

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

ERICH MANDEL,)	
)	
Plaintiff,)	No. 1:18-cv-08385
)	Honorable Martha M. Pacold
v.)	
)	
SEIU LOCAL 73 and COMMUNITY CONSOLIDATED SCHOOL DISTRICT 15,)	
)	
Defendants)	

**PLAINTIFF’S RESPONSE TO DEFENDANT SEIU LOCAL 73’S
FOURTH NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant SEUI Local 73 filed a Fourth Notice of Supplemental Authority in Support of its motion for summary judgment (Dkt. 057) on November 11, 2019, citing the Seventh Circuit’s decisions in *Janus v. AFSCME District Council 31*, Case No. 19-1553, __ F.3d __, 2019 WL 5704367 (Nov. 5, 2019) and *Mooney v. Illinois Educ. Ass’n*, Case No. 19-1774, __ F.3d __, 2019 WL 5704368 (Nov. 5, 2019).

Plaintiff files this response to point out authority from the Seventh Circuit’s *Janus* opinion relevant to the parties outstanding cross-motions for summary judgment, but not referenced in Local 73’s Notice. The Seventh Circuit found in *Janus* that AFSCME District Council 31 had acted under color of state law:

Here, AFSCME was a joint participant with the state in the agency-fee arrangement. CMS deducted fair-share fees from the employees’ paychecks and transferred that money to the union, which then spent it on authorized labor-management activities pursuant to the collective bargaining agreement. This is

sufficient for the union's conduct to amount to state action. We therefore conclude that AFSCME is a proper defendant under section 1983.

Janus v. AFSCME District Council 31, Case No. 19-1553, ___ F.3d ___, 2019 WL 5704367 (Nov. 5, 2019) at *15.

In this case, both Defendants assert that there was no state action involved that caused Plaintiff's constitutional harm. (Local 73's Memo in Support of its Motion for Summary Judgment, Dkt. 038 at 18-20; District's Memo in Support of its Motion for Summary Judgment, Dkt. 42 at 6-9). But as in the *Janus* case, here Local 73 was a joint participant with the District in the arrangement to withhold dues from Mr. Mandel. The District deducted the dues from Mr. Mandel's paycheck and transferred those funds to Local 73. As the Seventh Circuit said, this is sufficient for the union's conduct to amount to state action. Thus, the Seventh Circuit's decision in *Janus* directly contradicts Defendants' contentions that there was no state action in this case.

Dated: November 12, 2019.

Respectfully Submitted,

By: /s/ Jeffrey Schwab

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CERTIFICATE OF SERVICE

I, Jeffrey M. Schwab, an attorney, hereby certify that on November 12, 2019, I served Plaintiff's Response to Defendant SEIU Local 73's Fourth Notice of Supplemental Authority on Defendants' counsel by filing it through the Court's electronic case filing system.

/s/ Jeffrey M. Schwab