IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Carrie Keller and Elizabeth Zeien, Plaintiffs, v. Jeff Shorba, in his official capacity as Minnesota State Court Administrator, and Teamsters Public and Law Enforcement Employees' Union, Local No. 320, Defendants.	)	No. **COMPLAINT**

INTRODUCTION

1. This suit seeks to overturn *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). The State of Minnesota Court System ("State Employer") employs Plaintiffs Carrie Keller and Elizabeth Zeien. Plaintiffs were not represented by a union when they began working in their current positions. Instead, Keller and Zeien represented themselves and negotiated their own terms and conditions of employment with the State Employer. On March 21, 2017, however, Minnesota's Bureau of Mediation Services, a state agency, ordered the inclusion of the Plaintiffs in a bargaining unit already represented by Teamsters Local No. 320 ("Teamsters" or "Union") and governed by the Union's collective bargaining agreement ("CBA"). The order was based on a settlement agreement between the State Employer and Union.

2. Plaintiffs are now represented by the Teamsters and beholden to its CBA with the State Employer. Under the Union's CBA, Plaintiffs are required to pay a fee to the Union as a condition of employment. This forced collection of compulsory fees violates their rights under the First Amendment to the United States Constitution. They seek: (a) a declaratory judgment against the Defendants that these forced fees are unconstitutional; (b) injunctive relief that

prohibits Defendants from seizing compulsory fees from them in the future; and (c) a return of all dues illegally seized by the Union.

JURISDICTION AND VENUE

3. This is an action under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of rights, privileges, and immunities secured to Plaintiffs by the Constitution of the United States, particularly the First and Fourteenth Amendments.

4. This Court has jurisdiction over Plaintiffs' claims according to 28 U.S.C. § 1331 because they arise under the United States Constitution. This Court also has jurisdiction based on 28 U.S.C. § 1343, because Plaintiffs seek relief under 42 U.S.C. § 1983. This Court has authority under 28 U.S.C. §§ 2201 and 2202 to grant declaratory, injunctive, legal, and other appropriate relief.

5. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial portion of the events giving rise to the claims occurred in this district. Venue is also proper under 28 U.S.C. §§ 1391(c)(2) and 1391(d) because the Union operates or does business in this district.

PARTIES

6. Plaintiff Carrie Keller resides in Hastings, Minnesota. She is employed by the State of Minnesota Court System as a Judicial Court Administrative Assistant.

7. Plaintiff Elizabeth Zeien resides in Hastings, Minnesota. She is employed by the State of Minnesota Court System as an Accounting Technician.

8. Defendant Jeff Shorba is the Minnesota State Court Administrator. He is responsible for negotiating and administrating the CBA for the State Employer.

9. Defendant Teamsters Public and Law Enforcement Employees' Union, Local No.

320 is a labor union that transacts business in Minnesota and has an office located at 3001 University Avenue, S.E., Suite 500, Minneapolis, Minnesota 55414.

FACTUAL ALLEGATIONS

10. Minnesota's Public Employment Labor Relations Act ("PELRA") governs public employee relations with the State of Minnesota.

11. Section 179A.06, subdivision 2 of PELRA grants a designated or recognized union the legal authority to act as "an exclusive representative to negotiate grievance procedures and the terms and conditions of employment" with a state employer. These terms and conditions of employment include, among other things, wages, health care coverage, retirement benefits, pensions, and other benefits.

12. Section 179A.07, subdivision 2, obligates a public employer to "meet and negotiate in good faith with the exclusive representative of public employees in an appropriate unit regarding grievance procedures and the terms and conditions of employment."

13. The mandatory and permissive subjects of collective bargaining under PELRA concern matters of political and public concern over which employees and other citizens have divergent views and opinions.

14. Under Section 179A.06, collective bargaining agreements covered by PELRA may require state employees who are not members of a union ("nonmembers") to pay compulsory union fees. Subdivision 3 provides that:

> 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.

Minn. Stat § 179A.06, subd. 3.

