

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
PHILADELPHIA, PENNSYLVANIA

DANIEL M. GRAY,

PLAINTIFF,

v.

THOMAS W. CORBETT, GOVERNOR OF THE  
COMMONWEALTH OF PENNSYLVANIA;  
PENNSYLVANIA DEPARTMENT OF LABOR AND  
INDUSTRY; JULIA K. HEARTHWAY, SECRETARY  
OF PENNSYLVANIA DEPARTMENT OF LABOR &  
INDUSTRY; DAVID L. KESSLER, DIRECTOR OF  
THE BUREAU OF COMMONWEALTH PAYROLL  
OPERATIONS; AND SEIU LOCAL 668,

DEFENDANTS.

CASE NO. \_\_\_\_\_

**PLAINTIFFS' VERIFIED COMPLAINT  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

COMES NOW Plaintiff, Daniel M. Gray by and through his undersigned counsel, and states the following claim for relief against Defendants Thomas W. Corbett, Governor of the Commonwealth of Pennsylvania; the Pennsylvania Department of Labor and Industry, Julia K. Hearthway, Secretary of the Pennsylvania Department of Labor and Industry; David L. Kessler, Director of the Bureau of Commonwealth Payroll Operations ("the Commonwealth Defendants"); and SEIU Local 668 ("Local 668"), as follows:

**I. PRELIMINARY STATEMENT**

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for preliminary and permanent injunctive relief, declaratory relief, and monetary relief to redress and to prevent the

deprivation under color of the Pennsylvania Public Employee Relations Act, 43 PA.STAT.ANN. §§ 1101.1 *et seq.*, and/or the Public Employee Fair Share Fee Law (“PEFSFL”), 43 PA.STAT.ANN. §§ 1102.1 *et seq.*, and/or other state law and/or by a state actor, of rights, privileges, and immunities under the First and Fourteenth Amendments to the United States Constitution. It seeks to redress and prevent the deprivation under color of the PERA, the PEFSFL, and the monopoly or collective bargaining agreement between Plaintiff’s exclusive bargaining representative and his public employer, of the rights, privileges, and immunities under the First, Fifth, and Fourteenth Amendments of the United States Constitution. Pursuant to the “Union Security” article of their collective bargaining agreement (“CBA”) and the PERA and the PEFSFL, Defendants have deprived, and are threatening to continue to deprive, Plaintiff of his constitutional rights. Specifically, Defendant SEIU Local 668 (“Local 688”), acting in concert with Defendants Thomas W. Corbett, Governor of the Commonwealth of Pennsylvania, the Pennsylvania Department of Labor and Industry, Julia K. Hearthway, Secretary of the Pennsylvania Department of Labor & Industry and David L. Kessler, Director of the Bureau of Commonwealth Payroll Operations (“the Commonwealth Defendants”), require Plaintiff (and all similarly-situated employees within the bargaining unit) to maintain membership in Local 668, and have denied Plaintiff his right to resign from union membership and terminate all incidents of union membership, including the payment of full union dues.

2. Alternatively, and assuming *arguendo* that any obligation is imposed by a CBA which purports to impose a requirement exceeding the parties’ constitutional authority to bargain, an amount of dues or fees — unilaterally determined by Local 668 and its various state and national affiliates, which the Commonwealth Defendants have continued to seize from Plaintiff

for the benefit of Local 668 notwithstanding his resignation from union membership and revocation of his dues checkoff authorization card — is used for the unions’ political, ideological, and other nonbargaining activities. Thus, the compulsory dues or fees taken from objecting employees exceed the amount permitted by the First, Fifth, and Fourteenth Amendments. Defendant Local 668 and the Commonwealth Defendants, acting under color of their CBA and the PEFSFL, have denied Plaintiff’s right to resign and to refuse to pay for that portion of the dues or fees to which he objects. *Teachers Local No. 1 v. Hudson*, 475 U.S. 292 (1986).

