

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

<p>HOLLIE ADAMS, et al.,</p> <p style="text-align: center;">Plaintiffs,</p> <p>v.</p> <p>TEAMSTERS UNION LOCAL 429, et al.</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;"><i>No. 1:19-CV-0336</i></p> <p style="text-align: center;"><i>Judge Rambo</i></p> <p style="text-align: center;">Magistrate Judge Carlson</p>
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**PLAINTIFFS’ OBJECTIONS TO THE MAGISTRATE
JUDGE’S REPORT AND RECOMMENDATION
AS TO THE COMMONWEALTH DEFENDANTS**

Plaintiffs object to the Magistrate Judge’s December 3, 2019 Report and Recommendation (Doc. 55, hereinafter Report) with respect to the Commonwealth Defendants’ motion for summary judgment (Motion to Dismiss, Doc. 26, converted to a motion for summary judgment by Judge Rambo’s order, Doc. 30). Report at 1, 5-7, 11, 15-16, 17-20 (discussing resolution of claims specifically as against the Commonwealth Defendants). Plaintiffs respectfully make the following objections to the Report:

I. Plaintiffs object to the Report’s recommendations concerning Count I because no relief is sought against the Commonwealth in Count I.

The Report’s substantive discussion of Plaintiffs’ claims set forth in Count I – concerning mootness, the collective bargaining agreement, and enforcement – all

start from the incorrect premise that Count I was brought against the Commonwealth Defendants. *See* Report at 11-16. But Count I was only brought against the Teamsters and Lebanon County. Compl., Doc. 1, at 10) (“COUNT I: Defendants Lebanon County and Teamsters violated Plaintiffs’ rights to free speech and freedom of association protected by the First Amendment of the United States Constitution.”). *Accord id.* at 16-17 (prayer for relief seeks relief for Count I only against Teamsters and Lebanon County). Therefore, the Court should not adopt the Report’s first recommendation (Report at pages 11-16) because it does not relate to the Commonwealth Defendants whose motion the Report addresses.¹

To include the Report’s recommendation as to Count I would violate the U.S. Constitution’s “direct prohibition on the issuance of advisory opinions” as embodied in Article III. *Rhone-Poulenc Surfactants & Specialties, LP v. Comm’r of Internal Revenue*, 249 F.3d 175, 181-182 (3rd Cir. 2001) (internal citation omitted). There is no “case or controversy” between Plaintiffs and the Commonwealth Defendants as to Count I, and so adopting substantive legal conclusions as to Count I would be to issue an advisory opinion on the topic without a concrete dispute between these particular parties.

¹ The Plaintiffs also object to the substantive conclusions in this section of the Report, and discuss those objections in their objections to the report and recommendations with respect to the Union’s and Lebanon County’s respective motions for summary judgment.

II. Plaintiffs object to summary judgment for the Commonwealth Defendants when no recommendation is made as to the exclusive-representation claim.

Count II of the Complaint challenges the exclusive representation statutes which are administered by the Pennsylvania Labor Relations Board and enforced by the Pennsylvania Attorney General. (See Compl., Doc. 1, at 14-16.) The Complaint specifically seeks declaratory and injunctive relief against these agents of the Commonwealth for their role in administering and enforcing Commonwealth statutes and regulations concerning exclusive representation. *See id.* at 17-18.

The Report includes no discussion of the exclusive representation claim whatsoever, although it featured prominently in briefing by both the Plaintiffs and the Commonwealth Defendants. (See Brief in Support of Commonwealth Defendants' Converted Motion for Summary Judgment, Doc. 37, at 16-25; Plaintiffs' brief in support of cross-motion for summary judgment, Doc. 44, at 26-32; Reply Brief of Commonwealth Defendants, Doc. 52, at 9-11; Reply Brief of Plaintiffs, Doc. 53, at 17-20.)

