

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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ERICH MANDEL,	)	Case Number: 18-cv-08385
	)	
Plaintiff,	)	Hon. John Robert Blakey
	)	
v.	)	
	)	
SEIU LOCAL 73, and COMMUNITY	)	
CONSOLIDATED SCHOOL DISTRICT 15,	)	
	)	
Defendants	)	
	)	
	)	

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**JOINT STATEMENT OF STIPULATED FACTS**

**Status Conference to set briefing schedule:**

Date: May 14, 2019  
Time: 9:45 a.m.  
Courtroom: 1203

Pursuant to the Court’s March 19, 2019 Order (Dkt. 28), Plaintiff Erich Mandel, Defendant SEIU Local 73 (“Local 73”), and Defendant Community Consolidated School District No. 15 (“District”) stipulate, solely for the purposes of cross-motions for summary judgment, that the following facts are true. The Parties agree that they will file cross-motions for summary judgment based on the facts set forth in this Joint Statement of Stipulated Facts and will not introduce additional evidence related to the merits of Plaintiff’s claims in support of or opposition to those cross-motions.

Any Party’s stipulation that any of the facts set forth herein is true shall not be deemed an admission that the fact is relevant or supported by admissible evidence. If this action is not fully resolved on summary judgment on the basis of this Joint Statement of Stipulated Facts, each Party reserves all rights in further litigation to present evidence additional or contrary to any of these facts, and to argue that any of these facts are not relevant, not admissible, or not supported by admissible evidence.

	<b>Stipulated Fact</b>
1.	Plaintiff Erich Mandel is a resident of Palatine, Illinois, and has been an employee of Community Consolidated School District No. 15 (“District”) since July 31, 2013.
2.	SEIU Local 73 is a labor organization based in Chicago, Illinois, that represents more than 29,000 workers employed by numerous employers.
3.	Local 73 has approximately 29,000 dues-paying members.

4.	The Board of Education for the Community Consolidated School District 15 is the governing body for the District, an Illinois public school district organized under the Illinois <i>School Code</i> , 105 Ill. Comp. Stat. /1 <i>et seq.</i> , and statutorily charged with governing and serving more than 12,000 students from pre-kindergarten through 8th grade.
5	The District’s principal office is located at 580 N. 1 <sup>st</sup> Bank Drive, Palatine, Illinois with fifteen elementary schools, four junior high schools, and one preschool early childhood center and alternative public day school, all of which are located in Cook County, Illinois.
6.	The District is an educational employer under Section 2(a) of the <i>Illinois Educational Labor Relations Act</i> , 115 Ill. Comp. Stat. 5/2(a).
7.	Local 73 is a labor organization under Section 2(c) of the <i>Illinois Educational Labor Relations Act</i> , 115 Ill. Comp. Stat. 5/2(c).
8.	At all times relevant to the Complaint, Local 73 has been the exclusive bargaining representative of a bargaining unit consisting of certain employees of the District including full-time and regular part-time school year custodial, maintenance, internal services, and transportation mechanic personnel, except for those persons designated as non-working supervisors or in comparable roles.
9.	Plaintiff has been employed by the District as a diesel mechanic in the District’s transportation department since on or about July 31, 2013.

10.	<p>Since the beginning of his employment on or about July 31, 2013 Plaintiff has been employed in a position represented by the Local 73.</p>
11.	<p>On or about August 15, 2014, Plaintiff signed a Local 73 membership card that stated as follows:</p> <p>I hereby request and accept membership in SEIU Local 73, and authorize said Union to represent me and, in my behalf, to negotiate and conclude any and all agreements as to wages, hours, and other conditions of employment. I understand that it is my responsibility to notify the Union if there is any change in my name, address, or employment within 30 days of said change. Failure to do so may result in denial or loss of benefits that I may otherwise be entitled to.</p> <p>Effective the date indicated above, I hereby request and authorize any employer to deduct from my earnings each month the current amount of initiation fees and dues, as established by the Union. This amount shall be paid to the Secretary-Treasurer of Local 73 as prescribed in the collective bargaining agreement between the two parties.</p> <p>A true and correct copy of Plaintiff's 2014 Union membership card is attached as <b>Exhibit A</b> (SEIU0001) (personal information redacted).</p>
12.	<p>When Plaintiff signed the Local 73 membership card on August 15, 2014, he was required to either become a member of Local 73 and pay membership dues, or pay agency fees as a non-member of Local 73. Plaintiff asserts that at the time Plaintiff began his employment with the District 15 and joined Local 73, had he been given the option to pay no money to Local 73 as a non-member, he would not have the joined Local 73; Defendants accept this fact as true solely for the purpose of cross-motions for summary judgment.</p>
13.	<p>On or about August 26, 2016, Plaintiff signed a new Local 73 membership card that stated as follows:</p>

