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

LINDA MISJA, Plaintiff, vs. PENNSYLVANIA STATE EDUCATION ASSOCIATION, Defendant.	Civil Action No. 1:15-cv-1199-JEJ (Hon. John E. Jones, III)

LINDA MISJA'S REPLY BRIEF IN SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO THE PSEA'S CROSS-MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Plaintiff Linda Misja ("Ms. Misja") and Defendant Pennsylvania State Education Association ("PSEA") agree "that there is no genuine dispute as to any material fact" in this case. Fed. R. Civ. P. 56(a). In fact, the parties have submitted to this Court stipulated statements of facts ("Stips") in support of their respective motions for summary judgment. (Docs. 19 & 21).

But the PSEA, in its brief supporting the cross-motion for summary judgment, applies flawed reasoning and irrelevant law to those facts, amounting to argument that this Court must reject. Specifically, the PSEA posits that Ms. Misja has no property interest in money she earned; attempts to replace state law with federal law inapplicable to Ms. Misja's situation; and ignores language of the state statute actually dealing with religious objections to union payments. Most remarkably, the PSEA continues to insist that it can discriminate against Ms. Misja's charity selections on the basis of viewpoint.

This Court should grant Ms. Misja's motion for summary judgment.

II. COUNTERSTATEMENT OF FACTS[1]

On January 18, 2012, Ms. Misja, a teacher represented by the PSEA and the Apollo-Ridge Education Association, Stips. ¶¶ 57, 76-77, objected "to the payment of fair share fees for bona fide religious grounds," 71 P.S. § 575(e)(2), pursuant to title 71, section 575, of the Pennsylvania Statutes ("section 575"), Stips. ¶ 61. Ms. Misja does not challenge the PSEA's calculation of the fair share fee or the process afforded to those who object "to the propriety of the fair share fee." 71 P.S. § 575(e)(1).

The PSEA "accepted" Ms. Misja's religious objection to payment of the fair share fee on July 23, 2012. Stips. ¶ 66. Accordingly, under section 575, Ms. Misja "shall pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative." 71 P.S. § 575(h); Stips. ¶¶ 30-31.

In the letter accepting Ms. Misja's religious objection, the PSEA requested that Ms. Misja select a nonreligious charity. Stips. ¶ 66. The process afforded to Ms. Misja after that date consisted of the following:

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1. Ms. Misja generally relies on the statement of facts set forth in her Brief in Support of Motion for Summary Judgment (Doc. 15) and the stipulated statement of facts filed with this Court (Doc. 19). However, Ms. Misja provides a short counterstatement to the PSEA's brief supporting the cross-motion for summary judgment (Doc. 25).

- The PSEA continued to deduct and impound funds from Ms. Misja's paycheck. Stips. ¶¶ 66, 74.
- On February 7, 2013, the PSEA sent a letter to Ms. Misja requesting that she select a nonreligious charity pursuant to section 575. Stips. ¶ 67.
- The PSEA rejected Ms. Misja's first charity selection, "People Concerned for the Unborn Child," "based upon [the PSEA's] belief that sending fees to that charity would be tantamount to sending her fees to a charity that furthers religious beliefs, which is contrary to the neutral intent of the law that funds go to a non-religious charity."[2] Stips. ¶ 69. Instead, the PSEA offered to send Ms. Misja's money to "a pregnancy center that counsels women on all options." Stips. ¶ 69.
- The PSEA rejected Ms. Misja's alternate charity selection, "Friends of the NRA Foundation" because, according to the PSEA, the charity "was the charitable subsidiary of the National Rifle Association, a non-tax exempt advocacy entity that PSEA considers to be a

2. Ms. Misja did not stipulate to the accuracy of the PSEA's belief concerning PCUC or its characterization of the law.

political organization, not a charity," Stips. ¶ 71, and the PSEA "has a policy of not agreeing to the charitable subsidiaries of political organizations," Complaint, at Exh. C. The PSEA suggested that Ms. Misja find another educational program promoting gun safety. Stips. ¶ 72.

- The PSEA denied Ms. Misja's request for arbitration of her charity selection. Stips. ¶ 71.

