



## BACKGROUND (SEPTEMBER 2014)

*Jane Ladley & Christopher Meier v. Pennsylvania State Education Association*

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### THE EXECUTIVE SUMMARY

The Fairness Center represents schoolteachers Jane Ladley and Chris Meier, the targets of an illegal public union scheme to block nonunion employees from sending money to certain charities and to funnel money to the union’s favorite private charities.

Ms. Ladley recently retired after teaching for 25 years, most recently at Penn London Elementary School in Chester County, Pennsylvania. Mr. Meier has taught AP Economics and AP History courses at Penn Manor High School in Lancaster County, Pennsylvania for the last ten years. Neither Ms. Ladley nor Mr. Meier are members of the Pennsylvania State Education Association (“PSEA”), and neither Ms. Ladley nor Mr. Meier have paid a fee for its representation—which they do not want. But recently, the PSEA secured, in separate agreements with their respective school districts, the contractual authority to extract nonmember fees from teachers like Ms. Ladley and Mr. Meier. Ms. Ladley and Mr. Meier objected to payment of the fees on religious grounds.

As religious objectors to union membership and to payment of union fees, Ms. Ladley and Mr. Meier are entitled to certain legal protections, including the opportunity to redirect their fee—otherwise owed to the union—to a charitable organization. For this purpose, both Ms. Ladley and Mr. Meier selected IRS-approved charities; Ms. Ladley selected a local educational organization, and Mr. Meier selected a national charity providing free legal advice and representation to teachers like himself. Under the law, their money is automatically withheld and deposited into a separate account while the PSEA processes the selection.

Now, the PSEA is telling Ms. Ladley and Mr. Meier that it has a “policy” against allowing religious objectors to send their money to charities that they choose. According to the PSEA, Ms. Ladley’s educational charity was too “political,” and Mr. Meier’s charity was a “conflict of interest” because it represented teachers in separate, unrelated lawsuits against the PSEA.

Unfortunately, the PSEA’s policy also takes advantage of a loophole in the law to ensure that Ms. Ladley and Mr. Meier have no voice in this matter. The statute protecting religious objectors from having to pay dues or fees to the union requires that the charity selected by the objector be “agreed upon” by the union. But the law does not institute a procedure or deadline for reaching agreement with the union.

The PSEA is content to watch Ms. Ladley’s and Mr. Meier’s money automatically accrue in an interest-bearing escrow account while it waits for them to give in.

Ms. Ladley and Mr. Meier are filing suit in Lancaster County to expose the policy, to ask that the court declare the PSEA’s internal policy illegal, and to stop the PSEA from using the policy to indefinitely hold their money.

## **THE PROBLEM**

The PSEA has an internal, unwritten “policy” that restricts religious objectors’ ability to direct their funds to a substitute charity. The PSEA’s internal policy is arbitrary, narrows the scope of protections enacted by the Pennsylvania Legislature, and operates to fund only those private charities favored by the PSEA.

Ms. Ladley and Mr. Meier are religious objectors to union membership and to payment of nonmember “fair share” fees. Their status as “bona fide” religious objectors is not an issue—the PSEA already accepted Ms. Ladley’s and Mr. Meier’s required letter of verification.

Under the state law protecting religious objectors, Ms. Ladley and Mr. Meier will not be required to pay the fair share fee, but they are required to “pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the [union].”<sup>1</sup> The PSEA withdrew these funds from Ms. Ladley’s and Mr. Meier’s paychecks and placed them in an interest-bearing escrow account, pending Ms. Ladley’s and Mr. Meier’s designation of a charity.

### **Jane Ladley**

Initially, Ms. Ladley asked the PSEA to send her money to a scholarship fund for high school seniors interested in studying the United States Constitution. The scholarship fund was sponsored by an admittedly political organization.

