No. 22-_____

In the Supreme Court of the United States

MELODIE DEPIERRO,

Petitioner,

v.

LAS VEGAS POLICE PROTECTIVE ASSOCIATION METRO, INC.; LAS VEGAS METROPOLITAN POLICE DEPARTMENT,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

ÁNGEL J. VALENCIA
Counsel of Record
MILTON L. CHAPPELL
c/o NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
8001 Braddock Road
Suite 600
Springfield, VA 22160
(703) 321-8510
ajv@nrtw.org
mlc@nrtw.org
Counsel for Petitioner

November 21, 2022

QUESTION PRESENTED

Melodie DePierro is a police officer in the State of Nevada who exercised her First Amendment right not to support union speech under *Janus v. AFSCME, Council 31,* 138 S. Ct. 2448, 2486 (2018). She did this by resigning her union membership, by revoking any authorization for her government employer to deduct union dues from her wages, and by objecting to subsidizing union speech. The government and union defied DePierro's demands and continued to seize union dues from her pursuant to a provision in their collective bargaining agreement that prohibits employees from stopping deductions of union dues except during a twenty-day window period. DePierro never consented to this restriction on when she could exercise her First Amendment right to stop subsidizing union speech. The question presented is:

Can the government and a union restrict when employees can exercise their First Amendment right not to subsidize union speech without the employees' affirmative consent to the restriction?

PARTIES TO THE PROCEEDING

Petitioner is Melodie DePierro.

Respondents are the Las Vegas Police Protective Association Metro, Inc. and the Las Vegas Metropolitan Police Department.

CORPORATE DISCLOSURE STATEMENT

A corporate disclosure statement is not required under Supreme Court Rules 14(b)(ii) and 29.6 because the Petitioner is not a corporation.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to these proceedings:

1. *DePierro v. Las Vegas Police Protective Association Metro, Inc.,* No. 21-16541, U.S. Court of Appeals for the Ninth Circuit. Judgment entered August 24, 2022.

2. *DePierro v. Las Vegas Police Protective Association Metro, Inc.*, No. 20-01481, U.S. District Court for the District of Nevada. Judgment entered September 8, 2021.

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES

CONSTITUTIONAL AMENDMENTS

STATUTES AND RULES

OTHER AUTHORITIES

OPINIONS BELOW

The United States Court of Appeals for the Ninth Circuit memorandum opinion affirming the district court is unreported and reproduced at App. A (App. 1-3). The United States District Court for the District of Nevada's Order is unreported and reproduced at App. B (App. 4-14).

JURISDICTION

The judgment of the Ninth Circuit in this case was entered on August 24, 2022. The Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution and Nevada Revised Statute § 288.505 (as amended) are reproduced at App. F (App. 21).

STATEMENT OF THE CASE

This case is about a Nevada public employer and a union unilaterally restricting when public employees can exercise their First Amendment right to stop subsidizing union speech under *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018). Unlike in other cases recently considered by this Court, the employee here never signed any document stating that she consented to abide by any restriction on her speech rights. Rather, the public employer and union decided between themselves to prohibit employees from exercising their First Amendment rights except during an an-

nual twenty-day period. The Ninth Circuit's inexplicable decision to find this nonconsensual restriction to be constitutional under *Janus* grants public employers and unions free rein to devise and impose on employees onerous (and potentially total) restrictions on when they can exercise their right to stop subsidizing unwanted union speech. This Court's review is warranted.

Petitioner DePierro is a police officer with respondent Las Vegas Metropolitan Police Department ("the Department") in a unit exclusively represented by respondent Las Vegas Police Protective Association Metro, Inc. ("the Union"). When DePierro first started working for the Department in 2006, she signed a union membership application form and a payroll deductions form. App. 15-16. Neither form contained any restriction on when DePierro could stop paying union dues. *Id.* Nor did Respondents' collective bargaining agreement at that time. Instead, it provided that dues deduction authorizations could be revoked at any time. App. 19.

In 2018, the Court in *Janus* held that public employees have a First Amendment right not to subsidize union speech and that governments and unions violate that right by taking payments for union speech from nonmembers without their affirmative consent. 138 S. Ct. at 2486. The Court recognized that "[b]y agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed." *Id.*

A year later, in July 2019, the Department and Union entered into a new collective bargaining agreement that unilaterally restricts when employees can

exercise their rights under *Janus*. The Department and Union agreed between themselves to prohibit employees from stopping deductions of union dues from their wages unless the employee provided notice during an arbitrary twenty-day period than runs from October 1 through October 20 of each year. App. 6.

DePierro never agreed to abide by this or any restriction on when she could stop financially supporting the union. The Department and Union's new restriction on DePierro's First Amendment rights is mentioned nowhere in the only membership or dues deduction forms that she ever signed, which was in 2006. App. 15-16.

On January 9, 2020, DePierro notified Respondents that she resigned her union membership, objected to supporting the union, and revoked her 2006 dues deduction authorization. Respondents denied DePierro's request to stop paying union dues based on their new (2019) and unilateral restriction on when dues deductions could cease. Respondents continued to seize union dues from DePierro's wages for union speech, and without her consent, until the Respondents' window period restriction was satisfied in October 2020—ten months later. App. 6.

DePierro sued the Union and the Department under 42 U.S.C. § 1983, alleging they violated her First Amendment rights as recognized in *Janus*. App. 6. The district dismissed DePierro's complaint for failure to state a claim. App.13-14. The court found her "First Amendment theory is foreclosed by Ninth Circuit

precedent" and even trivialized DePierro's lack of consent to the Department's and Union's window period restriction as an "immaterial" distinction. App. 12.