Ms. Misja was not given advance notice of any PSEA policies governing the PSEA's evaluation of a charity selected pursuant to section 575. However, the PSEA now provides an apparently non-exhaustive list of "several criteria [that] may be applied, together or separately," Stips. ¶ 46:

- PSEA will require that the charity be a recognized 501(c)(3) organization under the Internal Revenue Code. [Stips. ¶ 47].
- PSEA will not agree to a charity where it appears that the religious objector has a personal interest in the selected charity (such as being a founder, officer, or member of a local charity who may be able to benefit personally from the work of the charity). [Stips. ¶ 48].
- PSEA will not agree to a charity that may appear to be "non-religious," (as required by the statute) if it appears that the underlying principles or overarching mission of the selected entity are essentially congruent with or directly supportive of those of a religious entity. It is PSEA's belief that payment of

> the funds to that organization would be tantamount to supporting the tenets of the religious organization, and therefore inconsistent with the stated legislative intent that the religious objector's funds be paid over to a non-religious charity. [Stips. ¶ 49].
>
> - PSEA will not agree to a charity that is a political, "advocacy" or "partisan" organization with a mission or objective that is known to advance issues and advocate for policies that are directly antagonistic to the interests of PSEA/NEA/ or its local affiliates, or which conflict directly with the established policies of PSEA or NEA. For example, PSEA has refused to agree to have a religious objector's funds contributed to the National Right to Work Foundation – an organization with a mission directly antagonistic to organized labor, public sector organized labor, and that has in the past and continues to this day to fund and sponsor litigation directly against PSEA. [Stips. ¶ 50].

PSEA Brief (Doc. 25), at pp. 6-7.[3]

III. COUNTERSTATEMENT OF QUESTIONS PRESENTED

A. WHETHER THE PSEA PROVIDES A FAIR AND EXPEDITIOUS PROCESS, NOTICE, AN OPPORTUNITY TO BE HEARD, AND ACCESS TO AN INDEPENDENT DECISIONMAKER

B. WHETHER SECTION 575 CONTAINS THE TERM "REASONABLE ACCOMMODATION"

C. WHETHER THE PSEA'S EXERCISE OF DUTIES SPECIFICALLY ASSIGNED TO THE "EXCLUSIVE REPRESENTATIVE" VIOLATES SECTION 575

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3. Unless otherwise noted, this brief will refer to the PSEA's combined brief in opposition to Ms. Misja's motion for summary judgment and in support of the PSEA's cross-motion for summary judgment (Doc. 25) as "PSEA Brief," and will cite using the PSEA's internal page numbers.

D. WHETHER SECTION 575 IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED BY THE PSEA, WHERE IT FAILS TO PROVIDE A FAIR AND EXPEDITIOUS PROCESS, NOTICE, AN OPPORTUNITY TO BE HEARD, AND ACCESS TO AN INDEPENDENT DECISIONMAKER

IV. ARGUMENT

A. THE PSEA VIOLATES MS. MISJA'S RIGHTS TO DUE PROCESS BY FAILING TO PROVIDE A FAIR AND EXPEDITIOUS PROCESS, NOTICE, AN OPPORTUNITY TO BE HEARD, AND ACCESS TO AN INDEPENDENT DECISIONMAKER

Perhaps recognizing the deficiency of the process afforded to Ms. Misja, the PSEA boldly argues that its process for handling charity selections for religious objectors "does not need to" comport with constitutional due process. PSEA Brief, at p. 14. It incorrectly reasons that Ms. Misja has no property or liberty interest with respect to her own money, and it also fails to recognize the PSEA's affirmative "responsibility to provide procedures that minimize . . . impingement [of First Amendment rights] and that facilitate a nonunion employee's ability to protect his rights." Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v. Hudson, 475 U.S. 292, 307 n.20 (1986). The PSEA's argument must be rejected.

First Amendment Due Process

The PSEA fails to recognize that, in the context of objections to forced payments resulting from public-sector "agency shop" agreements, due process protections also derive from the First Amendment. See Hudson, 475 U.S. at 307 ("The nonunion employee, whose First Amendment rights are affected by the

agency shop itself and who bears the burden of objecting, is entitled to have his objections addressed in an expeditious, fair, and objective manner."). The reason is simple: "[s]ince the agency shop itself is 'a significant impingement on First Amendment rights,' the government and union have a responsibility to provide procedures that minimize that impingement and that facilitate a nonunion employee's ability to protect his rights." Id. at 307 n.20. Specifically, unions must "provide for a reasonably prompt decision by an impartial decisionmaker" and "in an expeditious, fair, and objective manner." Id. at 307.

