

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

<p>Pollyanna Burns, Rhonda Tomoson, and Diane Gooding,</p> <p>Plaintiffs,</p> <p>v.</p> <p>Service Employees International Union Local 284; Independent School District 191,</p> <p>Defendants.</p>	<p>Court File No. _____</p> <p>COMPLAINT JURY TRIAL DEMANDED</p>
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INTRODUCTION

1. Polly Burns, Rhonda Tomoson, and Diane Gooding work for Independent School District 191 in Burnsville, Minnesota in school cafeterias of ISD 191. They are food service managers who work with school lunch workers.

2. In 2015, Burns and Tomoson became members of the SEIU Local 284, and in 2019, Gooding became a member of Local 284, without any notice to them that they might possibly waive their First Amendment rights related to subsidizing Local 284's political advocacy by joining Local 284.

3. Local 284 and ISD 191 then illegally deducted union dues from Plaintiffs' paychecks by relying on a dues checkoff without a valid waiver of Plaintiffs' First Amendment rights.

4. This lawsuit seeks a return of the union dues illegally deducted from Plaintiffs' paychecks from the date they joined Local 284 through their last date of union membership in 2020.

PARTIES

5. Plaintiff Polly Burns resides in Savage, Minnesota, within the District of Minnesota.

6. Plaintiff Rhonda Tomoson resides in Prior Lake, Minnesota, within the District of Minnesota.

7. Plaintiff Diane Gooding resides in Savage, Minnesota, within the District of Minnesota.

8. Defendant SEIU Local 284 is a local union organization and unincorporated Minnesota association affiliated with the Service Employees International Union. Its offices are located at 450 Southview Blvd., South Saint Paul, Minnesota 55075, within the District of Minnesota.

9. Defendant Independent School District 191 is an independent school district and thus a public corporation existing pursuant to Minn. Stat. § 123A.55 and the Education Code. Its address is 200 W. Burnsville Pkwy., Burnsville, Minnesota 55337, within the District of Minnesota.

JURISDICTION AND VENUE

10. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

11. Venue is proper because a substantial part of the events giving rise to the claims occurred in the District of Minnesota. *See* 28 U.S.C. § 1391(b)(2).

STATEMENT OF THE CLAIM

**Local 284 Took Dues From Plaintiffs Without Getting
a Valid Waiver of Their First Amendment Rights**

Pollyanna Burns

12. Burns is an Assistant Cook Manager at Marion W. Savage Elementary. She was asked to join Local 284 in August of 2015, and she was given the choice of either joining and paying full dues, or not joining and paying nearly full dues (an “agency fee”).

13. Because she was faced with this unconstitutional choice, Burns signed a dues checkoff in August 2015. She was never informed of her First Amendment right to not be a member and not pay any dues to Local 284. She never waived her First Amendment right not to be a member and not to pay any dues to Local 284. Burns never gave informed consent to pay dues to Local 284.

14. Notably, when she signed the checkoff in August 2015, Local 284 immediately processed her checkoff without waiting for any once-a-year “window.”

15. Burns terminated her membership in Local 284 and demanded the stoppage of dues deductions by notice to Local 284 on March 5, 2020.

16. Local 284 and ISD 191 illegally deducted dues from Burns’ paycheck for every paycheck from August 2015 through July 2020—both before and after she demanded stoppage of dues deductions from her paycheck.

Rhonda Tomoson

17. Tomoson is a Cook Manager at Edward Neill Elementary. She was asked to join Local 284 in August of 2015, and she was given the choice of either joining and paying full dues, or not joining and paying nearly full dues (an “agency fee”).

18. Because she was faced with this unconstitutional choice, Tomoson signed a dues checkoff in August 2015. She was never informed of her First Amendment right to not be a member and not pay any dues to Local 284. She never waived her First Amendment right not to be a member and not to pay any dues to Local 284. Tomoson never gave informed consent to pay dues to Local 284.

19. Notably, when she signed the checkoff in August 2015, Local 284 immediately processed her checkoff without waiting for any once-a-year “window.”

20. Tomoson terminated her membership in Local 284 and demanded the stoppage of dues deductions by notice to Local 284 on March 5, 2020.

21. Local 284 and ISD 191 illegally deducted dues from Tomoson’s paycheck for every paycheck from August 2015 through July 2020—both before and after she demanded stoppage of dues deductions from her paycheck.

