

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

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STARK COUNTY, OHIO  
2023 JUL 31 AM 11:29

DAVID KRIZON,  
24883 U.S. Rt. 30  
P.O. Box 1  
East Rochester, Ohio 44625

Plaintiffs,

vs.

OHIO ASSOCIATION OF PUBLIC SCHOOL  
EMPLOYEES AFSCME 4/LOCAL 187  
6805 Oak Creek Drive  
Columbus, Ohio 432241591

And

MINERVA LOCAL SCHOOL DISTRICT  
BOARD OF EDUCATION,  
406 East Street  
Minerva, Ohio 44657

Defendants.

CASE NO:

2023CV01351

Heath

JUDGE

COMPLAINT FOR  
DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF

Plaintiff David Krizon by and through counsel, for his complaint hereby states as follows:

**PARTIES**

1. Plaintiff David Krizon is a bus driver employed by the Minerva Local Schools Board of Education, in Minerva, Ohio. He was previously a member of the Ohio Association of Public School Employees-AFSCME 4/Local 187 ("OAPSE").

2. Defendant Ohio Association of Public School Employees-AFSCME Local 4 ("OAPSE") is a public sector union with its principal place of business in Franklin County, Ohio.

3. Defendant Minerva Local School District Board of Education public school board organized under R.C. 3313.01 and is Mr. Krizon's employer.

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## INTRODUCTION AND NATURE OF THE CASE

4. In *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, the Court held that the First Amendment protects public-sector employees from being compelled “to subsidize private speech on matters of substantial public concern” without prior affirmative consent. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, \_\_ U.S. \_\_, 138 S.Ct. 2448, 2460, 201 L.Ed.2d 924 (2018).

5. The Court rejected the requirement that forced government employees either to pay monthly dues or agency fees, used to support union policies and union lawyers, even when employees objected to the policies supported and actions taken by the union. Before *Janus*, non-payment of union dues or agency fees would trigger termination.

6. The *Janus* Court held that such requirements violated the First Amendment because “[c]ompelling individuals to mouth support for views they find objectionable violates [a] cardinal constitutional command, and in most contexts, any such effort would be universally condemned.” *Id.* at 2463. *Janus* made clear that unions and governments cannot continue to compel “free and independent individuals to endorse ideas they find objectionable.” *Id.* at 2464.

7. In light of *Janus*, Mr. Krizon terminated his membership in OAPSE and demanded that the union Defendants and his government employer stop the automatic deduction of membership dues from his paycheck and refund any union membership dues taken after his membership termination. Defendant Minerva Local Schools Board of Education initially honored his request to stop deducting dues from his paycheck, but later, at OAPSE’s request, reinstated deductions. OAPSE has continued deducting union membership dues from Mr. Krizon’s wages,

which it justified based upon the terms of the alleged agreement set forth in the original deduction card that he had signed.

8. Such ostensible agreements are based on a mutual mistake of law and have been vitiated through mutual rescission.

9. Even if such agreements have validity, any union claims to continued membership dues from non-members would be an unenforceable penalty.

10. Moreover, any ostensible agreements requiring Mr. Krizon to continue to pay union membership dues when he is not—in fact—a union member is invalid because it is an unconscionable contract of adhesion because it does not include the amount of the membership dues, is not subject to negotiation, and is unreasonably favorable to the union.

11. Yet the Defendant Unions—with the assistance of the Plaintiffs' public employers—continued to take union dues out of the Plaintiffs' pay well after their resignation from the union, and in some cases, continue to assess union dues.

12. The Defendant Union claims that its union membership contract with the Mr. Krizon allows it to continue to assess and collect dues up to and until a contractual opt-out window and, that the Mr. Krizon has contractually waived his constitutional right to refrain from funding the unions' political speech at least during the term of the contract.

13. But even accepting the Union's claim of a contractual right to continue to take dues as a form of liquidated damages, under Ohio law, such liquidated damages must reflect the reasonable compensation for damages incurred; where the liquidated damages are manifestly inequitable, courts will treat them as an unenforceable penalty.

