

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

LINDA MISJA,

Plaintiff,

vs.

PENNSYLVANIA STATE EDUCATION
ASSOCIATION,

Defendant.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

Plaintiff Linda Misja (“Ms. Misja”), a Pennsylvania public high school teacher and religious objector to public-sector union membership, by and through counsel, brings this lawsuit against Defendant Pennsylvania State Education Association (“PSEA”) to vindicate her constitutional and statutory rights to free speech, association, expression, and due process.

As a public high school teacher in Pennsylvania, Ms. Misja may be subjected to compulsory payment of a union “fair share fee” under title 71, section 575 of

the Pennsylvania Statutes (“section 575”).¹ However, section 575 expressly protects religious objectors from payment of fair share fees to the union and allows them instead to “pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the [union].” 71 P.S. § 575(h).

Unfortunately, as Ms. Misja will demonstrate, the PSEA engages in the practice of perpetuating the charity selection process indefinitely, imposing viewpoint-based restrictions on her speech and association, and stripping her of protections consistent with Pennsylvania law. The PSEA has further denied to Ms. Misja a mechanism consistent with constitutional due process even to challenge its actions—thereby putting itself and its practice beyond review. Accordingly, section 575 is being unconstitutionally applied to Ms. Misja.

Nevertheless, if the PSEA’s practice is consistent with section 575, then section 575 is facially unconstitutional for failing to provide an adequate mechanism to prevent the very sort of arbitrary and capricious restrictions imposed by the PSEA and the pernicious viewpoint discrimination in which it engages. The funds taken from Ms. Misja’s paycheck are her earned income and hers to direct, yet the PSEA’s practice, if held to be in accordance with the statute,

1. Section 575 is also commonly known as “The Fair Share Fee Law.”

deprive her of due process and unconstitutionally restrict her ability to direct her funds.

Accordingly, Ms. Misja respectfully requests that this Court declare that the PSEA has violated her constitutional and statutory rights and permanently enjoin such violations or, alternatively, declare Pennsylvania's section 575(h) facially unconstitutional in part.

JURISDICTION AND VENUE

1. Ms. Misja brings this lawsuit pursuant to 42 U.S.C. § 1983 for violations of her rights under the First and Fourteenth Amendments to the United States Constitution; the Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202; Article I, sections 1, 7, 9, 11, and 26 of the Pennsylvania Constitution; and 42 U.S.C. § 1988. Ms. Misja seeks declaratory and injunctive relief against the PSEA's practice of obstructing and censoring of her charity selections under section 575.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343.

3. Venue is proper in the United States District Court for the Middle District of Pennsylvania under 28 U.S.C. § 1391(b)(1) and (2). The PSEA is domiciled in Dauphin County, and a substantial part of the events or omissions

giving rise to Ms. Misja's claims occurred in Dauphin and Centre counties. See 28 U.S.C. § 118.

PARTIES

4. Ms. Misja has been a language teacher for over 35 years. She taught high school French and English at Bellefonte Area High School in Centre County from 2006 until 2014, when she began teaching French at Apollo-Ridge High School in Armstrong County. Prior to teaching high school French, she taught English and linguistics at the college level for 25 years, seven of which were at the Pennsylvania State University. Ms. Misja is fluent in two foreign languages, and over the course of her career, she has accumulated two bachelor's degrees, a master's degree, and three Pennsylvania teaching certifications. She is currently a Ph.D. student at the Pennsylvania State University. Ms. Misja is an adult citizen of the United States and a Centre County resident.

5. Defendant Pennsylvania State Education Association is an unincorporated association registered under the laws of Pennsylvania, a "statewide employe organization" as used in section 575, and domiciled in Pennsylvania, with a principal address of 400 North 3rd Street, Harrisburg, Pennsylvania 17105. The PSEA is affiliated with the National Education Association ("NEA").

