No. _____

IN THE

Supreme Court of the United States

JONATHAN REISMAN,

Petitioner,

v.

ASSOCIATED FACULTIES OF THE UNIVERSITY OF MAINE, et al.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Three times in recent years, this Court has recognized that schemes compelling public-sector employees to associate with labor unions impose a "significant impingement" on those employees' First Amendment rights. *Knox v. SEIU*, 567 U.S. 298, 310–11 (2012); *Harris v. Quinn*, 134 S. Ct. 2618, 2639 (2014); *Janus v. AFSCME*, 138 S. Ct. 2448, 2483 (2018). The most recent of those decisions, *Janus*, likewise recognized that a state's appointment of a labor union to speak for its employees as their exclusive representative was "itself a significant impingement on associational freedoms that would not be tolerated in other contexts." 138 S. Ct. at 2478. The lower courts, however, have refused to subject exclusive representation schemes to any degree of constitutional scrutiny, on the mistaken view that this Court approved such arrangements in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984). The question presented is therefore:

Whether it violates the First Amendment to designate a labor union to represent and speak for public-sector employees who object to its advocacy on their behalf.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner Jonathan Reisman was Plaintiff–Appellant in the court below.

Respondents, who were Defendants–Appellees in the court below, are the Associated Faculties of the University of Maine, University of Maine at Machias, the Board of Trustees of the University of Maine System, and the State of Maine.

Because the Petitioner is not a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

STATEMENT RELATED PROCEEDINGS

There are no other court proceedings "directly related" to this case within the meaning of Rule 14(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

As a condition of his employment as a public university professor, Petitioner Jonathan Reisman is compelled by Maine law to accept a labor union as his "sole and exclusive bargaining agent" to speak for him on what this Court has recognized to be "matters of substantial public concern." *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, 138 S. Ct. 2448, 2460 (2018). That state-law requirement is, as this Court observed in *Janus*, "a significant impingement on associational freedoms that would not be tolerated in other contexts." *Id.* at 2478. Yet the courts below, and others to consider the issue, have refused to subject such arrangements to any degree of constitutional scrutiny, on the mistaken view that this Court's decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), held that they involve no impingement of First Amendment rights at all.

The result of those decisions is to broadly sanction compelled representation of unwilling public employees and subsidy recipients like home healthcare workers, irrespective of their speech and associational interests. In this instance, Maine law recognizes a labor union as representing and speaking on behalf of Professor Reisman, despite that he vehemently opposes its positions and advocacy on issues ranging from fiscal policy to university governance. Yet the union, per Maine law, regularly speaks for him on these issues in collective bargaining sessions, through "meet and discuss" sessions on matters of academic and university policy, in grievance proceedings, and elsewhere.

That result cannot be squared with this Court's First Amendment jurisprudence. The "freedom of speech 'includes both the right to speak freely and the right to refrain from speaking at all.'" *Janus*, 138 S. Ct. at 2465 (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)). "The right to eschew association for expressive purposes is likewise protected." *Id*. (citing authorities). *Janus* considered it beyond debate that the First Amendment bars a state from "requir[ing] all residents to sign a document expressing support for a particular set of positions on controversial public issues—say, the platform of one of the major political parties." *Id*. at 2464. But that is what Maine requires of public university faculty by assigning them a representative to take positions on a host of controversial public issues on their behalf. And, vague references to "labor peace" aside, no one has ever explained how compelling public employees to accept unwanted representation furthers any compelling or legitimate state interest.

Like with public-sector agency fees prior to *Janus*, public-sector compelled representation has been assumed to be constitutional by reference to private-sector practices, "under a deferential standard that finds no support in [the Court's] free speech cases." *Id*. at 2480. It is a striking anomaly that, following *Janus*, public workers may not be compelled to subsidize a union's speech but may still be forced to accept that speech, made on their behalf by a state-appointed representative, as their own.

That anomaly requires correction by this Court. Even after *Janus* specifically identified compelled-representation regimes as an "impingement" of First Amendment rights, the lower courts have misread *Knight* as holding to the contrary. But *Knight* considered no compelled-speech or -association challenge to compelled union representation, only the claim that public workers had a right to be heard by the state in certain "meet and confer" sessions with union representatives. This Court alone has the power to correct that mistaken understanding of *Knight* and give "a First Amendment issue of this importance" the consideration it deserves. *Harris v. Quinn*, 134 S. Ct. 2618, 2632, 2639 (2014).

OPINIONS BELOW

The First Circuit's opinion is reported at 939 F.3d 409 and reproduced at Pet.App.1. The opinion of the District Court for the District of Maine is reproduced at Pet.App.15.

JURISDICTION

The First Circuit entered judgment on October 4, 2019. Pet.App.13. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

The relevant statutory provisions are reproduced in the Appendix, Pet.App.47, as are relevant provisions of the Respondents' collective bargaining agreement, Pet.App.70.

STATEMENT OF THE CASE

A. Maine Compels Public Employees To Accept a "Bargaining Agent" that Speaks on Their Behalf

The State of Maine authorizes public employers to require their employees to accept a "sole and exclusive bargaining agent" that speaks on behalf of "employees…without regard to [their] membership in the organization certified as bargaining agent." Me. Rev. Stat. Ann. tit. 26, § 1025(2)(E).

For a union to become a "bargaining agent," Maine requires a showing that a majority of the employees in a given bargaining unit wish for that union to represent them. Me. Rev. Stat. Ann. tit. 26, § 1025. Upon that showing, the union "shall be recognized" by the public university "as the sole and exclusive bargaining agent for all of the employees in the bargaining unit." Me. Rev. Stat. Ann. tit. 26, § 1025(2)(B).

Once certified, the "bargaining agent" is authorized to speak for all employees within the bargaining unit, and the public employer must bargain collectively with that union. Me. Rev. Stat. Ann. tit. 26, §§ 1026, 1027(1)(E), (2)(B). The duty to bargain requires both the bargaining agent and the public employer to "confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration." Me. Rev. Stat. Ann. tit. 26 § 1026(1)(C). These topics are a mandatory part of the collective bargaining process.

B. Maine Recognizes the Union as Petitioner's "Bargaining Agent"

The Petitioner, Jonathan Reisman, is a professor of economics and public policy at the University of Maine at Machias, which is a public university that is part of the University of Maine System. Pet.App.16.

Pursuant to Maine law, the Board of Trustees of the University of Maine System (the "Board") recognized the Associated Faculties of the University of Maine (the "Union") in 1978 as the "bargaining agent" for University of Maine employees with the authority "to bargain collectively and exclusively on behalf of all employees" in the "faculty bargaining unit." Pet.App.16; *see also* Pet.App.70 (providing that the Board "recognizes" the Union "as the sole and exclusive bargaining agent for University of Main System employees"). Even when dealing with individual employees, "[t]he Board or its officers and agents shall at all times be cognizant of the status of the Association as the sole and exclusive bargaining agent under the University of Maine System Labor Relations Act for unit members." Pet.App.73.

In its capacity as University employees' "bargaining agent," the Union speaks out on a variety of subjects. The agreement reflects the Union's and the Board's negotiations on the terms and conditions of employment of the University's faculty, including wages, benefits, grievances, the school year, workload, personnel files, office hours, severance, retirement, leaves of absence, professional development, and so on. *See* Pet.App.38.

In this role, the Union speaks on behalf of University employees, including nonmembers. For example, in addition to barring strikes and lockouts, the agreement provides that the Union "agrees *on behalf of itself and unit members* that there shall be no strikes, slow-downs or interference with the normal operation of the University." Pet.App.103 (emphasis added).

The agreement also requires the University to meet with a committee of Union representatives on the Union's request "for the purpose of discussing matters necessary to the implementation of this Agreement." Pet.App.78. Topics of discussion may include "University-wide" matters, matters "related to a particular campus," and "[m]atters of common concern." Pet.App.78–79.

The Union is also involved in setting policy through its role in the grievance process, as specified in the agreement. The "bargaining agent" has the right to participate in every stage of grievance proceedings, even when an employee rejects the Union's representation with respect to a grievance. Pet.App.97. And *only* the Union has the right to appeal grievances to the University Chancellor and ultimately into arbitration. Pet.App.92–93.

Professor Reisman disagrees with the Union's positions and advocacy on many issues, including issues related to terms and conditions of employment and to governance of the University, and for that reason he resigned his membership. *See* Pet.App.38, 45. Yet because he is employed on the faculty of the University

of Maine, state law recognizes the Union as his "bargaining agent," compelling him to associate with it and to suffer it to speak for him, including on issues where he disagrees with its positions. *See* Pet.App.36–38, 44–46; Me. Rev. Stat. Ann. tit. 26, § 1025(2)(B).

C. Proceedings Below

On August 10, 2018, Professor Reisman filed a complaint challenging the compelled-representation regime maintained by the Respondents, alleging that it violates his rights under the First and Fourteenth Amendments to be free from compelled speech and compelled association. Pet.App.39–40. He then moved for a preliminary injunction.

The district court denied his preliminary injunction motion and dismissed the action, concluding that Prof. Reisman's claim was foreclosed under *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), and *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir. 2016), which in turn viewed this Court's decisions in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), and *Knight* as authorizing compelled union representation. Pet.App.20–21.

Professor Reisman appealed. The First Circuit affirmed the district court's decision, holding that, because the Union represents all members of the bargaining unit, Maine's compelled-representation scheme was approved by *Knight* and worked no injury to Professor Reisman's First Amendment rights. Pet.App.10–12.

REASONS FOR GRANTING THE PETITION

The petition presents a question of profound importance that has never received careful consideration by this Court. The appointment of an exclusive representative or "agent" to speak on behalf of public employees is an obvious impingement on their First Amendment rights, as the Court recognized in *Janus*. Yet the lower courts understand the Court to have held, in *Knight*, that such regimes implicate no First Amendment interests at all. *Knight*, however, had no occasion to pass on that issue, because it was not raised or argued. As a result, public workers whom *Janus* recognized to have the right to be free from subsidizing a labor union's speech may nonetheless be compelled to enter an expressive association with a union and to suffer it to speak for them, no matter their disagreement with the words it puts in their mouths.

That is, if anything, a more severe impingement on First Amendment rights than that disapproved in *Janus*, and it is unjustified by any state interest, let alone the compelling one required by strict or exacting scrutiny. The Court should give this important issue the full and fair consideration that it deserves. This case, which challenges a typical exclusive-representation regime and presents the constitutional issue squarely, is the ideal vehicle to do so.

I. The Lower Courts Have Misread *Knight* To Exempt State-Compelled Union Representation from Constitutional Scrutiny

The court below, like others, viewed this Court's decision in *Knight* as holding that state laws compelling public workers to accept an unwanted representative that lobbies on their behalf do not even impinge First Amendment rights. *Knight*, however, involved a claimed right to be heard by the government, not any kind of First Amendment objection to compelled union representation. It has literally nothing to say on that latter issue.

Knight was, to be sure, a challenge to provisions of a state statute similar to those challenged here. The plaintiffs, college instructors, brought three claims, the first two of which were subject to summary affirmance by this Court. *See Knight v. Minnesota Community College Faculty Ass'n*, 460 U.S. 1048 (1983).

The first claim was that the state, by appointing a union as exclusive representative, "impermissibly delegated its sovereign power" in contravention of decisions like *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935), and *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936). *Knight v. Minnesota Community College Faculty Ass'n*, 571 F. Supp. 1, 3–4 (D. Minn. 1982). And the second was "that compulsory fair share fees…result in forced association with a political party," a claim that the district court held was controlled by this Court's decision upholding agency-

fee arrangements in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). The district court rejected both of those claims, 571 F. Supp. at 5, 7, and this Court summarily affirmed, *see Knight*, 465 U.S. at 278–79 (discussing lower court decision and summary affirmance).

The third claim, which this Court heard on the merits, involved the statute's "meet and confer" process in which public employers exchange views with an exclusive representative "on policy questions relating to employment but outside the scope of mandatory bargaining." *Id*. at 273. The district court had held that the limitation restricting participation in "meet and confer" sessions to representatives selected by the union violated the plaintiffs' First Amendment rights. 571 F. Supp. at 12.

Accordingly, as this Court stated in reviewing that decision: "The question presented in this case is whether this restriction on participation in the nonmandatory-subject exchange process violates the constitutional rights of professional employees within the bargaining unit who are not members of the exclusive representative and who may disagree with its views." 465 U.S. at 273. In answering that question, the Court held, first, that the First Amendment confers "no constitutional right to force the government to listen to [the instructors'] views" and, second, that "Minnesota's restriction of participation in 'meet and confer' sessions to the faculty's exclusive representative" did not infringe "[the instructors'] speech and associational rights." *Id*. at 283, 288. The majority decision

does not discuss or even cite compelled-speech or compelled-association precedents other than *Abood*.

That's because there was no First Amendment challenged to compelled representation. The instructors' principal brief recognized that the "constitutionality of exclusive representation" was undecided, but expressly "pretermit[ed]" argumentation on that issue. Brief for Appellees, *Minnesota State Board for Community Colleges v. Knight*, No. 82-898 (filed Aug. 16, 1983), at 46–47, *available at* 1983 U.S. S. Ct. Briefs LEXIS 130. A separate brief filed by the instructors did challenge exclusive representation, but only on nondelegation grounds. Brief for Appellants, *Minnesota Community College Faculty Ass'n v. Knight*, No. 82-977 (filed Aug. 16, 1983), *available at* 1983 U.S. S. Ct. Briefs LEXIS 126. No First Amendment challenge to compelled representation having been raised, the Court had no reason to consider the matter.

Nonetheless, the lower courts have come to regard *Knight* as controlling on that point. The Eighth Circuit, for example, recently held in *Bierman v. Dayton* that a "State has 'in no way' impinged" on associational rights "by recognizing an exclusive negotiating representative," 900 F.3d 570, 574 (8th Cir. 2018), quoting language from *Knight* that actually addressed "Minnesota's *restriction of participation* in 'meet and confer' sessions to the faculty's exclusive representative." 465 U.S. at 288 (emphasis added). The First Circuit committed the same error in the chief precedent underpinning the decision below, conflating *Knight*'s language upholding that restriction

on participation with approval of compelled representation. *D'Agostino v. Baker*, 812 F.3d 240, 243 (1st Cir. 2016). So too the Seventh Circuit, relying on the same language. *Hill v. SEIU*, 850 F.3d 861, 864 (7th Cir. 2017); *see also Jarvis v. Cuomo*, 660 F. App'x 72, 74 (2d Cir. 2016) (same); *Uradnik v. Inter Faculty Organization*, 2018 WL 4654751, at *2 (D. Minn. Sept. 27, 2018); *Mentele v. Inslee*, No. C15-5134-RBL, 2016 WL 3017713, at *4 (W.D. Wash. May 26, 2016). Thus, the lower courts regard themselves as bound by what is, at most, off-hand *dicta*, taken out of context, on an issue the Court had no occasion to consider.

