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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DIANNE KNOX; WILLIAM L.  
BLAYLOCK; ROBERT A. CONOVER;  
EDWARD L. DOBROWOLSKI, JR.;  
KARYN GIL; THOMAS JACOB HASS;  
PATRICK JOHNSON; and JON JUMPER,  
On Behalf of Themselves and the  
Class They Seek to Represent,

No. 2:05-cv-02198-MCE-KJM

Plaintiffs,

v.

MEMORANDUM AND ORDER

STEVE WESTLY, Controller,  
State of California; and  
CALIFORNIA STATE EMPLOYEES  
ASSOCIATION, LOCAL 1000,  
SERVICE EMPLOYEES  
INTERNATIONAL UNION, AFL-CIO-  
CLC,

Defendants.

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1 Through the present action, Plaintiffs, state employees, seek  
2 redress against Defendants, Steve Westly, the Controller of the  
3 State of California ("Controller"), and California State Employees  
4 Association, Local 1000, Service Employees International Union,  
5 AFL-CIO, CLC ("the Union"), for violations of their First, Fifth,  
6 and Fourteenth Amendment rights under 42 U.S.C. § 1983 by, *inter*  
7 *alia*, using Plaintiffs' monies to support political causes without  
8 satisfying constitutionally required procedural safeguards as  
9 compelled by *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).

10 Plaintiffs seek Summary Judgment as to the case in its  
11 entirety, or, alternatively, Summary Adjudication of individual  
12 claims, arguing that Defendants failed to provide any notice to  
13 employees regarding the basis for the temporary assessment  
14 imposed by the Union from September 2005 through December of  
15 2006. Defendants filed a cross-motion seeking Partial Summary  
16 Judgment as to the nonobjecting class of Plaintiffs, arguing that  
17 those Plaintiffs consented to the use of their wages to fund the  
18 Union's temporary assesement when they failed to object after  
19 receiving the Union's annual Hudson notice. Defendants also ask  
20 that this Court grant Summary Adjudication limiting the relevant  
21 time period of Plaintiffs' claims to September 2005 through June  
22 2006 (inclusive). For the reasons set forth below, Plaintiffs'  
23 Motion is granted, and Defendants' Motion is granted in part and  
24 denied in part.<sup>1</sup>

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27 <sup>1</sup> Because it is determined that oral argument would not be  
28 of material assistance, the Court ordered this matter submitted  
on the briefing. E.D. Cal. Local Rule 78-230(h).

1 **BACKGROUND**

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3 Though the following underlying facts material to the  
4 disposition of this Motion are undisputed, the Court is aware  
5 that the parties' characterizations of those facts diverge  
6 greatly.

7 Plaintiffs represent two classes of nonunion employees,  
8 those who objected to the Union's June 2005 Hudson Notice  
9 ("objectors") and those who did not ("nonobjectors")  
10 (collectively "Plaintiffs"). See Pls.' Statement of Undisputed  
11 Material Facts and Defs.' Response Thereto, No. 11 ("UF").  
12 Defendants are the State Controller and the Union. Id., Nos. 8-  
13 9.

14 The State of California has recognized the Union as the  
15 exclusive bargaining agent for the Plaintiffs and other State  
16 employees in bargaining units designated as Bargaining Units 1,  
17 3, 4, 11, 14, 15, 17, 20, and 21. Id., No. 16. The Union and  
18 the State of California have entered a series of Memoranda of  
19 Understanding ("MOUs") controlling the terms and conditions of  
20 employment for Plaintiffs. Id. One such MOU includes a  
21 provision requiring that all State employees in these Bargaining  
22 Units join the Union as formal Union members, or if opting not to  
23 join, have deducted from their wages a proportionate amount of  
24 agency fees. Id., No. 17.

25 The Union issues a notice pursuant to Hudson every June.  
26 This constitutionally required "Hudson notice" is meant to  
27 provide nonmembers with, *inter alia*, an adequate explanation of  
28 the basis of the agency fee. Hudson at 310.

1 Additionally the notice provides that, for thirty (30) days after  
2 it is issued, nonunion employees can object to the collection of  
3 full union dues and can elect instead to have only the reduced  
4 rate deducted during the upcoming fee year. Finally, during that  
5 30-day period, nonmembers can also challenge the Union's  
6 calculation of its chargeable and nonchargeable expenses. Such  
7 challenges are resolved by an impartial decisionmaker. UF,  
8 No. 18.

9 In June, 2005, the Union issued its annual Hudson notice  
10 ("2005 Hudson Notice"). This notice did not indicate that a  
11 temporary assessment would be included in the 2005-06 dues and  
12 fees, but stated that "[d]ues are subject to change without  
13 further notice to fee payers." Id., No. 27.

14 The 2005 Hudson Notice set the agency fee to be deducted  
15 from nonunion employee paychecks for the 2005-06 fiscal year at  
16 99.1% of dues. That Notice also informed nonmembers that the  
17 reduced agency fee ("fair share fee") of 56.35% of the Union's  
18 annual dues, would be charged to nonmembers who objected to  
19 paying the full agency fee and who requested a rebate pursuant to  
20 the procedures and deadlines outlined in the Notice. The 56.35%  
21 was based on the Union's actual expenditures for the year ending  
22 December 31, 2004, in which the Union calculated chargeable  
23 expenditures to be 56.35% of its total expenditures. Id.,  
24 No. 28.

