



## BACKGROUND (SEPTEMBER 2015)

*Professor Mary Ann Dailey v. Association of Pennsylvania State College & University Faculties*

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### THE EXECUTIVE SUMMARY

The Fairness Center represents Professor Mary Ann Dailey in her challenge to the Association of Pennsylvania State College and University Faculties' ("APSCUF's") practice of manipulating dues and creating a deceptive fundraising program in an effort to further fund union political work.

Every year, APSCUF conducts a dues "rebate" campaign, under which a portion of members' dues money is deemed unnecessary to the union and potentially returned to members. However, instead of simply returning members' dues, APSCUF first asks each member to contribute their dues "rebate" to APSCUF's own political action committee ("PAC"), the Committee for Action through Politics. And if members fail to respond to the campaign in a timely manner, APSCUF *keeps* the "rebate" for general use in the union treasury. Furthermore, if members make a selection one year, and APSCUF fails to hear back from them by the deadline in subsequent years, APSCUF assumes they mean to make that same choice year after year.

The "rebate" campaign begins with—and is made possible by—an artificial overcharge in union dues. APSCUF inflates dues to an amount that includes funds it intends to use for non-dues purposes, deprives members of that money throughout the year, asks members to send that money to APSCUF's PAC, and, should APSCUF fail to hear from members, keeps the money for union activities that may also be political in nature.

### THE PROBLEM

Ms. Dailey is an associate professor of Nursing at Slippery Rock University, with more than 25 years of teaching experience. Ms. Dailey is also a member of APSCUF, the public-sector union that represents faculty and coaches within the Pennsylvania State System of Higher Education.

Like any other APSCUF member, Ms. Dailey is contractually obligated to pay union dues in the amount set by APSCUF in order to keep her job. For 2014-2015, APSCUF set the dues rate at 1.15% of members' earnings.

However, during February and March of each year, APSCUF conducts a "Dues Rebate Campaign," sometimes dubbed the "March Madness Dues Rebate Campaign," under which it offers a \$25 "rebate" of dues to all members. In announcing the rebate, APSCUF and its PAC urge members to decline the money and instead send the "rebate" to APSCUF's PAC. APSCUF retains the "rebate" if members fail to affirmatively claim the money or send the money to the PAC. APSCUF also alerts

members that, unless they revoke their choice in writing and “according to the APSCUF rules,” their choice for the current year will be their choice for each subsequent year.

APSCUF’s “Dues Rebate Designation” form is below:

**COMMITTEE FOR ACTION THROUGH POLITICS**  
Dues Rebate Designation



For dues rebated by action of the APSCUF Legislative Assembly during the current fiscal year and on any subsequent occasion (unless revoked by me in writing according to the APSCUF rules), I designate the following disposition:

DESIGNATION <i>(please check one box)</i>	PERSONAL INFORMATION	
<input type="checkbox"/> I hereby donate any rebate to APSCUF/CAP (political contribution).	Name <i>(print)</i> :	
<input type="checkbox"/> I direct that the rebate be paid to me.	SSN/Employee ID:	Date:
<input type="checkbox"/> I direct that the rebate be retained by the treasury.	Signature:	
	University:	

APSCUF will accept no designation for payment of a dues rebate except on this form. Forms are available at the state or local APSCUF offices. Any change in Designation must be made on this form and must be received at the local APSCUF office by April 1 or postmarked by April 1 of any year to be effective during or any subsequent fiscal year.

Postmark/Date Received

Last year, Ms. Dailey had to specifically request this form, which is supposed to be sent to all APSCUF members. When she finally received the form, the deadline to respond had passed. In 2015, Ms. Dailey received the form only after APSCUF’s deadline. Because APSCUF’s default rule is to keep members’ rebates if APSCUF fails to hear from the member by the deadline, APSCUF kept her \$25 on both April 1, 2014, and April 1, 2015.

APSCUF’s dues “rebate” practice is problematic for at least four reasons:

1. *APSCUF uses its status as a public-sector union to exact dues from members that it intends to use for non-dues purposes.* APSCUF members are charged 1.15% of their earnings as union dues throughout the year, but as APSCUF’s practice makes clear, a portion of this percentage represents funds that APSCUF intends to fund its annual “rebate” campaign—with the ultimate aim of increasing funding to the PAC or its own treasury. The initial dues amount is deceptive, intentionally inflated to restrain or coerce members into funding its PAC or APSCUF itself. APSCUF’s PAC receives up to \$132,000 a year as a result of the “rebate” campaign.
2. *APSCUF deprives members of money throughout the year.* Although APSCUF allows its members to receive the funds taken from them throughout the year, the money has already been withheld from members throughout the course of the year, at no benefit to them. In other words, APSCUF effectively sets up for its members—without telling them or giving them an option to reject it—a no-interest savings account that APSCUF will try to access in order to fund its “rebate” campaign at the end of the year. It is not about how much money the unions take from members; unions should not deceive members into funding a PAC and should not manipulate members’ finances to accomplish union goals.
3. *The practice of pressuring professors into permanently sending their “rebate” to a PAC is coercive and deceptive,* even if legal under campaign finance laws. APSCUF retains the members’ funds while pressuring members to support its affiliated PAC and is relatively unresponsive to members who choose not to send their money to the PAC.
4. *APSCUF retains “rebate” funds under an unfair “negative option.”* APSCUF should not be permitted to use a default rule under which “rebates” remain in APSCUF’s treasury, either for the

immediate year or as a continuing assumption. This practice is itself coercive, but it also underscores that the campaign itself is an attempt to coerce members into assisting the organization.