3. For these reasons, Plaintiff asks this Court:

a. For a declaration that Pennsylvania Public Employee Fair Share Fee Law (“PEFSFL”), 43 PA.STAT.ANN. §§ 1102.1 *et seq.*, as applied, is null and void and a violation of the First, Fifth, and Fourteenth Amendments’ rights to association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience;

b. For a declaration that Article 2 of Defendants’ collective bargaining agreement, on its face and as applied, is null and void and a violation of the First, Fifth, and Fourteenth Amendments’ rights to association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience;

c. For a declaration that Defendants have violated Plaintiff’s constitutional right to association, self-organization, assembly, petition, and freedom of speech, thought, and conscience because Defendants refused to honor Plaintiff’s resignation from union membership, and provide him with the opportunity to vindicate his objection to the payment of that portion of Local 668’s and its affiliates’ dues expended for their political,

ideological, and other nonbargaining activities;

d. To restrain Defendants and those working in concert with them from engaging in, and continuing to engage in, the wrongful and unlawful conduct violative of Plaintiff's constitutional rights;

e. For a monetary judgment in, or equitable restitution of, the dues or fees taken from Plaintiff, together with appropriate interest, subsequent to his resignation from union membership; and

f. For attorneys' fees, pursuant to 42 U.S.C. § 1988, and any other appropriate relief.

## II. JURISDICTION AND VENUE

4. This action arises under the Constitution and laws of the United States, particularly the First, Fifth, and Fourteenth Amendments to the United States Constitution. The jurisdiction of this Court, therefore, is invoked under 28 U.S.C. § 1331.

5. This is also an action under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of rights, privileges and immunities secured to Plaintiff by the Constitution of the United States, particularly the First, Fifth, and Fourteenth Amendments thereto. The jurisdiction of this Court, therefore, is invoked under 28 U.S.C. § 1343.

6. This case is also an actual controversy where Plaintiff is seeking a declaration of his rights under the Constitution of the United States. Under 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights of Plaintiff and grant further necessary and proper relief based

thereon, including preliminary and permanent injunctive relief, pursuant to Rule 65, FED.R.CIV.P.

7. Pursuant to 28 U.S.C. § 1391(b) and § 1392, venue is proper in this Court because the Defendants either reside and/or have offices and conducts their business in the judicial district of the United States District Court for the Eastern District of Pennsylvania.

### III. PARTIES

8. Plaintiff Daniel M. Gray is an employee of the Pennsylvania Department of Labor and Industry. Plaintiff is employed in a bargaining unit represented, exclusively for purposes of collective bargaining, by Defendant SEIU Local 668 (“Local 668”), pursuant to the PERA, 43 PA.STAT.ANN. § 1101.101 *et seq.*, and/or the PEFSFL, 43 PA.STAT.ANN. § 1102.1 *et seq.* Plaintiff is not a member of Local 668, having resigned his membership in Local 668 by letter sent to Local 668 dated 14 April 2012.

9. Plaintiff is a “public employe” or “employe” within the meaning of the PERA, 43 PA.STAT.ANN. § 1101.301(2).

10. Defendant Thomas W. Corbett is the Governor of the Commonwealth of Pennsylvania. As such, he is the Chief Executive of Pennsylvania and is responsible for all operations of the government of the Commonwealth of Pennsylvania, including labor relations. He is sued in his official capacity.

11. Defendant Pennsylvania Department of Labor and Industry (“DOL”) is a “Public employer” within the meaning of the PERA, 43 PA.STAT.ANN. §§ 1101.301(1) & 1102.2, and a “Public employer” within the meaning of the PEFSFL, 43 PA.STAT.ANN. § 1102.2. By and

through its officers and/or agents, the DOL negotiated the collective bargaining agreement with Local 668.

12. Defendant Julia K. Hearthway, Secretary of Pennsylvania Department of Labor & Industry is the Chief Administrator of the DOL. As such, she is generally responsible for all operations of the Department, including labor relations. She is sued in her official capacity.