6. The PSEA acts “under the color of state law” because its practice is “power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law,” specifically, section 575, the Public School Code,² and the Public Employe Relations Act.³ West v. Atkins, 487 U.S. 42, 49 (1988) (quoting United States v. Classic, 313 U.S. 299 (1941)); see, e.g., Otto v. Pennsylvania State Educ. Ass’n-NEA, 330 F.3d 125 (3d Cir. 2003); see also Harris v. Quinn, 573 U.S. ___, 134 S. Ct. 2618 (2014); Communications Workers of Am. v. Beck, 487 U.S. 735, 761 (1988) (“[P]ermitting unions to expend governmentally compelled fees on political causes that nonmembers find objectionable” would raise a “serious constitutional question.”).

STANDING AND LEGAL STANDARD

7. Ms. Misja’s interest in this controversy is direct, substantial, and present. As a direct result of the PSEA’s construction of section 575, Ms. Misja has suffered in the past, and will continue to suffer in the future, nonmonetary damages including loss of income and the inability to donate to a “nonreligious charity” in accordance with section 575(h).

2. 24 P.S. §§ 11-1101-A – 11-1172-A.

3. 43 P.S. §§ 1101.301 – 1101.2301.

8. Under the Declaratory Judgments Act, this Court “may declare the rights and other legal relations of any interested party seeking such declaration.” 28 U.S.C. § 2201.

STATEMENT OF FACTS

9. Ms. Misja began teaching high school French at Bellefonte Area High School in 2006. She declined to become a member of the PSEA and the local affiliate, Bellefonte Area Education Association (“BAEA”).

10. From 2006 until 2011, the collective bargaining agreement (“CBA”) between BAEA and the Bellefonte Area School District (“Bellefonte”) did not allow for the collection of fees from teachers who declined to be union members. Accordingly, Ms. Misja and other nonmembers were not compelled to join the union or pay dues or fees to the BAEA, PSEA, or NEA.

11. However, in 2011, the BAEA bargained with Bellefonte to compel nonmembers to pay a fair share fee under an “agency shop” agreement,⁴ beginning January of 2012. See 2011-2015 CBA between Bellefonte and BAEA, at

4. An agency shop agreement dictates that “all the employees are represented by a union selected by the majority” and that “[w]hile employees in the unit are not required to join the union, they must nevertheless pay the union an annual fee to cover the cost of union services related to collective bargaining (so-called chargeable expenses).” Knox v. Services Employees Int’l Union, Local 1000, 567 U.S. ___, 132 S.Ct. 2277, 2284 (2012).

p. 29 (Article 35, Part E), a true and correct copy of which is incorporated by reference and attached hereto as “Exhibit A.”

12. In Pennsylvania, the “annual fee” imposed on nonmembers under an agency shop agreement is termed a “fair share fee” and is permitted under section 575. 71 P.S. § 575(a).

13. Section 575 provides significant protections for public employees who have declined to become (or remain) union members and are subject to payment of fair share fees under an agency shop agreement. First, nonmembers may object to “the propriety of the fair share fee.” 71 P.S. § 575(e)(1). Second, nonmembers may object to any payment of fair share fees by raising a “bona fide” religious objection. 71 P.S. § 575(e)(2). For verified and accepted bona fide religious objections, the statute provides that the nonmember “shall pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative.” 71 P.S. § 575(h). Section 575(h) is silent as to the meaning of “agreed upon” and imposes no deadline on agreement or disposition of escrowed funds. See id.⁵

5. Section 575(h) reads, in full:

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

14. On January 18, 2012, after the PSEA notified Ms. Misja that it would compel fair share fees, she filed a timely objection to payment of fair share fees on religious grounds under section 575(h).

15. Following her timely objection, Ms. Misja provided additional information upon the PSEA's request regarding the nature of her objection.

16. On July 23, 2012, the PSEA "accepted" Ms. Misja's religious objection to payment of fair share fees. The PSEA also requested that Ms. Misja select a nonreligious charity to which Ms. Misja's money could be forwarded. A true and correct copy of the PSEA's July 23, 2012, letter to Ms. Misja is incorporated by reference and attached hereto as "Exhibit B."

17. On February 18, 2013, Ms. Misja requested that the organization "People Concerned for the Unborn Child" ("PCUC") receive her money.

