

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE
PORTLAND DIVISION

DANIEL B. LOCKE; *et al.*; AND BETH L.
WEIRICH; ON BEHALF OF THEMSELVES AND
THE CLASS THEY SEEK TO REPRESENT,

Plaintiffs,

v.

EDWARD A. KARASS, STATE CONTROLLER; *et*
al.,

Defendants.

CASE No. 2:05-cv-00112-GZS

**PLAINTIFFS' FIRST AMENDED
AND/OR SUPPLEMENTAL CLASS
ACTION COMPLAINT**

INJUNCTIVE RELIEF SOUGHT

COMPLAINT

1. This is a civil rights action pursuant to 42 U.S.C. § 1983, seeking equitable relief, declaratory relief, nominal damages and other relief to prevent and/or redress the deprivation under color of Maine law of Plaintiffs' rights, privileges and immunities under the United States Constitution. Defendants are threatening to deprive, and have actually deprived, Plaintiffs and the class Plaintiffs seek to represent of their constitutional rights. Specifically, Defendants Edward A. Karass, Controller for the State of Maine, and Kenneth A. Walo, Director of the Maine Bureau of Employee Relations, have agreed to compel the payment of union dues or agency fees (so-called "service fees") from the wages of Plaintiffs, and each member of the class Plaintiffs seek to represent, in order to tender same to Defendant Maine State Employees Association, Local 1989, Service Employees International Union, AFL-CIO-CLC, and have actually demanded payment of such fees by each Plaintiff, and each member of the class Plaintiffs seek to represent, with payments to begin in July 2005. These demands have been

conducted in a manner which violates Plaintiffs' and class members' First, Fifth, and Fourteenth Amendment rights as set forth by the United States Supreme Court in *Teachers Local No. 1 v. Hudson*, 475 U.S. 292 (1986). Unless this Court enters a preliminary and permanent injunction against Defendants to prevent the enforcement of Defendants' forced-dues scheme, Plaintiffs' and class members' First, Fifth, and Fourteenth Amendment rights will be irreparably damaged.

JURISDICTION AND VENUE

2. This action arises under the Constitution and laws of the United States, particularly the First, Fifth, and Fourteenth Amendments to the United States Constitution. The jurisdiction of this Court, therefore, is invoked under 28 U.S.C. § 1331.

3. This is also an action under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the threatened deprivation, under color of state law, of rights, privileges and immunities secured to Plaintiffs and class members by the Constitution of the United States, particularly the First, Fifth, and Fourteenth Amendments thereto. The jurisdiction of this Court, therefore, is invoked under 28 U.S.C. § 1343, pursuant to which this Court may grant: a) nominal damages for the violation of Plaintiffs' and class members' First, Fifth, and Fourteenth Amendment rights; b) restitution of fees unconstitutionally collected from Plaintiffs and class members, and other equitable relief; c) permanent injunctive relief against any unlawful demand for and/or collection of agency fees; and d) reasonable attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

4. This is also a case of actual controversy where Plaintiffs seek a declaration of their rights under the Constitution of the United States. Under 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights of Plaintiffs and grant further necessary and proper relief based thereon,

including preliminary and permanent injunctive relief, pursuant to Rule 65, FED.R.CIV.P.

5. **Venue:** Pursuant to 28 U.S.C. § 1391(b) and § 1392, venue is proper in this Court because Defendants either reside and/or have offices and conduct their business in the judicial district of the United States District Court for the District of Maine.

PARTIES

6. Plaintiffs Daniel B. Locke, Hazel Dyer, Denise D. Gilbert, Robert Hoey, William A. Elliot, Kathleen M. Heath, Ratnasiri Liyanage-Don, Jeanne F. Locke, Kathleen Maguire, Rickey K. McKenna, Judith Melanson, Faith Mouradian, Gina M. Pelletier, Patricia W. Rolfe, Margaret P. Rudolf, Katherine B. Rugan, Sean P. Scully, Michael R. Smith, Tricia L. Thompson, and Beth Weirich are, and were at all times mentioned herein, individuals employed by various departments, agencies, and/or commissions of the executive branch of the State of Maine. As such, each is a “state employee” within the meaning of the State Employee Labor Relations Law, 26 ME. REV. STAT. ANN. § 979-A(6). Each of the named Plaintiffs is employed in one of the four bargaining units represented by Defendant Maine State Employees Association, Local 1989, Service Employees International Union, AFL-CIO, CLC (“MSEA”), designated as the Administrative, Professional & Technical, Supervisory Services, and Operations, Maintenance, and Support bargaining units. Plaintiffs are not members of MSEA and have not been members of MSEA at any time material hereto.

