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GAM

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SHALEA OLIVER,

Plaintiff,

v.

SERVICE EMPLOYEES
INTERNATIONAL UNION LOCAL 668,
TERESA D. MILLER, in her official
capacity as Secretary of Human Services,
MICHAEL NEWSOME, in his official
capacity as Secretary of the Office of
Administration, ATTORNEY GENERAL
JOSH SHAPIRO, in his official capacity,
JAMES M. DARBY, Chairman,
Pennsylvania Labor Relations Board;
ALBERT MEZZAROBA, Member,
Pennsylvania Labor Relations Board; and
ROBERT H. SHOOP, JR., Member,
Pennsylvania Labor Relations Board, in
their official capacities,

Defendants

No. **19 891**

FILED
FEB 28 2019
KATE BRYMAN, Clerk
By: [Signature] Dep. Clerk

COMPLAINT

1. Government employees have a First Amendment right not to be compelled by their employer to join a union or to pay any fees to that union unless an employee “affirmatively consents” to waive that right. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018). Such a waiver must be “freely given and shown by ‘clear and compelling’ evidence.” *Id.*

2. Union dues deduction authorizations signed by government employees in Pennsylvania before the Supreme Court’s decision in *Janus* cannot constitute affirmative consent by those employees to waive their First Amendment right not to pay union dues or fees. Union

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members who signed such agreements could not have freely waived their right to not join or pay a union because the Supreme Court had not yet recognized that right.

3. Because Plaintiff Shalea Oliver did not provide affirmative consent to waive her First Amendment right to not join or pay a union, Defendants violated Plaintiff's First Amendment rights by maintaining Plaintiff's union membership and by withholding union dues from her paycheck after the date of the *Janus* decision on June 27, 2018.

4. Further, Pennsylvania law requires that a union serve as an exclusive bargaining agent for all employees in a bargaining unit, including those employees who are not members of the union. 43 P.S. § 1101.606.

5. The First Amendment protects "[t]he right to eschew association for expressive purposes," *Janus*, 138 S. Ct. at 2463, and "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Roberts v. United States Jaycees*, 468 U. S. 609, 623 (1984).

6. Ms. Oliver does not wish to associate with Defendant Service Employees International Union Local 668 ("SEIU") including having it serve as her exclusive bargaining representative. Yet, Defendants, under color of state law, are forcing Plaintiff to associate with SEIU against her will, "a significant impingement on associational freedoms that would not be tolerated in other contexts." *Janus*, 138 S. Ct. at 2478.

7. Therefore, Ms. Oliver brings this suit under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) seeking declaratory and injunctive relief and damages in the amount of the dues previously deducted from her paychecks.

PARTIES

8. Plaintiff Shalea Oliver is an employee of the County of Philadelphia Assistance Office of the Pennsylvania Department of Human Services (“DHS”). She resides in Philadelphia, Pennsylvania.

9. Defendant SEIU is a labor union headquartered in Harrisburg, Pennsylvania, and represents public social service employees throughout Pennsylvania. SEIU is an “Employee organization” and “Representative” within the meaning of the Pennsylvania Public Employee Relations Act (“PERA”), 43 P.S. § 1101.301(3) and (4), respectively.

10. Defendant Teresa D. Miller is secretary of the Pennsylvania Department of Human Services and is generally responsible for the operations of the Pennsylvania Department of Human Services. Her office is located in Harrisburg, Pennsylvania.

11. Defendant Michael Newsome is Secretary of the Office of Administration and is responsible for human relations for employees of the Commonwealth. The Commonwealth is a “Public employer” within the meaning of PERA, 43 P.S. § 1101.301(1). His office is located in Harrisburg, Pennsylvania.

12. Defendant Attorney General Josh Shapiro is sued in his official capacity as the representative of the Commonwealth of Pennsylvania charged with the enforcement of Commonwealth laws, including PERA, which permits the limitation of the rights of government employees to resign from the union and stop union dues from being withheld from their paychecks, 43 P.S. § 1101.301(18); 1101.401; 1101.705; and which requires SEIU to be the “exclusive representative” of Plaintiff, whether she is a union member or not. 43 P.S. § 1101.606. His office is located in Harrisburg, Pennsylvania.

13. Defendants James M. Darby, Albert Mezzaroba, and Robert H. Shoop Jr., are sued in their official capacities as members of the Pennsylvania Labor Relations Board (“PLRB”), which is charged, under PERA, with certifying employee representatives for collective bargaining purposes, 43 P.S. § 1101.602, determining the appropriateness of the bargaining unit, 43 P.S. § 1101.604, and limited to certifying only one employee representative per bargaining unit, 43 P.S. § 1101.606. PLRB has certified SEIU as the exclusive bargaining representative for the employee unit which includes Plaintiff.

