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

HOLLIE ADAMS, et al.,	:	
	:	
Plaintiffs,	:	**No. 1:19-cv-00336 SHR**
	:	
v.	:	**The Honorable Sylvia Rambo**
	:	
TEAMSTERS UNION LOCAL 429, et al.	:	**Electronically Filed Document**
	:	
	:	*Complaint Filed 02/27/19*
Defendants.	:	

DEFENDANT TEAMSTERS LOCAL UNION NO. 429'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6), NOW CONVERTED TO A MOTION FOR SUMMARY JUDGMENT UNDER FED. R. CIV. P. 56(c)

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I. PROCEDURAL HISTORY

On February 27, Plaintiffs Hollie Adams ("Plaintiff Adams"), Chris Felker ("Plaintiff Felker"), Karen Unger ("Plaintiff Unger"), and Jody Weaber ("Plaintiff Weaber"), employees of Defendant Lebanon County, filed a two-count federal complaint alleging claims under 42 U.S.C. § 1983 ("Section 1983") for purported violations of their First and Fourteenth Amendment rights (Counts I and Count II). The Complaint is not a class-action.

Plaintiffs assert their two Section 1983 claims against Defendants Teamsters Local Union No. 429 ("Defendant Teamsters" or "Union")[1]; Lebanon County ("Defendant Lebanon County"), a county in the Commonwealth of Pennsylvania ("Commonwealth"); Attorney General Josh Shapiro ("Defendant Attorney General"), the elected Attorney General of the Commonwealth; and James Darby, Albert Mezzaroba, and Robert H. Shoop, Jr., the three (3) appointed members of the Pennsylvania Labor Relations Board ("PLRB").

In Count I, Plaintiffs allege that their First and Fourteenth Amendment rights were violated when they were provided, in their words, an "unconstitutional choice" between being a member of Defendant Teamsters and paying union dues or being a non-member and paying fair share fees. (*Adams et al. v. Teamsters Local Union 429*

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[1] Plaintiffs mistakenly denote Defendant Teamsters as "Teamsters Union Local No. 429." Its proper legal name is Teamsters Local Union No. 429.

et al., Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint* [hereinafter "*Complaint*," ¶¶ 36-51.) In Count II, Plaintiffs allege that their First and Fourteenth Amendment rights were violated because Defendant Teamsters, pursuant to the Pennsylvania Employe Relations Act, 43 P.S. §§ 1101.101 *et seq*. ("PERA" or "Act 195"), won a democratically-held union election and were designated the exclusive representative for purposes of collective bargaining for all bargaining unit employees, including those who chose to be, or not be, members of Defendant Teamsters. (*Complaint*, ¶¶ 52-65.)

On May 20, 2019, pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), Defendant Teamsters filed a motion to dismiss ("Motion") seeking to dismiss with prejudice all claims asserted against it. (*Adams et al. v. Teamsters Local Union 429 et al.,* Civ. Action No. 1:19-cv-00336, Dckt. #27, *Defendant Teamsters' Motion to Dismiss* [hereinafter "*Defendant Teamsters' Motion to Dismiss*.") Defendant Teamsters sought to dismiss (1) Count II in its entirety for failure to state a claim for relief, (2) Count I in its entirety and all retroactive monetary relief sought thereunder because Plaintiffs failed to state a claim for relief and Defendant Teamsters had a good faith defense, and (3) all prospective relief in Count I—whether monetary, injunctive, or declaratory—as moot. (*See Defendant Teamsters' Motion to Dismiss*.) In support of this Motion, Defendant Teamsters attached the Declaration of Kevin Bolig. (*Adams et al. v. Teamsters Local Union*

429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Defendant Teamsters' Motion to Dismiss* [hereinafter "*Declaration of Kevin Bolig*.")

On May 22, 2019, this Court issued a rule to show cause requesting the parties to explain why Defendants' Motions to Dismiss should not be converted into a Motion for Summary Judgment. (*Adams et al. v. Teamsters Local Union 429 et al.,* Civ. Action No. 1:19-cv-00336, Dckt. #28, *Rule to Show Cause Order*.) On or about May 30, 2019, the parties filed a joint motion requesting this Court grant a proposed briefing schedule after they agreed that Defendants' Motions to Dismiss should be converted into Motions for Summary Judgment. (*Adams et al. v. Teamsters Local Union 429 et al.,* Civ. Action No. 1:19-cv-00336, Dckt. #32, *Joint Motion to Extend Time – Briefing Deadlines*.) On June 3, 2019, this Court granted the joint motion requesting a briefing schedule. (*Adams et al. v. Teamsters Local Union 429 et al.,* Civ. Action No. 1:19-cv-00336, Dckt. #35, *Order Granting Joint Motion to Extend Time*.) Defendant Teamsters now files this Brief in Support of Its Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56(c), along with Defendants' Joint Statement of Material Facts Not In Dispute and an Amended Declaration of Kevin Bolig.

II. STATEMENT OF FACTS

A. Bargaining Agents, PERA, and the Collective Bargaining Agreement.

Under PERA, Defendant Teamsters is an employee organization and Defendant Lebanon County is an employer organization. (*Adams et al. v. Teamsters Local Union 429 et al.,* Civ. Action No. 1:19-cv-00336, Dckt. # 36, *Defendants' Joint Statement of Material Facts Not in Dispute* [hereinafter "*Jt. St.*"], ¶¶ 2, 3; 43 P.S. § 1101.301(1), (3) and (4).) Defendants Teamsters and Lebanon County have entered into a Collective Bargaining Agreement ("CBA") that outlines the terms and conditions of employment for bargaining unit employees working for Defendant Lebanon County. (*Jt. St.*, ¶ 16.) The term of the current CBA runs from January 1, 2016 through December 31, 2019. (*Jt. St.*, ¶ 16.)

