

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

WILLIAM H. NEELY, III,

Plaintiff,

v.

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
capacities as Chief Accounting Officer for
the Commonwealth of Pennsylvania and
Deputy Secretary for the Office of
Comptroller Operations,

Defendants.

Case No. _____

(Hon. _____)

COMPLAINT

--ELECTRONICALLY FILED--

AND NOW comes Plaintiff William H. Neely, III, by and through his undersigned attorneys, and states the following claim for relief¹ against Defendants American Federation of State, County and Municipal Employees, Council 13 (“Council 13”), David R. Fillman, Executive Director of Council 13, Commonwealth of Pennsylvania, Department of Human Services, Teresa D. Miller, in her official capacity as the 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, and Anna Maria Kiehl, in her official capacities as the Chief Accounting Officer for the Commonwealth of Pennsylvania and Deputy Secretary for the Office of Comptroller Operations, and avers as follows:

SUMMARY OF THE CASE

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for preliminary and permanent injunctive relief, declaratory relief, and monetary relief, to redress and to prevent the deprivation of rights, privileges, and/or immunities under the First and Fourteenth Amendments to the United States Constitution caused by statutes and Defendants’ contracts, policies, and practices that prohibit Council 13 members from

¹ Mr. Neely intends to file a Motion for Preliminary Injunction in this matter in the near future, which will significantly rely upon Chief Judge Conner’s grant of a preliminary injunction in a similar case, *McCabon v. Pennsylvania Tpk. Comm’n*, 491 F. Supp. 2d 522 (M.D. Pa. 2007), and recent Supreme Court case law.

resigning from the union except during one 15-day period over the term of a relevant collective bargaining agreement.

2. In so doing, Defendants have acted under the color of state law, specifically the state's Public Employe Relations Act ("PERA"), 43 P.S. §§ 1101.101–1101.2301, and/or other state laws and are therefore state actors.

3. Pursuant to PERA and "Article 3 Union Security" of a collective bargaining agreement entered into between the Commonwealth of Pennsylvania and Council 13, executed January 27, 2017, and setting forth terms and conditions of employment for certain public employees, including Mr. Neely, from July 1, 2016 to June 30, 2019 ("CBA"), Defendants have deprived, are depriving, and are threatening to continue to deprive, Mr. Neely of his constitutional rights. Specifically, Council 13, acting in concert with the Commonwealth of Pennsylvania and its Department of Human Services, through their named officers and officials, requires Mr. Neely to maintain his membership in Council 13 and its affiliates by restricting his right to resign from union membership and to end all aspects of union membership, including the payment of union dues, and by refusing to acknowledge and/or accept Mr. Neely's resignation, all under the color of state law.

4. Despite Mr. Neely's resignation from Council 13, Defendants have continued to have union dues deducted from his wages and thus, in addition to injunctive and declaratory relief, Mr. Neely seeks compensatory and nominal damages

for the violation of his First and Fourteenth Amendment rights, as well as attorneys' fees and costs.

JURISDICTION AND VENUE

5. This action arises under the Constitution and laws of the United States of America. It also arises under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of Mr. Neely's rights, privileges, and immunities under the Constitution of the United States, and particularly the First and Fourteenth Amendments thereto.

6. The Court has jurisdiction over Mr. Neely's claims pursuant to 28 U.S.C. § 1331—because his claims arise under the United States Constitution—and 28 U.S.C. § 1343—because Mr. Neely seeks relief under 42 U.S.C. § 1983.

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

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because a defendant, Council 13, is domiciled in and operates or does significant business in this judicial district. Additionally, a substantial part of the events giving rise to this action occurred in this judicial district.

PARTIES

9. Plaintiff William H. Neely, III, resides in Dauphin County, Pennsylvania. He is a “Public employe,” 43 P.S. § 1101.301(2), and “Commonwealth employe,” 43 P.S. § 1101.301(15), employed by the Commonwealth of Pennsylvania as a psychiatric aide at the Wernersville State Hospital in a bargaining unit represented, exclusively for purposes of collective bargaining, by Council 13. Mr. Neely was a member of Council 13, but he has not been a member of Council 13 since the date of his resignation letter.

10. Defendant Council 13 is an “Employe organization,” 43 P.S. § 1101.301(3), and “Representative,” 43 P.S. § 1101.301(4), within the meaning of PERA. Pursuant to the CBA, Council 13 represents employees of the Pennsylvania Department of Human Services, including Mr. Neely, exclusively for purposes of collective bargaining with the Commonwealth. Council 13 maintains a place of business at 4031 Executive Park Drive, Harrisburg, Pennsylvania, and conducts its business and operations throughout the Commonwealth of Pennsylvania, including the Middle District of Pennsylvania.

