

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

JOHN R. KABLER, JR.,

Plaintiff,

v.

UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 1776 KEYSTONE
STATE, *et al.*,

Defendants.

Case No. 1:19-CV-0395

(Hon. Sylvia H. Rambo)

--ELECTRONICALLY FILED--

**MOTION FOR VOLUNTARY
DISMISSAL WITH PREJUDICE**

Plaintiff John R. Kabler, Jr., hereby moves for a voluntary dismissal of this action, with prejudice, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, and in support thereof respectfully states as follows:

1. Plaintiff filed this action on March 6, 2019, alleging a claim and seeking relief against 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; and Keystone State United Food and Commercial Workers Union, Pennsylvania Wine and Spirits Council (collectively, “Union Defendants”); and Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board (“Commonwealth” or “PLCB”); Thomas W. Wolf, in his official capacity as

Governor of the Commonwealth of Pennsylvania; Timothy Holden, in his official capacity as Chairman of the PLCB; Michael Newsome, in his official capacity as Secretary of the Pennsylvania Office of Administration; and Anna Maria Kiehl, in her official capacities as Chief Accounting Officer for the Commonwealth of Pennsylvania and Deputy Secretary for the Office of Comptroller Operations (collectively, “Commonwealth Defendants”).

2. Under Rule 41(a)(2), voluntary dismissal may be pursuant to court order where an opposing party has filed a motion for summary judgment, as all Defendants have done in this case. *See* ECF Nos. 35, 37.

3. No Defendant has filed a counterclaim in this action.

4. Plaintiff’s four-count complaint sought relief for violations of his constitutional rights, along with one state-law count, arising from allegations that he was (1) forced into joining the union and remaining in “good standing” with the union as a condition of his employment; and (2) denied the ability to resign his union membership and cease financial support of the union in July 2018, after he learned that he did not have to be a union member.

5. Plaintiff has achieved substantially all the relief sought in his complaint in the following manner:

- a. On June 26, 2019, Union Defendants and Commonwealth Defendants ratified a successor collective bargaining agreement which, unlike previous agreements, contains no restriction on union members’ ability to resign their membership to a 15-day window, according to statements filed in this Court. *See* Decl. of Wendell W.

Young, IV ¶ 18 & Ex. D, ECF No. 35-2; Second Gold Decl. ¶ 24, ECF No. 35-1; Defs.' Joint Statement of Material Facts ¶ 65, ECF No. 36 ("In the new CBA, Article 4 no longer has any provision regarding maintenance of membership or fair share fees.").

- b. Union Defendants sent Plaintiff an unconditional refund check, reflecting all union dues paid after the date of the Supreme Court's decision in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), plus ten percent interest, by letter dated February 21, 2020. *See* Decl. of Liana Reed ¶¶ 11–12 & Ex. A, ECF No. 82-1. Union Defendants retained the monies paid by Mr. Kabler that they asserted were equal to the fair share fees paid by non-members during the time from Mr. Kabler's date of hire until the date of the *Janus* decision. *See id.*
- c. Following Plaintiff's demand pursuant to *Chicago Teachers Union No. 1. v. Hudson*, 475 U.S. 292 (1986), Union Defendants then sent Plaintiff a second unconditional refund check, reflecting all remaining union dues paid by Plaintiff from the date of his hire, with ten percent interest, by letter dated April 6, 2020.

6. As a result, Plaintiff has received, with interest, all monies the Commonwealth deducted from his paycheck and transmitted to the union since he began his employment with the Commonwealth in April 2017.

7. Therefore, Plaintiff voluntarily moves this Court for an order dismissing this action with prejudice in its entirety.

8. Plaintiff's counsel has contacted counsel for all Defendants in this action. Commonwealth Defendants concur in the relief requested. Union Defendants limited their concurrence to the following: "Union Defendants concur that it would be proper under Rule 41(a)(2) for the Court to enter an order dismissing all claims against all parties, with prejudice."

Dated: April 21, 2020

Respectfully submitted,

THE FAIRNESS CENTER

By: s/Nathan J. McGrath

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Counsel for Plaintiff

CERTIFICATE OF CONCURRENCE

The undersigned hereby certifies that he contacted counsel for Defendants regarding this motion. Commonwealth Defendants concur in the relief sought herein. Union Defendants limited their concurrence to the following: “Union Defendants concur that it would be proper under Rule 41(a)(2) for the Court to enter an order dismissing all claims against all parties, with prejudice.”

Dated: April 21, 2020

s/ Nathan J. McGrath

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, certify that on April 21, 2020, I electronically filed the foregoing with the Clerk of Court using the Court's CM/ECF system, which will send electronic notification of the filing to all counsel of record in this matter, who are ECF participants, and that constitutes service thereon pursuant to Local Rule 5.7.

s/ Nathan J. McGrath

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