Article 3 ("Union Security") of the Agreement states, in relevant part:

> Section 1. Each employer 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, as a condition of employment, maintain his/her membership in the Union. An employee may, however, resign from the Union within fifteen (15) days prior to the expiration of this Agreement without penalty by serving written notice to Teamsters Local Union No. 429, 1055 Spring Street, Wyomissing, PA 19610, and to the Commissioner's Office, Lebanon County Court House, Room 207, 400 South 8th Street, Lebanon, PA 17042.

(*Jt. St.*, ¶ 17 & *Exhibit A of the Complaint, Article 3*.)

Article 4, Section 1 of the CBA states in pertinent part:

> Section 1. Union Dues. The County agrees to deduct the Union membership initiation fees, assessment and once each month, either dues from the pay of those employees who individually request in wiring that such deduction be made or fair share. The amount to be deducted shall be certified to the County by the Union, and the aggregate deductions of all employees shall be remitted together with an itemized statement to the Union by the 10th of the succeeding month, after such deductions are made. This authorization shall be irrevocable during the term of this Agreement.

(*Jt. St.*, ¶ 18 & *Exhibit A of the Complaint, Article 4, Section 1*.)

Articles 3 and 4 of the CBA are consistent with provisions in PERA regarding union membership or non-membership, maintenance of membership, dues deductions, and exclusivity of representation. Section 301 of PERA defines "Maintenance of membership" as

> all employes who have joined an employe organization or who join the employe organization in the future must remain members for the duration of a collective bargaining agreement so providing with the proviso that any such employe or employes may resign from such employe organization during a period of fifteen days prior to the expiration of any such agreement.

43 P.S. § 1101.301(18). Section 401 of PERA grants public employees the right to be members or non-members of a union. 43 P.S. § 1101.401. Section 604 and Section 606 of PERA establishes that a union selected by public employees in a unit appropriate for collective bargaining purposes is the exclusive representative of all the employees in such unit to bargain on wages, hours, terms and conditions of employment. 43 P.S. §§ 1101.604, 606. Section 705 of PERA establishes that dues

deductions and maintenance of membership are proper subjects of bargaining. 43 P.S. § 1101.705.

B. Plaintiffs' Memberships in the Union.

All four Plaintiffs were hired by Defendant Lebanon County. (*Jt. St.*, ¶¶ 1, 19, 32, 42, 53.) Defendant Lebanon County hired Plaintiff Adams on April 14, 2003, Plaintiff Felker on January 25, 2010, Plaintiff Unger in October 2015, and Plaintiff Weaber on June 18, 2007. (*Jt. St.*, ¶¶ 19, 32, 42, 53.) Plaintiffs Adams, Felker, and Weaber all signed union authorization cards at or near the time they were hired. (*Jt. St.*, ¶¶ 20, 33, 54.) Plaintiff Unger began her employment as a non-member who did not sign a union authorization card. (*Jt. St.*, ¶ 43.) Later, on November 7, 2017, Plaintiff Unger became a union member and signed a union authorization card. (*Jt. St.*, ¶ 44.)

On June 27, 2018, the Supreme Court issued its decision in *Janus v. American Federation of State, County & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018). In *Janus*, the Supreme Court reversed its earlier precedent and held that requiring non-union members to pay fair share fees as a condition of employment "violates the First Amendment and cannot continue." *Id*. at 2486.

After the decision in *Janus*, all four Plaintiffs requested to no longer be members of the Union. (*Jt. St.*, ¶¶ 22, 35, 46, 56.) Plaintiff Adams made such a request on July 10, 2018; Plaintiff Felker on September 28, 2108; Plaintiff Unger on

July 10, 2018; and Plaintiff Weaber on July 16, 2018. (*Jt. St.*, ¶¶ 22, 35, 46, 56.)

Ultimately, Defendant Teamsters honored all their requests, accepting their resignations from the Union and remitting all union dues received by Defendant Teamsters from the time each Plaintiff originally made his or her respective request until dues deductions ceased. (*Jt. St.*, ¶¶ 25-31, 36-41, 47-52, 58-64.) Dues deductions ceased (1) for Plaintiff Adams after her paycheck dated on or about February 28, 2019; (2) for Plaintiff Felker after his paycheck dated on or about October 29, 2018; (3) for Plaintiff Unger after her paycheck dated on or about September 13, 2018; and (4) for Plaintiff Weaber after her paycheck dated on or about February 28, 2019. (*Jt. St.*, ¶¶ 27, 37, 48, 60.)

On May 7, 2019, Defendant Teamsters sent a letter to each Plaintiff confirming that the Union had accepted each of their resignations and that dues deductions had ceased. (*Jt. St.*, ¶¶ 30, 40, 51, 63.) On May 10, 2019, Defendant Teamsters sent each Plaintiff a letter along with a check for the amount of dues deductions received by the Local from the time each Plaintiff made his or her original request to revoke membership until the time that dues deductions ceased, as well as statutory interest. (*Jt. St.*, ¶¶ 31, 41, 52, 64.) As of the filing of this Brief, Plaintiffs are no longer members of Defendant Teamsters, do not pay any union dues, and have received a check for the dues deductions received by the Union from the time that each Plaintiff made their request to revoke union membership until dues

deductions ceased, along with statutory interest.

III. STATEMENT OF QUESTIONS INVOLVED

1. Pursuant to Rule 56(c), should this Court dismiss with prejudice Count II of the Complaint in its entirety and any relief sought thereunder because it fails to state a claim for relief under well-established and still applicable Supreme Court precedent?

Suggested Answer: Yes.

2. Pursuant to Rule 56(c), should this Court dismiss with prejudice Count I in its entirety and all retroactive monetary relief sought thereunder because those claims fail to state a claim for which relief may be granted and Defendant Teamsters has a valid good faith defense?

Suggested Answer: Yes.