11. Defendant David R. Fillman is the Executive Director of Council 13 and is sued in his official capacity.

12. Defendant Commonwealth of Pennsylvania, Department of Human Services is a “Public employer” within the meaning of PERA, 43 P.S. § 1101.301(1).

The Department employs Mr. Neely as a psychiatric aide at the Wernersville State Hospital.

13. Defendant Teresa D. Miller, Secretary of Human Services, leads the Pennsylvania Department of Human Services. She is sued in her official capacity.

14. Defendant Thomas W. Wolf is Governor of the Commonwealth of Pennsylvania and is generally responsible for the operations of the Commonwealth and the enforcement of its laws, including labor relations. The Commonwealth is a “Public employer” within the meaning of PERA, 43 P.S. § 1101.301(1). Through its officers and agents, the Commonwealth has negotiated and entered into the CBA with Council 13. Governor Wolf is sued in his official capacity.

15. Defendant Sharon P. Minnich is Secretary of the Office of Administration. On information and belief, Ms. Minnich negotiated, entered into, and is the signatory, on behalf of the Commonwealth of Pennsylvania, to the collective bargaining agreement governing the terms and conditions of employment for Mr. Neely. Ms. Minnich is sued in her official capacity.

16. Defendant Anna Maria Kiehl, Chief Accounting Officer for the Commonwealth of Pennsylvania and Deputy Secretary for the Office of Comptroller Operations, is responsible for, among other things, issuing wages to employees of the Commonwealth of Pennsylvania, including to Mr. Neely. She oversees the payroll system for the Commonwealth of Pennsylvania, which includes processing all payroll deductions, including union dues pursuant to the requirements of “Article 3 Union

Security” and “Article 4 Dues Deduction” of the CBA. She is sued in her official capacity.

FACTUAL ALLEGATIONS

17. Acting in concert under color of state law, the Commonwealth of Pennsylvania, controlled by Governor Wolf, Secretary Minnich, and Secretary Miller, in their official capacities, and Council 13 have entered into the CBA, which controls the terms and conditions of Mr. Neely’s employment. Relevant portions of the CBA are attached hereto as “Exhibit A,” and incorporated by reference herein.

18. The Commonwealth and Council 13 agreed to the term of the CBA, which is July 1, 2016, through June 30, 2019.

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

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

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

b. The letter shall be postmarked during the 15 day period prior to the expiration date of this Agreement and shall state that the employee is resigning membership in the

Union and where applicable is revoking check-off authorization.

Ex. A, CBA art. 3, § 1.

20. The CBA's maintenance of membership requirement mirrors in substantive part PERA's maintenance of membership provision, which states,

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

43 P.S. § 1101.301(18). PERA also provides,

Membership dues deductions and maintenance of membership are proper subjects of bargaining with the proviso that as to the latter, the payment of dues and assessments while members, may be the only requisite employment condition.

43 P.S. § 1101.705. PERA explicitly limits the rights of public employees as to "maintenance of membership":

It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement.

43 P.S. § 1101.401.

21. Thus, the terms of both the CBA and PERA limit a union member's right to resign from Council 13 to only the 15-day window immediately preceding the expiration of the CBA.

22. Further, the CBA's Article 4 provides for the deduction of union dues and "fair share" fees. Ex. A, CBA art. 4.

23. Mr. Neely sent his resignation letters to Mr. Fillman and a Council 13 staff representative, both at Council 13's headquarters located at 4031 Executive Park Drive, Harrisburg, Pennsylvania, and requested that the United States Postal Office provide a return receipt evidencing delivery.

24. Mr. Neely's resignation letters were received at Council 13's headquarters on or about July 3, 2018.

25. No Defendant, or agent or official thereof, responded to Mr. Neely's resignation letters to confirm that his resignation was accepted.

26. As a result, Mr. Neely made multiple phone calls to AFSCME offices in Philadelphia and Washington, D.C., seeking to confirm his resignation from Council 13 and its affiliates, but was told to contact Council 13.

27. Mr. Neely spoke about his resignation by telephone with various AFSCME and Council 13 officials and staff representatives who acknowledged receipt of Mr. Neely's resignation letters but told Mr. Neely that he could not resign

his Council 13 membership until the CBA-specified fifteen-day window near the expiration of the CBA in June 2019.

28. One of the staff representatives also told Mr. Neely to contact Council 13 Executive Director David Fillman about Mr. Neely's resignation from Council 13.

29. Mr. Neely made numerous phone calls in an effort to speak with Mr. Fillman about his resignation from Council 13.

30. To this date, Mr. Fillman has neither answered nor returned Mr. Neely's numerous phone calls, or otherwise communicated with Mr. Neely about his Council 13 membership resignation.

