

COURT OF COMMON PLEAS OF PENNSYLVANIA
ERIE COUNTY

MARK KIDDO; JOAN HORDUSKY; MIKE DZURKO;
CHRISTINE ARNONE; JENNIE CLAY; MADELYN
GROOVER; MELISSA GUZOWSKI; and JEFF
GRANGER,

Plaintiffs,

v.

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, LOCAL 2206;
AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES DISTRICT COUNCIL 85;
RANDY PROCIOS IN HIS OFFICIAL CAPACITY;
SHANE CLARK IN HIS OFFICIAL CAPACITY; and ERIE
WATER WORKS,

Defendants.

Case No. 13144-18

Judge _____

NOTICE TO DEFEND

COMMON PLEAS COURT
ERIE, PA
2013 DEC -5 PM 2:15
CLERK OF RECORDS
PROTHONOTARY

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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PROTHONOTARY

**COURT OF COMMON PLEAS OF PENNSYLVANIA
ERIE COUNTY**

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**COMPLAINT AND DEMAND FOR JURY
TRIAL**

AND NOW come Plaintiffs Mark Kiddo; Joan Hordusky; Mike Dzurko; Christine Arnone; Jennie Clay; Madelyn Groover; Melissa Guzowski; and Jeff Granger (collectively, "Plaintiffs"), by and through their undersigned counsel, and state the following claims for relief against Defendants American Federation of State, County and Municipal Employees Local 2206 ("Local 2206"); American Federation of State, County and Municipal Employees District Council 85 ("District Council 85"); Randy Procius, President of Local 2206; Shane Clark, AFSCME Representative¹; and Erie Water Works ("EWW") and aver as follows:

SUMMARY OF THE CASE

1. Plaintiffs bring this civil action to address AFSCME's failure to fairly represent the

¹ Local 2206, District Council 85, and Messrs. Procius and Clark will be referred to, collectively, as ("AFSCME").

bargaining unit. *See Case v. Hazelton Area Educ. Support Pers. Ass'n (PSEA/NEA)*, 928 A.2d 1154, 1158 (Pa. Cmwlt. 2007).

2. Because the “[u]nion has assumed the role of trustee for the rights of its members and other employees in the bargaining unit” and employees are “beneficiaries of fiduciary obligations owed by the [u]nion[,] . . . the [u]nion bears a heavy duty of fair representation to all those within the shelter of its protection.” *Falsetti v. Local Union No. 2026, United Mine Workers of Am.*, 161 A.2d 882, 895 (Pa. 1960). Accordingly, unions must “act in good faith, in a reasonable manner and without fraud.” *Id.*

3. Unfortunately, AFSCME breached its duty of fair representation to Plaintiffs by failing to “act in good faith, in a reasonable manner and without fraud.” *Id.*

4. Among other breaches of the duty of fair representation, AFSCME violated Paragraph 7 of AFSCME’s “Bill of Rights for Union Members,” which provides as follows:

Members shall have the right to full participation, through discussion and vote, in the decision making processes of the union, and to pertinent information needed for the exercise of this right. This right shall specifically include decisions concerning the acceptance or rejection of collective bargaining contracts, memoranda of understanding, or any other agreements affecting their wages, hours, or other terms and conditions of employment.

A true and correct copy of AFSCME’s Constitution, including the Bill of Rights for Union Members, which begins on page 8, is attached hereto as “Exhibit A” and incorporated by reference herein.

JURISDICTION AND VENUE

5. “[B]reach of the duty of fair representation . . . is within the exclusive jurisdiction of the courts of common pleas.” *Dailey v. PLRB*, 148 A.3d 920, 924 (Pa. Cmwlt. 2016).

6. Venue is proper in Erie County. *See* Pa. R.C.P. 2179(a)(1)–(4).

PARTIES

7. Plaintiff Mark Kiddo is an adult individual residing in Erie County, Pennsylvania. Mr. Kiddo is an employee of EWW, member of AFSCME, and a “public employe” for purposes of the Public

Employe Relations Act (“PERA”), 43 P.S. § 1101.301(2).