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1 On July 30, 2005, the Union proposed an "Emergency Temporary  
2 Assessment to Build a Political Fight-Back Fund" ("Assessment")  
3 for "use for a broad range of political expenses, including  
4 television and radio advertising, direct mail, voter  
5 registration, voter education, and get out the vote activities in  
6 our work sites and in our communities across California,"  
7 specifically stating that "[t]he Fund will not be used for  
8 regular costs of the union - such as office rent, staff salaries  
9 or routine equipment replacement, etc." Id., No. 20.

10 Additionally, the Union claimed that the Assessment was to "be  
11 used specifically in the political arenas of California to defend  
12 and advance the interests of members of the Union and the  
13 important public services they provide."<sup>2</sup> This Assessment was  
14 expected to raise \$12 million for the Union. Id., No. 23. On  
15 August 27, 2005, Union delegates to the CSEA General Council  
16 voted to implement the temporary dues increase of one-fourth of  
17 one percent of salary to create this "Political Fight Back Fund."  
18 Id., No. 22.

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24 <sup>2</sup> The Court notes Defendants' assertion that the Assessment  
25 was actually used "for a broad variety of expenditures, many of  
26 which were for chargeable activities." As is discussed, *infra*,  
27 this is not material to the disposition of this Motion.  
28 Additionally, the Court is cognizant of Defendants' position that  
none of their publications at the time the Assessment was adopted  
actually stated that the Assessment would be used "exclusively"  
for purposes set forth in those quotations or "exclusively" for  
nonchargeable expenditures. This, too, is immaterial to the  
Court's disposition of the current Motion.

1 On August 31, 2005, the Union sent another letter, addressed  
2 to "Local 1000 Members and Fair Share Fee Payers." The letter  
3 stated that Union members were subject to a dues increase and  
4 that "[t]he \$45 per month cap on...regular dues of 1% of gross  
5 pay [would] continue in effect, but [would] not apply to this  
6 additional .0025 temporary increase." Id., No. 29. That letter  
7 also claimed that the Union would use the funds from the  
8 Assessment to "defeat Proposition 76 and Proposition 75 on  
9 November 8." Additionally, according to the Union, it intended  
10 to "defeat another attack on [its] pension plan" in June of 2006,  
11 and "[i]n November 2006, [it would] need to elect a governor and  
12 a legislature who support public employees and the services  
13 [they] provide." Compl., Exh. D.

14 After receiving this letter, Plaintiff Dobrowolski called  
15 the Union's Sacramento office, and was directed to its Riverside  
16 office where he left a message for Jodi Smith, area manager.  
17 Smith returned his call and stated that, even if Dobrowolski  
18 objected to the payment of the full agency fee, there was nothing  
19 he could do about the September increase for the Assessment. She  
20 also stated that "we are in the fight of our lives," that the  
21 Assessment was needed, and that there was nothing that could be  
22 done to stop the Union's expenditure of that Assessment for  
23 political purposes. UF, No. 34.

24 Pursuant to the Assessment, the Controller began deducting  
25 additional fees at the end of September, 2005. Id., No. 31.  
26 Plaintiffs subsequently initiated this action in November of that  
27 year.

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**STANDARD**

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3 The Federal Rules of Civil Procedure provide for summary  
4 judgment when "the pleadings, depositions, answers to  
5 interrogatories, and admissions on file, together with  
6 affidavits, if any, show that there is no genuine issue as to any  
7 material fact and that the moving party is entitled to a judgment  
8 as a matter of law." Fed. R. Civ. P. 56(c). One of the  
9 principal purposes of Rule 56 is to dispose of factually  
10 unsupported claims or defenses. *Celotex Corp. v. Catrett*, 477  
11 U.S. 317, 325 (1986).

12 Rule 56 also allows a court to grant summary adjudication on  
13 part of a claim or defense. See Fed. R. Civ. P. 56(a) ("A party  
14 claiming relief may move...for summary judgment on all or part of  
15 the claim."); see also *Allstate Ins. Co. v. Madan*, 889 F. Supp.  
16 374, 378-79 (C.D. Cal. 1995); *France Stone Co., Inc. v. Charter*  
17 *Township of Monroe*, 790 F. Supp. 707, 710 (E.D. Mich. 1992).

18 The standard that applies to a motion for summary  
19 adjudication is the same as that which applies to a motion for  
20 summary judgment. See Fed. R. Civ. P. 56(a), 56(c); *Mora v.*  
21 *ChemTronics*, 16 F. Supp. 2d. 1192, 1200 (S.D. Cal. 1998).

22 Under summary judgment practice, the moving party  
23 always bears the initial responsibility of informing  
24 the district court of the basis for its motion, and  
25 identifying those portions of 'the pleadings,  
26 depositions, answers to interrogatories, and admissions  
27 on file together with the affidavits, if any,' which it  
28 believes demonstrate the absence of a genuine issue of  
material fact.

