

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

GREGORY J. HARTNETT, ELIZABETH
M. GALASKA, ROBERT G. BROUGH,
JR., and JOHN M. CRESS,

Plaintiffs,

v.

PENNSYLVANIA STATE EDUCATION
ASSOCIATION, HOMER-CENTER
EDUCATION ASSOCIATION, TWIN
VALLEY EDUCATION ASSOCIATION,
ELLWOOD AREA EDUCATION
ASSOCIATION, HOMER- CENTER
SCHOOL DISTRICT, TWIN VALLEY
SCHOOL DISTRICT, and ELLWOOD
CITY AREA SCHOOL DISTRICT,

Defendants.

Case No. 1:17-cv-00100

(Hon. Yvette Kane)

**ANSWER OF THE DEFENDANTS PENNSYLVANIA STATE
EDUCATION ASSOCIATION, HOMER-CENTER EDUCATION
ASSOCIATION, TWIN VALLEY EDUCATION ASSOCIATION, AND
ELLWOOD AREA EDUCATION ASSOCIATION
TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendants Pennsylvania State Education Association (“PSEA”), Homer-Center Education Association, Twin Valley Education Association, and Ellwood Area Education Association (collectively the “Unions”), answer each respective paragraph of the Plaintiffs’ First Amended Complaint (the “FAC”) as follows:

SUMMARY OF THE CASE

1. Paragraph 1 asserts only legal conclusions that do not require a response. To the extent Paragraph 1 of the FAC makes any factual allegations, they are denied.

2. Paragraph 2 asserts only legal conclusions that do not require a response. To the extent Paragraph 2 of the FAC or Plaintiffs’ footnote one makes any factual allegations, they are denied.

3. Paragraph 3 of the FAC asserts only legal conclusions, which do not require a response. To the extent Paragraph 3 of the FAC makes any factual allegations, they are denied.

4. Paragraph 4 of the FAC asserts only legal conclusions, which do not require a response. To the extent Paragraph 4 of the FAC makes any factual allegations, they are denied.

5. The Unions are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and, on that basis, deny them.

6. In response to Paragraph 6 of the FAC, the Unions specifically deny

the allegation that the Plaintiffs have suffered “severe infringements” of any protected interest. The Unions further deny that “there is no compelling governmental interest that justifies” any infringement of a protected interest. The Unions further deny that “Pennsylvania’s authorization of nonmember fees—and Defendants’ affirmative acts mandating nonmember fees pursuant to state law—cannot meet th[e] standard” of narrow tailoring. The Unions further deny that providing for fair share fees “serves no compelling state interest and constitutes means not narrowly tailored to advance those interests.” To the extent Paragraph 6 of the FAC asserts legal conclusions, the assertions do not require a response. Any remaining factual allegations in Paragraph 6 of the FAC are denied.

7. The Unions are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7 of the FAC and on that basis, deny them.

8. In response to Paragraph 8 of the FAC, the Unions deny that Plaintiffs are subject to a “severe and ongoing infringement of [their] right to free speech, free association, and free choice.” The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 8 of the FAC and on that basis, deny them.

JURISDICTION AND VENUE

9. In response to Paragraph 9 of the FAC, the Unions admit Plaintiffs’

action arises under 42 U.S.C. § 1983. Any remaining allegations in Paragraph 9 of the FAC are denied.

10. In response to Paragraph 10 of the FAC, the Unions admit that this Court has subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343 as to Counts I, II, and III of the FAC by Plaintiffs.

11. In response to Paragraph 11 of the FAC, the Unions admit that there is an actual, justiciable controversy as to all Counts of the FAC. The Unions deny that declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202 and Federal Rule of Civil Procedure 65 in this action. The remainder of Paragraph 11 of the FAC states legal conclusions that do not require a response. To the extent a response is required, the remaining allegations in Paragraph 11 of the FAC are denied.

12. The Unions admit the allegations in Paragraph 12 of the FAC.

PARTIES

13. In response to Paragraph 13 of the FAC, the Unions admit that Plaintiff Hartnett is a public school teacher in the Homer-Center School District, and that he is not currently a member of the Homer-Center Education Association. The Unions further admit that Homer-Center Education Association is the exclusive representative of a bargaining unit in the Homer-Center School District. The Unions are without sufficient knowledge or information to form a belief as to

the truth of any remaining allegations in Paragraph 13 of the FAC and, on that basis, deny them.

