APPENDIX

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United States Court of Appeals
For the First Circuit

No. 22-1466

RICHARD J. PELTZ-STEELE,

Plaintiff, Appellant,

v.

UMASS FACULTY FEDERATION, LOCAL 1895 AMERICAN FEDERATION OF TEACHERS, AFL-CIO; MARTIN MEEHAN, in his official capacity as the President of the University of Massachusetts; MAURA HEALEY, in her official capacity as the Attorney General of JOAN ACKERSTEIN, and KELLY STRONG, in their official capacities as members of the Commonwealth Employment Relations Board,

Defendants, Appellees.

JUDGMENT

Entered: February 14, 2023

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

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

By the Court:

Maria R. Hamilton, Clerk

cc: Matthew Louis Fabisch, Jeffrey Michael Schwab, Reilly Stephens, Jacob Karabell, Timothy J. Casey

App. 3

United States Court of Appeals
For the First Circuit

No. 22-1466

RICHARD J. PELTZ-STEELE,

Plaintiff, Appellant,

v.

UMASS FACULTY FEDERATION, LOCAL 1895 AMERICAN FEDERATION OF TEACHERS, AFL-CIO; MARTIN MEEHAN, in his official capacity as the President of the University of Massachusetts; MAURA HEALEY, in her official capacity as the Attorney General of Massachusetts; MARJORIE WITTNER, JOAN ACKERSTEIN, and KELLY STRONG, in their official capacities as members of the Commonwealth Employment Relations Board,

Defendants, Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. William G. Young, U.S. District Judge]

Before

Barron, Chief Judge,
Selya and Lynch, Circuit Judges.

Reilly Stephens, with whom Jeffrey M. Schwab, Liberty Justice Center, Matthew L. Fabisch, and Fabisch Law were on brief, for appellant.

Jacob Karabell, with whom Bredhoff & Kaiser PLLC was on brief, for appellee UMass Faculty Federation.

Timothy J. Casey, Assistant Attorney General, with whom Maura Healey, Attorney General of Massachusetts, was on brief, for state appellees.

February 14, 2023

BARRON, Chief Judge. We confront in this appeal the question whether a public employee's rights to freedom of speech and association under the First Amendment to the U.S. Constitution are infringed when a public employer authorizes a union to serve as the exclusive representative in collective bargaining for employees within that employee's designated bargaining unit. Twice before we have held that such First Amendment rights are not infringed in that circumstance. See Reisman v. Associated Facs. of the Univ. of Me., 939 F.3d 409 (1st Cir. 2019); D'Agostino v. Baker, 812 F.3d 240 (1st Cir. 2016). We now reach that same conclusion yet again, this time in connection with a suit brought in the United States District Court for the District of Massachusetts by a professor at the University of Massachusetts at Dartmouth ("UMass Dartmouth") School of Law against, among other

defendants, the union that represents his bargaining unit.

I.

A.

Like most other states, Massachusetts "allows public sector employees in a designated bargaining unit to elect a union by majority vote to serve as their exclusive representative in collective bargaining with their government employer." Branch v. Commonwealth Emp. Rels. Bd., 120 N.E.3d 1163, 1165 (Mass. 2019). This authorization is set forth in Massachusetts General Laws, chapter 150E, section 2, which provides that public "[e]mployees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment."

Under Section 4 of Chapter 150E, public employers "may recognize an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining" (emphasis added). Section 5 provides that a union that is so selected "shall have the right to act for and negotiate agreements covering all employees in the unit" (emphasis added).

The union's right to serve as the exclusive bargaining representative under Chapter 150E is limited to the traditional subjects of collective bargaining – i.e., "wages, hours, standards or productivity and performance, and any other terms and conditions of employment." Id. § 6; see also City of Worcester v. Lab. Rels. Comm'n, 779 N.E.2d 630, 634 (Mass. 2002) (explaining that the "crucial factor in determining whether a given issue is a mandatory subject of bargaining is whether resolution of the issue at the bargaining table is deemed to conflict with perceived requirements of public policy" (quoting Marc D. Greenbaum, The Scope of Mandatory Bargaining Under Massachusetts Public Sector Labor Relations Law, 72 Mass. L. Rev. 102, 103 (1987))). In all such bargaining, moreover, the union must represent "the interests of all . . . employees without discrimination and without regard to employee organization membership." Mass. Gen. Laws, ch. 150E, § 5.

To that latter end, Chapter 150E expressly provides that employees within the bargaining unit "have the right to refrain from any or all" collective bargaining activities. Id. § 2. Chapter 150E also bars public employers from interfering with, restraining, or coercing any employee in the exercise of any right granted by Chapter 150E, id. § 10(a)(1); discriminating "in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization," id. § 10(a)(3); and discriminating "on the basis of the employee's membership,

nonmembership or agency fee status in the employee organization or its affiliates," id. § 12.

B.

In September 2021, Peltz-Steele filed a complaint under 42 U.S.C. § 1983 in the United States District Court for the District of Massachusetts based on the First Amendment against the UMass Faculty Federation, Local 1895, American Federation of Teachers, AFL–CIO ("Union"), as well as the president of the UMass system, the attorney general of Massachusetts, and members of the Commonwealth Employment Relations Board. The complaint alleges the following facts.

Peltz-Steele is the Chancellor Professor at the UMass Dartmouth School of Law. His bargaining unit is composed of members of the UMass Dartmouth faculty, and that unit has selected the Union as its exclusive representative for purposes of collective bargaining under Chapter 150E. The Commonwealth Employment Relations Board has certified the Union as the exclusive bargaining representative for collective bargaining with respect to employees in Peltz-Steele's bargaining unit. See Mass. Gen. Laws, ch. 150E, § 4. Peltz-Steele has declined to join the Union and "does not wish to associate with the Union, including having the Union serve as his exclusive bargaining representative."

In the wake of financial losses related to the COVID-19 pandemic, the Union and a coalition of

unions representing UMass Dartmouth employees in other bargaining units entered into negotiations in 2020 with the university administration regarding potential staffing and/or salary cuts. Under UMass Dartmouth's initial proposal, UMass Dartmouth would have either laid off "80+ employees" in the relevant bargaining units or implemented a five percent "across the board cut to employee pay."

The unions – including the one that served as the exclusive bargaining representative for Peltz-Steele's bargaining unit – eventually negotiated an agreement that implemented a progressive pay reduction based on existing salary in exchange for a promise from UMass Dartmouth that no bargaining-unit employees would be terminated until July 1, 2021. That agreement, when combined with a separate "law-school specific" reduction in Peltz-Steele's research funding, resulted in his income being reduced by 12 percent. And, in Peltz-Steele's view, "given the existing salary scale at the law school, all full time faculty [we]re [left] worse off under the Union's plan than under the University's original proposal."

The complaint alleges that the defendants infringed Peltz-Steele's First Amendment rights by compelling his speech and association during the negotiations regarding the 2020 pay cuts, which Peltz-Steele accepts qualify as a traditional subject of collective bargaining. The complaint contends that the defendants infringed those rights by making the Union his exclusive representative in that process pursuant to Chapter 150E, despite his not being a member of the

Union. Peltz-Steele does not allege that he has been required to financially support the Union, or that he is otherwise restricted from expressing his opposition to the Union's bargaining positions.[1] As relief, the complaint seeks a declaration that "the exclusive representation provided for in [Chapter 150E] is unconstitutional" under the First Amendment as well as an order that enjoins the defendants from enforcing or giving effect to certain of its provisions.

