SELECTED SIGNIFICANT RECENT LABOR DECISIONS

(November 3, 2005)

D.C. Circuit Upholds Secretary of Labor's Authority to Tighten Union Financial Reporting Requirements: *AFL-CIO v. Chao*, 409 F.3d 377 (D.C. Cir. 2005).

In October 2003, the Secretary of Labor issued an administrative rule that requires more detailed and more informative data in the financial reports that large private-sector unions must file annually with the Department of Labor under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 433(b), 438. This rule requires a covered union to itemize its receipts and disbursements in functional categories in the report (LM-2) it must file about its own finances. The rule also requires the union to file a financial report (T-1) concerning any "significant trust" in which it is "interested." The AFL-CIO sued, alleging that the Secretary lacks authority to impose these new requirements. The AFL-CIO also alleged that the new rule is arbitrary and capricious, because compliance is unduly burdensome, and that the Secretary did not give unions sufficient time to make the accounting changes necessary to comply.

On December 31, 2003, the U.S. District Court for the District of Columbia postponed the rule's effective date for one year. 297 F. Supp. 2d 155. On January 22, 2004, the court held that the Secretary had the statutory authority to issue the rule, 298 F. Supp. 2d 104, 111-16, and concluded that the rule is reasonable and not arbitrary, *id*. at 124-26. The court also ordered that the rule could take effect on July 1, 2004, for unions that use a fiscal year beginning on or after that date. *Id*. at 128. The AFL-CIO appealed to the U.S. Court of Appeals for the D.C. Circuit. On July 13, 2004, the District Court denied the AFL-CIO's request that the effective date be further delayed. 2004 WL 1557786, 175 L.R.R.M. (BNA) 2202.

On May 31, 2005, a three-judge panel of the Court of Appeals unanimously upheld the portion of the rule that requires itemization of receipts and disbursements in functional categories in the LM-2 reports in which unions must disclose their own finances. 409 F.3d at 380-86. However, the panel majority (Circuit Judges Edwards and Rogers) ruled that the section of the rule that required financial reports concerning any "significant trust" in which such unions are "interested" was not a reasonable application of the Secretary's authority under the LMRDA. *Id*. at 386-91. Then Circuit Judge Roberts dissented from the latter ruling. *Id*. at 391-95. On July 15, 2005, the Secretary petitioned for rehearing, and rehearing en banc, of the latter ruling. The Court denied that petition on September 28.

Fourth Circuit Rules Nonmembers Cannot Be Forced to Wear Union Label: *Lee v. NLRB*, 393 F.3d 491 (4th Cir. 2005).

In 1996, a National Right to Work Legal Defense Foundation Staff Attorney filed unfair labor practice charges with the National Labor Relations Board (NLRB) against BellSouth Communications and the Communications Workers union (CWA) for two nonunion technicians employed by BellSouth in Charlotte, NC. The charges alleged that, by forcing nonmembers to wear a union logo on their uniforms as a condition of employment, BellSouth and CWA violated the nonmembers' right to refrain from union activity guaranteed by section 7 of the National Labor Relations Act (NLRA), 29 U.S.C. § 157. The NLRB's General Counsel agreed and issued

a complaint against BellSouth and CWA. However, the NLRB upheld the logo requirement. 335 N.L.R.B. 1066 (2001).

The workers' attorney then petitioned for review in the U.S. Court of Appeals for the Fourth Circuit, raising statutory and First Amendment claims. The court heard oral argument in February 2002. The courts had never before decided whether forcing nonmembers to act as a bulletin board for union propaganda violates the NLRA or the First Amendment guarantee of free speech. On January 4, 2005, the court reversed the Board and held that the logo requirement violates the NLRA, because there is "no evidence" that display of the union insignia enhances the company's public image. 393 F.3d at 496. Indeed, the court said, "rather than view the union logo as representing a labor-management partnership which makes labor disputes less likely and a reflection of a stable work environment, the public may view the union logo with suspicion and associate it with service disruptions and labor disputes, particularly in a right-to-work State such as North Carolina." *Id*. (citation omitted). The court did not reach the constitutional issue. The time for requesting Supreme Court review has expired, so this decision is final.

Ninth Circuit Holds That NLRA Preempts State Statute Barring Employers' Use of State Funds to Oppose Union Organizing: *Chamber of Commerce of the U.S. v. Lockyer*, 422 F.3d 973 (9th Cir. 2005).

