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In the Commonwealth Court of Pennsylvania

158 C.D. 2019

JANE LADLEY and CHRISTOPHER MEIER,
Appellants,

v.

PENNSYLVANIA STATE EDUCATION ASSOCIATION,
Appellee.

APPELLANTS' AMENDED INITIAL BRIEF

Appeal from a Final Order of the Court of Common Pleas, Lancaster County
(Case No. CI-14-08552)

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INTRODUCTION

This is a case of first impression concerning the application of the United States Supreme Court's decision in *Janus v. AFSCME, Council 31*, 585 U.S. __, 138 S. Ct. 2448 (2018), to Pennsylvania law. Appellants Jane Ladley ("Ladley") and Christopher Meier ("Meier") (collectively, "Teachers"), public school teachers, lodged religious objections to paying "fair share fees" to Appellee Pennsylvania State Education Association ("PSEA") under title 71, section 575, of the Pennsylvania Statutes ("section 575"). In 2014, Teachers filed a declaratory judgment and civil rights action in county court against PSEA, alleging, *inter alia*, that PSEA's practices under section 575 violated their free speech, assembly, and due process rights.

Nearly four years into litigation of this case, the United States Supreme Court held that Illinois' public employee "fair share fee" law was unconstitutional:

> Under Illinois law, public employees are forced to subsidize a union, even if they choose not to join and strongly object to the positions the union takes in collective bargaining and related activities. We conclude that this arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.

Janus, 138 S. Ct. 2459–60.

Following issuance of *Janus*, PSEA moved for summary judgment, arguing that the case was moot, in part, because certain PSEA officials were willing to represent that section 575, like Illinois' law, was no longer enforceable and that they intended to comply with *Janus* in the future. Unfortunately, the trial court largely agreed,

concluding that PSEA's "voluntary cessation" of its policies under section 575 rendered Teachers' claims moot.

This Court should reverse the trial court's determination below, which left section 575 intact and Teachers without certainty or security about the impact of *Janus* on Pennsylvania law. If the trial court's erroneous decision is not reversed, section 575 will remain "on the books," contributing to confusion and providing an avenue for PSEA to return to its allegedly abandoned policies. Indeed, PSEA left a fair share fee clause in Mr. Meier's collective bargaining agreement.[1] This Court should make clear that *Janus*' ruling with respect to Illinois law applies with equal force in Pennsylvania and direct the trial court to issue a permanent injunction against PSEA to protect against further "fair share" relapse.

STATEMENT OF JURISDICTION

This Court has appellate jurisdiction over this matter pursuant to section 762(a)(5)(i) of the Judicial Code, 42 Pa.C.S. §§ 101–9913.

[1] Teachers request that this Court take judicial notice of the attached collective bargaining agreement. *See* Penn Manor Sch. Dist., Teacher Contract Agreement 2017–2021, art. XXX, https://www.pennmanor.net/employment/negotiated-agreement-2017-2021-4-3-17-1-2/ (last visited August 7, 2019), attached hereto as "Exhibit A." "Judicial notice can be taken at any time, including on appeal." *In re D.A.G.*, No. 153 MDA 2018, 2018 WL 3433864, at *4 n.2 (Pa. Super. July 17, 2018) (citing Pa. R. Evid. 201(d) ("The court may take judicial notice at any stage of the proceeding.")).

ORDER IN QUESTION

Teachers appeal from an order of the Court of Common Pleas for Lancaster County, Pennsylvania, which reads:

> AND NOW, this 29th day of October 2018, upon review of plaintiffs' and defendant's crossclaims for summary judgment and supporting briefs, plaintiffs' motion is hereby DENIED and defendant's motion is GRANTED. The above-captioned action is DISMISSED. If plaintiffs believe they are the "prevailing parties" as defined in 42 U.S.C. 1988, they shall file a motion with supporting documentation by November 23, 2018. Any opposition to the motion shall be filed by December 7, 2018, and any reply shall be filed by December 14, 2018. The prothonotary is directed to close this case.

A copy of the order is attached hereto as "Appendix A."

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

This Court's scope of review of a trial court's grant of summary judgment is plenary; the same standard applies on appeal as before the trial court. *Albright v. Abington Mem'l Hosp.*, 696 A.2d 1159 (Pa. 1997). "When reviewing an order granting summary judgment, the reviewing court must view the record in the light most favorable to the nonmoving party, resolving all doubts as to the existence of a genuine issue of material fact against the moving party." *Minn. Fire & Cas. Co. v. Greenfield*, 855 A.2d 854, 860–61 (Pa. 2004) (internal quotation marks and citation omitted).

STATEMENT OF THE QUESTIONS INVOLVED

I. WHETHER TEACHERS WERE ENTITLED TO JUDGMENT AS A MATTER OF LAW UNDER UNITED STATES SUPREME COURT PRECEDENT.

II. WHETHER THE TRIAL COURT ERRED WHEN IT FOUND TEACHERS' CLAIMS TO BE MOOT.

STATEMENT OF THE CASE

I. PROCEDURAL HISTORY

This declaratory judgment and civil rights action was filed on September 18, 2014, to address PSEA's policies implementing section 575, which authorizes fair share fees for public school teachers. (R. 1447a). The operative complaint in this matter was filed on April 25, 2017, and PSEA filed an answer and new matter on June 7, 2017. (R. 134a, 501a). Teachers filed an answer to PSEA's new matter on June 27, 2017. (R. 556a).

Teachers filed a motion for summary judgment on June 30, 2017 (R. 630a), to which PSEA filed an answer and cross-motion for summary judgment on July 31, 2017 (R. 897a). On September 28, 2017, the Supreme Court granted *certiorari* in *Janus*.[2] In recognition of their shared expectation "that the Supreme Court's ruling in *Janus* is nearly certain to impact the disposition of this matter," the parties jointly requested that the trial court stay the proceedings until *Janus* was decided. (R. 1125a). The trial court stayed the proceedings on October 11, 2017. (R. 1129a).

[2] *See Janus v. AFSCME, Council 31*, 1389 S. Ct. 54 (2017) (No. 16-1466).

On July 31, 2018, in the wake of *Janus*, the trial court lifted the stay. (R. 1242a). On August 29, 2018, PSEA withdrew its cross motion for summary judgment and filed its "Motion for Summary Judgment Based on Mootness." (R. 1244a, 1247a).

On October 29, 2018, the Honorable Leonard G. Brown, III issued an opinion and order concluding that, while *Janus* did not automatically render Teachers' claims moot, PSEA's voluntary actions created a change in facts sufficient to moot the case and that no exception to the mootness doctrine applied. App. A. Pursuant to this finding, the trial court denied Teachers' motion for summary judgment, granted PSEA's motion for summary judgment, and dismissed the case for lack of subject matter jurisdiction. *Id.*

This appeal followed. (R. 1445a).

II. FACTS

A. Fair Share Fees and Litigation

In 1977, the United States Supreme Court decided in *Abood v. Detroit Board of Education*, 431 U.S. 209, 235–36 (1977), that unions could not force nonmembers to finance the unions' political and ideological agenda as a condition of public employment. Instead, "[u]nder *Abood*, nonmembers may be charged [only] for the portion of union dues attributable to activities that are 'germane to [the union's] duties as collective-bargaining representative.'" *Janus*, 138 S. Ct. at 2460. As predicted in *Abood*, in the years that followed, there were "difficult problems in drawing lines between collective-bargaining activities, for which contributions may be compelled,

and ideological activities unrelated to collective bargaining, for which such compulsion is prohibited." *Abood*, 431 U.S. at 236.

That portion chargeable to nonmembers became known as "fair share fees" in Pennsylvania. In 1988, the General Assembly passed section 575, which permits public-sector employees to impose on employees of the Commonwealth or school entities a fair share fee requirement. And in 1993, the "Public Employee Fair Share Fee Law," 43 P.S. §§ 1102.1–1102.9, which applies to all political subdivisions, was enacted. Both laws were written to implement *Abood* and its progeny, but they also contained protections not found in relevant caselaw and reporting requirements that had little to do with *Abood*. *See, e.g.*, 43 P.S. §§ 1102.5(a)(2), 1102.6–1102.8; 71 P.S. § 575(e)(2), (j)–(m). A portion of at least one of those laws, section 575(g), was later struck down as unconstitutional. *See Hohe v. Casey*, 956 F.2d 399, 415 (3d Cir. 1992).

But the history of fair share fees would be incomplete without mention of public-sector unions' enterprising efforts to exploit public-sector employees in violation of the Supreme Court's decision in *Abood* and its progeny. Court dockets reflect just a sampling of the challenges public-sector employees have faced, notwithstanding explicit constitutional protections from such union abuse.[3]

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[3] *See, e.g.*, *Knox v. SEIU, Local 1000*, 567 U.S. 298, 322 (2012) (holding that union violated employees' rights when it exacted special dues assessment without consent); *Lehnert v. Ferris Faculty Ass'n*, 500 U.S. 507, 520, 537 (1991) (holding that union lobbying was unconstitutionally charged to nonmembers); *Chi. Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292, 310 (1986) (holding that union's procedure violated nonmembers' rights for failing to provide adequate notice and opportunity to

The National Education Association ("NEA"), of which PSEA is an affiliate, has demonstrated a willingness to press its authority under Supreme Court precedent.[4] Indeed, NEA has actually sanctioned lawsuits *against teachers* to recover fees even when it has failed to observe minimum constitutional standards set forth by the Supreme Court.[5]

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challenge); *Seidemann v. Bowen*, 584 F.3d 104 (2d Cir. 2009) (holding unconstitutional union's efforts to charge nonmembers for lobbying activity); *Wessel v. City of Albuquerque*, 299 F.3d 1186 (10th Cir. 2002) (holding unconstitutional union's nonmember fee notices); *Weaver v. Univ. of Cincinnati*, 942 F.2d 1039 (6th Cir. 1991) (holding unconstitutional union's efforts to collect from nonmembers); *Perry v. Local Lodge 2569 of Int'l Ass'n of Machinists and Aerospace Workers*, 708 F.2d 1258 (7th Cir. 1983) (holding unconstitutional union's refund system); *Swanson v. Univ. of Hawaii Prof'l Assembly*, 269 F. Supp. 2d 1252 (D. Haw. 2003) (enjoining union's calculation procedure which included insufficient notice, inadequate audits, and no prompt rebate); *Lindenbaum v. City of Phila.*, 584 F. Supp. 1190 (E.D. Pa. 1984) (holding unconstitutional union's efforts to deny pension benefit increase to nonmembers).

[4] *See, e.g.*, *Harik v. Cal. Teachers Ass'n*, 326 F.3d 1042 (9th Cir. 2003) (holding unconstitutionally inadequate union's financial disclosures); *Knight v. Kenai Peninsula Borough Sch. Dist.*, 131 F.3d 807 (9th Cir. 1997) (holding constitutionally inadequate union's provision of notice and opportunity to challenge); *Bromley v. Mich. Educ. Ass'n-NEA*, 82 F.3d 686 (6th Cir. 1996) (holding unconstitutional use of nonmember funds for "defensive organizing"); *see also Fed. Election Comm'n v. NEA*, 457 F. Supp. 1102 (D.C. Cir. 1978) (holding illegal NEA's and local unions' attempt to deduct funds for political activity without members' consent).

[5] *Fort Wayne Educ. Ass'n v. Aldrich*, 527 N.E.2d 201, 218 (In. Ct. App. 1988) ("The rebate procedure is contrary not only to *Abood* and Indiana case law, which prohibit the use of nonmembers' funds for political purposes; the rebate procedure also fails to comply with the requirements laid out by the Supreme Court in *Hudson,* to which fair share fee contracts in Indiana must now comply."); *Columbus Educ. Ass'n v. Archuleta*, 505 N.E.2d 279, 287 (Ohio Ct. App. 1986) ("[The union's rebate procedure] would permit dissenters' funds to be improperly used in some years and cause union members to subsidize non-member dissenters in other years. Thus, the intent of the rebate system to protect First Amendment rights of both dissenters and the union majority would be defeated.").

PSEA has contributed to this unfortunate history by playing fast and loose with Supreme Court precedent in Pennsylvania. *See Otto v. Pennsylvania State Educ. Ass'n–NEA*, 330 F.3d 125 (3d Cir. 2003). For years, it ignored *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292, 307 (1986), in which the Supreme Court determined that public-sector unions exacting agency fees must provide "adequate disclosure" of expenditures to nonmembers, explaining that "adequate disclosure surely would include the major categories of expenses, *as well as verification by an independent auditor*." (Emphasis added). It also ignored the Third Circuit in *Hohe*, 956 F.2d at 415, which, years after *Hudson*, explained that "the purpose of requiring the verification . . . is to give the nonmembers some prior assurance that the fee was properly calculated" and that, "[w]hen nonmembers do not receive that assurance, their constitutional rights are violated under *Hudson*, and they are at least entitled to nominal damages of $1.00."

Despite the clear precedent in *Hudson* and *Hohe*, PSEA refused to secure independent audits for its local unions, relying instead on its novel theory that "*Hudson*'s independent auditor requirement was merely *dictum* or applie[d] only to large unions . . . that can afford an independent auditor." *Otto*, 330 F.3d at 131. *Hudson* was decided in 1986, but only in 2003, after nearly *seven years of litigation* against PSEA,[6] did PSEA receive the correction it needed. The Third Circuit reaffirmed what was

[6] *See Otto v. Pennsylvania State Educ. Ass'n–NEA*, No. CIV. 1:CV–96–1233, 1999 WL 177093, at *1 (M.D. Pa. Jan. 28, 1999) ("This civil action was initiated by a complaint filed on July 2, 1996.").

clearly stated by the United States Supreme Court in 1986 and obvious to everyone else: "We are bound by the Supreme Court's decision in *Hudson*, and its directive of 'verification by an independent auditor' means just that." *Id.* at 132.

B. History of This Case

Despite the relatively small dollar amounts at issue in this case, PSEA initially defended its internal practices against Teachers' challenge, relying chiefly on *Abood*. (R. 978a–979a). But after nearly two years of litigation over the PSEA's practices, the PSEA finally recognized that those practices were partially defective. (R. 962a–963a).

However, without notification to or discussion with Teachers, PSEA unilaterally implemented new written procedures, this time *directly contravening* the text of section 575. *Id.*; (R. 1005a–1007a). Despite section 575(h)'s requirement that religious objectors' funds be directed "to a nonreligious charity agreed upon by the nonmember and the exclusive representation," PSEA's policy claimed power to, under certain circumstances, send religious objectors' funds "to a nonreligious charity chosen by the PSEA at its sole discretion." (R. 1006a).

Equally surprising, the PSEA's new policy also included a take-it-or-leave-it, binding arbitration requirement seemingly copied-and-pasted from neighboring section 575(g), even though Supreme Court precedent clearly rendered such a requirement illegal. *Id.* Indeed, the Third Circuit had specifically ruled—24 years earlier—that section 575(g) was "invalid in its entirety" for requiring arbitration of constitutional issues, *Hohe*, 956 F.2d at 409 (citing *Patsy v. Bd. of Regents*, 457 U.S. 496,

516 (1982) ("[E]xhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983.")). Teachers moved for a preliminary injunction to prevent PSEA from imposing on them its obviously unconstitutional procedures. (R. 103a–128a).[7]

Shortly thereafter, a federal court in a separate case also involving the PSEA's new procedures observed that "[t]he PSEA's introduction of such procedures appear[ed] . . . to be an attempt to overwrite the pending lawsuit" and ordered the PSEA to stay implementation of its procedures until the motion for preliminary injunction in that matter was fully briefed. Order 1–2, *Misja v. Pennsylvania State Educ. Ass'n*, No. 1:15-cv-1199-JEJ (M.D. Pa. Aug. 8, 2016), ECF No. 30. That same day, Teachers came to an agreement with PSEA under which PSEA's new procedures would not be enforced against them, preserving the *status quo* in this matter, and withdrew their motion for preliminary injunction. (R. 129a–133a).

C. *Janus v. AFSCME, Council 31*

On June 27, 2018, in *Janus*, a case involving an Illinois public-sector employee and an Illinois public-sector union operating under Illinois law, the United States Supreme Court overruled *Abood*:

> Under Illinois law, public employees are forced to subsidize a union, even if they choose not to join and

[7] A Pennsylvania federal court, in yet another case involving the PSEA's new policies, remarked that, "[c]learly, [the PSEA] could not enforce the arbitration provision, as it is effectively unenforceable" under *Hohe* and the United States Supreme Court's decision in *Patsy*. (R. 627a).

> strongly object to the positions the union takes in collective bargaining and related activities. We conclude that this arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.

Janus, 138 S. Ct. at 2459–60. The Supreme Court remanded the case to the lower courts and did not analyze any other states' laws in conjunction with its decision. *Id.* at 2486.

According to PSEA's Assistant Executive Director for Administrative Services, on the day of the *Janus* decision, PSEA directed all affected employers to immediately stop processing fair share fees. (R. 1257a–1258a). PSEA's Assistant Executive Director for Administrative Services also represented to the trial court that it sent a letter to all nonmember employees informing them that they are no longer required to pay fair share fees and that their employers had been directed to stop collecting them. (R. 1258a–1259a). Finally, PSEA also refunded to Teachers their escrowed funds and claimed to have "begun to refund" other nonmembers fees collected after June 27, 2018. (R. 1258a). However, PSEA did not promise that it would remove fair share fee agreements from collective bargaining agreements or stop seeking them in other school districts. In fact, Mr. Meier's collective bargaining agreement, currently on Penn Manor School District's website, continues to show authorization of fair share fees. Ex. A.

SUMMARY OF ARGUMENT

This Court should reverse the denial of Teachers' motion for summary judgment, declare that section 575 is partially unconstitutional following *Janus*, and remand with instructions to enter a permanent injunction and award reasonable attorneys' fees and costs to Teachers under 42 U.S.C. § 1988. Teachers were clearly entitled to judgment as a matter of law under *Janus*, which should have made the trial court's work straightforward.

Instead, the trial court granted PSEA's motion for summary judgment based on mootness. But the trial court erred in reaching its conclusion, for at least three reasons. First, because section 575 has not been declared unconstitutional under the state or federal constitution and PSEA has not been enjoined, Teachers still have a stake in the outcome of this dispute, and meaningful relief can be granted. At the very least, PSEA should be directed to excise the fair share fee clause from Mr. Meier's agreement.

Second, PSEA failed to carry its "heavy burden" of demonstrating mootness, and the trial court erroneously suggested that the burden was on *Teachers* to prove otherwise. In fact, PSEA has uncut its own supposed promises not to violate Teachers' First Amendment rights in the future by, among other things, failing to amend its own collective bargaining agreement for Mr. Meier. Even if the trial court believed PSEA promises to comply with *Janus* satisfied its heavy burden, PSEA's

promises should have affected only the scope of injunctive relief and not the need for a declaration as to the constitutionality of section 575.

Finally, this case involves issues of great importance and should be decided, irrespective of mootness. Public employees, including Teachers, should have the clarity and finality of a ruling on the merits.

ARGUMENT

I. TEACHERS ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW UNDER UNITED STATES SUPREME COURT PRECEDENT

The trial court erred in denying Teachers' motion for summary judgment. Clearly, Teachers were entitled to judgment as a matter of law under the United States Supreme Court's recent pronouncement in *Janus*. This Court should apply *Janus*—a case involving Illinois litigants and Illinois law—in Pennsylvania and reverse the trial court's denial of Teachers' motion for summary judgment.

"It is fundamental that by virtue of the Supremacy Clause,[8] the State courts are bound by the decisions of the [United States] Supreme Court with respect to the federal Constitution and federal law, and must adhere to extant Supreme Court jurisprudence." *Council 13, AFSCME ex rel. Fillman v. Rendell*, 986 A.2d 63, 77 (Pa. 2009); *see also Chesapeake & O. Ry. Co. v. Martin*, 283 U.S. 209, 221 (1931) ("The determination by this [C]ourt of [a federal] question is binding upon the state courts, and must be followed, any state law, decision, or rule to the contrary

[8] U.S. Const. art. VI, cl.2.

notwithstanding."). "[T]he 'Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source.'" *DIRECTV, Inc. v. Imburgia*, 577 U.S. __, 136 S. Ct. 463, 468 (2015) (quoting *Howlett v. Rose*, 496 U.S. 356, 371 (1990)).

