

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

RALPH R. RHODES,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES, COUNCIL 13; and
DAVID R. FILLMAN, in his official
capacity as Executive Director of
American Federation of State, County
and Municipal Employees, Council
13,

Defendants.

Case No. _____

(Hon. _____)

COMPLAINT

--ELECTRONICALLY FILED--

AND NOW comes Plaintiff Ralph R. Rhodes, by and through his undersigned attorneys, and states the following claims for relief against Defendants American Federation of State, County and Municipal Employees, Council 13 (“Council 13”) and David R. Fillman, in his official capacity, and avers as follows:

SUMMARY OF THE CASE

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for monetary relief, to redress the deprivation under the color of state law of rights, privileges, and/or immunities under the First and Fourteenth Amendments to the United States Constitution caused by statute and Defendants’ contracts, policies, and practices that

prohibit Council 13 members from resigning from Council 13 except during one fifteen (15) day period over the term of a relevant collective bargaining agreement (“CBA”) between Council 13 and the Commonwealth of Pennsylvania (“Commonwealth”), as well as Council 13’s illegal prohibition on a public employee’s ability to revoke his or her authorization for the Commonwealth to deduct union dues from the employee’s wages, except during an annual window period coinciding with the anniversary of the employee’s signing of an authorization card for the public employer to deduct union dues (“authorization card”).

2. In so doing, Defendants have acted under the color of state law, specifically, the state’s Public Employee 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” and “Article 4 Dues Deduction” of a CBA between the Commonwealth and Council 13, executed January 27, 2017, which set forth terms and conditions of employment for certain public employees, including Plaintiff, from July 1, 2016 to June 30, 2019, Defendants deprived Plaintiff of his First and Fourteenth Amendment rights.

4. Specifically, Council 13 acted in concert with the Commonwealth, through their officers and officials, requiring Plaintiff 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 his resignation, all under the color of state law.

5. Furthermore, Council 13 acted in concert with the Commonwealth, through their officers and officials, to deprive Plaintiff of his constitutional rights by accepting union dues deducted from Plaintiff's wages by the Commonwealth irrespective of Plaintiff's membership in Council 13.

6. Defendants and the Commonwealth, through their officers and officials, enforced compelled dues deductions from Plaintiff's wages based on authorization in the CBA and Plaintiff's dues deduction authorization card.

7. From the time Plaintiff attempted to resign his union membership, Council 13 and the Commonwealth were on notice that the deduction of Plaintiff's dues from his wages were without Plaintiff's consent, against his will, and in violation of Plaintiff's constitutional rights under the First and Fourteenth Amendments.

8. Despite Plaintiff's notice to Council 13 and the Commonwealth that he revoked his authorization for dues deductions from his wages, Defendants and the Commonwealth, through their officers and officials, continued to deduct and accept union dues or the equivalent thereof from Plaintiff's wages; thus, Plaintiff seeks compensatory and nominal damages for the violation of his First and Fourteenth Amendment rights as well as attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

JURISDICTION AND VENUE

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

10. This Court has jurisdiction over Plaintiff'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 he seeks relief under 42 U.S.C. § 1983.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because one or more defendants operate in or do significant business in this judicial district and/or have offices in this judicial district. Additionally, a substantial part of the events giving rise to this action occurred in this judicial district.

PARTIES

12. Plaintiff Ralph R. Rhodes is, and was at all times relevant hereto, a “Public employe,” 43 P.S. § 1101.301(2), and “Commonwealth employe,” 43 P.S. § 1101.301(15), employed by the Commonwealth of Pennsylvania under its agency, Department of Human Services (“DHS”), at the North Central Secure Treatment Unit located in Montour County, as a Youth Development Aide in a bargaining unit represented, exclusively for purposes of collective bargaining, by Council 13.

13. 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. Council 13 represents certain employees of the Commonwealth of Pennsylvania, including Plaintiff, 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.

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

FACTUAL ALLEGATIONS

15. Acting in concert under color of state law, the Commonwealth, by and through its officers and officials acting in their official capacities, and Council 13, by and through its officers and officials, entered into the CBA, which controlled the terms and conditions of Plaintiff’s employment. Relevant excerpts of the CBA are attached hereto as “Exhibit A,” and incorporated by reference herein.

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

17. Pursuant to PERA, the CBA contained a “Union Security” article, which prohibited union members from unconditional resignation of their union membership, and provided 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 the 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 post-marked 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 (emphasis added).

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

(18) "Maintenance of membership" means that all employees 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.

19. Thus, PERA authorized the terms of the CBA that limited a union member’s right to resign from Council 13 to only the fifteen (15) days immediately preceding the expiration of the CBA.

20. Furthermore, the CBA contained a “Dues Deduction” article, which provided for automatic dues deductions and assignment to Council 13.

