No. 20-1824

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

HOLLIE ADAMS, JODY WEABER, KAREN UNGER, and CHRIS FELKER

Appellants

v.

TEAMSTERS UNION LOCAL 429, LEBANON COUNTY, 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

Respondents

On Appeal from the United States District Court
for the Middle District of Pennsylvania
No. 1:19-cv-00336
Hon. Sylvia H. Rambo

APPENDIX – Volume II, pp. 015-155

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Attorneys for Appellants

INDEX

APPEAL,CLOSED,HBG

United States District Court
Middle District of Pennsylvania (Harrisburg)
CIVIL DOCKET FOR CASE #: 1:19-cv-00336-SHR

Adams et al v. Teamsters Union Local 429 et al
Assigned to: Honorable Sylvia H. Rambo
Case in other court: Third Circuit, 20-01824
Cause: 42:1983 Civil Rights Act

Date Filed: 02/27/2019
Date Terminated: 03/31/2020
Jury Demand: None
Nature of Suit: 950 Constitutional - State Statute
Jurisdiction: Federal Question

Plaintiff

Hollie Adams

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Defendant

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Defendant

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Date Filed	#	Docket Text
02/27/2019	1	COMPLAINT against All Defendants (Filing fee $400, Receipt Number 0314-4686318), filed by Jody Weaber, Chris Felker, Hollie Adams, Karen Unger. (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit(s))(aaa) (Entered: 02/27/2019)
02/27/2019	2	Summons Issued as to All Defendants and provided TO ATTORNEY ELECTRONICALLY VIA ECF for service on Defendant(s)in the manner prescribed by Rule 4 of the Federal Rules of Civil Procedure. (NOTICE TO ATTORNEYS RECEIVING THE SUMMONS ELECTRONICALLY: You must print the summons and the attachment when you receive it in your e-mail and serve them with the complaint on all defendants in the manner prescribed by Rule 4 of the Federal Rules of Civil Procedure). (Attachments: # 1 Summons Packet) (aaa) (Entered: 02/27/2019)
03/01/2019	3	LETTER/NOTICE Re: Case Assignment and Procedures Signed by Honorable Sylvia H. Rambo on 3/1/19. (ma) (Entered: 03/01/2019)
03/04/2019	4	SUMMONS Returned Executed by Hollie Adams. All Defendants. (Beckley, Charles) (Entered: 03/04/2019)
03/19/2019	5	NOTICE of Appearance by John R. Bielski on behalf of Teamsters Union Local 429 (Bielski, John) (Entered: 03/19/2019)
03/19/2019	6	MOTION for Extension of Time to 60-Day Extension of Time to Respond to the Complaint by Teamsters Union Local 429. (Attachments: # 1 Proposed Order, # 2 Certificate of Concurrence, # 3 Certificate of Service)(Bielski, John) (Entered: 03/19/2019)
03/19/2019	7	NOTICE of Appearance by Caleb Curtis Enerson on behalf of James M. Darby, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr. (Enerson, Caleb) (Entered: 03/19/2019)
03/20/2019	8	ORDER granting Teamsters Union Local 429's mtn for exttm 6 . Teamsters Union Local 429's response to pltfs' complaint due by 5/20/2019.Signed by Honorable Sylvia H. Rambo on 3/20/19. (ma) (Entered: 03/20/2019)

03/21/2019	9	Unopposed MOTION for Extension of Time to to file Responsive Pleading by James M. Darby, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr.(Enerson, Caleb) (Additional attachment(s) added on 3/21/2019: # 1 Proposed Order) (rw). (Entered: 03/21/2019)
03/22/2019	10	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Charles O. Beckley, II on behalf of All Plaintiffs Attorney Jeffrey Schwab is seeking special admission. Filing fee $ 50, receipt number 0314-4710281.. (Beckley, Charles) (Entered: 03/22/2019)
03/22/2019	11	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Charles O. Beckley, II on behalf of All Plaintiffs Attorney Daniel Suhr is seeking special admission. Filing fee $ 50, receipt number 0314-4710324.. (Beckley, Charles) (Entered: 03/22/2019)
03/22/2019		DOCKET ANNOTATION: Petitioning attorneys and associate counsel's bar status verified. (aaa) (Entered: 03/22/2019)
03/25/2019	12	ORDER granting the unopposed mtn for exttm 9 . Dfts Shapiro, Darby,Mezzaroba, and Shoop shall file a responsive by 4/12/2019.Signed by Honorable Sylvia H. Rambo on 3/25/19. (ma) (Entered: 03/25/2019)
03/26/2019	13	SPECIAL ADMISSIONS FORM APPROVED as to Jeffrey Schwab, Esq. on behalf of pltfsSigned by Honorable Sylvia H. Rambo on 3/26/19. (ma) (Entered: 03/26/2019)
03/26/2019	14	SPECIAL ADMISSIONS FORM APPROVED as to Daniel Suhr, Esq. on behalf of pltfsSigned by Honorable Sylvia H. Rambo on 3/26/19. (ma) (Entered: 03/26/2019)
03/26/2019	15	NOTICE of Appearance by Peggy M. Morcom on behalf of Lebanon County (Morcom, Peggy) (Entered: 03/26/2019)
03/27/2019	16	MOTION for Extension of Time to *Respond to Plaintiff's Complaint* by James M. Darby, Lebanon County, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr, Teamsters Union Local 429. (Attachments: # 1 Certificate of Concurrence, # 2 Proposed Order)(Morcom, Peggy) (Entered: 03/27/2019)
03/27/2019	17	WAIVER OF SERVICE Returned by Josh Shapiro, Teamsters Union Local 429, James M. Darby, Robert H. Shoop, Jr, Lebanon County, Albert Mezzaroba. (Morcom, Peggy) (Entered: 03/27/2019)
03/27/2019	18	ORDER granting the unopposed mtn for exttm 16 . Lebanon County response/ansswer due by 5/20/2019.Signed by Honorable Sylvia H. Rambo on 3/27/19. (ma) (Entered: 03/27/2019)
04/01/2019	19	NOTICE of Hearing: A Case Management Conference has been set for 6/6/2019 @ 09:15 AM before Honorable Sylvia H. Rambo. This conference is by phone with the call to be initiated by the pltf unless otherwise arranged. A joint case mgmnt plan is to be filed by 5/30/19.Signed by Honorable Sylvia H. Rambo on 4/1/19. (ma) (Entered: 04/01/2019)
04/12/2019	20	Unopposed MOTION for Extension of Time to File *Responsive Pleading* by James M. Darby, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr. (Attachments: # 1 Certificate of Concurrence, # 2 Proposed Order)(Enerson, Caleb) (Entered: 04/12/2019)
04/15/2019	21	ORDER Granting dfts' mtn for exttm 20 . Dfts Shapiro, Darby, Messaroba and Shoop shall file a responsive pleading to pltfs' complaint by 5/20/2019.Signed by Honorable Sylvia H. Rambo on 4/15/19. (ma) (Entered: 04/15/2019)
04/16/2019	22	NOTICE of Appearance by Nancy A. Walker on behalf of James M. Darby, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr (Walker, Nancy) (Entered: 04/16/2019)
05/16/2019	23	PETITION FOR SPECIAL ADMISSION (PRO HAC VICE) by Christopher S Hallock on behalf of James M. Darby, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr Attorney

		Christopher Hallock is seeking special admission. Filing fee $ 50, receipt number 0314-4761177.. (Hallock, Christopher) (Entered: 05/16/2019)
05/16/2019		DOCKET ANNOTATION: Petitioning attorney and associate counsel's bar status verified. (aaa) (Entered: 05/16/2019)
05/17/2019	24	SPECIAL ADMISSIONS FORM APPROVED as to Christopher Hallock, Esq. on behalf of dftsSigned by Honorable Sylvia H. Rambo on 5/17/19. (ma) (Entered: 05/17/2019)
05/20/2019	25	MOTION to Dismiss *Plaintiff's Complaint* by Lebanon County. (Attachments: # 1 Certificate of Nonconcurrence, # 2 Proposed Order)(Morcom, Peggy) (Entered: 05/20/2019)
05/20/2019	26	MOTION to Dismiss for Lack of Jurisdiction *Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(1)*, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6)* by James M. Darby, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr. (Attachments: # 1 Exhibit(s) Certificate of Service, # 2 Certificate of Nonconcurrence, # 3 Proposed Order)(Walker, Nancy) (Entered: 05/20/2019)
05/20/2019	27	MOTION to Dismiss *PLAINTIFFS' COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b) (1) AND 12(b)(6)* by Teamsters Union Local 429. (Attachments: # 1 Exhibit(s) 1, # 2 Certificate of Nonconcurrence, # 3 Certificate of Service, # 4 Proposed Order)(Bielski, John) (Entered: 05/20/2019)
05/22/2019	28	ORDER: All parties shall show cause no later than (10) days from the date of this order as to why Dfts mtns to dismiss 25 , 26 and 27 should not be converted, pursuant to FRCP 12(d), into mtons for summary judgment. Pltfs are permitted to file one response to all mtns if they so choose. Signed by Honorable Sylvia H. Rambo on 5/22/19. (ma) (Entered: 05/22/2019)
05/28/2019	29	MOTION to Dismiss *Defendants' Unopposed Joint Motion Seeking Permission to File Briefs in Support of Their Respective Motions to Dismiss in Excess of Fifteen Pages* by James M. Darby, Lebanon County, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr, Teamsters Union Local 429. (Attachments: # 1 Certificate of Concurrence, # 2 Certificate of Service, # 3 Proposed Order)(Bielski, John) (Entered: 05/28/2019)
05/30/2019	30	Letter from Counsel *re: Conversion to Summary Judgment*. (Morcom, Peggy) (Entered: 05/30/2019)
05/30/2019	31	CASE MANAGEMENT PLAN *on behalf of all parties* by James M. Darby, Lebanon County, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr, Teamsters Union Local 429. (Attachments: # 1 Exhibit(s) Certificate of Service)(Walker, Nancy) (Entered: 05/30/2019)
05/30/2019	32	Joint MOTION for Extension of Time to motions to dismiss*including proposed briefing schedule post-conversion* by James M. Darby, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr. (Attachments: # 1 Exhibit(s) Certificate of Service, # 2 Proposed Order)(Walker, Nancy) (Entered: 05/30/2019)
05/31/2019	33	NOTICE cancelling the case management conference scheduled for 6/6/19. Conference to be rescheduled, if necessary, by further order of court. (ma) (Entered: 05/31/2019)
06/03/2019	34	ORDER granting dfts unopposed joint mtn seeking permission to file brsup of their respective mtns to dismiss in excess of 15 pgs 29 .Signed by Honorable Sylvia H. Rambo on 6/3/19. (ma) (Entered: 06/03/2019)
06/03/2019	35	ORDER - Granting dfts' Joint mtn for Exttm/brfng ddls 32 re. mtns to dismiss 25 , 26 and 27 including proposed briefing schedule post-conversion mtn to Dismiss: a.) Dfts brsupp

		of mtn for summary judgment and statement of material facts to be filed on or before 6/18/19.b.) Pltfs mtn for summary judgment to be filed on or before 7/16/19.c.) Pltfs combined brsup of Pltiffs mtn for summary judgment and in opposition of Dfts mtn for summary judgment and statement of material facts and any opposition to Dfts statement of material facts to be filed on or before 7/16/19.d.) Dfts reply briefs and bropp to Pltfs mtn for summary judgment, and any additional statement of facts to be filed on or before 7/30/19.e.) Pltfs reply brief to Dfts bropp to Pltfs mtn for summary judgment to be filed on or before 8/13/19.Signed by Honorable Sylvia H. Rambo on 6/3/19. (ma) (Entered: 06/03/2019)
06/18/2019	36	STATEMENT OF FACTS *DEFENDANTS' JOINT STATEMENT OF MATERIAL FACTS NOT IN DISPUTE* filed by James M. Darby, Lebanon County, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr, Teamsters Union Local 429. (Attachments: # 1 Exhibit(s) 1, # 2 CERTIFICATE OF SERVICE)(Bielski, John) (Entered: 06/18/2019)
06/18/2019	37	BRIEF IN SUPPORT *of Commonwealth Defendants' Converted Motion for Summary Judgment* re 26 MOTION to Dismiss for Lack of Jurisdiction *Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(1)* MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM *Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(6)* filed by James M. Darby, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr. (Attachments: # 1 Unpublished Opinion(s) Exhibit A, # 2 Unpublished Opinion(s) Exhibit B, # 3 Unpublished Opinion(s) Exhibit C, # 4 Unpublished Opinion(s) Exhibit D, # 5 Unpublished Opinion(s) Exhibit E, # 6 Exhibit(s) Certificate of Service)(Walker, Nancy) (Entered: 06/18/2019)
06/18/2019	38	BRIEF IN SUPPORT *of Motion for Summary Judgment* re 25 MOTION to Dismiss *Plaintiff's Complaint* filed by Lebanon County.(Morcom, Peggy) (Entered: 06/18/2019)
06/18/2019	39	CERTIFICATE of by Lebanon County re 38 Brief in Support of Motion for Summary Judgment . (Morcom, Peggy) (Entered: 06/18/2019)
06/18/2019	40	BRIEF IN SUPPORT *of Motion for Summary Judgment* re 27 MOTION to Dismiss *PLAINTIFFS' COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6)* filed by Teamsters Union Local 429. (Attachments: # 1 Exhibit A (Unreported Decisions), # 2 Certificate of Service)(Bielski, John) (Entered: 06/18/2019)
07/12/2019	41	Unopposed MOTION to Exceed Page Limitation *for Plaintiffs' Combined Summary Judgment Motion/Response* by Hollie Adams, Chris Felker, Karen Unger, Jody Weaber. (Attachments: # 1 Exhibit(s) Certificate of Service, # 2 Proposed Order)(Schwab, Jeffrey) (Entered: 07/12/2019)
07/15/2019	42	ORDER granting pltfs' mtn to file excess pgs 41 to dfts' mtns for summary jgmnt 25 , 26 , 27 .Signed by Honorable Sylvia H. Rambo on 7/15/19. (ma) (Entered: 07/15/2019)
07/16/2019	43	First MOTION for Summary Judgment by Hollie Adams. (Attachments: # 1 Supplement Certificate of Service, # 2 Memo Memo in support of MSJ, # 3 Unpublished Opinion(s) Belgau Opinion, # 4 Unpublished Opinion(s) Fisk Opinion, # 5 Proposed Order Proposed order)(Surh, Daniel) (Entered: 07/16/2019)
07/17/2019		DOCKET ANNOTATION: Counsel is advised to file the brief in support of Doc. 43 as a separate entry using the event: Civil Events Motions and Related Filings Responses and Replies (Briefs)-Brief in Support of Motion for Summary Judgment. (pjr) (Entered: 07/17/2019)
07/17/2019	44	BRIEF IN SUPPORT re 43 First MOTION for Summary Judgment filed by Hollie Adams. (Surh, Daniel) (Entered: 07/17/2019)
07/24/2019	45	Unopposed MOTION for Extension of Time to File Brief *re Parties Respective Motions*

		for Summary Judgment filed by James M. Darby, Lebanon County, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr, Teamsters Union Local 429. (Attachments: # 1 Certificate of Service, # 2 Certificate of Concurrence, # 3 Proposed Order)(Bielski, John) (Entered: 07/24/2019)
07/25/2019	46	ORDER granting the unopposed joint mtn for exttm 45 . 1)Dfts Reply Briefs and BrOpp to Pltfs Mtn for Summary Judgment, and any additional statement of facts are due on or before 8/13/19;2)Pltfs Reply Brief to Dfts BrOpp to Pltfs Mtn for Summary Judgment are due on or before 8/27/19.Signed by Honorable Sylvia H. Rambo on 7/25/19. (ma) (Entered: 07/25/2019)
08/08/2019	47	Unopposed MOTION to Exceed Page Limitation by James M. Darby, Lebanon County, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr, Teamsters Union Local 429. (Attachments: # 1 Certificate of Service, # 2 Certificate of Concurrence, # 3 Proposed Order)(Bielski, John) (Entered: 08/08/2019)
08/12/2019	48	ORDER granting the unopposed mtn to exceed page limit 47 . 1) Dft Teamsters, Dft County, and Commonwealth Dfts file one brief opposing Pltfs mtn for summary judgment and a reply supporting their mtns for summary judgment not to exceed (35) pages, not including the title page, table of authorities, and table of contents;2) Pltfs may file a reply brief supporting their mtn for summary judgment not to exceed (35) pages, not including the title page, table of authorities, and table of contents.Signed by Honorable Sylvia H. Rambo on 8/12/19. (ma) (Entered: 08/12/2019)
08/13/2019	49	REPLY BRIEF re 43 First MOTION for Summary Judgment , 25 MOTION to Dismiss *Plaintiff's Complaint* filed by Lebanon County. (Attachments: # 1 Unpublished Opinion(s))(Morcom, Peggy) (Entered: 08/13/2019)
08/13/2019	50	STATEMENT OF FACTS re 27 MOTION to Dismiss *PLAINTIFFS' COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6)* filed by James M. Darby, Lebanon County, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr, Teamsters Union Local 429. (Attachments: # 1 Supplemental Declaration of Kevin Bolig, # 2 Certificate of Service)(Bielski, John) (Entered: 08/13/2019)
08/13/2019	51	BRIEF IN OPPOSITION re 27 MOTION to Dismiss *PLAINTIFFS' COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6)*, 43 First MOTION for Summary Judgment filed by Teamsters Union Local 429. (Attachments: # 1 Exhibit(s), # 2 Certificate of Service)(Bielski, John) (Entered: 08/13/2019)
08/13/2019	52	REPLY BRIEF re 26 MOTION to Dismiss for Lack of Jurisdiction/ failure to state a claim Plaintiff's Complaint pursuant to Fed. R. Civ. P. 12(b)(1) filed by James M. Darby, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr. (Attachments: # 1 Unpublished Opinion(s) Exhibit A--Molina Case, # 2 Unpublished Opinion(s) Exhibit B--Diamond Case)(Enerson, Caleb) (Entered: 08/13/2019)
08/27/2019	53	REPLY BRIEF re 43 First MOTION for Summary Judgment filed by Hollie Adams, Chris Felker, Karen Unger, Jody Weaber. (Attachments: # 1 Unpublished Opinion(s) Exhibit A, # 2 Certificate of Service)(Schwab, Jeffrey) (Entered: 08/27/2019)
11/19/2019	54	NOTICE of Appearance by Jessica C Caggiano on behalf of Teamsters Union Local 429 (Attachments: # 1 Certificate of Service)(Caggiano, Jessica) (Entered: 11/19/2019)
12/03/2019	55	REPORT AND RECOMMENDATION - IT IS RECOMMENDED that the Commonwealth defendants motion to dismiss 26 which has been deemed a motion for summary judgment, be GRANTED. Objections to R&R due by 12/17/2019. Signed by Magistrate Judge Martin C. Carlson on December 3, 2019. (kjn) (Main Document 55 replaced on 12/4/2019) (kjn). (Entered: 12/03/2019)

12/05/2019	56	REPORT AND RECOMMENDATION - IT IS RECOMMENDED that the defendants motions to dismiss which have been deemed motions for summary judgment, (Doc. 25 and 27), be GRANTED and the plaintiffs motion for summary judgment, (Doc. 43) be DENIED. Objections to R&R due by 12/19/2019. Signed by Magistrate Judge Martin C. Carlson on December 5, 2019. (kjn) (Entered: 12/05/2019)
12/17/2019	57	OBJECTION to 55 Report and Recommendations . (Surh, Daniel) (Entered: 12/17/2019)
12/17/2019	58	OBJECTION to 56 Report and Recommendations . (Surh, Daniel) (Entered: 12/17/2019)
12/17/2019		DOCKET ANNOTATION: Counsel is advised to file a certificate of service for Docs. 57 & 58. (pjr) (Entered: 12/17/2019)
12/17/2019	59	CERTIFICATE of Service by Hollie Adams, Chris Felker, Karen Unger, Jody Weaber re 57 Objection to Report and Recommendations . (Surh, Daniel) (Entered: 12/17/2019)
12/17/2019	60	CERTIFICATE of Service by Hollie Adams, Chris Felker, Karen Unger, Jody Weaber re 58 Objection to Report and Recommendations . (Surh, Daniel) (Entered: 12/17/2019)
12/20/2019	61	Unopposed MOTION for Extension of Time to to File Responses to Objections by James M. Darby, Lebanon County, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr, Teamsters Union Local 429. (Attachments: # 1 Certificate of Concurrence, # 2 Certificate of Service, # 3 Proposed Order)(Bielski, John) (Entered: 12/20/2019)
12/23/2019	62	ORDER - Granting dfts' unopposed mtn for exttm 61 . The Dfts responses to Pltfs Objns 57 and 58 to the R & R's 55 and 56 are due on or before 1/13/20.Signed by Honorable Sylvia H. Rambo on 12/23/19. (ma) (Entered: 12/23/2019)
01/13/2020	64	BRIEF IN OPPOSITION re 55 REPORT AND RECOMMENDATIONS re 20 Unopposed MOTION for Extension of Time to File *Responsive Pleading* filed by Josh Shapiro, Albert Mezzaroba, Robert H. Shoop, Jr., James M. Darby *Response to Plaintiffs' Objs to R&R re: Commonwealth Ds, w/ cert. of service* filed by James M. Darby, Albert Mezzaroba, Josh Shapiro, Robert H. Shoop, Jr.(Walker, Nancy) (Entered: 01/13/2020)
01/13/2020	65	BRIEF IN OPPOSITION re 56 REPORT AND RECOMMENDATIONS re 27 MOTION to Dismiss *PLAINTIFFS' COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6)* filed by Teamsters Union Local 429, 43 First MOTION for Summary Judgment filed by Hollie Adams, [filed by Teamsters Union Local 429. (Attachments: # 1 Exhibit(s) Exhibit A, # 2 Certificate of Service)(Bielski, John) (Entered: 01/13/2020)
01/14/2020		DOCKET ANNOTATION: At the request of counsel Doc. 63 deleted and to be refiled. (pjr) (Entered: 01/14/2020)
01/14/2020	66	RESPONSE by Lebanon County to 56 REPORT AND RECOMMENDATIONS re 27 MOTION to Dismiss *PLAINTIFFS' COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6)* filed by Teamsters Union Local 429, 43 First MOTION for Summary Judgment filed by Hollie Adams, [, 58 Objection to Report and Recommendations . (Morcom, Peggy) (Entered: 01/14/2020)
03/31/2020	67	MEMORANDUM re the REPORT AND RECOMMENDATIONS of M.J. Carlson 55 (Order to follow as separate docket entry)Signed by Honorable Sylvia H. Rambo on 3/31/20. (ma) (Entered: 03/31/2020)
03/31/2020	68	ORDER - In accord with the accompanying Memorandum 67 : 1) The R&R of M.J. Carlson 55 is ADOPTED;2) The Commonwealth Dfts mtn for summary judgment 26 isGRANTED; and3) All claims against the Commonwealth Dfts are DISMISSED. Signed by Honorable Sylvia H. Rambo on 3/31/20. (ma) (Entered: 03/31/2020)
03/31/2020	69	ORDER: 1) The R&R 56 of M.J Carlson is ADOPTED in in its entirety;2) The mtns for

		summary judgment filed by Dts County ofLebanon 25 and Teamster Local Union 429 27 are GRANTED, and Pltfsclaims against them are DISMISSED, WITH PREJUDICE;3) The mtn for summary judgment filed by Pltfs 43 is DENIED; and4) The Clerk of Court is DIRECTED to close this case. Signed by Honorable Sylvia H. Rambo on 3/31/20. (ma) (Entered: 03/31/2020)
04/15/2020	70	NOTICE OF APPEAL in NON-PRISONER Case as to 69 Order Adopting Report and Recommendations,, Terminate Motions,, Order on Motion to Dismiss,, Order on Motion for Summary Judgment,, Order on Report and Recommendations,,, 67 Memorandum (Order to follow as separate docket entry), 68 Order Adopting Report and Recommendations,, Terminate Motions,, Order on Report and Recommendations,, Order on Motion to Dismiss/Lack of Jurisdiction,, Order on Motion to Dismiss for Failure to State a Claim, by Hollie Adams, Chris Felker, Karen Unger, Jody Weaber. Filing Fee and Docket Fee PAID. Filing fee $ 505, receipt number 0314-5066169. The Clerk's Office hereby certifies the record and the docket sheet available through ECF to be the certified list in lieu of the record and/or the certified copy of the docket entries. (Schwab, Jeffrey) (Entered: 04/15/2020)
04/17/2020	72	TRANSCRIPT PURCHASE ORDER REQUEST by Hollie Adams, Chris Felker, Karen Unger, Jody Weaber (Schwab, Jeffrey) (Entered: 04/17/2020)

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

HOLLIE ADAMS, JODY WEABER, KAREN UNGER, and CHRIS FELKER,	)	No.
Plaintiffs,	)	
v.	)	
TEAMSTERS UNION LOCAL 429, LEBANON COUNTY, 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	)	

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 checkoff 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 to not pay union dues or fees. Union 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 Plaintiffs have not provided affirmative consent to waive their First Amendment right to not join or pay a union, Defendants have violated Plaintiffs' First Amendment rights by maintaining Plaintiffs' union membership and by withholding union dues from their 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).

