

COURT OF COMMON PLEAS OF PENNSYLVANIA  
ERIE COUNTY

2/28/19  
COMMON PLEAS COURT  
ERIE, PA  
2019 MAR -7 PM 3:09  
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MARK KIDDO, *et al.*,

Plaintiffs,

v.

AMERICAN FEDERATION OF STATE, COUNTY AND  
MUNICIPAL EMPLOYEES, LOCAL 2206, *et al.*,

Defendants.

Case No. 13144-18

Judge Daniel J. Brabender

**PLAINTIFFS' RENEWED MOTION  
FOR PRELIMINARY INJUNCTION  
AND REQUESTING EMERGENCY  
RELIEF**

Pursuant to Pennsylvania Rule of Civil Procedure 1531(a), Plaintiffs Mark Kiddo, Joan Hordusky, Mike Dzurko, Christine Arnone, Jennie Clay, Madelyn Groover, Melissa Guzowski, and Jeff Granger (collectively "Plaintiffs"), by and through their undersigned counsel, file this Renewed Motion for Preliminary Injunction and Requesting Emergency Relief and state as follows:

1. Despite this Court's continuance of the hearing on Plaintiffs' Motion for Preliminary Injunction ("PI Motion")—and Defendant Eric Water Works's ("EWW's") consent to such continuance at the hearing—EWW plans to hold a vote on **March 21, 2019**, as to certain terms and conditions of employment that will immediately affect Plaintiffs.

2. The terms and conditions upon which EWW intends to vote ("Altered Offer") were ratified by Plaintiffs and their co-workers only after their union concealed and/or withheld the terms of EWW's final offer ("Final Offer"), in violation of the union's duty of fair representation. PI Mot. ¶¶ 5–16. Indeed, Plaintiffs were never made aware that EWW's Final Offer included two options and instead voted on the Altered Offer in forced ignorance of other, equally available terms and conditions of employment included in the Final Offer. *Id.* at ¶ 10.

3. Accordingly, and as alleged in and demonstrated at the hearing on Plaintiffs' PI Motion before this Court on February 26, 2019, should EWW choose to alter the status quo and

ratify such terms and conditions of employment, such terms and conditions will become final and binding, despite immediate and irreparable harm to Plaintiffs, and permanently foreclose equitable relief sought by Plaintiffs. PI Mot. ¶¶ 22–32.

4. EWW should be enjoined from altering the status quo and executing any such terms and conditions of employment, at least until the conclusion of the hearing on the PI Motion.

### STATEMENT OF FACTS

5. On December 5, 2018, Plaintiffs filed a Complaint and Demand for Jury Trial (“Complaint”) in the above-captioned matter alleging a breach of the duty of fair representation. Plaintiffs hereby incorporate by reference the allegations set forth in their Complaint.

6. Less than two weeks after filing their Complaint, Plaintiffs filed a PI Motion seeking to enjoin EWW from executing any contract or agreement with Defendants American Federation of State, County and Municipal Employees, Local 2206, American Federation of State, County and Municipal Employees District Council 85, Randy Precious, and Shane Clark (collectively, “Union Defendants”) during the pendency of this matter and enjoining Union Defendants from imposing union discipline or charges related to the subject matter of this action. PI Motion ¶ 4. Plaintiffs hereby incorporate by reference the allegations set forth in their PI Motion.

7. This Court scheduled a hearing on the PI Motion for December 27, 2018.

8. Plaintiffs joined in a Joint Motion to Modify Hearing Date (“Joint Motion”), filed on December 21, 2018, only after all parties agreed to observe the status quo.

9. As reflected in Joint Motion, “[t]he Union Defendants have agreed not to initiate any internal union charges against Plaintiffs arising out of the events at issue in the above-referenced litigation for the pendency of the litigation,” effectively vitiating the need for injunctive relief as to Union Defendants. Joint Mot. ¶ 5. For its part, EWW “agreed not to bring to a vote the Final Offer that was ratified by the members of AFSCME prior to February 26, 2019.” Joint Mot. ¶ 6.

10. On February 26, 2019, at the rescheduled hearing on Plaintiffs' PI Motion, Plaintiffs presented evidence and testimony demonstrating that Plaintiffs were entitled to a preliminary injunction in this matter.

11. After Plaintiffs rested their case, this Court, *with no objection from EWW's counsel*, continued the hearing on Plaintiffs' PI Motion until June 25, 2019.<sup>1</sup>

12. EWW's counsel has since informed Plaintiffs' counsel that, on March 21, 2019, EWW intends to hold a ratification vote on the terms and conditions of employment putatively ratified by Plaintiffs as a result of Union Defendants' breach of the duty of fair representation, despite the fact that all parties agreed to continue the hearing on Plaintiffs' PI Motion until June 25, 2019.

13. Should EWW disrupt the status quo and ratify such terms and conditions of employment, irreparable harm will befall Plaintiffs.

