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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

**DEBORA NEARMAN**, a public employee,

Plaintiff,

v.

**KATY COBA**, in her Official Capacity as  
Director of the Oregon Department of  
Administrative Services; **CURT**  
**MELCHER**, in His Official Capacity as  
Director of the Oregon Department of Fish  
and Wildlife, and **SERVICE EMPLOYEES**  
**INTERNATIONAL UNION, LOCAL 503,**  
**OPEU**, a labor organization,

Defendants.

Case No.:

**COMPLAINT**

**Constitutional Violation Action**  
**(42 U.S.C. § 1983)**

**DEMAND FOR JURY TRIAL**

Plaintiff alleges:

### **INTRODUCTION**

1. Plaintiff Debora Nearman (“Plaintiff”) is employed by the State of Oregon and is exclusively represented by Defendant Service Employees International Union, Local 503, OPEU (“SEIU”). Plaintiff is not a member of SEIU but is being forced to pay compulsory union fees to SEIU as a condition of her employment pursuant to Oregon’s Public Employee Collective Bargaining Act (“PECBA”). ORS 243.650(10); ORS 243.672(c); ORS 292.055(5).

2. Plaintiff submits that the automatic collection of these compulsory fees violates her rights under the First and Fourteenth Amendments to the United States Constitution. She brings this civil rights action pursuant to 42 U.S.C. § 1983 seeking: (a) judgment declaring that Oregon’s practice of forcing her to pay fees to fund union activity of any kind violates the First Amendment; (b) judgment declaring that ORS 243.650(10), ORS 243.672(c) – to the extent it authorizes compulsory nonmember fees - and ORS 292.055(5) violate the First Amendment; (c) injunctive relief that prohibits Defendants from seizing compulsory fees from her in the future; and (d) damages from SEIU for compulsory fees wrongfully seized from her.

### **JURISDICTION AND VENUE**

3. This is an action that arises under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of rights, privileges, and immunities secured to Plaintiff by the Constitution of the United States, particularly the First and Fourteenth Amendments thereto.

4. This Court has jurisdiction over Plaintiff’s claim pursuant to 28 U.S.C. § 1331, because it arises under the United States Constitution. This Court also has jurisdiction over

Plaintiff's claims pursuant to 28 U.S.C. § 1343, because Plaintiff seeks relief under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983.

5. This action is an actual controversy in which Plaintiff seeks a declaration of her rights under the Constitution of the United States. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights of Plaintiff and grant further necessary and proper relief based thereon, including injunctive relief pursuant to Federal Rule of Civil Procedure 65.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the claims arise in this judicial district and division, Plaintiff works and does business in this judicial district and division, and Defendants operate and do business in this judicial district and division. As Plaintiff works in Marion County and the claims arose in Marion County, intradistrict assignment to the Eugene Division is proper. USDC Oregon LR 3-2.

#### **PARTIES**

7. **Plaintiff** resides in Polk County, Oregon. She is a public employee who works as a Systems Analyst for the Oregon Department of Fish and Wildlife ("ODFW") in Salem, Oregon. Plaintiff is a member of a state-wide bargaining unit represented by SEIU but she is not a member of SEIU.

8. Defendant **Katy Coba** ("Defendant Coba") is sued in in her official capacity as Director of the Oregon Department of Administrative Services ("DAS"). Defendant Coba and DAS are responsible for negotiating the collective bargaining agreement ("CBA") on behalf of Plaintiff's public employer with SEIU 503, ORS 243.696(1). Such CBA, Article 10, Section 16, requires Plaintiff's employer to deduct automatically dues-equivalent fees from her wages and pay those fees to SEIU with no restriction on their use by SEIU.

9. Defendant **Curt Melcher** ("Defendant Melcher") is sued in his official capacity

as Director of the ODFW. Defendant Melcher is responsible for the state agency that employs Plaintiff and that deducts automatically union fees from her paycheck.