14. The Plaintiffs seek declaratory and injunctive relief under Ohio's declaratory judgment statute establishing that the union membership contracts unconscionably and

unreasonably penalizes the Plaintiffs for exercising their constitutional rights under both the U.S. Constitution's First Amendment and the Article 1, Sec. 11 and Art. 1, Sec. 16 of the Ohio Constitution.

15. Further, 42 U.S.C. §1983 provides for monetary relief in the form of damages for the violation of federal constitutional rights.

16. Mr. Krizon ask this Court, pursuant to the U.S. and Ohio Constitutions, as well as Ohio contract law, to stop these practices and to require the unions to reimburse the Plaintiffs for the unions' improper membership dues collections from non-members.

### **FACTS**

17. On June 27, 2018, the United States Supreme Court decided *Janus v. AFSCME*, holding that agency-shop arrangements that require employees to fund public-sector unions, irrespective of union membership, violate "the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." *Janus*, 138 S. Ct. at 2468.

18. The *Janus* decision fundamentally changed the law regarding public employees' rights to abstain from compelled payments to the unions chosen to represent them.

19. The Plaintiffs are all public employees who at one time were ostensibly members of the union Defendants, from whom the unions have collected union membership dues.

20. The mechanism for this continued extraction of dues from non-members is the public employers' automatic deduction of union membership dues from their employees' paychecks.

21. David Krizon is a bus driver employed by Minerva Local Schools in Minerva, Ohio ("the District"). OAPSE AFSCME 4/Local 187 ("OAPSE") represents Krizon's bargaining unit.

22. In March of 2000, Mr. Krizon joined the Union by signing a membership card, authorizing his employer to deduct union dues from his pay.

23. Exercising his rights under the Janus decision, Mr. Krizon resigned from union membership in June of 2022.

24. According to the Union membership card, Mr. Krizon could rescind his authorization for dues deductions only during a limited 10-day window period between August 22 and August 31 each year.

25. In June of 2022, Mr. Krizon rescinded such authorization in a written form he sent to OAPSE.

26. Mr. Krizon also sent the notice to the District, Mr. Krizon's employer.

27. On June 21, 2022, however, OAPSE sent a letter to Krizon informing him that his membership resignation has been processed but that his attempt to cancel his dues deduction authorization was untimely. OAPSE did not mention in the letter anything about the 10-day window period.

28. Also on June 21, 2022, OAPSE sent a letter to the District with instructions to continue OAPSE membership dues deductions uninterrupted despite Mr. Krizon's attempts to rescind authorization

29. In addition, OAPSE representative Ronnie Blatt called Mr. Krizon in July 2022 and told him that he had to continue paying dues for the next year despite his attempt to rescind authorization to dues payments. Blatt was bullying and hostile during the call. Blatt never mentioned the 10-day window period.

30. Unbeknownst to Mr. Krizon, and based on his prior authorization to do so, on August 18, 2022—during the opt-out window-- Lauren Bowen, Ohio Director of the Freedom

Foundation, an organization that assists employees in exercising their Janus rights, sent another copy of Krizon's withdrawal form to OAPSE. This second notice was sent by FedEx certified delivery, which was delivered to OAPSE and signed for on August 22, 2022. Bowen also sent a copy of Krizon's withdrawal form on August 18, 2022 by regular U.S. mail to the District.

31. Consistent with the renewed requests, the District stopped deducting union dues from Krizon's paychecks in September 2022.

32. On or about February 6, 2023, however, the District superintendent called Mr. Krizon into a meeting in his office, where Mr. Krizon met with the superintendent and OAPSE representative Ronnie Blatt. Blatt told David that David had not rescinded his authorization during the proper 10-day window and that he would have to continue paying union dues. Blatt gave David a copy of David's signed 2000 membership agreement.

33. In mid-February, the school treasurer told Mr. Krizon that OAPSE was pressuring her to resume union dues deductions from his paychecks.

34. The District began deducting dues from his wages again in his February 17, 2023 paycheck and has continued those deductions despite Mr. Krizon's protests that he is no longer a Union member and that his membership was withdrawn during the contractual opt-out window.

35. Union membership for the union Defendants is typically evidenced by a membership and dues-deduction authorization card ("Deduction Card").

