

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

LUANN ZEIGLER,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 13; AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, DISTRICT COUNCIL 84;
MICHAEL NEWSOME, in his official capacity
as Secretary of the Pennsylvania Office of
Administration; BRIAN T. LYMAN, in his
official capacities as Chief Accounting
Officer for the Commonwealth of
Pennsylvania and Deputy Secretary for the
Office of Comptroller Operations,

Defendants.

Civil Action No. 2:20-cv-996

COMPLAINT

AND NOW comes Plaintiff LuAnn Zeigler, by and through her undersigned attorneys, and states the following claims for relief against Defendants American Federation of State, County and Municipal Employees, Council 13 (“Council 13”); American Federation of State, County and Municipal Employees, District Council 84 (“District Council 84”) (collectively, “Union Defendants”); Michael Newsome, in his official capacity as Secretary of the Pennsylvania Office of Administration; and Brian T. Lyman, in his official capacities as the Chief Accounting Officer for the

Commonwealth of Pennsylvania and Deputy Secretary for the Office of Comptroller Operations (collectively, “Commonwealth Defendants”), and avers as follows:

SUMMARY OF THE CASE

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for monetary, injunctive, and declaratory relief, to redress the ongoing deprivation under the color of state law of Ms. Zeigler’s rights under the First and Fourteenth Amendments to the United States Constitution. This deprivation is caused by Defendants’ joint policies and practices in continuing to seize and accept payments equal to full union dues from Ms. Zeigler’s wages despite her status as a nonmember of the union, without a valid waiver of her constitutional rights and without the constitutionally required procedural protections.

2. Specifically, Union Defendants acknowledged Ms. Zeigler’s resignation from union membership but have continued to act in concert with the Commonwealth, by and through its agents and officials, to seize and to accept payments equal to full union dues from Ms. Zeigler’s wages, violating her First and Fourteenth Amendment rights to free association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience.

3. Additionally, Union Defendants have acted in concert with the Commonwealth, by and through its agents and officials, to seize and to accept payments equal to full union dues from Ms. Zeigler’s wages, without providing her any meaningful notice or opportunity to object to the ongoing withholding, the

process by which the money is withheld, or the ways in which her money is used, violating her Fourteenth Amendment right to due process.

4. Despite Ms. Zeigler's resignation from Council 13, Defendants have continued to have union dues deducted from her wages and thus, in addition to injunctive and declaratory relief against all Defendants, Ms. Zeigler seeks compensatory and nominal damages against Union Defendants for these violations of her First and Fourteenth Amendment rights, as well as attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

JURISDICTION AND VENUE

5. 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 Ms. Zeigler's rights, privileges, and immunities under the Constitution of the United States, and particularly the First and Fourteenth Amendments.

6. This Court has jurisdiction over Ms. Zeigler's claims under 28 U.S.C. § 1331—because the claims arise under the United States Constitution—and 28 U.S.C. § 1343—because they seek relief under 42 U.S.C. § 1983.

7. This action is an actual controversy in which Ms. Zeigler seeks a declaration of her rights under the Constitution of the United States. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court may declare plaintiffs' 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 under 28 U.S.C. § 1391(b), because one or more defendants are domiciled in and operate or do significant business in this judicial district, and because the events giving rise to this action occurred in this judicial district.

PARTIES

9. Plaintiff LuAnn Zeigler is a “Public employe,” 43 P.S. § 1101.301(2), and “Commonwealth employe,” 43 P.S. § 1101.301(15), as defined in Pennsylvania’s Public Employe Relations Act (“PERA”), employed by the Commonwealth of Pennsylvania in a bargaining unit represented, exclusively for purposes of collective bargaining, by Council 13. Ms. Zeigler was a member of Union Defendants, but has not been a member since the date of her 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 collective bargaining agreements, Council 13 represents certain employees of the Commonwealth of Pennsylvania, including Ms. Zeigler, exclusively for purposes of collective bargaining with the Commonwealth. Council 13 conducts its business and operations throughout the Commonwealth of Pennsylvania, including the Western District of Pennsylvania.

11. Defendant District Council 84 is an “Employee organization,” 43 P.S. § 1101.301(3), and “Representative,” 43 P.S. § 1101.301(4), within the meaning of PERA. District Council 84 maintains a place of business at Foster Plaza 10, 680 Andersen Drive, Suite 505, Pittsburgh, Pennsylvania 15220, and conducts its business and operations throughout the Commonwealth of Pennsylvania, including the Western District of Pennsylvania.

