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)

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Plaintiff Linda Misja ("Ms. Misja") is a Pennsylvania public high school teacher who statutorily objected on religious grounds to paying Defendant Pennsylvania State Education Association ("PSEA") a "fair share fee,"[1] the amount of which is nevertheless collected from her paycheck. See 71 P.S. § 575 ("section 575"). If not for her objection, Ms. Misja would be forced to surrender her funds to support the PSEA, an organization whose philosophy and practices are contrary to her sincerely-held religious convictions.

Ms. Misja entered her religious objection nearly four years ago. And in accordance with the governing statute, the PSEA reviewed Ms. Misja's objection and agreed that her objection to payment of the fair share fee was based on bona fide religious grounds. As a result, the PSEA is no longer entitled to Ms. Misja's money; instead, it must be sent to a "nonreligious charity agreed upon by the nonmember and the exclusive representative." 71 P.S. § 575(h).

Yet the PSEA has frustrated Ms. Misja's attempts to send her money to a nonreligious charity and subjected Ms. Misja to a prolonged charity selection

1. The "fair share fee" is statutorily defined as "the regular membership dues required of members of the exclusive representative less the cost for the previous fiscal year of its activities or undertakings which were not reasonably employed to implement or effectuate the duties of the employe organization as exclusive representative." 71 P.S. § 575(a).

process in an attempt to impose its ideology on her. The PSEA even denied Ms. Misja's request for arbitration of the disputed choice of charity before an independent decisionmaker—and recently urged this Court to dismiss the case—thereby insulating its practice from review of any kind. In fact, the PSEA asserts a right to block indefinitely[2] Ms. Misja's funding of a charity whenever the union unilaterally determines that the charity "advance[s] causes antithetical" to the PSEA's "strongly held principles."[3] Meanwhile, the PSEA continues each month to impound Ms. Misja's funds, withdrawn from her paycheck, and to watch those funds accrue in a PSEA-controlled escrow account, where they sit unused and unapplied to a qualified charity.

Because the PSEA's practice violates Ms. Misja's right to due process, her freedoms of speech, association, and expression, and her rights under section 575, this Court should grant the pending motion for summary judgment, render declaratory judgment in Ms. Misja's favor, and enjoin the PSEA's continuing practice. Alternatively, if the PSEA's implementation of section 575 is held to be

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2. Reply Brief of the Defendant Pennsylvania State Education Association in Support of its Motion to Dismiss (Doc. 12), at p. 12 (quoting Sorrell v. American Fed'n of State, County & Mun. Employees, 52 Fed. App'x 285, 287 (7th Cir. 2002)). For reasons discussed infra, Sorrell is inapplicable and actually demonstrates Ms. Misja's entitlement to judgment in this matter.

3. Id. at p. 1.

in accordance with the language of the statute, the statute itself must be struck down in part.

II. PROCEDURAL HISTORY

On June 18, 2015, Ms. Misja filed a Complaint for Declaratory and Injunctive Relief ("Complaint") (Doc. 1). The PSEA responded on August 18, 2015, with a motion to dismiss (Doc. 5) and, on September 1, 2015, filed a supporting brief (Doc. 10).

On September 15, 2015, Ms. Misja filed a brief in response to the PSEA's motion to dismiss (Doc. 11), to which the PSEA filed a reply on October 2, 2015 (Doc. 12).

On October 19, 2015, Ms. Misja filed the instant motion for summary judgment (Doc. 13).

III. STATEMENT OF FACTS

Ms. Misja's religious objection to payment of the fair share fee was entered almost four years ago, immediately after the Bellefonte Area Education Association ("BAEA")[4] bargained for an agency shop agreement.[5] Six months

4. The BAEA is the local affiliate of the PSEA.

5. An agency shop agreement dictates that, "[w]hile employees in the unit are not required to join the union, they must nevertheless pay the union an annual fee to cover the cost of union services related to collective bargaining (so-called chargeable expenses)." Knox v. Service Employees Int'l Union, Local 1000, 567 U.S. __, 132 S.Ct. 2277, 2284 (2012).

later, on July 23, 2012, the PSEA verified Ms. Misja's religious objection as bona fide, pursuant to section 575(h).[6] The PSEA began impounding a portion of her paycheck—the portion that would have been withdrawn in satisfaction of the "fair share fee"—in an interest-bearing escrow account.

