



BACKGROUND (MARCH 2019)

John R. Kabler, Jr. v. United Food & Commercial Workers Union, Local 1776 Keystone State, et al.

THE EXECUTIVE SUMMARY

The Fairness Center represents John R. Kabler, Jr. in his lawsuit against the United Food and Commercial Workers Union, Local 1776 Keystone State (“UFCW”). From his first day of employment, UFCW officials told him he had to be a union member as a condition of employment. Mr. Kabler later found that was not true and resigned his union membership, but UFCW has rejected Mr. Kabler’s resignation, relying on state law and a restriction within a collective bargaining agreement between United Food and Commercial Workers Union, Pennsylvania Wine and Spirits Council (“UFCW Council”) and the Commonwealth of Pennsylvania, which limits union member resignations to a 15-day period.

THE PROBLEM

When Mr. Kabler was hired as a liquor store clerk, he and other new employees were forced to attend an orientation session where a UFCW official told them that they must join the union as a condition of their employment. UFCW reinforced this notion by sending Mr. Kabler a letter signed by UFCW officials, which stated, among other things, that if he did not remain in good standing with UFCW, then he would be taken off the work schedule and not permitted to work. Believing he had no choice, Mr. Kabler regretfully joined the union at the orientation session, even though he never wanted to be a union member.

It was only later into his employment that Mr. Kabler discovered that union membership could not be a condition of employment. Once he learned that, Mr. Kabler tried to resign his union membership in July 2018, sending resignation letters to UFCW and his employer. Mr. Kabler’s employer responded by denying his resignation and pointing to the 15-day window period provision in a collective bargaining agreement (“CBA”) between the Commonwealth of Pennsylvania and UFCW Council. Every few years the Commonwealth of Pennsylvania enters into a CBA with employees who are represented by UFCW. As a Commonwealth employee under the Pennsylvania Liquor Control Board, Mr. Kabler is subject to the terms and conditions of that CBA.

Indeed, the current CBA, in reliance on state law, prohibits union members from resigning their membership for years, until the last 15 days of the CBA. The CBA reads, in part:

Each employee who is or becomes a member of the Union shall maintain such membership for the duration of this Agreement provided that such employee may resign from the

employee organization within the 15 days prior to the expiration of this Agreement upon written notice by certified mail, (return receipt requested) to the Employer and the Union.

As for UFCW's response to Mr. Kabler's resignation, its officials never contacted Mr. Kabler to confirm his resignation. However, union dues continue to be deducted from Mr. Kabler's wages despite him having resigned his union membership in July 2018.

THE LAW

The Supreme Court has repeatedly held that public employees have First Amendment rights that unions cannot violate. The Supreme Court recently extended those rights by holding in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018) that nonmembers cannot be forced to pay agency fees as a condition of employment. The Court stated, "[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning...[and c]ompelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns." *Janus*, 138 S. Ct. at 2464. Even before *Janus*, the Third Circuit Court of Appeals noted that "[t]he First Amendment affords public-sector employees the freedom not to associate with a labor organization." *Otto v. Pennsylvania State Educ. Ass'n*, 330 F.3d 125, 128 (3d Cir. 2003).

Union membership as a condition of employment is widely known as a "closed shop" arrangement. Closed shop requires employees to become full, dues-paying members of a union in order to work. However, closed shop situations largely died 70 years ago with the Taft-Hartley Act of 1947.

It appears that Mr. Kabler's employer and UFCW believe that he can be required to remain a union member until the end of the current CBA because of a provision of that agreement and Pennsylvania law. But over a decade ago, the current Chief Judge for the Middle District of Pennsylvania found that someone with a claim similar to Mr. Kabler's would be likely to succeed because the union's reliance on a similar "maintenance of membership" provision violated one's constitutional rights. See *McCabon v. Pa. Tpk. Comm'n*, 491 F. Supp. 2d 522 (M.D. Pa. 2007).

THE CASE LOGISTICS

Plaintiff

John R. Kabler, Jr.

Defendants

- United Food and Commercial Workers Union, Local 1776 Keystone State
- Wendell W. Young, IV, in his individual and official capacities
- Michele L. Kessler, in her individual and official capacities
- Peg Rhodes, in her individual and official capacities
- United Food and Commercial Workers Union, Pennsylvania Wine and Spirits Council
- Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board
- Thomas W. Wolf, in his official capacity as Governor of Pennsylvania

- Timothy Holden, in his official capacity as Chairman of the Pennsylvania Liquor Control Board
- Michael Newsome, in his official capacity as Secretary of the Pennsylvania Office of Administration
- Anna Maria Kiehl, in her official capacities as Chief Accounting Officer and Deputy Secretary for the Office of Comptroller Operations

Court

United States District Court for the Middle District of Pennsylvania

Judge

The Honorable Sylvia H. Rambo

Relief Sought

Mr. Kabler seeks a declaration that his First Amendment rights were violated, and a return of union dues unconstitutionally seized from his wages. He also seeks punitive damages from UFCW and its officials due to their misrepresentations.

Date Filed

March 6, 2019

THE LEGAL TEAM

David R. Osborne is President and General Counsel at the Fairness Center. David helped to launch the Fairness Center in 2014, provides advice and counsel to clients, and directs and manages the firm. Prior to joining the Fairness Center, David practiced law in Florida, where he had previously served as 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 J. McGrath is Vice President and Director of Litigation at the Fairness Center, where he litigates and develops legal strategy to advance the Fairness Center's clients' best interests. Prior to joining the Fairness Center, Nathan was a staff attorney with the National Right to Work Legal Defense Foundation, Inc. Nathan was also an associate attorney with Lawlor & Lawlor, P.C., a general practice firm in Pittsburgh, Pennsylvania.

Danielle R.A. Susanj serves as Litigation Counsel at the Fairness Center, representing clients in state and federal courts and before administrative boards. Prior to joining the Fairness Center, Danielle practiced law as a litigation associate at a large international firm in Washington, D.C., and as a litigator in central Pennsylvania, representing clients in federal district and appellate courts and the United States Supreme Court.