10. Defendant **Service Employees International Union, Local 503, OPEU** (“SEIU”) is a labor union conducting business and operations throughout the State of Oregon with its headquarters in Salem, Oregon. SEIU is Plaintiff’s exclusive bargaining representative and has negotiated with Defendant Coba a CBA which in Article 10, Section 16, requires Plaintiff’s employer to deduct automatically dues equivalent fees from her wages and pay those fees to SEIU with no restriction on their use by SEIU.

### **FACTUAL ALLEGATIONS**

#### **I. Dues-equivalent fees are deducted automatically from Plaintiff’s wages and paid to SEIU pursuant to contracts negotiated by Defendants.**

11. Oregon allows an exclusive representative (hereinafter referred to as “government union”) and a public employer, represented by DAS, to collectively bargain over “employment relations,” defined to include, but not limited to “matters concerning direct or indirect monetary benefits, hours, vacations, sick leave, grievance procedures, and other conditions of employment.” ORS 243.650(4) and (7)(a); ORS 243.666(1).

12. In addition to the mandatory subjects of collective bargaining, government unions and public employers may negotiate and make agreements regarding “permissive subjects,” which are any matters the parties mutually agree to discuss, as long as they are not prohibited by law. ORS 243.650(4).

13. While negotiating, government unions and public employers may agree to insert a so-called “fair-share agreement” into a CBA, which causes dues-equivalent nonmember fees to be automatically deducted from nonmember public employees’ wages and paid to their government union and its affiliates without any restriction on the unions’ use of those compelled

fees. ORS 243.650(10); ORS 243.672(c); ORS 292.055(5).

14. Pursuant to ORS 243.650(18), a nonmember fee is called a “payment-in-lieu-of-dues,” which is “an assessment to defray the cost for services by the exclusive representative in negotiations and contract administration of all persons in the appropriate bargaining unit who are not members of the organization serving as exclusive representative of the employees.” The fee “must be equivalent to regular union dues [or] must be an amount agreed upon by the public employer and the exclusive representative of the employees.”

15. Pursuant to ORS 292.055(5), upon receipt from DAS of a fair-share agreement, a public employer “shall deduct from the salary or wages of the employees covered by the agreement the in-lieu-of-dues payment stated in the agreement and pay such amount to the labor organization party the agreement [sic] in the same manner as deducted dues are paid to a labor organization.”

16. Under color of state law, SEIU has negotiated and agreed to a CBA with Defendant Coba. That CBA controls the wages, hours, and other terms and conditions of the nonmember public employees within Plaintiff’s bargaining unit. That CBA includes a “fair-share” agreement. CBA, Article 10, Section 16. The current CBA at issue is attached hereto as “Exhibit 1” and incorporated herein.

17. Defendant Coba has deducted, and continues to deduct automatically, nonmember dues-equivalent fees from Plaintiff’s wages and transmits said fees to SEIU pursuant to a “fair-share” agreement in the CBA between DAS and SEIU.

18. Defendant Coba currently deducts automatically approximately \$120 from Plaintiff’s paycheck every month and transmits it to SEIU. On information and belief, Defendant Coba has deducted several thousand dollars of nonmember fees from Plaintiff to date

and transmitted the funds to SEIU. For example, in 2017, Plaintiff was required to pay annual dues of approximately \$1,250.00 to SEIU. Plaintiff has taken affirmative steps to opt out of the SEIU-determined “political and ideological” expenditures and in 2017 she received a refund of approximately \$270.00 for nonchargeable expenses. Plaintiff and other nonmembers may not opt out of paying chargeable expenses, which ostensibly covers the cost of union bargaining and representation.

19. On information and belief, SEIU uses the nonmember fees it collects, including Plaintiff’s chargeable nonmember fees, to fund activities and expenditures that SEIU determines are for “negotiations and contract administration.” ORS 243.650(18).

20. Even nonmembers who object to the payment of the nonmember fees because of bona fide religious beliefs “shall pay an amount of money equivalent to regular union dues and initiation fees and assessments, if any, to a nonreligious charity or to another charitable organization \* \* \* .” ORS 243.666(1).

