

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

JOHN R. KABLER, JR.,

Plaintiff,

v.

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1776 KEYSTONE STATE; WENDELL W. YOUNG, IV, in his individual and official capacities; MICHELE L. KESSLER, in her individual and official capacities; PEG RHODES, in her individual and official capacities; UNITED FOOD AND COMMERCIAL WORKERS UNION, PENNSYLVANIA WINE AND SPIRITS COUNCIL; COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA LIQUOR CONTROL BOARD; THOMAS W. WOLF, in his official capacity as Governor of Pennsylvania; TIMOTHY HOLDEN, in his official capacity as Chairman of the Pennsylvania Liquor Control Board; 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 and Deputy Secretary for the Office of Comptroller Operations,

Defendants.

Case No. \_\_\_\_\_

(Hon. \_\_\_\_\_)

**COMPLAINT**

**Jury Trial Demanded**

--ELECTRONICALLY FILED--

AND NOW comes Plaintiff John R. Kabler, Jr., by and through his undersigned attorneys, and states the following claims for relief against Defendants United Food and Commercial Workers Union, Local 1776 Keystone State (“Local 1776”); Wendell W. Young, IV, in his individual and official capacities; Michele L. Kessler, in her individual and official capacities; Peg Rhodes, in her individual and official capacities; Keystone State United Food and Commercial Workers Union, Pennsylvania Wine and Spirits Council (“UFCW Council”); Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board (“Commonwealth” or “PLCB”); Thomas W. Wolf, in his official capacity as Governor of the Commonwealth of Pennsylvania; Timothy Holden, in his official capacity as Chairman of the PLCB; 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 and avers as follows:

### **SUMMARY OF THE CASE**

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for preliminary and permanent injunctive relief, declaratory relief, and monetary relief, to redress and to prevent the deprivation of rights, privileges, and/or immunities under the First and Fourteenth Amendments to the United States Constitution caused by statutes, ordinances, and Defendants’ contracts, policies, and practices that force public employees to (1) establish union membership as a condition of employment; (2)

surrender union payments under the guise of such a requirement; and (3) unwillingly maintain union membership until one 15-day period at the end of the relevant collective bargaining agreement.

2. In so doing, Defendants have acted under the color of state law, specifically, the state's Public Employe Relations Act ("PERA"), 43 P.S. §§ 1101.101–1101.2301, collective bargaining agreements between the Commonwealth and UFCW Council, and/or other state or local authority and are therefore state actors.

3. Mr. Kabler seeks a declaration of his constitutional rights as they relate to such authorities, including (1) his right not to associate with or become a member of Local 1776 as a condition of public employment; (2) his right to resign—as he did—from Local 1776, notwithstanding PERA, any collective bargaining agreements, or Local 1776's demand that he maintain membership as a condition of employment; and (3) the right to due process in the exercise of his constitutional rights. Mr. Kabler also seeks relief under Pennsylvania law for Defendants' fraudulent misrepresentations.

4. In addition to injunctive and declaratory relief, Mr. Kabler seeks nominal, compensatory, and punitive damages as well as attorneys' fees and costs.

### **JURISDICTION AND VENUE**

5. Mr. Kabler brings claims pursuant to 42 U.S.C. § 1983 for violations of his rights under the First and Fourteenth Amendments to the United States

Constitution; the Declaratory Judgments Act, 28 U.S.C. §§ 2201, 2202; and 42 U.S.C. § 1988.

6. Mr. Kabler also brings a claim for fraudulent misrepresentation under Pennsylvania state law.

7. This Court has jurisdiction over the federal claims pursuant to 28 U.S.C. §§ 1331 and 1343. This action is an actual controversy in which Mr. Kabler seeks a declaration of his rights under the Constitution of the United States. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court may declare Mr. Kabler's rights and grant further necessary and proper relief, including injunctive relief pursuant to Federal Rule of Civil Procedure 65.

8. This Court has supplemental jurisdiction over Mr. Kabler's claim arising under state law pursuant to 28 U.S.C. § 1367.

9. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2). Numerous defendants reside or are domiciled in Dauphin County, and a substantial part of the events or omissions giving rise to Mr. Kabler's claims occurred in Dauphin County. *See* 28 U.S.C. § 118(b).

## **PARTIES**

10. Plaintiff John R. Kabler, Jr. is a "Public employe," 43 P.S. § 1101.301(2), and "Commonwealth employe," 43 P.S. § 1101.301(15), employed by the Commonwealth of Pennsylvania as a Liquor Store Clerk and in a bargaining unit

exclusively represented for purposes of collective bargaining by UFCW Council and Local 1776.

11. Defendant Local 1776 is an “Employe organization,” 43 P.S. § 1101.301(3), and “Representative,” 43 P.S. § 1101.301(4), for purposes of PERA. Pursuant to the CBA, Local 1776 represents certain Commonwealth employees, including Mr. Kabler, for purposes of collective bargaining with the Commonwealth.<sup>1</sup> Local 1776 maintains a place of business at 150 S. 43rd Street, Suite 214, Harrisburg, Pennsylvania, and conducts its business and operations throughout the Commonwealth of Pennsylvania, including the Middle District of Pennsylvania.

12. Defendant Wendell W. Young, IV is the President of Local 1776 and is sued in his individual and official capacities.

13. Defendant Michele L. Kessler is the Secretary-Treasurer of Local 1776 and is sued in her individual and official capacities.

14. Defendant Peg Rhodes is a Vice President of Local 1776 and is sued in her individual and official capacities.

15. Defendant UFCW Council is an “Employe organization,” 43 P.S. § 1101.301(3), and “Representative,” 43 P.S. § 1101.301(4), for purposes of PERA. Pursuant to the CBA, UFCW Council represents certain Commonwealth employees, including Mr. Kabler, for purposes of collective bargaining with the Commonwealth.

---

<sup>1</sup> On or about April 29, 2018, United Food and Commercial Workers, Local 1776, merged with United Food and Commercial Workers, Local 23.

UFCW Council's principal office location is 3031 Walton Road, Suite 201, Plymouth Meeting, Pennsylvania, but it conducts its business and operations throughout the Commonwealth of Pennsylvania, including the Middle District of Pennsylvania.

16. Defendant PLCB is a "Public employer" within the meaning of PERA, 43 P.S. § 1101.301(1). The PLCB is empowered by the Commonwealth's Liquor Code, 47 P.S. §§ 1-101–10-1001, "[t]o appoint, fix the compensation and define the powers and duties of such managers, officers, inspectors, examiners, clerks and other employes as shall be required for the operation" of state law and thereby employs Mr. Kabler. 47 P.S. § 2-207(f).

17. Defendant Thomas W. Wolf is Governor of the Commonwealth and is generally responsible for the operations of the Commonwealth and the enforcement of its laws, including labor relations. Through its officers and agents, the Commonwealth has negotiated and entered into the CBA governing the terms and conditions of employment for Mr. Kabler. Governor Wolf is sued in his official capacity.

18. Defendant Timothy Holden is Chairman of the PLCB, Mr. Kabler's employer. He is sued in his official capacity.

19. Defendant Michael Newsome is Secretary of the Office of Administration. On information and belief, Mr. Newsome's predecessor, Sharon P. Minnich, negotiated, entered into, and is the signatory to, on behalf of the Commonwealth, the collective bargaining agreement governing the terms and

conditions of employment for Mr. Kabler. Mr. Newsome is sued in his official capacity.

20. Defendant Anna Maria Kiehl, Chief Accounting Officer for the Commonwealth of Pennsylvania and Deputy Secretary for the Office of Comptroller Operations, is responsible for, among other duties, issuing wages to employees of the Commonwealth, including Mr. Kabler. She oversees the payroll system for the Commonwealth, which includes processing union dues and other payroll deductions pursuant to the requirement of the CBA. She is sued in her official capacity.

### **FACTUAL ALLEGATIONS**

21. Acting in concert under color of state law, the Commonwealth—on its own behalf and on behalf of the PLCB—and UFCW Council—on behalf of Local 1776—through their respective departments, offices, and officers, have entered into the CBA, which controls the terms and conditions of Mr. Kabler’s employment. A true and correct copy of the CBA is attached hereto as “Exhibit A” and incorporated by reference herein.

