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

LINDA MISJA,	:	1:15-cv-1199
	:	
Plaintiff,	:	Hon. John E. Jones III
	:	
v.	:	
	:	
PENNSYLVANIA STATE EDUCATION ASSOCIATION,	:	
	:	
Defendant.	:	

MEMORANDUM & ORDER

March 28, 2016

Presently before the Court are the Defendant's Motion to Dismiss (Doc.5), the Plaintiff's Motion for Summary Judgment (Doc.13), and the Defendant's Cross Motion for Summary Judgment (Doc. 20). For the reasons that follow, the Court denies the Defendant's Motion to Dismiss. The Court shall stay adjudication on the remainder of the proceedings pending the outcome of *Ladley et al. v. Pennsylvania State Education Association*, No. CI-14-08552, in the Court of Common Pleas of Lancaster County.

I. FACTUAL BACKGROUND

The Plaintiff in the above-captioned matter, Ms. Linda Misja ("Misja"), is a Pennsylvania public high school teacher at Apollo-Ridge High School (Doc. 1, ¶ 24). She previously worked at Bellefonte Area High School. (*Id*., Introduction,

p.1). Misja is also a religious objector to public-sector union membership. (*Id*.). She declined to become a member of the Pennsylvania State Education Association ("PSEA"), an unincorporated association and a "statewide employee organization" under 71 P.S. Section 575. (*Id*. ¶¶ 9, 5). Misja also declined to become a member of the Bellefonte Area Education Association ("BAEA"), a regional affiliate of the PSEA, while she was employed at Bellefonte Area High School. (*Id*. ¶ 9). In 2011, the BAEA and Bellefonte Area School District, pursuant to their collective bargaining agreement, agreed that non-members of the BAEA would pay a "fair share fee" under what was termed an "agency shop" agreement. (*Id*. ¶ 11). An agency shop agreement dictates that '"all the employees are represented by a union selected by the majority [of employees]' 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."' (*Id*. ¶ 11, fn. 4 (quoting *Knox v. Services Employees Int'l Union, Local 1000,* 567 U.S. __, 132 S.Ct. 2277, 2284)). In Pennsylvania, such an annual fee is termed a "fair share fee" and is permitted under 71 P.S. § 575(a). (*Id*. ¶ 12). 71 P.S. § 575(e)(2) also provides that a non-member may object to the payment of fair share fees on the basis of a bona fide religious objection. (*Id*. ¶ 13). Such objecting non-members "shall pay the equivalent of the fair share fee to a nonreligious charity agreed upon

by the non-member and the exclusive representative." (*Id*. (quoting 71 P.S. § 575(h)).

Upon notification of the requirement that Misja pay a fair share fee starting in 2012, Misja timely filed an objection on the basis of religious grounds. (*Id*. ¶ 14). Her objection was accepted by the PSEA on July 23, 2012, and she was requested to select a non-religious charity, to which her contribution to the fair share payment would be forwarded. (*Id*. ¶ 16). In a letter dated February 18, 2013, Misja requested that her payment go to "People Concerned for the Unborn Child." (*Id*. ¶ 17). However, the PSEA rejected Misja's choice of charity, on the basis that sending her money there "would be tantamount to sending your fees to a charity that furthers your religious beliefs, which is contrary to neutral intent and requirements of the Pennsylvania Fair Share Fee Law." (*Id*. ¶ 19). Instead, the PSEA offered to send Misja's dues to "a pregnancy center that counsels women on all options." (*Id*. ¶ 20).

Instead, Misja opted to select an alternative organization. She chose the National Rifle Association Foundation, and further requested arbitration to resolve the disagreement over the selection. (*Id*. ¶¶ 21, 23). In January 2014, Misja left Bellefonte Area School District to fill a position at Apollo-Ridge. (*Id*. ¶ 24). The PSEA's local affiliate at Apollo-Ridge, the Apollo-Ridge Education Association, also had an agreement regarding Fair Share Fees similar to that at Bellefonte. (*Id*.).

On May 6, 2014, the PSEA rejected Misja's choice of the National Rifle Association Foundation as well, on the basis that the "PSEA has a policy of not agreeing to the charitable subsidiaries of political organizations." (*Id*. ¶ 25). The PSEA instead suggested a charity that, like the NRA Foundation, offered "educational programs promoting school safety, hunter safety, and self-defense," but without apparent ties to a political organization. (*Id*. ¶ 26). The PSEA also denied Misja's request for arbitration, explaining that no right to arbitration existed for a denial of a choice in charity under the Pennsylvania Fair Share Fee Law. (*Id*. ¶ 27). To date, the PSEA continues to receive and hold funds from Misja in escrow, as the parties continue to be unable to agree on an acceptable charitable recipient. (*Id*. ¶ 28).

II. PROCEDURAL HISTORY

Misja commenced this action with the filing of a Complaint on June 18, 2015. (Doc. 1). She "seeks a declaratory judgment that the PSEA cannot maintain its practice of withholding her funds indefinitely, without access to an independent decision-making 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." (*Id*. ¶ 30). Misja also seeks a permanent injunction to enforce

such a declaratory judgment. In the alternative, she seeks a determination that § 575 is facially unconstitutional. (*Id*.).

The PSEA filed a Motion to Dismiss for Failure to State a Claim (Doc. 10) on August 18, 2015. On October 19, 2015, Misja responded with a Motion for Summary Judgment. (Doc. 13). The PSEA filed a cross-motion for Summary Judgment on December 18, 2015. (Doc. 20). All motions have been fully briefed and are thus ripe for review.

III. STANDARDS OF REVIEW

A. Motion to Dismiss

A motion to dismiss pursuant to Rule 12(b)(6) contends that the complaint has failed to assert a claim upon which relief can be granted. *See* FED. R. CIV. P. 12(b)(6). In considering the motion, courts "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. Cnty. Of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (quoting *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)). To resolve the motion, a court generally should consider only the allegations in the complaint, as well as "any matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, [and] items

appearing in the record of the case." *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006) (citation and internal quotation marks omitted).

