



## BACKGROUND (DECEMBER 2018)

*Francisco Molina v. Pennsylvania Social Service Union, Service Employees International Union, Local 668, et al.*

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### THE EXECUTIVE SUMMARY

The Fairness Center represents Francisco Molina in his lawsuit against the Pennsylvania Social Service Union, part of Service Employees International Union, Local 668 (“SEIU”). The SEIU refused to recognize Mr. Molina’s resignation in July 2018 and relied on an invalid SEIU membership card to extract dues from his paycheck. Although Mr. Molina no longer works in an SEIU-represented bargaining unit, he seeks a return of unconstitutionally collected dues.

### THE PROBLEM

In January 2018, Mr. Molina and others within his bargaining unit were asked to sign new union membership cards. At the time, the SEIU informed membership that it needed new cards because the existing cards were “invalid.” The new cards would obligate members to pay dues, regardless of membership status—that is, even if they were no longer members.

Mr. Molina, who had once been a shop steward, refused to sign the new membership card and urged others to read the language in the card and make a decision for themselves. Union leadership believed that he was steering others, including new hires, away from union membership. After *Janus v. AFSCME, Council 31*, Mr. Molina became more vocal in his opposition to the union, even addressing the Lehigh County Commissioners in a [public comment session](#).

By letter to the SEIU, dated July 16, 2018, Mr. Molina resigned from Local 668 and demanded that dues deductions stop immediately. He copied his employer and obtained return receipts. The letter read, in pertinent part:

Dear Ms. Sessa,

At a meeting held in January 2018, as part of a SEIU proactive campaign, the SEIU Local 668 Chapter 13 leadership informed Lehigh County SEIU members that our previously signed SEIU membership cards were being invalidated and newly issued SEIU membership cards (see attached), designed to meet any future legal court challenges, had to be signed and returned immediately and prior to the pending *Janus Vs AFSCME* US Supreme Court decision.

At that time, and as I do today, I am refusing to sign or renew my

membership with SEIU Local 668 given my ideological differences with this organization, the lack of representation, and constant personal hostilities by SEIU representatives and its agents towards myself and other members of this shop.

As cited in the *Janus* decision, **“Neither an agency fee nor any other payment to the union may be deducted from a non-member’s wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.”** Therefore, I **do not consent** to any type of payments being made to SEIU on my behalf nor do I reaffirm any affiliation with SEIU or any of its agents.

Effective immediately, I am directing SEIU and my Lehigh County Employer and all of its agents to cease and desist the collection and recovery process of any and all payments relating to SEIU agency fees, activity fees, and dues from my employee payroll account or by any other collection method.

Additionally, I am requesting that any and all hostilities by SEIU members or any of its agents, towards myself and any other Lehigh County employees who do not share SEIU's ideological views, be suspended immediately.

I am also requesting that the Lehigh County Human Resources Department be provided with a list of current Lehigh County SEIU members along with copies of their newly signed membership cards in order to avoid any future hardships or miscommunications by all parties or any of its agents.

Unfortunately, dues deductions continued.

The collective bargaining agreement in effect when Mr. Molina attempted to resign included the following:

3.1 Each employee, who on the effective date of this Agreement is a member of the Union, and each employee who becomes a member after the date shall maintain his/her membership in the Union, provided that such employee may resign from the Union during a period of fifteen (15) days prior to the expiration of this Agreement. The payment of dues and assessments shall be uniformly required of the membership shall be the only requisite employment condition.

## **THE LAW**

The Supreme Court has repeatedly held that public employees have First Amendment rights that unions cannot violate. The Court recently extended those rights by holding in *Janus* that nonmembers cannot be forced to pay agency fees for union representation. The Court stated,

“[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning...[and c]ompelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns.” *Janus*, 138 S. Ct. 2448, 2464 (2018). Even before *Janus*, the Third Circuit Court of Appeals noted that “[t]he First Amendment affords public-sector employees the freedom not to associate with a labor organization.” *Otto v. Pennsylvania State Educ. Ass’n*, 330 F.3d 125, 128 (3d Cir. 2003).

The SEIU insists that it can require Mr. Molina to remain a union member until the end of the current collective bargaining agreement because of a provision of that agreement and Pennsylvania law. But over a decade ago, the current Chief Judge for the Middle District of Pennsylvania found that someone with a claim like Mr. Molina’s would be likely to succeed because the union’s failure to recognize his resignation violated his constitutional rights. *See McCabon v. Pa. Tpk. Comm’n*, 491 F. Supp. 2d 522 (M.D. Pa. 2007).

## **THE CASE LOGISTICS**

### **Plaintiff**

Francisco Molina, former County Social Services Aide 3

### **Defendants**

- Pennsylvania Social Service Union, Service Employees International Union, Local 668
- Stephen Catanese, in his official capacity as President of Service Employees International Union, Local 668
- Lehigh County Board of Commissioners
- Lehigh County Office of Children and Youth Services
- Phil Armstrong, in his official capacity as County Executive of Lehigh County
- M. Judith Johnston, in her official capacity as Director of Human Resources of Lehigh County

### **Court**

United States District Court for the Middle District of Pennsylvania

### **Judge**

The Honorable Yvette Kane

### **Relief Sought**

Mr. Molina seeks acknowledgement of his resignation, a declaration that his constitutional rights were violated, and a return of union dues unconstitutionally seized from his paychecks.

### **Date Filed**

January 7, 2019

## **THE LEGAL TEAM**

**David R. Osborne** is President and General Counsel at the Fairness Center. David helped to launch the Fairness Center in 2014, provides advice and counsel to clients, and directs and manages the firm. Prior to joining the Fairness Center, David practiced law in Florida, where he had previously served as clerk to a Florida Supreme Court justice and served as official staff to a member of Congress. David graduated from the Florida State University College of Law.

**Nathan J. McGrath** is Vice President and Director of Litigation at the Fairness Center, where he litigates and develops legal strategy to advance the Fairness Center's clients' best interests. Prior to joining the Fairness Center, Nathan was a staff attorney with the National Right to Work Legal Defense Foundation, Inc. Nathan was also an associate attorney with Lawlor & Lawlor, P.C., a general practice firm in Pittsburgh, Pennsylvania.

**Danielle R.A. Susanj** serves as Litigation Counsel at the Fairness Center, representing clients in state and federal courts and before administrative boards. Prior to joining the Fairness Center, Danielle practiced law as a litigation associate at a large international firm in Washington, D.C., and as a litigator in central Pennsylvania, representing clients in federal district and appellate courts and the United States Supreme Court.