

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
JOHNSTOWN DIVISION

Arthur Diamond, on behalf of himself and others similarly situated; **Jeffrey Schwartz** and **Sandra H. Ziegler**, on behalf of themselves and others similarly situated,

Plaintiffs,

v.

Pennsylvania State Education Association; Chestnut Ridge Education Association, as representative of the class of all chapters and affiliates of the Pennsylvania State Education Association; **National Education Association; Tom Wolf**, in his official capacity as governor of Pennsylvania; **Josh Shapiro**, in his official capacity as Attorney General of Pennsylvania; **James M. Darby, Albert Mezzaroba**, and **Robert H. Shoop Jr.**, in their official capacities as chairman and members of the Pennsylvania Labor Relations Board; **Lesley Childers-Potts**, in her official capacity as district attorney of Bedford County, and as representative of the class of all district attorneys in Pennsylvania with the authority to prosecute violations of 71 Pa. Stat. § 575,

Defendants.

Case No. _____

Complaint—Class Action

Arthur Diamond, Jeffrey Schwartz, and Sandra H. Ziegler are current or former public-school teachers who bring this class action on behalf of those who have been required to pay “fair-share fees” to the Pennsylvania State Education Association

(PSEA), its affiliates, or a union-approved charity. The defendants have violated the plaintiffs' constitutional rights by requiring them to pay these "fair-share fees" as a condition of their employment, even though the plaintiffs do not belong to the union and do not wish to subsidize the union's activities in any way.

The representative plaintiffs bring suit on behalf two separate classes. The first class consists of "agency-fee payers." These are employees who refuse to join the PSEA but are nevertheless compelled to pay "fair-share fees" to the union or its affiliates as a condition of their employment. *See* 71 Pa. Stat. § 575(b)–(c) (attached as Exhibit 1). Mr. Diamond is an "agency-fee payer" who remits his "fair-share fees" directly to the union, and he sues as class representative for all current and former agency-fee payers to the PSEA.

The second class consists of "religious objectors." These are employees who object to the PSEA's activities on religious grounds, and are therefore allowed to direct their mandatory "fair-share fees" to a nonreligious, union-approved charity rather than the union itself. *See* 71 Pa. Stat. § 575(e), (h). Mr. Schwartz and Ms. Ziegler are "religious objectors," whose "fair-share fees" have been diverted to a third-party charity, and they sue as class representatives for all such current and former religious objectors to the PSEA.

JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

2. Venue is proper because a substantial part of the events giving rise to the claims occurred in this judicial district. *See* 28 U.S.C. § 1391(b)(2).

3. Assignment to the Johnstown Division is proper because Ms. Ziegler resides in Bedford County. *See* Local Civil Rule 3. In addition, Ms. Ziegler's claims against the defendants arose in Bedford County, where she worked as school teacher. *See id.*

PARTIES

4. Plaintiff Arthur Diamond resides in Chester County, Pennsylvania.

5. Plaintiff Jeffrey Schwartz resides in Cumberland County, Pennsylvania.

6. Plaintiff Sandra H. Ziegler resides in Bedford County, Pennsylvania.

7. Defendant Pennsylvania State Education Association (PSEA) is a labor union whose headquarters are located at 400 North 3rd Street, Harrisburg, Pennsylvania, 17105-1724.

8. Defendant Chestnut Ridge Education Association is a local union chapter affiliated with the PSEA. It is sued as representative of the class of all chapters and affiliates of the PSEA.

9. Defendant National Education Association (NEA) is a labor union whose headquarters are located at 1201 16th Street NW, Washington, D.C. The NEA is affiliated with the PSEA.

10. Defendant Tom Wolf is the governor of Pennsylvania. His office is in Harrisburg, Pennsylvania. Governor Wolf is the representative of the State and he is sued in his official capacity.