The Union and the other defendants filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(6). At a brief hearing on May 11, 2022, the District Court granted those motions from the bench, ruling that it was "bound by First Circuit precedent" to reject Peltz-Steele's claim that the exclusive representation provisions of the Massachusetts public sector collective bargaining law compel speech and association in violation of the First Amendment. The District Court thereafter issued a memorandum that explained its reasoning as to why "precedent squarely – and justifiably – forecloses a First Amendment challenge to exclusive representation for public-sector unions." Peltz-Steele v. UMass Fac. Fed'n, ___ F. Supp. 3d ___, 2022 WL 3681824, at *1 (D. Mass. Aug. 25, 2022).

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[1] Peltz-Steele did allege in his complaint that he was barred from individually filing grievances about actions taken by the Union, but he voluntarily dismissed that claim because the parties agree that Massachusetts law already allows him to do so without representation by the Union. That claim is therefore not before us on appeal.

This timely appeal followed. Our review is de novo. Pagán-González v. Moreno, 919 F.3d 582, 589 (1st Cir. 2019).

II.

Peltz-Steele recognizes that the District Court held that it was bound to rule as it did by two of our prior precedents: D'Agostino, 812 F.3d at 244 (holding 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"), and Reisman, 939 F.3d at 412-14 (same). D'Agostino was decided before the Supreme Court of the United States decided Janus v. American Federation of State, County, & Municipal Employees, 138 S. Ct. 2448 (2018), which overruled Abood v. Detroit Board of Education, 431 U.S. 209 (1977), and held that the First Amendment prohibits a union's mandatory assessment of "agency fees" on nonunion members to compensate the union for costs incurred in collective bargaining. But, Peltz-Steele recognizes both that Reisman was decided after Janus and that Reisman expressly stated that Janus did not provide a basis for departing from our holding in D'Agostino because Janus concerned only the constitutionality of a public sector union's mandatory imposition of agency fees. See Reisman, 939 F.3d at 414. Peltz-Steele nonetheless contends that the law of the circuit doctrine, which obliges us to follow closely on point circuit precedent unless it has been undermined by intervening Supreme Court precedent or some other

compelling authority, id. (citing United States v. Barbosa, 896 F.3d 60, 74 (1st Cir. 2018)), does not require us to affirm the District Court's judgment for two independent reasons. As we will explain, neither reason is persuasive.

A.

We begin with Peltz-Steele's contention that Reisman is not controlling here because it is distinguishable on the facts and so the law of the circuit doctrine has no application in his case. The factual distinction on which Peltz-Steele relies is based on a difference in wording between the Massachusetts statute at issue here and the Maine statute at issue in Reisman. In pressing this contention, Peltz-Steele does not dispute that, as the District Court explained, Reisman rejected a post-Janus challenge to provisions of a Maine law that authorized state-university employees to elect an exclusive representative to bargain with the university system on the ground that "the statute did not designate the union [as the plaintiff's] personal representative, but rather the representative of his '[bargaining] unit as an entity.'" Peltz-Steele, 2022 WL 3681824, at *7 (quoting Reisman, 939 F.3d at 413) (emphases and second alteration in original). Nor does he dispute that Reisman concluded that this feature of the Maine law was significant because it revealed that one could not understand the union's speech in that case to constitute the speech of an individual nonunion employee – much less of a dissenting member of the bargaining unit who paid no dues to the union that served as the

exclusive bargaining representative. See 939 F.3d at 414. Peltz-Steele contends only that this rationale has no application here because the Massachusetts statutory scheme that he is challenging does not make a similar distinction between the bargaining unit for which the union is the exclusive representative and the individual employees in that unit that Reisman deemed dispositive.

To make that case, Peltz-Steele points to language of the Massachusetts statute that states that the exclusive representative shall have the right to act for and negotiate agreements covering "all employees in the unit" and shall be responsible for representing "the interests of all such employees." Mass. Gen. Laws ch. 150E, § 5. He points as well to Section 4 of Chapter 150E, which provides that "[p]ublic employers may recognize an employee organization designated by the majority of the employees in an appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining."

But, the fact that the Massachusetts statute recognizes that a bargaining unit is composed of a number of individual employees does not make the statute materially different from the Maine statute that we upheld in Reisman. After all, the Maine statute that Reisman upheld itself provided that "[t]he 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. . . ." See

Me. Stat. tit. 26, § 1025 (emphasis added). In addition, that statute provided that "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," id., and that "bargaining agent" "means any lawful [organization or its representative] 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," id. § 1022.

Moreover, a provision of the Massachusetts statute at issue here that Peltz-Steele does not reference makes clear that, like the Maine statute at issue in Reisman, 939 F.3d at 412-13, the Massachusetts statute authorizes a union selected to be an exclusive bargaining representative to bargain only on behalf of the bargaining unit and not on behalf of any individual employee independent of the unit itself. Indeed, the very first section of Chapter 150E defines the "written majority authorization" necessary to serve as such a representative as a writing "signed and dated by employees . . . in which a majority of employees in an appropriate bargaining unit designates an employee organization as its representative for the purpose of collective bargaining." Mass. Gen. Laws ch. 150E, § 1 (emphases added).

Thus, there is no material distinction between this Massachusetts law and the Maine law that we upheld in Reisman. Accordingly, Reisman may not be distinguished on the facts, and so this ground for contending

that the law of the circuit doctrine does not dictate the outcome here is unconvincing.

B.

That leaves Peltz-Steele's contention that Reisman is not controlling here because, even if that case is not different factually from this one, Reisman failed to consider key aspects of the Supreme Court's ruling in Janus.

But, here, too, we are not persuaded. As we have noted, Peltz-Steele recognizes that Reisman expressly addressed the import of Janus in upholding the Maine measure against First Amendment challenges very much like those that he brings against the defendants in this case. In that regard, Reisman explained that D'Agostino 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," in part based on the Supreme Court's decision in Minnesota State Board for Community Colleges v. Knight, 465 U.S. 271 (1984). See Reisman, 939 F.3d at 414 (emphasis in original) (quoting D'Agostino, 812 F.3d at 243). There, the Supreme Court held that there is no such violation of associational rights by an exclusive bargaining agent speaking for the entire bargaining unit on matters "even outside collective bargaining." Id. at 414 (emphasis in original) (quoting D'Agostino, 812 F.3d at 243). Reisman further explained that, although Janus was decided after D'Agostino, Janus's holding did not provide a basis for

disregarding D'Agostino because Janus focused only on "the unconstitutionality of a statute that require[d] a bargaining unit member to pay an agency fee to her unit's exclusive bargaining agent." Id. (emphasis added).

