

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ELIZABETH MCKEON,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 13; MICHAEL NEWSOME, in his
official capacity as Secretary of the
Pennsylvania Office of Administration;
BRIAN T. LYMAN, in his official capacities as
Chief Accounting Officer for the
Commonwealth of Pennsylvania and
Deputy Secretary for the Office of
Comptroller Operations,

Defendants.

Case No. _____

(Hon. _____)

COMPLAINT

--ELECTRONICALLY FILED--

AND NOW comes Plaintiff Elizabeth McKeon, by and through her undersigned attorneys, and states the following claim for relief against Defendant American Federation of State, County and Municipal Employees, Council 13 (“Council 13”); Michael Newsome, in his official capacity as Secretary of the Pennsylvania Office of Administration; and Brian T. Lyman, in his official capacities as the Chief Accounting Officer for the Commonwealth of Pennsylvania and Deputy Secretary for the Office of Comptroller Operations (the latter two, collectively, “Commonwealth Defendants”), and avers as follows:

SUMMARY OF THE CASE

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for monetary, injunctive, and declaratory relief, to redress the ongoing deprivation under the color of state law of Ms. McKeon's rights under the First and Fourteenth Amendments to the United States Constitution. This deprivation is caused by Defendants' joint policies and practices, as provided in their collective bargaining agreement and as authorized by state law, under which Defendants have forced Ms. McKeon to remain a member of Council 13 and have continued to seize and accept full union dues and political and legislative contributions from Ms. McKeon's wages despite her resignation from the union.

2. Despite Ms. McKeon's letter resigning membership in Council 13 nearly a year ago, Defendants have continued to deduct union dues and political and legislative contributions from her wages and thus, in addition to injunctive and declaratory relief against all Defendants, Ms. McKeon seeks compensatory and nominal damages against Council 13 for the violation of her First and Fourteenth Amendment rights, as well as attorneys' fees and costs, pursuant to 42 U.S.C. § 1988.

JURISDICTION AND VENUE

3. This action arises under the Constitution and laws of the United States of America, including the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of Ms. McKeon's rights, privileges,

and immunities under the Constitution of the United States, and particularly the First and Fourteenth Amendments.

4. This Court has jurisdiction over Ms. McKeon's claims under 28 U.S.C. § 1331—because the claims arise under the United States Constitution—and 28 U.S.C. § 1343—because she seeks relief under 42 U.S.C. § 1983.

5. This action is an actual controversy in which Ms. McKeon seeks a declaration of her rights under the Constitution of the United States. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court may declare plaintiffs' rights and grant further necessary and proper relief, including injunctive relief pursuant to Federal Rule of Civil Procedure 65.

6. Venue is proper in this Court under 28 U.S.C. § 1391(b), because a defendant, Council 13, is domiciled in and operates or does significant business in this judicial district.

PARTIES

7. Plaintiff Elizabeth McKeon is a "Public employe," 43 P.S. § 1101.301(2), and "Commonwealth employe," as defined in Pennsylvania's Public Employee Relations Act ("PERA"). 43 P.S. § 1101.301(15). She is employed by the Commonwealth of Pennsylvania, Department of Human Services as a Clerk Typist at the Norristown State Hospital, in a bargaining unit represented, exclusively for purposes of collective bargaining, by Council 13. Ms. McKeon was a member of Council 13, but resigned her union membership by letter dated July 26, 2019.

8. Defendant Council 13 is an “Employee organization,” 43 P.S. § 1101.301(3), and “Representative,” 43 P.S. § 1101.301(4), within the meaning of PERA. Pursuant to collective bargaining agreement, Council 13 represents employees of the Pennsylvania Department of Human Services, including Ms. McKeon, exclusively for purposes of collective bargaining with the Commonwealth. Council 13 is domiciled within the Middle District of Pennsylvania and conducts its business and operations throughout the Commonwealth of Pennsylvania, including the Middle District of Pennsylvania.