13. Defendant David L. Kessler is the Director of the Commonwealth Payroll Operations. As such, he is charged with the responsibility of issuing wages to employees of the DOL, including Plaintiff's, and processing all deductions therefrom. He is sued in his official capacity.

14. Defendant Local 668 is an "Employee organization" and "Exclusive representative" within the meaning of the PERA, 43 PA.STAT.ANN. § 1101.301(3) & (4), and an "employee organization" and an "exclusive representative" within the meaning of the PEFSFL, 43 PA.STAT.ANN. § 1102.2. Through a series of collective bargaining agreements with the Commonwealth of Pennsylvania, Local 668 represents employees of the DOL, including Plaintiff, exclusively for purposes of collective bargaining. Defendant Local 668 maintains a place of business at 2589 Interstate Drive, Harrisburg, Pennsylvania 17110-9602, and conducts its business and operations throughout the Commonwealth of Pennsylvania and within the Eastern District of Pennsylvania. Upon information and belief, Defendant Local 668 is affiliated with and pays monies to, *inter alia*, the Service Employees International Union, and the Pennsylvania State Council Service Employees International Union, Pennsylvania AFL-CIO, and the Central Labor Council.

#### IV. CAUSE OF ACTION

15. Acting in concert under color of state law — to-wit, the PERA, 43 PA.STAT.ANN. § 1101.201 *et seq.*, and the PEFSFL, 43 PA.STAT.ANN. § 1102.1 *et seq.* — Defendants DOL and Local 668 have entered into a CBA controlling the terms and conditions of Plaintiff's (and others) employment. Relevant portions of the CBA effective by its terms from 1 July 2011, through 30 June 2015 (“the CBA”), are attached hereto and incorporated herein as Exhibit A.

16. Pursuant to the PERA, 43 PA.STAT.ANN. § 1101.705, and the PEFSFL, 43 PA.STAT.ANN. § 1102.1 *et seq.*, the CBA contains a “Union Security” article, which provides in pertinent part that:

##### **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 maintain membership in the Union, provided that such employee may resign from the Union, in accordance with the following procedure:

a. The employee shall send a certified letter (Return Receipt Requested) of resignation to the headquarters of the Union and a copy of the letter to the employee's agency. The official membership card, if available, shall accompany the letter of resignation.

b. The letter referred to in a. above shall be post-marked during the fifteen (15) day period prior to the expiration date of this Agreement and shall state that the employee is resigning membership in the Union and where applicable, is revoking check-off authorization.

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Exhibit A, CBA, Article 2, § 1(A & B).

17. The PERA, 43 PA.STAT.ANN. § 1101.301(18), provides in pertinent part that:

(18) “Maintenance of membership” means that all employees who have joined an employee organization or who join the employee organization in the future must remain members for the duration of a collective bargaining agreement so providing with the proviso that any such employee or employees may resign from such employee organization during a period of fifteen days prior to the expiration

of any such agreement.

43 PA.STAT.ANN. § 1101.301(18). The PERA, 43 PA.STAT.ANN. § 1101.705, also provides in pertinent part 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 PA.STAT.ANN.

§ 1101.705.

18. Notwithstanding the provisions of the CBA and the provisions of the PERA, Plaintiff resigned his membership in Local 668 by sending a resignation letter 14 March 2012. A true and correct copy of that letter is attached hereto and incorporated herein as Exhibit B.

19. Notwithstanding Plaintiff’s resignation letter, Local 668 has failed to acknowledge or respond to Plaintiff’s resignation.

20. Notwithstanding Plaintiff’s resignation from union membership, and invocation of their rights to pay reduced fees under the PEFSFL and *Hudson*, the Commonwealth Defendants have continued automatically to deduct, and Local 668 has continued to accept payment of, full union dues from Plaintiff’s wages.

21. As nonmember or forced member subject to a forced-unionism provision, Plaintiff is entitled to receive appropriate procedural safeguards to protect his constitutional rights prior to the demand for and/or collection of any fees from him.

