

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

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|-------------------------|---|-------------------------------|
| DANIEL B. LOCKE, ET AL. |) | |
| |) | |
| Plaintiffs, |) | |
| |) | Civil Action No. 2:05-112-GZS |
| v. |) | |
| |) | |
| EDWARD A. KARASS, STATE |) | |
| CONTROLLER, ET AL., |) | |
| |) | |
| Defendants. |) | |

DECLARATION OF TIMOTHY L. BELCHER

Timothy L. Belcher, on penalty of perjury, deposes and says:

1. My name is Timothy Belcher. I am above the age of 18. I make this Declaration in connection with Defendant Maine State Employees Association’s (“MSEA’s”) Motion for Summary Judgment. The declaration is based on my own personal knowledge or on information obtained from MSEA business records.

2. Since June 27, 2005, I have held the position of MSEA Executive Director. From 1995 until October of 2005, I served as General Counsel of MSEA, and I served as a Staff Attorney for the union from November of 1989 until that promotion. MSEA is the exclusive collective bargaining representative of approximately 10,000 employees of the executive branch of Maine state government in the (1) Administrative, (2) Operations Maintenance and Support, (3) Professional and Technical, and (4) Supervisory Services bargaining units of the State (hereinafter “the Maine bargaining units”).

3. As the exclusive bargaining representative of the Maine bargaining units, MSEA is required by law to represent the interests of all of the employees in these units, and must

provide extensive contract administration services, such as collective bargaining and grievance processing, for all such employees, regardless whether they are members of the union. In order to negotiate and administer collective bargaining agreements, MSEA employs 28 paid employees, as well as 292 stewards who receive direction and training from MSEA. MSEA pools the costs of providing these services among all bargaining units it represents, and provides services and resources on an as-needed basis, making the resources available to all MSEA-represented employees.

4. Prior to 2003, employees who worked in the Maine bargaining units but were not members of MSEA received contract negotiation and administration services from MSEA without paying any service fee, except that nonmember grievants could be charged for processing individual grievances. The vast majority of the cost of MSEA's contract negotiation and administration functions was borne by those employees who elected to join the Union and pay dues.

5. During the first half of 2003, I participated in contract negotiations with the State on behalf of the Maine bargaining units. In those contract negotiations, the State agreed to include a "union security" provision in the contract governing the Maine bargaining units that would commence on July 2, 2003 for the Professional and Technical, Supervisory, and Administrative units, and on later dates in 2003 for the Operations, Maintenance and Support unit (hereinafter the 2003-2005 Contract). This "union security" clause provided, *inter alia*, that bargaining unit employees who were hired by the State after the effective date of the agreement and elected not to join the Union would be required to pay a "service fee" to the Union equivalent to their pro-rata share of the costs that MSEA incurs in providing collective bargaining and contract administration services on behalf of bargaining unit members. A true

and correct copy of the union security provision of the 2003-2005 Administrative Services Contract is attached to this Declaration as Exhibit 1, and the union security provisions of all four 2003-2005 agreements were identical except that one of the agreements became effective after July 2, 2003.

6. MSEA calculates the “service fee” applicable to nonmember employees by determining what percentage of MSEA’s expenditures are germane to the Union’s representation of nonmembers (i.e., “chargeable” to nonmembers). Nonmember employees pay this percentage of regular union dues as a service fee. Thus, for example, if regular union dues are \$6.00 weekly per member, and the Union determines that 50% of its expenditures were attributable to “chargeable” activities, nonmember employees in bargaining units represented by the Union would pay a weekly service fee of \$3.00. Because MSEA cannot predict in advance precisely what proportion of the Union’s budget will be spent on “chargeable” activities, the percentage used in calculating the service fee is based on accounting figures from the Union’s most recent available fiscal year.

7. MSEA’s chargeable expenses include, for example, collective bargaining and contract administration, including contract negotiations and grievance processing; legal services related to union representational activities; and training union stewards and others, except training related to political or ideological subjects. Other expenses are treated as nonchargeable. MSEA treats, for example, lobbying and political expenses; any costs related to an income protection program, which is not funded through dues but is only available to union members; and charitable contributions as nonchargeable. Additionally, organizing-related expenses are treated as nonchargeable, even though the Union firmly believes them to be central to MSEA’s role as an effective bargaining representative.

8. MSEA pays affiliation fees to its parent union, Service Employees International Union (“SEIU” or the “International Union”). The portion of this expenditure by MSEA that is deemed “chargeable” to nonmembers is based on SEIU’s audited chargeable expenses for the most recently-available fiscal year. Whatever percentage of the International Union’s expenditures were attributable to “chargeable” activities is used to calculate the portion of MSEA’s transfer deemed “chargeable” to nonmembers. Thus, for example, if 50% of SEIU’s budget was used for “chargeable” activities in the most recent available fiscal year, then 50% of MSEA’s transfer to SEIU would be included in the amount of MSEA’s expenditures deemed “chargeable” to nonmember employees through the service fee.

9. Because some of SEIU’s affiliate unions treat organizing expenditures as chargeable to nonmembers while other affiliates treat these expenditures as nonchargeable, SEIU annually creates two different audit reports allocating its budget into chargeable and nonchargeable categories – one report classifies the expenses related to organizing as chargeable, while the other report classifies such expenses as nonchargeable. Affiliate unions use whichever of these audit reports they believe appropriate in determining what percentage of transferred funds to include as chargeable in their calculation of nonmember service fees. Because MSEA is treating organizing expenditures as nonchargeable, we use the SEIU audit report that classifies organizing expenditures as nonchargeable.