11. Defendant Josh Shapiro is the Attorney General of Pennsylvania. His office is in Harrisburg, Pennsylvania. He is charged with enforcing the state's laws, including 71 Pa. Stat. § 575, which the plaintiffs are challenging as unconstitutional. He is sued in his official capacity.

12. Defendant James M. Darby is chairman of the Pennsylvania Labor Relations Board, and defendants Albert Mezzaroba and Robert H. Shoop Jr. are members of the Pennsylvania Labor Relations Board. They are charged with enforcing the State's private and public-sector collective-bargaining laws, including 71 Pa. Stat. § 575, and they are sued in their official capacities.

13. Defendant Lesley Childers-Potts is the district attorney of Bedford County. She is responsible for prosecuting violations of 71 Pa. Stat. § 575. She is sued in her

official capacity and as representative of the class of all district attorneys in Pennsylvania with the authority to prosecute violations of 71 Pa. Stat. § 575.

FACTS

14. Mr. Diamond is a public-school teacher in the Chichester School District, where he has taught since 1990. Mr. Diamond refuses to join the PSEA or its affiliates because he disapproves of their political advocacy as well as the excessive salaries paid to even low-ranking members of the state union and its national affiliate.

15. Mr. Schwartz is a public-school teacher in the South Middleton School District. He has taught in the Pennsylvania public schools since 1992. Mr. Schwartz refuses to join the PSEA or its affiliates because the union advocates for policies that contradict his religious beliefs.

16. Ms. Ziegler is a retired public-school teacher who taught at Chestnut Ridge Middle School in Bedford County for 24 years. Ms. Ziegler refused to join the PSEA or its affiliates because the union advocates for policies that contradict her religious beliefs.

17. Nevertheless, the collective-bargaining agreements negotiated by the PSEA have compelled the representative plaintiffs and their fellow objectors to pay a financial penalty for exercising their constitutional right to not join a union. Nonunion members must either: (1) Pay a “fair-share fee” directly to the union; or (2) Pay the equivalent of the “fair-share fee” to a nonreligious charity approved by the union. *See* 71 Pa. Stat. § 575(e), (h). Option (2) is available only to those who object to the union’s activities on “bona fide religious grounds.” 71 Pa. Stat. § 575(e)(2), (h); *see also* 29 U.S.C. § 169.

18. Mr. Diamond has chosen option (1), and he has been compelled to pay a “fair-share fee” to PSEA and its affiliates as a condition of his employment.

19. Mr. Schwartz and Ms. Ziegler, on the other hand, have been treated as “religious objectors,” so their “fair-share fees” are supposed to be given to a union-approved charity rather than the union itself.

20. When Mr. Schwartz started teaching in 1992, he was not compelled to pay “fair-share” fees as a nonmember of the union. When “fair-share fees” became a requirement in his school district’s collective-bargaining agreement, he immediately took religious-objector status and has paid his “fair-share fees” to a union-approved charity ever since.

21. When Ms. Ziegler became subject to “fair-share fees” in 2006, she obtained “religious objector” status and was told she could donate her “fair-share fees” to a union-approved charity. Ms. Ziegler refused to specify a charity and refused to authorize the union to release the “fair-share fees” it had taken from her paycheck. Shortly before Ms. Ziegler retired, she received a letter from the union informing her that her previously paid “fair-share fees” were sitting in an account waiting to be donated. To Ms. Ziegler’s knowledge, the union is still holding this money in escrow.

STATEMENT OF THE CLAIM

22. The PSEA’s compelled extraction of money from the representative plaintiffs and their fellow class members violates their constitutional rights—regardless of whether union keeps the money for itself or directs it toward a union-approved charity.

23. Mr. Diamond, for example, does not wish to pay a “fair-share fee” to the PSEA because he disapproves of PSEA’s activities and does not wish to subsidize them in any way. The compelled subsidy that Mr. Diamond and his fellow “agency-fee payers” must pay to the PSEA as a condition of their employment violates their constitutional rights.

