

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

SHALEA OLIVER

v.

**SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 668, ET AL.**

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CIVIL ACTION NO. 19-891

REPORT OF RULE 26(f) MEETING

In accordance with Federal Rule of Civil Procedure 26(f), counsel for the parties conferred on **May 28, 2019** and submit the following report of their meeting for the Court’s consideration:

Date of Rule 16 Conference: June 13, 2019 Time of Rule 16 Conference 1:30 PM

1. Discussion of Claims, Defenses, and Relevant Issues

Plaintiff believes that the facts are not in dispute and are summarized in the Complaint, and briefly, as follows:

Plaintiff’s Count I Facts: Plaintiff Shalea Oliver has been employed as an Income Maintenance Caseworker of the County of Philadelphia Assistance Office of the Pennsylvania Department of Human Services (DHS) since 2014. At the time she began her employment, she joined SEIU Local 668 because she would have been required to pay money to the union even as a non-member, in the form of agency fees. After the Supreme Court issued its decision in *Janus* on June 27, 2018, Ms. Oliver learned that she had the right to pay no money to the union as a non-member. In conversations with Ms. Oliver, representatives of SEIU Local 668 informed her that based on the dues deduction authorization she signed prior to the Supreme Court’s *Janus* decision, she could not withdraw

until July of 2019. On August 10, 2018, Ms. Oliver sent a letter to SEIU Local 668 and DHS informing them that she no longer wished to remain a member of SEIU Local 668 and that union dues should no longer be withheld from her paycheck. Her employer responded that they could not stop withholding dues from her paycheck unless they were directed to by the union. SEIU Local 668 did not respond to Ms. Oliver's request until January 23, 2019, when it sent her employer a letter indicating that DHS should discontinue deducting union dues from Ms. Oliver's paycheck.

Plaintiff's Count I Argument: Ms. Oliver never provided "affirmative consent" – as required by *Janus* – to Defendants to have dues deducted from her paycheck even before the *Janus* decision because she was not given the option of paying nothing to the union as a non-member. Therefore, Defendants have violated Plaintiff's constitutional right to freedom of association to not join or financially support a union without her affirmative consent and Plaintiff is entitled to declaratory relief and damages.

Plaintiff's Count II Facts: 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. 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. The Pennsylvania Labor Relations Board issued a certification, pursuant to 43 P.S. § 1101.606, acknowledging SEIU Local 668 as the exclusive representative of Ms. Oliver and her coworkers in the bargaining unit, with respect to wages, hours, and terms and conditions of employment.

Plaintiff's Count II Argument: This designation compels Ms. Oliver to associate with the union and, through its representation of her, it compels her to petition the government with a certain viewpoint, despite that viewpoint being in opposition to Ms. Oliver's own goals and priorities. The exclusive representation provision of 43 P.S. § 1101.606 is, therefore, an unconstitutional abridgement of Ms. Oliver's right under the First Amendment not to be compelled to associate with speakers and organizations without her consent. Plaintiff is entitled to declaratory and injunctive relief.

Defendant SEIU Local 668's Position on Count I: Plaintiff voluntarily became a member of SEIU Local 668 in 2014. As part of her voluntary agreement to join the union she agreed to pay union membership dues and to authorize her public employer to deduct her voluntary dues payments from her paychecks. In August 2018, Plaintiff informed Local 668 and her public employer that she wished to resign from the union and revoke her dues checkoff. Local 668 thereafter sent three letters to her employer informing the employer that Plaintiff had submitted her resignation from the union and asking the employer to terminate dues deductions. Those letters were sent on September 20, 2018, November 27, 2018, and January 23, 2019; copies of each letter are attached hereto as Exhibits A, B, and C. Plaintiff's dues deductions subsequently ended, and SEIU Local 668 thereafter sent Plaintiff two checks, in the amounts of \$263.01 and \$24.48, to reimburse her for all dues deducted from her paycheck following her resignation from the union. Copies of each check and the accompanying letter are attached hereto as Exhibits D and E.

Plaintiff is entitled to neither retrospective monetary relief nor prospective declaratory relief with respect to Count I. Plaintiff lacks standing to pursue prospective declaratory relief regarding SEIU Local 668's processing of her resignation because SEIU Local 668 had already

accepted her resignation and instructed her employer to terminate dues before Plaintiff filed her lawsuit. Even had this not occurred, her challenge to the union security provisions of the collective bargaining agreement that applies to her bargaining unit would be moot because her resignation has been accepted and processed by her employer, and the union security provisions she challenges have been eliminated from the collective bargaining agreement. A copy of the Defendants' agreement to eliminate those provisions is attached hereto as Exhibit F.