36. The term "dues" means "the official payments you make to an organization that you belong to." Cambridge Dictionary, *dues*, <https://tinyurl.com/CambridgeDues> (accessed Dec. 2, 2022); Collins, *dues*, <https://tinyurl.com/CollinsDues> (accessed Dec. 2, 2022) ("charges, as for membership of a club or organization").

37. Upon information and belief, Mr. Krizon's union deduction card did not contain any information on the amount of the union membership dues deductions.

38. Upon information and belief, Mr. Krizon's limited authorization for dues deduction applies only to the deduction of union membership dues, in other words for members and not for non-members.

39. Upon information and belief, the District is only authorized to deduct union membership dues based upon, and after receipt of, the signed deduction for the specific employee.

40. Upon information and belief, Mr. Krizon's deduction card contains a separate provision authorizing the employer to deduct union membership dues in an unspecified amount.

41. Upon information and belief, none of the collective bargaining agreements (or any other documents) which are binding on the parties allow the union to charge a non-union member for membership dues.

42. Unions are not permitted to assess union membership dues to non-union members for union membership. *See, e.g., Janus*, 138 S.Ct. 2448.

43. Once a person is no longer a member of an organization, he or she cannot—as a basic definitional matter—owe membership “dues.”

44. Upon information and belief, the District deducted union membership dues from Mr. Krizon's paychecks without ever receiving a valid Deduction Cards.

45. The Union—with the assistance of the District—took and continues to take union membership dues out of Mr. Krizon's pay both before and after his resignation from the union.

46. Mr. Krizon are entitled to relief based on Ohio contract law principles, including rescission and unconscionable contract of adhesion as set forth herein.

47. OAPSE thus contended that the Mr. Krizon had preemptively contractually waived their rights under *Janus* when they joined the union, or when they renewed their union membership. Accordingly, notwithstanding the Mr. Krizon's resignation from the union, the Union contends that he remains bound by his alleged contracts with the Union and must continue to pay union membership dues until the next opt-out window even though the Union recognizes his resignation and treats him as a non-member.

48. Assuming *arguendo* the validity of the unions' claim of a contractual right to continue to take union membership dues, such payments are not valid as consequential damages and are not liquidated damages under Ohio law because liquidated damages must reflect the reasonable compensation for damages incurred; instead the assessed union membership dues are an unenforceable penalty. *See Boone Coleman Constr., Inc. v. Piketon*, 145 Ohio St.3d 450, 2016-Ohio-628, 50 N.E.3d 502, ¶ 17-19.

49. Mr. Krizon seeks declaratory and injunctive relief under Ohio's declaratory judgment statute establishing that the union membership contracts unconscionably and unreasonably penalize the Plaintiffs as well as compensatory and punitive damages pursuant to 42 U.S.C. § 1983.

### **OHIO'S COLLECTIVE BARGAINING LAW**

50. R.C. Chapter 4117 sets forth Ohio's collective bargaining law for public employees.

51. R.C. 4117.04 requires that public employers recognize and bargain with an exclusive representative of the bargaining unit:

(A) Public employers shall extend to an exclusive representative designated under section 4117.05 of the Revised Code, the right to represent exclusively the employees in the appropriate



bargaining unit and the right to unchallenged and exclusive representation for a period of not less than twelve months following the date of certification and thereafter, if the public employer and the employee organization enter into an agreement, for a period of not more than three years from the date of signing the agreement. For the purposes of this section, extensions of agreements shall not be construed to affect the expiration date of the original agreement.

(B) A public employer shall bargain collectively with an exclusive representative designated under section 4117.05 of the Revised Code for purposes of Chapter 4117 of the Revised Code.

52. R.C. 4117.03 allows public employees to “refrain from [] joining an employee organization.”

53. The state employment relations board “shall decide in each case the unit appropriate for the purposes of collective bargaining. The determination is final and not appealable to any court.” R.C. 4117.06(A).

54. Ohio law mandates that the employee may only bargain with the relevant employer through the designated union. *See Thompson v. Marietta Educ. Ass'n*, 972 F.3d 809, 812 (6th Cir. 2020), *cert. denied*, \_\_\_ U.S. \_\_\_, 141 S.Ct. 2721, 210 L.Ed.2d 882 (2021).