7. Plaintiffs do not wish to associate with Defendant Teamsters Local 429 ("Teamsters"), including having it serve as their exclusive bargaining

representative. Yet, Defendants, under color of state law, are forcing Plaintiffs to associate with Teamsters against their will, "a significant impingement on associational freedoms that would not be tolerated in other contexts." *Janus*, 138 S. Ct. at 2478.

8. Therefore, Plaintiffs bring this suit under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) seeking declaratory and injunctive relief, as well as damages in the amount of the dues previously deducted from their paychecks.

PARTIES

9. Plaintiffs are employees of Lebanon County. Plaintiff Adams resides in Tower City, Pennsylvania. Plaintiff Weaber resides in Stevens, Pennsylvania. Plaintiff Unger resides in Pine Grove, Pennsylvania. Plaintiff Felker resides in Lebanon, Pennsylvania.

10. Defendant Teamsters is a labor union headquartered in Wyomissing, Pennsylvania, and includes among its members municipal government employees across central Pennsylvania. Teamsters is an "Employe organization" and "Representative" within the meaning of the Pennsylvania Public Employee Relations Act ("PERA"), 43 P.S. § 1101.301(3) and (4), respectively.

11. Defendant Lebanon County is a Pennsylvania county. Lebanon County is a "Public employer" within the meaning of PERA, 43 P.S. § 1101.301(1).

12. Defendant Attorney General Josh Shapiro is sued in his official capacity as the representative of 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 Teamsters to be the "exclusive representative" of Plaintiffs, whether they are union members 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 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 Teamsters as the exclusive bargaining representative for the employee unit which includes Plaintiffs.

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 Middle District of Pennsylvania.

FACTS

Defendants are acting under color of state law.

16. Acting in concert under color of state law, Defendant Lebanon County and Defendant Teamsters entered into a collective bargaining agreement ("Agreement"), effective on January 1, 2016 through December 31, 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. In relevant part, that article provides:

> Section 1. Each employer 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, as a condition of employment, maintain his/her membership in the Union. An employee may, however, resign from the Union within fifteen (15) days prior to the expiration of this Agreement without penalty by serving written notice to Teamsters Local Union No. 429, 1055 Spring Street, Wyomissing, PA 19610, and to the Commissioners Office, Lebanon County Court House, Room 207, 400 South 8th Street, Lebanon, PA 17042.

Article 3, p. 2, 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. Union Dues. The County agrees to deduct the Union membership initiation fees, assessment and once each month, either

> dues from the pay of those employees who individually request in wiring that such deduction be made or fair share. The amount to be deducted shall be certified to the County by the Union, and the aggregate deductions of all employees shall be remitted together with an itemized statement to the Union by the 10th of the succeeding month, after such deductions are made. This authorization shall be irrevocable during the term of this Agreement.

Article 4, p. 2, 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.

Plaintiffs seek to resign from and stop paying dues to the union.

23. Plaintiff Hollie Adams has been an administrative case manager with the Lebanon County Mental Health/Intellectual Disabilities/Early Intervention Program ("Lebanon County MH/ID/EI Program") since April 2003. Ms. Adams joined the union 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. Plaintiff Jody Weaber also is an administrative case manager with Lebanon County MH/ID/EI Program, which she joined in June 2007. Ms. Weaber joined the union 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.

25. Plaintiff Karen Unger has been an administrative case manager with the Lebanon County MH/ID/EI Program since October 2015. Ms. Unger joined the union 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.

26. Plaintiff Chris Felker has been a resource coordinator with the Lebanon County MH/ID/EI Program since December 2009. Mr. Felker joined the union at the time because he would have been required to pay money to the union even as a non-member, in the form of "fair share" fees.

27. At the time Plaintiffs began their employment with Lebanon County and joined Defendant Teamsters, had they been given the option to pay no money to the union as a non-member, they would not have the joined the union.

28. After the Supreme Court issued its decision in *Janus* on June 27, 2018, Plaintiffs learned that they had the right both to be a non-member of the union and to pay no money to the union. In July 2018, Plaintiffs Adams, Weaber, and Unger, and in September 2018, Plaintiff Felker sent letters to the union requesting to resign and asking that dues stop being withheld from their paychecks, but the union insisted that they had to continue as dues-paying members until they

requested to resign during the period designated in the dues checkoff authorizations they signed.[1]

29. In October 2018, counsel sent letters on behalf of Plaintiffs to Lebanon County asking for an end to dues withholding, but Lebanon County continued to withhold union dues from their paychecks.

30. In October 2018, which was during the resignation window prescribed in the dues checkoff authorization she signed, Ms. Unger sent a letter resigning her membership from the union. Teamsters allowed Ms. Unger to resign her membership and Lebanon County stopped withholding dues from her paycheck as of November 2018.

31. In September 2018, which was during the resignation window prescribed in the dues checkoff authorization he signed, Mr. Felker sent a letter resigning his membership from the union. Teamsters allowed Mr. Felker to resign his membership and Lebanon County stopped withholding dues from his paycheck as of November 2018.

32. The resignation windows for Ms. Adams and Ms. Weaber pursuant to their dues checkoff authorizations they signed arise in March 2019 and June 2019 respectively.

[1] Although PERA and the Agreement provides that a member may only resign his or her membership during a window 15 days prior to the expiration of the Agreement, the dues checkoff authorizations Plaintiffs signed indicate that Plaintiffs may resign their membership at least sixty but not more than seventy-five days before any periodic renewal of the authorization.

Teamsters is Plaintiffs' exclusive bargaining representative.

33. 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.

34. 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.

35. Defendant Teamsters is the exclusive representative of Plaintiffs and their coworkers in the bargaining unit with respect to wages, hours, terms and conditions of employment, pursuant to 43 P.S. § 1101.606. Article 1, p. 1, Exhibit A.

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.

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

37. 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.*

38. After the Supreme Court's decision in *Janus* on June 27, 2018, the Plaintiffs did not provide affirmative consent to remain members of Defendant Teamsters or to having union dues withheld from their paychecks by Defendant Lebanon County.

39. Defendant Lebanon County is a state actor who is deducting dues from Ms. Adams and Ms. Weaber's paychecks under color of state law, and was similarly deducting dues from Ms. Unger and Mr. Felker's paychecks from the date of *Janus* until they resigned their membership during the period designated in the dues checkoff authorizations they signed.

40. Acting pursuant to the Agreement and PERA, Defendant Teamsters is acting in concert with Defendant Lebanon County to collect union dues from Plaintiffs' paycheck without their consent.

41. The actions of Defendants Teamsters and Lebanon County constitute a violation of Plaintiffs' First Amendment rights to free speech and freedom of association to not join or financially support a union without their affirmative consent.

42. From when they joined the union until June 27, 2018 (the date the *Janus* decision was issued), because they were not given the option of paying

nothing to the union as a non-member of the union, Plaintiffs could not have provided affirmative consent to Defendants to have dues deducted from their paychecks.

43. Plaintiffs' 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.

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

45. Ms. Adams and Ms. Weaber are entitled to an injunction under 42 U.S.C. § 1983 ordering Defendant Teamsters immediately to resign their union membership.

46. Ms. Adams and Ms. Weaber are entitled to an injunction under 42 U.S.C. § 1983 ordering Defendant Lebanon County to immediately to stop deducting union dues from their paychecks.

47. All Plaintiffs are entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) that limiting their ability to revoke the authorization to

withhold union dues from their paychecks to a window of time is unconstitutional because they did not provide affirmative consent.

48. All Plaintiffs are entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) that Plaintiffs' signing of the dues checkoff authorizations cannot provide a basis for their affirmative consent to waive their 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.

49. All Plaintiffs are entitled to a declaration under 42 U.S.C. § 1983 and 28 U.S.C. § 2201(a) that the practice by Defendant Lebanon County of withholding union dues from Plaintiffs' paycheck was unconstitutional because Plaintiffs did not provide affirmative consent for Lebanon County to do so.

50. All Plaintiffs are entitled under 42 U.S.C. § 1983 to damages in the amount of all dues deducted and remitted to Defendant Teamsters after the date of the Supreme Court's decision in *Janus*, June 27, 2018, because they did not provide affirmative consent for such dues to be deducted.

51. All Plaintiffs are entitled under 42 U.S.C. § 1983 to damages in the amount of all dues deducted and remitted to Defendant Teamsters before June 27, 2018 because they could not have provided affirmative consent to those dues being deducted since they were 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 they been given the constitutionally-required option of paying nothing to the union as a non-member, they would have chosen that option.

COUNT II
Commonwealth law forcing Plaintiffs to associate with Defendant Teamsters without their affirmative consent violates their First Amendment rights to free speech and freedom of association.

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

53. "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.

54. 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).

55. 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).

56. 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.

57. 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.

58. Lebanon County has recognized Defendant Teamsters as Plaintiffs' exclusive representative for collective bargaining purposes. 43 P.S. § 1101.602; Article 1, p. 1, Exhibit A.

59. PLRB has certified Teamsters as the exclusive representative for collective bargaining purposes for the bargaining unit which includes Plaintiffs. *See* 43 P.S. § 1101.602.

60. Under color of state law, Defendant Teamsters has acted as Plaintiffs' exclusive representative in negotiating the terms and conditions of their employment.

61. Under color of state law, Defendant Lebanon County has negotiated the terms and conditions of Plaintiffs' employment with Defendant Teamsters.

62. This designation compels Plaintiffs to associate with the union and through its representation of them compels them to petition the government with a certain viewpoint, despite that viewpoint being in opposition to Plaintiffs' own goals and priorities.

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

64. Under 42 U.S.C. § 1983, Plaintiffs are entitled to have 43 P.S. § 1101.606 declared unconstitutional for violating their First Amendment rights to free speech and freedom of association.

65. Plaintiffs are 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

Plaintiffs Hollie Adams, Jody Weaber, Karen Unger, and Chris Felker respectfully request that this Court:

a. Declare that limiting the ability of Plaintiffs to revoke the authorization to withhold union dues from their paychecks to a

window of time is unconstitutional because they did not provide affirmative consent;

b. Declare that Plaintiffs' signing of the dues checkoff authorizations cannot provide a basis for their affirmative consent to waive their 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 Lebanon County of withholding union dues from Plaintiffs' paycheck was unconstitutional because Plaintiffs did not provide affirmative consent for Lebanon County to do so;

d. Enter an injunction ordering Teamsters to immediately allow Plaintiffs to resign their union membership;

e. Enjoin Defendant Lebanon County from continuing to deduct, and enjoin Defendant Teamsters from accepting, dues from Ms. Adams' and Ms. Weaber's paychecks, unless they first provide freely given affirmative consent to such deductions;

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

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

h. Enjoin 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;

i. Award damages against Defendant Teamsters for all union dues collected from all four Plaintiffs after the date of the Supreme Court's decision in *Janus*, June 27, 2018;

j. Award damages against Defendant Teamsters for all union dues collected from all four Plaintiffs before June 27, 2018;

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

l. Award any further relief to which Plaintiffs may be entitled.

Dated: February 27, 2019

Respectfully Submitted,

By: /s/ Charles O. Beckley

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Attorneys for Hollie Adams, Jody Weaber, Karen Unger, and Chris Felker

Exhibit A

AGREEMENT

Between

THE COUNTY OF LEBANON

and

TEAMSTERS LOCAL UNION NO. 429

Involving

Lebanon County Social Services Agencies

Affiliated with the International Brotherhood of Teamsters
and
Teamsters Joint Council No. 53

Duration of Agreement:

January 1, 2016

to

December 31, 2019

TEAMSTERS
LOCAL 429
1055 Spring Street
Wyomissing, PA 19610

Telephone Nos. (610) 320-5521
(800) 331-4290
Fax (610) 320-9216

Website: **www.teamsterslocal429.org**

President	William M. Shappell
Secretary-Treasurer	Kevin M. Bolig
Vice President/Business Agent	Jeff Strause
Recording Secretary	Mike Kennedy
Trustees	Martin Davis
	Kevin E. Moyer
	Jim Geise
Business Agents	Kevin E. Moyer
	Jim Geise
Organizer	Jim Geise

Executive Board Meetings – Second Saturday of every month after the General Meeting
General Meetings – Second Saturday of every month

THE COUNTY OF LEBANON
SOCIAL SERVICE AGENCIES
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TEAMSTERS LOCAL UNION NO. 429

Affiliated with the International Brotherhood of Teamsters

Teamsters Joint Council No. 53

AGREEMENT

THIS AGREEMENT entered into by the Lebanon County Commissioners, hereinafter referred to as the "County", and Teamsters Local Union No. 429, of Wyomissing, PA, hereinafter referred to as the "Union", with both the Union and the County recognized as a "Party" and both as the "Parties", has as its purpose the promotion of harmonious relations between the County and the Union; the establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work, and other conditions of employment not reserved by law or decisions by the Appellate Courts.

1. RECOGNITION

Section 1. The County recognizes the Union as the sole and exclusive bargaining agent for the purpose of establishing salaries, wages, hours and other conditions of employment for all full-time and regular part-time professional employees in Mental Health/Early Intervention, Children and Youth, Agency of Aging, and Drug and Alcohol, as per certification by the Pennsylvania Labor Relations Board, Case No. PERA-R-97-83-E and PERA-R-9104-C.

2. MANAGEMENT RIGHTS

The Association recognizes the rights of the Employer, Lebanon County, and the Lebanon County Commissioners to determine all operating policies and management of the Employees in light of their experience, business judgment, and changing conditions. It is understood and agreed that all rights, powers, or authority possessed by the Employer, Lebanon County and/or the Lebanon County Commissioners prior to the signing of this Agreement, whether or where exercised or not, shall be retained by the Employer, Lebanon County and/or the Lebanon County Commissioners.

Except where especially abridged by a specific provision of this Agreement, the Employer, Lebanon County and/or the Lebanon County Commissioners retain the right to hire, promote, demote, transfer, assign, and otherwise direct the work force; to discipline, suspend, or discharge Employees, to evaluate and determine the qualifications of, and the selection of Employees for promotion, to transfer Employees from one job or shift to another; to determine the number and arrangement of work shifts and the number of Employees to be assigned to each, to determine the starting and stopping time for each shift and each Employee, and when breaks are to be taken; to determine the number of hours of work; to determine the amount of compulsory overtime to be worked; to establish rules, regulations and policies, to establish job classifications and departments; to determine the way in which the Employer's services shall be provided, to determine the method of training of Employees; to assign Employees to other duties as operations may require, to introduce new or improved facilities; to relocate a facility; to introduce a change in method or methods of operation which will produce a change in job duties; the right to carry out the ordinary and customary functions of management in the sole and exclusive judgment of the Employer, Lebanon County and/or the Lebanon County Commissioners. The above rights of the

Employer, Lebanon County and/or the Lebanon County Commissioners are not all-inclusive, but indicate the type of matter or rights which belong to and are inherent to the Employer, Lebanon County and/or the Lebanon County Commissioners.

3. UNION SECURITY

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, as a condition of employment, maintain his/her membership in the Union. An employee may, however, resign from the Union within fifteen (15) days prior to the expiration of this Agreement without penalty by serving written notice to Teamsters Local Union No. 429, 1055 Spring Street, Wyomissing, PA 19610, and to the Commissioners Office, Lebanon County Court House, Room 207, 400 South 8th Street, Lebanon, PA 17042.

Section 2. Effective with the signing of this Agreement, any individual employed by the County in the unit certification set forth in Article 1, who does not join the Union, must pay to the Union each month a "fair share" service fee as a contribution toward the administration of this Collective Bargaining Agreement. Fair Share fees shall be established in accordance with existing State law and shall be based on the cost of representation reflected in the Union's annual report. The County shall be notified of that cost on or about July I annually. This payment shall be deducted in accordance with Article 3.

Section 3. The Union shall indemnify and save the County harmless against any and all claims, demands, suits or other forms of liability that shall arise out of, or by reason of, action taken or not taken by the County for the purpose of complying with any of the provisions of the fair share clause in Section 2 above.

4. CHECK-OFF (DUES, CREDIT UNION, DRIVE)

Section 1. Union Dues. The County agrees to deduct the Union membership initiation fees, assessment and once each month, either dues from the pay of those employees who individually request in writing that such deduction be made or fair share. The amount to be deducted shall be certified to the County by the Union, and the aggregate deductions of all employees shall be remitted together with an itemized statement to the Union by the 10th of the succeeding month, after such deductions are made. This authorization shall be irrevocable during the term of this Agreement. The County shall be indemnified fully, pursuant to Article 2, Union Security.

Section 2. Credit Union: Employees may designate a County approved Credit Union which is duly chartered under State or Federal statutes. The County shall remit within thirty (30) days following the end of the calendar month the aggregate deductions of all employees together with an itemized statement to the Credit Union so designated. The County shall establish rules, procedures and forms which it deems necessary to extend payroll deduction for Credit Union purposes. Payroll deduction authorization forms for Credit Union purposes must be executed by and between the employee and an official of the Credit Union.

Section 3. DRIVE: The County agrees to deduct from the paycheck of all employees covered by this Agreement voluntary contributions to DRIVE. DRIVE shall notify the County of the amounts designated by each contributing employee that are to be deducted from his/her paycheck on a biweekly basis for all weeks worked. The phrase "weeks worked" excludes any week other than a week in which

the employee earned a wage. The County shall transmit to DRIVE National Headquarters on a monthly basis, in one check, the total amount deducted along with the name of each employee on whose behalf a deduction has been made, the employee's Social Security number and the amount deducted from the employee's paycheck. The International Brotherhood of Teamsters shall reimburse the County annually for the County's actual cost for the expenses incurred in administering the weekly payroll deduction plan.

5. HOURS OF WORK

Section 1. The work week shall consist of five (5) consecutive work days in a pre-established work schedule, Monday through Friday 8:00am – 4:30pm.

The "on call" work week shall be defined as beginning on Friday at 4:30pm and ending on the following Friday at 8:00a.m. The existing Friday holiday policy shall continue in each department.

For the life of this contract all full time employees shall work thirty-seven and one-half (37-1/2) hours per week. Fourteen (14) days advance notice shall be provided before any change in work shift hours shall occur.

Section 2. Employees may work a flexible work schedule during a pay week with approval of the Department Head.

Section 3. All employees shall receive two (2) identified break periods fifteen (15) minutes in length. The first will be scheduled before the meal period and the second will be scheduled after the meal period. All employees may take their break periods in a manner not inconsistent with their professional obligations.

Section 4. Employees who are required to work "on call" will be compensated at a rate of Two Hundred Seventy Five Dollars ($275.00) each week in addition to any compensation received and shall remain at that rate through out the term of this agreement. This "on-call" provision will remain open pending the results of the Department of Labor investigation. Upon completion of the Department of Labor investigation and a determination is made, both parties agree to re-negotiate additional "on call" compensation or include the DOL investigations resolution into the Collective Bargaining Agreement; with the agreed benefit to be retroactive to the beginning of the term of this Collective Bargaining Agreement.

Employees who are called out to perform duties while on call and employees who are required to work due to an emergency will be compensated at their appropriate overtime hourly rate for actual hours worked, but shall receive a minimum of two (2) hours' pay at the appropriate rate for each call out and may be required to work at least two (2) hours. See attached Letter of Agreement.

Employees required to work in an "on call" capacity on any of the holidays listed in No. 33 below, shall receive Fifty Dollars ($50.00) each day, in addition to any compensation received in relevant sections of this Agreement.