On August 24, 2022, the Ninth Circuit affirmed the district court's order in an unpublished memorandum opinion on the grounds that DePierro's cause of action was foreclosed by the Circuit's decision in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 2795 (2021). App. 2-3. In *Belgau*, the Ninth Circuit held that a state did not violate the First Amendment by enforcing a restriction on stopping union dues deductions *included* in the dues deduction forms the employees signed. *Belgau*, 975 F.3d at 950-52. The *Belgau* court reasoned that the state did not compel the plaintiff employees to subsidize union speech because those employees had agreed to the restriction and to pay union dues for one year. *Id.*

Here, DePierro never agreed to the Department's and Union's unilateral restriction on stopping union dues deductions, which is stated nowhere in the forms she signed. But the Ninth Circuit panel ignored this critical fact and decreed that *Belgau* required dismissal of DePierro's First Amendment claim. App. 2.

REASONS FOR GRANTING THE PETITION

This petition presents the Court with the question of whether governments and unions need employees' affirmative consent to restrict when employees can exercise their First Amendment rights under *Janus*. The question is important because, if employee consent is not required, governments and unions can, and will, unilaterally devise and enforce onerous re-

strictions on when employees can stop subsidizing union speech.

The Court's decision in *Janus* should have settled this question, as the Court unambiguously held that a state and union cannot seize payments for union speech from an employee "unless the employee affirmatively consents to pay." 138 S. Ct. at 2486. But the Ninth Circuit defied the Court's ruling by finding that the Department and Union did not violate DePierro's First Amendment rights by compelling her to subsidize union speech, over her objections and without her affirmative consent, pursuant to a restriction on stopping dues deductions unilaterally agreed to by Respondents that she never consented to abide by.

This case differs from other ones involving restrictions on *Janus* rights in which the Court denied review, such as *Belgau*.[1] Those petitions concerned restrictions on stopping union dues deductions found in dues deduction agreements that the employees signed

---

[1] The *Belgau* petition for writ of certiorari did not limit its focus and questions presented to only the seizures of payments for union speech after the employees resigned their union membership, as the petition does here. Nor did it challenge an arrangement by which a window period restricting when an individual can revoke a dues deduction authorization is enforced without first obtaining the individual's consent to it, as here. *See* Cert. Pet., *Belgau v. Inslee,* No. 20-1120 (Feb. 11, 2021). Instead, the *Belgau* petition focused on union membership, the deduction of union dues pursuant to a "private agreement," and the "repayment of union dues deducted from [the petitioners'] wages going back to the limitations period." Cert. Pet. at 8, n.6. This petition is both more limited in scope and substance and broader in that it challenges a more pernicious scheme of denying public employees their First Amendment right not to subsidize union speech.

and thus arguably agreed to abide by. In contrast, this petition concerns a restriction that the government and a union unilaterally imposed on an employee without her consent.

The Court's intervention is urgently needed because the Ninth Circuit's decision is allowing governments and unions to unilaterally decide when and how to restrict employees' right to refrain from subsidizing union speech—without the need to secure their affirmative consent to the restriction. The logical conclusion of the Ninth Circuit's decision is that governments and unions can unilaterally decide, without the employees' consent, to totally restrict employees who were union members from ever refraining from subsidizing union speech.

The Court should not allow the fundamental First Amendment speech rights it recognized in *Janus* to be curtailed in this way. The Court should grant the petition and summarily instruct lower courts to enforce *Janus* as it applies to union members who resign their membership outside a window period to which they never affirmatively and specifically consented.

I. The Ninth Circuit's Decision Conflicts with and Undermines *Janus*.

A. *Janus* held that governments and unions must have employees' affirmative consent before any union money is taken from them.

In *Janus*, the Court held that an employee's affirmative consent must precede any lawful union deduction:

> Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938); see also *Knox* [*v. SEIU, Local 1000*, 567 U.S. 298, 312–13 (2012)]. Rather, to be effective, the waiver must be freely given and shown by "clear and compelling" evidence. *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 145 (1967) (plurality opinion); *see also College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 527 U.S. 666, 680–682 (1999). Unless employees clearly and affirmatively consent before any money is taken from them, this standard cannot be met.

Janus, 138 S. Ct. at 2486.

The Court's condition for valid union dues deductions makes sense. Given that employees have a First Amendment right not to pay for union speech at all, it follows that the government must secure employees' affirmative consent before taking monies from them for union speech. Otherwise, the government and unions will violate the employees' First Amendment rights.

The same reasoning applies to *restrictions* on when employees can exercise their First Amendment right to stop paying for union speech. The government cannot enforce such restrictions unless the employees have affirmatively consented to waive their speech

rights for a time period. Without that consent, the government and unions will necessarily violate the employees' First Amendment rights by compelling them to continue to subsidize union speech that they no longer want to support.

This case illustrates the point. DePierro never agreed that she could only stop paying for union speech during a twenty-day period in October. Consequently, the Department and Union violated her First Amendment rights by compelling her to pay for union speech without her consent until that arbitrary period occurred. The Department and Union's nonconsensual seizures of union dues from DePierro violated the "bedrock principle" that "no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support." *Harris v. Quinn*, 573 U.S. 616, 656 (2014).

The Ninth Circuit flouted this "bedrock principle" by wrongfully presuming a "private membership agreement" between DePierro and the Union containing a restriction on when employees can exercise their First Amendment rights existed. App. 2-3. No such agreement exists. Without any affirmative consent to a restriction on First Amendment rights, the Ninth Circuit approved forced subsidization of speech by a union DePierro no longer wished to support.

Employees like DePierro did not "clearly and affirmatively consent before any money [was] taken from them" before the Department and the Union unilaterally imposed their annual 20-day window period. *Janus*, 138 S. Ct. at 2486. The Ninth Circuit's ruling directly violates *Janus* because it allows the taking of

Union deductions *without* employees' affirmative consent to a restriction on the exercise of their First Amendment rights. The Ninth Circuit is reinstituting the type of compelled speech the Court unmistakably prohibited in *Janus*. 138 S. Ct. at 2464.

B. This case is unlike *Belgau* because DePierro never agreed to any restriction on her right to stop paying for union speech.

