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In the Commonwealth Court of Pennsylvania

1618 C.D. 2015

AMERICANS FOR FAIR TREATMENT,
Appellant,

v.

PHILADELPHIA FEDERATION OF TEACHERS, LOCAL 3, AFL-CIO; THE SCHOOL DISTRICT OF PHILADELPHIA; and SCHOOL REFORM COMMISSION,
Appellees.

APPELLANT'S INITIAL BRIEF

Appeal from Final Orders of the Court of Common Pleas of Philadelphia County, Case No. 02928 (February Term 2015)

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November 30, 2015

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INTRODUCTION

This case concerns the standing of Appellant Americans for Fair Treatment ("Americans") to obtain a declaration with respect to Appellees' longstanding practice of allowing public school employees to take indefinite "leave" from public employment for the purpose of working full time for a labor union while receiving all incidences of public employment. At least 19 Philadelphia public school employees are currently performing union work on school time; 10 of them have held their positions with the union for over 10 years, and 2 of those have worked for the union for over 30 years. If Americans, of which at least one Philadelphia teacher and one Philadelphia taxpayer are members, is unable to secure declaratory judgment concerning union work on school time, it is unclear whether the practice can be challenged at all.

STATEMENT OF JURISDICTION

This Court has appellate jurisdiction over this matter pursuant to section 762(a)(4)(i) of the Judicial Code, 42 Pa.C.S. §§ 101-9913.

ORDERS IN QUESTION

Americans appeal from final orders entered by Philadelphia County Court of Common Pleas Judge Linda Carpenter, which read:

> **AND NOW**, this 22nd day of July, 2015, upon consideration of Defendants The School District of Philadelphia and School Reform Commission's Preliminary Objections to Plaintiff's Amended Complaint, and the response thereto, it is hereby **ORDERED** and **DECREED** that the Preliminary Objections are **SUSTAINED**, as Plaintiff has failed to allege sufficient facts to support its standing.

And:

> **AND NOW**, this 22nd day of July, 2015, upon consideration of Defendant Philadelphia Federation of Teachers, Local 3, AFL-CIO's Preliminary Objections to Plaintiff's Amended Complaint, and the response thereto, it is hereby **ORDERED** and **DECREED** that the Preliminary Objections are **SUSTAINED**, as Plaintiff has failed to allege sufficient facts to support its standing.

A copy of each order is attached hereto as, respectively, Appendix "A" and "B." The trial court issued an opinion, attached hereto as Appendix "C," in support of those final orders.

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

A trial court's grant of preliminary objections on the question of standing is reviewed de novo, and the scope of review is plenary. See Seeton v. Pennsylvania Game Comm'n, 937 A.2d 1028, 1032 n.4 (Pa. 2007); see, e.g., McConville v. City of Philadelphia, 80 A.3d 836, 841-42 (Pa. Cmwlth. 2013). However, "in considering preliminary objections, '[the reviewing court] must accept the facts alleged in

Appellants' complaint and all reasonable inferences that may be drawn therefrom as true.' " Seeton, 937 A.2d at 1032 n.4 (quoting Luke v. Cataldi, 932 A.2d 45, 49 n.3 (Pa. 2007)).

STATEMENT OF THE QUESTIONS INVOLVED

I. **WHETHER THE TRIAL COURT ERRED IN CONCLUDING THAT AMERICANS MUST DISCLOSE THE IDENTITY OF A SPECIFIC MEMBER TO ESTABLISH STANDING**

II. **WHETHER THE TRIAL COURT ERRED IN CONCLUDING THAT AMERICANS LACKED STANDING, WHERE IT ALLEGED IMMEDIATE OR THREATENED INJURY**

STATEMENT OF THE CASE

Background and Procedural History

This is an appeal from final orders entered by the Court of Common Pleas for the County of Philadelphia. See App'x A, B.

On May 22, 2015, Americans filed an Amended Complaint for Declaratory and Injunctive Relief ("Amended Complaint") in the trial court. (R. 12a-260a). Defendant Philadelphia Federation of Teachers, Local 3, AFL-CIO ("PFT") responded on June 14, 2015, with preliminary objections (R. 261a-337a). On June 15, 2015, Defendants the School District of Philadelphia and School Reform Commission (collectively, "District") also filed preliminary objections. (R. 338a-354a). Both sets of preliminary objections included challenges to Americans standing to obtain a

declaration with respect to union work on school time. (R. 269a-271a, 340a). On July 23, 2015, Americans filed its answers to the preliminary objections. (R. 355a-638a).