21. On information and belief, nonmember fees, whether chargeable or nonchargeable, are not necessary to maintain order or labor peace in the workplace, because, among other reasons, public employers have other means to ensure workplace discipline.

22. On information and belief, government unions’ exclusive representation assists them with recruiting and retaining members because, among other things: (a) employees are more likely to join and support a union that has authority over their terms of employment, as opposed to a union that does not; (b) government unions are entitled to information about all employees in the unit; and (c) government unions can negotiate contract terms that facilitate recruiting and retaining members, such as contract terms providing for union orientations of all employs and automatic deduction of union dues from employees’ paychecks.

## II. Nonmember Fee Calculations and Procedures.

23. A government union that collects any fees from a nonmember must annually provide the nonmember with a “*Hudson*” notice that, among other things, explains how the union calculated the objecting nonmember fee. *See Chicago Teachers Union, No. 1 v. Hudson*, 475 U.S. 292 (1986). A nonmembers who timely objects may pay a reduced fee to cover the amount the government union claims is chargeable (“objecting nonmember fee”).

24. A government union calculates the objecting nonmember fee by first defining which types of activities it will deem “chargeable” (meaning that it pertains to negotiations and contract administration and may be charged to nonmembers) and “non-chargeable” (meaning that it pertains to political, ideological and other issues outside negotiations and contract administration and may not be charged to nonmembers). The government union then determines what percentage of its expenses in the prior fiscal year were chargeable and non-chargeable. The objecting nonmember fee is set according to the prior fiscal year’s chargeable percentage.

25. The above calculation must be based on an independent audit of government union expenditures. However, auditors *do not* verify whether the government union has properly classified its expenditures as chargeable or non-chargeable, as “chargeability is a legal question.” *Otto v. Pennsylvania State Education Ass’n*, 330 F.3d 125, 135 n.10 (3d Cir. 2003).

26. On information and belief, SEIU annually sends each nonmember, from whom dues-equivalent fees are collected, a *Hudson* notice, which informs nonmembers of the percentage of union expenses that SEIU determined were chargeable and nonchargeable. On information and belief, SEIU’s *Hudson* notices are typically six pages long and, in the middle, notify nonmembers how they may “object” and receive a refund of their fees attributable to nonchargeable expenses. On information and belief, nonmembers typically have 30 days after

the date of the notice to object. On information and belief, SEIU sends undated *Hudson* notices to make it more difficult for members to object timely and receive a refund of their fees.

Plaintiff received an undated *Hudson* notice from SEIU in 2016, which is attached hereto as “Exhibit 2,” and incorporated herein. (Exhibit 2 is referred to as “SEIU’s Hudson Notice.”)

27. In addition, if a nonmember disagrees with a government union’s classification of certain expenses as chargeable, the nonmember may challenge the classification either through arbitration or in a court of law.

28. On information and belief, SEIU’s Hudson Notice is the basis for the objecting nonmember fees it has received and will receive from objecting nonmembers during 2016-2017.

29. On information and belief, for 2016–2017, SEIU charged objecting nonmembers a fee of 80.49 percent of the total union dues amount charged to its members and nonobjecting nonmembers.

### **III. Plaintiff opposes being forced to pay compulsory fees to SEIU.**

30. Plaintiff objects to one or more of the public policy positions for which SEIU advocates, including some of the positions that SEIU takes in collective bargaining. Plaintiff objects to being required to financially support and associate with an organization that opposes her husband’s candidacy, opposes her religious views, and opposes her political views.

31. Specifically, in the 2016 general election, Plaintiff strongly supported her husband, Mike Nearman, for State Representative in the Oregon Legislature. Her government union, however, spent \$53,260 to oppose his candidacy. Jeff Pullman, an SEIU Organizer, formed and directed a political action committee named “The Real Mike Nearman Committee,” which received \$53,260.00 - 49.17% of its total funding - from SEIU’s PAC, Citizen Action for

Political Education. The Real Mike Nearman Committee aggressively campaigned against Plaintiff's husband and distributed fliers that disparaged him.