55. Thus, while a public employee may refrain from joining a union or choose to leave a union, they are not free to opt-out of the bargaining unit that is represented by that union.

56. Likewise, unions that are chosen as the bargaining unit representative are required to represent all members of the bargaining unit fairly, whether those bargaining unit members are union members or not.

57. In the case of each Plaintiff, OAPSE is the Plaintiff’s exclusive representative for purposes of collective bargaining and grievances as set forth in R.C. 4117.05.

58. In other words, while an employee may choose not to join the union that is recognized as the exclusive representative of his or bargaining unit, the employee may not opt-out of the bargaining unit. Likewise, a union that has been designated as the exclusive representative for a bargaining unit cannot refuse to represent the members of that bargaining unit.

59. Ohio's declaratory judgment statute provides that:

[s]ubject to division (B) of section 2721.02 of the Revised Code, any person interested under a \* \* \* written contract, or other writing constituting a contract \* \* \* may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.

R.C. 2721.03.

60. Before the Supreme Court's ruling in *Janus*, Mr. Krizon was required to either join his or her respective union and pay full union membership dues or pay "fair-share fees" to the union. *See* R.C. 4117.09(C).

61. The collective bargaining agreements between the respective employers and unions are statutorily required to contain a provision authorizing the public employer to deduct periodic dues of union members (but not non-members fair share fees) "upon presentation of a written deduction authorization by the employee." R.C. 4117.09(B)(2).

62. Mr. Krizon opposed and continue to oppose paying union membership dues because he is no longer a member of a union and because he disagrees with the Union's political advocacy and collective-bargaining activities. Like the plaintiff in *Janus*, he has been compelled by law and by their public employers' continued deduction of union membership dues from his paychecks to provide monetary support for speech with which they disagree.

63. Before the *Janus* decision, Mr. Krizon had no meaningful choice regarding whether or not to support their respective unions financially. He was required to fund the union either through union membership dues or fair share fees.

64. When Mr. Krizon became aware of the change in the law after *Janus*, he resigned from OAPSE and was no longer treated as a union member.

65. Accordingly, he demanded a cessation of union membership dues withdrawals and demanded refunds retroactively to the dates of their resignations.

66. OAPSE, however, through automatic union membership dues withdrawal and a refusal to recognize the Plaintiffs' rights under *Janus*, have continued to compel the Plaintiffs to subsidize their respective former unions' speech.

67. The Plaintiffs have no control over the amount of union membership dues and, upon information and belief. At least as long as they are union members, neither the unions nor the employers ever offered to the Plaintiffs the option to pay union membership dues to the union directly (even though such arrangement is permissible under R.C. 4117.09), as opposed to the employer wage reduction for all union members—at least as long as they are union members.

68. Under the U.S. Supreme Court's holding in *Janus*, an employee must "clearly and affirmatively consent before any money is taken." *Janus*, 138 S.Ct. at 2486.

69. Here, to the extent that any of the Plaintiffs consented to the withdrawal of union membership dues from their respective paychecks, that consent was clearly revoked by their resignations.

70. The unions' respective Collective Bargaining Agreements ("CBA") do not allow for the continued deduction of union membership dues from non-members as described below.

**COUNT ONE: ACTION FOR DECLARATORY JUDGMENT  
(CONTINUED COLLECTION OF UNION DUES VIOLATES PLAINTIFFS'  
CONSTITUTIONAL RIGHTS UNDER *JANUS*)**

71. Ohio's Declaratory Judgment statute provides that Subject to division (B) of section 2721.02 of the Revised Code, any person interested under a . . . written contract, or other writing constituting a contract . . . may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it. R.C. 2721.03.

72. Before the Supreme Court's ruling in *Janus*, each Plaintiff was required to either join his or her respective Union and pay full membership dues or pay "fair-share fees" to the union. See Ohio Rev. Code § 4117.09(B)(2)(C).

73. The Plaintiffs have opposed and continue to oppose paying dues because they disagree with their respective Unions' political advocacy and collective-bargaining activities. Simply put, like the plaintiff in *Janus*, they have been compelled by law and by their public employers' continued deduction of dues from their paychecks to provide monetary support for speech with which they disagree.