	<p>By signing below, I hereby request and accept membership in SEIU Local 73, and authorize said Union to represent me and, in my behalf, to negotiate and conclude any and all agreements as to wages, hours, and other conditions of employment. I agree to abide by its Constitution and Bylaws and the SEIU Constitution and Bylaws. ...</p> <p>By signing below, I hereby request and authorize any employer to deduct from my earnings each month the current amount of initiation fees and dues, as established by the Union effective the date indicated below. This authorization shall be irrevocable for a period of one (1) year from the date of execution or until the date of termination of the Collective Bargaining Agreement, whichever occurs sooner, and from year to year thereafter, unless not less than thirty (30) days and not more than forty-five (45) days prior to the end of any yearly period I give the Employer and Union signed written notice of my revocation via U.S. Mail.</p> <p>A true and correct copy of Plaintiff's 2016 Union membership card is attached as <b>Exhibit B</b> (SEIU0002) (personal information redacted).</p>
<p>14.</p>	<p>When Plaintiff signed the new Local 73 membership card on August 26, 2016, he was required to either be a member of Local 73 and pay membership dues, or pay agency fees as a non-member of Local 73. Plaintiff asserts that when Plaintiff signed the new Local 73 membership card on August 26, 2016, had he been given the option to pay no money to Local 73 as a non-member, he would not have not signed the new membership card and resigned his union membership; Defendants accept this fact as true solely for the purpose of cross-motions for summary judgment.</p>
<p>15.</p>	<p>At all times relevant to the Complaint, Local 73 and the District have been parties to a collective bargaining agreement.</p>

<p>16.</p>	<p>From December 21, 2016 through June 26, 2018, District employees in the Local 73 bargaining unit had the choice of being union members or fair share fee payers. Joining the union was never a condition of employment.</p>
<p>17.</p>	<p>Article XXII, Section A of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2017 through June 30, 2021 provides as follows:</p> <p>“Each bargaining unit employee shall join the Union on or before thirty (30) days from the date of commencement of duties or the effective date of this Agreement, whichever is later, or pay a fair share fee to the Union for the cost of services rendered by the Union that are chargeable to non-members under state and federal law. The fair share fee shall not exceed the dues uniformly required of members of the Union. When a bargaining unit employee joins the Union, he or she must maintain membership or pay the fair share fee.”</p> <p>A true and correct copy of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2017 through June 30, 2021 is attached hereto as <b>Exhibit C</b>.</p>
<p>18.</p>	<p>Article XXII, Section A of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2012 through June 30, 2017 provided in pertinent part as follows:</p> <p>“Each bargaining unit employee shall join the Union on or before thirty (30) days from the date of commencement of duties or the effective date of this Agreement, whichever is later, or pay a fair share fee to the Union for the cost of services rendered by the Union that are chargeable to non-members under state and federal law. The fair share fee shall not exceed the dues uniformly required of members of the Union. When a bargaining unit employee joins the Union, he or she must maintain membership or pay the fair share fee.</p> <p>“In the event that the bargaining unit employee does not pay his/her fair share fee directly to the Union by a certain date as established by the Union, the Board shall deduct the fair share fee from the wages of the non-member.</p> <p>“Such fee shall be paid to the Union by the Board no later than ten (10) days following deduction.</p>

	<p>“The parties expressly recognize the rights of non-members based upon the bona fide religious tenets or teachings of a church or religious body as provided for in Section XI of the Illinois Education Labor Relations Act.</p> <p>“In the event any legal action against the employer brought in a court or administrative agency because of its compliance with this Article, the Union agrees to defend such action, at its own expense and through its own counsel, provided:</p> <ul style="list-style-type: none"> <li>• The employer gives immediate notice of such action in writing to the Union and permits the Union intervention as a party if it so desires, and</li> <li>• The employer gives full complete cooperation to the Union and its counsel in securing and giving evidence, obtaining witnesses, and making relevant information available at both trial and appellate levels.</li> </ul> <p>“The Union agrees that in any action so defended, it will indemnify and hold harmless the employer from any liability or damages and costs imposed by a final judgment or court or administrative agency as direct consequences of the employer’s non-negligent compliance with this Article. It is expressly understood that this same harmless provision will not apply to any claim, demand, suit, or other form of liability which may arise as a result of any type of willful misconduct by the Board or the Board’s imperfect execution of the obligations imposed upon it by this Article.”</p> <p>A true and correct copy of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2012 through June 30, 2017 is attached hereto as <b>Exhibit D</b>.</p>
<p>19.</p>	<p>Article XXII, Section E of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2017 through June 30, 2021 provides as follows:</p> <p>“In the event any legal action against the employer brought in a court or administrative agency because of its compliance with this Article, the Union agrees to defend such action, at its own expense and through its counsel, provided:</p> <ul style="list-style-type: none"> <li>• The employer gives immediate notice of such action in writing to the Union and permits the Union intervention as a party if it so desires, and</li> </ul> <p>“The employer gives full and complete cooperation to the Union and its counsel in securing and giving evidence, obtaining witnesses, and making relevant information available at both trial and appellate levels.”</p>