9. Defendant Michael Newsome is Secretary of the Office of Administration. On information and belief, Mr. Newsome, and/or his predecessor, Sharon P. Minnich, on behalf of the Commonwealth, negotiated, entered into, and is the signatory to the collective bargaining agreements with Council 13 governing the terms and conditions of employment for Ms. McKeon. Mr. Newsome is sued in his official capacity.

10. Defendant Brian T. Lyman, Chief Accounting Officer for the Commonwealth of Pennsylvania and Deputy Secretary for the Office of Comptroller Operations, is responsible for, among other things, issuing wages to employees of the Commonwealth of Pennsylvania, including to Ms. McKeon. He oversees the payroll system for the Commonwealth of Pennsylvania, which includes processing all payroll deductions, including union dues deductions. He is sued in his official capacity.

FACTUAL ALLEGATIONS

11. Acting in concert under color of state law, the Commonwealth of Pennsylvania, by its officials and agents, including Secretary Newsome (and/or his predecessor, Sharon P. Minnich), in his official capacity, and Council 13 entered into a collective bargaining agreement (“expired CBA”), which controlled the terms and conditions of Ms. McKeon’s employment until its expiration on June 30, 2019. A true and correct copy of relevant excerpts from the expired CBA is attached hereto as “Exhibit A,” and incorporated by reference herein.

12. As authorized by PERA, the expired CBA contains a “Union Security” article, which prohibits union members from resigning their union membership when and how they see fit, and provides in relevant part that:

Section 1. Each employee who, on the effective date of this Agreement, is a member of the Union, and each employee who becomes a member after that date shall maintain membership in the Union, provided that such employee may resign from the Union, in accordance with the following procedure:

a. The employee shall send a certified letter, return receipt requested, of resignation to the headquarters of Council 13, AFSCME, AFL-CIO and a copy of the letter to the employee’s agency. The official membership card, if available, shall accompany the letter of resignation.

b. The letter shall be postmarked during the 15 day period prior to the expiration date of this Agreement and shall state that the employee is resigning membership in the Union and where applicable is revoking check-off authorization.

Ex. A, expired CBA art. 3, § 1.

13. The expired CBA's Article 3 imposes a maintenance of membership requirement mirroring, in substantive part, PERA's maintenance of membership provision, which states,

(18) "Maintenance of membership" means that all employes who have joined an employe organization or who join the employe organization in the future must remain members for the duration of a collective bargaining agreement so providing with the proviso that any such employe or employes may resign from such employe organization during a period of fifteen days prior to the expiration of any such agreement.

43 P.S. § 1101.301(18).

14. PERA explicitly authorizes limitations on the right to resign union membership, providing that, as defined above, "[m]embership dues deductions and maintenance of membership are proper subjects of bargaining" 43 P.S. § 1101.705.

15. Ms. McKeon joined Council 13 on August 27, 2018, shortly after beginning her employment with the Commonwealth of Pennsylvania, Department of Human Services, as a Clerk Typist at the Norristown State Hospital.

16. The terms of the "Membership Card" Ms. McKeon signed when she joined Council 13 stated that the authorization of dues deduction was irrevocable

unless I give my Employer and the Union written notice of revocation during the fifteen (15) days before the annual anniversary date of this authorization or, for public sector contracts, during the fifteen (15) days before the date of termination of the appropriate collective bargaining

agreement between the Employer and the Union, whichever occurs sooner.

17. On July 31, 2019, Ms. McKeon mailed her resignation letter, dated July 26, 2019, via certified mail to Council 13's headquarters located at 4031 Executive Park Drive, Harrisburg, Pennsylvania, and requested that the United States Postal Office provide a return receipt evidencing delivery.

18. Ms. McKeon enclosed her union membership card with the resignation letter sent to Council 13's headquarters.

19. Ms. McKeon's resignation letter was received and signed for at Council 13's headquarters on August 2, 2019, according to the return receipt from the United States Postal Service.