Nonetheless, Peltz-Steele points out that Reisman did note that it considered the plaintiff's argument that Janus provides "a basis for disregarding D'Agostino" waived because the contention was only made in a reply brief. Id. He thus contends that nothing in Reisman bars us from now considering the preserved arguments that he advances as to why Janus does undermine D'Agostino – and so Reisman as well.

To make that case, Peltz-Steele first points to a passage in Janus that states that "designating a union as the exclusive representative of nonmembers substantially restricts the nonmembers' rights." 138 S. Ct. at 2469. He then also points to a passage in Janus that states that it was not in dispute there that "the State may require that a union serve as [the] exclusive bargaining agent for its employees – itself a significant impingement on associational freedoms that would not be tolerated in other contexts." Id. at 2478 (emphasis added).

Peltz-Steele contends that these statements in Janus reveal the limited reach of the Supreme Court's previous statement in Knight that exclusive representation "in no way restrained [the plaintiff's] . . . freedom to associate or not to associate." 465 U.S. at 288. Knight's holding, he asserts, was limited to whether public sector employees have a First Amendment right

to compel the government to negotiate with them "instead of, or in addition to, the union." And thus, given the passages in Janus to which he points, he further contends that Knight cannot be read to cast any doubt on his First Amendment claim, insofar as that claim rests on an infringement of his right to be free from compelled speech and association. He then argues from this premise that, because we relied on Knight in D'Agostino, and in turn relied on D'Agostino in Reisman, to reject a claim that public sector exclusive bargaining compels nonunion members' speech and nonunion members' association with the union in violation of the First Amendment, Janus is best read to reveal that neither D'Agostino nor Reisman provides a basis for rejecting his First Amendment claim here.

We may assume for the sake of argument that Peltz-Steele is right both in his characterization of what Knight holds and in his contention that Reisman does not bar us from considering the additional arguments regarding the import of Janus that he now advances on appeal. And that is so because we do not find those arguments to provide any basis for finding merit in his contention that his First Amendment rights have been infringed by the designation pursuant to Chapter 150E of the Union as the exclusive bargaining representative for "all employees" within his bargaining unit.

The first statement in Janus that Peltz-Steele points to – that exclusive representation is "itself a significant impingement on associational freedoms that would not be tolerated in other contexts" – came as the

Court was explaining that it "readily acknowledge[s]" that government employers are afforded "greater . . . power to regulate [the] speech" of employees than the "citizenry in general," Janus, 138 S. Ct. at 2477-78 (quoting Pickering v. Bd. of Ed., 391 U.S. 563, 568 (1968)), but that it was "draw[ing] 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," id. (emphases added); see also id. at 2471-73, 78 (describing the "Pickering line of cases" as less applicable where government employees are compelled to "subsidize" speech). Thus, far from representing a rejection of Knight's reasoning, let alone the reasoning we relied on in D'Agostino and Reisman, this passage from Janus identifies exclusive bargaining in the public sector as something no party in the case challenged – while also acknowledging the uncontroversial point that a system in which the government designates a single entity to represent the interests of a group of people might result in an intolerable "impingement on associational freedoms" in "other contexts." See Janus, 138 S. Ct. at 2478 (emphasis added).

The other statement from Janus that Peltz-Steele latches onto – that exclusive bargaining "substantially restricts the nonmembers' rights" – offers him no more support for concluding that the Court in that case was rejecting any prior conclusion as to the impact of exclusive representation on associational freedoms, much less casting doubt on the particular reasoning that underlies D'Agostino and Reisman – i.e., that the activities of a designated bargaining unit's exclusive

representative simply cannot be imputed to nonunion employees by nature of their representation of the unit. Reisman, 939 F.3d at 414; D'Agostino, 812 F.3d at 244; see also Knight, 465 U.S. at 289-90 (noting that nonmembers "are free to form whatever advocacy groups they like" and face "no different . . . pressure to join a majority party tha[n] persons in the minority always feel"). Rather, that statement does not even refer specifically to First Amendment speech or associational rights. See Janus, 138 S. Ct. at 2460, 2469. And, even if we assume that by referencing a "restrict[ion]" on "nonmembers' rights" the Supreme Court really meant "nonmembers' speech and associational rights," the reference can only be understood in the sense that we have just discussed in connection with the other passage of Janus to which Peltz-Steele points.

Our conclusion that Peltz-Steele is overreading the passages from Janus in question draws further support from another passage in Janus itself that Peltz-Steele ignores. In explaining that the union's asserted need to charge nonunion employees agency fees to cover the costs of representing such employees in grievance proceedings did not supply a sufficiently compelling state interest to overcome heightened review, the Court noted that unions could instead use a "less restrictive" system in which nonmember employees pay for such services only if they use them – or simply deny representation to nonmembers in grievance proceedings altogether. Id. at 2468-69. The Court explained in a similar vein that mandatory agency fees could not "be justified on the ground that it would

otherwise be unfair to require" unions "to bear the duty of fair representation" because "[t]hat duty is a necessary concomitant of the authority that a union seeks when it chooses to serve as the exclusive representative of all the employees in a unit." Id. at 2469.

These explanations as to why the imposition of mandatory agency fees on nonunion employees could not withstand heightened scrutiny would make little sense if the Supreme Court meant simultaneously to cast into doubt the constitutionality of state laws that allow a public sector employer to treat a union as an exclusive bargaining representative for employees within a designated bargain unit. See Branch, 120 N.E.3d at 1175 ("Janus and the other Supreme Court cases have thus not questioned the constitutionality of exclusive representation. The Court has, however, inextricably coupled exclusive representation with a union's duty of fair representation."); see also Janus, 138 S. Ct. at 2485 n.27 ("States can keep their labor-relations systems exactly as they are – only they cannot force nonmembers to subsidize public-sector unions. In this way, these States can follow the model of the federal government and 28 other States.").

III.

In ruling as we do, we align ourselves with every Court of Appeals to have addressed the issue post-Janus. See Hendrickson v. AFSCME Council 18, 992 F.3d 950, 968-70 (10th Cir.), cert. denied, 142 S. Ct. 423 (2021); Mentele v. Inslee, 916 F.3d 783 (9th Cir.), cert.

denied sub nom. Miller v. Inslee, 140 S. Ct. 114 (2019); Bierman v. Dayton, 900 F.3d 570 (8th Cir. 2018), cert. denied sub nom. Bierman v. Walz, 139 S. Ct. 2043 (2019); Bennett v. AFSCME Council 31, 991 F.3d 724, 733-35 (7th Cir.), cert. denied, 142 S. Ct. 424 (2021); Ocol v. Chi. Tchrs. Union, 982 F.3d 529 (7th Cir. 2020), cert. denied, 142 S. Ct. 423 (2021); Thompson v. Marietta Educ. Ass'n, 972 F.3d 809 (6th Cir. 2020), cert. denied, 141 S. Ct. 2721 (2021); Akers v. Md. State Educ. Ass'n, 990 F.3d 375, 382 n.3 (4th Cir. 2021); Adams v. Teamsters Union Loc. 429, 2022 WL 186045 (3d Cir. Jan. 20, 2022), cert. denied, 143 S. Ct. 88 (2022); see also Branch, 120 N.E.3d at 1176-79. The uniformity of the way in which these courts have resolved similar First Amendment challenges is hardly surprising, as it well comports with the "majoritarian principle" underlying the "long and consistent adherence" to "exclusive representation" under the federal National Labor Relations Act, which the Supreme Court has recognized is "tempered" by the recognition and protection of "minority interests." See Emporium Capwell Co. v. W. Addition Cmty. Org., 420 U.S. 50, 62-65 (1975) ("In establishing a regime of majority rule, Congress sought to secure to all members of the unit the benefits of their collective strength and bargaining power, in full awareness that the superior strength of some individuals or groups might be subordinated to the interest of the majority. As a result, 'the complete satisfaction of all who are represented is hardly to be expected.'" (footnote, internal alteration, and internal citations omitted) (quoting Ford Motor Co. v. Huffman, 345 U.S. 330, 338 (1953))).