Under Pennsylvania law, as a verified religious objector, 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). Therefore, after the PSEA verified Ms. Misja's objection, Ms. Misja requested that her money be donated to a pregnancy center, People Concerned for the Unborn Child ("PCUC"). However, the PSEA rejected Ms. Misja's choice of PCUC on the stated grounds that sending the funds at issue to PCUC "would be tantamount to sending your fees to a charity that furthers your religious beliefs, which is contrary to neutral intent and requirements of [section 575]."[7] Complaint, at Exh. C. The PSEA stated that it would instead approve "a pregnancy center that counsels women on all options." Id.

6. The PSEA treated her objection as continuing when she moved to Apollo-Ridge High School in 2014, where she is represented by the Apollo-Ridge Education Association.

7. The PSEA apparently fails to recognize that a pro-life pregnancy organization can be secular in nature and purpose.

Ms. Misja responded by selecting an alternative—though not preferred—choice of charity, the National Rifle Association Foundation ("NRA Foundation"). Yet the PSEA also rejected the NRA Foundation, this time stating—without legal justification—that "PSEA has a policy of not agreeing to the charitable subsidiaries of political organizations." Id. Yet the PSEA had already offered to agree to send Ms. Misja's money to various other organizations that publicly disclose substantial political activity. Id. at 53 & Exh. F-H.

Ms. Misja requested arbitration to resolve the charity selection dispute, but the PSEA flatly rejected her request, stating:

> [T]o reiterate, you do not have a right under the Pennsylvania Fair Share Fee Law to arbitrate our denial of the [PCUC] or [the NRA Foundation] charities to receive your 2011-12, 2012-13, and 2013-14 fair share fees.

Id. at ¶ 27 & Exh. C.

Now, almost four years after Ms. Misja religiously objected, the PSEA continues to receive and impound Ms. Misja's money in an interest-bearing escrow account. There is no end in sight to PSEA's viewpoint-driven practice of blocking Ms. Misja's contribution to a nonreligious charity under section 575.

IV. 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 THE PSEA VIOLATES MS. MISJA'S FREE SPEECH, ASSOCIATION, AND EXPRESSION RIGHTS BY DISCRIMINATING AMONG MS. MISJA'S CHARITY SELECTIONS ON THE BASIS OF VIEWPOINT

C. WHETHER THE PSEA'S ARBITRARY AND CAPRICIOUS, VIEWPOINT-BASED PRACTICE OF REJECTING CHARITY SELECTIONS AND PERPETUATING THE CHARITY SELECTION PROCESS INDEFINITELY VIOLATES SECTION 575

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

E. WHETHER SECTION 575 IS FACIALLY UNCONSTITUTIONAL, WHERE IT FAILS TO SET FORTH A FAIR AND EXPEDITIOUS PROCESS, NOTICE, AND OPPORTUNITY TO BE HEARD, OR ACCESS TO AN INDEPENDENT DECISIONMAKER

V. 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

The religious objection process provided by the PSEA falls well short of that due to Ms. Misja under the First and Fourteenth Amendments to the United States Constitution and the Pennsylvania Constitution. At the very least, Ms. Misja should have been provided—but was not—with a fair and expeditious

process, notice, and opportunity to be heard, and access to an independent decisionmaker.[8]

The Fourteenth Amendment guarantees due process to citizens in the hearing and determination of disputes with state actors over deprivations of liberty or property. "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).

In Chicago Teachers Union, Local No. 1, AFT, AFL-CIO v. Hudson, 475 U.S. 292 (1986), the United States Supreme Court considered a due process challenge to a public sector union's practice of internally deciding—and obstructing—challenges to the propriety of nonmember fair share fees. The Court ultimately struck down the union's practice as deficient, stating,

> [T]he original procedure [adopted by the union] was [ ] defective because it did not provide for a reasonably prompt decision by an impartial decisionmaker. Although we have not so specified in the past, we now conclude that such a requirement is necessary. The nonunion employee, whose First Amendment rights are affected by the agency shop itself and who bears the

8. The PSEA acts under the color of state law in exercising authority under section 575. See, e.g., Otto v. Pennsylvania State Educ. Ass'n-NEA, 107 F.Supp.2d 615, 619 (M.D. Pa. 2000), aff'd in part, rev'd in part on other grounds, 330 F.3d 125 (3d Cir. 2003).