20. Ms. McKeon also sent a copy of her resignation letter to the Norristown State Hospital's Human Relations Office on or about July 31, 2019.

21. At the time Ms. McKeon mailed her resignation letter, and at the time Defendants received that letter, the expired CBA was not in effect, and no other collective bargaining agreement was yet in effect.

22. A new collective bargaining agreement between Council 13 and the Commonwealth was signed on August 28, 2019 ("current CBA").

23. Ms. McKeon received no response from Defendants to her July 26, 2019 resignation letter.

24. Since on or about July 26, 2019, Council 13 has continued to treat and/or to consider Ms. McKeon as a member of Council 13.

25. Since on or about July 26, 2019, Commonwealth Defendants have continued to treat and/or to consider Ms. McKeon as a member of Council 13.

26. Continually since on or about July 26, 2019, Mr. Lyman, in his role overseeing the Office of the Comptroller, has continued to deduct purported union dues from Ms. McKeon's wages, as well as purported political and legislative contributions.

27. Since on or about July 26, 2019, Council 13 has continued to take and/or accept purported union dues from Ms. McKeon's wages.

28. Since on or about July 26, 2019, Council 13, and/or its political action committee, has continued to take and/or accept political and legislative contributions from Ms. McKeon's wages against her will, even though federal campaign finance rules require such contributions to be voluntary.

29. Since on or about July 26, 2019, Commonwealth Defendants have deducted, and Council 13 and/or its political action committee has accepted, purported political and legislative contributions from Ms. McKeon's wages.

30. Defendants have taken and continue to take and have accepted and continue to accept purported union dues and political and legislative contributions from Ms. McKeon's wages even though Ms. McKeon resigned her union membership

on July 26, 2019, and the seizure of this money from her wages is against Ms. McKeon's will and without her consent.

31. Ms. McKeon objects to the compelled association with and financial subsidization of any activities of Council 13 and/or its affiliates for any purpose.

32. Since Ms. McKeon's resignation, continuing to the present day, Council 13 and Commonwealth Defendants, pursuant to the expired CBA, the "Membership Card," and/or their joint policy and practice, act in concert under color of state law to collect, distribute and/or accept full union membership dues and political and legislative contributions from Ms. McKeon's wages.

CLAIM FOR RELIEF

(Violation of 42 U.S.C. § 1983 and
the Constitution of the United States)

33. Ms. McKeon re-alleges and incorporates by reference all allegations contained in the foregoing paragraphs of this Complaint as if fully set forth herein.

34. The First and Fourteenth Amendments to the Constitution of the United States protect the associational, free speech, and free choice rights of United States citizens.

35. There is no state interest, compelling or otherwise, justifying the state's requirement that individuals remain members of a private organization, including a labor organization, for any length of time.

36. Even if there were a state interest in forcing ongoing membership in and financial contributions to a private organization, Defendants' joint policy and practice

of failing to honor Ms. McKeon's membership resignation and continuing to force her financial support of Council 13 and/or its affiliates is not narrowly tailored to that interest.

37. Defendants' joint policy and practice, as provided in their collective bargaining agreement and as authorized by state law, of failing to honor Ms. McKeon's membership resignation, requires Ms. McKeon to maintain unwilling allegiance to Council 13 and is, therefore, unconstitutional. This forced membership impinges on Ms. McKeon's exercise of her rights to free association, self-organization, assembly, petition, and freedom of speech, thought, and conscience, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

38. Defendants' joint policy and practice of continuing to withhold purportedly voluntary political and legislative contributions from Ms. McKeon despite her membership resignation compels Ms. McKeon to provide unwilling and forced support for the political speech of Council 13, which violates Ms. McKeon's rights under the First and Fourteenth Amendments.