IV.

The judgment of the District Court is **affirmed**.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Peltz-Steele
Plaintiff

CIVIL ACTION

V.

NO. 1:21-11590-WGY

UMASS Faculty Federation et al
Defendant

ORDER OF DISMISSAL

YOUNG, DJ,

In accordance with the Court's allowance of the defendants' motions to dismiss on May 11, 2022, it is hereby ORDERED that the above-entitled action be and hereby is dismissed.

By the Court,

May 12, 2022
Date

/s/ Jennifer Gaudet
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RICHARD PELTZ-STEELE, Plaintiff, v. UMASS FACULTY FEDERATION, LOCAL 1895 AMERICAN FEDERATION OF TEACHERS, AFL–CIO; MARTAN MEEHAN, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNIVESRITY OF MASSACHUSETTS; MARJORIE WITTNER, KELLY STRONG, AND JOAN ACKERSTEIN, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD; and MAURA HEALEY, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS Defendants.	CIVIL ACTION NO. 21–11590–WGY

YOUNG, D.J. August 25, 2022

MEMORANDUM OF DECISION

I. INTRODUCTION

Massachusetts, along with the vast majority of states, authorizes public employees to elect organizations to serve as their exclusive representatives in collective bargaining. See Mass. Gen. Laws ch. 150E, §§ 4–6; Harry C. Katz, Thomas A. Kochan & Alexander J.S. Colvin, An Introduction to U.S. Collective Bargaining and Labor Relations 331, 335 (5th ed. 2017) (stating that forty-one states confer a right to public-sector collective bargaining); Brief for the State of New York et al. as Amici Curiae in Support of Respondents at 7–8, 8 n.3, Harris v. Quinn, 573 U.S. 616 (2014) (No. 11-681) (detailing the respective statutes of forty-one states, the District of Columbia, and Puerto Rico authorizing exclusive representation in public-sector collective bargaining). This system of exclusive representation is central to public-sector labor relations in the Commonwealth. See Service Emps. Int'l Union, Local 509 v. Labor Rels. Comm'n, 431 Mass. 710, 714–15 (2000) (identifying "the exclusive representation concept" as "a basic building block of labor law policy" in Massachusetts); Branch v. Commonwealth Emp't Rels. Bd., 481 Mass. 810, 823–24 (2019) ("Exclusive representation . . . is necessary to effectively and efficiently negotiate collective bargaining agreements and thus promote peaceful and productive labor-management relations.").

Richard Peitz-Steele ("Peitz-Steele") claims it is unconstitutional.

A law professor at the University of Massachusetts School of Law at Dartmouth (the "University"), Peltz-Steele brings this First Amendment action challenging Massachusetts law governing public-sector unions. He alleges, first, that the exclusive representation provisions of Massachusetts General Laws chapter 150E, sections 4, 5, and 6 abridge his right to be free from compelled speech and association by forcing his association with the Defendant UMass Faculty Federation, Local 1895 American Federation of Teachers, AFL-CIO (the "Union") and his adoption of its viewpoints (count one); and second, that the grievance provisions of Massachusetts General Laws chapter 150E, sections 5 and 8 abridge his right to free speech by requiring that he receive Union permission to submit employment grievances (count two).

The Union and the Defendant state officials moved to dismiss both claims. Def. UMass Faculty Federation's Mot. Dismiss Compl. Fed. R. Civ. P. 12(b)(6) ("Union's Mot. Dismiss"), ECF No. 22; State Defs.' Mot. Dismiss, ECF No. 24. At a hearing on May 11, 2022, the Court dismissed count two with the assent of Peltz-Steele and dismissed count one after hearing arguments from counsel. See Electronic Clerk's Notes ("Clerk's Notes"), ECF No. 33.

This Memorandum of Decision explains the Court's reasoning as to the dismissal of count one and concludes that precedent squarely – and justifiably – forecloses a First Amendment challenge to exclusive representation for public-sector unions.

A. Procedural History

On September 28, 2021, Peltz-Steele filed a complaint against the Union and the following state officials in their official capacities: Martin Meehan, President of the University of Massachusetts system ("Meehan"); Marjorie Wittner, Kelly Strong, and Joan Ackerstein, members of the Commonwealth Employment Relations Board (the "Employment Relations Board"); and Maura Healey, Attorney General of the Commonwealth of Massachusetts (collectively, the "State Defendants"). Compl. ¶¶ 7–11.

He brings two counts under the First Amendment pursuant to 42 U.S.C. § 1983: count one challenges the exclusive representation provisions of Massachusetts General Laws chapter 150E, sections 4, 5, and 6, id. ¶¶ 41–54; count two challenges the grievance provisions of Massachusetts General Laws chapter 150E, sections 5 and 8, as they operate with the Collective Bargaining Agreement between the Union and the University, id. ¶¶ 55–63.

As for count one, Peltz-Steele seeks (1) a judgment declaring the exclusive representation provided for in Massachusetts General Laws chapter 150E, sections 4, 5, and 6 unconstitutional, as well as (2) to enjoin (a) the various State Defendants from recognizing the Union as the exclusive representative and (b) the Union from acting as the exclusive representative. Id. ¶¶ a-e. As for count two, Peltz-Steele asks the Court to enjoin (1) Meehan "from forcing [Peltz-Steele] to present all grievances through the Union," and (2) the Union

"from representing employees in grievance proceedings unless those employees consent to union representation." Id. ¶ f-g.

The Union and the State Defendants each filed a motion to dismiss both counts. See generally Union's Mot. Dismiss; State Defs.' Mot. Dismiss. The parties fully briefed the motions. See Mem. Law Supp. Def. UMass Faculty Federation's Mot. Dismiss. Compl. ("Union's Mem."), ECF No. 23; Mem. Law Supp. State Defs.' Mot. Dismiss ("State Defs.' Mem."), ECF No. 25; Resp. Opp'n Def. UMass Faculty Federation's Mot. Dismiss Compl. ("Pl.'s Resp. Union's Mot."), ECF No. 27; Resp. Opp'n State Defs.' Mot. Dismiss ("Pl.'s Resp. State Defs.' Mot."), ECF No. 28.[1]

At a hearing on May 11, 2022, this Court allowed the motions to dismiss as to both counts of Peltz-Steele's complaint. See Clerk's Notes. With respect to count two, counsel for Peltz-Steele assented to dismissal. Id. After hearing arguments on count one, the Court ruled that Supreme Court and First Circuit precedent precluded the claim. Id.