24. Although the PSEA allows agency-fee payers to insist that their “fair-share fees” will be used only to support the union’s collective-bargaining activities and not its political advocacy, this does not alleviate the defendants’ constitutional violations. A public-employee union’s collective-bargaining activities are no less political than its lobbying and electioneering activities, as all of these actions are directed at the government and seek to influence government policy. *See Harris v. Quinn*, 134 S. Ct. 2618, 2632–33 (2014). In addition, money is fungible, so when Mr. Diamond and his fellow class members are forced to subsidize the PSEA’s collective-bargaining activities, they are freeing up resources for the PSEA to spend on political and ideological activities. Finally, Mr. Diamond does not wish to subsidize *any* of PSEA’s activities, and his compelled support of PSEA’s collective-bargaining activities and the excessive salaries that the union pays to its officers is no less an affront than the compelled support of PSEA’s political and ideological advocacy.

25. The accommodations that the PSEA offers to “religious objectors” such as Mr. Schwartz and Ms. Zieger are likewise inadequate and unconstitutional. The PSEA’s demand that religious objectors pay money to a union-approved charity if they refuse to join or support the union violates the constitutional rights of religious objectors. Mr. Schwartz and Mr. Ziegler have a constitutional right to refrain from joining or lending financial support to a public-employee union, and they cannot be subject to any type of financial penalty for their decision, regardless of who ultimately collects the money.

26. The law of Pennsylvania authorizes the PSEA to extract “fair-share fees” from nonmembers as a condition of their employment. *See, e.g.*, 71 Pa. Stat. § 575 (attached as Exhibit 1). These state laws are unconstitutional to the extent that they allow public-employee unions to impose “fair-share fees” on nonmembers, regardless of whether those “fair-share fees” are directed to the union or a third-party entity.

27. The PSEA is acting under color of state law by imposing these “fair-share fees” on non-union members. *See* 71 Pa. Stat. § 575.

28. The PSEA has committed the tort of conversion by appropriating the money of the representative plaintiffs and the their fellow class members without their consent. The PSEA cannot defend its tortious conduct by relying on 71 Pa. Stat. § 575, because this statute is unconstitutional to the extent it purports to shield the PSEA’s compelled extraction of money from non-union members. Unconstitutional statutes cannot confer immunity on tortious conduct.

CLASS ACTION STATEMENT—AGENCY-FEE PAYERS

29. Mr. Diamond seeks to represent a class of “agency-fee payers” under Fed. R. Civ. P. 23(b)(1)(A), (b)(1)(B), and (b)(3). This class includes all individuals who: (1) are or previously were employed by the State of Pennsylvania or any of its subunits, including any school district in the State; (2) are or were members of bargaining units represented by the PSEA or its chapters or affiliates, yet chose not to become members of the PSEA by not signing membership cards or by choosing to become agency-fee payers, for any period of time; and (3) have had any “agency fees” or “fair-share fees” remitted to PSEA or its affiliates. The class includes everyone who has ever fallen within this definition, including retired teachers and teachers who have moved to other States, and it includes anyone who comes within the class definition at any time before the conclusion of this action.

30. The PSEA represents approximately 187,000 school employees, and we estimate that approximately 4% of school employees have opted out of union membership and become “agency-fee payers.” That puts the size of the proposed agency-fee payer class at approximately 7,480 plaintiffs. Including retired and former teachers will push the number even higher.

31. The number of persons in the agency-fee payer class makes joinder of the individual class members impractical.

32. Because each class member is an “agency-fee payer” who was compelled to pay money to the PSEA as a condition of his employment, there are numerous questions of law common to each member of the class. These include:

- Whether public-employee union shops are constitutionally permissible. *See Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466.
- Whether the class members can recover compensatory damages from the PSEA and its affiliates for “fair-share fees” that were collected before *Janus*.
- Whether and to what extent any statute of limitations might limit the recovery of class members.
- Whether and to what extent the laws of Pennsylvania that enforce public-employee union shops can survive the Supreme Court’s anticipated ruling in *Janus*.