12. Defendant Michael Newsome is Secretary of the Office of Administration. On information and belief, Mr. Newsome, and/or his predecessor, Sharon P. Minnich, negotiated, entered into, and is the signatory to, on behalf of the Commonwealth, the collective bargaining agreements governing the terms and conditions of employment for Ms. Zeigler. Mr. Newsome is sued in his official capacity.

13. Defendant Brian T. Lyman, 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 Ms. Zeigler. He oversees the payroll system for the Commonwealth of Pennsylvania, which includes processing all payroll deductions. He is sued in his official capacity.

FACTUAL ALLEGATIONS

14. Acting in concert under color of state law, the Commonwealth of Pennsylvania, through Secretary Newsome (and/or his predecessor, Sharon P.

Minnich), and Council 13 have entered into the collective bargaining agreements that have controlled the terms and conditions of Ms. Zeigler's employment.

15. The term of the current collective bargaining agreement governing Ms. Zeigler's employment ("CBA") is July 1, 2019, to June 30, 2023. Relevant portions of the CBA are attached hereto as "Exhibit A," and incorporated by reference herein.

16. PERA defines "membership dues deduction" as "the practice of a public employer to deduct from the wages of a public employe, with his written consent, an amount for the payment of his membership dues in an employe organization, which deduction is transmitted by the public employer to the employe organization." 43 P.S. § 1101.301(11).

17. PERA authorizes public employers and employee organizations and/or representatives to engage in bargaining relevant to membership dues deductions. 43 P.S. § 1101.705.

18. Accordingly, the CBA contains an Article 4 "Dues Deduction" provision, which requires the Commonwealth of Pennsylvania, as employer, to deduct dues from the wages of an employee subject to the terms and conditions of the CBA. Article 4 provides that it will be "determined by the Union" when deductions should cease, and that "the Employer shall rely on the information provided by the Union to cancel or change authorizations." *See* Ex. A, art. 4, sec. 1.

19. Article 4 also contains a provision that provides that the Union “shall indemnify and hold the Employer harmless” for actions “taken or not taken by the Employer under the provisions of this Article.” *See* Ex. A, art. 4, sec. 7.

20. Ms. Zeigler began her current position with the Commonwealth in June 2018, and joined Union Defendants as a member on July 25, 2018.

21. In the year that followed, Ms. Zeigler grew increasingly dissatisfied with the representation she received from Union Defendants, especially after a union representative confirmed that due to the union’s poor record keeping, Ms. Zeigler had been denied the opportunity to vote on the CBA when it was supposed to have been presented to membership for a vote.

22. Ms. Zeigler resigned her membership with Union Defendants by letter sent via electronic mail on January 2, 2020, and thereafter sent a copy of the letter to Council 13’s headquarters by certified mail, which was received January 10, 2020.

23. Ms. Zeigler emailed and faxed a copy of the resignation letter to the Human Resources Bureau of the Commonwealth of Pennsylvania, and also sent a copy by mail.

24. When Ms. Zeigler followed up with a representative of the Human Resources Bureau of the Commonwealth to ask when her dues deductions would cease, she was informed that she needed to “check with” the “HR Service Center” to have her dues deductions ended. Later that day, the same representative refused to

process Ms. Zeigler's request to end dues deduction, writing that "the [C]ommonwealth is no longer involved in this process."

25. Nevertheless, and despite her letter revoking consent to ongoing deductions from her wages, the Commonwealth, by and through its agents and officials, including Defendant Lyman, has continued to deduct money for Union Defendants from Ms. Zeigler's wages.

26. Nearly a month after her resignation, on January 31, 2020, a representative of Union Defendants wrote to Ms. Zeigler, stating that her status was "changed to a non-member, effective January 10, 2020," and that "because you are no longer a member of the union, you are no longer entitled to members-only rights and benefits."

27. The letter also claimed that

When you joined the union, you agreed to continue to provide financial support in an amount equal to dues until a certain window period. . . . Please see the enclosed copy of your membership card, which you signed on July 25, 2018. . . . Given your commitment to continue providing financial support at least until this window, you cannot cancel your payments right now. In keeping with your agreement, if you still wish to cease the deduction of dues from your pay, please submit in writing this request to both your Employer and AFSCME during the window period, and it will be processed accordingly.