20.	<p>Article XXII, Section F of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2017 through June 30, 2021 provides as follows:</p> <p>“The Union agrees that in any action so defended, it will indemnify and hold harmless the employer from any liability or damages and costs imposed by a final judgment or administrative agency as direct consequences of the employer’s non-negligent compliance with this Article. It is expressly understood that this same harmless provision will not apply to any claim, demand, suit, or other form of liability which may arise as a result of any type of willful misconduct by the Board or the Board’s imperfect execution of the obligations imposed upon it by this Article.”</p>
21.	<p>Article II, Section C of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2017 through June 30, 2021 provides as follows:</p> <p>“The Secretary-Treasurer of the union shall certify to the employer the amount of the union dues and initiation fees, which shall be uniform. The union agrees to indemnify the Board for any erroneous collection of dues and to hold the Board harmless for any money turned over to the union.”</p>
22.	<p>Article II, Section C of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2012 through June 30, 2017 provides as follows:</p> <p>“The Secretary-Treasurer of the union shall certify to the employer the amount of the union dues and initiation fees, which shall be uniform. The union agrees to indemnify the Board for any erroneous collection of dues and to hold the Board harmless for any money turned over to the union.”</p>
23.	<p>Article III, Section A of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2017 through June 30, 2021 provides as follows:</p> <p>“Upon receipt of a lawfully executed, written authorization from an employee, the District shall, during the term of this Agreement or until such authority is revoked by the employee in writing, deduct voluntary employee contributions to the S.E.I.U. Committee on Political Education (COPE), managed and operated by the union, in the amounts designated by the employee. Such deduction or deductions shall be made in twenty-four (24) equal installments and shall be remitted by the</p>

	District to the union official designated by the union in writing to receive such funds. Employees who are hired after the first pay period of the fiscal year will have the deduction prorated for the remainder of the year. The S.E.I.U. – Committee on Political Education shall refund the District or the employee any contributions which may be deducted erroneously or any monies which may be remitted erroneously.”
24.	<p>Article III, Section A of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2012 through June 30, 2017 provides as follows:</p> <p>“Upon receipt of a lawfully executed, written authorization from an employee, the District shall, during the term of this Agreement or until such authority is revoked by the employee in writing, deduct voluntary employee contributions to the S.E.I.U. Committee on Political Education (COPE), managed and operated by the union, in the amounts designated by the employee. Such deduction or deductions shall be made in twenty-four (24) equal installments and shall be remitted by the District to the union official designated by the union in writing to receive such funds. Employees who are hired after the first pay period of the fiscal year will have the deduction prorated for the remainder of the year. The S.E.I.U.– Committee on Political Education shall refund to the District or to the employee any contributions which may be deducted erroneously or any monies which may be remitted erroneously.”</p>
25.	<p>Article III, Section B of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2017 through June 30, 2021 provides as follows:</p> <p>“The union agrees to indemnify and hold harmless the District against any and all claims, suits, order, or judgments against the District resulting from any action taken or not taken by the District pursuant to the provisions of Section A of this article.”</p>
26.	<p>Article III, Section B of the collective bargaining agreement between Local 73 and the District in effect from July 1, 2012 through June 30, 2017 provides as follows:</p> <p>“The union agrees to indemnify and hold harmless the District against any and all claims, suits, orders, or judgments against the District resulting from any action taken or not taken by the District pursuant to the provisions of Section A of this article.”</p>
27.	<p>Plaintiff could resign his union membership at any time, but, according to the SEIU Local 73 membership cards that he signed, he would continue to have union</p>