74. Before the *Janus* decision, the Plaintiffs had no meaningful choice regarding whether or not to support their respective Unions financially. They were required to fund the Union either through Union dues or fair share fees in the same amount of the Union dues. Accordingly, they reluctantly joined the respective Unions.

75. When the Plaintiffs became aware of the change in the law after *Janus*, they resigned from their Unions and demanded a cessation of dues withdrawals and refunds to the dates of their resignations.

76. The Defendants, however, through automatic dues withdrawal and a refusal to recognize the Plaintiffs' rights under *Janus*, have continued to compel the Plaintiffs to subsidize their respective former Unions' speech.

77. The Supreme Court's ruling in *Janus* is retroactive. *See Harper v. Virginia Dep't of Taxation*, 509 U.S. 86, 96 (1993) (“[A] rule of federal law, once announced and applied to the parties to the controversy, must be given full retroactive effect by all courts adjudicating federal law.”).

78. The Union Defendants and Public Entity Defendants were acting under color of state law by imposing these mandatory union payments on the Plaintiffs. *See, e.g.*, R.C. 4117.09(B)(2)(C); *Lugar v. Edmondson Oil Co. Inc.*, 457 U.S. 922 (1982) (holding private parties subject to liability under 42 U.S.C. § 1983 when acting under an unconstitutional statute).

79. Under the U.S. Supreme Court's holding in *Janus*, an employee must “clearly and affirmatively consent[s] before any money is taken.” *Janus*, 138 S. Ct. at 2486.

80. Here, to the extent that any of the Plaintiffs consented to the withdrawal of Union dues from their paychecks, that consent was clearly revoked by their resignations.

81. The Defendants' refusal to immediately honor and implement the Plaintiffs' resignations from their respective unions — and their continued refusal to halt payroll deductions in the wake of the Plaintiffs' Union resignations — violate the Speech Clause and the Supreme Court's ruling in *Janus*.

82. There is thus a live dispute between the Parties regarding the Defendants' obligations under *Janus* and the First Amendment and the contracts between the Unions and Plaintiffs that can be properly resolved through a declaratory judgment action.

83. The Plaintiffs are entitled to a declaration that the Defendants' practice of

continuing to collect Union dues from employees after those employees have resigned from the Union violates the First Amendment of the U.S. Constitution and a permanent injunction enjoining such involuntary withdrawal of funds. refund of the money that was forcibly taken from them in violation of their constitutionally protected rights.

**COUNT TWO: ACTION UNDER 42 U.S.C. § 1983.**

84. Mr. Krizon restates the allegations of Paragraphs 1 through 83 and incorporates them by reference here as if fully re-written.

85. As the *Janus* court held, the First Amendment encompasses not only the freedom to speak but the freedom to refrain from speaking. Accordingly, courts have consistently held that government actors cannot compel a person to speak or to financially support a cause with which they disagree.

86. As set forth above, Mr. Krizon has been compelled, and continues to be compelled, to support Union speech through the withholding of union dues from their paychecks by their public employers.

87. This compelled speech violates the First Amendment.

88. Under 42 U.S.C. § 1983, the Plaintiffs are entitled to seek redress for this constitutional violation in the form of damages. They are also entitled to their attorneys' fees incurred in remedying the unconstitutional act. See 42 U.S.C. § 1983.

**COUNT THREE: DECLARATORY JUDGMENT UNDER R.C. 2721.03  
AND THE OHIO CONSTITUTION**

89. Mr. Krizon restates the allegations of Paragraphs 1 through 87 and incorporates them here as if fully re-written.

90. Ohio Revised Code § 2721.03 provides that “[s]ubject to division (B) of section 2721.02 of the Revised Code, any person interested under a deed, will, written contract, . . . or other legal relations are affected by a constitutional provision, statute, . . . may have determined any question of construction or validity arising under the instrument, constitutional provision, statute, rule, ordinance, resolution, contract, or franchise and obtain a declaration of rights, status, or other legal relations under it.” Ohio Rev. Code Ann. § 2721.03.