On July 23, 2015, the trial court entered its orders sustaining PFT's and the District's preliminary objections on the basis of standing. App'x A, B.

On August 3, 2015, Americans filed a motion for reconsideration of those orders (R. 641a-651a), which the trial court denied on August 21, 2015, by order and opinion (R. 673a-676a).

On August 17, 2015, Americans timely filed notices of appeal to this Court. (R. 652a-672a). Shortly thereafter, the trial court directed Americans to file a statement of errors pursuant to Pennsylvania Rule of Appellate Procedure 1925(b).

On October 16, 2015, the trial court entered an opinion in support of the July 23 orders. App'x C. Philadelphia County Court of Common Pleas Judge Linda Carpenter signed all orders and opinions.

Facts

On June 1, 1983, Arthur Steinberg, still considered an employee of the District, left the classroom to take a full-time position with PFT. (R. 258a). On March 11, 1987, Jerry Jordan, also considered a District employee—now also

president of PFT (R. 39a)—followed suit. (R. 258a). Neither have returned to the District since. (R. 258a).

These two were not the first or the last teachers to perform union work on school time. In fact, Steinberg and Jordan are just the longest tenured among at least 19 "teachers" currently engaged in full-time union work. (R. 258a-259a). These teachers generally receive a bump in salary (R. 364a-365a) and are entitled to receive all benefits and accrue seniority, as if they were still employed by the District. (R. 49a).

Since at least January 19, 2010,[1] when PFT and the District agreed[2] to their most recent collective bargaining agreement ("CBA"), union work on school time has been conducted under the following terms:

> B. Union Representatives - Leaves
>
> 1. Employees who are elected or appointed to full time positions with [PFT] or any organization with which it is affiliated will, upon proper application, be granted leaves of absence for the purpose of accepting those positions. Authorized [PFT] leaves shall be requested in

1. Although the CBA expired on August 31, 2013, (R. 18a), these terms continue to define the relationship between PFT and the District. See Philadelphia Fed'n of Teachers, AFT, Local 3, AFL-CIO v. Sch. Dist. of Philadelphia, 109 A.3d 298, 309 (Pa. Cmwlth. 2015), petition for allowance of appeal granted, 121 A.3d 433 (Pa. 2015) ("Both this Court and our Supreme Court have recognized a duty in the parties to maintain the status quo when a CBA expires and no successor agreement is in place.").

2. The CBA was made effective retroactive to September 1, 2009. CBA, at p. 1 (R. 39a).

writing by the President of [PFT] only. Employees granted such leaves of absence shall retain all insurance and other benefits and shall continue to accrue seniority as though they were in regular service. Annually, the President of [PFT] shall inform the [District] of the salary to be paid to each employee on approved leave with [PFT]. The [District] shall adjust each employee's salary accordingly. Upon return to service they shall be placed in the assignment which they left with all accrued benefits and increments that they would have earned had they been in regular service.

2. Employees on such leaves of absence shall be permitted to pay both their and the School District's regular contributions to all plans requiring such contributions.[3]

. . . .

5. Within each bargaining unit listed below, the following limits on the number of employees granted leaves of absence to hold full-time staff positions with [PFT] shall apply:

(a) Union leave for Teachers and School Based Employees

No more than thirty-five (35) teachers, four (4) paraprofessionals, four (4) secretaries and three (3) [Non-Teaching Assistants].

(b) Union leaves for Comprehensive Early Learning Center Employees

No more than four (4) employees shall be granted such leaves of absence for any school year.

(c) Union leaves for Food Service Managers

No more than three (3) employees shall be granted such leaves of absence for any school year.

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3. Employees represented by PFT make no contributions to their health insurance plans. (R. 9a).

> (d) Union leaves for Head Start Employees
> No more than three (3) employees shall be granted such leaves of absence for any school year.
> (e) Union leaves for Per Diem Teachers
> No more than two (2) substitute teachers who are assured consecutive run assignment on days during which negotiations respecting this [CBA] are mutually scheduled by the parties during work hours will be released to attend such negotiations with no loss in pay.
> (f) Union leaves for Professional-Technical Employees
> No more than five (5) employees shall be granted such leaves of absence for any school year.

