

UNITED STATES DISTRICT COURT
for the
MIDDLE DISTRICT OF PENNSYLVANIA

DAVID SCHASZBERGER, ET AL.

Plaintiff

v.

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

Defendant

Civil Action No.:

3:19-CV-01922-MEM

Hon. Malachy E Mannion

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

SEE COMPLAINT

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Charles O. Beckley II
Beckley & Madden
212 N. Third St.
P.O. Box 11998
Harrisburg, PA 17108-1998

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

PETER J. WELSH

CLERK OF COURT

s/ – Karen P. Fuller

Signature of Clerk or Deputy Clerk



AO 399 (01/09) Waiver of the Service of Summons

UNITED STATES DISTRICT COURT

for the
Middle District of Pennsylvania

Plaintiff

v.

Defendant

)
)
) Civil Action No.
)
)

WAIVER OF THE SERVICE OF SUMMONS

To: Charles O. Beckley, II

(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from _____, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

Signature of the attorney or unrepresented party

Printed name of party waiving service of summons

Printed name

Address

E-mail address

Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Schaszberger, David; Schmittle, Brad; Clouse, Kyle; Conner, Colby;
Hulse, Jeanette; Landiak, Gary; Malene, Andrew

(b) County of Residence of First Listed Plaintiff **Lancaster**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Please see attached.

DEFENDANTS

American Federation of State, County, and Municipal Employees,
Council 13

County of Residence of First Listed Defendant **Dauphin**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Real Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. 1983

Brief description of cause:

Deprivation of First Amendment rights by requiring payment of fair share fees by nonmembers of union

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE Malachy E. Mannion

DOCKET NUMBER 1:19-1367

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

ATTACHMENT TO CIVIL COVER SHEET

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

David Schaszberger, Bradford Schmittle, Kyle Clouse, Colby Conner, Jeanette Hulse, Gary Landiak, and Andrew Malene,

Plaintiffs,

v.

**American Federation of State, County,
and Municipal Employees, Council 13,**

Defendant.

No. _____

COMPLAINT (CLASS ACTION)

INTRODUCTION

1. The U.S. Supreme Court has concluded that unions acted unconstitutionally when they deducted tens of millions of dollars from public-sector employees who were not members of a union but were required to pay agency fees, or “fair share” fees, to the union against their will. *See Janus v. AFSCME*, 138 S. Ct. 2448 (2018). The Court has explained that its interpretations of federal law “must be given full retroactive effect.” *Harper v. Va. Dep’t of Taxation*, 509 U.S. 86, 97 (1993). Plaintiffs, individually and on behalf of a class of all agency fee-payers whose money was taken by the American Federation of State, County, and Municipal Employees, Council 13 (“AFSCME”), sue for the

return of wrongfully-seized money under 42 U.S.C. § 1983.

PARTIES

2. Plaintiff David Schaszberger was a statistical analyst employed by the Pennsylvania Department of Labor and Industry, and he resides in Lancaster County, Pennsylvania.

3. Plaintiff Bradford Schmittle is a statistician employed by the Pennsylvania State Police, and he resides in Dauphin County, Pennsylvania.

4. Plaintiff Kyle Clouse is a forester employed by the Pennsylvania Game Commission, and he resides in Centre County, Pennsylvania.

5. Plaintiff Colby Conner is a parole agent employed by the Pennsylvania Board of Probation and Parole, and he resides in Armstrong County, Pennsylvania.

6. Plaintiff Jeanette Hulse was a legal assistant employed by the Pennsylvania Department of Environmental Protection, and she resides in Adams County, Pennsylvania.

7. Plaintiff Gary Landiak is a food inspector employed by the Pennsylvania Department of Agriculture, and he resides in Lebanon County, Pennsylvania.

8. Plaintiff Andrew Malene is a civil engineer employed by the Pennsylvania Department of Environmental Protection, and he resides in

Cumberland County, Pennsylvania.

9. Defendant, American Federation of State, County, and Municipal Employees, Council 13, is a labor union whose headquarters is located at 4031 Executive Park Drive, Harrisburg, PA 17111.

JURISDICTION AND VENUE

10. This case raises claims under the First and Fourteenth Amendments of the United States 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.

11. Venue is appropriate under 28 U.S.C. § 1391(b) because AFSCME has its headquarters in the Middle District of Pennsylvania.

FACTUAL ALLEGATIONS

12. Pennsylvania's Public Employee Fair Share Fee Law for Commonwealth employees provides, "If the provisions of a collective bargaining agreement so provide, each nonmember of a collective bargaining unit shall be required to pay to the exclusive representative a fair share fee." 71 Pa. Stat. Ann. § 575.

13. AFSCME is the exclusive representative for numerous bargaining units throughout the Commonwealth of Pennsylvania, including Plaintiffs' bargaining units.