27 *Celotex* at 323(quoted Rule 56(c)).

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1 If the moving party meets its initial responsibility, the  
2 burden then shifts to the opposing party to establish that a  
3 genuine issue as to any material fact actually does exist.  
4 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,  
5 585-87 (1986); *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S.  
6 253, 288-89 (1968).

7 In attempting to establish the existence of this factual  
8 dispute, the opposing party must tender evidence of specific  
9 facts in the form of affidavits, and/or admissible discovery  
10 material, in support of its contention that the dispute exists.  
11 Fed. R. Civ. P. 56(e). The opposing party must demonstrate that  
12 the fact in contention is material, i.e., a fact that might  
13 affect the outcome of the suit under the governing law, and that  
14 the dispute is genuine, i.e., the evidence is such that a  
15 reasonable jury could return a verdict for the nonmoving party.  
16 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 251-52  
17 (1986); *Owens v. Local No. 169, Assoc. of Western Pulp and Paper*  
18 *Workers*, 971 F.2d 347, 355 (9th Cir. 1987). Stated another way,  
19 "before the evidence is left to the jury, there is a preliminary  
20 question for the judge, not whether there is literally no  
21 evidence, but whether there is any upon which a jury could  
22 properly proceed to find a verdict for the party producing it,  
23 upon whom the onus of proof is imposed." *Anderson*, 477 U.S. at  
24 251 (quoting *Improvement Co. v. Munson*, 14 Wall. 442, 448, 20  
25 L.Ed. 867 (1872)).

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1 As the Supreme Court explained, "[w]hen the moving party has  
2 carried its burden under Rule 56(c), its opponent must do more  
3 than simply show that there is some metaphysical doubt as to the  
4 material facts .... Where the record taken as a whole could not  
5 lead a rational trier of fact to find for the nonmoving party,  
6 there is no 'genuine issue for trial.'" *Matsushita*, 475 U.S. at  
7 586-87.

8 In resolving a summary judgment motion, the evidence of the  
9 opposing party is to be believed, and all reasonable inferences  
10 that may be drawn from the facts placed before the court must be  
11 drawn in favor of the opposing party. *Anderson*, 477 U.S. at 255.  
12 Nevertheless, inferences are not drawn out of the air, and it is  
13 the opposing party's obligation to produce a factual predicate  
14 from which the inference may be drawn. *Richards v. Nielsen*  
15 *Freight Lines*, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985),  
16 *aff'd*, 810 F.2d 898 (9th Cir. 1987).

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18 **ANALYSIS**

19 **I. PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

20 **A. The 2005 *Hudson* Notice Did Not Provide an Adequate**  
21 **Explanation of the Basis of the Assessment**

22 The dispute in this case, while of great import, is over a  
23 relatively simple question: Did Defendants' June 2005 Hudson  
24 Notice provide "an adequate explanation of the basis" supporting  
25 the subsequent September 2005 Assessment?

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1 This somewhat narrow issue is drawn against a broader  
2 backdrop of First Amendment jurisprudence. There is no question  
3 that "[r]equiring nonunion employees to support their collective-  
4 bargaining representative 'has an impact upon their First  
5 Amendment interests." Hudson at 301 (quoting Abood v. Detroit  
6 Bd. of Educ., 431 U.S. 209, 222 (1977)). Nevertheless, it is  
7 constitutional for a "public employer to designate a union as the  
8 exclusive collective-bargaining representative of its employees,  
9 and to require nonunion employees, as a condition of employment,  
10 to pay a fair share of the union's costs of negotiating and  
11 administering a collective-bargaining agreement .... [H]owever,  
12 ... nonunion employees do have a constitutional right to 'prevent  
13 the Union's spending a part of their required service fees to  
14 contribute to political candidates and to express political views  
15 unrelated to its duties as exclusive bargaining representative.'" Hudson  
16 at 301-302 (quoting Abood at 234). The fees charged to  
17 nonunion employees for services related to a union's collective-  
18 bargaining activities are termed "fair share" fees.

19 In Hudson, the Supreme Court elaborated "that the  
20 constitutional requirements for the Union's collection of agency  
21 fees include an adequate explanation of the basis for the fee, a  
22 reasonably prompt opportunity to challenge the amount of the fee  
23 before an impartial decisionmaker, and an escrow for the amounts  
24 reasonably in dispute while such challenges are pending." Hudson  
25 at 310. Notices issued pursuant to this language have come to be  
26 known as "Hudson Notices." Wagner v. Prof'l Eng'rs in Cal.  
27 Gov't, 354 F.3d 1036, 1039 (9th Cir. 2004).

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1 After receiving a Hudson notice, "the nonunion employee has  
2 the burden of raising an objection, but ... the union retains the  
3 burden of proof" as to the appropriate proportion of fair share  
4 fees. Hudson at 306 (citing Abood at 239-240 ("Since the unions  
5 possess the facts and records from which the proportion of  
6 political to total union expenditures can reasonably be  
7 calculated, basic considerations of fairness compel that they,  
8 not the individual employees, bear the burden of [proof].")).  
9 Additionally, the important policies underlying Hudson inform the  
10 determination of whether a Hudson notice is adequate. "Basic  
11 considerations of fairness, as well as concern for the First  
12 Amendment rights at stake, ...dictate that the potential objectors  
13 be given sufficient information to gauge the propriety of the  
14 union's fee." Hudson at 306. "Leaving the nonunion employees in  
15 the dark about the source of the figure for the agency fee-and  
16 requiring them to object in order to receive information-does not  
17 adequately protect the careful distinctions drawn in [prior case  
18 law]." Hudson at 306.