6. SENIORITY

Section 1. There shall be four (4) types of seniority and they shall be defined as follows:

A. County Seniority – An employee's length of continuous service with the employer since his/her last date of hire.

B. Bargaining Unit Seniority - An employee's length of continuous service with in the subject bargaining unit.

C. Department Seniority – an employee's length of continuous service in a department. The departments are Area Agency on Aging, Children & Youth Services, Lebanon County Commission on Drug & Alcohol Abuse, and Mental Health / Early Intervention.

D. Job Position Seniority - an employee's length of continuous service within a job position within a particular department.

Section 2. The full-time employee seniority roster and the part-time seniority roster shall set forth bargaining unit and department seniority. A corrected seniority roster shall be given to the Union every six (6) months.

The County shall maintain an accurate seniority list which reflects all employees and their seniority dates. The application of seniority shall be governed by the terms of this Agreement.

7. FURLOUGH

Section 1. In the event of a furlough, the least senior employee in each department shall be furloughed first. Seniority for the purpose of furlough shall be defined as length of service within the bargaining unit.

Bumping shall be permitted between positions within the furloughed department only.

In the event this process would leave no qualified individuals to move into specialty positions (ICM, Child Abuse Investigators, etc.) the incumbent in the specialty position shall not be furloughed and the next least senior employee in a non-specialty position shall be furloughed.

Recalls shall be made to the first available vacancy for which the employee is qualified within the department conducting the furlough. Employees being recalled are not entitled to the position they vacated at time of furlough. Should employees be recalled, the most senior furloughed employee shall be recalled first.

Section 2. Health insurance benefits shall cease for employees furloughed in a reduction in force at the end of the month plus one additional month. Thereafter, employees may elect to participate in COBRA.

Section 3. Recall rights: Employees who are furloughed shall retain their seniority and recall rights with the department from which they were furloughed for a period of one year. Furloughed employees are required to maintain their current address with the Employer and the department. In the event of recall, the employees shall be given notice of recall by registered or certified mail, sent to the last address given to the county by the employee. The employees shall have seven (7) calendar days to notify the county of their intention to return.

Section 4. Acceptance and refusal of recall: If the furloughed employee accepts or refuses recall in the same department conducting the furlough, all recall rights cease.

Section 5. Senior employees within the department conducting the furlough will have the option to accept a voluntary furlough, for a period not to exceed six months, without discrimination. Upon return to employment, section one will apply.

Section 6. Posting regarding furlough shall be consistent with Article 8, Job Bidding.

8. JOB BIDDING

Section 1. Employees who have successfully completed their initial probationary period; and have received no disciplinary actions (of a written warning or greater within one calendar year from the date of the posting) and have been employed by the County within the Bargaining Unit for at least one calendar year, shall be permitted to bid job opportunities within the department and other departments within the bargaining unit.

Section 2. When the employer announces a job opportunity it shall be posted within the department where the vacancy exists and other bargaining unit departments for a period of five (5) working days.

The union (shop steward where the vacancy exists) shall receive a copy of the vacancy posting and list of all employees bidding on a job opportunity in a timely manner.

Section 3. Selection shall be awarded as follows:

1. Senior qualified employee within the department. If there are no bidders from within the department;

2. Senior qualified employee within the bargaining unit. If there are no bidders from within the bargaining unit;

3. Furloughed employees within bargaining unit. If there are no bidders from within the bargaining unit;

4. Unqualified bargaining unit members may be considered for the position. If there are no bidders from within the bargaining unit;

5. The vacancy may be filled from outside the bargaining unit.

Section 4. Limitations: An employee who is the successful bidder for the posted vacancy cannot bid on other vacancies for a period of one (1) year.

9. DISCIPLINARY PROCEDURE

Section 1. Employees may not be disciplined except for just cause.

Section 2. Progressive discipline may be applied as follows:

1st Offense - Verbal Warning

2nd Offense - Written Warning

3rd Offense - Suspension

4th Offense - Possible Termination

The Employer, however, reserves the right to determine the level of discipline to apply based upon the severity of the employee's action.

Any disciplinary action taken by the employer under section one of this Article shall be commenced no more than Thirty (30) calendar days after the knowledge of such incident(s) giving rise to such action.

Discipline is issued to ensure important correction of an employee's work performance, work habits, attitude, behavior, etc.

Section 3. Removal of Disciplinary Actions from Employee's Personnel File: Disciplinary actions shall be removed from the employee's personnel file as follows: 1st and 2nd warning after one (1) year; suspensions after three (3) years. Actions shall be removed as described above unless there are intervening or similar events or the discipline involved client abuse or other inappropriate interactions with clients. Those disciplinary records will not be removed from the employee's personnel file.

Section 4. Disciplinary Probation: An employee may also be placed on probationary status as a disciplinary measure if he or she has committed a violation of County or Department rules or regulations from which discharge could result. An employee placed on disciplinary probation must be aware of the urgent need for compliance and the risk of termination of employment.

10. GRIEVANCE AND ARBITRATION PROCEDURE

Section 1. Any grievance which may arise between the parties relating to the application or interpretation of this Agreement, shall be settled in the following manner:

Step 1. The employee, accompanied by the Union shop steward if so desired, shall attempt to resolve grievable matters through discussion with the department head or his/her designee. The County shall cooperate to the fullest extent to meet, discuss and resolve these matters.

Step 2. If the matter cannot be resolved in Step 1 above, the employee may present a written grievance to the department head/designee. Grievances must be presented no later than fourteen (14) days after the occurrence of the incident. The department head shall attempt to resolve the matter or shall submit a written decision to the employee within fourteen (14) days after receipt of the grievance. A copy of the decision shall be furnished promptly to the Union.

Step 3. If the matter cannot be resolved in the above Steps, the Union Business Agent and the department head or his/her designee, will meet in an attempt to resolve the matter within fourteen (14) days of the issuance of the decision in Step 2. All parties will have the opportunity to present the facts, call upon witnesses and review pertinent documents, statements or correspondence.

Step 4. If the grievance cannot be settled in the above Steps, the matter will be submitted, within sixty-five (65) days following the step 3 meeting, to either the Pennsylvania Bureau of Mediation or the State Civil Service Commission. The decision of the impartial arbitrator or the State Civil Service Commission shall be final and binding on both parties consistent with the Act.

Section 2. Any cost involved in the procedure set forth above will be borne equally by the County and the Union,

Section 3. The time limits in this Article may be extended by mutual agreement.

Section 4. Attendance at hearings and arbitrations shall be limited to representatives of the County and/or its designated legal counsel, representatives of the Union and its designated legal counsel, stewards, grievants, witnesses, hearing officers, and those people who, on a case by case basis, are mutually agreed upon by the County and the Union or ordered by the impartial arbitrator.

11. PROBATIONARY PERIOD

Section 1. Routine Probationary Period - All new employees, unless otherwise specified, are employed for a probationary period of one hundred and eighty (180) days. The probationary period is an intrinsic part and extension of the employee selection process during which the employee will be considered in training and under careful observation and evaluation by supervisory personnel. Generally, this period will be utilized to train and evaluate the employee's effective adjustment to work tasks, conduct, observation of rules, attendance, and job responsibilities. Any probationary employee whose performance does not meet required standards of job progress or adaptation, during this period, may be released.

If, at the conclusion of the employee's probationary period, the employee's performance and employment conditions have been satisfactory in all respects in the opinion of supervising personnel, and advancement to regular civil service status is deemed mutually advantageous to the County and the employee, a retention recommendation shall be made to the Director of Human Resources in accordance with State Civil Service requirements.

The County Commissioners retain the right to extend a probationary period at their own discretion, to a maximum of 545 calendar days.

Additionally, employment may be terminated at any time during the probationary period should either the employee or the employer regard such termination as necessary and appropriate. In cases of probationary release from County service, formal advance notice by the employer is not required.

Section 2. "Working Probationary Period" shall be defined by the duly adopted civil service rules and regulations as set forth by the Commonwealth of Pennsylvania State Civil Service Commission.

Fringe benefits for probationary employees shall begin as described in the MBEH.

12. DISCRIMINATION

Section 1. There shall be no discrimination against any employee because of sex, religion, race, age, national origin, marital status, political affiliation, Union affiliation, or disability.

Section 2. It is mutually agreed and emphasized that neither the Union nor the County will tolerate any type of sexual discrimination or harassment of any type. Should an employee believe that he/she is being sexually harassed or discriminated against, he/she should report the matter to his/her Union representative, department head or other County representative.

Section 3. Wherever any words are used in this collective bargaining agreement in the masculine gender, they shall be construed as though they were used in the feminine gender in all situations where they would so apply, and wherever any words are used in this collective bargaining agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and wherever any words are used in this collective bargaining agreement in the plural forms, they shall be construed as though they were also used in the singular form in all situations where they would so apply.

Section 4. The parties agree that the principle of a fair day's work for a fair day's pay shall be observed at all times and employees shall perform their duties in a manner that best represents the Employer's interest. The Employer shall not intimidate, harass, or coerce any employee in the performance of his or her duties. The Employer will treat employees with dignity and respect. Employees will treat the Employer with Dignity and respect.

13. MAINTENANCE OF STANDARDS

To the extent not inconsistent with this Agreement, the economic terms set forth in the MBEH (Municipal Building Employees Handbook) shall apply to all employees covered by this Agreement.

14. STEWARD

The Local Union will appoint members to act as Stewards, whose duty it shall be to see that the conditions of this contract are not broken by either Employer or employees. The Steward shall be the last employee to be laid off, and in no circumstances shall he be discriminated against.

The authority of the Steward so designated by the Union shall be limited to and shall not exceed the following duties and activities: (1) the investigation and presentation of grievances in accordance with the provisions of the collective bargaining agreement; (2) the collection of dues when authorized by appropriate Local Union action; (3) the transmission of such messages and information which shall originate with, and are authorized by the Local Union or its officers, provided such messages and

information (a) have been reduced to writing or (b) if not reduced to writing, are of a routine nature and do not involve work stoppages, slow downs, refusal to handle goods, or any other interference with the Employer's business.

The Steward has no authority to take strike action or any other action interrupting the Employer's business, except as authorized by official action of the Union.

The Employer recognizes these limitations upon the authority of the Steward and shall not hold the Union liable for any unauthorized acts. The Employer, in so recognizing such limitations, shall have the authority to impose proper discipline, including discharge, in the event the Steward has taken unauthorized strike action, slow down, or work stoppage in violation of this Agreement, and the Employer also has the right to discipline the participants in an unauthorized strike, slow down, stoppage of work, and those who refuse to return to the work of their normal duties when ordered to do so.

15. UNION BUSINESS

Section 1. Union Business Agents shall be permitted to investigate and discuss grievances during working hours on the County's premises.

Section 2. The Employer agrees to provide space for a Union bulletin board for posting notices and other pertinent Union information, provided that nothing shall be posted that involves political issues (other than Local 429 political matters) not directly related to the labor-management relationship.

16. LIE DETECTOR TEST

The County shall not require that an employee take a polygraph or any other form of lie detector test.

17. HEALTH AND SAFETY

Section 1. The County will provide immunization for the Hepatitis B virus to an employee and pay for the cost of such immunization when it is not paid by the County health insurance plan.

Section 2. Employees will not be responsible for equipment that is lost, stolen, or damaged in the line of duty unless the employee failed to take reasonable steps to prevent the loss or damage, consistent with Section 4.26 and Section 4.29 of the Municipal Building Employee Handbook, (hereinafter "MBEH") . In the event an employee is required to reimburse the County for lost, stolen or damaged equipment, the amount of reimbursement shall not exceed the sum paid by the County to acquire the affected equipment.

Section 3. The County shall pay the cost to replace or repair any personal items, excluding a personal vehicle that are damaged or destroyed while acting within the scope of employment. Payment for replacement of any item(s) referred to above is conditioned upon verification of the cost (whether through invoice, appraisement or other means). Such verification shall be presented by the bargaining unit member at the time that the payment for replacement is requested.

Section 4. Worker and Community Right to Know Act, the Pennsylvania Law 1984-159, provides for information to be made available to employees and community residents regarding hazardous substances introduced into the work place and into the general environment by employers subject to the law. Upon request, the County will furnish to any employee information concerning the Worker and Community Right to Know Act.

Section 5. The medical records of employees will be maintained conf idential. An employee's full medical record will be made available to any licensed physician(s) designated by the employee, providing an appropriate medical authorization contains the employee's original signature.

Section 6. Time spent receiving emergency medical attention during regularly scheduled work hours which was necessary as a result of a work-related injury, will be considered as paid time.

Section 7. With Department Head approval, in the event a private vehicle is soiled (i.e., urination, defecation, regurgitation), the County will reimburse the employee for the cost of cleaning the interior of the private vehicle arising out of such soiling, upon verification of cost (whether through invoice or other means).

Section 8. With Department Head approval, employee concerns about equipment and vehicles shall be addressed in a face-to-face meeting with the Chief County Clerk.

Section 9. The County agrees to provide kevlar-style gloves to employees as determined appropriate by the Department Head.

Section 10. Camera and film shall be supplied as determined appropriate by the Department Head to maintain appropriate photographic records.

Section 11. Should an employee's personal vehicle be damaged in the course of their employment by the action of a client, said employee shall report the accident within forty-eight (48) hours of the occurrence to the Department Head who will sumit the claim to the County Administrator or his/her designee. Upon receipt of the claim, the County Administrator shall review the submission on a case by case basis and render a decision within thirty (30) days from the receipt of the claim.

Section 12. With Department Head approval, in the event an employee's residence becomes infested (e.g., bed bugs) arising out of the employee's course of employment, and where the employee can provide information satisfactory to the Department Head of compliance with all applicable work rules and recommendations about preventing infestation, the County will reimburse the employee for the cost of resolving the infestation, after having approved the method to be used to achieve the resolution of the infestation.

18. PERSONNEL RECORDS

Section 1. Each employee shall have the right, upon written request, to examine and copy any and all material, including but not limited to, any and all evaluations, contained in any personnel records concerning such employee. The Union shall have access to an employee's official personnel file upon written authorization of the employee involved. The County may charge a reasonable amount for copying expenses.

Section 2. Employees must maintain an accurate current residence address and home telephone number with the payroll section of the County Controller's Office. All changes must be submitted to the payroll section of the County Controller's Office in writing, immediately after the effective date of the change. The payroll section of the County Controller's Office will provide to the employee an initialed copy to acknowledge receipt. Telephone numbers and addresses will be secured and only provided to authorized persons.

19. LEAVES OF ABSENCE

An employee may, by submission of a written request to his/her department head, request unpaid leave of absence. Reasons for leave of absence include, but are not limited to, personal illness, family illness (with explanation), educational leave (in a related field of instruction), childbirth rearing, or personal reasons. Verification concerning leave requests may be required by the County.

A leave of absence (LOA) is an unpaid absence from work. Requests for an LOA must be submitted at least fourteen (14) days prior to the beginning of the leave. Requesting employees shall receive notice of the disposition of their request within fourteen (14) days of submission. All leaves are subject to the approval of the County Commissioners and the Department Head.

Approved leaves of absence are normally granted in increments ranging from ten (10) through ninety (90) day periods. Duration of approved leaves of absence shall not exceed six (6) months in length. When requesting a leave of absence, the employee must specify the reason for the leave, the number of days needed and the date the unpaid leave is to begin.

Extension to establish leaves of absence may be requested, in writing, by the employee providing such request does not exceed the six (6) month time limit. Extension to existing leaves of absence are subject to the approval of the employee's Department Head and the County Commissioners.

Employees are limited to one (1) approved leave of absence, with a duration not exceeding six (6) months in length within any twelve (12) month period, measured forward from the beginning of the previous leave.

While on an approved leave of absence, employees are prohibited from gainful employment elsewhere, unless there is an agreement to the contrary between the County and the Union.

An approved leave of absence may not expand the availability of paid leave, such as sick leave, beyond how such paid leave is presently permitted.

Seniority - Unpaid leaves of absence do not affect department Seniority. Unpaid leaves do, however, affect county service time and one's retirement pension.

20. CHILD BIRTH/REARING LEAVE

This leave is a leave of absence without pay. Employees must request this type of leave in writing specifying the dates that are to be used. Leaves may commence prior to or after childbirth or adoption. Total child birth/rearing leave, including paid and unpaid time, shall not exceed six (6) months in length.

21. **MEDICAL LEAVE OF ABSENCE**

Employees requesting medical leaves must provide with their written request a signed statement from their physician indicating the medical reason for the absence and the approximate amount of time necessary for recovery.

22. **FAMILY AND MEDICAL LEAVE**

The provisions of the Family and Medical Leave Act (Addendum "A") shall become effective with the signing of this Agreement.

23. **TRAINING PROGRAMS**

Employees will be compensated at the appropriate hourly rate for County-required training. The County reserves the right to change the employee's schedule to accommodate such training, provided the employee is given at least two (2) weeks advance notice.

24. **LEGAL PROCEEDINGS**

Section 1. Any court appearance scheduled to begin within two (2) hours before or after an employee's regularly scheduled work shift shall be paid only on the basis of time spent in the proceedings, and shall be calculated as time worked at the appropriate hourly rate. Witness fees shall be turned over to the County.

Section 2. The County shall provide, at its cost, legal representation to any employee who is named as a defendant in a civil and/or criminal action arising out of acts committed by the employee within the scope of his/her employment not constituting a crime, actual fraud, actual malice or willful misconduct, so long as such representation constitutes no conflict or potential conflict of interest to the County. Such representation must be requested in writing by the affected employee or his/her power of attorney no more than five (5) calendar days after the service of process.

Section 3. Legal representation will be provided through the office of the County Solicitor or liability insurance carrier. The decision of the County Solicitor on whether to represent the employee shall be final. Should the solicitor decline to represent the employee because of a conflict of interest or a potential conflict of interest, the County shall select alternate counsel and the County will pay for reasonable attorney's fees (as determined by the County) incurred in the employee's defense of the action.

Section 4. Except for acts which constitute a crime, actual fraud, actual malice or willful misconduct, the County shall indemnify employees against civil litigation which arises out of action taken within the scope of employment.

25. **TRAVEL EXPENSES**

Section 1. Employees who are required to operate their private vehicles pursuant to their job duties or approved training will be compensated in accordance with the Internal Revenue Service mileage rate in effect at the time such service is rendered.

Section 2. Employees will be reimbursed for all travel expenses in accordance with the municipal Building Employees Handbook. Employees will be reimbursed for all meals at the rate of ten dollars ($10) for breakfast, twelve dollars ($12) for lunch, and seventeen dollars ($17) for dinner.

26. **SICK LEAVE**

Section 1. An employee contracting or incurring any sickness or disability which renders such employee unable to perform the duties of his/her employment shall be eligible to receive sick leave with pay.

Section *2.* Employees shall earn fifteen (15) sick leave day per calendar year at the rate of *1.25* days for each month in which they are in compensable status through the fourteenth (14th) of the month. Unused sick leave is carried forward into the next year provided that the maximum accumulation is not exceeded. Employees may accumulate up to one hundred fifty-five (155) days of sick leave.

Section 3. Employees who have accumulated over the maximum sick leave of one hundred fifty-five (155) days at the end of the calendar year shall be reimbursed for those unused sick days over the maximum accumulation at the rate of Fifteen ($15.00) per day. Reimbursement shall be made during the month of January.

Section 4. It shall be the obligation of the employee to notify a supervisor of their absence as soon as possible, and at least prior to the employee's scheduled start time, if possible. Employees on long term absences shall apprise the department head of the expected duration of the absence from time to time. Upon request by the County, a physician's written evaluation shall be provided by the employee.

Section 5. Full-time employees may use up six (6) sick leave days per year for the illness of family members residing in their household, or a parent or child residing outside of the household. These days are charged against sick leave balances. Employees utilizing three (3) days in succession for the illness of a family member must provide a doctor's note describing the illness of the family member. This note justifies the payment of the benefits days.

Section 6. Employees may take sick leave in one half day increments or hourly increments for doctor visits if said visit is covered by medical insurance excluding eye and dental.

27. **WORKERS' COMPENSATION**

Section 1. An employee injured on the job must complete a workers' compensation injury report as soon as possible and forward it to his/her department head. The employee shall receive a copy of the report which shall indicate the date on which the report was received by the department head. Within twenty-one (21) days from the date the injury was reported, the County or its designee shall issue a

workers compensation payment, or a notice of denial, in accordance with the Pennsylvania Workers' Compensation Act.

Section 2. Any employee going on work-related injury leave shall continue to earn, for ninety (90) days from the beginning of such leave, vacation, holidays, sick leave and personal days, but such benefits shall not continue to accrue beyond that time during the remainder of the period of disability. Such employee shall continue to be covered by the various insurances provided by the Employer during the period of disability.

Section 3. An employee on worker's compensation leave shall undergo examination by a licensed physician selected by the County at times as determined by the County. The County shall pay the cost of such examination.

28. **BEREAVEMENT LEAVE**

Section 1. Employees are authorized a maximum of five (5) consecutive bereavement leave days with pay for death of members of the immediate family - husband, wife, parent, child, step-child.

Section 2. Employees are authorized three (3) consecutive bereavement leave days with pay for the death of brother, sister, grandparents, grandchildren, mother-in-law, father-in-law, step-father, step-mother, step-brother, step-sister, or a member of the family residing in the employee's household.

Section 3.Employees may use one (1) day bereavement leave and two (2) days as vacation or personal days for the death of son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent-in-law, aunt, uncle, niece, or nephew.

Section 4. Employees may utilize personal days, compensatory time, vacation days, or sick leave to extend bereavement leave for deaths in the family, or when extensive travel is required. Bereavement leave shall be used within seven (7) calendar days following the date of death.

Section 5. Part-time employees shall receive bereavement leave. Such bereavement leave shall follow the schedule set forth in Sections 1 and 2 above. The part-time employees, bereavement leave shall be a ratio of the average hours worked in a regularly scheduled work week divided by thirty-seven and one-half (37 1/2) hours and then multiplied by the number of days of bereavement leave granted to a full-time employee in Sections 1 and 2 above, rounded to the nearest full day. Bereavement leave shall be used within seven (7) calendar days following the date of death. An employee who is scheduled to work one day per week, shall be entitled to at least one (1) day of bereavement if the funeral is held on the employee's scheduled work day. (Example: Part-time employee who works two (2) days per week would receive bereavement leave as follows:

Section 1. .4 X 5 = 2 days bereavement leave

Section 2. .4 X 3 = 1 day bereavement leave

Section 3. .4 X 1 = 1 day bereavement leave

29. **MILITARY LEAVE**

Section 1. An employee enlisting or entering the military service of the United States shall be granted all rights and privileges provided by applicable law.

