



## BACKGROUNDER (JANUARY 2019)

*Megan M. James, et al. v. Service Employees International Union, Local 668, et al.*

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### THE EXECUTIVE SUMMARY

The Fairness Center represents Megan M. James, William A. Lester, and Angela Pease in their class-action lawsuit against the Service Employees International Union, Local 668 (“SEIU”). The SEIU denied these public employees’ union resignations in 2018, relying on state law and a restriction within a collective bargaining agreement between SEIU and the Commonwealth of Pennsylvania, which limits union member resignations to a 15-day period. The Fairness Center’s clients seek to represent a class of employees who sought to resign their SEIU memberships during the last two years.

### THE PROBLEM

Every few years, the Commonwealth of Pennsylvania enters into a statewide collective bargaining agreement (“CBA”) with approximately 9,000 employees who are represented by the SEIU. As Commonwealth employees under the Department of Labor & Industry in Greensburg, Pennsylvania, Ms. James, Mr. Lester, and Ms. Pease are subject to that CBA.

In July 2018, the Fairness Center’s clients sent separate letters to the SEIU resigning their union membership. After several months, they each received identical letters from the SEIU purporting to reject their resignations on the basis that the CBA did not allow for resignations until a later period.

Indeed, the current CBA, in reliance on state law, prohibits union members from resigning their membership for years, until the last 15 days of the CBA. The CBA reads, in part:

Each employee who, on the effective date of this Agreement, is a member of the Union, and each employee who becomes a member after that date *shall maintain membership in the Union*, provided that such employee may resign from the Union, in accordance with the following procedure:

- a. The employee shall send a certified letter (Return Receipt Requested) of resignation to the headquarters of the Union and a copy of the letter to the employee’s agency. The official membership card, if available, shall accompany the letter of resignation.

- b. The letter referred to in a. above shall be post-marked during the fifteen (15) day period prior to the expiration date of this Agreement and shall state that the employee is resigning membership in the Union and where applicable, is revoking check-off authorization.

As indicated in its letters to the Fairness Center’s clients, the SEIU rejected their resignations and continued to take dues from the clients’ paychecks.

## **THE LAW**

The Supreme Court has repeatedly held that public employees have First Amendment rights that unions cannot violate. The Supreme Court recently extended those rights by holding in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018) that nonmembers cannot be forced to pay agency fees as a condition of employment. The Court stated, “[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.” *Janus*, 138 S. Ct. at 2464. Even before *Janus*, the Third Circuit Court of Appeals 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 SEIU insists that it can require employees, including the Fairness Center’s clients, 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 the Fairness Center’s clients’ claim 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. Pa. Tpk. Comm’n*, 491 F. Supp. 2d 522 (M.D. Pa. 2007).

## **THE CASE LOGISTICS**

### **Plaintiffs**

- Megan M. James
- William A. Lester
- Angela Pease

### **Defendants**

- Service Employees International Union, Local 668
- Stephen Catanese, in his official capacity as President of Service Employees International Union, Local 668
- Commonwealth of Pennsylvania, Department of Labor & Industry
- W. Gerard Oleksiak, in his official capacity as Secretary of the Department of Labor & Industry
- 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 Western District of Pennsylvania

**Judge**

The Honorable Cathy Bissoon

**Relief Sought**

The Fairness Center’s clients seek a declaration that their and others’ First Amendment rights were violated, and a return of union dues unconstitutionally seized from their paychecks.

**Date Filed**

January 17, 2019

**THE LEGAL TEAM**

**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., where he practiced constitutional, labor, and administrative law. Nathan was also an associate attorney with Lawlor & Lawlor, P.C., a general practice firm in Pittsburgh, Pennsylvania.