 15-Day Opt-Out Window Is
Unconstitutional**

74. Plaintiff incorporates the preceding paragraphs by reference.

75. The Application on which Council 5 relies to continue taking money from Plaintiff without his consent states that dues deductions can only be terminated if an employee “revoke[s] [the authorization] by sending written notice to both [his] employer and Minnesota AFSCME Council 5 during the period not less than thirty (30) and not more than forty-five (45) days before the annual anniversary date of this authorization.”

76. Therefore, the Application only provides a 15-day window in which an employee can stop the unlawful deduction of union dues within an entire calendar year. Council 5 does not impose a comparable administrative limit on itself for *beginning* dues deductions.

77. Under *Janus*, in order for an opt-out system to be constitutional, it must allow for opt-out of the dues check-off system where the employee determines, for example, that he or she no longer supports the speech being promoted or shares the views of the speaker.

78. Council 5’s opt-out system does not allow for immediate opt-out, and so it violates the Supreme Court’s waiver doctrine related to an employee’s exercise of First Amendment rights.

79. There is no credible administrative justification for failing to allow an optout of a dues check-off where there is no comparable ban on opting

in at any time.

80. Because Council 5's opt-out window is limited to a 15-day period once per year, it is unconstitutional under the First Amendment.

81. Plaintiff is entitled to injunctive relief allowing him to opt-out of any dues deductions immediately, and punitive damages, fees, and declaratory relief as well.

Count Five Conversion

82. Plaintiff incorporates the preceding paragraphs by reference.

83. Council 5 and DHS willfully interfered with Plaintiff's personal property (his paycheck in the amount of Council 5's dues deductions) without lawful justification, which deprived Plaintiff, the lawful possessor of that property, of use and possession of the same, from 2014 through the present day.

84. Plaintiff holds a property interest in the money deducted by Council 5 and DHS from his paycheck as dues to Council 5.

85. Council 5 and DHS deprived Plaintiff of that interest.

Count Six Money Had and Received/Unjust Enrichment

86. Plaintiff incorporates the preceding paragraphs by reference.

87. By unlawfully deducting union dues or fees from Plaintiff's paycheck, Council 5 and DHS have had a benefit conferred upon them since 2014.

88. Council 5 and DHS "knowingly appreciated and accepted" that benefit.

89. Council 5 and DHS' acceptance and retention of that benefit is inequitable under these circumstances.

90. Council 5 and DHS are liable to Plaintiff for retaining the union dues or fees unlawfully deducted from Plaintiff's paychecks, and Plaintiff is entitled to an award of damages against Council 5 and DHS for the same or for aiding and abetting the same.

Count Seven Civil Theft

91. Plaintiff incorporates the preceding paragraphs by reference.

92. Council 5 and DHS have stolen property from Plaintiff by unlawfully deducting union dues or fees from Plaintiff's paycheck since 2014.

93. Council 5 and DHS have wrongfully and surreptitiously taken Plaintiff's wages for the purpose of keeping them or using them.

94. Council 5 and DHS are liable to Plaintiff for the value of the property taken from Plaintiff, or for aiding and abetting the taking of the same.

95. Plaintiff seeks money damages and punitive damages under Minn. Stat. § 604.14, Subd. 1 for Council 5 and DHS' civil theft, or for aiding and abetting the same.

Count Eight
Tortious Interference With Contractual
Relations
(Council 5)

96. Plaintiff incorporates the preceding paragraphs by reference.

97. The agreement for Plaintiff to provide services as an employee to DHS constitutes a valid and enforceable contract between them. Plaintiff and Council 5 were aware of the contract.

98. Council 5's interference with Plaintiff's contractual relations with DHS, by wrongfully forcing the deduction of dues payments from Plaintiff's paycheck in violation of his constitutional rights through DHS, was intentional and intended to procure breach of that contract by said deductions, was without justification, and was perpetrated with actual malice to injure Plaintiff.

99. As a direct and proximate result of Council 5's interference and acts, Plaintiff's performance under his contract with DHS was made more expensive, less

remunerative, and more difficult and burdensome. Plaintiff has suffered damages as a direct and proximate result of Council 5's actions.

Count Nine
Unlawful Wage Deductions
Minn. Stat. § 181.79

100. Plaintiff incorporates the preceding paragraphs by reference.

101. Minnesota Statutes § 181.79 provides: "No employer shall make any deduction, directly or indirectly, from the wages due or earned by any employee.... to recover any other claimed indebtedness running from employee to employer, unless the employee, after the loss has occurred or claimed indebtedness has arisen, voluntarily authorizes the employer in writing to make the deduction or unless the employee is held liable in a court of competent jurisdiction for the loss or indebtedness."

102. Defendants violated Minn. Stat. § 181.79 by making deductions from Plaintiff's wages without written authorization, as the only written authorization was forged and/or was not properly obtained pursuant to *Janus*.

103. Defendants are liable to Plaintiff for twice the amount of deduction taken under Minn. Stat. § 181.79, Subd. 2.

PRAYER FOR RELIEF

Mr. Todd respectfully requests that the Court grant him relief as follows after a trial by jury, which is demanded:

A. An award of money damages for union dues unlawfully deducted from Mr. Todd's paychecks from 2014 through July 6, 2018;

B. An award of money damages for union dues unlawfully deducted from Mr. Todd's paychecks from July 6, 2018 through his tendering of his resignation in 2020;

C. An award of money damages for union dues unlawfully deducted from Mr. Todd's paychecks from his tendering of his resignation in 2020 through the date of any judgment;

D. A declaration that Council 5 and DHS' practice of deducting union dues from Plaintiff's paycheck without clear and compelling evidence of a knowing, intelligent, and voluntary waiver of Plaintiff's First Amendment rights is unlawful and a violation of Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution;

E. A declaration that Council 5 and DHS' imposition of an unreasonably short and once-a-year time window to resign from union membership and discontinue dues deductions violates Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution and the Supreme Court's

waiver doctrine related to constitutional rights;

F. An injunction prohibiting Council 5 and DHS from continuing the unlawful practices set forth in this Complaint, including unlawful dues deductions without prior affirmative consent to the waiver of constitutional rights, and the imposition of an unreasonably short time window to resign from union membership and stop unconstitutional dues deductions;

