Statement of Facts and Basis of Charges

This unfair labor practice charge is about how United States Immigration and Customs Enforcement ("ICE"), in concert with and at the behest of the union American Federation of Government Employees ("AFGE"), took money for Pay Period 16, 2022 from thousands of ICE employees' wages for AFGE's benefit, including Sage Collins's ("Collins"). ICE did this even though AFGE was no longer the exclusive representative of the relevant bargaining unit at the time—and had not been for two weeks—and thus there was no "allotment" for AFGE that was permitted by the Federal Service Labor-Management Relations Statute ("FSLMRS"). On information and belief, AFGE nonetheless accepted and retained this money. AFGE's conduct violated the FSLMRS.

This charge is also about how AFGE, in concert with ICE under color of law, violated Collins's rights under the First Amendment to the United States Constitution.

A. FACTUAL & LEGAL BACKGROUND

1. The Charging Party is Collins. Collins is a Deportation Officer and HSI-Task Force Officer employed by ICE. Collins became so employed in August 2007. He is stationed at the Boise, Idaho Sub-Office of ICE's Salt Lake City Field Office. He is a U.S. Army veteran, and he has more than twenty years of federal service.

2. The Charged Labor Organization is AFGE.

3. Collins was a dues-paying member of AFGE from December 2008 until August 11, 2022. *See* ¶ 7, *infra*.

4. Collins was a member of the collective bargaining unit of ICE "non-professional" employees for which AFGE was the exclusive representative until August 11, 2022. *National Collective Bargaining Agreement between U.S. Immigration and Naturalization Service and National Immigration and Naturalization Service Council*, Exhibit 1, hereto, at art. 1 (hereinafter "CBA"); *see also* ¶ 7, *infra*.

5. On June 20, 2022, the ICE Council (which was the local of AFGE's non-professional bargaining unit at ICE) filed a complaint against AFGE with the United States Department of Labor. The ICE Council alleged, among other things, that AFGE misused approximately $90,000 of union dues to visit strip clubs and solicit prostitutes; used union dues to purchase jewelry, artwork, clothing, Super Bowl tickets, and to fund unauthorized travel; misused $20,000 in membership resources for reelection campaigns; paid settlements in excess of $1 million to silence witnesses and conceal AFGE leadership misconduct; massively increased pay for an AFGE employee who was involved in covering up an AFGE assault/harassment scandal; and otherwise engaged in sexual harassment, sexual assault and battery, and racial discrimination. *See* Exhibit 2, hereto, at 1–2 (August 2, 2022, letter from Representative Michael Cloud to FLRA).

6. Just twenty-two days later, AFGE filed a petition with FLRA "seeking to disclaim representational interest in its unit of non-professional employees" at ICE. Exhibit 3, hereto, at 1 (Decision and Order, *ICE and AFGE* (Aug. 11, 2022)).

7. On August 11, 2022, Jessica Bartlett, the regional director of FLRA's Washington Regional Office, granted AFGE's petition and revoked its certification to represent ICE's "non-professional employees." Ex. 3; Exhibit 4, hereto (Revocation of Certification (Aug. 11, 2022)). ICE and AFGE "waived their right to file an application for review" of RD Bartlett's decision, so it was final on August 11, 2022. Ex. 4.

8. The very next day, ICE Enforcement and Removal Operations ("ERO") issued an "Interim Personnel Manual" that "set[] out policies, procedures, and practices relating to personnel matters" for non-professional employees. Exhibit 5, hereto, at 2. The Introduction to the Manual, authored by Corey A. Price, executive associate director of ERO, explained that the prior collective bargaining agreement with AFGE that governed non-professional employee workplace conditions had been "discontinu[ed]." *Id.* EAD Price further explained that "any prior conditions of employment directly concerning rights of an exclusive representative (e.g., union officials) . . . are no longer authorized under law, and thus null and void." *Id.*

9. Pay Period 16 in 2022 was from July 31 through August 13. *See* Exhibit 6, hereto (USDA/NFC Pay Period Calendar 2022). The "Official Pay Date" for Pay Period 16 was August 25, 2022. *See* Exhibit 7, hereto (Collins's Pay Period 16 pay stub).