This is no less true when the job is relatively straightforward. By way of illustration, when the Supreme Court decided another high-profile case with national implications, *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), there was little doubt that many state statutes were constitutionally dubious; however, lower courts were still required to apply that decision to other federal and state statutes.[9]

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[9] *See, e.g., General Majority PAC v. Aichele*, No. 1:14-CV-332, 2014 WL 3955079, at *1, *4 (M.D. Pa. Aug. 13, 2014) (relying on *Citizens United* to strike down as unconstitutional portion of Pennsylvania statute prohibiting contributions for independent expenditures); *and see Republican Party of N.M. v. King*, 741 F.3d 1089, 1090-91 (10th Cir. 2013) (interpreting New Mexico statute in light of *Citizens United* and finding law irreconcilable); *N.Y. Progress and Protection PAC v. Walsh*, 733 F.3d 483, 487 (2d Cir. 2013) (citing *Citizens United* as basis for granting injunction enjoining enforcement of New York law limiting contributions); *Texans for Free Enterprise v. Tex. Ethics Comm'n*, 732 F.3d 535, 538 (5th Cir. 2013) (applying *Citizens United* to suit challenging Texas law on contributions); *Wis. Right to Life State PAC v. Barland*, 664 F.3d 139, 143 (7th Cir. 2011) (holding Wisconsin statute limiting campaign contributions to independent groups unconstitutional after *Citizens United*); *Long Beach Area Chamber of Commerce v. Long Beach*, 603 F.3d 684, 695 (9th Cir. 2010) (striking down portion of city campaign ordinance based on *Citizens United*); *SpeechNow.org v. FEC*, 599 F.3d 686, 689 (D.C. Cir. 2010) (holding that Supreme Court opinion in *Citizens United* resolved the issue, thereby requiring that statute be stricken); *see also N.Y. Progress*, 733 F.3d at 487 n.2 (citing six federal district court cases striking down analogous laws).

This was also true for lower court cases litigated contemporaneously with *Citizens United* and decided in its immediate aftermath.[10]

A similar round of lower court decisions followed the Supreme Court's decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015),[11] even over objections of mootness.[12] For example, in *Waters v. Ricketts*, 798 F.3d 682 (8th Cir. 2015), the State of Nebraska argued that a challenge to its state statute was moot because *Obergefell* had addressed the constitutionality of Michigan's, Kentucky's, Ohio's, and Tennessee's bans on same-sex marriage in a manner that made clear Nebraska could not enforce its same-sex marriage ban. The Eighth Circuit did not agree:

> Nebraska suggests that *Obergefell* moots this case. But the Supreme Court specifically stated that "the State laws *challenged by Petitioners in these cases* are now held invalid." *Id.* at 2605 (emphasis added). . . . The Court invalidated laws in Michigan, Kentucky, Ohio, and Tennessee—not Nebraska. The Court also did not consider state benefits incident to marriage, which were addressed by Plaintiffs and the district

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[10] *See, e.g., Long Beach Area Chamber of Commerce*, 603 F.3d at 684 (decided Apr. 30, 2010); *SpeechNow.org*, 599 F.3d at 686 (decided March 26, 2010).

[11] *See, e.g., Rosenbrahn v. Daugaard*, 799 F.3d 918, 922 (8th Cir. 2015); *Jernigan v. Crane*, 796 F.3d 976, 979 (8th Cir. 2015); *Waters v. Ricketts*, 798 F.3d 682, 685 (8th Cir. 2015); *Robicheaux v. Caldwell*, 791 F.3d 616, 619 (5th Cir. 2015); *Conde Vidal v. Garcia-Padilla*, 167 F. Supp. 3d 279, 283 (D.P.R. 2016) *Marie v. Mosier*, 122 F. Supp. 3d 1085, 1102 (D. Kan. 2015).

[12] *See, e.g., Waters v. Ricketts*, 159 F. Supp. 3d 992, 999–1001 (D. Neb. 2016) (explaining that, in light of *Obergefell*, "there is no argument now that plaintiffs have won on the merits," and granting summary judgment to plaintiffs and entering declaratory and permanent-injunctive relief); *Marie v. Mosier*, 122 F. Supp. 3d 1085, 1106, 1112–13 (D. Kan. 2015) (granting plaintiffs' motion for summary judgment in challenge to Kansas same-sex marriage ban and awarding declaratory relief, notwithstanding that "the record [ ] suggests that defendants have taken some affirmative steps to accord the relief plaintiffs seek").

> court here. Nebraska has not repealed or amended the challenged constitutional provision.
>
> Nebraska's assurances of compliance with *Obergefell* do not moot the case. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000) ("[A] defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur."). These assurances may, however, impact the necessity of continued injunctive relief. The district court should consider Nebraska's assurances and actions and the scope of any injunction, based on *Obergefell* and Federal Rule of Civil Procedure 65(d).

798 F.3d at 685–86 (some citations omitted). Suffice it to say, lower court cases turning on Supreme Court precedent do not automatically resolve themselves.

Here, Teachers and PSEA do not actually dispute that *Janus* controls. Pennsylvania law, like the Illinois law that was at issue in *Janus*, permits public-sector unions to collect agency (or "fair share") fees over the objection of nonmembers.[13] Section 575(b) obligates nonmembers to pay fair share fees to their public-sector union if required by a collective bargaining agreement, and subsections (c) through (i) set forth the legal regime for the exaction of and challenges to fair share fees. Only subsections (j) through (m), which set forth certain union reporting requirements, may

[13] *Compare* 71 P.S. § 575(b) ("If the provisions of a collective bargaining agreement so provide, each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee.") *with Janus*, 138 S. Ct. at 2459–60 ("Under Illinois law, public employees are forced to subsidize a union, even if they choose not to join and strongly object to the positions the union takes in collective bargaining and related activities.").

lawfully be enforced after *Janus*.[14] Section 575 violates nonmembers' First Amendment rights, just as the Illinois law did.

Curiously, the trial court distinguished section 575 from the laws at issue in *Citizens United* and *Obergefell* on the grounds that section 575 is "permissive," while bans on certain political contributions and same-sex marriage are "prohibitive." App. A, at 18–20. Clearly, the Supreme Court had no problem ruling that an equally "permissive" statute in Illinois was unconstitutional. *See* Ill. Comp. Stat., ch. 5, § 315/6(e) ("When a collective bargaining agreement is entered into with an exclusive representative, it *may* include in the agreement a provision requiring [nonmember fees]." (emphasis added)).

But such a distinction, even if accurate, hardly justifies setting aside Supreme Court precedent. A law that "permits" unions to exact unconstitutional fair share fees is still unconstitutional, and it allows for conduct equally objectionable to any supposedly "prohibitive" law. Section 575's *permissive* grant of authority to charge nonmembers' fair share fees is no more or less offensive than, for example, a *prohibition* on allowing nonmembers to receive free union representation. "Permissive" and "prohibitive" often represent two sides of the same coin.

Even if there were a meaningful distinction between permissive and prohibitive laws in this context, permissive laws still represent a looming threat to those targeted

[14] Subsection (a) sets forth definitions for terms used throughout section 575, including nonoffending subsections (j) through (m).

and should earn the courts' attention. If, after *Citizens United*, a state's political contribution law gave state officials *permission* to exact a 75% fee from corporations making political contributions, the law would raise the same concerns as a *prohibition* on the same contributions. Similarly, after *Obergefell*, state officials could never be given *permission* to add an extra 75% to the cost of marriage licenses for same-sex couples. Yet the trial court refused to apply *Janus* in part because Pennsylvania law merely gives *permission* to school districts and unions to charge nonmembers roughly 75% of regular dues in order to keep their jobs. (R. 546a).

In sum, given the United States Supreme Court's decision in *Janus*, this Court has no choice but to conclude that portions of Pennsylvania law, like portions of the Illinois law at issue in *Janus*, are invalid. Accordingly, section 575(b) through (i) should be declared unconstitutional under the rationale set forth in *Janus*, and the trial court should be reversed.

II. THE TRIAL COURT ERRED WHEN IT CONCLUDED THAT TEACHERS' CLAIMS WERE MOOT

The trial court's determination that Teachers' claims were moot should be reversed for at least three reasons. First, Teachers still have a stake in the outcome because no court has applied *Janus* to Pennsylvania law under the state or federal constitutions. Second, the PSEA has failed to carry its heavy burden of demonstrating that its voluntary assurances of compliance with the law unilaterally moot this case.

And finally, even if this case were moot—and it is not—it should be decided under the public interest exception to the mootness doctrine.

A. This Case is Not Moot Because No Court has Applied *Janus* to Pennsylvania Law

Teachers still have a stake in the outcome of this dispute. Section 575 is still "on the books" in Pennsylvania, and PSEA insists on keeping fair share fee provisions in Mr. Meier's collective bargaining agreement. Ex. A. Indeed, the trial court could and should have provided the relief requested by Teachers, namely, a ruling that section 575 was partially unconstitutional and a permanent injunction against PSEA.

"In determining whether a case is moot, the appropriate inquiry is whether the litigant has been deprived of the necessary stake in the outcome, or whether the court . . . will be able to grant effective relief." *Al Hamilton Contracting Co. v. Commonwealth*, 494 A.2d 516, 518 (Pa. Cmwlth. 1985) (citations omitted); *see also DeJohn v. Temple Univ.*, 537 F.3d 301, 308 (3d Cir. 2008) ("The court's ability to grant effective relief lies at the heart of the mootness doctrine.") (quoting *Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 216 (3d Cir. 2003). Our Pennsylvania Supreme Court has ruled against mootness arguments where, for example, the labor strike at issue is over but "the question of attorney fees still remains," *Giant Eagle Markets Co. v. UFCW, Local Union No. 23*, 652 A.2d 1286, 1291 (Pa. 1995), and where a corporation closed its business but "could attempt to open" another, similar one, *Pap's A.M. v. City of Erie*, 812 A.2d 591, 600 (Pa. 2002).

Here, the trial court could have granted effective relief to Teachers, who still have a stake in the outcome of this dispute. For one, *Janus* involved Illinois litigants and Illinois law.[15] The Supreme Court could not and did not strike down Pennsylvania law when it decided *Janus* because no one raised a justiciable challenge to Pennsylvania's fair share fee statutes in *Janus*. It is the work of lower courts—and should have been the work of the trial court here—to apply that ruling in their respective jurisdictions.[16] *See Waters*, 798 F.3d at 685 ("The Court invalidated laws in Michigan, Kentucky, Ohio, and Tennessee—not Nebraska."); *see also Rosenbrahn v. Daugaard*, 799 F.3d 918, 922 (8th Cir. 2015) ("not South Dakota"); *Jernigan v. Crane*, 796 F.3d 976, 979 (8th Cir. 2015) ("not Arkansas"). Teachers also raised claims under

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[15] Ill. Comp. Stat. ch. 5 §§ 315/1–315/28.

[16] PSEA argued below that this case is moot because *Janus*, "[w]ith one broad, unequivocal, nation-wide stroke . . . overturned . . . the agency fee laws of Illinois and over 20 other states, including Pennsylvania," making it unnecessary for further rulings. (R. 1274a). However, this represents a profound misunderstanding of basic principles of federal (and state) jurisdiction and the facts of this case. It is axiomatic that a decision by another court as to the facts at issue in a separate case cannot provide meaningful relief to litigants everywhere. *See Martin v. Wilks*, 490 U.S. 755, 762 (1989) ("A judgment or decree among parties to a lawsuit resolves issues among them, but it does not conclude the right of strangers to those proceedings." (superseded on other grounds by statute)). "[N]either declaratory nor injunctive relief can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular plaintiffs . . . ." *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975); *see also* Edward A. Hartnett, *A Matter of Judgment, Not A Matter of Opinion*, 74 N.Y.U. L. Rev. 123, 126 (1999) ("The operative legal act performed by a court is the entry of a judgment; an opinion is simply an explanation of reasons for that judgment."); Thomas W. Merrill, *Judicial Opinions as Binding Law and as Explanations for Judgments*, 15 Cardozo L. Rev. 43, 62 (1993) ("[J]udicial opinions are simply explanations for judgments—essays written by judges explaining why they rendered the judgment they did.").

the *state* constitution, claims the Supreme Court could not have addressed. (R. 167a–170a; 176a–177a).

Additionally, PSEA left in place a fair share fee provision within Mr. Meier's collective bargaining agreement. Ex. A. The trial court was notified that PSEA refused to remove fair share fee provisions within Mr. Meier's collective bargaining agreement, (R. 1378a–1379a), and could have, at the very least, invalidated that provision or directed PSEA to remove or refrain from using it. Here, as the litigants in *Al Hamilton Contracting Co.*, *Pap's A.M.*, or *Giant Eagle Markets Co.*, Teachers still have a stake in the outcome of this proceeding.

In fact, a ruling that section 575 is partially invalid and an injunction against fair share relapse would be analogous to the relief granted to litigants in Pennsylvania after *Citizens United*. Four years after *Citizens United*—and despite the "parties['] agree[ment] that the challenged Election Code provision cannot stand constitutional scrutiny"—a federal district court applied the *Citizens United* ruling to Pennsylvania law, held invalid a specific provision of Pennsylvania's Election Code, and entered a permanent injunction against its enforcement. *General Majority PAC v. Aichele*, No. 1:14–CV–332, 2014 WL 3955079, *1 (M.D. Pa. Aug. 13, 2014).[17] The plaintiffs in *General Majority*

[17] The trial court attempted to distinguish *General Majority PAC* on the mistaken basis that the Commonwealth wanted an injunction because it was otherwise intent on enforcing its contribution ban. App. A, at 19. In fact, *General Majority PAC* resembles this case in that, before the court was ready to render judgment, the parties had all *agreed* on the unconstitutionality of the law at issue. *Gen. Majority PAC*, 2014 WL 3955079, at *1 (specifying that "[t]he Commonwealth of Pennsylvania concedes

PAC, who would otherwise be operating a PAC in technical violation of state law, were understandably in practical need of security and certainty, just as the Teachers in the instant case would be if made to rely on the promises of PSEA without declaratory or injunctive relief.

Likewise, in another set of post-*Obergefell* cases, the Fifth Circuit remanded with instructions to various district courts to enter final judgment on the merits in light of the Supreme Court's decision—even though all parties conceded that *Obergefell* dictated a particular outcome—because any change in law in another jurisdiction did not finally and conclusively dispose of the controversy. *See Robicheaux v. Caldwell*, 791 F.3d 616, 619 (5th Cir. 2015) ("[The parties] are agreed that the judgment should be reversed and remanded for entry of judgment in favor of plaintiffs."); *Campaign for Southern Equality v. Bryant*, 791 F.3d 625, 627 (5th Cir. 2015) ("Because, as both sides now agree, the injunction appealed from is correct in light of *Obergefell*, the preliminary

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that the challenged provision no longer passes constitutional muster, and the only matter remaining to be decided is the scope of this court's order permanently enjoining its enforcement" and "the parties agree that the challenged Election Code provision cannot stand constitutional scrutiny.").

The trial court in this matter appeared to be confused about the Commonwealth's request for a more onerous injunction, App. A, at 19, but the request appears to have been motivated not by a desire to enforce its law but by a desire for affirmative guidance in complying with the Supreme Court's ruling, *see Gen Majority PAC*, 2014 WL 3955079, *6 ("As for the Commonwealth's second request for us to establish a new category of 'independent political committees,' we will not usurp the role of the democratically elected General Assembly or the [agency] by substantively rewriting the Election Code.").

injunction is AFFIRMED. This matter is REMANDED for entry of judgment in favor of the plaintiffs."); *De Leon v. Abbott*, 791 F.3d 619, 625 (5th Cir. 2015) (same).

Finally, Teachers note that the issue of attorneys' fees—for a case initiated in 2014 and perpetuated in part because of PSEA's conduct, (R. 2a–9a)—has yet to be resolved. *See Giant Eagle Markets Co.*, 652 A.2d at 1291 (rejecting mootness arguments on the ground that, "although the strike has been settled, the question of attorney fees still remains because under 43 Pa.S. § 206q appellee is clearly entitled to such recovery if appellant's request for an injunction should have been denied"). Had the trial court ruled for Teachers on any portion of the merits, they would have been entitled to the attorneys' fees they sought under 42 U.S.C. § 1988. *See Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 790 (1989) (analyzing entitlement to attorneys' fees under § 1988 and noting "that such awards are proper where a party 'has established his entitlement to some relief on the merits of his claims, either in the trial court or on appeal'" (quoting *Hanrahan v. Hampton*, 446 U.S. 754, 757 (1980))).

In sum, *Janus* controls this matter, but that does not mean the work of Pennsylvania Courts is unnecessary or impossible. Because the United States Supreme Court did not specifically invalidate Pennsylvania law, there was no change in Pennsylvania law and certainly no change sufficient to make judgment for Teachers impossible to grant.[18] Judgment and relief for Teachers is not only possible, but

[18] However, even if *Janus* were a "change in law" in Pennsylvania, *Janus* did not finally and conclusively dispose of the controversy because it did not make it

necessary, because, as discussed more fully below, PSEA has made no apparent effort to remove fair share fee provisions from Mr. Meier's collective bargaining agreement. Ex. A. This Court must formalize in Pennsylvania the Supreme Court's *Janus* precedent to protect Teachers and all similarly situated Pennsylvania workers.

B. This Case is Not Moot Because a Voluntary Change in Policy is Not Sufficient Protection Against Relapse

Before the trial court, PSEA promised not to violate *Janus* in the future, submitting a statement of policy from its Assistant Executive Director for Administrative Services that PSEA will no longer collect fair share fees in the future. (R. 1256a–1260a). But even assuming PSEA has such a policy—and its lower level employee qualified to present it—it failed to carry its burden of proving that its conduct will not recur.

"[V]oluntary cessation of allegedly unlawful conduct does not moot a case because such a situation would allow the party acting wrongly to revert, upon dismissal of the proceedings, to the offensive pattern of conduct." *Salvatore v. Dallastown Area Sch. Dist.,* No. 995 C.D. 2014, 2015 WL 5162153, *6 (Pa. Cmwlth.

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impossible for this Court to grant the requested relief, which is a specific declaration as to the constitutionality of section 575 under the state and federal constitution as well as an injunction. *See Nat'l Dev. Corp. v. Planning Comm'n of the Twp. of Harrison*, 439 A.2d 1308, 1310 (Pa. Cmwlth. 1982) ("While it is well established that a legal question can, after suit has been commenced, become moot as a result of changes in the facts of the case or in the law, such changes must finally and conclusively dispose of the controversy."); *cf. In re Gross*, 382 A.2d 116, 120 (Pa. 1978) (noting that the *amendment of the underlying statute* made it "impossible to grant relief.") (emphasis added).

Feb. 20, 2015). Accordingly, a party claiming mootness carries "a heavy burden" of "prov[ing] that there is no reasonable expectation that the past conduct will be repeated." *Pennsylvania Interscholastic Athletic Ass'n, Inc. v. Greater Johnstown Sch. Dist.*, 463 A.2d 1198, 1201 (Pa. Cmwlth. 1983). Federal courts, to which Pennsylvania courts frequently look for guidance on deciding questions of mootness,[19] further describe this burden as "formidable." *Friends of the Earth, Inc. v. Laidlaw Env. Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000); *DeJohn*, 537 F.3d at 309.

Here, a self-serving statement of policy from a lower level employee is hardly enough to prove PSEA cannot frustrate nonmembers' rights or press its authority under section 575 in the future. Merely disclaiming any intent to resume activity—precisely what PSEA did here—is insufficient to render a matter moot. *United States v. W. T. Grant Co.*, 345 U.S. 629, 633 (1953) ("Such a profession does not suffice to make a case moot . . . ."); *Salvatore*, 2015 WL 5162153, at *6.

Unfortunately, the trial court suggested that the burden was on Teachers to demonstrate that PSEA will not return to its unlawful policies. App. A, at 22 ("Plaintiffs have not demonstrated that there is any reason to expect that PSEA would reinstate the collection of fair share fees."). Placing the burden on Teachers violates not only Pennsylvania's standard with respect to mootness, *see, e.g.*, *Pennsylvania Interscholastic Athletic Ass'n*, 463 A.2d at 1201, but it also flies in the face of the long-

[19] *Pap's A.M.*, 812 A.2d at 600 n.4 ("This Court has frequently looked to cases from the U.S. Supreme Court for guidance in deciding questions of mootness.").

settled standard with respect to consideration of motions for summary judgment, *see Summers v. Certainteed Corp.*, 997 A.2d 1152, 1159 (Pa. 2010) ("When considering a motion for summary judgment, the trial court must take all facts of record and reasonable inferences therefrom in a light most favorable to the non-moving party.").