Section 2. The County shall pay the health insurance contributions for an employee on leave of absence for training in the military reserves or National Guard not to exceed fifteen (15) days.

Section 3. The County will compensate employees in the military reserves or National Guard for annual training not to exceed fifteen (15) days lost work.

30. **JURY DUTY/COURT APPEARANCE**

Section 1. A paid leave will be granted to any employee called to jury duty at his/her regular salary.

Section 2. Employees shall retain any payment (s) to them by the Federal or State Court for jury duty service.

Section 3. A paid leave, of required duration, will be granted for an Employee called as a witness in a County related matter.

Section 4. An unpaid leave will be granted to an Employee for personal court matters, such as domestic relations, family law, civil or criminal matters. Vacation or personal time may be used, if available.

Section 5. An unpaid leave will be granted to an employee if he/she is subpoenaed as a witness for a personal matter. Vacation or personal time may be used, if available.

Section 6. Employee must submit Court notification to his Department Head at least two (2) work days prior to Court appearance, whenever possible. If an Employee is released by a Lebanon County Court prior to the end of his/her shift, Employee is expected to return to work for the balance of the work day.

Section 7. Employee shall continue to work his/her shift until the time in which he/she is required to report for jury duty or Court participation. Immediately following dismissal by the court, Employees shall return to his work to complete his shift.

31. **PERSONAL HOLIDAY**

Section 1. Full-time employees shall be eligible for four (4) personal leave days annually to be taken January 1 through December 31 of each year.

Section 2. New Employees - Employees hired between January 1 through June 30 inclusive, entitlement to any personal days during this period is prohibited, but two (2) personal days are allowed July 1 through December 31.

Employees hired between July 1 through December 31 inclusive are not entitled to any personal days during this period, but may take four (4) personal days beginning with the next period.

Section 3. Change of Status - Employees changing employment status from part-time to full-time shall follow the procedures established for new employees. Employees changing status from full-time to part-time shall utilize unused personal days by the end of the current six month period.

Section 4. Upon the approval of the Department Head, personal leave days shall be granted at the time it is requested by the employee on a "first come, first serve" basis. Employees will not be required to give any reason for the use of personal leave days.

Section 5. Each employee must use all personal leave days during the calendar year in which the personal leave days are earned or lose them.

32. VACATIONS

Section 1. Employees shall earn vacation time with pay in accordance with the following schedule:

Years of Service with County	Number of Days	Rate of Accumulation
Less than 5	10	.833 days/month
5 to 10	15	1.25 days/month
10 to 20	20	1.667 days/month
20 plus	25	2.083 days/month

Section 2. With approval of the County, employees will be permitted to receive advance vacation (i.e., to take vacation not yet earned). Advanced vacation shall not exceed the amount normally expected to be approved during the calendar year. Employees will be required to sign the necessary administrative forms with the County.

Section 3. With approval of the County, employees, in accordance with department seniority, will be permitted to select specific dates for vacation during the month of January each year. Vacation selected in January shall be awarded by seniority. Vacation that is selected after the January selection period will be awarded on a "first come, first serve" basis so long as this is not in conflict with the department's needs.

Section 4. Upon separation, an employee shall receive payment for all earned, accumulated, and unused vacation time.

Section 5. Vacation time shall be counted as time worked toward computation of overtime.

Section 6. Unused vacation for the present year may be carried forward into the next year provided the maximum accumulation is not exceeded. Maximum accumulation is as follows:

Service Time	Entitlement
4th month to end of 7th year	30 working days
8th year and over	40 working days

At the end of the calendar year, any days over the maximum accumulation, shall be forfeited if not used.

Section 7. Vacation is earned at the appropriate rate under the schedule for each pay period an employee is in a compensable status, except for workers' compensation.

33. HOLIDAYS

Section 1. The following holidays shall be observed as paid holidays for all employees who are actively employed on such holiday:

New Year's Day
Martin Luther King Jr. Day
Presidents' Day (National Holiday)
Good Friday
Memorial Day
4th of July
Labor Day
Veterans Day
Thanksgiving Day
Christmas Day

Section 2. An employee whose shift begins on any of the above-listed holidays shall be paid at the rate of time and one-half his/her hourly wage, in addition to seven and one-half (7 1/2) hours holiday pay.

Section 3. All hours worked on holidays shall be counted as hours worked in the computation of weekly overtime.

34. INSURANCE BENEFITS

The County is to provide paid health insurance (Preferred Provider Organization, [PPO] to each full-time employee and his/her dependents including children under the age of twenty six (26).

The County will maintain a family prescription plan as part of its health insurance program with employee co-pays of Ten Dollars ($10.00) for generic drugs; Twenty Dollars ($20.00) for preferred name drugs and Forty Dollars ($40.00) for non-preferred co-pay per 30 day prescription. Employee co-pays of Twenty Dollars ($20.00) for generic drugs; Forty Dollars ($40.00) for Preferred; Eighty Dollars ($80.00) for non-preferred co-pay per 90 day prescription.

Medical Service Co-Pays: Family Doctor, Twenty Dollars ($20.00); Specialist, Forty Dollars ($40.00); Urgent Care, Fifty Dollars ($50.00); Emergency Room, One hundred Dollars ($100.00).

The employee shall be required to pay a deductible for the health insurance benefits provided by the County.

For 2016, the deductible for health insurance benefits provided by the County shall be Three Hundred Dollars ($300.00) per calendar year for individual coverage, and Six Hundred Dollars ($600.00) per calendar year for multiple person coverage.

On January 1, 2017, the deductible for health insurance benefits provided by the County shall be Four Hundred Dollars ($400.00) per calendar year for individual coverage, and Eight Hundred Dollars ($800.00) per calendar year for multiple person coverage.

On January 1, 2018, the deductible for health insurance benefits provided by the County shall be Six Hundred Dollars ($600.00) per calendar year for individual coverage, and Twelve Hundred Dollars ($1200.00) per calendar year for multiple person coverage.

On January 1, 2019, the deductible for health insurance benefits provided by the County shall be Eight Hundred Fifty Dollars ($850.00) per calendar year for individual coverage, and Seventeen Hundred Dollars ($1700.00) per calendar year for multiple person coverage.

Coverage begins within 90 days of the beginning of employment.

The insurance, coverages and benefits described herein may be subject to change under the following circumstances:

A. Where substantially similar benefits are provided, subject to the mutual agreement of the parties; or

B. Where identical or better coverage and benefits are provided through a different provider.

1. Eligibility – Full-time employees shall elect coverage from the offered health insurance plan. Coverage includes the employee as well as his/her dependents, Dependents include one's spouse, and children up to age 26, and unmarried children who are past the limiting age and are medically certified by a physician as being disabled. The term children includes stepchildren and legally adopted children.

2. Enrollment - Enrollment forms for health insurance shall be completed in a timely manner in the County Benefits Office. It is the responsibility of all employees to complete and return their health insurance enrollment forms. Failure to do so may cause a delay in coverage. Prior to enrollment each full-time employee shall be provided with information for the health insurance plan.

3. Health Insurance Exchange - Employees who maintain health insurance elsewhere may choose to participate in the County's health insurance exchange program. This experimental program, which is available to full-time employees only, provides a monetary payment to

employees who choose not to take part in the County's health insurance coverage. To enter this program, employees must provide documentation that they are covered under a health insurance plan through another carrier. The taxable reimbursement shall be made quarterly on a payroll check.

The reimbursement rate is $200.00 per month as established by the County Commissioners.

Employees wishing to participate in this program should contact the Employee Benefits Office for details.

4. After one hundred and eighty (180) calendar days of employment, the county shall provide each employee with County paid term life insurance which shall equal one hundred percent (100%) of the employee's annual income, rounded to the next highest thousand dollars (to a maximum of Fifty Thousand Dollars ($50,000.00). The County shall continue to provide life insurance coverage during a non-paid leave of absence with benefits.

5. Any additional or improved eye or dental insurance benefit provided by the County of Lebanon to its employees not represented by a bargaining representative during the term of this Collective Bargaining Agreement shall also be provided to this bargaining unit.

35. PENSION

Section 1. The Pension Fund is regulated by Lebanon County.

Section 2. By State and County regulations, a mandatory minimum contribution of seven percent (7%;) of the employee's salary will be applied to the County Pension Fund for new employees hired after the effective date of this Agreement. Employees may be governed by another percentage under previous State regulations depending on their date of hire.

36. OVERTIME/COMPENSATORY TIME/FLEX TIME

Section 1. In the event an employee is required to work in excess of his/her regularly scheduled work week or work day, the employee shall receive one and one-half (1 1/2) times his/her base hourly rate of pay for all hours worked beyond the regularly scheduled work day (7 1/2 hours) or work week (37 1/2 hours). Time not worked and not otherwise compensable does not count toward overtime.

Section 2. At the employee's option, he or she may elect to take compensatory time in lieu of overtime payment. Each hour of overtime worked must be compensated with an hour and a half of paid time off.

Example: If an employee works two (2) hours of overtime, said employee shall receive three (3) straight time hours of paid time off.

Section 3. Any work performed on a Saturday shall be paid at time and one half and any work performed on a Sunday shall be paid at double time.

Section 4. Compensatory time, if not taken within a ninety (90) day period, shall be paid out.

37. **WAGES**

Section 1. Annual pay increases shall take effect with the first full pay period beginning on or after December 24 in a given year. All other general pay increases, including incremental increases (i.e., promotion), shall take effect with the first day of the pay period closest to the pay increase date.

Section 2. Effective with the described first pay period, for 2016, an employee on the salary schedule shall receive a 3.0% wage increase, and an employee going off the salary schedule or off the salary schedule shall receive a 3.0% wage increase.

Section 3. Effective with the described first pay period, for 2017, an employee on the salary schedule shall receive a 3.0% wage increase (one step on the salary schedule plus an increase in the 2016 salary schedule of 1.0%), and an employee going off the salary schedule or off the salary schedule shall receive a 3.0% wage increase.

Section 4. Effective with the described first pay period, for 2018, an employee on the salary schedule shall receive a 3.0% wage increase (one step on the salary schedule plus an increase in the 2017 salary schedule of 1.0 %), and an employee going off the salary schedule or off the salary schedule shall receive a 3.0% wage increase.

Section 5. Effective with the described first pay period, for 2019, an employee on the salary schedule shall receive a 3.0% wage increase (one step on the salary schedule plus an increase in the 2018 salary schedule of 1.0 %), and an employee going off the salary schedule or off the salary schedule shall receive a 3.0% wage increase.

Section 6. Effective with the date of this Agreement, all current and new bargaining unit employees shall be promoted, based upon civil service minimum experience and training requirements and department head recommendation with such recommendation, employees may be promoted as soon as they have obtained the minimum experience and/or training required for the promotion.

Section 7. All wages are based upon thirty-seven and one-half (37 1/2) hours per week. For purposes of calculating overtime, an employee's hourly rate shall be the employee's base wage.

Section 8. In the event a County employee transfers into this bargaining unit from another "professional" position within the County, placement will be mutually agreed upon by the County, the employee involved, and the Union.

Section 9. When an employee is required to work in a higher classification, said employee shall receive the higher rate of pay.

Section 10. Rules of the Pay chart

1. The Employer shall place an employee new to this bargaining unit on the chart, as determined by the Employer.

2. Any employee promoted one (1) pay grade shall move from their existing step and pay grade to the new pay grade at the same step. (i.e., Grade 9, Step 1 to Grade 10, Step 1; Grade 9, Step 4 to Grade 10, Step 4).

3. Any employee promoted two (2) pay grades shall move from his/her existing pay grade and step to the new pay grade less one (1) step, or to the minimum step for that pay grade. (i.e., Grade 9, Step 3 to Grade 11, Step 2; Grade 9, Step 1 to Grade 11, Step 1).

4. Any employee demoted one (1) pay grade shall move from their existing step and pay grade to the lower pay grade at the same step. (i.e., Grade 10, Step 3 to Grade 9, Step 3; Grade 11, Step 5 to Grade 10, Step 5).

5. Any employee demoted two (2) pay grades shall move from his/her existing pay grade and step to the lower pay grade plus one (1) step. (i.e., Grade 11, Step 2 to Grade 9, Step 3).

6. Any employee who receives a lateral transfer shall remain in the same pay grade at the same step.

38. **DEFINITIONS**

Section 1. As used in this Agreement, the following terms shall have the meaning which follows:

"ACT" - Public Employee Relations Act, Act of the General Assembly of the Commonwealth of Pennsylvania, No. 195, July 23, 1970.

"EMPLOYEE" - Any individual employed by the County and included in the unit certification set forth in Article 1.

"COUNTY" - County of Lebanon.

"UNION" - Teamsters Local Union No. 429

"COUNTY POLICY" - Municipal Building Employees Handbook

"PROMOTION" – A promotion is the movement of an employee to a classification with a higher maximum rate of pay (last step on the pay chart).
"DEMOTION" – A demotion is the movement of an employee to a classification with a lower maximum rate of pay (last step on the pay chart).

"LATERAL TRANSFER" – A lateral transfer is the movement of an employee to the same classification or a different classification within the same pay grade. This move may be made within the same department or to a different department.

39. **SAVINGS**

Section 1. In the event that any provisions of this Agreement are found to be inconsistent with existing statutes or ordinances, the provisions of such statutes or ordinances shall prevail, and if any

provisions herein are found to be invalid and unenforceable by a Court or other authority having jurisdiction, then such provisions shall be considered void, but all other valid provisions shall remain in full force and effect.

40. **SUCCESSORS**

In the event the Employer sells, leases, transfers, or assigns any of its facilities to other political subdivisions, corporations, or persons, and such sale, lease, transfer, or assignment would result in the lay-off, furlough or termination of employees covered by this Collective Bargaining Agreement, the Employer shall attempt in good faith to arrange for the placement of such employees with the new employer. The Employer shall notify the Union in writing at least thirty (30) days in advance of any such sale, lease, transfer, or assignment.

41. **TRANSFER OF SOCIAL SERVICE AGENCY.**

This Agreement shall be binding upon the parties herein, their successors and assigns. In the event an entire existing County of Lebanon Social Services Department (i.e., Children and Youth, Mental Health/Early Intervention, Area Agency on Aging, Drug and Alcohol), or a portion thereof is sold, leased, transferred, or taken over, the new provider of the work of that Social Services Department, or portion thereof, shall continue to be subject to the terms and conditions of this Agreement for the life of this Agreement, and shall include the acquisition of all existing employees of that department or portion thereof acquired, so long as not in violation of any law. It is understood that the employer shall not use any leasing device to a third party to evade this Agreement. The County agrees to give notice of the existence of this Agreement to any purchaser, lessee, transferee, or assignee of a described Social Services Department or portion thereof. Such notice shall be in writing, with a copy to the Union not later than the effective date of the transfer. The transferee shall provide seniority to transferred employees as the employees enjoy pursuant to this Collective Bargaining Agreement. In addition, the County of Lebanon Social Services Department shall require any lessee, transferee, buyer, subcontractor, etc. to assume the obligaitons of this agreement by specific provision in the County's agreement with the entity in question.

42. **RETURN OF BARGAINING UNIT WORK AND EMPLOYEES.**

If, during the term of this Agreement, the County of Lebanon transfers any work covered by this Agreement, and employees are transferred as described above, and the County of Lebanon subsequently terminates its relationship with that entity, and the County of Lebanon again takes over providing that work, then:

(a). The County of Lebanon shall return said work, and the employees then performing that work, to this bargaining unit, unless prohibited by law;

(b). Said work and employees shall be covered by the terms of this Agreement;

(c). Employees presently employed by the County of Lebanon, continuously employed by the transferee, and returning to the County of Lebanon, shall be credited with all seniority earned while employed by the transferee upon their return to the County of Lebanon, except for pension benefits.

Seniority for pension purposes shall be that seniority existing when transferred from County of Lebanon employment.

Nothing herein limits the County of Lebanon from transferring work as provided in Article 41 above.

43. **TERMINATION.**

Section 1. This Agreement shall be effective on January 1, 2016 and will continue in full force through December 31, 2019. It shall automatically be renewed from year to year thereafter, unless either party shall notify the other in writing by such time as would permit the parties to comply with the collective bargaining schedule established under the Public Employees Relations Act.

In the presence of:

LEBANON COUNTY

By: _____

By: _____

By: _____
County Commissioners

TEAMSTERS LOCAL UNION NO. 429

By: _____
President

By: _____
Secretary Treasurer

Attest:

_____
Jamie A. Wolgemuth
County Administrator

ADDENDUM A

FAMILY AND MEDICAL LEAVE

Eligible employees may utilize up to twelve (12) weeks of unpaid leave in accordance with the Family and Medical Leave Act (FMLA) of 1993 and in accordance with the following provisions:

1. **REASONS FOR LEAVE**:

Family and Medical Leave will be available to an eligible employee for the following reasons:

(A) The birth or placement of a child with the employee for adoption or for foster care. This leave shall be known as child care.

Leave taken for the birth or placement of a child must be within twelve (12) months of that birth or placement.

(B) To care for a spouse, child or parent with a serious health condition. This leave shall be known as serious health condition of family member.

(C) A serious health condition of the employee that makes the employee unable to perform his or her job duties. This leave shall be known as medical, not to be confused with the regular medical leave.

A "serious health condition" is defined as an illness, injury, impairment or physical or mental condition that involves in-patient care at a hospital, hospice or residential medical care facility, or continuing care by a doctor of medicine or osteopathy.

Other important definitions are located at the end of this article.

2. **ADVANCE NOTICE AND MEDICAL CERTIFICATIONS**:

Employees seeking to use the FMLA leave may be required to provide:

(A) 30-day advance notice of the need to take FMLA leave when the need is foreseeable;

(B) Medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;

Where family and medical leave is requested as a result of a serious health condition, disability, or illness of either a family member or the employee, the employee shall provide an acceptable medical certification issued by a health care provider and paid for by the employee. Such certification can be required at the beginning of, during, at the completion of, or at other times as determined by the County.

When leave is needed to care for an immediate family member or the employee's own illness and is for planned medical treatment, the employee must attempt to schedule treatment so that it will not unduly disrupt the County's operation.

(C) The county can require an opinion from a second health care provider which will be paid for by the County, when there is doubt as to the validity of the certification provided by the employee. If there is a conflict between the two medical opinions, the County may obtain an opinion from a third health care provider selected by the previous two physicians. The cost of this exam and medical opinion shall be split equally between employee and the County. The opinion of the third health care provider will be binding upon both the County *and* employee.

Similarly, when leave is requested as the result of a birth or placement, the employee shall provide an acceptable physician's certification of the event.

(D) Periodic reports during FMLA leave regarding the employee's status and intent to return to work; and

(E) A "fit-for-duty"' certification to return to work.

3. **ELIGIBILITY**:

To be eligible for the leave, an employee must have worked for the County for at least twelve (12) months and for *a* minimum of one thousand two hundred fifty (1,250) hours during the previous one-year period immediately prior to the onset of the requested leave.

4. **REQUESTING FMLA**:

Employees requesting leave are to complete a Request for Family and Medical Leave Form available in the Employee Benefits office.

5. **COMMENCEMENT OF LEAVE**:

FMLA leaves shall begin when all applicable paid leaves end. (see below).

(A) Child care - under this provision the employee must use all their accumulated vacation, personal days and sick leave (during their period of disability only) prior to beginning this leave.

(B) Serious health condition of a family member under this provision the employee must use all their accumulated vacation, personal days allotted family sick days prior to beginning this leave.

(C) Medical - under this provision the employee must use all their accumulated sick, vacation and personal day leave time before going out on an unpaid FMLA.

6. **LENGTH OF FMLA LEAVE:**

Eligible employees may use up to twelve (12) weeks leave in any twelve (12) month period. The "rolling forward" method shall be used to determine eligibility for new leaves.

(A) Additional Leave Time - the period of Family and Medical Leave used can be combined with an unpaid leave of absence if such a leave of absence is approved by the County. and not to exceed the provisions of other similar leaves - During the leave of absence period, employees will be responsible for continuing all insurance, if they so elect, and will be required to pay those dollar amounts established to meet the monthly premium.

7. **LEAVE CONDITIONS:**

Employees who take leave under the Family and medical Leave Act will be returned to their position or to a position with equivalent benefits, pay and other terms and conditions of employment.

(A) Continuance of Insurance Coverage - the County will continue insurance coverage under group health and life insurance plans for employees who have elected to use family or medical leave under the same conditions as coverage would have been provided if no leave had been taken. Employees will be responsible for any co-payments related to the specific insurance plan; or in the case of employee payments will be continued.

(B) Failure to Return to Work - when an employee fails to return from leave, the County can recover any premium that has been paid by the County on behalf of the employee to maintain health care coverage. Employees who fail to return to work will not be liable for the premiums if their failure to return is due to the continuation, recurrence, or onset of a serious health condition or other circumstances beyond their control. In such case, the county can require a medical certification issued by a health care provider acceptable to the County.

8. **MISCELLANEOUS PROVISIONS:**

(A) Intermittent Leave - in certain circumstances, as described below, an employee may take the twelve (12) week period, intermittently (take, a day periodically when needed), or use the leave to reduce the work week or work day, resulting in a reduced work schedule. This form of leave is subject to the approval of the County Commissioners.

Under the Act, unpaid leave related to a serious health condition of a child, spouse, parent or the employee may be taken intermittently or on a reduced leave schedule when medically necessary, and certification, acceptable to the County is provided. Such intermittent leave or reduced leave schedule will not result in a reduction in the total amount of family and medical leave to which the employee is entitled beyond the amount of leave actually taken. Thus an employee who takes four (4) hours leave for a medical treatment has utilized four (4) hours of the twelve (12) weeks of leave to which the employee is entitled.

Approved intermittent leave may be taken as part of unpaid leave.

The County reserve the right *to* temporarily transfer an employee taking intermittent leave or leave on a reduced work schedule for planned medical treatment to an equivalent alternative position that better accommodates such intermittent or reduced leave.

Under the law, leave resulting from the birth of a child or the placement of a child with an employee for adoption or foster care cannot be taken intermittently or on a reduced leave schedule unless the employee and County agree to a specific schedule.