G. An award of attorney fees in favor of Plaintiff and against Council 5 and DHS upon Plaintiff prevailing in this litigation and upon post-judgment application for the same, pursuant to 42 U.S.C. § 1988 and Minn. Stat. § 15.472;

H. An award of punitive damages against Council 5 and DHS because of Council 5 and DHS' intentional, willful, malicious, and/or reckless disregard for Plaintiff's First Amendment rights, and also under Minn. Stat. §§ 604.14 and 181.79; and

I. An award of all other relief that the court may deem just, proper, or equitable.

UPPER MIDWEST LAW CENTER

Dated: March 5, 2021

/s/ James V. F. Dickey
Douglas P. Seaton (#127759)
James V. F. Dickey (#393613)
8421 Wayzata Blvd., Suite 105

Golden Valley, Minnesota 55426
Doug.Seaton@umwlc.org
James.Dickey@umwlc.org
(612) 428-7000

Attorneys for Plaintiff

APPENDIX H

EXHIBIT 1

Moisten Here and Seal Shut to Return

Welcome to AFSCME Council 5! [AFSCME LOGO]

A Join our Union! Become an AFSCME member
with Dues Authorization **001000**

TODD	MARCUS	FISHER
Last	First	Middle
520 SIOUX LN	SAINT PETER	56082
Address	City	ST Zip

SECURITY COUNSELOR
Job Title

(507) 459-9431	(507) 985-2509	
Home Phone	Work Phone	Cell Phone

Home Email

Work Email

I hereby request membership with and authorize Minnesota AFSCME Council 5 to represent me for the purpose of collective bargaining with my employer and to negotiate and conclude all agreements respecting wages, hours and other conditions of 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.

Additionally, I hereby request and voluntarily authorize my employer to deduct from my wages an amount equal to the regular monthly dues applicable to members of Minnesota AFSCME Council 5, and further that such amount so deducted be sent to Minnesota AFSCME Council 5 for and on my behalf. This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending written notice to both my employer and Minnesota AFSCME Council 5 during the period not less than thirty (30) and not more than forty-five (45) days before the annual anniversary date of this authorization. This authorization shall be automatically renewed by an irrevocable check-off year to year unless I revoke it in writing during the above described window period, irrespective of my membership in the Union.

The invalidity or unenforceability of any particular provision hereof shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted. By submitting this form, it shows that I agree with the terms above.

/s/
Employee's Signature

20-Jun-2018
Date

B Elect our Bosses! Become a PEOPLE member

YES! I want to contribute to our political fund! As

public workers, AFSCME members elect our bosses. My PEOPLE membership will help ensure we elect pro-worker politicians who will protect our benefits and pensions, and fight for working families across America.

I hereby authorize Minnesota AFSCME Council 5 to file this payroll deduction with my employer and authorize my employer and associated agencies to deduct each pay period the amount certified in the box provided as a voluntary contribution to AFSCME PEOPLE. Amounts so deducted are to be remitted within 30 days of the deduction to the office of Minnesota AFSCME Council 5 for transmittal to AFSCME PEOPLE, P.O. Box 65334, Washington, D.C. 20035-5334, to be used for the purpose of making political contributions and expenditures. My contribution is voluntary, and I understand that it is not required as a condition of membership in any organization, or as a condition of continued employment, and is free of reprisal. I understand that any contribution guideline is only a suggestion and I am free to contribute more or less than that amount and will not be favored or disadvantaged due to the amount of my contribution or refusal to contribute, and that I may revoke this authorization at any time by giving written notice to Minnesota AFSCME Council 5.

☐ \$10 per pay period ☐ \$8 per pay period

☐ \$6 per pay period ☐ Other amount ___ per pay period

20-Jun-2018

Employee's Signature

Date

In accordance with the federal law, AFSCME PEOPLE will accept contributions only from members of AFSCME and their families. Contributions from other persons will be returned. Contributions or gifts to AFSCME PEOPLE are not deductible as charitable contributions for federal income tax purposes.

C Your Temporary AFSCME Membership Card

*AFSCME Council 5
Temporary Membership Card*

Full Name (Print Clearly)

*Council 5 use only – This is NOT your official Member
001000 [AFSCME LOGO]*

Our Mission

**We advocate for excellence in services
for the public, dignity in the workplace, and
opportunity and prosperity for all workers**

Retain the card to the left as your proof of membership until your permanent card arrives. Note the number **on** the card is for reference only and is NOT your official AFSCME member number.

EXHIBIT 2

American Federation of State, County, and Municipal
Employees Council 5
300 Hardman Avenue So
South St Paul, MN 55075

AFSCME Council 5 Executive Director:

Effective immediately, I resign membership in all levels of American Federation of State, County, and Municipal Employees Council 5.

I do not consent to any payment or withholding of dues, fees, or political contributions to the union or its affiliates. If you believe I have given consent in the past, that consent is revoked, effective immediately.

The right to be free from forced union payments is guaranteed under the First Amendment of the Federal Constitution as recognized by *Janus v. AFSCME*. I insist that you immediately cease deducting any and all union dues or fees from my paycheck or account, as is my constitutional right. This notification is permanent and continuing in nature, until I sign indicating otherwise.

Further exaction of union dues or fees against my will violates my constitutional rights. If you refuse to process such cessation of payment, I request that you:

- promptly provide me with a copy of any dues deduction authorization – written, electronic, or oral – the union has on file for me; and

- promptly inform me, in writing, of exactly what steps I must take to effectuate my constitutional rights and stop the deduction of dues/fees.

I understand that AFSCME Council 5 has arranged to be the sole provider of workplace representation services for all employees in my bargaining unit. I understand further that, in exchange for the privilege of acting as the exclusive bargaining representative, AFSCME Council 5 must continue to represent me fairly and without discrimination in dealings with my employer and cannot, under any circumstances, deny me any wages, benefits, or protections provided under the collective bargaining agreement with my employer.

Please reply promptly to my request.

Marcus Todd
520 Sioux Lane
St Peter, Minnesota 56082
(507) 459-9431

MSOP St Peter
Security Counselor

Signature and Date: /s/ 07/16/2020

- ☒ Do not contact me with any future membership solicitations or union materials.