10. Even though AFGE chose to stop representing non-professional employees in ICE as of August 11, ICE took union dues for AFGE's benefit from those very employees' pay on August 25, 2022. On information and belief, ICE provided (by and through USDA/NFC) these dues to AFGE, which accepted and retained them. On information and belief, this amounted to thousands of dollars. For example, ICE took $21 from Collins's pay for Pay Period 16. *Id.* There were approximately 7,600 members in AFGE's disclaimed non-professional bargaining unit. *See* Stephen Dinan, *Biden Administration Abolishes ICE Labor Union*, Wash. Times (Aug. 11, 2022), https://www.washingtontimes.com/news/2022/aug/11/biden-administration-abolishes-ice-labor-union/ [https://perma.cc/D2V2-K9R3]. For example, if only half of those employees were formerly AFGE members before AFGE abandoned them, and the average amount of dues were $21 per pay period, then approximately $80,000 is at issue here.

11. The amount ICE deducted from Collins's pay for AFGE's benefit for Pay Period 16 was the same amount it deducted from his pay for AFGE's benefit for Pay Period 15. *Compare* Ex. 7 *with* Exhibit 8, hereto (Collins's Pay Period 15 pay stub). Collins objects to the forcible taking of money from his pay for the benefit of a union that chose not to represent him.

12. On information and belief, ICE ceased deducting union dues from its non-professional employees for AFGE's benefit as of September 8, 2022 (the "Official Pay Date" for Pay Period 17). Collins's Pay Period 17 pay stub indicates that no

money was taken for "Union/Association Dues" and shows only a year-to-date amount previously taken. Exhibit 9, hereto.

13. The FSLMRS permits agencies to deduct dues from the wages of employees who are "in an appropriate unit" and have authorized the deductions. 5 U.S.C. § 7115(a). The deductions must be "for the payment of periodic dues of the exclusive representative of the unit." *Id.* If all those conditions are satisfied, then an agency "shall honor the assignment and make an appropriate allotment pursuant to the assignment" for the exclusive representative. *Id.*

14. Any "allotment" provided for under § 7115(a) "shall terminate when" one of two conditions are satisfied: 1) "the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee"; or 2) "the employee is suspended or expelled from membership in the exclusive representative." 5 U.S.C. § 7115(b). Both conditions were satisfied on August 11, 2022, when RD Bartlett revoked AFGE's certification to represent non-professional employees at ICE (and accordingly AFGE immediately ceased being their exclusive representative). *See* Ex. 4. The AFGE-ICE CBA was null and void as of that day and stopped being applicable. *See* Ex. 5 at 2. And all non-professional ICE employees who were formerly members of AFGE were expelled from the union as of that day. *Id.* By the plain terms of § 7115(b), the "allotment" for AFGE terminated on August 11, 2022. ICE's taking of employee money for AFGE's benefit after that day means "the employees have suffered the conversion by the employer of wages they still own." *AFGE v. FLRA*, 835 F.2d 1458, 1462 (D.C. Cir. 1987).

    a. ICE's violation of § 7115 is an unfair labor practice. 5 U.S.C. § 7116(a)(1), (8).

    b. Likewise, AFGE's violation of § 7115—by accepting and retaining the monies that were the product of ICE's violation of § 7115—is an unfair labor practice. 5 U.S.C. § 7116(b)(1), (8).

15. The FSLMRS also codifies federal employees' right to refrain from "assist[ing]" labor union activity. 5 U.S.C. § 7102 ("Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right.").

    a. AFGE's violation of an employee's right to refrain is an unfair labor practice. 5 U.S.C. § 7116(b)(1), (8).

B. BASIS OF THE CHARGES

16. Violation of Collins's Rights Under § 7115 and Violation of His Right to Refrain

a. The FSLMRS sets forth very specific conditions under which an agency may deduct union dues ("an appropriate allotment" for "the payment of regular and periodic dues") from employee wages for the benefit of a union. *See* ¶¶ 13–14, *supra*.

b. Once dues deduction begins, if one of two conditions subsequent are satisfied, then the "allotment" "shall terminate" at that time. *See* ¶ 14, *supra*. Both conditions subsequent were satisfied on August 11, 2022, when the AFGE-ICE CBA became null and void and when Collins was expelled from AFGE membership. *Id.*

c. Nevertheless, ICE deducted an "allotment" of $21 (the ordinary amount) from Collins's pay on August 25, 2022—14 days after doing exactly that became illegal. *See* ¶¶ 9–11, 14, *supra*.