The Court now writes to explain its ruling on count one – that is, to specify why exclusive bargaining arrangements do not run afoul of the First Amendment.

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[1] Peltz-Steele's response to the State Defendants' motion to dismiss is materially identical to his response to the Union's motion to dismiss. Accordingly, from this point forward, this Memorandum will cite only to his response to the Union's motion, ECF No. 27.

B. Massachusetts' System of Exclusive Representation

This case involves provisions of the Massachusetts Public Sector Collective Bargaining Statute, Mass. Gen. Laws ch. 150E et seq. ("chapter 150E"), which governs labor relations between public employers and employees in Massachusetts.

Chapter 150E authorizes public employees to form organizations for purposes of negotiating with employers on terms of employment. See Mass. Gen. Laws ch. 150E, § 2. Section 4 of chapter 150E permits public employers to "recognize an employee organization designated by the majority of the employees in an appropriate bargaining unit as the **exclusive representative** of all the employees in such unit for the purpose of collective bargaining." See id. § 4 (emphasis added). Once the Employment Relations Board so certifies an organization, section 5 grants it "the right to act for and negotiate agreements covering **all employees in the unit**," id. § 5 (emphasis added), but requires that it represent their interests "without regard to employee organization membership," id. The exclusive representative organization has the power to bargain on behalf of all unit employees "with respect to wages, hours, standards or productivity and performance, and any other terms and conditions of employment." Id. § 6.

C. Facts Alleged

At all times relevant, the Union was the "exclusive bargaining representative" for a unit comprising professors and certain other professional employees at the University of Massachusetts School of Law at Dartmouth. See Compl. ¶ 30; Union's Mem., Ex. A, Collective Bargaining Agreement 1–2, ECF No. 23-1.[2] Peltz-Steele is "a senior faculty member with tenure" and "Chancellor Professor" at the University. Compl. ¶¶ 14, 24. Thus, Peltz-Steele is a member of the bargaining unit that the Union represents. Id. ¶¶ 16, 36; see also Collective Bargaining Agreement 1. He is not, however, a member of the Union and "does not wish to associate with the Union, including having the Union serve as his exclusive bargaining representative." Compl. ¶¶ 4, 16.

In September 2020, to offset financial losses sustained during the COVID-19 pandemic, the University entered into a memorandum of agreement with the Union cutting employee salaries (the "Salary

[2] The Collective Bargaining Agreement, attached to the Union's memorandum in support of its motion to dismiss, is incorporated by reference in the complaint. See Newman v. Lehman Bros. Holdings Inc., 901 F.3d 19, 23 (1st Cir. 2018) ("We may also augment those facts [from the complaint] with facts extractable from documentation annexed to or incorporated by reference in the complaint." (internal quotation marks omitted)).

Reduction Agreement").[3] Id. ¶ 17; Union's Mem., Ex. B, Salary Reduction Agreement, ECF No. 23-2.

On September 4, 2020, Union President Grant O'Rielly ("O'Rielly") sent an email to members of the bargaining unit detailing the Union's negotiations with the University. See Compl. ¶ 18. According to O'Rielly, without salary cuts, "the University would have had to lay off some '[eighty-plus] employees.'" Id. ¶ 19. The University first requested "a [five percent] across the board cut to employee pay," id., but the Union rejected this proposal and "demand[ed] a 'progressive' structure that would impose different cuts on different employees depending on their salary level," id. ¶ 20. The University agreed to this format. Id.

The Salary Reduction Agreement ultimately provided for the following formula:

> a. There shall be no reduction on the first $30,000 of regular salary and any regular contractual or other stipend for any faculty or staff member.
>
> b. For each $5,000 in excess of $30,000 there shall be a salary reduction calculated as a percentage of the faculty or staff member's marginal salary. This percentage reduction shall start at five percent and shall increase by one

[3] The Salary Reduction Agreement, Union's Mem., Ex. B, Salary Reduction Agreement, ECF No. 23-2, is incorporated by reference in the complaint. See Newman, 901 F.3d at 23.

> percentage-point for each step up to a maximum of ten percent.

Salary Reduction Agreement 2.

With respect to Peltz-Steele, "this formula results in a cut in income of about [twelve percent], when including a law-school specific cut of $7,500 in research support that had already been imposed." Compl. ¶ 23. Moreover, "the effects of these cuts on junior, less job secure faculty is even more severe"; for example, Peltz-Steele "is personally aware of at least one junior colleague whose salary reduction put them below the level at which they were hired." Id. ¶ 24. In fact, "given the existing salary scale at the law school, all full[-]time law faculty are worse off under the Union's plan than under the University's original proposal." Id.

In their negotiations, "[t]he Union and the University rejected or failed to consider" other avenues of cost reduction, including "a reduction in redundant administrative staff, extended voluntary furloughs, intangible incentives such as faculty course releases, or tapping into the UMass System's $114 million dollar 'rainy day fund,' which exists for just such an emergency." Id. ¶ 21.

The Union's status as exclusive representative prevented Peltz-Steele "from negotiating separately with his employer, or even proposing an alternative solution to the University's financial situation." Id. ¶ 25.

II. PLEADING STANDARD

To withstand a motion to dismiss, a complaint must "state a claim upon which relief can be granted. . . ." Fed. R. Civ. P. 12(b)(6). The complaint must include sufficient factual allegations that, accepted as true, "state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Courts "draw every reasonable inference" in favor of the plaintiff, Berezin v. Regency Sav. Bank, 234 F.3d 68, 70 (1st Cir. 2000), but they disregard statements that "merely offer legal conclusions couched as fact or threadbare recitals of the elements of a cause of action," Ocasio-Hernández v. Fortuño-Burset, 640 F.3d 1, 12 (1st Cir. 2011) (brackets, ellipsis, and quotations omitted).

III. ANALYSIS

Peltz-Steele claims that designating the Union the exclusive representative of his bargaining unit violates his First Amendment rights by compelling him (1) "to associate with the Union" against his wishes and (2) "to petition the government with a certain viewpoint" contrary to his own. Compl. ¶ 52.

The parties' arguments center on the applicability of certain Supreme Court and First Circuit precedent. The Union and State Defendants assert that a facial challenge to exclusive representation is plainly foreclosed by Minnesota State Board for Community Colleges v. Knight, 465 U.S. 271 (1984), D'Agostino v. Baker, 812 F.3d 240 (1st Cir. 2016), cert. denied, 579 U.S. 909 (2016), and Reisman v. Associated Faculties of

the University of Maine, 939 F.3d 409 (1st Cir. 2019), cert. denied, 141 S. Ct. 445 (2020). See Union's Mem. 5–9; State Defs.' Mem. 7–12. In response, Peltz-Steele argues that Knight, D'Agostino, and Reisman are distinguishable or, alternatively, no longer good law in light of Janus v. AFSCME, Council 31, 138 S. Ct. 2448 (2018). See Pl.'s Resp. Union's Mot. 5–9.