The Ninth Circuit found that its earlier decision in *Belgau* required dismissal of DePierro's First Amendment claim because the restriction on her First Amendment rights supposedly "arose from a private membership agreement between union and employee." App. 2. Nothing could be further from the truth. The Department and Union *unilaterally* created and enforced a restriction on when employees could stop paying dues in their 2019 collective bargaining agreement. App. 5-6, 12-13. DePierro never agreed to abide by this new restriction, which is absent from the membership and dues deduction forms she signed years earlier in 2006.

The situation in *Belgau* was much different. The employees' "Payroll Deduction Authorization" in *Belgau* expressly included language restricting when the employees could stop dues deductions. *Belgau v. Inslee*, 359 F. Supp. 3d 1000, 1007 (W.D. Wash. 2019). The Ninth Circuit predicated its decision in *Belgau* on the notion that this language showed the employees had consented to this restriction on their right to stop financially supporting the union. *Belgau*, 975 F.3d at 950-52. In that situation, the Court found that the state was merely enforcing the terms of the private agreement between the union and its members when

it enforced this term of the employees' membership and dues deduction agreement.

The same conclusion should have been impossible to reach here because, unlike in *Belgau*, no term of DePierro's membership or dues deduction agreement restricted her right to stop paying union dues to a twenty-day period in October. Rather, the Department and Union unilaterally imposed this restriction on DePierro years later and without her consent.

This critical distinction between DePierro's plight and the employees in *Belgau* makes clear that the Ninth Circuit wrongly decided this case. It also distinguishes this petition from the denied petition in *Belgau*, 141 S. Ct. 2795 (2021), and from denied petitions in cases like *Belgau*.[2] The Court's decision not to review *Belgau* on its own facts or when applied to similar facts—i.e., where an employee arguably agreed in a contract to a restriction on when they could stop paying union dues—is no reason to deny review in a case in which an employee never agreed to a restriction on her rights under *Janus*. This petition presents the Court with a critical question that it has not passed upon before.

---

[2] *See, e.g.*, *Woods v. Alaska State Emps. Ass'n*, 142 S. Ct. 1110, *cert. denied* (2022).

II. This Case Is Exceptionally Important for Public Employees, Especially Former Union Members, Who Are Subject to Unilateral and Nonconsensual Window Period Restrictions Limiting When They Can Exercise Their First Amendment Rights Not to Subsidize Union Speech.

The Court's review and summary reversal is urgently needed because governments and unions are severely restricting the exercise of public employees', especially former union members', First Amendment rights under *Janus*, without them ever having consented to restrictions limiting those rights. To rein in these abuses, the Court should make clear that governments and unions cannot compel employees by whatever means to subsidize union speech through the enforcement of a window period restriction that those employees have not affirmatively and specifically consented to by agreeing to be bound by a window period restriction.

The Court reiterated in *Janus* that "[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *Janus*, 138 S. Ct. at 2463 (quoting *W. Va. Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943)) (emphasis omitted).

That fixed star shines throughout the year—not only for a few days. "Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command." *Janus,* 138 S. Ct. at 2463. "Compelling a person to *subsidize* the speech of

other private speakers raises similar First Amendment concerns." *Id.* at 2464. "As Jefferson famously put it, 'to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical.'" *Id.* (quoting A Bill for Establishing Religious Freedom, 2 Papers of Thomas Jefferson 545 (J. Boyd ed. 1950)). The sole effect of an unauthorized window period restriction is to force employees who no longer want to contribute money to propagate union speech to continue to do so against their will, and in DePierro's case for another ten months.

Yet the Ninth Circuit is giving governments and unions a free pass to severely restrict, if not totally prohibit, public employees' First Amendment right not to subsidize union speech by finding affirmative, but unauthorized, consent to any restriction or prohibition governments and unions unilaterally impose in the general union membership agreements public employees signed decades earlier. This constitutional right deserves greater respect than this. The Court provided for such safeguards in *Janus* when it held that governments and unions must have public employees' affirmative consent to dues deductions before taking away their money for union speech. *Janus*, 138 S. Ct. at 2486.

Allowing a government and union to add terms governing dues deductions arbitrarily and unilaterally to which public employees have not affirmably and specifically consented is a dangerous practice. Doing so based on a general union membership agreement is even worse and more threatening to the First Amend-

ment than the violations found in *Janus*. While DePierro never consented to any restriction limiting her right to stop dues deductions, the Ninth Circuit is allowing an employee's initial general decision to join a union to provide the affirmative and specific consent for unions to later concoct and enforce onerous terms restricting the First Amendment right to refrain from subsidizing union speech.

This would have severe repercussions beyond the confines of this case. Public sector union members throughout the Ninth Circuit's jurisdiction—and the rest of the United States if this Court does not intervene—would be blindly surrendering themselves to any future restriction on their First Amendment revocation rights or any other constitutional right simply for their original decision to join a union. Public sector unions and employers would now have free rein to conjure up whatever new limitation for resigning membership or revoking dues deduction authorizations, up to the multi-year length of the collective bargaining agreement or even the length of public employment, all without obtaining any kind of consent from workers or even notifying them of any change.

These multi-year kinds of unilateral and nonconsensual union deductions have already been implemented elsewhere. In Michigan, a public school teachers' union tried to impose a 10-year long union deduction obligation without employees' affirmative consent. *See Taylor Sch. Dist. v. Rhatigan,* 318 Mich. App. 617, 646 (2016). California and Pennsylvania have "maintenance of membership" statutes stating that governments and unions may require in any agreement between the two entities that union members

must maintain their membership for the duration of the multi-year collective bargaining agreement unless the employees terminate their obligations to the union within a short window period tied to the end of the bargaining agreement.[3]

Many public sector employees have endured even shorter window period restrictions than the annual twenty-day window here.[4] These schemes, as the one here, result in a severe curtailment of public sector workers' rights in violation of *Janus* and the First Amendment's general protection against compelled speech and association.