33. Mr. Diamond’s claims are typical of other class members, as both he and each class member has objected to PSEA membership yet was subject to “fair-share fees” despite their refusal to join the union.

34. Mr. Diamond adequately represents the interests of his fellow class members, and he has no interests antagonistic to the class. Mr. Diamond seeks to maximize recovery for his fellow agency-fee payers—a goal shared by all members of the class—and there are no conflicts between Mr. Diamond and the other agency-fee payers.

35. A class action can be maintained under Rule 23(b)(1)(A) because separate actions by class members could risk inconsistent adjudications on the underlying legal issues.

36. A class action can be maintained under Rule 23(b)(1)(B) because an adjudication determining the constitutionality of compulsory “fair-share fees” will, as a practical matter, be dispositive of the interests of all class members.

A class action can be maintained under Rule 23(b)(3) because the common questions of law and fact identified in the complaint predominate over any questions affecting only individual class members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because, among other things, all class members are subjected to the same violation of their constitutional rights, but the amount of money involved in each individual’s claim would make it burdensome for class members to maintain separate actions.

CLASS ACTION STATEMENT—RELIGIOUS OBJECTORS

37. Mr. Schwartz and Ms. Zeigler seek to represent a class of “religious objectors” under Fed. R. Civ. P. 23(b)(1), (b)(2), and (b)(3). The class includes all individuals who: (1) are or were employed by the State of Pennsylvania or any of its subunits, including any school district in the State; (2) are or were members of bargaining units represented by the PSEA or its chapters or affiliates; and (3) are or were religious objectors to the PSEA who elected to have their “fair-share fees” given to a union-approved charity rather than the union itself. The class includes everyone who has ever fallen within this definition, including retired teachers and teachers who have moved to other States, and it includes anyone who comes within the class definition at any time before the conclusion of this action.

38. We estimate that there are approximately 300 religious objectors in Pennsylvania who have opted out of PSEA membership and directed their “fair-share dues” to a union-approved charity. This estimate does not include retired or former teachers, which would make the class larger.

39. The number of persons in the religious-objector class makes joinder of the individual class members impractical.

40. Because each class member is an “religious objector” who was compelled to pay money to a union-approved charity as a condition of his employment, there are numerous questions of law common to each member of the class. These include:

- Whether public-employee union shops are constitutionally permissible. *See Janus v. American Federation of State, County, and Municipal Employees, Council 31*, No. 16-1466.
- Whether the Constitution allows public-employee unions and state officials to preserve public-employee union shops post-*Janus* by compelling non-union members to direct their “fair-share fees” to a union-approved charity rather than the union itself.
- Whether religious objectors can recover compensatory damages from the PSEA and its affiliates for “fair-share fees” that were diverted to union-approved charities.
- Whether and to what extent any statute of limitations might limit the recovery of class members.
- Whether and to what extent the laws of Pennsylvania that purport to accommodate religious objectors can survive the Supreme Court’s anticipated ruling in *Janus*.

41. Mr. Schwartz and Ms. Zeigler’s claims are typical of other class members, as both they and their fellow class members have objected to PSEA membership and support on religious grounds, yet were subject to monetary penalties for exercising their constitutional right not to join or financially support a public-employee union.

42. Mr. Schwartz and Ms. Zeigler adequately represent the interests of their fellow class members, and they have no interests antagonistic to the class. Mr. Schwartz and Ms. Zeigler seek to maximize recovery for their fellow religious objectors—a goal shared by all members of the class—and there are no conflicts between Mr. Schwartz and Ms. Zeigler and the other religious objectors.

43. A class action can be maintained under Rule 23(b)(1)(A) because separate actions by class members could risk inconsistent adjudications on the underlying legal issues.