The Defendants are correct. First, Knight, D'Agostino, and Reisman plainly apply to Peltz-Steele's claims, as all three contemplated the First Amendment implications of exclusive representation on non-union dissenters and, to varying degrees, theories of compelled association or compelled speech. Knight, 465 U.S. at 289; D'Agostino, 812 F.3d at 244; Reisman, 939 F.3d at 414. Second, Knight and its progeny are not superseded by Janus – as determined by the First Circuit in Reisman, 939 F.3d at 414, and expressly stated by the Supreme Court in Janus, 138 S. Ct. at 2478. Third, under the above precedent, Peltz-Steele has not stated a claim for compelled association or speech, as he is (1) free not to join the Union, see Knight, 465 U.S. at 289, and (2) not required to adopt the Union's speech – either actually or apparently, see D'Agostino, 812 F.3d at 244; u, 939 F.3d at 414. Thus, count one of Peltz-Steele's complaint fails.

A. The Scope of Knight

The Union and State Defendants assert that Peltz-Steele's compelled speech and association claims fail under Minnesota State Board for Community

Colleges v. Knight, 465 U.S. 271 (1984) and, by extension, D'Agostino v. Baker, 812 F.3d 240 (1st Cir. 2016). See Union's Mem. 2; State Defs.' Mem. 9. Peltz-Steele counters that Knight is limited to the narrow set of facts under which it was decided and does not apply to First Amendment theories of compelled speech and association. Pl.'s Resp. Union's Mot. 5–7. Peltz-Steele's attempts to distinguish are unavailing; Knight and D'Agostino apply squarely to his claims.

1. A Summary of Knight

Knight involved a Minnesota statute authorizing public employees to select exclusive bargaining agents to "meet and negotiate" mandatory matters of employment. 465 U.S. at 274. The statute also provided that, where professional employees had an exclusive representative, their employers could not "meet and confer" with anyone apart from the exclusive representative on employment matters even outside the scope of mandatory collective bargaining. Id. at 274–75. Community college faculty challenged the law, claiming it violated their First Amendment rights by (1) denying their "entitlement to a government audience for their views," id. at 282, and (2) restricting their freedom of speech and association, id. at 288. First, the Supreme Court held that the plaintiffs had "no constitutional right to force the government to listen to their views," whether "as members of the public, as government employees, or as instructors in an institution of higher education." Id. at 283. Second, the Supreme Court held that the law "in no way restrained [the plaintiffs]' 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." Id. at 288.

Peltz-Steele advances a narrow reading of Knight. Knight, he claims, "did not consider a compelled-speech or compelled-association challenge to exclusive bargaining schemes," but, rather, only addressed whether "public workers had a right to be heard by the state in certain 'meet and confer' sessions with union representatives." Pl.'s Resp. Union's Mot. 2. He cites to language in Knight indicating that the plaintiffs' primary claim was "a right to force officers of the State . . . to listen to them in a particular formal setting." Id. 6 (quoting Knight, 465 U.S. at 282). Unlike those plaintiffs, Peltz-Steele asserts, he "does not claim that his employer – or anyone else – should be compelled to listen to his views"; he simply asks "whether someone else can speak in his name, with his imprimatur granted to it by the government." Id. Thus, he argues, Knight is immaterial. Id. 5.

The First Circuit would disagree.

2. The First Circuit's Reading of Knight

In D'Agostino v. Baker, the First Circuit rejected a challenge to a Massachusetts statutory scheme deeming childcare providers "public employees" and authorizing them to elect an exclusive bargaining agent pursuant to chapter 150E. 812 F.3d at 242–43. The childcare providers, like Peltz-Steele, had claimed that Massachusetts' system of exclusive representation

violated their First Amendment rights against compelled speech and association. See Compl. ¶ 32, D'Agostino v. Patrick, 98 F. Supp. 3d 109 (D. Mass. 2015) (Sorokin, J.), aff'd sub nom. D'Agostino v. Baker, 812 F.3d 240 (1st Cir. 2016) (No. 14-cv-11866), ECF No. 17. Basing its decision in part on Knight, the First Circuit reasoned that (1) the providers' freedom "to speak out publicly on any union position . . . counters the claim that there is an unacceptable risk the union speech will be attributed to them contrary to their own views," and (2) the union's duty to fairly represent the providers as their exclusive bargaining agent did not "impermissibly compel[] association" with the union. D'Agostino, 812 F.3d at 244. Accordingly, D'Agostino held that "exclusive bargaining representation by a democratically selected union does not, without more, violate" the speech or associational rights of dissenting employees in a bargaining unit. Id. at 243–45.

D'Agostino applies plainly to this case, yet Peltz-Steele argues D'Agostino is not controlling because it misinterprets Knight. Pl.'s Resp. Union's Mot. 7. Regardless whether Peltz-Steele's reading of Knight has merit, this Court is bound by First Circuit precedent. See, e.g., Specialty Retailers, Inc. v. Main St. NA Parkade, LLC, 804 F. Supp. 2d 68, 72 (D. Mass. 2011) ("[A] district court in this circuit is bound by a prior ruling of the Court of Appeals until that ruling is either vacated by a subsequent decision of the Court of Appeals or rendered non-viable by a ruling of the Supreme Court." (ellipsis omitted)).

A brief examination of Knight nevertheless reveals that Peltz-Steele misapprehends its scope.

3. Whether Knight and D'Agostino Apply Here

As an initial matter, D'Agostino is not an aberration; every circuit to decide the issue has held that Knight applies to compelled speech and compelled association claims. See, e.g., Jarvis v. Cuomo, 660 F. App'x 72, 74 (2d Cir. 2016) (deeming the argument that exclusive representation violates the First Amendment by "compel[ling] union association" to be "foreclosed by [Knight]"), cert. denied, 137 S. Ct. 1204 (2017); Adams v. Teamsters Union Local 429, 2022 WL 186045, at *2 (3d Cir. Jan. 20, 2022) (stating that portraying Knight as "only about whether the employees could demand a forum with their employer" is "simply at odds with what it says," and holding that "Knight foreclose[d] the First Amendment [speech and association] challenge"); Akers v. Md. State Educ. Ass'n, 990 F.3d 375, 382 n.3 (4th Cir. 2021) (holding that Knight "foreclosed" the freedom of association claim, as Knight held that Minnesota's exclusive representation regime "did not violate speech and associational rights of those who were not members of [the] organization selected as exclusive representative"); Thompson v. Marietta Educ. Ass'n, 972 F.3d 809, 813–14 (6th Cir. 2020) (holding that Knight precluded the First Amendment compelled speech and association challenge to exclusive representation and stating that the plaintiff's attempt to distinguish Knight constituted "such a cramped reading

of Knight" that it "would functionally overrule the decision"), cert. denied, 141 S. Ct. 2721 (2021); Bennett v. Council 31 of the AFSCME, 991 F.3d 724, 734–35 (7th Cir. 2021 (rejecting the plaintiff's argument that Knight "addressed only whether the plaintiffs could force the government to listen to their views," stating that "Knight speaks directly to the constitutionality of exclusive representation," and holding that Knight barred the free speech and association claim), cert. denied sub nom. Bennett v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31, 142 S. Ct. 424 (2021); Bierman v. Dayton, 900 F.3d 570, 574 (8th Cir. 2018) (holding that Knight "summarily affirmed the constitutionality of exclusive representation for subjects of mandatory bargaining" and thereby foreclosed the claim that the "'mandatory agency relationship' between [public employees] and the exclusive representative [] violates their right to free association"), cert. denied sub nom. Bierman v. Walz, 139 S. Ct. 2043 (2019); Mentele v. Inslee, 916 F.3d 783, 788–89 (9th Cir. 2019) (stating that "Knight is the most appropriate guide" for a compelled association challenge and rejecting the claim under Knight), cert. denied sub nom Miller v. Inslee, 140 S. Ct. 114 (2019); Hendrickson v. AFSCME Council 18, 992 F.3d 950, 969 (10th Cir. 2021) (holding that Knight "found exclusive representation constitutionally permissible" and "thus belies [the plaintiff]'s claim that exclusive representation imposes [compelled speech and association] in violation of the First Amendment").