15. A "public employer" or "employer" is defined in Section 179A.03, subdivision 15 as "the state court administrator for court employees."

16. The State Employer, through the state court administrator, has entered into collective bargaining agreements under PELRA with different unions that require the deduction of compulsory fees from the earnings of the nonmembers, with the fees then paid to the union.

17. In this case, the State Employer is a party to a CBA with Teamsters Local 320 effective July 1, 2015, through June 30, 2017, which is attached to the Complaint as Exhibit 1. The contract requires the payment of compulsory fees. *Id*. at Art. 6.1.

18. Plaintiffs Keller and Zeien work in Dakota County and are now represented by the Teamsters.

19. Plaintiffs, while working in these positions, have not always been represented by a union. Plaintiff Keller has been in her current position for three years. For her first three years Keller represented herself and negotiated her own terms and conditions of employment with the State Employer.

20. Plaintiff Zeien has been in her current position since September 2016. For her first seven months in this position, Zeien negotiated her own terms and conditions of employment with the State Employer without the Union's assistance or representation.

21. In 2015, the Teamsters, and two other unions representing other state court employees, filed a "petition for unit clarification" with the State of Minnesota Bureau of Mediation Services. The petition sought to add certain self-represented employees of the State of Minnesota Court System, including Plaintiffs, to a number of bargaining units represented by three separate unions.

22. On March 6, 2017, the Union and State Employer reached a settlement agreement. The State Employer agreed to add nine separate employees to various bargaining units throughout the State of Minnesota. In return, the unions would withdraw their petition for unit clarification. *See* Ex. 2, Bureau of Mediation Services March 21, 2017 Order.

23. The State Employer added both Keller and Zeien to a unit represented by the Teamsters. *Id.*

24. The Union's CBA and Minnesota law now require the Plaintiffs pay compulsory fees to the Union as a condition of employment.

25. Sometime around May 12, 2017, the State Employer started deducting $19.62 from each of Keller's paychecks and sending it to the Union. The State Employer has not yet started deducting any dues or fees from Zeien's paycheck.

26. The First Amendment prohibits a public employer and union from requiring, as a condition of employment, public employees to pay union fees unrelated to the union's spending on collective bargaining, contract administration, and grievance adjustment. *See Abood*, 431 U.S. 209.

27. When a union collects compulsory fees from an employee, it must annually provide that employee with a "*Hudson*" notice that, among other things, explains how the union calculated the employee's portion of the union's spending on collective bargaining activities. *See*

Chi. Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292 (1986). A union calculates a compulsory fee by first defining which types of activities it will deem "chargeable" and "non-chargeable" to nonmember employees. It then determines the percentage of the union's expenses in a previous fiscal year that were chargeable and non-chargeable. The compulsory fee is set at the previous fiscal year's chargeable percentage.

28. The above calculation must be based on an audit of union spending conducted by independent auditors, but auditors do not confirm whether the union properly classified its spending as chargeable or non-chargeable.

29. If a nonmember disagrees with a union's classification of its spending as chargeable, the nonmember may challenge the classification either through arbitration or in a court of law.

30. The State Employer deducts compulsory fees, in the amount set by a union, from the earnings of employees and sends those monies to the union. The Union here acts under color of state law when it causes, participates in, and accepts the compulsory deduction of fees from monies owed to nonmember state employees.

31. On April 21, 2017, Plaintiff Keller sent Teamsters Local 320 a letter demanding a "*Hudson*" notice so she could understand how the union calculated any fees that it planned to seize from her pay through her State Employer.

32. On April 26, 2017, the Union responded to Keller with a letter containing what purports to be its "schedule of expenses and allocations of chargeable and non-chargeable expenses" for the year 2015. Exhibit 3 is a copy of the current notice distributed by the Union and is the basis for the compulsory fees it collected in 2016 through 2017, to date.