32. Also, Plaintiff is a devout Catholic and strongly opposes SEIU's position on abortion and its financial support of pro-choice political candidates and legislation.

33. Additionally, Plaintiff opposed Measure 97 (the 2016 ballot measure supporting a controversial corporate gross receipts tax) but SEIU contributed \$5,353,545.00 to proponents of Measure 97. Plaintiff's objecting nonmember fee was used to support Measure 97 because SEIU did not contribute through its PAC; instead, it used "fair share" dues paid by Plaintiff and other objecting nonmembers to support Measure 97.

34. Further, the Constitution requires that union expenditures for "ideological causes not germane to its duties as a collective-bargaining representative" "be financed from charges, dues, or assessments paid by employees who do not object to advancing such causes and who are not coerced into doing so against their will by the threat of loss of governmental employment." *Aboud v. Detroit Bd. of Ed.*, 431 US 209, 235-236 (1977). SEIU mixes representation of its employees with political issues, such as supporting Oregon Ballot Measure 88 (2014) to issue driver licenses to undocumented immigrants, and opposing a ballot measure that would have allowed nonpartisan primary elections. These positions have no reasonable nexus to wages, benefits, or working conditions.

35. SEIU also lobbies for legislative changes during collective bargaining, violating ORS 192.660(3) which requires labor negotiations to be "conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session." Traditional collective bargaining allows employees to see the agreements negotiated between unions and employers because such agreements are reduced to writing. This provides a level of transparency

and accountability even if employees ultimately take issue with the agreements. There is no requirement that legislative agreements orchestrated between government unions and the government be reduced to writing and this can leave employees in the dark about their unions' legislative deals. This clearly demonstrates the degree to which the collective bargaining that takes place between the SEIU and DAS is an inherently political activity.<sup>1</sup>

36. But for Oregon law requiring nonmember fees and/or fees provisions, no ODFW nonmember could be forced to pay any nonmember fees or otherwise subsidize SEIU as a condition of employment.

37. But for Oregon law requiring the seizure of nonmember fees, Plaintiff would not pay any union fees or otherwise subsidize SEIU at all.

38. On information and belief, SEIU expends dollars collected pursuant to the objecting nonmember fee provisions contained in the CBA for what it considers chargeable activities—for instance, lobbying and bargaining to support or oppose Oregon ballot measures or candidates for the Oregon Legislature. There is no principled distinction between SEIU and various other special interest groups (that also expend money on political and ideological activities to protect their own favored programs and services) sufficient to justify a constitutional violation.

39. Like the petitioners in *Harris v. Quinn*, 134 S Ct 2618 (2014), Plaintiff has “the right not to be forced to contribute [any moneys] to the union, with which they broadly disagree.”

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<sup>1</sup> See *Abood v. Detroit Bd. of Ed.*, 431 US 209, 228 (1977) (“[D]ecisionmaking by a public employer is above all a political process. . . . [Such decisionmaking] will depend upon a blend of political ingredients, including community sentiment about unionism generally and the involved union in particular, the degree of taxpayer resistance, and the views of voters as to the importance of the service involved and the relation between the demands and the quality of service.”).

40. The objecting nonmember fee provisions in the CBA, Article 10, Section 16, and Oregon law, ORS 243.650(10); ORS 243.672(c); ORS 292.055(5), permitting such forced nonmember fee provisions, are nonetheless unconstitutional because they significantly infringe on nonmembers' First Amendment rights, while serving no compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.

41. Objecting nonmember union fees infringe on the First Amendment rights of Plaintiff and other nonmembers, because objecting nonmember fee requirements compel nonmember employees to support speech against their will and to associate with SEIU against their will.

42. Plaintiff submits that *Abood* was wrongly decided and should be overturned by the Supreme Court, and that the seizure of objecting nonmember fees is coerced political speech and association that is unconstitutional under the First Amendment. Among other things, there is no justification, much less a compelling one, for mandating that nonmembers support SEIU, which, upon information and belief, is one of the largest, most powerful, and politically active organizations in Oregon.