CBA, Art. III § B (R. 49a-50a) (emphasis added). PFT is not contractually obligated to repay any portion of the District's costs of salary, benefits, insurance coverage, seniority, or pension. (R. 19a).

Americans filed its Amended Complaint on May 22, 2015, and, with respect to standing, alleged that its membership included teachers who suffer direct, immediate, or substantial injury as a result of union work on school time. Amended Complaint, at ¶¶ 5-8 (R. 15a-16a). First, Americans alleged that its "membership rolls include Philadelphia teachers who have had less accrued seniority than many of the teachers who have left the classroom to perform union work on school time," who continue to accrue their seniority while out of the classroom. Id. at ¶ 7 (R.

16a). The Amended Complaint made the nature of the injury to Americans' teachers clear:

> In addition to other seniority preferences, the CBA mandates a "LIFO" policy under which longer-tenured employees are—regardless of their performance and in spite of their higher costs—protected against layoffs and have rights to be transferred or recalled before other employees.

Id. at ¶ 19 (R. 18a).

Second, Americans alleged that union work on school time deprives its teachers of assistance, leadership, and valuable service of those teachers who, as a result of union work on school time, are no longer in Philadelphia schools. Id. at ¶ 7 (R. 16a). The Amended Complaint stated that the District was scrambling to fill 217 teacher vacancies across the District. Id. at ¶ 18 (R. 18a).

Finally, Americans alleged that its membership rolls included Philadelphia taxpayers who contribute toward Philadelphia schools and whose taxes are placed at risk by the practice or union work on school time. Id. at ¶ 8 (R. 16a). As stated in the Amended Complaint, "PFT is not contractually obligated to reimburse the District for the cost of salary, benefits, insurance coverage, seniority, or pension," yet the CBA continues to require that the District provide them to union workers. Id. at ¶¶ 24-25 (R. 19a).

Ultimately, the trial court ruled that Americans lacked standing. In the trial court's opinion supporting its order, the trial court reasoned that Americans

> provides no specific Philadelphia teachers or taxpayers in its membership rolls nor presents any facts as to how these members or the association are directly harmed by the collective bargaining agreement being challenged. The facts as alleged in the Amended Complaint are insufficient to establish that Americans for Fair Treatment or its members would be directly aggrieved by the collective bargaining agreement. Without an averment establishing that at least one specific member is harmed by the agreement in a concrete, articulable way, this Court may only conclude that Americans for Fair Treatment's interests are remote and inadequate to show a direct, immediate, or substantial harm.

App'x C.

SUMMARY OF ARGUMENT

The trial court erred in determining that Americans lacked standing to obtain a declaratory judgment concerning union work on school time, in two distinct ways. First, the trial court erroneously concluded that Americans had to disclose the identity of a specific member in order to establish associational standing. Such a requirement is contrary to Pennsylvania and federal caselaw. Requiring Americans to disclose its members' identities in order to establish standing would be wholly inappropriate at the preliminary objection phase, where the court is required to

accept as true Americans' allegations concerning the composition of its membership.

Second, the trial court erred in concluding that Americans failed to allege immediate or threatened injury to the members justifying associational standing. Americans alleged that its member-teachers were harmed by their loss of teaching seniority as well as loss of assistance, leadership, and service from absent teachers. It further alleged, with respect to its Philadelphia taxpayer members, misuse of taxpayer dollars and unwillingness of the District to challenge the practice. Each of those injuries justify standing in this case.

Accordingly, this Court should reverse the trial court's final order and remand for further proceedings.

ARGUMENT

I. THE TRIAL COURT ERRED IN CONCLUDING THAT AMERICANS MUST DISCLOSE THE IDENTITY OF A SPECIFIC MEMBER TO ESTABLISH STANDING

The trial court erred reaching its determination that, in order to establish standing, Americans would have to disclose the identity of a specific member. This ruling is contrary to court rulings concerning associational standing and ignores the relevant standard for consideration of preliminary objections.

