UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

HOLLIE ADAMS, et al., Plaintiffs, v. TEAMSTERS UNION LOCAL 429, et al. Defendants.	*No. 1:19-CV-0336* *Judge Rambo* *Magistrate Judge Carlson*

PLAINTIFFS' OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION AS TO TEAMSTERS AND LEBANON COUNTY

Plaintiffs object to the Magistrate Judge's Report and Recommendation (Doc. 56, hereinafter Second Report) with respect to Teamsters Local 429's and Lebanon County's respective motions for summary judgment. (Docs. 40 and 38, respectively.)

I. Plaintiffs have stated viable claims for relief in Count I.

Plaintiffs object to the Magistrate Judge's second report and recommendation as to Count I because the claims for prospective, declaratory, and injunctive relief are not moot. The Second Report is correct that the Defendants could not reinstitute agency-fees after the Supreme Court's decision in *Janus v. AFSCME*, 138 S. Ct. 2448 (2018). Second Report at 15. However, the Plaintiffs here are former union

members, not agency fee-payers, who were trapped in their union by very specific, very narrow opt-out windows. *See* Defendants' Supplemental Joint Statement of Facts, Doc. 50, at 4. This is a critical distinction: though Plaintiffs believe that the logic and opinion of *Janus* compel the relief they seek, its particular fact pattern was limited to agency-fee payers. Thus, many of the cases the Second Report relies upon in footnote 2 are inapposite to this case, because they only acknowledge the straightforward principle that *Janus* binds lower courts and bars the enforcement of statutes in direct conflict with its holding. The Second Report relies heavily on *Diamond v. Pa. State Educ. Ass'n*, No. 3:18-cv-128, 2019 U.S. Dist. LEXIS 112169, at *3 (W.D. Pa. July 8, 2019), which was just such an agency-fee case. Agency-fee cases are fundamentally different from the member cases such as Plaintiffs', which argue that the logic and opinion of *Janus* compel the extension of its holding to union members who were forced into an unconstitutional choice between fees and membership, the core argument which the Second Report fails entirely to address.

Once the distinction between fee-payers and members is evident, then it is clear that the union's decision to let the Plaintiffs out and partially refund their dues was indeed "a brief and temporary tactical legal retreat on an uncertain legal landscape." Second Report at 18. Though the legal landscape is clear as to fee-payers, the extension of *Janus* to union members is the subject of ongoing litigation nationwide. *See* Nicole Ault, "Still Paying Coerced Labor Dues, Even After Janus," Wall St. J.

(July 26, 2019), https://www.wsj.com/articles/still-paying-coerced-labor-dues-even-after-janus-11564181195. Letting the Plaintiffs out with partial refunds was a blatant attempt to beat just such an impermissible tactical retreat, to try to deny Plaintiffs' legal theory resolution on its merits.

The union initially denied the Plaintiffs' attempt to leave outside their opt-out window, *see* Defendants' Joint Statement of Facts, Doc. 36, at 8-19, and only changed course after a lawsuit was filed. *Id*. A "defendant cannot automatically moot a case simply by ending its unlawful conduct once sued." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013). *Accord Knox v. SEIU, Local 1000*, 567 U.S. 298, 397 (2012) ("The voluntary cessation of challenged conduct does not ordinarily render a case moot . . ."). This Court should instead adopt the rule announced in *Fisk v. Inslee*, No. 17-35957, 2018 U.S. App. LEXIS 35317, at *2-3 (9th Cir. Dec. 17, 2018), where the Ninth Circuit recognized that claims like Plaintiffs' would never be addressed by courts if unions were allowed to moot out every case in this way. For further explanation of this objection, Plaintiffs incorporates the brief supporting their motion for summary judgment, Doc. 44, at 7-11.

II. Plaintiffs are entitled to damages against the union on Count I.

Even if Plaintiffs' claim for prospective relief is moot, which it is not, Plaintiffs' claim for damages is not moot because Plaintiffs seek the return of funds taken from them. Limited to the statute of limitations, based on the dates from which the Union

provided refunds, Plaintiffs are entitled to damages in the form of dues deducted from February 27, 2017 to July 10, 2018 (Adams, Unger); from February 27, 2017 to July 16, 2018 (Weaber); and from February 27, 2017 to September 28, 2018 (Felker).