California enacted a statute that prohibits employers who receive state funds from "us[ing] any of those funds to assist, promote, or deter union organizing." Cal. Gov't Code § 16645.7(a). Employer associations sued alleging that the statute is preempted by the NLRA and, therefore, unconstitutional under the Supremacy Clause. In 2002, the U.S. District Court for the Central District of California granted the associations summary judgment, except as to provisions of the statute that deal with state contractors and public employers. 225 F. Supp. 2d 1199. The state and intervening unions appealed. In 2004, the U.S. Court of Appeals for the Ninth Circuit held that the statute is preempted under *Machinists v. Wisconsin Employment Relations Commission*, 427 U.S. 132 (1976), because, by directly regulating the organizing process and imposing substantial compliance costs and litigation risks on employers who advocate or oppose union organizing, the statute interferes with an area of labor relations that Congress intended to leave free from state regulation. 364 F.3d 1154, 1164-72.

On May 13, 2005, the Ninth Circuit granted panel rehearing and withdrew its original opinion. 408 F.3d 590. On rehearing, the court ruled 2 to 1, on September 6, that the California statute is completely preempted as to any NLRA-covered employer under not only *Machinists*, but also under *San Diego Building Trades Council v. Garmon*, 359 U.S. 236 (1959). 422 F.3d at 994. *Garmon* bars state regulation of conduct that the NLRA actually or arguably prohibits or protects, because such regulation would interfere with the NLRB's administration of the NLRA. *See id*. at 985-86.

The court majority held "that Section 8(c) of the [NLRA], codified at 29 U.S.C. § 158(c), explicitly protects the right of employers to express their views about unions and union organizing efforts." 422 F.3d at 982. Therefore, the California statute "is completely preempted under the *Garmon* doctrine," because the "statute stifles employers' speech rights which are granted by federal law, and in doing so, impedes the ability of the [NLRB] to uphold its election

speech rules and administer free and fair elections." *Id*. at 985.[1] The court reiterated that *Machinists* preemption applies, because, although "cast nominally as an effort to ensure state neutrality, the California statute, by discouraging employers from exercising their protected speech rights, operates to significantly empower labor unions as against employers" and "runs roughshod over the delicate balance between labor unions and employers" Congress mandated in the NLRA. *Id*. at 988.

Appeal Establishes that All Class Members Are Entitled to Nominal Damages for Inadequate Compulsory Fee Notices: *Cummings v. California State Employees Ass'n*, 402 F.3d 936 (9th Cir. 2005).

National Right to Work Legal Defense Foundation Staff Attorneys filed this civil rights action to enforce the right of nonmember public employees to receive an independent audit of the proportion of dues charged to them for collective bargaining and contract administration. *See Teachers Loca1 1 v. Hudson*, 475 U.S. 292, 306-07 & n. 18 (1986). The U.S. District Court for the Eastern District of California certified the case as a class action. 163 L.R.R.M. (BNA) 2086, 1999 WL 1256772 (1999). Granting summary judgment against the union, the District Court ordered that it return more than $2.5 million in fees to some 37,000 nonmember California state employees, because it did not give a notice that included the required audit until thirteen months after the fee seizures began and eight months after suit was filed. 177 F. Supp. 2d 1079 (E.D. Cal. 2001).

On appeal, the Ninth Circuit agreed that the union's original notice did not satisfy *Hudson*, because that notice merely represented that the figures had been audited but included no auditor's verification. 316 F.3d 886, 890-92 (2003). The court also affirmed certification of a class of all nonmembers, rejecting an argument that plaintiffs were inadequate class representatives because some unidentified nonmembers opposed plaintiffs' pursuit of full restitution, an important new precedent. *Id*. at 895-96. However, the Ninth Circuit held that the District Court erred in ordering the union to refund even the constitutionally nonchargeable portion of the fees to nonmembers who did not object in response to any of the union's notices, because the union made what the District Court called "good faith efforts" to correct the notice and that court itself may have caused the union's delay in issuing an adequate notice. *Id.* at 893-95. The U.S. Supreme Court denied a petition for certiorari. 539 U.S. 927 (2003).

On remand, the District Court ruled that only the seven named plaintiffs, not all class members, are entitled to nominal damages of $1 each for the violation of their *Hudson* rights. 281 F. Supp. 2d 1187 (E.D. Cal. 2003). This ruling was appealed to the Ninth Circuit, which reversed it on March 29, 2005. The court held "that when nominal damages are awarded in a civil rights class action, every member of the class whose constitutional rights were violated is entitled to nominal damages." 402 F.3d at 940. The case was remanded with instructions to award nominal damages to the entire class. *Id*. at 948.