19 Hudson has been interpreted in later cases as setting the  
20 minimum constitutional protections that a union must provide  
21 nonunion employees. See Davenport v. Wash. Educ. Ass'n, \_\_\_ U.S.  
22 \_\_\_, 127 S. Ct. 2372, 2379 (2007). Indeed, our Supreme Court has  
23 referred to the Hudson requirements as a "constitutional floor."

24 Id.

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1 To date, only the Northern District of California has had  
2 the opportunity to address the Hudson requirements on facts  
3 similar to this case. On two separate occasions that court  
4 determined that a union's annual Hudson notice provided adequate  
5 information to supply a basis for a newly-imposed, post-objection  
6 period, 10% increase in fees and dues. See Liegmann v. Cal.  
7 Teachers Ass'n, 395 F. Supp. 2d 922 (N.D. Cal. 2005) (addressing  
8 the question in the context of an application for a Temporary  
9 Restraining Order ("TRO")) (Liegmann I); Liegmann v. Cal.  
10 Teachers Ass'n, 2006 WL 1795123 (N.D. Cal. 2006) (addressing the  
11 issue in the context of cross-motions for summary judgment)  
12 (Liegmann II).

13 In Liegmann I, that court was confronted with facts similar  
14 to those this Court considers today. That union issued its  
15 annual Hudson notice and subsequently implemented an  
16 approximately 10% increase in dues and fair share fees to be used  
17 either wholly or partially for political purposes. Liegmann I at  
18 925-927. Under the standard for reviewing TRO applications, that  
19 court had to balance the potential hardships to the parties.  
20 Liegmann I at 925. The court balanced the union's and the  
21 nonobjectors' constitutional rights against those of the  
22 objectors and determined that the employee plaintiffs had failed  
23 to show that the balance tipped in their favor.<sup>3</sup> Id. at 926.

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26 <sup>3</sup> To the extent the Northern District relied on an apparent  
27 need to protect the union's constitutional entitlement to  
28 nonunion employees' fees, that decision cannot stand. See  
Davenport v. Washington Education Association, \_\_\_ U.S. \_\_\_, 127  
S. Ct. 2372, 2379 (2007).

1 When examining the likelihood of success on the merits, the  
2 Liegman I court stated, "This Court declines to find nonmembers  
3 are further entitled to another Hudson Notice, in advance,  
4 detailing exactly how much of the additional revenue generated by  
5 a fee increase will be spent on which purpose. There is nothing  
6 in Hudson or subsequent authority which requires that Hudson  
7 Notices provide such advance detail." Liegmann I at 927. That  
8 court went on to determine that nothing in the facts indicated  
9 that the "increase [was] so extraordinary that it require[d] a  
10 departure from the procedure approved in Hudson." Id. at 927.

11 In Liegmann II, the Northern District revisited the same  
12 facts in the more developed posture of cross-motions for summary  
13 judgment. As in this case, that union argued, and that court  
14 agreed, that the standard Hudson notice provided adequate  
15 information regarding the subsequent dues increase. Liegmann II  
16 at \*3. That court further determined that the assessment was not  
17 so extraordinary as to warrant a departure from customary Hudson  
18 procedures. Notably, that court did not have before it a case  
19 raising the "question of whether an assessment for purely  
20 political purposes would necessitate a deviation from Hudson  
21 because the facts of [that] case [did] not raise such a  
22 question." Liegmann II at \*5.

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1 This Court, too, need only engage in a straight-forward  
2 Hudson analysis to determine whether, under traditional  
3 principles, the Union's 2005 Hudson Notice was adequate to  
4 provide a basis for its Assessment.<sup>4</sup>

5 Critical to the current endeavor, and hotly disputed between  
6 the parties, is the characterization of the Assessment. As a  
7 threshold issue, this Court will address the parties'  
8 disagreement regarding the actual magnitude of the Assessment's  
9 impact. Plaintiffs state that the Assessment resulted in a 25-  
10 35% increase in fees paid by nonmembers. Defendants, to the  
11 contrary, attempt to align their cause with Liegmann, where the  
12 court addressed a 10% increase in fair share fees, by arguing  
13 that current objectors only saw an increase of 14.09%.  
14 Defendants reach this conclusion by pointing out that, at least  
15 for those who objected to the 2005 Hudson Notice, the only  
16 portion of the increase they would be required to pay is 56.35%  
17 of the 25% increase, which equates to a 14.09% increase in the  
18 deduction from the objector's salary.<sup>5</sup> This figure is somewhat  
19 misleading, however, because it refers only to the increase in  
20 the percentage of salary deducted from objectors' wages and not  
21 to the percentage increase in fair share fees paid by nonunion  
22 employees.