8. Plaintiff Joan Hordusky is an adult individual residing in Erie County, Pennsylvania. Ms. Hordusky retired from her work with EWW on October 30, 2018 and is no longer an AFSCME member. However, Ms. Hordusky was an employee and union member when AFSCME breached its duty of fair representation and due to AFSCME’s breach, Ms. Hordusky has suffered and continues to suffer injury.

9. Plaintiff Mike Dzurko is an adult individual residing in Erie County, Pennsylvania. Mr. Dzurko is an employee of EWW, member of AFSCME, and a “public employe” for purposes of PERA, 43 P.S. § 1101.301(2).

10. Plaintiff Christine Arnone is an adult individual residing in Erie County, Pennsylvania. Ms. Arnone is an employee of EWW, member of AFSCME, and a “public employe” for purposes of PERA, 43 P.S. § 1101.301(2).

11. Plaintiff Jennie Clay is an adult individual residing in Erie County, Pennsylvania. Ms. Clay is an employee of EWW, member of AFSCME, and a “public employe” for purposes of PERA, 43 P.S. § 1101.301(2).

12. Plaintiff Madelyn Groover is an adult individual residing in Erie County, Pennsylvania. Ms. Groover is an employee of EWW, member of AFSCME, and a “public employe” for purposes of PERA, 43 P.S. § 1101.301(2).

13. Plaintiff Melissa Guzowski is an adult individual residing in Erie County, Pennsylvania. Ms. Guzowski is an employee of EWW, member of AFSCME, and a “public employe” for purposes of PERA, 43 P.S. § 1101.301(2).

14. Plaintiff Jeff Granger is an adult individual residing in Erie County, Pennsylvania. Mr. Granger is an employee of EWW, member of AFSCME, and a “public employe” for purposes of PERA, 43 P.S. § 1101.301(2).

15. Defendant Local 2206 is a labor union with a principal place of business at 626 State Street, Erie, PA 16501. Local 2206 is an “employee organization” for purposes of PERA, 43 P.S. § 1101.301(3), and an affiliate of District Council 85.

16. Defendant District Council 85 is a labor union with a principal place of business at 1276 Liberty Street, Franklin, PA 16323. District Council 85 is an “employee organization” and Plaintiffs’ exclusive representative for purposes of PERA, 43 P.S. §§ 1101.301(3), 1101.606.

17. Defendant Randy Prociuous, is an adult individual employed by the City of Erie and serves as the President of Local 2206 with an address at 626 State Street, Erie, PA 16501-1146. Mr. Prociuous is sued in his official capacity as President of Local 2206.

18. Defendant Shane Clark is an adult individual with an address of 5296 Autumnwood Drive, Cochranon, PA 16314. Mr. Clark is employed by AFSCME and sued in his official capacity as staff representative.

19. Defendant EWW, also known as the Erie City Water Authority, is a municipal authority of the city of Erie, Pennsylvania, incorporated under the Municipal Authorities Act, 53 Pa.C.S. §§ 5601–5623, with its principal place of business at 340 West Bayfront Parkway, Erie, PA 16507-2004. EWW is the Plaintiffs’ “public employer” for purposes of PERA, 43 P.S. § 1101.301(1).

FACTUAL ALLEGATIONS

20. From January 1, 2013, to December 31, 2017, Plaintiffs worked under terms and conditions of employment set forth in a collective bargaining agreement (“CBA”) between EWW and Local 2206, a true and correct copy of which is attached hereto as “Exhibit B” and incorporated by reference herein.

21. AFSCME and EWW began negotiations over a successor agreement prior to the expiration of the CBA.

22. At that time, certain employees at EWW were entitled to post-employment subsidies and/or

other benefits from EWW under their respective terms of employment. For example, a true and correct copy of the collective bargaining agreement between EWW and General Teamsters Local 397 is attached hereto as “Exhibit C” and incorporated by reference herein.

23. Plaintiffs desired a successor agreement that included post-employment subsidies and/or other benefits.

24. Before or during collective bargaining negotiations over the successor agreement, one or more Plaintiffs expressed their desire for post-employment subsidies and/or other benefits to AFSCME officials and/or to members of the negotiating team for AFSCME.