7. Defendant Edward A. Karass (hereinafter “Karass”) is the Controller of the State of Maine. As such, he is charged with the responsibility of issuing wages to employees of the State, including Plaintiffs and members of the class Plaintiffs seek to represent, and processing all deductions therefore, including for union dues and/or so-called “service” fees pursuant to

“union security” agreements. He is sued in his official capacity.

8. Defendant Rebecca M. Wyke (hereinafter “Wyke”) is the Commissioner of the Department of Administrative and Financial Services for the State of Maine. As such, Defendant Wyke is responsible for overseeing all aspects of the civil service system and employee training and benefits, including the negotiation and administration of relations between the State and labor unions representing State employees, and she is a signatory to all collective bargaining agreements negotiated with the State. She is sued in her official capacity.

9. Defendant Kenneth A. Walo (hereinafter “Walo”) is Director of the Bureau of Employee Relations of the Department of Administrative and Financial Services for the State of Maine. As such, Defendant Walo is the primary official of the State of Maine charged with responsibility for negotiating and administering relations between the State and labor unions representing State employees, and he is a signatory to all collective bargaining agreements negotiated with the State. He is sued in his official capacity.

10. Defendant Maine State Employees Association, Local 1989, Service Employees International Union, AFL-CIO, CLC (“MSEA” or “the union”) is a “bargaining agent” as defined in the State Employee Labor Relations Law, 26 ME. REV. STAT. ANN. § 979-A(1), and has been recognized as the exclusive representative under said law for collective bargaining purposes of all employees in Administrative, Professional & Technical, Supervisory Services, and Operations, Maintenance, and Support bargaining units. On information and belief, Defendant MSEA is a non-profit corporation formed and existing under the laws of the State of Maine. MSEA conducts its business and operations throughout the State of Maine.

CLASS ACTION ALLEGATIONS

11. Plaintiffs' action is a class action brought by Plaintiffs on their own behalf and on behalf of others similarly situated, pursuant to Rule 23(b)(1)(A) and (b)(2), FED.R.CIV.P. The class that Plaintiffs seek to represent consists of: all State of Maine employees employed in the Administrative, Professional & Technical, Supervisory Services, and Operations, Maintenance, and Support bargaining units who were or are represented exclusively for purposes of collective bargaining by MSEA and who were or have been subject to demands for payment of union dues or "service" fees to MSEA as a condition of continued State employment.

12. The number of persons in this class is believed to number approximately 2,000-3,000. These persons are therefore so numerous that joinder of all members of the class obviously is impractical.

13. There are questions of law and fact common to all members of the class, to-wit, whether Defendants have demanded payment of agency fees from the Nonmembers prior to providing them with all of the notice and procedural safeguards required by the First, Fifth, and Fourteenth Amendments to the United States Constitution as prerequisites to the collection of compulsory agency fees from nonunion employees.

14. Plaintiffs' claims are typical of other members of the class, who are: (1) subject to the same deprivations of their rights by Defendants' implementation of the State Employee Labor Relations Law, 26 ME. REV. STAT. ANN. § 979, *et seq.*, as hereinafter alleged; and (2) subject to the same threatened deprivations of their rights by Defendants' demand for and/or collection of compulsory agency fees in the absence of the constitutionally-required notice and procedural safeguards, as hereinafter alleged.

15. Plaintiffs can adequately represent the interests of other members of the class.

Plaintiffs have no interests antagonistic to other members of the class related to the subject matter of this lawsuit. Plaintiffs are members of the class and, like all current and future nonunion State employees in the relevant bargaining units, were, are, and will be “potential objectors” as that term was used by the United States Supreme Court in *Hudson*, 475 U.S. at 306.

16. Plaintiffs’ attorneys are experienced in representing similarly-situated litigants before the various federal courts. Plaintiffs’ counsel is provided *pro bono publico* by a national charitable legal aid organization, and their lead counsel is experienced in representing nonunion employees in litigation, including class actions, involving issues identical or similar to those raised in this action, and in fact, has litigated many of the leading cases addressing these issues.

17. Because Defendants have a duty under *Hudson* to provide notice and procedural protections adequate to protect the First, Fifth, and Fourteenth Amendment rights of nonunion employees — which duty applies equally to all class members — the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants.

18. Defendants have acted and threaten to continue to act on grounds generally applicable to all members of the class, thereby making appropriate final injunctive and declaratory relief with regard to the class as a whole.