21. The CBA limited employees’ right to revoke authorization for automatic dues deduction during the term of the CBA:

Section 1. The Employer shall deduct the Union biweekly membership dues and an annual assessment, if any, from the pay of those employees who individually request in writing that such deductions be made . . . The aggregate deduction of all employees shall be remitted together with an itemized statement to the Union by the last day of the succeeding month, after such deductions are made. *This authorization shall be irrevocable by the employee during the term of this Agreement.* When revoked by the employee in accordance with Article 3, the agency shall halt the check-off of dues

effective the first full pay period following the expiration of this Agreement.

Ex. A, CBA art. 4, § 1 (emphasis added).

22. The authorization card's prohibition on the revocation of automatic dues deductions was authorized by and mirrored in substantive part the CBA's prohibition and limits revocation of dues deduction authorization to certain fifteen (15) day windows immediately preceding the termination of the CBA or the anniversary of the execution of the authorization card:

This voluntary authorization and assignment shall be irrevocable, regardless of whether I am or remain a members of the Union, for a period of one year from the date of execution of this authorization or until the termination date of the collective bargaining agreement (if there is one) between my Employer and the Union, whichever occurs sooner, and for the years to come, unless I give my Employer and the Union written notice of revocation during the fifteen (15) days before the annual anniversary date of this authorization or, for public sector contracts, during the fifteen (15) days before the date of termination of the appropriate collective bargaining agreement between the Employer and the Union, whichever occurs sooner.

A copy of the authorization card is attached hereto as "Exhibit B," and incorporated by reference herein.

23. The authorization card further provides that the employee's employer is authorized to "deduct from my pay each pay period, regardless of whether I am or remain a member of the Union, the amount of dues certified by the Union . . . to remit such amount monthly to AFSCME Council 13 . . ." Ex. B.

24. In accordance with Article 3, Section 1, of the CBA, Plaintiff sent a certified letter, return receipt requested, to Council 13's headquarters at 4031 Executive Park Drive, Harrisburg, Pennsylvania.

25. Plaintiff's resignation letter was postmarked on June 25, 2019, and notified Council 13 that Plaintiff resigned his Council 13 union membership, effective immediately.

26. Plaintiff's resignation via letter was postmarked to Council 13 during the fifteen (15) day period prior to the termination date of the 2016–2019 CBA between DHS and Council 13.

27. During the same fifteen (15) day window period, Plaintiff hand-delivered a copy of his June 25, 2019 resignation letter to his employer by placing a copy of the letter in the office mailbox of his employer's secretary, who also served as Plaintiff's union representative.

28. In response to Plaintiff's June 25, 2019 resignation letter, Council 13 acknowledged it received the letter but directed Plaintiff to contact the Commonwealth's DHS to request that DHS end Plaintiff's automatic dues deductions.

29. In response to Council 13's instructions, Plaintiff sent multiple inquiries via email to various Commonwealth officials, seeking assistance in ceasing the automatic deduction of union dues by the Commonwealth.

30. Representatives for DHS ultimately instructed Plaintiff that he must contact Council 13's Member Resource Center if he wished to resign from Council 13.

31. Pursuant to instructions from Commonwealth DHS officials, Plaintiff contacted Council 13 and was told by a Council 13 official that Plaintiff could not resign his membership in Council 13 or revoke his authorization for the Commonwealth to automatically deduct union dues until April 2020 based on an authorization card Plaintiff purportedly signed.

32. Council 13 sent a copy of the authorization card, dated April 28, 2018, to Plaintiff. Ex. B.

33. However, in accordance with the terms contained on the authorization card, Plaintiff's dues deduction authorization revocation was postmarked during the earlier occurring fifteen (15) day window period in June 2019.

34. On April 14, 2020, Plaintiff sent a letter to Council 13 wherein he reaffirmed his membership resignation and revocation of dues deduction authorization.

35. Plaintiff sent copies of that April 14, 2020 letter to DHS and the Commonwealth's Office of Comptroller.

36. Brian T. Lyman, in his role overseeing the Office of the Comptroller, deducted purported union dues from Plaintiff's wages from on or about June 25, 2019 until on or about June 12, 2020.

37. From on or about June 25, 2019, Council 13 continued to take, receive, and/or accept purported union dues from Plaintiff's wages until on or about June 12, 2020.

38. Until on or about June 12, 2020, Council 13 considered Plaintiff to be a Council 13 union member despite Plaintiff's resignation of membership in Council 13 and its affiliates on June 25, 2019.

39. Defendants continued to take and/or accept purported union dues deducted from Plaintiff's wages even after they knew that seizure of purported union dues from Plaintiff's wages was against Plaintiff's will and without his consent.

40. Plaintiff objects to the compelled association and speech inherent with and financial subsidization of any activities of Council 13 and its affiliates for any purpose.