EXHIBIT 2

To Whom It May Concern,

The credit inquiry on 5/21/15 was for financing my car lease, the inquiry on 6/3/15 was to get preapproval for a home loan, and the inquiry on 6/26/15 was for a credit card I acquired due to it having more favorable terms and benefits.

The previous address of [redacted] MN is my mother's address and the home I grew up in. have used this as a permanent address for the past few years in order to keep mailing situations more simple.

My mother, Sandra Todd who lives at [redacted] MN, will be remaining at her residence in Winona and will not be occupying the property we wish to purchase at [redacted] MN.

Thank you,

/s/ 8/10/2015

Marcus Todd 8/10/2015

EXHIBIT 2

Minnesota Sex Offender Program
Department of Human Services
Security Counselor Job Coach Application

Name: Marcus Todd

Classification: Security Counselor

Dept./Work Area: A-Team

Watch (if applicable): 3rd

This criteria will be used in the selection of Job Coaches:

1. Job performance is satisfactory.
2. Prior relevant work experience as an MSOP security counselor for at least one year.
3. Technical knowledge necessary for successful performance of the job
4. Availability and willingness to actively participate in training.
5. A positive attitude regarding position and the program.
6. Supervisor support for participation.
7. Ability to commit to a minimum of one year of

participation.

8. Ability to give constructive feedback through exceptional verbal and teaching skills with excellent report writing skills
9. Must be invested in the success of other employees.

I have reviewed the above criteria to become a Job Coach. I understand that I will not supervise new employees, nor will I perform supervisory tasks. I agree to assist in the training of new employees. I understand this will be accomplished during regular working hours. I understand and agree to the following:

- I am willing and able to commit to one year of participation.
- I will meet with and train new employees assigned to me.
- I will be available to current employees for Job Coach Program training opportunities.
- I will learn and utilize Job Coach Program training methods.
- I will follow MSOP principles of personal accountability, respect for others, and community responsibility.

Employee Signature: /s/ Date: 10/3/17

THIS SECTION IS TO BE FILLED OUT BY
SUPERVISOR OF EMPLOYEE.

☐ NO Comments:

Supervisor Signature:_____ Date:_____

Job Coach Steering Committee Decision:

☐ YES
☐ NO

Original: Supervisory File
Copy: Employee

EXHIBIT 2

Mid-Probation and Probationary Review Form

Employee Name: Marcus Todd

Employee's EID: [redacted]

Supervisor Name: Marc Zika

Supervisor's EID: [redacted]

Probation Start Date: 8/8/14

Probation Scheduled End Date: 218/14

Appraisal Period: (08/0812014 to 12/23/2014)

Mid-Probationary and End of Probation Review

Does the employee:

1. Exhibit sufficient technical/analytical skills and learning abilities to be able to learn the job duties?

☒ Yes ☐ No ☐ Needs Improvement

Comments (required for No or Needs Improvement):

2. Exhibit good working relationships with co-workers and customers and contribute positively to the work environment?

☒ Yes ☐ No ☐ Needs Improvement

3. Exhibit reliability in attendance and adherence to work deadlines?

☒ Yes ☐ No ☐ Needs Improvement

4. Produce quality and timely work?

☒ Yes ☐ No ☐ Needs Improvement

5. Demonstrate ability and willingness to learn and adapt to new learning situations?

☒ Yes ☐ No ☐ Needs Improvement

6. Do you have concerns about the employee's performance?

☒ No ☐ Yes (please explain)

End Probationary only: ☐ Yes ☐ No^{*}

Additional Comments: Marcus has been a positive addition to the Pexton 1 North team and has been consistently demonstrating the general duties and responsibilities of a security counselor.

^{*} Employee must be notified in writing prior to end date.

Employee Signature (I have reviewed the contents) /s/

Date: 12/23/14

Supervisor Signature: /s/

Date: 12/23/14

Manager Signature: /s/

Date: 12/29/14

EXHIBIT 2

ADDENDUM TO PURCHASE AGREEMENT

This form approved by the Minnesota Association of Realtors®, which disclaims any liability arising out of use or misuse of this form.

© 2011 Minnesota Association of Realtors®, Edina, MN

1. Date _____

2. Page _____

Addendum to Purchase Agreement between parties dated June 18, 2015 pertaining to the purchase and sale of the property at [redacted] MN.

In the event of a conflict between this Addendum and any other provision of the Purchase Agreement, the language in this Addendum shall govern.

The radon system will be installed at 520 Sioux Lane. The Bill will be sent to sellers after the installation.

The sellers will pay up to \$2,000. Any balance over \$2,000 will be paid by the buyers.

The installation will occur after the closing.

(Seller)

(Date)

/s/_____

7/1/15

(Buyer)

(Date)

(Seller)

(Date)

/s/

7/1/15

(Buyer)

(Date)

**THIS IS A LEGALLY BINDING CONTRACT
BETWEEN BUYERS AND SELLERS. IF YOU
DESIRE LEGAL OR TAX ADVICE, CONSULT
AN APPROPRIATE PROFESSIONAL.**

**SPOUSE
Certification Form**

Employee Information

Last Name	First Name	Middle Initial
Todd	Marcus	F

Employee ID #
[redacted]

Mailing Address	City	State	Zip Code
[redacted]	[redacted]	MN	[redacted]

Agency	Work Phone Number	Home Phone Number
MSOP	507-985-3001	[redacted]

Spouse Information

Last Name	First Name	Middle Initial
Todd	[redacted]	[redacted]

Gender	Date of Birth
☐ Male ☒ Female	[redacted]

[redacted]

By completing and signing this form, I certify that the information I have provided is true, complete, and accurate. I understand that knowingly providing false, incomplete, or misleading information may **be** fraud or intentional

misrepresentation of a material fact and may result in denial or loss of benefits, I may be required to repay any claims paid during the period the spouse as ineligible, and I may be subject to disciplinary action.