Emphatically, Teachers have *no responsibility* to help PSEA carry its formidable burden to show that this matter is moot.[20] However, Teachers observe several ways in which PSEA undercuts its own supposed promises not to violate *Janus* in the future. First, PSEA made no showing that it amended the relevant collective bargaining agreements to remove its fair share fee authorizations. To the contrary, Mr. Meier's collective bargaining agreement, currently on Penn Manor School District's website, continues to show authorization of fair share fees.[21] Ex. A. PSEA will surely trot out nonbinding decisions from other courts that have found unions' promises to comply with *Janus* convincing; however, none of those cases involved in-force collective

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[20] Federal courts explain that mootness only arises based on voluntary cessation if "(1) it can be said with assurance that there is no reasonable expectation that the alleged violation will recur, and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." *DeJohn*, 537 F.3d at 309. The Commonwealth Court has set forth a similar set of considerations. *See Highway Auto. Serv. v. Commonwealth*, 439 A.2d 238, 240 (Pa. Cmwlth. 1982) ("In determining whether the cessation of such activity compels a finding of mootness, we consider (1) the good faith of the defendant's announced intention to discontinue the challenged activity, (2) the effectiveness of the discontinuance, and (3) the character of the past violation.").

[21] *See* Penn Manor Sch. Dist., Teacher Contract Agreement 2017–2021, art. XXX, https://www.pennmanor.net/employment/negotiated-agreement-2017-2021-4-3-17-1-2/ (last visited August 7, 2019). Ex. A.

bargaining agreements in blatant violation of *Janus*. If PSEA were trying to show this Court that it could not relapse—effectively the required showing for mootness— it has utterly failed.

Second, as set forth above,[22] PSEA has already demonstrated a willingness, historically *and in this case*, to disregard Supreme Court rulings. The possibility of not getting caught—with the potential penalty of $1.00 nominal damage claims and returning a limited number of plaintiffs' funds, sometimes only after years of litigation—is apparently too tempting to resist. It is not unreasonable to conclude, based on PSEA's past and present conduct, that it will return to its ways as soon as the courts turn their backs. It is essential to Teachers' relief that this Court grant their request for a permanent injunction, allowing them to resume this four-year long case where they left off instead of starting from scratch.

In any event, and to the extent that the policy of PSEA's Assistant Executive Director for Administrative Services provides assurance against relapse, such assurances do not moot the need for a declaration as to the constitutionality of section 575; they merely impact the scope of injunctive relief necessary. *See W. T. Grant Co.*, 345 U.S. at 633 ("Such a profession does not suffice to make a case moot although it is one of the factors to be considered in determining the appropriateness of granting an injunction against the now-discontinued acts."); *Waters*, 798 F.3d at 686

[22] *See supra*, at Facts § B.

("Nebraska's assurances of compliance with *Obergefell* do not moot the case. . . . These assurances may, however, impact the necessity of continued injunctive relief."); *General Majority PAC*, 2014 WL 3955079, at *1 ("The Commonwealth of Pennsylvania concedes that the challenged provision no longer passes constitutional muster, and the only matter remaining to be decided is the scope of this court's order permanently enjoining its enforcement."). If the trial court believed PSEA, it should have declined to enjoin PSEA, yet still declared section 575 invalid.

Accordingly, PSEA has failed to carry its formidable burden to establish mootness. This Court should provide necessary certainty and security—the purpose of the Declaratory Judgments Act—by reversing the trial court and either directing that Teachers' motion be granted or remanding for further proceedings. *See* 42 Pa.C.S. § 7541(a) ("Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.").

C. Even if the Case is Moot, this Court Should Decide the Issue Based on the Public Interest Exception Because the Case Involves Important First Amendment Protections

Even assuming for the sake of argument that this case is moot, the trial court's dismissal of this case should be reversed because this case involves First Amendment protections of great public importance. Accordingly, irrespective of mootness, this Court should hold that section 575(b) through (i) is unconstitutional and issue an injunction against PSEA.

Issues like the ones presented in this case, involving First Amendment or state-related claims, should survive technical mootness under the "great public importance" exception. *See Pap's A.M. v. Erie*, 812 A.2d 591, 599-601 (Pa. 2002) (refusing to dismiss free expression challenge for mootness even though the establishment ceased operating because the dispute involved an issue of "great public importance" and law could impact future litigants); *Commonwealth v. Nava*, 966 A.2d 630, 633 (Pa. Super. 2009) ("Luna's case presents a case of great public importance. The current political and public controversy concerning immigration policies in the United States, particularly the enforcement of existing laws, has landed on our state capitol and courthouse steps."); *In re Duran*, 769 A.2d 497, 502 (Pa. Super. Ct. 2001) ("The issues in this appeal, rights to privacy and bodily integrity, are matters of public importance."); *In re Estate of Dorone*, 502 A.2d 1271, 1275 (Pa. Super. 1985) ("The rights alleged to have been violated include the First Amendment right to freedom of religion, a matter of public importance."). Of course, the great public importance exception is rare; however, Teachers are only asking this Court to apply Supreme Court precedent in a matter in which it inarguably applies.

CONCLUSION

For the reasons stated above, Teachers respectfully request that this Court reverse the trial court, declare that section 575(b)–(i) is unconstitutional under *Janus*, and remand with instructions to enjoin PSEA from seizing or impounding Teachers'

funds in the future and award Teachers reasonable attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988.

Respectfully submitted,

THE FAIRNESS CENTER

Dated: August 8, 2019

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APPENDIX A

ENTERED AND FILED
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Audrey Conrad

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

JANE LADLEY and CHRISTOPHER MEIER, Plaintiffs	:	
v.	:	No. CI-14-08552
PENNSYLVANIA STATE EDUCATION ASSOCIATION, Defendant.	:	

OPINION

Presently before the court are the parties' cross motions for summary judgement. After briefing by both sides, this matter is ripe for review. For the reasons that follow, defendant's motion for summary judgment is granted and plaintiffs' motion for summary judgment is denied.

The dispute between the parties involves the payment of union dues and pictures the contention created when a public union attempts to compel nonmembers to subsidize private speech. Plaintiffs, Jane Ladley[1] and Christopher Meier are public-sector employees in the public schools of Pennsylvania. They both, for various reasons, object to compulsory union dues payments. The court is guided in its analysis of the dispute by the recent decision of the Supreme Court of the United States in Janus v. AFSCME Council 31, 138 S.Ct. 2448 (2018). Plaintiffs, relying on Janus, argue that they are entitled to summary judgment. Defendant, Pennsylvania State Education Association ("PSEA"), relying on changes it has made since the Janus decision, contends that plaintiffs' claims are now moot.

[1] Ms. Ladley retired from teaching after this lawsuit commenced.

I. PROCEDURAL HISTORY

In September 2014, plaintiffs filed a declaratory judgment action challenging PSEA's implementation of the religious objector provisions of the Pennsylvania Fair Share Law, 71 P.S. 575(h) ("section 575(h)"). Plaintiffs sought declaratory and injunctive relief. On October 9, 2014, PSEA filed preliminary objections.

The court's order of June 30, 2015, disposed of the defendant's preliminary objections, sustaining all preliminary objections except those of Counts I (Ms. Ladley's right to due process), III (Ms. Ladley's right to freedom of speech and association), V (violation of statute by misconstruing "agreed upon" with respect to Ms. Ladley), VI (violation of statute by misconstruing "agreed upon" with respect to Mr. Meier), and Alternative Count I (constitutionality of section 575(h)). On July 20, 2015, plaintiffs filed their first amended complaint which included a claim for violation of due process under the Pennsylvania Constitution. Plaintiffs again sought declaratory and injunctive relief. Defendant filed preliminary objections that were disposed of by court order dated April 20, 2016. The court ruled that: (1) PSEA is a state actor; (2) no viable claim for violation of due process under the Pennsylvania Constitution exists; (3) no first-amendment issues, federal due process issues or state constitutional claims with respect to the same exist; (4) plaintiffs failed to make the necessary argument under Com. v. Edmunds, 586 A.2d 887 (Pa. 1991) or DePaul v. Com., Pennsylvania Gaming Control Bd., 969 A.2d 536 (Pa. 009); (5) plaintiffs' allegations of PSEA being unreasonable survived preliminary objections, but plaintiffs' contention that PSEA could not act as an agent of the bargaining unit did not; and (6) injunctive relief is not warranted as a remedy for money damages exists. This judge is bound by the law of the case decided in these prior orders.

On April 25, 2017, plaintiffs filed their second amended complaint to which defendant filed an answer and new matter. Plaintiffs' second amended complaint contains the following counts: Count I – denial of due process under the United States Constitution as applied to Ms. Ladley; Count II – denial of due process under the United States Constitution as applied to Mr. Meier; Count III – denial of due process under the Pennsylvania Constitution as to Ms. Ladley; Count IV – denial of due process under the Pennsylvania Constitution as to Mr. Meier; Count V – violation of federal rights to free speech, association, and expression as to Ms. Ladley; Count VI – violation of federal rights to free speech, association, and expression as to Mr. Meier; Count VII – violation of state rights to free speech, association, and expression as to Ms. Ladley; Count VIII – violation of state rights to free speech, association, and expression as to Mr. Meier; Count IX – violation of plain language of section 575 as to Ms. Ladley; Count X – violation of plain language of section 575 as to Mr. Meier; Count XI – violation of 42 U.S.C. §1983 as to Ms. Ladley; Count XII – violation of 42 U.S.C. §1983 as to Mr. Meier; and Count XIII – request for a permanent injunction against PSEA.

Plaintiffs filed their motion for summary judgment on June 30, 2017, to which defendant filed an answer and cross-motion for summary judgment. The parties briefed their motions and after it became clear that the United States Supreme Court would hear the Janus case, the parties filed a joint motion to stay this case pending the outcome of Janus. The case was stayed on October 11, 2017, and the stay lifted on July 31, 2018.

Defendant withdrew its cross-motion for summary judgment on August 29, 2018, and filed a new motion for summary judgment on the same date asserting that the case is now moot. Plaintiffs responded on September 18, 2018. On October 22, 2018, defendant filed a notice to the court of changed circumstances, drawing the court's attention to guidance issued by the

Pennsylvania Department of Labor and Industry, and two new federal cases addressing similar issues to the case at hand.

II. FACTS

Plaintiff, Jane Ladley ("Ms. Ladley") was a public school teacher in Chester County, Pennsylvania, and was not a union member. Plaintiff, Christopher Meier ("Mr. Meier") is a public school teacher in Lancaster County, Pennsylvania, and a non-union member. PSEA is a non-profit statewide employee organization organized under the laws of the Commonwealth of Pennsylvania. Both Ms. Ladley and Mr. Meier, as non-union members, lodged religious objections to paying any dues or fees to PSEA pursuant to section 575(h). There is no dispute that PSEA accepted their objections.

Plaintiff Jane Ladley

Prior to her retirement, Ms. Ladley had been a Pennsylvania public school teacher in the Avon Grove School District for seventeen years. The Avon Grove Education Association ("AGEA") is Ms. Ladley's exclusive representative for collective bargaining. Effective March 13, 2013, the AGEA and Avon Grove School District entered into an "agency shop" agreement. The agency-shop agreement requires Ms. Ladley to pay to AGEA an annual fee ("fair share fee")[2] related to collective bargaining expenses. The fair share fee for Ms. Ladley was approximately $435.14 per year.

[2]A "fair share fee" is defined as "the regular membership dues required of members of the exclusive representative less the cost for the previous fiscal year of its activities or undertakings which were not reasonably employed to implement or effectuate the duties of the employe organization as exclusive representative." 71 P.S. § 575(a).

On December 12, 2013, PSEA notified Ms. Ladley that she, as a non-union member ("nonmember"),[3] would have to pay a fair share fee as a condition of her employment. On January 4, 2014, Ms. Ladley notified PSEA that she objected to the payment of fair share fees on bona fide religious grounds. On March 7, 2014, PSEA accepted Ms. Ladley's claim of a religious objection, and asked her to designate a charity to receive her fair share fee. On March 16, 2014, Ms. Ladley requested that her fair share fee be paid to the Coalition for Advancing Freedom's ("CFAF") "Sustainable Freedom Scholarship." This college scholarship fund is designed to "encourage our youth to become knowledgeable about the U.S. Constitution and the principles of freedom upon which our Country was founded." Second Am. Compl. ¶ 24, Ex. G. On March 19, 2014, PSEA rejected Ms. Ladley's designated charity on the basis that PSEA has a "policy of not allowing political organizations to receive fair share fees." Id. ¶ 25, Ex. H.

On March 30, 2014, Ms. Ladley requested clarification of this policy. On March 31, 2014, PSEA responded that it had also refused Ms. Ladley's designated charity as it considered that charity to be religious. On May 5, 2014, Ms. Ladley notified PSEA that she had chosen an alternate charity to be the recipient of her fair share fee, the Constitutional Organization of Liberty ("COOL"). Ms. Ladley contacted PSEA on June 24, 2014, after failing to receive a response to her proposal for an alternate charity. Id. ¶ 27. On March 3, 2015, nearly a year later, PSEA notified Ms. Ladley, through counsel, that it rejected her selection of COOL on the ground that it was "a partisan organization."

After Ms. Ladley retired, Avon Grove and the AGEA entered into a new collective bargaining agreement for the period of July 1, 2014 through June 30, 2017, that continued the

[3]A "nonmember" is defined as "an employe of a public employer, who is not a member of the exclusive representative, but who is represented in a collective bargaining unit by the exclusive representative for purposes of collective bargaining." Id.

public-sector union shop within the school district. At the time of the filing of the second amended complaint, Ms. Ladley's funds were in escrow. However, after the Janus decision, PSEA has refunded Ms. Ladley her fair share fees plus interest in the amount of $437.52.

Plaintiff Christopher Meier

Mr. Meier is a Pennsylvania public school teacher in the Penn Manor School District in Lancaster County. The Penn Manor Education Association ("PMEA") is Mr. Meier's exclusive representative for collective bargaining. Effective July 1, 2012, the PMEA and Penn Manor School District entered into an agency-shop agreement. The agency-shop agreement requires Mr. Meier, as a nonmember, to pay PMEA an annual fair share fee of approximately $435.14. On December 11, 2012, PSEA notified Mr. Meier that he would have to pay a fair share fee. On January 10, 2013, Mr. Meier notified PSEA that he objected to the payment of a fair share fee on bona fide religious grounds. Mr. Meier selected the National Right to Work Legal Defense Foundation ("NRWLDF") as the charity to receive his fair share fee.

On February 21, 2013, PSEA notified Mr. Meier that it would not agree to remit the fair share fee to NRWLDF, provided him with a list of charities that PSEA would accept, and asked for more information about his religious beliefs in order to determine whether Mr. Meier's objection was religious in nature. Mr. Meier wrote to PSEA through regular and electronic mail five times between March 13, 2013, and January 17, 2014, but did not receive a response until June 26, 2014.

On June 26, 2014, PSEA responded and requested that Mr. Meier provide further explanation as to why his objection was religious. On June 27, 2014, Mr. Meier contacted PSEA and explained the basis for his religious objection. On July 31, PSEA accepted that Mr. Meier's objection was religious but rejected the NRWLDF as an acceptable charity to receive his fair

share fee. PSEA claimed that its rejection was due to a fundamental conflict of interest between it and the NRWLDF, as the NRWLDF has previously sued PSEA and the National Educational Association ("NEA"). PSEA provided a list of twelve acceptable charities to which it would agree to send Mr. Meier's fair share fee. At the time of the filing of the second amended complaint, Mr. Meier's fair share fees were in escrow. However, since the Janus decision, PSEA has refunded to Mr. Meier his fair share fees plus interest in the amount of $2,718.28.

Plaintiffs' second amended complaint seeks declaratory and injunctive relief with respect to PSEA's policy of refusing to agree to remit fair share fees to charities with which it does not approve. Plaintiffs claim that this policy, as applied to Ms. Ladley and Mr. Meier, violates their right to due process,[4] freedom of speech, and association. Plaintiffs also allege that PSEA has violated the express language of section 575(h), which plaintiffs assert requires that only the exclusive representatives (AGEA and PMEA) may negotiate with plaintiffs to resolve a dispute and that the resolution should be timely. This challenge is no longer a prima facie challenge to the law as was alleged in plaintiffs' prior complaints, but is only an as-applied challenge of the law to them.

PSEA's Procedures and Current Position

On July 12, 2016, PSEA adopted new procedures for handling disputes such as the ones described above, where teachers and the union cannot agree on a charitable organization to which to donate the fair share fee. The new procedures provide, among other things, that PSEA will only approve a religious objector's nonreligious charity if "[t]he charity does not advance policies or positions inconsistent with PSEA or NEA constitution and bylaws, resolutions, or

[4] The Honorable James P. Cullen dismissed plaintiffs' due process claims and exclusive representation claims by prior order, which is the law of the case. There are no new factual allegations in plaintiffs' second amended complaint that would disturb Judge Cullen's conclusions.

policies." Rather than implementing a framework to agree upon a charity "by the nonmember and the exclusive representative" as required by section 575(h), PSEA's policy directs where a payment will go.

On the day the Supreme Court announced the Janus decision, PSEA contacted all affected employers and directed them to immediately stop processing fair share fees. The PSEA sent a letter to each fair share fee payer on July 2, 2018, informing nonmembers that they are no longer required to pay fair share fees and that PSEA had directed the employers to cease collecting them. Further, PSEA explained that it would be refunding any fees collected attributable to the period after June 27, 2017.

On July 6, 2018, the parties filed a joint notice of subsequently decided authority, that being the United States Supreme Court's Janus decision. Janus has vindicated the position of the plaintiffs, but the question remains whether it has mooted their claims.

III. SUMMARY JUDGMENT LEGAL STANDARD

The parties agree that no material issues of disputed fact exist and that their dispute may be decided as a matter of law. A party may move for summary judgment "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense." Pa. R.C.P. 1035.2(1). The motion will be granted if the "adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense." Pa. R.C.P. 1035.2(2). "The moving party has the burden of proving that there is no genuine issue of material fact. The record and any inferences therefrom must be viewed in the light most favorable to the nonmoving party, and any doubt must be resolved against the moving party." Roberts v. Estate of Pursley, 700 A.2d 475, 481 (Pa. Super. 1997) (internal citations omitted). In response, the nonmoving party may not rest upon the pleadings but must set forth

facts demonstrating a genuine issue for trial. DeSantis v. Frick Co., 745 A.2d 624, 625 (Pa. Super. 1999). "A motion for summary judgment must be granted in favor of a moving party if the other party chooses to rest on its pleadings, unless a genuine issue of fact is made out in the moving party's evidence taken by itself." Curry v. Estate of Thompson, 481 A.2d 658, 660 (Pa. Super. 1984).

IV. MOOTNESS LEGAL STANDARD OF REVIEW

In order "[f]or a matter to become moot, some change in the facts or applicable law must occur so that, although the plaintiff had standing at the outset of the litigation, there is no longer a live controversy." Valley Forge Towers Apartments N, LP v. Upper Merion Area Sch. Dist., 640 Pa. 489, 504–05, 163 A.3d 962, 972 (2017) (citing In re Gross, 382 A.2d 116, 119–20 (Pa. 1978)). In general, a court will not decide moot questions. See Sierra Club v. Pa. PUC, 702 A.2d 1131 (Pa. Cmwlth. 1996) (holding that courts will dismiss an appeal as moot unless an actual case or controversy exists at all stages of the judicial or administrative process), aff'd, 731 A.2d 133 (Pa. 1999).

The Pennsylvania Supreme Court has stated that:

> This Court generally will not decide moot questions.... [W]e [have] summarized the mootness doctrine as follows: The cases presenting mootness problems involve litigants who clearly had standing to sue at the outset of the litigation. The problems arise from events occurring after the lawsuit has gotten under way—changes in the facts or in the law—which allegedly deprive the litigant of the necessary stake in the outcome. The mootness doctrine requires that an actual case or controversy must be extant at all stages of review, not merely at the time the complaint is filed.

Pub. Def.'s Office of Venango Cty. v. Venango Cty. Court of Common Pleas, 893 A.2d 1275, 1279 (Pa. 2006) (quoting Pap's A.M. v. City of Erie, 812 A.2d 591, 599–600 (Pa. 2002)). "While it is well established that a legal question can, after suit has been commenced, become moot as a result of changes in the facts of the case or in the law, such changes must finally and

conclusively dispose of the controversy." Nat'l Dev. Corp. v. Planning Comm'n of Harrison Twp., 439 A.2d 1308, 1310 (Pa. Cmwlth. 1982). A defendant's voluntary cessation of an activity may render a legal question moot. Cox v. City of Chester, 464 A.2d 613, 616 (Pa. Cmwlth. 1983).

There are, however, instances where a court may decide a technically moot case:

> [A] case which may be rendered moot will not be dismissed where the issues raised are of a recurring nature and capable of repeatedly avoiding review. A case is capable of repetition yet evading review when the duration of the challenged action is too short to be litigated and there is a reasonable probability that the complaining party will be subjected to the same action in the future.

Erie Homes for Children & Adults, Inc. v. Dept. of Pub. Welfare, 833 A.2d 1201, 1204 (Pa. Cmwlth. 2003) (citations omitted). Another exception is in cases where the matter is of public importance. In re Gross, 382 A.2d at 120.