Notably, the one court to consider the compelled-representation issue from first principles recognized that this prevailing view of *Knight* is untenable. *See Mentele v. Inslee*, 916 F.3d 783 (9th Cir. 2019). Acknowledging that *Knight*'s reliance on the overruled *Abood* casts doubt on its vitality, the Ninth Circuit accepted that compelled representation appears to impinge First Amendment rights but held that the state's interest in "labor peace," as recognized by *Abood*, justified the intrusion. *Id.* at 790–91. Thus, the only court ever to attempt meaningful consideration of this issue understood that the prevailing view of *Knight*—compelled representation does not even impinge First Amendment rights—is inconsistent with this Court's free-speech cases, and it could only uphold compelled union representation by relying on an unsound doctrine drawn from an overruled decision. *See infra* at 16–18 (discussing "labor peace" doctrine).

With that one exception, however, the lower courts have declined to subject compelled-representation regimes to any degree of constitutional scrutiny, taking off the table a profoundly important question that has never received any deliberate consideration by this Court. Unless and until this Court clarifies the scope of its holding in *Knight*, the constitutionality of compelled representation will never receive meaningful review.

II. State-Compelled Union Representation Cannot Be Reconciled with This Court's First Amendment Jurisprudence

Review of that issue is warranted because subjecting public workers to state-compelled union representation is at odds with ordinary First Amendment doctrine. Indeed, the Court recently recognized as much when it observed, correctly, that such schemes constitute "a significant impingement on associational freedoms that would not be tolerated in other contexts." *Janus*, 138 S. Ct. at 2478. And if *Janus* stands for anything, it is that there is no labor-relations exception to the First Amendment.

When state law appoints a union to represent unwilling public workers, it compels their speech. The Maine statute here recognizes the Union as the Petitioner's "bargaining agent" and expressly provides that, in that role, the Union speaks "for all of the employees," including those like the Petitioner who have declined to join the Union and object to its speech. Me. Rev. Stat. Ann. tit. 26, § 1025(2)(B). That speech by the Union is regarded as the speech of the employees

themselves. *See, e.g.*, Pet.App.103 (memorializing a representation the Union made "on behalf" of employees). So, when the Union speaks, it is speaking for the Petitioner, putting words in his mouth. *See Janus*, 138 S. Ct. at 2474 ("[W]hen a union negotiates with the employer or represents employees in disciplinary proceedings, the union speaks for the *employees*…."). And, after *Janus*, there can be no dispute that this speech concerns "matters of substantial public concern," *id*. at 2460, including public-sector wages and benefits and the governance of public institutions.

The state's compulsion of the Petitioner's speech on these issues is, to say the least, an impingement of his First Amendment right to be free from compelled speech. "Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason, one of [the Court's] landmark free speech cases said that a law commanding 'involuntary affirmation' of objected-to beliefs would require 'even more immediate and urgent grounds' than a law demanding silence." *Id*. at 2464 (quoting *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 633 (1943)). For that reason, government-compelled speech is subject to strict scrutiny. *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 800–01 (1988).

Likewise, compelled union representation impinges on associational rights. An association "is protected by the First Amendment's expressive associational right" if the parties come together to "engage in some form of expression, whether it be public or private."

Boy Scouts of America v. Dale, 530 U.S. 640, 648 (2000). That is, of course, the entire purpose of the Union's appointment as the Petitioner's "bargaining agent"—to speak on behalf of him and other employees. *Compare United States v. United Foods*, 533 U.S. 405, 411–12 (2001) (finding violation where the compelled speech "itself, far from being ancillary, is the principal object of the regulatory scheme").

"Freedom of association…plainly presupposes a freedom not to associate." *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984); *see also Pacific Gas & Elec. Co. v. Public Util. Comm'n of Cal.,* 475 U.S. 1, 12 (1986) (plurality opinion) ("[F]orced associations that burden protected speech are impermissible"). Compelled association is therefore subject, at a minimum, to "exacting scrutiny" and so must at least "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Knox v. Serv. Employees Int'l Union, Local 1000*, 567 U.S. 298, 310 (2012).

Compelling public workers to submit to representation by a labor union fails either degree of scrutiny, strict or exacting, because it is unsupported by any compelling state interest. There is no interest in avoiding "free-riders" at play, because there is no possible argument that the Petitioner and other nonmembers are seeking to "enjoy[] the benefits of union representation without shouldering the costs," *Janus*, 138 S. Ct. at 2466. And while the Union has a duty of fairness to all employees, that is no more than a nondiscrimination provision appropriately reflecting the

state's own obligation, as the counterparty in bargaining, not to discriminate on the basis of union membership. *See Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 202 (1944) (analogizing a private-sector union's fair-representation duty to the duty "the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates"); *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U.S. 47, 69 (2006) (recognizing that government may not "impose penalties or withhold benefits based on membership in a disfavored group" where doing so "ma[kes] group membership less attractive"). Indeed, the Board forbids the Union from discriminating on the basis of Union membership in the same provision that bars it from discriminating based on "race, color, religion, sex," etc. Pet.App.103.

As for any state interest in "labor peace," it is neither compelling nor served in any tailored fashion by forcing public employees to accept union representation. *Janus* assumed, without deciding, that a state might have a compelling interest in avoiding "inter-union rivalries" and "conflicting demands from different unions" sufficient to overcome First Amendment objections. 138 S. Ct. at 2466 (quoting *Abood*, 431 U.S. at 220–21)). But, like the rest of *Abood*, this "labor peace" concept was borrowed from another area of the Court's jurisprudence—concerning Congress's Commerce Clause power to regulate economic affairs, *e.g.*, *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 41–42 (1937)—and, without any consideration, given a second life as a First Amendment doctrine. 431 U.S.

at 220–21. That the promotion of labor peace might justify congressional regulation of economic affairs, subject only to rational-basis review, says nothing about whether labor-peace interests suffice to clear the higher bar of First Amendment scrutiny. They do not. The Court's cases recognize that the First Amendment does *not* permit government to "substitute its judgment as to how best to speak for that of speakers and listeners" or to "sacrifice speech for efficiency." *Riley*, 487 U.S. at 791, 795. Yet that is, in a nutshell, the labor-peace rationale.

In any instance, labor peace provides no justification for mandating union representation. Irrespective of exclusive-representation regimes, the First Amendment affords public workers a near-absolute right to speak out themselves on matters of public concern and to join alternative labor organizations, just like they may enter into any number of private associations free from government retaliation. *See, e.g.*, *Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1416 (2016). Even when some other group has been recognized as the exclusive representative, such organizations can still make demands on public employers, spark rivalries, and even foster dissention within the workforce—those potential ills are a consequence of public workers' well-recognized First Amendment rights and are not addressed in any way by exclusive-representation requirements. In this respect, there is a fundamental disconnect between compelling unwilling public workers to accept a labor union as their representative and any claimed interest in labor peace.

At a minimum, any state interest in promoting labor peace can readily be achieved through means significantly less restrictive of speech and associational freedoms than compelling public workers to submit to union representation—namely, by declining to bargain with rival unions. *See Smith v. Arkansas State Highway Employees, Local 1315*, 441 U.S. 463, 465 (1979) ("[T]he First Amendment does not impose any affirmative obligation on the government to listen…."); Tenn. Code. Ann. § 49-5-603 (providing that "professional employees…have the right to refrain" from "negotiat[ing] through representatives").

For all of these reasons, the Court's review is required to cure the conflict between the lower courts' misunderstanding of *Knight* as exempting compelled-representation regimes from constitutional scrutiny and this Court's First Amendment jurisprudence.

III. The Question Presented Is Important and Frequently Recurring

The importance of the question whether state-compelled union representation passes constitutional muster cannot be gainsaid. In the wake of *Janus*, it is a striking anomaly that public-sector workers, now free from compelled subsidization of union advocacy on "matters of substantial public concern," 138 S. Ct. at 2460, may still be compelled to accept that same advocacy as their own and compelled to associate with a union for the sole purpose of facilitating that advocacy. A compelled-representation regime is literally "a law commanding 'involuntary affirmation' of objected-to beliefs." *Id*. at 2464 (quoting *Barnette*, 319

U.S. at 633). This intrusion on workers' First Amendment rights—and ultimately their rights of freedom of thought and conscience—is greater than that at issue in *Janus* and calls for review.

The question presented is also one that arises frequently. No fewer than five of the courts of appeal have addressed that issue over the past two years. *Mentele v. Inslee*, 916 F.3d 783 (9th Cir. 2019); *Bierman v. Dayton*, 900 F.3d 570 (8th Cir. 2018); *Hill v. SEIU*, 850 F.3d 861 (7th Cir. 2017); *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir. 2016); *Jarvis v. Cuomo*, 660 F. App'x 72 (2d Cir. 2016). Each of those courts except in *Mentele*, as discussed above, has punted on the fundamental constitutional question, believing it to be controlled by *Knight*. Even so, additional challenges—many of them brought following this Court's decision in *Janus*—are pending in the lower courts. Given the importance of the issue to workers forced against their will to accept union representation, the fact that this Court has never squarely addressed the constitutionality of that practice, and the Court's recognition in *Janus* that such regimes do impinge First Amendment rights, it is inevitable that there will be more cases raising that same issue. Unless and until this Court passes judgment on compelled union representation, workers, municipalities, states, and the lower courts will continue to devote significant resources to litigation that this Court can and should resolve in one fell swoop.

IV. This Case Is the Ideal Vehicle To Clarify *Knight*'s Reach and the First Amendment's Application in This Area

This case presents an ideal vehicle for the Court to finally resolve an issue of overriding importance. It squarely presents the issue of whether the First Amendment permits a state to recognize a labor union as the representative and "bargaining agent" of public workers who have declined to join the union and object to its speech on their behalf. *See* Pet.App.39–40 (claim challenging just that). The courts below passed on that precise issue. Pet.App.10–11, Pet.App.20–26. And it is dispositive of the merits of this appeal. There is no issue regarding the Petitioner's standing, mootness, or any other justiciability concern.

Moreover, this case involves the typical factual scenario in which this issue arises. The Petitioner is a state employee, and it is state employees who are by far the most numerous subjects of unwanted union representation under state law. By contrast, other recent challenges to exclusive-representation regimes have involved subsidy recipients like home healthcare workers, raising a host of issues separate from the core one of whether states may compel representation at all. *Compare Harris v. Quinn*, 134 S. Ct. 2618 (2014) (challenge to agency fees by subsidy recipients), *with Janus*, 138 S. Ct. at 2461 (challenge to agency fees by state employee). Hearing this case would permit the Court to address the question presented in the most common factual context in which it is likely to arise and thereby provide the clearest

possible guidance to the lower courts, avoiding the confusion that may ensue from a decision premised on idiosyncratic facts.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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JANUARY 2020

APPENDIX

APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 18-2201

JONATHAN REISMAN,

Plaintiff, Appellant,

v.

ASSOCIATED FACULTIES OF THE UNIVERSITY OF MAINE; UNIVERSITY OF MAINE AT MACHIAS; BOARD OF TRUSTEES OF THE UNIVERSITY OF MAINE; and THE STATE OF MAINE,

Defendants, Appellees.

Appeal from the U.S. District Court for the District of Maine (Hon. Jon D. Levy, U.S. District Judge)

OPINION

Before THOMPSON, SELVA, and BARRON, Circuit Judges.

Andrew M. Grossman, with whom Richard B. Raile, Renee M. Knudsen, BakerHostetler LLP, Robert Alt, Daniel Dew, and The Buckeye Institute were on brief, for appellant.

Jacob Karabell, with whom John M. West, Bredhoff & Kaiser, P.L.L.C., Jason Walta, and National Education Association were on brief, for appellee Associated Faculties of the University of Maine.

Linda D. McGill, with whom Tara A. Walker and Bernstein, Shur, Sawyer & Nelson, P.A. were on brief, for appellees University of Maine at Machias and Board of Trustees of the University of Maine.

Susan P. Herman, Deputy Attorney General, with whom Aaron M. Frey, Attorney General, and Christopher C. Taub, Assistant Attorney General, were on brief, for appellee State of Maine.

October 4, 2019

BARRON, Circuit Judge.

Jonathan Reisman, an economics professor at the University of Maine at Machias, seeks to invalidate a Maine statute that governs collective bargaining between the state's university system and its faculty on the ground that the statute violates the First Amendment of the United States Constitution. The District Court granted the defendants' motion to dismiss. We affirm.

I.

The Maine statute that Reisman challenges is the University of Maine System Labor Relations Act, Me.

Stat. tit. 26, §§ 1021-1037. Enacted in 1975, the statute is modeled on the National Labor Relations Act, 29 U.S.C. §§ 151-169, and extends collective bargaining rights to employees of the state's universities.

The statute divides university employees into various "bargaining units" based on their occupational groups. See tit. 26, § 1024-A. The faculty in the university system make up one particular bargaining unit, while "[s]ervice and maintenance" employees, for example, constitute another. Id.

To facilitate labor negotiations, the statute provides, among other things, that a union that receives majority support within "a bargaining unit shall be recognized by the university, academy or community colleges as the sole and exclusive bargaining agent for all of the employees in the bargaining unit." Id. § 1025(2)(B). Once so recognized, that union is the bargaining unit's exclusive agent to bargain with the university system "with respect to wages, hours, working conditions and contract grievance arbitration." Id. § 1026(1)(C).

No employee bears an obligation to join a union, see id. § 1023, and, after Janus v. American Federation of State, County, & Municipal Employees, Council 31, 138 S. Ct. 2448 (2018), nonmember employees are not obliged to pay agency fees to the union that serves as their bargaining unit's bargaining agent. However, the statute does provide that the bargaining agent "is required to represent all…employees within the unit without regard to membership in the organization." tit. 26, § 1025(2)(E).

The Associated Faculties of the Universities of Maine ("AFUM" or "the Union") has represented the faculty bargaining unit for Reisman's university since 1978. Reisman "resigned his membership in [AFUM] because he opposes many of the positions [AFUM] has taken, including on political and policy matters." (Internal quotation and citation omitted).

On August 10, 2018, Reisman filed a complaint in the United States District Court for the District of Maine. His complaint alleges that the statute violates his First Amendment rights because, "[b]y designating the Union as [his] exclusive representative," the statute necessarily "compels [him] to associate with the Union[,]…compels [him] to speak and to petition government,…[and] attributes the Union's speech and petitioning to [him]." Reisman also requests a preliminary "injunction barring Defendants from recognizing the Union as [his] exclusive representative…[and] barring Defendants from affording preferences to members of the Union."

On December 3, 2018, the District Court dismissed Reisman's suit under Federal Rule of Civil Procedure 12(b)(6). The next day, Reisman filed a notice of appeal. On December 14, 2018, Reisman filed a motion asking this Court for a summary disposition. He argued that this Circuit's binding precedent required us to affirm the District Court's decision and explained that a summary disposition would allow him to petition the Supreme Court for review more quickly. On February 6, 2019, we denied Reisman's motion. This appeal from the District Court's dismissal of his

claims then followed. Our review is de novo. See Cunningham v. Nat'l City Bank, 588 F.3d 49, 52 (1st Cir. 2009); see also Doherty v. Merck & Co., 892 F.3d 493, 497 (1st Cir. 2018) (noting that "challenges to the constitutionality" of state statutes are reviewed de novo).

II.

Reisman first contends that, under the statute, as a faculty member of the university he must accept AFUM as his personal representative by virtue of its being the exclusive bargaining agent for his bargaining unit. Reisman then argues that by forcing him to accept AFUM as his personal representative, the statute impermissibly burdens his First Amendment speech and associational rights, because it permits AFUM to speak for him when he does not wish for it do so and compels him to associate with AFUM when he does not wish to do so. His argument relies, in large part, on Janus, in which the Supreme Court held that "public sector agency-shop arrangements violate the First Amendment." 138 S. Ct. at 2478. According to Reisman, "the logic of Janus, as well as its application of that logic to the specific question of compelled union representation" demonstrates the constitutional problem with Maine's statute, though he is less clear in identifying the precise remedy that he seeks for the claimed violation.