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25 <sup>4</sup> Because the Court finds the 2005 Hudson Notice legally  
26 inadequate under its traditional Hudson analysis, it is not  
27 necessary to consider whether the current facts, when compared to  
those in the Liegmann cases, present such an extraordinary set of  
circumstances as to warrant a departure from Hudson.

28 <sup>5</sup> The percentage of salary deducted from nonobjectors  
increased by 24.775% (99.1% x 25%).

1 Plaintiffs' characterization of the percentage increase in  
2 fair share fees is more on point. Standard dues paid by those  
3 objectors earning \$4500 per month would be capped at 1% of  
4 salary, or \$45, per month. The Assessment was not subject to  
5 this cap. Therefore, someone earning \$4500 would be assessed an  
6 additional .25% of his or her salary, or \$11.25. Since this  
7 person was an objector, he or she would only be required to pay  
8 56.35% of the above union dues. In this case, that equals an  
9 additional \$6.34, which is approximately a 14% increase when  
10 compared to the \$45 monthly dues. However, objectors would not  
11 have paid \$45 in union dues. They would have paid only their pro  
12 rata share, 56.35% of \$45, which is approximately \$25.34.  
13 Therefore, the \$6.34 increase actually equates to an increase of  
14 approximately 25% in fair share fees.<sup>6</sup>

15 Additionally, because the standard dues are capped at 1% of  
16 salary, and the Assessment was not subject to this cap, those  
17 objectors who earned in excess of \$4500 per month, would see this  
18 proportion grow as their salaries increased.<sup>7</sup> Therefore, the  
19 fair share fees paid by both objectors and nonobjectors actually  
20 increased by a much greater margin than Defendants would like to  
21 suggest.

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22 <sup>6</sup> A nonobjector would see the same increase ( $99.1\% \times \$45.00$   
23  $= \$44.60$ ;  $99.1\% \times \$11.25 = \$11.15$ ;  $\$11.15/\$44.60 = 25\%$ ).

24 <sup>7</sup> As an example, an objector earning \$6000 per month  
25 would pay only his pro rata share of 1% of his monthly salary,  
26 capped at \$45, again \$25.34. However, the cap would not limit  
27 the amount allocated to him for the Assessment. Therefore, he  
28 would be required to pay his pro rata share of .25% of 1% of his  
salary, in this case an additional \$8.45. This equates to an  
increase in his fair share fee of approximately 33%. A  
nonobjector earning the same amount would see the same  
approximate increase.

1 This increase represents a material change in the amount of funds  
2 nonunion employees were required to contribute to Union  
3 expenditures.

4 More importantly, however, is a determination of the nature  
5 of the Assessment. Plaintiffs ask the Court to view the  
6 Assessment as a fund intended solely for political and  
7 ideological purposes. Defendants disagree and request this Court  
8 view it as an ordinary dues and fees increase. This distinction  
9 is relevant because there is no case law directly on point  
10 dealing with an assessment intended solely to fund political and  
11 ideological goals. However, this Court finds that the semantic  
12 arguments are not dispositive and engages in the current  
13 discussion only to clarify its opinion. Regardless of how the  
14 assessment is cast, the Courts' decision is the same.

15 Based on the Union's own initial characterization of the  
16 Assessment, the fund was intended for political purposes. The  
17 Court is cognizant of the fact that, in retrospect, the Union may  
18 be able to show that the entire fund was not used for  
19 nonchargeable, political or ideological purposes. Based on that,  
20 Defendants appear to argue that if any of the Assessment's funds  
21 were spent on chargeable activities, the Assessment should be  
22 treated as an ordinary dues and fees increase. This argument  
23 defies logic.

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1 First and foremost, the Union specifically couched its  
2 proposed assessment as an "Emergency Temporary Assessment to  
3 Build a Political Fight-Back Fund" for "use for a broad range of  
4 political expenses, including television and radio advertising,  
5 direct mail, voter registration, voter education, and get out the  
6 vote activities in our work sites and in our communities across  
7 California." Additionally, the Union stated that the fund was  
8 not to be used "for regular costs of the union - such as office  
9 rent, staff salaries or routine equipment replacement, etc."  
10 Rather, it was to "be used specifically in the political arenas  
11 of California to defend and advance the interests of members of  
12 the Union and the important public services they provide." See  
13 UF, Nos. 20, 23.

14 When employees were officially notified of the Assessment,  
15 the Union stated that it intended to use the funds to "defeat  
16 Proposition 76 and Proposition 75," to "defeat another attack on  
17 [its] pension plan" in June of 2006, and to "elect a governor and  
18 a legislature who [would] support public employees and the  
19 services [they] provide" in November of 2006. Id., No 29; See  
20 Compl., Exh. D. It is hard to imagine any circumstances in which  
21 it could be more clear that an Assessment was passed for  
22 political and ideological purposes.

23 Nevertheless, the Union argues that not all of the funds  
24 were used for political purposes, and, even if they were, not all  
25 political purposes are nonchargeable. However, the adequacy of  
26 Hudson notices should not be viewed through a lens skewed by the  
27 benefit of hindsight.