19. The questions of law and fact common to the members of the class predominate over questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy, because the individual class members are deprived of the same rights by Defendants’ actions and threatened actions, and differ only in non-material aspects of their factual situation.

CAUSE OF ACTION

20. Acting in concert under color of state law — to-wit, the State Employee Labor Relations Law, 26 ME. REV. STAT. ANN. § 979, *et seq.* — the State of Maine has recognized MSEA as the exclusive bargaining agent for the Plaintiffs and other State employees in bargaining units designated as the: (1) Administrative; (2) Operations, Maintenance, and Support; (3) Professional & Technical; and (4) Supervisory Services bargaining units.

21. Pursuant to the State Employee Labor Relations Law, 26 ME. REV. STAT. ANN. § 979, *et seq.*, the State of Maine (represented by, *inter alia*, Defendants Wyke and Walo) and MSEA have entered into a series of collective bargaining agreements (CBAs) controlling the terms and conditions of employment for Plaintiffs and the class of state employees Plaintiffs seek to represent (“the Nonmembers”). The current CBA for each unit identified in ¶ 20, *supra*, is effective by its terms from 1 July 2005 through 30 June 2007.

22. For each unit identified in ¶ 20, *supra*, the State and MSEA have negotiated provisions providing, *inter alia*, that:

Any employee covered by this Agreement shall, as a condition of employment, be required to choose from the options of membership in MSEA-SEIU or payment to MSEA-SEIU of a service fee equal to their pro-rata share of the costs to MSEA-SEIU that are germane to collective bargaining and contract administration as defined by law. The amount of the fee charged to certain employees hired prior to July 2, 2003, who were not members of MSEA-SEIU on that date, will be capped for approximately the first year of the contract, as provided under the subsection titled “Calculation of Service Fee.”

Employees shall be required to (a) sign a written payroll deduction authorization form authorizing deduction from their pay of the membership dues or service fee, or (b) tender the amount of the service fee due to the union, or (c) indicate in writing their religious objection to such fee and make contributions at least equal in amount to the service fee to a non-religious charitable organization mutually agreed upon by the employee so objecting and the Union. Employees choosing (b) or (c) shall make payments within ten (10) days after each payday.

The obligation to pay fees or dues shall become effective as follows:

a. For employees first hired after December 1, 2004, the

payment obligation shall be effective at the start of the pay period commencing closest to but not earlier than the thirtieth day after the end of their initial six months of probation;

b. For all other employees, the period commencing closest to but not earlier than July 1, 2005. This obligation shall be implemented simultaneously with the salary increase scheduled for July 2005.

23. In addition to authorizing the exaction of union dues and/or so-called “service” or agency fees from nonunion employees, each such article contains a provision entitled “Indemnification,” as follows:

MSEA-SEIU agrees that it shall indemnify, defend, reimburse, and hold the State harmless against any claim, demand, suit, cost, expense, damages, or any other form of liability, including attorneys’ fees, costs, or other liability arising from or incurred as a result of any act taken or not taken by the State, its members, officers, agents, employees, or representatives in complying with or carrying out the provisions of this Article, including, but not limited to, as a result of being ordered to reinstate an employee terminated at the request of MSEA-SEIU for not paying the service fee; in reliance on any notice, letter, or authorization forwarded to the State by the union pursuant to this Article; and including but not limited to any charge that the State failed to discharge any duty owed to its employees arising out of the service fee deduction. MSEA-SEIU will intervene in and defend any administrative or court litigation concerning the propriety of any act taken or not taken by the State, including, but not limited to, termination for failure to pay the service fee. In such litigation the State shall have no obligation to defend its act taken or not taken.

24. On or after 11 April 2005, the Nonmembers received from Defendant MSEA: (1) a two-page memorandum; (2) a four-page, 11” x 17” tabloid-style document on newsprint identified as the “Notice of Rights Concerning MSEA-SEIU Membership, Dues and Fees”; and (3) a dues checkoff authorization card. True and correct copy of said documents is attached hereto and incorporated herein as Exhibits A(1), A(2), and A(3), respectively. In order to comply with Court Rules regarding the size of Exhibits, Exhibit A(2) has been reduced in size, and reproduced as a single-sided document.

25. On or about 11 May 2005, the Nonmembers received from Defendant Walo an

e-mail communication stating “your need to either become a member of the Maine State Employees Association or pay a service fee beginning in July 2005,” and electronically attaching two documents. True and correct copies of the forwarded e-mail, redacting that portion protected by the attorney-client privilege, and its attachments, are attached hereto and incorporated herein as Exhibits B(1), B(2), and B(3), respectively.