3. Pursuant to Rule 56(c), should this Court dismiss as moot all prospective relief—whether monetary, equitable, or declaratory relief—sought in Count I because Plaintiffs are no longer members, they had their dues deductions cease, and any dues deductions received by the Local after they requested to leave the Union were remitted back to them, along with statutory interest?

Suggested Answer: Yes.

IV. ARGUMENT

A. Legal Standard for a Motion for Summary Judgment Pursuant to Rule 56(c) of the Federal Rules of Civil Procedure.

To prevail on a motion for summary judgment, the moving party must establish that "there is no genuine issue as to any material fact and that [it] is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Construing all evidence submitted in the light most favorable to the non-moving party, *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986), the movant must prevail if there are no genuinely disputed issues of essential material facts that can support a verdict for the non-moving party. *See, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 324 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). If a reasonable jury cannot return a verdict for the non-moving party, no genuine issue of material fact exists. *In re Paoli R.R. Yard PCB Litigation*, 916 F.2d 829, 860 (3rd Cir. 1990), *cert. denied* 111 S. Ct. 1584 (1991).

Once a case has been made in support of summary judgment, the party opposing the motion has the affirmative burden of coming forward with specific facts "evidencing a need for trial." *See* Fed. R. Civ. P. 56(e). "Wholly speculative assertions will not suffice" to defeat a motion, *Jersey Central Power and Light Co. v. Lacy Township*, 772 F.2d 1103, 1109 (3rd Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986), nor will "a[n] alleged or hypothetical factual dispute." *Thompson v. Gjivoje*,

896 F.2d 716, 720 (2nd Cir. 1990).

B. Plaintiffs' Constitutional Challenge in Count II to Pennsylvania's Exclusivity of Representation Statute Lacks Any Legal Merit, and, Therefore, Should Be Dismissed with Prejudice.

Under the facts of this case, Plaintiffs have no valid basis for challenging the constitutionality of Section 606 of PERA because long-established and still-existing Supreme Court precedent has held that state statutes providing for exclusivity of representation for public sector bargaining unit employees do not violate the First and Fourteenth Amendments of the Constitution. In fact, every court that has considered the issue has concluded the same. Nothing in the *Janus* decision changed or modified this well-establish law.

1. United States Supreme Court precedent forecloses Plaintiffs' faulty theory that exclusive representative collective bargaining violates the First and Fourteenth Amendments.

In *Minnesota State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 273, 278-79 (1984) (hereinafter "*Knight*"), the United States Supreme Court ("Supreme Court") heard the appeal of a group of Minnesota college instructors who argued that the exclusive representation provisions of Minnesota's public employee labor relations act violated the First Amendment speech and associational rights of bargaining unit employees who did not wish to associate with the union chosen as the bargaining unit's exclusive representative. 465 U.S. 271, 273, 278-79 (1984). The state law

granted such elected representatives the exclusive right to "meet and negotiate" over employment terms. *Id.* at 274. The state law also granted the unit's representative the exclusive right to "meet and confer" with campus administrators about employment-related policy matters outside the scope of mandatory negotiations. *Id.* at 274-75. Only the exclusive representative had the right to participate in both the "meet and negotiate" and "meet and confer" processes, with the exclusive representative's views being treated as the faculty's "official collective position" in those settings. *Id.* at 273, 276.

The district court rejected the *Knight* plaintiffs' constitutional challenge with respect to the meet-and-negotiate (*i.e.*, collective bargaining) process. *See id.* at 278. On appeal, the Supreme Court summarily affirmed the lower court's rejection of the *Knight* plaintiffs' "attack on the constitutionality of exclusive representation in bargaining over terms and conditions of employment." *Id.* at 278-79; *Knight v. Minnesota Cmty. Coll. Faculty Ass'n*, 460 U.S. 1048 (1983). The district court also concluded, however, that the meet-and-confer process violated the rights of faculty members who had not joined the union that served as their exclusive representative but who wanted to be involved in employment-related policy-setting discussions. In a separate, full opinion, the Supreme Court reversed the district court's judgment with respect to the meet-and-confer process, holding that even with respect to matters not involving terms and conditions of employment subject to bargaining,

exclusive representation does not infringe the First Amendment speech or associational rights of non-member employees. *Knight,* 465 U.S. at 278, 288.

The *Knight* Court began its analysis by recognizing that government officials have no obligation to negotiate or confer with faculty members, and that the meet-and-confer process (like the meet-and-negotiate process) was not a "forum" to which plaintiffs had any First Amendment right of access. 465 U.S. at 280-82. The Court explained that non-members also had no constitutional right "as members of the public, as government employees, or as instructors in an institution of higher education" to "force the government to listen to their views." *Id*. at 283. The government, therefore, was "free to consult or not to consult whomever it pleases." *Id*. at 285; *see also Smith v. Arkansas State Highway Emps.*, 441 U.S. 463, 464-66 (1979) (government did not violate speech or associational rights of union supporters by accepting grievances filed by individual employees while refusing to recognize union's grievances).

The *Knight* Court then went on to consider whether Minnesota's public employee labor relations act violated those First Amendment rights that nonmembers could properly assert—namely, the right to speak and the right to "associate or not to associate." 465 U.S. at 288. The Court concluded that Minnesota's law "in no way restrained appellees' freedom to speak on any

education-related issue or their freedom to associate or not to associate with whom they please, including the exclusive representative." *Id*. (emphases added).

Non-members' speech rights were not infringed by Minnesota's system of exclusive representation because, while the exclusive representative's status "amplifie[d] its voice in the policymaking process," that amplification did not "impair[] individual instructors' constitutional freedom to speak." *Id*. As the Court explained, such amplification is "inherent in government's freedom to choose its advisers" and "[a] person's right to speak is not infringed when government simply ignores that person while listening to others." *Id*.