Employee Signature /s/ Date 11/20/16

EXHIBIT 2

Position Description: Section A

State of Minnesota
Department of Human Services

EMPLOYEE NAME & ID#:
Marcus Todd ID# [redacted]

ADMINISTRATION/DIVISION;
Minnesota Sex Offender Program (MSOP)

ACTIVITY:
Operations

CLASSIFICATION TITLE:
Security Counselor

WORKING TITLE (if different):
Security Counselor

POSITION NUMBER:

PREPARED BY/ DA TE
prepared or revised: Terry Kneisel & Troy Sherwood
3/21/16

PREVIOUS INCUMBENT:

APPRAISAL PERIOD:
From: 4/12/16 To:

EMPLOYEE SIGNATURE (this position description accurately reflects my job): /s/

DATE: 4/12/16

SUPERVISOR'S SIGNATURE (this document reflects the employee's current job):
Courtland, Adam GS/OD /s/

EMPLOYEE ID# [redacted]

DATE: 4/13/16

POSITION PURPOSE:

Monitor and closely supervise clients civilly committed to the Minnesota Sex Offender Program (MSOP) at the Moose Lake or St. Peter facilities as Sexually Dangerous Persons (SDP) or Sexual Psychopathic Personalities (SPP). The person in this position will ensure a safe and secure environment in which a therapeutic atmosphere can be maintained. Interaction with clients will be in accordance with facility policies and procedures in order to provide a consistently therapeutic environment, which supports MSOP's mission, vision and goals. The person in this position will model pro-social and therapeutic behavior by displaying warm, empathetic, rewarding and directive interactions. When needed, this person will intervene with the client population to protect the public, staff and clients.

The incumbent must be able to perform the essential function of the job, with or without reasonable

accommodation.

I verified that this position should be covered under the Corrections Employee Retirement Plan in accordance with MN Statute § 352.91.

/s/

APPOINTING AUTHORITY'S SIGNATURE

4-13-16

Date

REPORTABILITY:

Reports to: Group Supervisor or Assistant Group Supervisor

Supervises: MSOP clients

DIMENSIONS:

Budget: None

Clientele:

- 1) Direct service recipients include clients residing at MSOP as well as their families and their legal representatives.
- 2) Other clients include internal MSOP staff and management; judicial and governmental representatives (State and County); attorneys; community resource personnel; and the general public.

EXHIBIT 2

Position Description: Section A

State of Minnesota
Department of Human Services

EMPLOYEE NAME & ID#:
Todd, Marcus [redacted]

ADMINISTRATION/DIVISION;
Minnesota Sex Offender Program (MSOP)

ACTIVITY:

CLASSIFICATION TITLE:
Security Counselor

WORKING TITLE (if different):
Security Counselor

POSITION NUMBER:

PREPARED BY/ DATE
prepared or revised: Terry Kneisel & Troy Sherwood
3/22/16

PREVIOUS INCUMBENT:

APPRAISAL PERIOD:
From: 4/12/16 To:

EMPLOYEE SIGNATURE (this position description accurately reflects my job): /s/

DATE: 4/12/16

SUPERVISOR'S SIGNATURE (this document reflects the employee's current job):
/s/

EMPLOYEE ID# [redacted]

DATE: 9/17/19

POSITION PURPOSE:

Monitor and closely supervise clients civilly committed to the Minnesota Sex Offender Program (MSOP) at the Moose Lake or St. Peter facilities as Sexually Dangerous Persons (SDP) or Sexual Psychopathic Personalities (SPP). The person in this position will ensure a safe and secure environment in which a therapeutic atmosphere can be maintained. Interaction with clients will be in accordance with facility policies and procedures in order to provide a consistently therapeutic environment, which supports MSOP's mission, vision and goals. The person in this position will model pro-social and therapeutic behavior by displaying warm, empathetic, rewarding and directive interactions. When needed, this person will intervene with the client population to protect the public, staff and clients.

The incumbent must be able to perform the essential function of the job, with or without reasonable

accommodation.

I verified that this position should be covered under the Corrections Employee Retirement Plan in accordance with MN Statute § 352.91.

/s/

APPOINTING AUTHORITY'S SIGNATURE

9-17-19

Date

REPORTABILITY:

Reports to: Group Supervisor or Assistant Group Supervisor

Supervises: MSOP clients

DIMENSIONS:

Budget: None

Clientele:

- 1) Direct service recipients include clients residing at MSOP as well as their families and their legal representatives.
- 2) Other clients include internal MSOP staff and management; judicial and governmental representatives (State and County); attorneys; community resource personnel; and the general public.

EXHIBIT 3

American Federation of State, County, and Municipal
Employees Council 5
300 Hardman Avenue So
South St Paul, MN 55075

AFSCME Council 5 Executive Director:

Effective immediately, I resign membership in all levels of American Federation of State, County, and Municipal Employees Council 5.

I do not consent to any payment or withholding of dues, fees, or political contributions to the union or its affiliates. If you believe I have given consent in the past, that consent is revoked, effective immediately.

The right to be free from forced union payments is guaranteed under the First Amendment of the Federal Constitution as recognized by *Janus v. AFSCME*. I insist that you immediately cease deducting any and all union dues or fees from my paycheck or account, as is my constitutional right. This notification is permanent and continuing in nature, until I sign indicating otherwise.

Further exaction of union dues or fees against my will violates my constitutional rights. If you refuse to process such cessation of payment, I request that you:

- promptly provide me with a copy of any dues deduction authorization – written, electronic, or oral – the union has on file for me; and

- promptly inform me, in writing, of .exactly what steps I must take to effectuate my constitutional rights and stop the deduction of dues/fees.

I understand that AFSCME Council 5 has arranged to be the sole provider of workplace representation services for all employees in my bargaining unit. I understand further that, in exchange for the privilege of acting as the exclusive bargaining representative, AFSCME Council 5 must continue to represent me fairly and without discrimination in dealings with my employer and cannot, under any circumstances, deny me any wages, benefits, or protections provided under the collective bargaining agreement with my employer.

Please reply promptly to my request.

Marcus Todd
520 Sioux Lane
St Peter, Minnesota 56082
(507) 459-9431

MSOP St Peter
Security Counselor

Signature and Date: /s/ 07/16/2020

- ☒ Do not contact me with any future membership solicitations or union materials.