	<p>dues deducted from his paycheck unless he gave Local 73 and the District signed written notice of revocation of his dues deduction authorization via U.S. Mail not less than thirty (30) days and not more than forty-five (45) days prior to the end of any “yearly period.”</p>
28.	<p>At all times relevant to the Complaint, the District deducted union dues from the wages of union members, including Plaintiff, and remitted those dues to Local 73, pursuant to the collective bargaining agreements and 5 Ill. Comp. Stat. 315/6(f).</p>
29.	<p>In anticipation of the Supreme Court’s <i>Janus</i> decision, beginning in April of 2018, and continuing through all times relevant to the Complaint, the District worked with SEIU Local 73 to ensure the District had a current and accurate list of fair share employees and a list of union members with valid dues deduction authorization forms.</p>
30.	<p>Prior to June 27, 2018, Defendants collected fair share fees from nonmembers pursuant to Article XXII, Section A of the collective bargaining agreement, 5 Ill. Comp. Stat. 315/6(e), and <i>Abood v. Detroit Bd. of Educ.</i>, 431 U.S. 209 (1977). Defendants stopped enforcing the fair-share requirement of the collective bargaining agreement and collecting fair share fees immediately after the Supreme Court issued <i>Janus v. AFSCME Council 31</i>, 138 S. Ct. 2448 (2018) on June 27, 2018.</p>
31.	<p>On or about June 28, 2018, SEIU Local 73 sent an e-mail to the District enclosing a list of union members with current dues deduction authorization forms. Plaintiff was one of the union members named on Local 73’s list. In that email, Local 73</p>

	<p>instructed the District to continue deducting union dues for Plaintiff and all other employees included on the attached list.</p>
32.	<p>On or about August 21, 2018, Plaintiff sent a letter to the District stating:</p> <p>“Please remove me from the SEIU local 73 union and discontinue taking deductions on my behalf from my pay as of the next payroll period.”</p> <p>A true and correct copy of Plaintiff’s August 21, 2018 letter to the District is attached as <b>Exhibit E</b>.</p>
33.	<p>On or about August 24, 2018 and August 28, 2018, Plaintiff contacted Local 73 by telephone and stated that he wanted to drop his union membership. A true and correct copy of screenshots from the Union’s membership contact database is attached as <b>Exhibit F</b> (SEIU0003-0006).</p>
34.	<p>Plaintiff asserts that he sent an email to “info@seiu.org” on August 27, 2018 requesting to “please discontinue his membership as of today and please discontinue receiving any dues on my behalf,” a copy of which is attached as <b>Exhibit G</b> [Dkt. 1-2]; Local 73 accepts this assertion as true solely for the purpose of cross-motions for summary judgment. “Info@seiu.org” is not a Local 73 email address, and Local 73 asserts that it did not receive this email.”</p>
35.	<p>On or about September 5, 2018, Local 73 sent Plaintiff a letter in response to his communications to the Union on August 24 and August 28, 2018. Local 73 shared a copy of this letter with the District.</p> <p>A true and correct copy of Local 73’s September 5, 2018 letter to Plaintiff is attached as <b>Exhibit H</b> (SEIU0007-0008).</p>

<p>36.</p>	<p>On or about September 17, 2018, Plaintiff sent a second letter to the District, again requesting that the District stop deducting his dues. A true and correct copy of the letter is attached as <b>Exhibit I</b> (Dkt. 1-4).</p>
<p>37.</p>	<p>On or about October 22, 2018, SEIU Local 73 received a copy of a letter from the District addressed to Jim Hilbert, “Service Employees International Union (SEIU)”, which stated in relevant part:</p> <p>“In order to be certain that CCSD 15’s current dues deduction procedures are accurate and lawful for all employees, please provide our Payroll Department with copies of current valid dues deduction authorization forms for <u>all</u> of your members. Please collect and hand deliver or send via certified mail, not later than Monday, November 18, 2018, to [name and address omitted]...” (emphasis in original).</p> <p>A true and correct copy of the letter is attached as <b>Exhibit J</b>.</p>
<p>38.</p>	<p>On or about October 23, 2018, Local 73 sent an email to the District enclosing current copies of dues deduction forms, including Plaintiff’s form. Local 73 instructed the District to continue deducting union dues for all members, including Plaintiff. A true and correct copy of the email is attached as <b>Exhibit K</b>.</p>
<p>39.</p>	<p>On or about October 24, 2018, the District sent an email to Plaintiff stating in relevant part:</p> <p>“We have been reviewing our files and working with the union to ensure all employee profiles are accurately represented for Union Dues Deductions. We have a letter on file stating you wish to withdraw your membership from the Union; however, we have not received direction from SEIU to remove your bimonthly dues deduction. In order to no longer participate in the Union, you will need to contact your SEIU representative to be removed.”</p> <p>A true and correct copy of the email is attached as <b>Exhibit L</b>.</p>