14. In response to Paragraph 14 of the FAC, the Unions admit that Plaintiff Galaska is a public school teacher and librarian in the Twin Valley School District, and that she is not currently a member of the Twin Valley Education Association. The Unions further admit that Twin Valley Education Association is the exclusive representative of a bargaining unit in the Homer-Center School District. The Unions are without sufficient knowledge or information to form a belief as to the truth of any remaining allegations in Paragraph 14 of the FAC and, on that basis, deny them.

15. In response to Paragraph 15 of the FAC, the Unions admit that Plaintiff Brough is a public school teacher in the Ellwood City Area School District, and that he is not currently a member of the Ellwood City Area Education Association. The Unions further admit that Ellwood Area Education Association is the exclusive representative of a bargaining unit in the Ellwood City Area School District. The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 15 of the FAC and on that basis, deny them.

16. In response to Paragraph 16 of the FAC, the Unions admit that Plaintiff Cress is a public school teacher in the Ellwood City Area School District,

and that he is not currently a member of the Ellwood Area Education Association. The Unions further admit that Ellwood City Area Education Association is the exclusive representative of a bargaining unit in the Ellwood City Area School District. The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 16 of the FAC and on that basis, deny them.

17. The Unions admit the allegations in Paragraph 17 of the FAC.

18. In response to Paragraph 18 of the FAC, the Unions admit that the Homer-Center Education Association is the local union recognized as the “exclusive representative,” as defined by 71 P.S. § 575(a), for Plaintiff Hartnett and the other teachers of Homer-Center School District. The Unions further admit that PSEA is the state affiliate of the Homer-Center Education Association, and that the Homer-Center Education Association transfers nonmembers’ fair share fees, as defined by 71 P.S. § 575(a), that it receives from the Homer-Center School District to PSEA. The Unions further admit that NEA is the national affiliate of the Homer-Center Education Association. The Unions admit that Homer-Center Education Association is located at 45 Wildcat Lane, Homer City, Pennsylvania. Any remaining factual allegation in Paragraph 18 are denied.

19. In response to Paragraph 19 of the FAC, the Unions admit that the Twin Valley Education Association is the local union recognized as the “exclusive

representative,” as defined by 71 P.S. § 575(a), for Plaintiff Galaska and the other teachers of Twin Valley School District. The Unions further admit that PSEA is the state affiliate of the Twin Valley Education Association, and that the Twin Valley Education Association transfers nonmembers’ fair share fees, as defined by 71 P.S. § 575(a), that it receives from the Twin Valley School District to PSEA. The Unions further admit that NEA is the national affiliate of the Twin Valley Education Association. The Unions admit that the Twin Valley Education Association is located at 250 Barneston Road, Honey Brook, Pennsylvania. Any remaining factual allegations in Paragraph 19 are denied.

20. In response to Paragraph 20 or the FAC, the Unions admit that the Ellwood Area Education Association is the local union recognized as the “exclusive representative,” as defined by 71 P.S. § 575(a), for Plaintiffs Brough and Cress and the other teachers of Ellwood City Area School District. The Unions further admit that PSEA is the state affiliate of the Ellwood Area Education Association, and that the Ellwood Area Education Association transfers nonmembers’ fair share fees, as defined by 71 P.S. § 575(a), that it receives from the Ellwood City Area School District to PSEA. The Unions further admit that NEA is the national affiliate of the Ellwood Area Education Association. The Unions admit that the Ellwood Area Association is located at 2235 Chewton Wurtemberg Road, Wampum, Pennsylvania. Any remaining factual allegations in

Paragraph 20 are denied.

21. In response to Paragraph 21, the Unions admit that Defendant Homer-Center School District is a “public employer” and “school entity” pursuant to 71 P.S. § 575(a). The Unions further admit that Defendant Homer-Center School District pays wages to Plaintiff Hartnett and makes deductions from his pay for fair share fees, as defined by 71 P.S. § 575(a), pursuant to the terms of the collective bargaining agreement between the Homer-Center School District and the Homer-Center Education Association. The Unions admit that Homer-Center School District maintains offices at 65 Wildcat Lane, Homer City, Pennsylvania. Any remaining factual allegations in Paragraph 21 are denied.