Setting the question of remedy to the side, the defendants respond in part by arguing that Janus is plainly distinguishable, as it involved a First Amendment challenge to a statutory requirement that a public employee pay an agency fee to a union serving as

the exclusive bargaining agent of a bargaining unit. See id. at 2459-60. There is, the defendants, contend, no comparable forced association or speech at issue here, as is shown in our decision in D'Agostino v. Baker, 812 F.3d 240, 244 (1st Cir. 2016) ("[E]xclusive bargaining representation by a democratically selected union does not, without more, violate the right of free association on the part of dissenting non-union members of the bargaining unit.").

We will return to the question of Janus's reach in a moment. But, for present purposes, it is enough to focus on the defendants' additional contention that the statute, fairly read, simply does not support the premise of Reisman's constitutional challenge -- that it designates AFUM as his personal representative.

In contending otherwise, Reisman points out that the statute states that an exclusive bargaining agent must "represent all the university…employees within the [bargaining] unit without regard to membership in the organization." Me. Stat. tit. 26, § 1025(2)(E). He emphasizes, too, that the statute provides that "one of [the] primary purposes" of a "[b]argaining agent" is "the representation of employees in their employment relations with employers." Id. § 1022(1-B). And finally, Reisman notes that, under the statute, a union becomes an exclusive bargaining agent for a bargaining unit only when "a majority of…employees in an appropriate bargaining unit…wish to be represented for the purpose of collective bargaining." Id. § 1025(1). It is on the basis of these provisions that Reisman seeks to make the case that once AFUM became the

exclusive bargaining agent for his bargaining unit, the statute transformed it, by operation of law, into his personal representative, regardless of whether he agreed with its positions or whether he wished to associate with it. And thus, given his reading of the statute, he contends that it follows from Janus that the statute -- by forcing him to associate with AFUM -- violates the First Amendment no less than the statutory requirement to pay an agency fee that the Court struck down in that case.

Yet, we must read the individual provisions of the statute, including the provisions that Reisman seizes upon to mount his constitutional challenge, in the context of the statute as a whole and not in isolation. See Dickau v. Vt. Mut. Ins. Co., 107 A.3d 621, 628 (Me. 2014) ("[W]e examine the entirety of the statute, 'giving due weight to design, structure, and purpose as well as to aggregate language.'" (quoting Banknorth, N.A. v. Hart (In re Hart), 328 F.3d 45, 48 (1st Cir. 2003))). And, when we do, we conclude that the defendants have the better interpretation.

The statute repeatedly makes clear that a union that acts as an exclusive bargaining agent is "the representative of a bargaining unit." tit. 26, § 1025(2)(A) (emphasis added); see also id. § 1025(2)(B) ("The bargaining agent certified as representing a bargaining unit shall be recognized by the university…as the sole and exclusive bargaining agent for all of the employees in the bargaining unit." (emphasis added)); id. § 1037(1) ("The university, academy or community college shall provide to a bargaining agent access to

members of the bargaining unit that the bargaining agent exclusively represents." (emphasis added)). Moreover, the statute contains a number of provisions that preserve the rights of every employee to refrain from joining a union without fear of discrimination, see id. § 1023(2),[1] and to present their grievances to the university system without obtaining the permission of the bargaining agent, see id. § 1025(2)(E) (noting that an "employee may present at any time that employee's grievance to the employer and have that grievance adjusted without the intervention of the bargaining agent," so long as the requested relief is consistent with the collective bargaining agreement and a union representative is "given reasonable opportunity to be present" at the meeting). In addition, to ensure that no employee is discriminated against during collective bargaining on account of their union membership, the statute clarifies that the bargaining agent must bargain on behalf of all "employees within the unit without regard to membership in the organization." Id.

Considered in context, then, § 1025(2)(E) is not properly read to designate AFUM as Reisman's personal representative, as he contends. Rather, that provision merely makes clear that a union, once it becomes the exclusive bargaining agent for a bargaining unit, must represent the unit as an entity, and not

[1] The statute prohibits any "person" from acting to "interfere with, intimidate, restrain, coerce or discriminate against [an] …employee…in the free exercise of [his] right[], given by the section, to voluntarily…not join a union." Id. § 1023.

only certain of the employees within it, and then solely for the purposes of collective bargaining. Nor are the other provisions that Reisman relies on properly read to support his contention. In fact, their plain terms accord with this more limited understanding of the statute, see id. § 1022(1-B) (noting that a bargaining agent "has as one of its primary purposes the representation of employees in their employment relations with employers" (emphasis added)); id. § 1025(1) (stating that an "employee organization" may be voluntarily recognized as a unit's bargaining agent when it "alleg[es] that a majority of the…employees in an appropriate bargaining unit…wish to be represented for the purpose of collective bargaining" (emphasis added)).

If there were any doubt about the correctness of this construction, moreover, we would be in no position to discard it in favor of Reisman's. The text of the statute, when considered in its entirety, by no means compels his view, and the Attorney General of Maine plausibly contends that, under the statute, "the union is the agent for the bargaining unit, which is a distinct entity separate from the individual employees." See Forsyth Cty. v. Nationalist Movement, 505 U.S. 123, 131 (1992) ("In evaluating [appellant's] facial challenge, we must consider the [state's] authoritative constructions of the ordinance, including its own implementation and interpretation of it."); Ward v. Rock Against Racism, 491 U.S. 781, 795 (1989) ("Administrative interpretation and implementation of a regulation are, of course, highly relevant to our analysis.").

Reisman does attempt to advance an alternative challenge in which he contends that, even if the statute merely makes the union the representative of his bargaining unit for purposes of collective bargaining, it still impermissibly burdens his First Amendment rights. He argues that the distinction between having a union represent a bargaining unit as an entity in collective bargaining and having it represent the employees within the unit individually is "immaterial because…the representation of the 'unit as a whole' infringes the rights of all non-consenting members of that unit." (Internal citation omitted).

But, the Supreme Court's decision in Minnesota State Board for Community Colleges v. Knight, 465 U.S. 271 (1984), which we cited favorably in response to a similar challenge in D'Agostino, 812 F.3d 240, would appear to dispose of this contention rather clearly. The Supreme Court in Knight rejected a First Amendment challenge to a Minnesota law that provided for "exclusive representation of community college faculty," 465 U.S. at 278, for purposes of collective bargaining and "on matters related to employment that are outside the scope of mandatory negotiations," id. at 274. We explained in D'Agostino that Knight held that there is "no violation of associational rights by an exclusive bargaining agent speaking for their entire bargaining unit when dealing with the state even outside collective bargaining." 812 F.3d at 243 (emphases added). And, as for Reisman's apparent compelled speech claim, D'Agostino found that

Knight disposed of such a claim, too, for reasons worth quoting in full:

> No matter what adjective is used to characterize it, the relationship [between a bargaining unit and a bargaining agent] is one that is clearly imposed by law, not by any choice on a dissenter's part, and when an exclusive bargaining agent is selected by majority choice, it is readily understood that employees in the minority, union or not, will probably disagree with some positions taken by the agent answerable to the majority. And the freedom of the dissenting appellants to speak out publicly on any union position further counters the claim that there is an unacceptable risk the union speech will be attributed to them contrary to their own views; they may choose to be heard distinctly as dissenters if they so wish, and as we have already mentioned the higher volume of the union's speech has been held to have no constitutional significance.

Id. at 244.

To be sure, D'Agostino was decided prior to Janus. However, we are obliged to follow circuit precedent unless undermined by intervening Supreme Court precedent or some other compelling authority. See United States v. Barbosa, 896 F.3d 60, 74 (1st Cir. 2018), cert. denied, 139 S. Ct. 579 (2018). And, as Janus focuses on the unconstitutionality of a statute that requires a bargaining unit member to pay an agency fee to her unit's exclusive bargaining agent,

see 138 S. Ct. at 2478, we cannot say that precedent provides us with a basis for disregarding D'Agostino. In any event, to the extent that Reisman adverted to this alternative theory in his opening brief, as opposed to merely in his reply brief and at oral argument, see Aulson v. Blanchard, 83 F.3d 1, 7 (1st Cir. 1996) ("[R]elief from an appellate court, requested for the first time in a reply brief, is ordinarily denied as a matter of course."); Bernardo ex rel. M & K Eng'g, Inc. v. Johnson, 814 F.3d 481, 492 n.17 (1st Cir. 2016) (noting that contentions "raised [] for the first time at oral argument…[are] waived"), he has waived it for lack of development on appeal. See United States v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) ("[I]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived.").

III.

The District Court's judgment is **affirmed.**

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 18-2201

JONATHAN REISMAN,

Plaintiff, Appellant,

v.

ASSOCIATED FACULTIES OF THE UNIVERSITY OF MAINE; UNIVERSITY OF MAINE AT MACHIAS; BOARD OF TRUSTEES OF THE UNIVERSITY OF MAINE; and THE STATE OF MAINE,

Defendants, Appellees.

Appeal from the U.S. District Court for the District of Maine (Hon. Jon D. Levy, U.S. District Judge)

JUDGMENT

Entered: October 4, 2019

This cause came on to be heard on appeal from the United States District Court for the District of Maine and was argued by counsel.

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The District Court's judgment is affirmed.

By the Court:
Maria R. Hamilton, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JONATHAN REISMAN Plaintiff v. ASSOCIATED FACULTIES OF THE UNIVERSITY OF MAINE, UNIVERSITY OF MAINE AT MACHIAS, and the BOARD OF TRUSTEES OF THE UNIVERSITY OF MAINE SYSTEM Defendants, and STATE OF MAINE Intervenor.	1:18-cv-00307-JDL

ORDER ON DEFENDANTS' MOTIONS TO DISMISS AND PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Jonathan Reisman, a professor at the University of Maine at Machias, challenges a state law which authorizes a faculty union elected by a majority of employees, to bargain collectively and exclusively on behalf of all employees as a violation of his First Amendment rights of speech and association. Reisman has

moved for a preliminary injunction that would enjoin the Associated Faculties of the University of Maine, the union that represents Maine's public university faculty, from holding itself out as his representative, and that would enjoin the board of the University of Maine System from regarding the union as his representative and agent. The Defendants have moved to dismiss Reisman's complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief may be granted.

I. BACKGROUND

The University of Maine System Labor Relations Act (the "Act"), 26 M.R.S.A. § 1021, *et seq*. (West 2018), establishes the collective bargaining rights of the employees of Maine's public institutions of higher education. Plaintiff Jonathan Reisman is one such employee, serving as a professor of economics at the University of Maine at Machias (the "University"). He contends that the Act violates his First Amendment rights of free speech and association by enabling the Defendant Associated Faculties of the University of Maine (the "Union"), having been elected by a majority of employees as the bargaining agent, to bargain collectively and exclusively on behalf of all employees who comprise the bargaining unit. Reisman is not, however, a member of the Union and he disagrees with its positions on various issues of public import.

The Act provides that a majority of employees in a bargaining unit may choose to be represented by a union for purposes of collective bargaining with the University regarding "wages, hours, working conditions

and contract grievance arbitration." 26 M.R.S.A. §§ 1025, 1026(1)(C). Employees are not required to be union members. *Id*. at §§ 1023(2), 1027(1)(G). A union that receives the majority of the votes is certified and "recognized by the [U]niversity…as the sole and exclusive bargaining agent for all of the employees in the bargaining unit." *Id*. at § 1025(2)(B). Such a union "is required to represent all the [U]niversity...employees within the unit without regard to membership in the organization certified as bargaining agent." *Id*. at § 1025(2)(E).

Reisman seeks a preliminary injunction under Fed. R. Civ. P. 65(a) that would enjoin the Union from holding itself out as his representative, and also enjoin the Defendant Board of Trustees of the University of Maine System (the "Board") from treating the Union as his representative and agent. In response, the Union, the Board and the University, along with the intervenor Attorney General of the State of Maine ("Maine"), move to dismiss Reisman's complaint under Fed. R. Civ. P. 12(b)(6) for failing to state a claim. Because I conclude that Reisman's complaint fails to state a claim, I deny his motion for a preliminary injunction, grant the Union's, the University and the Board's, and the State's motions to dismiss, and order the dismissal of this case.

II. ANALYSIS

To survive a motion to dismiss, the complaint "must contain sufficient factual matter to state a claim to relief that is plausible on its face." *Rodríguez–Reyes v. Molina–Rodríguez*, 711 F.3d 49, 53 (1st Cir.

2013). In evaluating a motion to dismiss, the Court will accept all well-pleaded facts as true and draw all reasonable inferences in the plaintiff's favor. *Id.* at 52-53. Determining the plausibility of a claim is a context-specific task that requires the court "to draw on its judicial experience and common sense." *Id.* at 53 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)).

Reisman argues that the Act imposes on him "a government-appointed lobbyist who attempts to influence government on his behalf and in his name, as his agent and representative, even though he disagrees with the positions it attributes to him." ECF No. 5 at 7. This, he contends, gives rise to two First Amendment violations: First, Reisman contends that the Act violates his right to free speech because it effectively compels him to speak on matters from which he chooses to refrain from speaking. *See Wooley v. Maynard*, 430 U.S. 705, 714 (1977) ("[Freedom of speech] includes both the right to speak freely and the right to refrain from speaking at all."). In his declaration filed in support of his motion, Reisman expresses his opposition to numerous positions the Union has taken on his behalf relating to, among other things, wages, hours, and conditions of employment, as well as various other positions and actions by the Union: for example, its decision to expend funds opposing the election of Maine governor Paul LePage in 2010 and 2014, and its support for presidential candidate Hilary Clinton in 2016. Second, Reisman argues that the Act violates his right of free association because it

compels him to associate with the Union, an organization whose speech he chooses not to be associated with. *See Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S.Ct. 2448, 2463 (2018) ("The right to eschew association for expressive purposes is likewise protected."). Although Reisman does not claim that he or any particular organization he is associated with has a right to participate in bargaining sessions, he does contend that he cannot be compelled to associate with the Union "through its advocacy as his representative or agent." ECF No. 5 at 15.

Stated succinctly, Reisman's constitutional challenge to the Act is that by establishing the Union as the exclusive bargaining agent of the University's professors, the Act violates his First Amendment right of free speech and association by depriving him of the right to "decide what not to say" and by placing him in an agency relationship with the Union, thereby forcing him into an unwanted expressive association. ECF No. 38 at 5.

The Union, the University and the Board, and the State all contend that Reisman's constitutional arguments are contrary to established precedent of the Supreme Court and the First Circuit Court of Appeals: *Minn. State Bd. for Cmty. Colleges v. Knight*, 465 U.S. 271 (1984), which rejected a challenge to a Minnesota collective bargaining statute similar to the Act on grounds similar to those Reisman asserts, and *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir. 2016), *cert. denied*, 136 S. Ct. 2473 (2016), which similarly rejected a challenge to the exclusive representation provisions

of a Massachusetts collective bargaining statute. Reisman points, however, to a more recent Supreme Court decision—*Janus*—as having shifted the constitutional framework by requiring that a more exacting degree of judicial scrutiny be applied to statutes that are alleged to infringe on speech and associational rights. In his view, Janus undermines the vitality of the *Knight* and *D'Agostino* decisions.