EXHIBIT 4

August 14, 2020

Sent by U.S. Mail and Email

Christine Harriman, Field Representative-
Member Action Center
AFSCME, Council 5
300 Hardman Avenue South
South St. Paul, MN 55075
Council5@afscmemn.org

Re: Demand for Immediate Acknowledgement of
Resignation and Cessation of Dues Deduction
Based on Forged "Welcome" Card

Dear Ms. Harriman:

I have received your July 16, 2020 email, responding to my email and my resignation and cessation of dues deduction letter of July 16, 2020, together with the "Welcome to AFSCME Council 5" card, dated June 20, 2018, which you enclosed and assert prevents me from resigning or stopping dues deductions until May 6-21, 2021.

I deny that this card was ever signed by me. The "signature" thereon is a forgery. I have enclosed several examples of my signature from documents contemporaneous to the "Welcome" card, which clearly show no resemblance to this "signature." Accordingly, I demand again that my resignation be acknowledged and that dues deductions stop immediately.

Please confirm in writing that this will be done. If not,
I plan to authorize legal action against AFSCME,
Council 5.

Very truly yours,

/s/

Marcus Todd
520 Sioux Lane
St. Peter, MN 56082

Enclosures

Cc: Douglas P. Seaton, President,
Upper Midwest Law Center

EXHIBIT 5

[LETTERHEAD OF UPPER MIDWEST
LAW CENTER]

September 15, 2020

Sent by U.S. Mail and Email

Christine Harriman, Field Representative -
Member Action Center

AFSCME, Council 5
300 Hardman Avenue South
South St. Paul, MN 55075
Christine.Harriman@afscmemn.org
Council5@afscmemn.org

Re: Forgery of Union Membership and Dues
Deduction Authorization Card

Dear Ms. Harriman:

I represent Mr. Marcus Todd, who wrote to you on August 14, 2020, concerning the refusal of AFSCME, Council 5 ("Council 5") to confirm his membership resignation and termination of any alleged dues deduction authorization.

Your letter to him of July 16, 2020 replying to his original resignation and dues deduction authorization termination of July 16, 2020, asserted that he was bound by a "Welcome to AFSCME Council 5" card to continue dues and membership until May 6-21, 2021.

This card, however, is a forgery, as Mr. Todd demonstrated in his letter of August 14, 2020. You have failed to respond to this letter, and Mr. Todd continues to have dues deducted from his pay and his union membership resignation has not been recognized.

I demand that Mr. Todd receive a confirmation of his resignation, and the termination of his dues deduction authorization, and that Council 5 refund him the \$1,643.31 in dues payments Council 5 has received since June 20, 2018, no later than close of business September 25, 2020.

Very truly yours,

/s/

Douglas P. Seaton
Attorney for Marcus Todd

cc: Mr. Marcus Todd

EXHIBIT 6

[LETTERHEAD OF AFSCME MINNESOTA
COUNCIL 5]

Douglas P. Seaton
Upper Midwest Law Center
8421 Wayzata Boulevard, Suite 105
Golden Valley, MN 55426

Re: Marcus Todd

Dear Mr. Seaton,

My name is Josie Hegarty and I am an attorney on staff with AFSCME Council 5. Please direct any further correspondence from your office regarding your client to my attention. This letter is in response to your letter of September 15, 2020 regarding your client Marcus Todd.

You stated in your letter that that the signature we have on file for your client is a forgery and that Mr. Todd has demonstrated this through his communications with AFSCME. We disagree on both points and believe that if this issue proceeds to litigation, we would prevail.

As I am sure you are aware, electronic signatures are enforceable under Minnesota law and attributable to a person through the context and surrounding circumstances at the time of the signature's creation. Minn. Stat. § 325L.09. The membership card that we have on file for Mr. Todd was created through the use

of an electronic signature through a secure system by which AFSCME members can access information about their membership. This signature was made on June 20, 2018. Mr. Todd paid dues following this signature on each of his paychecks and made no request to be let out of his dues obligation until July 16, 2020. In this request, he provided his AFSCME member number and specifically requested a copy of his union card with signing date, and any information he needed in order to be let out of membership. He made no contentions whatsoever that his membership card had a fraudulent signature until August 14, 2020.

Given these circumstances, we do not agree that your client has demonstrated that the signature is fraudulent. Instead, the circumstances point to your client having used his own personal information to access the electronic system to sign a membership card in 2018, and that in doing so, he understood he was agreeing to membership in AFSCME, which would include dues deductions from his paycheck and a specific time frame during which he could revoke this dues authorization. We do not believe that an alternative series of events is plausible.

Further, even if there are facts to which we are currently unaware that your client could present during litigation that would raise doubts about the authenticity of his signature on the membership card, we still do not believe your client's claim would prevail. "A party who with full knowledge of the facts receives and retains the proceeds or the benefits of his unauthorized signature upon an instrument ratifies the signature." *Strader v. Haley*, 12 N.W.2d 608, 614,

(Minn. 1943). Even if your client could raise doubts as to his authorization of the signature on the membership card, his actions would be viewed as demonstrating acquiescence to such signature. Dues were deducted from your client's paychecks for over two years before he requested to cease union membership. His request stated his AFSCME member number and clearly demonstrated that he believed he had signed a union card, as he requested a copy of such a card as well as the signing date and instructions for how to cease his membership. Such behavior demonstrates he understood that he had agreed to be a member of AFSCME and that such membership entails the payment of dues and specific parameters for ceasing such dues payment.

As your client was informed on July 16, 2020, he may revoke his dues authorization during the next opt-out period, which is May 6-21, 2021, by providing a written dated request with a handmade signature. He may provide this document through mail to our South Saint Paul office at the address below or by sending a scanned copy of this request to council5@afscmemn.org.

If you have any relevant facts that you believe would change the outcome of a lawsuit, please provide that information so that we may consider it. We believe this issue can be resolved without proceeding to litigation. I look forward to hearing from you.

Thank you.

/s/

Josie "JD" Hegarty
(she / her // they / them)
Staff Attorney
AFSCME Council 5
300 Hardman Ave S
South Saint Paul, MN 55075
612-772-3119
jd.hegarty@afscmemn.org

APPENDIX I

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. XIV, section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MINNESOTA STATUTES 2021 179A.06

179A.06 RIGHTS AND OBLIGATIONS OF EMPLOYEES.

Subdivision 1. **Expression of views.** Sections 179A.01 to 179A.25 do not affect the right of any public employee or the employee's representative to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as this is not designed to and does not interfere with the full faithful and proper performance of the duties of employment or circumvent the rights of the exclusive representative. Sections 179A.01 to 179A.25 do not require any public employee to perform labor or services against the employee's will.