22. Burns and Tomoson were never informed by Local 284 of the Supreme Court’s *Janus* decision that affirmed the existence of their First Amendment right not to pay any payment to a government union without a knowing and intelligent waiver of their First Amendment rights.

Diane Gooding

23. Gooding works at Rahn Elementary. She was asked to join Local 284 in January of 2019.

24. Gooding signed a dues checkoff authorization in January 2019. Notably, when she signed the checkoff in January 2019, Local 284 immediately processed her checkoff without waiting for any once-a-year “window.”

25. Gooding was never informed of her First Amendment right to not be a member and not pay any dues to Local 284. She never waived her First Amendment right not to be a member and not to pay any dues to Local 284. Gooding never gave informed consent to pay dues to Local 284.

26. Gooding terminated her membership in Local 284 and demanded the stoppage of dues deductions by notice to Local 284 on March 5, 2020.

27. Local 284 and ISD 191 illegally deducted dues from Gooding’s paycheck for every paycheck from January 2019 through December 2020—both before and after she demanded stoppage of dues deductions from her paycheck.

28. Local 284 never informed Gooding of the Supreme Court’s *Janus* decision that affirmed the existence of her First Amendment right not to make any payment to a government union without a knowing and intelligent waiver of her First Amendment rights.

Local 284’s Checkoffs Do Not Inform Employees of Their First Amendment Rights and Therefore Cannot Constitute Valid Consent to Dues Deductions

29. The checkoff on which Local 284 relied to take money from Plaintiffs Burns and Tomoson without their informed consent states that dues deductions can only be

terminated if an employee “revoke[s] [the authorization] by sending written notice to both [the] employer and the Local Union during the period not less than thirty (30) and not more than forty-five (45) days before the annual anniversary date of this authorization.” The checkoff does not mention *Janus* or employees’ First Amendment right not to pay any money to a government union.

30. The Checkoff on which Local 284 relied to take money from Plaintiff Gooding’s paychecks without her informed consent states that dues deductions can only be terminated if an employee “revoke[s] [the authorization] by sending written notice via U.S. mail to both the employer and SEIU during the period not less than thirty (30) and not more than forty-five (45) days before the annual anniversary date of this agreement.” The checkoff does not mention *Janus* or employees’ First Amendment right not to pay any money to a government union.

31. Each checkoff only provides a 15-day window in which an employee can stop the unlawful deduction of union dues within an entire calendar year. Local 284 does not impose a comparable administrative limit on itself for beginning dues deductions and did not impose any such once-a-year “window” limitation on beginning dues deductions.

32. The checkoffs fail to inform employees of their First Amendment rights by merely reciting that the signing of the checkoffs is “voluntary.” The checkoffs do not provide enough information to constitute “clear and compelling” evidence of voluntary consent to dues deductions—especially not for future years.

33. The checkoffs do not constitute a valid waiver of First Amendment rights under *Janus*. And, the checkoffs do not constitute a valid reason for Local 284 to continue taking Plaintiffs' money after they explicitly revoked any authorization in March 2020.

Local 284 and ISD 191 Act Under Color of State Law

34. The law of Minnesota authorizes Local 284, ISD 191, and their affiliates to extract money from public employees via dues checkoff and the employer and union's collective bargaining agreement without clear and compelling evidence of the employee's freely given waiver of First Amendment rights. See Minn. Stat. § 179A.06, Subd. 6; Minn. Stat. § 179A.20, Subd. 1.

35. Local 284, ISD 191, and their affiliates were acting under color of state law at all relevant times by deducting dues from Plaintiffs' paychecks without clear and compelling evidence of their freely given waiver of First Amendment rights.

Article III Standing

36. Plaintiffs have Article III standing to bring their claims. They have suffered injury-in-fact because money was taken from their paychecks by Local 284 and ISD 191 without their consent, both before and after their resignation and demand for dues stoppage from Local 284. Plaintiffs' injuries were caused by Defendants' unconstitutional behavior, and the injuries will be redressed by a refund of the money that Local 284 and ISD 191 have unconstitutionally extracted from Plaintiffs, plus appropriate penalties and fees.

