

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

TAMMY C. WESSNER,

Plaintiff,

v.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
COUNCIL 13; DAVID R. FILLMAN, in his
official capacity as Executive Director of
American Federation of State, County and
Municipal Employees, Council 13;
COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF HUMAN SERVICES;
TERESA D. MILLER, in her official capacity
as Secretary of the Pennsylvania
Department of Human Services; THOMAS
W. WOLF, in his official capacity as
Governor of the Commonwealth of
Pennsylvania; MICHAEL NEWSOME, in his
official capacity as Secretary of the
Pennsylvania Office of Administration;
ANNA MARIA KIEHL, in her official
capacities as Chief Accounting Officer for
the Commonwealth of Pennsylvania and
Deputy Secretary for the Office of
Comptroller Operations,

Defendants.

Case No. _____

(Hon. _____)

COMPLAINT

--ELECTRONICALLY FILED--

AND NOW comes Plaintiff Tammy C. Wessner, by and through her undersigned attorneys, and states the following claim for relief against Defendants

American Federation of State, County and Municipal Employees, Council 13 (“Council 13”); David R. Fillman, Executive Director of Council 13; Commonwealth of Pennsylvania, Department of Human Services; Teresa D. Miller, in her official capacity as the Secretary of the Pennsylvania Department of Human Services; Thomas W. Wolf, in his official capacity as Governor of the Commonwealth of Pennsylvania; Michael Newsome, in his official capacity as Secretary of the Pennsylvania Office of Administration; and Anna Maria Kiehl, in her official capacities as the Chief Accounting Officer for the Commonwealth of Pennsylvania and Deputy Secretary for the Office of Comptroller Operations, and avers as follows:

SUMMARY OF THE CASE

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for permanent injunctive relief, declaratory relief, and monetary relief, to redress and to prevent the deprivation of rights, privileges, and/or immunities under the First and Fourteenth Amendments to the United States Constitution caused by statutes and Defendants’ contracts, policies, and practices that prohibit Council 13 members from resigning from the union except during one 15-day period over the term of a relevant collective bargaining agreement.

2. In so doing, Defendants have acted under the color of state law, specifically the state’s Public Employee Relations Act (“PERA”), 43 P.S. §§ 1101.101–1101.2301, and/or other state laws and are therefore state actors.

3. Pursuant to PERA and “Article 3 Union Security” of a collective bargaining agreement entered into between the Commonwealth of Pennsylvania and Council 13, executed January 27, 2017, and setting forth terms and conditions of employment for certain public employees, including Ms. Wessner, from July 1, 2016 to June 30, 2019 (“CBA”), Defendants have deprived, are depriving, and are threatening to continue to deprive, Ms. Wessner of her constitutional rights. Specifically, Council 13, acting in concert with the Commonwealth of Pennsylvania and its Department of Human Services, through their named officers and officials, requires Ms. Wessner to maintain her membership in Council 13 and its affiliates by restricting her right to resign from union membership and to end all aspects of union membership, including the payment of union dues, and by refusing to acknowledge and/or accept Ms. Wessner’s resignation, all under the color of state law.

4. Despite Ms. Wessner’s resignation from Council 13, Defendants have continued to have union dues deducted from her wages and thus, in addition to injunctive and declaratory relief, Ms. Wessner seeks compensatory and nominal damages for the violation of her First and Fourteenth Amendment rights, as well as attorneys’ fees and costs.

JURISDICTION AND VENUE

5. This action arises under the Constitution and laws of the United States of America. It also arises under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of Ms. Wessner’s rights, privileges,

and immunities under the Constitution of the United States, and particularly the First and Fourteenth Amendments thereto.

6. The Court has jurisdiction over Ms. Wessner's claims pursuant to 28 U.S.C. § 1331—because her claims arise under the United States Constitution—and 28 U.S.C. § 1343—because Ms. Wessner seeks relief under 42 U.S.C. § 1983.

7. This action is an actual controversy in which Ms. Wessner seeks a declaration of her rights under the Constitution of the United States. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court may declare plaintiffs' rights and grant further necessary and proper relief, including injunctive relief pursuant to Federal Rule of Civil Procedure 65.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because a defendant, Council 13, is domiciled in and operates or does significant business in this judicial district. Additionally, a substantial part of the events giving rise to this action occurred in this judicial district.

PARTIES

9. Plaintiff Tammy C. Wessner is a "Public employe," 43 P.S. § 1101.301(2), and "Commonwealth employe," 43 P.S. § 1101.301(15), employed by the Commonwealth of Pennsylvania as a psychiatric aide at the Wernersville State Hospital in a bargaining unit represented, exclusively for purposes of collective bargaining, by Council 13. Ms. Wessner was a member of Council 13, but has not been a member of Council 13 since the date of her resignation letter.