18. PCUC is not a religious organization.

19. The PSEA rejected Ms. Misja's choice of PCUC on the stated grounds that sending Ms. Misja's money to PCUC "would be tantamount to sending your

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.

fees to a charity that furthers your religious beliefs, which is contrary to neutral intent and requirements of the Pennsylvania Fair Share Fee Law.” A true and correct copy of the PSEA’s May 6, 2013, letter to Ms. Misja reiterating the reasons for rejection of PCUC is incorporated by reference and attached hereto as “Exhibit C.”

20. The PSEA offered to approve “a pregnancy center that counsels women on all options.” Exh. C.

21. Shortly thereafter, Ms. Misja selected an alternative—though not her preferred—choice of charity, the National Rifle Association Foundation (“NRA Foundation”).⁶ A true and correct copy of the undated letter from Ms. Misja to the PSEA is incorporated by reference and attached hereto as “Exhibit D.”

22. The NRA Foundation is not a religious organization.

23. Ms. Misja also requested arbitration to resolve disagreement over the charity selection. Exh. D.

24. In January 2014, Ms. Misja left Bellefonte to fill another teaching position at Apollo-Ridge High School. The PSEA’s local affiliate at Apollo-Ridge, the Apollo-Ridge Education Association (“AREA”), had also already bargained to

6. Although Ms. Misja first identified the charity as “The Friends of NRA foundation,” a fundraising program benefitting the NRA Foundation, she identified and provided the Federal Employer Identification Number for the NRA Foundation.

force fair share fees, to which she had a continuous religious objection under section 575.⁷ See 2013-2018 CBA between Apollo-Ridge and AREA, at p. 22 (Article XVI, Section C), a true and correct copy of which is incorporated by reference and attached hereto as “Exhibit E.”

25. On May 6, 2014, the PSEA rejected Ms. Misja’s alternate choice of charity on the grounds that the “PSEA has a policy of not agreeing to the charitable subsidiaries of political organizations.” Exh. C.

26. The PSEA offered to consider a charity that, like the NRA Foundation, offered “educational programs promoting school safety, hunter safety, and self-defense” but, apparently, without ties to a “political” organization. Exh. C.

27. The PSEA also rejected Ms. Misja’s request for arbitration, stating:

[T]o reiterate, you do not have a right under the Pennsylvania Fair Share Fee Law to arbitrate our denial of the [PCUC] or [the NRA Foundation] charities to receive your 2011-12, 2012-13, and 2013-14 fair share fees.^[8]

Exh. C.

7. Both parties appeared to have treated the existing objection, “accepted” on July 23, 2012, as valid after her move.

8. The PSEA’s characterization of Ms. Misja’s funds as “fair share fees” is incorrect, given that she objected—and the PSEA accepted her objection—to payment of fair share fees.

28. The PSEA continues to receive—as automatic deductions from Ms. Misja’s paycheck—a portion of Ms. Misja’s earned income, which the PSEA has held from 2011 to date.

29. Because the PSEA rejects Ms. Misja’s choice of charity arbitrarily, on viewpoint-based grounds, without reference to a written policy or timetable, and without resort to an independent decisionmaker, Ms. Misja is uncertain and insecure as to her rights as an “accepted” bona fide religious objector under section 575.⁹

SUMMARY OF CLAIMS

30. Ms. Misja seeks a declaratory judgment that the PSEA cannot maintain its practice of withholding her funds indefinitely, without access to an independent decisionmaking process to resolve the disputed application thereof, and cannot engage in pernicious viewpoint discrimination by restricting her choice of charity simply because Ms. Misja’s chosen charity takes positions with which the PSEA does not agree.¹⁰ In maintaining its arbitrary practice, the PSEA

9. For this reason, it is unnecessary for justiciability purposes that Ms. Misja continue to select charity after charity. Ms. Misja is already uncertain and insecure as to her rights.