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1 The undisputed facts surrounding the implementation of the  
2 Assessment evidence that the Union fully intended to use the 12  
3 million additional dollars it anticipated to raise for political  
4 purposes. Following the Union's logic, it should be required  
5 only to show that some small fraction of this fund was used for  
6 chargeable purposes in order to justify subverting its Hudson  
7 responsibilities.

8 Defendants call for the Court to be practical. However,  
9 they cannot simultaneously avoid that call for practicality  
10 themselves. The Union controls the categorization of its own  
11 expenses. Following Defendants' reasoning, there could never  
12 exist an assessment for purely political purposes because it is  
13 quite likely that some small portion of such a fund would, from a  
14 practical perspective, always be chargeable. It would follow  
15 that all post-notice, post-objection period assessments would be  
16 considered dues and fees increases, covered by an already issued  
17 Hudson notice. Unions would then be permitted to pass any such  
18 future assessments as long as those funds built in the most  
19 minute chargeable cushion, a cushion that is, from a practical  
20 perspective, almost inevitable. Without repercussion, Unions  
21 would be free to, even if inadvertently, trample on the First  
22 Amendment rights of dissenters.

23 This strategy must fail. Even if every cent of the  
24 assessment was not intended to be used for entirely political  
25 purposes, it is clear that the Union's intent was to depart  
26 drastically from its typical spending regime and to focus on  
27 activities that were political or ideological in nature.

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1 This shift represents a material difference from that  
2 contemplated under the standard dues structure to which the 2005  
3 Hudson Notice was directed and rendered the Hudson notice  
4 obsolete as to that Assessment.

5 Defendants adamantly object to being required to provide a  
6 second Hudson notice. Since they are required to base such  
7 notices on audited figures, they argue that it is impossible to  
8 provide an "advance" notice. However, advance notice is exactly  
9 what Hudson requires. It is an advance notice provided to  
10 nonunion employees so that they may make an informed decision as  
11 to whether or not they object to the use of their funds for  
12 political or ideological purposes. The Supreme Court's  
13 recognition that these notices would necessarily depend on prior  
14 years' financials does not change the underlying function of the  
15 notice itself.

16 Defendants belabor the Supreme Court's nod to practicality  
17 in footnote 18 of the Hudson opinion. The Court there stated,  
18 "We continue to recognize that there are practical reasons why  
19 '[a]bsolute precision' in the calculation of the charge to  
20 nonmembers cannot be 'expected or required.'" Hudson at 307  
21 n.18. The Court went on, "Thus, for instance, the Union cannot  
22 be faulted for calculating its fee on the basis of its expenses  
23 during the preceding year." Id. At no point did the Court state  
24 that this procedure was the only constitutionally mandated manner  
25 in which to prepare a Hudson notice. The Court simply noted  
26 that, in the case of an annual notice, it was understandable that  
27 the union relied on the prior year's figures.

28 ///

1 Notably, however, there is at least some nexus between using  
2 the whole of the prior year's expenditures as a benchmark for the  
3 whole of anticipated current year's expenditures, which could  
4 reasonably be expected to remain at a similar level. In that  
5 instance, the nonunion employee is being asked to compare one  
6 year's apples to the next year's apples. However, in the current  
7 case, the nonunion employees were never given any opportunity to  
8 make such an informed decision as to the Assessment. Rather,  
9 after implementing the increase, the Union took the position that  
10 nonunion employees had already been given an opportunity to make  
11 an informed decision as to the Assessment by means of the 2005  
12 Hudson Notice. The Union now turns a blind eye to the  
13 inconsistency inherent in asking nonunion employees to compare  
14 apples, in the form of the prior year's financials, to oranges,  
15 in the form of a new Assessment, an Assessment which was not to  
16 be utilized for Union operations, but was instead earmarked for  
17 discrete political purposes.

18 Defendants' argument that it must rely on audited financial  
19 figures which the Assessment has not yet generated is inapposite.  
20 Defendants are correct that the Hudson Court stated "adequate  
21 disclosure surely would include...verification by an independent  
22 auditor." Hudson at 307 n.18. However, the Ninth Circuit has  
23 held that "while a formal audit is not always required, the union  
24 must provide a statement of its chargeable and nonchargeable  
25 expenses, together with an independent verification that the  
26 expenses were actually incurred." *Harik v. Cal. Teachers Ass'n*,  
27 326 F.3d 1042, 1046 (9th Cir. 2003).

28 ///

1 "This passage certainly indicates that, although the Union must  
2 provide a breakdown between chargeable and nonchargeable  
3 expenses, the audit does not verify that the allocation is  
4 correct, but that the expenses were indeed spent the way the  
5 Union claims." *Cummings v. Connell*, 316 F.3d 886, 892 (9th Cir.  
6 2003) (rejecting the claim that an allocation audit was  
7 required). "What is required is a real independent verification  
8 of the financial data in question to make sure that expenditures  
9 are being made the way the union says they are." *Id.* (quoting  
10 *Prescott v. County of El Dorado*, 177 F.3d 1102, 1107 (9th Cir.  
11 1999), vacated and remanded on other grounds, 528 U.S. 1111  
12 (2000), reinstated in relevant part, 204 F.3d 984 (9th Cir.  
13 2000)).