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[1] The court emphasized that it "'is highly desirable that the employees involved in a union campaign should hear all sides of the question in order that they may exercise the informed and reasoned choice that is their right.'" 422 F.3d at 984 (quoting *NLRB v. Lenkurt Elec. Co.*, 438 F.2d 1102, 1108 (9th Cir. 1971)).

Suit Challenging Airline Mechanic's Discharge Appealed Again: *Mackay v. Aircraft Mechanics Fraternal Ass'n Local 14*, 85 Fed. Appx. 605, 2004 WL 61237 (9th Cir. 2004).

Bernard Mackay was a nonunion skilled mechanic for Alaska Airlines at the Seattle, Washington, airport. The Aircraft Mechanics Fraternal Association (AMFA) and Alaska entered into a contract requiring all mechanics to join the union. Mackay never took any affirmative step to acquire membership nor participated in any activities he thought were only for members. He was never given any notice that he had been inducted into membership. AMFA nonetheless considered him a "voluntary" member based upon a unilateral "decree" it posted in the shop that, at best, merely implied that all mechanics were members. AMFA also never gave Mackay the procedural safeguards required to collect dues from nonmembers under the National Right to Work Legal Defense Foundation's victories in *Hudson* and *Dean v. TWA*, 924 F.2d 805 (9th Cir. 1991) (*Dean* held that the requirements the U.S. Supreme Court established in *Hudson* must be followed under the Railway Labor Act, which applies to railway and airline employees). Moreover, AMFA's objection policy was woefully inadequate under *Hudson*. AMFA had Alaska Airlines fire Mackay for not paying full dues.

A Foundation Staff Attorney sued for Mackay in U.S. District Court for the Western District of Washington, alleging that the discharge was unlawful, and to establish a precedent that a union cannot impose membership by fiat. However, the court upheld the discharge. It ruled that *Hudson* did not protect Mackay, because AMFA's unilateral "decree" automatically made him a member. Mackay's attorney appealed to the U.S. Court of Appeals for the Ninth Circuit. On January 13, 2004, that court reversed the summary judgment for AMFA, finding "genuine issues of material fact, and law, in dispute as to whether Mackay was a member of the Union." 85 Fed. Appx. at 606. The court affirmed the judgment for Alaska, because Mackay had "filed and abandoned a grievance against [Alaska] regarding his discharge." *Id*. at 607.

The District Court conducted a bench trial in January 2005. On March 22, 2005, the court issued its decision. It found that MacKay told the local union president that "he did not want to be a union member," and that the other facts "did not . . . make plaintiff a *de facto* member of the union." Yet, the court held, inconsistently, that the union lawfully demanded Mackay's discharge, because the facts "reasonably led union officials to believe that plaintiff was a member rather than a nonmember." MacKay's attorney filed a second appeal to the Ninth Circuit on April 12, 2005. Although fully briefed, the case has not yet been set for oral argument.

Discrimination Against Nonmembers in Health Benefits Successfully Attacked: *Brannian v. San Diego Municipal Employees Ass'n*, 364 F. Supp. 2d 1187 (S.D. Cal. 2005)

Susan Brannian is an assistant chemist employed by the City of San Diego. The Municipal Employees' Association (MEA) exclusively represents her bargaining unit. She is not a union member. She pays no representation fees, because the employees in her unit have twice voted against agency shop. The City offers a flexible benefits plan in which employees can spend pre-tax dollars on various benefits, such as health and life insurance. MEA runs the dental and eye care insurance plans, but by agreement with the City only members or agency fee payers could buy into these plans. Employees who did not pay union dues or fees could not use flex benefits dollars to buy dental or eye care insurance. National Right to Work Legal Defense

Foundation attorneys filed a federal class action for Brannian and other nonmembers alleging that this scheme violated the First Amendment.