The Court should not tolerate this encroachment on its *Janus* precedent. It should not permit governments and unions to downsize the First Amendment right it recognized in *Janus* and leave a whole class of individuals—former union members—unprotected. To protect employees' ability to freely exercise their speech rights, it is critical that the Court instruct the

---

[3] *E.g.,* Cal. Gov. Code §§ 3513(i), 3515.7(a), 3540.1(i)(1), 3543(a)(2); *E.g.,* 43 Pa. Stat. §§ 1101.301(18), 1101.705, 1101.401.

[4] In New Mexico, state employees endured an annual two-week window period for revoking prior dues deduction authorizations—enforced against them without their prior affirmative consent. Second Amended Complaint, *McCutcheon v. Commc'ns Workers of Am. Local 7076,* No. 18-01202-MV-JHR (D.N.M. May 16, 2019), ECF No. 39. In California, public university professors faced a similar annual 15-day window period—also enforced without their affirmative consent to the restriction. Amended Complaint, *McCain v. Ventura Cnty. Fed'n of Coll. Tchrs., AFT Loc. 1828,* No. 19-0228-JLS-DFM (C.D. Cal. April 1, 2019), ECF No. 33.

lower courts that they must enforce *Janus*'s affirmative consent requirement before government employers or unions unilaterally execute and enforce window period restrictions.

CONCLUSION

For all these reasons, DePierro respectfully requests that the Court grant her petition for a writ of certiorari to the Ninth Circuit and summarily reverse the Ninth Circuit's decision.

Respectfully submitted,

ÁNGEL J. VALENCIA
Counsel of Record
MILTON L. CHAPPELL
c/o NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION, INC.
8001 Braddock Road
Suite 600
Springfield, VA 22160
(703) 321-8510
ajv@nrtw.org
mlc@nrtw.org
Counsel for Petitioner

November 21, 2022

APPENDIX

TABLE OF APPENDICES

Appendix A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MELODIE DePIERRO, Plaintiff-Appellant, v. LAS VEGAS POLICE PROTECTIVE ASSOCIATION METRO, INC.;LAS VEGAS METROPOLITAN POLICE DEPARTMENT, Defendants-Appellees.	No. 21-16541 D.C. No. 2:20-cv-01481-GMN-VCF MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, District Judge, Presiding

Submitted August 17, 2022**

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P34(a)(2).

Before: S.R. THOMAS, PAEZ, and LEE, Circuit Judges.

Melodie DePierro appeals from the district court's judgment dimissing her 42 U.S.C. § 1983 action alleging a First Amendment claim arising out of union membership dues paid to Las Vegas Police Protective Association Metro, Inc. ("union"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal for failure to state a claim. *Puri v. Khalsa*, 844 F.3d 1152, 1157 (9th Cir. 2017). We affirm.

The district court properly dismissed DePierro's First Amendment claim for retrospective relief because the deduction of union membership dues arose from a private membership agreement between union and employee, and "private dues agreements do not trigger state action and independent constitutional scrutiny." *Belgau v. Inslee*, 975 F.3d 940, 946-49 (9th Cir. 2020), *cert. denied* 141 S. Ct. 2795 (2021) (discussing state action); *see id.* at 950-52 (concluding that the Supreme Court's decision in *Janus v. American Federation of State, County & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), did not extend a First Amendment right to avoid supporting the union and paying union dues that were agreed upon under voluntarily entered membership agreements); *Knutson v. Sirius XM Radio Inc.*, 771 F.3d 559, 565 (9th Cir. 2014) (discussing mutual assent).

Deierro's request for oral argument, set forth in the opening brief, is denied.

DePierro's claim for prospective relief is moot. DePierro is no longer a member of the union and defendants stopped deducting union membership dues. *See Bain v. Cal. Teachers Ass'n*, 891 F.3d 1206, 1211-14 (9th Cir. 2018) (explaining that plaintiffs' claims for prospective relief were moot when they resigned their union membership and presented no reasonable likelihood that they would rejoin the union in the future).

AFFIRMED.

Appendix B

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MELODIE DEPIERRO, Plaintiff vs. LAS VEGAS POLICE PROTECTIVE ASSOCIATION METRO, INC.; LAS VEGAS METRO POLICE DEPARTMENT, Defendants.	Case No.: 2:20-cv-01481-GMN-VCF **ORDER**

Pending before the Court is the Motion to Dismiss, (ECF No. 11), filed by Defendant Las Vegas Metropolitan Police Department ("LVMPD"). Plaintiff Melodie DePierro ("Plaintiff") filed a Response, (ECF No. 20), and LVMPD filed a Reply, (ECF No. 24).

Also pending before the Court is the Motion to Dismiss, (ECF No. 13), filed by Defendant Las Vegas Police Protective Association Metro, Inc. ("the Union"). Plaintiff filed a Response, (ECF No. 19), and the Union filed a Reply, (ECF No. 25).

Also pending before the Court is LVMPD's

Motion for Summary Judgment, (ECF No. 29). Plaintiff filed a Response, (ECF No. 41), and LVMPD filed a Reply, (ECF No. 46).

Also pending before the Court is the Union's Motion for Summary Judgment, (ECF No. 32). Plaintiff filed a Response, (ECF No. 40), and the Union filed a Reply, (ECF No. 44).

Also pending before the Court is Plaintiff's Motion for Summary Judgment, (ECF No.33). LVMPD and the Union filed Responses, (ECF No. 36–37), and Plaintiff filed a Reply, (ECF No. 42).

For the reasons discussed below, the Court **GRANTS** the Motions to Dismiss **with** prejudice, and **DENIES** as moot the Motions for Summary Judgment.