"[A]n association, as a representative of its members, has standing to bring a cause of action even in the absence of injury to itself . . . ." Pennsylvania Med. Soc'y v. Dep't of Pub. Welfare, 39 A.3d 267, 278 (Pa. 2012). "[I]n order for an association to have standing, it must allege that its members, or at least one of its members, has or will suffer a 'direct, immediate and substantial injury' to their interest as a consequence of the challenged action." Nat'l Solid Wastes Mgmt. Ass'n v. Casey, 580 A.2d 893, 899 (Pa. Cmwlth. 1990).

In setting forth such an allegation, there is no requirement that the association seeking to establish standing must disclose the names of those members suffering injury.[4] Instead, Pennsylvania cases emphasize the nature of membership and their injury. See, e.g., North-Central Pennsylvania Trial Lawyers Ass'n v. Weaver, 827 A.2d 550, 554 (Pa. Cmwlth. 2003) (determining that association had standing on the basis that it "alleged that a number of its members are members in good standing of the bar of Pennsylvania who engage in medical malpractice litigation . . . ."); Narcotics Agents Reg'l Comm. ex rel. McKeefery v. Am. Fed'n of State, Cnty & Mun. Emps., AFL-CIO, Council 13, 780 A.2d 863 (Pa. Cmwlth. 2001) (determining that association had standing where it "alleged injuries to all

4. In any event, a blanket rule that associations must disclose identities of its members to establish standing would infringe on members' rights to associational privacy. See NAACP v. Alabama, 357 U.S. 449 (1958).

[e]mployees") (emphasis in original); Pennsylvania Social Services Union, Local 668 v. Commonwealth, Dep't of Pub. Welfare, 699 A.2d 807, 810 (Pa. Cmwlth. 1997) (determining that union had standing because its membership included "claims investigation agents and supervisors"); Parents United for Better Schs., Inc. v. Sch. Dist. of Philadelphia Bd. of Educ., 646 A.2d 689, 693 (Pa. Cmwlth. 1994) (determining that association had standing because its membership included "parents" of children in Philadelphia public schools). Adding names to single out those individuals would do nothing to further illustrate their injury.

Federal courts, to which Pennsylvania courts look to resolve standing determinations,[5] have expressly held that associations are not required to name their members in order to establish associational standing. See also Disability Rights Wisconsin, Inc. v. Walworth Cnty. Bd. of Supervisors, 522 F.3d 796, 802 (7th Cir. 2008) ("This [associational standing] requirement, however, still allows for the member on whose behalf the suit is filed to remain unnamed by the organization."); Bldg. & Constr. Trades Council of Buffalo, New York and Vicinity v. Downtown Dev., Inc., 448 F.3d 138, 145 (2d Cir. 2006) ("An association bringing suit

5. See Hous. Auth. of Chester Cnty. v. Pennsylvania State Civil Serv. Comm'n, 730 A.2d 935, 939 (Pa. 1999) ("Traditionally, in determining issues of standing, this Court has looked to the federal courts' interpretation of Article III of the United States Constitution.").

on behalf of its members must allege that one or more of its members has suffered a concrete and particularized injury, . . . as the plaintiffs do. But the defendants cite to no authority—nor are we aware of any—that supports the proposition that an association must 'name names' in a complaint in order properly to allege injury in fact to its members."); Doe v. Stincer, 175 F.3d 879, 882 (11th Cir. 1999) ("Nor must the association name the members on whose behalf suit is brought."); Church of Scientology of California v. Cazares, 638 F.2d 1272, 1279 (5th Cir. 1981) ("[I]n determining whether an association has standing to bring suit on behalf of its members, neither unusual circumstances, inability of individual members to assert rights nor an explicit statement of representation are requisites."); Forum for Academic & Institutional Rights, Inc. v. Rumsfeld, 291 F.Supp.2d 269, 287 (D.N.J. 2003) ("The [defendant's] argument places undue emphasis on language requiring plaintiff associations to 'identify' or 'name' members. Such language in the cited authorities goes not to a blanket rule that associations seeking to bring suit on behalf of its members must identify their membership, but rather to whether the factual allegations in a given context sufficiently demonstrate that an association indeed has members that have suffered an injury-in-fact.").