Knight involved a challenge by college instructors to a Minnesota law mandating that a union representative selected as their exclusive bargaining agent concerning "the terms and conditions of employment" also be their exclusive agent in "meet and confer" sessions with school officials covering other matters outside the scope of mandatory union negotiations. 465 U.S. at 274-75. The Court upheld the statute, finding that the professors' "speech and associational rights …have not been infringed by [the] restriction of participation in 'meet and confer' sessions to the faculty's exclusive representative." *Id*. at 288.

Reisman attempts to distinguish *Knight*, arguing that *Knight* only addresses associational exclusion because the Minnesota statute denied professors the opportunity to speak at "meet and confer" sessions, while his challenge to the Act is broader because the Act compels him to associate and speak against his beliefs. ECF No. 38 at 14. The *Knight* decision, however, is not so narrow. The Court explained that "[t]he state has in no way restrained appellees' freedom to speak on any education-related issue or their freedom to associate *or not to associate* with whom they please,

including the exclusive representative." *Knight*, 465 U.S. at 288 (emphasis added). In reaching this conclusion, the Court expressly noted that, like here, the state considered the exclusive union representative's views to be the official collective position of all faculty and recognized "that not every instructor agrees with the official faculty view on every policy question." *Id.* at 276. *Knight* is therefore not distinguishable from the present case, and it forecloses Reisman's First Amendment claims.

In *D'Agostino*, the First Circuit, relying in part on *Knight*, affirmed the dismissal of a complaint under Fed. R. Civ. P. 12(b)(6) which challenged a statutory scheme which—like the one at issue here—authorized exclusive representation in collective bargaining for public employees. 812 F.3d at 242. The First Circuit squarely rejected the plaintiffs' alleged First Amendment violation, reasoning that "exclusive bargaining representation by a democratically selected union does not, without more, violate the right of free association on the part of dissenting non-union members of the bargaining unit." *Id.* at 244. Reisman concedes that if *D'Agostino* remains controlling authority it defeats his claims. ECF No. 5 at 12-13.

As previously noted, however, Reisman also argues that *Knight* and *D'Agostino* are no longer valid in light of the Supreme Court's recent ruling in *Janus*. Specifically, Reisman argues that by stating in *Janus* "that a union serv[ing] as exclusive bargaining agent for its employees [is] itself a significant impingement on associational freedoms that would not be tolerated

in other contexts," the Court indicated for the first time that collective bargaining statutes do burden First Amendment rights and must therefore pass some level of heightened scrutiny. 138 S.Ct. at 2478. Because *Knight* and *D'Agostino*—finding no First Amendment burden at all—failed to subject the challenged laws to such scrutiny, Reisman contends that they are in conflict with *Janus* and do not control his claims. Reisman further argues that *D'Agostino* must be reconsidered because it is inextricably intertwined with *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), which *Janus* expressly overruled. 138 S.Ct. at 2486. *D'Agostino* cited *Abood* for the proposition that non- union public employees "have no cognizable associational rights objection" to a union's exclusive bargaining scheme, such as the one created by the Act. 812 F.3d at 243.

In *Janus*, the Supreme Court held that statutes that compel the payment of agency fees to a union that serves as the exclusive bargaining agent for all employees—both union members and non-members—violate the First Amendment rights of the non-member employees by compelling them to subsidize the union's private speech. 138 S.Ct. at 2464, 2478. The Court overruled its earlier decision in *Abood* which had reached the opposite conclusion. The Court did not consider in *Janus* whether, as Reisman claims in this case, there is a constitutional defect in statutes that authorize a union selected by a majority vote of all employees to act as the exclusive bargaining agent for the employees in collective bargaining. The *Janus*

opinion strongly suggests, however, that, as *D'Agostino* found, there is no constitutional defect: "It is …not disputed that the State may require that a union serve as exclusive bargaining agent for its employees…. We simply draw the line at allowing the government to go further still and require all employees to support the union irrespective of whether they share its views." *Janus*, 138 S.Ct. at 2478. Thus, although *D'Agostino* cited favorably to *Abood*, and *Abood* was overruled by *Janus*, *Janus* did not, as Reisman argues, call into question *D'Agostino's* conclusion that the First Amendment is not violated where a democratically selected union serves as the exclusive bargaining agent for all employees.

Reisman also contends that the *Knight* and *D'Agostino* decisions should be reconsidered because they did not apply the heightened level of judicial review—"exacting scrutiny"—which *Janus* indicates should be applied. 138 S.Ct. at 2465; ECF No. 38 at 17. The Court noted in *Janus* that it had in the past used exacting scrutiny in assessing issues of compelled speech and association, which requires a law to "serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." 138 S.Ct. at 2465. However, in *Janus* the Court cited approvingly to federal union laws, *see, e.g.*, 5 U.S.C.A. §§ 7102, 7111(a), 7114(a) (West 2018), which allow exclusive union representation selected by a majority vote of the employees, but do not permit agency fees and characterized this approach

as "significantly less restrictive of associational freedoms" than are mandated agency fees.[2] 138 S.Ct. at 2466. This is the exact arrangement codified by the Act which Reisman challenges here. Thus, *Janus* itself suggests that the Act satisfies the exacting scrutiny standard.

Accordingly, *Janus* did not overrule or unsettle the *Knight* or *D'Agostino* decisions, both of which are binding precedent. The other courts which have addressed the same or similar questions since the Supreme Court's decision in *Janus* have reached the same conclusion. In *Bierman v. Dayton*, 900 F.3d 570, 574 (8th Cir. 2018), the court addressed a challenge by public homecare providers that is essentially identical to Reisman's: that exclusive union representation of non- members creates a "mandatory agency relationship" which violates their right to free association under the First Amendment. The Eighth Circuit concluded that the plaintiffs' claims were foreclosed by *Knight* which, the court held, was not superseded by *Janus*. *Id*. In another case challenging the same statute, *Uradnik v. Inter Faculty Organization*, 2018

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[2] The *Janus* decision assumed that "labor peace," meaning the "avoidance of the conflict and disruption that [*Abood*] envisioned would occur if the employees in a unit were represented by more than one union," is a compelling state interest. 138 S.Ct. at 2465. The Court cited several federal employment laws as illustrative of the fact that labor peace has been achieved where "a union chosen by majority vote is designated as the exclusive representative of all the employees, but federal law does not permit agency fees." 138 S.Ct. at 2466.

WL 4654751 (D. Minn. Sept. 27, 2018), the court denied a preliminary injunction sought by a professor that would have enjoined the faculty union from acting as her representative and the university from treating the union as her representative. The court held that *Knight* was distinguishable from *Janus* and "broadly rejected the [professor's] First Amendment free speech arguments, indicating that the decision applies regardless of the type of speech at issue." *Id*. at *2. Furthermore, the court reasoned that even if *Janus* is construed as requiring that exclusive union representation undergo heightened judicial scrutiny, Minnesota's statute survives exacting scrutiny because the "benefits unions provide…are already tailored to minimize First Amendment speech and associational harms." *Id*. at *3. The same is true of the University of Maine System Labor Relations Act.

Reisman contends that by challenging the Act's constitutionality he does not seek to prevent the Union and the Board from continuing to negotiate the terms and conditions of employment and "to apply the terms of its collective bargaining agreement to all bargaining-unit members." ECF No. 38 at 2. Rather, he challenges the Act because, as he characterizes it, the Act unlawfully "permits the Board to appoint the Union as [his] unwanted representative and agent so that it can speak on his behalf on many issues of substantial public concern." ECF No. 38 at 3. This argument mischaracterizes the Act's requirements and effect.

Under the Act, the Union was not, as Reisman asserts, appointed by the Board as his representative and agent. Instead, it was selected by a majority vote of the employees to serve as their bargaining-unit's agent. 26 M.R.S.A. § 1025. And by authorizing the Union, in its role as the agent for the bargaining-unit, to negotiate with the Board on matters related to the terms and conditions of employment, *id.* at § 1025(2)(B), the Act does not cloak the Union with the authority to speak on issues of public concern on behalf of employees, such as Reisman, who do not belong to the Union. Reisman remains free to speak out in opposition to the Union and its positions as he sees fit. His constitutional challenge to the Act thus rests on a fundamental misconception. The Union is not, as Reisman appears to believe, his individual agent. Rather, the Union is the agent for the bargaining-unit which is a distinct entity separate from the individual employees who comprise it. Because the Union is not Reisman's agent, representative, or spokesperson, the Act does not compel him, in violation of the First Amendment, to engage in speech or maintain an association with which he disagrees.

III. CONCLUSION

For the preceding reasons, I conclude that Reisman's complaint fails to state a claim upon which relief can be granted arising from the Act's alleged infringement of his First Amendment Rights. The Defendants' motions to dismiss (ECF Nos. 30, 33, 34) are therefore **GRANTED**. Consequently, Reisman has failed to demonstrate a likelihood of success on the

merits of his claims, the key requirement for obtaining a preliminary injunction. "The *sine qua non* of [the preliminary injunction] inquiry is likelihood of success on the merits: if the moving party cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity." *New Comm Wireless Servs., Inc. v. SprintCom, Inc.*, 287 F.3d 1, 9 (1st Cir. 2002) (emphasis added). Thus, Reisman's motion for a preliminary injunction (ECF No. 5) is **DENIED**.

SO ORDERED.

Dated this 3rd day of December, 2018.

/s/ JON D. LEVY
U.S. DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JONATHAN REISMAN Plaintiff v. ASSOCIATED FACULTIES OF THE UNIVERSITY OF MAINE, UNIVERSITY OF MAINE AT MACHIAS, and the BOARD OF TRUSTEES OF THE UNIVERSITY OF MAINE SYSTEM Defendants, and STATE OF MAINE Intervenor.	1:18-cv-00307-JDL

JUDGMENT

In accordance with the Order on the Defendants' Motions to Dismiss and Plaintiff's Motion for Preliminary Injunction, issued on December 3, 2018, by U.S. District Judge Jon D. Levy;

JUDGMENT of dismissal is hereby entered for Defendants, Associated Faculties of the University of Maine, the University of Maine at Machias, Board of Trustees of the University of Maine System, and Intervenor, State of Maine.

Christa K. Berry
Clerk of Court

By: /s/ Amy K. Rydzewski
Amy K. Rydzewski
Deputy Clerk

Dated: December 4, 2018

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JONATHAN REISMAN Plaintiff v. ASSOCIATED FACULTIES OF THE UNIVERSITY OF MAINE, UNIVERSITY OF MAINE AT MACHIAS, and the BOARD OF TRUSTEES OF THE UNIVERSITY OF MAINE SYSTEM Defendants.	Civil Case No.:________ INJUNCTIVE RELIEF SOUGHT

COMPLAINT

Jonathan Reisman, for his Complaint against Associated Faculties of the University of Maine; the University of Maine at Machias; and the Board of Trustees of the University of Maine System (collectively, "Defendants"), alleges as follows:

Nature of the Action

1. The First Amendment protects the individual rights of free speech and association, including the rights *not* to speak and *not* to associate. For example, public employees who do not belong to a labor union "should not be required to fund a union's political and

ideological projects unless they choose to do so." *Knox v. Serv. Employees Int'l Union, Local 1000*, 567 U.S. 298, 315 (2012). Furthermore, "[b]ecause a public-sector union takes many positions during collective bargaining that have powerful political and civic consequences, the compulsory fees constitute a form of compelled speech and association that imposes a significant impingement on First Amendment rights." *Id.* at 311–12 (quotations and citations omitted). As the Supreme Court has now made clear in *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), that type of burden is impermissible.

2. In violation of these principles, Maine law authorizes state-run universities and labor unions to require public employees who are not union members to associate with those unions and accept their status as "the sole and exclusive bargaining agent" for the employees' interests. The Defendants in this case have done exactly that, agreeing that the Associated Faculties of the University of Maine will be the exclusive representative of employees of the University of Maine at Machias, like the Plaintiff, whether or not they want the Associated Faculties' representation. The agreement the Defendants have executed provides that only the Associated Faculties may bargain as to terms and conditions of employment at the University of Maine at Machias, thereby depriving the Plaintiff and others the right to petition the government on their own behalf.

3. As the Supreme Court has now recognized, "[d]esignating a union as the employees' exclusive representative substantially restricts the rights of individual employees. Among other things, this designation means that individual employees may not be represented by any agent other than the designated union; nor may individual employees negotiate directly with their employer." *Janus*, 138 S. Ct. at 2460. For that reason, and because the union's advocacy is attributed to employees, that designation violates employees' speech and petitioning rights, as well as their associational rights, in contravention of the First Amendment.

Parties

4. The Plaintiff, Johnathan Reisman, is a professor of economics at the University of Maine at Machias. Mr. Reisman is a "state employee" within the meaning of Maine Revised Statute tit. 26, § 979-A(6); *see also id.* § 1022(8).

5. Defendant University of Maine at Machias (the "University") is a public university in Maine. The University is part of the University of Maine System, and "an instrumentality and agency of the State," Me. Rev. Stat. tit. 20-A, §§ 10901, 10903; *id.* at tit. 26, § 1022(10), which is governed and regulated by state statutes, *see, e.g.*, Me. Rev. Stat. tit. 20-A, § 10007, is overseen by trustees, including 14 appointed by the governor, reviewed by a joint committee of jurisdiction, and confirmed by the Maine Legislature, and funded from the state treasury.

6. Defendant Board of Trustees of the University of Maine System (the "Board") is the Maine "instrumentality and agency of the State" charged with the superintendence of the University System, including University of Maine at Machias. Me. Rev. Stat. tit. 20-A, §§ 10901, 10903; *id.* at tit. 26, § 1022(10). The Board is the public employer of University employees within the meaning of Maine's public-employees labor-relations code. Me. Rev. Stat. Ann. tit. 20-A §§ 1022(3), (10).

7. Defendant Associated Faculties of the University of Maine (the "Union") is a "bargaining agent" as defined in the Maine university-public-employees labor-relations code, Me. Rev. Stat. Ann. tit. 26, §§ 1022.1-B, and represents employees at the University.

Jurisdiction and Venue

8. This case raises claims under the First and Fourteenth Amendments of the federal Constitution, 42 U.S.C. § 1983, and the doctrine of *Ex Parte Young*, 209 U.S. 123 (1908). Jurisdiction is proper under 28 U.S.C. § 1331.

9. Mr. Reisman, the Board, the University, and the Union are all residents of Maine. Venue is proper in this District under 28 U.S.C. § 1391(b).

Factual Allegations

10. Under Maine law, a union may become the exclusive bargaining representative for public em-

ployees in a bargaining unit by showing that a majority of employees in the unit wish the union to represent them. Me. Rev. Stat. Ann. tit. 26, § 1025.

11. This showing may be made in two ways.

12. First, the union may obtain recognition simply by "alleging" that a majority of employees in the unit desire the union to be their representative. If the university does not contest this allegation, the union is recognized as the exclusive bargaining representative. Me. Rev. Stat. Ann. tit. 26, § 1025(1).

13. Second, if the university "desire[s] that an election determine whether the organization represents a majority of the members in the bargaining unit," the Maine Labor Relations Board oversees an election, which occurs in two stages. Me. Rev. Stat. Ann. tit. 26, § 1025(1), (2).