22. Plaintiff did not receive, after his resignation from union membership and prior to the continued collection of fees equal to full union dues from his wages, any notice of his rights and the procedural safeguards which are required by the United States Supreme Court’s decision



in *Hudson, supra*, in any respect, including but not limited to the following:

- a. Local 688 failed to provide any notice or explanation of the amount of the fee, or total union expenditures allocated into understandable, useful chargeable and non-chargeable categories, verified by an independent auditor;
- b. Local 668 failed to provide any financial information about the chargeable and nonchargeable expenses of its many affiliates;
- c. Local 668 failed to provide an opportunity to object and to challenge the amount of its fee before an impartial decisionmaker; and
- d. Local 668 failed to provide an escrow of amounts reasonably in dispute pending the outcome of such a challenge.

23. Said collections of full union dues from Plaintiff's wages after his resignation from union membership, and Local 668's acceptance of those fees from the Commonwealth Defendants, occurred without the appropriate safeguards and procedural protections that are necessary for the constitutional seizure of fees, to-wit:

- a. The collection of full union dues from Plaintiff's wages, as described above in ¶ 20, occurred without the required disclosure of the major categories of Local 668's expenditures, and allocation between chargeable and nonchargeable components, verified by an independent audit;
- b. The collection of full union dues from Plaintiff's wages, as described above in ¶ 20, occurred without the required audit of union expenditures and the allocation between chargeable and nonchargeable categories of expenditures for each and every Local 668 affiliate receiving a portion of the fee;

c. The collection of full union dues from Plaintiff's wages, as described above in ¶ 20, occurred without the required reasonably prompt opportunity to challenge Local 668's calculation of the fee before an impartial decisionmaker; and

d. The collection of full union dues from Plaintiff's wages, as described above in ¶ 20, occurred without the required escrow of amounts reasonably in dispute pending challenges to the amount of the fee before an impartial decisionmaker.

24. The refusal of Local 668 to recognize Plaintiff's resignation from union membership, and its acceptance of full union dues collected from Plaintiff by the Commonwealth Defendants after Plaintiff's resignation from union membership, under color of state law, without providing any of the procedural protections required under the United States Constitution, violates Plaintiff's rights, privileges, and immunities granted by the First, Fifth, and Fourteenth Amendments to the United States Constitution, and violates 42 U.S.C. § 1983.

25. Plaintiff objects to the compelled financial subsidization of the activities of Local 668 for any purposes other than collective bargaining, contract administration, and grievance adjustment for the bargaining unit of employees in which Plaintiff is employed, and/or for any other purposes for which he cannot be compelled to subsidize the collective bargaining representative.

26. On information and belief, portions of the dues collected by Local 668 have been or will be used by Defendant and/or its affiliates for purposes that are not "germane" to collective-bargaining activity, not justified by the government's vital policy interest in labor peace and avoiding "free riders," and/or significantly add to the burdening of free speech that is inherent in the allowance of an "agency shop," including, but not limited to:

- a. lobbying and other political activities that do not concern legislative ratification of, or fiscal appropriations for, the dissenting nonmember's collective-bargaining agreement;
- b. otherwise chargeable activities that do not ultimately enure to the benefit of the employees in the dissenting nonmember's bargaining unit;
- c. litigation that does not concern the dissenting nonmember's bargaining unit and union literature reporting on such activities;
- d. public relations activities; and,
- e. organizing and membership activities undertaken to protect or strengthen Defendant Local 668's or its affiliates' existing status as exclusive bargaining representatives.

27. On information and belief, portions of the fee demanded by Local 668 have been and/or will be used by Local 668 and/or its affiliates for purposes which Defendant cannot prove to be constitutionally chargeable to Plaintiff because Local 668, and/or its affiliates, have failed to maintain contemporaneous business records showing the chargeable or nonchargeable nature of the expenses and/or the time of salaried employees.

