

**IN THE UNITED STATE DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

GREGORY J. HARTNETT, et al.	:	
	:	
Plaintiffs	:	HONORABLE YVETTE KANE
	:	
v.	:	Case No. 1:17-cv-00100-YK
	:	
PENNSYLVANIA STATE EDUCATION ASSOCIATION, et al.	:	<i>ELECTRONICALLY FILED</i>
	:	
Defendants	:	
	:	

**MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT FOR
FAILURE TO STATE A CLAIM
PURSUANT TO FED.R.CIV.P. 12(b)(6) OF DEFENDANTS
HOMER-CENTER SCHOOL DISTRICT and
ELLWOOD CITY AREA SCHOOL DISTRICT**

Defendants Homer-Center School District and Ellwood City Area School District, by and through undersigned counsel, move, pursuant to Fed.R.Civ.P. 12(b)(6), to dismiss the Amended Complaint against them for failure to state a claim upon which relief can be granted and for the reasons to be contained in the memorandum of law that will be filed in support of this motion pursuant to the Rules of Court.

1. Plaintiff Gregory J. Hartnett has failed to state a claim against Defendant Homer-Center School District for violation of 42 U.S.C. § 1983 and the Constitution of the United States in Count I of the Amended Complaint.

2. Plaintiffs Robert G. Brough, Jr.'s and John M. Cress' have failed to state a claim against Defendant Ellwood City Area School District for violation of 42 U.S.C. § 1983 and the Constitution of the United States in Count III of the Amended Complaint.

3. Plaintiffs cannot state a legally viable claim under 42 U.S.C. § 1983 for the alleged deprivation of their rights under First and Fourteenth Amendments to the United States Constitution.

4. Plaintiffs contend their Constitutional rights have been violated by certain statutes, contracts, polices and practices that require Plaintiffs, as public school teachers who are not union members, to pay union fees as a condition of employment, even though such "fair share" fees are permissible as a matter of law pursuant to the Public School Code of 1949, 24 P.S. §§ 1-101-27-2702 and the Public Employee Fair Share Fee Law, 43 P.S. §§ 1102.1-1102.9.

5. Plaintiffs in their Amended Complaint recognize that this Court is bound by *Aboud v. Detroit Board of Education*, 431 U.S. 209 (1977), wherein the United States Supreme Court considered and approved "fair share" provisions under a public sector labor contract. Amended Complaint ¶ 8.

6. *Abood* and its progeny remain the operative and controlling law of the land, and require this Court's adherence to this well-settled body of law.

7. Plaintiffs' concession in their own Complaint that *Abood* is and remains viable precedent is fatal to their request that "fair share" provisions of the Pennsylvania law cited above be declared unconstitutional.

8. The claim of Plaintiff Hartnett against the Homer-Center School District and the claims of Plaintiffs Brough, Jr. and Cress against the Ellwood City Area School District should be dismissed with prejudice and no ability to plead over.

WHEREFORE, Defendants Homer-Center School District and Ellwood City Area School District respectfully request that the Court grant the relief requested and enter the attached Proposed Order.

Respectfully submitted,

KILLIAN & GEPHART, LLP

Date: April 4, 2017

/s/Thomas W. Scott

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*Counsel for Defendants Homer-Center School
District and Ellwood City Area School District*

CERTIFICATE OF CONCURRENCE / NON-CONCURRENCE

I, Thomas W. Scott, hereby certify that I attempted to contact the attorneys for all parties regarding possible concurrence with the foregoing Motion to Dismiss. I was unable to reach Counsel for Plaintiffs; however, I presume they will not concur in the motion. Counsel for Defendant Twin Valley School District concurs in the motion. Counsel for Defendants Pennsylvania State Education Association, Homer-Center Education Association, Twin Valley Education Association, and Ellwood Area Education Association advise that they believe the Amended Complaint raises issues of fact that require the development of a record.

Respectfully submitted,

KILLIAN & GEPHART, LLP

Date: April 4, 2017

/s/Thomas W. Scott

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 4, 2017, the Motion to Dismiss the Amended Complaint for Failure to State a Claim Pursuant to Fed.R.Civ.P. 12(b)(6) of Defendants Homer-Center School District and Ellwood City Area School District and attached Proposed Order, was served via ECF on the following:

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Respectfully submitted,

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Date: April 4, 2017

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