10. The Fairness Center also serves as counsel and has advanced a similar argument in an action filed in state court. That action has not yet proceeded to the merits because the PSEA filed preliminary objections, which are now pending

(1) violates Ms. Misja's right to due process under both the First and Fourteenth Amendments to the United States Constitution; (2) violates Ms. Misja's right to due process under the Pennsylvania Constitution;¹¹ (3) infringes upon Ms. Misja's freedoms of speech, association, and expression under the First Amendment to the United States Constitution; (4) infringes upon Ms. Misja's freedoms of speech, association, and expression under Article I, sections 1, 7, and 26 of the Pennsylvania Constitution;¹² (5) violates the plain language of section 575; and (6) violates Pennsylvania law by failing to refer Ms. Misja's charity dispute to the "exclusive representative," the BAEA, for resolution. Ms. Misja also seeks a permanent injunction to enforce this Court's declaratory judgment. Alternatively,

before that court. See *Ladley v. Pennsylvania State Education Ass'n*, CI-14-08552 (Lancaster Cnty. Ct. Com. Pl., filed Sept. 18, 2014).

11. "Article I, Sections 1, 9 and 11 of the Pennsylvania Constitution give to the people of Pennsylvania the right to due process guaranteeing those appearing in any judicial or administrative tribunal the right to a fair and impartial hearing. While the rights protected under those Articles and the rights guaranteed under the Fourteenth Amendment are substantially coextensive, the Pennsylvania due process rights are more expansive in that, unlike under the Fourteenth Amendment, a violation of due process occurs, even if no prejudice is shown, when the same entity or individual participates in both the prosecutorial and adjudicatory aspects of a proceeding." *Stone and Edwards Ins. Agency v. Dep't of Ins.*, 636 A.2d 293, 297 (Pa. Cmwlth. 1994) (emphasis added).

12. "Article I, Section 7 provides broader protections of expression than the related First Amendment guarantee in a number of different contexts." *DePaul v. Commonwealth*, 969 A.2d 536, 546 (Pa. 2009).

Ms. Misja seeks a determination that section 575 is facially unconstitutional in part.

FIRST CAUSE OF ACTION
SECTION 575 UNCONSTITUTIONAL AS APPLIED – DENIAL OF DUE PROCESS
(42 U.S.C. § 1983; U.S. Const. amends. I and XIV)

31. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

32. The PSEA has failed to provide Ms. Misja with due process under the First and Fourteenth Amendment, namely, an expeditious process including notice, an opportunity to be heard, and access to an independent decisionmaker to break disagreement with the PSEA and to determine the proper disposition of funds withheld from her paycheck.¹³

33. On January 18, 2012, Ms. Misja objected to payment of fair share fees on religious grounds pursuant to section 575¹⁴ and has attempted to direct her funds to a nonreligious charity as permitted by the statute.

13. See, e.g., Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v. Hudson, 475 U.S. 292, 307 & n.20 (1986) (finding unconstitutional a union’s practice of internally deciding—and obstructing—challenges to nonmember fees “because it did not provide for a reasonably prompt decision by an impartial decisionmaker” and on the basis that “the government and union have a responsibility to provide procedures that minimize that impingement [of First Amendment rights] and that facilitate a nonunion employee’s ability to protect his rights.”).

14. Religious objector bears the burden of objecting to payment of fair share fees. See 71 P.S. § 575.

34. To date—more than three years later—the PSEA has yet to complete the religious objection process, despite Ms. Misja’s good-faith attempts at resolution.

35. The PSEA’s practice in dealing with religious objections fails to sufficiently minimize the impingement of Ms. Misja’s First Amendment rights or her burden under section 575 of objecting to payment of compelled fees.

36. The PSEA has failed to provide Ms. Misja with notice of any written policies regarding the process or standards applied by the PSEA in addressing religious objectors’ charity selections.

37. The PSEA has failed to provide Ms. Misja with an expeditious process.

38. The PSEA has failed to provide Ms. Misja with a fair process.

39. The PSEA specifically denied Ms. Misja access to an independent and impartial decisionmaker.

40. Rather, the PSEA imposes an extremely protracted process driven by the PSEA’s own ad hoc, arbitrary determinations, while denying Ms. Misja access to an impartial decisionmaker. The PSEA’s practice continues to ensure that Ms. Misja’s funds are withheld from her and from a nonreligious charity of her choice.

