

FILED ELECTRONICALLY

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

SHAELA OLIVER,

Plaintiff,

v.

SEIU LOCAL 668, et al..

Defendants.

CASE NO.: 2:19-cv-00891-GAM

STATEMENT OF STIPULATED UNDISPUTED FACTS

For purposes of their cross-motions for summary judgment, the parties stipulate and agree that the following facts are undisputed and accurate. The parties, however, reserve the right to dispute legal materiality of any of these facts. The parties also reserve the right to submit other evidence in support of or in opposition to the cross-motions for summary judgment consistent with the Federal Rules of Civil Procedure.

1. The Plaintiff, Shalea Oliver, is an employee of the Commonwealth of Pennsylvania (“Commonwealth”) in the County of Philadelphia Assistance Office of its Department of Human Services (“DHS”).
2. Ms. Oliver has been employed by the Commonwealth as an Income Maintenance Caseworker since December 2014.
3. Defendant SEIU Local 668 (the “Union”) is an “employe organization” as defined in Pennsylvania Public Employe Relations Act (“PERA”).
4. Pursuant to the provisions of PERA governing the designation of employee representatives, the Union has been certified by the Pennsylvania Labor Relations Board as

the majority-designated exclusive representative of a bargaining unit of certain public employees of the Commonwealth for the purposes of collective bargaining under PERA. The Union has been the designated exclusive representative of a bargaining unit that includes Income Maintenance Caseworkers employed by the Commonwealth, like Ms. Oliver, for 47 years.

5. A true and correct copy of the collective bargaining agreement between the Union and the Commonwealth that applied to Ms. Oliver's bargaining unit and that was in effect from July 1, 2016 to June 30, 2019 (the "Agreement") is attached to Ms. Oliver's Complaint as Exhibit A, ECF No. 1-1.

6. On April 2, 2019, the Union and Commonwealth entered into a Side Letter concerning certain terms of the Agreement. This Side Letter modified and superseded certain terms of the Agreement. A true and correct copy of the Side Letter is attached to the Parties' Report of Rule 26(f) Meeting as Exhibit F, ECF No. 26-6. The Side Letter states, *inter alia*, that "[a]ny employee of an agency under the Governor's Jurisdiction, Commonwealth of Pennsylvania (hereafter referred to as the Employer) who is currently a member of PSSU, Local 668, SEIU (hereafter referred to as Union) or who may become a member of Local 668 in the future may, at any time, resign from the Union, regardless of any window period which may be specified in the collective bargaining agreement or the Public Employee Relations Act."

7. The Commonwealth and the Union have completed their negotiations for and reached an agreement regarding a new collective bargaining agreement to succeed the 2016-2019 Agreement ("Successor Agreement"), and the Union has ratified the Successor Agreement. The Commonwealth is in the process of completing the ratification process. Once ratified, the term of the Successor Agreement will be from July 1, 2019, through June 30, 2023. Any requirements to maintain membership, formerly specified in Article 2 of the earlier Agreement, have been removed.

8. The Agreement, Side Letter, and Successor Agreement record the

Commonwealth's and Union's negotiated points of agreement on matters subject to mandatory and permissive bargaining under PERA.

9. The Union holds all rights and obligations applicable to public-sector labor unions recognized as exclusive representatives of bargaining units under PERA.

10. The Commonwealth holds all rights and obligations applicable to public-sector employers under PERA.

11. Ms. Oliver holds all rights applicable to public-sector employees under PERA. She also holds all rights applicable to public-sector employees subject to Pennsylvania's Civil Service Act.

12. Ms. Oliver chose to become a member of the Union in December 2014 when she first accepted employment with the Commonwealth. Ms. Oliver was not required to join the Union as a condition of employment with the Commonwealth. A true and correct screenshot of the electronic application form that was presented to Ms. Oliver at that time is attached hereto as Exhibit A.

13. At the time Ms. Oliver joined the Union in December 2014, she was required to either join the Union as a member or pay agency fees to the Union as a non-member as a condition of her employment. At that time, the amount of the agency fee paid by non-members was 56.1% of the amount of regular membership dues.

14. At the time she joined the Union in December 2014, Ms. Oliver authorized the Commonwealth to deduct her Union membership dues from her paycheck and to transmit those dues to the Union. *See* Exh. A.

15. On August 10, 2018, Ms. Oliver sent a letter to the Union requesting to withdraw from Union membership and stating that the Union was no longer authorized to enforce her prior authorization for automatic payroll deductions of Union dues.