> burden of objecting, is entitled to have his objections addressed in an expeditious, fair, and objective manner.[20]
>
> > FN.20. We reject the Union's suggestion that the availability of ordinary judicial remedies is sufficient. This contention misses the point. Since 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. We are considering here the procedural adequacy of the agency shop arrangement itself; we presume that the courts remain available as the ultimate protectors of constitutional rights.
> > . . . .

Id. at 307 (footnote omitted) (citation omitted) (emphases added).

Here, the PSEA's practice suffers from the same obvious defects condemned in Hudson. The PSEA's practice is neither "expeditious," "fair," nor "objective." Ms. Misja's religious objection was filed almost four years ago, and the PSEA responded with a prolonged, ad hoc, arbitrary, viewpoint-based attempt to censor and control Ms. Misja's money, even denying her an opportunity for hearing of the dispute by an independent decisionmaker.[9] The PSEA's practice

9. Although Ms. Misja entered a religious objection, not the objection at issue in Hudson, she too is subject to agency shop provisions that "significantly impinge" on her First Amendment rights and bears the burden of objecting to imposition of the fair share fee. Hudson, 475 U.S. at 307 n.20. But for section

fails to sufficiently minimize—in fact, it exacerbates—the First Amendment violation inherent in authorizing the PSEA to exact funds from her paycheck, and it fails to facilitate Ms. Misja's ability to protect her rights as a nonunion employee.

More generally, the PSEA has failed to provide Ms. Misja with notice and a meaningful opportunity to be heard as required under the Fourteenth Amendment, even while depriving her of her property. It is undisputed that Ms. Misja was not provided notice of any written policies regarding the process or standards applied by the PSEA in addressing religious objectors' charity selections. And again, the PSEA denied Ms. Misja's request for access to an independent decisionmaker.

Beyond federal constitutional concerns, the PSEA's practice violates Ms. Misja's rights under the Pennsylvania Constitution, which grants even greater due process protections. In Pennsylvania, there must be a strict separation of the decisionmaking function from the interested party, so as to ensure hearing by a truly independent decisionmaker:

> While the rights protected under [the Pennsylvania Constitution] and the rights guaranteed under the

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575—and the PSEA's insistence on agency shop—Ms. Misja would be free to remain a nonmember, with no obligation to direct her money to a nonreligious charity.

> Fourteenth Amendment are substantially coextensive, the Pennsylvania due process rights are more expansive in that, unlike under the Fourteenth Amendment, a violation of due process occurs, even if no prejudice is shown, when the same entity or individual participates in both the prosecutorial and adjudicatory aspects of a proceeding.

Stone & Edwards Ins. Agency v. Dep't of Ins., 636 A.2d 293, 297 (Pa. Cmwlth. 1994).

The PSEA's actions clearly constitute a deprivation of this constitutionally-mandated protection. By exercising both the power to impose its viewpoint on religious objectors and to prevent adjudications of its own decisions, the PSEA "participates in both the prosecutorial and adjudicatory aspects of a proceeding" contrary to the Pennsylvania Constitution. Stone, 636 A.2d at 297.

However, the PSEA has instituted—and now defends—a "process" that could continue ad infinitum, without resolution or resort to an outside decisionmaker. In fact, the PSEA has argued to this Court that there are no due process issues whatsoever and that its irrational handling of Ms. Misja's religious objection should be allowed to continue "indefinitely." Reply Brief in Support of its Motion to Dismiss (Doc. 12), pp. 11-12 (quoting Sorrell v. American Fed'n of State, County & Mun. Employees, 52 F. App'x 285, 287 (7th Cir. 2002)).

The PSEA's reliance on Sorrell for such a proposition is misplaced. In Sorrell, a public employee, Sorrell, religiously objected to payment of fair share fees under Illinois law. 52 Fed. App'x at 286. She notified the union, which sent her a "list of approved charities" almost one year later, after she had filed an unfair labor practice charge. Id. Upon receipt of the list, Sorrell selected a charity, and the union sent her money to the agreed upon charity about six months later. Id. Sorrell filed suit, alleging, among other things, a violation of her Fourteenth Amendment right to due process by "delay[ing] donating her fair share fees and caus[ing] her to incur transaction costs to force the donation." Id. at 287.