91. Article 1, §11 of the Ohio Constitution, Ms. Kolkowski has the right to choose her own representative for the purpose of adjusting her grievance, the right to speak freely through that representative, the right to associate with that representative, and the right against being compelled to associate with a representative not of her choosing. In addition, the right to choose one’s own legal counsel in civil litigation is a fundamental right under the Due Process Clause

92. Further, Article 1, Section 16 of the Ohio Constitution provides that “All courts shall be open, and every person, for an injury done to him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.”

93. The language used to protect free speech under Ohio’s Constitution is different than, and in fact, broader than the First Amendment.

94. Notwithstanding any limitations on Janus or limitations imposed by federal courts interpreting it, the Ohio Constitution provides an independent right to be free from compelled speech.

95. There is a current dispute or controversy regarding whether under Section 11 and 18 of Article 1, Mr. Krizon can be compelled to support the Union through mandatory deduction of Union dues after he has resigned his membership from the Union.

**COUNT FOUR: DECLARATORY JUDGMENT-  
RECISSION BY AGREEMENT**

96. Mr. Krizon restates the foregoing allegations and incorporates them here as if fully re-written.

97. To the extent that the Union claims that any contracts or assignments of wages (via the Deduction Cards)—and specifically the Opt-out Windows contained therein remain in force even after Mr. Krizon resigned from the Union, Mr. Krizon seeks a declaration that his contract with the Unions was effectively rescinded and an order returning them to the financial situation as it existed at the time of the resignation based on mutual repudiation.

98. Mr. Krizon has unambiguously rescinded any contracts with the Union and any assignment of wages.

99. The Union has, in turn, recognized and acknowledged that Mr. Krizon is no longer a Union members and has refused to provide any benefits or other consideration to him beyond the exclusive representation that it is required by law to provide to members and non-members alike.

100. When both parties repudiate or otherwise refuse to perform under a contract, Ohio courts treat the contract as rescinded. *See e.g., Haman Ents., Inc. v. Sharper Impressions Painting Co.*, 2015-Ohio-4967, 50 N.E.3d 924, ¶ 19 (10th Dist.).

101. A party's assent to rescission can be inferred from their actions. *Id.*

102. In this case, the Union, by acknowledging that Mr. Krizon is no longer a union members and withholding any purported benefits of union membership from him have effectively rescinded any alleged contract with him.



103. The relevant CBA does not provide for the deduction of union membership dues from nonmembers.

104. Despite this rescission and the Union's termination of union membership benefits to Mr. Krizon, the union still claims the right—through state actors—to seize union membership dues from him.

105. There is therefore a dispute over the validity or interpretation of the contracts between Mr. Krizon and the Union.

106. Mr. Krizon is entitled to a declaration that any contracts they may have had with the unions or any assignment of wages have been rescinded as of the date of his resignation and terminations of membership, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts, and an order that the Defendants restore Mr. Krizon to their respective financial positions as of the date of their resignations by refunding all union membership dues collected after the date of the resignation.

**COUNT FIVE: DECLATORY JUDGMENT—RESCISSION BASED ON  
MUTUAL MISTAKE**

107. Mr. Krizon restates the foregoing and incorporate them here as if fully re-written.

108. In the alternative, to the extent that the Union claims that its contract with Mr. Krizon—and specifically the Opt-out Window contained in his contract—remains in force even after his resignation from the Union, Mr. Krizon seeks a declaration that their contracts with the unions were effectively rescinded and an order returning them to the financial situation as of the date of resignation based on the doctrine of mutual mistake of law and fact.

109. Assuming Mr. Krizon entered into a valid contract or assignment of wages for payment of union membership dues at the time Plaintiffs did so, both the Plaintiffs and the respective Defendants understood that the controlling law thereof was that set forth in *Abood v.*

*Detroit Bd. Of Ed.*, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed.2d 261 (1977), which allowed unions to require all employees in the bargaining unit to pay either union membership dues or non-member fair share fees to the union through their employers.

110. Based on the law in existence when Mr. Krizon entered into any contract or assignment, he understood that they would be liable for union membership dues or non-member fair share fees whether or not he joined the Union.

111. After Mr. Krizon entered into any contract or assignment, the law changed by virtue of the holding in *Janus*, which held that “States and public-sector unions may no longer extract agency fees from nonconsenting employees.” *Janus*, 138 S.Ct. at 2486.

