

LAW OFFICES
DILLON & FINDLEY
A PROFESSIONAL CORPORATION
1049 W. 5th Avenue, Suite 100
Anchorage, Alaska 99501
TEL. (907) 277-5400 - FAX (907) 277-9896

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE
3

4 STATE OF ALASKA,
5 Plaintiff/Counterclaim Defendant,

6 vs.

7 ALASKA STATE EMPLOYEES
8 ASSOCIATION/AMERICAN
9 FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES
LOCAL 52, AFL-CIO,

10 Defendant/Counterclaimant.

11 ALASKA STATE EMPLOYEES
12 ASSOCIATION/AMERICAN
13 FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES
14 LOCAL 52, AFL-CIO,

15 Third-Party Plaintiff,

16 vs.

17 MICHAEL J. DUNLEAVY, in his
18 official capacity as Governor of Alaska;
19 KEVIN G. CLARKSON, in his official
20 capacity as Attorney General of Alaska;
21 KELLY TSHIBAKA, in her official
22 capacity as Commissioner of the Alaska
Department of Administration; and
STATE OF ALASKA, DEPARTMENT
OF ADMINISTRATION,

23 Third-Party Defendants.

COPY
Original Received

SEP 25 2019

Clerk of the Trial Courts

Case No. 3AN-19-09971 CI

PRELIMINARY INJUNCTION ORDER

1 On September 25, 2019, defendant/counterclaimant and third-party plaintiff
2 Alaska State Employees Association / AFSCME Local 52, AFL-CIO (“ASEA”) filed a
3 Motion for a Temporary Restraining Order and Preliminary Injunction (“Motion”). The
4 Motion seeks a preliminary injunction maintaining the status quo by enjoining the State
5 of Alaska and the third-party defendants from implementing Alaska Attorney General
6 Kevin G. Clarkson’s August 27, 2019 opinion letter regarding the deduction of union
7 dues (the “AG Opinion”) or making any changes to the State employee union dues
8 deduction practices that were in place before the AG Opinion was issued, pending the
9 resolution of this case.
10

11 After considering the submissions of the parties in connection with the Motion, the
12 Court finds that there is good cause to grant a preliminary injunction, because (1) ASEA
13 is likely to succeed on the merits of its claims that implementation of the AG Opinion
14 would be illegal and exceed the Sate’s and third-party defendants’ authority; (2) the
15 balance of hardships justifies preliminary injunctive relief to prevent irreparable harm to
16 ASEA, while the State and third-party defendants will suffer no similar harm from a
17 preliminary injunction; and (3) a preliminary injunction is also separately appropriate to
18 maintain the status quo pending arbitration of ASEA’s grievance challenging the
19 implementation of the AG Opinion.
20

21 ASEA is entitled to preliminary injunctive relief pending the resolution of this
22 case because ASEA has shown that it is likely to succeed on the merits of its claims. The
23

1 implementation of the AG Opinion would exceed the State’s and third-party defendants’
2 authority in violation of the separation of powers enshrined in Alaska’s Constitution
3 because such implementation would: a) abrogate State employers’ statutory obligation
4 under the Public Employment Relations Act (“PERA”) to make dues deductions that
5 have been authorized by union members; b) abrogate State employers’ statutory
6 obligation under PERA to comply with the terms of the State’s collective bargaining
7 agreements; c) abrogate State employers’ statutory duty under PERA to bargain about
8 dues deduction procedures; and d) abrogate the State’s statutory duty under PERA not to
9 interfere with unions’ relationship with their members.
10

11
12 The implementation of the AG Opinion would also violate the State Contract
13 Clause, because it would substantially impair the State’s contractual relations with ASEA
14 and ASEA’s contractual relations with ASEA’s members, by directing that the dues
15 deduction provisions in those contracts be abrogated, without justification.
16

17 Even if the implementation of the AG Opinion would not violate state statute
18 (which it would) or the Contract Clause (which it would), implementing the AG Opinion
19 would violate the Administrative Procedure Act (“APA”), because the new dues
20 deduction procedures entailed by the AG Opinion are state regulations subject to the
21 procedural requirements of the APA. The State and third-party defendants have not
22 complied with those requirements.
23
24

1 The State and third-party defendants contend that the implementation of the
2 AG Opinion is necessary to comply with the Supreme Court’s decision in *Janus v.*
3 *AFSCME, Council 31*, 138 S.Ct. 2448 (2018). They are wrong. *Janus* does not require
4 these violations of state law. *Janus* addressed compulsory fees for *nonmembers*, not
5 membership dues that individual union members have affirmatively authorized. The
6 Court agrees with the unanimous weight of authority on this issue.¹

7
8 For all these reasons, ASEA has shown a probability of succeeding on its claims
9 that implementation of the AG Opinion would be unlawful. A preliminary injunction
10 should be, and is, granted on that ground alone.
11