The essence of the mootness doctrine is whether the court has the ability to grant effective relief. PSEA claims that the case is now moot because of the change in the law and facts as a result of the Janus decision and alternatively because it changed its policy regarding the selection of a charity.

V. DISCUSSION

This dispute has changed its complexion over the course of its life. When it was originally filed on September 18, 2014, the plaintiffs asserted an as-applied challenge and a facial challenge to section 575(h) to declare the application of section 575(h) as to plaintiffs unconstitutional, or alternatively to declare section 575(h) unconstitutional. Plaintiffs' first amended complaint filed on June 20, 2015, also pled claims for facial and as-applied constitutional violations of section 575(h). The second amended complaint, filed April 25, 2017, abandoned any facial challenge to section 575(h) and pleads only an as-applied challenge to

section 575. Both parties insist that they, not the other party, are entitled to judgment as a matter of law. Plaintiffs believe this is so because Janus affirms that the statute they are challenging is unconstitutional. Defendant believes this is so because Janus has mooted plaintiffs' claims.

The PSEA makes two arguments in opposition to plaintiffs' request for summary judgment. First, PSEA argues that as a result of Janus and the steps taken by PSEA, the as-applied challenge brought by plaintiffs—and as limited by prior court orders—is moot. Second, PSEA contends that should the court reach the merits of the plaintiffs' claims, it should deny their request for summary judgment and examine the dispute as existed before Janus: that is, whether PSEA was acting unreasonably with respect to the charitable selections of plaintiffs. In this contingency, PSEA seeks to incorporate all of its arguments in response to the plaintiffs' motion for summary judgment as well as the arguments made by PSEA in the motion for summary judgment it withdrew.

For their part, the plaintiffs respond that they are entitled to judgment as a matter of law, and that the case is not moot because Janus has not been applied to the laws of Pennsylvania and the PSEA's voluntary policy change is not an adequate safeguard to prevent repetition; alternatively, plaintiffs argue that regardless of mootness, the court should decide the case based on the public interest exception as first-amendment protections are at issue. Plaintiffs contend that PSEA's association with the National Education Association ("NEA") and the NEA's penchant to press its authority to the limits of Supreme Court precedent—coupled with PSEA's failure to comply with Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292 (1986), prior to 2003—demonstrate the necessity of an injunction here.

A. The Janus Decision

Janus was a sea change in the law, overruling Abood v. Detroit Bd. of Ed., 431 U.S. 209 (1977), and its forty-one years of precedent. Mark Janus was a child support specialist employed by the Illinois Department of Healthcare and Family Services. He refused to join the public-sector union because he opposed many of its public policy positions and advocacy. He also believed that "the Union's 'behavior in bargaining does not appreciate the current fiscal crises in Illinois and does not reflect his best interests or the interests of Illinois citizens.'" Janus, 138 S.Ct. at 2461.

The Illinois law challenged by Janus was consistent with Abood and its progeny. The law, the Illinois Public Labor Relations Act ("IPLRA"), provided: (1) the union is designated as the exclusive bargaining representative of the unit employees; (2) employees within the unit are not required to join the union; (3) employees who do not join the union are not assessed full union dues but must pay an agency fee which is the proportional fee not associated, according to the union, with the union's political and ideological projects; and (4) employees receive a notice each year of the amount to be deducted from their pay. Ill. Comp. Stat., ch. 5, § 315/6(a). The Illinois law resulted in unions assessing a chargeable amount of 78% of full union dues.

The Supreme Court concluded that Abood, with which the Illinois law would have complied, was inconsistent with standard first-amendment principles. The Court observed that the agency-shop arrangement imposed associations that citizens in the United States have the right to eschew, compelled speech in support of views those citizens find objectionable, and forced employees to subsidize speech of other private speakers that they find objectionable. The union argued that there were significant state interests in labor peace and the risk of free riders. It further asserted that the employee speech suggested above is somehow not protected by the First Amendment. The Court concluded that the restrictions on constitutionally protected speech

could not survive even a permissive review of the government's actions and rejected the assertion that employee speech rights fall outside the First Amendment. See Janus, 138 S.Ct. at 2465.

As a consequence of Janus, "States and public-sector unions may no longer extract agency fees from nonconsenting employees." Id. at 2486. The Court went on to explain, "Neither an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay. By agreeing to pay, nonmembers are waiving their first-amendment rights, and such a waiver cannot be presumed." Id.

Nowhere in its opinion does the Supreme Court mention, comment on, or analyze Pennsylvania's laws regarding public-sector unions. The law at issue in this case was not before the United States Supreme Court. However, the Supreme Court clearly contemplated that its decision would prohibit "[s]tates and public-sector unions . . . [from] extract[ing] agency fees from nonconsenting employees." Id. at 2459. Consequently, this court must apply the precedent of Janus to Pennsylvania's public-sector union in the context of PSEA.

B. The Pennsylvania Framework

The statute at issue in this dispute is the Fair Share Fee: Payroll Deduction of the Administrative Code related to the powers and duties of the Pennsylvania Department of Labor and Industry. See 71 Pa.C.S. § 575. Section 575 provides:

> (a) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:
>
> "Bona fide religious objection" shall mean an objection to the payment of a fair share fee based upon the tenets or teachings of a bona fide church or religious body of which the employe is a member.
>
> "Commonwealth" shall mean the Commonwealth of Pennsylvania,

including any board, commission, department, agency or instrumentality of the Commonwealth.

"Employe organization" shall mean an organization of any kind or any agency or employe representation committee or plan in which membership includes public employes and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employe-employer disputes, wages, rates of pay, hours of employment or conditions of work, but shall not include any organization which practices discrimination in membership because of race, gender, color, creed, national origin or political affiliation.

"Exclusive representative" shall mean the employe organization selected by the employes of a public employer to represent them for purposes of collective bargaining pursuant to the act of July 23, 1970 (P.L. 563, No. 195), known as the "Public Employe Relations Act."[1]

"Fair share fee" shall mean the regular membership dues required of members of the exclusive representative less the cost for the previous fiscal year of its activities or undertakings which were not reasonably employed to implement or effectuate the duties of the employe organization as exclusive representative.

"Nonmember" shall mean an employe of a public employer, who is not a member of the exclusive representative, but who is represented in a collective bargaining unit by the exclusive representative for purposes of collective bargaining.

"Public employer" shall mean the Commonwealth of Pennsylvania or a school entity.

"School entity" shall mean any school district, intermediate unit or vocational-technical school.

"Statewide employe organization" shall mean the Statewide affiliated parent organization of an exclusive representative, or an exclusive representative representing employes Statewide, and which is receiving nonmember fair share payments.

(b) If the provisions of a collective bargaining agreement so provide, each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee.

(c) To implement fair share agreements in accordance with subsection (b), the exclusive representative shall provide the public employer with the name of each nonmember who is obligated to pay a fair share fee, the

amount of the fee that he or she is obligated to pay and a reasonable schedule for deducting said amount from the salary or wages of such nonmember. The public employer shall deduct the fee in accordance with said schedule and promptly transmit the amount deducted to the exclusive representative.

(d) As a precondition to the collection of fair share fees, the exclusive representative shall establish and maintain a full and fair procedure, consistent with constitutional requirements, that provides nonmembers, by way of annual notice, with sufficient information to gauge the propriety of the fee and that responds to challenges by nonmembers to the amount of the fee. The procedure shall provide for an impartial hearing before an arbitrator to resolve disputes regarding the amount of the chargeable fee. A public employer shall not refuse to carry out its obligations under subsection (c) on the grounds that the exclusive representative has not satisfied its obligation under this subsection.

(e) Within forty (40) days of transmission of notice under subsection (d), any nonmember may challenge as follows:

(1) to the propriety of the fair share fee; or
(2) to the payment of fair share fees for bona fide religious grounds.

(f) Any objection under subsection (e) shall be made in writing to the exclusive representative and shall state whether the objection is made on the grounds set forth in subsection (e)(1) or (2).

(g) When a challenge is made under subsection (e)(1), such challenge shall be resolved along with all similar challenges by an impartial arbitrator, paid for by the exclusive representative, and selected by the American Arbitration Association, or the Federal Mediation and Conciliation Service, pursuant to the Rules for Impartial Determination of Union Fees promulgated by the American Arbitration Association. The decision of the impartial arbitrator shall be final and binding. [This section ruled constitutionally invalid in its entirety by Hohe v. Casey, 956 F.2d 399, 409 (3rd Cir. 1992).]

(h) When a challenge is made under subsection (e)(2), the objector shall provide the exclusive representative with verification that the challenge is based on bona fide religious grounds. If the exclusive representative accepts the verification, the challenging nonmember shall pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative. If the exclusive representative rejects the verification because it is not based on bona fide religious grounds, the challenging nonmember may challenge that determination within forty (40) days from receipt of notification.

(i) When a challenge is made under subsection (e)(1), the exclusive representative shall place fifty per centum (50%) of each challenged fair share fee into an interest-bearing escrow account until such time as the challenge is resolved by an arbitrator. When a challenge is made under subsection (e)(2), the exclusive representative shall place one hundred per centum (100%) of each challenged fair share fee into an interest-bearing escrow account until such time as the challenge is resolved by an arbitrator.

(j) Every Statewide employe organization required to submit a report under Title II of the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257, 29 U.S.C. § 401 et seq.) shall make available a copy of such report to the Secretary of Labor and Industry.

(k) All materials and reports filed pursuant to this section shall be deemed to be public records and shall be available for public inspection at the Office of the Secretary of Labor and Industry during the usual business hours of the Department of Labor and Industry.

(l) Any employe organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall be subject to a fine of not more than two thousand dollars ($2,000).

(m) Any person who wilfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall be fined not more than one thousand dollars ($1,000) or undergo imprisonment for not more than thirty (30) days, or both. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false.

Like the IPLRA in Illinois, Pennsylvania law states that (1) the union is designated as the exclusive bargaining representative of the unit employees; (2) employees within the unit are not required to join the union; (3) employees who do not join the union are not assessed full union dues but must pay a "fair share" fee if the collective bargaining agreement so provides, which is the portion of the fee that the union determines is not associated with its political and ideological projects; and (4) employees receive a notice each year of the amount to be deducted from their pay.

Unlike the IPLRA, section 575(h) provides an exception to the allocation of the fair share fee for nonmembers with bona fide religious objections.

Section 575(h) provides:

> (h) When a challenge is made under subsection (e)(2), the objector shall provide the exclusive representative with verification that the challenge is based on bona fide religious grounds. If the exclusive representative accepts the verification, the challenging nonmember shall pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative. If the exclusive representative rejects the verification because it is not based on bona fide religious grounds, the challenging nonmember may challenge that determination within forty (40) days from receipt of notification.

71 P.S. § 575(h). There is no provision within this section addressing what the parties are to do should they be unable to agree on a nonreligious charity. In the time between when this case was filed and the Janus decision, PSEA sought to fill in the missing contingency by implementing new written procedures in July 2016.

The new procedures provided for arbitration should PSEA and fee payer fail to agree on a charity. As pointed out by plaintiffs, the arbitration provision mirrors the provision in section 575(g) above which the Third Circuit in Hohe v. Casey declared in 1992 to be constitutionally invalid.

In the wake of Janus, PSEA have provided a sworn affidavit of Joseph Howlett, Assistant Executive Director for Administrative Services of PSEA, outlining the steps PSEA has taken to cease fair share fee collection, directives given to local associations to stop such collecting, and proof that plaintiffs have been reimbursed their fees with interest.

C. Mootness

Monumental changes in both the law and the facts have occurred since plaintiffs filed their second amended complaint. Plaintiffs assert that because Janus has not been applied to

Pennsylvania law, the case is not moot and PSEA's voluntary cessation does not moot the case. Section 575 is still the law in Pennsylvania and has not been repealed, and there appears to be no pending legislation seeking to repeal it. However, the Supreme Court's holding in Janus has made it clear that the collection of fair share fees from nonmembers is an unconstitutional abridgement of first-amendment rights.

The Pennsylvania Department of Labor and Industry recently released guidance on the impact of Janus in Pennsylvania, instructing public employers to stop collecting fair share fees from non-union members. See Pa. Dep't Labor & Indus., Guidance Regarding the June 2018 Janus Supreme Court Decision, Sept. 6, 2018. Though nothing has occurred within the legislative branch to direct a change in fair share fees, PSEA has voluntary ceased collecting the fee and the executive branch has issued guidance prohibiting the fees from being collected. Moreover, PSEA has advised all nonmember employees that PSEA can no longer collect fair share fees and has reimbursed these non-party employees for any fees collected and attributable to the post-Janus period of time. Both plaintiffs have been reimbursed the fees collected from them as well. There is no longer any harm suffered by plaintiffs.

1. The Argument that Janus Must be Applied to Pennsylvania Law is Without Merit

Plaintiffs correctly point out that Janus arose from a dispute over Illinois law and involved no Pennsylvania statutes. However, this fact is not a recognized exception to the mootness doctrine. Plaintiffs cite no case law for the proposition that a Supreme Court case cannot make moot a pending controversy based on similar facts. Instead, they argue by analogy to the lower court cases in the wake of Citizens United v. Federal Election Commission, 558 U.S. 310 (2010), and Obergefell v. Hodges, 153 S.Ct. 2584 (2015), for the conclusion that

despite PSEA's declaration that it will comply with Janus and that it has refunded fees already collected, the court must still issue an injunction against it.

Regarding the effect of Citizens United on lower court cases, plaintiffs first cite to General Majority PAC v. Aichele, No. 1:14–CV–332, 2014 WL 3955079 (M.D. Pa. Aug. 13, 2014). However, in Aichele, the Commonwealth of Pennsylvania agreed that a permanent injunction was necessary in light of Citizens United because Pennsylvania's Bureau of Commissions, Elections and Legislation refused to stop enforcing a contribution prohibition. See id. at *4 (The Commonwealth requested a permanent injunction that "go[es] further than [its] first" preliminary injunction, thereby rewriting the election code.). Because the unconstitutional contribution prohibition was still being enforced, the court held that it was necessary to "find [the contribution prohibition] unconstitutional and enter . . . [an] order permanently enjoining the Commonwealth from enforcing it." Aichele, 2014 WL 3955079 at *6.

Plaintiffs also cite to Republican Party of N.M. v. King, 741 F.3d 1089 (10th Cir. 2013) (holding that New Mexico's statute limiting political contributions was unconstitutional). In Republican Party, the defendant did not agree that Citizens United rendered the statute in question unconstitutional. Because the law was still being enforced, there was no mootness issue.

The cases brought following Citizens United or Obergefell are readily distinguishable from the case at hand. The laws in question in Citizens United and Obergefell are prohibitive, limiting political contributions and restricting individuals' right to marry. The Pennsylvania statute in question here, section 575, is permissive: it allows the collection of fair share fees when authorized by collective bargaining agreements. It neither mandates nor forbids any action. If there is no authorization of fair share fees, section 575 has no effect. More

importantly, however, the case at hand is distinguishable from the cases cited by Plaintiffs because in those cases, the plaintiffs had standing to bring their claims as the laws called into question were still being enforced.

2. PSEA's Voluntary Cessation of Fee Collection

Plaintiffs' claims grounded in an unconstitutional application of section 575(h) are based on the presupposition that a fair share fee may be coerced from them. They claim the fair share fee should be directed to the charity they select. However, because it is now clear that "States and public-sector unions may no longer extract agency fees from nonconsenting employees," Janus, 138 S.Ct. at 2486, it is also clear that there will be no need for an exception that permits such extracted fees to be designated to a charity by the objecting employee. In this sense, the four-year conflict over the designation of a charity in which the parties have been engaged, is not capable of repetition. Plaintiffs argue that PSEA's voluntary cessation of fee collection does not moot the case because PSEA has not met the high burden of showing that the conduct will not recur. Plaintiffs cite cases describing defendants not meeting this burden where the conduct involves a high school student who allegedly switched school districts for athletic reasons,[5] a wastewater treatment plant that allegedly violated provisions of the Clean Water Act,[6] a university with an unconstitutional sexual harassment policy,[7] and corporations allegedly violating antitrust law.[8] None of these involves a defendant who was engaged in conduct that

[5] Pa. Interscholastic Athletic Ass'n, Inc. v. Greater Johnstown Sch. Dist., 463 A.2d 1198 (Pa. Cmwlth. 1983) (action not mooted where high school athlete graduated, where other athletes could repeat the conduct in their final year of high school and evade appellate review if case mooted when they graduated).

[6] Friends of the Earth v. Laidlaw Env. Servs. (TOC), Inc., 528 U.S. 167, 168 (2000) (finding that lower court "erred in concluding that a citizen suitor's claim for civil penalties must be dismissed as moot when the defendant, after commencement of the litigation, ha[d] come into compliance with its NPDES permit").

[7] DeJohn v. Temple Univ., 537 F.3d 301, 309 (3rd Cir. 2008) (finding that where university did not change its sexual harassment policy until more than a year after the start of the litigation, and where university still defends its prior policy as constitutional and necessary, the change in policy does not render claim moot).

[8] United States v. W.T. Grant Co., 345 U.S. 629, 635 (1953) (Trial court did not abuse its discretion in finding that "there was no significant threat of future violation," where affidavits from defendant corporations stated that

was widely regarded as constitutional at the time, and ceased the conduct when a change in law showed it to be unconstitutional.

To determine whether a defendant's voluntary cessation of an activity renders a legal question moot, a court "consider[s] (1) the good faith of the defendant's announced intention to discontinue the challenged activity, (2) the effectiveness of the discontinuance, and (3) the character of the past violation." Cox v. City of Chester, 464 A.2d 613, 616 (Pa. Cmwlth. 1983). PSEA's intention to discontinue the collection of fair share fees has been clearly stated. PSEA has reached out not only to the plaintiffs in this case, but to all nonmembers who had been subject to fair share fees. PSEA demonstrated the good faith of its intention by ceasing collection immediately, and the effectiveness of the discontinuance by refunding any already collected fees attributable to any time subsequent to the Supreme Court's decision in Janus.[9] The "character of the past violation" here weighs in PSEA's favor, as the collection of fair share fees was recognized to be constitutional until the Supreme Court's decision in Janus overturned Abood. Therefore all three factors weigh in favor of a finding that PSEA's cessation of fair share fee collection renders the legal question at hand moot.

D. Plaintiffs' As-Applied Challenge

Plaintiffs' claims alleged in their second amended complaint, grounded in an allegedly unconstitutional application of section 575(h), are based on the presupposition that a fair share fee may be coerced from them as provided for in section 575(b). Section 575(b) provides, "If the provisions of a collective bargaining agreement so provide, each nonmember of a collective

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defendants had been unaware until the suit was filed that their conduct violated governmental antitrust law, and had not committed more than one violation.).

[9] The Pennsylvania Department of Labor and Industry recently released guidance on the impact of Janus in Pennsylvania, instructing public employers to stop collecting fair share fees from non-union members. Pa. Dep't Labor & Indus., Guidance Regarding the June 2018 Janus Supreme Court Decision, Sept. 6, 2018. This further confirms the remoteness of the possibility of PSEA resuming its collection of fair share fees.

bargaining unit shall be required to pay to the exclusive representative a fair share fee." 71 Pa.C.S. § 575(b). However, section 575 is no longer being applied to plaintiffs at all. The harm alleged by plaintiffs in their second amended complaint is that "[a]s a direct result of the PSEA's construction of section 575, [plaintiffs] have suffered in the past, and will continue to suffer in the future, nonmonetary damages including violations of their constitutional and statutory rights and the inability to donate to a 'nonreligious charity' in accordance with section 575(h)." Second Am. Compl. ¶ 13. Plaintiffs have not demonstrated that there is any reason to expect that PSEA would reinstate the collection of fair share fees.

Plaintiffs' second amended complaint seeks declaratory and injunctive relief. Under the Pennsylvania Declaratory Judgments Act, declaratory relief is appropriate when a plaintiff's "rights, status, or other legal relations are affected by a statute." 40 Pa.C.S. § 7533. A plaintiff must have standing to seek a declaratory judgment:

> For standing to exist, the underlying controversy must be real and concrete, such that the party initiating the legal action has, in fact, been aggrieved. . . . [T]he core concept of standing is that a person who is not adversely affected in any way by the matter he seeks to challenge is not "aggrieved" thereby and has no standing to obtain a judicial resolution to his challenge. A party is aggrieved for purposes of establishing standing when the party has a substantial, direct and immediate interest in the outcome of litigation. A party's interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, a party's interest is immediate when the causal connection with the alleged harm is neither remote nor speculative.

