

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MAINE**

DANIEL B. LOCKE, et al.,	)	
	)	
Plaintiffs	)	
	)	
v.	)	CIV. ACTION NO. 2:05-CV-00112-GZS
	)	
EDWARD A. KARASS, in his official capacity as Controller of the State of Maine, et al.,	)	
	)	
Defendants	)	
	)	

**AFFIDAVIT OF DEFENDANT KENNETH A. WALO**

Kenneth A. Walo, being duly sworn, avers as follows:

1. I am the Director of the Bureau of Employee Relations of the Department of Administrative and Financial Services (“BER”) of the State of Maine (“the State”). As such, I am the primary official of the State charged with responsibility for negotiating and administering collective bargaining agreements between the State and labor unions representing State employees, and I am signatory to all collective bargaining agreements negotiated by the State.
  
2. The first collective bargaining agreement between the State and Defendant Maine State Employees Association (“MSEA” or “the Union”) was signed in 1979. Since 1979, every collective bargaining agreement between the State and the MSEA has included a union security clause, requiring employees in the bargaining units represented by the MSEA who were members of the Union to pay union dues as a condition of their employment with the State. Until 2003, the union security clause in these contracts provided that employees who chose not to become members of the Union (“nonmembers”) were not required to pay anything, as a condition of

employment with the State. This created a potential for labor unrest, because employees who were members were likely to resent the fact that nonmembers were “free riders” who received the benefits of collective bargaining without paying their fair share of the costs of negotiating and administering the collective bargaining agreements. In order to eliminate or mitigate this potential for unrest and to promote labor peace in the State of Maine, the State agreed during negotiations for the 2003-2005 collective bargaining agreements to the MSEA’s request that the union security clause include provision for a “service fee” which would require new employees who were nonmembers to pay a portion of the dues charged to members of the Union. In negotiations for the 2005-2007 collective bargaining agreement, the State agreed to extend this requirement to all employees who were nonmembers.

3. Every collective bargaining agreement with the MSEA has also included an “indemnification clause.” The State sought this provision to protect itself against liability which might arise from its reliance upon acts, omissions or representations by the Union. Until this lawsuit was commenced, the State has never had occasion to invoke application of the indemnification clause.

4. When the requirement of a service fee was added to the collective bargaining agreements in 2003, the indemnification clause was amended to read 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.

5. The State never intended that the indemnification clause apply in any case involving an intentional deprivation of an individual's constitutional rights by the State. Accordingly, on October 18, 2005, the State of Maine and the MSEA executed a clarification of the indemnification clause in their collective bargaining agreements, after which the clause read as follows (new language appears in **bold face**):

MSEA-SEIU agrees that it shall indemnify, defend, reimburse, and hold the State harmless (**collectively, "Indemnification"**) 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; **provided that, nothing herein shall require Indemnification for any intentional deprivation of an individual's constitutional rights by the State.** 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.

A copy of the October 18, 2005 agreement between the State and the MSEA is attached to this Affidavit as set Exhibit A.

6. In the event that the State were asked by the MSEA to terminate any of the members of the bargaining units represented by the MSEA, for non-payment of the service fee, my office would have the responsibility for acting on that request, and we would not act on the request until we had undertaken a complete investigation and review of the facts to satisfy ourselves that the service fee had been properly assessed and that all of the requirements of *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986) had been satisfied. Even then, my office would not proceed with termination of the affected employee until he or she was provided with a notice of delinquency and given thirty days to pay the service fee in arrears.

7. The BER has not been asked by the MSEA to initiate or take any steps to terminate any of the named Plaintiffs in this case for non-payment of the service fee, and we have not initiated or taken any steps to terminate any of the named Plaintiffs in this case for non-payment of the service fee.

8. The BER has not been asked by the MSEA to initiate or take any steps to terminate any of the other members of the bargaining units represented by the MSEA, for non-payment of the service fee, and we have not initiated or taken any steps to terminate any of the other members of the bargaining units represented by the MSEA, for non-payment of the service fee.

/s/ Kenneth A. Walo  
KENNETH A. WALO

Subscribed and sworn to before me this 20th day of January, 2006.

/s/ Margaret E. Russell  
Notary Public

Margaret E. Russell  
Notary Public, Maine  
My Commission Expires April 16, 2011