22. The Commonwealth and UFCW Council agreed to the term of the CBA, which is July 1, 2016, through June 30, 2019. Ex. A.

23. The CBA contains a “Maintenance of Membership and Dues Checkoff” article, which prohibits union members from resigning their union membership when and how they see fit, and provides in relevant part that:

A. Each employee who is or becomes a member of the Union shall maintain such membership for the duration of this Agreement provided that such employee may resign from the employee organization within the 15 days prior to the expiration of this Agreement upon written notice by certified mail, (return receipt requested) to the Employer and the Union.

B. The Employer agrees to deduct dues and initiation fees, as defined in Article III, Section 301, Paragraph 11 of Act 195. Said deductions shall be made from the wages upon proper written authorization from the employee. The Union shall certify to the Employer the amount of Union dues to be deducted biweekly, and dues at this rate shall be deducted for each biweekly pay period for which the member is paid. Dues shall also be deducted from back pay awards and from pay received to supplement workers' compensation to the extent monies are available after appropriate deductions are made.

C. The Employer further agrees to deduct from the wages of employees having executed the authorization in Section B of this Article an annual assessment, if any, upon certification of the assessment by the Union to the Employer.

....

H. Upon written request of the Union, the Employer shall, on a monthly basis, provide a statewide list of all employees who have been hired including their work locations and most recent date of hire. The Union shall be given the opportunity to speak to newly hired bargaining unit members during new employee orientation.

Ex. A, CBA art. 4.

24. Section A of the CBA's Article 4 imposes a maintenance of membership requirement mirroring, in substantive part, PERA's maintenance of membership provision, which states,

(18) "Maintenance of membership" means that all employees who have joined an employe organization or who

join the employe organization in the future must remain members for the duration of a collective bargaining agreement so providing with the proviso that any such employe or employes may resign from such employe organization during a period of fifteen days prior to the expiration of any such agreement.

43 P.S. § 1101.301(18). PERA also provides,

Membership dues deductions and maintenance of membership are proper subjects of bargaining with the proviso that as to the latter, the payment of dues and assessments while members, may be the only requisite employment condition.

43 P.S. § 1101.705. PERA explicitly limits the rights of public employees as to “maintenance of membership”:

It shall be lawful for public employes to organize, form, join or assist in employe organizations or to engage in lawful concerted activities for the purpose of collective bargaining or other mutual aid and protection or to bargain collectively through representatives of their own free choice and such employes shall also have the right to refrain from any or all such activities, except as may be required pursuant to a maintenance of membership provision in a collective bargaining agreement.

43 P.S. § 1101.401.

25. Thus, the terms of both the CBA and PERA limit a public employee’s right to resign from Local 1776 to only the 15-day window immediately preceding the expiration of the CBA.

26. Further, Section B of the CBA’s Article 4 provides for the deduction of union dues.

27. On or about April 10, 2017, Mr. Kabler was hired as a Liquor Store Clerk by the Commonwealth.

28. During Mr. Kabler's mandatory, employer-sanctioned orientation session for new hires, Local 1776 informed Mr. Kabler that union membership was a condition of employment and that his employment would be terminated if he did not become a union member and begin paying union dues.

29. At that time—and therefore under the threat of termination—Mr. Kabler signed a union membership card.

30. At no time did Mr. Kabler want to subsidize Local 1776, to which he was and is opposed.

31. Shortly thereafter, Mr. Kabler received a letter from Local 1776 which read, in pertinent part:

Dear John,

We are taking this opportunity to welcome you to the United Food and Commercial Workers, Local 1776. You are working for an Employer/Company that has a Collective Bargaining Agreement (Union Contract) with Local 1776. It is a condition of employment with this company that you become a member in good standing with Local 1776. . . . Also, please find attached your membership card.

According to our records you were hired on 04/10/2017, therefore, you will be affiliated into our union on 05/2017. . . . Dues are payable one month in advance, therefore your employer has been instructed to make these deductions through payroll effective in the month in which you were hired which will be applied to the month you are affiliated. The initiation fee for your present classification is \$200.00. This fee will be deducted through payroll over several pay periods.