41. The PSEA’s practice fails to provide due process under the First and Fourteenth Amendments to the United States Constitution, which process

requires notice, an opportunity to be heard at a meaningful time, and access to an impartial decisionmaker.¹⁵

SECOND CAUSE OF ACTION
SECTION 575 UNCONSTITUTIONAL AS APPLIED – DENIAL OF DUE PROCESS
(Pa. Const. art I §§ 1, 9, and 11)

42. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

43. In addition to violating Ms. Misja’s due process rights under the First and Fourteenth Amendments, the PSEA’s practice violates Ms. Misja’s rights to due process under Article I, Sections 1, 9 and 11 of the Pennsylvania Constitution.¹⁶

44. The PSEA “participates in both the prosecutorial and adjudicatory aspects” of the religious objection proceeding. Stone and Edwards Ins. Agency v.

15. See Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”) (quoting Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).

16. “Article I, Sections 1, 9 and 11 of the Pennsylvania Constitution give to the people of Pennsylvania the right to due process guaranteeing those appearing in any judicial or administrative tribunal the right to a fair and impartial hearing. While the rights protected under those Articles and the rights guaranteed under the Fourteenth Amendment are substantially coextensive, the Pennsylvania due process rights are more expansive in that, unlike under the Fourteenth Amendment, a violation of due process occurs, even if no prejudice is shown, when the same entity or individual participates in both the prosecutorial and adjudicatory aspects of a proceeding.” Stone and Edwards Ins. Agency v. Dep’t of Ins., 636 A.2d 293, 297 (Pa. Cmwlth. 1994) (emphasis added).

Dep't of Ins., 636 A.2d 293, 297 (Pa. Cmwlth. 1994); see, e.g., Lyness v. State Bd. of Med., 605 A.2d 1204 (Pa. 1992). The PSEA both objects to a nonmember's choice of charity and then denies any process by which the nonmember can argue that its determination should be overturned, in violation of guarantees of due process under the Pennsylvania Constitution.¹⁷

45. In sum, this Court should find that the process provided by the PSEA fell short of that due to Ms. Misja under the state constitution.

THIRD CAUSE OF ACTION
SECTION 575 UNCONSTITUTIONAL AS APPLIED
DENIAL OF RIGHTS TO SPEECH, ASSOCIATION, AND EXPRESSION
(42 U.S.C. § 1983; U.S. Const. amend. I)

46. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

47. The PSEA has violated and continues to violate Ms. Misja's rights to freedom of speech, association, and expression under the First Amendment by engaging in practices that effectively prohibit her from sending her money to an organization she selected and compel her to send her money to an organization she does not wish to support.

17. See also R. v. Dep't of Public Welfare, 636 A.2d 142, 153 (Pa. 1994) (adopting "Matthews" [sic] methodology to assess due process claims brought under Section 1 of Article I of the Pennsylvania Constitution).

48. The PSEA's practice does not serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.

49. Moreover, the PSEA's practice is a pernicious viewpoint-based restriction. The PSEA's practice operates in a manner that "suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people." First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 785-86 (1978).

50. The PSEA imposes viewpoint-based restrictions by prohibiting Ms. Misja from sending her money to a charity that, in the PSEA's judgment, "furthers [Ms. Misja's] religious beliefs." Exh. C.

51. The PSEA imposes viewpoint-based restrictions by prohibiting Ms. Misja from sending her money to a pregnancy center that, in the PSEA's judgment, does not "counsel[] women on all options." Exh. C.

52. The PSEA imposes viewpoint-based restrictions by prohibiting Ms. Misja from sending her money to the NRA Foundation but allowing her to send money to a charity that provides educational programs otherwise similar to those offered by the NRA Foundation, without a putative "political" connection. Exh. C.