In general, a Rule 12(b)(6) motion tests the sufficiency of the complaint against the pleading requirements of Rule 8(a). Rule 8(a)(2) requires that a complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief, "in order to 'give the defendant fair notice of what the claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957) (alteration omitted)). While a complaint attacked by a Rule 12(b)(6) motion to dismiss need not contain detailed factual allegations, it must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). To survive a motion to dismiss, "a civil plaintiff must allege facts that 'raise a right to relief above the speculative level . . . .'" *Victaulic Co. v. Tieman*, 499 F.3d 227, 234 (3d Cir. 2007) (quoting *Twombly*, 550 U.S. at 555). Accordingly, to satisfy the plausibility standard, the complaint must indicate that the defendant's liability is more than "a sheer possibility." *Iqbal*, 556 U.S. at 678. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

Under the two-pronged approach articulated in *Twombly* and later formalized in *Iqbal*, a district court must first identify all factual allegations that constitute nothing more than "legal conclusions" or "naked assertion[s]." *Twombly*, 550 U.S. at 564, 557. Such allegations are "not entitled to the assumption of truth" and must be disregarded for purposes of resolving a 12(b)(6) motion to dismiss. *Iqbal*, 556 U.S. at 679. Next, the district court must identify "the 'nub' of the . . . complaint – the well-pleaded, nonconclusory factual allegation[s]." *Id.* at 680. Taking these allegations as true, the district judge must then determine whether the complaint states a plausible claim for relief. *See id.*

However, "a complaint may not be dismissed merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits." *Phillips*, 515 F.3d at 231 (citing *Twombly*, 550 U.S. at 556-57). Rule 8 "'does not impose a probability requirement at the pleading stage,' but instead 'simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of' the necessary element." *Id.* at 234 (quoting *Twombly*, 550 U.S. at 556).

B. Motion for Summary Judgment

Also applicable here is the standard of review pertaining to summary judgment motions. Summary judgment is appropriate if the moving party establishes "that there is no genuine dispute as to any material fact and the movant

is entitled to judgment as a matter of law." FED. R. Civ. P. 56(a). A dispute is "genuine" only if there is a sufficient evidentiary basis for a reasonable jury to find for the non-moving party, and a fact is "material" only if it might affect the outcome of the action under the governing law. *See Sovereign Bank v. BJ's Wholesale Club, Inc.*, 533 F.3d 162, 172 (3d Cir. 2008) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)). A court should view the facts in the light most favorable to the non-moving party, drawing all reasonable inferences therefrom, and should not evaluate credibility or weigh the evidence. *See Guidotti v. Legal Helpers Debt Resolution, L.L.C.*, 716 F.3d 764, 772 (3d Cir. 2013) (citing *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000)).

Initially, the moving party bears the burden of demonstrating the absence of a genuine dispute of material fact. *See id.* at 773 (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)). Upon satisfaction of that burden, the non-movant must go beyond the pleadings, pointing to particular facts that evidence a genuine dispute for trial. *See id.* In advancing their positions, the parties must support their factual assertions by citing to specific parts of the record or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." FED. R. Civ. P. 56(c)(1).

A court should not grant summary judgment when there is a disagreement about the facts or the proper inferences that a factfinder could draw from them. *See Reedy v. Evanson*, 615 F.3d 197, 210 (3d Cir. 2010) (citing *Peterson v. Lehigh Valley Dist. Council*, 676 F.2d 81, 84 (3d Cir. 1982)). Still, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment." *Layshock ex rel. Layshock v. Hermitage Sch. Dist.*, 650 F.3d 205, 211 (3d Cir. 2011) (quoting *Anderson*, 477 U.S. at 247-48) (internal quotation marks omitted).

IV. DISCUSSION

The questions raised by the parties in their respective Motions are matters of law, and they have been fully briefed. We detect no material factual disputes contained within the pleadings. Accordingly, the record is sufficient for a determination on the merits under the summary judgment standard, or, where reliance on the record is unnecessary, under the motion to dismiss standard. However, special issues surround an adjudication of this case on the merits that warrant brief explanation. Firstly, we note that counsel for the Plaintiff, The Fairness Center, has already filed a nearly identical suit in Pennsylvania state court. *See Ladley et al. v. Pennsylvania State Education Association*, No. CI-14-08552 (Jun. 30, 2015). There, plaintiffs Jane Ladley and Christopher Meier also asserted a complaint against the PSEA, seeking declaratory and injunctive relief

for alleged violations of their rights to due process, freedom of speech and association, and violations of the state statute itself, 71 P.S. § 575. Alternatively, plaintiffs Ladley and Meier, like Misja, seek a determination that § 575 is unconstitutional. (*See* Doc. 10-4, p. 5). Like Misja, Ladley and Meier's fair share fee payments currently remain in escrow. (*Id*., p. 3).

Secondly, we briefly note a pending Supreme Court decision. On December 5, 2013, the United States District Court for the Central District of California entered a judgment on the pleadings in favor of defendant, California Teachers' Association, on the basis of an agreement between the parties that plaintiff Rebecca Friedrichs' suit was foreclosed by a prior Supreme Court ruling, *Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S.Ct. 1782 (1977). *See Friedrichs et al. v. California Teachers Ass'n*, No. SACV 13-676-JLS, 2013 WL 9825479 (C.D. Cal. Dec. 5, 2013). Friedrichs, like Misja, Ladley and Meier, is a public school teacher who has resigned union membership. *Id*. at *1. However, unlike the other plaintiffs, Friedrichs objects to paying the entirety of the non-chargeable portion of the fair share fee. *Id*. at *2. It is unclear where the proceeds of those fees are currently being sent, or whether California has an arrangement for religious objectors' fees to go to charities similar to that in Pennsylvania or under federal law. Like the case before us, Friedrichs' complaint challenges California's agency shop provision as a violation of her First Amendment rights, and further argues

that "[b]y requiring Plaintiffs to undergo 'opt out' procedures to avoid making financial contributions in support of non-chargeable union expenditures, California's agency-shop arrangement violations [her] rights to free speech and association under the First and Fourteenth Amendments." *Id*. The Ninth Circuit affirmed the District Court ruling, and certiorari was granted on June 30, 2015. See *Friedrichs et al., v. California Teachers Ass'n*, 135 S.Ct. 2933 (Mem) (2015). As the current holding in *Abood* declares the institution of agency shop provisions in collective bargaining agreements between public-sector unions and municipalities to be lawful, any alteration to this case law would be pertinent to the case before us.