Still, the PSEA implicitly agrees that due process is necessary before earned income may be extracted from union nonmembers; it recites—with obvious pride[4]—the process provided to nonmembers when it collects fair share fees. PSEA Brief, at pp. 2-4. But its apparent provision of notice, opportunity to be heard, and access to an impartial decisionmaker in that context does not help a religious objector attempting to send her money to a nonreligious charity. The process accorded to agency feepayers stands in sharp contrast to that accompanying collection and retention of a religious objector's funds, where the "process" is little more than a staredown.

4. In fact, such a process is clearly required both constitutionally and statutorily. Hudson, 475 U.S. 292; 71 P.S. § 575(c), (d), (i). Section 575(g) was held "invalid in its entirety." Hohe v. Casey, 956 F.2d 399, 409 (3d Cir. 1992).

Indeed, the process accorded to Ms. Misja is neither expeditious, fair, nor objective, and she was ultimately denied access to an impartial decisionmaker. Stips. ¶ 71. Ms. Misja's religious objection was filed over four years ago, and she identified an organization to which her funds could go almost three years ago. Stips. ¶ 68. The PSEA's standards for evaluating her charity selections were unknown and unknowable,[5] forcing Ms. Misja to remain uncertain as to her options and her rights, and ultimately pressing her to file suit to achieve clarity. Again, the PSEA's practice fails to sufficiently minimize—in fact, it exacerbates—the First Amendment violation inherent in authorizing the PSEA to exact funds from her paycheck.

5. Even now that the PSEA has committed to writing its "several criteria" for evaluating charity selections, PSEA Brief, at pp. 6-7, the PSEA's practice is no less predictable. For example, the PSEA's criteria allow it to reject a charity selection if "the underlying principles or overarching mission of the selected charity are essentially congruent with or directly supportive of those of a religious entity" or if it has "a mission or objective that is known to advance issues or advocate for policies that are directly antagonistic to the interests of PSEA/NEA/ or its local affiliates, or which conflict directly with established policies of PSEA or NEA." PSEA Brief, at p. 7. These standards could be applied to any charity or to no charity at all; no one could possibly predict how these standards will be applied, and no one could apply them objectively.

Fourteenth Amendment Due Process

The PSEA also argues that Ms. Misja lacks a property interest in money taken from her paycheck and, on that basis, announces that the PSEA's process "does not need to" comport with constitutional standards. PSEA Brief, at p. 14. This Court should reject the PSEA's flawed reasoning.

While "[s]tate law defines property interests for purposes of procedural due process claims" under the Fourteenth Amendment, Ruiz v. New Garden Twp., 376 F.3d 203, 206 (3d Cir. 2004), federal law defines the process properly accorded to the individual claiming the property right,[6] Perri v. Aytch, 724 F.2d 362, 365 (3d Cir. 1983) ("A plaintiff claiming a due process violation 'while relying upon state law to establish his property right looks to federal law to define procedural due process.'"). "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).

Here, Ms. Misja's Fourteenth Amendment property interest derives from at least two state law sources. First, "[t]he Pennsylvania legislature has granted

6. Therefore, Ms. Misja's due process rights are not limited to the "agreed upon" process set forth in section 575(h).

professional employees a protected property interest in their jobs." Coreia v. Schuylkill Cnty. Area Vocational-Technical Sch. Auth., 241 Fed. App'x 47, 50 (3d Cir. 2007) (citing 24 P.S. § 11-1122). As a teacher—or "professional employe"—Ms. Misja has a recognized right to continued employment and, by extension, a constitutional right to procedural due process before her wages are impounded. See Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 578 (1972).

Second, and more specifically, section 575 allows union nonmembers to object "to the payment of fair share fees for bona fide religious grounds." 71 P.S. § 575(e)(2). Once the objection is verified as based on bona fide religious grounds—as Ms. Misja's was, Stips. ¶ 66—the nonmember has the right to "pay the equivalent of the fair share fee to a nonreligious charity" instead of paying the union. 71 P.S. § 575(h). The funds taken from Ms. Misja are no longer fair share fees and cannot legally belong to the PSEA. In fact, when she can finally send her money to a charitable organization, she will be entitled to report the contribution on her tax return.[7] See I.R.S., Pub. 17 (2015), Part Five, Chp. 24, available at https://www.irs.gov/publications/p17/ch24.html.