22. In response to Paragraph 22 of the FAC, the Unions admit that Defendant Twin Valley School District is a “public employer” and “school entity” pursuant to 71 P.S. § 575(a). The Unions further admit that Defendant Twin Valley School District pays wages to Plaintiff Galaska and makes deductions from his pay for fair share fees, as defined by 71 P.S. § 575(a), pursuant to the terms of the collective bargaining agreement between the Twin Valley School District and the Twin Valley Education Association. The Unions admit that Twin Valley School District maintains offices at 4851 North Twin Valley Road, Elverson, Pennsylvania. Any remaining factual allegations in Paragraph 22 are denied.

23. In response to Paragraph 23 of the FAC, the Unions admit that

Defendant Ellwood City Area School District is a “public employer” and “school entity” pursuant to 71 P.S. § 575(a). The Unions further admit that Defendant Ellwood City Area pays wages to Plaintiffs Brough and Plaintiffs Cress and makes deductions from their pay for fair share fees, as defined by 71 P.S. § 575(a), pursuant to the terms of the collective bargaining agreement between the Ellwood City Area School District and the Ellwood Area Education Association. The Unions admit that Ellwood City Area School District maintains offices at 501 Crescent Avenue, Ellwood City, Pennsylvania. Any remaining factual allegations in Paragraph 23 are denied.

FACTUAL ALLEGATIONS

24. In response to Paragraph 24 of the FAC, the Unions admit that Title 71, section 575(b), the Public Employee Relations Act, 43 P.S. §§ 1101.701, 1101.705, and the Public School Code of 1949, 24 P.S. § 11-1111-A, allow an exclusive representative and a public school district to collectively bargain over and agree in a collective bargaining agreement a provision requiring that nonmembers pay a fair share fee. Any remaining factual allegations in Paragraph 24 are denied.

25. The Unions admit the allegations in Paragraph 25 of the FAC.

26. In response to Paragraph 26 of the FAC, the Unions admit that the quoted language comes from 71 P.S. § 575(a).

27. The Unions admit the allegations in Paragraph 27 of the FAC.

28. In response to Paragraph 28 of the FAC, the Unions admit that pursuant to 71 P.S. § 575(c), to implement a fair share fee agreement, a public employer is required to deduct the fair share fee from the wages of a nonmember and “transmit the [fee] deducted to the exclusive representative.” Any remaining factual allegations in Paragraph 28 are denied.

29. In response to Paragraph 29, the Unions admit that each named local union defendant has negotiated and agreed to a collective bargaining agreement with its respective school district defendant that controls the wages, hours, and other terms and conditions for all members of the bargaining unit including those of the nonmember teachers, and admits that those agreements include fair share fee provisions that allow for the effective administration of those agreements. The Unions further admit that true and correct copies of the three current collective bargaining agreements at issue are attached to the FAC as “Exhibit 1,” “Exhibit 2,” and “Exhibit 3.” Any remaining factual allegations in Paragraph 29 are denied.

30. In response to Paragraph 30 of the FAC, the Unions admit that the Homer-Center School District, under the direction of Superintendent Koren and/or his predecessors, has deducted and continues to deduct fair share fees as defined by 71 P.S. § 575(a) from Plaintiff Hartnett’s wages and transmits said fees to the Homer-Center Education Association pursuant to a provision in the collective

bargaining agreement between Homer-Center School District and the Homer-Center Education Association. Any remaining factual allegations in Paragraph 30 are denied.

31. In response to Paragraph 31 of the FAC, the Unions admit that the Homer-Center Education Association transmits all fair share fees to PSEA. Any remaining allegations in Paragraph 31 of the FAC are denied.

32. In response to paragraph 32 of the FAC, the Unions admit that the Twin Valley School District has deducted and continues to deduct fair share fees as defined by 71 P.S. § 575(a) from Plaintiff Galaska's wages and transmits said fees to the Twin Valley Education Association pursuant to a provision in the collective bargaining agreement between Twin Valley School District and the Twin Valley Education Association. Any remaining factual allegations in Paragraph 32 are denied.

33. In response to Paragraph 33 of the FAC, the Unions admit that Twin Valley Education Association transmits all fair share fees to PSEA. Any remaining allegations in Paragraph 33 of the FAC are denied.