I. BACKGROUND

This case arises from Plaintiff's attempt to revoke LVMPD's authority to deduct Plaintiff's Union dues from her paycheck outside of the time authorized by the Union's collective bargaining agreement ("CBA") with LVMPD. (See Compl., ECF No. 1). Plaintiff serves as an officer for LVMPD. (*Id.* ¶ 2). LVMPD officers are part of a bargaining unit represented exclusively by the Union. (*Id.*). Plaintiff was previously a Union member. (*Id.* ¶¶ 2–3). And, pursuant to the CBA between LVMPD and the Union as well as Plaintiff's dues deduction authorization form[†], Plaintiff's Union dues were deducted from her

[†] Plaintiff alleges that she did not sign a dues deduction authorization form "agreeing to the restrictive escape period of 20 days" contained in the CBA. (Compl. ¶ 18). While her

paychecks. (*Id.* ¶¶ 17–18). Under Article 4.1 of the CBA, union members who "signed an authorized payroll deduction card" agreed that their paycheck dues deduction authorization would be "irrevocable for a period of one (1) year and automatically renewed each year thereafter commencing October 1, except that authorization may be withdrawn by an employee during a period of 20 days each year ending October 20." (*Id.* ¶ 17).

On January 9, 2020, Plaintiff notified LVMPD and the Union in writing that she was resigning her membership in the Union. (*Id.* ¶ 15). She simultaneously requested that LVMPD immediately cease deducting Union dues from her paycheck. (*Id.*). LVMPD and the Union declined the request to cease deducting Union dues. (*Id.*). Plaintiff now seeks declaratory relief, an injunction, and damages against Defendants, arguing that enforcing the CBA's paycheck deduction revocation period violated her First Amendment right to be free from compelled speech under *Janus v. AFSCME, Council 31* ("*Janus*"), 138 S. Ct. 2448, 2486 (2018). (Compl. 23–42). She argues that, under *Janus*, the revocation period cannot be enforced because she did not provide an "affirmative consent and knowing waiver of First Amendment rights." (*Id.* ¶ 4).

---

authorization form did not reflect the restrictive period provided in the CBA, Plaintiff did execute a dues deduction authorization form, of which the Court takes judicial notice under FRE 201. (See Decl. David Roger, ECF No. 18); (DePierro Signed Form for Membership and Deduction of Membership Dues, Ex. A to Roger Decl., ECF No. 18-1).

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action that fails to state a claim upon which relief can be granted. *See N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not give the defendant fair notice of a legally cognizable claim and the grounds on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint is sufficient to state a claim, the Court will take all material allegations as true and construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

The Court, however, is not required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation is *plausible*, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555).

A court may also dismiss a complaint pursuant to Federal Rule of Civil Procedure 41(b) for failure to comply with Federal Rule of Civil Procedure 8(a). *Hearns v. San Bernardino Police Dept.*, 530 F.3d 1124, 1129 (9th Cir. 2008). Rule 8(a)(2) requires that a plaintiff's complaint contain "a short and plain

statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Furthermore, the Supreme Court has rejected any sort of "heightened" pleading requirement for § 1983 municipal liability claims because such a heightened pleading standard cannot be "square[d] . . . with the liberal system of 'notice pleading' set up by the Federal Rules." *Leatherman v. Tarrant Cty. Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993).

"Generally, a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion . . . . However, material which is properly submitted as part of the complaint may be considered on a motion to dismiss." *Hal Roach Studios, Inc. v. Richard Feiner & Co*., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted). Similarly, "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss" without converting the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell,* 14 F.3d 449, 454 (9th Cir. 1994). Under Federal Rule of Evidence 201, a court may take judicial notice of "matters of public record." *Mack v. S. Bay Beer Distrib*., 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court considers materials outside of the pleadings, the motion to dismiss becomes a motion for summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001). If the court grants a motion to dismiss, it must then decide whether to grant leave to amend. The court should "freely give" leave to amend

when there is no "undue delay, bad faith[,] dilatory motive on the part of the movant . . . undue prejudice to the opposing party by virtue of. . . the amendment, [or] futility of the amendment . . . ." Fed. R. Civ. P. 15(a); *Foman v. Davis*, 371 U.S. 178, 182 (1962). Generally, leave to amend is only denied when it is clear that the deficiencies of the complaint cannot be cured by amendment. *See DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

III. DISCUSSION

LVMPD and the Union both argue that Plaintiff has failed to state a First Amendment claim because enforcement of the CBA's restrictive revocation period does not compel speech as a matter of law. (LVMPD Mot. Dismiss ("LVMPD MTD") 5:13–8:14, ECF No. 11); (Union MTD 4:21–9:24, ECF No. 13). The Union separately argues that it cannot be liable for any constitutional violation because it is not a state actor, and Plaintiff's claims for declaratory and injunctive relief are moot. (Union MTD 10:1–19:8). The Court finds that Plaintiff's First Amendment theory is foreclosed by Ninth Circuit precedent and therefore need not reach the Union's remaining arguments.

The Court first addresses the scope of *Janus* and the Circuit's application thereof. In *Janus*, the plaintiff challenged the constitutionality of an Illinois law that compelled public sector employees, who chose not to join the labor union that represented their bargaining unit, to pay an "agency fee" on the grounds that the law compelled speech. 138 S. Ct. at 2460. Under Illinois law, public sector unions were entitled to agency fees from non-members and could apply the

proceeds to activities "germane to [the union's] duties as collective-bargaining representative." *Id.* (internal citations and quotations omitted) (internal modifications original).

The Supreme Court held that the Illinois law violated the First Amendment because it forced non-union employees to subsidize the positions the union took during collective bargaining without serving a sufficiently weighty state interest. *Id.* at 2462–78, 2485–86. However, the Supreme Court narrowly circumscribed its holding in ways essential to this case. The Court limited its holding to unions deducting fees from *nonmembers'* wages without their consent. *Id*. at 2486. In its analysis, when explaining the powers granted to unions under Illinois law "[e]ven without agency fees," the Court emphasized that unions are often granted the privilege of "having dues and fees deducted directly from employee wages[.]" *Id*. at 2467. The Court expressly stated that following its decision, "[s]tates can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions." *Id.* at 2486 n.27.