Sorrell is distinguishable and actually underscores the need for a declaration in this case, in several respects. First, Sorrell involved an Illinois law that specifically provided for a resolution to the charity selection process. See 5 Ill. Comp. Stat. 315/6(g) (". . . . If the affected employees and the bargaining representative are unable to reach an agreement on the matter, the Board may establish an approved list of charitable organizations to which such payments may be made."). Second, whereas the public employee in Sorrell merely complained of a delay in the process, Ms. Misja has experienced a structurally defective process without any resolution, by the PSEA's design. Finally, unlike Ms. Misja,

the public employee in Sorrell never disagreed with the union as to the recipient charity. The union in Sorrell was not using delay tactics to violate the nonmember's federal and state constitutional rights to speak and associate.

Accordingly, this Court must declare that the PSEA's practice violates Ms. Misja's due process rights and enjoin it is further operation.

B. THE PSEA VIOLATES MS. MISJA'S FREE SPEECH, ASSOCIATION, AND EXPRESSION RIGHTS BY DISCRIMINATING AMONG MS. MISJA'S CHARITY SELECTIONS ON THE BASIS OF VIEWPOINT

The PSEA openly admits that it uses the charity selection process as a means to impose its viewpoint on Ms. Misja.[10] This Court should declare the PSEA's practice unconstitutional and enjoin its further operation.

"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

10. "What PSEA has not and will not do is permit the plaintiff to turn her religious objector status, a statutory shield to insure her religious freedom, into a sword—used to fund 'charities' that advance causes antithetical to equally strongly held principles of PSEA." Reply Brief of the Defendant Pennsylvania State Education Association in Support of its Motion to Dismiss (Doc. 12), at p. 1.

infringement' on constitutional rights."). 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) (emphasis added); see, e.g., DePaul v. Commonwealth, 969 A.2d 536, 591 (Pa. 2009); Pap's A.M. v. City of Erie, 812 A.2d 591, 605 (Pa. 2002).

These First Amendment principles remain in the context of government-compelled union payments:

> [C]ontributing to an organization for the purpose of spreading a political message is protected by the First Amendment. 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.

Abood v. Detroit Bd. of Ed., 431 U.S. 209, 234 (1977) (internal punctuation, citations and footnote omitted) (emphasis added). Still, forced union fees are permitted because the United States Supreme Court decided that forced financial support of "collective bargaining, contract administration and grievance

adjustment" may be justified by overriding state interests in "labor peace" and prevention of "free riders." Id. at 225-26.

But no such compelling interest justifies forcing support of a certain charitable organization. See Acevedo-Delgado v. Rivera, 292 F.3d 37, 42 (1st Cir. 2002). In Acevedo-Delgado, the government of Puerto Rico, for which the plaintiff Ms. Acevedo-Delgado worked, attempted to raise funds for a charity-run school voucher system by compelling public employees to contribute. Id. at 29-30. The First Circuit held that such compelled payments were without constitutional justification:

> In the Abood/Keller line of cases, the issue of coerced contributions arose in the context of a mandated association—a union or integrated bar—that served significant state interests and thus was deemed a permissible intrusion on the First Amendment right not to associate. After concluding that some compromise of an employee's First Amendment rights was justified in both settings, the Court confronted the difficult question of how far the intrusion could extend. The Lehnert criteria represent the Court's effort to limit the scope of the intrusion to a narrow category of assessments that are linked closely to the state's asserted interest and are not substantially more burdensome to First Amendment rights than the mandated association itself.
>
> Here, there is no threshold compulsory association that has been sanctioned as a permissible burden on employees' free association rights . . . .

Id. at 41-42 (emphasis added).