### STANDARD FOR PRELIMINARY INJUNCTION

14. As detailed in their PI Motion and demonstrated through evidence and testimony to this Court, Plaintiffs have established all six elements for a preliminary injunction. *See* Mot. for Prelim. Inj.; *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 828 A.2d 995, 1001 (Pa. 2003).

15. Specifically, Plaintiffs have shown: (1) that they will suffer immediate and irreparable harm in that EWW was considering—and will now conduct a ratification vote on March 21, 2019—terms and conditions of employment that were only ratified as a result of Union Defendants' breach of the duty of fair representation; (2) that greater harm would follow from refusing the injunction because, without an injunction, EWW will be permitted or forced to execute a collective bargaining agreement that reflects inadequate representation and has been ratified only due to AFSCME's

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<sup>1</sup> Additionally, testimony and evidence presented at the February 26, 2019 hearing also established that EWW had filed exceptions with the Pennsylvania Labor Relations Board to a hearing examiner's proposed order purporting to require EWW to hold a vote but not requiring ratification or execution and, at that time, had no intent to hold a vote before June 25, 2019.

breach of its duty of fair representation; (3) an injunction would preserve the status quo in that EWW will continue to work under terms and conditions set forth in its expired contract; (4) Plaintiffs have a clear right to relief in that Union Defendants violated their own constitution and misrepresented or failed to disclose the existence of and/or all pertinent information concerning the Final Offer; (5) enjoining EWW will abate the harm because it will prevent EWW from implementing harmful terms and conditions of employment; and (6) entering an injunction would not be contrary to the public interest because EWW will continue to work under existing terms and conditions of employment and because “[r]here is . . . an over-riding public interest in promoting well-managed autonomous associations which are able to perform their functions effectively and still provide internally for the fair treatment of individual members . . . .” *Falsetti v. Local Union No. 2026, United Mine Workers*, 161 A.2d 882, 888 (Pa. 1960).

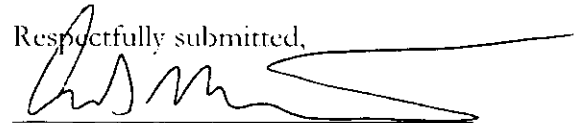
16. EWW’s intended decision to hold a vote on March 21, 2019, only strengthens the need for a preliminary injunction in this matter. EWW may—in just two weeks—*permanently* foreclose equitable relief for Plaintiffs, including the opportunity to revote on the Final Offer. *See* Compl. 11.

17. Should it be impossible to complete the hearing in this matter before March 21, 2019, this Court has reason to grant Plaintiffs’ PI Motion without further hearing. *See, e.g.*, Pa.R.C.P. No. 1531(a) (permitting a court to grant a preliminary injunction without hearing if it “appears to the satisfaction of the court that immediate and irreparable injury will be sustained before . . . a hearing [can be] held”); *see WPNT Inc. v. Secret Comm’ns Inc.*, 661 A.2d 409, 411 (Pa. Super. 1995) (“A preliminary injunction may be granted without notice and hearing only when there exists a need for unusual haste so that a clear right may be protected from immediate and irreparable injury.”).

18. However, if this Court cannot grant Plaintiffs' PI Motion without a hearing, Plaintiffs are available to appear before this Court.<sup>2</sup>

**WHEREFORE**, Plaintiffs respectfully request that this Court issue an order preliminarily enjoining EWW and its agents, assistances, successors, employees, attorneys, directors, and all other persons acting in concert or cooperation with them or at their direction or under their control, from executing any contract or agreement with Union Defendants.

Dated: March 7, 2019

Respectfully submitted,  


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*Counsel for Plaintiffs*

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<sup>2</sup> Plaintiffs' counsel has previously scheduled conflicts on March 14th, 20th, and 21th, 2019. However, Plaintiffs' counsel will make every reasonable effort to accommodate any hearing date set by this Court.

**CERTIFICATE OF SERVICE**

The foregoing was served this day via first-class mail on the Defendants as follows:

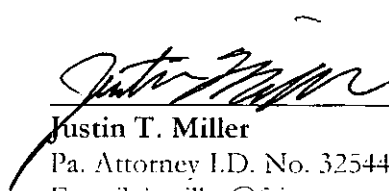
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Dated: March 7, 2019

  
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**ORDER GRANTING PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2019, upon consideration of the Motion for Preliminary Injunction filed by Plaintiffs, and finding that good cause exists, said Motion is **GRANTED**, and **IT IS FURTHER ORDERED** as follows:

1. Until otherwise ordered by an administrative tribunal or court of competent jurisdiction, Defendant Eric Water Works and its agents, assistants, successors, employees, attorneys, and all other persons acting in concert or cooperation with them or at their direction or under their control, are hereby **PRELIMINARILY ENJOINED** from executing any contract or agreement with Defendants American Federation of State, County and Municipal Employees, Local 2206, District Council 85, and/or union officials Randy Prociuous and Shane Clark; and

2. Plaintiffs shall be required to post a nominal bond in the amount of \$1.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2019.

BY THE COURT:

\_\_\_\_\_  
Hon. Daniel J. Brabender  
COUNTY COURT OF COMMON PLEAS JUDGE