The Ninth Circuit adopted *Janus'*s aforementioned limitations in *Belgau v. Inslee*, 975 F.3d 940 (9th Cir. 2020). Just like the present case, *Belgau* concerned the constitutionality of deducting union dues from a former union member's paycheck through the enforcement of a CBA's restrictive revocation period. *Id*. at 944–45. The plaintiffs had signed membership agreements authorizing their employer to deduct union dues from their paychecks. *Id*. at 945. In 2017, the plaintiffs signed revised

authorization cards that included a "voluntary authorization" that made the dues deduction "irrevocable for a period of one year." *Id*. The plaintiffs revoked their union memberships after the *Janus* decision and attempted to revoke their paycheck deduction authorizations outside the authorized period. *Id*. at 945–46. The union continued making deductions because the one-year period had not yet lapsed. *Id.* at 946. Plaintiffs then brought a First Amendment claim against their employer and the union arising from the paycheck deductions, which the district court dismissed. *Id.* The Ninth Circuit affirmed, finding that the plaintiffs could not state a First Amendment claim because they agreed to a contract providing for the limited revocation period, whereas the plaintiffs in *Janus* were compelled to subsidize the union by statute without their prior consent. *Id*. at 950–52

The court explained that the plaintiffs "chose to join [the union]" and therefore lacked "a serious argument that they were coerced to sign the membership cards; they voluntarily authorized union dues to be deducted from their payrolls." *Id*. at 950. While *Janus* concerned mandatory financial support for a union compelled by statute, "[t]hese facts speak to a contractual obligation, not a First Amendment violation." *Id*. "The First Amendment does not support Employees' right to renege on their promise to join and support the union[, and] . . .*Janus* did not alter these basic tenets of the First Amendment." *Id.* Where, as in Belgau, plaintiffs agreed to a restrictive revocation period by contract, plaintiffs were not subject to a compulsion like that which animated Janus. *Id*.

Here, Defendants argue that *Belgau* presents the same facts as those Plaintiff raises in her Complaint. (LVMPD MTD 6:20–8:13); (Union MTD 6:20–9:24). Plaintiff attempts to distinguish *Belgau*, arguing that she never agreed to the restriction. (Pl.'s MTD 5:22–8:24). Unlike the plaintiffs in *Belgau*, who signed new authorization cards that explained the restrictive revocation period, Plaintiff argues that she never expressly agreed to Defendants' revocation period. (*Id.* 5:22–8:24). Plaintiff argues that Defendants have compelled her speech after her attempted revocation given she did not affirmatively consent to the revocation restriction with the knowledge of how the restriction would impact her First Amendment rights.

The distinction is immaterial under *Janus* and the Circuit's analysis in *Belgau*. As the Circuit explains in *Belgau*, "choosing to pay union dues cannot be decoupled from the decision to join a union." 975 F.3d at 950–51. By joining the Union, Plaintiff agreed that her relationship with LVMPD would be governed by the CBA. And, as a Union member, she would be bound by the CBA as amended during the course of her Union membership. She cannot escape the consequences of her decision to join the Union. "By joining the union and receiving benefits of membership, [she] also agreed to bear the financial burden of membership." *Id.* at 951.

Contrary to Plaintiff's assertions, the First Amendment does not require that Plaintiff affirmatively waive her ability to unconditionally revoke her paycheck deduction authorization. In *Belgau*, the Circuit echoed the Supreme Court's admonition that "[s]tates can keep their labor-

relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions." *Id*. (quoting *Janus*, 138 S. Ct. at 2485 n.27). Just as in *Belgau*, Plaintiff is not being compelled to support the Union without ever having authorized the Union to be her representative. Instead, she seeks to escape the consequences of a CBA she now regrets assenting to as a consequence of her Union membership. Defendants' decision to bind Plaintiff to Article 4.1 of the CBA based on her dues deduction authorization form does not compel her speech absent a waiver of her revocation rights. To the contrary, "The Court . . . in no way created a new First Amendment waiver requirement for union members before dues are deducted pursuant to a voluntary agreement." *Id*. at 952.

Defendants have not compelled Plaintiffs' speech. She had the freedom to never join the Union or to withdraw her membership before enactment of the CBA with the restrictive revocation period. Her freedom to refrain from paying Union dues may be validly "subject to a limited payment commitment period." *Belgau*, 975 F.3d at 952. As it appears no set of facts could entitle Plaintiff to relief, the Court grants the Motions to Dismiss with prejudice.

IV. CONCLUSION

IT IS HEREBY ORDERED that LVMPD's Motion to Dismiss, (ECF No. 11), is **GRANTED with prejudice.**

IT IS FURTHER ORDERED that the Union's Motion to Dismiss, (ECF No. 13), is **GRANTED with**

prejudice.

IT IS FURTHER ORDERED that LVMPD's Motion for Summary Judgment, (ECF No. 29), is **DENIED as moot**.

IT IS FURTHER ORDERED that the Union's Motion for Summary Judgment, (ECF No. 32), is **DENIED as moot**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment (ECF No. 33), is **DENIED as moot**.

The Clerk of Court shall close the case and enter judgment accordingly.

Dated this 8 day of September, 2021.

Gloria M. Navarro, District Judge

UNITED STATES DISTRICT COURT

Appendix C

Las Vegas Police Protective Association Metro, Inc.

DETECTIVE DAVID F. KALLAS
EXECUTIVE DIRECTOR
CORRECTIONS OFFICER THOMAS REID
ASST. EXECUTIVE DIRECTOR
DETECTIVE CHRIS COLLINS
ASST. EXECUTIVE DIRECTOR
OFFICER JEORGE MARTIN
ASST. EXECUTIVE DIRECTOR

DETECTIVE FRED GALEY
TREASURER
DETECTIVE MICHELLE SMAISTRLA
SECRETARY
JOHN DEAN HARPER
CHIEF GENERAL COUNSEL
KATHRYN A. WERNER
GENERAL COUNSEL

L.V.P.P.A MEMBERSHIP INFORMATION FORM FOR COMMISSIONED METRO/CITY EMPLOYEES

FIRST NAME: MELODIE LAST NAME: DEPIERRO P # 9027

MAILING ADDRESS: [redacted]

CITY: [redacted] STATE: [redacted] ZIP: [redacted]