If no exclusive representative has been certified, any public employee individually, or group of employees through their representative, has the right to express or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment, by meeting with their public employer or the employer's representative, so long as this is not designed to and does not interfere with the full, faithful, and proper performance of the duties of employment.

Subd. 2. **Right to organize.** Public employees have the right to form and join labor or employee organizations, and have the right not to form and join

such organizations. Public employees in an appropriate unit have the right by secret ballot to designate an exclusive representative to negotiate grievance procedures and the terms and conditions of employment with their employer. Confidential employees of the state, confidential court employees, and confidential University of Minnesota employees are excluded from bargaining. Supervisory and managerial court employees are excluded from bargaining. Supervisory, managerial, and confidential employees of Hennepin Healthcare System, Inc., are excluded from bargaining. Other confidential employees, supervisory employees, principals, and assistant principals may form their own organizations. An employer shall extend exclusive recognition to a representative of or an organization of supervisory or confidential employees, or principals and assistant principals, for the purpose of negotiating terms or conditions of employment, in accordance with sections 179A.01 to 179A.25, applicable to essential employees.

Supervisory or confidential employee organizations shall not participate in any capacity in any negotiations which involve units of employees other than supervisory or confidential employees. Except for organizations which represent supervisors who are: (1) firefighters, emergency medical service employees certified under section 144E.28, 911 system public safety dispatchers, peace officers subject to licensure under sections 626.84 to 626.863, guards at correctional facilities, or employees at hospitals other than state hospitals; and (2) not state or University of Minnesota employees, a supervisory or confidential employee organization which is affiliated with another

employee organization which is the exclusive representative of nonsupervisory or nonconfidential employees of the same public employer shall not be certified, or act as, an exclusive representative for the supervisory or confidential employees. For the purpose of this subdivision, affiliation means either direct or indirect and includes affiliation through a federation or joint body of employee organizations.

Subd. 3. **Fair share fee.** An exclusive representative may require employees who are not members of the exclusive representative to contribute a fair share fee for services rendered by the exclusive representative. The fair share fee must be equal to the regular membership dues of the exclusive representative, less the cost of benefits financed through the dues and available only to members of the exclusive representative. In no event may the fair share fee exceed 85 percent of the regular membership dues. The exclusive representative shall provide advance written notice of the amount of the fair share fee to the employer and to unit employees who will be assessed the fee. The employer shall provide the exclusive representative with a list of all unit employees.

A challenge by an employee or by a person aggrieved by the fee must be filed in writing with the commissioner, the public employer, and the exclusive representative within 30 days after receipt of the written notice. All challenges must specify those portions of the fee challenged and the reasons for the challenge. The burden of proof relating to the amount of the fair share fee is on the exclusive representative.

The commissioner shall hear and decide all issues in these challenges.

The employer shall deduct the fee from the earnings of the employee and transmit the fee to the exclusive representative 30 days after the written notice was provided. If a challenge is filed, the deductions for a fair share fee must be held in escrow by the employer pending a decision by the commissioner.

Subd. 4. **Meet and confer.** Professional employees have the right to meet and confer under section 179A.08 with public employers regarding policies and matters other than terms and conditions of employment.

Subd. 5. **Meet and negotiate.** Public employees, through their certified exclusive representative, have the right and obligation to meet and negotiate in good faith with their employer regarding grievance procedures and the terms and conditions of employment, but this obligation does not compel the exclusive representative to agree to a proposal or require the making of a concession.

Subd. 6. **Dues checkoff.** Public employees have the right to request and be allowed dues checkoff for the exclusive representative. In the absence of an exclusive representative, public employees have the right to request and be allowed dues checkoff for the organization of their choice.

Subd. 7. **Concerted activity.** Public employees

have the right to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

[See Note.]

History: *1984 c 462 s 7; 1987 c 186 s 15; 1989 c 255 s 4; 1997 c 7 art 1 s 83; 1999 c 216 art 7 s 7; 2000 c 387 s 1; 2005 c 125 art 1 s 29; art 2 s 4,10; 1Sp2005 c 7 s 34; 2014 c 211 s 8,13; 1Sp2015 c 1 art 7 s 1; 1Sp2021 c 10 art 3 s 19*

NOTE: Subdivision 7, as added by Laws 2014, chapter 211, section 8, is effective July 1, 2020, to June 30, 2021, and on July 1, 2023. Any investigation and proceedings related to an unfair labor practice charge currently pending before the Public Employee Relations Board as of July 1, 2021, shall be conducted according to the process in place under Minnesota Statutes, sections 179A.052 and 179A.13, as of July 1, 2020, and the board shall retain jurisdiction over any pending charge. From July 1, 2021, until July 1, 2023, any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in Minnesota Statutes, section 179A.13, may bring an action for injunctive relief and for damages caused by the unfair labor practice in the district court of the county in which the practice is alleged to have occurred. Laws 2014, chapter 211, section 13, as amended by Laws 2015, First Special Session chapter 1, article 7, section 1; Laws 2016, chapter 189, article 7, section 42; Laws 2017, chapter 94, article 12, section 1; and Laws 2021, First Special

Session chapter 10, article 3, section 19.

* * *

179A.13 UNFAIR LABOR PRACTICES.

Subdivision 1. **Actions.** (a) The practices specified in this section are unfair labor practices. Any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in this section may file an unfair labor practice charge with the board.

(b) Whenever it is charged that any party has engaged in or is engaging in any unfair labor practice, an investigator designated by the board shall promptly conduct an investigation of the charge. Unless after the investigation the board finds that the charge has no reasonable basis in law or fact, the board shall promptly issue a complaint and cause to be served upon the party a complaint stating the charges, accompanied by a notice of hearing before a qualified hearing officer designated by the board at the offices of the bureau or other location as the board deems appropriate, not less than five days nor more than 20 days after serving the complaint, provided that no complaint shall be issued based upon any unfair labor practice occurring more than six months prior to the filing of a charge. A complaint issued under this subdivision may be amended by the board at any time prior to the issuance of an order based thereon. The party who is the subject of the complaint has the right to file an answer to the original or amended complaint prior to hearing and to appear in person or by a

representative and give testimony at the place and time fixed in the complaint. In the discretion of the hearing officer conducting the hearing or the board, any other party may be allowed to intervene in the proceeding and to present testimony. The board or designated hearing officers shall not be bound by the rules of evidence applicable to courts, except as to the rules of privilege recognized by law.