40.	On or about January 8, 2019, Local 73 employee Eva Gasienica requested that the District immediately terminate dues deductions from Plaintiff's pay. District employee Danielle Cockrum responded on January 8, 2019 that dues deductions had been "removed ... from Erich's profile."
41.	On or about January 8, 2019, Local 73 sent a letter to Plaintiff enclosing a refund of \$222.46. This amount is equal to all dues received from Plaintiff's pay from August 24, 2018 through January 8, 2019, with 7 percent interest thereon.
42.	Since January 8, 2019, no union dues have been deducted from Plaintiff's pay or transmitted to Local 73.
43.	The parties agree that the limitations period covered by this case is December 21, 2016 through the present.
44.	During the applicable limitations period, the amount deducted from Plaintiff's pay for union dues was \$46.20 per month.
45.	At the time Plaintiff signed his 2016 Union membership card ( <b>Exh. B</b> ), and at all times thereafter until June 27, 2018, the fair share fee that was germane to collective bargaining and chargeable to fair share fee payers who objected to paying the non-chargeable amount varied from year to year but was less than full union dues.
46.	As set forth in the Parties' respective MIDP disclosures, the Parties agree that the maximum amount of damages recoverable in this case is \$924.00.

47.	<p>On or about March 19, 2019, the Union (through its counsel) mailed Plaintiff (through his counsel) a check for \$988.68, which is \$924.00 plus 7 percent interest thereon. A true and correct copy of the Union’s March 19, 2019 letter is attached as <b>Exhibit M</b>.</p>
48.	<p>By signing a card like the 2014 and 2016 Union membership cards that Plaintiff signed (<b>Exhs. A &amp; B</b>), workers become Union members and obtain membership rights. Those rights include the right to vote on whether to ratify a collective bargaining agreement, the opportunity to serve on bargaining committees and participate in the union’s internal affairs, the right to vote in union elections, and the right to be nominated for or elected to union office.</p>
49.	<p>Plaintiff asserts that he has never voted on whether to ratify a collective bargaining agreement, served on a bargaining committee or participated in the union’s internal affairs, voted in union elections, or been nominated for or elected to union office; Defendants accept this fact as true solely for the purpose of cross-motions for summary judgment.</p>
50.	<p>Members of Local 73 also have access to members-only benefits that are offered to all SEIU members, including access to free or low-cost higher education programs; discounts on life, home, and auto insurance; home mortgage assistance; discounts on many goods and services including cellular telephone and tax preparation services; and personal loans.</p>
51.	<p>Plaintiff asserts that he has never accessed Local 73’s free or low-cost higher education programs; discounts on life, home, and auto insurance, home mortgage</p>

	<p>assistance; discounts on goods and services including cellular telephone and tax preparation services; or personal loans; Defendants accept this fact as true solely for the purpose of cross-motions for summary judgment.</p>
52.	<p>Local 73 processed Plaintiff's resignation of union membership on or about January 8, 2019. Therefore, Plaintiff no longer has membership rights or access to members-only benefits.</p>
53.	<p>In his MIDP disclosures, Plaintiff admits that his prayer for relief "now includes only the following":</p> <p>"[D]eclaratory relief that the union dues taken before and after June 27, 2018 were unconstitutional because Mr. Mandel did not provide affirmative consent; declaratory relief that the union dues authorization did not constitute affirmative consent; damages in the amount of union dues withheld after June 27, 2018 that were not otherwise returned; damages in the amount of union dues withheld before June 27, 2018 limited to the statute of limitations; attorneys' fees and costs."</p>
54.	<p>Plaintiff is no longer seeking declaratory relief that "limiting the ability of Mr. Mandel to revoke the authorization to withhold dues ... to a window of time is unconstitutional because he did not provide affirmative consent" (Complaint (Dkt. 1) at p. 7, ¶a), and he is no longer seeking any injunctive relief (Complaint (Dkt. 1) at p. 8, ¶¶d-e).</p>
55.	<p>Apart from the facts set forth in this Stipulation, the Parties do not contend that additional facts exist now that make Plaintiff's 2016 Union membership card and dues deduction authorization enforceable or not enforceable.</p>

ALL SIGNATURES ON FOLLOWING PAGE

Dated: April 16, 2019

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Liberty Justice Center  
  
*Attorneys for Plaintiff*

Dated: April 16, 2019

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