Com., Office of Governor v. Donahue, 98 A.3d 1223, 1229 (Pa. 2014) (citations, quotations, and alterations omitted). Now that PSEA has stopped collecting fair share fees, section 575 no longer affects either plaintiff's "rights, status, or other legal relations." The permanent injunction sought by plaintiffs is only appropriately granted in cases where the plaintiffs "establish [their] clear right to relief. . . . The part[ies] need not establish either irreparable harm or immediate

relief, and a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at law." Pestco, Inc. v. Associated Prods., Inc., 880 A.2d 700, 710 (Pa. Super. 2005) (quoting Buffalo Twp. v. Jones, 813 A.2d 659, 663–64 (Pa. 2002)). Whether or not the application of section 575 to plaintiffs would constitute a "legal wrong for which there is no adequate redress at law," here there is simply no basis for a finding that an injunction is necessary to prevent any legal wrong to plaintiffs. Because the relief sought by plaintiffs would have no real effect, the issue is moot.

E. Public Interest Exception to the Mootness Doctrine

Alternatively, plaintiffs contend that even if the case is moot the court should decide it because of public policy implications. Plaintiffs argue that the public interest exception applies here because of the first-amendment issues involved. The public interest exception allows courts to "decide[] moot questions or erect[] guideposts for future conduct or actions," but applies "only in very rare cases where exceptional circumstances exist or where matters or questions of great public importance are involved." Wortex Mills v. Textile Workers Union of Am., C.I.O., 85 A.2d 851, 857 (Pa. 1952). There is no compelling reason to extend the public interest exception to the case at hand, where the defendant agrees that collection of fair share fees is now unconstitutional under Janus and even the state Department of Labor and Industry has issued guidance confirming that fair share fees are no longer to be collected.[10] Given the remoteness of the possibility that PSEA would reinstate fair share fees in this circumstance, as well as the lack of a need for "guideposts for future conduct or actions," the court declines to decide the case under the public interest exception.

F. Attorney's Fees and Costs Under 42 U.S.C. 1988

[10] See supra, note 7.

Plaintiffs brought their claims under 42 U.S.C. 1983, and seek to have the court award them attorney's fees and costs incurred in this suit. If plaintiffs believe they are the "prevailing parties" as defined in 42 U.S.C. 1988, they shall file a motion with supporting documentation by November 23, 2018. Any opposition to the motion shall be filed by December 7, 2018, and any reply shall be filed by December 14, 2018.

VI. CONCLUSION

While the change in law at the United States Supreme Court level did not automatically render the legal issue at hand moot, PSEA's voluntary actions—its good-faith cessation of fair share fee collections and the steps it has taken to refund fair share fees and prevent their future collection—have created a change in facts sufficient to moot this case. No exception to the mootness doctrine is applicable here, because there is no basis for a reasonable anticipation that PSEA would resume collection of fair share fees from plaintiffs. There being no actual controversy in this case, the action must be dismissed for lack of subject matter jurisdiction.

IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

JANE LADLEY and CHRISTOPHER MEIER, Plaintiffs	:	
v.	:	No. CI-14-08552
PENNSYLVANIA STATE EDUCATION ASSOCIATION, Defendant.	:	

ORDER

AND NOW, this 29th day of October 2018, upon review of plaintiffs' and defendant's crossclaims for summary judgment and supporting briefs, plaintiffs' motion is hereby DENIED and defendant's motion is GRANTED. The above-captioned action is DISMISSED. If plaintiffs believe they are the "prevailing parties" as defined in 42 U.S.C. 1988, they shall file a motion with supporting documentation by November 23, 2018. Any opposition to the motion shall be filed by December 7, 2018, and any reply shall be filed by December 14, 2018. The prothonotary is directed to close this case.

BY THE COURT:

LEONARD G. BROWN, III, JUDGE

ATTEST: C. Herhart

Copies to: David R. Osborne, Esquire ESERVED
Justin T. Miller, Esquire MAIL-1
Joseph F. Canamucio, Esquire MAIL-1
Thomas W. Scott, Esquire ESERVED

NOTICE OF ENTRY OF ORDER OR DECREE
PURSUANT TO PA. R.C.P. NO. 236
NOTIFICATION - THE ATTACHED DOCUMENT
HAS BEEN FILED IN THE CASE
PROTHONOTARY OF LANCASTER CO., PA
DATE: 10-29-18

EXHIBIT A

Penn Manor School District

&

Penn Manor Education Association

Negotiated Agreement

July 1, 2017 – June 30, 2021

www.pennmanor.net

TABLE OF CONTENTS

AGREEMENT

MADE AND CONCLUDED AS of this 3rd day of April, 2017

BY AND BETWEEN PENN MANOR SCHOOL DISTRICT, a school district organized and existing under the laws of the Commonwealth of Pennsylvania, having its principal office at 2950 Charlestown Road, Lancaster County, Pennsylvania, (hereinafter called "DISTRICT");

AND

PENN MANOR EDUCATION ASSOCIATION, the duly certified representative of the professional employees of the District, as set forth on the Certificate issued to it by the Pennsylvania Labor Relations Board (hereinafter called "ASSOCIATION")

WITNESSETH THAT:

The District and the Association, intending to be legally bound hereby, for themselves and each of their respective successors and assigns, covenant and agree, as follows:

I. Term of Agreement

The term of this agreement shall be from July 1, 2017, until June 30, 2021.

II. Effect

This Agreement supersedes and replaces effective July 1, 2017, the prior Negotiated Agreement, which will expire June 30, 2017.

III. Recognition

The Board hereby recognizes the Association as the exclusive and sole representative for collective bargaining for all employees included in the bargaining unit as certified and determined by an election conducted by the Pennsylvania Labor Relations Board.

IV. Definitions

A. **Teachers or Employees** — All professional employees included in the bargaining unit. The Coordinator of Alternative Education for Disruptive Youth (CAEDY) shall be deemed to be an employee of the Bargaining Unit, but will be subject to an alternative compensation package and alternative work schedule than that applicable to other employees.

B. **Board or Public Employer or District** — Penn Manor School District Board of School Directors.

C. **Association** — Penn Manor Education Association.

V. Negotiation of a Successor Agreement

A. The District and the Association agree that negotiations for a successor agreement shall commence following the receipt by the Board of a request for such negotiations from the Association, which request shall be made on or before January 10, 2021 under the terms of ACT 88 of 1992.

B. Each party agrees to make information available to the other party upon reasonable request. Requests for information shall be made in writing and, if made by the Association, shall be addressed to the District Superintendent, signed by the President or Vice-President of the Association and a duplicate copy thereof shall be sent to the Secretary of the Board. Requests for information made by the District shall be signed by the Superintendent or the President of the Board and shall be sent to the President of the Association. Responses to the requests shall be given by the party receiving the request to the party making it within seven (7) calendar days after the request is received.

VI. Teacher Work Year

During the length of this contract, the teacher work year shall be contained within the confines of the school calendar as determined by the Board, but shall not exceed one hundred ninety (190) days, comprised of not more than one hundred eighty-two (182) days when pupils are in attendance and the remainder (not to exceed a total of one hundred ninety (190) days) shall be clerical, orientation, in-service, parent conference or record keeping days. The teacher work year for teachers employed on a ten (10) month contract shall be two hundred nine (209) days, and salaries of those teachers shall be increased ten percent (10%) from the attached schedules. Middle school counselors are employed on a 199 day work year. The salaries of those teachers shall be increased five percent (5%) from the attached schedule. The CAEDY is employed on a 195 day work year. The salary of the CAEDY shall be increased two point six percent (2.6%) from the attached schedule.

The last school day before Winter Break will be an early dismissal day for both teachers and students.

One day prior to the opening of school shall be designated as a room preparation day and 1/2 day at or near the end of each school year shall be scheduled for record keeping or clerical duties. One day of the work year shall be dedicated for Elementary Report Card/Conference Preparation Day for the elementary staff and Secondary Change-Over Day for record keeping or clerical duties for the secondary staff. One of the required in-service days will be for the purpose of completing DSSD requirements in a flexible, teacher-directed format. Teachers under formal observation will also receive in-service credit.

Back to School Night/Elementary Conference Committee – the Association and District will form a Back to School Night/Elementary Conference Committee that

will be charged with making a proposal for revisions to both Back to School Night and Elementary Conference scheduling for incorporation into the 2018-2019 school calendar. Both parties will have equal representation on the Committee.

An exception to the defined teacher work year is made for one 12-month teaching position in the Agriculture Department. The teacher assigned to the 12 month Agriculture position is assigned 20 vacation days per year during non-instructional days and is permitted the district approved holidays. The teacher serving in this position shall receive 125% of pay based on that individual's service and degree status.

VII. Teaching Hours and Teaching Duties

A. Teaching hours and teaching duties shall be as determined by the Board, but in no event shall the length of a teacher day be more than seven (7) hours and five (5) minutes on duty, exclusive of lunch period, for secondary teachers; or more than six (6) hours and fifty-five (55) minutes on duty, exclusive of lunch period, for elementary teachers. The length of lunch periods, availability of preparation times, ability of teachers to leave the building, etc., shall be in accordance with State Law or the policy of the Board, whichever is applicable. In addition, teachers shall, on request, make reasonable appointments for conferences with students and parents and shall attend faculty meetings, unless excused from attendance by the building principal.

B. In the event a teacher shall be requested and agrees to teach more than the teaching duties (excluding homebound instruction, tutoring, summer school, "Twilight School" alternative schooling, adult education, and curriculum writing) established for teachers by the Administration or the Board, then such teacher shall receive additional compensation for each such hour of additional teaching duties based on the teacher's hourly per diem rate. For example, a teacher who normally teaches less than 100% of the teaching schedule will be paid according to this section for time worked as a district teacher substitute. (Example: $50,490 divided by 190 days - i.e., the number of days in a year) equals $265.74 divided by 7 hours and 5 minutes = $37.52 per hour.)

C. Elementary teachers shall be relieved of teaching responsibilities for a minimum of 30 consecutive minutes during those times when their classes are receiving instruction from such teaching specialists. Elementary specialists' 30 consecutive minute preparation period will also occur during the student day. Nothing precludes the District from making modifications to the length of elementary specials within this framework.

D. The times for elementary recess in each building shall be scheduled so as to facilitate sharing of supervision duties by those teachers who so desire,

provided, however, that nothing contained herein shall be deemed to require any teacher to share supervision duties or to permit inadequate supervision of recess by teachers as determined by the Superintendent.

E. The daily teaching duties at the secondary level will include not less than one (1) period of unassigned preparation time, which period shall be the same average length as the length of the normal instructional periods as established by the Administration or the Board. Teachers having dual assignments (e.g., high school students and middle school students) shall be granted a prorated preparation period according to their actual teaching assignment (i.e., one block and three traditional teaching periods equal one traditional planning period). The daily teaching duties at the secondary level will include not less than one (1) period of unassigned preparation time per day, which period shall be the same average length as the length of the normal instructional periods as established by the Administration or the Board. Such preparation time is for the purpose of engaging in, and shall be used for, tasks related to the teacher's assigned duties unless an exception is granted upon request to the building principal. Nothing contained in this paragraph shall be deemed to permit a substantial decrease in total preparation time by reason of a major alteration in the length of instructional periods, except in the event of a change in schedule mutually agreed upon by administration and association.

F. Preparation for part-time Bargaining Unit teachers shall be as follows:

- One teaching block equals one-third of a block for preparation (30 minutes).
- Two teaching blocks equals two-thirds of block for preparation (60 minutes).
- Three teaching blocks equals one block for preparation (85-90 minutes).

Such preparation time for part-time Bargaining Unit Members is for the purpose of engaging in and shall be used for tasks related to the teacher's assigned duties unless an exception is granted upon request to the building principal. Nothing contained in this paragraph shall be deemed to permit a substantial decrease in total preparation time by reason of a major alteration in the length of instructional periods, except in the event of a change in schedule mutually agreed upon by administration and association.

G. Teachers involved in Parent Conference evening sessions and Meet the Teacher Night activities shall be dismissed two (2) hours early either on the date of the event or on the Friday immediately following the event. The decision designating the target day for the two-hour early dismissal

shall be made in cooperation between the Superintendent and the association officers.

H. The participating music staff in the elementary and middle schools will be given approximately one hour release time on a school day agreed upon by the teacher and the school principal for "music night." In addition, participating art staff will be given approximately one hour release time on a school day agreed upon by the teacher and the school principal for "district art show."

I. Elementary specialists will receive amounts of release time equivalent to amounts of release time provided to other elementary teachers.

J. The administration may direct the social workers and the CAEDY to work hours outside of the hours described above in Paragraph A. The individuals in the positions noted herein may be required to work weekends and during the summer to meet the expectations of their position. The administration recognizes that in light of this requirement, these employees may be permitted to take time off consistent with the contract during what would normally be a regular working day for the rest of the bargaining unit. In the event these employees request time off during regular school time, they must obtain the necessary permission from their immediate supervisor.

VIII. Reimbursement of Expenses

A. Teachers required to use their own automobiles in the performance of their duties shall be reimbursed for all such travel at the prevailing, per mile rate as determined by the Internal Revenue Service. Teachers assigned to more than one (1) school per day shall be reimbursed for all driving done between schools, with one (1) school being designated as their operation base. Teachers who perform homebound teaching duties shall be reimbursed for any extra mileage required by reason of such teaching duties.

B. Mileage reimbursement will be based upon additional required mileage. (For example, a teacher will not be reimbursed for mileage which would have been driven despite the homebound teaching duties. Assume that a teacher would drive 25 miles to and from school. If that teacher performed homebound instruction which required a total of 30 miles to school, to homebound instruction, and home, the reimbursement would be for 5 miles.)

IX. Grievance Procedure

Any grievance shall be resolved in accordance with the Grievance Procedure attached to this agreement as Appendix "A."

X. Professional Compensation

Effective July 1, 2017, each member of the bargaining unit shall be repositioned on the attached salary schedule, regardless of years of service in the District, at the lowest step number that corresponds to their 2016-2017 column placement for which s/he receives at least $1,000 increase over his/her 2016-2017 base salary for the exact same column in 2017-2018 as 2016-2017. This is a one-time-only step adjustment applied before any column movement applies for those employees eligible to receive lateral movement on the salary schedule for 2017-2018. (Refer to the Step Placement Chart included herein for 2017-2018 for additional clarification.) Effective July 1, 2018 for 2018-2019 and each contract year thereafter for the life of this Agreement, each employee shall advance one (1) step ***for each cumulative year of service*** within their applicable column until the employee reaches step 17 on the salary schedule, where the employee shall remain for the life of this Agreement. (For example, an employee with 4.49 cumulative years of service would be considered to have 4 years of service; and an employee with 4.50 cumulative years of service would be considered to have 5 years of service.) The salary of each teacher for the 2017-2018, 2018-2019, 2019-2020, 2020-2021 school years is set forth in the schedules attached as Appendix "B."

A. Newly hired professional employees shall be placed in the proper credit column of the salary scale and at the longevity position as agreed upon at time of hiring.

B. In order to receive a "degree plus" increment, a teacher must submit to the Superintendent, prior to June 30, a "notification of credits" on the form provided by the Administration. Course work must be completed and an official grade report pertaining to those credits which qualify that person for the increment must be submitted to the Superintendent prior to January 1. Receipt of the official transcript may occur after the January 1 cut off date. All teachers, irrespective of length of service, are eligible for "degree plus" increments.

C. New employees who have earned a Bachelor's degree in an area other than education and with credits beyond a Bachelor's degree, with the exception of student teaching credits, will receive credit for post-Bachelor's credits toward advanced placement on the salary schedule.

D. Special Education teachers, speech and language instructors and teachers of gifted shall receive twenty-six hundred dollars ($2,600) per year in addition to the basic salaries set forth in Appendix "B."

E. Considerations will be made recognizing the specialized requirements to achieve a Master's level degree for school psychologists, professional school counselors, and speech and language specialists. These compensation guidelines are outlined in Appendix "E."

F. I. E. P. Preparation Compensation

1. Special education teachers, excluding teachers of the gifted and speech and language teachers, who are assigned to prepare and monitor more than 30 separate student's Individual Education Plans per school year shall be compensated one hour (at the professional rate) for each I. E. P. above 30. By November 1 of each school year the Coordinator of Special Services shall verify to the Superintendent the I.E.P. preparing and monitoring load of each special education teacher. Teachers preparing and monitoring more than 30 I.E.P.s will be informed in writing by the Superintendent. A payment equal to ½ of the stipend for I.E.P.s above 30 will be made to the qualifying teacher before November 30. By June 1 of each school year the Coordinator of Special Services shall perform a second review of I.E.P. caseload status. Qualifying teachers from the November count and newly qualifying teachers will receive payments by June 30. A reconciliation of the November payment will be made with the second payment in June. Teachers receiving a 50% payment in November will receive a payment equal to the first payment and adjusted for additional I.E.P.s. Newly qualifying teachers will receive full payment for I.E.P. monitoring above 30. Long-term substitute teachers are eligible to receive payment for preparing and monitoring I.E.P.s in excess of 30. No teacher shall be eligible for payments separate from the November and June targets.

2. Documentation provided by teachers shall be submitted to the Coordinator of Special Education for verification prior to submission to the business office.

3. Special education speech and language teachers shall be reimbursed for I.E.P. preparing and monitoring on the same schedule as outlined in F,1 above. Compensation for speech and language teachers shall be at 50% of the hourly professional rate for separate I.E.P. preparing and monitoring above a total of 30. A 50% speech and language teacher would receive the full hourly rate for each I.E.P. monitored above 30.

4. Special Education teachers, Speech teachers and Gifted teachers will receive 2 release days to work on IEPs and other special education/gifted paperwork. For teachers with a case load of over 30 students, an additional release day will be granted. Scheduling release days requires prior approval of the Director of Special Services (or designee).

G. To be considered for granting of a "Master's plus" increment, a teacher must have earned credits subsequent to receipt of the Master's degree or subsequent to receipt of a Master's equivalent certificate from the

Pennsylvania Department of Education. Although courses used to qualify for a "Master's plus" increment must normally be at the graduate level, under special circumstances undergraduate courses may be approved by the Superintendent for consideration for the Master's plus increment. Bargaining Unit Members who have a Master's degree or are enrolled in a Master's degree program as of April 4, 2011, that is leading to the receipt of an actual Master's degree shall not be subject to the above requirement about having earned credits subsequent to the receipt of a Master's Equivalent certificate from the Pennsylvania Department of Education. Bargaining Unit Members hired on or after July 1, 2011, are not eligible for the Master's Equivalency endorsement recognition and placement on the Master's column. Bargaining Unit Members who only have a Master's Equivalency endorsement are no longer eligible for column movement. Effective July 1, 2016, all "Master's plus" column movement shall require a Master's degree.

H. Teachers who usually work less than one-half of the regular teaching schedule shall receive modified fringe benefits (i.e., hospitalization, income protection, dental care, vision fund and life insurance) proportionate to the time worked. This will be accomplished by agreement with the teacher either by the omission of the benefit or pro rata contribution by the teacher for the full benefit. Under the high school block schedule, teachers teaching two thirds of a teacher's normal teaching schedule as established by the Board are considered to be 66-2/3% employees while teachers teaching one third of a teacher's normal teaching schedule as established by the Board are considered to be 33-1/3% employees.

Teachers who usually work 50% of the regular teaching schedule shall have the above listed fringe benefits paid for by the District for the employee only (less the applicable payroll deduction). If any of the above listed benefits are extended to include spouse and/or dependents, the costs of such benefits shall be borne by the employee based upon the expected floating rate.

I. Personal leave and sick leave shall be prorated for any teacher hired in any school year after the 61st working day.

J. Long-term substitute teachers (i.e. those persons employed in professional positions and whose employment at the time of hiring is expected to continue for a semester or more) shall:

1. Be paid a per diem rate equal to the applicable credit column divided by one hundred ninety (190).

2. Be entitled to all benefits of the contract between the District and Association except that a long-term substitute teacher:

a. shall not be guaranteed continuity of employment except on a day-to-day basis, it being specifically understood that the employment of a long-term substitute teacher may be terminated (or employment not continued) with or without cause at any time;

b. if hired for a permanent position, have continuous service as a long-term substitute recognized for purposes of longevity on the salary schedule and be reimbursed according to Article XXV (Professional Development and Educational Improvement) for any reimbursable amounts expended within the prior two (2) years while such teacher was a long-term substitute within the Penn Manor School District;

c. have no benefits pursuant to Article XVI-B (Income Protection Insurance) and Article XXV (Professional Development and Educational Improvement); and

d. have prorated benefits for sick leave (as provided pursuant to the school code) and Article XX (Personal Leave Day).

K. A teacher who has been furloughed will, if properly certified, be offered a position in preference to a long-term substitute teacher.