In order to protect your rights as defined in the Collective Bargaining Agreement, it is your responsibility to remain in good standing with Local 1776. If you fail to maintain this obligation, your Employer is required to remove your name from the work schedule and you will not be permitted to work.

....

A true and correct copy of Local 1776's letter to Mr. Kabler is attached hereto as "Exhibit B" and incorporated by reference herein.

32. On or about July 17, 2018, Mr. Kabler sent his resignation letter via certified mail to Local 1776, with a copy to the Commonwealth. A true and correct copy of Mr. Kabler's letter to Local 1776, with return receipt evidencing delivery on July 19, 2018, is attached hereto as "Exhibit C" and incorporated by reference herein.

33. On July 25, 2018, Mr. Kabler's employer emailed Mr. Kabler the following message:

Mr. Kabler:

We are in receipt of your request. The Janus Decision affected those employees that were paying fair share but had not become members of the Union. In reviewing your record, you elected to become a member in May, 2017. Therefore, the UFCW contract only allows for employees to withdrawal [sic] membership during the 15 day period prior to the expiration of the Agreement (June 16-30, **2019**). You can refer to Article 4 of the contract for specific language. Therefore, we are unable to process your request unless we are informed that UFCW is making an exception to this language. Thanks.

A true and correct copy of the PLCB's email to Mr. Kabler is attached hereto as "Exhibit D" and incorporated by reference herein.

34. Neither Local 1776, UFCW Council, nor any agents or officials of either union, responded to Mr. Kabler's resignation letter to confirm that his resignation was accepted.

35. Yet continually—from the date of Mr. Kabler's hire to the present—Local 1776 continued to consider Mr. Kabler a Local 1776 union member.

36. Continually—from the date of Mr. Kabler's hire to the present—the Commonwealth continued to deduct purported union dues from Mr. Kabler's wages.

37. Continually—from the date of Mr. Kabler's hire to the present—Local 1776 continued to take and/or accept purported union dues from Mr. Kabler's wages.

38. Defendants have taken and continue to take and have accepted and continue to accept purported union dues from Mr. Kabler's wages despite the fact that such seizure of purported union dues from his wages were and are against Mr. Kabler's will and without his consent.

39. Mr. Kabler objects to the compelled association with and financial subsidization of any activities of Local 1776 and its affiliates for any purpose.

40. Defendants acted with knowledge that they were violating a federally protected right or with reckless disregard for whether they were doing so.

## **CLAIMS FOR RELIEF**

### **COUNT ONE**

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

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

42. The First and Fourteenth Amendments to the Constitution of the United States protect the associational, free speech, and free choice rights of United States citizens.

43. Defendants' practice of requiring public employees, including Mr. Kabler, to join or establish membership in Local 1776 as a condition of employment is an unconstitutional violation of such rights.

44. There is no state interest, compelling or otherwise, justifying Defendants' requirement that individuals become members of a private organization, including a labor organization.

45. Accordingly, Mr. Kabler is entitled to be recognized and treated as a nonmember, including the return of funds unconstitutionally seized from Mr. Kabler from the date of his hiring, when Defendants forced him to join Local 1776 as a condition of public employment.

46. As a direct result of Defendants' actions, Mr. Kabler:

- a. has been prevented from exercising his rights and privileges as a citizen of the United States to freely associate in accord with his conscience and desires;
- b. has been deprived of his civil rights guaranteed to him under the statutes of the United States and has suffered monetary damages and other harm;

c. is in imminent danger of being deprived of his civil rights guaranteed under the Constitution and statutes of the United States and is in imminent danger of suffering monetary damages and other harm; and

d. is in imminent danger of suffering irreparable harm, damage, and injury inherent in the violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law.

47. If not enjoined by this Court, Defendants and/or their agents will continue to effect the aforementioned deprivations and abridgments of Mr. Kabler's constitutional rights, thereby causing irreparable harm, damage, and injury for which there is no adequate remedy at law.