26. On or after 10 June 2005, the Nonmembers received from Defendant MSEA: (1) a five-page memorandum; and (2) a two-page affidavit signed by Joan Towle. True and correct copy of said documents is attached hereto and incorporated herein as Exhibits C(1), and C(2), respectively.

27. On or after 12 July 2005, the Nonmembers received from Defendant MSEA: (1) a seven-page memorandum; (2) a two-page affidavit from Joan Towle; (3) a one-page “Revised Statement of Expenses and Allocation Between Chargeable Expenses and Non-Chargeable Expenses with Organizing as Non-Chargeable” for the year ended 31 December 2004; (4) a one-page letter to MSEA’s Executive Director, dated 7 July 2005, signed by Kathleen Tyson, a partner in the accountancy firm Runyon Kersteen Ouellette; (5) an eight-page copy of the “Audited Statement of Expenses and Allocation Between Chargeable Expenses and Non-Chargeable Expenses and Supporting Documents” for the year ended 31 December 2004 for MSEA; (6) an eleven-page copy of the “Consolidated Statement of Expenses and Allocation Between Chargeable Expenses and Non-Chargeable Expenses — Alternative Basis for Allocation” for the year ended 31 December 2003 for the Service Employees International Union, AFL-CIO, CLC, United States Division; and (7) a five-page copy of the forced-unionism provisions applying for 2005-2007 for the Professional and Technical, Supervisory, Administrative and Operations, and Maintenance and Support Units. True and correct copies of

said documents is attached hereto and incorporated herein as Exhibits D(1), D(2), D(3), D(4), D(5), D(6), and D(7), respectively.

28. On or after 12 July 2005, those Nonmembers who had, after receiving the 11 April 2005 notice, Exhibits A(1), A(2), and A(3) hereto, received a one-page memorandum from MSEA, “providing [them] with an additional opportunity to decide whether [they] want to resign [their] membership in MSEA-SEIU and instead pay” an agency fee. A true and correct copy of said memorandum is attached hereto and incorporated herein as Exhibit E.

29. Notwithstanding Defendants’ demands that the Nonmembers’ pay to Defendant MSEA “service” fees and/or full union dues, Defendants failed to provide constitutionally-adequate notice of the Nonmembers’ rights and constitutionally-adequate procedural safeguards which are required by the United States Supreme Court’s decision in *Hudson, supra*, because:

a. Defendants failed to provide constitutionally-adequate notice or explanation of the amount of the agency fee, or total MSEA expenditures allocated into understandable, useful, and lawful chargeable and non-chargeable categories; and

b. Defendants failed to provide a constitutionally-adequate allocation of MSEA’s chargeable and nonchargeable expenditures, or those of its affiliates, and a constitutionally-adequate “advance reduction” of the fee.

30. MSEA’s agency fee procedure communicated in its initial notice to the Nonmembers, Exhibits A(1), A(2), and A(3), is constitutionally inadequate in that it fails to comply with the Supreme Court decision in *Hudson, supra*, in many respects, including but not limited to the following:

a. the procedure fails to provide for an adequate explanation of the allocation of the agency fee broken into understandable, useful, and lawful categories of chargeable

and non-chargeable categories; and

b. the procedure fails to provide an adequate advance reduction of the fee, as Defendant MSEA claims that it is entitled to exact from nonmembers constitutionally nonchargeable organizing expenditures for itself and for its affiliate(s).

31. The demands for payment of agency fees from the Nonmembers by Defendant Walo, on behalf of MSEA, beginning on or about 11 April 2005, under color of state law, without providing all of procedural protections required under the United States Constitution, violates their rights, privileges, and immunities granted by the First, Fifth, and Fourteenth Amendments to the United States Constitution, and in violation of 42 U.S.C. § 1983.

32. Said demands for payment of agency fees occurred without the appropriate safeguards and procedural protections that are necessary for the constitutional collection of agency fees, to-wit:

a. The demand for payment of agency fees made to the Nonmembers, as described above in ¶¶ 24-28, has occurred and threatens to continue to occur without the required and adequate disclosure of the major categories of MSEA's expenditures, and allocation between chargeable and nonchargeable components, verified by an independent audit;

b. The demand for payment of agency fees made to the Nonmembers, as described above in ¶¶ 24-28, has occurred and threatens to continue to occur without the required audit of union expenditures and the adequate allocation between chargeable and nonchargeable categories of expenditures for each and every MSEA affiliate; and

c. The demand for payment of agency fees made to the Nonmembers, as described above in ¶¶ 24-28, has occurred and threatens to continue to occur without the

required adequate advance reduction of the fee for MSEA and for each and every MSEA affiliate.