14. At the first stage, the union may obtain a certification election by presenting proof to Maine's Labor Relations Board that at least 30 percent of employees in a proposed bargaining unit wish to be represented by the union. Me. Rev. Stat. Ann. tit. 26, § 1025(2)(A).

15. At the second, if the union obtains at least a majority of votes of bargaining- unit employees in the election, it is certified as the exclusive representative of employees in the bargaining unit. Me. Rev. Stat. Ann. tit. 26, §§ 1025(2)(B).

16. A union certified as the exclusive representative of employees in a bargaining unit "is required to

represent all the university, academy or community college employees within the unit without regard to membership in the organization certified as bargaining agent." Me. Rev. Stat. Ann. tit. 26, §§ 1025(2)(E). Accordingly, such a union is the representative of employees who are not members of the union.

17. A public employer must bargain collectively with a union that obtains status as the exclusive representative of some or all its employees. Me. Rev. Stat. Ann. tit. 26, §§ 1026, 1027(1)(E), (2)(B).

18. The duty to bargain requires the university to "confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration." Me. Rev. Stat. tit. 26 § 1026(1)(A).

19. Maine law authorizes a union and public university to deduct an agency fee from public employees who are not members of the unit to fund the union's "representational activities." Me. Rev. Stat. tit. § 1023(A)(2). This provision is now plainly unconstitutional in light of *Janus*.

20. The Board and the Union are parties to a collective bargaining agreement with a stated term from 2015 through 2017, which, on information and belief, is currently in force or is identical for all material purposes of this case to the one currently in force. See Exhibit A (the "Agreement"). The Union identifies this Agreement on its website as the "Current Contract."

21. The Agreement establishes a bargaining unit of "University of Maine System employees." Agreement, Art. 1.

22. The Agreement provides that the Union is the "sole and exclusive bargaining agent" of those persons. *Id*.

23. Accordingly, under Maine law and the Agreement, the Union is the representative and agent of University of Maine System employees who have declined to join the Union.

24. The Agreement requires that, even when dealing with individual employees, "[t]he Board or its officers and agents shall at all times be cognizant of the status of the Association as the sole and exclusive bargaining agent under the University of Maine System Labor Relations Act for unit members." Agreement, Art. 3.

25. The Agreement provides the Union the right to "express its views at meetings of the Board of Trustees." *Id*. Art. 3(D).

26. The Agreement provides for the appointment members of the Union to be a "designated grievance chairperson" to assist in "the implementation of this Agreement." *Id*. Art. 4(A)(2). "Such representatives shall have the right…to investigate, consult and prepare grievance presentations and attend grievance hearings and meeting or participate in collective bargaining." *Id*.

27. The Agreement requires the University to meet with a committee of Union representatives on the Union's request "for the purpose of discussing matters necessary to the implementation of this

Agreement." *Id*. Art 5(A). Topics of discussion may include "University-wide" matters, matters "related to a particular campus," and "[m]atters of common concern." *Id*. Art 5(C), (D), (E).

28. The Agreement affords the Union the right to prepare "default student evaluation form and procedures for assessment of online and interactive television (ITV) courses," which are used in evaluating faculty members. *Id*. Art. 10(B)(2).

29. The Agreement requires unit members to join the Union, pay a representation fee to the Union, or pay a fee to an "education fund." *Id*. Art. 14(A). This provision is now patently unconstitutional under *Janus*.

30. The Agreement provides for a grievance procedure for resolving "any complaint that exists with respect to the interpretation or application of this Agreement." *Id*. Art. 15. Although the Agreement allows any individual unit member to proceed through the first three steps of the grievance procedure, it afford only the Union the right to proceed past step three, including bringing the grievance to the University Chancellor and arbitration. *Id*. Art. 15(C). In other words, an individual may not proceed past step three or arbitrate a grievance unless the Union represents him or her.

31. The Agreement also provides the Union the right to have its representative attend and "state its views" at all grievance stages prosecuted by an individual not represented by the Union, whether or not

that individual wishes the Union's representative to attend. *Id*. Art. 15(E)(3).

32. In all of these activities, the Union speaks on behalf of the employees that it represents.

33. In addition to these Union-specific rights and roles, the Agreement records the Board's and Union's negotiated points of agreement, including those pertaining to wages, benefits, grievances, the school year, workload, personnel files, office hours, severance, retirement, leaves of absence, and so on. These provisions bind all bargaining unit members, including non-union employees.

34. Dr. Reisman is a tenured faculty member at the University.

35. Dr. Reisman is not a member of the Union.

36. Dr. Reisman disagrees with the Union on many issues, including issues related to terms and conditions of employment and issues related to governance of the University.

37. Due to the Union's status as exclusive representative of University faculty, Dr. Reisman has no meaningful avenue to negotiate his own terms and conditions of employment with the University.

38. Due to the Union's status as exclusive holder of the statutory right to meet and confer, Dr. Reisman has no avenue to exercise the meet and confer rights the Union possesses.

Count I: Designating a Union as Employees' "Exclusive Representative" Violates the First Amendment

39. The Plaintiff incorporates and re-alleges each and every allegation contained in the foregoing paragraphs of this Complaint, as though fully set forth herein.

40. By designating the Union as the Plaintiff's exclusive representative, Maine law and the Agreement violate the Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution.

41. That designation compels the Plaintiff to associate with the Union.

42. The designation compels the Plaintiff to speak and to petition government, because it authorizes and requires the Union to speak for him.

43. That designation attributes the Union's speech and petitioning to the Plaintiff.

44. That designation restricts the Plaintiff's speech and petitioning.

45. The Plaintiff has no adequate remedy at law.

46. The controversy between Defendants and the Plaintiff is a definite and concrete dispute concerning the legal relations of parties with adverse legal interests.

47. The dispute is real and substantial, as the Union continues to hold itself out as the Plaintiff's exclusive representative and its designation as such restricts the Plaintiff's rights.

48. The declaratory relief sought is not based on a hypothetical state of facts, nor would it amount to a mere advisory opinion, as the parties dispute the legality of the Union's designation as the Plaintiff's exclusive representative.

49. As a result of the foregoing, an actual and justiciable controversy exists between the Plaintiff and the Union regarding their respective legal rights, and the matter is ripe for review.

Costs and Attorneys' Fees

50. Pursuant to 42 U.S.C § 1988, the Plaintiff seeks an award of costs and attorneys' fees incurred in the litigation of this case.

Prayer for Relief

For these reasons, the Plaintiff requests that the Court:

(A) Enter a judgment declaring that Maine's exclusive-representation law and the Agreement impermissibly abridge the Plaintiff's First Amendment speech, petitioning, and associational rights by designating the Union as the Plaintiff's exclusive representative;

(B) Enter an injunction barring Defendants from recognizing the Union as the Plaintiff's exclusive representative or representative;

(C) Enter an injunction barring Defendants from affording preferences to members of the Union;

(D) An award of costs, including reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988(b);

(E) Grant the Plaintiff additional or different relief as the Court deems just and proper.

August 10, 2018 Respectfully submitted,

/s/ Timothy C. Woodcock

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UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JONATHAN REISMAN Plaintiff v. ASSOCIATED FACULTIES OF THE UNIVERSITY OF MAINE, UNIVERSITY OF MAINE AT MACHIAS, and the BOARD OF TRUSTEES OF THE UNIVERSITY OF MAINE SYSTEM Defendants.	Civil Case No.:________ INJUNCTIVE RELIEF SOUGHT

DECLARATION OF JONATHAN REISMAN

Pursuant to 28 U.S.C. § 1746, I, Jonathan Reisman, declare and state as follows:

1. I am over the age of 18 and competent to make this declaration. I have personal knowledge of the fact state herein, and if called as a witness, I could and would competently testify thereto.

2. I am an Associate Professor of Economics and Public Policy at the University of Maine at Machias.

3. I am an employee of the University of Maine System (the "Board"),

4. The Associated Faculties of the University of Maine (the "Union") has been designated as the exclusive bargaining agent for employees of the Board.

5. AFUM is affiliated with the Maine Education Association and the National Educational Association.

6. The Board has entered into a series of collective-bargaining agreements with the Union, including the latest "Agreement." A true and correct copy of the Agreement is attached as Exhibit A.

7. Under that Agreement, the bargaining unit includes all "University of Maine System employees." Ex. A, art. 1.

8. I belong to the bargaining unit covered by the Agreement.

9. I am not a member of the Union.

10. Under Maine law and without my affirmative consent, the union acts as my exclusive representative and agent to the board when collectively bargaining, in grievance proceedings, in other contacts with the Board and its agents and employees, and when engaging in other public and governmental advocacy.

11. The Union speaks on my behalf. The Unions speech to and petitioning of the government in its representative capacity is imputed to me because of the Union's status under Maine law and the Agreement as my agent and representative, despite that I do not authorize the Union to advocate or otherwise speak on my behalf.

12. My unwanted association with the Union is forced upon me by Maine law and government officials, despite my actual refusal to associate with the Union.

13. I oppose many of the positions the Union has taken, including on political and policy matters.

14. I oppose numerous of the positions that the Union has taken on my behalf, relating to, among other things, wages, hours, and conditions of employment. Indeed, the Union has taken positions as my exclusive representative that are contrary to my conscience and beliefs

15. Among other things, I oppose the MEA's decision to expend funds opposing the election of Governor Paul LePage in 2010 and 2014

16. I opposed the MEA's decision to promote and support separate referenda which raised the minimum wage and imposed a 3% surtax on high income households.

17. I opposed the MEA's opposition to school choice and charter schools.

18. I opposed the MEA and NEA's support in 2016 for Hillary Clinton.

19. I oppose the MEA's current support for another referendum to impose a surtax on high income households.

20. I oppose the MEA's support for various "social justice" issues.

21. I have no control over the Union's choices of positions to advocate, despite that the Union advocates those position on my behalf.

22. I am restricted from speaking on my own behalf or petitioning the government on my own behalf by virtue of the Union's designation as my exclusive bargaining agent.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 7, 2018.

Jonathan Reisman
Jonathan Reisman

26 M.R.S.A. § 1021

§ 1021. Purpose

It is declared to be the public policy of this State and it is the purpose of this chapter to promote the improvement of the relationship between public employers and their employees by providing a uniform basis for recognizing the right of the University of Maine System employees, Maine Maritime Academy employees and community college employees to join labor organizations of their own choosing and to be represented by such organizations in collective bargaining for terms and conditions of employment.

26 M.R.S.A. § 1022

§ 1022. Definitions

As used in this chapter, the following terms shall, unless the context requires a different interpretation, have the following meanings.

1. Repealed. Laws 1975, c. 671, § 2, eff. Oct. 1, 1976.

1-A. Academy. "Academy" means the Maine Maritime Academy and its activities and functions supervised by its board of trustees or their designee. In the furtherance of this chapter, the academy shall be considered as a single employer and employment relations, policies and practices throughout the academy shall be as consistent as practicable. It is the responsibility of the board of trustees of the academy or their designee to negotiate collective bargaining agreements and to administer such agreements. The board of trustees of the academy or their designee is responsible for the employer functions of the academy under this chapter and shall coordinate its collective bargaining activities. For purposes of consistency elsewhere in this chapter, references to the university shall be construed to include and to apply to the Maine Maritime Academy, its board of trustees, and its employees.

1-B. Bargaining agent. "Bargaining agent" means any lawful organization, association or individual representative of such organization or association, which has as one of its primary purposes the representation

of employees in their employment relations with employers and which has been certified by the Executive Director of the Maine Labor Relations Board.

1-C. Community college. "Community college" means the Maine state community colleges and their activities and functions supervised by the Board of Trustees of the Maine Community College System or its designee. The employment relations, policies and practices throughout the community colleges shall be as consistent as possible. It is the responsibility of the board of trustees or its designee to negotiate collective bargaining agreements and administer these agreements. The board of trustees or its designee is responsible for employer functions of the community colleges under this chapter and shall coordinate its collective bargaining activities with campuses or units on matters of community college concern. In addition to its responsibilities to the public generally, the board of trustees shall have the specific responsibility of considering and representing the interests and welfare of the students in any negotiations under this chapter.

A. Repealed.

2. Board. "Board" means the Maine Labor Relations Board as defined in section 968, subsection 1.

3. Board of Trustees. "Board of Trustees" means the Board of Trustees of the University of Maine System, the Board of Trustees of the Maine Maritime Academy or the Board of Trustees of the Maine Community College System.

4. Classified employee. "Classified employee" means any employee not engaged in professional work as defined in subsection 7.

5. Cost items. "Cost items" means the provisions of a collective bargaining agreement which require specific funding.

6. Executive Director. "Executive Director" means the Executive Director of the Maine Labor Relations Board as defined in section 968, subsection 2.

7. Professional employee. "Professional employee" means any employee engaged in work:

A. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work;

B. Involving the consistent exercise of discretion and judgment in its performance;

C. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a given time period; and

D. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical processes.

8. Regular employee. "Regular employee" means any professional or classified employee who occupies a position that exists on a continual basis.

9. Supervisory employee. "Supervisory employee" means any employee whose principal work tasks are characterized by performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees, or performing such duties as are distinct and dissimilar from those performed by the employees supervised, or exercising judgment in adjusting grievances, in applying other established personnel policies and procedures and in enforcing a collective bargaining agreement or establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards.

10. University. "University" means all campuses or units of the university, represented by the board of trustees or its designee. In the furtherance of this chapter, the university shall be considered as a single employer and employment relations, policies and practices throughout the university shall be as consistent as practicable. It is the responsibility of the board of trustees or its designee to negotiate collective bargaining agreements and to administer such agreements. The board of trustees or its designee is responsible for the employer functions of the university under this chapter and shall coordinate its collective bargaining activities with campuses or units on mat-

ters of university concern. In addition to its responsibilities to the public generally, the university shall have the specific responsibility of considering and representing the interests and welfare of the students in any negotiations under this chapter.

11. University, academy or community college employee. "University, academy or community college employee" means any regular employee of the University of Maine System, the Maine Maritime Academy or the Maine Community College System performing services within a campus or unit, except any person:

A. Appointed to office pursuant to law;

B. Appointed by the Board of Trustees as a vice-president, dean, director or member of the chancellor's, superintendent's or Maine Community College System executive director's immediate staff; or

C. Whose duties necessarily imply a confidential relationship with respect to matters subject to collective bargaining as between such person and the university, the academy or the Maine Community College System.

26 M.R.S.A. § 1023

§ 1023. Right of university, academy or community college employees to join or refrain from joining labor organizations; prohibition

A person may not directly or indirectly interfere with, intimidate, restrain, coerce or discriminate against a university, academy or community college employee or a group of university, academy or community college employees in the free exercise of their rights, given by this section, to voluntarily:

1. Join a union. Join, form and participate in the activities of organizations of their own choosing for the purposes of representation and collective bargaining or in the free exercise of any other right under this chapter; or

2. Not join a union. Refrain from joining or participating in the activities of organizations for the purposes of representation and collective bargaining, except that an employee may be required to pay to the organization that is the bargaining agent for the employee a service fee that represents the employee's pro rata share of those expenditures that are germane to the organization's representational activities.