The Second Report's discussion of the "legal and factual backdrop" of the case concludes that the union acted in good-faith reliance on the law as it existed at the time the dues were charged. Second Report at 19-20. The Second Report then goes on to state that the good-faith defense should apply to this case. *Id*. at 20-21. As the Plaintiffs set forth in their briefing supporting summary judgment, the good-faith defense is incompatible with the text of 42 U.S.C. § 1983, incompatible with the precedent on purposes for creating immunities and defenses, incompatible with "[e]lemental notions of fairness [that] dictate that one who causes a loss should bear the loss." *Owen v. City of Indep*., 445 U.S. 622, 654 (1980), and incompatible with the remedial purposes of the statute. The Plaintiffs incorporate into their objection their briefing on this point. Doc. 44 at 12-23.

Moreover, the Second Report fails to distinguish between dues taken before and after the *Janus* decision. Even if the good-faith defense holds true for dues taken before *Janus*, the unions lack a good-faith defense for dues taken from June 27, 2018, to the dates of Plaintiffs' resignation refunds. For that time period, the union cannot say it was relying in good faith upon *Abood v. Detroit Board of Education*, 431 U.S.

209 (1977), as the law as it existed at the time the dues were taken, because after that it was clear that *Abood* had been overruled and could not be relied upon.

IV. The Plaintiffs should succeed on Count II as to exclusive representation.

The Plaintiffs object to the Second Report as to Count II on exclusive representation because the Second Report fails to respect the core holding of *Knight*, which concerned not whether employees could be forced to associate with an exclusive representative, but rather whether the government could be forced to listen to certain employees. *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 282-83 (1984). The Court made the unremarkable holding that citizens "have no constitutional right to force the government to listen to their views." *Id*. at 283. That uncontroversial point is a far cry from the Defendants' and Second Report's characterization of a sweeping holding that all exclusive-representation schemes are constitutional. Second Report at 23-24. Nothing in the opinion directly addresses the sort of "freedom not to associate" claim made here.

This reading of *Knight's* limited holding is reinforced by a review of the Third Circuit's cases citing *Knight,* which generally treat it as a petition-clause case. "In *Knight*, … the Court held that the petition clause does not require the government to respond to every communication that the communicator may denominate a petition." *San Filippo v. Bongiovanni*, 30 F.3d 424, 437 (3d Cir. 1994). *Accord Torres v. Davis*, 506 F. App'x 98, 101 (3d Cir. 2012) (same); *Kerchner v. Obama*, 612 F.3d

204, 209 (3d Cir. 2010) (same); *Bieregu v. Reno*, 59 F.3d 1445, 1453 n.3 (3d Cir. 1995) (same). These cases confirm that *Knight* addressed one question—the right to be heard by government decision-makers—but did not address the question presented today—the right not to be forced to associate against one's will.

The Second Report also fails to grapple with any of the sections in subsequent Supreme Court cases that question the constitutionality of exclusive representation. The Court started down this path in *Harris v. Quinn,* where the majority said "a critical pillar of the *Abood* Court's analysis rests on an unsupported empirical assumption, namely, that the principle of exclusive representation in the public sector is dependent on a union or agency shop. … [T]his assumption is unwarranted." 573 U.S. 616, 638 (2014). The Court returned to this theme in *Janus*, saying, "Designating a union as the employees' exclusive representative substantially restricts the rights of individual employees." *Janus*, 138 S. Ct. at 2460. *Accord id*. at 2469 ("designating a union as the exclusive representative of nonmembers substantially restricts the nonmembers' rights."). The Court also reiterated its critique from *Harris*, saying that *Abood's* "unsupported empirical assumption" about exclusive representation has been contradicted by experience. *Id*. at 2483. The logic of *Janus* also compels this conclusion: if forced association by forced subsidization is unconstitutional because the exclusive representative is constantly speaking on issues of public concern, why is forced association by forced

representation any different when in either case the exclusive representative is speaking on your behalf on issues of public concern?

After reading these cases, and Plaintiffs' briefing on this topic, Doc. 44 at 26-32, the Court should reject the Second Report's recommendation and instead conclude that mandated association with an exclusive representative in the public sector is unconstitutional.

CONCLUSION

Plaintiffs respectfully request that the Court deny Lebanon County and the Teamsters Union's motions for summary judgment and object to the Court's adoption of the Second Report. Further, Plaintiffs request that the Court grant its motion for summary judgment against all defendants.

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