

LEGAL ANALYSIS

Preliminary objections may be filed for failure of a pleading to conform to law or rule of court or legal insufficiency in a pleading. *Pa.R.C.P. 1028(a)(2) and (4)*. When ruling on preliminary objections, a court must accept as true all well-pled facts which are relevant and material, as well as all inferences reasonably deducible therefrom. *Bower v. Bower*, 611 A.2d 181, 182 (Pa. 1992). To sustain preliminary objections, it must appear with certainty, or be “clear and free from doubt” based on the facts as pleaded, “that the pleader will be unable to prove facts legally sufficient to establish his right to relief.” *Id.*

A preliminary objection in the nature of a demurrer is properly granted where the contested pleading is legally insufficient. *Jones v. Nationwide Property and Cas. Ins. Co.*, 995 A.2d 1233, 1237 (Pa. Super. 2010). In making that determination, all material facts set forth in the challenged pleading and all inferences reasonably deducible therefrom are accepted as true. *Foster v. UPMC South Side Hospital*, 2 A.3d 655, 662 (Pa. Super. 2010).

I. Defendants’ Claim: Duty of Fair Representation Claims may not be pursued against individual union officials.

Defendant Randy Prociuous is President of AFSCME Local 2206. *Compl.*, ¶ 17. Defendant Shane Clark is a staff representative for Defendant AFSCME District Council 85. *Compl.*, ¶ 18. Defendants aver “suing Defendant Clark and Defendant Prociuous individually in connection with a duty of fair representation claim is improper under Pennsylvania law.” *Defs.’ Br. In Supp.*, p. 2. *See also, Preliminary Objections*, ¶7. Plaintiffs contend Defendants Clark and Prociuous “are sued only in their official capacities” and therefore “they are expected to carry out the unions’ duty of fair representation. *Pls.’ Br. In Opp.*, p. 2.

It is well-settled Pennsylvania law that:

The fiduciary duty owed the member-employee is by the Union, and not by its individual representatives. Officials of the Union, acting in their authorized capacities, cannot be held individually liable in damages to a member-employee for failure to process the grievance since they are but agents responsible only to the Union itself. It is the Union that is the proper target of appellant's complaint.

Falsetti v. United Mine Workers, 161 A.2d 882, 896 (Pa. 1960). The Court finds Plaintiffs' argument that Defendants Clark and Prociuous should not be removed from this action because they are being sued in their "official capacity" rather than their "personal capacity" to be meritless. The cases cited by Defendants: *Flagg v. Int'l Union, Sec., Police, Fire Professionals of Am., Local 506*, 146 A.3d 300 (Comwlth. 2016); *Ky. v. Graham*, 473 U.S. 159 (1985); and *Felice v. Sever*, 985 F.2d 1221(3d Cir. 1993), are inapposite to the present case.

As Defendants Clark and Prociuous are individual agents of the Union Defendants they cannot be held liable here, where the proper targets of Plaintiff's Complaint are the Union Defendants themselves. Thus, as it is clear and free from doubt based on the facts as pleaded that Plaintiffs will be unable to prove facts legally sufficient to establish their right to relief against Defendants Clark and Prociuous, Defendants' first preliminary objection shall be sustained. The Duty of Fair Representation claim asserted in Count 1 against Defendants Clark and Prociuous shall be dismissed with prejudice.

II. Defendants' Claim: Plaintiffs do not have the right to a jury trial.

Defendants aver Plaintiffs' "jury demand is improper under Pennsylvania law and the Pennsylvania Rules of Civil Procedure." *Defs. ' Br. In Supp. p. 2*. Plaintiffs contend "[j]ury trials are a proper means, when demanded, for deciding issues of fact in tort claims, including those tort claims alleging a violation of the duty of fair representation." *Pls. ' Br. In Opp. p. 3*.

It is well-settled Pennsylvania law where, as here, “the duty of fair representation that AFSCME District Council 85 and AFSCME Local 2206 owe to Plaintiffs comes from PERA [the Public Employee Relations Act]” that Plaintiffs are not entitled to a jury trial for any claims arising under that statute. *Defs.’ Prelim. Objs.* ¶ 14; *Defs.’ Br. In Supp.* p. 5. Indeed, “Plaintiffs agree for purposes of this only that entitlement to a jury trial has yet to established.” *Pls.’ Br. In Opp.* p. 5.

Thus, as it is established that “PERA makes arbitration of all disputes arising under public sector collective bargaining agreements the exclusive remedy for unresolved grievances not involving police officers or firemen,” Plaintiffs’ demand for a jury trial is unsupported by law and Defendants Second Preliminary Objection shall therefore be sustained. *See Martino v. Transport Workers’ Union, Local 234*, 480 A.2d 242, 250 (Pa. 1984). Plaintiffs’ demand for jury trial shall be stricken.

BY THE COURT:

2/21/2020
Date

Daniel J. Brabender, Jr.
Daniel J. Brabender, Jr., Judge

cc: Counsel for the Plaintiffs:
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MARK KIDDO, JOAN HORDUSKY,
MIKE DZURKO, CHRISTINE ARNONE,
JENNIE CLAY, MADELYN GROOVER,
MELISSA GUZOWSKI and
JEFF GRANGER,

Plaintiffs

v.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES, LOCAL 2206;
AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES, DISTRICT COUNCIL 85;
RANDY PROCIOUS in his official
capacity; SHANE CLARK in his official
capacity; and ERIE WATER WORKS,

Defendants

: IN THE COURT OF COMMON PLEAS
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: OF ERIE COUNTY, PENNSYLVANIA
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: CIVIL DIVISION
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: NO. 13144-2018

COMMON PLEAS COURT
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CLERK OF RECORDS
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ORDER

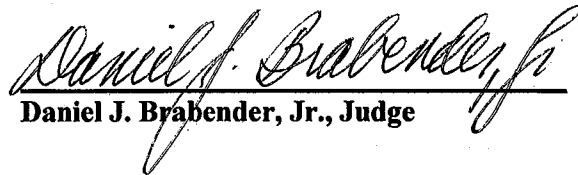
AND NOW, to-wit, this 21st day of February 2020, upon consideration of Union Defendants' Preliminary Objections to the Complaint, Plaintiffs' Response to Union Defendants' Preliminary Objections, and the Memorandum of Law in Support of Union Defendants' Preliminary Objections to the Complaint, it is hereby **ORDERED** as follows for the reasons set forth in the accompanying Opinion:

1. Defendants' first preliminary objection in the nature of demurrer pursuant to Pa.R.C.P. 1028(a)(4) is **SUSTAINED**. The Breach of Duty of Fair Representation Claim at Count I against union officials Defendants Clark and Procious is **DISMISSED WITH PREJUDICE**.

2. Defendant's second preliminary objection requesting the Court strike the demand for a jury trial against union defendants for failure to conform to law or rule of court pursuant to

Pa.R.C.P. 1028(a)(2) and/or for legal insufficiency pursuant to Pa.R.C.P. 1028(a)(4) is **SUSTAINED**. Plaintiffs' demand for jury trial is hereby stricken.

BY THE COURT:


Daniel J. Brabender, Jr., Judge

cc: Counsel for the Plaintiffs:
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