The Supreme Court found no infringement of non-members' associational rights because they were "free to form whatever advocacy groups they like" and were "not required to become members" of the organization acting as the exclusive representative. *Id*. at 289. The Court acknowledged that non-members may "feel some pressure to join the exclusive representative" to serve on its committees and influence its positions. *Id*. at 289-90. But the Court held that this "is no different from the pressure to join a majority party that persons in the minority always feel." *Id*. at 290. Such pressure "is inherent in our system of government; it does not create an unconstitutional inhibition on associational freedom." *Id*.

Knight thus considered whether an exclusive representation system violates the speech or associational rights of individuals who are not members of the union

that has been designated as their exclusive representative, and held that it does not do so—thereby foreclosing the claim Plaintiffs assert in Count II. *See id*. at 288 ("[T]he First Amendment guarantees the right both to speak and to associate. Appellees' speech and associational rights, however, have not been infringed ....") (emphasis added); *id*. at 290 n.12 (non-members' "speech and associational freedom have been wholly unimpaired").

Every court to consider the issue has concluded that *Knight* forecloses any claim that a democratic system of exclusive representative collective bargaining violates the First Amendment. *See Branch v. Commonwealth Employment Relations Board*, 120 N.E.3d 1163 (Mass. 2019); *Mentele v. Inslee*, 916 F.3d 783, 788-90 (9th Cir. 2019); *Bierman v. Dayton*, 900 F.3d 570 (8th Cir. 2018), *cert. denied*, 2019 U.S. LEXIS 3319 (May 13, 2019); *Hill v. Service Emps. Int'l Union,* 850 F.3d 861 (7th Cir. 2017), *cert. denied*, 138 S.Ct. 446 (2017); *Jarvis v. Cuomo*, 660 F. App'x 72 (2d Cir. 2016), *cert. denied*, 137 S.Ct. 1204 (2017); *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir. 2016), *cert. denied*, 136 S.Ct. 2473 (2016); *Thompson v. Marietta Educ. Ass'n*, 2019 U.S. Dist. LEXIS 67900 (S.D. Ohio Jan. 14, 2019); *Reisman v. Associated Faculties*, 356 F.Supp.3d 173 (D. Me. 2018); *Uradnik v. Inter Faculty Org.*, 2018 U.S. Dist. LEXIS 165951 (D. Minn. Sept. 27, 2018), *aff'd*, No. 18-3086 (8th Cir. Dec. 3, 2018), *cert denied*, No. 18-719 (Supreme Court April 29, 2019); *Grossman v. Hawaii Gov't Employees Ass'n*, 2019 U.S. Dist. LEXIS 85668 (D. Hi.

May 21, 2019).[2]

Because the constitutionality of exclusivity of representation is well-settled law, Plaintiffs' legal challenge to Section 606 of PERA fails as a matter of law.

2. Nothing in *Janus* disturbed settled precedent that exclusive representation in the public sector is constitutionally permissible under the First and Fourth Amendments.

In support of Count I, Plaintiffs allege that the Supreme Court's recent decision in *Janus* supports their claim. (See Complaint, ¶¶ 53, 54, 56.) But *Janus* only held that public employees who are not union members cannot be required to pay "fair-share" or "agency" fees to an exclusive representative for collective bargaining representation. *Janus*, 138 S.Ct. at 2460. As the Eighth Circuit recently explained, *Janus* "never mentioned *Knight*, and the constitutionality of exclusive representation standing alone was not at issue." *Bierman*, 900 F.3d at 574.[3]

The majority opinion in *Janus*, moreover, expressly distinguished between compelled financial support for an exclusive representative and the underlying system of exclusive representation. *Janus*, 138 S.Ct. at 2465, 2467. The majority opinion explained that while the States may no longer require public employees to

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[2] All non-reported cases cited in Defendant Teamster's Brief is attached thereto as Exhibit "A."

[3] Importantly, the Supreme Court rejected petitions for review of the Eight Circuit's decisions in *Bierman* and *Uradnik*, *supra*, on April 29, 2019 and May 13, 2019, respectively, further demonstrating there is no interest in the nation's highest court to overturn its long-established precedent on the constitutionality of exclusivity of representation.

pay fair-share fees to their exclusive representatives, the States can otherwise "keep their labor-relations systems exactly as they are," including by "requir[ing] that a union serve as exclusive bargaining agent for its employees." *Id*. at 2478, 2485 n.27; *see also id*. at 2466, 2485 n.27 (States may "follow the model of the federal government," in which "a union chosen by majority vote is designated as the exclusive representative of all the employees"); *id*. at 2471 n.7 ("[W]e are not in any way questioning the foundations of modern labor law."). *Janus* also observed that while exclusive representation might not be permissible "in other contexts," in the collective bargaining context the imposition of a duty of fair representation on the exclusive representative avoids any constitutional questions. *Id*. at 2469, 2478.

For all these reasons, *Knight* and *Janus* demand rejection of Plaintiffs' erroneous claim that the exclusive representation model of collective bargaining violates the First and Fourteenth Amendments, and, therefore, this Court should dismiss with prejudice Count II in its entirety and all relief sought thereunder.

C. Count I and All Claims for Relief Sought Thereunder Are Barred Under the Law.

In Count I, Plaintiffs erroneously seek prospective and retroactive relief, including remittance of all dues deductions (1) from the time they signed a union authorization card until the date of the *Janus* decision and (2) from the date of the *Janus* decision until those dues deductions ceased. (*Complaint*, ¶ 50, 51.) In advancing this erroneous claim, Plaintiffs allege that when Defendant Lebanon

County hired them they were faced with an "unconstitutional choice" between becoming members and paying union dues or being non-members and paying fair share fees. (Complaint, ¶ 43.) While Plaintiffs claim that they only became members due to this purported "unconstitutional choice," in fact, Plaintiffs Adams, Felker, and Weaber chose union membership, while Plaintiff Unger initially chose non-membership and over a year later became a member. (*Jt. St.*, ¶¶ 20, 33, 43, 44, 54.) At no time did Plaintiffs inform Defendant Teamsters that they believed that they were faced with a purported "unconstitutional choice" until they filed their Complaint, and not until after the Supreme Court issued the *Janus* decision did they ask the Union to revoke their membership. (*Jt. St.*, ¶¶ 21, 34, 45, 55.) They claim that they did not recognize that they faced an "unconstitutional choice" until *Janus* was decided. (*Complaint,* ¶ 28.) Under these facts and the current law, Count I utterly lacks merit.