With these two pending cases in mind, we begin by addressing the arguments raised by the PSEA in its Motion to Dismiss. (Doc. 5). The PSEA first argues that it is not a state actor, nor does it act under color of state law, and so this Court should find that Misja is unable to assert colorable § 1983 claims against the PSEA. (*Id.*, at p. 9). The PSEA also argues that this Court should dismiss or stay this matter under either the *Younger* or *Pullman* abstention doctrines due to the pending state court proceeding filed by Ladley and Meier in the Lancaster County Court of Common Pleas. (Doc. 10, at p. 4). Finally, the PSEA also argues that Misja's assertion that § 575 is unconstitutional fails to state a claim upon which

relief may be granted. (*Id.*, p. 12). We begin by considering the PSEA's argument that it is not a state actor.

A. The PSEA as a State Actor

As noted, the PSEA argues that it is not a state actor, nor does it act under color of state law, and so this Court should find that Misja is unable to assert colorable § 1983 claims against it. (Doc. 10, at p. 9). According to the Third Circuit,

> a suit under § 1983 requires the wrongdoers to have violated federal rights of the plaintiff, and that they did so while acting under color of state law. As the "under color of state law" requirement is part of the prima facie case for § 1983, the plaintiff bears the burden of proof on that issue. The color of state law element is a threshold issue; there is no liability under § 1983 for those not acting under color of law.

Groman v. Twp. of Manalapan, 47 F.3d 628, 638 (3d Cir. 1995) (internal citations omitted) (holding that a first aid squad that responded to a police officer's dispatches was not a state actor for the purposes of plaintiff's § 1983 claim).

"Where the actors are not state or municipal officials, but are private individuals or associations, we still must address whether their activity can nevertheless be deemed to be under color of law. The inquiry is fact-specific." *Id.* (citing *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 939 (1982)). "To establish that challenged conduct was state action, a plaintiff must demonstrate two things. First, the conduct at issue must either be mandated by the state or must represent the exercise of a state-created right or privilege. Second, the party who engaged in the

challenged conduct must be a person or entity that can '"fairly be said to be a state actor.'" *White v. Communications Workers of America, AFL-CIO, Local 1300*, 370 F.3d 346, 350 (3d Cir. 2004) (quoting *Lugar*, 457 U.S. at 937).

The analysis at hand is admittedly difficult. *Groman*, 47 F.3d at 638 ("The color of state law analysis can be difficult, but is grounded in a basic and clear requirement that the defendant in a § 1983 action have [sic] exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law") (internal citations and quotations omitted)). Further complicating matters, the Supreme Court has specifically left unresolved the issue of whether actions taken by a union pursuant to an agency shop clause constitute state action. *Communications Workers of America v. Beck*, 487 U.S. 735, 761 (1988) ("We need not decide whether the exercise of rights permitted, though not compelled, by § 8(a)(3) [of the National Labor Relations Act] involves state action."). As a result, a circuit split has developed on the issue, with the Third,[1] Second[2] and District of Columbia Circuits[3] concluding that no state action is present when a union negotiates for, and implements, an agency

[1] *White v. Communications Workers of America*, 370 F.3d 346 (3d Cir. 2004) ("CWA's statutorily enhanced bargaining power is insufficient to warrant a finding of state action.").
[2] *Price v. UAW*, 927 F.2d 88 (2d Cir. 1986) (noting that the Supreme Court expressly declined to rule on the issue of state action in *Beck* and reiterating previous Second Circuit opinions that a union shop agreement is "a product of private negotiations and [is] not attributable to the government.").
[3] *Kolinske v. Lubbers*, 712 F.2d 471 (D.C.Cir. 1983) ("[A] state's mere authorization of private conduct does not justify a finding of state action.").

shop provision. The Fourth[4] and First[5] Circuits have conversely determined that state action is indeed implicated when a union engages in such behavior.

To make matters more complicated, the instant case involves the actions of a public-sector union, as Misja is employed by the school district. The circuit courts that have ruled on this issue have all made their determinations in consideration of private-sector unions alone. As with private-sector union action, the Supreme Court has also not opined on whether a public-sector union may fairly be said to adopt the authority of the state in its negotiations. However, without addressing the issue of state action the Supreme Court has ruled on the merits of § 1983 claims brought against public-sector unions in two cases: *Chicago Teachers Union, Local No. 1 v. Hudson*, 106 S.Ct. 1066 (1986)[6] and *Knox v. Service Employees Int'l Union, Local 1000*, 132 S.Ct. 2277 (2012).[7]

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[4] *Beck v. Communication Workers of America*, 776 F.2d 1187 (4th Cir. 1985) ("The en banc court by a vote of six to four sustained federal jurisdiction in this cause," which involved private-sector union negotiations with the American Telephone and Telegraph Company).

[5] *Linscott v. Millers Falls Co.*, 440 F.2d 14 (1st Cir. 1971) ("Sufficient potential is furnished by government approval.").