25. On or about December 22, 2017, during the course of collective bargaining, EWW presented to the negotiating team for AFSCME a document, a true and correct copy of which is attached hereto as “Exhibit D” and incorporated by reference herein.

26. Said document was entitled “Final Offer.” Ex. D (“Final Offer”).

27. The Final Offer contained two options with respect to, among other subjects, wages, health care, and retirement benefits (“Option #1” and “Option #2”). Final Offer, at 2–3.

28. Option #1 included a 3.00% wage increase beginning in 2018, a post-employment subsidy of \$400 per month, and a 457(b) retirement plan for new hires. Final Offer, at 2.

29. By contrast, Option #2 included a 2.50% wage increase beginning in 2018, no post-employment subsidy, and a pension plan for new hires instead of the 457(b) retirement plan. Final Offer, at 3.

30. EWW intended for the Final Offer, complete with Option #1 and Option #2, to be presented to AFSCME membership, including Plaintiffs, for potential ratification.

31. EWW has maintained that its Final Offer included both Option #1 and Option #2 and specifically requested that the Final Offer be presented to Local 2206 for ratification. A true and correct

copy of EWW correspondence to AFSCME officials is attached hereto as composite “Exhibit E” and incorporated by reference herein.

32. Members of AFSCME’s bargaining team understood that the Final Offer included both Option #1 and Option #2 and even doubted their ability to withhold Option #1 from membership.

33. For example, on or about January 4, 2018, Mr. Clark considered his obligation to present the Final Offer, complete with Option #1 and Option #2, to membership. At that time, Mr. Clark confirmed his understanding that the Final Offer was indeed “presented as a final offer with two options.” A true and correct copy of Mr. Clark’s e-mail exchange is attached as composite “Exhibit F” and incorporated by reference herein.

34. On or about January 5, 2018, Mr. Clark informed EWW that he believed he was under no obligation to present the Final Offer to membership. A true and correct copy of Mr. Clark’s email to EWW is attached hereto as “Exhibit G” and incorporated by reference herein.

35. Ultimately, the Final Offer was not presented to membership for ratification.

36. Instead, on or about January 11, 2018, AFSCME removed or omitted Option #1 from the Final Offer, caused Option #1 to be omitted from the Final Offer, or modified the Final Offer so as to exclude Option #1 from the Final Offer, leaving a document that resembled the Final Offer but did not include Option #1 (“Altered Offer”).

37. On or about January 11, 2018, AFSCME presented the Altered Offer to Local 2206 membership for ratification.

38. The Altered Offer presented to Plaintiffs did not include Option #1, which was included in EWW’s Final Offer.

39. AFSCME did not inform Plaintiffs that the Final Offer contained Option #1.

40. AFSCME did not inform Plaintiffs that EWW was willing to agree to a contract that

included Option #1.

41. Plaintiffs were disappointed to learn that the post-employment subsidy and/or other benefits were not purportedly available to them or otherwise included in the “final offer” as it was presented to them.

42. The ratification meeting on or about January 11, 2018, involved heated discussion.

43. For example, AFSCME led Plaintiffs to believe that one or more Plaintiffs would risk losing their pensions if Local 2206 membership failed to ratify the Altered Offer. Accordingly, Plaintiffs voted to ratify the Altered Offer.

44. In reality, Plaintiffs would not lose their pensions if they rejected the Altered Offer.

45. But for AFSCME’s concealment of Option #1, Plaintiffs would not have voted to ratify the contract as it was presented.

46. Had Plaintiffs known that EWW had made Option #1 equally available to them, Plaintiffs would not have voted to ratify a contract that included Option #2.

47. Additionally, had Option #1 been presented to Plaintiffs, Plaintiffs would have selected Option #1 and voted to ratify a contract that included Option #1 instead of Option #2.

48. On or about February 8, 2018, Plaintiffs learned that EWW’s Final Offer included both Option #1 and Option #2. A true and correct copy of EWW’s letter to Mr. Kiddo is attached hereto as “Exhibit H” and incorporated by reference herein.