## **COUNT TWO**

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

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

49. The First and Fourteenth Amendments to the Constitution of the United States protect the associational, free speech, and free choice rights of United States citizens.

50. Defendants' practice of requiring public employees, including Mr. Kabler, to maintain membership in Local 1776 as a condition of employment is an unconstitutional violation of such rights.

51. There is no state interest, compelling or otherwise, justifying the state's requirement that individuals remain members of a private organization, including a labor organization, for any length of time.

52. The above-cited portions of PERA and the CBA's Article 4, on their faces and/or as applied by Defendants, permit Defendants to require that employees remain union members throughout the life of the CBA and, therefore, violate the limited constitutional authorization for exclusive representation by public-sector unions under the First Amendment, as set forth in relevant Supreme Court caselaw.

53. The above-cited portions of PERA and the CBA's Article 4, on their faces and/or as applied by Defendants, permit Defendants to require that employees maintain unwilling allegiance to Local 1776 throughout the life of the CBA and are, therefore, unconstitutional. This forced membership requirement impinges on Mr. Kabler's exercise of his rights to free association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

54. The above-cited portions of PERA and the CBA's Article 4, on their faces and/or as applied by Defendants, authorize Defendants to violate Mr. Kabler's constitutional rights by withholding union dues or fees from him without his affirmative consent, in violation of the United States Constitution as explained in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018).

55. Accordingly, Mr. Kabler is entitled to be recognized and treated as a nonmember, including the return of funds unconstitutionally seized from Mr. Kabler as far back as his date of hire, the date from which Defendants have represented to Mr. Kabler that maintaining membership was a condition of his public employment.

56. As a direct result of Defendants' actions, Mr. Kabler:

a. has been prevented from exercising his rights and privileges as a citizen of the United States to disassociate from and no longer support the agenda and expenses of a private organization with which he never agreed and/or to which he never wanted to belong as a member;

b. has been deprived of his civil rights guaranteed to him under the statutes of the United States and has suffered monetary damages and other harm;

c. is in imminent danger of being deprived of his civil rights guaranteed under the Constitution and statutes of the United States and is in imminent danger of suffering monetary damages and other harm; and

d. is in imminent danger of suffering irreparable harm, damage, and injury inherent in the violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law.

57. If not enjoined by this Court, Defendants and/or their agents will continue to effect the aforementioned deprivations and abridgments of Mr. Kabler's constitutional rights, thereby causing irreparable harm, damage, and injury for which there is no adequate remedy at law.

**COUNT THREE**

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

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

59. 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).

60. Additionally, public-sector unions and public employers have a responsibility, under the First Amendment, to provide procedures that minimize constitutional impingement inherent in compelled association 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).

61. Neither Local 1776, Mr. Young, Ms. Kessler, nor Ms. Rhodes provided meaningful notice to Mr. Kabler of his right to refuse/object to associating with or subsidizing the speech of Local 1776.

62. Neither the Commonwealth nor their officials provided meaningful notice to Mr. Kabler of his right to refuse/object to associating with or subsidizing the speech of Local 1776.

63. More to the point, Defendants did not provide Mr. Kabler with a meaningful opportunity to refuse/object to initial or continued seizure of his funds or a clearly defined process for asserting such a refusal/objection.

64. Instead, Defendants put the burden on Mr. Kabler to learn, assert, and vindicate his rights with respect to union payments, with the result that he unwillingly joined Local 1776 and that his resignation from Local 1776 was ignored.

65. To date, Defendants have yet to meaningfully address his refusal/objection or resignation and have failed to provide due process concerning his resignation.

66. As a direct result of Defendants' actions, Mr. Kabler:

a. has been prevented from exercising his rights and privileges as a citizen of the United States to disassociate from and no longer support the agenda and expenses of a private organization with which he never agreed and/or to which he never wanted to belong as a member;

b. has been deprived of his civil rights guaranteed to him under the statutes of the United States and has suffered monetary damages and other harm;

c. is in imminent danger of being deprived of his civil rights guaranteed under the Constitution and statutes of the United States and is in imminent danger of suffering monetary damages and other harm; and

d. is in imminent danger of suffering irreparable harm, damage, and injury inherent in the violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law.