The PSEA told Ms. Ladley that it would not send her money to the scholarship fund and that she would have to select a “nonpolitical” charity instead. Despite Ms. Ladley’s sincere desire to contribute to the scholarship fund, she chose an alternate charity, the Constitutional Organization of Liberty (“COOL”), providing educational materials on the Constitution and America’s history. The PSEA refused to respond to Ms. Ladley’s proposed solution.

Ms. Ladley retired earlier this year, but her money—which should go to a charity—is still sitting in escrow, awaiting action by the PSEA.

### **Chris Meier**

Mr. Meier asked the PSEA to send his money to a national charity that provides free legal advice and representation specific to public-sector employees, called the National Right to Work Legal Defense Foundation (the “Foundation”). The Foundation exists to protect teachers like Mr. Meier from public union abuses and has, under that mission, provided free legal services to teachers against the PSEA. The Foundation’s clients have succeeded in uncovering such abuse within the PSEA.<sup>2</sup>

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<sup>1</sup> 71 P.S. § 575(h).

<sup>2</sup> See, e.g., *Otto v. Pennsylvania State Educ. Ass’n*, 330 F.3d 125 (3d Cir. 2003) (holding that the PSEA’s local affiliates must obtain independent audits of their finances).

The PSEA refused Mr. Meier’s selection because, according to the PSEA, allowing Mr. Meier to fund the Foundation would be a “conflict of interest” for the PSEA. In other words, *the PSEA disagrees with the Foundation.*

## Implications

The PSEA’s internal policy to block teachers from sending their money to a charity of their choice is problematic for at least five reasons:

1. *The PSEA’s internal policy is arbitrary.* The PSEA’s reasons for rejecting these charities are inconsistent and evidence a misunderstanding of the law. First, despite the PSEA’s hostility to “political” charities, the PSEA has agreed to send religious objector funds to other charities that engage in substantial political activities. Second, the PSEA’s supposed “conflict of interest” with Mr. Meier’s charity involved no clash of interests on the PSEA’s part—the funds and the charitable “interest” belongs to Mr. Meier, not the PSEA.
2. *The PSEA’s internal policy is inconsistent with the protections enacted by the Legislature.* The union “policy” unconstitutionally discriminates based on a charity’s political views or activities. At the heart of this dispute, the PSEA simply does not approve of the message the charities are sending. The power claimed by the PSEA is precisely the reason for the protections enacted by the Legislature
3. *The PSEA’s internal policy takes advantage of a legal loophole.* The law requires that the funds at issue be placed into an escrow account, but the law does not articulate a process for resolving disputes between the union and the religious objector. The PSEA is using the statute to block Ms. Ladley’s and Mr. Meier’s choices for as long as it wants, without consequence.
4. *The PSEA’s internal policy unnecessarily restricts a teacher’s right to choose an eligible charity.* The PSEA is telling teachers—teachers who have declined to join the union and owe nothing to the union—that they cannot send their money to a charity eligible to receive those funds under the law.
5. *The PSEA’s internal policy withholds charitable contributions from eligible charities.* The money at issue *should go to a charity.* But the PSEA is content to leave the money in an escrow account until the nonmember agrees to the union’s choice of a private charity.

## THE LAW

In 1988, the Pennsylvania Legislature enacted “agency shop” provisions applicable to state and school employees.<sup>3</sup> The measure, known as Act 84,<sup>4</sup> allowed public-sector unions to bargain for agreements that require—as a condition of employment—either union membership or payment of a nonmember “fair share” fee. Portions of the law were found unconstitutional following a class action lawsuit filed by nonmember employees.<sup>5</sup>

### Statutory Protections for Religious Objectors

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<sup>3</sup> Russell E. Eschleman, Jr., *Casey Signs ‘Agency Shop’ Measure into Law*, PHILADELPHIA INQUIRER, July 14, 1988, [http://articles.philly.com/1988-07-14/news/26237264\\_1\\_agency-shop-large-unions-public-employee-unions](http://articles.philly.com/1988-07-14/news/26237264_1_agency-shop-large-unions-public-employee-unions).