33. Using the Union's notice, it is impossible for Plaintiffs to determine how the

Union spends or calculates its compulsory fees. The notice only includes a bare breakdown between what the Union has deemed chargeable and non-chargeable spending. It does not explain how the Union arrived at each calculation or explain what it considers chargeable and non-chargeable spending.

34. For example, the Union's breakdown purports to show it spends $1,768,102 on "per capita taxes." "Per capita taxes" is the amount Teamsters Local No. 320 sends to its jointly affiliated national groups. But the Union's notice includes no information on how its jointly affiliated national groups spend the money they receive, or how they determine their non-chargeable rate.

35. The notice purporting to show the breakdown of chargeable and non-chargeable spending includes two notes at the bottom that state: "See Report of Independent Auditors on Supplementary Information" and "See accompanying notes to schedule." The Union's notice, however, does not contain any accompanying notes to the schedule or an independent auditor report.

36. The Teamsters charge nonmembers compulsory fees equal to approximately 85% of the total dues charged to members. Union dues are $50.00 per month, and its compulsory fees for objecting nonmembers are $42.50 per month.

37. Plaintiffs object to forced union representation. Plaintiffs never sought the Union's representation, and oppose being forced into the bargaining unit. Plaintiffs want to remain self-represented and not associate, in any manner, with the Union.

38. The Union's exclusive representation harms Plaintiffs. Their pay and benefits were either similar, or better, when they were self-represented and negotiated their own employment terms.

39. Keller is a Court Administrative Assistant. When Keller was a self-represented employee, she was subject to the State Employer's self-represented compensation plan. *See* Ex. 5. As a self-represented administrative assistant Keller was placed in "pay band" number five. Ex. 4, p. 2. Her potential hourly minimum pay was $19.24 per hour, with a potential maximum of $28.89 per hour. When Keller represented herself, she was paid $20.19 per hour. Now, under Union representation, her potential minimum pay is $17.66 per hour, with a potential maximum of $26.45 per hour. *Compare* Ex. 4 *with* Ex. 1 . By being represented by the Union, Keller loses out on a potential maximum pay difference exceeding $2.00 per hour.

40. Plaintiff Zeien is an Accounting Technician. When Zeien was a self-represented employee, she too was under the State Employer's self-represented compensation plan. *See* Ex. 4. Zeien was placed in "pay band" number six. *Id.* at p. 5. A self-represented Accounting Technician's potential minimum hourly pay is $20.77 per hour, with a potential maximum of $31.15 per hour. When Zeien represented herself, she was paid $27.18 per hour. Now, under Union representation, her potential minimum pay is $19.06 per hour, with a potential maximum of $28.74 per hour. Coming under the Union's representation, Zeien loses out on a potential maximum pay difference of over two dollars per hour. *Compare* Ex. 4 *with* Ex. 1.

41. Keller also loses seniority by being forcibly accreted into the Teamsters' represented unit. When self-represented, Keller's seniority date was calculated from her date of hire, June 11, 2012. But according to an email from the State Employer, Keller's seniority date is now based on the date the Teamsters started representing her position, adjusted for pervious time worked in a Teamsters' represented position. *See* Ex. 5.

42. Plaintiffs cannot be categorized as "free-riders" in any sense, because their pay scales, seniority, and benefits as self-represented employees were either similar or better than

when represented by the Union. Indeed, Plaintiffs can never be categorized as "free-riders" because they oppose union representation. They want to remain self-represented employees. Instead, the State's compulsory unionism statute takes them on a forced ride with the Union.

43. In addition to deriving no benefit—and even harm—from being associated with the Union, Plaintiffs object to many of the public policy positions for which the Union advocates for, including positions the Union advocates for in collective bargaining.

44. But for Minnesota law imposing compulsory union fees, Plaintiffs would not pay any fees or otherwise subsidize the Union. It is currently permissible for collective bargaining agreements covered by PELRA to require nonmembers to pay compulsory union fees. *See* Minn. Stat. § 179A.06. The constitutionality of such provisions was first considered by the United States Supreme Court in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), where the Court held the seizure of compulsory fees in the public sector to be constitutional based on state interests in labor peace and avoiding free riders. But the *Abood* court failed to subject these ostensible justifications to requisite constitutional scrutiny.