14. Pursuant to 71 Pa. Stat. Ann. § 575, AFSCME negotiated a master

agreement with the Commonwealth of Pennsylvania for the collection of service fees from nonmember Commonwealth employees such as Plaintiffs. Article 4, Section 2 of the Master Agreement effective from July 1, 2016 through June 30, 2019 provided:

The Employer further agrees to deduct a fair share fee biweekly from all employees in the bargaining unit who are not members of the Union. Authorization from non-members to deduct fair share fees shall not be required. The amounts to be deducted shall be certified to the Employer by the Union, and 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.

15. Pursuant to this agreement, prior to June 27, 2018, all Commonwealth employees in the bargaining units represented by AFSCME who were not union members, including Plaintiffs, were forced to pay “fair-share” fees to AFSCME as a condition of their employment.

16. Prior to June 27, 2018, government employers covered by the collective bargaining agreement deducted “fair share” fees from Plaintiffs’ and other nonmembers’ wages without their consent and, upon information and belief, transferred those funds to AFSCME, which collected those funds. AFSCME should have known that its seizure of “fair share” fees from non-consenting employees likely violated the First Amendment.

CLASS ACTION ALLEGATIONS

17. This case is brought as a class action under Federal Rule of Civil

Procedure 23(b)(3) by Plaintiffs for them and for all others similarly situated. The class consists of all current and former Commonwealth employees from whom AFSCME collected “fair share” fees pursuant to its collective bargaining agreement with the Commonwealth of Pennsylvania within the applicable statute of limitations.

18. The number of persons in the class is so numerous that joinder is impractical. AFSCME’s website affirms that it represents “over 67,000 Pennsylvania Employees.” *See* AFSCME Council 13, <https://www.afscme13.org/>. From July 1, 2016 to June 30, 2017, AFSCME collected agency fees from 14,991 agency fee payers. *See* Form Lm-2 Labor Organization Annual Report, <https://olms.dol-esa.gov/query/orgReport.do?rptId=656517&rptForm=LM2Form>. For the reporting period ending June 30, 2018, after the *Janus* decision, AFSCME Reported 578 agency fee payers. *See* Form Lm-2 Labor Organization Annual Report, <https://olms.dol-esa.gov/query/orgReport.do?rptId=684209&rptForm=LM2Form>. Therefore, upon information and belief, the difference of 14,413 represents an approximate number of the public-sector workers who were agency fee payers prior to June 27, 2018.

19. There are questions of law and fact common to all class members, including Plaintiffs. The constitutional violations perpetrated by AFSCME against all nonmembers were taken according to the same statutes and collective

bargaining agreement. The legal question of whether AFSCME owes damages to class members from whom it unconstitutionally seized “fair share” fees is common to all class members.

20. Plaintiffs’ claims are typical of class members’ claims because all concern whether AFSCME owes damages to class members from whom it unconstitutionally seized “fair share” fees.

21. Plaintiffs will adequately represent the class and have no conflicts with other class members.

22. The class can be maintained under Federal Rule of Civil Procedure 23(b)(3) because the important and controlling question of law or fact, whether agency fee deductions violated class members’ First Amendment rights, is common to the members of the class and predominates over any questions affecting only individual members. A class action is superior to other available methods for the fair and efficient adjudication of the controversy because the individual class members are deprived of the same rights by AFSCME’s actions, and they differ only in the amount of money deducted. These amounts are known to AFSCME and easily calculated from its business records. The limited amount of money involved in each individual class member’s claim would make it burdensome for each respective class member to maintain a separate action.

CAUSE OF ACTION: FIRST AMENDMENT VIOLATION

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

24. AFSCME acted under color of state law and in concert with the Commonwealth of Pennsylvania when it compelled Plaintiffs and class members to pay “fair share” fees, caused the government to deduct “fair share” fees from Plaintiffs and class members, and collected “fair share” fees seized from Plaintiffs and class members.

25. AFSCME violated Plaintiffs’ and class members’ First Amendment rights to free speech and association, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, by requiring the payment of “fair share” fees as a condition of employment and by collecting such fees.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

- a. Certify the class;
- b. Enter a judgment, pursuant to 28 U.S.C. § 2201(a), declaring that AFSCME violated Plaintiffs’ and class members’ constitutional rights by compelling them to pay “fair share” fees as a condition of their employment and by collecting “fair share” fees from them without consent;

c. Award Plaintiffs and class members actual damages or restitution in the full amount of “fair share” fees and assessments seized from their wages, plus interest, for violations of their First Amendment Rights;

d. Award Plaintiffs their costs and attorneys’ fees under 42 U.S.C. § 1988; and

e. Award any further relief to which Plaintiffs and class members may be entitled.

Dated: November 7, 2019

Respectfully Submitted,

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