



BACKGROUND (OCTOBER 2018)

William H. Neely, III v. American Federation of State, County & Municipal Employees, Council 13, et al.

THE EXECUTIVE SUMMARY

The Fairness Center represents William H. Neely, III, a psychiatric aide at Wernersville State Hospital. Mr. Neely had been a union member for many years, however, he recently resigned his American Federation of State, County and Municipal Employees (“AFSCME”), Council 13 membership because he believed that the union no longer represented his interests or beliefs. The union, however, refused to honor his resignation, citing a provision of a collective bargaining agreement between the union and the Commonwealth of Pennsylvania as its justification.

Mr. Neely brings this lawsuit to establish that the union cannot force him to remain a union member. Mr. Neely contends in this lawsuit that the union’s failure to honor his resignation violates his constitutional rights to freedom of association and speech.

THE PROBLEM & THE LAW

Pennsylvania law currently allows unions to force their members to stay in the union until a 15-day resignation period that occurs only when a collective bargaining agreement expires. In this case, that 15-day window will not occur until the end of the three-year term of the current agreement, in June 2019. And until that point, the union refuses to recognize Mr. Neely’s resignation, instead forcing him to remain on its rolls and to have union dues deducted from every paycheck.

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 v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), that non-union members 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] compelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns.” *Id.* at 2464.

But before Mr. Neely can exercise that right, he has to first resign his union membership. The Third Circuit Court of Appeals has 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). But the union insists that it can require Mr. Neely to remain a union member until the end of the current collective bargaining agreement because of a provision of that agreement and Pennsylvania law.

Over a decade ago, the current Chief Judge for the Middle District of Pennsylvania found that someone with a claim like Mr. Neely's would be likely to succeed on a claim that 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). That is precisely the finding Mr. Neely will be seeking.

THE CONCLUSION

Unions should not be able to force public employees to be union members against their will, remaining associated with a group with which they disagree and having to support that group financially. Mr. Neely seeks to establish that his constitutional rights cannot be limited to a 15-day resignation window every three or more years.

THE CASE LOGISTICS

Plaintiff

William H. Neely, III

Defendants

- American Federation of State, County and Municipal Employees, Council 13
- David R. Fillman, in his official capacity as Executive Director of American Federation of State, County and Municipal Employees, Council 13
- Commonwealth of Pennsylvania, Department of Human Services
- Teresa D. Miller, in her official capacity as Secretary of the Pennsylvania Department of Human Services
- Thomas W. Wolf, in his official capacity as Governor of the Commonwealth of Pennsylvania
- Sharon P. Minnich, in her official capacity as Secretary of the Pennsylvania Office of Administration
- Anna Maria Kiehl, in her official capacity as Chief Accounting Officer for the Commonwealth of Pennsylvania and Deputy Secretary for the Office of Comptroller Operations

Court

United States District Court for the Middle District of Pennsylvania

Judge

The Honorable John E. Jones, III

Relief Sought

Mr. Neely seeks a declaration from the court that he is no longer a member of the union and that his constitutional rights have been violated by the Defendants' refusal to acknowledge his resignation and its continuing seizure of union dues from his paychecks.

Date Filed

October 19, 2018

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.