28. Enclosed with the January 31, 2020 letter was a copy of the "Membership Card" purportedly signed by Ms. Zeigler on July 25, 2018. A true and

correct copy of the “Membership Card” sent by Union Defendants’ representative to Ms. Zeigler is included as Exhibit B.

29. This “Membership Card” provided by Union Defendants contains no statement informing of, referencing, or otherwise acknowledging the rights of public employees with regard to union membership and payment of money to Union Defendants.

30. This “Membership Card” does not contain a notice to Ms. Zeigler that she has constitutional rights to choose not to be a member of Union Defendants, to choose not to pay any fees or dues to Union Defendants as a nonmember, or to due process, including notice and an opportunity to object to how any nonconsensual dues taken from her are used.

31. The “Membership Card” purports to provide authorization for the Commonwealth, as Ms. Zeigler’s employer, to deduct dues from her wages:

Effective immediately, I hereby voluntarily authorize and direct my Employer 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, and as they may be adjusted periodically by the Union. I further authorize my Employer to remit such amount monthly to AFSCME Council 13 and I recognize that neither this authorization nor its continuation is a condition of my employment.

This voluntary authorization and assignment shall be irrevocable, regardless of whether I am or remain a member 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.

Ex. B.

32. Upon information and belief, the language of the “Membership Card” Ms. Zeigler signed, after the Supreme Court decided *Janus v. AFSCME, Council 13*, 138 S. Ct. 2448 (2018), is identical to the language of the membership cards Union Defendants asked public employees to sign before the *Janus* decision, and the “Membership Card” contains no reference to or other language informing public employees of their rights as explained in *Janus*.

33. No Defendant or any official of Defendants asked Ms. Zeigler to agree to pay money to Union Defendants as a nonmember of the union, following her status change to nonmember of Union Defendants, nor has Ms. Zeigler provided any such waiver of her constitutional right as a nonmember not to pay union fees or authorization since her resignation of union membership and conversion to nonmember status.

34. Upon information and belief, since Ms. Zeigler’s resignation, continuing to the present day, Union Defendants and Commonwealth Defendants, pursuant to the CBA, the “Membership Card,” and their joint policy and practice, act in concert

under color of state law to collect, distribute, and/or accept an amount of money equal to full union membership dues from Ms. Zeigler's wages.

CLAIMS FOR RELIEF

COUNT ONE

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

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

36. 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.

37. The First Amendment requires that “[n]either an agency fee nor any other payment to the union may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.” *Janus*, 138 S. Ct. at 2486.

38. Because Ms. Zeigler is a nonmember employed in a bargaining unit represented exclusively by Council 13, the First Amendment protects her from being forced to pay dues and/or fees to Union Defendants without her consent.

39. Because Ms. Zeigler is a nonmember of Union Defendants, the First Amendment protects her from having Commonwealth Defendants withhold payments for Union Defendants from her wages.

40. A valid waiver of constitutional 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.

41. Ms. Zeigler has never waived her constitutional right as a nonmember not to pay dues and/or fees to Union Defendants.

42. The language of the “Membership Card” Ms. Zeigler signed before she was a union member was not a valid waiver and was insufficient to allow for a voluntary, knowing, and intelligent waiver of her constitutional right not to pay union dues and/or fees as a nonmember.

43. No Defendant asked Ms. Zeigler to waive, and she in fact never did waive, her constitutional rights not to pay Union Defendants after she returned to nonmember status in January 2020.

44. Union Defendants are acting in concert with the Commonwealth of Pennsylvania, by and through its agents, including Defendant Lyman, to seize and/or accept deductions of monies/fees from Ms. Zeigler’s wages under color of state law, which violates Ms. Zeigler’s rights protected by the First and Fourteenth Amendments to the United States Constitution, and violates 42 U.S.C. § 1983 by causing her to support the political activities and speech of Union Defendants without her consent.

45. Defendant Lyman is acting under color of state law in seizing payments from Ms. Zeigler's wages via payroll deduction, in concert with Union Defendants and pursuant to their joint policy and the provisions of the CBA between them, despite Ms. Zeigler's revocation of her consent to dues deductions and despite her requests for deductions to cease.

46. Defendants, by deducting and collecting union dues and/or fees from Ms. Zeigler without clear and compelling evidence that she has waived her First Amendment rights to refrain from subsidizing Union Defendants and their speech, are depriving Ms. Zeigler of her 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.

