

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

BRETT HENDRICKSON,

Plaintiff,

v.

NO. 18-CV-1119 RB-LF

AFSCME COUNCIL 18 *et al.*,

Defendants.

**PLAINTIFF'S REFORMATTED CONCISE STATEMENT
OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Brett Hendrickson submits this reformatted Concise Statement of Undisputed Material Facts in support of his Motion for Summary Judgment (Dkt. 33). Defendants Governor Michelle Lujan Grisham and Attorney General Hector Balderas' Amended Response Brief in Opposition to Plaintiff's Motion for Summary Judgment (Dkt. 41) points out that Plaintiff's initial Statement of Facts failed to number them. Therefore, Plaintiff submits this reformatted Statement of Facts, which are numbered and otherwise identical in substance to his prior submission.

STATEMENT OF FACTS

1. Defendant Hector Balderas (“Balderas”) is the Attorney General of New Mexico. Joint Status Report and Provisional Discovery Plan (“JSR”) (Dkt. 27) at 3.
2. Defendant Michelle Lujan Grisham (“Lujan Grisham”) took office as Governor of New Mexico on January 1, 2019. *Id.*
3. Hendrickson is an employee of the New Mexico Human Services Department (“HSD”) and has been since 2001.¹ *Id.*
4. Defendant AFSCME Council 18 is the certified exclusive bargaining representative for Hendrickson’s bargaining unit, pursuant to N.M. Stat. Ann. § 10-7E-15(A). *Id.*
5. The collective bargaining agreement between the Union and HSD, signed in 2004, stated that employees who were not members of the Union, as a condition of continuing employment, were required to pay the Union each pay period a fair share payment in an amount certified by the Union. Defendant AFSCME Council 18’s Answer to First Amended Complaint (“Answer”) (Dkt. 24) ¶ 16.
6. Hendrickson signed a Union membership card on or about March 8, 2007. Answer ¶ 20; Hendrickson Declaration (Dkt. 33-1) ¶ 3.
7. At the time Hendrickson signed the Union membership card, neither the Union nor HSD could have informed him about his constitutional right not to pay fair share, or agency, fees because the Janus ruling was not decided by the Supreme Court until June 27, 2018. Hendrickson Declaration ¶ 4.

¹ Hendrickson switched to another department in state government for a year and returned to HSD, so he has been continuously employed by HSD since 2006. See Hendrickson Declaration (Dkt. 33-1) ¶ 2; First Amended Complaint (“FAC”) (Dkt. 38) ¶ 17.

8. After he signed the Union membership card, dues were deducted from Hendrickson's paycheck and transmitted to the Union. Answer ¶ 5.

9. Hendrickson's monthly dues payment in 2008 was approximately \$26, and the monthly dues increased by nominal amounts annually. Answer ¶ 21.

10. On August 9, 2018, Hendrickson sent an e-mail to the State Personnel Office ("SPO") expressing his desire to withdraw from union membership, asking whether he could do so immediately or whether he had to wait. Hendrickson Declaration ¶ 5.

11. The same day SPO replied that the collective bargaining agreement between HSD and the Union controlled when he could cease union dues deductions from his paycheck. Hendrickson Declaration ¶ 6.

12. Union dues continued to be deducted from Hendrickson's paycheck through December 2018. Answer ¶ 21.

13. On December 6, 2018, the Union sent Hendrickson a letter explaining that the collective bargaining agreement stated his dues authorization is revocable during the first two weeks of December of each year; that the Union had processed his resignation from membership; and that it was notifying his employer to cease his union dues deductions. Answer ¶ 34; Hendrickson Declaration ¶ 7.

14. Hendrickson has not been refunded any union dues paid prior to December 2018. Hendrickson Declaration ¶ 8.

Dated: August 1, 2019

Respectfully Submitted,

/s/ Brian K. Kelsey

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I hereby certify that the foregoing pleading was electronically filed the 1st day of August, 2019, through the Court's CM/ECF filing system, which causes all parties of record to be served.

/s/ Brian K. Kelsey