<sup>4</sup> P.L. 493, No. 84, § 2 (Pa. S.B. 291 (Reg. Sess. 1987-88)), codified at 71 P.S. § 575.

<sup>5</sup> *Hobe v. Casey*, 956 F.2d 399 (3d Cir. 1992). The nonunion employee class was jointly represented by National Right to Work Legal Defense Foundation and a Harrisburg law firm, Beckley & Madden.

As a protective countermeasure to agency shop, the same 1988 law included several protections for nonmembers:

1. Nonmembers receive an annual notice of the fair share fee amount, with “sufficient information to gauge the propriety of the fee;”<sup>6</sup>
2. Nonmembers who object to the propriety of the fair share fee amount are entitled to impartial, binding arbitration and other procedural devices;<sup>7</sup> and
3. Nonmembers have the right to object to fair share fees “for bona fide religious grounds” and to have their funds go to a nonreligious charity.<sup>8</sup> For religious objections, an amount equivalent to the fair share fee must be sent to the charity.

This case involves the third protection, namely, the right to direct funds to a nonreligious charity. The statute protecting religious objectors provides just two qualifications for the charity selected by the nonmember—it must be “nonreligious” and a “charity.”

Religious objectors are also entitled under the statute to interact with their “exclusive representative,” defined by statute as the *local* representative—not the statewide public union.

### **Statutory Procedure**

After the union “approves” a religious objector’s verification of religious reasons, the religious objector is no longer obligated to pay dues or a fee to the union. At that point, the union and the religious objector must “agree upon” the substitute charity. However, unlike many other statutes governing labor relations, the law does not describe the means by which the nonmember and the union come to terms or resolve an impasse. There is also no deadline by which the union must “agree” with the religious objector.

Under the PSEA’s policy, a religious objector’s money can sit in escrow forever. Until agreement is reached, the automatically drafted funds are placed into an interest-bearing escrow account.<sup>9</sup> Moreover, throughout the process, the PSEA has ignored religious objectors’ rights to deal with their local representative and has kept all of Ms. Ladley’s and Mr. Meier’s objections within its own legal

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<sup>6</sup> In full, title 71, Pennsylvania Statutes, section 575(d), provides:

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.

<sup>7</sup> See *Hobe*, 956 F.2d 399.

<sup>8</sup> Section 575(h) requires:

(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.

<sup>9</sup> 71 P.S. § 575(i).

department.

## Constitutional Issues

*Courts have not addressed the issues raised in this case.* Although cases have explored the First Amendment issues surrounding forced unionization, those cases have little to do with this case because the PSEA has already “approved” the objections lodged by Ms. Ladley and Mr. Meier. In other words, the funds at issue in this case do not belong to the PSEA; they belong to Ms. Ladley and Mr. Meier, who are entitled to remain nonmembers and to send their money elsewhere.

*But some constitutional principles are clear.* Clearly, public-sector unions may not prevent or compel contributions from nonmembers without violating the First Amendment.<sup>10</sup> Although this principle has been compromised by the courts to facilitate “labor peace,”<sup>11</sup> that compromise only permits forced payments to the union—not forced payments to charities.

Also clear, from a United States Supreme Court case dealing with procedural rights,<sup>12</sup> is that a nonmember objecting to paying a union has the right to “a reasonably prompt decision by an impartial decisionmaker” and the right to have their objections “addressed in an expeditious, fair, and objective manner.”<sup>13</sup> Here, the PSEA has blocked Ms. Ladley’s and Mr. Meier’s selections indefinitely, with no outside, objective process for resolving their dispute.