**V. CLAIM FOR RELIEF**  
**(Violation of 42 U.S.C. § 1983 and the Constitution of the United States)**

Plaintiff reasserts the foregoing and further alleges:

28. To the extent that the statutes governing Plaintiff's employment, the PERA, 43 PA.STAT.ANN. §§ 1101.301(18) & 1101.705, and the PEFSFL, 43 PA.STAT.ANN. § 1102.1 *et*

*seq.*, authorize forced-unionism agreements, they may only constitutionally do so to the extent that they permit an “agency shop,” and do not authorize public employers, such as the Commonwealth Defendants, to enter into and/or enforce agreements requiring bargaining unit employees to become and/or remain members of labor unions, including Local 668.

29. There is no compelling state interest justifying the government’s requirement that an individual become or remain a member of a private organization, including a labor organization, for up to four years.

30. In the alternative, if there is, somehow, a compelling state interest in requiring members of a labor organization to remain members for the duration of the monopoly bargaining agreement, there is no compelling state interest for government to require its employees to pay for a union’s political, ideological, and other nonbargaining activities.

31. The “Union Security” article, Exhibit A, Article 2 § 1 (b), between Local 668 and the Commonwealth Defendants, creates an unreasonable and overly complex resignation process restricting the Plaintiff’s right to invoke procedural safeguards to protect his constitutional rights under *Hudson*.

32. The “Union Security” and “Dues Deduction” articles, Exhibit A, Articles 2 & 3, between Local 668 and the Commonwealth Defendants, on its face and/or as applied by Defendants, permits Local 668 to require that employees maintain unwilling allegiance to Local 668 and/or its affiliates throughout the life of the CBA and, therefore, violate the limited constitutional authorization for forced unionism schemes under the First Amendment, as set forth in relevant Supreme Court decisionmaking.

33. The PERA, 43 PA.STAT.ANN. §§ 1101.301(18) & 1101.705, “Union Security”

article, Exhibit A, Article 2, and the “Dues Deductions” article, Exhibit A, Article 3, between Local 668 and the Commonwealth Defendants, on their faces and/or as applied by Defendants, permit Local 668 to require that employees maintain unwilling allegiance to Local 668 and/or its affiliates throughout the life of the CBA and are, therefore, unconstitutional in that they create a chilling effect and work a prior restraint upon Plaintiff’s exercise of his rights of association, self-organization, assembly, petition, and freedom of speech, thought, and conscience, as guaranteed by the First, Fifth, and Fourteenth Amendments to the Constitution of the United States.

34. The PERA, 43 PA.STAT.ANN. §§ 1101.301(18) & 1101.705, the “Union Security” article, Exhibit A, Article 2, and the “Dues Deductions” article, Exhibit A, Article 3, between Defendants Local 668 and the Commonwealth Defendants, on their faces and/or as applied by Defendants, permit Local 668 to use the monies exacted from the Plaintiff and other objecting members for political, ideological, and other nonbargaining causes and are, therefore, unconstitutional in that they both create a chilling effect and work a prior restraint upon Plaintiff’s exercise of his rights to association, self-organization, assembly, and petition, and freedoms of speech, thought, and conscience, as guaranteed by the First, Fifth, and Fourteenth Amendments to the Constitution of the United States.

35. As a result of Defendants' unlawful actions described in paragraphs 14-25, Plaintiff:

- a. has been prevented from exercising his rights and privileges as a citizen of the United States to resign from a private organization with which he no longer agrees;
- b. has been prevented from exercising his rights and privileges as a citizen

of the United States not to pay dues for any political, ideological, and nonbargaining activity which he opposes.

c. has been deprived of his civil rights guaranteed to him under the statutes of the United States; and

d. has suffered monetary damages in the amount collected from him, or alternatively, for that amount of dues spent on political, ideological, and nonbargaining activities to which he objects.