33. Defendants' agency fee procedures violate the First, Fifth, and Fourteenth Amendments to the United States Constitution in that it requires payment of agency fees:

a. even though Defendants have not established a constitutionally adequate procedure for providing notice of the basis for the amount of the agency fee; and

b. before all of the constitutionally required safeguards and protections, including an adequate advance reduction of the fee, have been given.

34. The Nonmembers claim their constitutional rights, as enunciated by the Supreme Court in *Hudson*:

a. to be provided with **all** of the precollection safeguards and procedures that will ensure that none of their wages are either collected nor spent for improper purposes; and

b. to pay only their *pro rata* share of MSEA's and its affiliates' costs of collective bargaining, contract administration, and grievance adjustment with the State of Maine.

35. Plaintiffs object, on behalf of themselves and the class they seek to represent, to the collection and/or expenditure of any amounts for purposes other than their *pro rata* share of the costs of collective bargaining, contract administration, and grievance adjustment for their individual bargaining units.

36. On information and belief, portions of the dues demanded by Defendants will be used by Defendant MSEA and/or its affiliates for purposes that are not "germane" to collective-bargaining activity, not justified by the government's vital policy interest in labor peace and

avoiding “free riders,” and/or significantly add to the burdening of free speech that is inherent in the allowance of an “agency shop,” including, but not limited to:

- a. lobbying and other political activities that do not concern legislative ratification of, or fiscal appropriations for, the dissenting nonmember’s collective bargaining agreement;
- b. otherwise chargeable activities that do not ultimately enure to the benefit of the employees in the dissenting nonmember’s bargaining unit;
- c. litigation that does not concern the dissenting nonmember’s bargaining unit and union literature reporting on such activities;
- d. public relations activities; and
- e. organizing and membership activities undertaken to protect or strengthen MSEA’s or its affiliates’ existing status as exclusive bargaining representatives.

37. On information and belief, portions of the fee collected and/or demanded by Defendant MSEA will be used by MSEA and/or its affiliates for purposes which Defendant cannot prove to be constitutionally chargeable to nonmembers because MSEA, and/or its affiliates, have failed to maintain contemporaneous business records showing the chargeable or nonchargeable nature of the expenses and/or the time of salaried employees.

CLAIM FOR RELIEF
(Violation of 42 U.S.C. § 1983 and
the Constitution of the United States)

Plaintiffs and class members reassert the foregoing and further allege:

38. The Nonmembers’ decision not to join and pay dues to MSEA and its affiliates is an exercise of their rights to freedom of speech, association, petition, belief, and thought

guaranteed against state action by the First, Fifth, and Fourteenth Amendments to the United States Constitution. The actions of Defendants Karass, Wyke, Walo, and MSEA, acting in concert to authorize, negotiate, and enforce an agreement compelling the Nonmembers to pay agency fees to MSEA, and its affiliates, even for their costs of exclusive representation on behalf of the Nonmembers' bargaining units, infringes upon those fundamental rights.

39. The First and Fourteenth Amendments to the United States Constitution require that the procedures for the involuntary collection of so-called "service" fees be carefully tailored to limit the infringement on the fundamental rights of nonunion employees to serve the compelling state interest that justifies such fees in the manner least restrictive of the nonunion employees' freedoms of speech, association, petition, belief, thought, and due process.

40. Defendants' failure to provide a constitutionally-adequate notice — including a constitutionally-adequate advance reduction of the fee — violates the Nonmembers' First, Fifth, and Fourteenth Amendment rights under the United States Constitution and the *Hudson* decision, in that Defendants have demanded the payment of agency fees even though they have represented to the Nonmembers that they can be compelled to subsidize the organizing activities of MSEA and/or its affiliates.

41. Defendant MSEA's materials do not give sufficient information to gauge the propriety of the union's fee, but nevertheless require objection based upon them.

42. Defendants' demands for payment of agency fees violate the First, Fifth, and Fourteenth Amendments to the Constitution of the United States in that the materials provided to the Nonmembers, described at ¶¶ 24-28, do not provide a constitutionally-sufficient advance reduction of the fee.

