

II. PARTIES

2. The Attorney General of Texas is charged with the civil enforcement of the state laws prohibiting requirements of membership or nonmembership in a union as a condition of employment. The Attorney General brings this action pursuant to Texas right-to-work laws delineating unlawful employment practices against persons based on their right to not participate or contribute to unions. The Attorney General has the authority to prosecute for violations of Texas right-to-work laws. Tex. Lab. Code Ann. §§ 101.121, .122, .124(2), .301, .302 (Vernon 2006).

3. The Attorney General of Texas has the authority under the Texas Labor Code to file a civil action seeking relief on behalf of the public's interest. Tex. Lab. Code Ann. §§ 101.121, .122, .124(2), .301, .302 (Vernon 2006).

4. Deco-Akal Services LLC, is a joint venture between Deco, Inc. and Akal Security, Inc., located at 14275 Golf Course Drive, Suite 250, Baxter, Minnesota 56425, that is believed to provide security services to the Immigration and Customs Enforcement Service Processing Center in El Paso, Texas (hereinafter referred to as SPC). Deco-Akal Services LLC may be served by and through its Registered Agent, CT Corporation System, at 350 North St. Paul Street, Dallas, Texas 75201.

5. Deco Akal JV, is a joint venture between Deco, Inc. and Akal Security, Inc., that provides security services to the Immigration and Customs Enforcement Service Processing Center in El Paso, Texas. Deco Akal JV has an office in El Paso, Texas and may be served by and through its attorney, John A. Ferguson, Jr., Bracewell & Giuliani, LLP, 800 One Alamo Center, 106 South St. Mary's Street, San Antonio, Texas 78205-3603.

6. Akal Security, Inc., a New Mexico corporation with an office and place of business at P.O. Box 1197, Santa Cruz, New Mexico 87567, is engaged in the business of providing security services to the Immigration and Customs Enforcement Service Processing Center in El Paso, Texas. Akal Security, Inc. has an office in El Paso, Texas through Deco-Akal JV. Akal Security, Inc. may be served by and through its attorney, John A. Ferguson, Jr., Bracewell & Giuliani, LLP, 800 One Alamo Center, 106 South St. Mary's Street, San Antonio, Texas 78205-3603.

7. Deco, Inc., is a Minnesota corporation with its headquarters and principle place of business at 14275 Golf Course Drive, Suite 250, Baxter, Minnesota 56425, and is engaged in the business of providing security services to the Immigration and Customs Enforcement Service Processing Center El Paso, Texas. Deco, Inc. has an office in El Paso, Texas through Deco-Akal JV. Deco, Inc. may be served by and through its Registered Agent CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

8. The International Union, Security, Police and Fire Professionals of America (SPFPA or Union), is a national union organization operating through local chapters in Texas, with headquarters at 25510 Kelly Road, Roseville, Michigan 48066, and may be served with process by serving its attorney, Mark L. Heinen, at Gregory, Moore, Jeakle, Heinen & Brooks, P.C., 65 Cadillac Square, Suite 3727, Detroit, Michigan 48226-2893.

9. SPFPA Local 725 may be served with process by serving its, attorney Mark L. Heinen, at Gregory, Moore, Jeakle, Heinen & Brooks, P.C., 65 Cadillac Square, Suite 3727, Detroit, Michigan 48226-2893.

III. VENUE AND JURISDICTION

10. This Court has venue and jurisdiction of this suit. Tex. Lab. Code Ann. §§ 101.121, .122, .124(2), .301, .302 (Vernon 2006).

IV. PUBLIC INTEREST

11. Plaintiff State of Texas has reason to believe that Defendants have engaged in, and will continue to engage in the unlawful practices set forth below. Plaintiff State of Texas has reason to believe Defendants have caused and will cause immediate, irreparable injury, loss and damage to the State of Texas and its citizens by impacting their livelihood by enforcing provisions contrary to Texas right-to-work laws. The Defendants are engaged in an unlawful compulsory unionism agreement which requires bargaining unit employees to join the Union or pay a fee as a condition of employment in violation of Texas right-to-work laws. Therefore, the State of Texas believes that these proceedings are in the public interest.

