



## BACKGROUND (MARCH 2019)

*Curtis W. Thompson v. American Federation of State, County & Municipal Employees, District Council 89, Local 4013, et al.*

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### THE EXECUTIVE SUMMARY

The Fairness Center represents Curtis W. Thompson, who seeks to have the union honor his resignation of membership and to stop having union dues deducted from his wages against his will. Mr. Thompson is an education assistant at Eagle View Middle School in the Cumberland Valley School District (“CVSD”). He was a union member but resigned his membership because he believes that the union no longer represented his interests or beliefs.

But the union refuses to honor his resignation, relying on Pennsylvania law and its collective bargaining agreement with CVSD to say that Mr. Thompson cannot resign until he follows its stringent resignation procedures during a 15-day window period immediately preceding the CBA’s expiration date. Mr. Thompson contends in his lawsuit that the union’s failure to honor his resignation violates his constitutional rights to freedom of speech and association.

### 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 four-year term of the current agreement, in June 2020. And until that time, the union refuses to recognize Mr. Thompson’s resignation, instead forcing him to remain on its membership rolls and to have union dues deducted from his wages—even though Mr. Thompson followed the union’s procedures for resignation, except for waiting to exercise his constitutional rights until the 15-day window comes around.

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 that “[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.” *Id.* at 2464.

But before Mr. Thompson can exercise that right, the union has to honor his resignation. 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). The union, however, insists that it can require Mr. Thompson to remain a union member until the end of the current collective bargaining agreement because of the provision in Pennsylvania law.

Over a decade ago, the current Chief Judge for the Middle District of Pennsylvania found that someone with a claim like Mr. Thompson’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. Pennsylvania Tpk. Comm’n*, 491 F. Supp. 2d 522 (M.D. Pa. 2007). That is the finding Mr. Thompson seeks in this matter.

## **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. Thompson seeks to establish that his constitutional rights cannot be limited to one 15-day resignation window every four or more years.

## **THE CASE LOGISTICS**

### **Plaintiff**

Curtis W. Thompson

### **Defendants**

- American Federation of State, County and Municipal Employees, District Council 89, Local 4013
- Steve Mullen, in his official capacity as Director of American Federation of State, County and Municipal Employees, District Council 89
- Cumberland Valley School District
- Frederick S. Withum, III, in his official capacity as Superintendent of the Cumberland Valley School District

### **Court**

United States District Court for the Middle District of Pennsylvania

### **Judge**

The Honorable Sylvia H. Rambo

## **Relief Sought**

Mr. Thompson 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 wages.

## **Date Filed**

March 26, 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.

**Justin T. Miller** serves as Litigation Counsel at the Fairness Center. His work focuses on representing clients in state and federal courts, and before administrative boards. Prior to joining the Fairness Center, Justin was a prosecutor for the State Attorney's Office in Florida. He was lead counsel in over 80 jury trials and prosecuted a wide-array of felony offenses before accepting an assignment to the special victims unit.