45. Since *Abood*, the Supreme Court has repeatedly acknowledged that compelling a state employee to financially support a public sector union seriously impinges upon free speech and association interests protected by the First Amendment to the United States Constitution.

46. The Court in *Abood* also distinguished between "chargeable" union spending, which may be charged even to employees who choose not to join a union, and "non-chargeable" spending, which can only be charged to union members.

47. But in the years following the *Abood* decision, the Supreme Court "struggled repeatedly with" interpreting *Abood* and determining what qualified as "chargeable" spending and what qualified as "non-chargeable" political or ideological spending. *Harris v. Quinn*, __

U.S. __, 134 S. Ct. 2618, 2633 (2014) (citing *Ellis v. Bhd. of Ry. Clerks*, 466 U.S. 435 (1984); *Hudson*, 475 U.S. 292; *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991); *Locke v. Karass*, 555 U.S. 207 (2009)).

48. In *Knox v. Service Employees International Union, Local 1000*, 567 U.S. 298, 132 S. Ct. 2277, 2289 (2012), the Supreme Court also recognized that "a public-sector union takes many positions during collective bargaining that have powerful political and civic consequences." For that reason, "compulsory fees constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights." *Id*. (internal quotation marks omitted). *Knox* emphasized the "general rule" that "individuals should not be compelled to subsidize private groups or private speech." *Id*. at 2295 "[C]ompulsory subsidies for private speech are subject to exacting First Amendment scrutiny and cannot be sustained unless two criteria are met." *Id.* at 2289.

49. "First, there must be a comprehensive regulatory scheme involving a 'mandated association' among those who are required to pay the subsidy." *Id.* at 2289 (citation omitted). "Such situations are exceedingly rare because . . . mandatory associations are permissible only when they serve a compelling state interest [] . . . that cannot be achieved through means significantly less restrictive of associational freedoms." *Id*. (citation omitted).

50. "Second, even in the rare case where a mandatory association can be justified, compulsory fees can be levied only insofar as they are a 'necessary incident' of the 'larger regulatory purpose which justified the required association.'" *Id*. (citation omitted).

51. In *Harris*, 134 S. Ct. 2618, a majority of the Supreme Court questioned *Abood*'s continued validity on several grounds, and outlined an interpretation of the First Amendment that, in light of the current circumstances of public sector collective bargaining, is incompatible

with nonmembers being compelled to pay compulsory fees such as those required by the CBA here.

52. Regarding the "fair share" provisions at issue in that case, the *Harris* majority noted that "'[t]he primary purpose' of permitting unions to collect fees from nonmembers' . . . is 'to prevent nonmembers from free-riding on the union's efforts, sharing the employment benefits obtained by the union's collective bargaining without sharing the costs incurred.'" *Id.* at 2627 (quoting *Knox*, 132 S. Ct. at 2289). The Court continued, however, that "'[s]uch free-rider arguments . . . are generally insufficient to overcome First Amendment objections.'" *Harris*, 134 S. Ct. at 2627 (quoting *Knox*, 132 S. Ct. at 2289).

53. The Supreme Court also recognized in *Harris* that "fair share" provisions in public employee collective bargaining agreements implicate First Amendment concerns not necessarily presented in the private sector because the collective bargaining process itself is political when taxpayers fund the negotiated wages and benefits. This is especially so given the enormous power of unions in electoral politics and the size of public employers' payrolls. *See Harris*, 134 S. Ct. at 2632-33.

54. In coordination with their express political advocacy, the Union here routinely takes positions in the collective bargaining process that greatly impact the State's budget.

55. Since *Abood*, the facts and circumstances of public sector bargaining have caused the Fair Share Contract Provisions to significantly infringe on the First Amendment rights of Minnesota state employees who do not wish to associate with the Union.