V. FACTS

12. Effective November 1993, Defendants Deco-Akal, SPFPA and Local 725 entered into a collective bargaining agreement (CBA) with an expiration date of May 31, 2007. The CBA was renewed on May 31, 2007, and remains in effect. The CBA contains a "Union Security" clause at Article 2, Section 2.8, effective June 1, 2004, which requires Deco-Akal employees to either join the Union, pay the Union a service fee, or donate an amount equal to the service fee to a charitable organization.

13. By way of example of the public impact of the CBA on Texas citizens, Juan Vielma, a security officer employee of Deco-Akal at the SPC was told he had to pay Union dues as a condition of employment, and was subsequently, on June 25, 2006, suspended indefinitely without

pay until he agreed to comply with the compulsory unionism agreement in the CBA. By way of background, Vielma was originally hired to work as a security officer at the SPC by another security service company in 1995. On June 8, 2000, the International Union, United Plant Guard Workers of America (UPGWA) was certified as the exclusive bargaining representative of the unit. In May 2000, the UPGWA changed its name to International Union, Security, Police and Fire Professionals of America (SPFPA). In 2004, Deco-Akal replaced the other company as a provider of security services at the SPC. Vielma had not been a member of the Union at all times after May 31, 2005. Between July 1, 2005 and June 25, 2006, Vielma did not pay any dues to the Union.

14. By letter dated December 25, 2005, the Union, through its attorney, advised Vielma, among other matters, that he was delinquent in the payment of Union dues, and that if he did not cure the delinquency within 30 days then the Union would seek termination of his employment.

15. By letter dated May 19, 2006, the Union, through its secretary-treasurer, Dennis Eck, informed the employer, Deco-Akal, among other matters, that Vielma had not paid periodic Union dues or service fees in lieu of Union dues, and it was, therefore, requesting the removal from the work site of security officer Vielma pursuant to the terms of the CBA's Union security provisions.

16. On June 14, 2006, Jonathon Rhodes, Deco-Akal's human resources manager, sent Vielma a letter, which, among other matters, mentioned that under the CBA between Deco-Akal and the Union, employees are required to either join the Union or pay the Union a service fee (CBA Section 2.8-Union Security). The letter further informed Vielma that under the terms of the CBA the Union has the right to demand his removal from the contract if he refuses to do so. Rhodes' letter advised Vielma that Deco-Akal had advised the Union of Vielma's failure to either join the

Union or pay the Union service fee. Rhodes concluded his letter to Vielma asking that he give this matter prompt attention, and advise Rhodes of his intentions no later than June 23, 2006.

17. On June 21, 2006, Rhodes sent Vielma a follow up letter, reminding him of his earlier letter instructing him to comply with the CBA. This latest letter from Rhodes concluded that if Vielma did not respond prior to Monday, June 26, 2006, his employment would be suspended pending compliance.

18. On or about June 25, 2006, at the request of the Union, Deco-Akal indefinitely suspended their employee, Juan Vielma, for failure to join the Union or pay the Union service fees. His failure to pay the Union was the sole basis for his discharge or indefinite suspension as evidenced in correspondence dated September 26, 2006, written by Dennis Eck, the Union's secretary-treasurer, to Rhodes confirming that the termination of Vielma for non-payment of dues or service fee was still in effect.

19. Upon information and belief, Deco-Akal has offered Vielma reinstatement. However, Vielma's back wages have not yet been paid. Further, the CBA is still in effect.

20. Other similarly situated employees are subject to the enforcement of this illegal provision and are at risk of being terminated for failure to pay Union dues or a service fee in violation of state laws. These Texas citizens should not be forced to join the Union or pay union fees as a condition of employment.

21. The union security provision in the CBA, and its enforcement, deny Texas citizens employment based on membership or non-membership in the Union in violation of state laws. Tex. Lab. Code Ann. §§ 101.052, .111, .301 (Vernon 2006).

VI. COUNT I -SPFPA AND LOCAL 725 VIOLATIONS OF TEX. LABOR CODE § 101.111

22. Under the Texas Labor Code, a union or its agent(s) are prohibited from collecting, receiving, or demanding, directly or indirectly, a fee as a work permit or as a condition for the privilege to work from a person who is not a member of the union. The Attorney General is empowered to enforce this subchapter. SPFPA and Local 725 are subject to a civil penalty for violations of the section of up to \$1,000 per violation and injunctive relief.