49. Between February 14 and 15, 2018, Plaintiffs conferred by email among themselves and with other AFSCME members, and thirteen AFSCME members—a majority of the bargaining unit—stated that they wanted to revote and formally decide between Option #1 and Option #2. A true and correct copy of the email requests for revote is attached hereto as composite “Exhibit I” and incorporated by reference herein.

50. Had they been provided with truthful and pertinent information, Plaintiffs would have voted for a contract that included Option #1 instead of Option #2. A true and correct copy of affidavits completed by AFSCME members eligible to vote at the January 11, 2018 ratification meeting are attached hereto as composite “Exhibit J” and incorporated by reference herein.

51. Plaintiffs have exhausted all internal remedial efforts reasonably required before filing the instant lawsuit.

52. On or about February 21, 2018, Mr. Kiddo, on behalf of himself and twelve other AFSCME members, filed an Official Grievance Form with AFSCME requesting a cancellation of the January 11, 2018 ratification vote and the opportunity to revote on the Final Offer, which included both Options #1 and #2. A true and correct copy of the Official Grievance Form is attached hereto as “Exhibit K” and incorporated by reference herein.

53. On or about April 25, 2018, Richard Abelson, AFSCME Judicial Panel Chairperson, sent a letter to Mr. Kiddo, Local 2206 President Randy Prociuous, and union representative Shane Clark informing them that the grievance was scheduled for a hearing before the AFSCME Judicial Panel. A true and correct copy of Chairperson Abelson’s April 25, 2018 letter is attached hereto as “Exhibit L” and incorporated by reference herein.

54. On or about June 4, 2018, Chairperson Abelson served as the Trial Officer and heard testimony and arguments pertaining to Plaintiffs’ grievance against Mr. Prociuous and Mr. Clark.

55. On or about July 20, 2018, Chairperson Abelson issued his decision dismissing the charges against Mr. Prociuous and Mr. Clark. A true and correct copy of the Trial Officer’s decision is attached hereto as “Exhibit M” and incorporated by reference herein.

56. On or about August 16, 2018, Plaintiffs filed a Notice of Expedited Appeal to the full Judicial Panel.

57. On or about October 9, 2018, the full Judicial Panel sustained the decision of Chairperson Abelson.

58. According to Article XI, section 15, of AFSCME's Constitution, any decision rendered by the full Judicial Panel can be appealed only to the International Convention. The next International Convention is scheduled for the Summer of 2020 and constitutes an unreasonable measure for purposes of exhaustion of internal remedies. Ex. A, at 128.

COUNT I
Breach of Duty of Fair Representation
(All Plaintiffs against All Defendants²)

59. The foregoing paragraphs are incorporated by reference as if set forth fully herein.

60. Because the “[u]nion has assumed the role of trustee for the rights of its members and other employees in the bargaining unit” and employees are “beneficiaries of fiduciary obligations owed by the [u]nion[,] . . . the [u]nion bears a heavy duty of fair representation to all those within the shelter of its protection.” *Falsetti v. Local Union No. 2026, United Mine Workers of Am.*, 161 A.2d 882, 895 (Pa. 1960). Accordingly, unions must “act in good faith, in a reasonable manner and without fraud.” *Id.*

61. AFSCME failed to act in good faith, in a reasonable manner, and/or without fraud.

62. AFSCME's actions were arbitrary, discriminatory, and/or made in bad faith.

63. AFSCME's conduct caused harm to Plaintiffs.

64. AFSCME breached its duty of fair representation to Plaintiffs.

65. AFSCME breached its duty of fair representation to Plaintiffs by failing to present the Final Offer in its entirety to Plaintiffs for ratification.

66. AFSCME breached its duty of fair representation to Plaintiffs by violating its own internal rules.

² EWW is included as a necessary party.

67. AFSCME breached its duty of fair representation to Plaintiffs by failing to pursue terms and conditions of employment favorable to or desired by Plaintiffs.