34. In response to Paragraph 34 of the FAC, the Unions admit that Ellwood City Area School District has deducted and continues to deduct fair share fees as defined by 71 P.S. § 575(a) from the wages of Plaintiffs Brough and Cress' wages and transmits said fees to the Ellwood Area Education Association pursuant

to a provision in the collective bargaining agreement between Ellwood City Area School District and the Ellwood Area Education Association. Any remaining factual allegations in Paragraph 34 are denied.

35. In response to Paragraph 35 of the FAC, the Unions admit that the Ellwood Area Education Association transmits all fair share fees to PSEA. Any remaining allegations in Paragraph 35 of the FAC are denied.

36. In response to Paragraph 36 of the FAC, the Unions admit that PSEA distributes a portion of the fair share fees it receives from its local affiliates to the NEA, and uses other fair share fees it collects or receives from nonmembers to fund activities and expenditures that PSEA determines meets the statutory definition of the fees. The Unions admit that the quoted language in Plaintiffs' footnote two comes from 71 P.S. § 575(a). Any remaining factual allegations in Paragraph 36 are denied.

37. The Unions deny the allegations in Paragraph 37 of the FAC.

38. In response to Paragraph 38 of the FAC, the Unions admit that some collective bargaining agreements between local unions and certain school districts do not contain a fair share fee provision. Any remaining factual allegations in Paragraph 38 are denied.

39. The Unions admit the allegations in Paragraph 39 of the FAC.

40. In response to Paragraph 40 of the FAC, the Unions admit that a union

that collects fair share fees as defined by 71 P.S. § 575(a) from a nonmember must annually provide the nonmember with a “Hudson” notice that, among other things, explains how the union calculated the fair share fee. Any remaining factual allegations in Paragraph 40 are denied.

41. In response to Paragraph 41 of the FAC, the Unions admit that a union calculates a fair share fee as defined by 71 P.S. § 575(a) by first defining which types of activities are “chargeable” (meaning that they meet the statutory definition) and “non-chargeable” (meaning any activities excluded from the statutory definition of “chargeable” activities) to nonmembers, and then annually determines what percentage of the union’s expenses in a prior fiscal year were chargeable and non-chargeable. The Unions further admit that a fair share fee is set at the prior fiscal year’s chargeable percentage as that is the latest year for which complete and audited financial reports are available. Any remaining factual allegations in Paragraph 41 are denied.

42. In response to Paragraph 42 of the FAC, the Unions admit that the calculation of a fair share fee as defined by 71 P.S. § 575(a) must be based on an independent audit of union expenditures. Any remaining allegations in Paragraph 42 are denied.

43. The Unions deny the allegations in Paragraph 43 of the FAC.

44. The Unions admit the allegations in Paragraph 44 of the FAC.

45. The Unions admit that PSEA annually sends each nonmember Pennsylvania teacher, who is represented by an affiliated local union, a Hudson notice. The Unions further admit that a true and correct copies of PSEA's December 15, 2016 Notice is attached as Exhibit 4. Any remaining allegations in Paragraph 45 are denied.

46. In response to Paragraph 46 of the FAC, the Unions admit that the PSEA Notice attached to the FAC is the basis for the fair share fees it has received and will receive from nonmember teachers during the 2016-2017 school year. Any remaining allegations in Paragraph 46 are denied.

47. In response to Paragraph 49 of the FAC, the Unions admit that for the 2016–2017 school year, PSEA charges nonmember teachers a fair share fee of 74 percent of the total union dues amount charged to its members. Any remaining allegations in Paragraph 49 are denied.

48. The Unions are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 48 of the FAC and, on that basis, deny them.

49. The Unions are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 49 of the FAC and, on that basis, deny them.

50. The Unions deny the allegations in Paragraph 50 of the FAC.

51. The Unions are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 51 of the FAC and on that basis, deny them.

52. The Unions deny the allegations in Paragraph 52 of the FAC.

53. The Unions are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 53 of the FAC and on that basis, deny them.

54. Paragraph 54 of the FAC and Plaintiffs' footnote three assert only legal conclusions, which do not require a response. To the extent Paragraph 54 of the FAC makes any factual allegations, they are denied.