7. The PSEA appears to take the position that it will not only deduct and impound Ms. Misja's funds but will ultimately serve as the pass-through for Ms. Misja's charitable donations, effectively depriving her of the opportunity to deduct a charitable donation. PSEA Brief, at pp. 5-6. Such a position would be contrary to

In arguing that Ms. Misja has no property interest in her own income, the PSEA's false premise is that Ms. Misja's money actually belongs to the PSEA. See PSEA Brief, at pp. 15-16. However, the PSEA's reasoning quickly collapses on itself when one properly understands that section 575 allows for a religious objection to avoid paying a union at all. See, e.g., PSEA Brief, at p. 16 ("The only reason the money does not go directly to the union is because of Plaintiff's religious objection to providing any financial support to a labor union."). And, of course, Ms. Misja's religious objection has been accepted as bona fide. Stips. ¶ 66.

Pennsylvania Due Process

Finally, the PSEA fails to respond to Ms. Misja's claims with respect to Pennsylvania due process rights, which are both substantially coextensive with and more expansive than those conferred by the Fourteenth Amendment to the United States Constitution. Stone & Edwards Ins. Agency v. Dep't of Ins., 636 A.2d 293, 297 (Pa. Cmwlth. 1994). Again, by "participat[ing] in both the prosecutorial and adjudicatory aspects of a proceeding," the PSEA has also violated Ms. Misja's state constitutional due process rights. Id.

section 575, which requires that "the challenging nonmember shall pay the equivalent of the fair share fee to a nonreligious charity . . . ." (emphasis added).

Accordingly, this Court should determine that the due process accorded to Ms. Misja was insufficient, reject the PSEA's argument otherwise, and ultimately enjoin the PSEA's practice.

B. SECTION 575 DOES NOT CONTAIN THE TERM "REASONABLE ACCOMMODATION"

The PSEA attempts to distract this Court from its deficient process and viewpoint-based restrictions by turning section 575 into something it is not: a "reasonable accommodation" statute. The argument is irrelevant to section 575, which nowhere allows unions to merely accommodate religious objectors to union payments. Moreover, "reasonable accommodation" does not begin to address the underlying constitutional deficiencies in process and substance in this case.

Title VII and Section 575

States are free to—and often do—provide protections to employees that surpass those supplied by federal law. The Civil Rights Act, of which Title VII is a part, specifically allows for it. 42 U.S.C. § 2000h-4; see Baker v. John Morrell & Co., 266 F. Supp. 2d 909, 933 (N.D. Iowa 2003) ("[I]n enacting Title VII, Congress expressly intended that civil rights plaintiffs remain free to enforce their rights under state law because Title VII establishes a floor, not a ceiling, and states are free to grant more protection than federal law provides.").

Nowhere in section 575—or in case law interpreting section 575—do the words "reasonable accommodation" appear. The Pennsylvania General Assembly, through section 575, has provided greater protections to religious objectors to union payments than what is provided by Title VII, and did not merely require that a union act "reasonably" in directing religious objectors' money wherever the union wishes.

Even putting aside the language of section 575, it would be inappropriate to graft Title VII's reasonable accommodation language into section 575. Title VII's accommodation requirements and undue hardship considerations must be carefully implemented by the Equal Employment Opportunity Commission to be effective, see 29 C.F.R. § 1605.2,[8] and such oversight is simply not available in the context of section 575. In fact, the PSEA argues that religious objectors are not entitled to access an independent decisionmaker at all. PSEA Brief, at pp. 14-16.

Second, and relatedly, it would be inappropriate to graft reasonable accommodation principles into section 575 without also considering that sending

8. See also E.E.O.C. v. Aldi, Inc., 2009 WL 3183077, at *8 (W.D. Pa. Sept. 30, 2009) ("The reasonableness of an employer's attempt at accommodation cannot be determined in a vacuum. Instead, it must be determined on a case-by-case basis; what may be reasonable accommodation for one employee may not be reasonable for another.") (quoting Smith v. Pyro Mining Co., 827 F.2d 1081, 1085 (6th Cir. 1987)).

funds to a charity of Ms. Misja's choice would impose only a de minimis cost on the PSEA. See Webb v. City of Philadelphia, 562 F.3d 256, 259-60 (3d Cir. 2009) ("An accommodation constitutes an 'undue hardship' if it would impose more than a de minimis cost on the employer."). The PSEA cannot pick and choose what it imports from Title VII.