26 M.R.S.A. § 1025

§ 1025. Determination of bargaining agent

1. Voluntary recognition. Any employee organization may file a request with the university, academy or community colleges alleging that a majority of the university, academy or community college employees in an appropriate bargaining unit as established in section 1024, wish to be represented for the purpose of collective bargaining between the university, academy or community colleges and the employees' organization. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include a demonstration of majority support. Such request for recognition shall be granted by the university, academy or community colleges unless the university, academy or community colleges desire that an election determine whether the organization represents a majority of the members in the bargaining unit. In the event that the request for recognition is granted by the university, academy or community colleges, the executive director shall certify the organization so recognized as the bargaining agent.

2. Elections.

A. The executive director of the board, upon signed request of the university, academy or community college alleging that one or more university, academy or community college employees or employee organizations have presented to it a claim to be recognized as the representative of a bargaining unit of university,

academy or community college employees, or upon signed petition of at least 30% of a bargaining unit of university, academy or community college employees that they desire to be represented by an organization, shall conduct a secret ballot election to determine whether the organization represents a majority of the members of the bargaining unit. Such an election may be conducted at suitable work locations or through the United States mail, and the procedures adopted and employed must ensure that neither the employee organizations or the management representatives involved in the election have access to information that would identify a voter.

B. The ballot shall contain the name of such organization and that of any other organization showing written proof of at least 10% representation of the university, academy or community college employees within the unit, together with a choice for any university, academy or community college employee to designate that the employee does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot, and no one of the 3 or more choices receives a majority vote of the university, academy or community college employees voting, a run-off election shall be held. The run-off ballot shall contain the 2 choices which received the largest and 2nd largest number of votes. When an organization receives the majority of votes of those voting, the executive director shall certify it as the bargaining agent. The bargaining agent certified as representing

a bargaining unit shall be recognized by the university, academy or community colleges as the sole and exclusive bargaining agent for all of the employees in the bargaining unit unless and until a decertification election by secret ballot shall be held and the bargaining agent declared by the executive director as not representing a majority of the unit.

C. Whenever 30% of the employees in a bargaining unit petition for a bargaining agent to be decertified, the procedures for conducting an election on the question shall be the same as for representation as bargaining agent hereinbefore set forth.

D. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question concerning unit or representation may be raised except during the period not more than 90 nor less than 60 days prior to the expiration date of the agreement.

E. The bargaining agent certified by the executive director or a designee as the exclusive bargaining agent for a unit is required to represent all the university, academy or community college employees within the unit without regard to membership in the organization certified as bargaining agent, except that any university, academy or community college employee may present at any time that employee's grievance to the employer and have that grievance adjusted without the intervention of the bargaining agent, if the adjustment is not inconsistent with the terms of any collective bargaining agreement then in effect and the

bargaining agent's representative has been given reasonable opportunity to be present at any meeting of the parties called for the resolution of that grievance.

26 M.R.S.A. § 1026

§ 1026. Obligation to bargain

1. Negotiations. It is the obligation of the university, academy, community college or state schools for practical nursing and the bargaining agent to bargain collectively. "Collective bargaining" means, for the purpose of this chapter, their mutual obligation:

A. To meet at reasonable times;

B. To meet within 10 days after receipt of written notice from the other party requesting a meeting for collective bargaining purposes if the parties have not otherwise agreed in a prior written contract;

C. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration, except that by such obligation neither party is compelled to agree to a proposal or required to make a concession;

D. To execute in writing any agreements arrived at, the term of any such agreement to be subject to negotiation, but not to exceed 3 years; and

E. To participate in good faith in the mediation, fact finding and arbitration procedures required by this section.

1-A. Additional bargaining; community college employees. Cost items in any collective bargaining agreement of community college employees must be submitted for inclusion in the Governor's next operating budget within 10 days after the date on which the agreement is ratified by the parties. If the Legislature

rejects any of the cost items submitted to it, all cost items submitted must be returned to the parties for further bargaining. "Cost items" includes salaries, pensions and insurance.

Cost items related to a collective bargaining agreement reached under this chapter and submitted to the Legislature for its approval under this subsection may not be submitted in the same legislation that contains cost items for employees exempted from the definition of "community college employee" under section 1022, subsection 11.

2. Mediation.

A. It is the declared policy of the State to provide full and adequate facilities for the settlement of disputes between the employer and employees or their representatives through mediation.

B. Mediation procedures, as provided by section 965, subsection 2, shall be followed whenever either party to a controversy requests such services prior to arbitration, or at any time on motion of the Maine Labor Relations Board or its executive director.

C. The employer, union or employees involved in collective bargaining shall notify the Executive Director of the Maine Labor Relations Board, in writing, at least 30 days prior to the expiration of a contract, or 30 days prior to entering into negotiations for a first contract between the employer and the employees, or whenever a dispute arises between the parties threatening interruption of work, or under both conditions.

D. Nothing in this section shall be construed as preventing the parties, as an alternative to mediation under section 965, from jointly agreeing to elect mediation from either the Federal Mediation and Conciliation Service or the American Arbitration Association, in accordance with the procedures, rules and regulations of those organizations.

E. Any information disclosed by either party to a dispute to a mediator or to a mediation panel or any of its members in the performance of this subsection shall be privileged.

3. Fact-finding.

A. If the parties, either with or without the services of a mediator, are unable to effect a settlement of their controversy, they may jointly agree either to call upon the Maine Labor Relations Board to arrange for fact-finding services and recommendations to be provided by the Maine Board of Arbitration and Conciliation, or to pursue some other mutually acceptable fact-finding procedure, including use of the Federal Mediation and Conciliation Service or the American Arbitration Association according to their respective procedures, rules and regulations.

B. If the parties do not jointly agree to call upon the Maine Labor Relations Board or to pursue some other procedure, either party to the controversy may request the executive director to assign a fact-finding panel. If so requested, the executive director shall appoint a fact-finding panel, ordinarily of 3 members, in

accordance with rules and procedures prescribed by the board for making such appointments.

C. The fact-finding proceedings shall be as provided by section 965, subsection 3.

4. Arbitration.

A. At any time after participating in the procedures set forth in subsections 2 and 3, either party, or the parties jointly, may petition the board to initiate arbitration procedures. On receipt of the petition, the executive director shall within a reasonable time determine if an impasse has been reached; the determination must be made administratively, with or without hearing, and is not subject to appeal. If the executive director so determines, the executive director shall issue an order requiring arbitration and requesting the parties to select one or more arbitrators. If the parties, within 10 days after the issuance of the order, have not selected an arbitrator or a Board of Arbitration, the executive director shall then order each party to select one arbitrator and the 2 arbitrators so selected shall select a 3rd neutral arbitrator. If the 2 arbitrators cannot in 5 days select a 3rd neutral arbitrator, the executive director shall submit identical lists to the parties of 5 or more qualified arbitrators of recognized experience and competence. Each party has 7 days from the submission of the list to delete any names objected to, number the remaining names indicating the order of preference and return the list to the executive director. In the event a party does not return the list within the time specified, all parties named therein are deemed acceptable.

From the arbitrators who have been approved by both parties and pursuant to the order of mutual preference, the executive director shall appoint a neutral arbitrator. If the parties fail to agree upon any arbitrators named, or if for any other reason the appointment cannot be made from the initial list, the executive director shall then submit a 2nd list of 5 or more additional qualified arbitrators of recognized experience and competence from which they shall strike names with the determination as to which party shall strike first being determined by a random technique administered through the Executive Director of the Maine Labor Relations Board. Thereafter, the parties shall alternately strike names from the list of names submitted, provided that, when the list is reduced to 4 names, the 2nd from the last party to strike shall be entitled to strike 2 names simultaneously, after which the last party to strike shall so strike one name from the then 2 remaining names, such that the then remaining name shall identify the person who must then be appointed by the executive director as the neutral arbitrator.

Nothing in this subsection may be construed as preventing the parties, as an alternative to procedures in the preceding paragraph, from jointly agreeing to elect arbitration from either the Federal Mediation and Conciliation Service or the American Arbitration Association, under the procedures, rules and regulations of that association, provided that these procedures, rules and regulations are not inconsistent with paragraphs B and C.

B. If the controversy is not resolved by the parties themselves, the arbitrators shall proceed as follows: With respect to a controversy over salaries, pensions and insurance, the arbitrators will recommend terms of settlement and may make findings of fact; such recommendations and findings will be advisory only and will be made, if reasonably possible, within 60 days after the selection of the neutral arbitrator. The arbitrators may in their discretion make such recommendations and findings public, and either party may make such recommendations and findings public if agreement is not reached with respect to such findings and recommendations within 10 days after their receipt from the arbitrators. With respect to a controversy over subjects other than salaries, pensions and insurance, the arbitrators shall make determinations with respect thereto if reasonably possible within 60 days after the selection of the neutral arbitrator. Such determinations may be made public by the arbitrators or either party and if made by a majority of the arbitrators, such determinations will be binding on both parties and the parties will enter an agreement or take whatever other action that may be appropriate to carry out and effectuate such binding determinations, and such determinations will be subject to review by the Superior Court in the manner specified by section 1033. The results of all arbitration proceedings, recommendations and awards conducted under this section shall be filed with the Maine Labor Relations Board at the offices of its executive director simultaneously with the submission of the recommenda-

tions and award to the parties. In the event the parties settle their dispute during the arbitration proceeding, the arbitrator or the chairman of the arbitration panel will submit a report of his activities to the Executive Director of the Maine Labor Relations Board not more than 5 days after the arbitration proceeding has terminated.

C. In reaching a decision under this section, the arbitrators shall consider the following factors:

(1) The interests and welfare of the students and the public and the financial ability of the university, academy or community colleges to finance the cost items proposed by each party to the impasse;

(2) Comparison of the wages, hours and working conditions of the employees involved in the arbitration proceeding with the wages, hours and working conditions of other employees performing similar services in public and private employment competing in the same labor market;

(3) The overall compensation presently received by the employees, including direct salary and wage compensation, vacation, holidays, life and health insurance, retirement and all other benefits received;

(4) Such other factors not confined to the factors set out in subparagraphs (1) to (3), which are normally and traditionally taken into consideration in the resolution of disputes involving similar subjects of collective bargaining in public higher education;

(5) The need of the university, academy or community colleges for qualified employees;

(6) Conditions of employment in similar occupations outside the university, academy or community colleges;

(7) The need to maintain appropriate relationships between different occupations in the university, academy or community colleges; and

(8) The need to establish fair and reasonable conditions in relation to job qualifications and responsibilities.

5. Costs. The following costs must be shared equally by the parties to the proceedings: the costs of the fact-finding board, including, if any, per diem expenses and actual and necessary travel and subsistence expenses; the costs of the neutral arbitrator or arbitrators, including, if any, per diem expenses and actual and necessary travel and subsistence expenses; the costs of the Federal Mediation and Conciliation Service or the American Arbitration Association; and the costs of hiring the premises where any fact-finding or arbitration proceedings are conducted. All other costs must be assumed by the party incurring them. The services of the Panel of Mediators and the State Board of Arbitration and Conciliation and any state allocation program charges must be shared equally by the parties to the proceedings and must be paid into a special fund administered by the Maine Labor Relations Board. Authorization for services rendered and ex-

penditures incurred by members of the Panel of Mediators and the State Board of Arbitration and Conciliation is the responsibility of the executive director. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the matter is scheduled for hearing or the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action.

26 M.R.S.A. § 1027

§ 1027. Prohibited acts of the university, university employees and university employee organizations

1. University, academy and community colleges; prohibitions. The university, its representatives and agents, the academy, its representatives and agents and the community colleges, their representatives and agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1023;

B. Encouraging or discouraging membership in any employee organization by discrimination in regard to hire or tenure of employment or any term or condition of employment;

C. Dominating or interfering with the formation, existence or administration of any employee organization;

D. Discharging or otherwise discriminating against an employee because the employee has signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter;

E. Refusing to bargain collectively with the bargaining agent of its employees as required by section 1026;

F. Blacklisting of any employee organization or its members for the purpose of denying them employment;

G. Requiring an employee to join a union, employee association or bargaining agent as a member; and

H. Terminating or disciplining an employee for not paying union dues or fees of any type.

2. University, academy, community colleges; prohibitions. University employees, university employee organizations, their agents, members and bargaining agents; academy employees, academy employee organizations, their agents, members and bargaining agents; and community college employees, community college employee organizations, their agents, members and bargaining agents are prohibited from:

A. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed in section 1023 or the university, academy and community colleges in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances;

B. Refusing to bargain collectively with the university, academy and community colleges as required by section 1026; and

C. Engaging in:

(1) A work stoppage, slowdown or strike; and

(2) The blacklisting of the university, academy or community colleges for the purpose of preventing them from filling employee vacancies.

3. Negotiation of union security. Nothing in this chapter shall be interpreted to prohibit the negotiation of union security, excepting closed shop.

3-A. Negotiation of initial probationary period. The length and terms of an employee's probationary period upon initial employment is a negotiable item in accordance with the procedures set forth in section 1026, except that, at a minimum, the probationary period must include the first 6 months of the employee's active employment. During the initial 6 months of active employment, an employee may be terminated without just cause.

4. Violations. Violations of this section shall be processed by the board in the manner provided in section 1029.

AGREEMENT BETWEEN UNIVERSITY OF MAINE SYSTEM AND ASSOCIATED FACULTIES OF THE UNIVERSITIES OF MAINE, MEA/NEA 2015 - 2017

[EXCERPTS]

* * *

ARTICLE 1 – RECOGNITION

The Board of Trustees of the University of Maine System (hereinafter the Board) recognizes the Associated Faculties of the Universities of Maine / Maine Education Association / National Education Association (hereafter the Association) as the sole and exclusive bargaining agent for University of Maine System employees, as defined in the University of Maine System Labor Relations Act, in the faculty bargaining unit (hereafter unit members). Unit members are University of Maine System employees in titles or positions included in the faculty bargaining unit as a result of the Stipulation in Unit Determination Hearings and Memorandum of Understanding dated March 27, 1978; the Certification by the Maine Labor Relations Board on May 11, 1978; and the Unit Determination Report of the Maine Labor Relations Board dated August 4, 1978, as they are amended by Article 13, Responsibilities of Department, Division or other Appropriate Units and Chairpersons; the Memorandum of Understanding dated September 19, 1982.

ARTICLE 2 - ACADEMIC FREEDOM AND FACULTY EXPRESSION

The Board and the Association agree that academic freedom is essential to the fulfillment of the purposes of the University. The parties acknowledge and encourage the continuation of an atmosphere of confidence and freedom while recognizing that the concept of academic freedom is accompanied by a corresponding concept of responsibility to the University and its students. Academic freedom is the freedom of Unit members to present and discuss all relevant matters in the classroom, to explore all avenues of scholarship, research and creative expression, and to speak or write without any censorship, threat, restraint, or discipline by the University with regard to the pursuit of truth in the performance of their teaching, research, publishing or service obligation.

Unit members have the right to comment as faculty on matters related to their professional duties, and the functioning of the University, subject to the need for courteous, professional and dignified interaction between all individuals and the parties' shared expectation that all members of the campus community will work to develop and maintain professional relationships that reflect courtesy and mutual respect recognizing a Unit member's responsibility to refrain from interfering with the normal operations of the University and the ability to carry out its mission.