Here, forcing Ms. Misja to send her money to a charity against her will cannot be justified by a compelling state interest.[11] The justifications for First Amendment impingement articulated in Abood—"labor peace" or prevention of "free-riders"—are not present in this context, first, because the General Assembly has allowed religious objectors to opt out of paying for the costs of collective bargaining.[12] And second, bluntly, religious objectors are not free-riders. See Nottelson v. Smith Steel Workers, D.A.L.U. 19806, AFL-CIO, 643 F.2d 445, 451 (7th Cir. 1981) ("Because a religious objector under a charity-substitute accommodation bears the same financial burden as his co-workers, he is not, as the Union suggests, a 'free-rider' seeking something for nothing . . . .").

In any event, the PSEA is not free to engage in "pernicious" viewpoint-based restrictions that "suggest[ ] an attempt to give one side of a debatable public question an advantage in expressing its views to the people." First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 785-86 (1978). Yet that is exactly what is happening here: the PSEA, in briefing on its Motion to Dismiss, boldly argues that

11. Although there is a conceivable interest in ensuring that religious objections are legitimate, Ms. Misja's objection has already been "accepted" by the PSEA.

12. Conversely, it is difficult to conceive of a scenario under which the PSEA's standoff with Ms. Misja would achieve labor peace.

it can block Ms. Misja's funding whenever the union single-handedly determines that the charity "advance[s] causes antithetical" to the PSEA's "strongly held principles."[13]

Applying that operative principle, the PSEA refused to allow Ms. Misja to send her money to a pregnancy center because it does not, in the PSEA's view, "counsel[ ] women on all options." Complaint, at Exh. C. And although the NRA Foundation, Ms. Misja's second choice, appears to do work acceptable to the PSEA—the PSEA would have agreed to other gun-safety organizations—the PSEA nevertheless rejected it because of its tie to a "political" organization, the National Rifle Association. Id. The truth, however, is that the PSEA simply does not like the politics of the National Rifle Association; not only would the PSEA fund another gun-safety organization, the PSEA would allow funding of at least ten other charities that spend substantial amounts on political activities. Id. at ¶ 53 & Exhs. F-H.

Accordingly, the PSEA infringed upon Ms. Misja's rights to freedom of speech, association, and expression under the United States and Pennsylvania Constitutions. As a result, this Court must grant the Motion and enjoin the PSEA's practice.

13. Reply Brief of the Defendant Pennsylvania State Education Association in Support of its Motion to Dismiss (Doc. 12), at p. 1.

C. THE PSEA'S ARBITRARY AND CAPRICIOUS, VIEWPOINT-BASED PRACTICE OF REJECTING CHARITY SELECTIONS AND INDEFINITELY PROLONGING THE CHARITY SELECTION PROCESS VIOLATES SECTION 575

The PSEA's practice also violates the plain language of section 575. Accordingly, this Court should declare the practice illegal under state law and enjoin its further maintenance.

"When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b); Chanceford Aviation Props., L.L.P. v. Chanceford Twp. Bd. of Supervisors, 923 A.2d 1099, 1104 (Pa. 2007) ("It is only when the statute's words are not explicit that the legislature's intent may be ascertained by considering the factors provided in 1 Pa.C.S. § 1921(c).").

Section 575(h) provides, in part:

> [T]he challenging nonmember shall pay the equivalent of the fair share fee to a nonreligious charity agreed upon by the nonmember and the exclusive representative.

Black's Law Dictionary (10th ed. 2014) defines "charity" first as a "charitable organization," which is defined using language from and a reference to section 501(c)(3) of the Internal Revenue Code. Black's Law Dictionary does not define "nonreligious" or "religious," but it defines "religious corporation" as

"[a] corporation created to carry out some ecclesiastical or religious purpose." Therefore, in specifying that religious objector funds go to a "nonreligious charity," the Pennsylvania Legislature plainly permitted that any 501(c)(3) organization or its functional equivalent—including those with lawful "political" activities and those with which the PSEA disagrees—may serve as an alternative to payment of fair share fees as long as it was not created to carry out an ecclesiastical or religious purpose.

As for the "agreed upon" language in the statute, mechanical application would produce either absurd results or an unconstitutional violation of due process. See 1 Pa. C.S. 1922(a)(1), (3) (directing courts interpreting Pennsylvania statutes to assume, inter alia, "[t]hat the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable," "to violate the Constitution of the United States or of this Commonwealth" or "to favor the public interest as against any private interest"). If the term "agree[ment]" permits unions to act as ideological gatekeepers, disputes like this may continue indefinitely, without statutory guidance on process or substance. Such delay may actually violate the statute itself, which requires the nonmember to make payment to a substitute charity, presumably at some point during their career. 71

P.S. § 575(h) ("[T]he challenging nonmember shall pay the equivalent of the fair share fee . . . .") (emphasis added).