[6] In *Hudson*, the Court examined "the constitutionality of the procedure adopted by the Chicago Teachers Union, with the approval of the Chicago Board of Education, to draw that necessary line [between allowable union expenditures and those not sufficiently related to collective bargaining to justify their being imposed on dissenters], and to respond to nonmembers' objections to the manner in which it was drawn." *Hudson*, 106 S.Ct. at 1069. Ultimately, the Court found the public-sector union in violation of the nonmembers' First Amendment rights for failing follow procedural safeguards, firstly because the rights that an agency shop provision infringes upon are protected by the First Amendment, and secondly because "the individual whose First Amendment rights are being affected must have a fair opportunity to identify the impact of the governmental action on his interests and to assert a meritorious First Amendment claim." *Id.* at 1074.

[7] Like *Hudson*, *Knox* also addressed an agency shop provision negotiated by a public-sector union, but *Knox* delved more deeply into the importance of First Amendment protections and

The Third Circuit has also ruled on the merits of a § 1983 claim against a public-sector union. *Otto v. Pennsylvania State Educ. Association-NEA*, 330 F.3d 125 (3d Cir. 2003). Coincidentally, the union at issue in that case was also the one before us today – the PSEA. In *Otto*, the Third Circuit had an opportunity to rule on the lower court's determination that the PSEA engaged in state action such that it could properly be sued under § 1983. *See Otto v. Pennsylvania State Educ. Ass'n-NEA*, 107 F.Supp.2d 615 (M.D.Pa. 2000) (the district court noted that

> [t]he essential elements of a claim brought pursuant to 42 U.S.C. § 1983 require that the conduct complained of 1) be committed by a person acting under color of state law and 2) the conduct has deprived the plaintiffs of one of their rights, privileges, or immunities secured by the constitution or federal law

and that the "rights at issue in this case are those grounded in the First and Fourteenth Amendments," but neglecting to comment further on the PSEA as a state actor.). However, the Third Circuit declined to analyze the lower court's determination that the PSEA was a state actor, and simply moved on to reach the merits of the case. This silence suggests to us that the issue of state action was likely not raised on appeal.

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expressed a certain degree of incredulity at the breadth of freedom unions have received thus far in implementing agency shop provisions. *Knox*, 132 S.Ct. at 2290-91. The Court concluded that "when a public-sector union imposes a special assessment or dues increase, the union must provide a fresh *Hudson* notice and may not exact any funds from nonmembers without their affirmative consent." *Id.* at 2296.

It is, of course, well-settled that "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Cooper Indus., Inc. v. Aviall Servs., Inc.*, 543 U.S. 157, 170 (2004) (quoting *Webster v. Fall*, 266 U.S. 507, 511 (1925)). We thus find ourselves confronted by an unresolved issue of law, and may not exercise jurisdiction over Misja's § 1983 claims on the basis of *Hudson*, *Knox*, and *Otto* without further inquiry. However, we find it instructive that in all four of these noted instances, three of which involved determinations by higher courts, not a single court identified a discrepancy in the various plaintiffs' determinations to sue under § 1983. Further of note is that the Third Circuit's opinion that private-sector unions do not constitute state actors, decided just one year after *Otto* and nearly twenty years after *Hudson*, also did not comment on public-sector union actions. We turn more closely to that opinion for guidance.

In *White v. Communications Workers of America*, 370 F.3d 346 (3d Cir. 2004), our Court of Appeals determined that a labor union negotiating with a private employer could not be held liable under § 1983 for a potential infringement on White's first amendment right not to associate by electing to institute an agency shop clause and then allegedly failing to effectively notify White of his right to opt-out of paying the dues. White argued that "if Section 158(a)(3) of the NLRA did not permit agency-shop clauses, non-union employees could not be forced to

pay dues, and thus there would be no need to devise procedures permitting non-union employees to decline to pay part of their compulsory fees." *Id*. at 350-51. However, the Court reasoned that in merely negotiating for the inclusion of an available, lawful clause in their agreement,[8] the union was not acting as a state entity. *Id.* at 351. Rather, "[e]ven though federal law provides an encompassing umbrella of regulation, the parties, like any two parties to a private contract, were still free to adopt or reject an agency shop clause with or without government approval." *Id*. (quoting *Kolinske*, 712 F. 2d, at 478).

As in *White*, we must ascertain whether "the party who engaged in the challenged conduct [constitutes] a person or entity that can fairly be said to be a state actor." *White*, 370 F.3d at 350. Courts have widely held that public-sector employees are entitled to special consideration by virtue of employment by the state. *Abood*, 97 S.Ct. at 1795 (noting "a long line of decisions holding that public employment cannot be conditioned upon the surrender of First Amendment rights"

[8] The Supreme Court has a long history of upholding the lawfulness of agency shop fair share fees. In 1956, the Court upheld such fees as authorized by the Railway Labor Act, which required financial support of the exclusive bargaining representative by every member of the bargaining unit, regardless of union membership. *Railway Employees Department v. Hanson*, 351 U.S. 225 (1956). In a later case, *Communications Workers of America v. Beck*, 108 S.Ct. 2641 (1988), the Court detailed an explanation of Congress' rationale, noting that "closed shop" agreements requiring employers to hire only persons who were already union members were too great of a barrier to free employment. *Beck*, 108 S.Ct. at 2650. Such agreements did, however, ensure that employees would be required to contribute to the unions who negotiated for benefits on their behalf. *Id*. Thus, the agency shop provision was born of compromise and ensured that employees would not be fired for expulsion from the union for any reason other than his or her failure to pay dues. *Id*. at 2651. In 1988, Pennsylvania enacted a fair share law, thereby codifying the previously-established propriety of such clauses in federal law. 71 P.S. § 575.

and later mentioning "the important and often-noted differences in the nature of collective bargaining in the public and private sectors.").