Additionally, Unit members as citizens are entitled to the rights of citizenship in their roles as citizens, in-

cluding to comment on matters of public concern. Because of their special status in the community, unit members have a responsibility and an obligation to indicate when expressing personal opinions that they are not institutional representatives unless specifically authorized as such.

The University of Maine System is a public institution of higher education committed to excellence in teaching, research, and public service. Together, the students, faculty, and staff form our state wide University community. The quality of life on and about the member Universities is best served by preserving the above described freedoms and civility.

ARTICLE 3 - BOARD ASSOCIATION RELATIONS

A. The Board of Trustees (hereafter Board) and the Association agree to maintain the academic character of the University of Maine System (hereafter University) as an institution of higher education.

B. The rights, functions, powers, duties and responsibilities of the Board and its officers and agents, under applicable state law and the Bylaws of the Board, including the Board's right to alter or waive existing Bylaws or policies in accordance with the procedures specified in the Bylaws shall remain vested in the Board and in said officers and agents except as modified by this Agreement.

C. Nothing contained in this Agreement shall be construed to diminish the rights granted under the Bylaws of the Board to the entities and bodies

within the internal structure of the University so long as such rights are not in conflict with a stated term of this Agreement.

D. Nothing contained in this Agreement shall be construed to prevent the Board and its officers and agents from meeting with any individual or organization to hear views on any matters. The Board or its officers and agents shall at all times be cognizant of the status of the Association as the sole and exclusive bargaining agent under the University of Maine System Labor Relations Act for unit members. In accordance with Board policy, the Association may express its views at meetings of the Board of Trustees.

ARTICLE 4 - ASSOCIATION RIGHTS

A. 1. Duly designated staff representatives of the Association shall be permitted on University premises at reasonable hours for the purpose of conducting official Association business. The Association agrees to a reasonable exercise of this privilege which will not interfere with or interrupt the normal operations of the University.

2. One designated grievance chairperson per campus except two (2) at UM, UMA, and USM and, during the term of negotiations, seven (7) designated negotiating team members shall henceforth be granted priority, when necessary, insofar as possible within the campus scheduling procedures, in the selection of times

for their assigned teaching schedules and/or other professional responsibilities in order to facilitate the implementation of this Agreement. These Association representatives shall have the responsibility to meet all classes, office hours and other duties and responsibilities. Such representatives shall have the right during times outside of those hours scheduled for such activities to investigate, consult and prepare grievance presentations and attend grievance hearings and meetings or participate in collective bargaining.

3. Upon timely designation by the Association, unit members who are Association representatives shall be granted a total of not more than fifty-eight (58) hours of release time during the period per academic year during the life of the agreement for the purposes of negotiations, grievance handling and implementation of this Agreement. No more than sixteen (16) hours shall be available to unit members from any single campus in any semester. The Association may purchase released time at the applicable overload rate for six (6) additional unit members timely designated for the above described purposes. Such purchased released time shall not exceed a total of eighteen (18) hours per semester, and all released time shall be subject to the above limitations regarding its allocation to campuses.

4. The Association shall inform the University of the names of the individual unit members who are to receive priority scheduling and/or released time far enough in advance so that the scheduling of any semester's classes is not interfered with or otherwise disrupted. Release time notification shall be made no later than May 31 for the following fall semester and no later than October 31 for the following spring semester.

B. 1. The Association shall be allowed reasonable use of the intra-campus mail system.

2. The Association may request a lockable office for Association use pursuant to existing campus procedures at the University of Maine and the University of Southern Maine. An office shall be provided to the Association if available.

3. The University shall allow at no cost to the association the listing of a campus or other designated phone number for the Association in each campus directory. The Association may, at its cost, have a University phone installed on each campus. All operating charges shall be borne by the Association.

4. The Association shall have access for purposes of Association business to campus meeting rooms through the normal reservation process at each campus. The Association shall pay only the amount required of other campus organizations for this privilege.

5. The Association shall have access to the use of available campus office equipment at reasonable times.

6. The Association shall receive at no cost three (3) campus parking passes, where utilized, to assure ease of compliance with campus traffic regulations while representatives of the Association are on official business.

7. Within the months of February, April, June, August, October and December of each year and at no cost to the Association, the University shall supply the Association with a standardized MEA electronic data file (see below). Once standardized, no changes will be made to the data file during the life of this Agreement.

Collective Bargaining Unit	Original Hire Date
Unique ID	Title
Employee ID	Department
First and Last Name	Job Code
Health Plan Type	Job Entry Date
Address (home)	Employment Status
Gender	Regular / Temp
Birth Date	Time Base (full or part-time)
Education Level	FTE
Step	Union Code
Campus	Campus Address
Salary Base	Wage Grade
Coverage	Benefit Plan
Country	Soft Money

Contract Length	Work Year
Tenure Status	College – where employed
Hourly rate	

8. The University agrees to provide to AFUM an Excel file containing the best available information regarding the name, course number, course title, number of credits per course and number of student credits for all non-unit members teaching credit bearing courses. Such report shall be provided twice annually by January 31 for Fall semester and by June 30 for Spring semester.

9. Unless otherwise stated in this Article, the Association shall pay the cost of all materials, supplies and any other normal charge incident to the use of equipment or facilities.

C. The University shall supply the Association president or that person's designee with all public agendas, minutes and reports of the Board of Trustees in a timely fashion. At any Board of Trustees meeting where the agenda specifies public discussion with the public regarding matters which are subject to collective bargaining with the Association, the Association shall have the opportunity upon request to express its views in accordance with procedures and conditions for public comment which are adopted by the Board.

ARTICLE 5 - MEET AND DISCUSS

A. Upon request of either party, the Chancellor and/or designees of the Chancellor shall during the term of this Agreement meet with a committee appointed by the Association for the purpose of discussing matters necessary to the implementation of this Agreement.

B. The request for any such meetings shall include a list of the specific matter(s) to be discussed. A copy of any request shall be sent simultaneously to the offices of the Director of Labor Relations and the Association's Higher Education Representative.

C. If the matters to be discussed are University-wide, appropriate arrangements will be made by the Chancellor's office to schedule the meeting within two (2) weeks of notice in such manner and at such times as the parties mutually agree. The Association Committee shall be of reasonable size and shall not exceed eight (8) persons. Likewise, the number of University System representatives shall not exceed eight (8). Six (6) meetings per year, if requested, shall constitute compliance with this section. Additional meetings may be scheduled by mutual consent in the manner described above.

D. If the matters to be discussed are related to a particular campus, the Chancellor's Office will notify the chief administrative officer of that campus who shall make the appropriate arrangements to

schedule the meeting within two (2) weeks of receipt of notice in such manner and at such times as the parties mutually agree. The Association Committee shall be of reasonable size and shall not exceed six (6) persons. Likewise, the number of University System representatives shall not exceed six (6). Two (2) meetings per semester per campus, if requested, shall constitute compliance with this section. Additional meetings may be scheduled by mutual consent in the manner described above.

E. Such meetings shall not be for the purpose of discussing specific grievances, conducting collective bargaining negotiations on any subject, or modifying, adding to or deleting any provision of this Agreement.

F. Matters of common concern, other than those specified in paragraph A, may be placed on the list of matters to be discussed with the Chancellor by mutual agreement of the Chancellor and the Association.

* * *

ARTICLE 10 – EVALUATIONS

* * *

B. Procedure for the Development of Evaluation Criteria:

* * *

2. The parties agree that student input is essential in the improvement of instruction and shall

be considered during evaluation. Further, student input is a meaningful part of evaluation. Consequently, Unit members shall conduct student evaluations in each course taught. A department, division or other appropriate unit may develop or revise a standard student evaluation form and procedure. Student evaluation forms and procedures shall be developed, revised and approved in accordance with paragraph B(3) of this Article, except that the Association shall develop a default student evaluation form and procedures for assessment of online and interactive television (ITV) courses. The form shall be administered in an online format. In developing the form and procedures, the Association shall solicit comments from and work with faculty, and shall submit the form and procedures for approval by the Vice Chancellor for Academic Affairs in accordance with the process outlined in paragraph B(3) of this Article. Said default form and procedures shall be used for online and ITV courses starting with the first semester beginning at least ninety (90) days after said approval, and thereafter, unless an alternative is developed for online courses by the department, division or other appropriate unit. The procedure for developing this default form shall not constitute a practice or precedent for any other process carried out by departments, divisions or other appropriate units. Student evaluations shall be

part of a Unit member's personnel file as follows:

* * *

ARTICLE 14 - CHECKOFF AND MAINTENANCE OF MEMBERSHIP

A. Unit members shall elect one of the following options within sixty (60) days of initial employment in the bargaining unit or execution of this Agreement, whichever is later: 1) membership in the Association; 2) payment of a Representation Fee; or, 3) payment to an education fund.

B. For purposes of this Article, "Representation Fee" is the costs associated with the negotiation and continued administration of this Agreement and the legal requirement that the Association represent all bargaining unit members. During the term of this Agreement, the Representation Fee shall be assessed monthly at an amount specified by the Association as set forth in Section E below.

C. Unit members who elect the education fund option shall during the term of this Agreement be assessed monthly at the rate of one-twelfth (1/12) of the annual membership dues.

D. Unit members who are members of the Association as of the date of ratification of this Agreement, or who, thereafter, during its term, become members of the Association, shall maintain their membership in the Association for the term of this Agree-

ment; provided, however, that any such unit member may resign from membership in the Association during the period from August 15 to September 15 of a given year. Unit members who resign from membership in the Association are required to select an alternative option from Section A above upon the effective date of their resignation. If a unit member resigns and does not select an alternative option, upon notification from the Association, the University shall deduct the monthly Representation Fee in accordance with F below.

E. The University agrees to deduct in monthly installments the dues of the Association, the Representation Fee or the education fund contribution from the pay of those unit members who individually request in writing that such deductions be made. The amount(s) to be deducted shall be certified in writing by the Association within thirty (30) days of the signing of this Agreement, and thereafter by August 10 of each year. The University shall remit monthly the aggregate deductions, together with an itemized statement containing the names of the unit members from whom the deductions have been made and the amount so deducted from each one. The aforesaid remittance shall be made by the 15th of each month following the month in which such deductions have been made.

F. The Association has demonstrated, based upon actual payroll records, that two-thirds (2/3) of the unit members voluntarily economically support

the Association either through the payment of a membership fee or voluntary payment of the Representation Fee. Therefore, during the term of this Agreement the University agrees to deduct a monthly Representation Fee from the pay of all unit members hired on or after August 16, 2010 who have not signed an authorization for the University to deduct monthly installments for one of the options specified in Section A of this Agreement and also have not made arrangements to pay regular dues, representation fees or contributions to the education fund to the Association directly, unless the unit member is a religious objector as provided under Section G. The Association shall advise the University as to the names of such unit members who have not either authorized payroll deductions, made arrangements for direct payments, or qualified for religious objector status. Automatic deductions for those unit members as described in this paragraph will begin in the pay period following the month during which the Association has notified the University as required by this section.

G. Any unit member covered hereby who maintains that she/he holds a sincere and bona fide religious belief that conflicts with an obligation to financially support the Association, public employee organizations or labor organizations in general may seek religious objector status by petitioning the Association. Any such unit member who is found by the Association to hold a sincere and bona fide

religious belief that conflicts with an obligation to financially support the Association, public employee organizations or labor organizations in general, shall have the right to refuse to pay the Representation Fee only so long as the unit member makes contributions at least equal in amount to the Representation Fee to a non-religious charitable organization mutually agreed upon by the unit member so refusing and the Association, within ten (10) days after each payday. The Association shall not unreasonably deny the choice of such non-religious charitable organization suggested by the unit member. An administrative or legal challenge to a denial of a petition for religious objector status may be filed by the unit member against the Association in an appropriate forum and shall not be subject to grievance arbitration under this Agreement.

Should a unit member have a pending written request for religious objector status or a pending administrative or legal challenge regarding their religious objector status, the University will continue to deduct the Representation Fee from the unit member's pay until the request is granted or the challenge is resolved, and that amount will be placed by the Association in an interest-bearing escrow account pending resolution of such dispute or request. If, as a result, the unit member is granted religious objector status then the Association will pay the amount held in escrow to the unit

member. The Association shall pay for any maintenance fees associated with such escrow accounts. The University shall not be liable for any fees, costs, damages, expenses, or any other form of liability involved with regard to such escrow accounts. If a unit member is granted religious objector status, the Association will notify the University of the unit member's religious objector status and the University will cease automatic Representation Fee deductions.

It shall be the sole responsibility of the Association to verify contributions made in lieu of Representation Fees pursuant to this Section G of this Article. It shall be the sole obligation of the Association to certify to the University the name of any unit member who has failed to make timely contributions as a religious objector and has, thus, forfeited religious objector status. Once the Association has certified the unit member's name to the University, the University will commence and continue to automatically deduct the Representation Fee from the unit member's pay as provided in Section F of this Article.

H. It shall be the sole responsibility of the Association to verify payments or contributions made directly to the Association pursuant to Section A of this Article. It shall be the sole obligation of the Association to advise the University, as set forth in Section F above, as to the name of any unit member who has failed to make timely payments or contributions directly to the Association and has, thus,

forfeited direct payment status. Once the Association has provided a unit member's name to the University, the University will commence and continue to automatically deduct the Representation Fee from the unit member's pay as provided in Section F of this Article.

Any administrative or legal challenge regarding payments or contributions made or not made directly to the Association by a unit member may be filed by the unit member against the Association in an appropriate forum and shall not be subject to grievance arbitration under this Agreement.

Should a unit member have a pending dispute with the Association regarding direct pay status or a pending administrative or legal challenge regarding his or her payments or contributions payable directly to the Association, the University will continue to deduct the Representation Fee from the unit member's pay until the dispute or legal challenge is resolved, and that amount will be placed by the Association in an interest-bearing escrow account pending resolution of such dispute or challenge. If, as a result, the unit member is granted direct pay status then the Association will pay the amount held in escrow to the unit member. The Association shall pay for any maintenance fees associated with such escrow accounts. The University shall not be liable for any fees, costs, damages, expenses, or any other form of liability involved with regard to such escrow accounts. If a

unit member is granted direct pay status, the Association will notify the University of the unit member's direct pay status and the University will cease automatic Representation Fee deductions. It will be the Association's obligation to work out a direct payment or contribution plan with the unit member.

I. The University shall not be responsible for making any deduction for dues, fees or education fund contributions if a unit member's pay within any pay period, after deductions for withholding tax, Social Security, retirement, health insurance, and other mandatory deductions required by law is less than the amount of authorized deductions or from worker's compensation benefits. In such event, it will be the responsibility of the Association to collect the dues or fees for that pay period directly from the unit member.

J. The University shall be entitled to designate at least one (1) representative to participate in the administration of the education fund.

K. The University's responsibility for deducting fees from a unit member's salary specified in Section A of this Article shall terminate automatically upon either: 1) cessation of the authorizing unit member's employment, or 2) the transfer or promotion of the authorizing unit member out of the bargaining unit.

L. The University shall deduct any authorized amount as certified by the Association in accordance with section D, E or F above. Failure of a unit member to meet the obligation set forth in Section A shall not result in termination or non- reappointment of a unit member.

M. The Association and the University shall develop appropriate forms to authorize payment of the representation fees and education fund contributions.

N. The University shall inform all unit members in writing of their obligation to make an election as specified in section A above. Such notice shall be given to individuals in writing in the initial letter of appointment.