L. Teachers shall be paid according to the schedule provided in Appendices "B" and "C."

M. In the event that the Commonwealth of Pennsylvania shall adopt (and fund without cost to the District) legislation providing for supplements to teachers' salary, such salary supplemental funds will (so long as such supplementary funds supplied by the Commonwealth are not available for general budgetary purposes) be available for teachers and the allocation among teachers of such funds will be (unless established by legislation) negotiated with the Association.

N. If the District is unable to maintain the prior fiscal year's level of funding due to a loss of revenue at the state and local levels as a result of changes to or elimination of the property tax system during the first two years of this Agreement, the parties agree to reopen this Agreement for the 2020-2021 year for the purpose of salaries only. The loss of revenue must exceed 3% of the prior year's level of funding.

XI. Association Business

A. The District shall allow members of the Association to attend Association conventions and other meetings called for the Association's business which are not specifically related to curriculum, supervision or instruction; provided, however, that no more than five (5) persons shall be permitted to attend any convention or other meeting on a given day, that no individual shall be absent to attend such meetings or conventions more than six (6) days per year and that no more than a total of fifteen (15) days per year shall be used for such purposes by the Association. The President of the Association shall notify the Superintendent in writing (through the use of email) when an Association member is absent due to attendance at Association business.

B. The elected President of the Association will be provided with a schedule that consists only of teaching and is free from all other non-teaching duties.

XII. Vacancies

A. While it is understood that the Board retains the right to make assignments of professional employees, the Board recognizes that it is desirable in making assignments to consider the interests and aspirations of its teachers. Requests by a teacher for a transfer to a different class, building or position shall be made in writing, one (1) copy of which shall be filed with the Superintendent and one (1) copy of which shall be filed with the Association. The application shall set forth the reasons for transfer; the school, grade or position desired; and the applicant's academic qualifications. Such requests shall be renewed once each year prior to April 1 to assure active consideration by the School District.

B. The Board agrees to make known to teachers (through the use of email with an electronic copy to the President of the Association) all vacancies occurring, giving equal consideration to present teachers in making appointments to these vacancies, while reserving the right to make the final decision concerning such appointments. If specifically requested, any teacher who applies in writing and within one week of the posting for a vacant position, including a head coaching/co-curricular lead position, shall be granted an interview with the appropriate administrative person; and, if such teacher is not selected for the vacant position, such teacher

shall upon request be entitled to a written statement as to the reason such teacher was not selected. It is agreed, however, that in no event shall the unintentional failure to provide such an interview be deemed to give any rights to any applicant for appointment or to void any appointment to any vacancy, nor shall the reason why such teacher was not selected for the vacant position be the subject of a grievance or subject to the grievance procedure.

C. This section, Vacancies, shall not apply to long-term substitute positions.

XIII. Illness or Disability

A. Each teacher shall be informed by the District, at the time of the first paycheck subsequent to the second Monday in September of each year, as to his or her total accumulated sick leave.

B. A teacher who is absent due to injury in the course of a teacher's employment with the District shall be compensated based on provisions outlined in the District's workers' compensation plan. A teacher will be permitted to claim one sick day, until sick days are exhausted, for every three days of leave prompted by the injury.

C. A teacher may use no more than five (5) sick days per school year to care for a member of the teacher's immediate family. (Immediate family shall be as defined by the section XXII of the negotiated agreement.)

D. Sick Leave Bank

1. A "Sick Leave Bank" was established July 1, 2005.

2. Provisions governing the establishment and operation of the Sick Leave Bank have been established through a cooperative effort between the Association and the District.

3. The Superintendent may ask for access to the minutes of the Sick Leave Committee. A request for minutes must be provided in writing to the President of the Penn Manor Education Association. Minutes of the Sick Bank Leave Committee must be provided to the Superintendent within 10 working days following receipt of the written request.

XIV. Health Insurance

A. **Hospitalization Insurance:**

The Board shall make available health care benefits equal to or better than those previously adopted and as adjusted based on the negotiated contract for the years 2017-2018, 2018-2019, 2019-2020, and 2020-2021. Terms of coverage and benefit

schedules are found in the Plan Document and Summary Plan Description for the Penn Manor School District Employee Healthcare Benefit Plan.

The Board shall make available, through payroll deductions, coverage for members, members' spouses, and members' dependents as specified under The Patient Protection and Affordable Care Act.

Monthly payroll deductions for healthcare:

Calendar year basis	**2018**	**2019**	**2020**	**2021**
Single	**9% based upon 7/1/2017 Expected Floating Rate less dental deduction amount**	**9% based upon 7/1/2018 Expected Floating Rate less dental deduction amount**	**10% based upon 7/1/2019 Expected Floating Rate less dental deduction amount**	**10% based upon 7/1/2020 Expected Floating Rate less dental deduction amount**
2 Party				
Family				

The annual in-network deductible under the point of service plan will be as follows:

Effective Date	Individual	Family	
January 1, 2018	$500	$1,000	Waived if Lancaster Regional/Heart Of Lancaster used
January 1, 2019	$500	$1,000	Waived if Lancaster Regional/Heart Of Lancaster used
January 1, 2020	$750	$1,500	Waived if Lancaster Regional/Heart Of Lancaster used
January 1, 2021	$750	$1,500	Waived if Lancaster Regional/Heart Of Lancaster used

The annual out-of-network deductible under the point of service plan will be as follows:

Effective Date	Individual	Family
January 1, 2018	$1,000	$2,000
January 1, 2019	$1,000	$2,000
January 1, 2020	$1,500	$3,000
January 1, 2021	$1,500	$3,000

Out-of-network co-insurance expense beyond the listed deductibles shall be paid at an 80% district/20% member rate subject to the usual and customary charge.

The maximum out-of-pocket for combined in-network and out-of-network charges, which includes deductibles, medical co-pays, pharmacy co-pays, and amounts over reasonable and customary charges will be as follows:

Effective Date	Maximum out-of-pocket Individual	Maximum out-of-pocket Family
January 1, 2018	$4,000	$8,000
January 1, 2019	$4,000	$8,000
January 1, 2020	$6,350	$12,000
January 1, 2021	$6,350	$12,000

The doctor's visit office co-pay under the current plan will be as follows:

Effective Date	Primary Care Physician Visit	Specialist Visit
January 1, 2018	$15	$40
January 1, 2019	$15	$40
January 1, 2020	$15	$45
January 1, 2021	$15	$45

Urgent Care and Emergency Room Co-pays:

Effective Date	Urgent Care	Emergency Room
January 1, 2018	$35	$100
January 1, 2019	$35	$100
January 1, 2020	$40	$100
January 1, 2021	$40	$100

In the event that a member has both an Urgent Care and Emergency Room visit for the same event, the member may submit receipts for reimbursement of $35 (2018-2019) and $40 (2020-2021) from the District.

B. **Prescription:**

The Board shall make available to full time eligible members and their eligible dependents a mandatory generic four-tiered formulary prescription purchase plan. Prescription co-pay charges shall be as follows:

Effective Date	Generic	Brand Name	Non-formulary	Injectables/Specialty
January 1, 2018	$10	$30	$50	$50
January 1, 2019	$10	$30	$50	$50
January 1, 2020	$10	$35	$60	$100
January 1, 2021	$10	$35	$60	$100

Each 90 day mail-in prescription order requires a payment equal to twice the prescription co-pay amount.

Monthly payroll deductions for healthcare - Appendix "D"

Birth Control Prescription Coverage:

1. Birth control prescriptions shall be included in the District's Prescription coverage plan.

2. Prescription co-pays and prescription mail-order co-pays are the same for prescription birth control as for all other prescriptions.

3. Prescriptions commonly referred to as the "day after pill" or prescriptions designed to impact on existing pregnancies are excluded from this coverage.

C. Spousal Surcharge

The spousal surcharge applies when a working spouse of a Bargaining Unit Member has access to group health insurance coverage at the spouse's place of employment and chooses not to enroll in that health benefit plan. The surcharge amount shall be determined by the chart below. Notwithstanding the foregoing, the District will waive the spousal surcharge temporarily if the Bargaining Unit Member's spouse cannot enroll in the Bargaining Unit Member's spouse's health benefit plan until the next open enrollment. A Bargaining Unit Member who wants coverage for a spouse under the Bargaining Unit Member's District-sponsored health insurance plan must actively enroll the spouse each year during open enrollment. The plan will not automatically reenroll a covered spouse. Annual enrollment includes an affirmation process that requires Bargaining Unit Members to read and agree to certain statements about enrollment of a spouse. The Bargaining Unit Member must affirm that the Bargaining Unit Member intends to enroll his/her spouse and that the spouse does not have access to insurance through his/her job. As part of the affirmation, the enrollment process shall include warnings about misrepresentation and also the District shall have the authority to audit this requirement periodically and the Bargaining Unit Member is mandatorily required to participate in such audit procedures.

Effective Date	Annual Amount
January 1, 2018	$1,200 ($100/mo.)
January 1, 2019	$1,200 ($100/mo.)
January 1, 2020	$2,400 ($200/mo.)
January 1, 2021	$2,400 ($200/mo.)

D. **Enrollments:**

There will be a one-month period each calendar year as a true Open Enrollment Period, where plan participants may modify their existing coverage. This date will be determined by the District.

Enrollments are permitted within 30 days of a qualifying event. Late enrollments (beyond the 30 day period) are not permitted. A qualifying event is:

1. A change in family status which affects those covered (marriage, death, divorce, birth, or adoption).

2. A change in the spouse's employment status causing a loss of health or dental coverage for the plan participant or his/her dependents.

3. A change in the plan participant's employment status causing a loss of coverage.

4. A substantial change in benefits and/or premium costs takes place. This is subject to appeal through the normal grievance procedures.

5. A change in employment status that results when a permanent 50% or less teacher is assigned to a permanent full time (51% or higher) position shall also be considered a qualifying event.

6. All long-term substitute teachers will be terminated from the School District's health care plan at the end of the substitute teaching contract and will be eligible to purchase continuing health care benefits pursuant to COBRA. Thereafter, at the beginning of the subsequent school year, these former long-term substitute teachers who have accepted a permanent contract with the District will be permitted to enroll in the School District's health care plan as a new hire, pursuant to the plan's enrollment provisions.

A plan participant who fails to make an election change during the enrollment period will automatically retain his or her present coverage.

Plan participants will receive detailed information regarding the enrollment period from the Penn Manor School District.

E. **Wellness Program Participation**

During only the 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years, the district will offer a voluntary wellness program with an opportunity for covered employees to earn a payroll contribution reduction of up to the equivalent of two months single contribution rate. This

wellness program will be developed in consultation with the Association and will be reviewed annually.

F. **Hospitalization and Dental Insurance Waiver Payment:**

1. As a method to create an incentive for the effective utilization by eligible teachers of the hospitalization and dental insurance plan available to them by the Board or otherwise, the Board agrees to sponsor an Internal Revenue Code, Section 125 Plan. This sponsorship is contingent upon the same being permitted pursuant to law.

2. Under the Section 125 Plan, eligible teachers shall, prior to July 1 of each year of this Agreement, have the option to elect not to be covered under any Board-sponsored hospitalization and dental plan for the period of July 1 to June 30 (the plan year). Any teacher who waives all hospitalization/dental coverage for which he/she is eligible shall be eligible to receive a cash payment in the amount of $2,000 for the plan year. A pro rata portion of the $2,000 payment will be applied to those teachers working less than 100% of the schedule. The pro rata distribution will be determined by the actual percent the teacher is working. For example, a teacher who works 2/3 or 66 2/3% would be eligible to receive a payment of $1,333.33 under the terms of this section.

   Any teacher who has so waived coverage and received a cash payment and (i) is permitted under the terms of the Section 125 Plan to revoke the Board's waiver for the remainder of the plan year or (ii) is no longer employed by the District until the end of the plan year for which coverage has been waived, agrees, if the payment has been paid for a period when coverage is in place or post-termination of employment, to reimburse the District for an amount equal to the number of calendar days left in the plan year on the date of the revocation or termination divided by the total days in the calendar year times $2,000. Payment by the District for the cash payment will be made in increments of $200 per pay on the second pay of the month starting in September and continuing until and including June.

3. Proof of other hospitalization coverage must be presented prior to the election of the hospitalization insurance waiver payment. Such proof shall be in accordance with the regulations of the Internal Revenue Service.

G. **Dental:**

1. Monthly payroll deductions for dental benefits shall be:

Effective Date	Single	Two-Party	Family
January 1, 2018	$5	$10	$15

2. Members who have opted to participate in the District's Insurance Waiver Payment option are not eligible for dental coverage.

3. Members cannot qualify for a broader level of dental coverage compared to that member's health care coverage level. (A member who is enrolled in the health care plan at the two-party level can not participate in the dental care program at the family level.)

H. **Retiree Hospitalization:**

1. Eligibility. A teacher who retires is eligible for benefits under this section if all of the following conditions are satisfied:

   a. Except in the event of a teacher's sickness or disability, the date of retirement shall be at the conclusion of the school year and the teacher shall give the School District a preliminary letter of intent to retire by January 1 in the year of retirement. For those teachers who provide the District with the preliminary letter of intent by January 1, final irrevocable notice must be provided in writing to the District no later than March 1 in the year of retirement;

   b. The teacher is 50 years of age or older as of the date of retirement (age will be determined by the birthday nearest to the date of retirement);

   c. The teacher has been employed by the School District for at least fifteen (15) consecutive years immediately preceding the date of retirement;

   d. The teacher as of the date of retirement accepts benefits under the Pennsylvania School Employees' Retirement System;

e. The teacher on or before the date of his/her retirement in writing notifies the School District of his/her election to continue to receive hospitalization benefits under this Section E; and

f. The retired teacher pays as and when due the costs of such coverage.

2. Benefits. A retired teacher who is eligible for and who elects benefits under this section will have the option for the same hospitalization benefits which the School District from time to time makes available to teachers. These benefits will change (i.e. increase or decrease) following the teacher's retirement as and when there are changes in the hospitalization benefits which the School District makes available to teachers who are then employed by the School District. The retired teacher's spouse and dependent children may also be covered if elected by the retired teacher and covered on October 1 preceding the date of retirement. Dependent children born or adopted after October 1, preceding the date of retirement, and the spouse of a teacher who is married, after October 1, preceding the date of retirement, may also be covered if elected by the retired teacher and covered as of the date of the teacher's retirement.

3. Duration of Benefits. So long as the amount due for such benefits is paid as and when due, coverage (a) for the eligible retired teacher may be continued until the retired teacher is eligible for a government funded health care insurance program and (b) for the retired teacher's spouse and/or dependent(s) may be continued until the earlier of (i) the date on which coverage for the retired teacher terminates (e.g. the retired teacher is age eligible for a government funded health care insurance program, dies, etc.) or (ii) the date on which the spouse or any dependent is eligible for a government funded health care insurance program, or ceases to be the retired teacher's spouse or dependent (a person ceases to be a dependent based upon the requirements of the Patient Protection and Affordable Care Act.) Notwithstanding the foregoing, the spouse of a teacher who would lose coverage because the retired teacher becomes age eligible for a government funded health insurance program may continue such coverage for the lesser of a period not to exceed three years or until such spouse is age eligible for a government funded health insurance program. The COBRA eligible period shall be calculated beginning on the date of termination of coverage. A spouse or dependent whose coverage terminates under this paragraph (termination of coverage shall be deemed to occur at the time coverage terminates under the first sentence of this paragraph) shall not be entitled to coverage at a later date, except as provided under COBRA

or this paragraph, even if the spouse or dependent again qualifies as the spouse or dependent of the retired teacher.

4. Cost of Coverage. The retired teacher who wishes to purchase continued healthcare coverage for himself/herself or for himself/herself and spouse, shall annually purchase such healthcare at the expected floating rate. The floating rate is typically established in June of each year. Increases in the rate paid for the purchase of healthcare shall not exceed 10%. For the purpose of the calculation of that 10% increase cap, the base rate shall be the expected floating rate in the first year of retirement. (A teacher who retired with a rate of $8,000 would pay no more than $8,800 in the second year of retirement and no more than $9,680 in the third year, etc.) If the increase in the rate is less than 10%, then the teacher would pay the full amount of the increase.

5. In the event of a change in coverage after retirement (e.g. elimination of dependent children), the change shall be effective, and the payment due by the retired teacher shall be adjusted, on the effective date of the change in coverage.

6. The retired teacher may elect to pay the entire cost of such coverage based upon the monthly premium as calculated annually by the School District's Insurance Administrator. Payments shall be made quarterly in advance. Failure to make such payments as and when due will result in termination of coverage.

7. Disability. Teachers who do not qualify under the above terms, who become disabled, and who legally qualify for and obtain disability benefits under the social security system, may continue hospitalization coverage upon payment of the expected floating rate as calculated by the School District's Insurance Consultant for a period of two (2) years or until eligible for a government funded health care program, whichever comes first.

I. **Surviving Spouse Hospitalization:**

In the event of the death of any teacher while employed by the District, the spouse and children (if covered at the time of the teacher's death) of such teacher may elect to continue to be covered in the Board's hospitalization insurance coverage for a period of two (2) years after the death of the teacher or the remarriage of the spouse, whichever comes first. The spouse and children of such deceased teacher shall pay the entire cost of such coverage based upon the expected floating rate for retirees as calculated by the District's Insurance Consultant. The COBRA eligible period shall begin at the end of this two year period.

J. **Dental Care Benefits:**

The Board shall make available to teachers a dental care plan with benefits (subject to usual and reasonable charges) summarized as follows:

Diagnostic (No Deductible) X-rays and exams every six months and full mouth x-rays every two years	100%
Preventive (No Deductible) Cleaning every six months, fluoride treatments, and sealants (to age 14)	100%
Minor Restorative Fillings, including posterior composite based fillings	80/20
Oral Surgery Extractions and pre/post care	80/20
Endodontics Pulp and root canal work	80/20
Periodontics Gums and supporting structures	80/20
Denture Repair	80/20
Major Restorative	80/20
Prosthodontics (Dentures)	80/20
General Anesthesia (includes additional) Covered when used in conjunction with covered oral surgical procedures	80/20
Gold Fillings	80/20
Injectable Antibiotics	80/20
Deductible (per person per calendar year)	$25.00
Payment (District)	100%

Maximum coverage per person per calendar year shall be $2,000. (Does not include orthodontics reimbursement.) The District shall provide the above benefits for the spouse and dependents of any teacher.

The District shall provide orthodontic benefits under the guidelines outlined below.

- Reimbursement is limited to procedures performed on dependents prior to their 19th birthday.
- Reimbursement is limited to 50% of the total eligible expense with life time maximum of $2,000 per covered dependent.
- Orthodontic claims must be submitted to the dental administrator within 6 months from the date of the claim. This 6-month deadline would also apply if this benefit is terminated July 1, 2021, meaning a claim incurred on June 30, 2021, may still be submitted and considered for payment until December 30, 2021.

K. **Vision Fund:**

The District agrees (subject to the provisions of this section), to reimburse employees for professional eye examinations, prescription glasses, contacts, and related professional eye care.

Eligible expenses are those incurred by an employee, an employee's spouse, or his/her dependents.

The plan shall require submission of itemized invoice (receipt) and shall operate on a fiscal year (July-June). Payment will be made by the District on a monthly basis. Items submitted by the end of each month will be reimbursed by the second pay of the following month. Submitted invoices (receipts) may not be older than 6 months to be considered for payment. Payment for vision care is limited to the following for each fiscal year along with unused amount that was carried over according to the schedule below:

Year	**Amount**	**Carry Over Maximum**
2017-2018	$300	No carry over
2018-2019	$300	No carry over
2019-2020	$300	No carry over
2020-2021	$300	No carry over

For a 31 day period at the end of any fiscal year, receipts can be submitted and applied to the previous year's balance.

L. **Hearing Aid Fund**

The District agrees (subject to the provisions of this section), to reimburse employees for prescription hearing aids.

Eligible expenses are those incurred by an employee, an employee's spouse, or his/her dependents.

The plan shall require submission of itemized invoice (receipt) and shall operate on a fiscal year (July-June). Payment will be made by the District on a monthly basis. Items submitted by the end of each month will be reimbursed by the second pay of the following month. Submitted invoices (receipts) may not be older than 6 months to be considered for payment. Payment for hearing aids is limited to the following for each fiscal year:

Year	**Amount**
2017-2018	$300
2018-2019	$300
2019-2020	$300
2020-2021	$300

For a 31 day period at the end of any fiscal year, receipts can be submitted and applied to the previous year's balance.

XV. Deduction from Salary

A. The District agrees to deduct, from the salaries of those teachers who request such deductions in writing, dues for the Association, the PSEA and the NEA, provided that such deductions shall be made from sixteen (16) consecutive pays, which pays shall be determined by the Business Manager and the Association; and, provided that all such deductions shall be uniform. Such dues deduction shall be irrevocable.