67. If not enjoined by this Court, Defendants and/or their agents will continue to effect the aforementioned deprivations and abridgments of Mr. Kabler's constitutional rights, thereby causing irreparable harm, damage, and injury for which there is no adequate remedy at law.

#### **COUNT FOUR**

(Fraudulent Misrepresentation Against  
Defendants Local 1776, Mr. Young, Ms. Kessler, and Ms. Rhodes)

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

69. Local 1776, Mr. Young, Ms. Kessler, and/or Ms. Rhodes ("Union Defendants") knew or should have known that they cannot legally maintain a practice of inducing public employees, including Mr. Kabler, to become members of Local 1776. Accordingly, Union Defendants engaged in fraudulent misrepresentation.

70. "Under Pennsylvania law, a fraudulent misrepresentation claim has six elements: (1) a representation; (2) which is material to the transaction at hand; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the

reliance.” *Bouriez v. Carnegie Mellon Univ.*, 585 F.3d 765, 771 (3d Cir. 2009) (quoting *Overall v. Univ. of Pennsylvania*, 412 F.3d 492, 498 (3d Cir. 2005)).

71. Union Defendants represented to Mr. Kabler that membership in Local 1776 was a condition of public employment. Specifically,

a. Mr. Young and Ms. Kessler represented in a letter to Mr. Kabler that “[i]t is a condition of employment with this company that you become a member in good standing with Local 1776”; that “[i]n order to protect your rights as defined in the Collective Bargaining Agreement, it is your responsibility to remain in good standing with Local 1776”; and that “[i]f you fail to maintain this obligation, your Employer is required to remove your name from the work schedule and you will not be permitted to work.” Ex. B; and

b. likewise, Ms. Rhodes represented to Mr. Kabler in a mandatory, employer-sanctioned orientation session for new hires that membership in Local 1776 was required as a condition of employment.

72. Union Defendants’ representations that union membership was a condition of public employment was material to Mr. Kabler’s becoming a union member. Specifically, Mr. Kabler became a member of Local 1776 because he wanted to retain his position as a Liquor Store Clerk.

73. Union Defendants made representations that union membership was a condition of public employment falsely, with knowledge of its falsity or recklessness as to whether it was true or false. For example, had Union Defendants merely glanced

at Article 4 of the CBA, *for which Mr. Young bargained and signed on behalf of Local 1776*, Union Defendants would have read that public employees are not required to be union members in order to become or remain Commonwealth employees. *See* Ex. A, CBA art. 4 § A (“ . . . such employee may resign from the employee organization . . . .”); *id.* at art. 4 § D (“The Employer and the Union hereby agree that all *non-members* of the Union shall be subject to a fair share fee . . . . The fair share fee shall be deducted biweekly from all employees in the bargaining unit *who are not members* of the Union.” (emphasis added)).

74. In representing that union membership was a condition of public employment, Union Defendants intended to mislead public employees, including Mr. Kabler, and induce him to become a member of Local 1776.

75. Mr. Kabler justifiably relied on Union Defendants’ representations that union membership was a condition of public employment. Specifically,

a. under Pennsylvania law, Union Defendants are entrusted to and expected to represent constituent public employees in a trustee-beneficiary relationship. *See Falsetti v. Local Union No. 2026, United Mine Workers of Am.*, 161 A.2d 882, 895 (Pa. 1960) (“In entering into this Agreement, the Union has assumed the role of trustee for the rights of its members and other employees in the bargaining unit. The employees, on the other hand, have become beneficiaries of fiduciary obligations owed by the Union.”).

b. Mr. Young and Ms. Kessler—senior officials at Local 1776—represented, in a letter placed on Local 1776 letterhead, that union membership was a condition of public employment. Ex. B. The letter’s contents described an apparently routine union policy with express or tacit approval of Mr. Kabler’s employer; and

c. Ms. Rhodes represented that union membership was a condition of public employment in the context of a mandatory, employer-sanctioned orientation session for new hires while she was serving as a business representative for Mr. Kabler and his bargaining unit.