44. A class action can be maintained under Rule 23(b)(1)(B) because an adjudication determining the constitutionality of compulsory “fair-share fees” will, as a practical matter, be dispositive of the interests of all class members.

45. A class action can be maintained under Rule 23(b)(3) because the common questions of law and fact identified in the complaint predominate over any questions affecting only individual class members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because, among other things, all class members are subjected to the same violation of their constitutional rights, but the amount of money involved in each individual’s claim would make it burdensome for class members to maintain separate actions.

CAUSES OF ACTION

46. The representative plaintiffs are suing the PSEA, Governor Wolf, Attorney General Shapiro, the state labor board officials, and the district attorneys under 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. § 2201, each of which supplies a cause of action for the individual and class-wide relief that they are requesting.

47. The representative plaintiffs are also suing the PSEA under the state-law tort of conversion, and they invoke the supplemental jurisdiction of this court over that state-law claim. *See* 28 U.S.C. § 1367.

DEMAND FOR RELIEF

48. Mr. Dimaond, Mr. Schwartz, and Ms. Ziegler respectfully request that the court:

- a. certify a class of all nonunion “agency-fee payers” who have been forced to pay “fair-share fees” to PSEA or its affiliates as a condition of their employment;
- b. certify a separate class of all “religious objectors” who have opted out of PSEA membership and have chosen to have their “fair-share fees” remitted to a union-approved charity rather than the union itself;
- c. declare that the representative plaintiffs and their fellow class members have a constitutional right to decline to join or financially support a public-employee union, and that they cannot be penalized or forced to pay money to the union or a third-party entity as a consequence for exercising this constitutional right;
- d. declare that state tort law protects the right of the representative plaintiffs and their fellow class members not to have their wages garnished or redirected by the PSEA without their affirmative, written consent, and that any federal or state law or collective-bargaining agreement that purports to override these protections of state tort law by allowing the PSEA to help itself to the wages and paychecks of school employees—or that compels school employees to consent the garnishment of their wages by the PSEA as a condition of their employment—is unconstitutional and without legal effect;
- e. declare 71 Pa. Stat. § 575(b) unconstitutional to the extent it allows public-employee unions to extract “fair-share fees” from nonmembers, and permanently enjoin Governor Wolf, Attorney General Shapiro, the state labor board officials, the district attorneys, and all of their officers, agents, servants, employees, attorneys, and any other person or entity in active concert or participation with them, from enforcing 71 Pa. Stat. § 575(b) in this unconstitutional manner;

- f. declare 71 Pa. Stat. § 575(c) unconstitutional to the extent it allows a public-employee union to garnish a nonmember's wages or deduct money from a nonmember's salary or paycheck without first securing the nonmember's affirmative, written consent, and permanently enjoin Governor Wolf, Attorney General Shapiro, the state labor board officials, the district attorneys, and all of their officers, agents, servants, employees, attorneys, and any other person or entity in active concert or participation with them, from enforcing 71 Pa. Stat. § 575(c) in this unconstitutional manner;
- g. declare 71 Pa. Stat. § 575(e)(1) unconstitutional because it prohibits nonmembers from objecting to a "fair-share fee" imposed by a public-employee union unless they do so within the 40-day window described in 71 Pa. Stat. § 575(e), and permanently enjoin Governor Wolf, Attorney General Shapiro, the district attorneys, the state labor board officials, and all of their officers, agents, servants, employees, attorneys, and any other person or entity in active concert or participation with them, from enforcing 71 Pa. Stat. § 575(e)(1) as applied to public-employee unions;
- h. declare 71 Pa. Stat. § 575(e)(2) unconstitutional because it prohibits bona fide religious objectors from withdrawing their financial support of a public-employee union unless they do so within the 40-day window described in 71 Pa. Stat. § 575(e), and permanently enjoin Governor Wolf, Attorney General Shapiro, the state labor board officials, the district attorneys, and all of their officers, agents, servants, employees, attorneys, and any other person or entity in active concert or participation with them, from enforcing 71 Pa. Stat. § 575(e)(2) as applied to public-employee unions;