36. If not enjoined, Defendants and their agents will continue the aforesaid deprivation and abridgement of Plaintiff's constitutional rights, thereby causing irreparable harm, damage, and injury to Plaintiff for which there is no adequate remedy at law.

#### VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

A. **Declaratory:** A judgment based upon the actual, current, and *bona*

*fide* controversy between the parties as to the legal relations among them, pursuant to 28 U.S.C.

§ 2201 and Rule 57, FED.R.CIV.P., declaring:

1. that the "Union Security" and "Dues Deduction" articles, Exhibit A, Article 2 & 3, between Local 668 and the Commonwealth Defendants, on its face and as applied, unconstitutionally abridges the Plaintiff's rights under the First, Fifth, and Fourteenth Amendments to the Constitution of the United States;

2. that the PERA, 43 PA.STAT.ANN. §§ 1101.301(18) & 1101.705, and the PEFSFL, 43 PA.STAT.ANN. § 1102.1 *et seq.*, on their face and/or as applied, violate the

First, Fifth, and Fourteenth Amendments to the United States Constitution; and

3. that the First and Fourteenth Amendments prevent the Defendants from restricting the right of Plaintiff to resign from union membership at any time and/or requiring objecting nonmembers to pay for the union's political, ideological, and other nonbargaining activities.

**B. Injunctive:** A permanent injunction:

1. enjoining Defendants, their officers, employees, agents, attorneys, and all other persons in active concert with them, from:

a. engaging in any of the activities listed in Part A above which the Court declares illegal;

b. enforcing the "Union Security" and "Dues Deduction" articles, Exhibit A, Articles 2 & 3, between Local 668 and the Commonwealth Defendants, which requires Plaintiff to remain a member of Local 668 for the duration of the monopoly bargaining agreement; and

c. requiring Plaintiff to pay for the political, ideological, and other nonbargaining activities of Local 668 and/or its affiliates.

2. requiring Defendants, their officers, employees, agents, attorneys, and all other persons in active concert with them, to:

a. expunge the "Union Security" and "Dues Deduction" articles, Exhibit A, Articles 2 & 3, between Local 668 and the Commonwealth Defendants;

b. honor Plaintiff's request to resign from union membership,

*nunc pro tunc*; and

c. refund to Plaintiff all union dues deducted from his wages subsequent to the date of resignation.

C. **Monetary:** A judgment awarding Plaintiff compensatory damages for the injuries sustained as a result of Defendants' unlawful interference with and deprivation of his constitutional and civil rights including, but not limited to, the amount of dues deducted from his wages after resignation, and such amounts as principles of justice and compensation warrant.

D. **Attorneys' Fees and Costs:** A judgment awarding Plaintiff costs, including reasonable attorneys' fees under 42 U.S.C. § 1988; and

E. **Other:** Such other and further relief as the Court may deem just and proper.

DATED: \_\_\_ September 2012

Respectfully submitted,

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ATTORNEY FOR PLAINTIFF



VERIFICATION OF COMPLAINT

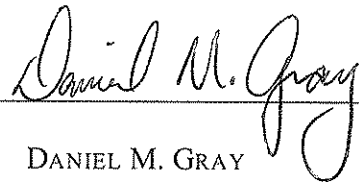
Daniel M. Gray, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. § 1746,  
declares as follows:

I am named as a Plaintiff in the within suit and am employed by the Pennsylvania Department of Labor and Industry in the bargaining unit represented by Defendant SEIU Local 668. I have read the foregoing Complaint, and state upon my knowledge, information, and belief that the statements and allegations contained herein are true and correct.

As stated more fully in the Complaint, Defendant SEIU Local 668, has refused to honor my resignation and has accepted from the Commonwealth Defendants monies deducted from my pay as union dues, notwithstanding the fact that I resigned from union membership, have objected to the payment of fees equal to full union dues, and have not been provided with any notice of my rights under *Teachers Local No. 1 v. Hudson*, 475 U.S. 292 (1986).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 31 August 2012.

  
DANIEL M. GRAY