(c) Designated investigators must conduct the investigation of charges.

(d) Hearing officers must be licensed to practice law in the state of Minnesota and must conduct the hearings and issue recommended decisions and orders.

(e) The board or its designees shall have the power to issue subpoenas and administer oaths. If any party willfully fails or neglects to appear or testify or to produce books, papers, and records pursuant to the issuance of a subpoena, the board may apply to a court of competent jurisdiction to request that the party be ordered to appear to testify or produce the requested evidence.

(f) A full and complete record shall be kept of all proceedings before the board or designated hearing officer and shall be transcribed by a reporter appointed by the board.

(g) The party on whom the burden of proof rests shall be required to sustain the burden by a preponderance of the evidence.

(h) At any time prior to the close of a hearing, the parties may by mutual agreement request referral to mediation, at which time the commissioner shall appoint a mediator, and the hearing shall be suspended pending the results of the mediation.

(i) If, upon a preponderance of the evidence taken, the hearing officer determines that any party named in the charge has engaged in or is engaging in an unfair labor practice, then a recommended decision and order shall be issued stating findings of fact and conclusions, and requiring the party to cease and desist from the unfair labor practice, to post a cease-and-desist notice in the workplace, and ordering any appropriate relief to effectuate the policies of this section, including but not limited to reinstatement, back pay, and any other remedies that make a charging party whole. If back pay is awarded, the award must include interest at the rate of seven percent per annum. The order further may require the party to make reports from time to time, and demonstrate the extent to which the party has complied with the order.

(j) If there is no preponderance of evidence that the party named in the charge has engaged in or is engaging in the unfair labor practice, then the hearing officer shall issue a recommended decision and order stating findings of fact and dismissing the complaint.

(k) Parties may file exceptions to the hearing officer's recommended decision and order with the board no later than 30 days after service of the recommended decision and order. The board shall

review the recommended decision and order upon timely filing of exceptions or upon its own motion. If no timely exceptions have been filed, the parties must be deemed to have waived their exceptions. Unless the board reviews the recommended decision and order upon its own motion, it must not be legal precedent and must be final and binding only on the parties to the proceeding as issued in an order issued by the board. If the board does review the recommended decision and order, the board may adopt all, part, or none of the recommended decision and order, depending on the extent to which it is consistent with the record and applicable laws. The board shall issue and serve on all parties its decision and order. The board shall retain jurisdiction over the case to ensure the parties' compliance with the board's order. Unless overturned by the board, the parties must comply with the recommended decision and order.

(l) Until the record has been filed in the court of appeals or district court, the board at any time, upon reasonable notice and in a manner it deems appropriate, may modify or set aside, in whole or in part, any finding or order made or issued by it.

(m) Upon a final order that an unfair labor practice has been committed, the board or the charging party may petition the district court for the enforcement of the order and for appropriate temporary relief or a restraining order. When the board petitions the court, the charging party may intervene as a matter of right.

(n) Whenever it appears that any party has

violated a final order of the board issued pursuant to this section, the board must petition the district court for an order directing the party and its officers, agents, servants, successors, and assigns to comply with the order of the board. The board shall be represented in this action by its general counsel, who has been appointed by the board. The court may grant or refuse, in whole or in part, the relief sought, provided that the court also may stay an order of the board pending disposition of the proceedings. The court may punish a violation of its order as in civil contempt.

(o) The board shall have power, upon issuance of an unfair labor practice complaint alleging that a party has engaged in or is engaging in an unfair labor practice, to petition the district court for appropriate temporary relief or a restraining order. Upon the filing of any such petition, the court shall cause notice thereof to be served upon such parties, and thereupon shall have jurisdiction to grant to the board or commissioner temporary relief or a restraining order as it deems appropriate. Nothing in this paragraph precludes a charging party from seeking injunctive relief in district court after filing the unfair labor practice charge.

(p) The proceedings in paragraphs (m), (n), and (o) shall be commenced in the district court for the county in which the unfair labor practice which is the subject of the order or administrative complaint was committed, or where a party alleged to have committed the unfair labor practice resides or transacts business.

Subd. 2. **Employers.** Public employers, their

agents and representatives are prohibited from:

(1) interfering, restraining, or coercing employees in the exercise of the rights guaranteed in sections 179A.01 to 179A.25;

(2) dominating or interfering with the formation, existence, or administration of any employee organization or contributing other support to it;

(3) discriminating in regard to hire or tenure to encourage or discourage membership in an employee organization;

(4) discharging or otherwise discriminating against an employee because the employee has signed or filed an affidavit, petition, or complaint or given information or testimony under sections 179A.01 to 179A.25;

(5) refusing to meet and negotiate in good faith with the exclusive representative of its employees in an appropriate unit;

(6) refusing to comply with grievance procedures contained in an agreement;

(7) distributing or circulating a blacklist of individuals exercising a legal right or of members of a labor organization for the purpose of preventing blacklisted individuals from obtaining or retaining employment;

(8) violating rules established by the

commissioner regulating the conduct of representation elections;

(9) refusing to comply with a valid decision of a binding arbitration panel or arbitrator;

(10) violating or refusing to comply with any lawful order or decision issued by the commissioner or the board;

(11) refusing to provide, upon the request of the exclusive representative, all information pertaining to the public employer's budget both present and proposed, revenues, and other financing information provided that in the executive branch of state government this clause may not be considered contrary to the budgetary requirements of sections 16A.10 and 16A.11; or

(12) granting or offering to grant the status of permanent replacement employee to a person for performing bargaining unit work for the employer during a lockout of employees in an employee organization or during a strike authorized by an employee organization that is an exclusive representative.