23. Defendants are in violation of Texas right-to-work laws by requiring employees to contribute to the Union as a condition of the privilege to work.

VII. COUNT II - DECO AKAL JV, SPFPA AND LOCAL 725 VIOLATIONS OF
TEX. LABOR CODE § 101.301

24. Section 101.301 of the Texas Labor Code generally prohibits interference with a person's right-to-work. Specifically, the statute prohibits a person from denying or abridging a person's right-to-work due to membership or nonmembership in a labor union. Tex. Lab. Code Ann. § 101.301(a) (Vernon 2006). The prohibition includes "threats, force, intimidation, or coercion." *Id.* at 301(b). As such, Deco-Akal, SPFPA, and Local 725 are subject to this section. Defendants are liable to a person who suffers from a violation of this subchapter for all resulting damages. *Id.* at 301(c). The Attorney General has the authority to bring this action in district court to enjoin a violation of this subchapter. *Id.* at 302(a).

25. Deco-Akal, SPFPA and Local 725 are acting in violation of these Texas right-to-work provisions. They should be enjoined from being able to enforce the provisions of their CBA that require employees to join the Union, pay the Union a service fee, or donate an amount equal to the

service fee to a charitable organization. Moreover, the provisions in Article 2, Section 2.8, of the CBA should be void as they are in direct violation of Texas laws.

VIII. DAMAGES

26. Pursuant to Tex. Lab. Code Ann. §§ 101.111 and .301(a) (Vernon 2006), Defendants violated Texas right-to-work laws and the State of Texas is entitled to recover all costs incurred and seek injunctive relief including resulting damages to Texas citizens. Tex. Lab. Code Ann. §§ 101.121, .122, .124(2), .301, .302 (Vernon 2006).

IX. APPLICATION FOR TEMPORARY INJUNCTION

27. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated the laws as set forth herein. Unless restrained by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to Texas citizens subject to the unlawful compulsory unionism provisions in the CBA.

28. Plaintiff, the State of Texas, asks the Court to issue a temporary injunction immediately requiring Defendants to cease and desist from continuing to enforce contract clauses that make payment of Union dues a requirement of employment against employees of Deco-Akal.

29. Further, the State of Texas, asks the Court to order Defendants to void the CBA as it contains language that is in violation of Texas laws. Tex. Lab. Code Ann. § 101.053 (Vernon 2006).

30. The State of Texas asks the Court to order Defendants to make payments for any losses or damages incurred by aggrieved persons who were required to either join the Union, pay the

Union a service fee, or donate an amount equal to the service fee to a charitable organization as a condition of employment.

31. The State of Texas further asks the Court to reinstate Juan Vielma to his previous position and order that Defendants pay all of his lost earnings and benefits since the date of his termination.

32. If the State of Texas's application is not granted, harm is imminent because Defendants will continue to require employees to either join the Union, pay the Union a service fee, or donate an amount equal to the service fee to a charitable organization as a condition of employment in violation of Texas laws, and at the expense of former, current and future employees, including Juan Vielma's, livelihood and ability to provide for their families.

33. The harm that will result if the temporary injunction is not issued is irreparable because employees will feel required to either join the Union, pay the Union a service fee, or donate an amount equal to the service fee to a charitable organization as a condition of employment, in contravention of the rights of Texans to work free from being obligated to pay unions in exchange for employment.

34. The State of Texas has no adequate remedy at law because the ongoing violations of Texas laws that deprive Texas citizens of their livelihood if they refuse to either join the Union, pay the Union a service fee, or donate an amount equal to the service fee to a charitable organization, pose incalculable injuries to these former, current and future employees, and it is in the interest of the citizens of the State of Texas for these unlawful practices established by Defendants to be prohibited.

X. REQUEST FOR TEMPORARY AND PERMANENT INJUNCTION

35. Plaintiff asks the Court to set its application for temporary injunction for hearing, and, after the hearing, issue a temporary injunction against Defendants.