47. As a direct result of Defendants' concerted actions, taken pursuant to state law, their CBA, and their joint policy and practice, Ms. Zeigler:

- a. is being prevented from exercising her rights and privileges as a citizen of the United States not to fund and support the agenda, activities, expenses, and speech of a private organization;
- b. is being deprived of her civil rights guaranteed under the Constitution and statutes of the United States; and
- c. is suffering monetary damages and other harm.

48. If not enjoined by this Court, Defendants and/or their agents will continue to effect the aforementioned deprivations and abridgments of Ms. Zeigler's constitutional rights, thereby causing her irreparable harm.

COUNT TWO

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

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

50. The Fourteenth Amendment to the Constitution of the United States guarantees due process to citizens facing deprivation of liberty or property by state actors. "At the core of procedural due process jurisprudence is the right to advance notice of significant deprivations of liberty or property and to a meaningful opportunity to be heard." *Abbott v. Latshaw*, 164 F.3d 141, 146 (3d Cir. 1998); *see also Mathews v. Eldridge*, 424 U.S. 319, 336 (1976).

51. Additionally, public-sector unions and public employers have a responsibility to provide procedures that minimize constitutional impingement inherent in compelled association and speech and facilitate the protection of public employees' rights. *See Chi. Teachers Union, Local No. 1 v. Hudson*, 475 U.S. 292, 307 & n.20 (1986).

52. Defendants have not provided Ms. Zeigler with a meaningful opportunity to object to the continued seizure of her funds or the purposes for which those funds are used, or a clearly defined process for asserting such a

refusal/objection, nor have they provided the constitutionally required procedures and disclosures as recognized in *Hudson*.

53. To date, Defendants have yet to meaningfully address Ms. Zeigler's refusal of/objection to the Commonwealth's withholding ongoing payments for Union Defendants and have failed to provide due process concerning her revocation of consent to these payments.

54. Defendants have placed onerous and unnecessary requirements on Ms. Zeigler's ability to exercise her constitutional rights, denying her due process. These requirements include requiring Ms. Zeigler to notify the Commonwealth and the Union in order to resign her union membership, yet nevertheless forcing her into indefinite dues payments to be taken by the Commonwealth, unless she again notifies the Commonwealth and the Union within only a 15-day window period—all despite her clear and acknowledged revocation of consent to any payments since the date of her resignation letter.

55. Ms. Zeigler has never waived her due process rights, including her rights to notice and a meaningful opportunity to object to the procedure or lack thereof surrounding her resignation and ongoing dues payments.

56. As a direct result of Defendants' actions, Ms. Zeigler:

- a. is being prevented from exercising her rights and privileges as a citizen of the United States to no longer support the agenda, activities, speech, and expenses of a private organization which she objects to supporting; and

b. is being deprived of her civil rights guaranteed to her under the Constitution and statutes of the United States and has suffered monetary damages and other harm.

57. If not enjoined by this Court, Defendants and/or their agents will continue to effect the aforementioned deprivations and abridgments of Ms. Zeigler's constitutional rights, thereby causing her irreparable harm.

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 purported irrevocable agreement to pay dues contained in the "Membership Card" is unenforceable against Ms. Zeigler as it deprives Ms. Zeigler of her constitutional rights without a valid waiver; and

ii. that any nonconsensual payments taken from Ms. Zeigler violate her rights under the First and Fourteenth Amendments;

iii. or, alternatively, that the First and Fourteenth Amendments require Union Defendants to provide Ms. Zeigler with notice and a meaningful opportunity to object to the nonconsensual monies being withheld from her, and the purposes for which the monies are used, including the notice and procedures required by *Hudson*.

B. **Injunctive:** A permanent injunction requiring Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them:

i. not to enforce the “Membership Card” against Ms. Zeigler or to otherwise engage in conduct declared unconstitutional under Part A;

ii. not to collect any money from Ms. Zeigler in the form of membership dues or money equal to membership dues, through withholding/deductions from her wages or other manner, or otherwise seek to enforce the terms of the “Membership Card”;

iii. or, alternatively, to provide constitutionally adequate notice and procedures for the Commonwealth’s withholding/deductions of nonconsensual dues and forced financial support of the Union from Ms. Zeigler’s wages.

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

D. **Attorneys’ Fees and Costs:** A judgment against Union Defendants awarding Ms. Zeigler costs and 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: July 6, 2020

s/ Nathan J. McGrath

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