53. Additionally, although the PSEA does not oppose religious objectors funding ideological or political organizations, it has opposed Ms. Misja's funding of putatively ideological or political causes with which it disagrees:

- a. In a May 8, 2012 letter to Ms. Misja seeking additional information concerning the nature of her objection, the PSEA's legal department provided an approved list of several charities to which Ms. Misja's "fair share fee" could be donated:

| | |
|-------------------------------|----------------------------|
| Alzheimer's Association | Cystic Fibrosis Foundation |
| American Cancer Society | Make-A-Wish Foundation |
| American Diabetes Association | March of Dimes |
| American Heart Association | Muscular Dystrophy [Ass'n] |
| American Red Cross | Special Olympics |

A true and correct copy of the PSEA's May 8, 2012, letter to Ms. Misja is incorporated by reference and attached hereto as composite "Exhibit F."

- b. However, a review of these organizations' IRS Form 990 documents reveals that many such organizations spend a significant amount of money on undeniably "political" activities. In 2013 (or from 2013-14, as documented), the following charities spent the corresponding amounts directly on "Lobbying," as reported to the IRS:

Alzheimer's Association: \$1,844,797
American Cancer Society: \$17,056,480
American Diabetes Association: \$1,380,997
American Heart Association: \$3,258,509
American Red Cross: \$369,706
Cystic Fibrosis Foundation: \$561,245
March of Dimes: \$2,090,509
Muscular Dystrophy Association: \$333,447
Special Olympics: \$91,200

A true and correct copy of the relevant portion of each organization's IRS Form 990 is incorporated by reference and attached hereto as composite "Exhibit G."

- c. The PSEA's willingness to allow Ms. Misja to send her money to "a pregnancy center that counsels women on all options"—presumably the local Planned Parenthood affiliate—also belies the PSEA's claim to oppose funding any "charitable subsidiaries of political organizations." The Planned Parenthood Federation of America, Inc., spent \$689,416 on lobbying from July 2013-June 2014. A true and correct copy of the relevant portion of Planned Parenthood Federation of America's IRS Form 990 is incorporated by reference and attached hereto as composite "Exhibit H."

54. Even if the PSEA could demonstrate a compelling interest in dictating which activities a religious objector may fund, the PSEA's practice would be an

unnecessarily restrictive means of accomplishing that interest. For example, the PSEA's practice includes unwritten "policies" that rule out large, vague categories of charities—those that "further[] your religious beliefs" and "charitable subsidiaries of political organizations"—without reference to certain charitable activities or their conflict, if any, with legal PSEA operations.

55. At the very least, the PSEA's practice includes ad hoc, arbitrary determinations based on subjective, unwritten policies.

56. Even the stated reasons given to Ms. Misja for rejecting her charity selections cannot be evenly applied. The Red Cross, for example, may equally "further[Ms. Misja's] religious beliefs." Likewise, the putative concern over "political" activity leading to rejection of the NRA Foundation is equally present with respect to the acceptable charities identified by the PSEA.

FOURTH CAUSE OF ACTION
SECTION 575 UNCONSTITUTIONAL AS APPLIED
DENIAL OF RIGHTS TO SPEECH, ASSOCIATION, AND EXPRESSION
(Pa. Const. art. I, §§ 1, 7, and 26)

57. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

58. The PSEA's practice denies to Ms. Misja's her rights to speech, association, and expression under Article 1, sections 1, 7, and 26 of the Pennsylvania Constitution.¹⁸

FIFTH CAUSE OF ACTION
PSEA'S VIOLATIONS OF THE PLAIN LANGUAGE OF SECTION 575

59. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

A. ARBITRARY AND CAPRICIOUS APPLICATION OF THE PLAIN LANGUAGE OF SECTION 575

60. Section 575(h) is clear and unambiguous in conferring upon a public employee the right to choose a nonreligious charity of his or her choice to receive funds otherwise owed to a union. A substitute designated must satisfy just two substantive requirements: (1) it must be a "charity"; and (2) it must be "nonreligious."

61. PSEA has denied to Ms. Misja the right to choose a nonreligious charity of her choice to receive her fair share fee.

62. Such action is arbitrary and capricious and clearly at odds with the meaning of the statute, which is to allow a nonmember to designate a charity

18. "Article I, Section 7 provides broader protections of expression than the related First Amendment guarantee in a number of different contexts." DePaul v. Commonwealth, 969 A.2d 536, 546 (Pa. 2009).

without serial objections from PSEA based upon unwritten and unknowable criteria.