- i. declare 71 Pa. Stat. § 575(g) unconstitutional to the extent it permits an arbitrator to override the constitutional rights of nonmembers who refuse to join or financially support a public-employee union;
- j. declare 71 Pa. Stat. § 575(h) unconstitutional because it forces bona fide religious objectors to pay money to a union-approved charity and penalizes them for exercising their constitutional right not to join or financially support a public-employee union, and permanently enjoin Governor Wolf, Attorney General Shapiro, the state labor board officials, the district attorneys, and all of their officers, agents, servants, employees, attorneys, and any other person or entity in active concert or participation with them, from enforcing 71 Pa. Stat. § 575(h);
- k. declare 71 Pa. Stat. § 575(h) unconstitutional and contrary to the Supreme Court's ruling in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012 (2017), because it categorically disqualifies religious charities from receiving a nonunion member's fair-share fees, and permanently enjoin the PSEA, Governor Wolf, Attorney General Shapiro, the state labor board officials, the district attorneys, and all of their officers, agents, servants, employees, attorneys, and any other person or entity in active concert or participation with them, from enforcing 71 Pa. Stat. § 575(h)'s exclusion of religious charities;
- l. declare 71 Pa. Stat. § 575(m) unconstitutional to the extent it threatens monetary fines and imprisonment on those who refuse to join or financially support a public-employee union, or who refuse to pay money to a union-approved charity as a penalty for exercising this constitutional right, and permanently enjoin Governor Wolf, Attorney General Shapiro, the state labor board officials, the district attorneys, and all of their officers, agents, servants, employees, attorneys,

and any other person or entity in active concert or participation with them, from enforcing 71 Pa. Stat. § 575(m) in this unconstitutional manner;

- m. declare that all collective-bargaining agreements that compel non-union members to pay “fair-share fees” to a union or a third-party entity violate the constitutional rights of the representative plaintiffs and their fellow class members;
- n. order the National Education Association, the Pennsylvania State Education Association, and all of its chapters and affiliates to repay all “fair-share fees” that they unconstitutionally extracted from the representative plaintiffs and their fellow class members—regardless of whether the union kept those funds for itself or diverted those funds toward union-approved charities or other third-party entities, along with pre-judgment and post-judgment interest;
- o. permanently enjoin the Pennsylvania State Education Association and its affiliates, along with its officers, agents, servants, employees, attorneys, and any other person or entity in active concert or participation with it, from taking or redirecting any type of money from the representative plaintiffs and their fellow class members without first obtaining their affirmative, written consent;
- p. permanently enjoin all of the defendants, along with their officers, agents, servants, employees, attorneys, and any other person or entity in active concert or participation with them, from enforcing any provision of federal or Pennsylvania law, or any provision of a collective-bargaining agreement, that requires the payment of money as a consequence for exercising one’s constitutional right not to join or financially support a public-employee union, regardless of whether that

compelled payment of money is collected by the union itself or diverted to a third-party entity;

- q. permanently enjoin all of the defendants, along with their officers, agents, servants, employees, attorneys, and any other person or entity in active concert or participation with them, from enforcing any provision of federal or Pennsylvania law, or any provision of a collective-bargaining agreement or union-membership agreement, that prevents or deters public employees from cancelling their union membership and withdrawing financial support of the union at any time during the calendar year;
- r. award costs and attorneys' fees under 42 U.S.C. § 1988;
- s. grant all other relief that the Court deems just, proper, or equitable.

Respectfully submitted.

