

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

WILLIAM H. NEELY, III,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL EMPLOYEES,  
COUNCIL 13, *et al.*,

Defendants.

**Case No. 1:18-cv-02043-JEJ**

(Hon. John E. Jones, III)

**MOTION FOR PRELIMINARY  
INJUNCTION**

--ELECTRONICALLY FILED--

Pursuant to Federal Rule of Civil Procedure 65 and Middle District of Pennsylvania Local Rule 7.1, Plaintiff William H. Neely, III, by and through his undersigned counsel, respectfully moves this Court for the entry of an order preliminarily enjoining Defendants' enforcement against him of the "Union Security" article of the current collective bargaining agreement ("CBA") between the Commonwealth of Pennsylvania and Defendant American Federation of State, County and Municipal Employees, Council 13 ("Council 13"), pending final disposition of this action. Plaintiff further requests that Defendants be enjoined from taking any retaliatory measures against Plaintiff, including the filing of union charges, union discipline, or punitive changes to his terms and conditions of employment.

In addition to the averments that follow, this motion is based upon Plaintiff's declaration and brief in support of this motion, the pleadings, records and files in this action, and upon such further oral and documentary evidence that may be presented to this Court before it rules on this motion.

The grounds for this motion, further set forth and explained in Plaintiff's Brief in Support of Motion for Preliminary Injunction, filed herewith, are:

1. Plaintiff filed this 42 U.S.C. § 1983 action on October 19, 2018, *see* Compl., ECF No. 1, challenging the constitutionality of Pennsylvania law and Defendants' actions, taken under color of state law, which violate Plaintiff's rights under the First and Fourteenth Amendments to the Constitution of the United States.

2. As more fully set forth and discussed in the brief in support of this motion, Defendants have entered into a collective bargaining agreement pursuant to state law that violates Plaintiff's constitutional rights to freedom of speech, association, and choice. Relying on that collective bargaining agreement, and despite Plaintiff's letters resigning his union membership, Defendants have refused to accept Plaintiff's resignation and continue to treat Plaintiff as a member of Council 13 and its affiliates. Decl. of William H. Neely, III, in Supp. of Pl.'s Mot. for Prelim. Inj. ("Neely Decl.") ¶¶ 7–12; 15–16.

3. Among other constitutional violations, Defendants continue to deduct union dues from Plaintiff's wages despite his resignation of union membership and against his will, Neely Decl. ¶¶ 10, 15. *See Janus v. AFSCME, Council 31*, 138 S. Ct.

2448, 2486 (2018) (noting 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).

4. A preliminary injunction is necessary and proper to avoid the immediate and irreparable harm to Plaintiff resulting from the violation of his First and Fourteenth Amendment rights through Defendants' continued treatment of him as a union member, which forces him to remain associated with the union. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (noting that the "loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury").

5. No adequate remedy at law exists for the violation of those constitutional rights, and Plaintiff is likely to succeed on the merits of his action, while the harm to Plaintiff and the public interest from denial of the injunction outweighs any possible harm to Defendants.

6. As the record demonstrates, Defendants have violated, have threatened to violate, and continue to threaten to violate his First and Fourteenth Amendment rights, as Defendants have continued the seizure of union dues from Plaintiff's wages despite his resignation from union membership and his directive to stop the seizure of dues from him. Neely Decl. ¶¶ 10, 15. Defendants will continue to seize union dues from Plaintiff's future wages under the terms of the CBA, violating his constitutional rights and necessitating a preliminary injunction from this Court.

7. Plaintiff has acted with all haste to file this motion after the initiation of his lawsuit, as the unconstitutional seizures continue from his biweekly paychecks. Neely Decl. ¶ 15. Defendants also continue to treat Plaintiff as a union member, forcing him to remain associated with an organization with which he no longer wants to be affiliated. Neely Decl. ¶¶ 7, 12, 15–16.

8. Because Plaintiff has been treated as a union member, he may be subjected to union discipline or charges should Defendants believe Plaintiff's exercise of his rights in this matter is contrary to their interests. Likewise, Defendants may change or cause to be changed Plaintiff's terms and conditions of employment as a retaliatory or punitive measure for the same.

**WHEREFORE**, Mr. Neely respectfully requests that this Court issue an order preliminarily enjoining Defendants and their agents, assistants, successors, employees, attorneys, and all other persons acting in concert or cooperation with them or at their direction or under their control, from seizing union dues from Mr. Neely and from taking any other steps to enforce the "Union Security" article of the CBA against him, or otherwise to treat him as a member of Council 13, until further order of this Court.

Plaintiff also requests that this Court enjoin Defendants from taking any adverse employment action against him in retaliation for or in response to his filing of this action and pursuing the adjudication of his constitutional rights.

Dated: October 23, 2018

Respectfully submitted,

THE FAIRNESS CENTER

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**CERTIFICATE OF CONCURRENCE/NON-CONCURRENCE**

The undersigned hereby certifies that because the identity of Defendants' counsel in this matter is, at this time, unknown, the undersigned was unable to seek concurrence related to the foregoing motion from Defendants' counsel.

Dated: October 23, 2018

/s/ David R. Osborne  
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## CERTIFICATE OF SERVICE

I, the undersigned, certify that on October 23, 2018, I electronically filed Plaintiff's *Motion for Preliminary Injunction*, corresponding proposed order, and *Declaration of William H. Neely, III, in Support of Plaintiff's Motion for Preliminary Injunction* using the Court's CM/ECF system, which will send electronic notification of said filing to all counsel of record in this matter, who are ECF participants, and that constitutes service thereon pursuant to Local Rule 5.7.

Those Defendants without known counsel registered with the Court's CM/ECF system, were served via First-Class, U.S. Mail at:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO, COUNCIL 13  
4031 Executive Park Drive  
Harrisburg, PA 17111

DAVID R. FILLMAN  
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COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF HUMAN SERVICES  
625 Forster Street, Room 333  
Harrisburg, PA 17120

TERESA D. MILLER  
Pennsylvania Department of Human Services  
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THOMAS W. WOLF  
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Dated: October 23, 2018

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