(B) Husband and Wife - If husband and wife are employed by the County and both wish to take leave to care for a newly-arrived child or a sick parent, their aggregate leave is limited to twelve (12) weeks. If the leave is requested because of the illness of a child or of the other spouse, each spouse is entitled to twelve (12) weeks of leave.

(C) Seniority - Unpaid FMLA leave does not count toward benefit accrual. For the purpose of retirement, unpaid FMLA leave does not count towards one's length of County service. Unpaid FMLA leave does, however, count towards departmental seniority.

9. Any provisions of the Family and Medical Leave Act not specifically covered in this article shall revert back to the Act itself.

10. **DEFINITIONS**:

(A) Eligible Employee - the term "eligible employee" means an employee who has been employed

(i) For at least twelve (12) months by the County with respect to when leave is requested; and

(ii) For at least one thousand two hundred fifty (1,250) hours of service with the County during the previous twelve (12) month period.

(B) Employment Benefits - the term "employment benefits" means all benefits provided or made available to employees by the County, includinq group life insurance, health insurance, sick leave, vacation, personal days and pensions, regardless of whether such benefits are provided by a practice or written policy.

(C) Health Care Provider - the term "health care provider" means - (a) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or (b) any other person determined by the Secretary of Labor to be capable of providing health care services.

(D) Parent - the term "parent" means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter.

(E) Son or Daughter - means a biological, adopted, or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis, who is

(i) Under I8 years of *age; or*

(ii) 18 years of age or older and incapable of self-care because of mental or physical disability.

(F) Spouse - means a husband or wife, as the case may be.

11. An employee may elect to reserve up to five (5) days of their accrued vacation time for their expected return to work from FMLA leave.

NOTICE
BE SURE TO GET A WITHDRAWAL CARD

It is important to get a withdrawal card from the Local Union if you do not work and are not being paid by your Employer. This applies if you terminate your employment, go on unpaid sick leave, workers compensation, a leave of absence, are laid off, or for any reason you do not work and are not being paid by your Employer. Members must request a withdrawal card. Failure to request a withdrawal card will make you responsible for all back dues and possibly a re-initiation fee. Your request should be submitted before the end of the month in which you last worked. A withdrawal card allows a member to maintain his or her membership on an inactive basis. In other words, you will not owe union dues for any months you did not work after you obtain the withdrawal card. Additionally, this allows you to avoid paying a re-initiation fee when you return to employment.

You can request a withdrawal card by mail or by clicking on **www.teamsterslocal429.org** and printing the **withdrawal form.** Along with your request, please include fifty cents to cover the cost of the withdrawal card. Mail requests to:

Teamsters Local Union No. 429
1055 Spring Street
Wyomissing, PA 19610

You may also apply for a withdrawal card in person at the above address. The business hours are:

Monday through Friday – 7:00 A.M. to 4:00 P.M.

In order to be eligible for a withdrawal card, your initiation fees must be paid in full and your union dues must be paid current.

Union Dues: This Local Union is required to conduct an update of dues paid by members to be in compliance with the directives of the IBT Constitution (Article X, Section 5). All members are reminded that accurate and timely payment of dues is the member's responsibility. If a member is on dues check-off, they must contact the Union Hall immediately to report any error in their monthly dues deduction.

Membership Cards: Any member that does not have a union membership card must contact the Union Hall.

Should you have any questions, please call:

TEAMSTERS LOCAL UNION NO. 429
(610) 320-5521
or (800) 331-4290

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

HOLLIE ADAMS, *et al.*,	:	
Plaintiffs,	:	**No. 1:19-cv-00336 SHR**
v.	:	
TEAMSTERS UNION LOCAL 429, *et al*.	:	**The Honorable Sylvia Rambo**
Defendants	:	**Electronically Filed Document**
	:	*Complaint Filed 02/27/19*

DEFENDANTS' JOINT STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

1. Plaintiffs are employees of Defendant Lebanon County. Plaintiff Adams resides in Tower City, Pennsylvania. Plaintiff Weaber resides in Stevens, Pennsylvania. Plaintiff Unger resides in Pine Grove, Pennsylvania. Plaintiff Felker resides in Lebanon, Pennsylvania. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 9.

2. Defendant Teamsters Local Union No. 429 ("Defendant Teamsters") is a labor union headquartered in Wyomissing, Pennsylvania, and includes among its members municipal government employees. Teamsters is an "Employe organization" and "Representative" within the meaning of the Pennsylvania Public Employee Relations Act ("PERA"), 43 P.S. § 1101.301(3) and (4), respectively.

Adams et al. v. Teamsters Local Union 429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 10.

3. Defendant Lebanon County is a Pennsylvania county. Defendant Lebanon County is a "Public employer" within the meaning of PERA, 43 P.S. § 1101.301(1). *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 11.

4. Defendant Attorney General Josh Shapiro is responsible for enforcement of Commonwealth laws. His office is located in Harrisburg, Pennsylvania. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 12.

5. Defendants James M. Darby, Albert Mezzaroba, and Robert H. Shoop Jr., are members of the Pennsylvania Labor Relations Board ("PLRB"). *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 13.

6. The PLRB is charged, under PERA, with a number of tasks, including but not limited to, determining the appropriateness of the bargaining unit, certifying a single employee representative per bargaining unit for collective bargaining purposes, and establishing the rules for membership or non-membership in a union as well as the payment of membership dues. *Adams et al. v. Teamsters Local Union*

429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 13; 43 P.S. §§ 1101.101 *et seq*.

7. Section 301 of PERA defines "Maintenance of membership" as

> 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.

Adams et al. v. Teamsters Local Union 429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 18; 43 P.S. § 1101.301(18).

8. Section 401 of PERA states in pertinent part:

> 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.

Adams et al. v. Teamsters Local Union 429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 19; 43 P.S. § 1101.401.

9. Section 705 of PERA states in pertinent part:

> 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.

Adams et al. v. Teamsters Local Union 429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 22; 43 P.S. § 1101.705.

10. Section 604 and Section 606 of PERA establishes that 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. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 13; 43 P.S. §§ 1101.604, 1101.606.

11. Section 604 states in its entirety:

> Section 604. The board shall determine the appropriateness of a unit which shall be the public employer unit or a subdivision thereof. In determining the appropriateness of the unit, the board shall:
>
> (1) Take into consideration but shall not be limited to the following: (i) public employes must have an identifiable community of interest, and (ii) the effects of over-fragmentization.
>
> (2) Not decide that any unit is appropriate if such unit includes both professional and nonprofessional employes, unless a majority of such professional employes vote for inclusion in such unit.
>
> (3) Not permit guards at prisons and mental hospitals, employes directly involved with and necessary to the functioning of the courts of this Commonwealth, or any individual employed as a guard to enforce against employes and other persons, rules to protect property of the employer or to protect the safety of persons on the employer's premises to be included in any unit with other public employes, each may form separate homogenous employe organizations with the proviso that organizations of the latter designated employe group may not be affiliated with any

> other organization representing or including as members, persons outside of the organization's classification.
>
> (4) Take into consideration that when the Commonwealth is the employer, it will be bargaining on a Statewide basis unless issues involve working conditions peculiar to a given governmental employment locale. This section, however, shall not be deemed to prohibit multi-unit bargaining.
>
> (5) Not permit employes at the first level of supervision to be included with any other units of public employes but shall permit them to form their own separate homogenous units. In determining supervisory status the board may take into consideration the extent to which supervisory and nonsupervisory functions are performed.

Adams et al. v. Teamsters Local Union 429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 13; 43 P.S. §§ 1101.604.

12. Section 606 of PERA states in its entirety:

> Representatives selected by public employes in a unit appropriate for collective bargaining purposes shall be the exclusive representative of all the employes in such unit to bargain on wages, hours, terms and conditions of employment: Provided, That any individual employe or a group of employes shall have the right at any time to present grievances to their employer and to have them adjusted without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of a collective bargaining contract then in effect: And, provided further, That the bargaining representative has been given an opportunity to be present at such adjustment.

Adams et al. v. Teamsters Local Union 429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 13; 43 P.S. § 1101.606.

13. Once a union is designated the exclusive representative of all bargaining unit employees in the bargaining unit, it negotiates wages, hours, terms

and conditions of employment for all bargaining unit employees. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 34; 43 P.S. § 1101.606.

14. PLRB has certified Defendant Teamsters as the exclusive bargaining representative for the bargaining unit employees which includes Plaintiffs. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶¶ 13, 35.

15. As such, Defendant Teamsters is the exclusive representative of Plaintiffs and their coworkers in the bargaining unit with respect to wages, hours, terms and conditions of employment. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 35; *Exhibit A of the Complaint, Article 1*; 43 P.S. § 1101.606.

16. Defendant Lebanon County and Defendant Teamsters entered into a collective bargaining agreement ("Agreement"), effective on January 1, 2016 through December 31, 2019. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 16 & Exhibit A of the Complaint.

17. Article 3 ("Union Security") of the Agreement states, in relevant part:

> Section 1. Each employer 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, as a condition of employment, maintain his/her membership in the Union. An

> employee may, however, resign from the Union within fifteen (15) days prior to the expiration of this Agreement without penalty by serving written notice to Teamsters Local Union No. 429, 1055 Spring Street, Wyomissing, PA 19610, and to the Commissioners Office, Lebanon County Court House, Room 207, 400 South 8th Street, Lebanon, PA 17042.

Adams et al. v. Teamsters Local Union 429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #1, *Complaint*, at ¶ 17 & *Exhibit A of the Complaint, Article 3*.

18. Article 4, Section 1 of the Agreement states in pertinent part:

> Section 1. Union Dues. The County agrees to deduct the Union membership initiation fees, assessment and once each month, either dues from the pay of those employees who individually request in wiring that such deduction be made or fair share. The amount to be deducted shall be certified to the County by the Union, and the aggregate deductions of all employees shall be remitted together with an itemized statement to the Union by the 10th of the succeeding month, after such deductions are made. This authorization shall be irrevocable during the term of this Agreement.

Adams et al. v. Teamsters Local Union 429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #27, *Complaint*, at ¶ 21; *Exhibit A of Complaint, Article 4, Section 1*.

19. On or about April 14, 2003, Plaintiff Hollie Adams ("Plaintiff Adams") was hired by Defendant Lebanon County. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 3.

20. On or about May 6, 2003, Plaintiff Adams signed a union authorization card, whereby she became a union member of the Local. *Adams et al. v. Teamsters*

Local Union 429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 4; *Exhibit A to Declaration of Kevin Bolig*.

21. Prior to July 10, 2018, Plaintiff Adams never requested to resign her membership in the Local. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 5.

22. On or about July 10, 2018, Plaintiff Adams sent a letter to the Local requesting to resign her membership, which the Local received on July 13, 2018. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 6; *Exhibit B to Declaration of Kevin Bolig*.

23. On or about August 13, 2018, the Local responded to her July 10, 2018 letter, denying her request based on the terms of her dues authorization card. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 7; *Exhibit C to Declaration of Kevin Bolig*.

24. On or about August 30, 2018, Plaintiff Adams sent a second letter to the Local requesting to resign her membership, which the Local received on September 4, 2018. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action

No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 8; *Exhibit D to Declaration of Kevin Bolig*.

25. On or about September 7, 2018, the Local sent a letter to Plaintiff Adams, reiterating the terms of her dues authorization card and notifying her that dues deductions will cease March 2019. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 9; *Exhibit E to Declaration of Kevin Bolig*.

26. On or about March 5, 2019, the Local notified Defendant Lebanon County to cease dues deductions for Plaintiff Adams. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 10.

27. The payroll check issued on February 28, 2019 by Defendant Lebanon County to Plaintiff Adams was the last payroll check in which union dues payable to Defendant Teamsters was withheld from Plaintiff Adams by Defendant Lebanon County. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #25, *Exhibit A, Affidavit of Michelle L. Edris to Lebanon County's Motion to Dismiss*, at ¶ 6.

28. The last dues deductions received by the Local from Defendant Lebanon County for Plaintiff Adams occurred on or about March 5, 2019. *Adams*

et al. v. Teamsters Local Union 429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 10.

29. From the time she requested to resign her membership until dues deductions ceased, the Local received $416.00 in dues deductions from Defendant Lebanon County for Plaintiff Adams. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 11.

30. On or about May 7, 2019, the Local sent a letter to Plaintiff Adams confirming that the Local had accepted her resignation of her membership and that dues deductions had ceased. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 12; *Exhibit F to Declaration of Kevin Bolig*.

31. On or about May 10, 2019, the Local sent a letter to Plaintiff Adams advising her that the Local was refunding all dues deductions received by the Local from the time she requested to resign her membership until dues deductions ceased. Enclosed in the letter was a check for $440.96, representing the $416.00 in dues deductions received by the Local, as well as six percent statutory interest. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 13; *Exhibit G to Declaration of Kevin Bolig*.

32. On or about December 14, 2009, Plaintiff Christopher Felker ("Plaintiff Felker") was hired by Defendant Lebanon County. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 14.

33. On or about January 26, 2010, Plaintiff Felker signed a union authorization card, whereby he became a member of the Local. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 15; *Exhibit H to Declaration of Kevin Bolig*.

34. Prior to September 28, 2018, Plaintiff Felker never requested to resign his membership in the Local. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 16.

35. On or about September 28, 2018, Plaintiff Felker sent a letter to the Local requesting to resign his union membership, which the Local received on October 1, 2018. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 17; *Exhibit I to Declaration of Kevin Bolig*.

36. On or about October 5, 2018, the Local sent a letter to Plaintiff Felker informing him that the Local accepted his resignation of his membership and dues

deductions would cease by November 2018. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 18; *Exhibit J to Declaration of Kevin Bolig*.

37. The payroll check issued on October 25, 2018 by Defendant Lebanon County to Plaintiff Felker was the last payroll check in which union dues payable to Defendant Teamsters was withheld from Plaintiff Felker by Defendant Lebanon County. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #25, *Exhibit A, Affidavit of Michelle L. Edris to Lebanon County's Motion to Dismiss,* at ¶ 5.

38. The last dues deductions received by the Local from Defendant Lebanon County for Plaintiff Felker occurred on or about October 29, 2018. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 19.

39. From the time he requested to resign his membership until dues deductions ceased, the Local received $96.00 in dues deductions from Defendant Lebanon County for Plaintiff Felker. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 20.

40. On or about May 7, 2019, the Local sent a letter to Plaintiff Felker confirming that the Local had accepted his resignation of membership and that dues

deductions had ceased. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 21; *Exhibit K to Declaration of Kevin Bolig*.

41. On or about May 10, 2019, the Local sent a letter to Plaintiff Felker advising him that the Local was refunding all dues deductions received by the Local from the time he requested to resign his membership until dues deductions ceased. Enclosed in the letter was a check for $101.76, representing the $96.00 in dues deductions received by the Local, as well as six percent statutory interest. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 22; *Exhibit L to Declaration of Kevin Bolig*.

42. On or around October 2015, Plaintiff Karen Unger ("Plaintiff Unger") was hired by Defendant Lebanon County. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 23.

43. Plaintiff Unger did not sign a union authorization card at or near the time she started employment with Defendant Lebanon County but instead paid a fair share fee as a non-member. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 24.

44. On or about November 7, 2017, Plaintiff Unger signed a union authorization card, whereby she became a member of the Local. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 25; *Exhibit M to Declaration of Kevin Bolig*.

45. From the time she became a member of the Local until July 10, 2018, Plaintiff Unger never requested to resign her membership in the Local. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 26.

46. On or about July 10, 2018, Plaintiff Unger sent a letter to the Local requesting to resign her membership, which the Local never received until Defendant Lebanon County forwarded a copy of the letter at the end of August 2018. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 27; *Exhibit N to Declaration of Kevin Bolig*.

47. On or about August 31, 2018, the Local requested that Defendant Lebanon County cease dues deductions for Plaintiff Unger. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 28.

48. The payroll check issued on September 13, 2018 by Defendant Lebanon County to Plaintiff Unger was the last payroll check in which union dues payable to Defendant Teamsters was withheld from Plaintiff Unger by Defendant Lebanon County. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #25, *Exhibit A, Affidavit of Michelle L. Edris to Lebanon County's Motion to Dismiss*, at ¶ 4.

49. The last dues deductions received by the Local from Defendant Lebanon County for Plaintiff Unger occurred on or about October 1, 2018. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 28.

50. From the time she requested to resign her membership on July 10, 2018 until dues deductions ceased, the Local received $88.00 in dues deductions from Defendant Lebanon County for Plaintiff Unger. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 29.

51. On or about May 7, 2019, the Local sent a letter to Plaintiff Unger confirming that the Local had accepted her resignation and that dues deductions had ceased. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 30; *Exhibit O to Declaration of Kevin Bolig*.

52. On or about May 10, 2019, the Local sent a letter to Ms. Unger advising her that the Local was refunding all dues deductions received by the Local from the time she requested to resign union membership until dues deductions ceased. Enclosed in the letter was a check for $93.28, representing the $88.00 in dues deductions received by the Local, as well as six percent statutory interest. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 31; *Exhibit P to Declaration of Kevin Bolig*.

53. On or about June 18, 2007, Plaintiff Jody Weaber ("Plaintiff Weaber") was hired by Defendant Lebanon County. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 32.

54. On or about July 31, 2007, Plaintiff Weaber signed a union authorization card, whereby she became a union member of the Local. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 33; *Exhibit Q to Declaration of Kevin Bolig*.

55. Prior to July 16, 2018, Plaintiff Weaber never requested to resign her membership in the Local. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ.

Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 34.

56. On or about July 16, 2018, Plaintiff Weaber sent a letter to the Local requesting to resign her union membership, which the Local received on July 23, 2018. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 35; *Exhibit R to Declaration of Kevin Bolig*.

57. On or about August 30, 2018, Plaintiff Weaber sent a second letter to the Local requesting to resign her membership, which the Local received on September 4, 2018. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 36; *Exhibit S to Declaration of Kevin Bolig*.

58. On or about September 7, 2018, the Local sent a letter to Plaintiff Weaber, explaining the terms of her dues authorization card and notifying her that union dues deductions will cease June 2019. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 37; *Exhibit T to Declaration of Kevin Bolig*.

59. On or about March 5, 2019, the Local notified Defendant Lebanon County to cease dues deductions for Plaintiff Weaber. *Adams et al. v. Teamsters*

Local Union 429 et al., Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 38.

60. The payroll check issued on February 28, 2019 by Defendant Lebanon County to Plaintiff Weaber was the last payroll check in which union dues payable to Defendant Teamsters was withheld from Plaintiff Weaber by Defendant Lebanon County. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #25, *Exhibit A, Affidavit of Michelle L. Edris to Lebanon County's Motion to Dismiss*, at ¶ 7.

61. The last dues deduction received by the Local from Defendant Lebanon County for Plaintiff Weaber occurred on or about March 5, 2018. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 38.

62. From the time she requested to resign her membership until dues deductions ceased, the Local received $392.00 in dues deductions from Defendant Lebanon County for Plaintiff Weaber. (*Amended Declaration of Kevin Bolig*, at ¶ 39, a true and correct copy of which is attached to this Joint Statement as Exhibit "1."[1]

[1] There was a scrivener's error in Paragraph 39 of the original Declaration of Kevin Bolig. Thus, Defendant Teamsters filed an Amended Declaration of Kevin Bolig to correct this one error.

63. On or about May 7, 2019, the Local sent a letter to Plaintiff Weaber advising her that the Local had accepted her resignation and that dues deductions had ceased. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 40; *Exhibit U to Declaration of Kevin Bolig*.

64. On or about May 10, 2019, the Local sent a letter to Plaintiff Weaber advising her that the Local was refunding all dues deductions received by the Local from the time she requested to resign her membership until dues deductions ceased. Enclosed in the letter was a check for $415.52, representing the $392.00 in dues deductions received by the Local, as well as six percent statutory interest. *Adams et al. v. Teamsters Local Union 429 et al.*, Civ. Action No. 1:19-cv-00336, Dckt. #27-1, *Declaration of Kevin Bolig to Teamsters' Motion to Dismiss*, at ¶ 41; *Exhibit V to Declaration of Kevin Bolig*.

[Signature Page Follows]

Respectfully submitted,

WILLIG, WILLIAMS & DAVIDSON

/s/ John R. Bielski

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Dated: June 18, 2019

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

HOLLIE ADAMS, *et al.*,	:	
Plaintiffs,	:	**No. 1:19-cv-00336 SHR**
v.	:	
TEAMSTERS UNION LOCAL 429, *et al*.	:	**The Honorable Sylvia Rambo**
Defendants	:	**Electronically Filed Document**
	:	*Complaint Filed 02/27/19*

DEFENDANTS' SUPPLEMENTAL JOINT STATEMENT OF MATERIAL FACTS NOT IN DISPUTE

1. On or about January 26, 2010, Plaintiff Christopher Felker ("Plaintiff Felker") signed the Local's membership application and a dues authorization form. *See Supplemental Declaration of Kevin Bolig* (hereinafter "*Bolig Supp. Decl.*"), ¶ 6. (A true and correct copy of Plaintiff Felker's membership application and dues authorization form is attached as *Exhibit* "A" to the *Bolig Supp. Decl,* which is attached to this *Supplemental Joint Statement of Material Facts Not in Dispute* (hereinafter "*Supp. Joint St.*")

2. On or about November 7, 2017, approximately two years after the County hired her--during which time she was a non-member who paid fair share fees-- Plaintiff Karen Unger ("Plaintiff Unger") signed the Local's membership application and a dues authorization form. *See Bolig Supp. Decl.*, ¶ 7. (A true and

correct copy of Plaintiff Unger's membership application and dues authorization form is attached as *Exhibit* "B" to the *Bolig Supp. Decl.*, which is attached to this *Supp. Joint St.* as *Exhibit* "1.")

3. The membership application and the dues authorization form are contained on one page and were designed by the International Brotherhood of Teamsters for use by its various locals, including Teamsters Local Union No. 429. *See Bolig Supp. Decl.*, ¶ 8.