Moreover, the context indicates that the "agree[ment]" is the conclusion, not the perpetuation, of a religious objection. The term is unaccompanied in section 575(h) by the procedural standards or external dispute mechanisms expected to accompany a negotiation. Absent, for instance, are the procedural standards and dispute resolution options described in other portions of the statute for disputes between the nonmember and the union.[14]

The PSEA's policy is also inconsistent with the intent behind section 575. The protection for religious objectors was added in 1988 as a countermeasure to the law allowing agency shop agreements. See P.L. 493, No. 84, § 2 (Pa. S.B. 291 (Reg. Sess. 1987-88)). The idea was not to give the unions another avenue for coercing payments from religious objectors; the religious objection protection was included to ensure that public employees would not have to fund activities

14. For disputes as to whether a religious objection is "bona fide," section 575(h) gives the nonmember 40 days to challenge the union, and section 575(i) provides for arbitration. Meanwhile, for challenges to the propriety of the fair share fee, section 575(d) require a "full and fair procedure . . . that provides nonmembers, by way of annual notice, with sufficient information to gauge the propriety of the annual fee and that responds to challenges" and provides for "an impartial hearing before an arbitrator."

that violate their own consciences.[15] It makes little sense to grant sweeping veto rights to the union over the selection of a charity when the statutory text plainly evidences concern over the legitimacy of the objection, not the name of the charity.

Moreover, to hold otherwise—that is, to hold that the PSEA may reject a nonreligious charity for any reason, with no temporal restrictions at all—is to introduce significant practical problems into section 575, in addition to any constitutional infirmities. See 1 Pa.C.S. § 1922 ("[T]he General Assembly does not intend a result that is absurd, impossible of execution or unreasonable."). The law cannot be construed so as to let this dispute last forever.

This Court should determine that section 575 does not—expressly or impliedly—suggest that the nonmember is to proffer charity after charity, with the union's only responsibility to reject these choices until it finds one that comports with its internal "policies."

15. See 37 Pa. House L.J. 702 (May 26, 1987) (Rep. Cowell, speaking in favor of the legislation as passed, remarked "[A] constitutional procedure must be established to protect the rights of the employee who would be subject to the fair share fee but who may in fact have some objections for any of those dollars being used for . . . religious purposes.").

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

Apart from the constitutional and statutory violations of the PSEA's policy, this Court should determine that the PSEA violated section 575 by usurping the role of the "exclusive representative" in handling the religious objection process.

Section 575(a) distinguishes between an "exclusive representative" and a "statewide employe organization":

> "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.

Section 575(h) 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).

Here, Ms. Misja's local exclusive representative—the Bellefonte Area Education Association or the Apollo-Ridge Education Association—should have been handling Ms. Misja's religious objection. The local unions are in the best position to assess Ms. Misja's sincerity and will be directly accountable to those in the school where Ms. Misja works.

The PSEA has injected itself into a process where by law it does not belong. This Court could (and in the absence of other basis should) grant Ms. Misja's motion and enjoin the PSEA's practice simply on this statutory basis alone.

E. IF THE PSEA'S PRACTICE IS HELD TO BE IN ACCORDANCE WITH SECTION 575, SECTION 575 IS FACIALLY UNCONSTITUTIONAL BECAUSE IT FAILS TO SET FORTH A FAIR AND EXPEDITIOUS PROCESS, NOTICE, AN OPPORTUNITY TO BE HEARD, AND ACCESS TO AN INDEPENDENT DECISIONMAKER

As explained supra, the process provided to Ms. Misja was neither fair nor expeditious and failed to include notice, an opportunity to be heard, and access to an independent decisionmaker. 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.

VI. CONCLUSION

Accordingly, this Court should grant Ms. Misja's 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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November 2, 2015 By: _____

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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 4,966 words.

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PROOF OF SERVICE

The undersigned hereby certifies that a copy of this Brief in Support of Motion for Summary Judgment has on this date been served on Defendant as follows:

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