Though we are tempted to extend the Third Circuit's rationale in *White* to a public-sector union as well, we find it imprudent to turn the tide against what is a clearly established pattern, if not precedent, in favor of hearing § 1983 claims against public-sector unions. Further, as the court in *White* points out, the power to enact and enforce the agency shop provision comes, not from the government in the first instance, but from the collective bargaining agreement. *White*, 370 F.3d at 351. In this case, that agreement is made between the union and the state, whose acquiescence to its terms not only provides power to the provision, but which also affirmatively acts to enforce the agreement by withholding funds from state employees' paychecks. In bargaining with, and collaborating on such an agreement, and ultimately relying on the state for the agreement's execution to an extent, we find that a public-sector union has sufficiently forayed into the waters of state action such that it may be sued pursuant to § 1983.

ii. Abstention Pursuant to the *Younger* Doctrine

The PSEA's next argument is that this Court should abstain from exercising jurisdiction over the case pursuant to the *Younger* Doctrine. "In the main, federal courts are obliged to decide cases within the scope of federal jurisdiction. Abstention is not in order simply because a pending state-court proceeding

involves the same subject matter." *Sprint Communications, Inc. v. Jacobs*, 134 S.Ct. 584, 588 (2013). However,

> *Younger* exemplifies one class of cases in which federal-court abstention is required: When there is a parallel, pending state criminal proceeding, federal courts must refrain from enjoining the state prosecution. [The Supreme Court] has extended *Younger* abstention to particular state civil proceedings that are akin to criminal prosecutions, or that implicate a State's interest in enforcing the orders and judgments of its courts. We have cautioned, however, that federal courts ordinarily should entertain and resolve on the merits an action within the scope of a jurisdictional grant, and should not "refus[e] to decide a case in deference to the States."

Id. (internal citations omitted) (quoting *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 368 (1989) (hereinafter "*NOPSI*")).

As an initial matter, we must decide whether the two cases to which the PSEA points constitute parallel, pending state proceedings within the meaning of *Younger*. Misja herself has not filed an identical proceeding in state court. Rather, her attorneys have filed "essentially the same complaint" on behalf of two other plaintiffs, Ladley and Meier. (Doc. 10, p. 5). Neither Misja nor the PSEA have pointed to case law that indicates whether a similar state court case that lacks continuity of the parties can nonetheless constitute "ongoing state proceedings" within the principles of *Younger*. Thus, we conduct our own inquiry into the matter.

Doran v. Salem Inn, Inc., 422 U.S. 922 (1975) has proven to be instructive precedent. There, the Supreme Court considered whether the lower court should

have abstained in a federal case involving three plaintiffs, where one of those three was facing related state criminal proceedings. In *Doran*, the plaintiff M&L chose to resume its briefly suspended presentation of topless dancing one day after the appellees' joint complaint was filed and their application for a temporary restraining order was denied.[9] *Id*. at 925. As a result of this action, M&L and its topless dancers were served with criminal summonses returnable before the Nassau County Court. *Id.* The two remaining federal plaintiffs did not resume their original course of business, and so were not similarly served. *Id*. The lower court reached the merits for all plaintiffs, choosing to treat them as one and not to abstain in M&L's proceedings. The court reasoned that the interest of avoiding conflicting outcomes in the two otherwise identical cases permitted such an approach. *Id*. at 927-28.

The Supreme Court disagreed, noting that "the very existence of one system of federal courts and 50 systems of state courts, all charged with the responsibility for interpreting the United States Constitution, suggests that on occasion there will be duplicating and overlapping adjudication of cases which are sufficiently similar in content, time, and location to justify being heard before a single judge had they arisen within a unitary system." *Id*. at 928. This risk of duplication, the Court

[9] The complaint alleged that a local ordinance making it unlawful for bar owners and others to permit topless, or nearly topless, entertainment in their establishments was in violation of their First and Fourth Amendment rights. They sought a temporary restraining order from the enforcement of the ordinance, as well as a preliminary injunction and declaratory relief. *Id.* at 924-25.

concluded, does not warrant singular treatment for all such cases under the *Younger* doctrine. "While there plainly may be some circumstances in which legally distinct parties are so closely related that they should all be subject to the *Younger* considerations which govern any one of them, . . . while respondents [here] are represented by common counsel, and have similar business activities and problems, they are apparently unrelated in terms of ownership, control and management. We thus think that each of the respondents should be placed in the position required by our cases as if that respondent stood alone." *Id*. at 928-29. The Court concluded that the state court prosecution rendered M&L's position legally distinct from its companion plaintiffs, and as such, abstention from M&L's suit was the proper course for the lower court. *Id*.at 929. The lower court was, however, free to proceed on the cases of the other two plaintiffs.

The foregoing informs us that the risk of duplicating proceedings in both state and federal court is not a sufficient reason for a federal court to abstain pursuant to *Younger*. Further, the mere existence of a common legal goal is not sufficient to bind parties together for purposes of a *Younger* abstention when they are unrelated in other regards. *See World Wide Street Preachers' Fellowship v. Reed*, 2006 WL 1984614, at *3, fn 5 ("[P]laintiffs in the federal lawsuit, similar business enterprises, having a common legal goal are not all bound by *Younger*

application to one of them when they are unrelated in terms of ownership, control and management") (internal quotations omitted)).

When, in a case like *Doran*, the Court holds that a single proceeding should be severed so that the federal court could rule on two plaintiffs' issues but abstain in the case of the third, at the risk of duplicative and potentially conflicting outcomes in state and federal court, it follows that here, too, a concern for duplicative and potentially conflicting outcomes should not sway our "virtually unflagging obligation" as a federal court to exercise jurisdiction. *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 817-18 (1976) (noting that "the pendency of an action in state court is no bar to proceedings concerning the same matter in the federal court having jurisdiction" because of a federal court's "virtually unflagging obligation" to exercise its jurisdiction).

Like Misja, Ladley and Meier, the plaintiffs in *Doran* were represented by common counsel and were similarly situated in terms of their legal grievances. But the Court refused to authorize the lower court's decision to lump them all together and in fact ordered them severed. *Id*. at 928 ("We do not agree with the Court of Appeals . . . that all three plaintiffs should automatically be thrown into the same hopper for *Younger* purposes . . . ."). Here, where the cases are factually similar but functionally distinct, we certainly shall not go so far in contravention of

the spirit of *Doran* as to forcibly bring them together and require Misja to litigate in state court.