76. Finally, the resulting injury to Mr. Kabler was proximately caused by his reliance on Union Defendants’ representations. Mr. Kabler would not have joined Local 1776 had it not been for Union Defendants’ representations, which induced him to become a member of Local 1776 in violation of his constitutional rights and at the expense of an initiation fee and union dues payments.

77. Union Defendants’ conduct was outrageous for purposes of state law, entitling Mr. Kabler to punitive damages against Union Defendants.

78. As a direct result of Defendants’ actions, Mr. Kabler:

a. has been prevented from exercising his rights and privileges as a citizen of the United States to disassociate from and no longer support the agenda and expenses of a private organization with which he never agreed and/or to which he never wanted to belong as a member; and

b. paid Local 1776—a private organization that he did not wish to subsidize in *any* amount—an initiation fee, union dues according to Local 1776’s hourly wage rate, and an additional \$3.32 on top of Local 1776’s hourly wage rate over the course of his employment.

### **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 Defendants’ practice of requiring membership in Local 1776 as a condition of public employment unconstitutionally abridges Mr. Kabler’s rights under the First and Fourteenth Amendments to the Constitution of the United States;

ii. that Article 4 of the CBA between Local 1776 and the Commonwealth, on its face and as applied, unconstitutionally abridges Mr. Kabler’s rights under the First and Fourteenth Amendments to the Constitution of the United States;

iii. that certain PERA provisions, *see* 43 P.S. §§ 1101.301(18); 1101.401; 1101.705, on their face and as applied, violate the First and Fourteenth Amendments to the United States Constitution;

iv. that the First and Fourteenth Amendments prevent Defendants from restricting Mr. Kabler's right to resign from union membership at any time;

v. that the First and Fourteenth Amendments prevent Defendants from seizing Mr. Kabler's funds without his affirmative consent or waiver of First Amendment rights; and

vi. that the Fourteenth Amendment requires due process of law for union nonmembers and members alike, specifically, meaningful notice concerning their rights and a meaningful opportunity to object to continued seizure of his funds in the context of a clearly defined process for asserting such an objection.

B. **Injunctive:** A permanent injunction:

i. enjoining Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them, from:

a. engaging in any of the activities listed in Part A above, which the Court declares unconstitutional;

b. enforcing the Article 4 of the CBA or any subsequent, substantially similar provision between Local 1776 and the Commonwealth which requires Mr. Kabler to become or remain a member of Local 1776 for a particular length of time.

ii. requiring Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them, to:

- a. expunge the Article 4 of the CBA;
  - b. honor Mr. Kabler's resignation from union membership;
- and
- c. refund to Mr. Kabler all union dues deducted from his wages from at least April 10, 2017, plus interest thereon.

C. **Adjudicative:** Adjudge Union Defendants guilty of and liable to Mr. Kabler for fraudulent misrepresentation.

D. **Monetary:** A judgment awarding Mr. Kabler nominal, compensatory, and punitive damages for the injuries sustained as a result of Defendants' unlawful interference with and deprivation of his constitutional and civil rights including, but not limited to, the amount of dues deducted from his wages without Mr. Kabler's affirmative consent and waiver of his First Amendment rights, plus interest thereon, punitive damages, and such amounts as principles of justice and compensation warrant.

E. **Attorneys' Fees and Costs:** A judgment awarding Mr. Kabler costs and reasonable attorneys' fees under 42 U.S.C. § 1988; and

F. **Other:** Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

THE FAIRNESS CENTER

Dated: March 6, 2019

*s/ Nathan J. McGrath*

---

Nathan J. McGrath

Pa. Attorney I.D. No. 308845

E-mail: njmcgrath@fairnesscenter.org

David R. Osborne

Pa. Attorney I.D. No. 318024

E-mail: drosborne@fairnesscenter.org

Danielle R.A. Susanj

Pa. Attorney I.D. No. 316208

E-mail: drasusanj@fairnesscenter.org

THE FAIRNESS CENTER

500 North Third Street, Floor 2

Harrisburg, Pennsylvania 17101

Phone: 844.293.1001

Facsimile: 717.307.3424

*Attorneys for Plaintiff*