CAUSES OF ACTION

37. Plaintiffs have set forth a short and plain statement showing their entitlement to relief that is substantially plausible under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544

(2007), *Ashcroft v. Iqbal*, 556 U.S. 662, and *Johnson v. City of Shelby*, 135 S. Ct. 346 (2014), and further identifies discrete claims for relief, which include but are not limited to the following.

38. This Court has pendent jurisdiction to determine Plaintiffs' state law claims under 28 U.S.C. § 1367. *See Knight v. Alsop*, 535 F.2d 466 (8th Cir. 1976).

Count One
42 U.S.C. §§ 1983, 1988
28 U.S.C. § 2201

Local 284 and ISD 191's Pre-Resignation Deductions

39. Plaintiffs incorporate the preceding paragraphs by reference.

40. Plaintiffs never consented to pay dues to Local 284 pursuant to a valid waiver of their First Amendment rights.

41. Local 284 and ISD 191 deducted dues payments from Plaintiffs' paychecks prior to their resignation from Local 284 without clear and compelling evidence of Plaintiffs' freely given waiver of First Amendment rights.

42. Because of these deductions, Plaintiffs were forced to subsidize Local 284's speech, with which they generally disagree.

43. Local 284 and ISD 191's deductions thus violate the First Amendment pursuant to *Janus*.

44. Plaintiffs are entitled to money damages, penalties, punitive damages, and fees to redress and remedy Local 284 and ISD 191's violations of their rights.

Count Two
42 U.S.C. §§ 1983, 1988
28 U.S.C. § 2201

Local 284 and ISD 191's Post-Resignation Deductions

45. Plaintiffs incorporate the preceding paragraphs by reference.

46. Plaintiffs never consented to pay dues to Local 284 pursuant to a valid waiver of their First Amendment rights.

47. Even though they never consented to pay dues to Local 284 pursuant to a valid waiver of their First Amendment rights, to ensure the illegal dues deductions stopped, Plaintiffs tendered their resignations to Local 284 and demanded that Local 284 stop dues deductions.

48. Local 284 refused to stop dues deductions.

49. Local 284's response was that it would continue deducting dues until Plaintiffs opted out of dues deductions during 15-day periods in July and December 2020.

50. Local 284 and ISD 191 deducted dues payments from Plaintiffs' paychecks after their resignation from Local 284, without clear and compelling evidence of Plaintiffs' freely given waiver of First Amendment rights.

51. Because of these deductions, Plaintiffs were forced to subsidize Local 284's speech, with which they generally disagree.

52. Local 284 and ISD 191's deductions thus violate the First Amendment pursuant to *Janus*. The checkoffs are not a sufficient waiver of First Amendment rights under *Janus*.

53. Local 284's dues deductions even after Plaintiffs demanded stoppage and resigned from Local 284 constitute intentional, malicious, willful, and/or reckless disregard for Plaintiff's First Amendment rights.

54. Plaintiffs are entitled to money damages, penalties, punitive damages, and fees to redress and remedy these violations of their rights by Local 284 and ISD 191.

**Count Three
Conversion**

55. Plaintiffs incorporate the preceding paragraphs by reference.

56. Local 284 and ISD 191 willfully interfered with Plaintiffs' personal property (their paychecks in the amount of Local 284's dues deductions) without lawful justification, which deprived Plaintiffs, the lawful possessors of that property, of use and possession of the same.

57. For Burns and Tomoson, this conversion occurred from August 2015 through July 2020.

58. For Gooding, this conversion occurred from January 2019 through December 2020.

59. Plaintiffs hold property interests in the money deducted by Local 284 and ISD 191 from their paychecks.

60. Local 284 and ISD 191 deprived Plaintiffs of that interest.

**Count Four
Money Had and Received/Unjust Enrichment**

61. Plaintiffs incorporate the preceding paragraphs by reference.

62. By unlawfully deducting union dues or fees from Plaintiffs' paycheck, Local 284 and ISD 191 have had a benefit conferred upon them since August 2015 for Burns and Tomoson, and January 2019 for Gooding.

63. Local 284 and ISD 191 "knowingly appreciated and accepted" that benefit.

64. Local 284 and ISD 191's acceptance and retention of that benefit is inequitable under these circumstances.

65. Local 284 and ISD 191 are liable to Plaintiffs for retaining the union dues or fees unlawfully deducted from Plaintiffs' paychecks, and Plaintiffs are entitled to an award of damages against Local 284 and ISD 191 for the same or for aiding and abetting the same.