112. The status of the law under *Abood* was an important component in the parties’ understanding of the import of joining or not joining the respective unions and the unions’ permitted usage of the funds.

113. The foregoing was a material term or basis for Mr. Krizon’s decision regarding whether or not to join the union.

114. “A mutual mistake of fact or law regarding a material term of a contract is grounds for rescission.” *Quesinberry v. Quesinberry*, 2022-Ohio-635, 185 N.E.3d 1163, ¶ 36 (2d Dist.), *appeal not accepted*, 167 Ohio St.3d 1467, 2022-Ohio-2490, 191 N.E.3d 437.

115. Mr. Krizon is entitled to a declaration that any contract with the unions and/or assignment of wages have been rescinded as of the date of his resignation, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts and ordering that the Defendants restore him to their respective financial positions as of the date of their resignations by refunding all union membership dues collected after the date of the resignation.

**COUNT SIX: THE COURT SHOULD DECLARE THAT THE CONTRACTS  
BETWEEN THE PLAINTIFFS AND THE UNIONS IMPOSE AN  
UNENFORCEABLE PENALTY**

116. Mr. Krizon restates the foregoing allegations and incorporate them here as if fully re-written.

117. In the alternative, to the extent that Mr. Krizon's resignation from the Union and termination of any signed Deduction Cards constitutes a breach of contract, the unions' continued withdrawal of union membership dues constitutes an unreasonable and unenforceable penalty for such breach of contract.

118. Ohio law permits liquidated damages only when they represent a reasonable measure of compensation for the contract's breach. *Boone*, 145 Ohio St.3d 450, 2016-Ohio-628, 50 N.E.3d 502, at ¶ 17-19.

119. Conversely, a penalty is:

“a sum inserted in a contract, not as the measure of compensation for its breach, but rather as a punishment for default, or by way of security for actual damages which may be sustained by reason of nonperformance, and it involves the idea of punishment. A penalty is an agreement to pay a stipulated sum on breach of contract, irrespective of the damage sustained. Its essence is a payment of money stipulated as in terrorem of the offending party, *while the essence of liquidated damages is a genuine covenanted pre-estimate of damages*. The amount is fixed and is not subject to change; however, if the stipulated sum is deemed to be a penalty, it is not enforceable, and the non-defaulting party is left to the recovery of such actual damages as he can prove.”

(Emphasis sic.) *Id.*, quoting *Piper v. Stewart & Inlow*, 5th Dist. Licking No. CA-2530, 1978 WL 217430, \*1 (June 14, 1978).

120. In this case, the continued payment of union membership dues in an amount never

specified in the Deduction Card—presumably subject to increase by unilateral determination by the union—and imposed upon the union members without advance knowledge, is not related to any additional cost or damages sustained by the unions.

121. The Union stopped providing those services to Mr. Krizon that they were not otherwise required by law to provide to members and non-members alike on or about the date of Mr. Krizon's resignation.

122. The Union was therefore immediately relieved of those costs associated with servicing additional union members and thus—assuming that Mr. Krizon's resignation constituted a breach of their contracts with the unions—suffered no damages from those breaches.

123. The additional union membership dues that the unions have received from the Plaintiffs after their respective resignations are thus unenforceable penalties.

124. The continued union membership dues payments are not consequential damages because a contracting party “is not, however, liable in the event of breach for loss that he did not at the time of contracting have reason to foresee as a probable result of such a breach.” *Williams v. Gray Guy Grp., L.L.C.*, 2016-Ohio-8499, 79 N.E.3d 1146, ¶ 33 (10th Dist.). Since the Deduction Card does not specify the amount to be deducted, the employee cannot have foreseen what might be the probable result of a breach at the time of signing the Deduction Card.

125. Mr. Krizon is entitled to a declaration that the unions' continued withdrawal of union membership dues from their paychecks is an unenforceable penalty, a refund of all post-resignation union membership dues collected, and a permanent injunction enjoining any further union membership dues deductions.