14 Defendants had audited financials from the prior year from  
15 which they were able to construct the requisite 2005 Hudson  
16 Notice. Those expenditures were not necessarily relevant,  
17 however, to allocations within the subsequent Assessment. It was  
18 within the Union's purview to determine which additional  
19 expenditures were chargeable or nonchargeable. See *Harik* at  
20 1046. It follows that it was up to the Union to determine the  
21 relevant major categories of expenses as well. The auditor  
22 merely "make[s] sure that expenditures are being made the way the  
23 union says they are." *Prescott* at 1107. Therefore, the Union  
24 could have looked at the purpose of the Assessment and determined  
25 which of its major categories of expenses should be allocated to  
26 that fund. Those figures had been audited based on the prior  
27 year's information, as is acceptable under Hudson. The burden is  
28 on the Union to put forth the TYPE of relevant expenditures.

1 The Court's methodology provides the means by which the Union  
2 could have met that burden by issuing a second, verified Hudson  
3 notice, specific to the Assessment, without estimating exact  
4 future revenue expenditures.

5 Ultimately, the crux of the analysis is "adequate  
6 information." The Supreme Court determined that, under the  
7 Hudson facts, use of prior year's financials was "adequate." See  
8 Hudson at 307 n.18. The Union's use of its financials was not  
9 adequate here because the categories of expenses included in the  
10 2005 Hudson Notice were not relevant to the purposes for which  
11 the funds in the Assessment were to be used. The Assessment,  
12 even according to the Union's own statements, was always intended  
13 to provide a stream of funds whose use departed drastically from  
14 standard Union spending.

15 A contrary decision from the one reached today would allow  
16 unions to run roughshod over dissenting nonmembers by imposing a  
17 post-objection period, "almost" purely political assessment,  
18 holding the funds hostage, and then using those funds, even if  
19 temporarily, for impermissible purposes.

20 An advance reduction by the amount of the fair share  
21 percentage in the 2005 Hudson Notice does not alter this  
22 analysis. As the Supreme Court has emphasized, "[A] remedy which  
23 merely offers dissenters the possibility of a rebate does not  
24 avoid the risk that dissenters' funds may be used temporarily for  
25 an improper purpose." Hudson at 305.

26 ///

27 ///

28 ///

1 "A forced exaction followed by a rebate equal to the amount  
2 improperly expended is thus not a permissible response to the  
3 nonunion employees' objections." Hudson at 305-306.<sup>8</sup>

4 Regardless of whether couched in terms of the Constitution  
5 or in terms of common sense, the 2005 Hudson Notice could not  
6 possibly have supplied the requisite information with which  
7 nonmembers could make an informed choice of whether or not to  
8 object to the Assessment. Accordingly, this Court finds that the  
9 2005 Hudson Notice was inadequate to provide a basis for the  
10 Union's Assessment.

11  
12 **B. New Notice is the Appropriate Remedy to Address the**  
13 **Harm to Plaintiffs as a Result of the Inadequate 2005**  
14 **Hudson Notice**

15 "An inadequate notice gives fee payers insufficient  
16 information with which to decide whether or not to object to  
17 paying portions of the fee that are unrelated to representational  
18 activities. A new, conforming notice, with a renewed opportunity  
19 for fee payers to object to paying nonchargeable amounts,  
20 addresses that harm.

21  
22 <sup>8</sup> Defendants' attempt to dismiss constitutional concerns  
23 because everything worked out in favor of the nonmember employees  
24 after the fact is irrelevant. The question is not whether, in  
25 retrospect, nonunion employees actually benefitted by being  
26 "undercharged." Rather, the question is whether those employees  
27 were provided the constitutionally required minimum information  
28 to make a forward-looking decision. They were not. Additionally, Defendants' argument hinges on the fact that the chargeable funds expended overall increased. However, the chargeable expenditures attributed to the Assessment were 27.35% in 2005 and 18.77% in 2006, much lower than those attributed to the standard Union dues and fees. Union's Opp'n to Pls.' Motion for Summary Judgment, 12:13-15.

1 Following a new, conforming notice, fee payers could object, and  
2 objectors would be entitled to a refund of the nonchargeable  
3 portion of the fee, with interest." Wagner at 1041. "[B]ecause  
4 the injury that fee payers suffer from an inadequate Hudson  
5 notice is the lack of an informed opportunity to object, the  
6 proper remedy is for the union to issue proper notice and give  
7 another opportunity for objection." Id. at 1042 (emphasis in  
8 original). These objectors will be entitled to receive a refund,  
9 with interest, of the nonchargeable amount.<sup>9</sup> See Id. at 1043.

10  
11 **C. Summary of Resolution of Plaintiffs' Motion**

12  
13 The 2005 Hudson Notice, which detailed expenditures  
14 regarding all Union activities, not just the limited activities  
15 to be covered by the Assessment, could, by no stretch of the  
16 imagination, have been applicable to this special fund. A second  
17 Hudson notice was required in the case of this Assessment, not  
18 because the 2005 Hudson Notice could not conceivably cover any  
19 assessment or dues increase, but because the actual notice in  
20 this case was inadequate to provide the requisite information  
21 regarding the specific Assessment. See Hudson at 307 ("[T]he  
22 original information given to the nonunion employees was  
23 inadequate.")