O. The University agrees to mail to all newly appointed faculty at the start of the academic year a letter provided by AFUM concerning membership in the Association along with such membership forms as AFUM desires to enclose. This letter may also reference the AFUM website for those new faculty who may wish to complete the form electronically.

P. The Association agrees that it shall indemnify, defend, reimburse, and hold the University harmless (collectively, "Indemnification") against any claim, demand, suit, cost, expense, damages or any other form of liability, including attorney's fees, costs or other liability arising from or incurred as a result of any act taken or not taken by the University, its

members, officers, agents, employees or representatives in complying with or carrying out the provisions of this Article; in reliance on any notice, letter or authorization forwarded to the University by the Association pursuant to this Article; and including but not limited to any charge that the University failed to discharge any duty owed to its employees arising out of the Representation Fee deduction. The Association will intervene in and defend any administrative or court litigation concerning the propriety of any act taken or not taken by the University under this Article. In such litigation, the University shall have no obligation to defend its act taken or not taken.

Q. Should any Court or other authority find the indemnity clause in Section P above void or unenforceable, Article 14 of the parties' July 1, 2007-December 31, 2009 collective bargaining Agreement shall apply in place of this Article.

ARTICLE 15 - GRIEVANCE PROCEDURES

The Association and the University agree that they will use their best efforts to encourage the informal and prompt settlement of any complaint that exists with respect to the interpretation or application of this Agreement. However, in the event such a complaint arises between the University and the Association which cannot be settled informally, a grievance procedure is described herein. Pursuant to this procedure, it is the intent of both the Association and the University that grievances shall be handled in a

timely manner and that neither party shall delay procedures unnecessarily.

A. Definitions:

1. A "grievance" shall mean an unresolved complaint arising during the period of this Agreement between the University and a unit member, a group of unit members, or the Association with respect to the interpretation or application of a specific term of this Agreement.

2. A "grievant" is the unit member, group of unit members or Association making the complaint.

3. "Days" shall mean all days exclusive of Saturdays, Sundays and officially recognized University holidays, as described in Article 19, Leaves.

B. Informal Procedure:

A complaint may be presented informally to the administrator whose decision or action is being contested.

C. Formal Procedure:

Step 1: In the event satisfactory resolution is not achieved through informal discussions the grievant, within thirty (30) days following the act or omission giving rise to the grievance or the date on which the grievant reasonably should have known of such act or omission if that date is later, shall complete and forward to the administrator whose action or decision is being contested the written signed grievance form (Appendix A). The

administrator shall respond in writing within twenty (20) days of receipt of the grievance.

Step 2: If satisfactory resolution is not achieved in Step 1, the grievant, within twenty (20) days of receipt of an answer, or of the date the answer is due if no answer is provided, shall forward the grievance form, written statement(s) why the resolution is not satisfactory, and any other documentation, to the next appropriate level of administration. A grievance so presented shall be answered in writing within twenty (20) days of receipt of the grievance. This step of the grievance procedure shall be applicable only at the following campuses: UMF, UM, UMPI, USM.

Step 3: In the event satisfactory resolution is not achieved in Step 2, the grievant, within twenty (20) days of the receipt of an answer or of the date the answer is due if no answer is provided, shall forward the grievance form and written statement(s) why the resolution is not satisfactory, and any other documentation, to the chief administrative officer of his/her designee. A grievance so presented shall be answered in writing within twenty (20) days of receipt of the grievance. If a grievance affects unit members in more than one department, division or other appropriate unit on a campus, the Association, within twenty (20) days following the act or omission giving rise to the grievance or the date on which the Association reasonably should have known of such act or omission if

that date is later, shall forward to the chief administrative officer or his or her designee the written signed grievance form referred to in Step 1. A grievance so presented shall be answered in writing within twenty (20) days of receipt of the grievance.

Step 4: In the event satisfactory resolution has not been achieved in Steps 1 through 3, the Association, within twenty (20) days of receipt of the answer or of the date the answer is due if no answer is provided, may forward to the Chancellor or his or her designee the written grievance form, written statement(s) why the resolution is not satisfactory, and any other documentation. The Chancellor or his or her designee shall answer in writing within twenty (20) days of receipt of the grievance. If the grievance affects unit members on more than one campus, the Association, within twenty (20) days following the action or omission giving rise to the grievance or the date on which the Association reasonably should have known of such act or omission if that date is later, shall forward to the Chancellor or his or her designee the written signed grievance form referred to in Step 1. A grievance so presented shall be answered in writing within twenty (20) days of receipt of the grievance.

Step 5: a) In the event a grievance is not satisfactorily resolved at Step 4 of the grievance procedure and the Association wishes to proceed to arbitra-

tion, it shall serve written notice to that effect. Notice shall be by certified mail directed to the Chancellor within twenty (20) days after receipt of the Step 4 answer or the date such answer is due, if no answer is provided. The parties shall meet within twenty (20) days to select an arbitrator competent in matters concerning institutions of higher education. Should the parties be unable to agree upon an arbitrator within ten (10) days of the initial meeting, or if the twenty (20) day period lapses without a meeting being scheduled, the grievance shall be referred by either party within twenty (20) days to the Federal Mediation and Conciliation Service for resolution by a single arbitrator in accordance with the procedures, rules and regulations of that Association. Should the grievant elect representation in arbitration by counsel of his or her choosing, said counsel will assume full responsibility of selecting an arbitrator pursuant to the provision of this paragraph. The arbitrator shall not waive timelines or excuse counsel in instances where counsel fails to adhere to the specified timelines as related to the selection of the arbitrator. The Association will provide written notification to the Chancellor or the Chancellor's designee that the grievant's counsel will assume the responsibility of selecting an arbitrator and will also represent the grievant in arbitration

Expedited Arbitration

The University and the Association shall decide on a case-by-case basis whether expedited arbitration

proceedings shall be utilized for any particular grievance. In those cases where both parties agree in writing to expedite arbitration, the following procedure shall be used:

The parties shall agree within sixty (60) days following the execution date of the Agreement on a panel of not fewer than seven (7) arbitrators who are members of the National Academy of Arbitrators. The panel members shall be placed in alphabetical order and shall be selected by rotation from top to bottom of the list of panel members. The arbitrators shall agree to hear a case in not less than ten (10) days and not more than twenty (20) days. If an arbitrator is not able to hear the case within the established time, the next arbitrator on the list shall be selected. The arbitration shall take place at a time and location agreed on by the parties. The arbitration shall be conducted in accordance with the following procedures:

a. The hearing shall be informal

b. Formal rules of evidence shall not apply

c. There shall be no transcripts or post-hearing briefs

d. The arbitrator shall notify the parties of his or her decision within seventy-two (72) hours after the close of the hearing.

e. The decision of the arbitrator shall be based on the record before the arbitrator and shall include a written explanation

of the arbitrator's decision. The arbitrator may issue his or her written explanation after the time of the decision, but in no case longer than seven (7) calendar days from the date the arbitrator gives notice of his or her decision.

f. The decision shall be final and binding

g. If the parties mutually agree, the arbitrator may be asked for a bench decision

b) The arbitrator shall have no authority to add to, subtract from, modify or alter the terms or provisions of this Agreement. Arbitration shall be confined to disputes arising under the terms of this Agreement.

c) The arbitrator shall have no authority to substitute his or her judgment for the academic judgment exercised by the chief administrative officer or designee(s) or the Board of Trustees or their designee(s).

d) The arbitrator's decision as to whether there has been a violation of this Agreement shall be final and binding on the University, the Association and any and all affected members.

e) An arbitrator may award lost University compensation where appropriate to remedy a violation of this Agreement, but the arbitrator may not award other monetary damages or penalties.

f) The arbitrator may award an appropriate remedy when a violation of the Agreement has been determined. In no case shall the arbitrator award tenure as a remedy nor shall an arbitrator's decision awarding employment beyond the sixth year of employment entitle the unit member to tenure. The arbitrator in a case involving the denial of tenure may direct a remand to the Board of Trustees and may include a recommendation regarding the tenure status of the unit member.

g) If a unit member is reappointed at the direction of an arbitrator, the chief administrative officer shall consult with the unit member and assign the person during the period of appointment to a mutually agreed upon assignment which may be the former position or a substantially equivalent one.

D. Duplicate Proceedings:

1. The Association and the University agree that this grievance procedure is the best forum for resolving issues of alleged contract violations. Consequently, the Association and the University will encourage any employee alleging a violation of the non-discrimination article to seek relief through this process. Notwithstanding the above sentence, employees may have rights to pursue claims or complaints through outside agencies, including the Office of Civil Rights and the Maine Human Rights Commission. If a

complaint is filed with such an outside agency, any internal grievance that is filed or pending will be processed in accordance with the terms of this Article.

2. In the event a claim is filed with an outside agency such as those referenced above or filed through the University's equal opportunity complaint procedure, the University and Association may jointly agree to an extension of the deadline for a grievance response. All such extensions shall be to a specified date and shall be documented in writing.

E. Rights and Responsibilities of the Grievant, University and Association:

1. No reprisals shall be taken by either the grievant, Association, or the University against any participant in the grievance procedure by reason of such participation.

2. A unit member may be represented at any level of the grievance procedure by an Association member, or professional staff or counsel of the Maine Education Association.

3. When a unit member is not represented by the Association, the Association shall have the right and a reasonable opportunity to be present at all stages of the formal procedure and to state its views.

4. Except for the decision resulting from arbitration or settlement, all documents, communications and records dealing with the processing of a grievance shall be filed separately from the personnel files of the unit members.

5. The forms which must be used for filing a grievance (Appendix A), and any subsequent review (Appendix B) shall be prepared by the University and supplied to unit members and the Association.

6. In all grievances at Steps 3 and 4, the grievance designees for the Association and the University, or their representatives, will arrange a meeting to discuss the grievance. Other participants in the matter which is the subject of the grievance may attend by invitation of a party. The requirement to conduct such a meeting may be waived with respect to any grievance by mutual agreement, confirmed in writing, of the University and Association representatives involved. All meetings and hearings under this procedure shall be conducted in private and shall include only the parties in interest and their designated representatives.

7. In the event that a grievance is not timely answered by the University at any step in the procedure, the grievant or the Association, as appropriate, may file at the next step in the procedure.

8. The costs of arbitration will be borne equally by the University and the Association. Such shared costs shall be limited to the arbitrator's fee and expenses and the charges of the American Arbitration Association.

9. The University shall promptly forward to the Association a copy of any submitted written grievance and any written material accompanying the grievance. This requirement is waived in case of grievances filed by the Association, or unit member(s) who are represented by the Association or its representatives. If the Association requests material relevant to a grievance that did not accompany the grievance, the University will make a reasonable effort to provide relevant material that is in its possession unless provision of such material is deemed by the University to be violative of its responsibility under 1 MRSA 401-410.

10. No complaint informally resolved or grievance resolved at Steps 1, 2, 3 or 4 shall constitute a precedent for any purpose unless agreed to in writing by the Chancellor or designee and the Association.

11. All grievances shall be filed within the time limits set forth or the grievance will be deemed to have been resolved by the decision at the prior step. The time limits in this Article may be extended by mutual agreement of the grievant and the appropriate University ad-

ministrator at any step of the grievance procedure except that the time limits for the initial filing of a grievance may be extended only by agreement between the Chancellor or designee and the Association. Any mutual agreement shall be confirmed in writing as soon as practicable.

12. Acts or omissions which occurred prior to the execution of this Agreement shall not constitute evidence of a violation of any term of this Agreement.

13. Grievances will be scheduled for arbitration in the order in which the University receives from the Association notice of its intent to proceed to arbitration, except where the parties mutually agree otherwise in this Agreement. In scheduling arbitrations, the parties may mutually agree to schedule more than one grievance to be heard by a single arbitrator.

* * *

ARTICLE 17 - RETRENCHMENT

A. "Retrenchment" shall mean the discontinuance of a unit member with a tenured appointment or continuing contract from a position at any time or a probationary or fixed length appointment before the end of the specified term for bona fide financial or program reasons including temporary or permanent program suspension or elimination.

* * *

C. Unit members to be retrenched shall be informed as soon as possible, with a copy of the notice to the Association. Unit members shall receive the applicable notice period provided for in Article 7, Appointment, Reappointment and Non-Reappointment and Contract Status, except for unit members with tenured or continuing contract appointments shall receive at least one and one-half (1 1/2) years notice of retrenchment, as described in Section D of this Article and be notified of the decision to retrench the faculty member's position no later than October 31 or March 31 of the semester in which notice or retrenchment is given.

* * *

J. When a retrenchment is ordered, the University shall make available to the Association relevant information upon request.

K. In the event of retrenchment, the Association shall proceed directly to Step 3 of Article 15, Grievance Procedure.

* * *

ARTICLE 25 - BARGAINING UNIT WORK

A. Bargaining unit work includes such activities as are described in Articles 10.B and 11.C.1. These responsibilities are fulfilled in major part by unit members.

B. It is the intention of the parties that bargaining unit work be performed by unit members. However, the responsibilities stated above, as in any other academic institution, are also fulfilled by non-unit members.

C. A variety of research, specialized advising, public service and teaching that has not been traditionally performed by unit members may be determined to constitute part of regular workload or overload as provided in Article 11.

D. Undergraduate students shall not assume regular classroom teaching responsibilities.

E. Where non-unit members have teaching responsibilities, evaluation of teaching performance shall be in accordance with the procedures established in this Agreement.

F. Overload courses within their department, division or other appropriate unit shall be offered to qualified unit members. The distribution of such courses shall be in an equitable manner.

G. Unit members shall be informed of summer session and mini-session course opportunities within their department, division or other appropriate unit. Current practice regarding the assignments of these courses within the department, division or other appropriate unit shall be continued.

H. Departments, division or other appropriate units identified in the report of the Committee on Bargaining Unit Work dated July 24, 1985 which use

non-unit members for more than 35% of current teaching contracts shall not increase this proportion except in the case of unusual circumstances with notice to the Association.

* * *

ARTICLE 27 - NON-DISCRIMINATION

The University and the Association agree not to discriminate illegally with respect to wages, hours and working conditions based upon: race, color, religion, sex, sexual orientation, including transgender status or gender expression, national origin, citizenship status, age, disability, genetic information, veterans status or membership or non-membership in the Association.

ARTICLE 28 - NO STRIKE OR LOCKOUT

The Board and the Association agree that disputes which may arise between them shall be settled without resort to strike or lockout and that the requirements of law in this regard will not be violated. The Board agrees it will not lockout any or all unit members during the term of this Agreement. The Association agrees on behalf of itself and unit members that there shall be no strikes, slow-downs or interference with the normal operation of the University during the term of this Agreement.

* * *

ARTICLE 32 - PROGRAM ELIMINATION

The Association shall be notified in writing of any proposed elimination or suspension of a program to

which unit members are assigned at the time a Program Elimination Procedure is initiated. The Association shall have the opportunity to meet and discuss with the campus administration prior to completion of an impact study.

ARTICLE 33 - CONDITIONS OF AGREEMENT

This is a tentative Agreement and shall be of no force and effect unless and until all of the following occur:

A. The tentative Agreement is approved by the Board of Trustees of the University of Maine System.

B. The tentative Agreement is ratified by the bargaining unit membership of the Associated Faculties of the University of Maine System, MEA/NEA.