10. Defendant Council 13 is an “Employee organization,” 43 P.S. § 1101.301(3), and “Representative,” 43 P.S. § 1101.301(4), within the meaning of PERA. Pursuant to the CBA, Council 13 represents employees of the Pennsylvania Department of Human Services, including Ms. Wessner, exclusively for purposes of collective bargaining with the Commonwealth. Council 13 maintains a place of business at 4031 Executive Park Drive, Harrisburg, Pennsylvania, and conducts its business and operations throughout the Commonwealth of Pennsylvania, including the Middle District of Pennsylvania.

11. Defendant David R. Fillman is the Executive Director of Council 13 and is sued in his official capacity.

12. Defendant Commonwealth of Pennsylvania, Department of Human Services is a “Public employer” within the meaning of PERA, 43 P.S. § 1101.301(1). The Department employs Ms. Wessner as a psychiatric aide at the Wernersville State Hospital.

13. Defendant Teresa D. Miller, Secretary of Human Services, leads the Pennsylvania Department of Human Services. She is sued in her official capacity.

14. Defendant Thomas W. Wolf is Governor of the Commonwealth of Pennsylvania and is generally responsible for the operations of the Commonwealth and the enforcement of its laws, including labor relations. The Commonwealth is a “Public employer” within the meaning of PERA, 43 P.S. § 1101.301(1). Through its

officers and agents, the Commonwealth has negotiated and entered into the CBA with Council 13. Governor Wolf is sued in his official capacity.

15. Defendant Michael Newsome is Secretary of the Office of Administration. On information and belief, Mr. Newsome's predecessor, Sharon P. Minnich, negotiated, entered into, and is the signatory to, on behalf of the Commonwealth, the collective bargaining agreement governing the terms and conditions of employment for Ms. Wessner. Mr. Newsome is sued in his official capacity.

16. Defendant Anna Maria Kiehl, Chief Accounting Officer for the Commonwealth of Pennsylvania and Deputy Secretary for the Office of Comptroller Operations, is responsible for, among other things, issuing wages to employees of the Commonwealth of Pennsylvania, including to Ms. Wessner. She oversees the payroll system for the Commonwealth of Pennsylvania, which includes processing all payroll deductions, including union dues pursuant to the requirements of "Article 3 Union Security" and "Article 4 Dues Deduction" of the CBA. She is sued in her official capacity.

FACTUAL ALLEGATIONS

17. Acting in concert under color of state law, the Commonwealth of Pennsylvania, controlled by Governor Wolf, Secretary Newsome (and/or his predecessor, Sharon P. Minnich), and Secretary Miller, in their official capacities, and Council 13 have entered into the CBA, which controls the terms and conditions of

Ms. Wessner's employment. Relevant portions of the CBA are attached hereto as "Exhibit A," and incorporated by reference herein.

18. The term of the CBA is July 1, 2016, through June 30, 2019.

19. Pursuant to PERA, the CBA contains a "Union Security" article, which prohibits union members from resigning their union membership when and how they see fit, and provides in relevant part that:

Section 1. Each employee who, on the effective date of this Agreement, is a member of the Union, and each employee who becomes a member after that date shall maintain membership in the Union, provided that such employee may resign from the Union, in accordance with the following procedure:

a. The employee shall send a certified letter, return receipt requested, of resignation to the headquarters of Council 13, AFSCME, AFL-CIO and a copy of the letter to the employee's agency. The official membership card, if available, shall accompany the letter of resignation.

b. The letter shall be postmarked during the 15 day period prior to the expiration date of this Agreement and shall state that the employee is resigning membership in the Union and where applicable is revoking check-off authorization.

Ex. A, CBA art. 3, § 1.

20. The CBA's maintenance of membership requirement mirrors in substantive part PERA's maintenance of membership provision, which states,

(18) "Maintenance of membership" means that all employees who have joined an employee organization or who join the employee organization in the future must remain members for the duration of a collective bargaining agreement so providing with the proviso that any such employee or employees may resign from such employee

organization during a period of fifteen days prior to the expiration of any such agreement.

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

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

43 P.S. § 1101.705. PERA explicitly limits the rights of public employees as to

“maintenance of membership”:

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

43 P.S. § 1101.401.

21. Thus, the terms of both the CBA and PERA limit a union member’s right to resign from Council 13 to only the 15-day window immediately preceding the expiration of the CBA.

22. Further, the CBA’s Article 4 provides for the deduction of union dues and “fair share” fees. Ex. A, CBA art. 4.

23. Ms. Wessner became a union member in 2009, because she was informed that the agency fees she would pay as a non-member were the same or nearly the same as the dues for a member of Council 13.

24. On July 9, 2018, Ms. Wessner sent her resignation letter via certified mail to the attention of Defendant Fillman at Council 13's headquarters located at 4031 Executive Park Drive, Harrisburg, Pennsylvania, and requested that the United States Postal Office provide a return receipt evidencing delivery.