1. Plaintiffs failed to state a claim for which relief can be granted because, as asserted, Count I is not a valid Section 1983 claim.

Count I is premised on a faulty legal theory that Plaintiffs have a valid Section 1983 claim based on their allegation that they faced an "unconstitutional choice" when they signed union authorization cards prior to the *Janus* decision. (*Complaint*, ¶ 43.) As alleged by Plaintiffs, this purported "unconstitutional choice" required them to either sign union authorization cards and become union members or choose

to be non-members and pay fair share fees. (*Complaint*, ¶ 43.) They further claim that at the time they became members, they should have been given the choice to become non-members and not pay anything to Defendant Teamsters. (*Complaint*, ¶ 44.) Based on this erroneous reasoning, Plaintiffs allege that they are entitled to prospective relief in the form monetary damages, declaratory judgments, and injunctive relief, and retroactive relief in the form of remittance of all dues deductions. (*Complaint*, ¶¶ 45-51.)

Essentially, Plaintiffs are attempting to create a new legal doctrine under Section 1983 that one has a valid legal claim if they are faced with undesired, but legally valid, choices under the law at the time those choices are made. But Plaintiffs' theory ignores decades of well-established Pennsylvania public sector labor law as well as Supreme Court precedent existing at the time that they became union members. Prior to the issuance of the *Janus* decision, the law firmly held that Pennsylvania public sector bargaining unit employees had a choice between being a member who pays union dues or a non-member who pays fair share fees (if the union in question had negotiated a fair share fee provision in the collective bargaining agreement).

Until the Supreme Court decided *Janus*, Pennsylvania's Public Employee Fair Share Fee Law, 43 Pa.C.S.A. §1102.1 *et seq*., authorized public sector unions to negotiate provisions within collective bargaining agreements for the payment of fair

share fees for bargaining unit employees who choose to be a non-member of a union. Fair share fee statutes, like Pennsylvania's statute, were found constitutional by the Supreme Court in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977) and remained so until the *Janus* decision was issued on June 27, 2018. Thus, what Plaintiffs call an "unconstitutional choice" is simply what the law in Pennsylvania authorized and the Supreme Court held constitutional. In fact, Defendant Teamsters could find no court decision supporting a Section 1983 claim as advanced by Plaintiffs.

For these reasons, this Court should dismiss with prejudice Count I and all relief sought thereunder because it fails to state a valid claim for relief.

2. Because Plaintiffs signed union authorization cards and were union members, they are not entitled to remittance of dues deductions taken from their paychecks prior to the time they requested revocation of their union membership.

Plaintiffs all signed union authorization cards and were members of Defendant Teamsters. The union authorization cards signed by Plaintiffs Adams, Unger, and Weaber stated in pertinent part:

> This authorization is voluntary and is not conditioned on any present or future membership in the Union.
>
> This authorization and assignment shall be irrevocable for the term of the applicable contract between the union and the employer or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is lesser, unless I give written notice to the company and the union at least sixty [60] days, but not more than seventy-five [75] days

> before any periodic renewal date of this authorization and assignment of my desire to revoke the same.

Declaration of Kevin Bolig, at ¶¶ 4, 25, 33, & Exhibits A, M, Q. The clear language of these union authorization cards permits Plaintiffs to revoke their union membership during an annual, fifteen (15) day window before their anniversary date of signing the card. *Declaration of Kevin Bolig*, at ¶¶ 4, 25, 33, & Exhibits A, M, Q. The union authorization card signed by Plaintiff Felker indicates he has a choice to be a member or non-member, although it does not explain the process by which to do so. *Declaration of Kevin Bolig*, at ¶ 15 & Exhibit H.

Despite having the authority to be a non-member, none of the Plaintiffs sought such an option after signing a union authorization card until after the *Janus* decision was decided. When they did, Defendant Teamsters ultimately accepted their revocation of membership, ceased dues deductions, and remitted dues deductions received by the Union from the time Plaintiffs made the request until dues deductions ceased.

Plaintiffs, however, make the erroneous argument that despite their signed union authorization cards and membership in the Union, they are entitled to all dues deductions taken from their paycheck prior to their notification to the Union that they desired to revoke their membership and cease dues deductions. Specifically, they seek remittance of all dues deductions (1) from the time those deductions began until the *Janus* decision was filed and (2) from the date of the *Janus* decision until

those dues deductions ceased.

Plaintiffs are not entitled to such retroactive relief. When the *Janus* decision was issued, it had no impact on them because they were not fair share fee paying members. Instead, they were members who signed union authorization cards, and, at a minimum, those cards granted Defendant Teamsters the right to have Lebanon County deduct union dues until they notified the Union that they wanted to revoke their union membership and cease dues deductions. Thus, Plaintiffs have no grounds for remittance of union dues prior to sending their letters to Defendant Teamsters. Until Defendant Teamsters received their written requests, the Union had no notice that Plaintiffs sought to revoke their union membership and, therefore, are not liable to remit any dues deductions made prior to Plaintiffs sending their requests.

