

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE  
PORTLAND DIVISION

DANIEL B. LOCKE; *et al.*, 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' MOTION FOR A  
PRELIMINARY INJUNCTION**

**ORAL ARGUMENT REQUESTED**

COME NOW Plaintiffs, Daniel B. Locke, *et al.*, on behalf of themselves and the class they seek to represent, by their undersigned counsel, and pursuant to Rule 65, FED.R.CIV.P., and Civil Rule 7, D.ME., respectfully move the Court for the entry of an Order preliminarily enjoining the actions of Defendants to enforce portions of the "Union Security" or agency shop sections of the collective bargaining agreements between the State of Maine ("State") and Defendant Maine State Employees Association, Local 1989, Service Employees International Union, AFL-CIO-CLC ("MSEA"), Plaintiffs' Verified Class Action Complaint, ¶ 22, pending final disposition of this action.

As more fully discussed in the Memorandum of Points and Authorities accompanying this Motion, the demand for payment of agency fees by Defendants and their collection by and/or for the benefit of MSEA pursuant to these agreements is threatening to occur in the absence of adequate notice and appropriate procedural safeguards, improperly invading and denying the exercise of freedoms protected by the First, Fifth, and Fourteenth Amendments to the United

States Constitution, as explained in *Teachers Local No. 1 v. Hudson*, 475 U.S. 292 (1986); *Weaver v. University of Cincinnati*, 942 F.2d 1039 (6TH CIR. 1991) (directing entry of preliminary injunction); *Lowary v. Lexington Local Board of Education*, 854 F.2d 131 (6TH CIR. 1988) (reversing denial of preliminary injunction), **further proceedings** 903 F.2d 422 (6TH CIR. 1991); *Damiano v. Matish*, 830 F.2d 1363 (6TH CIR. 1987); *Tierney v. Toledo*, 824 F.2d 1497 (6TH CIR. 1987), **further proceedings**, 917 F.2d 927 (6TH CIR. 1991); *Andrews v. Education Association of Cheshire*, 829 F.2d 335 (2D CIR. 1987); *Prescott v. County of El Dorado*, 177 F.3d 1102 (9TH CIR. 1999); *Knight v. Kenai Peninsula Borough School District*, 131 F.3d 807 (9TH CIR. 1997), **cert. denied** 118 S.Ct. 2160 (1998); *Dean v. TWA, Inc.*, 924 F.2d 805 (9TH CIR. 1991); and *Lucid v. City and County of San Francisco*, 136 LRRM (BNA) 2877 (N.D.CAL. 1991), **further proceedings** 774 F.Supp. 1234 (N.D.CAL. 1991).

The grant of a preliminary injunction is necessary and proper in order to avoid the impending irreparable harm to Plaintiffs and the class they seek to represent (“the Nonmembers”), resulting from the impairment of their First, Fifth, and Fourteenth Amendment rights by fee collections and/or termination from employment for refusing to authorize fee deductions or otherwise make payment of fees notwithstanding Defendants’ failure to provide adequate notice and procedures. No adequate remedy at law exists for the preservation and vindication of those paramount constitutional rights. The Nonmembers are ultimately likely to succeed on the merits of their action, and the harm to the Nonmembers and to the public interest of not granting the requested injunctive relief outweighs any possible harm to Defendants of granting such relief.

Plaintiffs moved as quickly as possible to file this Motion after filing of this action. Owing to the failure to comply with “the constitutional requirements for the ... collection of

agency fees,” *Hudson*, 475 U.S. at 310, Defendants’ demands for fees is unlawful, as would be their collection.

WHEREFORE, Plaintiffs request that the Court immediately issue, pending a full hearing on Plaintiffs’ prayer for permanent relief, an Order preliminarily enjoining Defendants Karass, Wyke, and Walo, their agents, assistants, successors, employees, attorneys, and all other persons acting in concert or cooperation with it or at its direction or under its control, from collecting agency fees from Plaintiffs and the class Plaintiffs seek to represent, and preliminarily enjoining Defendants, and all of them, their agents, assistants, successors, employees, attorneys, and all other persons acting in concert or cooperation with them or at their direction or under their control from taking any further steps to enforce those portions of the “Union Security” or agency shop sections of the current collective bargaining agreement between the State and Defendant MSEA until a constitutionally adequate notice has been provided and constitutionally adequate procedures are in place and operating, and further order of this Court.

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This Motion is based upon the attached Memorandum of Law in Support of this Motion,  
Plaintiffs' Verified Class Action Complaint, and all files and proceedings herein.

DATED: 23 June 2005

Respectfully submitted,

/s/ W. James Young

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Thursday, 23 June 2005, 11:49:42 am, E.D.T.

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing **Plaintiffs' Motion for a**

**Preliminary Injunction** were sent *via* FedEx, delivery costs prepaid, addressed to:

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this 23rd day of June, 2005.

          /s/ Laverne K. Stanley          

LAVERNE K. STANLEY