16. At the time Ms. Oliver sent her August 10, 2018 letter to the Union, Article 2, Section 1 of the Collective Bargaining Agreement stated:

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.
- c. It is understood by the parties that a member's status shall not change as a result of a member accepting a promotion to a position within this bargaining unit, transferring to a new work location, or returning from an extended leave.

The operating collective bargaining agreement at the time Ms. Oliver sent her August 10, 2018 letter expired June 30, 2019.

17. On September 20, 2018, the Union sent a letter to the Commonwealth's Office of Administration enclosing a copy of Ms. Oliver's August 10 letter and instructing the Office of Administration to discontinue the payroll deduction of Union dues for Ms. Oliver effective immediately. A true and correct copy of this letter is attached to the Parties' Report of Rule 26(f) Meeting as Exhibit A, ECF No. 26-1.

18. On November 27, 2018, the Union sent a letter to the Commonwealth's Office of Administration enclosing a copy of Ms. Oliver's August 10 letter and instructing the Office of Administration to discontinue the payroll deduction of Union dues for Ms. Oliver effective immediately. A true and correct copy of this letter is attached to the Parties' Report of Rule 26(f) Meeting as Exhibit B, ECF No. 26-2.

19. On January 23, 2019, the Union sent a letter to the Office of Administration enclosing a copy of Ms. Oliver's August 10 letter and instructing the Office of Administration to discontinue the payroll deduction of Union dues for Ms. Oliver effective immediately. A true and correct copy of this letter is attached to the Parties' Report of Rule 26(f) Meeting as Exhibit C, ECF No. 26-3.

20. On January 30, 2019, the Union sent a letter to Ms. Oliver stating that the Union had received her request to withdraw her participation in the Union and enclosing a check for \$263.01, an amount equal to all dues withheld for the pay period beginning August 4, 2018, through the pay period ending January 4, 2019. A true and correct copy of this letter is attached to the Parties' Report of Rule 26(f) Meeting as Exhibit D, ECF No. 26-4. Ms. Oliver received and cashed the check.

21. Ms. Oliver was not copied on the Union's September 20, 2018, November 27, 2018, or January 23, 2019 letters and was not otherwise informed by the Union that the Union has instructed the Commonwealth to discontinue the union dues deductions from her paychecks. The January 30, 2019 letter was the first time Ms. Oliver had received communication from the Union regarding her August 10, 2018 letter requesting that union dues stop being withheld from her paycheck and resigning her union membership.

22. The last pay period for which Ms. Oliver had dues deducted from her paycheck ended on January 18, 2019. Ms. Oliver has not had any dues deducted from her paycheck since February 1, 2019, when she received her pay for the pay period ending on January 18, 2019.

23. On March 20, 2019, the Union sent Ms. Oliver a check in the amount of \$24.48, an amount equal to all dues withheld for the pay period beginning January 4, 2019 and ending January 18, 2019. A true and correct copy of the letter than accompanied this check is attached to the Parties' Report of Rule 26(f) Meeting as Exhibit E, ECF No. 26-5. Ms. Oliver received and cashed the check.

24. Ms. Oliver is not legally obligated to become or remain a member of the

Union.

25. Ms. Oliver is not currently a member of the Union.

26. Since the Supreme Court's decision in *Janus v. AFSCME, Council 31*, 138 S.Ct. 2448 (2018), members of Ms. Oliver's bargaining unit who are not members of the Union have not been legally obligated to make any payment of money to the Union.

27. The Union and the Commonwealth understand Ms. Oliver does not necessarily agree with the views or positions of the Union.

28. Ms. Oliver has the right to criticize the Union's positions, to refrain from any Union activities, and to present her views and grievances to the Commonwealth.

Dated: August 23, 2019

Respectfully submitted,

/s/ P. Casey Pitts

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EXHIBIT A

Membership Application and Payroll Deduction Authorization

I hereby apply for membership in the Union. I further request and authorize the Commonwealth of Pennsylvania to deduct from my earnings an amount sufficient to provide for the regular payment of the current rate of union dues. Any change in such amount shall be so certified by the union. The amount deducted shall be transmitted to the union.

Dues to a union are not deductible as charitable contributions for federal income tax purposes. Dues paid, however, may qualify as business expenses, and may be deductible in limited circumstances subject to various restrictions imposed by the Internal Revenue Code.

Join

I hereby wish to apply for Union Membership
0668-SEIU Local 668

CERTIFICATE OF SERVICE

This document has been filed electronically using the ECF system and is available for viewing and downloading from the ECF system. All parties are represented by counsel registered on ECF, and all counsel were served by the automatic notices generated upon filing.

Dated: August 23, 2019

Respectfully Submitted,

By: /s/P. Casey Pitts
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