d. On information and belief, ICE deducted dues from the pay of all non-professional employees who were previously members of AFGE after AFGE ceased being their exclusive representative. This violated 5 U.S.C. § 7115.

e. On information and belief, AFGE accepted and retained monies that ICE improperly deducted from the pay of all non-professional employees who were members of AFGE until AFGE ceased being their exclusive representative. This violated 5 U.S.C. § 7115.

f. AFGE's violation of 5 U.S.C. § 7115 was an unfair labor practice. 5 U.S.C. § 7116(b)(1), (8) ("[I]t shall be an unfair labor practice for a labor organization . . . to otherwise fail or refuse to comply with any provision of this chapter[.]").

g. The FSLMRS guarantees Collins's right to refrain from "assist[ing] any labor organization." *See* ¶ 15, *supra*.

h. But ICE, in concert with and at the behest of AFGE, failed to allow Collins, and thousands of other employees similarly situated, to refrain from assisting AFGE when it took money from his pay for AFGE's benefit after AFGE was no longer his exclusive representative. *See* ¶¶ 9–12, 15, *supra*. Collins objects to being forced to subsidize the activities of a union that has disclaimed its interest in him after nearly fifteen years of paid-for membership. *See* ¶¶ 3, 11, *supra*.

i. ICE's violation of Collins's right to refrain from assisting a union that abandoned him was an unfair labor practice. *See* ¶ 15, *supra*.

17. Violation of the United States Constitution

a. ICE's failure, in concert with AFGE, to stop taking dues from Collins's pay for AFGE's benefit after AFGE was no longer entitled to those dues was a violation of Collins's rights under the First Amendment to the United States Constitution.

b. AFGE and ICE required Collins to maintain unwilling allegiance to and financial support of AFGE and its affiliates even though AFGE chose to stop representing Collins weeks before. This impinged on Collins's rights to free association, self-organization, assembly, and petition, and freedoms of thought, speech, and conscience, as guaranteed to him by the First Amendment.

c. The United States Supreme Court held in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018), that the First Amendment requires that "[n]either 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." Further, "by agreeing to pay [union dues], [employees] are waiving their First Amendment rights, and such a waiver cannot be presumed . . . [and] must be freely given." *Id.*

d. Once AFGE stopped representing non-professional ICE employees such as Collins (and thus they immediately and automatically became "nonmembers" of AFGE), ICE had a duty to stop deducting dues from their paychecks immediately. *Cf. OPM*, 71 FLRA 571, 574 (2020) (Abbott, M., concurring) ("The theme of *Janus* is that an employee has the right to support, or to stop supporting, the union by paying, or to stop paying, dues.").

e. ICE and AFGE, in concert under color of law, have violated Collins's First Amendment rights by: (1) ICE forcibly taking purported union dues from the wages of ICE non-professional employees that AFGE no longer represented for AFGE's benefit; and (2) AFGE accepting and retaining those monies to which it has no legal right. *See* ¶¶ 9–15, *supra*.

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f. Collins reserves his right to seek adjudication of his constitutional claims in federal court if this Charge is not accepted by the FLRA. *Brookens v. Gamble*, No. 20-CV-1740 (CRC), 2020 WL 6134266, at *10 (D.D.C. Oct. 19, 2020) ("Brookens is therefore required to exhaust his administrative remedies at the FLRA before bringing his constitutional claims to district court.").

C. REQUEST FOR RELIEF

Collins requests that this Board:

i. Determine that AFGE has engaged in unfair labor practices;

ii. Order AFGE to cease and desist from these unfair labor practices;

iii. Order AFGE to return to Collins, and all employees similarly situated, all monies ICE deducted from his wages for the benefit of AFGE on about August 25, 2022, for Pay Period 16 (fourteen days after FLRA revoked AFGE's certificate to represent those employees);

1. In the alternative, return to Collins and all employees similarly situated 3/14 of the dues ICE deducted on about August 25, 2022, for AFGE's benefit, representing the three days during Pay Period 16 when AFGE did not represent them.

iv. Enter any other relief that justice requires.

Respectfully submitted,

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