Here, Americans clearly "allege[d] that its members, or at least one of its members, has or will suffer a 'direct, immediate and substantial injury' to their

interest as a consequence of the challenged action." Nat'l Solid Wastes Mgmt. Ass'n, 580 A.2d at 899. It identified its members with individual standing as "Philadelphia teachers" and "Philadelphia taxpayers":

> 6. Plaintiff has standing to bring a cause of action because "at least one of its members has [suffered] or will suffer a direct, immediate or substantial injury as a consequence of the challenged action." Nat'l Solid Wastes Mgmt. Ass'n v. Casey, 580 A.2d 893 (Pa. Cmwlth. 1990).
>
> 7. Specifically, Plaintiff's membership rolls include Philadelphia teachers with less accrued seniority than many of the teachers who have left the classroom to perform union work on school time. In many instances, teachers performing union work on school time have been out of the classroom for over 15 years, yet they continue to accrue seniority over and beyond that of other teachers. Additionally, union work on school time deprives Philadelphia teachers of assistance, leadership, and valuable service from those teachers performing union work on school time.
>
> 8. Plaintiff's membership rolls also include Philadelphia taxpayers whose taxes fund Philadelphia schools and whose dollars are placed at risk by the practice of union work on school time. Given that the District is a party to—and thus may not be inclined to challenge—the CBA, taxpayers also have standing to challenge the CBA provision.

(R. 16a) (emphases added). Again, hypothetically, what would it have added for standing purposes if Americans alleged that one of those teachers was named "John"?

In any event, it was inappropriate for the trial court to have required that Americans "prove" its membership at the preliminary objection phase—where the trial court should have "accept[ed] as true all well-pleaded facts and all inferences reasonably deducible therefrom." Dorfman v. Pennsylvania Social Servs. Union-Local 668 of Serv. Emps. Int'l Union, 752 A.2d 933, 936 (Pa. Cmwlth. 2000). At the very least, the trial court ignored the requirement that, "[t]o sustain preliminary objections, it must be 'clear from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish a right to relief.' " Summit Sch., Inc. v. Commonwealth, Dep't of Educ., No. 20 M.D. 2011, 2011 WL 10819518, at *2 (Pa. Cmwlth. 2011). Were it necessary, Americans would be able to show, subject to appropriate protections, that its membership includes at least one teacher and taxpayer.

In sum, the trial court erred in determining that Americans was required to disclose the identities of Americans members. Accordingly, this Court should reverse and remand for further proceedings.

II. THE TRIAL COURT ERRED IN CONCLUDING THAT AMERICANS LACKED STANDING, WHERE IT ALLEGED IMMEDIATE OR THREATENED INJURY

Additionally, the trial court erred in concluding that Americans' allegations with respect to injury were insufficient to demonstrate standing. Loss of teaching

seniority; loss of assistance, leadership, and service from absent teachers; and misuse of taxpayer dollars were alleged, and each justify standing in this case. Amended Complaint, at ¶¶ 6-8 (R. 16a). This Court should reverse the trial court's holding otherwise.

To establish associational standing, "[a]n association need merely allege that any of its members is suffering immediate or threatened injury resulting from the challenged action sufficient to satisfy the William Penn Parking Garage, Inc. v. City of Pittsburgh standard." Pennsylvania Acad. of Chiropractic Physicians v. Commonwealth, Dep't of State, Bureau of Prof'l & Occupational Affairs, 564 A.2d 551, 553 (Pa. Cmwlth. 1989) (internal citation omitted); see also Joint Bargaining Comm. of Pennsylvania Social Servs. Union, Local No. 668, SEIU v. Commonwealth, 530 A.2d 962, 967 (Pa. Cmwlth. 1987) ("[T]he fact that no member of Petitioners' association has yet suffered harm is of no moment. Section 7532 of the Declaratory Judgments Act provides that a court may declare rights 'whether or not further relief is or could be obtained.' ") (internal citation omitted). "When ruling on preliminary objections, this Court must accept as true all well-pleaded allegations of material fact in the complaint, as well as all reasonable inferences that flow from those facts." Feudale v. Aqua Pennsylvania, Inc., 122 A.3d 462, 465 (Pa. Cmwlth. 2015).