COUNT ONE

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

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

42. The First Amendment to the Constitution of the United States protects the associational, free speech, and free choice rights of United States citizens, and the Fourteenth Amendment to the Constitution of the United States incorporates the protections of the First Amendment against the States.

43. 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.

44. The "Union Security" article of the CBA, Ex. A, on its face and/or as applied by Defendants, permitted Defendants to require that bargaining unit 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.

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

46. PERA and the "Union Security" article of the CBA, on their faces and/or as applied by Defendants, authorized Defendants to violate Plaintiff'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 v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018).

47. The prohibition on resignation violated the limited constitutional authorization for exclusive representation by public-sector unions under the First Amendment, as set forth in relevant Supreme Court caselaw.

48. As a direct result of Defendants' actions taken under PERA and the CBA, Plaintiff:

a. was prevented from exercising his rights and privileges as a citizen of the United States to disassociate from and no longer support the agenda, expenses, and speech of a private organization;

b. was deprived of his civil rights guaranteed under the Constitution and statutes of the United States; and,

c. suffered monetary damages and other harm.

COUNT TWO

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

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

50. The Supreme Court held in *Janus v. AFSCME, Council 31*, 138 S. Ct. at 2486, 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.

51. The "Dues Deduction" article of the CBA, Ex. A, on its face and/or as applied by Defendants, permits Defendants to limit the right to revoke authorization

for automatic dues deductions 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.

52. Defendants' prohibition on dues revocation as provided on the authorization card, Ex. B, on its face and/or as applied by Defendants, limits employees from revoking dues authorization to a fifteen (15) day window prior to the anniversary of the union card's authorization or the expiration of the existing CBA, whichever occurs sooner, otherwise employees are subjected to automatic dues deductions without their affirmative consent.

53. The compelled dues deduction provision of the union card violates the limited constitutional authorization for exclusive representation by public-sector unions under the First Amendment, as set forth in relevant Supreme Court caselaw.

54. Because Plaintiff resigned his membership in Council 13, his First Amendment rights protected him from being forced to pay dues and/or fees to Council 13 without his consent.

55. Because Plaintiff resigned his membership in Council 13, his First Amendment rights protected him from having the Commonwealth, and/or its agents, withhold/deduct payments for Council 13 from Plaintiff's wages.

56. A valid waiver of First Amendment rights requires clear and compelling evidence that the putative waiver was voluntary, knowing, and intelligent and that

enforcement of the waiver is not against public policy. Defendants bear the burden of proving that these criteria are satisfied.

57. Plaintiff did not make a valid waiver of his First Amendment rights as a nonmember not to pay dues and/or fees to Council 13 or its affiliates.

58. The Comptroller of the Commonwealth, and/or its agents, and the Defendants and/or their agents acted in concert to seize and/or accept deductions of monies/fees from Plaintiff's wages under color of state law, which violated Plaintiff's rights, privileges, and immunities granted by the First and Fourteenth Amendments to the United States Constitution, and violated 42 U.S.C. § 1983 by causing Plaintiff to support the activities and speech of Council 13 and its affiliates without his consent.

59. Actions of the Comptroller of the Commonwealth and/or his agents, in concert with Council 13, were under color of state law in seizing payments from Plaintiff's wages via payroll deduction, pursuant to the CBA, despite Plaintiff's requests for the deductions to cease.

60. Defendants, by deducting and/or accepting union dues and/or fees from Plaintiff's wages without clear and compelling evidence that he waived his First Amendment rights to refrain from subsidizing Council 13 and its speech, deprived Plaintiff of his First Amendment rights to free speech and association, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

61. As a direct result of Defendants' continued deduction and/or acceptance of purported union dues and/or fees, Plaintiff:

a. was prevented from exercising his rights and privileges as a citizen of the United States to disassociate from and no longer support the agenda, expenses, and speech of a private organization;

b. was deprived of his civil rights guaranteed under the Constitution and statutes of the United States; and,

c. suffered monetary damages and other harm.

PRAYER FOR RELIEF

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

A. **Monetary:** A judgment against Council 13 awarding Plaintiff nominal and compensatory damages for the injuries sustained as a result of Defendants' unlawful interference with and deprivation of his rights, privileges, and immunities secured by the Constitution of the United States, including, but not limited to, actual damages in the full amount of purported union dues seized from Plaintiff's wages from the date of his resignation from Council 13 until the seizures stopped, plus interest thereon, and nominal exemplary damages, under 42 U.S.C. § 1983;

B. **Attorneys' Fees and Costs:** A judgment against Council 13 awarding Plaintiff his costs and reasonable attorneys' fees under 42 U.S.C. § 1988; and

C. **Other:** Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

THE FAIRNESS CENTER

Dated: July 29, 2020

By: *s/ Nathan J. McGrath* _____

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