This consensus ought come as no surprise. While the precise claims made in Knight may differ slightly

from the present case, its holding is unambiguous: exclusive representation by public-sector labor unions does not violate the speech or associational rights of non-union members. See Knight at 288. That Knight involved "meet and confer" sessions does not meaningfully distinguish it from D'Agostino or the case at bar; as stated by the First Circuit, if the Knight plaintiffs "could claim no violation of associational rights by an exclusive bargaining agent" in "dealing with the state **even outside collective bargaining**, the same understanding of the First Amendment should govern" where a plaintiff's "objection goes only to bargaining representation." D'Agostino, 812 F.3d at 243 (emphasis added). Moreover, the Supreme Court in Knight addressed compelled association in stating that the plaintiffs' "associational freedom ha[d] not been impaired" because they were "free to form whatever advocacy groups they like" and were **"not required to become members of" the union**. Knight, 465 U.S. at 289 (emphasis added). Any pressure the non-union members felt to join the union or adopt its views was "no different from the pressure to join a majority party that persons in the minority always feel." Id. 290.

Thus, contrary to Peltz-Steele's contentions, Knight is "responsive to the question [he] now raises." Pl.'s Resp. Union's Mot. 6.

B. The Effect of Janus on Knight

Peltz-Steele next asserts that to the extent Knight and D'Agostino apply to his claims, they

were superseded by the Supreme Court's decision in Janus v. AFSCME, Council 31, 138 S. Ct. 2448 (2018). See Pl.'s Resp. Union's Mot. 7–9. The Union and State Defendants counter that the holding in Janus is narrow and does not implicate Knight or D'Agostino. Union's Mem. 8–9; State Defs.' Mem. 11–12. The Defendants are correct; Janus did not undermine the constitutionality of exclusive representation.

1. A Summary of Janus

Janus involved a First Amendment challenge to "agency fees" – mandatory charges assessed to non-union members to compensate a union for costs incurred in collective bargaining. Janus, 138 S. Ct. at 2460–61. In examining Illinois' agency fee arrangement under "exacting scrutiny," the Janus Court assumed that labor peace was a compelling state interest but concluded that it could "readily be achieved through" less restrictive means. Id. at 2466. Accordingly, the Supreme Court held that public-sector union-shop arrangements "violate[] the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." Id. at 2460. In so holding, Janus overturned Abood v. Detroit Board of Education, 431 U.S. 209, 262 (1977), which had previously held agency-fee arrangements constitutional, see Janus, 138 S. Ct. at 2460.

Although not at issue in the case, Janus alluded to the First Amendment implications of exclusive representation:

> It is also **not disputed** that the State may require that a union serve as exclusive bargaining agent for its employees – itself a **significant impingement on associational freedoms** that would not be tolerated in other contexts. 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 (emphasis added).

Peltz-Steele asserts that the logic of Janus – and this passage in particular – effectively rendered D'Agostino, which relied on Knight and Abood, inoperative. Pl.'s Resp. Union's Mot. 2. Yet again, Peltz-Steele asks the Court to exercise a power it lacks: whether Janus merits reconsideration of D'Agostino is for the First Circuit to decide. See Briand v. Lavigne, 223 F. Supp. 2d 241, 247 (D. Me. 2002) ("A lower federal court in this Circuit is bound by First Circuit precedent even if a subsequent Supreme Court decision might justify a reevaluation of that holding."); Carpenters Local Union No. 26 v. United States Fid. & Guar. Co., 215 F.3d 136, 138 (1st Cir. 2000) ("We have considerably greater freedom than the district courts to evaluate the impact of recent Supreme Court precedent on our previous decisions.").

What is more, the First Circuit has already answered the question.

2. The First Circuit's Reading of Janus

In Reisman v. Associated Faculties of the University of Maine, the First Circuit rejected a college professor's post-Janus challenge to Maine's statutory scheme authorizing professional employees to elect an exclusive representative to bargain with the university system. 939 F.3d 409, 410–11 (1st Cir. 2019). The Reisman Court reasoned that the statute did not designate the union the professor's personal representative, but rather the representative of his "[bargaining] unit as an entity." Id. at 413 (emphasis added). Accordingly, Knight and D'Agostino disposed of the professor's compelled speech and association claims. Id. at 414. The First Circuit in Reisman expressly acknowledged that "D'Agostino was decided prior to Janus," but determined that Janus did not provide "a basis for overturning D'Agostino." Id. at 414.

Reisman would therefore seem to dispose of the issue. Peltz-Steele, however, claims "Reisman is inapposite for at least three reasons." Pl.'s Resp. Union's Mot. 8.

First, he argues that Reisman was grounded in "the statutory text of the Maine exclusive bargaining law," which "repeatedly makes clear that a union" represents the "**bargaining unit** only and not **individual employees**." Id. (emphasis added). This is a pained distinction.

Admittedly, chapter 150E contains language indicating that an exclusive bargaining agent has "the right to act for and negotiate agreements covering all

employees in the unit," and is "responsible for representing the interests of all such employees," Mass. Gen. Laws ch. 150E, § 4. The Maine statute, however, contains similar language. See Me. Stat. tit. 26, § 1025(2)(E) ("[T]he 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. . . ." (emphasis added)); id. § 1022 (providing that "one of [the exclusive bargaining agent's] primary purposes [is] the representation of **employees** in their employment relations with employers" (emphasis added)).

Moreover, like Maine's statutory scheme, other provisions of chapter 150E suggest that the exclusive bargaining agent represents the bargaining unit as an **entity**. See Mass. Gen. Law ch. 150E, § 1 (defining "[w]ritten majority authorization" as "writings . . . in which a majority of employees in an appropriate bargaining **unit** designates an employee organization as **its** representative for the purpose of collective bargaining" (emphasis added)); id. § 4 (describing the process by which the commission receives "a petition filed by or on behalf of a substantial number of the employees in a **unit** alleging that the exclusive representative **therefor** no longer represents a majority of the employees therein" (emphasis added)).[4] As the First Circuit

[4] Further muddying the waters, another provision in chapter 150E indicates that public employees are represented by their bargaining units. See Mass. Gen. Laws ch. 150E, § 3 ("[C]ourt officers . . . shall be **represented** by such other bargaining **units** as they may elect." (emphasis added)).

concluded in Reisman, here, the statutory scheme does not recognize the Union as Peltz-Steele's personal representative, but rather mandates that the Union represent the bargaining unit fairly and in its entirety – "not only certain of the employees within it, and then solely for the purposes of collective bargaining." Reisman, 939 F.3d at 413. The law is "devoid of any hint" that a union's duty to fairly represent members and non-members alike "results in impermissibly compelled association." See D'Agostino, 812 F.3d at 244.