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* *pro hac vice* application pending

Dated: June 15, 2018

*Counsel for Plaintiffs and
the Proposed Class*

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff **Chester**
(EXCEPT IN U.S. PLAINTIFF CASES)

Seán Leigue, Esq. and Jonathan F. Mitchell, Esq.
Seán Leigue Law PLLC, 27 W. Main St. Carnegie, PA 15106
(412) 389-0805; Jonathan F. Mitchell, Mitchell Law PLLC, 106 E. Sixth
St., Suite 900, Austin, TX 78701 (512) 686-3940

DEFENDANTS

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983, 28 U.S.C. § 2201

Brief description of cause:

Class-action lawsuit challenging the constitutionality of "fair-share fees" imposed on non-union members

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
June 15, 2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

JS 44A REVISED June, 2009
IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA
THIS CASE DESIGNATION SHEET MUST BE COMPLETED

PART A

This case belongs on the (☐ Erie ☒ Johnstown ☐ Pittsburgh) calendar.

1. **ERIE CALENDAR** - If cause of action arose in the counties of Crawford, Elk, Erie, Forest, McKean, Venang or Warren, OR any plaintiff or defendant resides in one of said counties.
2. **JOHNSTOWN CALENDAR** - If cause of action arose in the counties of Bedford, Blair, Cambria, Clearfield or Somerset OR any plaintiff or defendant resides in one of said counties.
3. Complete if on **ERIE CALENDAR**: I certify that the cause of action arose in _____ County and that the _____ resides in _____ County.
4. Complete if on **JOHNSTOWN CALENDAR**: I certify that the cause of action arose in Bedford County and that the Ms. Ziegler resides in Bedford County.

PART B (You are to check ONE of the following)

1. ☐ This case is related to Number _____. Short Caption _____.
2. ☒ This case is not related to a pending or terminated case.

DEFINITIONS OF RELATED CASES:

CIVIL: Civil cases are deemed related when a case filed relates to property included in another suit or involves the same issues of fact or it grows out of the same transactions as another suit or involves the validity or infringement of a patent involved in another suit **EMINENT DOMAIN:** Cases in contiguous closely located groups and in common ownership groups which will lend themselves to consolidation for trial shall be deemed related.

HABEAS CORPUS & CIVIL RIGHTS: All habeas corpus petitions filed by the same individual shall be deemed related. All pro se Civil Rights actions by the same individual shall be deemed related.

PART C

I. CIVIL CATEGORY (Select the applicable category).

1. ☐ Antitrust and Securities Act Cases
2. ☐ Labor-Management Relations
3. ☐ Habeas corpus
4. ☐ Civil Rights
5. ☐ Patent, Copyright, and Trademark
6. ☐ Eminent Domain
7. ☒ All other federal question cases
8. ☐ All personal and property damage tort cases, including maritime, FELA, Jones Act, Motor vehicle, products liability, assault, defamation, malicious prosecution, and false arrest
9. ☐ Insurance indemnity, contract and other diversity cases.
10. ☐ Government Collection Cases (shall include HEW Student Loans (Education), V A Overpayment, Overpayment of Social Security, Enlistment Overpayment (Army, Navy, etc.), HUD Loans, GAO Loans (Misc. Types), Mortgage Foreclosures, SBA Loans, Civil Penalties and Coal Mine Penalty and Reclamation Fees.)

I certify that to the best of my knowledge the entries on this Case Designation Sheet are true and correct

Date: June 11, 2018

Jonathan F. Mitchell

ATTORNEY AT LAW

NOTE: ALL SECTIONS OF BOTH FORMS MUST BE COMPLETED BEFORE CASE CAN BE PROCESSED.

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

71 Pa. Stat. § 575

(a) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Bona fide religious objection” shall mean an objection to the payment of a fair share fee based upon the tenets or teachings of a bona fide church or religious body of which the employe is a member.

“Commonwealth” shall mean the Commonwealth of Pennsylvania, including any board, commission, department, agency or instrumentality of the Commonwealth.