JURISDICTION AND VENUE

14. This case raises claims under the First and Fourteenth Amendments of the United State Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

15. Venue is appropriate under 28 U.S.C. § 1391(b) because a substantial portion of the events giving rise to the claims occurred in the Eastern District of Pennsylvania.

FACTS

Defendants are acting under color of state law.

16. Acting in concert under color of state law, the Commonwealth of Pennsylvania and Defendant SEIU entered into a collective bargaining agreement (“Agreement”), effective on July 1, 2016 through June 30, 2019. **Exhibit A.**

17. The Agreement contains a “Union Security” article, which limits when union members may resign their union membership and stop union dues from being withheld from their paycheck. That article provides:

Section 1. Each employee who, on the effective date of this Agreement, is a member of the Union, and each employee who becomes a member after that date shall maintain membership in the Union, provided that

such employee may resign from the Union, in accordance with the following procedure:

a. The employee shall send a certified letter (Return Receipt Requested) of resignation to the headquarters of the Union and a copy of the letter to the employee's agency. The official membership card, if available, shall accompany the letter of resignation.

b. The letter referred to in a. above shall be post- marked during the fifteen (15) day period prior to the expiration date of this Agreement and shall state that the employee is resigning membership in the Union and where applicable, is revoking check-off authorization.

Article 2, p. 3, Exhibit A.

18. The Agreement's maintenance of membership requirement follows PERA's definition of "maintenance of membership," which states:

(18) "Maintenance of membership" means that 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).

19. PERA permits the limitation of the rights of government employees to resign from the union and stop union dues from being withheld from their paychecks.

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

43 P.S. § 1101.401.

20. The terms of both the Agreement and PERA limit a union member's right to resign and stop union dues from being withheld from his or her paycheck to only the 15-day window immediately preceding the expiration of the Agreement.

21. The Agreement also provides that with respect to union dues that:

Section 1. The Employer agrees to deduct the Union membership dues, an annual assessment, and an initiation fee, from the pay of those employees who individually request in writing that such deductions be made. The signature of the employee on a properly completed Union dues deduction authorization card shall constitute the only necessary authorization to begin payroll deductions of said dues. The Union shall certify to the Employer the rate at which Union dues are to be deducted, and dues at this rate shall be deducted from all compensation paid. The aggregate deductions of all employees shall be remitted together with an itemized statement to the Union by the last day of the succeeding month, after such deductions are made. Except as otherwise provided in Article 2 of this Agreement, the authorization shall be irrevocable during the term of this Agreement. When revoked by the employee in accordance with Article 2, the agency shall halt the check-off of dues effective the first full pay period following the expiration of this Agreement.

Article 3, p. 4, Exhibit A.

22. PERA provides that:

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

43 P.S. § 1101.705.

Plaintiff sought to resign from and stop paying dues to the union.

23. Plaintiff Shalea Oliver has been an Income Maintenance Caseworker at the DHS County of Philadelphia Assistance Office since December 2014. Ms. Oliver joined Defendant SEIU at the time because she would have been required to pay money to the union even as a non-member, in the form of "fair share" fees.

24. At the time Ms. Oliver began her employment with DHS and joined Defendant SEIU, had she been given the option to pay no money to the union as a non-member, she would not have joined the union.

25. After the Supreme Court issued its decision in *Janus* on June 27, 2018, Ms. Oliver learned that she had the right both to be a non-member of the union and to pay no money to the union.

26. In conversations with Ms. Oliver, representatives of Defendant SEIU informed her that based on the dues deduction authorization she signed prior to the Supreme Court's *Janus* decision, she could not withdraw until July of 2019.

27. On August 10, 2018, Ms. Oliver sent a letter to SEIU and DHS informing them that she no longer wished to remain a member of SEIU and that union dues should no longer be withheld from her paycheck.

28. The Commonwealth's HR Services responded that they could not stop withholding dues from her paycheck unless they were directed to by the union. SEIU did not initially respond to Ms. Oliver's request.

29. On January 23, 2019, almost 6 months after her request, SEIU sent a letter to the Commonwealth indicating that it should discontinue deducting union dues from Ms. Oliver's paycheck.

SEIU is Plaintiff's exclusive bargaining representative.

30. Under Pennsylvania law, 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. § 1101.606.

31. Once a union is designated the exclusive representative of all employees in a bargaining unit, it negotiates wages, hours, terms and conditions of employment for all employees, even employees who are not members of the union or who do not agree with the positions the union takes on the subjects.