43. Defendants threaten to deprive the Nonmembers of their First- and Fourteenth-

Amendment rights, as enunciated and specified in *Hudson*, to be free from compulsory dues requirements in the absence of appropriate safeguards and procedural protections prior to the collection of agency fees.

44. Specifically, the materials provided to the Nonmembers, Exhibits A(1), A(2), A(3), C(1), C(2), D(1), D(2), D(3), D(4), D(5), D(6), and D(7), violate the First, Fifth, and Fourteenth Amendments to the Constitution in that they treat as chargeable union expenditures made for organizing.

45. As a direct result of Defendants' unlawful actions described herein, the Nonmembers have:

a. been deprived of their right to adequate notice and procedural protections prior to any demand for and/or collection of agency fees;

b. been prevented from exercising their rights and privileges as citizens of the United States to decline to support union activities not constitutionally chargeable to dissenting nonmembers and to have those monies used, even temporarily, for such activities;

c. threatened with the deprivation of their civil rights guaranteed to them under the Constitution and statutes of the United States; and

d. have suffered the threat of irreparable harm, damage, and injury for which there is no adequate remedy at law that is inherent in the threatened violation of their First Amendment rights.

46. Unless enjoined by this Court, Defendants and/or their agents will continue to threaten and/or will actually engage in the aforesaid deprivation and abridgement of the First Amendment rights of the Nonmembers, thereby causing irreparable harm, damage, and injury for

which there is no adequate remedy at law.

47. The “hold harmless” or indemnification sections of the CBAs are void as against public policy, invalid, and unenforceable, insofar as they cause the State and its officers to ignore consideration of whether the collection of agency fees violates the constitutional rights of nonunion State employees. Enforcement of the indemnification clause would work against the important public policies contained in the First, Fifth, and Fourteenth Amendments to the Constitution of the United States.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray judgment, for themselves and the class they seek to represent, as follows:

A. For actual damages in the full amount of agency fees and/or union dues deducted from their wages prior to having been provided with all of the protections required by the Supreme Court in *Hudson*, plus interest, and nominal exemplary damages under 42 U.S.C. § 1983, for depriving the Nonmembers of their rights, privileges, and immunities secured by the Constitution of the United States;

B. For equitable relief, restitution of all agency fees and/or union dues taken from Plaintiffs and members of the class Plaintiffs seek to represent, plus interest; or, alternatively, assuming *arguendo* that Defendant MSEA is entitled to collect any fees in light of its failure to comply with “the constitutional requirements for the ... collection of agency fees,” *Hudson*, 475 U.S. at 310, award Plaintiffs and class members compensatory damages or restitution in the amount of the portion of the service fees unlawfully exacted from them, with interest, and such other amounts as principles of justice and compensation warrant;

C. For equitable relief, a preliminary and permanent injunction prohibiting Defendants from taking any action to demand or collect from Plaintiffs and class members, by any means, so-called “service fees,” and from taking any other action to enforce the “Union Security” provisions of the State/MSEA memoranda of understanding, Exhibits A & B, until a constitutional agency fee procedure approved by this Court is established and operating, and a constitutionally-adequate agency fee notice approved by this Court is provided to the Nonmembers;

D. For equitable relief, a preliminary and permanent injunction prohibiting Defendants from taking any action to enforce and/or comply voluntarily with the indemnification sections of the “Union Security” articles of the State/MSEA collective bargaining agreements;

E. For issuance of a declaratory judgment, pursuant to 28 U.S.C. § 2201, declaring:

1. that Defendants have failed to comply with *Hudson, supra*, and thus, that the “Union Security” articles of the State/MSEA collective bargaining agreements are null and void on their face and/or as applied to Plaintiffs and class members, because collection of and demand for payment of compulsory agency fees therefore violates the First, Fifth, and Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. § 1983;

2. that any money actually collected from any Nonmember by Defendants and those working in concert with them, under color of the collective bargaining agreements, was illegally collected in violation of the First, Fifth, and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983; and

3. that the indemnification sections of the “Union Security” articles of the State/MSEA collective bargaining agreements are null and void as against public policy,

and unenforceable and thus, that the “Union Security” articles of the State/MSEA collective bargaining agreements are null and void on their face.

F. For costs, including reasonable attorneys’ fees under 42 U.S.C. § 1988; and

G. Such other and further relief as the Court may deem just and proper.

DATED: 8 August 2005

Respectfully submitted,

/s/ Stephen C. Whiting

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Monday, 8 August 2005, 13:10:58 pm, E.D.T.