10. In February and March of 2005, I participated in contract negotiations with the State for the current contract governing the four Maine bargaining units, which became effective on July 1, 2005 (hereinafter the “2005-2007 Contract”). In these negotiations, the parties agreed to new union security language, extending the service fee obligation to all nonmember employees in the four bargaining units. However, nonmember employees in the Maine

bargaining units who were hired prior to the effective date of the 2003-2005 agreement, and who have not been members of MSEA or fee payers since that date are subject to a “grandfather clause” which provides that they are required to pay only 50% of the applicable service fee through June 30, 2006. A true and correct copy of the union security provisions of the 2005-2007 Administrative Services Contract is attached to this Declaration as Exhibit 2. The Union Security Article of that agreement is identical in all respects to the other three 2005-2007 agreements, except for references in the Operations, Maintenance and Support agreement article to the effective date of the 2003-2005 agreement for that unit.

11. MSEA began collecting service fees from nonmember employees pursuant to the 2005-2007 Contract on July 27, 2005, after the first full pay period of July 2005. These collections are made either through payroll deduction or through direct billing. Based on MSEA’s business records, none of the named Plaintiffs in this lawsuit have authorized payment of their service fees through payroll deduction.

12. I have participated in the preparation of notices and materials sent to employees in the Maine bargaining units regarding their service fee obligations under the 2005-2007 Contract. The first such notice was mailed on April 11, 2005 (hereinafter the “April Notice”). A true and correct copy of the April Notice is attached to this Declaration as Exhibit 3.

13. Because more recent financial information became available for MSEA after the April Notice was issued, and because based on that information the calculated service fee was lower than the amount previously calculated, MSEA mailed a second notice to all employees in the Maine Bargaining Units on June 10, 2005 (hereinafter the “June Notice”). A true and correct copy of the June Notice is attached to this Declaration as Exhibit 4.

14. Subsequent to the June Notice, MSEA made a determination to treat union organizing expenditures (which had previously been treated as “chargeable” in the calculations set forth in the April and June Notices) as nonchargeable to nonmember employees. This change reduced the percentage of union dues that nonmember employees would pay from approximately 70% of union dues to approximately 49% of union dues.

15. Accordingly, on July 13, 2005, MSEA mailed a third notice to all nonmember employees and all members who had joined the union since the issuance of the April 11 Notice (hereinafter the “July Notice”). A true and correct copy of the July Notice is attached to this Declaration as Exhibit 5. Because MSEA now treats organizing expenditures to be “nonchargeable,” the July Notice provided the version of SEIU’s audit report classifying such expenditures as similarly nonchargeable at the International level. The July Notice included the entirety of the SEIU audited “Consolidated Statement of Expenses and Allocation Between Chargeable Expenses and Non-Chargeable Expenses - Alternative Basis of Allocation” report for 2003, SEIU’s most recently audited year.

16. The seven-page cover letter sent with the July Notice explained that the service fee charged to nonmembers would be significantly lower than the fee originally announced in the April Notice and explained the fee calculation in detail. The letter informed the post-Notice members of their right to withdraw their membership and elect to pay the lower service fee.

17. The service fee collected is based on the service fee percentage calculation outlined in the July 13 Notice (*i.e.*, 49.13% of member dues, or \$8.94 per bi-weekly pay period for employees paying the full service fee). In accordance with the “grandfather clause” provision included in the 2005-2007 Contract, all nonmember employees hired prior to the effective date of the 2003-2005 contract, who have not been members of MSEA or fee payers

since that date, including all named plaintiffs in this action, are charged only 50% of the calculated service fee through June 30, 2006, or \$4.47 per bi-weekly pay period. *See* Exhibit 5 at 2, 30.

18. All three of the Notices issued by MSEA detail procedures by which nonmember employees can submit challenges to the Union's calculated service fee. In response to the Notices, several nonmember employees, including plaintiff Margaret P. Rudolf, have filed challenges to MSEA's calculation of the service fee. These challenges were scheduled to be adjudicated by an independent arbitrator on October 28, 2005. The hearing was postponed until early-December 2005, and MSEA expects the arbitrator to issue a decision in spring 2006.

19. Pursuant to the procedures set up by MSEA, all service fees collected by MSEA from nonmember employees are held in an independent escrow account, and none of these monies will be released to MSEA from the escrow account before the independent arbitrator has resolved all challenges to MSEA's calculation of the service fee. At that time, refunds (if any) required to be made pursuant to the arbitrator's decision will be provided to service fee payers, with interest.

20. The 2005-2007 Contract contains provisions permitting the Union to enforce nonmembers' service fee obligations, subject to extensive protection of nonmembers' rights. If an employee has refused to pay, the Union must certify to the State that the employee has not paid. The State may not take any action against the employee until after the State has completed an investigation regarding any payment delinquency, as well as to determine whether the Union has complied with the collective bargaining agreement and the law. Once that investigation is complete, if the employer concludes that the employee is delinquent in payments, the employee

is given a thirty days to comply. Should the employee refuse to comply at that stage, he or she would be afforded additional procedures prior to any termination.

21. To date, the Union has not requested any disciplinary action against any nonmember for non-payment of service fees.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and is based on my personal knowledge. Executed this 24th day of January, 2006 at Augusta, Maine.

/s/ Timothy L. Belcher
Timothy L. Belcher

CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2006, I electronically filed the foregoing Declaration of Timothy L. Belcher with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following: Stephen C. Whiting, W. James Young, Philip J. Moss, William H. Laubenstein, III, and Jeffrey Neil Young.

/s/ Robert Alexander
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