

**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)

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**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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Plaintiff Linda Misja ("Ms. Misja"), by and through her counsel, the Fairness Center, moves for summary judgment pursuant to Federal Rule of Civil Procedure 56(c) and, in support, avers the following uncontested facts:

1. This action challenges Defendant Pennsylvania State Education Association's ("PSEA's") illegal and unconstitutional practice of perpetuating the charity selection process set forth in title 71, section 575 ("section 575"), of the Pennsylvania Statutes and placing viewpoint-based restrictions on the use of funds withheld from Ms. Misja's paycheck, contrary to her rights of free speech, free association, and due process guaranteed under the First and Fourteenth

Amendments to the United States Constitution and Article I, sections 1, 7, 11, and 26 of the Pennsylvania Constitution. Ms. Misja also challenges the PSEA's practice as contrary to section 575.

2. Ms. Misja seeks a declaration from this Court that the PSEA has violated her constitutional and statutory rights, and she seeks a permanent injunction against the continued violation of those rights. Alternatively, she seeks a declaration that section 575(h) is facially unconstitutional in part. Complaint for Declaratory and Injunctive Relief ("Complaint") (Doc. 1), at ¶¶ 30-86.

3. From 2006-2014, Ms. Misja was a teacher at Bellefonte Area High School in Centre County. Id. at ¶ 4.

4. While employed at Bellefonte Area High School she declined to become a member of the PSEA<sup>1</sup> and its local affiliate and exclusive representative, the Bellefonte Area Education Association ("BAEA").<sup>2</sup> Id. at ¶ 9.

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1. The PSEA is a "statewide employe organization," as defined in section 575(a). Complaint, at ¶¶ 5, 74.

2. The BAEA is an "exclusive representative," as defined in section 575(a). Id. at ¶ 75.

5. In 2011, the BAEA bargained with Bellefonte Area School District to compel nonmembers to pay a fair share fee, beginning in January 2012.<sup>3</sup> Id. at ¶¶ 11-12 & Exh. A.

6. In January 2012, after the PSEA notified Ms. Misja that it would compel fair share fees, Ms. Misja filed a timely objection to payment of fair share fees on religious grounds in accordance with section 575(h). Id. at ¶ 14.

7. Pursuant to section 575(h), on July 23, 2012, the PSEA “accepted” (or “verified”) Ms. Misja’s religious objection to payment of fair share fees. Id. at ¶ 16 & Exh. B.

8. On February 18, 2013, Ms. Misja requested that her money go to the organization People Concerned for the Unborn Child (“PCUC”). Id. at ¶ 17.

9. PCUC is not a religious organization. Id. at ¶ 18.

10. 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 the Pennsylvania Fair Share Fee Law.” Id. at ¶ 19 & Exh. C.

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3. Pennsylvania law allows unions to bargain for contractual provisions that compel nonmembers to pay a “fair share fee” to the union, an arrangement commonly referred to as “agency shop.” 71 P.S. § 575(b); see Knox v. Serv. Emps. Int’l Union, Local 1000, 567 U.S. \_\_\_, 132 S.Ct. 2277, 2284 (2012).

11. The PSEA offered to approve “a pregnancy center that counsels women on all options.” Id. at ¶ 20 & Exh. C.

12. Subsequently, Ms. Misja by undated letter informed the PSEA of an alternative—though not her preferred—choice of charity, the National Rifle Association Foundation (“NRA Foundation”). Id. at ¶ 21 & Exh. D.

13. The NRA Foundation is not a religious organization. Id. at ¶ 22.

14. In January 2014, Ms. Misja began teaching at Apollo-Ridge High School in Armstrong County. Id. at ¶¶ 4, 24.

15. The PSEA’s local affiliate and Ms. Misja’s exclusive representative at Apollo-Ridge, the Apollo-Ridge Education Association (“AREA”),<sup>4</sup> had also already bargained to force fair share fees, to which Ms. Misja had a continuous religious objection under section 575. Id. at ¶ 24 & Exh. E.

16. On May 6, 2014, the PSEA rejected the NRA Foundation, stating, “PSEA has a policy of not agreeing to the charitable subsidiaries of political organizations.” Id. at ¶ 25 & Exh. C.

