

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

DAVID SCHASZBERGER, et al.,

Plaintiffs,

v.

AMERICAN FEDERATION OF
STATE, COUNTY AND
MUNICIPAL EMPLOYEES,
COUNCIL 13,

Defendant.

Case No. 3:19-CV-01922-MEM
(Judge Malachy E. Mannion)

--Electronically Filed--

JOINT MOTION TO STAY THE CASE

Plaintiffs David Schaszberger, Bradford Schmittle, Kyle Clouse, Colby Conner, Jeanette Hulse, Gary Landiak, and Andrew Malene and Defendant American Federation of State, County, and Municipal Employees, Council 13 (“Council 13”) jointly and respectfully move this Court to stay all proceedings in this matter pending decisions by the United States Court of Appeals for the Third Circuit in *Diamond v. Pa. State Educ. Ass’n*, No. 19-2812 and *Wenzig v. Service Employees International Union Local 668*, No. 19-3906.

1. On November 7, 2019, Plaintiffs filed their Complaint (ECF No. 1) seeking the return of agency fees paid on behalf of themselves and as representative of a putative class of Commonwealth employees who were required,

pursuant to Pennsylvania law and the collective bargaining agreement between the Commonwealth of Pennsylvania and Council 13, to pay fair share fees to Council 13 as non-members before the Supreme Court decision in *Janus v. AFSCME Council 31*, 138 S. Ct. 2448 (2018). In *Janus*, the Supreme Court overruled its precedent in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), in which the Court had held that the collection of agency fees was constitutional so long as the fees were expended on the non-member's proportionate share of the union's costs of collective bargaining and contract administration, to the exclusion of any political or ideological expenses. The Court in *Janus*, in overruling *Abood*, held that fair share fee requirements are unconstitutional in the public sector.

2. On January 6, 2020, Council 13 filed a motion to dismiss Plaintiffs' Complaint, arguing, in part, that Plaintiffs' claim is barred by the good faith defense available to private parties sued under 42 U.S.C. § 1983. *See* ECF No. 7. In its motion, Council 13 cited this Court's recent opinion in *Wenzig v. Service Employees Local 668*, 2019 WL 6715741 (M.D. Pa Dec. 10, 2019) and stated that, pursuant to Local Rules 7.5 and 7.7, brief(s) would be filed in support of the motion.

3. In *Wenzig*, this Court held that unions that collected fair share fees from non-members prior to *Janus* and pursuant to state law and *Abood* can assert the good faith defense to § 1983 liability, and dismissed claims by non-member

plaintiffs seeking to recover such fair share fees paid prior to *Janus*. In reaching that conclusion, this Court concurred with the similar rationale and conclusion of Judge Gibson of the Western District of Pennsylvania in *Diamond v. Pa. State Educ. Ass'n*, 399 F. Supp. 3d 361, 395-96 (W.D. Pa. 2019).

4. On August 6, 2019, Diamond appealed to the Third Circuit. On December 13, 2019, the *Wenzig* plaintiffs appealed to the Third Circuit.

5. Counsel for the Plaintiffs in this case are also counsel for the Plaintiffs in *Wenzig*. Of the counsel for Council 13 in this case, Mr. Griffin's firm is counsel for the union defendant in *Diamond* and Ms. Rosenberger's firm is one of the counsel for the union defendant in *Wenzig*.

6. On January 9, 2020, the union defendant/appellees in *Diamond* and *Wenzig* filed with the Third Circuit an Uncontested Motion To Have *Diamond* and *Wenzig* Heard Before the Same Panel and For the Court To List the Appeals For Disposition Before the Next Available Panel at the Conclusion of the Briefing. A copy of that uncontested motion is attached to this motion as Exhibit A. In support of their motion, *inter alia*, the union defendant/appellees advised the court that three other cases raising the applicability of the good faith defense to non-member claims for fair share fees paid pre-*Janus* were pending before the Third Circuit,

and the issue was pending in at least three district court cases within the Circuit, specifically including the instant case. Exhibit A, at 3-4.

7. The parties to this case recognize that the decisions by the Third Circuit in *Diamond* and *Wenzig* are likely to have a significant impact on the legal arguments made in this case.

8. Thus, the parties jointly move that this Court stay this case pending decisions by the Third Circuit in the *Diamond* and *Wenzig* cases.

9. Counsel for the parties propose this stay in order to save judicial resources, as well as the resources of the parties in briefing a legal issue that is already pending before the Third Circuit.

10. The parties propose that the Court stay this case and set a status hearing for approximately one year, with leave for the parties to request that the stay be lifted sooner, should the Third Circuit issue decisions in *Diamond* and *Wenzig* before then. The parties further propose that the case management conference currently scheduled for February 6, 2020 be indefinitely continued in line with this stay.

11. In addition, if the Court grants this joint motion to stay, Council 13 agrees not to file the brief in support of its motion to dismiss and to withdraw that

motion, so long as that withdrawal is without prejudice to Council 13 refiling the motion after the stay is lifted.

WHEREFORE, Plaintiffs and Council 13 respectfully request that the Court stay all further proceedings in this case until after the Court of Appeals for the Third Circuit has issued its decisions in *Diamond v. Pa. State Educ. Ass'n*, No. 19-2812 and *Wenzig v. Service Employees International Union Local 668*, No. 19-3906.

Dated: January 10, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true and correct copy of the foregoing Joint Motion to Stay the Case to be served via the Court's CM/ECF system on:

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