Having failed to distinguish Reisman, Peltz-Steele next argues that Reisman is invalid because it (1) incorrectly reasoned "that Knight is controlling precedent," and (2) erroneously suggested "that D'Agostino's reliance on Knight is appropriate even in light of . . . Janus." Pl.'s Resp. Union's Mot. 9. The former argument fails because Knight is controlling precedent in this case. See supra section III.B. The latter fails because, as discussed, it is not for this Court to decide whether Janus merits reconsideration of D'Agostino. See supra section III.C.1.

An appraisal of the caselaw nonetheless shows that Janus did not go so far.

3. Whether Janus Applies Here

Like D'Agostino, Reisman is by no means an outlier: every circuit to hear a post-Janus challenge has rejected the notion that Janus overrules Knight or undermines the constitutionality of exclusive representation. See, e.g., Adams, 2022 WL 186045, at *6 (holding

that "[n]othing in Janus undermines Knight or exclusive-representation laws"); Akers, 990 F.3d at 382 n.3 (holding post-Janus that the First Amendment challenge to exclusive representation was barred by Knight); Thompson, 972 F.3d at 811–12 (concluding that "when the Supreme Court decided Janus, it left on the books Knight," which "directly controls the outcome of" the First Amendment claim against exclusive representation); Bennett, 991 F.3d at 735 (explaining that "Janus did not mention, let alone overrule, Knight or otherwise question the constitutionality of a system of labor relations based on exclusive representation"); Bierman, 900 F.3d at 574 (holding that Janus did not overrule Knight and explaining that, "where a precedent like Knight has direct application in a case, [courts] should follow it, even if a later decision arguably undermines some of its reasoning"); Mentele, 916 F.3d at 789 (holding that Janus did not overrule Knight and "leav[ing] to the Supreme Court the prerogative of overruling its own decisions" where "directly applicable precedent" exists); Hendrickson, 992 F.3d at 969 (explaining that Janus "reinforces" the holding in Knight that exclusive representation is constitutionally permissible).

Furthermore, although not controlling here, the Massachusetts Supreme Judicial Court held in 2019 that a "First Amendment challenge to the exclusive representation provisions of [chapter] 150E is foreclosed by Supreme Court precedent," reasoning that Janus "did not in any way question the centrality" or "the constitutionality of exclusive representation."

Branch v. Commonwealth Emp't Rels. Bd., 481 Mass. 810, 812, 823–24 (2019), cert. denied sub nom. Branch v. Mass. Dep't of Labor, 140 S. Ct. 858 (2020).

Courts' unanimous response to this question is for good reason. Janus did not once mention Knight. Moreover, the Janus Court expressly distinguished exclusive representation from agency-fee arrangements, explaining that the "designation of a union as the exclusive representative of all employees in a unit" is not "inextricably linked" with "the exaction of agency fees." Janus, 138 S. Ct. at 2465. The Supreme Court further explained that it was "not disputed that the State may require that a union serve as exclusive bargaining agent for its employees," but it was "simply draw[ing] the line at allowing the government to go further still and require all employees [financially] to support the union irrespective of whether they share its views." Id. at 2478.

This distinction is sensible: "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves," Janus, 138 S. Ct. at 2464, is a far cry from allowing a democratically elected agent to represent a bargaining unit consisting of dissenters, where "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," D'Agostino, 812 F.3d at 244.

Peltz-Steele's reliance on Janus is therefore misplaced.

C. The Fate of Peltz-Steele's Claims

Under Knight, D'Agostino, and Reisman, Peltz-Steele's compelled speech and association claims fail.

Peltz-Steele is free not to join the Union that represents his bargaining unit, see Knight, 465 U.S. at 288–89 – a freedom he has exercised, see Compl. ¶¶ 4, 16. He is free not to endorse the Union's viewpoint and, further, openly to dissent, see D'Agostino, 812 F.3d at 244; Knight, 465 U.S. at 288 – another freedom he has put to use. He is "not compelled to act as [a] public bearer" of the Union's message, see D'Agostino, 812 F.3d at 244 (citing Wooley v. Maynard, 430 U.S. 705 (1977)), nor would he appear to a reasonable observer to adopt any or all positions taken by the Union, merely as a member of the bargaining unit, see D'Agostino, 812 F.3d at 244; Reisman, 939 F.3d at 414. He is not entitled to – and thus cannot be wrongfully denied – an audience with the State to negotiate his employment, see Knight, 465 U.S. at 283, a claim to which he alludes, see Compl. ¶ 25, but wisely does not defend, see Pl.'s Resp. Union's Mot. 6. Lastly, he is not required to subsidize the Union's speech, Janus, 138 S. Ct. at 2460, nor to perform an act analogous thereto. In brief, Peltz-Steele's First Amendment rights remain intact.

While precedent compels this outcome, so too do commonsense understandings of representative relationships. Although private in nature, exclusive union representation echoes the representative structures

of American democracy both in its assets and its imperfections, fostering a majoritarianism tempered by constraints of fair representation but which inescapably yields a dissenting minority. See Kate Andrias, Janus's Two Faces, 2018 Sup. Ct. Rev. 21, 37 (describing a union as "a majoritarian body that must represent all workers in the bargaining unit fairly," a function analogous to government's role as "representative of the people"). Non-union dissenters may feel aggrieved that their policy preferences do not prevail; like a voter whose disfavored political party holds office, however, they are neither required to join the representative union nor perceived as endorsing its conduct. See Knight, 465 U.S. at 289–90; D'Agostino, 812 F.3d at 244; see also Charlotte Garden, Is There an Anti-Democracy Principle in the Post-Janus v. AFSCME First Amendment?, 2020 U. Chi. Legal F. 77, 91 (explaining that "[n]o reasonable observer would attribute a government's views to each voter," and "[i]n the same way, no reasonable observer would assume that every union-represented worker supports the union's positions"). Their First Amendment rights are left unscathed.

IV. CONCLUSION

In sum, an exclusive union representative neither unlawfully compels dissenting public employees to associate with it nor bears their imprimatur when it speaks; to hold otherwise would contravene binding precedent and the assumptions underlying representative relationships. Thus, the Court allowed the Union's

and State Defendants' motions to dismiss count one of Peltz-Steele's complaint challenging Massachusetts' system of exclusive representation.

/s/ William G. Young
WILLIAM G. YOUNG
JUDGE
of the
UNITED STATES[5]

[5] This is how my predecessor, Peleg Sprague (D. Mass. 1841–1865) would sign official documents. Now that I'm a Senior District Judge I adopt this format in honor of all the judicial colleagues, state and federal, with whom I have had the privilege to serve over the past 44 years.