In the second report issued in this case, the Magistrate Judge includes a footnote stating:

We note that Count II of this complaint may also tangentially implicate defendants beyond the union and the county, since the members of the Pennsylvania Labor Relations Board, (PLRB), who are also named as defendants in this lawsuit, are alleged to have certified the local as the exclusive representative of the bargaining unit in this case. We have already issued a Report and Recommendation recommending the

dismissal of these state agency defendants. (Doc. 55.) However, to the extent that the plaintiffs believe that this exclusive bargaining agent certification by the PLRB provides independent grounds for a cause of action against these state officials, we believe that the foregoing analysis refutes such a claim and would also compel dismissal of these state agency officials.

(Report & Recommendation as to Lebanon County and Teamsters Union, Doc. 56, at 26-27, n.5.) (“Second Report”)

More than “tangentially” impacting the PLRB, the exclusive-representation claim is the entire reason that the PLRB members and Attorney General are parties to this case. The Pennsylvania Public Employe Relations Act (“PERA”) specifically charges the PLRB with conducting representation elections and then certifying the unions that win those elections as the exclusive representative of the employees in the bargaining unit for which the election was held. 43 P.S. Labor §§ 1101.605 and 606. An employer who refuses to bargain in good faith “with an employe representative which is the exclusive representative of employes in an appropriate way,” may be subject to unfair labor practice charges and proceedings before the PLRB. 43 P.S. §§ 1101.1201. If the employer refuses to abide by an order of the PLRB directing the employer to bargain with the duly certified exclusive representative, then the PLRB may petition the Court to enforce its bargaining order. 43 P.S. §§ 1101.1501. Finally, PERA also authorizes prosecution and criminal sanctions for those who impede or interfere with the PLRB’s performance of its

duties. 43 P.S. Labor § 1101.1901. *See* Defendants’ Joint Statement of Facts, Doc. 36, at 2-6.

Plaintiffs object to the Second Report’s recommendation on exclusive representation, and incorporate here that objection and their underlying briefing. (*See* “Plaintiffs’ objections to the magistrate judge’s report and recommendation as to Teamsters and Lebanon County,” Doc. 58, at 5-7)

Regardless of how the Court acts on the Magistrate Judge’s recommendation as to exclusive representation contained in Doc. 56, Plaintiffs request that the Court explicitly incorporate that determination into its resolution of this Report as well to ensure the issue’s appealability against all of the necessary defendants.

III. Plaintiffs object to the Report as to damages against the Commonwealth Defendants, as they have never sought such damages.

The Plaintiffs’ do not disagree with the Report’s statement of the law of immunity and the Eleventh Amendment. (Report at 17-19.) Nevertheless, Plaintiffs object to the inclusion of the statement in the final ruling, as it is irrelevant to the case.² The Report phrases its recommendation “to the extent that the plaintiffs are seeking damages or some other form of retroactive financial relief from the state, state agencies, or state officials acting in their official capacities, this complaint encounters a second, insurmountable legal obstacle.” Report at 17. Plaintiffs do not,

² Defendants Lebanon County and Teamsters make no claim to Eleventh Amendment immunity, as they cannot because they are not immune under the Eleventh Amendment.

however, seek such damages or financial relief of any kind from the Commonwealth defendants. In the Complaint's prayer for relief, Plaintiffs seek only declaratory and injunctive relief against the Commonwealth Defendants. (Compl., Doc. 1, at 16-18.) The Complaint's prayer for relief only references damages against the Teamsters, *id.* at 18, and Plaintiffs do not waive that claim with these objections.

To include the Report's recommendation as to Eleventh Amendment immunity would also violate the prohibition on advisory opinions. *Rhone-Poulenc Surfactants & Specialties, LP v. Comm'r of Internal Revenue*, 249 F.3d 175, 181-182 (3rd Cir. 2001). Courts should refrain from "decid[ing] abstract, hypothetical, or contingent questions." *Id.* at 182 (quoting *Ala. State Fed. of Labor v. McAdory*, 325 U.S. 450, 461 (1945)). To decide the Eleventh Amendment issue is just such a hypothetical, as the Plaintiffs do not seek the relief the Report's discussion addresses. Therefore, this recommendation should be excluded from the final order.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny the Commonwealth Defendants' motion for summary judgment and object to the Court's adoption of the Report. Further, Plaintiffs request that the Court grant its motion for summary judgment against all defendants.

Dated: December 17, 2019

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