Continuing our analysis, *Hicks v. Miranda*, 422 U.S. 332, 95 S.Ct. 2281 (1975) merits consideration as well. *Hicks* is not only a formative Supreme Court case examining the *Younger* doctrine, but it also contains a guiding discussion of parallel proceedings that lack continuity of parties. *Id.* at 348-50. In *Hicks*, the Court held that the district court had erroneously reached the merits of the proceedings due to an incorrect determination that *Younger* abstention was unwarranted. *Id.* The district court had observed that "no criminal charges were pending in the state court against appellees" and thus concluded that no parallel state court proceeding was pending. *Id.* at 340. The Supreme Court agreed with the factual observation, but clarified that although at the time the federal complaint was filed there were no state criminal charges pending against the appellees, a state proceeding with different parties merited the consideration of the court. In the state court proceeding,

> two employees of [the appellees] had been charged and four copies of "Deep Throat"[10] had been seized, were being held, and had been declared to be obscene and seizable by the Superior Court. Appellees had a substantial stake in the state proceedings, so much so that they sought federal relief . . . . Obviously, their interests and those of their employees were intertwined; . . . the federal action sought to interfere with the pending state prosecution.

[10] "Deep Throat" was an erotic video belonging to the plaintiffs in the federal court action, the content of which was related to the merits of the state court proceeding.

Id. at 348-49. The Court concluded that "[a]bsent a clear showing that appellees, whose lawyers also represented their employees, could not seek the return of their property in the state proceedings and see to it that their federal claims were presented there, the requirements of *Younger v. Harris* could not be avoided on the ground that no criminal prosecution was pending against appellees of the date the federal complaint was filed." *Id*. at 349.

We thus must query whether the relationship that existed between appellees in *Hicks* and the defendants in the parallel state court proceeding is duplicated in the instant case. Because of the similarities that exist between the instant case and that filed by plaintiffs Ladley and Meier, we agree with the PSEA that Misja has an interest in the outcome of their proceedings. That interest arises from the possibility that the state court opinion may provide persuasive reasoning applicable to her own federal case. Misja does not, however, have a stake in the outcome to the extent that the appellants in *Hicks* displayed such that her proceedings could be considered parallel. In fact, she has no relation at all to Ladley and Meier, putting her in a position quite contrary to that of the appellants in *Hicks*, who employed the state court defendants and who owned property that was being held by the state court pursuant to its pending proceedings. Because of these important distinctions, abstention is not warranted in the instant case as it was warranted in *Hicks* and *Doran*.

Moreover, even if we found that the state court proceedings were sufficiently parallel to the instant action, despite the absence of continuity between the parties, this is not a case that falls within the purview of *Younger* as recently clarified by the Supreme Court in *Sprint Communications, Inc. v. Jacobs*, 134 S.Ct. 584 (2013) (concluding that where a case does not fall into any one of the three exceptional categories described by *NOPSI, Younger* abstention is unwarranted). Specifically, the Supreme Court

> has extended *Younger* abstention to particular state civil proceedings that are akin to criminal prosecutions, or that implicate a State's interest in enforcing the orders and judgments of its courts, but has reaffirmed that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States. *NOPSI* identified three such "exceptional circumstances." First, *Younger* precludes federal intrusion into ongoing state criminal prosecutions. Second, certain "civil enforcement proceedings" warrant *Younger* abstention. Finally, federal courts should refrain from interfering with pending civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions. This Court has not applied *Younger* outside these three "exceptional" categories, and rules, in accord with *NOPSI*, that they define *Younger*'s scope.

Sprint Communications, 134 S.Ct. at 586-87 (internal citations and quotations omitted). As the ongoing state court proceedings instituted by plaintiffs Ladley and Meier are neither criminal in nature, nor sufficiently akin to criminal proceedings, nor do they involve certain orders "uniquely in furtherance of the state courts' ability to perform their judicial functions," they do not fall within the purview of *Younger* and as such abstention is unwarranted.

iii. Abstention Pursuant to the *Pullman* Doctrine

In the alternative, PSEA argues that abstention or a stay is warranted by the *Pullman* doctrine.

> [A]bstention under *Pullman* is appropriate where an unconstrued state statute is susceptible of a construction by the state judiciary which might avoid in whole or in part the necessity for a federal constitutional adjudication, or at least materially change the nature of the problem. The purpose of abstaining is twofold: (1) to avoid a premature constitutional adjudication which could ultimately be displaced by a state court adjudication of state law; and (2) to avoid needless friction with state policies. . . . [W]e reiterate that *Pullman* should rarely be invoked.

Planned Parenthood of Central New Jersey v. Farmer, 220 F.3d 127, 149 (3d Cir. 2000) (internal citations and quotations omitted). The Supreme Court has warned that "abstention should not be ordered merely to await an attempt to vindicate the claim in a state court. Where there is no ambiguity in the state statute, the federal court should not abstain but should proceed to decide the federal constitutional claim." *Wisconsin v. Constantineau*, 400 U.S. 433, 439 (1971).

In order for a federal court to abstain under *Pullman*, the Third Circuit has clarified that three "exceptional circumstances" must be present.

> First, there must be uncertain issues of state law underlying the federal constitutional claims. Second, the state law issues must be amenable to a state court interpretation which could obviate the need to adjudicate or substantially narrow the scope of the federal constitutional claim. Third, it must be that an erroneous construction of state law by the federal court would disrupt important state policies.

Planned Parenthood, 220 F.3d at 149-50 (quoting *Presbytery of N.J. of the Orthodox Presbyterian Church v. Whitman*, 99 F.3d 101, 106 (3d Cir.1996), *cert. denied*, 520 U.S. 1155, 117 S.Ct. 1334, 137 L.Ed.2d 494 (1997). In the instant case, the PSEA argues that *Pullman* abstention is appropriate for Misja's claims that the PSEA's application of Pennsylvania's fair share law is in violation of the U.S. Constitution. (Doc. 10, p. 8). The PSEA suggests that there are uncertain issues of state law which are susceptible to a state court interpretation that would obviate the need for this Court to consider Misja's federal constitutional claims. (*Id*.). However, the PSEA fails to specify what these may be and does not offer an example of an interpretation that would defeat the need for a ruling from this Court as to the constitutionality of § 575.