25. Ms. Wessner enclosed her official membership card with the resignation letter sent to Council 13's headquarters.

26. Ms. Wessner's resignation letter was received at Council 13's headquarters on July 10, 2018.

27. Ms. Wessner hand delivered a copy of her resignation letter to her employer's Human Resources Department at her place of employment on or about July 10, 2018.

28. To this date, no Defendant, or agent or official thereof, has ever responded to Ms. Wessner's resignation letters.

29. Continually since on or about July 9, 2018, Ms. Kiehl, in her role overseeing the Office of the Comptroller, has continued to deduct purported union dues from Ms. Wessner's wages.

30. Continually since on or about July 9, 2018, Council 13 has continued to take and/or accept purported union dues from Ms. Wessner's wages.

31. Defendants have taken and continue to take and have accepted and continue to accept purported union dues from Ms. Wessner's wages even though the seizure of purported union dues from her wages is against Ms. Wessner's will and without her consent.

32. Continually since on or about July 9, 2018, Council 13 continues to consider Ms. Wessner a member of Council 13.

33. Ms. Wessner objects to the compelled association with and financial subsidization of any activities of Council 13 and/or its affiliates for any purpose.

CLAIM FOR RELIEF

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

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

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

36. The Supreme Court recently held, in *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018), that the Constitution prohibits unions from collecting union dues or fees from public employees who are not members of the union without their affirmative consent.

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

38. The "Union Security" article, Exhibit A, on its face and/or as applied by Defendants, permits Council 13 to require that employees remain union members throughout the life of the CBA and, therefore, violates the limited constitutional authorization for exclusive representation by public-sector unions under the First Amendment, as set forth in relevant Supreme Court caselaw.

39. PERA and the "Union Security" article of the CBA, on their faces and/or as applied by Defendants, permit Council 13 to require that employees maintain unwilling allegiance to Council 13 throughout the life of the CBA and are, therefore, unconstitutional. This forced membership requirement impinges on Ms. Wessner's exercise of her rights to free association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

40. PERA and the "Union Security" article of the CBA, on their faces and/or as applied by Defendants, authorize Defendants to violate Ms. Wessner's constitutional rights by withholding union dues or fees from her without her consent, in violation of the United States Constitution as explained in *Janus*, 138 S. Ct. 2448.

41. As a direct result of Defendants' actions taken under PERA and the CBA, Ms. Wessner:

a. has been prevented from exercising her rights and privileges as a citizen of the United States to disassociate from and no longer support the agenda and expenses of a private organization with which she no longer agrees and/or to which she no longer wishes to belong as a member;

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court order the following relief:

A. **Declaratory:** A judgment based upon the actual, current, and *bona fide* controversy between the parties as to the legal relations among them, pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57, declaring:

i. that the “Union Security” article, Exhibit A, Article 3, between the Commonwealth of Pennsylvania and Council 13, on its face and as applied, unconstitutionally abridges Ms. Wessner’s rights under the First and Fourteenth Amendments to the Constitution of the United States;

ii. that PERA provisions 43 P.S. §§ 1101.301(18), 1101.401, and 1101.705, to the extent they relate to and/or authorize maintenance of membership, on their face and/or as applied, violate the First and Fourteenth Amendments to the United States Constitution; and

iii. that the First and Fourteenth Amendments prevent Defendants from restricting Ms. Wessner’s right to resign from union membership at any time.

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

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

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

b. enforcing the “Union Security” article, Exhibit A, Article 3, or any subsequent substantially similar provision between Council 13 and the Commonwealth of Pennsylvania, which requires Ms. Wessner to remain a member of Council 13 and/or its affiliates for the duration of a collective bargaining agreement and/or any

other duration of time beyond that which Ms. Wessner wishes to remain a member.

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

a. expunge the “Union Security” article, Exhibit A, Article 3, from the CBA between Council 13 and the Commonwealth of Pennsylvania and to provide written notice to each member of the relevant bargaining unit of such expungement;

b. honor Ms. Wessner’s request to resign from union membership, retroactive to the date of her resignation; and

c. refund to Ms. Wessner all union dues deducted from her wages from the date of her resignation, plus interest thereon.

C. **Monetary:** A judgment awarding Ms. Wessner nominal and compensatory damages for the injuries sustained as a result of Defendants’ unlawful interference with and deprivation of her constitutional and civil rights including, but not limited to, the amount of dues deducted from her wages after Ms. Wessner’s resignation, plus interest thereon, and such amounts as principles of justice and compensation warrant.

D. **Attorneys’ Fees and Costs:** A judgment awarding Ms. Wessner costs and reasonable attorneys’ fees under 42 U.S.C. § 1988; and

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

Respectfully submitted,

THE FAIRNESS CENTER

Dated: March 27, 2019

s/ Nathan J. McGrath

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