
**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
Harrisburg Division**

GREGORY J. HARTNETT, et al.,

Plaintiffs,

v.

PENNSYLVANIA STATE EDUCATION
ASSOCIATION, et al.,

Defendants.

Case No. 1:17-cv-00100-YK

(Hon. Yvette Kane)

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

--ELECTRONICALLY FILED--

AND NOW COME Plaintiffs, by and through their undersigned attorneys, pursuant to Federal Rule of Civil Procedure 56, Local Rule 56.1, and this Court's Order, ECF No. 60, and respectfully move this Honorable Court for summary judgment because, for the reasons stated below and in the Plaintiffs' Statement of Material Facts and Brief in Support of Their Motion for Summary Judgment, there is no genuine dispute as to any material fact and plaintiffs are entitled to judgment as a matter of law.

1. Plaintiffs filed this 42 U.S.C. § 1983 action on January 18, 2017, to challenge the constitutionality of title 71, section 575, of the Pennsylvania Statutes

Plaintiffs' Motion for Summary Judgment

(“section 575”), *see also* 43 P.S. §§ 1102.1–1102.9, and those portions of the Public Employe Relations Act, 43 P.S. §§ 1101.101–1101.2301, and the Public School Code of 1949, 24 P.S. §§ 1-101–27-2702, that authorize nonmember forced fees, and the actual forced fee provisions in the respective collective bargaining agreements (“CBA”) governing plaintiffs’ bargaining units that required plaintiffs to pay defendants and their affiliates a nonmember fee as a condition of employment which was automatically deducted from plaintiffs’ wages by their respective public employers. Complaint, ECF No. 1.¹

2. Plaintiffs filed their First Amended Complaint on March 21, 2017, ECF No. 23. At the time the original and amended complaints were filed, the United States Supreme Court allowed such seizures of nonmember fees in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977).

3. Plaintiffs allege good faith reasons in their First Amended Complaint as to why they believe *Abood* was wrongly decided by the Supreme Court and why, were it to look at the issue again, the Court would determine that seizures of nonmember fees by defendants violate plaintiffs’ First and Fourteenth Amendment rights. First Am. Compl. ¶¶ 37–38, 48–64, ECF No. 23

¹ The union defendants act under color of state law in exercising authority under the listed Pennsylvania statutes. *See e.g., Otto v. Pennsylvania State Educ. Ass’n-NEA*, 107 F. Supp. 2d 615, 619 (M.D. Pa. 2000), *aff’d in part, rev’d in part on other grounds*, 330 F.3d 125 (3rd Cir. 2003).

4. On June 27, 2018, the United States Supreme Court overruled *Abood* and held: a) *Abood* was wrongly decided; and b) states, public-sector employers and unions may no longer extract or deduct forced fees from nonmembers' wages, unless nonmembers affirmatively consent to pay and knowingly waive their First Amendment rights. *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018).

5. Under section 575, *see also* 43 P.S. § 1102.4(a), as under “the Illinois law [at issue in *Janus*], if a public-sector collective-bargaining agreement includes a [forced]-fee provision and the union certifies to the employer the amount of the fee, that amount is automatically deducted from the nonmember’s wages. No form of employee consent is required.” 138 S. Ct. at 2486 (citations omitted).

6. The material facts in this matter are not in dispute. *See* Plaintiffs’ Statement of Material Facts filed herewith. Defendants admit, as they must, that they were seizing nonmember fees from plaintiffs pursuant to the forced fee statutes and CBA provisions. Defs.’ Answer ¶¶ 13–36, 66, 71, 76, ECF No. 29.

7. Although the deductions of forced fees have ceased, the statutes and CBA provisions requiring forced fees as a condition of employment still exist, more than two and a half months after *Janus*, and could be enforced and included in subsequent CBAs. Hartnett, Galaska, Brough & Cress Decls., ¶¶ 4 & 5.

WHEREFORE, in light of the binding precedent of *Janus*, Plaintiffs' Motion for Summary Judgment must be granted and judgment entered in Plaintiffs' favor:

- a) declaring that section 575, the Public Employee Fair Share Fee Law, 43 P.S. §§ 1102.1–1102.9, and those portions of the Public Employee Relations Act, 43 P.S. §§ 1101.101–1101.2301, and the Public School Code of 1949, 24 P.S. §§ 1-101–27-2702, that authorize the automatic deduction of nonmember forced fees or their payment as a condition of public employment; and the actual forced fee provisions in the respective CBAs governing plaintiffs' bargaining units that required plaintiffs to pay defendants and their affiliates a nonmember fee as a condition of employment violate Plaintiffs' First and Fourteenth Amendment rights of association, free speech, and free choice, are unconstitutional, and are null and void; and
- b) issuing a mandatory injunction requiring defendants to expunge the forced fee provisions in the existing CBAs governing Plaintiffs' bargaining units and not include such provisions in any subsequent CBAs.²

² Nominal damages are not being requested because defendants paid each plaintiff \$100.00 in nominal damages.

Dated: September 14, 2018

Respectfully Submitted,

THE FAIRNESS CENTER

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Attorneys for Plaintiffs

CERTIFICATE OF NON-CONCURRENCE

I, the undersigned, hereby certify that as an attorney for the movant I sought the concurrence of counsel of all defendants to this matter as to the relief requested in this motion, and said counsel has denied concurrence in the motion.

Dated: September 14, 2018

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CERTIFICATE OF SERVICE

I, the undersigned, certify that on September 14, 2018, I electronically filed the foregoing *Plaintiffs' Motion for Summary Judgment* with the Clerk of Court using the Court's CM/ECF system, which will send electronic notification of said filing to all counsel of record in this matter, who are ECF participants, and that constitutes service thereon pursuant to Local Rule 5.7.

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