In October 2003, the U.S. District Court for the Southern District of California denied the union's motion to dismiss. In May 2004, the union and City amended their collective bargaining agreement to allow nonmembers who do not pay agency fees to participate in the union's dental and eye care insurance plans with flex benefits dollars. Consequently, on September 27, 2004, the court found that the plaintiffs' claims for declaratory and injunctive relief were moot and denied class certification. On March 29, 2005, the court granted plaintiffs summary judgment for $1 in nominal damages each year for 2002 and 2003. The court held "that Defendants infringed Plaintiffs' First Amendment rights in June 2002 by providing optional insurance plans to union members only." 364 F. Supp. 2d at 1195. The court also ruled that a requirement imposed in 2003 that nonmembers pay a "voluntary agency fee" to enroll in the insurance plans also "was impermissibly coercive in violation of the First Amendment." *Id*. at 1196. No appeal has been filed, so this decision is now final.

Court Approves Significant Settlement of Punitive Damages Claim Against Municipal Employees' Union: *Wessel v. City of Albuquerque*, 327 F. Supp. 2d 1332 (D.N.M. 2004), and *Harrington v. City of Albuquerque*, 329 F. Supp. 2d 1237 (D.N.M. 2004).

An Albuquerque, New Mexico, ordinance guarantees City employees the right to refrain from joining or participating in unions. Ignoring the procedural requirements for amending an ordinance, the City Council adopted a resolution authorizing agreements requiring City employees to pay "fair share" fees. When the City began enforcing such an agreement in 1999, a National Right to Work Legal Defense Foundation attorney filed an action for thirteen nonmember, blue collar City employees to have the agreement declared unlawful under the ordinance. The U.S. District Court for New Mexico held that the resolution was sufficient to authorize the fee requirement, but agreed that the union, a local of the American Federation of State, County & Municipal Employees (AFSCME), had not complied with *Hudson*'s requirement that it give nonmembers adequate notice of the financial basis for the fee.

Both sides appealed. In August 2002, the U.S. Court of Appeals for the Tenth Circuit ruled that, because the ordinance does not explicitly prohibit "fair share" fees, the resolution lawfully authorized the fee requirement. 299 F.3d 1186, 1190-92. However, the workers' appeal succeeded in three respects. Setting a new precedent, the Court of Appeals held that a union does not satisfy *Hudson*'s notice requirement by merely stating that its expenses were audited, but must put the independent auditor's report in the notice. *Id*. at 1192-94. The court voided as unlawful the union's agreement to indemnify the City for any liability the City incurred by unlawfully seizing fees from employees' wages. *Id*. at 1197-99 (2-1 decision). The court also ordered the District Court to hold an evidentiary hearing to determine what part of the fees is attributable to the state and national AFSCME's costs of serving as exclusive representative in other bargaining units. The Tenth Circuit ruled that such costs are not constitutionally chargeable under the Foundation's U.S. Supreme Court victory in *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507 (1991). *Id*. at 1196. The District Court held the required hearing in December 2003.

Meanwhile, a companion class action called *Harrington v. City of Albuquerque* had been filed for all other nonunion City employees. Moreover, all fee deductions ended in July 2000,

because the union did not send nonmembers a notice of the fee's basis for subsequent fiscal years. *Harrington* was held in abeyance until after the Tenth Circuit's decision in *Wessel*. On June 30, 2004, the District Court certified the class, 222 F.R.D. 505, which ultimately included some 770 nonmember City employees. Then, on July 27, 2004, the court granted final judgment for the *Wessel* plaintiffs and a partial summary judgment for the *Harrington* class. The court found that the union had not proven that any of the fees were collected for lawful purposes under the Tenth Circuit's decision. It ordered the union to refund, with interest, all fees collected. *Harrington*, 329 F. Supp. 2d at 1242-43; *Wessel*, 327 F. Supp. 2d at 1336-42. The City was ordered to return the indemnification it had received from the union. *Wessel*, 327 F. Supp. 2d at 1344-46. Moreover, the court ruled in *Harrington* that a jury should decide whether the class was entitled to punitive damages because the union intentionally, or with callous or reckless disregard for nonmembers' First Amendment rights, collected fees that it knew or should have known were excessive. 329 F. Supp. 2d at 1243-45.

In August 2004, the defendants noticed appeals from the final judgment in *Wessel*. Although the appeal has been fully briefed, the Tenth Circuit has not yet set a date for argument.

On March 24, 2005, the parties agreed to settle *Harrington*. The court approved those terms, after notice to the class, at a hearing on August 2. Under the settlement, the union has paid 479 class members $62,561 in fee refunds, interest, and nominal damages and another $95,000 in lieu of punitive damages. The union had also refunded fees and interest totaling $21,627 during the litigation and has agreed that it will pay class members another $30,000 in lieu of punitive damages if the Tenth Circuit upholds the *Wessel* order that the City return the indemnification it received from the union.