WORK PHONE: _____ HOME PHONE: 702-266-6741

DATE OF BIRTH: [redacted] DATE OF HIRE: 1-18-06 SS#: [redacted]

METRO EMPLOYEE: ✓ CITY EMPLOYEE. _____

EMAIL: _____

RDO's: _____ SHIFT: _____ BUREAU: _____ CLASSIFICATION: _____

BENEFICIARY (S): [redacted]

SIGNATURE: Melodie DePierro DATE: 5-26-06

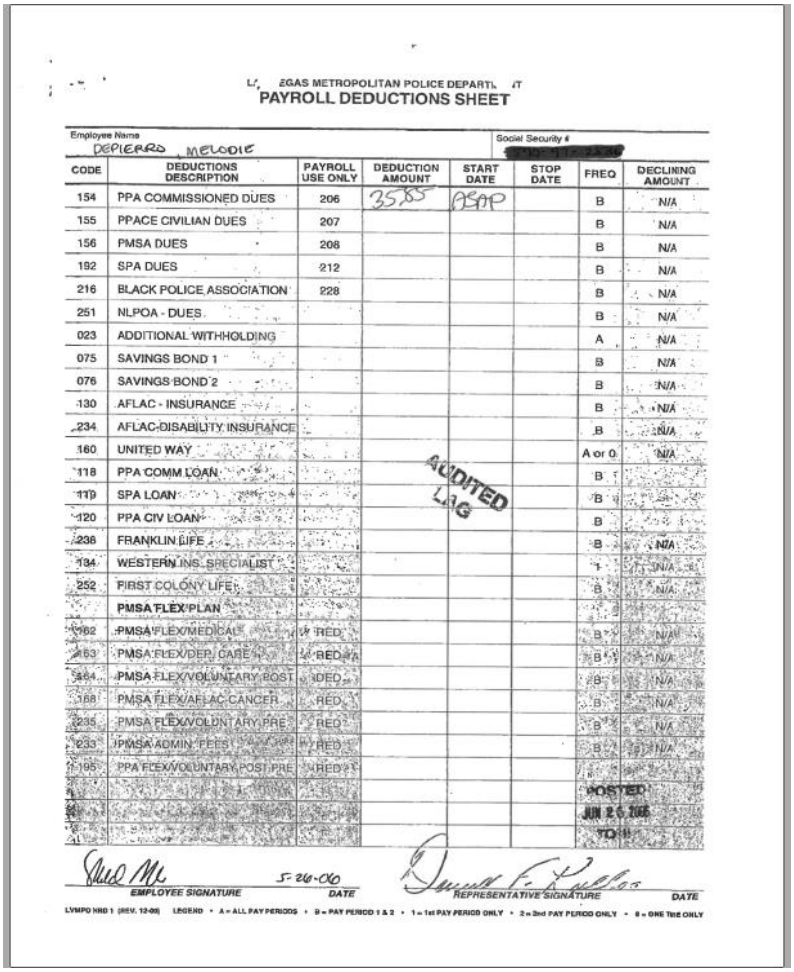
- CONTRIBUTIONS OR GIFTS TO LAS VEGAS POLICE PROTECTIVE ASSOCIATION ARE NOT TAX DEDUCTIBLE AS CHARITABLE CONTRIBUTIONS. HOWEVER, THEY MAY BE TAX DEDUCTIBLE AS ORDINARY AND NECESSARY BUSINESS EXPENSES.
- PPA DUES WILL NOT BE DEDUCTED FROM YOUR CHECK UNTIL YOU GRADUATE FROM THE ACADEMY. THE ATTACHED PAYROLL DEDUCTION SHEET MUST BE SIGNED AND DATED BY YOU AND ATTACHED TO THIS FORM

MAY 26 2006

201 LAS VEGAS BLVD SOUTH, SUITE 200 • LAS VEGAS, NEVADA 89101 • (702) 384-8692 • FAX (702) 384-7989
MEMBER INTERNATIONAL UNION OF POLICE ASSOCIATIONS, AFL/CIO
Email: office@lvppa.com – Website: www.lvppa.com

LVPPA-0357

Appendix D



L/ EGAS METROPOLITAN POLICE DEPARTI IT

PAYROLL DEDUCTIONS SHEET

Employee Name: DEPIERRO, MELODIE

Social Security #: [redacted]

CODE	DEDUCTIONS DESCRIPTION	PAYROLL USE ONLY	DEDUCTION AMOUNT	START DATE	STOP DATE	FREQ	DECLINING AMOUNT
154	PPA COMMISSIONED DUES	206	35.85	ASAP		B	N/A
155	PPACE CIVILIAN DUES	207				B	N/A
156	PMSA DUES	208				B	N/A
192	SPA DUES	212				B	N/A
216	BLACK POLICE ASSOCIATION	228				B	N/A
251	NLPOA - DUES					B	N/A
023	ADDITIONAL WITHHOLDING					A	N/A
075	SAVINGS BOND 1					B	N/A
076	SAVINGS BOND 2					B	N/A
130	AFLAC - INSURANCE					B	N/A
234	AFLAC-DISABILITY INSURANCE					B	N/A
160	UNITED WAY					A or 0	N/A
118	PPA COMM LOAN			AUDITED LAG		B	
119	SPA LOAN					B	
120	PPA CIV LOAN					B	
238	FRANKLIN LIFE					B	N/A
134	WESTERN INS. SPECIALIST					B	N/A
252	FIRST COLONY LIFE					B	N/A
	PMSA FLEX PLAN						
162	PMSA FLEX/MEDICAL	RED				B	N/A
163	PMSA FLEX/DEP. CARE	RED				B	N/A
164	PMSA FLEX/VOLUNTARY POST	RED				B	N/A
188	PMSA FLEX/AFLAC CANCER	RED				B	N/A
235	PMSA FLEX/VOLUNTARY PRE	RED				B	N/A
233	PMSA ADMIN. FEES	RED				B	N/A
195	PPA FLEX/VOLUNTARY POST PRE	RED					
							POSTED
							JUN 2 6 2006
							TO HI