APSCUF should not be using professors like Ms. Dailey to grease its political machine.

## THE LAW

Under the Public Employe Relations Act (“PERA”), it is an unfair labor practice for a public-sector union to “restrain or coerce”<sup>1</sup> employees into “assist[ing]”<sup>2</sup> the union. It is also an unfair labor practice for a public-sector union to restrain or coerce employees into “engaging in...concerted activities for the purpose of collective bargaining or other mutual aid and protection.”<sup>3</sup>

When APSCUF determines and collects dues, APSCUF members have little choice in deciding whether they pay the amount set by APSCUF. The professors’ contract requires that “payment of dues and assessments while...a member shall be the only requisite employment condition.”<sup>4</sup> Maintenance-of-membership provisions severely limit the time period in which a member can “opt out” of union membership.<sup>5</sup>

APSCUF “restrain[s] or coerce[s]” employees by offering a “rebate” based on imposition of a higher payment of dues than required. Whether employees choose to receive their “rebate,” send money to the PAC, or allow APSCUF to retain the funds, the underlying purpose of the campaign and the artificial inflation of dues is to get members to “assist” the union and “engag[e] in...concerted activities for the purpose of collective bargaining or other mutual aid and protection.”

APSCUF also “restrain[s] or coerce[s]” employees into “assist[ing]” the union or “engaging in...concerted activities for the purpose of collective bargaining or other mutual aid and protection” by creating a “negative option” under which failure to respond to the “rebate” allows APSCUF to keep the dues “rebate” owed to the employee.

The Pennsylvania Labor Relations Board (“PLRB”) has exclusive jurisdiction<sup>6</sup> over claims of unfair labor practices and is empowered to issue cease and desist orders, levy fines, or order remedial action.

## THE CASE LOGISTICS

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<sup>1</sup> 43 P.S. § 1101.1201(b)(1).

<sup>2</sup> 43 P.S. § 1101.401.

<sup>3</sup> *Id.*

<sup>4</sup> *Agreement Between Association of Pennsylvania State College & University Faculties and the Pennsylvanai State System of Higher Education*, p. 89, available at <https://docs.google.com/viewerng/viewer?url=http://www.apscuf.com/documents/members.faculty.contract.0615.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> “The [PLRB] is empowered...to prevent any person from engaging in any unfair practice listed in Article XII of [PERA]. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that have been or may be established by agreement, law, or otherwise.” 43 P.S. § 1101.1301; *Hollinger v. Dep’t of Public Welfare*, 365 A.2d 1245, 1249 (Pa. 1976).

## **Individual Charging Unfair Labor Practice**

Professor Mary Ann Dailey has been nurse educator for over 25 years. She received her diploma in nursing from the Presbyterian-University Hospital School of Nursing, Pittsburgh, Pennsylvania, her BSN from the University of the State of New York, MSN in Burns, Emergency and Trauma Nursing from Widener University, and PhD in Nursing Education from Widener University. Ms. Dailey is a member of the Board of the Pennsylvania State Nurses Association (“PSNA”) Executive Committee and Awards Committee, and she is Chair of PSNA’s Government Relations Committee. She served three-terms, from 1998 to 2004, as a state representative for part of Montgomery County. Ms. Dailey was the Founding President of Community Health and Dental Care, Inc., a nonprofit providing for health care needs of underinsured residents in and around Pottstown.

## **Enforcement Agencies**

Pennsylvania Labor Relations Board

## **Relief Sought**

Cease and desist order, refund of unfairly obtained dues money, and/or implementation of additional protections for members subjected to this program

## **Date Filed**

May 18, 2015

## **THE LEGAL TEAM**

**David R. Osborne** is General Counsel at the Fairness Center, where he provides advice and counsel to clients, directs the Fairness Center’s legal strategy, and oversees all litigation efforts. Before joining the Fairness Center, David litigated on behalf of healthcare providers and conducted organizational and lobbying efforts for a national trade association. He previously worked as a judicial clerk to a Florida Supreme Court justice and served as official staff to a member of Congress. David graduated from the Florida State University College of Law.

**Nathan R. Bohlander** is Assistant General Counsel at the Fairness Center, where he focuses on client interaction and litigation activities. Before joining the Fairness Center, Nathan clerked for a judge in the Philadelphia Court of Common Pleas and maintained a solo practice. He has also previously worked for a nonprofit school choice organization, a Pennsylvania State Senator, and a member of Congress. Nathan graduated from the Pennsylvania State University Dickinson School of Law.