68. AFSCME breached its duty of fair representation to Plaintiffs by presenting the Altered Offer to Plaintiffs for ratification.

69. AFSCME breached its duty of fair representation to Plaintiffs by failing to inform Plaintiffs at the January 11, 2018 ratification meeting and/or thereafter that Option #1 was included as part of the Final Offer.

70. AFSCME breached its duty of fair representation to Plaintiffs by failing to inform Plaintiffs at the January 11, 2018 ratification meeting and/or thereafter of the terms or existence of Option #1.

71. AFSCME breached its duty of fair representation to Plaintiffs by failing to communicate information pertinent to Plaintiffs' consideration of the Altered Offer, including but not limited to the terms or existence of Option #1, to the members at the January 11, 2018 ratification meeting and/or thereafter.

72. AFSCME breached its duty of fair representation to Plaintiffs by concealing the terms or existence of Option #1 at the January 11, 2018 ratification meeting and/or thereafter.

73. AFSCME breached its duty of fair representation to Plaintiffs by pressuring Plaintiffs into voting to ratify the Altered Offer despite the fact that it contained terms less favored by and less favorable to Plaintiffs.

74. AFSCME breached its duty of fair representation to Plaintiffs by misrepresenting potential choices available to Plaintiffs at the January 11, 2018 ratification meeting and/or thereafter.

75. AFSCME breached its duty of fair representation to Plaintiffs by providing misleading information to Plaintiffs.

76. AFSCME breached its duty of fair representation to Plaintiffs by denying Plaintiffs' request to vote on the Final Offer.

77. AFSCME breached its duty of fair representation to Plaintiffs when it discriminated against Plaintiffs by elevating the interests of AFSCME and AFSCME officials above that of Plaintiffs.

78. Plaintiffs voted to ratify the Altered Offer as a result of AFSCME's conduct.

79. As a result of the foregoing, Plaintiffs have suffered or will suffer pecuniary injury in the form of a loss of or decreased pay raise and loss of post-employment subsidy since at least January 11, 2018.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests this Honorable Court to:

- a) Enter judgment against Defendants;
- b) Order Defendants to allow Plaintiffs to revote on the Final Offer, including Option #1 and #2;
- c) And/or award damages as to AFSCME in excess of \$50,000;
- d) Award costs and fees, including reasonable attorneys' fees, and such other relief as the Court deems appropriate.

JURY DEMAND

Plaintiffs demand a trial by jury on all matters triable by jury pursuant to Pennsylvania Rule of Civil Procedure 1007.1.

Respectfully submitted,

THE FAIRNESS CENTER



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Dated: December 5, 2018

THE FAIRNESS CENTER
500 North Third Street, Floor 2
Harrisburg, PA 17101
Telephone: 844.293.1001
Facsimile: 717.307.3424

Counsel for Plaintiffs

VERIFICATION

I, Christine Arnone, hereby verify that I am a plaintiff to this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.

Date: 11/24/18 By: Christine A Arnone

VERIFICATION

I, Jennie Clay, hereby verify that I am a plaintiff to this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.

Date: 11-20-2018

By: Jennie Clay

VERIFICATION

I, Mike Dzurko, hereby verify that I am a plaintiff to this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.

Date: November 18, 2018 By: 

VERIFICATION

I, Jeff Granger, hereby verify that I am a plaintiff to this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.

Date: December 3, 2018 By: Jeff Granger

VERIFICATION

I, Madelyn Groover, hereby verify that I am a plaintiff to this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.

Date: 11-19-18 By: Madelyn J Groover

VERIFICATION

I, Melissa Guzowski, hereby verify that I am a plaintiff to this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.

Date: 11-21-19 By: Melissa A. Guzowski

VERIFICATION

I, Joan Hordusky, hereby verify that I am a plaintiff to this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.

Date: 11/19/18

By: Joan Hordusky

VERIFICATION

I, Mark Kiddo, hereby verify that I am a plaintiff to this action and subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in Plaintiff's Complaint are true and correct to the best of my knowledge, information and belief.

Date: 11/19/18 By: Mark Kiddo