Bankruptcy Delays Court Challenge to "Top-Down" Organizing: *Patterson v. Heartland Industrial Partners*, 225 F.R.D. 204 (N.D. Ohio 2004).

National Right to Work Legal Defense Foundation Staff Attorneys filed this federal court action for six employees at the Collins & Aikman Corporation's auto interior components plant in Holmesville, Ohio. Collins & Aikman's employees had previously rejected union efforts to obtain recognition through the secret-ballot election process supervised by the NLRB. The defendants are the Steelworkers union, Collins & Aikman, and Heartland, an investment firm that acquired Collins & Aikman and required it to comply with a so-called "neutrality" agreement. Under this agreement, any company Heartland acquires must not oppose union organizing, must give the union access to company premises and employees' names and home addresses to aid it in soliciting signatures on union authorization cards, and must recognize the union without a secret-ballot election if a majority of employees sign such cards. Moreover, if the union is recognized, the company must force employees to join the union or pay union dues to keep their jobs. This case was filed to establish a precedent that such "neutrality" agreements violate the Taft-Hartley Act's provision that prohibits an employer from giving any "thing of value" to a union seeking to represent its employees and prohibits unions from accepting such things. 29 U.S.C. § 186.

Defendants moved to dismiss, arguing that there is no private cause of action under § 186 and that the "neutrality" agreement is not a "thing of value." In January 2004, the court denied that motion, because defendants disputed some of the plaintiffs' factual claims, and "the

record . . . should be as factually complete as possible" given the likelihood of appeals. The court later declined to certify an interlocutory appeal. Desperate to stop the action, defendants then petitioned the U.S. Court of Appeals for the Sixth Circuit for a writ of mandamus ordering the District Court to dismiss the case. On April 28, 2004, the Sixth Circuit, explicitly recognizing that there is a private cause of action, denied mandamus. Order, No. 04-3290.

During discovery, the union refused to produce hundreds of documents concerning its organizing strategy and negotiations with the company defendants. A Magistrate Judge ordered production of those documents. On December 14, 2004, the District Judge rejected the union's objections to the Magistrate's order, holding "that the First Amendment associational privilege does not apply,"and that an "NLRA privilege does not exist." 225 F.R.D. at 205. In March 2005, the Magistrate denied the union a protective order against public disclosure of most disputed documents. The District Judge has not yet ruled on the union's objections to that decision. Cross-motions for summary judgment were filed in April 2005, but the case was temporarily automatically stayed due to Collins & Aikman's bankruptcy. On October 24, the bankruptcy court lifted the stay to allow the District Court to decide the motions for summary judgment.

Adequate Advance Notice of Compulsory Fees' Basis Must Link Total Chargeable Expenses to Revenues the Fees Generate: *Robinson v. Pennsylvania State Corrections Officers Ass'n*, 299 F. Supp. 2d 425 (2004), *further proceedings*, 363 F. Supp. 2d 751 (E.D. Pa. 2005).

Advance notice to nonmembers of the method by which forced union fees are calculated is a procedural prerequisite to the collection of such fees that was established in *Teachers Local 1 v. Hudson*, 475 U.S. 292, 306-07, 310 (1986). In this class action brought by Pennsylvania state corrections officers, the union gave nonmembers no notice until fourteen months after fee deductions began. The union argued that it need not comply with *Hudson*'s notice requirement, because it was newly organized and had no history of expenditures from which to calculate the fee. The U.S. District Court for the Middle District of Pennsylvania granted the nonmembers partial summary judgment that the collection of fees before giving notice was unconstitutional, holding that a "union that cannot satisfactorily explain the method used to compute a fair share fee simply cannot impose the fee." 299 F. Supp. 2d at 430. "Neither the First Amendment nor *Hudson* supports a 'new union' exception to the advance notice requirement." *Id*.