To the extent that Plaintiffs claim that the Union should have known prior to receiving their letters that Plaintiffs faced a "unconstitutional choice" when they signed union authorization cards, that claim is belied by the record. Plaintiffs themselves acknowledge that they did not know that they could be non-members who pay nothing to Defendant Teamsters until after issuance of the *Janus* decision. In fact, prior to the *Janus* decision that was not legally possible. Furthermore, Plaintiffs' letters in no way state they are seeking remittance of all dues deductions taken from their paychecks since they first became union members. Finally, as explained in Section D.1, *supra*, the Union would have no knowledge about any

purported "unconstitutional choice" because it was operating under long-established, existing law that required a Pennsylvania bargaining unit employee either to be a member who pays union dues or a non-member who pays fair share fees.

For these reasons, Defendant Teamsters cannot be held liable for dues deductions taken from Plaintiffs' paychecks prior to their notifying the Union of their desire to revoke their union membership and cease dues deductions.

3. The union authorization cards signed by Plaintiffs constitute valid private contracts, and, therefore, do not implicate the First Amendment.

To state a valid Section 1983 claim, a plaintiff must demonstrate that the challenged action was performed "under color of state [law.]" 42 U.S.C. § 1983. Courts considering First Amendment claims challenging dues deductions made pursuant to union authorization cards have concluded that no necessary state action was involved and, therefore, dismissed plaintiff's claims. *See, e.g., Belgau v. Inslee*, 359 F. Supp. 3d 1000 (W.D. Wash. 2019) (plaintiff "failed to show that the contents of the agreements are in any way attributable to the State" as the "Union, a private entity, drafted the agreements and asked Plaintiff to sign them."). Furthermore, at least one federal appellate court, considering a Section 1983 claim involving dues authorization cards have concluded, relying upon *Cohen v. Cowles Media Co*., 501 U.S. 663 (1991), that "the First Amendment does not preclude enforcement of 'legal

obligations' that are bargained-for and 'self-imposed' under state contract law." *Fisk v. Inslee*, 759 Fed. Appx. 632, 633 (9th Cir. 2019).

Because Plaintiffs had private contracts with Defendant Teamsters in the form of union authorization cards, this Court should dismiss with prejudice Count I and all relief sought thereunder.

4. Defendant Teamsters have a good faith defense against the remittance of dues deductions prior to Plaintiffs' request to revoke their membership.

The concept of a good faith defense for private parties sued under Section 1983 arose from two decisions of the Supreme Court. In *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 942 (1982), the Court held that private parties may be liable under Section 1983 in situations where they act according to a state-created system. Later, while not affording private parties qualified immunity to Section 1983 claims, the Supreme Court stated that "we do not foreclose the possibility that private defendants faced with [Section] 1983 liability … could be entitled to an affirmative defense based on good faith… or that [Section] 1983 suits against private, rather than governmental, parties could require plaintiffs to carry additional burdens." *Wyatt v. Cole*, 504 U.S. 158, 169 (1992). The Supreme Court was concerned that "principals of equality and fairness may suggest … that private citizens who rely unsuspectingly on state laws they did not create and may have no reason to believe are invalid should have some protection from liability, as do their government

counterparts." *Id*. at 168. Chief Justice Rehnquist and Justice Kennedy, writing in dissent and concurrence, respectively, argued that a good-faith defense existed but differed on its application. *Id*. at 169-70 (Kennedy, J., concurring), 175-77 (Rehnquist, C.J., dissenting).

Since *Wyat*t, every federal appellate court, including the U.S. Court of Appeals for the Third Circuit, that has considered the good faith defense has held it exists for private parties sued under Section 1983. *See Pinsky v. Duncan*, 79 F.3d 306, 311-12 (2d Cir. 1996); *Jordan v. Fox, Rothschild, O'Brien & Frankel*, 20 F.3d 1250, 1275-78 (3d Cir. 1994); *Wyatt v. Cole*, 994 F.2d 1113, 1118-21 (5th Cir. 1993); *Vector Research, Inc. v. Howard & Howard Attorneys P.C.*, 76 F.3d 692, 698-99 (6th Cir. 1996); *Clement v. City of Glendale*, 518 F.3d 1090, 1096-97 (9th Cir. 2008).

As of yet, no court has considered the good faith defense in a situation in which union members are seeking remittance of dues deductions based on an allegation that they faced "an unconstitutional choice" between being a union member paying dues or a non-member paying fair share fees. However, several federal courts have considered the good faith defense in the situation in which a non-union member paid fair share fees and sought remittance of all those fees deducted prior to the *Janus* decision. In all of them, the courts held that such fair share fees are not recoverable based on the good faith defense. *Crockett v. NEA-Alaska*, 367

F. Supp. 3d 996, 1007 (D. Alaska 2019); *Lee v. Ohio Educ. Ass'n*, 366 F. Supp. 3d 980, 981 (N.D. Ohio 2019); *Carey v. Inslee*, 364 F. Supp. 3d 1220, 1233 (W.D. Wash. 2019); *Cook v. Brown*, 364 F. Supp. 1184, 1192 (D. Or. 2019); *Danielson v. AFSCME, Council 28, AFL-CIO*, 340 F. Supp. 3d 1083, 1087 (W.D. Wash. 2018); *Mooney v. Ill. Educ. Ass'n*, ___ F. Supp. 3d ___, 2019 U.S. Dist. LEXIS 62966, *7-9 (C.D. Ill. April 11, 2019); *Hough v. SEIU Local 521*, 2019 U.S. Dist. LEXIS 46356, at *1 (N.D. Cal. March 20, 2019); *Janus v. AFSCME, Council 31*, 2019 U.S. Dist. LEXIS 43152, at *8-9 (N.D. Ill. March 18, 2019).