## THE CASE LOGISTICS

### Plaintiffs

- Jane Ladley, a recently retired schoolteacher, last served as a Response to Intervention and Instruction (“RTII”) teacher. As an RTII teacher, Ms. Ladley dealt with children who have displayed potential learning problems. She instructed children over a short period of time in an effort to assess their needs and address learning problems. Finally, Ms. Ladley evaluated the children’s needs and recommends a solution including, potentially, a referral to special education.
- Christopher “Chris” Meier is a veteran schoolteacher teaching Advanced Placement courses in Economics and History. He previously coached the high school’s track and field team and led successful high school academic competition teams. He has served the district by developing curriculum for new courses and continues to take graduate courses at nearby Millersville University.

### Defendant

The Pennsylvania State Education Association, an affiliate of the National Education Association. The PSEA is as the largest education employee organization in the state. According to the PSEA’s 2013-2014 resolutions,<sup>14</sup> it is committed to the following principles:

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<sup>10</sup> See *Harris v. Quinn*, 573 U.S. \_\_\_\_ (2014).

<sup>11</sup> See *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977).

<sup>12</sup> *Chi. Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292 (1986).

<sup>13</sup> *Id.* at 307.

<sup>14</sup> Available at <http://www.psea.org/uploadedFiles/AboutPSEA/PSEAResolutions.pdf>.

### B-3 ACADEMIC, PERSONAL, AND PROFESSIONAL FREEDOM

The Association believes that academic, personal, and professional freedom is essential to the well-being of the teaching profession. Academic freedom includes the right of the teacher and learner to present, discuss, and explore controversial and divergent points of view in an atmosphere conducive to the quest for knowledge and truth...

Personal freedom includes all of those rights that American citizens enjoy under the U.S. Constitution, regardless of occupation. Educators should not be penalized personally or professionally for exercising their constitutional rights.

Professional freedom includes the right of educators to advocate their professional points of view and to evaluate and criticize the policies and actions of the local school entity in which they are employed without fear of reprisal...

### B-11 POLITICAL ACTION

The Association reaffirms the constitutional right and obligation of all education employees, individually and/or collectively, to participate in all aspects of the democratic political process and encourages all education employees, to actively do so. The Association must resist any efforts to deny or suppress the exercise of those rights. The Association should assist local associations in bringing action against any policymaking board which abrogates the political rights of education employees. Provisions should be made to enable education employees to serve in any public office without personal loss and/or curtailment of annual increments, tenure, retirement, fringe benefits, or seniority rights.

The Association endorses PSEA-PACE, the PSEA political action committee, and strongly urges members and friends of education to support it through individual involvement and contributions.

The Association opposes legislation that would uniformly impose expenditure limits without regard to PAC size. (80,87,95,07,09)

#### **Court**

Lancaster County Court of Common Pleas

#### **Judge**

The Honorable Leonard G. Brown, III

#### **Relief Sought**

Ms. Ladley and Mr. Meier are asking the Court to issue a declaratory judgment clarifying that, under title 71, Pennsylvania Statutes, section 575(h), the union cannot maintain its arbitrary “policy” restricting religious objectors’ choice of a substitute on the basis that the charity is, in the union’s view, “political” or a so-called “conflict of interest.” Ms. Ladley and Mr. Meier will also seek injunctive relief to enforce the Court’s ruling.

#### **Date Filed**

September 14, 2018

#### **THE LEGAL TEAM**

**David R. Osborne** is General Counsel at the Fairness Center, where he advises on board activities and legal strategy. Before joining the Fairness Center, David litigated on behalf of healthcare providers and conducted organizational and lobbying efforts for a national trade association. He previously worked as a judicial clerk to a Florida Supreme Court justice and served as official staff to a member of Congress. David graduated from the Florida State University College of Law.

**Nathan R. Bohlander** is Assistant General Counsel at the Fairness Center, where he focuses on client interaction and litigation activities. Before joining the Fairness Center, Nathan clerked for a judge in the Philadelphia Court of Common Pleas and maintained a solo practice. He has also previously worked for a nonprofit school choice organization, a Pennsylvania State Senator, and a member of Congress. Nathan graduated from the Pennsylvania State University Dickinson School of Law.