4. The membership application for both Plaintiff Felker and Unger reads in pertinent part:

> I voluntarily submit this Application for Membership in Local Union ____, affiliated with the International Brotherhood of Teamsters, so that I may fully participate in the activities of the Union. I understand that by becoming and remaining a member of the Union, I will be entitled to attend membership meetings, participate in the development of contract proposals for collective bargaining, vote to ratify or reject collective bargaining agreements, run for Union office or support candidates of my choice, receive Union publications and take advantage of programs available only to Union members. I understand that only as a member of the Union will I be able to determine the course the Union takes to represent me in negotiations to improve my wages, fringe benefits and working conditions. And, I understand that the Union's strength and ability to represent my interests depends upon my exercising my right, as guaranteed by federal law, to join the Union and engage in collective activities with my fellow workers.
>
> I understand that under the current law, I may elect "nonmember" status, and can satisfy any contractual obligation necessary to retain my employment by paying an amount equal to the uniform dues and initiation fee required of members of

> the Union. I also understand that if I elect not to become a member or remain a member, I may object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining, contract administration and grievance adjustment, and I can request the Local Union to provide me with information concerning its most recent allocation of expenditures devoted to activities that are both germane and non-germane to its performance as the collective bargaining representative sufficient to enable me to decide whether or not to become an objector. I understand that nonmembers who choose to object to paying the pro-rata portion of regular Union dues or fees that are not germane to collective bargaining will be entitled to a reduction in fees based on the aforementioned allocation of expenditures, and will have the right to challenge the correctness of the allocation. The procedures for filing such challenges will be provided by my Local Union, upon request.
>
> I have read and understand the options available to me and submit this application to he admitted as a member of the Local Union.

See Bolig Supp. Decl., ¶ 9; *Exhibits* "A" and "B" attached to the *Bolig Supp. Decl.*

5. Plaintiffs Adams and Unger, as well as Plaintiffs Hollie Adams ("Plaintiff Adams") and Plaintiff Jody Weaber ("Plaintiff Weaber") all signed dues authorization forms. *See Bolig Supp. Decl.*, ¶ 10; Exhibits "A" and "B" attached to *Bolig Supp. Decl.*, ¶ 10; *Amended Declaration of Kevin Bolig* (hereinafter "*Bolig Amended Decl.*"), Docket No. 36-1, ¶¶ 4, 25, 33; *Exhibits* to *Bolig Amended Decl.*, Docket No. 36-1, *Exhibits* "A," "M," "Q."

6. The dues authorization forms signed by Plaintiffs Adams, Felker, Unger, and Weaber read in pertinent part:

> I, _____ hereby authorize my employer to deduct from my wages each and every month an amount equal to the monthly dues, initiation fees and uniform assessments of Local Union _____ and direct such amounts so deducted to be turned over each month to the Secretary-Treasurer of such Local Union for and on my behalf.
>
> This authorization is voluntary and is not conditioned on my present or future membership in the Union.
>
> This authorization and assignment shall be irrevocable for the term of the applicable contract between the union and the employer or for one year, whichever is the lesser, and shall automatically renew itself for successive yearly or applicable contract periods thereafter, whichever is lesser, unless I give written notice to the company and the union at least sixty [60] days, but not more than seventy-live [75] days before any periodic renewal date of this authorization and assignment of my desire to revoke same.

See Bolig Supp. Decl., ¶ 11; Exhibits "A" and "B" attached to *Bolig Supp. Decl.*; *Exhibits* to *Bolig Amended Decl.*, Docket No. 36-1, *Exhibits* "A," "M," "Q."

7. When a bargaining unit employee of the County chose to become a union member, the Local provided him or her the membership application which included the dues authorization form. *See Bolig Supp. Decl.*, ¶ 12.

8. Bargaining unit employees who chose to become members would complete and sign the union membership application and then the dues authorization form. Thus, bargaining unit employees only signed a dues authorization form if they had signed the membership application. *See Bolig Supp. Decl.*, ¶ 13.

9. Prior to June 27, 2018, if a bargaining unit employee working at the County chose not to become a union member, he or she paid fair share fees rather than dues. *See Bolig Supp. Decl.*, ¶ 14.

10. Based on the dates that Plaintiffs Adams and Weaber signed their dues authorization forms, they signed their membership applications on or about May 6, 2013 and July 31, 2007, respectively. *See Bolig Supp. Decl.*, ¶ 15.

11. On or about May 10, 2019, the Local sent each Plaintiff a letter advising him or her that the Local was refunding all dues deductions received by the Local from the time he or she requested to resign his or her membership until dues deductions ceased. Each letter contained a check for the refunded dues along with statutory interest. *See Bolig Supp. Decl.*, ¶ 16; *Bolig Amended Decl.*, Docket No. 36-1, ¶¶ 13, 22, 31, 41.

12. In mid-June, each Plaintiff cashed the check provided by the Local. *See Bolig Supp. Decl.*, ¶ 17. (A true and correct copy of cancelled checks are attached as *Exhibit* "C" to the *Bolig Supp. Decl.*, which is attached to this *Supp. Joint St.* as *Exhibit* "1.").

[Signature Page Follows]

Respectfully submitted,

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Dated: August 13, 2019

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

HOLLIE ADAMS, et al.,	:	**Civil No. 1:19-CV-336**
	:	
Plaintiff	:	**(Judge Rambo)**
	:	
v.	:	**(Magistrate Judge Carlson)**
	:	
TEAMSTERS LOCAL UNION 429, et al.,	:	
	:	
Defendants	:	

REPORT AND RECOMMENDATION

I. Statement of Facts and of the Case

In some ways, this lawsuit, which comes before us for consideration of a dispositive motion filed on behalf of the Pennsylvania Attorney General and the members of the Pennsylvania Labor Relations Board, seems to be a case in search of a current controversy. The element of legal controversy which normally accompanies a lawsuit is reduced significantly in this case due to a simple fact: The legal issue which lies at the heart of this litigation was conclusively resolved by the United States Supreme Court some eight months *before* the plaintiff filed this case.

On June 27, 2018, the United States Supreme Court decided Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31, 138 S. Ct. 2448, 2459-60, 201 L. Ed. 2d 924 (2018), holding that a state law under which "public employees are forced to subsidize a union, even if they choose not to join and strongly object to the

positions the union takes in collective bargaining and related activities, . . . violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." Id. In reaching this result, the Court expressly overruled its prior decision in Abood v. Detroit Bd. of Ed., 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977), which had for many years sustained the constitutionality of such state statutes.[1] Thus Janus constituted a sea change in the law as it related to the question of the constitutionality of laws permitting compulsory public employee union fee deductions.

At the time of the Supreme Court's decision in Janus, the plaintiffs were employed by Lebanon County in various capacities. (Doc. 36, ¶¶ 19-64). During their employment with the county, each of the plaintiffs had at one time or another

[1] As one court recently explained:

> In Abood, the Court confronted a Michigan statute that allowed unions representing local-government employees to utilize "agency-shop" clauses in collective-bargaining agreements. Id. at 211, 97 S. Ct. 1782. These clauses required every employee represented by a union, even those who declined to become union members for political or religious reasons, to pay union dues. Id. at 212, 97 S. Ct. 1782. . . . . The Court held that the charges were constitutional to the extent they were used to finance the union's collective-bargaining, contract-administration, and grievance activities. Id. at 225, 97 S. Ct. 1782.

Diamond v. Pennsylvania State Educ. Ass'n, No. 3:18-CV-128, 2019 WL 2929875, at *1–2 (W.D. Pa. July 8, 2019).

joined Teamsters Local 429, the union representing county workers. As county employees, the plaintiffs were also subject to the provisions of the Pennsylvania Public Employee Relations Act ("PERA"), 43 Pa. C.S. §§ 1101.101-2301.

At the time of the Supreme Court's decision in Janus, consistent with prior case law, Pennsylvania had, by statute, provided for some automatic deductions from public employee pay checks to subsidize union activities. Specifically, PERA provided that:

> It shall be lawful for public employes [sic] to organize, form, join or assist in employe [sic] 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 [sic] 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 of a collective bargaining agreement.*

43 Pa. C.S. § 1101.401 (emphasis added). Pennsylvania law further provided that the term " '[m]aintenance of membership' means that all employes [sic] who have joined an employe [sic] organization . . . *must remain members for the duration of a collective bargaining agreement* . . . with the proviso that any such employe [sic] . . . may resign from such employe [sic] organization during a period of fifteen days prior to the expiration of any such agreement." 43 Pa. C.S. § 1101.301(18) (emphasis added). This provision of state law, in turn, subjected local government employees to dues, deductions, and maintenance provisions since, by statute, such deductions were deemed "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 Pa. C.S. § 1101.705.

In accordance with the then-existing state law, Lebanon County and Defendant Teamsters had entered into a collective bargaining agreement ("CBA" or "Agreement"), effective from January 1, 2016 through December 31, 2019. Article 3 of the Agreement stated in pertinent part as follows:

> 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, as a condition of employment, maintain his/her membership in the Union. An employee may, however, resign from the Union within fifteen (15) days prior to the expiration of this Agreement without penalty by serving written notice to Teamsters Local Union No. 429, 1055 Spring Street, Wyomissing, PA 19610, and to the Commissioners Office, Lebanon County Court House, Room 207, 400 South 8th Street, Lebanon, PA 17042.

(Id. ¶¶ 17-18).

Article 4, Section 1 of the Collective Bargaining Agreement, in turn, contained provisions regarding dues deductions which stated that:

> Section 1. Union Dues. The County agrees to deduct the Union membership initiation fees, assessment and once each month, either dues from the pay of those employees who individually request in wiring that such deduction be made or fair share. The amount to be deducted shall be certified to the County by the Union, and the aggregate deductions of all employees shall be remitted together with an itemized statement to the Union by the 10th of the succeeding month, after such deductions are made. This authorization shall be irrevocable during the term of this Agreement.

(Id. ¶ 18).

Taken together, these provisions of state law and the collective bargaining agreement between Lebanon County and the union created an obligation for the plaintiffs to make dues payments, something which they assert they were opposed to doing.

On June 27, 2018, the Supreme Court's decision in Janus struck down the continued constitutionality of laws like the Pennsylvania statute permitting compulsory public employee union fee deductions. Shortly after the Janus decision, the plaintiffs wrote the union requesting to resign from this labor organization. (Id. ¶¶ 19-64). After some exchanges between the plaintiffs and the union, these requests were granted and the unions dues deductions for the plaintiffs ceased. Moreover, by May 2019, the union had refunded those dues deductions which had taken place between the time of the plaintiffs' resignation requests and the processing of those requests. (Id.)

Notwithstanding these facts, on February 27, 2019, the plaintiffs filed this lawsuit. (Doc. 1). In their complaint, the plaintiffs sued both the county and the local union, the entities which were parties to the collective bargaining agreement at issue in this case. However, the plaintiffs' complaint also named four Commonwealth officials as defendants, the Pennsylvania Attorney General, Josh Shapiro, and the members of the Pennsylvania Labor Relations Board, James Darby, Albert Mezzoroba, and Robert Shoop, suing these officials in their official capacity only. (Doc. 1, Introduction). According to the plaintiffs, even though these officials were

not parties to the collective bargaining agreement, they were nonetheless defendants in this litigation because Attorney General Shapiro is "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 Teamsters to be the 'exclusive Representative' of Plaintiffs, whether they are union members or not. 43 P.S. § 1101.606." (Doc. 1 ¶ 12). The members of the Pennsylvania Labor Relations Board, who likewise were not parties to this CBA, were sued by the plaintiffs in their official capacity because they were "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." (Id. ¶ 13). The plaintiffs then alleged that the conduct of union officials and the county defendants violated their constitutional rights under the First and Fourteenth Amendments. (Id., *passim*). On the basis of these allegations, the plaintiffs sought injunctive and declaratory relief, along with damages and attorneys' fees. (Id., Prayer for relief).

On May 20, 2019, the Commonwealth defendants filed a motion to dismiss this complaint, (Doc. 20), which the Court then converted to a motion for summary

judgment. (Doc. 28).[2] In this motion, the Commonwealth defendants argued that the plaintiffs' requests for prospective relief are now moot given that they are no longer members of the union and no longer have union fees deducted from their wages. The Commonwealth defendants further asserted that to the extent that the plaintiffs sought damages or other retrospective relief from the Commonwealth or from Commonwealth officials acting in their official capacities, such claims are barred by the Eleventh Amendment to the United States Constitution.

This motion is fully briefed and is, therefore, ripe for resolution. For the reasons set forth below, it is recommended that this motion to dismiss which has been deemed a motion for summary judgment, (Doc. 20), be granted.

II. Discussion

A. Summary Judgment—Standard of Review

The Commonwealth defendants have moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, which provides that the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Through summary adjudication, a court is empowered to

[2] The county and union defendants have also moved for summary judgment on these claims brought by the plaintiffs. The plaintiffs, in turn, have filed a motion for partial summary judgment, which appears to relate primarily to the union. Because these motions entail somewhat different legal claims, and arise in a distinct factual context, we will address these motions in separate Reports and Recommendations.

dispose of those claims that do not present a "genuine dispute as to any material fact," Fed. R. Civ. P. 56(a), and for which a trial would be "an empty and unnecessary formality." Univac Dental Co. v. Dentsply Int'l, Inc., No. 07-0493, 2010 U.S. Dist. LEXIS 31615, *4 (M.D. Pa. Mar. 31, 2010). The substantive law identifies which facts are material, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine only if there is a sufficient evidentiary basis that would allow a reasonable fact finder to return a verdict for the non-moving party. Id. at 248-49.

The moving party has the initial burden of identifying evidence that it believes shows an absence of a genuine issue of material fact. Conoshenti v. Pub. Serv. Elec. & Gas Co., 364 F.3d 135, 145-46 (3d Cir. 2004). Once the moving party has shown that there is an absence of evidence to support the nonmoving party's claims, "the non-moving party must rebut the motion with facts in the record and cannot rest solely on assertions made in the pleadings, legal memoranda, or oral argument." Berckeley Inv. Group. Ltd. v. Colkitt, 455 F.3d 195, 201 (3d Cir. 2006); accord Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). If the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial," summary

judgment is appropriate. Celotex, 477 U.S. at 322. Summary judgment is also appropriate if the non-moving party provides merely colorable, conclusory, or speculative evidence. Anderson, 477 U.S. at 249. There must be more than a scintilla of evidence supporting the nonmoving party and more than some metaphysical doubt as to the material facts. Id. at 252; see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In making this determination, the Court must "consider all evidence in the light most favorable to the party opposing the motion." A.W. v. Jersey City Pub. Schs., 486 F.3d 791, 794 (3d Cir. 2007).

Moreover, a party who seeks to resist a summary judgment motion by citing to disputed material issues of fact must show by competent evidence that such factual disputes exist. Further, "only evidence which is admissible at trial may be considered in ruling on a motion for summary judgment." Countryside Oil Co., Inc. v. Travelers Ins. Co., 928 F. Supp. 474, 482 (D.N.J. 1995). Similarly, it is well-settled that: "[o]ne cannot create an issue of fact merely by . . . denying averments . . . without producing any supporting evidence of the denials." Thimons v. PNC Bank, NA, 254 F. App'x 896, 899 (3d Cir. 2007) (citation omitted). Thus, "[w]hen a motion for summary judgment is made and supported . . ., an adverse party may not rest upon mere allegations or denial." Fireman's Ins. Co. of Newark, N.J. v. DuFresne, 676 F.2d 965, 968 (3d Cir. 1982); see Sunshine Books, Ltd. v. Temple University, 697 F.2d 90, 96 (3d Cir. 1982). "[A] mere denial is insufficient to raise a disputed issue of

fact, and an unsubstantiated doubt as to the veracity of the opposing affidavit is also not sufficient." Lockhart v. Hoenstine, 411 F.2d 455, 458 (3d Cir. 1969). Furthermore, "a party resisting a [Rule 56] motion cannot expect to rely merely upon bare assertions, conclusory allegations or suspicions." Gans v. Mundy, 762 F.2d 338, 341 (3d Cir. 1985) (citing Ness v. Marshall, 660 F.2d 517, 519 (3d Cir. 1981)). In reaching this determination, the Third Circuit has instructed that:

> To raise a genuine issue of material fact . . . the opponent need not match, item for item, each piece of evidence proffered by the movant. In practical terms, if the opponent has exceeded the "mere scintilla" threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. It thus remains the province of the fact finder to ascertain the believability and weight of the evidence.

Id. In contrast, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (internal quotation marks omitted); NAACP v. North Hudson Reg'l Fire & Rescue, 665 F.3d 464, 476 (3d Cir. 2011).

It is against this analytical prism that we assess the summary judgment motion submitted by the Commonwealth defendants.

B. The Plaintiffs' Requests for Injunctive Relief Against the Commonwealth Defendants are Now Moot.

At the outset, to the extent that the plaintiffs seek prospective injunctive or declaratory relief, the short answer to that request is that the plaintiffs have withdrawn from the union, are no longer subject to dues deductions, have received dues refunds, and in light of the Supreme Court's decision in Janus, are no longer subject to the threat of future dues deductions since the Court has struck down these type of "agency shop" arrangements in which dissenting workers were nonetheless required to pay union dues. Given that this practice is no longer in effect and cannot be constitutionally reinstituted in light of the Court's decision in Janus, we agree with those courts who have considered prospective injunctive and declaratory relief requests like those made here and found those requests to be moot.

The mootness doctrine recognizes a fundamental truth in litigation: "[i]f developments occur during the course of adjudication that eliminate a plaintiff's personal stake in the outcome of a suit or prevent a court from being able to grant the requested relief, the case must be dismissed as moot." Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 698-99 (3d Cir. 1996). There is a constitutional dimension to the mootness doctrine.

> Under Article III of the Constitution, a federal court may adjudicate "only actual, ongoing cases or controversies." Lewis v. Continental Bank Corp., 494 U.S. 472, 477, 110 S. Ct. 1249, 108 L.Ed.2d 400 (1990). "To invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the

> defendant and likely to be redressed by a favorable judicial decision." Id. (citing Allen v. Wright, 468 U.S. 737, 750–751, 104 S. Ct. 3315, 82 L.Ed.2d 556 (1984); Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 471–473, 102 S. Ct. 752, 70 L.Ed.2d 700 (1982)). Article III denies the District Court the power to decide questions that cannot affect the rights of litigants before it, and confines it to resolving live controversies "admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 241, 57 S. Ct. 461, 81 L.Ed. 617 (1937). The case or controversy requirement continues through all stages of federal judicial proceedings, trial and appellate, and requires that parties have a personal stake in the outcome. Lewis, 494 U.S. at 477–478. "This means that, throughout the litigation, the plaintiff 'must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.' " Spencer, 523 U.S. at 7 (quoting Lewis, 494 U.S. at 477).

Burkey v. Marberry, 556 F.3d 142, 147 (3d Cir. 2009) (dismissing habeas petition as moot).

In considering the application of the mootness doctrine to this case, we most assuredly do not write upon a blank slate. Quite the contrary, in the wake of Janus' sea change in this law regarding the constitutionality of "agency shop" statutes, numerous courts have been confronted with the precise scenario presented here: A Janus-based lawsuit by an employee who was formerly subjected to compulsory dues deductions, seeking injunctive relief against officials who had abandoned this "agency shop" practice in light of the Supreme Court's ruling. Almost without exception, on these facts, courts have concluded that plaintiffs' requests for

prospective relief are now moot given the cessation of this practice that was compelled by the Supreme Court's decision in Janus.[3]

[3] See, e.g., Oliver v. Serv. Employees Int'l Union Local 668, No. CV 19-891, 2019 WL 5964778, at *7 (E.D. Pa. Nov. 12, 2019); LaSpina v. SEIU Pennsylvania State Council, No. CV 3:18-2018, 2019 WL 4750423, at *9 (M.D. Pa. Sept. 30, 2019); Mayer v. Wallingford-Swarthmore Sch. Dist., No. CV 18-4146, 2019 WL 4674397, at *3 (E.D. Pa. Sept. 24, 2019); Diamond v. Pennsylvania State Educ. Ass'n, 399 F. Supp. 3d 361, 383 (W.D. Pa. July 8, 2019) (citing Hartnett v. Pa. State Educ. Ass'n, 390 F. Supp. 3d 592 (M.D. Pa. May 17, 2019) (finding comparable claims for declaratory and injunctive relief moot post-Janus because the "[p]laintiffs face no realistic possibility that they will be subject to the unlawful collection of 'fair share' fees")); Cook v. Brown, 364 F. Supp. 3d 1184, 1189 (D. Or. 2019) (finding a request for injunctive relief post-Janus moot because the union had already stopped collecting fair-share fees and thus there was "no live controversy . . . necessitating injunctive relief"); Lamberty v. Conn. State Police Union, No. 3:15-cv-378, 2018 WL 5115559, at *9 (D. Conn. Oct. 19, 2018) (explaining that Janus mooted a challenge to the constitutionality of agency fees because "there is nothing for [the court] to order [the d]efendants to do now"); Yohn v. Cal. Teachers Ass'n, Case No. SACV 17-202-JLS-DFM, 2018 WL 5264076 (C.D. Cal. Sept. 28, 2018) (granting the union's motion to dismiss on mootness grounds after the union complied with Janus); Danielson v. Inslee, 345 F. Supp. 3d 1336, 1339-40 (W.D. Wash. 2018) (finding that Janus mooted a controversy when the State of Washington stopped collecting agency fees post-Janus); Smith v. Bieker, Case No. 18-cv-05472-VC, 2019 WL 2476679, at *1 (N.D. Cal. June 13, 2019) (finding similar claims moot because the State did not plan to enforce the unconstitutional statute in light of Janus). See also Mayer v. Wallingford-Swarthmore Sch. Dist., No. CV 18-4146, 2019 WL 4674397, at *3 (E.D. Pa. Sept. 24, 2019); Molina v. Pennsylvania Soc. Serv. Union, 392 F. Supp. 3d 469, 471 (M.D. Pa. 2019); Hamidi v. Serv. Employees Int'l Union Local 1000, 386 F. Supp. 3d 1289, 1295 (E.D. Cal. 2019); Akers v. Maryland State Educ. Ass'n, 376 F. Supp. 3d 563, 572 (D. Md. 2019); Lee v. Ohio Educ. Ass'n, 366 F. Supp. 3d 980 (N.D. Ohio 2019).