EMPLOYEE SIGNATURE — DATE: 5-26-06

REPRESENTATIVE SIGNATURE — DATE

LVMPD HRD 1 (REV. 12-05) LEGEND • A = ALL PAY PERIODS • B = PAY PERIOD 1 & 2 • 1 = 1st PAY PERIOD ONLY • 2 = 2nd PAY PERIOD ONLY • 0 = ONE TIME ONLY

Appendix E

COLLECTIVE BARGAINING AGREEMENT

between

Las Vegas Metropolitan Police Department

&

LAS VEGAS POLICE PROTECTIVE ASSOCIATION

Expires June 30, 2009

ARTICLE 2 - SCOPE OF AGREEMENT

2.1 Bargaining Unit. The term "employee" as used in this Agreement applies to those persons having a regular commissioned Civil Service appointment to the work force of the Department, excluding, however, appointive and other administrative employees, supervisory employees, confidential employees, employees in other recognized bargaining units, and temporary employees, except as specified below.

2.2 List of Eligible Classes

	Salary Range
Police Officer II	21
Corrections Officer II	21
Police Officer I	20
Corrections Officer I	20

ARTICLE 3 – DEFINITIONS

This Agreement is made pursuant to and in conjunction with the Local Government Employee Management Relations Act of the State of Nevada, and all terms used herein which are terms used in the Local Government Employee-Management Relations Act shall have definitions ascribed to them by said Act.

ARTICLE 4 - ASSOCIATION SECURITY

4.1 Check Off. The Department agrees to deduct from the paycheck of each employee within the bargaining unit who has signed an authorized payroll deduction card such amount as has been designated by the Association as Association dues and is so certified by the Treasurer of the Association. The Association will certify to the Department, in writing, the current rate of membership dues. The Department will be notified of any change in the rate of membership dues 30 days prior to the effective date of such change.

Such funds shall be remitted by the Department to the Treasurer of the Association within one (1) month after such deductions. The employee's authorization for such deductions is revocable at the will of the employee, as provided by the law, and may be so terminated at any time by the employee giving 30 days written notice to the Department and the Association or upon termination of employment.

The Department will not be required to honor any pay period deduction authorizations that are delivered to the Payroll Section after the beginning of the pay period during which the deductions should start.

ARTICLE 26 - TERM OF AGREEMENT

This Agreement shall become effective as of July 1, 2005, unless otherwise specified herein, and shall be effective through June 30, 2009. This agreement shall remain in full force and effect during negotiations for

a successor agreement with the exception of any compensation other than regular step increases. Retroactivity provided herein shall only apply to employees of the Department as of the date of the signing of this agreement. Individuals that retired as employees of the Department at any time after June 18, 2005, until the signing of this agreement, will be paid retroactively for the wage increase provided herein.

This agreement may be reopened by either party for the specific purpose of discussing the Citizens Review Board in the event issues arise that are determined to be mandatory subjects of bargaining as provided by NRS 288.

For the Department For the Association

Bill Young
Sheriff

David Kallas
Executive Director

For the Fiscal Affairs Committee

Peter Thomas
Chairman

Appendix F

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Nevada Revised Statute § 288.505

Requirements for collective bargaining agreements; procedures for grievances; rules governing conflicts between agreements and statutes and regulations

1. Each collective bargaining agreement must be in writing and must include, without limitation:

(a) A procedure to resolve grievances which applies to all employees in the bargaining unit and culminates in final and binding arbitration. The procedure must be used to resolve all grievances relating to employment, including, without limitation, the administration and interpretation of the collective bargaining agreement, the applicability of any law, rule or regulation relating to the employment and appeal of discipline and other adverse personnel actions.

(b) A provision which provides that an officer of the Executive Department shall, upon written authorization by an employee within the bargaining unit, withhold a sufficient amount of money from the salary or wages of the employee pursuant to NRS 281.129 to pay dues or similar fees to the exclusive representative of the bargaining unit. Such authorization may be revoked only in the manner prescribed in the authorization.

(c) A nonappropriation clause that provides that any provision of the collective bargaining agreement which requires the Legislature to appropriate money is effective only to the extent of legislative appropriation.

2. Except as otherwise provided in subsections 3 and 4, the procedure to resolve grievances required in a collective bargaining agreement pursuant to paragraph (a) of subsection 1 is the exclusive means available for resolving grievances described in that paragraph.

3. An employee in a bargaining unit who has been dismissed, demoted or suspended may pursue a grievance related to that dismissal, demotion or suspension through:

(a) The procedure provided in the agreement pursuant to paragraph (a) of subsection 1; or

(b) The procedure prescribed by NRS 284.390,

but once the employee has properly filed a grievance

in writing under the procedure described in paragraph (a) or requested a hearing under the procedure described in paragraph (b), the employee may not proceed in the alternative manner.

4. An employee in a bargaining unit who is aggrieved by the failure of the Executive Department or its designated representative to comply with the requirements of NRS 281.755 may pursue a grievance related to that failure through:

(a) The procedure provided in the agreement pursuant to paragraph (a) of subsection 1; or

(b) The procedure prescribed by NRS 288.115,

but once the employee has properly filed a grievance in writing under the procedure described in paragraph (a) or filed a complaint under the procedure described in paragraph (b), the employee may not proceed in the alternative manner.

5. If there is a conflict between any provision of an agreement between the Executive Department and an exclusive representative and:

(a) Any regulation adopted by the Executive Department, the provision of the agreement prevails unless the provision of the agreement is outside of the lawful scope of collective bargaining.

(b) An existing statute, other than a statute described in paragraph (c), the provision of agreement may not be given effect unless the Legislature amends

the existing statute in such a way as to eliminate the conflict.

(c) Except as otherwise provided in NRS 284.4086, a provision of chapter 284 or 287 of NRS or NRS 288.570, 288.575 or 288.580, the provision of the agreement prevails unless the Legislature is required to appropriate money to implement the provision, within the limits of legislative appropriations and any other available money.