Finally, the PSEA does not propose to engage in accommodation approaching "reasonable." It adopts unprincipled policies that depend on ad hoc, subjective evaluations that invite discriminatory enforcement. Among the PSEA's "several criteria" for evaluating the acceptability of a religious objector's charity selection:

> 49. PSEA will not agree to a charity that may appear to be "non-religious," (as required by the statute) if it appears that the underlying principles or overarching mission of the selected entity are essentially congruent with or directly supportive of those of a religious entity. . . .
>
> 50. PSEA will not agree to a charity that is a political, "advocacy" or "partisan" organization with a mission or objective that is known to advance issues or advocate for policies that are directly antagonistic to the interests of PSEA/NEA/ or its local affiliates, or which conflict directly with the established policies of PSEA or NEA. . . .

Stips. ¶ 49-50; see also PSEA Brief, at p. 7.

Such policies are patently unreasonable and have been applied by the PSEA unreasonably. For example, many—if not all—charities could be said to have

"underlying principles" or an "overarching mission" that are "essentially congruent with or directly supportive of those of a religious entity." Consider the numerous charities that, like many religions, promote assistance for the needy. Stips. ¶ 49. And with respect the PSEA's policy against agreeing to any "antagonistic" or "conflict[ing]" organization, the PSEA could not even apply its vague policy; instead, the PSEA used the policy to rule out the National Rifle Association Foundation, even though the Foundation is a tax-exempt charitable organization and not the organization which the PSEA identified as being "antagonistic." Stips. ¶ 71.

Title VII and the First Amendment

Additionally, case law interpreting Title VII cannot justify the PSEA's discriminatory practice. This Court must reject the PSEA's argument to the contrary.

"Because an individual should be allowed to believe as he sees fit without coercion from the state, his First Amendment interests are implicated when the state forces him to contribute to the support of an ideological cause he opposes." Amidon v. Student Ass'n of State Univ. of N.Y. at Albany, 508 F.3d 94, 99 (2d Cir. 2007); see Galda v. Rutgers, 772 F.2d 1060, 1064 (3d Cir. 1985) ("[C]ompelling, as well as prohibiting 'contributions for political purposes works no less an

infringement' on constitutional rights.").[9] For that reason, a state actor cannot force support of a certain charitable organization. See Acevedo-Delgado v. Rivera, 292 F.3d 37, 42 (1st Cir. 2002) ("Here, there is no threshold compulsory association that has been sanctioned as a permissible burden on employees' free association rights . . . ."). Title VII cannot, as a matter of first principles, abrogate constitutional protections. See Marbury v. Madison, 5 U.S. 137, 180 (1803).

Neither does case law interpreting Title VII suggest that a public-sector union can safely discriminate on the basis of viewpoint. In fact, none of the cases cited by the PSEA even involve disagreement as to which charity the objector could send their money which might give occasion to viewpoint-based discrimination. Nottelson v. Smith Steel Workers D.A.L.U. 19806, AFL-CIO, 643 F.2d 445, 450 (7th Cir. 1981); McDaniel v. Essex Intern. Inc., 571 F.2d 338, 340-41 (6th Cir. 1978); O'Brien v. City of Springfield, 319 F. Supp. 2d 90, 98 (D. Mass. 2003).

The PSEA's practice unconstitutionally forces support of an organization without any compelling interest, and the PSEA cannot be saved by Title VII. The PSEA argues that it alone can determine when an organization too closely shares

9. "Article I, section 7 of the Pennsylvania Constitution 'provides protection for freedom of expression that is broader than the federal constitutional guarantee.' " Commonwealth v. State Bd. of Physical Therapy, 728 A.2d 340, 343-344 (Pa. 1999).

the purpose of a religious entity or "advance[s] issues or advocate[s] for policies that are directly antagonistic to [its] interests." PSEA Brief, at p. 7. But at the root, it is clear: the PSEA will block any funding if it simply does not like the politics of the charity; the "several criteria" are just a rationalization.

In sum, the PSEA's practices violate section 575, the United States Constitution, and the Pennsylvania Constitution. This Court should grant Ms. Misja's motion for summary judgment, deny the PSEA's cross-motion for summary judgment, and enjoin the PSEA's practice.