B. The District agrees to deduct from the salaries of those teachers who request in writing such deductions, United Way, Penn Manor Education Foundation, approved tax-sheltered annuities, funds for savings deductions, and deductions for the Pennsylvania Tuition Account Program. All such deductions shall be uniform in amount and shall continue for such period of time as to avoid unreasonable interference with the District's Business Office procedures.

C. The Penn Manor School District offers all employees the option to utilize the Flexible Spending Account (FSA) under IRS Section 125 rules. FSA permits employees to pay for qualifying health care expenses, including insurable deductibles and contributions, or dependent daycare expenses with pre-tax dollars. Adjustments to this plan may be required due to regulations and limits related to health care and tax regulations.

XVI. Term Insurance

A. **Life Insurance:**

The Board agrees to provide term life insurance with accidental death and dismemberment benefits for each teacher in the amount of $50,000.

B. **Income Protection Insurance:**

The Board shall provide for each teacher in the District an income protection plan with benefits payable in accordance with insurance policy provisions summarized as follows:

Sixty-six and two thirds percent (66 2/3%) of daily rate of pay per school day for each school day of continuous absence due to accident or illness, commencing with the sixth (6th) school day of each continuous absence after exhaustion of sick leave, two (2) years illness and five (5) years accident, no benefits payable while teacher is on sabbatical leave or retirement, benefits integrated with other disability plans.

XVII. Jury Duty

Teachers called for jury duty shall receive their contractual salary. The teacher serving on jury duty agrees to turn over to the District all jury pay received, excluding reimbursement of expenses.

XVIII. Co-curricular Positions

A. Teachers will be notified in writing (electronically) of their salaries upon election to the co-curricular position.

B. All co-curricular positions not contained in this contract are the Board's responsibility and the Board has exclusive authority regarding such positions.

Mentors:

Full year - $1,000

One Semester - $500

Team Leaders: $2,000

Team leaders on the existing tiered schedule during 2013-2014 who exceed the stipend designated in this agreement will remain at their existing stipend during the length of this contract.

Wellness Coordinator:

2017-2018 - $3,100

2018-2019 - $3,200

2019-2021 - $3,300

Vocational Instructors (Chapter 339) - for additional duties required as part of the educational program that extends beyond the contractual work day and work year - $3,590

XIX. Compensation for Hourly Employment

The District agrees to compensate teachers for summer school, homebound instruction, Twilight School instruction, adult education, after school tutoring, alternative education, and curriculum workshops at the rate of

2017-2018 $33.00 per hour

2018-2019 $33.00 per hour

2019-2020 $34.00 per hour

2020-2021 $34.00 per hour

Positions not included in the above paragraph may be created and persons hired for such positions by the School Board after a meet and discuss session with the Association. If the School Board creates any position and hires an individual in that position, the salary will be based on the type of work, preparation and training required and will be negotiated with the Association.

XX. Personal Leave

Teachers shall be entitled to three (3) personal leave days per school year subject to and in accordance with the following provisions:

A. Requests for such leave shall be submitted electronically one (1) week in advance and will be approved on a priority of date of request; however, requests of an emergency nature will be granted upon less notice if such request would be otherwise permitted pursuant to this article.

B. No personal leave day shall be permitted during the first five student days or last five student days of school except that personal leave day/s may be approved for situations of an emergency nature.

C. Personal leave days shall be permitted as one-half (1/2) days.

D. Not more than twenty (20) teachers in the entire District or ten percent (10%) of the number employed in any one (1) building (or minimum of 2 teachers, whichever is higher) shall be allowed a personal leave day on any one (1) school day.

E. Personal leave days shall be credited to a maximum of seven (7) days i.e., if a teacher at the conclusion of a school year has 5/6/7 days accumulated the teacher shall receive either 2, 1 or 0 additional days in the subsequent school year. No more than five (5) days may be utilized consecutively.

F. Exceptions for emergency reasons may be approved by the Superintendent. Such approval or denial shall neither be the subject of a grievance nor subject to the grievance procedure.

G. Teachers requesting time off from work in order to participate in a bona fide religious observance mandated by their religious faith may use their personal days or request time off without pay. The Superintendent may authorize a teacher to take off with pay for such religious observances, if a suitable and reasonable plan can be developed to have the teacher make up the missed work due to the teacher's absence.

XXI. Child Rearing Leave

The Board will grant a teacher an unpaid child rearing leave of absence to care for a newly born, newly adopted, or seriously ill child upon the following terms and conditions:

A. The teacher desiring child rearing leave shall submit a request therefore by completing forms provided by the district through the Superintendent's Office. The unpaid child rearing leave shall commence upon the date reasonably requested by the teacher but not later than the date such teacher is physically able to return to work.

B. The unpaid child rearing leave shall end at the beginning of a semester as selected by the teacher but not to exceed two (2) full semesters after commencement of the unpaid child rearing leave. The teacher may terminate the unpaid child rearing leave effective at the beginning of any semester upon not less than sixty (60) calendar days prior written notice to the Board. These requirements for early termination of the unpaid child rearing leave may be waived by the Board in the event of extenuating circumstances.

C. If the child rearing leave begins on or after the date the teacher is physically disabled, the teacher will be considered (during the period of physical disability) to be absent from school because of sickness or illness.

D. In cases of adoption, the requested leave date may be changed due to extenuating circumstances if the District is notified of such change at least ten (10) school days prior to the originally requested date.

E. Upon termination of the unpaid child rearing leave, the teacher shall be returned to a position for which the teacher is certified. The teacher may return to work only if (1) the teacher has given the Board thirty (30) calendar days prior written notice and (2) the teacher is physically able to return to work. The Board may require the teacher's physician to certify that such teacher is physically able to return to work. The Board reserves the right to require its own physical examination.

F. The Board, upon request, will grant an unpaid child rearing leave to a teacher to care for a newly adopted or seriously ill child. Such leave shall commence on the date reasonably requested by the teacher and shall be subject to the other provisions of this Article.

G. A teacher who is granted an unpaid child rearing leave shall be entitled to credit for longevity increment on the salary schedule only if the leave commences after the 95th contract day.

H. A teacher on unpaid child rearing leave may elect to continue within the District's hospitalization and dental programs and shall remit to the Business Office on a monthly basis such amounts as are necessary (expected floating rate) to cover the teacher and/or his or her dependents. Failure to meet payment periods will result in a forfeiture of such benefits.

I. Any leaves required by law shall be part of, and not an addition to, leaves under this Article XXI.

XXII. Bereavement Leave

When a teacher is absent from duty because of a death in the immediate family, there shall be no deduction in salary for an absence of three (3) days. The Board may extend the period of absence at its discretion.

Immediate Family shall be defined as father, mother, brother, sister, son, daughter, husband, wife, parent-in-law, step-parent, step-brother, step-sister, step-child, grandchild, or near relative who resides in the same household, or any person with whom the employee has made his/her home.

When a teacher is absent from duty because of the death of a **near relative**, there shall be no deduction in salary for absences on the day of the funeral. The Board may extend the period of absence at its discretion. Near relative shall be defined

as first cousin, grandfather, grandmother, aunt, uncle, niece, nephew, son-in-law, daughter-in-law, brother-in-law, and sister-in-law.

The teacher's absence report form must indicate the nature of the relationship in all bereavement type leaves.

XXIII. Retirement

A. **Eligibility:**

A teacher who retires is eligible for a retirement incentive payment under this article if all of the following conditions are satisfied:

1. Except in the event of a teacher's sickness, disability, or an event beyond the teacher's control (e.g., death of a spouse or partner, geographic transfer of spouse), or any other reason as agreed to by the Superintendent and President of the Association, the date of retirement shall be at the conclusion of the school year. The teacher shall give the School District written notice of retirement on or before January 1 preceding the date of retirement and shall further give an irrevocable written notice of retirement on or before March 1 preceding the date of retirement.

2. A teacher who has been employed by the District for at least fifteen (15) consecutive years immediately preceding the date of retirement including the year of retirement and part-time employees whose percentages would total fifteen (15) consecutive years immediately preceding the date of retirement including the year of retirement.

3. When a program or class is transferred as a unit from the Intermediate Unit to the Penn Manor School District, a professional employee who was assigned to the class or program immediately prior to the transfer and is classified as a teacher as defined in Section 1141(1) of the Public School Code and that teacher is suspended as a result of the transfer and is hired by the Penn Manor School District, such transferred teacher shall be credited by the Penn Manor School District for the years employed by the Intermediate Unit for the purposes of having the required years for eligibility for retirement benefits.

4. The teacher as of the date of retirement accepts benefits under the Pennsylvania Employee's Retirement System.

B. **Retirement Payment Schedule:**

1. A teacher shall receive $180 per year for each year of employment with the Penn Manor School District plus $80 per day for each unused sick and/or personal day.

2. The retirement incentive is limited to a maximum of $35,000.

3. The payment under this article will be paid as an employer non-elective contribution to the teacher's 403(b) account at the time of retirement and no teacher shall have any right to receive the payment in the form of cash. Any payment required under this article shall be reduced by any amount that results in annual additions on behalf of the teacher to the teacher's 403(b) account exceeding the contribution limits under Section 415(c) of the Internal Revenue Code ("Code") or any other contribution limits under the Code or applicable Treasury Regulations. Any excess payment amount shall be contributed in the following year to the extent that the excess amount does not exceed the contribution limits under Section 415(c) of the Code or any other contribution limits under the Code or applicable Treasury Regulations in the following year and is otherwise permitted under the Code and applicable Treasury Regulations. Any teacher who fails to establish a 403(b) account prior to separation from service shall forfeit the benefit under this article.

XXIV. Rights of Professional Employees; Just Cause

A. Professional employees shall have all the rights, privileges and immunities afforded them under the applicable laws and regulations of the Commonwealth of Pennsylvania as currently enacted or as hereafter amended. Furthermore, all duties, obligations or other requirements of professional employees shall likewise be required by the laws and regulations of the Commonwealth of Pennsylvania.

B. No teacher shall be deprived of any economic benefit existing by reason of this contract without just cause.

C. In the event the Teachers' Tenure Act shall be repealed by the legislature and no other legislation is enacted which purports to deal with teachers' tenure, then no teacher shall be disciplined or suspended or discharged or reduced in rank or compensation without just cause. In the event of such repeal, any grievance with respect to any suspension, discharge or reduction in compensation shall commence at Step Three of the Grievance Procedure.

XXV. Professional Development and Educational Improvement

The Board agrees to pay the full costs of tuition and any reasonable expenses incidental thereto incurred in connection with any courses, workshops, seminars, conferences, in-service training sessions or other educational matters which a teacher is required or requested to participate in by the administration or the Board, or which has the prior written approval of the Superintendent, other than those required by law.

For those teachers who have not yet attained a Master's degree (including those with a Master's Equivalency), the Board agrees to reimburse each teacher for tuition fees to a maximum of the cost of twelve (12) graduate credits per year at the average cost of the graduate tuitions at three universities (Millersville University, Penn State University and Temple University) for the term of the contract. Tuition fees shall include the amount of additional charges at Millersville University which are required to be paid by the teacher. For example, a fee per credit of $18.00, would be equal to reimbursement of $54.00 for a three-credit course. A teacher taking graduate level course work at an accredited provider would be eligible for reimbursement for any related fee at a rate to match the academic fee at Millersville.

For those teachers who have attained a Master's degree, the Board agrees to reimburse each teacher for tuition fees to a maximum of the cost of nine (9) graduate credits per year at the average cost of the graduate tuitions at three universities (Millersville University, Penn State University and Temple University) for the term of the contract. Tuition fees shall include the amount of additional charges at Millersville University which are required to be paid by the teacher. For example, a fee per credit of $18.00, would be equal to reimbursement of $54.00 for a three-credit course. A teacher taking graduate level course work at an accredited provider would be eligible for reimbursement for any related fee at a rate to match the academic fee at Millersville.

Tuition reimbursement shall be based upon the grade received utilizing the following schedule:

Grade	Reimbursement
A	100% of credit allotment
B	100% of credit allotment
C	50% of credit allotment
D, F, WP, WF	0% of credit allotment and 0% of fees

A. Teachers who have permanent certification will be reimbursed for graduate credits in accordance with the following provisions:

1. Such credits must be graduate credits obtained pursuant to a degree program established by an accredited, degree granting institution, and such credits shall have the prior approval of the Superintendent, which approval shall not be unreasonably withheld, or

2. Such credits must be obtained from an accredited institution, and such credits shall have the prior approval of the Superintendent, which approval may be withheld and which approval or disapproval shall not be the subject of a grievance or subject to the grievance procedure.

3. Such credits must be completed satisfactorily according to the standards of the institution.

4. Credit fees for the research and writing of a doctoral dissertation are limited to a three-year period commencing with the first request for payment of such fees. At the discretion of and with the prior approval of the Superintendent, a fourth year may be permitted.

5. Except for instances of furlough, involuntary dismissal, or an event beyond the teacher's control (e.g., geographic transfer of spouse, long-term illness or disability), or any other reason as agreed to by the Superintendent and President of the Association, the teacher must return to work in the District for at least two years after completion of such credits or the employee shall reimburse the district for the course as follows:

   a. One hundred percent (100%) of expenses if resignation occurs within 12 calendar months of service of the completion of the course.

   b. Fifty percent (50%) of expenses if resignation occurs between 13 and 24 calendar months of service of the completion of the course.

   c. Repayment obligations cease after 24 calendar months of service following the completion of the course.

6. A teacher may substitute undergraduate courses for graduate level courses when appropriate graduate level courses are not available and with the prior approval of the Superintendent according to the guidelines in this section of the Negotiated Agreement.

B. Teachers who do not have permanent certification will be reimbursed for credits in accordance with the following provisions:

1. Such credits must be acceptable toward permanent certification and such credits shall have the prior approval of the Superintendent, which approval shall not be unreasonably withheld.

2. Such credits must be completed satisfactorily according to the standards of the institution.

3. The teacher's most recent rating prior to taking such credits must be satisfactory; and except for instances of furlough or involuntary dismissal, the teacher must return to work in the District and maintain a satisfactory rating for at least one semester after completion of such credits.

4. A teacher may substitute undergraduate courses for graduate level courses when appropriate graduate level courses are not available and with the prior approval of the Superintendent according to the guidelines in this section of the Negotiated Agreement.

5. Reimbursement for such credits shall be made promptly upon receipt of evidence showing satisfactory completion thereof.

C. Excepting teachers who have been approved for a sabbatical for professional development or those members in a doctoral cohort, no teacher shall be permitted annual reimbursement for more than the credits defined above in Article XXV of this agreement. (A tuition year is defined as a period between September 1 and August 31. The restriction applies to courses completed during the time period. Completion date is determined by the date the course is transcripted.)

D. Horizontal movement across the salary schedule will be limited to one column per year, with the exception of an individual who earns B+24 status and earns a Master's Degree in which case the individual shall be permitted to move from the Bachelor's Column to the Master's Column.

E. All credits to be used for column movement (with the exception of three (3) graduate credits per year) shall have the prior approval of the Superintendent, which approval may be withheld and which approval or disapproval shall not be subject to a grievance or subject to the grievance procedure.

XXVI. No Strike, No Lockout

During the term of this agreement or any renewals or extensions hereof, the Association agrees for itself and each of its members, that it and they will not engage in any activity involving a strike, slow down, willful absence from work or any activity other than the full and proper performance of their duties, and the Board likewise agrees that it shall not engage in any lockout practices.

XXVII. Meet and Discuss, Complaint Procedure

The Association acknowledges the responsibility and duty of the Board as required by law to manage and administer the District. Though the Association fully recognizes the Board's responsibilities and exclusive authority in these matters, the Board agrees that many of these administrative and management matters are important concerns of the Association and each teacher. In order to facilitate mutual understanding in the resolution of these matters and in order to obtain the benefits which mutual discussion can produce, the Board and the Association agree to form a joint committee to meet and discuss the following matters:

1. Co-curricular salaries stipulated by the contract;
2. Hiring and interview procedures;
3. Class size;
4. Teacher-pupil ratios;
5. Professional qualifications;
6. Programs including provision of teaching specialists;
7. Teacher aides;
8. Daily schedules;
9. Elementary recess and physical education program;
10. Professional employees' responsibilities;
11. Association use of District equipment;
12. Professional qualifications and assignment of teachers;
13. Classroom utilization;
14. Special instructional materials;
15. Teacher calendar;
16. Teaching hours, teaching duties, class schedules;
17. Traveling requirements;
18. Special conditions applicable to students;
19. Vacancies and transfer;

20. Employee evaluations;
21. Teacher-administration liaison;
22. Professional services;
23. Substitute teachers;
24. Protection of teachers, students and property;
25. Discipline policy;
26. Personal and academic freedom;
27. Faculty meeting scheduling and duration;
28. Ethics;
29. Retirement recognition; and
30. Any other matter, the discussion of which shall be mutually beneficial to the parties hereto.

In addition, in the event that there shall be any complaint concerning the above matters or in the event that any teacher shall claim that the District's rules and regulations have been applied on an inequitable and discriminatory basis, then such complaint shall be processed according to the following procedure and shall not be the subject of a grievance or subject to the grievance procedure.

The teacher and the teacher's immediate supervisor and/or building principal shall meet and discuss the matter, and they shall attempt to resolve the matter informally. If the matter remains unresolved, the teacher shall meet and discuss the matter with the Superintendent. If the matter still remains unresolved, the teacher shall meet and discuss the matter with the Board. The decision of the Board, if the matter remains unresolved, shall be final and binding and shall not be the subject of a grievance or subject to the grievance procedure, but written notice of the Board's decision shall be furnished to all interested persons. And provided, further, that nothing contained herein shall preclude any teacher from bringing suit in the Lancaster County Court of Common Pleas in the event the Board's decision is in violation of the laws of the Commonwealth of Pennsylvania.

XXVIII. Compensated Professional Leave

This section is governed by Policy #338.1, Compensated Professional Leaves. A teacher who is entitled to compensated leave under the terms of the Pennsylvania School Code may, at his or her option, take a compensated leave for one (1) semester at full pay in lieu of a one (1) year compensated leave at one-half (1/2) pay; provided, however, that such leaves shall be limited to the purpose of study leading to an advanced degree or certification and that notice of intention to take such leave shall be given to the District by March 1, for leaves for the following school year, and provided that the teacher has not been previously approved for a full-pay sabbatical as defined by this article. The number of full pay leaves shall be based on the schedule provided below.

Year	First Semester	Second Semester
2017-2018	1	1
2018-2019	1	1
2019-2020	1	1
2020-2021	1	1

XXIX. Seniority

Seniority shall mean the total length of continuous employment by the District (or its predecessors or successors). District approved leaves of absence or other leaves required by law shall not constitute a break in continuity of employment; but seniority shall not accrue during such leaves except as required by law. Teachers who are employed part-time shall accrue seniority proportionately to the time worked; but teachers employed beyond the normal school work year shall not accrue additional seniority.

XXX. Fair Share

When membership in the Association is 90% or greater of the eligible members, the Penn Manor School District shall deduct from employees who are not members of the Association an amount annually certified by the Association as the fair share fee as permitted by the Public Employee Fair Share Law ("Law"). Each nonmember in the bargaining unit represented by the Association under the Public Employee Relations Act shall be required to pay the fair share fee as provided by the Law. The fair share fee shall not include any amount expended by the Association for partisan, political or ideological activities that is excluded by a body that has jurisdiction to exclude certain activities. Subject to the following, the Penn Manor School District and the Association agree to apply the provisions of the Law:

1. The Association agrees to extend to all nonmembers the opportunity to join the Association.

2. Non-members with bona fide religious objections to a fair share fee may direct the Association to contribute their agency fee to a non-religious charity. The Association's escrow agent shall provide verification of said payment to any affected nonmember once the total agency fee obligation has been fully satisfied via payroll deduction.

3. If any legal action is brought against the Penn Manor School District as a result of any actions it is required to perform by the Association pursuant to this Section, the Association agrees to provide for the defense of the Penn Manor School District at the Association's expense and through counsel selected by the Association.

4. The Penn Manor School District agrees to give the Association immediate notice of any such legal action brought against it, and agrees to cooperate fully with the Association in the defense of the case. If the Penn Manor School District does not fully cooperate with the Association, any obligation of the Association to provide a defense under this Section shall cease.

5. The Association agrees in any action so defended, to indemnify and hold the Penn Manor School District harmless for any monetary damages the Penn Manor School District might be liable for as a consequence of its compliance with this Section; except that it is expressly understood that this save harmless provision will not apply to any legal action which may arise as a result of any willful misconduct by the Penn Manor School District's failure to properly perform its obligation under this Section.