12
13
14 ¹ See *Anderson v. SEIU Local 503*, ___ F.Supp.3d ___, 2019 WL 4246688, at *3 (D.
15 Or. Sept. 4, 2019); *Seager v. United Teachers Los Angeles*, 2019 WL 3822001, at *2
16 (C.D. Cal. Aug. 14, 2019); *Smith v. Superior Court, Cty. of Contra Costa*, 2018 WL
17 6072806, at *1 (N.D. Cal. Nov. 16, 2018) (“*Smith I*”), *subsequent order*, *Smith v. Bieker*,
18 2019 WL 2476679, at *2 (N.D. Cal. June 13, 2019) (“*Smith II*”); *Cooley v. Cal. Statewide*
19 *Law Enforcement Ass’n*, 2019 WL 331170, at *3 (E.D. Cal. Jan. 25, 2019) (“*Cooley I*”),
20 *subsequent order*, 385 F.Supp.3d 1077, 1079 (E.D. Cal. 2019) (“*Cooley II*”);
21 *O’Callaghan v. Regents of Univ. of Cal.*, 2019 WL 2635585, at *3 (C.D. Cal. June 10,
22 2019); *Babb v. Cal. Teachers Ass’n*, 378 F.Supp.3d 857, 877 (C.D. Cal. 2019); *Belgau v.*
23 *Inslee*, 2018 WL 4931602, at *5 (W.D. Wash. Oct. 11, 2018) (“*Belgau I*”), *subsequent*
24 *order*, 359 F.Supp.3d 1000, 1016 (W.D. Wash. 2019) (“*Belgau II*”); *Bermudez v. SEIU*
25 *Local 521*, 2019 WL 1615414, at *2 (N.D. Cal. Apr. 16, 2019); *Crockett v. NEA-Alaska*,
367 F.Supp.3d 996, 1008 (D. Alaska 2019); *Montana Fed’n of Public Emps. v. Vigness*,
No. DV 19-0217, Order Granting PI (Mont. D. Ct. Apr. 11, 2019); *In re Woodland*
26 *Township Bd. of Educ., and Chatsworth Educ. Ass’n*, No. CO-2019-047, 45 NJPER ¶ 24,
2018 WL 4501733 (N.J. Pub. Emp’t Relations Comm’n Aug. 31, 2018); *AFSCME, Local*
3277 v. Rio Rancho, PELRB No. 113-18, TRO and PI (N.M. Pub. Emps. Lab. Relations
Bd. Aug. 21, 2018).

1 The Court also finds that preliminary injunctive relief should independently be
2 granted under the “balance of the hardships” test, because implementation of the
3 AG Opinion would cause ASEA serious irreparable harm, as other state courts and labor
4 relations agencies have recognized in indistinguishable circumstances.² The State and
5 third-party defendants will suffer no similar harms from an injunction. An injunction will
6 merely maintain the same status quo that has been in effect for more than a year since
7 *Janus* was issued in June 2018. An injunction could also save the State money, because
8 the remedy for unlawfully withholding dues is generally recognized to be the repayment
9 of those withheld dues by the employer to the union, plus interest, without the employer
10 being permitted to seek reimbursement from the employees whose dues should have been
11 deducted.

12
13
14
15 Moreover, preliminary injunctive relief is also separately appropriate under the
16 established principle that courts should issue interim relief when necessary to effectuate
17 the collective bargaining grievance arbitration process. ASEA has filed a grievance
18 challenging the implementation of the AG Opinion, and preliminary injunctive relief
19 maintaining the status quo while the grievance is arbitrated is appropriate to fulfill
20

21
22
23 ² See *Montana Fed’n of Public Emps. v. Vigness*, No. DV 19-0217, Order Granting
24 PI (Mont. D. Ct. Apr. 11, 2019); *In re Woodland Township Bd. of Educ., and Chatsworth*
25 *Educ. Ass’n*, No. CO-2019-047, 45 NJPER ¶ 24, 2018 WL 4501733 (N.J. Pub. Emp’t
Relations Comm’n Aug. 31, 2018); *AFSCME, Local 3277 v. Rio Rancho*, PELRB No.
113-18, TRO and PI (N.M. Pub. Emps. Lab. Relations Bd. Aug. 21, 2018).

1 PERA's statutory policy supporting arbitration of labor grievances.³ Labor arbitrators
2 have sustained similar grievances against public employers that sought to rely on an
3 erroneous interpretation of *Janus* to justify changes to the processing of dues authorized
4 by union members.⁴
5

6 For all these reasons, the Court GRANTS ASEA's motion for a preliminary
7 injunction. Accordingly, IT IS HEREBY ORDERED that the State of Alaska and third-
8 party defendants Governor Michael J. Dunleavy, Attorney General Kevin G. Clarkson,
9 Department of Administration Commissioner Kelly Tshibaka, and the State of Alaska,
10 Department of Administration and their officers, employees, servants, agents and all
11 others acting on their behalf or in active concert or participation with them, are enjoined
12 from taking any actions to implement the AG Opinion and from making any changes to
13 the State employee dues deduction practices that were in place before the AG Opinion
14 was issued. This order shall remain in effect until final judgment is entered in this
15 lawsuit.
16
17
18
19
20

21 _____
22 ³ See AS 23.40.210(a).

23 ⁴ See *In re Ripley Union Lewis Huntington Sch. Dist. Bd. of Educ. and*
24 *OAPSE/AFSCME Local 4, AFL-CIO Local 642, Cessation of Union Dues Collection*
25 *Grievance, AAA File No. 01-180004-6755 (Arb. W.C. Heekin, June 18, 2019); City of*
Madison (WI) and IBT, Local 695, 48 LAIS 35, 2019 WL 3451442 (Arb. P.G. Davis,
Feb. 13, 2019).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

The Court deems that no security is necessary or appropriate because the State and third-party defendants do not stand to suffer any costs or damages from this preliminary injunction order.

IT IS SO ORDERED.

DATED: _____

THE HONORABLE GREGORY A. MILLER
Superior Court Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 25, 2019, a true and correct copy of the foregoing document was served by:

- hand delivery
- first class mail
- email

on the following attorneys of record:

Tregarrick R. Taylor - *hand delivered*
Deputy Attorney General
State of Alaska
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
Email: treg.taylor@alaska.gov

William S. Consovoy - *mail & email*
J. Michael Connolly
Consovoy McCarthy, PLLC
1600 Wilson Blvd., Suite 700
Arlington, VA 22209
Email: will@consovoymccarthy.com
mike@consovoymccarthy.com

Lisa Kusmider

Lisa Kusmider