Subd. 3. **Employees.** Employee organizations, their agents or representatives, and public employees are prohibited from:

(1) restraining or coercing employees in the exercise of rights provided in sections 179A.01 to 179A.25;

(2) restraining or coercing a public employer in the election of representatives to be employed to meet and negotiate or to adjust grievances;

(3) refusing to meet and negotiate in good faith with a public employer, if the employee organization is the exclusive representative of employees in an appropriate unit;

(4) violating rules established by the commissioner regulating the conduct of representation elections;

(5) refusing to comply with a valid decision of an arbitration panel or arbitrator;

(6) calling, instituting, maintaining, or conducting a strike or boycott against any public employer on account of any jurisdictional controversy;

(7) coercing or restraining any person with the effect to:

(i) force or require any public employer to cease dealing or doing business with any other person;

(ii) force or require a public employer to recognize for representation purposes an employee organization not certified by the commissioner;

(iii) refuse to handle goods or perform services; or

(iv) prevent an employee from providing services to the employer;

(8) committing any act designed to damage or actually damaging physical property or endangering the safety of persons while engaging in a strike;

(9) forcing or requiring any employer to assign particular work to employees in a particular employee organization or in a particular trade, craft, or class rather than to employees in another employee organization or in another trade, craft, or class;

(10) causing or attempting to cause a public employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed;

(11) engaging in an unlawful strike;

(12) picketing which has an unlawful purpose such as secondary boycott;

(13) picketing which unreasonably interferes with the ingress and egress to facilities of the public employer;

(14) seizing or occupying or destroying property of the employer;

(15) violating or refusing to comply with any lawful order or decision issued by the commissioner or the board.

History: *1984 c 462 s 14; 1986 c 444; 1987 c 186 s 15; 1989 c 255 s 5; 1991 c 239 s 2; 1992 c 582 s 11,12; 2014 c 211 s 10,13; 1Sp2015 c 1 art 7 s 1; 1Sp2021 c 10 art 3 s 19*

NOTE: This section, as amended by Laws 2014, chapter 211, section 10, is effective July 1, 2020, to June 30, 2021, and on July 1, 2023. Any investigation and proceedings related to an unfair labor practice charge currently pending before the Public Employee Relations Board as of July 1, 2021, shall be conducted according to the process in place under Minnesota Statutes, sections 179A.052 and 179A.13, as of July 1, 2020, and the board shall retain jurisdiction over any pending charge. From July 1, 2021, until July 1, 2023, any employee, employer, employee or employer organization, exclusive representative, or any other person or organization aggrieved by an unfair labor practice as defined in Minnesota Statutes, section 179A.13, may bring an action for injunctive relief and for damages caused by the unfair labor practice in the district court of the county in which the practice is alleged to have occurred. Laws 2014, chapter 211, section 13, as amended by Laws 2015, First Special Session chapter 1, article 7, section 1; Laws 2016, chapter 189, article 7, section 42; Laws 2017, chapter 94, article 12, section 1; and Laws 2021, First Special Session chapter 10, article 3, section 19.

* * *

179A.20 CONTRACTS.

Subdivision 1.**Written contract.** The exclusive

representative and the employer shall execute a written contract or memorandum of contract containing the terms of the negotiated agreement or interest arbitration decision and any terms established by law.

Subd. 2. **No contract provisions contrary to law.** No provision of a contract shall be in conflict with:

(1) the laws of Minnesota; or

(2) rules promulgated under law, or municipal charters, ordinances, or resolutions, provided that the rules, charters, ordinances, and resolutions are consistent with this chapter.

Subd. 2a. **Former employee benefits.** A contract may not obligate an employer to fund all or part of the cost of health care benefits for a former employee beyond the duration of the contract, subject to section 179A.20, subdivision 6. A personnel policy may not obligate an employer to fund all or part of health care benefits for a former employee beyond the duration of the policy. A policy may not extend beyond the termination of the contract of longest duration covering other employees of the employer or, if none, the termination of the budgetary cycle during which the policy is adopted.

Subd. 3. **Duration.** The duration of the contract is negotiable but shall not exceed three years. Any contract between a school board and an exclusive representative of teachers shall be for a term of two

years, beginning on July 1 of each odd-numbered year. A contract between a school board and an exclusive representative of teachers shall contain the teachers' compensation including fringe benefits for the entire two-year term and shall not contain a wage reopening clause or any other provision for the renegotiation of the teachers' compensation.

Subd. 4. **Grievance procedure.** (a) All contracts must include a grievance procedure providing for compulsory binding arbitration of grievances including all written disciplinary actions. If the parties cannot agree on the grievance procedure, they are subject to the grievance procedure promulgated by the commissioner under section 179A.04, subdivision 3, clause (h).

(b) Notwithstanding any home rule charter to the contrary, after the probationary period of employment, any disciplinary action is subject to the grievance procedure and compulsory binding arbitration.

(c) Employees covered by civil service systems created under chapter 43A, 44, 375, 387, 419, or 420, by a home rule charter under chapter 410, or by Laws 1941, chapter 423, may pursue a grievance through the procedure established under this section. When the grievance is also within the jurisdiction of appeals boards or appeals procedures created by chapter 43A, 44, 375, 387, 419, or 420, by a home rule charter under chapter 410, or by Laws 1941, chapter 423, the employee may proceed through the grievance procedure or the civil service appeals procedure, but once a written grievance or appeal has been properly filed or submitted by the employee or on the

employee's behalf with the employee's consent the employee may not proceed in the alternative manner.

(d) A teacher who elects a hearing before an arbitrator under section 122A.40, subdivision 15, or 122A.41, subdivision 13, or who elects or acquiesces to a hearing before the school board may not later proceed in the alternative manner nor challenge the termination or discharge through a grievance procedure required by this subdivision.

(e) This section does not require employers or employee organizations to negotiate on matters other than terms and conditions of employment.

Subd. 5. Implementation. Upon execution of the contract, the employer shall implement it in the form of an ordinance or resolution. If implementation of the contract requires adoption of a law, ordinance, or charter amendment, the employer shall make every reasonable effort to propose and secure the enactment of this law, ordinance, resolution, or charter amendment.

Subd. 6. Contract in effect. During the period after contract expiration and prior to the date when the right to strike matures, and for additional time if the parties agree, the terms of an existing contract shall continue in effect and shall be enforceable upon both parties.

History: 1984 c 462 s 21; 1986 c 444; 1987 c 186 s 15; 1988 c 605 s 7; 1989 c 255 s 11; 1991 c 196 s 6; 1992 c 582 s 21; 1998 c 397 art 11 s 3