In this case, Defendant Teamsters relied upon nearly three (3) decades of established Pennsylvania labor law and over four (4) decades of federal law, holding that bargaining unit employees had a choice between being a union member and paying union dues or being a non-member and paying fair share fees. Furthermore, Pennsylvania labor law recognized that unions could require public employers to abide by contractual provisions regarding union authorization cards signed by a member of the union. Because there was well-established law upon which Defendant Teamsters relied upon, the good faith defense applies, and Plaintiffs claim for retroactive monetary damages fails.

For all these reasons, this Court should dismiss with prejudice Count I and all retroactive relief sought thereunder.

D. Because Plaintiffs No Longer Are Members and No Longer Pay Union Dues, They Lack Standing to Assert Claims in Count I for Prospective Monetary Relief or for Any Declaratory and Injunctive Relief.

This Court has Article III jurisdiction to hear a claim only if the plaintiff has standing. *Common Cause of Pa. v. Pa.*, 448 F.3d 249, 257-58 (3rd Cir. 2009). A "plaintiff must demonstrate standing separately for each form of relief sought." *Friends of the Earth, Inc. v. Laidlaw Env'tl Servs.*, 528 U.S. 167, 185 (2000). To establish Article III standing, a plaintiff must demonstrate:

> (1) An injury in fact (*i.e.*, a concrete and particularized invasion of a legally protected interest); (2) causation (*i.e.*, a fairly traceable connection between the alleged injury in fact and the alleged conduct of the defendant): and (3) redressability (*i.e.*, it is likely and not merely speculative that the plaintiff's injury will be remedied by the relief plaintiff seeks in bringing suit).

Common Cause of Pa., 558 F.3d at 258 (internal quotations omitted). A plaintiff seeking forward-looking forms of relief such as monetary, declaratory, or injunctive relief "must show that he is 'likely to suffer future injury' from the defendant's conduct." *McNair v. Synapse Group, Inc.*, 672 F.3d 213, 223 (3rd Cir. 2012) (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983)).

1. Plaintiffs lack standing for any claims for prospective monetary relief from the time they filed their Complaint going forward.

To the extent Plaintiffs seek monetary relief from the time they filed their complaint and going into the future, those claims are moot. Plaintiffs Felker and

Unger ceased being members and no longer had dues deductions after their paychecks dated on or about October 25, 2018 and September 13, 2018, respectively. (*Jt. St.*, ¶¶ 36, 37, 48, 49.) Dues deductions ceased well before they filed their Complaint, and, therefore, they have no entitlement to prospective monetary relief. Similarly, Plaintiffs Adams and Weaber's dues deductions ceased after their paychecks dated on or about February 28, 2019—one day after they filed their Complaint. (*Jt. St.*, ¶¶ 27, 28, 60, 61.) To the extent Plaintiffs Adams and Weabler argue they are entitled to dues deductions for the one day after their Complaint was filed, the Union already remitted those dues deductions back to them when it provided checks for all dues deductions received from the time Plaintiffs requested to revoke their union memberships until dues deductions ceased. (*Jt. St.*, ¶¶ 29, 31, 62, 64.) It is nearly impossible for those dues deductions to begin again because that would require Plaintiffs to sign another union authorization card. Thus, any claims for prospective monetary relief are moot, and they lack standing to seek such relief.

For these reasons, this Court should dismiss as moot all prospective monetary relief sought in Count I.

2. Plaintiffs lack standing to obtain declaratory relief.

Similarly, in Count I, Plaintiffs seek prospective relief in the form of declaratory judgments and injunctions. With respect to declaratory relief, Plaintiff seeks declarations that (1) "limiting their ability to revoke the authorization to

withhold dues from their paychecks to a window of time is unconstitutional because they did not provide affirmative consent"; (2) "Plaintiffs signing of the dues checkoff authorizations cannot provide a basis for their affirmative consent to waive their First Amendment rights" because that "was based on an unconstitutional choice between paying [dues to Defendant Teamsters] as a member or paying the Union [fair share fees] as a non-member"; and (3) "the practice by Defendant Lebanon County of withholding union dues from Plaintiffs' paycheck was unconstitutional because Plaintiffs did not provide affirmative consent for [the County] to do so." Complaint, Dckt. #1, at ¶¶ 47-49.

In *Golden v. Zwickler*, the Supreme Court considered whether a Section 1983 plaintiff had standing to request a declaratory judgment that a New York State statute barring anonymous election hand-billing violated the First Amendment. 394 U.S. 103, 117 (1969). Plaintiff had distributed handbills in 1964 decrying votes of a Congressperson, and wanted to do so again in 1966. *Id.* at 106. However, the Congressperson had left office and accepted a seat as a judge of the Supreme Court of New York. *Id.* at 109 n.1.

While the trial court granted plaintiff's request, on appeal, a unanimous Supreme Court reversed, holding that the federal court had no jurisdiction to issue a declaratory judgment in the matter since it was "wholly conjectural" that the Congressperson would ever serve as a candidate for Congress and, therefore, no case

or controversy existed at the time the lower court considered the issue. *Id*. at 109. In reaching its conclusion, the Supreme Court began:

> "The federal courts established pursuant to Article III of the Constitution do not render advisory opinions. For adjudication of constitutional issues, 'concrete legal issues, presented in actual cases, not abstractions,' are requisite. This is as true of declaratory judgments as any other field."

Id. at 108 (quoting *United Pub. Workers of Am. v. Mitchell*, 330 U.S. 75, 89 (1947)). To determine if an actual case or controversy exists under the Declaratory Judgment Act, the Supreme Court reasoned, "… the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Id*. (quoting *Maryland Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273 (1941)).

In applying this legal standard, the Supreme Court concluded:

> Since the New York statute's prohibition of anonymous handbills applies to handbills directly pertaining to election campaigns, and the prospect was neither real nor immediate of a campaign involving the Congressman, it was wholly conjectural that another occasion might arise when [Appellee] might be prosecuted for distributing the handbills referred to in the complaint. His assertion in his brief that the former Congressman can be "a candidate for Congress again" is hardly a substitute for evidence that this is a prospect of immediacy and reality.