Though the PSEA does not state it explicitly, we presume that it is again referring to an interpretation that could be provided by the Court of Common Pleas of Lancaster County pursuant to the pending *Ladley* case. Further, though the PSEA's brief is vague, we have read the state court's ruling on preliminary objections closely and indeed, we find that an interpretation of § 575 may be forthcoming such that a ruling from this Court could be unwarranted, or at least substantially altered, by the state court's decision. For the reasons that follow, we decline to abstain, but conclude that a stay pending the outcome of *Ladley* is appropriate at this time.

We briefly summarize the pertinent rulings in *Ladley*. Based on the record before it, the state court sustained the PSEA's objection that plaintiffs' complaint does not implicate any federal constitutional issues. (*Id*. at p.9). Rationalizing that the Supreme Court has upheld the collection of a "service charge" for collective bargaining from non-union members in opposition to their union's political activities, (*id*.), and that federal law allows for a nonmember objecting on religious grounds to pay a fair share fee to an entity chosen from among three nonreligious charities designated by the employer and the exclusive representative in the contract between the employer and the exclusive representative (*id*. at p. 10), the court determined that the Pennsylvania law goes no further than federal law in dictating the terms of a nonmember to direct his or her fair share fee. (*Id*.).[11] As such, "Pennsylvania's statute does not run afoul of the United States Constitution by providing protection to a nonmember's First Amendment rights similar to that available under federal law." (*Id*.).

Whether the state statute goes further than the federal law, and whether it runs afoul of the United States Constitution, are two separate analyses. Misja has asked us to ascertain whether § 575 either facially conflicts with her constitutional rights, or whether it violates her rights as applied by the PSEA. We do not find the

[11] The assertion in Misja's brief that "the state court [was] unwilling to address the constitutional issues at stake in this matter" is a mischaracterization of the state court's analysis. (Doc. 11, p. 10).

state court's analysis, which is predicated on an assumption that a state law is constitutional if it comports with a federal law, to be persuasive. However, there is another aspect of the state court's ruling that requires our attention.

In its state court submissions, the PSEA argues that Ladley and Meier failed to state a claim that the PSEA's refusal to agree to their selected charities constitutes a violation of the language contained in § 575. (*Id*. at p. 12). As already mentioned, § 575 requires agreement between the parties as to the designated charity. In its submissions to this Court, the PSEA has argued that because it has made a good faith effort to reach an agreement with Misja, it is not in violation of § 575. (Doc. 12, p. 3 ("PSEA has done its part, as evidenced by its willingness to have the funds go to any pregnancy counselling agency that provides information on a comprehensive range of options, or to a non-aligned, apolitical gun/hunter safety educational resource.")). However, a lack of agreement has nonetheless resulted, and has caused the disputed funds to remain in escrow indefinitely.

In *Ladley*, the state court explained that "it is presumed that the Legislature did not intend that an absurd or unreasonable result would follow from its enactments." (Doc. 10-4, p. 13 (citing *Lehigh Valley Co-op Farmers v. Com., Bureau of Employment*, 498 Pa. 521, 526, 447 A.2d 948, 950 (1982)). However,

> PSEA's continuous refusal, which could indefinitely delay the disposition of the fair share fee, would be patently unreasonable under the language of the

> statute, as would Plaintiffs' purported absolute right under the same language to designate any nonreligious charity. Therefore, an interpretation of Section 575(h) that does not provide for a resolution of a fair share fee recipient dispute should be avoided.

(*Id*. at p. 14).

Thus, the state court has indicated that its solution to this conundrum shall be to read a reasonableness requirement into the language of the statute. However, it has not expounded upon the actual workings of such a requirement, and, given the early stage of the proceedings, the court has only ascertained that a possibility exists that the PSEA acted unreasonably under this new reading of the statute. As the litigation progresses, the state court shall be able to more thoroughly determine whether the PSEA acted unreasonably or not. For our purposes, the actions that the PSEA and the plaintiffs in the state court case have taken, and those described in the instant proceedings between the PSEA and Misja, are markedly similar. Thus, an opportunity to ascertain the state court's meaning of a reasonableness requirement pursuant to § 575 will prove invaluable to our interpretation of the statute. We agree that an interpretation of § 575 that does not provide for a resolution of a fair share fee recipient dispute should be avoided. Candidly, it has been our preliminary impression that the vague requirements of "agreement" in § 575 have caused this stalemate between the parties. Without an opportunity for resolution, § 575 is primed to run headlong into a confrontation with the Due Process Clause of the Fourteenth Amendment. By failing to provide clarification

as to how an agreement should be reached between two already diametrically opposed parties, a union and an objecting nonmember who have both already indicated grave discrepancies in their opinions and standing on fundamental political issues, we believe that the Pennsylvania legislature has set the stage for stand-offs such as these that exist between Ladley, Meier, Misja, their counsel, and the PSEA.

We thus return to the requirements of a *Pullman* analysis. We have before us an uncertain issue of state law which underlies Misja's constitutional claims. The issue is not, however, "so vague that it is not amenable to a state court interpretation which would render unnecessary or substantially narrow the constitutional question at issue." *Planned Parenthood*, 220 F.3d at 149-50. Rather, we have an indication from a state court that the pertinent statute, as interpreted by the parties, leads to an absurd result, thereby requiring a different interpretation. The state court has further indicated that it will provide such an interpretation by reading a reasonableness requirement into the statute, but we do not yet know how such a requirement will play out. In the event that the interpretation provides a mechanism by which the parties may resolve their differences, the state court's interpretation may obviate the need to adjudicate Misja's constitutional claims, as required by the second *Pullman* factor. Indeed, it is also possible that the parties may independently resolve their differences through

the adoption of a separate mechanism of compromise such as mediation or arbitration.[12] Frankly, we are loath to intercept the proceedings with a consideration of the constitutionality of the state law while an alternative opportunity to resolve the issue remains possible, though perhaps not likely absent a settlement.