Americans have alleged immediate and threatened injuries to its members sufficient to establish standing. First, it alleged that, as a result of union work on school time, its Philadelphia teachers lost seniority relative to those teachers on permanent leave with PFT, where union workers continue to accrue seniority beyond that of Americans' teachers despite working full-time for the union. Amended Complaint, at ¶ 7 (R. 16a); see Bertulli v. Indep. Ass'n of Cont'l Pilots, 242 F.3d 290, 295 (5th Cir. 2001) ("Loss of seniority is an injury within a commonsense understanding of the term, and one that is suffered by the plaintiffs themselves. It carries with it the possibility of several forms of concrete injury, such as slower promotion, greater likelihood of being laid off, and lower benefits."). Americans' teachers experience an immediate loss of status and face the threats of furlough prior to those doing union work on school time as well as less favorable treatment in the event of shifts in staffing.[6] Amended Complaint, at ¶ 19 (R. 18a); 24 P.S. § 1121 (establishing tenure for certain public school employees); 24 P.S. § 11-1125.1 (establishing a "last-in, first-out" policy).

Second, Americans have alleged that its Philadelphia teachers have been "deprive[d] . . . of assistance, leadership, and valuable service from those teachers

6. Seniority seems to play a role in nearly every staffing decision at the District. See, e.g., CBA, at pp. 67-77 (R. 114a-124a).

performing union work on school time." Amended Complaint, at ¶ 7 (R. 16a). As alleged in the Amended Complaint, last Fall, "there were 217 teacher vacancies across the District, and the District has been scrambling to fill those positions." Id. at ¶ 18 (R. 18a). Not only does union work on school time contribute in the immediate sense to the District's upside-down staffing situation, it also threatens to further increase class size and reduce the numbers of those offering cooperative support among faculty at Philadelphia public schools. Id. at ¶ 7 (R. 16a).

Finally, Americans alleged injury sufficient to confer standing on its members who are Philadelphia taxpayers. Id. at ¶ 8 (R. 16a). Americans alleged that "District employees working for PFT . . . still receive incidences of District employment, such as salary, benefits, and insurance coverage from the District, as well as accrual of pension credit and seniority," yet "PFT is not contractually obligated to reimburse the District." Id. at ¶¶ 24-25 (R. 19a). It further averred that union work on school time "obligates the District and/or Commonwealth to spend funds on activities not advancing [stated] public policy concerns," id. at ¶ 61 (R. 25a), constitutes a "gift" for purposes of article VIII, section 8 of the Pennsylvania Constitution, id. at ¶¶ 65-74 (R. 26a-27a), and "represents a misuse of resources for private gain, in violation of the District's duty under the public trust doctrine," id. at ¶ 81 (R. 28a). It also alleged that, "[g]iven that the District is a party to—and thus may not be inclined

to challenge—the CBA, taxpayers also have standing to challenge the CBA provision," id. at ¶ 8 (R. 16a), a point further expounded upon in Americans' responses to preliminary objections, briefing, and motion for reconsideration (R. 362a-363a, 591a, 628a, 644a-645a).

In sum, Americans has adequately pled an injury to the members upon whom Americans bases its standing. The trial court erred by failing to accept those allegations as true and determine that Americans has standing. Therefore, this Court should reverse the final orders.

CONCLUSION

For the reasons articulated above, this Court should hold that the trial court erred, conclude that Americans established standing to seek a declaratory judgment concerning union work on school time, and remand for further proceedings.

Respectfully submitted,

THE FAIRNESS CENTER

November 28, 2015

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APPENDIX A

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

AMERICANS FOR FAIR TREATMENT, INC.	:	**FEBRUARY TERM, 2015**
	:	
	:	**NO. 2928**
v.	:	
	:	**Control No. 15061971**
PHILADELPHIA FEDERATION OF TEACHERS, LOCAL 3, AFL-CIO; THE SCHOOL DISTRICT OF PHILADELPHIA; and SCHOOL REFORM COMMISSION	:	

ORDER

AND NOW, this 22nd day of July, 2015, upon consideration of Defendants The School District of Philadelphia and School Reform Commission's Preliminary Objections to Plaintiff's Amended Complaint, and the response thereto, it is hereby **ORDERED** and **DECREED** that the Preliminary Objections are **SUSTAINED**, as Plaintiff has failed to allege sufficient facts to support its standing.

BY THE COURT:

CARPENTER, J.