31. Mr. Neely also spoke with the Human Resources and Timekeeping departments at Wernersville State Hospital and the Commonwealth's Office of Payroll to notify them of his resignation from Council 13 and to request that they stop deducting union dues from his paychecks. But employees of both offices told Mr. Neely that they could not stop the deduction of union dues from his wages without authorization from Council 13.

32. Continually since on or about July 3, 2018, Ms. Kiehl, in her role overseeing the Office of the Comptroller, has continued to deduct purported union dues from Mr. Neely's wages.

33. Continually since on or about July 3, 2018, Council 13 has continued to take and/or accept purported union dues from Mr. Neely's wages.

34. Defendants have taken and continue to take and have accepted and continue to accept purported union dues from Mr. Neely's wages despite the fact that such seizure of purported union dues from his wages are against Mr. Neely's will and without his consent.

35. Continually since on or about July 3, 2018, Council 13 continues to consider Mr. Neely a Council 13 union member.

36. Among other things, Council 13 continues to mail Mr. Neely union literature touting the supposed benefits of his putative membership with Council 13.

37. Mr. Neely objects to the compelled association with and financial subsidization of any activities of Council 13 and its affiliates for any purpose.

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

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

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

40. The Supreme Court recently held, in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018), that the Constitution prohibits unions from collecting union dues or fees from public employees who are not members of the union without their affirmative consent.

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

42. The "Union Security" article, Exhibit A, on its face and/or as applied by Defendants, permits Council 13 to require that employees remain union members throughout the life of the CBA and, therefore, violates the limited constitutional authorization for exclusive representation by public-sector unions under the First Amendment, as set forth in relevant Supreme Court caselaw.

43. PERA and the "Union Security" article of the CBA, on their faces and/or as applied by Defendants, permit Council 13 to require that employees maintain unwilling allegiance to Council 13 throughout the life of the CBA and are, therefore, unconstitutional. This forced membership requirement impinges on Mr. Neely's exercise of his rights to free association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

44. PERA and the "Union Security" article of the CBA, on their faces and/or as applied by Defendants, authorize Defendants to violate Mr. Neely's constitutional rights by withholding union dues or fees from him without his consent, in violation of the United States Constitution as explained in *Janus*, 138 S. Ct. 2448.

45. As a direct result of Defendants' actions taken under PERA and the CBA, Mr. Neely:

a. has been prevented from exercising his rights and privileges as a citizen of the United States to disassociate from and no longer support the agenda and expenses of a private organization with which he no longer agrees and/or to which he no longer wishes to belong as a member;

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

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

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

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

PRAYER FOR RELIEF

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

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

i. that the “Union Security” article, Exhibit A, Article 3, between the Commonwealth of Pennsylvania and Council 13, on its face and as applied, unconstitutionally abridges Mr. Neely’s rights under the First and Fourteenth Amendments to the Constitution of the United States;

ii. that PERA provisions 43 P.S. §§ 1101.301(18), 1101.401, and 1101.705, to the extent they relate to and/or authorize maintenance of membership, on their face and/or as applied, violate the First and Fourteenth Amendments to the United States Constitution; and

iii. that the First and Fourteenth Amendments prevent Defendants from restricting Mr. Neely’s right to resign from union membership at any time.

B. **Injunctive:** A permanent injunction:

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

a. engaging in any of the activities listed in Part A above, which the Court declares illegal;

b. enforcing the “Union Security” article, Exhibit A, Article 3, or any subsequent substantially similar provision between Council 13 and the Commonwealth of Pennsylvania, which requires Mr. Neely to remain a member of Council 13 for the duration of a collective bargaining agreement.

- ii. requiring Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them, to:
 - a. expunge the “Union Security” article, Exhibit A, Article 3, between Council 13 and the Commonwealth of Pennsylvania;
 - b. honor Mr. Neely’s request to resign from union membership, retroactive to the date of his resignation; and
 - c. refund to Mr. Neely all union dues deducted from his wages from the date of his resignation, plus interest thereon.

C. **Monetary:** A judgment awarding Mr. Neely nominal and compensatory damages for the injuries sustained as a result of Defendants’ unlawful interference with and deprivation of his constitutional and civil rights including, but not limited to, the amount of dues deducted from his wages after Mr. Neely’s resignation, plus interest thereon, and such amounts as principles of justice and compensation warrant.

D. **Attorneys’ Fees and Costs:** A judgment awarding Mr. Neely costs, including reasonable attorneys’ fees under 42 U.S.C. § 1988; and

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

Respectfully submitted,

THE FAIRNESS CENTER

Dated: October 19, 2018

s/ Nathan J. McGrath
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