63. The PSEA's practice of adding additional, broad requirements to section 575 is inconsistent with the plain language of the statute.

64. In specifying that religious objector funds go to a "nonreligious charity," the General Assembly plainly permitted that any nonreligious 501(c)(3) organization or its functional equivalent may serve as an alternative to payment of fair share fees.

65. Ms. Misja's proposed charities—which qualified under the statute as nonreligious charities—were rejected by the PSEA.

66. Although section 575(h) contains language specifying that nonreligious charities must be "agreed upon," if such language permits the indefinite postponement, and ultimate frustration, of a nonmember's funds, then such a reading would produce absurd results and, ultimately, a facially unconstitutional rendering.

67. At the very least, the mutual agreement requirement cannot provide support for a sweeping practice like the one created by the PSEA. It would have made little sense to the General Assembly to grant veto rights to the union over

the selection of a charity when the statutory text plainly evidences concern over the legitimacy of the objection, not the name of the charity.

68. The protection for religious objectors was added in 1988 as a countermeasure to the law allowing state and school employee unions to secure agency shop agreements. See P.L. 493, No. 84, § 2 (Pa. S.B. 291 (Reg. Sess. 1987-88)). The religious objection protection was included to ensure that public employees would not have to fund efforts against their own consciences.¹⁹

69. Yet the PSEA's policy turns the protection into a tool that the union may use to control Ms. Misja and dictate how she directs her funds. Ms. Misja was verified by the PSEA as having a "bona fide" religious objection to the use of her funds for union purposes. Instead of honoring the protections afforded by the General Assembly for teachers like Ms. Misja, the PSEA practice effectively works against religious objectors.

70. The PSEA's reading of section 575(h) with respect to lack of "agreement" would leave the nonmember in "no-man's land"—and the courts

19. See 37 Pa. House L.J. 702 (May 26, 1987). Rep. Cowell, speaking in favor of the legislation as passed, remarked "[A] constitutional procedure must be established to protect the rights of the employee who would be subject to the fair share fee but who may in fact have some objections for any of those dollars being used for . . . religious purposes." Id.

without any enforceable standards—without any conceivable resolution to his or her religious objection process.

B. PSEA’S USURPATION OF ROLE OF “EXCLUSIVE REPRESENTATIVE”

71. Section 575(h) clearly tasks the “exclusive representative”—here, the Bellefonte Area Education Association (“BAEA”) or Apollo-Ridge Education Association (“AREA”)—with the task of resolving charity designations. Therefore, the PSEA should not even be involved in the very matter at issue in this case, and should have referred Ms. Misja’s designation to the BAEA or AREA.

72. Section 575(h) plainly 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.

(Emphases added).

73. Section 575(a) includes the following definitions:

“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.”

....

“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.

(Footnote omitted).

74. Here, the PSEA is clearly the “Statewide employe organization” because it is the affiliated parent organization for the BAEA and the AREA receiving, as a general matter, nonmember fair share payments.

75. Meanwhile the BAEA and the AREA are the “exclusive representatives” for purposes of section 575(h).

76. Under the CBA between Bellefonte and the BAEA, “[t]he District recognizes the [BAEA] as the exclusive bargaining agent for the employees in the bargaining unit as certified by the Pennsylvania Labor Relations Board.” Exh. A, at p. 3. The CBA further provides that “[t]he Pennsylvania Labor Relations Board, under date of May 3, 1971, certified the [BAEA] as the exclusive representative of the Employees of the District . . . for the purpose of collective bargaining with respect to wages, hours, and conditions of employment.” Id.

77. Likewise, under the CBA between Apollo-Ridge and the AREA, the AREA is “recognized by [Apollo-Ridge] as the exclusive bargaining agent providing for collective bargaining for public employees.” Exh. E, at p. 2.

78. The clear wording of section 575(h) leaves the PSEA with no other “available option” in dealing with religious objections and the designation of a charity. See Otto v. Pennsylvania State Education Association-NEA, 330 F.3d 125, 134 (3d Cir. 2003).