39. As a direct result of Defendants' actions taken pursuant to the expired CBA, the "Membership Card," and/or their joint policy and practice, Ms. McKeon:

a. has been prevented from exercising her rights and privileges as a citizen of the United States to disassociate from and no longer support the agenda, political speech, and expenses of a private organization with which she no longer agrees and to which she no longer wishes to belong as a member;

b. has been deprived of her civil rights guaranteed to her under the statutes of the United States and has suffered monetary damages and other harm;

c. is in imminent danger of being deprived of her civil rights guaranteed under the Constitution and statutes of the United States and is in imminent danger of suffering monetary damages and other harm; and

d. is in imminent danger of suffering irreparable harm, damage, and injury inherent in the violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law.

40. If not enjoined by this Court, Defendants and/or their agents will continue to effect the aforementioned deprivations and abridgments of Ms. McKeon's constitutional rights, thereby causing irreparable harm, damage, and injury for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court order the following relief:

A. **Declaratory:** A judgment based upon the actual, current, and *bona fide* controversy between the parties as to the legal relations among them, pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, declaring:

i. that the First and Fourteenth Amendments prohibit Defendants from restricting Ms. McKeon's right to resign from union membership at any time;

ii. that the First and Fourteenth Amendments require Defendants to recognize Ms. McKeon's resignation of her union membership as of the date of her resignation;

iii. that the First and Fourteenth Amendments prohibit Defendants from forcing Ms. McKeon to continue to provide financial support in the form of political and legislative contributions despite her resignation from union membership; and

iv. that PERA provisions 43 P.S. §§ 1101.301(18), 1101.401, and 1101.705, relating to and authorizing maintenance of membership, and Article 3, Section 1, of the expired CBA, Exhibit A, between the Commonwealth of Pennsylvania and Council 13, on their face and as applied, unconstitutionally abridge Ms. McKeon's rights under the First and Fourteenth Amendments to the Constitution of the United States.

B. Injunctive: A permanent injunction:

i. enjoining Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them, from:

a. withholding union dues, political and legislative contributions, and/or any other monies for Council 13 from Ms. McKeon's wages;

b. restricting and/or failing to recognize or honor Ms. McKeon's right to resign her union membership; and

- c. enforcing or continuing to enforce Article 3, Section 1, of the expired CBA, Exhibit A, and/or any other provision between Council 13 and the Commonwealth of Pennsylvania that requires Ms. McKeon to remain a member of Council 13 and/or its affiliates for the duration of a collective bargaining agreement and/or any other duration of time beyond that which Ms. McKeon wishes to remain a member.
- ii. requiring Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them, to:
 - a. honor Ms. McKeon's request to resign from union membership, retroactive to the date of her resignation; and
 - b. cease withholding any monies from Ms. McKeon's wages for Council 13.
- iii. requiring Council 13 to refund Ms. McKeon all union dues and political and legislative contributions deducted from her wages from the date of her resignation from union membership to the present, with interest thereon.

C. **Monetary:** A judgment against Council 13 awarding Ms. McKeon nominal and compensatory damages for the injuries sustained as a result of Defendants' unlawful interference with and deprivation of her constitutional and civil rights including, but not limited to, the amount of dues and political and legislative

contributions deducted from her wages from the date of her resignation, plus interest thereon, and such amounts as principles of justice and compensation warrant.

D. **Attorneys' Fees and Costs:** A judgment awarding Ms. McKeon costs and reasonable attorneys' fees under 42 U.S.C. § 1988; and

E. **Other:** Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

THE FAIRNESS CENTER

Dated: June 15, 2020

s/ Danielle R.A. Susanj

Danielle R.A. Susanj

Pa. Attorney I.D. No. 316208

E-mail: drasusanj@fairnesscenter.org

Nathan J. McGrath

Pa. Attorney I.D. No. 308845

E-mail: njmcgrath@fairnesscenter.org

Curtis M. Schube

Pa. Attorney I.D. No. 325479

E-mail: cmschube@fairnesscenter.org

THE FAIRNESS CENTER

500 North Third Street, Floor 2

Harrisburg, Pennsylvania 17101

Telephone: 844.293.1001

Facsimile: 717.307.3424

Attorneys for Plaintiff