



## BACKGROUND (MARCH 2019)

*Tammy C. Wessner v. American Federation of State, County & Municipal Employees, Council 13, et al.*

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### THE EXECUTIVE SUMMARY

The Fairness Center represents Tammy C. Wessner, a psychiatric aide at Wernersville State Hospital. Years ago, Ms. Wessner was asked to, and did, sign a card that made her a member of AFSCME, Council 13. But in 2018, she resigned her membership after several years of researching how to get out of the union because she believes that the union does not represent her interests or beliefs. The union, however, refused to honor her resignation, never even bothering to respond to her resignation letter.

Ms. Wessner brings this lawsuit to establish that the union cannot force her to remain a union member. She contends in this lawsuit that the union's failure to honor her resignation violates her constitutional rights to freedom of speech and association.

### THE PROBLEM & THE LAW

Pennsylvania law currently allows unions to force their members to stay in a union until a 15-day resignation period that occurs only when a collective bargaining agreement expires. In this case, that 15-day window occurs at the end of the three-year term of the current agreement, in June 2019. The union refuses to honor Ms. Wessner's resignation, instead forcing her to remain on its rolls with union dues regularly deducted from her wages.

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.

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). Council 13 appears to believe that it can force public employees to remain union members until the end of the current CBA because of a provision of that agreement and Pennsylvania law. But over a decade ago, the current Chief Judge for the Middle District of Pennsylvania found that someone with a claim similar to Ms. Wessner's would be likely to succeed because the union's reliance on a similar “maintenance of membership” provision

violated one's constitutional rights. *See McCabon v. Pennsylvania Tpk. Comm'n*, 491 F. Supp. 2d 522 (M.D. Pa. 2007).

## **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. Ms. Wessner seeks to establish that her constitutional rights cannot be limited to a 15-day resignation window every three or more years.

## **THE CASE LOGISTICS**

### **Plaintiff**

Tammy C. Wessner

### **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
- Michael Newsome, in his 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

### **Court**

United States District Court for the Middle District of Pennsylvania

### **Judge**

The Honorable Sylvia H. Rambo

### **Relief Sought**

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

**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.

**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.