79. The statute’s text clearly requires that the “exclusive representative,” the BAEA and the AREA, must resolve this matter along with Ms. Misja. Additionally, the local, exclusive representative is in a better position to assess her situation and is directly accountable to those with whom Ms. Misja works.

80. The PSEA accordingly must be prevented from interfering with the process by which Ms. Misja may direct her funds.

SIXTH CAUSE OF ACTION (ALTERNATIVE)
FACIAL UNCONSTITUTIONALITY OF SECTION 575

81. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

82. Section 575 provides that the non-religious charity to which a non-union employee may direct his or her fair share fee must be “agreed upon” with the exclusive representative provided under the statute.

83. In the context of section 575, the term “agreed upon,” if applied mechanically, would either produce absurd or unconstitutional results.

84. If “agree[ment]” would operate as a window to allow unions to impose new substantive requirements, disputes over the selection of a substitute charity might continue indefinitely, without statutory guidance on process or substance and without legal remedy for an aggrieved non-union employee.

85. Moreover, “agree[ment]” as used in section 575 indicates the conclusion of, and not an invitation to perpetuate, the religious objection process. The term “agreed upon” is unaccompanied in section 575(h) by any other procedural standards or external dispute mechanisms expected to end a negotiation. Absent, for instance, are the procedural standards and dispute resolution options described in other portions of the same statute for disputes between the nonmember and the union.²⁰

20. For disputes as to whether a religious objection is “bona fide,” section 575(h) gives the nonmember 40 days to challenge the union, and section 575(i) provides for arbitration. Meanwhile, for challenges to the propriety of the fair share fee, section 575(d) require a “full and fair procedure . . . that provides nonmembers, by way of annual notice, with sufficient information to gauge the

86. Accordingly, if no saving interpretation would be applied to the statute such as that advanced by Ms. Misja here—for instance, an implied right to due process when disputes arise and a protection against pernicious viewpoint discrimination in an employee’s choice of nonreligious charity—section 575 must be declared facially unconstitutional under the First and Fourteenth Amendments and Article I, §§ 1, 7, 9, 11 and 26 of the Pennsylvania Constitution.

PRAYER FOR RELIEF

WHEREFORE, Ms. Misja prays this Honorable Court to:

- A. DECLARE that the PSEA’s implementation of section 575 is UNCONSTITUTIONAL AS APPLIED to Ms. Misja in that the PSEA’s practice:
1. VIOLATES Ms. Misja’s right to DUE PROCESS under the First and Fourteenth Amendments;
 2. VIOLATES Ms. Misja’s right to DUE PROCESS under Article I, Sections 1, 9 and 11 of the Pennsylvania Constitution;
 3. VIOLATES Ms. Misja’s right to speech, association and expression under the First Amendment by rejecting her

propriety of the annual fee and that responds to challenges” and provides for “an impartial hearing before an arbitrator.”

named non-religious charities out of pernicious viewpoint-based discrimination; and

4. VIOLATES Ms. Misja's right to speech, association and express under Article I, sections 1, 7 and 26 of the Pennsylvania Constitution;
5. VIOLATES Ms. Misja's rights under Section 575 by arbitrarily and capriciously rejecting the nonreligious charities she has chosen to receive her funds, and by usurping the place of the local area representative in rejecting the nonreligious charities so designated.

- B. ALTERNATIVELY DECLARE section 575 FACIALLY UNCONSTITUTIONAL under the First and Fourteenth Amendments and Article I, §§ 1, 7, 9, 11, and 26 of the Pennsylvania Constitution if literally implemented without avenue for due process review in the event of union-nonmember conflict in the choice of nonreligious charity and with allowance for pernicious viewpoint discrimination by the union;

- C. PERMANENTLY ENJOIN PSEA from further unconstitutional applications of section 575, including those delineated here;
- D. AWARD attorney's fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and
- E. GRANT such further legal and equitable relief as is just and proper.

Respectfully submitted,

THE FAIRNESS CENTER

Date: June 18, 2015

By:



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