32. Defendant SEIU is the exclusive representative of Ms. Oliver and her coworkers in the bargaining unit, with respect to wages, hours, and terms and conditions of employment, pursuant to 43 P.S. § 1101.606. Article 1, p. 3, Exhibit A.

COUNT I
Defendants violated Plaintiff's rights to free speech
and freedom of association protected by the First
Amendment of the United States Constitution.

33. The allegations contained in all preceding paragraphs are incorporated herein by reference.

34. Requiring a government employee to pay money to a union violates that employee's First Amendment rights to free speech and freedom of association unless the employee "affirmatively consents" to waive his or her rights. *Janus v. AFSCME*, 138 S. Ct. 2448, 2486 (2018). Such a waiver must be "freely given and shown by 'clear and compelling' evidence." *Id.*

35. After the Supreme Court's decision in *Janus* on June 27, 2018, Ms. Oliver did not provide affirmative consent to remaining a member of Defendant SEIU or to having union dues withheld from her paycheck by the Commonwealth.

36. Defendants Teresa D. Miller and Michael Newsome are state actors who oversaw the deduction of dues from Ms. Oliver's paycheck under color of state law.

37. Acting pursuant to the Agreement and PERA, Defendant SEIU acted in concert with Defendants Miller and Newsome to collect union dues from Ms. Oliver's paycheck without her consent.

38. The actions of Defendant SEIU and Defendants Miller and Newsome constitute a violation of Ms. Oliver's First Amendment rights to free speech and freedom of association to not join or financially support a union without her affirmative consent.

39. From when she joined the union until June 27, 2018 (the date the *Janus* decision was issued), because she was not given the option of paying nothing to the union as a non-member, Ms. Oliver could not have provided affirmative consent to Defendants to have dues deducted from her paycheck.

40. Ms. Oliver's consent to dues collection was not "freely given" because it was given based on an unconstitutional choice of either paying the union as a member or paying the union agency fees as a non-member. *Janus* made clear that this false dichotomy is unconstitutional. *Janus*, 138 S. Ct. at 2486.

41. If Ms. Oliver had a choice between paying union dues as a member of the union or paying nothing as a non-member, she would have chosen to pay nothing as a non-member. Therefore, Ms. Oliver's consent was compelled, and not freely given.

42. Ms. Oliver is entitled to declaratory relief that 43 P.S. § 1101.301(18), 1101.401, and 1101.705 are unconstitutional as applied to Plaintiff to the extent they limit the Plaintiff's ability to resign from the union and stop union dues from being withheld from her paycheck, despite Plaintiff not providing affirmative consent.

43. Ms. Oliver is entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) that limiting her ability to revoke the authorization to withhold union dues from her

paycheck to a window of time is unconstitutional because she did not provide affirmative consent.

44. Ms. Oliver is entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) that her signing of the union dues deduction authorization cannot provide a basis for her affirmative consent to waive her First Amendment rights upheld in *Janus* because such authorization was based on an unconstitutional choice between paying the union as a member or paying the union as a non-member.

45. Ms. Oliver is entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) that the practice by Defendants Miller and Newsome of withholding union dues from her paycheck was unconstitutional because she did not provide affirmative consent to do so.

46. Ms. Oliver is entitled under 42 U.S.C. § 1983 to damages in the amount of all dues deducted and remitted to Defendant SEIU after the date of the Supreme Court's decision in *Janus*, June 27, 2018, because she did not provide affirmative consent for such dues to be deducted.

47. Ms. Oliver is entitled under 42 U.S.C. § 1983 to damages in the amount of all dues deducted and remitted to Defendant SEIU before June 27, 2018 because she could not have provided affirmative consent to those dues being deducted since she was given an unconstitutional choice between paying union dues to the union as a member or paying agency fees to the union as a non-member, and had she been given the constitutionally-required option of paying nothing to the union as a non-member, she would have chosen that option.

COUNT II

Commonwealth law forcing Ms. Oliver to associate with Defendant SEIU without her affirmative consent violates Ms. Oliver's First Amendment rights to free speech and freedom of association.

48. The allegations contained in all preceding paragraphs are incorporated herein by reference.

49. "Compelling individuals to mouth support for views they find objectionable violates that cardinal constitutional command, and in most contexts, any such effort would be universally condemned." *Janus*, 138 S. Ct. at 2463.