43. Even if there were compelling state interests sufficient to justify an infringement of constitutional freedoms, compelling objecting nonmember fees from Plaintiff is not a narrowly tailored manner of securing those interests.

44. Additionally, the inherently political nature of collective bargaining and its consequences in Oregon have further infringed on Plaintiff's First Amendment right to refrain from supporting government unions, including SEIU, in their organizational and collective bargaining activities. Therefore, the First Amendment forbids coercing any money from nonmembers to pay any fees pursuant to nonmember fee provisions.

45. Under the Supremacy Clause contained in Article VI of the United States Constitution, the First Amendment, as applied to the State of Oregon through the Fourteenth Amendment, supersedes any inconsistent state statute or actions taken under color of state law, thus rendering *ultra vires* any public collective bargaining agreement, or a provision thereof, that would violate nonmembers' First Amendment rights.

### **CLAIMS FOR RELIEF**

46. Plaintiff re-alleges and incorporates by reference the paragraphs set forth above.

47. The First Amendment to the United States Constitution guarantees each individual a right to choose whether, how, and with whom she associates to “petition the Government for a redress of grievances” and engage in “speech.” A state grievously infringes on these First Amendment rights when it compels citizens to be represented by and associate with and financially support an expressive organization or its expressive activities. Those infringements are subject to at least exacting constitutional scrutiny, and are permissible only if they serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.

### **COUNT I**

#### **(Compulsory financial support of SEIU 503 violates 42 U.S.C. § 1983 and the First and Fourteenth Amendments.)**

48. Plaintiff re-alleges and incorporates by reference the paragraphs set forth above.

49. By and through ORS 243.650(10), ORS 243.672(c) and ORS 292.055, and Article 10, Section 16 of the 2015-2019 CBA and related provisions, along with similar language in any subsequent CBA, as well as the automatic seizure of agency fees from Plaintiff—and the requirement that nonmembers specifically opt out and request the deductions to cease—Defendants have compelled Plaintiff to financially support SEIU as her mandatory representative

for petitioning and contracting with the State of Oregon. By so doing, Defendants have violated, and continue to violate, Plaintiff's First Amendment rights, as secured by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, not to associate with a mandatory representative and not to support, financially or otherwise, petitioning and speech.

50. No compelling state interest justifies these infringements on Plaintiff's First Amendment rights.

51. As a result, Plaintiff is suffering the irreparable harm and injury inherent in a violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law. Unless enjoined by this Court, Plaintiff will continue to suffer irreparable harm and injury.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiff requests that this Court:

1. **Declaratory judgment:** enter a declaratory judgment that ORS 243.650(10); ORS 243.672(c); ORS 292.055(5); Article 10, Section 16 of the 2015-2019 CBA, and similar provisions in subsequent agreements, to the extent that those statutes and agreements mandate compulsory fees on behalf of all ODWF workers, are unconstitutional under the First Amendment, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, and are null and void;
2. **Permanent injunction:** issue a permanent injunction enjoining Defendants from engaging in any activity this Court declares illegal; and the enforcement of ORS 243.650(10); ORS 243.672(c); ORS 292.055(5), and Article 10, Section 16 of the 2015-2019 CBA, and similar provisions in subsequent agreements, to the extent that those statutes and agreements mandate compulsory fees on behalf of all ODFW employees;
3. **Damages:** enter a judgment awarding Plaintiff compensatory damages or

restitution in an amount equal to the union fees deducted from her ODWF wages since and including February 2016, with statutory interest pursuant to ORS 82.010, and such other amounts as principles of justice and compensation warrant, and hold SEIU liable for said damages or restitution;

4. **Costs and attorneys' fees:** award Plaintiff her costs and reasonable attorneys' fees pursuant to the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. § 1988; and

5. **Other relief:** grant Plaintiff such other and additional relief as the Court may deem just and proper.

Dated: April 25, 2018

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