Id. at 109. *Golden* remains good law and the Third Circuit has cited it with approval in a Section 1983 claim, alleging a violation of the First Amendment. *See, e.g., Versarger v. Twp. of Clinton*, 984 F.2d 1359, 1360 (3rd Cir. 1992) (concluding that

there was no case or controversy because "it was highly unlikely" that a volunteer firefighter removed from a volunteer fire company under its bylaws "would ever again be a member of the Hose Company….").

Plaintiffs have no grounds to seek declaratory relief in Count I because they are no longer union members and no longer pay union dues. Therefore, they are no longer subject to the provisions of the CBA or PERA regarding maintenance of membership, dues authorization forms, or dues deduction, or the practices of the Union as they relate to the same.[4] As is the case in *Versager*, *supra*, there is simply no way that Plaintiffs would ever return as a member of the Union. Thus, they cannot claim they will be harmed by PERA or the CBA regarding maintenance of membership or dues deductions, or Defendant Teamsters' practices regarding these matters about which they complain in Count I.

For these reasons, this Court should dismiss as moot all claims for declaratory judgments sought in Count I as there no actual case or controversy with respect to such relief.

3. Plaintiffs lacks standing to obtain injunctive relief.

In Count I, with respect to injunctive relief, Plaintiff seeks an injunction from this Court, ordering (1) Defendant Teamsters "immediately to [allow Plaintiffs] to

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[4] Nor can Plaintiffs or any other bargaining unit employee working for Defendant Lebanon County ever be subject to fair share fees as *Janus* precluded such deductions.

resign their union membership" and (2) Defendant Lebanon County "to immediately [] stop deducting union dues from their paychecks." (*Complaint*, ¶¶ 45, 46.) Because Defendant Teamsters accepted their revocation of membership and dues deductions have ceased, Plaintiffs lack standing for obtaining the injunctive relief sought in Count I, and those claims are moot.

As is the case with a request for a declaratory judgment, a plaintiff seeking an injunction must demonstrate the existence of an actual case or controversy that is not speculative, justifying such prospective relief. *See Lyons*, 461 U.S. at 101 (1982); *see also*, *ZF Meritor, LLC v. Eaton Corp.*, 696 F.3d 254, 301 (3rd Cir. 2012) (finding there was no actual case or controversy for issuance of an injunction when the corporation against which the injunction was sought had dissolved).

Lyons involved an individual who was injured by a City of Los Angeles ("City") police officer during an arrest in which the police officer subjected plaintiff to a chokehold. *Lyons*, 461 U.S. at 97-98. Plaintiff sought monetary damages as well as injunctive relief. *Id*. at 97. Plaintiff requested the district court enjoin the City's policy permitting police officers to employ chokeholds. *Id*. at 98. The district court granted the injunction and the Court of Appeals affirmed. *Id*. at 99. After the Supreme Court granted *certiorari*, the chief of police of the City prohibited some chokeholds and imposed a six-month moratorium for others except in limited circumstances. *Id*. at 100.

In reviewing the Court of Appeals affirmance of the district court's grant of injunctive relief, the Supreme Court argued that injunctive relief is only proper if "[p]laintiffs … demonstrate a 'personal stake in the outcome' in order to 'assure that concrete adverseness which sharpens the presentation of issues' necessary for the proper resolution of constitutional questions." *Id*. at 101 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962). The Supreme Court reiterated that "'[past] exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief … if unaccompanied by any continuing, present adverse effects.'" *Id*. at 102 (quoting *O'Shea v. Littleton*, 414 U.S. 488 (1974)). It further rejected the notion that a plaintiff with standing to seek monetary damages for prior constitutional wrongs has standing for prospective injunctive relief. *Id*. at 104. Because the Supreme Court found that plaintiff was not facing immediate harm, he lacked standing for injunctive relief. *Id*. at 105.

In reaching this conclusion, the Supreme Court rejected the idea that the police conduct fell within the rule that "a claim does not become moot where it is capable of repetition but evades review…." *Id*. at 109. "[T]he capable-of-repetition doctrine applies only in exceptional situations, and ***generally only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality***." *Id*. (emphasis added). It emphasized that injunctive relief "is unavailable absent a showing of irreparable injury, ***a requirement that cannot be met where***

there is no showing of any real or immediate threat that the plaintiff will be wronged again…." *Id*. at 111 (citing *O'Shea*, 414 U.S. at 502) (emphasis added). Finally, because Lyons had an adequate remedy at law—his claims for monetary relief—the Supreme Court found unavailing the argument that without an injunction, police misconduct cannot be challenged. *Id*.

Even more so than in *Lyons*, Plaintiffs lack an actual case or controversy to confer standing for injunctive relief which they seek in Count I. Defendant Teamsters ultimately granted each Plaintiff's request to revoke his or her membership and Defendant Lebanon County, upon request by the Union, ceased dues deductions. (*Jt. St.*, ¶¶ 26-30, 36-38, 40, 47-49, 50, 59-61, 63.) Thus, Plaintiffs are no longer subject to the provisions of the CBA and PERA regarding maintenance of membership, dues authorization forms, or dues deduction, or any purported practice of Defendant Teamsters concerning the same. Because they are under no "real or immediate threat that [they] will [be] wronged again," they have no grounds for injunctive relief. Like the volunteer firefighter in *Versanger*, it is "highly unlikely" that any Plaintiff "would ever again be a member of the [Union]."

For these reasons, this Court should dismiss as moot all claims for injunctive relief sought in Count I because those claims lack an actual case or controversy.

V. CONCLUSION

Based on the above, this Court should dismiss with prejudice in their entirety Counts I and II asserted against Defendant Teamsters and all claims for relief sought thereunder.

Respectfully submitted:

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