50. For this reason, the Supreme Court has repeatedly affirmed that "[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning . . . [A] law commanding 'involuntary affirmation' of objected-to beliefs would require 'even more immediate and urgent grounds' than a law demanding silence." *Janus*, 138 S. Ct. at 2464 (2018) (quoting *West Virginia Bd. of Ed. v. Barnette*, 319 U.S. 624, 633 (1943)).

51. Therefore, courts should scrutinize compelled associations strictly, because "mandatory associations are permissible only when they serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms." *Knox v. SEIU*, 567 U.S. 298, 310 (2012).

52. In the context of public sector unions, the Supreme Court has recognized that "[d]esignating a union as the employees' exclusive representative substantially restricts the rights of individual employees. Among other things, this designation means that individual employees may not be represented by any agent other than the designated union; nor may individual employees negotiate directly with their employer." *Janus*, 138 S.Ct. at 2460.

53. Under PERA, the Commonwealth of Pennsylvania allows only one union representative to collectively bargain with a government employer for each employee bargaining unit. 43 P.S. § 1101.606.

54. The Commonwealth has recognized Defendant SEIU as Ms. Oliver's exclusive representative for collective bargaining purposes. 43 P.S. § 1101.603; Article 1, p. 3, Exhibit A.

55. PLRB has certified SEIU as the exclusive representative for collective bargaining purposes for the bargaining unit which includes Plaintiff. *See* 43 P.S. § 1101.602.

56. Under color of state law, Defendant SEIU has acted as Plaintiff's exclusive representative in negotiating the terms and conditions of her employment.

57. Under color of state law, Defendant Newsome's predecessor has negotiated the terms and conditions of Plaintiffs' employment on behalf of the Commonwealth with Defendant SEIU.

58. This designation compels Ms. Oliver to associate with the union and, through its representation of her, it compels her to petition the government with a certain viewpoint, despite that viewpoint being in opposition to Ms. Oliver's own goals and priorities.

59. The exclusive representation provision of 43 P.S. § 1101.606 is, therefore, an unconstitutional abridgement of Ms. Oliver's right under the First Amendment not to be compelled to associate with speakers and organizations without her consent.

60. Under 42 U.S.C. § 1983, Ms. Oliver is entitled to have 43 P.S. §§ 1101.606 declared unconstitutional for violating her First Amendment rights to free speech and freedom of association.

61. Plaintiff is entitled to an injunction preventing Defendant General Shapiro from enforcing it, and preventing Defendants James M. Darby, Albert Mezzaroba, and Robert H.

Shoop Jr., in their capacity as members of PLRB, from certifying a union as the exclusive representative in a bargaining unit.

PRAYER FOR RELIEF

Plaintiff Shalea Oliver respectfully requests that this Court:

a. Declare that limiting the ability of Ms. Oliver to revoke the authorization to withhold union dues from her paycheck to a window of time is unconstitutional because she did not provide affirmative consent;

b. Declare that Ms. Oliver's signing of the union dues deduction authorization cannot provide a basis for her affirmative consent to waive her First Amendment rights upheld in *Janus* because such authorization was based on an unconstitutional choice between paying the union as a member or paying the union as a non-member;

c. Declare that the practice by Defendant Michael Newsome of withholding union dues from Ms. Oliver's paycheck was unconstitutional because Ms. Oliver did not provide affirmative consent to do so;

d. Declare 43 P.S. § 1101.301(18), 1101.401, and 1101.705 unconstitutional as applied to Plaintiff to the extent they limit her ability to resign from the union and stop union dues from being withheld from their paychecks, despite Plaintiff not providing affirmative consent;

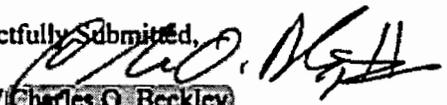
e. Declare the exclusive representation provided for in 43 P.S. §§ 1101.606 to be unconstitutional;

f. Enjoin Defendant Josh Shapiro from enforcing the provisions of 43 P.S. §§ 1101.606;

- g. Enjoin Defendants James M. Darby, Albert Mezzaroba, and Robert H. Shoop Jr., in their capacity as members of PI.RB from certifying a union as the exclusive representative in a bargaining unit;
 - h. Award damages against Defendant SEIU for all union dues collected from Ms. Oliver after the date of the Supreme Court's decision in *Janus*, June 27, 2018;
 - i. Award damages against Defendant SEIU for all union dues collected from Ms. Oliver before June 27, 2018;
 - j. Award Ms. Oliver her costs and attorneys' fees under 42 U.S.C. § 1988;
- and
- k. Award any further relief to which Ms. Oliver may be entitled.

Dated: February 27, 2019

Respectfully Submitted,

By: 
/s/ Charles O. Beckley

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