



## BACKGROUND (DECEMBER 2018)

*Mark Kiddo, et al. v. American Federation of State, County & Municipal Employees, Local 2206, et al.*

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### THE EXECUTIVE SUMMARY

The Fairness Center represents eight Erie Water Works employees, including lead plaintiff Mark Kiddo, in their suit against American Federation of State, County and Municipal Employees (“AFSCME”) affiliates and officials. Unfortunately, public-sector union officials tasked with representing Mark Kiddo and his coworkers concealed vital information from them, elevating AFSCME officials’ interest in a defined-benefit pension plan for new employees over the interests of the employees actually working for Erie Water Works. As a result, Mr. Kiddo and his coworkers ratified terms and conditions of employment that included lesser pay and benefits than what was offered by Erie Water Works.

Mr. Kiddo and his coworkers ultimately want AFSCME officials to honor their duty to fairly represent public employees and the chance to accept the higher pay, benefits, and defined-contribution retirement plan for new employees that Erie Water Works offered. The legal remedy for a breach of the duty of fair representation is monetary damages from AFSCME.

### THE PROBLEM & THE LAW

Labor organizations, commonly referred to as labor unions, serve as the exclusive representative for workers in collective bargaining negotiations with employers. Exclusive representation entails both benefits and obligations for union officials. The primary benefit for union officials is the monopoly right to negotiate directly with an employer over the terms and conditions of workers’ employment. The employer is obligated to enter into good-faith negotiations with the union, and the union exerts considerable pressure on the employer because it speaks as the collective voice for all the workers it represents.

At the same time, the union is obligated to represent workers fairly. That means unions must act in good faith, in a reasonable manner, and without fraud. *Falsetti v. Local Union No. 2026, United Mine Workers of Am.*, 161 A.2d 882, 895 (Pa. 1960). At the very least, fair representation means adhering to the union’s constitution and bylaws. *See Williams v. Nat’l Org. Masters, Mates & Pilots of Am., Local No. 2*, 120 A.2d 896, 898 (Pa. 1956).

In this case, Erie Water Works and AFSCME officials were engaged in contract negotiations for a new collective bargaining agreement. Erie Water Works extended a final offer containing two distinct options. AFSCME officials should have relayed the final offer to employees and allowed them to vote to either accept one of the two options or reject both options.

The first option included in the final offer would have given employees *higher* salary increases, a monthly post-employment subsidy for new and existing employees, and a defined-contribution plan for new employees while keeping current employees on a defined-benefit pension program. The second option included *lower* salary increases, *no* post-employment subsidy, and a pension plan for new employees instead of the defined contribution plan.

AFSCME officials did not want the members to see the first option—even though it included a higher salary and benefits—because AFSCME officials prioritized keeping a pension plan for new employees above its current members’ interests. Therefore, AFSCME officials concealed the existence of the first option from members and only presented the second option. AFSCME officials’ concealment led Plaintiffs—who wanted a contract with the first option—to ratify a contract with the second option.

AFSCME officials’ concealment of terms and conditions of employment hurt its members. And they broke their own rules; AFSCME’s “Bill of Rights for Union Members” guarantees all members “the right to full participation, through discussion and vote, in the decision making processes of the union, and to pertinent information needed for the exercise of this right.” The “Bill of Rights” goes on to state that the right “shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts” and any other agreement affecting “wages, hours, or other terms and conditions of employment.”

## **THE CONCLUSION**

AFSCME officials concealed information and put their own interests above the interests of those they are legally obligated to represent. Accordingly, AFSCME officials breached their duty of fair representation.

## **THE CASE LOGISTICS**

### **Plaintiffs**

- Mark Kiddo
- Joan Hordusky
- Mike Dzurko
- Christine Arnone
- Jennie Clay
- Madelyn Groover
- Melissa Guzowski
- Jeff Granger

### **Defendants**

- American Federation of State, County and Municipal Employees, Local 2206
- American Federation of State, County and Municipal Employees, District Council 85
- Randy Prociuous, President of Local 2206

- Shane Clark, American Federation of State, County and Municipal Employees Representative
- Erie Water Works

## **Court**

Court of Common Pleas of Erie County

## **Judge**

The Honorable Daniel J. Brabender, Jr.

## **Relief Sought**

Plaintiffs seek legal and equitable relief in the form of damages and an injunction for AFSCME officials' breach of their duty of fair representation.

## **Date Filed**

December 5, 2018

## **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.

**Justin T. Miller** serves as Litigation Counsel at the Fairness Center. His work focuses on representing clients in state and federal courts, and before administrative boards. Prior to joining the Fairness Center, Justin was a prosecutor for the State Attorney's Office in Florida. He was lead counsel in over 80 jury trials and prosecuted a wide-array of felony offenses before accepting an assignment to the special victims unit.