**COUNT SEVEN: THE COURT SHOULD DECLARE THE PLAINTIFFS’  
CONTRACTS WITH THE UNION TO BE UNCONSCIONABLE  
CONTRACTS OF ADHESION**

126. Mr. Krizon restates the foregoing allegations and incorporate them by reference here as if fully re-written.

127. Any contract, assignment of wages or Deduction Card signed by Mr. Krizon is substantively unconscionable because not including any amounts and requiring monthly membership dues deduction every month for a full year without possible termination thereof upon leaving the union is “unfair and commercially unreasonable.” *Porpora v. Gatliff Bldg. Co.*, 160 Ohio App.3d 843, 2005-Ohio-2410, 828 N.E.2d 1081, ¶ 8 (9th Dist.).

128. Additionally, any such contract, assignment of wages, or Deduction Card is unconscionable because Mr. Krizon—by virtue of the Ohio Revised Code, the collective bargaining agreements in place, and the mandatory recognition of only one bargaining unit—created “the absence of meaningful choice on the part of [Plaintiffs]” which was “combined with contract terms that are unreasonably favorable to the [unions].” *Sabo v. Hollister Water Assn.*, 4th Dist. Athens No.06CA8, 2007-Ohio-7178, ¶ 34, citing *Collins v. Click Camera & Video, Inc.*, 86 Ohio App.3d 826, 834, 621 N.E.2d 1294 (2d Dist. 1993).

129. Further, “price is an essential element of a contract that must be proven for the contract to be enforceable.” *Ross v. Belden Park Co.*, No. 1996CA00429, 1998 WL 347064, \*3 (5th Dist. June 1, 1998) (internal quotation marks omitted). Any alleged contract between the Mr. Krizon and the Union had no stated amount—or price—to be deducted as union membership dues. Upon information and belief, there is no other document incorporated by reference into the Deduction Card which shows the essential price element.

130. Accordingly, any such contract, assignment of wages, or Deduction Card is invalid,

and unconscionable.

131. Mr. Krizon is entitled to a declaration that any contracts they may have had with the union or any assignment of wages are unenforceable contracts of adhesion, a permanent injunction enjoining any further withdrawal of union membership dues pursuant to the purported contracts and ordering that the Defendants restore Mr. Krizon to the financial situation as it existed at the time of their resignations by refunding all union membership dues collected after the date of his resignation.

132. The Union could have made the contract fair and enforceable, and can do so prospectively through execution of a fair and enforceable Deduction Card, by providing the 'price' element, notifying the party of the option of direct payment to the union rather than automatic dues deductions, allowing that dues deductions can be cancelled at any time, and correcting any other practices which the court determines to be unfair or improper.

**COUNT EIGHT: THE DEFENDANT UNIONS HAVE BEEN  
UNJUSTLY ENRICHED**

133. Mr. Krizon restates the foregoing allegations and incorporate them here as if fully re-written.

134. Any contract, agreement or assignment of wages has been rescinded or otherwise terminated.

135. By continuing to deduct union membership dues from Mr. Krizon's paychecks after he has resigned from union membership, the Union has been unjustly enriched.

136. Specifically, the Union has continued to deduct union membership dues while at the same time not providing services.

137. Mr. Krizon has demanded the refund of their union membership dues after he was no longer union members, but the unions have refused.

138. The Union has thus retained a benefit under circumstances where it is inequitable to do so.

139. Accordingly, Mr. Krizon is entitled to damages in the form of a refund of their union membership dues, plus interest.

WHEREFORE, Plaintiff prays for the following relief:

A. A Declaration that the Defendants continued withdrawal of union membership dues from Plaintiffs' paychecks is unlawful;

B. A Declaration that the Plaintiffs' contracts with their respective unions were rescinded or terminated upon the Plaintiffs' resignations or are otherwise invalid;

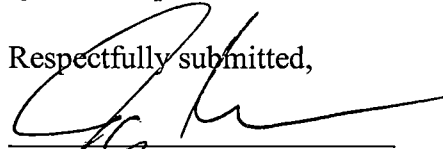
C. A refund of all union membership dues improperly withheld;

D. A permanent injunction barring further deductions;

E. An award of Plaintiffs' costs and attorneys' fees; and

F. Any further relief the Court deems just and equitable.

Respectfully submitted,



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