36. Further, because the Defendants have engaged in the unlawful acts and practices described above, Defendants have violated the laws as set forth herein. Unless restrained by this Honorable Court, Defendants may continue to violate the laws of the State of Texas and cause additional injury, loss and damage to its Texas employees. Plaintiff, the State of Texas, respectfully requests that after notice and hearing this Court issue a permanent injunction restraining and enjoining Defendants, Defendants' agents, servants, employees, attorneys, and any other person acting in active concert or participation with Defendants from violating Texas right-to-work laws by voiding the CBA.

XI. ADDITIONAL RELIEF REQUESTED

37. Plaintiff seeks all equitable and injunctive relief to which it is entitled, including, but not limited to, attorneys' fees and court costs for the prosecution of this case, and injunctive remedies, including returning illegally obtained monies to Texas citizens, and prohibiting Defendants from engaging in violations of the Texas right-to-work laws in the future.

38. The State of Texas, its agents, political subdivisions, citizens, residents, and former, current and prospective employees seeking the right to employment have been deprived of their right-to-work without conditions of Union participation or payments. As a result, Plaintiff has suffered injuries and damages from Defendants' disregard of the laws of the State of Texas. Texas citizens will continue to suffer such injuries if Defendants continue to engage in unlawful employment practices and disregard of the laws of this state.

39. Plaintiff, therefore, requests that upon final hearing, the Court enter a permanent injunction enjoining Defendants from engaging in violations of Texas right-to-work laws. Further, Plaintiff prays that the Court permanently enjoin Defendants from in any way, requiring employees to either join the Union, pay the Union service fee, or donate an amount equal to the service fee to a charitable organization, and be enjoined from interfering with such employees' right-to-work free of such requirements as a condition of employment.

40. Plaintiff further requests that the Court order payment of all necessary and reasonable attorneys' fees, reimbursement of investigative expenditures, costs of court, and any and all affirmative relief set forth in Tex. Lab. Code Ann. §§ 101.121, .122, .124(2), .301, .302 (Vernon 2006).

XII. JURY REQUEST

41. Plaintiff requests a jury trial pursuant to Tex. R. Civ. P. 216.

XIII. REQUEST FOR DISCLOSURE

42. Under Tex. R. Civ. P. 194.3a, Plaintiff requests that Defendants disclose, within 50 days of the service of this request, the information or material described in Tex. R. Civ. P. Rule 194.2.

PRAYER

WHEREFORE, the State of Texas, on behalf of all aggrieved persons in El Paso County, including Juan Vielma, and the State of Texas who have suffered from violations of Texas right-to-work laws request the following judgment and relief against Defendants, jointly and severally:

The Court ISSUE a Temporary Injunction against Defendants, prohibiting them from committing further violations of the Texas right-to-work laws, by requiring that the CBA that

requires employees to either join the Union, pay the Union service fee, or donate an amount equal to the service fee to a charitable organization as a condition of employment, be void;

That the Court ORDER a Permanent Injunction against Defendants, prohibiting them from committing further violations of the Texas right-to-work laws, by requiring that the CBA that requires employees to either join the Union, pay the Union a service fee, or donate an amount equal to the service fee to a charitable organization as a condition of employment be void, so that the language requiring payments to the Union is not enforced against employees;

That the Court ORDER Defendants to provide notice to all employees of their rights under Texas right-to-work laws;

That the Court ORDER Defendants to cease and desist from threatening employees, including but not limited to, Juan Vielma, with termination if they do not pay the Union dues or fees;

That the Court ORDER reinstatement of Juan Vielma to his previous position and order that Defendants pay all of his lost earnings and benefits since the date of his termination;

That the Court ORDER Defendants to return the payment of Union dues or fees to employees who were forced to join the Union, pay the service fee, or donate an amount equal to the service fee to a charitable organization as a condition of employment, including but not limited to Juan Vielma;

That the Court GRANT Plaintiff all costs of suit, including attorneys' fees, investigative costs and costs of Court;

That the Court GRANT civil penalties against SPFPA and Local 725 of \$1,000 per violation;
and

That the Court GRANT Plaintiff such other and further relief, at law or equity, to which it may show itself and the aggrieved persons justly entitled.

Respectfully submitted,

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