C. THE PSEA'S EXERCISE OF DUTIES SPECIFICALLY ASSIGNED TO THE "EXCLUSIVE REPRESENTATIVE" VIOLATES SECTION 575

Contrary to the PSEA's assertions, the PSEA violated section 575 by usurping the role of the "exclusive representative" in handling the religious objection process. The PSEA ignores the plain language of section 575 in the interests of its own administrative convenience.

It is hard to reason around the plain language of section 575(h), which specifically assigns certain duties only to the "exclusive representative" in the religious objection process:

> When a challenge is made under subsection (e)(2), the objector shall provide the exclusive representative with verification that the challenge is based on bona fide religious grounds. If the exclusive representative accepts

> the verification, the challenging nonmember shall pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative. If the exclusive representative rejects the verification because it is not based on bona fide religious grounds, the challenging nonmember may challenge that determination within forty (40) days from receipt of notification.

(Emphases added).

As the parties have stipulated—consistent with section 575(a)[10]—the PSEA is the "Statewide employe organization," while Ms. Misja's local union is the "exclusive representative." Stips. ¶¶ 8, 9. Therefore, the PSEA's assertion that Ms. Misja "has no legal right to deal only with her local associations" is out of step with the facts and with the text of section 575.

[10] Section 575(a) reads, in pertinent part,

> "Exclusive representative" shall mean the employe organization selected by the employes of a public employer to represent them for purposes of collective bargaining pursuant to the act of July 23, 1970 (P.L. 563, No. 195), known as the "Public Employe Relations Act."
> . . . .
> "Statewide employe organization" shall mean the Statewide affiliated parent organization of an exclusive representative, or an exclusive representative representing employes Statewide, and which is receiving nonmember fair share payments.

Again, the PSEA has injected itself into a process where, by law, it does not belong. This Court should grant Ms. Misja's motion for summary judgment and enjoin the PSEA's practice.

D. SECTION 575 IS UNCONSTITUTIONAL ON ITS FACE AND AS APPLIED

The PSEA attempts to divert this Court's attention away from the religious objection language in section 575 and toward largely irrelevant case law authorizing the collection of fair share fees. Again, the process provided to Ms. Misja falls short of what is due, and the substance of its practice constitutes impermissible viewpoint-based discrimination.

In Abood v. Detroit Bd. of Educ., 431 U.S. 209, 225-26 (1977), the United States Supreme Court determined that unions could force nonmembers to pay agency fees, despite the inherent First Amendment violation, based on the overriding state interest in achieving "labor peace" and preventing "free riders." But the Court in Abood did not minimize the First Amendment problem:

> Because making a contribution enables like-minded persons to pool their resources in furtherance of common political goals, limitations upon the freedom to contribute implicate fundamental First Amendment interests[.] The fact that [nonunion members] are compelled to make, rather than prohibited from making, contributions for political purposes works no less an infringement of their constitutional rights.

Id. at 234.

Here, the First Amendment problem remains—but without the overriding state interests in labor peace or prevention of free riders. See Acevedo-Delgado, 292 F.3d at 42. And absent those overriding state interests, the default rule is in full operation: "[C]ompelling, as well as prohibiting 'contributions for political purposes works no less an infringement' on constitutional rights." Galda, 772 F.2d at 1064; Harris v. Quinn, 134 S. Ct. 2618, 2639 (2014) ("Because Abood is not controlling, we must analyze the constitutionality of the payments compelled by [the PSEA] under generally applicable First Amendment standards.").

Apparently, the PSEA believes that it can tell religious objectors where to send their money, just as it is permitted to do with non-religious objectors under Abood. But neither the First Amendment nor section 575 itself allow a union to force religious objectors to pay a charity they do not wish to support. And if this Court should find the PSEA's application of the statute to be correct, then the Court must declare the statute itself unconstitutional on its face under the First and Fourteenth Amendment to the United States Constitution and Article I, Sections 1, 7 and 11 of the Pennsylvania Constitution.

V. CONCLUSION

For the foregoing reasons, this Court should grant Ms. Misja's motion for summary judgment, deny the PSEA's cross-motion for summary judgment, declare the PSEA's application of section 575 unconstitutional or, alternatively, declare section 575 partially facially unconstitutional, and permanently enjoin the PSEA's practice.

Respectfully submitted,

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CERTIFICATION OF COMPLIANCE

I hereby certify that this brief complies with the word-count limit described in Local Rule 7.8(b)(2). According to the word count feature of the word-processing system used to prepare the brief, it contains 4,507 words.

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