In later proceedings, the court considered the adequacy of the union's belated notice. On February 4, 2005, the court again granted the nonmembers partial summary judgment, holding the notice constitutionally inadequate because it was "based on *union dues*, rather than the revenues necessary to cover chargeable expenses." 363 F. Supp. 2d at 760. The court explained that "the cardinal purpose of the *Hudson* notice is disclosure of the relationship between the fair share fee and nonunion employees' *pro rata* share of union expenses attributable to collective bargaining activities." *Id*. at 758. However, union "dues may bear little or no relation to chargeable (or total) expenses of the union, and are essentially irrelevant to computation of the fair share fee." *Id*. at 760 (footnote omitted). Thus, it is not enough for a *Hudson* notice to merely "list the prior year's expenditures, reasonably categorized to indicate their use, with verification by an independent auditor," and "divided into 'chargeable' and 'nonchargeable' costs, with a general explanation of the basis for these allocations. Most importantly, the notice

must link the total chargeable expenditures to the revenues to be generated by the fair share fee, if applied to all employees." *Id*. at 759 (citations omitted).[2]

Michigan Court Rejects State Agency's Attempt to Impose Compulsory Union Representation on Religious Educational Institution's Faculty: *Michigan Education Ass'n v. Christian Brothers Institute of Michigan*, 2005 WL 1982988, 177 L.R.R.M. (BNA) 3297 (Mich. Ct. App. 2005).

Brother Rice is a Roman Catholic high school for boys run by the Christian Brothers. The Michigan Education Association (MEA) petitioned for election with the Michigan Employment Relations Commission (MERC), seeking to be certified as the lay faculty's exclusive bargaining representative. The MERC ordered an election despite Brother Rice's objection that state regulation of its labor relations would violate the U.S. and Michigan constitutions' provisions protecting freedom of religion.

Brother Rice appealed to the Michigan Court of Appeals. A National Right to Work Legal Defense Foundation Staff Attorney filed an amicus brief for the Acton Institute, a religious liberty public policy group. This brief argued that the court should construe the relevant Michigan labor statute to exclude coverage over private religious schools, as the U.S. Supreme Court had earlier done with the nearly identical NLRA in *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979). The brief contended that such a construction is necessary, because the imposition of compulsory union representation and monopoly bargaining on the faculty of a religious institution would constitute excessive entanglement with religion and interfere with the church's pursuit of its religious mission.

The Court of Appeals issued a unanimous decision on August 16, 2005, vacating the MERC's order. The court found that the MERC's involvement in the school's labor relations "would present more of a 'significant risk' of entanglement proscribed by the Michigan Constitution than the risk found by the Supreme Court in *Catholic Bishop*." 177 L.R.R.M. (BNA) at 3299. It, therefore, held that, because "nothing in the [state statute] expressly grants the MERC jurisdiction over labor issues that arise in parochial schools," the legislature did not grant such jurisdiction. *Id*. at 3300. No appeal was filed with the Michigan Supreme Court, so this decision is final.

Appellate Court Reinstates Attack on Use of Member's Dues for Politics Without Consent: *Esquinance v. Polk County Education Ass'n*, 2005 WL 1798625 (Tenn. Ct. App. July 29, 2005).

Dewey Esquinance is a member of the Polk County, Tennessee, and National Education Associations, which have a unitary membership structure. He joined because only members can vote on the collective bargaining agreement, sit on the negotiating team, or serve on the committee which sets criteria for teacher evaluations. Although Esquinance opposes the unions' political activities, they require him to pay the part of the dues that they use for politics.

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[2] *Robinson* was not a National Right to Work Legal Defense Foundation case, but was based on Foundation-won precedents in *Hudson* and its progeny.

A National Right to Work Legal Defense Foundation Staff Attorney filed this case seeking to establish that union members have a right under the state constitution to withhold the part of their dues spent for political and ideological purposes. The claim is that teachers should not have to choose between their political autonomy and their right to a meaningful voice and vote concerning their terms and conditions of employment. The complaint alternatively alleged that, if teachers can be forced to support the union's political speech to have a voice and vote on their working life, then monopoly collective bargaining ("exclusive representation") violates Tennessee's constitutional prohibition of monopolies. A Tennessee trial court dismissed the complaint on June 2, 2004.

Esquinance appealed. On July 29, 2005, the Tennessee Court of Appeals reversed dismissal of the claim that under state law the union must permit members to object and refrain from supporting union political and ideological activities and remanded for further proceedings on that claim. The court ruled that teachers have a constitutional right to be members of their exclusive representative, and that Tennessee's teacher-bargaining statute can be construed to authorize compulsory dues only for the costs of collective bargaining. 2005 WL 1798625, at *9-*10. However, the court held that exclusive representation is not an unlawful monopoly, reasoning that the anti-monopoly provision of Tennessee's constitution allows the legislature to grant a monopoly if the monopoly reasonably tends to promote the general welfare. *Id*. at *11. The union has petitioned the Tennessee Supreme Court for review.