55. The Unions are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 55 of the FAC and on that basis, deny them.

56. The Unions are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 56 of the FAC and on that basis, deny them.

57. The Unions deny the allegations in Paragraph 57 of the FAC.

58. Paragraph 58 of the FAC asserts only legal conclusions, which do not require a response. To the extent Paragraph 58 of the FAC makes any factual allegations, they are denied.

59. Paragraph 59 of the FAC asserts only legal conclusions, which do not require a response. To the extent Paragraph 59 of the FAC makes any factual allegations, they are denied.

60. Paragraph 60 of the FAC asserts only legal conclusions, which do not require a response. To the extent Paragraph 60 of the FAC makes any factual allegations, they are denied.

61. Paragraph 61 of the FAC asserts only legal conclusions, which do not require a response. To the extent Paragraph 61 of the FAC makes any factual allegations, they are denied.

62. Paragraph 62 of the FAC asserts only legal conclusions, which do not require a response. To the extent Paragraph 62 of the FAC makes any factual allegations, they are denied.

63. In response to Paragraph 63 of the FAC, the Unions deny that collective bargaining is “inherently political.” The remaining allegations in Paragraph 63 are legal conclusions, which do not require a response. To the extent Paragraph 63 of the FAC makes any factual allegations, they are denied.

64. Paragraph 64 of the FAC asserts only legal conclusions, which do not require a response. To the extent Paragraph 64 of the FAC makes any factual allegations, they are denied.

COUNT I

65. In response to Paragraph 65 of the FAC, the Unions incorporate their responses to Paragraphs 1 through 64 of the FAC.

66. The Unions admit the allegations in Paragraph 66 of the FAC.

67. In response to Paragraph 67 of the FAC, the Unions deny that they have violated Plaintiff Hartnett's associational, free speech, and free choice rights under the First and Fourteenth Amendments to the United States Constitution. The remaining allegations in Paragraph 67 are legal conclusions, which do not require a response. To the extent Paragraph 67 of the FAC makes additional factual allegations, they are denied.

68. The Unions deny the allegations in Paragraph 68a-d of the FAC.

69. The Unions deny the allegations in Paragraph 69 of the FAC.

COUNT II

70. In response to Paragraph 70 of the FAC, the Unions incorporate their responses to Paragraphs 1 through 64 of the FAC.

71. The Unions admit the allegations in Paragraph 71 of the FAC.

72. In response to Paragraph 72 of the FAC, the Unions deny that they have violated Plaintiff Galaska's associational, free speech, and free choice rights under the First and Fourteenth Amendments to the United States Constitution. The remaining allegations in Paragraph 72 are legal conclusions, which do not require a response. To the extent Paragraph 72 of the FAC makes additional factual

allegations, they are denied.

73. The Unions deny the allegations in Paragraph 73a-d of the FAC.

74. The Unions deny the allegations in Paragraph 74 of the FAC.

COUNT III

75. In response to Paragraph 75 of the FAC, the Unions incorporate their responses to Paragraphs 1 through 64 of the FAC.

76. The Unions admit the allegations in Paragraph 76 of the FAC.

77. In response to Paragraph 77 of the FAC, the Unions deny that they have violated Plaintiffs Brough and Cress' associational, free speech, and free choice rights under the First and Fourteenth Amendments to the United States Constitution. The remaining allegations in Paragraph 77 are legal conclusions, which do not require a response. To the extent Paragraph 77 of the FAC makes additional factual allegations, they are denied.

78. The Unions deny the allegations in Paragraph 78a-d of the FAC.

79. The Unions deny the allegations in Paragraph 79 of the FAC.

PRAYER FOR RELIEF

80. The Unions deny the allegations in Paragraph 80a-e of the FAC.

AFFIRMATIVE DEFENSES

1. Claims in the FAC are barred by the applicable statute of limitations.
2. Claims in the FAC are barred by laches.

WHEREFORE, the Unions pray that judgment be entered in their favor on the Plaintiffs' First Amended Complaint, that plaintiffs take nothing by it, and for such other and further relief as may be appropriate under the circumstances, including costs and attorneys' fees.

Respectfully Submitted,

/s/

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* *Pro hac vice* admission pending

April 4, 2017

CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2017, I electronically filed the foregoing Answer to the First Amended Complaint with the Clerk of the Court for the United States District Court for the Middle District of Pennsylvania by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/

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