“Employe organization” shall mean an organization of any kind or any agency or employe representation committee or plan in which membership includes public employes and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, employe-employer disputes, wages, rates of pay, hours of employment or conditions of work, but shall not include any organization which practices discrimination in membership because of race, gender, color, creed, national origin or political affiliation.

“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 Employee Relations Act.”

“Fair share fee” shall mean 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.

“Nonmember” shall mean an employe of a public employer, who is not a member of the exclusive representative, but who is represented in a collective bargaining unit by the exclusive representative for purposes of collective bargaining.

“Public employer” shall mean the Commonwealth of Pennsylvania or a school entity.

“School entity” shall mean any school district, intermediate unit or vocational-technical school.

“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.

(b) If the provisions of a collective bargaining agreement so provide, each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee.

(c) To implement fair share agreements in accordance with subsection (b), the exclusive representative shall provide the public employer with the name of each nonmember who is obligated to pay a fair share fee, the amount of the fee that he or she is obligated to pay and a reasonable schedule for deducting said amount from the salary or wages of such nonmember. The public employer shall deduct the fee in accordance with said schedule and promptly transmit the amount deducted to the exclusive representative.

(d) As a precondition to the collection of fair share fees, the exclusive representative shall establish and maintain a full and fair procedure, consistent with constitutional requirements, that provides nonmembers, by way of annual notice, with sufficient information to gauge the propriety of the fee and that responds to challenges by nonmembers to the amount of the fee. The procedure shall provide for an impartial hearing before an arbitrator to resolve disputes regarding the amount of the chargeable fee. A public employer shall not refuse to carry out its obligations under subsection (c) on the grounds that the exclusive representative has not satisfied its obligation under this subsection.

(e) Within forty (40) days of transmission of notice under subsection (d), any nonmember may challenge as follows:

(1) to the propriety of the fair share fee; ☐ or

(2) to the payment of fair share fees for bona fide religious grounds.

(f) Any objection under subsection (e) shall be made in writing to the exclusive representative and shall state whether the objection is made on the grounds set forth in subsection (e)(1) or (2).

(g) When a challenge is made under subsection (e)(1), such challenge shall be resolved along with all similar challenges by an impartial arbitrator, paid for by the exclusive representative, and selected by the American Arbitration Association, or the Federal Mediation and Conciliation Service, pursuant to the Rules for Impartial Determination of Union Fees promulgated by the American Arbitration Association. The decision of the impartial arbitrator shall be final and binding.

(h) 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.

(i) When a challenge is made under subsection (e)(1), the exclusive representative shall place fifty per centum (50%) of each challenged fair share fee into an interest-bearing escrow account until such time as the challenge is resolved by an arbitrator. When a challenge is made under subsection (e)(2), the exclusive representative shall place one hundred per centum (100%) of each challenged fair share fee into an interest-bearing escrow account until such time as the challenge is resolved by an arbitrator.

(j) Every Statewide employe organization required to submit a report under Title II of the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257, 29 U.S.C. § 401 et seq.) shall make available a copy of such report to the Secretary of Labor and Industry.

(k) All materials and reports filed pursuant to this section shall be deemed to be public records and shall be available for public inspection at the Office of the Secretary of Labor and Industry during the usual business hours of the Department of Labor and Industry.

(l) Any employe organization which violates the provisions of this section or fails to file any required report or affidavit or files a false report or affidavit shall be subject to a fine of not more than two thousand dollars (\$2,000).

(m) Any person who wilfully violates this section, or who makes a false statement knowing it to be false, or who knowingly fails to disclose a material fact shall be fined not more than one thousand dollars (\$1,000) or undergo imprisonment for not more than thirty (30) days, or both. Each individual required to sign affidavits or reports under this section shall be personally responsible for filing such report or affidavit and for any statement contained therein he knows to be false.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Pennsylvania Teachers Claim Mandatory Union 'Fair-Share Fees' Unconstitutional](#)