56. When this Union spends money collected under the CBA's "Fair Share" Provisions to lobby or bargain against reductions to employee benefits packages, or for increases to those packages, it acts like any other special interest group that spends money on political

activities to protect its own favored programs.

57. Like the petitioners in *Harris*, Plaintiffs have "the right not to be forced to contribute to the union, with which they broadly disagree." *Harris*, 134 S. Ct. at 2640.

58. The forced fee provisions, while permitted by PELRA, are nonetheless unconstitutional because they significantly infringe on nonmember Minnesota state employees' First Amendment rights, while they serve no compelling state interest that cannot be achieved through means significantly less restrictive of speech and associational freedoms. Compulsory fees infringe on the First Amendment rights of the Plaintiffs and other employees because compulsory fee requirements are compelled speech, association, and petition.

59. Plaintiffs submit that *Abood* was wrongly decided and should be overturned by the United States Supreme Court. The seizure of compulsory fees is unconstitutional under the First Amendment. There is no justification, much less a compelling one, for mandating that nonmembers support unions, which are some of the most powerful and politically active organizations in the State.

60. In addition, the inherently political nature of collective bargaining and its consequences in Minnesota infringe on nonmembers' First Amendment rights to refrain from supporting public sector unions in their organization and collective bargaining activities. Therefore, the First Amendment forbids forcing nonmembers to pay fees to a union under forced fees provisions in a collective bargaining agreement.

61. A state interest in labor peace cannot justify a compulsory fee. Compulsory fees are not necessary to maintain order or labor peace in the workplace because, among other reasons, exclusive representation does not depend on the right to collect a fee from nonmembers.

62. Exclusive representation, instead of burdening a union, assists it with recruiting

and retaining members because, among other things: (a) employees are more likely to join and support a union that has authority over their terms of employment, as opposed to a union that does not; (b) exclusive representatives are entitled to information about all employees in the unit; and (c) exclusive representatives can negotiate contract terms that facilitate recruiting and retaining union members, such as contract terms requiring all employees attend union orientations and automatic deduction of union dues from employees' paychecks.

63. Moreover, this Union affirmatively sought to exclusively represent Plaintiffs over their objections. These employees continue to oppose being accreted into a represented bargaining unit, and would prefer to remain self-represented.

64. Nonmember fee deductions are compelled political speech and association that violate the First Amendment to the United States Constitution.

65. Under the Supremacy Clause found in Article VI of the United States Constitution, the First Amendment supersedes any inconsistent requirements within Minnesota statutes. Thus, the First Amendment voids any public union collective bargaining agreement provision that violates nonmembers' speech, petition, and associational rights.

COUNT I

(Compulsory Union Fees Violate 42 U.S.C. § 1983 and the United States Constitution)

66. Plaintiffs re-allege and incorporate by reference the paragraphs set forth above.

67. By requiring under color of state law that the Plaintiffs pay compulsory fees as a condition of their employment, the State Employer, under the control and direction of the state court administrator and the Teamsters violated Plaintiffs' First Amendment rights to free speech, petition, and association, as secured by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

68. As a result, Plaintiffs suffer the irreparable harm and injury inherent in a violation of First Amendment rights for which there is no adequate remedy at law. Unless enjoined by this Court, Plaintiffs will continue to suffer irreparable harm and injury.

69. The following Minnesota law that authorizes compulsory fees is unconstitutional, both on its face and as applied to Plaintiffs: Minnesota Statute Section 179A.06, Subdivision 3.

CLAIMS FOR RELIEF

Plaintiffs request that this Court:

A. Issue a declaratory judgment that PELRA Section 179A.06, subdivision 3 is unconstitutional under the First Amendment, as secured against state infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, and is null and void;

B. Issue preliminary and permanent injunctions that enjoin enforcement of the compulsory fee statute and the application of the forced fee provision in the CBA, either in whole or in part;

C. Award Plaintiffs their costs and reasonable attorneys' fees under the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. § 1988; and

D. Grant such other and additional relief as this Court may deem just and proper.

Dated: June 8, 2017

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