**Count Five
Civil Theft**

66. Plaintiffs incorporate the preceding paragraphs by reference.

67. Local 284 and ISD 191 have stolen property from Plaintiffs by unlawfully deducting union dues or fees from Plaintiffs' paychecks— from August 2015 through July 2020 for Burns and Tomoson, and from January 2019 to December 2020 for Gooding.

68. Local 284 and ISD 191 have wrongfully and surreptitiously taken Plaintiffs' wages for the purpose of keeping them or using them.

69. Local 284 and ISD 191 are liable to Plaintiffs for the value of the property taken from Plaintiffs, or for aiding and abetting the taking of the same.

70. Plaintiffs seek money damages and punitive damages under Minn. Stat. § 604.14, Subd. 1 for Local 284 and ISD 191's civil theft, or for aiding and abetting the same.

Count Six
Tortious Interference With Contractual Relations
(Local 284 only)

71. Plaintiffs incorporate the preceding paragraphs by reference.

72. The agreement for Plaintiffs to provide services as employees to ISD 191 constitutes a valid and enforceable contract between them. Plaintiffs and Local 284 were aware of the contract.

73. Local 284's interference with Plaintiffs' contractual relations with ISD 19, by wrongfully forcing the deduction of dues payments from Plaintiffs' paychecks in violation of their constitutional rights through ISD 191, was intentional and intended to procure breach of that contract by said deductions, was without justification, and was perpetrated with actual malice to injure Plaintiffs.

74. As a direct and proximate result of Local 284's interference and acts, Plaintiffs' performance under their contract with ISD 191 was made more expensive, less remunerative, and more difficult and burdensome. Plaintiffs have suffered damages as a direct and proximate result of Local 284's actions.

Count Seven
Unlawful Wage Deductions
Minn. Stat. § 181.79

75. Plaintiffs incorporate the preceding paragraphs by reference.

76. Minnesota Statutes § 181.79 provides: "No employer shall make any deduction, directly or indirectly, from the wages due or earned by any employee.... to recover any other claimed indebtedness running from employee to employer, unless the employee, after the loss has occurred or claimed indebtedness has arisen, voluntarily

authorizes the employer in writing to make the deduction or unless the employee is held liable in a court of competent jurisdiction for the loss or indebtedness.”

77. Defendants violated Minn. Stat. § 181.79 by making deductions from Plaintiffs’ wages without written authorization, as the only written authorization was not properly obtained pursuant to *Janus*.

78. Defendants are liable to Plaintiffs for twice the amount of deduction taken under Minn. Stat. § 181.79, Subd. 2.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court grant them relief as follows after a trial by jury, which is demanded:

A. For Burns, an award of money damages for union dues unlawfully deducted from her paychecks from August 2015 through July 2020;

B. For Tomoson, an award of money damages for union dues unlawfully deducted from her paychecks from August 2015 through July 2020;

C. For Gooding, an award of money damages for union dues unlawfully deducted from her paychecks from January 2019 through December 2020;

D. A declaration that Local 284 and ISD 191’s practice of deducting union dues from Plaintiffs’ paychecks without clear and compelling evidence of a knowing, intelligent, and voluntary waiver of Plaintiffs’ First Amendment rights is unlawful and a violation of Plaintiffs’ rights under the First and Fourteenth Amendments to the United States Constitution;

E. A declaration that Local 284 and ISD 191's imposition of an unreasonably short and once-a-year time window to resign from union membership and discontinue dues deductions violates Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution and the Supreme Court's waiver doctrine related to constitutional rights;

F. An award of attorney fees in favor of Plaintiffs and against Local 284 and ISD 191 upon Plaintiffs prevailing in this litigation and upon post-judgment application for the same, pursuant to 42 U.S.C. § 1988 and Minn. Stat. § 15.472;

G. An award of punitive damages against Local 284 and ISD 191 because of their intentional, willful, malicious, and/or reckless disregard for Plaintiffs' First Amendment rights, and also under Minn. Stat. §§ 604.14 and 181.79; and

H. An award of all other relief that the court may deem just, proper, or equitable.

UPPER MIDWEST LAW CENTER

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