APPENDIX B

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

AMERICANS FOR FAIR TREATMENT, INC.	:	**FEBRUARY TERM, 2015**
	:	**NO. 2928**
v.	:	
	:	**Control No. 15061776**
PHILADELPHIA FEDERATION OF TEACHERS, LOCAL 3, AFL-CIO; THE SCHOOL DISTRICT OF PHILADELPHIA; and SCHOOL REFORM COMMISSION	:	

ORDER

AND NOW, this 22nd day of July, 2015, upon consideration of Defendant Philadelphia Federation of Teachers, Local 3, AFL-CIO's Preliminary Objections to Plaintiff's Amended Complaint, and the response thereto, it is hereby **ORDERED** and **DECREED** that the Preliminary Objections are **SUSTAINED**, as Plaintiff has failed to allege sufficient facts to support its standing.

BY THE COURT:

CARPENTER, J.

APPENDIX C

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

Americans For Fair Treatment, Inc. Vs Philad-OPFLD

AMERICANS FOR FAIR TREATMENT, INC. ***Plaintiff***	:	
v.	:	**COMMONWEATH COURT 1618 CD 2015**
PHILADELPHIA FEDERATION OF TEACHERS, LOCAL 3, AFL-CIO; **and** **THE SCHOOL DISTRICT OF PHILADELPHIA;** ***and*** **SCHOOL REFORM COMMISSION** ***Defendants***	:	**COURT OF COMMON PLEAS CASE NO. 150202928**

OPINION

CARPENTER, J. OCTOBER 16, 2015

Appellant Americans For Fair Treatment, Inc. ("Americans for Fair Treatment") appeals this Court's July 23, 2015 Orders sustaining the Preliminary Objections of Defendants Philadelphia Federation of Teachers, Local 3, AFL-CIO ("Federation"), the School District of Philadelphia ("School District"), and the School Reform Commission ("Commission") and dismissing the Appellant's Amended Complaint. For the reasons that follow, the Commonwealth Court should affirm.

PROCEDURAL HISTORY

On July 23, 2015, this Court docketed two Orders sustaining each defendant's Preliminary Objections to the Amended Complaint because Americans for Fair

Treatment failed to allege sufficient facts to support its standing to bring suit. On August 3, 2015, Americans For Fair Treatment filed a Motion for Reconsideration of this Court's July 23, 2015 Orders, which this Court denied on August 21, 2015 via Order and Opinion.

On August 17, 2015, Americans for Fair Treatment filed a Notice of Appeal to the Commonwealth Court and on August 19, 2015, Appellant was served an Order directing it to file a concise statement of the matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). On September 9, 2015, Appellant filed a timely statement of matters complained of on appeal raising the following issues:

1. This Court erred in not granting Plaintiff standing because, as alleged in the Amended Complaint filed on May 22, 2015, Plaintiff's membership rolls include Philadelphia teachers who do not currently receive the full protection reflecting their seniority status. As a result of the challenged provision of the collective bargaining agreement to which Defendants have entered, those performing union work on school time have accrued seniority beyond that accrued by Plaintiff's teachers, despite the fact that they are no longer in the classroom. Moreover, as further alleged in the Amended Complaint, Plaintiff's teachers are deprived of assistance, leadership, and valuable service from those teachers performing union work on school time.

2. This Court erred in not granting Plaintiff standing because, as alleged in the Amended Complaint, Plaintiff's membership rolls also include Philadelphia taxpayers whose tax dollars are at risk and should be allowed to assert taxpayer standing in this case. Without granting taxpayer standing this governmental action may go unchallenged as the District is complicit in the union work on school time arrangement, and, as the beneficiary of the agreement, the Union has no incentive to challenge the action.

DISCUSSION

Standing is a threshold requirement and, in order to prove it, a litigant must demonstrate that he or she is aggrieved.[1] As our Supreme Court held in City of

[1] Howard v. Com., 957 A.2d 332, 335 (Pa. Cmwlth. 2008) (citing: Pittsburgh Palisades Park, LLC v. Com., 888 A.2d 655 (Pa. 2005)).