24 ///

25 ///

26  
27 <sup>9</sup> The Wagner court considered it relevant that there was no  
28 evidence presented that the union had acted in bad faith. Id. at  
1042. Since the same is true here, the Court need not engage in  
any further analysis on this point.



1 Defendants essentially rely on the argument that Hudson and  
2 its progeny left them a convenient loophole, one which now allows  
3 them to subvert the central protections Hudson is meant to  
4 provide. However, no self-asserted loophole will allow  
5 Defendants to avoid the Constitution. The Hudson Court  
6 articulated the minimum protections required under the First  
7 Amendment. This Court will not undermine that interpretation by  
8 allowing Defendants to hollowly assert that they adhered to  
9 constitutional requirements by issuing a standard Hudson notice,  
10 which, in actuality, failed to provide any "adequate explanation"  
11 as to how the subsequent Assessment would be used.

12 Accordingly, Plaintiffs' Motion for Summary Judgment is  
13 granted. The Union shall issue a proper Hudson notice as to the  
14 Assessment, with a renewed opportunity for nonmembers to object  
15 to paying the nonchargeable portion of the fee. The Union is  
16 ordered to issue nonmembers who, pursuant to this proper notice,  
17 object to the Assessment a refund, with interest, of that amount.  
18 Wagner at 1043.

19  
20 **II. DEFENDANTS' MOTION FOR SUMMARY ADJUDICATION**

21 **A. Nonobjectors Did Not Consent to the Assessment by**  
22 **Failing to Object to 2005 Hudson Notice**

23 Defendants argue that nonobjectors have no claim against the  
24 Union for the wrongful use of funds exacted from their paychecks  
25 under the 2005 Hudson Notice since they did not object to that  
26 Notice. This is basically the same claim, though differently  
27 dressed, that Defendants' raised in their already denied first  
28 motion for summary judgment.

1 This Court need not address Defendants' argument that "silence  
2 equals consent" under the Constitution. In order for the  
3 nonunion employees' failure to object to have any legal  
4 significance, the 2005 Hudson Notice must have been valid and  
5 sufficient to cover the Assessment. See Wagner at 1043 ("Th[e]  
6 principle [that plaintiffs burden of objection attaches only on  
7 provision of proper notice] makes sense, for it would be unfair  
8 to require a nonmember to object when the nonmember has, as a  
9 matter of law, not been adequately informed of the facts.").  
10 Because this Court holds that the 2005 Hudson Notice was not  
11 adequate as to the Assessment, nonobjectors could not have  
12 legally consented to the relevant subsequent deductions.  
13 Defendants' Motion for Summary Adjudication as to the class of  
14 nonobjectors is denied.

15  
16 **B. Plaintiffs' Claims Are Limited to the Time Period**  
17 **Encompassed by the Union's 2005 *Hudson* Notice**

18 Defendants also argue that any alleged wrong that occurred  
19 due to the lack of an adequate Hudson notice was remedied when  
20 the Union issued its subsequent Hudson notice in June of 2006.  
21 See Wagner and discussion, supra.

22 Since the proper remedy for the current wrong is a new  
23 Hudson notice and since Plaintiffs have not challenged the  
24 adequacy of the Union's 2006 or 2007 Hudson notices, this Court  
25 agrees with Defendants that the only time period relevant to the  
26 current dispute is September 2005 through June 2006 (inclusive).  
27 Hence, Defendants' Motion for Summary Adjudication as to the  
28 relevant time period is granted.

1 **CONCLUSION**

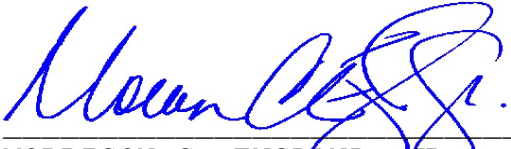
2  
3 Plaintiffs' Motion for Summary Judgment is GRANTED.  
4 Defendants are ordered to issue, within sixty (60) days following  
5 the date of this Order, a proper Hudson notice as to the 2005  
6 Assessment, offering nonmembers a forty-five (45) day period in  
7 which to object. The Union shall thereafter issue to those  
8 nonmembers who object to this new Hudson notice a refund of the  
9 nonchargeable portion of the Assessment. Pursuant to 28 U.S.C. §  
10 1961, the Union shall further issue to those nonmembers all  
11 interest accruing from the date(s) upon which nonchargeable  
12 deductions were taken.

13 Defendants' Motion for Summary Adjudication as to the  
14 nonobjector class is DENIED and Defendants' Motion asking the  
15 Court to limit the relevant time period to September 2005 through  
16 June 2006 (inclusive) is GRANTED.

17 The Clerk of the Court is directed to enter judgment in  
18 favor of Plaintiffs and close the file.

19 IT IS SO ORDERED.

20  
21 Dated: March 27, 2008

22   
23 MORRISON C. ENGLAND, JR.  
24 UNITED STATES DISTRICT JUDGE  
25  
26  
27  
28