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4. The AREA is an “exclusive representative,” as defined in section 575(a). Id. at ¶ 75.

17. The PSEA offered to accept a charity that offered “educational programs promoting school safety, hunter safety, and self-defense” but, apparently, without ties to a “political” organization. Id. at ¶ 26 & Exh. C.

18. On May 8, 2012, the PSEA provided a list to Ms. Misja of several charities to which the funds at issue could be sent without objection from the PSEA:

Alzheimer’s Association	Cystic Fibrosis Foundation
American Cancer Society	Make-A-Wish Foundation
American Diabetes Association	March of Dimes
American Heart Association	Muscular Dystrophy Association
American Red Cross	Special Olympics

Id. at ¶ 53a & Exh. F.

19. However, these suggested organizations spent the corresponding amounts directly on “lobbying” in 2013 (or from 2013-14, as documented) according to each organization’s IRS Form 990:

Alzheimer’s Association: \$1,844,797
American Cancer Society: \$17,056,480
American Diabetes Association: \$1,380,997
American Heart Association: \$3,258,509
American Red Cross: \$369,706
Cystic Fibrosis Foundation: \$561,245
March of Dimes: \$2,090,509
Muscular Dystrophy Association: \$333,447
Special Olympics: \$91,200

Id. at ¶ 53b & Exh. G.

20. In short, although the PSEA has rejected the NRA Foundation as a charitable subsidiary of a political organization, it nevertheless would allow payment to any of the above charities which self-report substantial political lobbying.

21. Similarly, while the PSEA rejects Ms. Misja's direction of her funds to PCUC as furthering a religious belief, PSEA appears not to object to the direction of her money to the Planned Parenthood Federation of America, Inc.—which operates pregnancy centers that counsel women on “all options”—even though it spent \$689,416 on “lobbying” from July 2013 to June 2014. Id. at ¶ 53c & Exh. H.

22. Also in her undated letter to the PSEA, Ms. Misja requested arbitration to resolve the disagreement over the charity selection. Id. at ¶ 23 & Exh. D.

23. The PSEA flatly rejected Ms. Misja's request for arbitration, 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.

24. From 2011 to date, the PSEA has continuously received—as automatic deductions from Ms. Misja's paycheck—a portion of Ms. Misja's earned income, which the PSEA has held in escrow now for years. Id. at ¶ 28.

25. From 2011 to date, the PSEA and Ms. Misja have not been able to come to agreement on a destination for the funds at issue. Id. at ¶¶ 19, 25, 28.

26. The PSEA has not provided Ms. Misja with notice of any written policies regarding the process or standards applied by the PSEA in addressing religious objectors' charity selections. Id. at ¶ 36.

27. The PSEA perpetuates the charity selection process indefinitely, imposes viewpoint-based restrictions on the charities to which Ms. Misja's funds can be directed, arbitrarily and capriciously allows payment to some organizations which spend substantial sums on political lobbying while prohibiting payments to others, has provided no rational basis to justify its discrimination against certain charities while approving of others, and refused access to a process by which a dispute between a nonmember teacher and the PSEA can be ruled upon.

28. The PSEA's practice violates Ms. Misja's First and Fourteenth Amendment rights to speech, association, and due process, as well as Ms. Misja's Fourteenth Amendment right to due process.

29. The PSEA's practice violates section 575.

30. In the alternative—that is, if section 575 actually sanctions the PSEA's practice—the statute itself is facially unconstitutional in part by conferring upon organizations such as the PSEA the right to impose unconstitutional restrictions on

teachers' constitutional rights in the direction of their funds—money which they themselves have earned and which has been taken out of their paychecks.

31. The PSEA's practice must be declared contrary to the United States Constitution, the Pennsylvania Constitution, and Pennsylvania Statutes and permanently enjoined.

WHEREFORE, Ms. Misja respectfully requests that this Court enter summary judgment in her favor and against defendant on all counts stated in the complaint.

Respectfully submitted,

THE FAIRNESS CENTER

Date: October 19, 2015

By:



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**CERTIFICATION OF NONCONCURRENCE**

The undersigned certifies that he sought concurrence in this Motion for Summary Judgment from the PSEA and that concurrence was denied.

Date: October 19, 2015

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**PROOF OF SERVICE**

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

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