

****FILED ELECTRONICALLY****

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

GREGORY J. HARTNETT,	:	
ELIZABETH M. GALASKA,	:	
ROBERT G. BROUGH, JR., AND	:	
JOHN M. CRESS,	:	CASE NO.: 1:17-cv-00100-YK
	:	
Plaintiffs	:	HONORABLE YVETTE KANE
	:	
v.	:	
	:	
PENNSYLVANIA STATE EDUCATION	:	
ASSOCIATION, HOMER-CENTER	:	
EDUCATION ASSOCIATION,	:	
TWIN VALLEY EDUCATION	:	
ASSOCIATION, ELLWOOD AREA	:	
EDUCATION ASSOCIATION, HOMER-	:	
CENTER SCHOOL DISTRICT,	:	
TWIN VALLEY SCHOOL DISTRICT,	:	
ELLWOOD CITY AREA SCHOOL	:	
DISTRICT,	:	
	:	
Defendants	:	

DEFENDANT TWIN VALLEY SCHOOL DISTRICT'S MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

Defendant Twin Valley School District ("Twin Valley") by and through its counsel, Marshall, Dennehey, Warner, Coleman & Goggin, respectfully requests

this Honorable Court to Dismiss Plaintiffs' Amended Complaint, pursuant to Fed. R. Civ. P. 12(b)(6), and in support thereof states the following:

1. Plaintiffs commenced this litigation by filing a Complaint in the United States District Court for the Middle District of Pennsylvania on January 18, 2017. (Doc. 1).

2. Summonses as to Twin Valley and Dr. Robert Pleis, Superintendent of the Twin Valley School District, were issued on January 18, 2017. (Doc. 2).

3. On February 28, 2017, Twin Valley and Dr. Pleis filed a Motion to Dismiss Plaintiffs' Complaint. (Docs. 19 and 21).

4. Plaintiffs filed an Amended Complaint on March 21, 2017. (Doc. 23).

5. Also on March 21, 2017, Plaintiffs filed a Notice of Voluntary Dismissal as to Dr. Pleis (and others), and accordingly Dr. Pleis is no longer a party in this matter. (Doc. 24).

6. For the reasons below, and for the reasons more fully set forth in Twin Valley's accompanying Brief, Plaintiffs' Amended Complaint must be dismissed with prejudice as to Twin Valley, pursuant to Fed. R. Civ. P. 12(b)(6).

7. Despite the amendment of the Complaint, Plaintiffs (and in particular Elizabeth Galaska, the only named Plaintiff who has asserted a claim against Twin Valley) still cannot state a legally viable claim under 42 U.S.C. § 1983 for the

alleged deprivation of their rights under First and Fourteenth Amendments of the United States Constitution.

7. Plaintiffs contend their Constitutional rights have been violated by certain statutes, contracts, policies and practices that require them, 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.

8. 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.

9. Aboud and its progeny remain the operative and controlling law of the land, and thus the doctrine of *stare decisis* requires this Court's adherence to this well-settled body of Supreme Court precedent.

10. Plaintiffs' acknowledgement in their own Amended Complaint that Aboud is and remains viable precedent is fatal to their request that the "fair share" provisions of the Pennsylvania statutes cited above be declared unconstitutional.

WHEREFORE, Defendant Twin Valley School District respectfully requests that this Honorable Court enter an Order granting its Motion to Dismiss Plaintiffs' Amended Complaint and dismissing the claims against it with prejudice.

Respectfully submitted,

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

Dated: April 4, 2017

By: /s/Christopher J. Conrad

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CERTIFICATE OF CONCURRENCE/NON-CONCURRENCE

I, Christopher J. Conrad, Esquire, as counsel for Defendant Twin Valley School District, certify that I sought the concurrence of all counsel of record to the relief requested in this Motion.

Defendants Homer Center School District and Ellwood City Area School District concur in the relief requested.

Defendants PSEA, Homer Center Education Association and Ellwood Area Education Association neither concur in nor object to the relief requested.

Plaintiffs' counsel has indicated the following: Plaintiffs deny concurrence with the Motion to the extent needed for the Court to issue an appealable order as to the merits of this case, recognizing, as they stated in paragraphs 7, 8, and 61 of the Amended Complaint, that, at this time, the United States Supreme Court's decision in Aboud v. Detroit Board of Education, 431 U.S. 209 (1977), prevents the Court from granting their requested relief.

**MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN**

Dated: April 4, 2017

BY: /s/ Christopher J. Conrad

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CERTIFICATE OF SERVICE

I, Christopher J. Conrad, Esquire, of Marshall Dennehey Warner Coleman & Goggin, do hereby certify that I served a true and accurate copy of the foregoing document via the electronic court filing system, on the below date, as follows:

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