Plaintiff is not entitled to retrospective monetary relief for her pre-resignation payment of dues because she voluntarily chose to join the union and agreed to pay membership dues in exchange for receiving the benefits of union membership. *Janus* addressed only the rights of individuals who chose not to join the union that serves as their collective bargaining unit's representative, not the rights of individuals like Plaintiff who chose to become union members. Plaintiff is not entitled to retrospective monetary relief for her post-resignation payment of dues because all of the dues deducted from her pay following her resignation have already been refunded to her by the union.

Defendant SEIU Local 668's Position on Count II: Plaintiff's First Amendment challenge to the system of exclusive representation collective bargaining in public employment is foreclosed by the United States Supreme Court's decision in *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271 (1984), which rejected an indistinguishable challenge to exclusive representation collective bargaining for Minnesota public employees. Even if *Knight* were not directly on point, Plaintiff's claim would fail because exclusive representation collective bargaining does not compel represented employees to associate with the association designated as their bargaining unit's collective bargaining representative, or to petition the government.

Commonwealth Defendants: Count I:

Given the undisputed facts, Defendants did not violate Plaintiffs' rights and their conduct was lawful at all relevant times. Further, Plaintiff was refunded any union deductions following her resignation. Accordingly, Count I is moot.

Commonwealth Defendants: Count II:

The Commonwealth Defendants' recognition of SEIU as plaintiff's exclusive bargaining representative is in accordance with well-settled state and federal law and precedent. Accordingly, Count II is moot.

2. Informal Disclosures

The parties have agreed to submit Rule 26(a)(1) disclosures by June 7, 2019.

3. Formal Discovery

The parties anticipate a limited need for discovery, including potential depositions of the plaintiff and a few responsible officials of defendants SEIU Local 668 and the Commonwealth. The parties anticipate all of these depositions will occur within the Commonwealth, either in the Eastern District or in the state capital city of Harrisburg. The parties may also engage in limited exchange of key documents, such as records related to the plaintiff's payroll status, union member status, and beneficial use of union representation; and the policies of defendants applicable to plaintiff. The parties do not anticipate any third-party discovery. The parties do not anticipate the need for a protective order but reserve the right to request a protective order should the need arise.

The parties have agreed to a discovery deadline of October 11, 2019. The parties have also agreed to a final date for dispositive motions of October 25, 2019.

The parties do not anticipate extensive electronic discovery. At most, the parties may engage in limited discovery for electronically maintained payroll or membership records or email exchanges related to plaintiff or to defendants' policies regarding membership resignations. Counsel for the parties have agreed to ask their clients to put in place safeguards ("litigation holds") to preserve potentially discoverable information. The parties expect each will bear its own costs for this limited discovery.

The parties do not anticipate needing any expert witnesses for this case.

4. Insurance Coverage

SEIU Local 668 maintains an insurance policy potentially applicable to the claims asserted by Plaintiff in this action. The policy has an aggregate limit of liability of \$1,000,000, and a self-insured retention of \$25,000 per claim. The aggregate limit of liability and self-insured retention potentially include fees and costs incurred by SEIU Local 668 in defending itself against Plaintiff's claims.

The Commonwealth defendants do not believe insurance coverage will be applicable in this litigation; however, the Commonwealth is self-insured. *See* 4 Pa. Code § 39.1 *et seq.*

5. Settlement or Resolution

The parties have conferred and agree that Count II involves a legal dispute which is not subject to resolution through settlement at this time. Plaintiff's request for prospective relief with respect to Count I likewise presents a legal dispute not subject to resolution through settlement at this time. Plaintiff has not made any settlement offer with respect to the retrospective monetary relief sought in Count I.

6. Trial date

If the Court does not resolve both counts on a dispositive motion, the parties request that trial be scheduled for approximately 90 days after the date of the Court's decision on cross-motions for summary judgment.

7. Length of Trial

The parties anticipate that any trial would be brief and to the bench. Trial of Count I would require only testimony from plaintiff and certain officials associated with Defendants. Trial of Count II would require this testimony, as well as testimony from certain additional individuals knowledgeable about exclusive representation collective bargaining in public employment, both in general and in Pennsylvania. The parties expect five days to be sufficient for trial if both claims are tried, and two days to be sufficient if only Count I is tried.

8. Other Matters

The parties do not believe any other matters require the Court's attention at this time.

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