For their part, the plaintiffs attempt to resist this rising tide of case law by arguing the voluntary cessation doctrine, which holds that voluntary abandonment of an unlawful practice does not automatically render a dispute moot. The difficulty with this assertion in the instant case is twofold: First, virtually every court which has considered this argument following the Supreme Court's decision in Janus has rejected it.[4] Second, this argument fails to take into account the unique factual context of this case. This is not a situation in which the voluntary cessation doctrine applies because a litigant has made a brief and temporary tactical legal retreat on an uncertain legal landscape. Quite the contrary, the United States Supreme Court has now clearly and definitively changed that legal landscape and the actions of the defendants simply reflect compliance with the Court's unmistakable mandate. As one court has aptly observed when discounting a similar voluntary cessation argument:

> Janus . . . represents a significant legal shift because it explicitly overruled Abood and held that the collection of fair-share fees was unconstitutional. "The law of the land thus has changed and there no longer is a legal dispute as to whether public sector unions can collect agency fees." Complying with a Supreme Court decision [therefore] cannot be considered "voluntary cessation."

Diamond v. Pennsylvania State Educ. Ass'n, No. 3:18-CV-128, 2019 WL 2929875, at *16 (W.D. Pa. July 8, 2019) (citations omitted).

[4] See cases cited in footnote 3 supra.

We agree. Finding that this paradigm shift in the law, and the parties' compliance with their newly defined legal obligations eliminates the need for prospective relief, and further concluding that complying with a Supreme Court decision cannot be characterized as voluntary cessation, we submit that these requests for prospective relief from the Commonwealth defendants are now moot and should be dismissed.

Indeed, in this case the commonwealth defendants' ties to any live case or controversy are particularly tenuous since neither Attorney General Shapiro nor the members of the Pennsylvania Labor relations Board are parties to the collective bargaining agreement. Instead, the only tie these officials have to the matters set forth in the complaint is a fleeting and evanescent allegation that they have some role in the enforcement of Pennsylvania's laws, including Pennsylvania labor laws. Yet, at least one federal court has found similar allegations to be legally insufficient to hold these state officials legally responsible for post-Janus union collective bargaining activities and disputes. In Diamond v. Pennsylvania State Educ. Ass'n, 399 F. Supp. 3d 361, 380–81 (W.D. Pa. 2019), the court rejected an argument similar to the one advanced in this case, that the general law enforcement duties of the Attorney General and members of the Pennsylvania Labor Relations Board were sufficient to hold them legally accountable civil rights claims made in the wake of the Janus decision, holding instead that:

> [I]n order for a state officer to have "some connection with the enforcement of the act," there must be "realistic potential" that the officer's "general power to enforce the laws of the state would have been applied" against the plaintiffs. See Rode v. Dellarciprete, 845 F.2d 1195, 1208 (3d Cir. 1988). Specifically, "[a] plaintiff challenging the validity of a state statute may bring suit against the official who is charged with the statute's enforcement only if the official has either enforced, or threatened to enforce, the statute against the plaintiffs." 1st Westco Corp. v. Sch. Dist. of Phila., 6 F.3d 108, 113 (3d Cir. 1993). "General authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law." Id.

Diamond v. Pennsylvania State Educ. Ass'n, 399 F. Supp. 3d 361, 380–81 (W.D. Pa. 2019). In the instant case, beyond a general assertion that these state officials play some role in the enforcement of labor laws, the plaintiffs' complaint makes no allegations that the Commonwealth defendants have "either enforced, or threatened to enforce, the statute against the plaintiffs." Id. Nor can the plaintiffs credibly make a claim that they face some imminent enforcement activity since the provisions of the PERA which troubled them are now nullities in light of the Supreme Court's decision in Janus. Accordingly, since "[g]eneral authority to enforce the laws of the state is not sufficient to make government officials the proper parties to litigation challenging the law," these officials simply are not proper defendants in this lawsuit and should be dismissed.

C. The Eleventh Amendment Bars The Plaintiffs' Damages Claims Against State Agencies or State Officials Acting in Their Official Capacity.

Further, 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. Such claims are barred both by the Eleventh Amendment to the United States Constitution and by case law construing the reach of the federal civil rights statute, 42 U.S.C. § 1983. Simply put, dismissal of the claims lodged against these state officials in their official capacities is warranted because this complaint runs afoul of basic constitutional and statutory rules limiting lawsuits against state agencies and officials.

First, as a matter of constitutional law, the Eleventh Amendment to the Constitution provides that "[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the . . . States . . . ." U.S. Const. Amend XI. By its terms, the Eleventh Amendment strictly limits the power of federal courts to entertain cases brought by citizens against the state and state agencies. Moreover, a suit brought against an individual acting in his or her official capacity constitutes a suit against the state and therefore also is barred by the Eleventh Amendment. Will v. Michigan Dept. of State Police, 491 U.S. 58 (1989). Pursuant to the Eleventh Amendment, states, state

agencies, and state officials who are sued in their official capacity are generally immune from lawsuits in federal courts brought against them by citizens. Seminole Tribe v. Florida, 517 U.S. 44, 54 (1996). Under the Eleventh Amendment, the Commonwealth's immunity exists as a matter of law unless waived by the state, or expressly and unequivocally abrogated by Congress. In this case, it is apparent that Congress has not expressly abrogated this constitutional immunity with respect to federal civil rights lawsuits against these state agencies or officials, and the Commonwealth clearly has not waived its immunity. Quite the contrary, the Commonwealth has specifically invoked its Eleventh Amendment immunity under 42 Pa.C.S. § 8521(b). Thus, while Pennsylvania has, by law, waived sovereign immunity in limited categories of cases brought against the Commonwealth in state court, see 42 Pa.C.S. § 8522, Section 8521(b) flatly states that: "Nothing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in federal courts guaranteed by the Eleventh Amendment to the Constitution of the United States." 42 Pa.C.S. § 8521(b).

These principles control here and are fatal to any damages claims that the plaintiffs wish to pursue against these state agencies and officials, who are sued only in their official capacities. At the outset, it is well-settled that the Pennsylvania Labor Relations Board is an arm of the state that is entitled to Eleventh Amendment sovereign immunity. Ponton v. AFSCME, 395 F. App'x 867, 872 (3d Cir. 2010).

Likewise, the Pennsylvania Attorney General's office is also encompassed by the protection from suit provided for by the Eleventh Amendment to the United States Constitution. Friends & Residents of St. Thomas Twp., Inc. v. St. Thomas Dev., Inc., 176 F. App'x 219, 227 (3d Cir. 2006). Therefore, these state agencies and officials are cloaked in this constitutional immunity. In addition, courts that have considered post-Janus civil rights claims for damages lodged against state agencies and officials have consistently found that the Eleventh Amendment bars such claims. See, e.g, Diamond v. Pennsylvania State Educ. Ass'n, 399 F. Supp. 3d 361, 377 (W.D. Pa. 2019); Belgau v. Inslee, 359 F. Supp. 3d 1000, 1011 (W.D. Wash. 2019). Moreover, beyond these constitutional considerations, as a matter of statutory interpretation, the plaintiff cannot bring a damages action against the Commonwealth since it is also well-settled that a state, a state agency, or a state official acting in an official capacity is not a "person" within the meaning of 42 U.S.C. § 1983—the principal federal civil rights statute relied upon by the plaintiffs in this case. Will v. Michigan Dep't of State Police, 491 U.S. 58, 71 (1989).

These basic legal tenets apply here and compel dismissal of the plaintiffs' damages claims against these state official defendants. In sum, as to these state officials, federal civil rights claims for damages are barred both by the Eleventh Amendment to the United States Constitution and by cases construing the federal civil rights statute, 42 U.S.C. § 1983. Therefore, since these state officials cannot be

sued in this fashion for damages in federal court, these claims should also be dismissed.

III. Recommendation

Accordingly, for the foregoing reasons, IT IS RECOMMENDED that the Commonwealth defendants' motion to dismiss which has been deemed a motion for summary judgment, (Doc. 20), be GRANTED.

The parties are further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 3rd day of December 2019.

/s/ Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge

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

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Plaintiffs	:	**(Judge Rambo)**
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TEAMSTERS LOCAL UNION 429, et al.,	:	
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REPORT AND RECOMMENDATION

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This lawsuit, which comes before us for consideration of cross motions for summary judgment, seems in many ways to be a case in search of a current controversy. The element of legal controversy which normally accompanies a lawsuit is reduced significantly in this case due to a simple fact: The legal issue which lies at the heart of this litigation was conclusively resolved by the United States Supreme Court some eight months *before* the plaintiff filed this case.

On June 27, 2018, the United States Supreme Court decided Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31, 138 S. Ct. 2448, 2459-60, 201 L. Ed. 2d 924 (2018), holding that a state law under which "public employees are forced to subsidize a union, even if they choose not to join and strongly object to the positions the union takes in collective bargaining and related activities, . . . violates

the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern." Id. In reaching this result, the Court expressly overruled its prior decision in Abood v. Detroit Bd. of Ed., 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977), which had for many years sustained the constitutionality of such state statutes.[1] Thus Janus constituted a sea change in the law as it related to the question of the constitutionality of laws permitting compulsory public employee union fee deductions.

At the time of the Supreme Court's decision in Janus, the plaintiffs were employed by Lebanon County in various capacities. (Doc. 36 ¶¶ 19-64). During their employment with the county, each of the plaintiffs had at one time or another joined Teamsters Local 429, the union representing county workers. For instance, on April

[1] As one court recently explained:

> In Abood, the Court confronted a Michigan statute that allowed unions representing local-government employees to utilize "agency-shop" clauses in collective-bargaining agreements. Id. at 211, 97 S. Ct. 1782. These clauses required every employee represented by a union, even those who declined to become union members for political or religious reasons, to pay union dues. Id. at 212, 97 S. Ct. 1782. . . . . The Court held that the charges were constitutional to the extent they were used to finance the union's collective-bargaining, contract-administration, and grievance activities. Id. at 225, 97 S. Ct. 1782.

Diamond v. Pennsylvania State Educ. Ass'n, No. 3:18-CV-128, 2019 WL 2929875, at *1–2 (W.D. Pa. July 8, 2019).

14, 2003, Plaintiff Hollie Adams was hired by Lebanon County and on May 6, 2003, Adams signed a union authorization card, joining Local 429. (Id. ¶¶ 19-20). Likewise, on December 14, 2009, Plaintiff Christopher Felker was hired by Lebanon County. One month later, on January 26, 2010, Felker signed a union authorization card and joined the local union. (Id. ¶¶ 32-33). Lastly, on June 18, 2007, Plaintiff Jody Weaber was hired by Lebanon County and Weaber joined the union one month later, on July 31, 2007, when she signed a union authorization card. However, not all of the plaintiff-employees felt the need to immediately join Local 429. For example, in October of 2015, Plaintiff Karen Unger was hired by Lebanon County. Unger did not sign a union authorization card at the time she started employment with Lebanon County, opting instead to pay a fair share fee as a non-member. Unger then deferred for two years before she signed a union authorization card and joined the local union on November 7, 2017. (Id. ¶¶ 42-44).

As county employees, the plaintiffs were also subject to the provisions of the Pennsylvania Public Employee Relations Act ("PERA"), 43 Pa. C.S. §§ 1101.101-2301. At the time of the Supreme Court's decision in Janus, consistent with prior case law, Pennsylvania had, by statute, provided for some automatic deductions from public employee pay checks to subsidize union activities. Specifically, PERA provided that:

> It shall be lawful for public employes [sic] to organize, form, join or assist in employe [sic] 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 [sic] 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 of a collective bargaining agreement.*

43 Pa. C.S. § 1101.401 (emphasis added). Pennsylvania law further provided that the term " '[m]aintenance of membership' means that all employes [sic] who have joined an employe [sic] organization . . . *must remain members for the duration of a collective bargaining agreement* . . . with the proviso that any such employe [sic] . . . may resign from such employe [sic] organization during a period of fifteen days prior to the expiration of any such agreement." 43 Pa. C.S. § 1101.301(18) (emphasis added). This provision of state law, in turn, subjected local government employees to dues, deductions, and maintenance provisions since, by statute, such deductions were deemed "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 Pa. C.S. § 1101.705.

PERA also provides that:

> Representatives selected by public employes in a unit appropriate for collective bargaining purposes shall be the exclusive representative of all the employes in such unit to bargain on wages, hours, terms and conditions of employment: Provided, That any individual employe or a group of employes shall have the right at any time to present grievances to their employer and to have them adjusted without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of a collective bargaining contract then in

> effect: And, provided further, That the bargaining representative has been given an opportunity to be present at such adjustment.

43 P.S. § 1101.606.

Once a union is designated the exclusive representative of all bargaining unit employees in the bargaining unit, it negotiates wages, hours, terms, and conditions of employment for all bargaining unit employees. 43 P.S. § 1101.606. In this case, Teamsters Local 429 has been certified as the exclusive bargaining representative for the bargaining unit employees in Lebanon County, which includes Plaintiffs. As such, the defendant local is the exclusive representative of the bargaining unit, which included the plaintiffs and their co-workers, with respect to wages, hours, terms, and conditions of employment. (Id. ¶¶ 12-15).

In accordance with the then-existing state law, Lebanon County and Defendant Teamsters entered into a collective bargaining agreement ("CBA" or "Agreement"), effective from January 1, 2016 through December 31, 2019. Article 3 of the Agreement stated in pertinent part as follows:

> 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, as a condition of employment, maintain his/her membership in the Union. An employee may, however, resign from the Union within fifteen (15) days prior to the expiration of this Agreement without penalty by serving written notice to Teamsters Local Union No. 429, 1055 Spring Street, Wyomissing, PA 19610, and to the Commissioners Office, Lebanon County Court House, Room 207, 400 South 8th Street, Lebanon, PA 17042.

(Id. ¶¶ 17-18).

Article 4, Section 1 of the Collective Bargaining Agreement, in turn, contained provisions regarding dues deductions which stated that:

> Section 1. Union Dues. The County agrees to deduct the Union membership initiation fees, assessment and once each month, either dues from the pay of those employees who individually request in wiring that such deduction be made or fair share. The amount to be deducted shall be certified to the County by the Union, and the aggregate deductions of all employees shall be remitted together with an itemized statement to the Union by the 10th of the succeeding month, after such deductions are made. This authorization shall be irrevocable during the term of this Agreement.

(Id. ¶ 18). Taken together, these provisions of state law and the collective bargaining agreement between Lebanon County and the union created an obligation for the plaintiffs to make dues payments, something which they assert they were opposed to doing.

On June 27, 2018, the Supreme Court's decision in Janus struck down the continued constitutionality of laws like the Pennsylvania statute permitting compulsory public employee union fee deductions. Shortly after the Janus decision, the plaintiffs wrote the union requesting to resign from this labor organization. (Id. ¶¶ 19-64). After some exchanges between the plaintiffs and the union, these requests were granted and the unions dues deductions for the plaintiffs ceased. Moreover, by May 2019, the union had refunded those dues deductions which had taken place between the time of the plaintiffs' resignation requests and the processing of those requests. (Id.)

Specifically, on July 10, 2018, Hollie Adams wrote the Local requesting to resign her membership. The local union responded to this July 10, 2018 letter on August 13, 2018, denying her request based on the terms of her dues authorization card. Adams then sent a second letter to the union on August 30, 2018, repeating her request to resign her union membership. On September 7, 2018, the Local notified Adams that under the terms of her dues authorization card, her dues deductions would cease in March of 2019, the next available date for withdrawal from dues payments. In fact, on March 5, 2019, the Local notified Lebanon County to cease dues deductions for Adams, and Adams' February 28, 2019 payroll check was the last payroll check in which union dues were withheld.

Between July 2018 and March 2019, the Local received $416.00 in dues deductions for Adams. On May 7, 2019, the Local sent a letter to Adams confirming that the Local had accepted her resignation of her membership and that dues deductions had ceased. Three days later, on May 10, 2019, the Local notified Adams that it was refunding all dues deductions received by the Local from the time she requested to resign her membership until dues deductions ceased. Adams then received a refund of $440.96, representing the $416.00 in dues deductions received by the Local, as well as six percent statutory interest. (Id. ¶¶ 22-31).

The local union followed a similar course with respect to the other named plaintiffs. For example, on September 28, 2018, Christopher Felker wrote the Local

requesting to resign his union membership. One week later, on October 5, 2018, the Local informed Felker that it had accepted his resignation of his membership and his dues deductions would cease by November 2018. Consequently, the payroll check issued to Felker on October 25, 2018 was the last payroll check in which union dues were withheld. On May 7, 2019, the Local sent a letter to Felker confirming that the Local had accepted his resignation of membership and that dues deductions had ceased. Three days later, on May 10, 2019, the Local refunded Felker's dues deductions, along with accrued interest, from the time he has notified the union of his resignation. (Id. ¶¶ 35-41). In the same vein, on July 10, 2018, Karen Unger notified the union that she, too, wished to resign her membership. Alerted to this request in August, the union requested that Lebanon County cease dues deductions for Unger. The payroll check issued on September 13, 2018 to Unger was the last payroll check in which union dues were withheld and the last dues deductions received by the local from Lebanon County for Unger occurred on or about October 1, 2018. Between July 10, 2018 and October 2018, the local received $88.00 in dues deductions from Lebanon County for Unger. On May 10, 2019, those funds, with accrued interest, were refunded by the Local to Unger. (Id. ¶¶ 46-52).

Finally, on July 16 and August 30, 2018, Jody Weaber contacted the Local requesting to resign her union membership. While the Local initially notified Weaber in September of 2018 that union dues deductions would cease in June of

2019, the local actually instructed Lebanon County to cease dues deductions for Weaber on March 5, 2019. Thus, the payroll check issued on February 28, 2019 by Lebanon County to Weaber was the last payroll check in which union dues were withheld. Between July 2018 and March 2019, the local received $392.00 in dues deductions for Weaber. On May 10, 2019, these dues deductions, as well as six percent statutory interest, were refunded to Weaber. (Id. ¶¶ 56-64).

Notwithstanding these facts, on February 27, 2019, the plaintiffs filed this lawsuit. (Doc. 1). In their complaint, the plaintiffs sued both the county and the local union, the entities which were parties to the collective bargaining agreement at issue in this case, as well as four Commonwealth officials, the Pennsylvania Attorney General, Josh Shapiro, and the members of the Pennsylvania Labor Relations Board, James Darby, Albert Mezzoroba, and Robert Shoop. (Doc. 1, Introduction). Pursuing claims under the federal civil rights statute, 42 U.S.C. §1983, the plaintiffs' complaint contains two counts. Count I brings constitutional free speech claims based upon the Supreme Court's decision in Janus, alleging that the conduct of union officials and the county defendants violated their constitutional rights under the First and Fourteenth Amendments through compulsory dues payments. (Id. ¶¶ 36-51). Count II of the complaint then brings a separate First Amendment freedom of association and freedom of speech claim, asserting that the designation of the local union as the exclusive bargaining representative for all employees unconstitutionally

abridged the plaintiffs' free speech and association rights by in some way compelling them to associate with the union. (Id. ¶¶ 52-65). On the basis of these allegations, the plaintiffs sought injunctive and declaratory relief, along with damages and attorneys' fees. (Id., Prayer for relief).

Lebanon County and Local 429 have both moved to dismiss this complaint, (Docs. 25 and 27), motions which the Court then converted to motions for summary judgment. (Doc. 28). In these motions, the defendants argue that the plaintiffs' requests for prospective relief are now moot given that they are no longer members of the union and no longer have union fees deducted from their wages. The defendants further assert that any damages claims fail as a matter of law, and that the designation of the union as the exclusive bargaining representative for these employees does not violate the First Amendment but rather has been approved by the United States Supreme Court. The plaintiffs, in turn, have filed their own cross motion for summary judgment, arguing that they are entitled to a judgment in their favor as a matter of law on all of these constitutional claims.

These competing summary judgment motions are fully briefed and are, therefore, ripe for resolution. For the reasons set forth below, it is recommended that the defendants' motions to dismiss which have been deemed motions for summary judgment, (Docs. 25 and 27), be granted, and the plaintiffs' summary judgment motion, (Doc. 42), be denied.

II. Discussion

A. Summary Judgment—Standard of Review

The parties have filed cross motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, which provides that the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). Through summary adjudication, a court is empowered to dispose of those claims that do not present a "genuine dispute as to any material fact," Fed. R. Civ. P. 56(a), and for which a trial would be "an empty and unnecessary formality." Univac Dental Co. v. Dentsply Int'l, Inc., No. 07-0493, 2010 U.S. Dist. LEXIS 31615, *4 (M.D. Pa. Mar. 31, 2010). The substantive law identifies which facts are material, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute about a material fact is genuine only if there is a sufficient evidentiary basis that would allow a reasonable fact finder to return a verdict for the non-moving party. Id. at 248-49.

The moving party has the initial burden of identifying evidence that it believes shows an absence of a genuine issue of material fact. Conoshenti v. Pub. Serv. Elec. & Gas Co., 364 F.3d 135, 145-46 (3d Cir. 2004). Once the moving party has shown that there is an absence of evidence to support the nonmoving party's claims, "the

non-moving party must rebut the motion with facts in the record and cannot rest solely on assertions made in the pleadings, legal memoranda, or oral argument." Berckeley Inv. Group. Ltd. v. Colkitt, 455 F.3d 195, 201 (3d Cir. 2006); accord Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). If the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial," summary judgment is appropriate. Celotex, 477 U.S. at 322. Summary judgment is also appropriate if the non-moving party provides merely colorable, conclusory, or speculative evidence. Anderson, 477 U.S. at 249. There must be more than a scintilla of evidence supporting the nonmoving party and more than some metaphysical doubt as to the material facts. Id. at 252; see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In making this determination, the Court must "consider all evidence in the light most favorable to the party opposing the motion." A.W. v. Jersey City Pub. Schs., 486 F.3d 791, 794 (3d Cir. 2007).

Moreover, a party who seeks to resist a summary judgment motion by citing to disputed material issues of fact must show by competent evidence that such factual disputes exist. Further, "only evidence which is admissible at trial may be considered in ruling on a motion for summary judgment." Countryside Oil Co., Inc. v. Travelers Ins. Co., 928 F. Supp. 474, 482 (D.N.J. 1995). Similarly, it is well-settled that: "[o]ne cannot create an issue of fact merely by . . . denying averments . . . without producing

any supporting evidence of the denials." Thimons v. PNC Bank, NA, 254 F. App'x 896, 899 (3d Cir. 2007) (citation omitted). Thus, "[w]hen a motion for summary judgment is made and supported . . ., an adverse party may not rest upon mere allegations or denial." Fireman's Ins. Co. of Newark, N.J. v. DuFresne, 676 F.2d 965, 968 (3d Cir. 1982); see Sunshine Books, Ltd. v. Temple University, 697 F.2d 90, 96 (3d Cir. 1982). "[A] mere denial is insufficient to raise a disputed issue of fact, and an unsubstantiated doubt as to the veracity of the opposing affidavit is also not sufficient." Lockhart v. Hoenstine, 411 F.2d 455, 458 (3d Cir. 1969). Furthermore, "a party resisting a [Rule 56] motion cannot expect to rely merely upon bare assertions, conclusory allegations or suspicions." Gans v. Mundy, 762 F.2d 338, 341 (3d Cir. 1985) (citing Ness v. Marshall, 660 F.2d 517, 519 (3d Cir. 1981)). In reaching this determination, the Third Circuit has instructed that:

> To raise a genuine issue of material fact . . . the opponent need not match, item for item, each piece of evidence proffered by the movant. In practical terms, if the opponent has exceeded the "mere scintilla" threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. It thus remains the province of the fact finder to ascertain the believability and weight of the evidence.