The final *Pullman* requirement is that an erroneous construction of the state law by a federal court would disrupt important state policies. Certainly an adjudication that a state law is in violation of the United States Constitution would disrupt the application of that state law, and interfere with the activities of unions and collective bargaining within the state.

Though all of the factors for a Pullman abstention are present, the situation before us represents a unique scenario in which the parties need not seek recourse in state court. Rather, as noted, an adjudication is already pending. We confess some hesitancy to abstain, given the "virtually unflagging" obligation of the federal courts to adjudicate claims. *Planned Parenthood*, 220 F.3d 127, 149 (3d Cir. 2000). "Abstention is an 'extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it' and one which should be invoked 'only in the exceptional circumstances."' *Id*. at 149. Given these

[12] The vast majority of clauses in § 575 require arbitration between the parties should an agreement prove elusive. We are at a loss as to why such a requirement was not also included in § 575(h) to broker a stalemate such as this surrounding the choice of charity.

cautions, and this Court's familiarity with the facts of the case at hand, we will implement an interim step, finding a stay pending the resolution in *Ladley* to be more appropriate than complete abstention. As such, we shall refrain from ruling on the parties' Motions for Summary Judgment (Docs. 13, 20) until the state court resolution is reached.[13]

iv. Whether Misja's claim that § 575 is unconstitutional fails to state a claim upon which relief may be granted

Finally, we reach the last of the PSEA's arguments pursuant to its Motion to Dismiss. The PSEA argues that Misja's assertion that § 575 is unconstitutional fails to state a claim upon which relief may be granted. (Doc. 10, p. 12). Though we have alluded to this conclusion, we now formally state our finding that, at this time, Misja has successfully stated a claim upon which relief may be granted.

First, the PSEA states that agency shop provisions and fair share fee laws are permissible under Supreme Court jurisprudence. We have no quarrel with this assertion. As already noted, the Supreme Court first upheld agency shop provisions in collective bargaining agreements between private-sector employees and unions in *Railway Employees' Dept. v. Hanson.* Citing the rationale of Congress as its paramount consideration, the Court explained that "it would promote peaceful labor relations to permit a union and an employer to conclude an

[13] To the extent that additional briefing is warranted subsequent to the state court's decision, we shall order the same.

agreement requiring employees who obtain the benefit of union representation to share its cost, and that legislative judgment was surely an allowable one." *Abood*, 97 S.Ct. at 1791 (summarizing *Hanson*). More relevant to the instant case is the Supreme Court's holding in *Abood v. Detroit Board of Education*, where the issue of public versus private sector agency shop provisions was first addressed. The Court held that agency shop provisions negotiated by public-sector unions inflicted no actionable First Amendment violation against public employees, as public employees have no weightier First Amendment interests than do private employees. *Abood*, 97 S.Ct. at 1796. On this reasoning, the agency shop provisions were declared constitutional as between a municipality and a teachers' union, insofar as the funds were used solely to defray the costs of collective bargaining. *Id.* at 1799-1800 ("We do not hold that a union cannot constitutionally spend funds for the expression of political views . . . . Rather, the Constitution requires only that such expenditures be financed from charges, dues or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of government employment.").

The PSEA argues that because Misja was only charged for the collective bargaining, contract administration and other expenses related to the union's efforts to provide the services of a bargaining unit, the First Amendment is not

implicated. (*Id*. at 11-12). Further, the PSEA asserts that Misja has no right under § 575 to unilaterally direct a fair share fee to the charity of her choosing. (*Id*.). This argument misinterprets Misja's complaint. Misja does not argue that she was overcharged, or improperly charged. Further, though she claims that "[t]he funds taken from Ms. Misja's paycheck are earned income and hers to direct," the question of whether Misja seeks unilateral control is secondary to a more salient query: whether the PSEA may send the funds to a charity that Misja does not support, thereby forcing her to associate in violation of the First Amendment. Misja also argues that the PSEA may not hold the funds in escrow indefinitely without some opportunity for the parties to broker a compromise, as this is in violation of her due process rights. This conglomeration of issues was not addressed by the Court in *Abood*, nor to our knowledge have they been addressed in subsequent case law. As such, they pose valid questions of constitutional law that should not be dismissed at this early stage.

We clarify that, in our determination that Misja successfully alleges that § 575 may be unconstitutional, we only hold that her claim survives the PSEA's Motion to Dismiss. We make no prediction concerning the merits of her argument for later stages of this litigation, particularly because, as noted above, an interpretation of § 575 by the state court may obviate the need for, or greatly alter such a judgment. At this early juncture, we can only conclude that Misja's

allegation rises into the range of plausibility as required by *Iqbal* and *Twombly*, and that it has not, as the PSEA argues, been foreclosed by prior case law. For these reasons, we cannot find Misja's claim merits dismissal.

V. CONCLUSION

For the reasons set forth, we shall deny the PSEA's Motion to Dismiss. We shall stay adjudication of the parties' Motions for Summary Judgment pending the resolution of the state court proceedings in *Ladley et al. v. Pennsylvania State Education Association*, No. CI-14-08552.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Defendant's Motion to Dismiss (Doc. 5) is **DENIED** in its entirety.
2. The case is **STAYED** pending the outcome of *Ladley et al. v. Pennsylvania State Education Association*, No. CI-14-08552, in the Court of Common Pleas of Lancaster County.
3. The parties shall alert the Court as to the resolution of the said Ladley case, and jointly file a copy of the county court's decision on the docket upon its entry.

s/ John E. Jones III
John E. Jones III
United States District Judge