XXXI. Furloughs

During only the 2017-2018 school year, the District agrees not to furlough any temporary professional or professional staff members.

During only the 2018-2019, 2019-2020, and 2020-2021 school years, if the District should furlough, temporary professional or professional staff members will be furloughed based on seniority as defined in Article XXIX.

XXXII. Separability, Exclusivity

If any provision of this agreement or any application of this agreement to any employee or group of employees is contrary to law, then such provisions or applications shall not be deemed valid and subsisting, except to the extent permitted by law. The invalidity of any term or provision of this agreement shall not invalidate the entire agreement, but shall only affect the provision deemed invalid.

This agreement contains the entire agreement between the Board and the Association.

The Board and the Association agree that they shall meet and discuss on other matters with respect to wages, hours, and other terms and conditions of employment, but the Superintendent or the Board shall have the sole and exclusive authority to determine all matters which are not specifically set forth in this agreement.

PENN MANOR SCHOOL DISTRICT

BY: _____

ATTEST: _____

PENN MANOR EDUCATION ASSOCIATION

BY: _____

ATTEST: _____

APPENDIX A - GRIEVANCE PROCEDURES

If a grievance, as hereinafter defined, should arise between the parties, it shall be resolved in the following manner:

A. Definitions.

1. The word "grievance," as used in this agreement, shall mean a complaint by a teacher alleging that there has been a violation, misinterpretation or misapplication of the terms of the agreement.

2. An "aggrieved person," as used in this agreement, shall mean the teacher or teachers making a complaint.

3. The term "days," as used in this agreement, shall mean weekdays, excluding weekends and legal holidays.

4. The term "representative," as used in this agreement, shall mean a duly authorized member of the Association.

B. General Procedures.

1. The Association shall select and certify to the Superintendent a grievance representative in each building.

2. At all levels of the grievance procedure, the aggrieved person shall have the right to be represented by a duly certified representative of the Association and/or legal counsel and shall have the right to call witness(es) to testify on his or her behalf.

3. An aggrieved person may withdraw from the grievance procedure at any time and the Association may withdraw its representation of an aggrieved person at any time.

4. Failure at any step of the grievance procedure to communicate the decision in writing to the aggrieved person within the specified time limit shall permit the aggrieved person to proceed to the next step. Failure at any step of the grievance procedure to appeal a grievance to the next step within the specified time limit shall be deemed to be acceptance of the decision rendered at that step; provided, however, that such time limit shall be extended for a period not to exceed ten (10) days upon the written request of the aggrieved person.

5. Forms for processing grievances shall be jointly prepared by the Superintendent and the Association, subject to approval by the Board.

6. Conferences and hearings under the grievance procedure shall not be conducted in public and shall be attended only by parties in interest, their designated representative and necessary witnesses.

7. Nothing contained in this agreement shall be interpreted so as to prevent a member of the bargaining unit from discussing, informally, with any member of the Administration, any matter, including an alleged violation, misinterpretation or misapplication of the terms of this agreement.

8. When the aggrieved person is not a member of the Association, the Association shall have the right to have a representative present.

9. In the event grievance conferences or hearings are scheduled during school hours, the aggrieved person, the Association representative and necessary witnesses shall be permitted to attend such conferences or hearings and no salary deduction shall be made in consequence of such attendance. In addition, aggrieved persons, Association representatives and essential witnesses shall be permitted to use unassigned periods for the purposes of processing grievances without diminution of salary.

10. In the event that the Association and the Superintendent shall agree that a grievance affects a group of teachers, then the grievance shall be commenced at level II by the filing of written grievance with the Superintendent.

11. In the event that both parties agree that no resolution is forth-coming, both parties may agree to move grievances to a level where a resolution can be readily reached.

C. Initiation and Processing.

1. Level I.

a. The aggrieved person shall first discuss the grievance with his or her immediate supervisor with the objective of resolving the matter informally.

b. In the event that informal discussion with the aggrieved person's immediate supervisor does not resolve the grievance, the aggrieved person shall, within five (5) days following the termination of informal discussions, or within twenty (20) days from the date on which the aggrieved person originally discovered the alleged grievance, whichever is first to occur, file a written notice of the grievance, on the form specified, with his or her immediate supervisor and with such other persons as may be specified on the grievance form.

c. If requested by the aggrieved person or the immediate supervisor of the aggrieved person, the aggrieved person's immediate supervisor shall schedule a conference to be held within five (5) days of the receipt of the grievance notice. If a conference is held, the aggrieved person's immediate supervisor shall send his decision to the aggrieved person, in writing, within five (5) days following the conference, and shall send copies of such decision to all persons officially present at the conference. If conference is not held, the aggrieved person's immediate supervisor shall render a decision, in writing within five (5) days from receipt of the grievance notice.

2. Level II.

a. Within five (5) days of receipt of the decision of the aggrieved person's immediate supervisor, said decision may be appealed by the aggrieved person to the Superintendent. Such appeal shall be filed in writing, on the form provided for such purpose and shall include a copy of the decision of the aggrieved person's immediate supervisor and a short statement of the grounds for regarding the decision as incorrect. Such appeal shall also state the names of all persons officially present at any conference held by the aggrieved person's immediate supervisor and copies of the appeal shall be served on all such persons.

b. Within ten (10) days of receipt of an appeal, the Superintendent, or his delegate, shall hold a hearing. Written notice of time and place of the hearing shall be given at least five (5) days prior to the hearing to the aggrieved person and to all persons officially present at any prior conference.

c. Within ten (10) days following the hearing on the appeal, the Superintendent, or his delegate, shall communicate, to the aggrieved person and all other parties officially present at the hearing, his or her written decision, which shall include supporting reasons therefore.

3. Level III.

a. Within ten (10) days of receipt of the decision rendered by the Superintendent, or his or her delegate, the Association may appeal the decision to the Board. The appeal shall be filed on the form provided and shall be addressed to the President of the Board, who shall schedule a hearing on said appeal to be held by the Board or designated committee thereof within twenty (20) days from receipt of the appeal.

b. Within ten (10) days following the hearing on the appeal, the President of the Board, or his or her delegate, shall communicate, in writing, the decision of the Board to the Association.

4. Level IV.

a. In the event the decision of the Board is not acceptable to the Association, the grievance may be submitted for arbitration as provided in Section 903 of Act 195. Notice of a demand for arbitration shall be filed within ten (10) days after receipt of the decision of the Board and shall include a statement setting forth the issue or issues to be decided by the arbitrator.

b. Nothing contained in the immediately preceding paragraph shall be interpreted so as to increase the scope of arbitration provided for in Section 903 of Act 195, nor shall anything contained in this grievance procedure be in any way interpreted or construed to in any way expand, modify or alter the terms of this agreement.

c. Within ten (10) days after written notice of demand for arbitration, the Superintendent or the Association shall notify the Bureau of Mediation requesting a panel of arbitrators.

d. One-half (1/2) of the cost of the services of the arbitrator shall be borne by the Board and the remaining one-half by the Association.

APPENDIX B - SALARY SCHEDULE

2017-2018 Initial Step Placement on the New 17-Step Salary Schedule based on Years of Service Completed as of June 30, 2017*

*For those employees that have column movement through December 31, 2017 that would require a retroactive payroll adjustment, placement on the new column will be based on the same criteria used for the initial repositioning on the salary schedule.

Years of Service	B	B+24	M	M+15	M+30	M+45	M+60
0	1	1	1	1	1	1	1
1	1	1	1	1	1	1	1
2	1	1	1	1	1	1	1
3	1	1	1	1	1	1	1
4	1	1	1	1	1	1	1
5	1	1	1	1	1	1	1
6	3	1	1	1	1	1	1
7	3	1	1	1	1	1	1
8		1	1	1	1	1	1
9		2	1	1	1	1	1
10		3	2	1	2	2	2
11		4	3	3	3	3	3
12		5	4	4	4	4	4
13		6	6	5	6	6	6
14		8	7	7	7	7	7
15		8	7	7	7	7	7
16		9	9	9	9	9	9
17		11	10	10	10	11	11
18		11	10	10	10	11	11
19		13	12	12	12	12	12
20		15	14	14	14	15	15
21+		17	17	17	17	17	17

2017-2018

Years of Service	Step No.	B	B+24	M	M+15	M+30	M+45	M+60
Years of Service and Step Number are different for each column.								
	1	46,585	49,605	54,302	57,687	58,796	60,608	61,931
	2	46,732	51,050	55,747	59,132	60,241	62,053	63,376
	3	46,879	52,494	57,191	60,576	61,685	63,497	64,820
	4	47,026	53,939	58,636	62,021	63,130	64,942	66,265
	5	47,173	55,384	60,081	63,466	64,575	66,387	67,710
	6	47,320	56,828	61,525	64,910	66,019	67,831	69,154
	7	47,467	58,273	62,970	66,355	67,464	69,276	70,599
	8	47,614	59,718	64,415	67,800	68,909	70,721	72,044
	9	47,761	61,162	65,859	69,244	70,353	72,165	73,488
	10	47,908	62,607	67,304	70,689	71,798	73,610	74,933
	11	48,055	64,052	68,749	72,134	73,243	75,055	76,378
	12	48,202	65,497	70,194	73,579	74,688	76,500	77,823
	13	48,349	66,941	71,638	75,023	76,132	77,944	79,267
	14	48,496	68,386	73,083	76,468	77,577	79,389	80,712
	15	48,643	69,831	74,528	77,913	79,022	80,834	82,157
	16	48,790	71,275	75,972	79,357	80,466	82,278	83,601
	17	48,937	72,720	77,417	80,802	81,911	83,723	85,046

2018-2019

Step	B	B+24	M	M+15	M+30	M+45	M+60
1	47,797	52,073	56,816	59,840	61,174	63,029	64,521
2	47,919	53,158	57,902	60,926	62,259	64,115	65,607
3	48,041	54,244	58,988	62,012	63,345	65,200	66,693
4	48,163	55,330	60,074	63,097	64,431	66,286	67,779
5	48,285	56,723	61,467	64,491	65,824	67,680	69,172
6	48,407	58,117	62,861	65,884	67,218	69,073	70,566
7	48,530	59,510	64,254	67,278	68,611	70,467	71,959
8	48,652	60,904	65,648	68,671	70,005	71,860	73,353
9	48,774	62,297	67,041	70,065	71,398	73,254	74,746
10	48,896	63,691	68,435	71,458	72,792	74,647	76,140
11	49,018	65,084	69,828	72,852	74,185	76,041	77,533
12	49,140	66,478	71,222	74,245	75,579	77,434	78,927
13	49,262	67,871	72,615	75,639	76,972	78,828	80,320
14	49,384	69,265	74,009	77,032	78,366	80,221	81,714
15	49,506	70,658	75,402	78,426	79,759	81,615	83,107
16	49,628	72,052	76,796	79,819	81,153	83,008	84,501
17	49,750	73,445	78,189	81,213	82,546	84,402	85,894

2019-2020

Step	B	B+24	M	M+15	M+30	M+45	M+60
1	49,329	55,190	59,993	62,560	64,177	66,088	67,794
2	49,420	55,822	60,625	63,193	64,810	66,720	68,426
3	49,510	56,455	61,258	63,825	65,442	67,352	69,059
4	49,601	57,087	61,890	64,457	66,074	67,984	69,691
5	49,691	58,416	63,219	65,786	67,403	69,313	71,020
6	49,782	59,744	64,548	67,115	68,732	70,642	72,348
7	49,872	61,073	65,876	68,443	70,060	71,971	73,677
8	49,963	62,402	67,205	69,772	71,389	73,300	75,006
9	50,053	63,731	68,534	71,101	72,718	74,629	76,335
10	50,144	65,060	69,863	72,430	74,047	75,957	77,664
11	50,234	66,389	71,192	73,759	75,376	77,286	78,993
12	50,325	67,717	72,521	75,088	76,705	78,615	80,321
13	50,415	69,046	73,849	76,416	78,033	79,944	81,650
14	50,506	70,375	75,178	77,745	79,362	81,273	82,979
15	50,596	71,704	76,507	79,074	80,691	82,602	84,308
16	50,687	73,033	77,836	80,403	82,020	83,930	85,637
17	50,777	74,362	79,165	81,732	83,349	85,259	86,966

2020-2021

Step	B	B+24	M	M+15	M+30	M+45	M+60
1	51,296	59,192	64,071	66,052	68,033	70,014	71,995
2	51,346	59,242	64,121	66,102	68,083	70,064	72,045
3	51,396	59,292	64,171	66,152	68,133	70,114	72,095
4	51,446	59,342	64,221	66,202	68,183	70,164	72,145
5	51,496	60,588	65,467	67,448	69,429	71,410	73,391
6	51,546	61,834	66,713	68,694	70,675	72,656	74,637
7	51,596	63,080	67,959	69,940	71,921	73,902	75,883
8	51,646	64,326	69,205	71,186	73,167	75,148	77,129
9	51,696	65,571	70,450	72,431	74,412	76,393	78,374
10	51,746	66,817	71,696	73,677	75,658	77,639	79,620
11	51,796	68,063	72,942	74,923	76,904	78,885	80,866
12	51,846	69,309	74,188	76,169	78,150	80,131	82,112
13	51,896	70,555	75,434	77,415	79,396	81,377	83,358
14	51,946	71,801	76,680	78,661	80,642	82,623	84,604
15	51,996	73,046	77,925	79,906	81,887	83,868	85,849
16	52,046	74,292	79,171	81,152	83,133	85,114	87,095
17	52,096	75,538	80,417	82,398	84,379	86,360	88,341

APPENDIX C - PAY DATES

Pay Date	Number	Day of Week
08/30/2017	1	Wednesday
09/13/2017	2	Wednesday
09/27/2017	3	Wednesday
10/11/2017	4	Wednesday
10/25/2017	5	Wednesday
11/08/2017	6	Wednesday
11/22/2017	7	Wednesday
12/06/2017	8	Wednesday
12/20/2017	9	Wednesday
01/03/2018	10	Wednesday
01/17/2018	11	Wednesday
01/31/2018	12	Wednesday
02/14/2018	13	Wednesday
02/28/2018	14	Wednesday
03/14/2018	15	Wednesday
03/28/2018	16	Wednesday
04/11/2018	17	Wednesday
04/25/2018	18	Wednesday
05/09/2018	19	Wednesday
05/23/2018	20	Wednesday
06/06/2018	21	Wednesday
06/20/2018	22	Wednesday
07/04/2018	23	Wednesday
07/18/2018	24	Wednesday
08/01/2018	25	Wednesday
08/15/2018	26	Wednesday

Pay Date	Number	Day of Week
08/29/2018	1	Wednesday
09/12/2018	2	Wednesday
09/26/2018	3	Wednesday
10/10/2018	4	Wednesday
10/24/2018	5	Wednesday
11/07/2018	6	Wednesday
11/21/2018	7	Wednesday
12/05/2018	8	Wednesday
12/19/2018	9	Wednesday
01/02/2019	10	Wednesday
01/16/2019	11	Wednesday
01/30/2019	12	Wednesday
02/13/2019	13	Wednesday
02/27/2019	14	Wednesday
03/13/2019	15	Wednesday
03/27/2019	16	Wednesday
04/10/2019	17	Wednesday
04/24/2019	18	Wednesday
05/08/2019	19	Wednesday
05/22/2019	20	Wednesday
06/05/2019	21	Wednesday
06/19/2019	22	Wednesday
07/03/2019	23	Wednesday
07/17/2019	24	Wednesday
07/31/2019	25	Wednesday
08/14/2019	26	Wednesday

Pay Date	Number	Day of Week
08/28/2019	1	Wednesday
09/11/2019	2	Wednesday
09/25/2019	3	Wednesday
10/09/2019	4	Wednesday
10/23/2019	5	Wednesday
11/06/2019	6	Wednesday
11/20/2019	7	Wednesday
12/04/2019	8	Wednesday
12/18/2019	9	Wednesday
01/01/2020	10	Wednesday
01/15/2020	11	Wednesday
01/29/2020	12	Wednesday
02/12/2020	13	Wednesday
02/26/2020	14	Wednesday
03/11/2020	15	Wednesday
03/25/2020	16	Wednesday
04/08/2020	17	Wednesday
04/22/2020	18	Wednesday
05/06/2020	19	Wednesday
05/20/2020	20	Wednesday
06/03/2020	21	Wednesday
06/17/2020	22	Wednesday
07/01/2020	23	Wednesday
07/15/2020	24	Wednesday
07/29/2020	25	Wednesday
08/12/2020	26	Wednesday

Pay Date	Number	Day of Week
08/26/2020	1	Wednesday
09/09/2020	2	Wednesday
09/23/2020	3	Wednesday
10/07/2020	4	Wednesday
10/21/2020	5	Wednesday
11/04/2020	6	Wednesday
11/18/2020	7	Wednesday
12/02/2020	8	Wednesday
12/16/2020	9	Wednesday
12/30/2020	10	Wednesday
01/13/2021	11	Wednesday
01/27/2021	12	Wednesday
02/10/2021	13	Wednesday
02/24/2021	14	Wednesday
03/10/2021	15	Wednesday
03/24/2021	16	Wednesday
04/07/2021	17	Wednesday
04/21/2021	18	Wednesday
05/05/2021	19	Wednesday
05/19/2021	20	Wednesday
06/02/2021	21	Wednesday
06/16/2021	22	Wednesday
06/30/2021	23	Wednesday
07/14/2021	24	Wednesday
07/28/2021	25	Wednesday
08/11/2021	26	Wednesday

APPENDIX D - DEDUCTIONS

Monthly payroll deductions for healthcare:

Calendar year basis	2018	2019	2020	2021
Single 2 Party Family	9% based upon 7/1/2017 Expected Floating Rate less dental deduction amount	9% based upon 7/1/2018 Expected Floating Rate less dental deduction amount	10% based upon 7/1/2019 Expected Floating Rate less dental deduction amount	10% based upon 7/1/2020 Expected Floating Rate less dental deduction amount

Monthly payroll deductions for dental:

Calendar year basis	2018	2019	2020	2021
Single	$5	$5	$5	$5
2 Party	$10	$10	$10	$10
Family	$15	$15	$15	$15

APPENDIX E - SPECIAL MASTERS

The following guidelines reflect special considerations given to school psychologists, professional school counselors, and speech and language specialists in acknowledgement of specified requirements for a Master's degree in these areas and supplement the existing Master's level designation from the Penn Manor School District salary schedule.

1. A Master's degree shall be designated as 36 graduate credits within the specialized field of study.

2. For specific programs (school psychology, professional school counselors, and speech and language clinician) that require additional credits prior to conferring a Master's degree, placement on the salary schedule shall reflect the required study above the university-approved Master's program.

SAMPLES

Sample teacher	Master's Requirement	Placement
Teacher A	Master's conferred at 36 credits from the degree-granting institution	Master's
Teacher B	Master's conferred at 40 credits from the degree-granting institution	Master's
Teacher C	Master's conferred at 55 credits from the degree-granting institution	Master's + 15
Teacher D	Master's conferred at 66 credits from the degree-granting institution	Master's + 30

APPENDIX F - GENERIC DRUG INCENTIVE

The Association and the District agree that the Third Party Administrator (TPA) may waive certain prescription drug (RX) Copays for bargaining unit members enrolled in the POS/PPO plan who switch from certain brand (or generic) drugs to other brand (or generic) drugs (including, without limitation, both pharmacy-dispensed and over-the-counter drugs), during certain periods of time (a "Copay Waiver"). The terms, existence, commencement, extension and/or termination of the Copay Waiver program, a list of approved drugs available for the Copay Waiver and the period of such availability (if any) will be determined by the TPA from time to time. The District and/or the TPA shall notify eligible plan participants in writing of the availability of such Copay Waiver(s).

The District and the Association understand and agree that the Copay Waiver(s) will have no effect on the ability (or lack thereof) of a bargaining unit member to switch from one drug (e.g., the "new" drug) back to another drug (e.g., the "original" drug) without prejudice and/or prior authorization. The District and the Association understand and agree that neither the Copay Waiver program nor this agreement create any right or guarantee of any benefit or service or the continuation of any benefit or service.

The Association and the District understand and agree that eligible participants may decide voluntarily whether to participate in the Copay Waiver program.

The Association and the District understand and agree that this agreement shall not be cited as precedent or used as evidence by either party in any context at any time, including but not limited to in the context of grievance arbitrations or unfair practice proceedings; provided, either party may cite this agreement in any grievance proceeding in which the sole issue is whether a party complied with the terms of this agreement.

The District and Association agree that this agreement does not, in any way, modify or amend Section XIV or any other article, term or provision of the CBA.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has on this date been served on the following:

Thomas W. Scott, Esquire
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Dated: August 8, 2019

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