Id. In contrast, "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986) (internal

quotation marks omitted); NAACP v. North Hudson Reg'l Fire & Rescue, 665 F.3d 464, 476 (3d Cir. 2011).

Further:

> "When confronted with cross-motions for summary judgment . . . 'the court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the summary judgment standard.' " Transguard Ins. Co. of Am., Inc. v. Hinchey, 464 F. Supp. 2d 425, 430 (M.D. Pa. 2006) (quoting Marciniak v. Prudential Fin. Ins. Co. of Am., 184 Fed. App'x 266, 270 (3d Cir. 2006)). "If review of [the] cross-motions reveals no genuine issue of material fact, then judgment may be entered in favor of the party deserving of judgment in light of the law and undisputed facts." Id. (citing Iberia Foods Corp. v. Romeo, 150 F.3d 298, 302 (3d Cir. 1998)).

Pellicano v. Office of Pers. Mgmt., Ins. Operations, 8 F. Supp. 3d 618, 625–26 (M.D. Pa. 2014), aff'd sub nom. Pellicano v. Office of Pers. Mgmt., 714 F. App'x 162 (3d Cir. 2017). It is against this analytical prism that we now assess these cross motions for summary judgment.

B. The Plaintiffs' Requests for Prospective, Injunctive, and Declaratory Relief are Now Moot.

At the outset, to the extent that the plaintiffs seek prospective, injunctive, or declaratory relief, the short answer to that request is that the plaintiffs have withdrawn from the union, are no longer subject to dues deductions, have received dues refunds, and, in light of the Supreme Court's decision in Janus, are no longer subject to the threat of future dues deductions since the Court has struck down these type of "agency shop" arrangements in which dissenting workers were nonetheless

required to pay union dues. Given that this practice is no longer in effect and cannot be constitutionally reinstituted in light of the Court's decision in Janus, we agree with those courts who have considered prospective, injunctive, and declaratory relief requests like those made here and found those requests to be moot.

The mootness doctrine recognizes a fundamental truth in litigation: "[i]f developments occur during the course of adjudication that eliminate a plaintiff's personal stake in the outcome of a suit or prevent a court from being able to grant the requested relief, the case must be dismissed as moot." Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 698-99 (3d Cir. 1996). There is a constitutional dimension to the mootness doctrine.

> Under Article III of the Constitution, a federal court may adjudicate "only actual, ongoing cases or controversies." Lewis v. Continental Bank Corp., 494 U.S. 472, 477, 110 S. Ct. 1249, 108 L.Ed.2d 400 (1990). "To invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision." Id. (citing Allen v. Wright, 468 U.S. 737, 750–751, 104 S. Ct. 3315, 82 L.Ed.2d 556 (1984); Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 471–473, 102 S. Ct. 752, 70 L.Ed.2d 700 (1982)). Article III denies the District Court the power to decide questions that cannot affect the rights of litigants before it, and confines it to resolving live controversies "admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." Aetna Life Insurance Co. v. Haworth, 300 U.S. 227, 241, 57 S. Ct. 461, 81 L.Ed. 617 (1937). The case or controversy requirement continues through all stages of federal judicial proceedings, trial and appellate, and requires that parties have a personal stake in the outcome. Lewis, 494 U.S. at 477–478. "This means that, throughout the litigation, the plaintiff 'must have suffered,

> or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.' " Spencer, 523 U.S. at 7 (quoting Lewis, 494 U.S. at 477).

Burkey v. Marberry, 556 F.3d 142, 147 (3d Cir. 2009) (dismissing habeas petition as moot).

In considering the application of the mootness doctrine to this case, we most assuredly do not write upon a blank slate. Quite the contrary, in the wake of Janus' sea change in this law regarding the constitutionality of "agency shop" statutes, numerous courts have been confronted with the precise scenario presented here: A Janus-based lawsuit by an employee who was formerly subjected to compulsory dues deductions, seeking injunctive relief against officials who had abandoned this "agency shop" practice in light of the Supreme Court's ruling. Almost without exception, on these facts, courts have concluded that plaintiffs' requests for prospective relief are now moot given the cessation of this practice that was compelled by the Supreme Court's decision in Janus.[2]

[2] See, e.g., Oliver v. Serv. Employees Int'l Union Local 668, No. CV 19-891, 2019 WL 5964778, at *7 (E.D. Pa. Nov. 12, 2019); LaSpina v. SEIU Pennsylvania State Council, No. CV 3:18-2018, 2019 WL 4750423, at *9 (M.D. Pa. Sept. 30, 2019); Mayer v. Wallingford-Swarthmore Sch. Dist., No. CV 18-4146, 2019 WL 4674397, at *3 (E.D. Pa. Sept. 24, 2019); Diamond v. Pennsylvania State Educ. Ass'n, 399 F. Supp. 3d 361, 383 (W.D. Pa. July 8, 2019) (citing Hartnett v. Pa. State Educ. Ass'n, 390 F. Supp. 3d 592 (M.D. Pa. May 17, 2019) (finding comparable claims for declaratory and injunctive relief moot post-Janus because the "[p]laintiffs face no realistic possibility that they will be subject to the unlawful

For their part, the plaintiffs attempt to resist this rising tide of case law by arguing the voluntary cessation doctrine, which holds that voluntary abandonment of an unlawful practice does not automatically render a dispute moot. The difficulty with this assertion in the instant case is twofold: First, virtually every court which has considered this argument following the Supreme Court's decision in Janus has rejected it.[3] Second, this argument fails to take into account the unique factual

collection of 'fair share' fees")); Cook v. Brown, 364 F. Supp. 3d 1184, 1189 (D. Or. 2019) (finding a request for injunctive relief post-Janus moot because the union had already stopped collecting fair-share fees and thus there was "no live controversy . . . necessitating injunctive relief"); Lamberty v. Conn. State Police Union, No. 3:15-cv-378, 2018 WL 5115559, at *9 (D. Conn. Oct. 19, 2018) (explaining that Janus mooted a challenge to the constitutionality of agency fees because "there is nothing for [the court] to order [the d]efendants to do now"); Yohn v. Cal. Teachers Ass'n, Case No. SACV 17-202-JLS-DFM, 2018 WL 5264076 (C.D. Cal. Sept. 28, 2018) (granting the union's motion to dismiss on mootness grounds after the union complied with Janus); Danielson v. Inslee, 345 F. Supp. 3d 1336, 1339-40 (W.D. Wash. 2018) (finding that Janus mooted a controversy when the State of Washington stopped collecting agency fees post-Janus); Smith v. Bieker, Case No. 18-cv-05472-VC, 2019 WL 2476679, at *1 (N.D. Cal. June 13, 2019) (finding similar claims moot because the State did not plan to enforce the unconstitutional statute in light of Janus). See also Mayer v. Wallingford-Swarthmore Sch. Dist., No. CV 18-4146, 2019 WL 4674397, at *3 (E.D. Pa. Sept. 24, 2019); Molina v. Pennsylvania Soc. Serv. Union, 392 F. Supp. 3d 469, 471 (M.D. Pa. 2019); Hamidi v. Serv. Employees Int'l Union Local 1000, 386 F. Supp. 3d 1289, 1295 (E.D. Cal. 2019); Akers v. Maryland State Educ. Ass'n, 376 F. Supp. 3d 563, 572 (D. Md. 2019); Lee v. Ohio Educ. Ass'n, 366 F. Supp. 3d 980 (N.D. Ohio 2019).

[3] See cases cited in footnote 3 supra.

context of this case. This is not a situation in which the voluntary cessation doctrine applies because a litigant has made a brief and temporary tactical legal retreat on an uncertain legal landscape. Quite the contrary, the United States Supreme Court has now clearly and definitively changed that legal landscape and the actions of the defendants simply reflect compliance with the Court's unmistakable mandate. As one court has aptly observed when discounting a similar voluntary cessation argument:

> Janus . . . represents a significant legal shift because it explicitly overruled Abood and held that the collection of fair-share fees was unconstitutional. "The law of the land thus has changed and there no longer is a legal dispute as to whether public sector unions can collect agency fees." Complying with a Supreme Court decision [therefore] cannot be considered "voluntary cessation."

Diamond v. Pennsylvania State Educ. Ass'n, 399 F. Supp. 3d 361, 387 (W.D. Pa. 2019) (citations omitted).

We agree. Finding that this paradigm shift in the law, and the parties' compliance with their newly defined legal obligations eliminates the need for prospective relief, and further concluding that complying with a Supreme Court decision cannot be characterized as voluntary cessation, we submit that these requests for prospective relief from the defendants are now moot and should be dismissed.

C. The Plaintiffs' Count I Damages Claims Also Fail as a Matter of Law.

As we construe the plaintiffs' complaint, the plaintiffs also seek damages from the defendants as a result of these alleged Constitutional infractions. However, in our view, on the unique facts of this case, the plaintiffs' Count I claims for damages fail. As we have noted, Count I brings constitutional free speech claims based upon the Supreme Court's decision in Janus, alleging that the conduct of union officials and the county defendants violated their constitutional rights under the First and Fourteenth Amendments through compulsory dues payments. (Doc. 1 ¶¶ 36-51).

There are two profound problems with these damages claims. First, they ignore the legal and factual backdrop of this case. Prior to June of 2018, the practice engaged in by the county and the union of seeking dues deductions from these employees was commonplace, expressly authorized by statute, and constitutionally endorsed by the United States Supreme Court. Abood v. Detroit Bd. of Ed., 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977). Thus, prior to the fundamental sea change in the law resulting from the ruling in Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31, 138 S. Ct. 2448, 2459-60, 201 L. Ed. 2d 924 (2018), the defendants had no reason the question the lawfulness of their conduct. Moreover, once the legal paradigm shifted in this profound way, within a matter of months the defendants had accepted the plaintiffs' resignations from the union, halted their dues

deductions, and repaid the dues that had been deducted while the resignations requests were pending, with interest.

These damages claims also fail to acknowledge an immutable legal fact, the existence of a good faith defense when parties act in reliance upon what was then-existing law. On this score, we note that: "every federal appellate court to have decided the question has held that, while a private party acting under color of state law does not enjoy qualified immunity from suit, it is entitled to raise a good-faith defense to liability under section 1983." Janus v. Am. Fed'n of State, Cty. & Mun. Employees, Council 31; AFL-CIO, 942 F.3d 352, 362 (7th Cir. 2019) citing Clement v. City of Glendale, 518 F.3d 1090, 1096–97 (9th Cir. 2008); Pinsky v. Duncan, 79 F.3d 306, 311–12 (2d Cir. 1996); Vector Research, Inc. v. Howard & Howard Attorneys P.C., 76 F.3d 692, 698–99 (6th Cir. 1996); Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1275–78 (3d Cir. 1994); Wyatt v. Cole, 994 F.2d 1113, 1118–21 (5th Cir. 1993) ("Wyatt II"). As the United States Court of Appeals for the Third Circuit has observed when considering this issue in the context of § 1983 civil rights litigation: "we believe in accord with the [other] court of appeals . . . that a good faith defense is available[.]" Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1277 (3d Cir. 1994).

In the instant case, these legal tenets combine to defeat the damages claim set forth in Count I of the plaintiffs' complaint and the First Amendment claims

grounded directly upon the Janus decision. Here, the dues deductions that were undertaken by the defendants were plainly done in good faith, in reliance on a state statute which expressly authorized this practice and in accordance with the then existing Supreme Court precedent which constitutionally endorsed such union dues deductions. Furthermore, when the Supreme Court's Janus decision fundamentally altered this legal landscape, the defendants then halted the dues deductions for those employees who chose to withdraw from the union and refunded dues paid while their resignation requests were pending, with interest. On these facts, we conclude that it is evident that a defense of good faith reliance upon then existing law applies here and bars these § 1983 damages claims.

We are not alone in reaching this conclusion. Quite the contrary, on remand from the Supreme Court, the court of appeals in Janus v. Am. Fed'n of State, Cty. & Mun. Employees, Council 31; AFL-CIO, 942 F.3d 352, 364 (7th Cir. 2019) found that the union was entitled to a good faith defense to liability for damages based upon its reliance on what was previously settled law. In reaching this result, the court of appeals observed that there is an emerging legal consensus on this question, stating that "every district court that has considered the precise question before us—whether there is a good-faith defense to liability for payments collected before Janus II—has answered it in the affirmative." Id. (citing Hamidi v. SEIU Local 1000, 2019 WL 5536324 (E.D. Cal. Oct. 25, 2019)); LaSpina v. SEIU Pennsylvania State

Council, 2019 WL 4750423 (M.D. Pa. Sept. 30, 2019); Casanova v. International Ass'n of Machinists, Local 701, No. 1:19-cv-00428, Dkt. #22 (N.D. Ill. Sept. 11, 2019); Allen v. Santa Clara Cty. Correctional Peace Officers Ass'n, 400 F. Supp. 3d 998, 2019 WL 4302744 (E.D. Cal. Sept. 11, 2019); Ogle v. Ohio Civil Serv. Emp. Ass'n, 397 F. Supp. 3d 1076 (S.D. Ohio 2019), appeal pending, No. 19-3701 (6th Cir.); Diamond v. Pennsylvania State Educ. Ass'n, 399 F. Supp. 3d 361, 2019 WL 2929875 (W.D. Pa. July 8, 2019), appeal pending, No. 19-2812 (3d Cir.); Hernandez v. AFSCME California, 386 F. Supp. 3d 1300 (E.D. Cal. 2019); Doughty v. State Employee's Ass'n, No. 1:19-cv-00053-PB (D.N.H. May 30, 2019), appeal pending, No. 19-1636 (1st Cir.); Babb v. California Teachers Ass'n, 378 F. Supp. 3d 857 (C.D. Cal. 2019); Wholean v. CSEA SEIU Local 2001, 2019 WL 1873021 (D. Conn. Apr. 26, 2019), appeal pending, No. 19-1563 (2d Cir.); Akers v. Maryland Educ. Ass'n, 376 F. Supp. 3d 563 (D. Md. 2019), appeal pending, No. 19-1524 (4th Cir.); Bermudez v. SEIU Local 521, 2019 WL 1615414 (N.D. Cal. Apr. 16, 2019); Lee v. Ohio Educ. Ass'n, 366 F. Supp. 3d 980 (N.D. Ohio 2019), appeal pending, No. 19-3250 (6th Cir.); Hough v. SEIU Local 521, 2019 WL 1274528 (N.D. Cal. Mar. 20, 2019), amended, 2019 WL 1785414 (N.D. Cal. Apr. 16, 2019), appeal pending, No. 19-15792 (9th Cir.); Crockett v. NEA-Alaska, 367 F. Supp. 3d 996 (D. Alaska 2019), appeal pending, No. 19-35299 (9th Cir.); Carey v. Inslee, 364 F. Supp. 3d 1220 (W.D. Wash. 2019), appeal pending, No. 19-35290 (9th Cir.); Cook v. Brown, 364

F. Supp. 3d 1184 (D. Or. 2019), appeal pending, No. 19-35191 (9th Cir.); Danielson v. AFSCME, Council 28, 340 F. Supp. 3d 1083 (W.D. Wash. 2018), appeal pending, No. 18-36087 (9th Cir.); see also Mooney v. Illinois Educ. Ass'n, 942 F.3d 368, 369 (7th Cir. 2019).

Given the uncontested evidence revealing that the defendants conducted these dues deductions in accordance with then-existing law, and then conformed their conduct to the altered legal terrain following the Supreme Court's decision in Janus, it is submitted that this court should follow the growing legal consensus finding that the good faith defense applies in this setting and precludes claims for damages on these unique facts. Accordingly, these damages claims should be dismissed.

D. Count II of the Plaintiffs' Complaint Fails to State a Claim.

Finally, in Count II of their complaint, the plaintiffs bring a separate First Amendment freedom of association and freedom of speech claim, asserting that the designation of the local union as the exclusive bargaining representative unconstitutionally abridged the plaintiffs' free speech and association rights by in some way compelling them to associate with the union on collective bargaining matters. (Doc. 1 ¶¶ 52-65).

As noted by the defense, the difficulty with this particular claim is that in Minnesota State Bd. for Cmty. Colleges v. Knight, 465 U.S. 271, 291, 104 S. Ct. 1058, 1069, 79 L. Ed. 2d 299 (1984), the United States Supreme Court rejected First

Amendment and Equal Protection challenges to similar exclusive representation laws in the public employment context holding that such laws do not violate First Amendment associational principles and finding that: "The state has a legitimate interest in ensuring that its public employers hear one, and only one, voice presenting the majority view of its professional employees on employment-related policy questions, whatever other advice they may receive on those questions." Id.

Given what we construe as the Supreme Court's longstanding teaching in Knight, the plaintiffs' First Amendment associational claims challenging the union's role as the exclusive labor representative of these public employees would fail unless the Court's recent decision in Janus has somehow abrogated its holding in Knight. Viewed in isolation, this is a difficult argument to sustain. The Supreme Court's decision in Janus clearly shows that the Court understood its ability to expressly overrule prior precedent since that is precisely what the Court did when it set aside its prior decision in Abood. It seems unlikely that the Court, having expressly overruled its prior decision in Abood, would have been reticent to expressly address its holding in Knight, if that had been the Court's intent. Moreover, while the Court's decision in Janus recognized First Amendment tensions that may arise due to the activities of public employee unions, in the final analysis the Court did not to make any sweeping declaration striking down these exclusive bargaining agent arrangements. Quite the contrary, the Court eschewed any such broad declarations,

stating instead that: "States can keep their labor-relations systems exactly as they are—only they cannot force nonmembers to subsidize public-sector unions." Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31, 138 S. Ct. 2448, 2485, n. 27, 201 L. Ed. 2d 924 (2018). Since exclusive bargaining representative status is a settled feature of state labor-relations systems, the Court's assertion that "States can keep their labor-relations systems exactly as they are", simply cannot be read as a constitutional rebuke of this practice.

And, in fact, those courts which have considered this issue generally agree that the Court's decision in Janus does not abrogate or undermine its prior holding in Knight. Mentele v. Inslee, 916 F.3d 783, 790 (9th Cir.), cert. denied sub nom. Miller v. Inslee, 140 S. Ct. 114 (2019). As one court has recently observed:

> Read properly, Janus reaffirms rather than undermines Knight. Although Janus contains a brief passage stating that exclusive representation is "a significant impingement on associational freedoms that would not be tolerated in other contexts," earlier in that same sentence the Court held "[i]t is also not disputed that the State may require that a union serve as exclusive bargaining agent for its employees." Janus, 138 S. Ct. at 2478. Furthermore, Janus emphasizes elsewhere that "States can keep their labor-relation systems exactly as they are" and makes no reference to Knight in the opinion. Id. at 2485 n.27. In that regard, if Knight were overruled, public employers would lack a readily identifiable, authorized representative with whom to negotiate, and the practical challenges for public employers in managing their workforce would be daunting.
>
> The Third Circuit has not yet addressed the issue, but the Eighth and Ninth Circuits have held that the Supreme Court sanctioned the practice of exclusive representation in public sector collective bargaining in Knight and agree that Janus cannot be read to have overruled it.

> Bierman v. Dayton, 900 F.3d 570, 574 (8th Cir. 2018) (noting that "the constitutionality of exclusive representation standing alone was not at issue" in Janus); Mentele v. Inslee, 916 F.3d 783, 789 (9th Cir. 2019) ("Janus's reference to infringement caused by exclusive union representation . . . is not an indication that the Court intended to revise the analytical underpinnings of Knight or otherwise reset the longstanding rules governing the permissibility of mandatory exclusive representation.").

Oliver v. Serv. Employees Int'l Union Local 668, No. CV 19-891, 2019 WL 5963226, at *5 (E.D. Pa. Nov. 12, 2019). This conclusion is echoed in an emerging body of case law, which consistently declines invitations to set aside public employee unions' exclusive representation status based upon an expansive reading of Janus.[4] We find the rationale of these cases compelling and persuasive. Accordingly, given the current state of the law, the plaintiffs' Count II claims, which entail a broadly framed First Amendment attack upon exclusive public union representation of workers, fails, and this claim should be dismissed.[5]

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[4] See e.g., Sweet v. California Ass'n of Psychiatric Technicians, No. 2:19-CV-00349-JAM-AC, 2019 WL 4054105, at *3 (E.D. Cal. Aug. 28, 2019); Grossman v. Hawaii Gov't Employees Ass'n/AFSCME Local 152, 382 F. Supp. 3d 1088 (D. Haw. 2019); Thompson v. Marietta Educ. Ass'n, 371 F. Supp. 3d 431 (S.D. Ohio 2019); Reisman v. Associated Faculties of Univ. of Maine, 356 F. Supp. 3d 173, 178 (D. Me. 2018), aff'd, 939 F.3d 409 (1st Cir. 2019); Uradnik v. Inter Faculty Org., No. CV 18-1895 (PAM/LIB), 2018 WL 4654751, at *2 (D. Minn. Sept. 27, 2018).

[5] 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

Finally, having found that the plaintiffs' claims fail as a matter of law, it follows that the plaintiffs' motion for summary judgment, (Doc. 43), also fails and should be denied.

III. Recommendation

Accordingly, for the foregoing reasons, IT IS RECOMMENDED that the defendants' motions to dismiss which have been deemed motions for summary judgment, (Doc. 25 and 27), be GRANTED and the plaintiffs' motion for summary judgment, (Doc. 43) be DENIED.

The parties are further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge,

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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.

however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 5th day of December 2019.

/s/ Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2021, I electronically filed the forgoing Appendix with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Jeffrey M. Schwab

Counsel for Plaintiffs-Appellants