Philadelphia v. Commonwealth of Pennsylvania,[2] the courts of this Commonwealth do not render decisions in the abstract or offer purely advisory opinions, rather the requirement of standing arises from "the principle that judicial intervention is appropriate only when the underlying controversy is real and concrete."[3] Under Pennsylvania law, a plaintiff can demonstrate that he or she is aggrieved upon establishing a direct, substantial, and immediate interest in the outcome of the litigation in order to be deemed to have standing.[4] An interest is substantial if it "surpasses the common interest of all citizens in procuring obedience to the law."[5] Moreover, a direct interest mandates a showing that the matter complained of demonstrates a causal connection between the harm and the violation of law.[6] Furthermore, an interest is immediate if the causal connection is not remote or speculative.[7] Accordingly, if the plaintiff is not adversely affected in any way by the matter he or she seeks to challenge, the plaintiff is not aggrieved and thereby has no standing to obtain a judicial resolution of a challenge.[8]

With regard to organizational standing, associations have standing to sue on behalf of their members if they allege that at least one of their members has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action.[9] For organizational standing to be valid in the Commonwealth, the

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[2] 838 A.2d 566 (Pa. 2003).
[3] Id. at 577; see also: Pittsburgh Palisades Park, LLC., 888 A.2d at 659.
[4] Pittsburgh Palisades Park, LLC, 888 A.2d at 660 (citing: In re Hickson, 821 A.2d 1238, 1243 (Pa. 2003))
[5] In re Hickson, 821 A.2d at 1243.
[6] Id.; City of Philadelphia, 838 A.2d at 577.
[7] City of Philadelphia, 838 A.2d at 577; Kuropatwa v. State Farm Ins. Co., 721 A.2d 1067, 1069 (Pa. 1998).
[8] In re Hickson, 821 A.2d at 1243 (citing: Independent State Store Union v. Pennsylvania Liquor Control Board, 432 A.2d 1375, 1379-80 (Pa. 1981)).
[9] Citizens for State Hosp. v. Com., 552 A.2d 496, 498-99 (Pa. Cmwlth. 1989). (citing: Pennsylvania Gamefowl Breeders Ass'n v. Com., 533 A.2d 838, 840 (Pa. Cmwlth. 1987)).

organization must allege specific facts demonstrating that the group or its members would be aggrieved by the challenged position.[10]

In the instant matter, Appellant broadly avers that at least one of its members will suffer a direct, immediate, or substantial injury caused by Article III, Section B of the collective bargaining agreement between the Pennsylvania Federation of Teachers and the School District of Philadelphia, but has provided no facts and has filed no amended pleading asserting any additional facts.

Appellant is an Oklahoma based non-profit organization seeking to establish standing on the general grounds that its membership rolls "include Philadelphia teachers with less accrued seniority than many of the teachers who have left the classroom to perform union work on school time [. . .] [as well as] Philadelphia taxpayers whose taxes fund Philadelphia schools."[11] Appellant, however, provides no specific Philadelphia teachers or taxpayers in its membership rolls nor presents any facts as to how these members or the association are directly harmed by the collective bargaining agreement being challenged. The facts as alleged in the Amended Complaint are insufficient to establish that Americans for Fair Treatment or its members would be directly aggrieved by the collective bargaining agreement. Without an averment establishing that at least one specific member is harmed by the agreement in a concrete, articulable way, this Court may only conclude that the Americans for Fair Treatment's interests are remote and inadequate to show a direct, immediate, or

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[10] Society Created to Reduce Urban Blight (SCRUB) v. Zoning Hearing Bd. Of Adjustment of City of Philadelphia, 951 A.2d 398, 402 (Pa. Cmwlth. 2008) (citing: Society Hill Civic Ass'n v. Philadelphia Bd. of License & Inspection Review, 905 A.2d 579 (Pa. Cmwlth. 2006)).

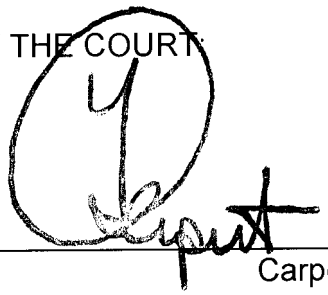
[11] Amended Complaint, ¶¶ 7, 8.

substantial harm. Accordingly, this Court sustained the Preliminary Objections to the Amended Complaint.

CONCLUSION

For the reasons set forth in this Opinion, the Commonwealth Court should affirm this Court's Orders sustaining the Preliminary Objections raised by the Federation, the School District, and the Commission to the Amended Complaint of Americans for Fair Treatment.

BY THE COURT:



Carpenter, J.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Appellant's Initial Brief, has on November 30, 2015, been served on the following:

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November 28, 2015

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