

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
PITTSBURGH, PENNSYLVANIA

WILLIAM MANGINO; DIANE GALLO; PAULA  
HENDERSON; KIRK MILLER; LISA MULIK;  
TIMOTHY MULIK; AND DARLENE TUCCINARD,

Plaintiffs,

v.

PENNSYLVANIA TURNPIKE COMMISSION;  
JOSEPH G. BRIMMEIER, CHIEF EXECUTIVE  
OFFICER, PENNSYLVANIA TURNPIKE  
COMMISSION; ANTHONY Q. MAUN,  
DIRECTOR OF ACCOUNTING AND PAYROLL,  
PENNSYLVANIA TURNPIKE COMMISSION; AND  
TURNPIKE, SOFT DRINK, BEER DISTRIBUTOR  
AND MISCELLANEOUS EMPLOYEES,  
TEAMSTERS LOCAL UNION No. 250,  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS,

Defendants.

CASE No. \_\_\_\_\_

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

COME NOW Plaintiffs William Mangino, Diane Gallo, Paula Henderson, Kirk Miller, Lisa Mulik, Timothy Mulik, and Darlene Tuccinard, by and through their undersigned counsel, and state the following claim for relief against Defendants Pennsylvania Turnpike Commission ("PTC"), Joseph G. Brimmeier, Chief Executive Officer, Pennsylvania Turnpike Commission, Anthony Q. Maun, Director of Accounting and Payroll, Pennsylvania Turnpike Commission, and Turnpike, Soft Drink, Beer Distributor and Miscellaneous Employees, Teamsters Union Local No. 250, International Brotherhood of Teamsters ("Local 250"), 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 (“PERA”), 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 Plaintiffs’ exclusive bargaining representative and their public employer, of the rights, privileges, and immunities under the First, Fifth, and Fourteenth Amendments of the United States Constitution. Pursuant to the forced-unionism article of their collective bargaining agreement (“CBA”) and the PERA and the PEFSFL, Defendants have deprived, and are continuing to deprive, Plaintiffs of their constitutional rights. Specifically, Defendant Turnpike, Soft Drink, Beer Distributor and Miscellaneous Employees, Teamsters Union Local No. 250, International Brotherhood of Teamsters (“Local 250”), acting in concert with Defendant Pennsylvania Turnpike Commission (“PTC”) and its herein-named officers, requires Plaintiffs to pay an amount of dues or fees unilaterally determined by Local 250 and its various state and national affiliates — which the PTC has continued to seize from Plaintiffs for the benefit of Local 250 notwithstanding their resignation from union membership and revocation of their dues checkoff authorization cards — which is used for the unions’ political, ideological, and other nonbargaining activities. Thus, the compulsory dues or fees taken from objecting employees exceeds the amount permitted by the First, Fifth, and Fourteenth Amendments. Specifically, Defendants have enforced, are

enforcing, and will continue to enforce, through automatic seizures, compulsory unionism requirements contained in a collective bargaining agreement between the PTC and Local 250 to collect agency fees from Plaintiffs:

a. without complying fully with the “constitutional requirements for the ... collection of agency fees” required by the First and Fourteenth Amendments to the United States Constitution, as set forth more specifically in the Supreme Court’s decision in *Teachers Local No. 1 v. Hudson*, 475 U.S. 292, 310 (1986); and,

b. in amounts which exceed that permitted by the First and Fourteenth Amendments to the United States Constitution, because portions of the total fee are used for union activities which constitutionally cannot be financed from compulsory fees of nonmembers.

2. In addition to injunctive and declaratory relief, Plaintiffs seek compensatory damages for violation of Plaintiffs’ rights under the First and Fourteenth Amendments to the United States Constitution, together with attorneys’ fees, restitution of all agency fees seized from Plaintiffs’ wages before injunctive relief is granted, and punitive damages.

## **II. JURISDICTION AND VENUE**

3. 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.

4. 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 Plaintiffs 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.

5. This is also a case of actual controversy where Plaintiffs are seeking a declaration of their rights under the Constitution of the United States. Under 28 U.S.C. §§ 2201 and 2202, this Court may declare the rights of Plaintiffs and grant further necessary and proper relief based thereon, including preliminary and permanent injunctive relief, pursuant to Rule 65, FED.R.CIV.P.

6. 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 Western District of Pennsylvania.

### **III. PARTIES**

7. Plaintiffs William Mangino, Diane Gallo, Paula Henderson, Kirk Miller, Lisa Mulik, Timothy Mulik, and Darlene Tuccinard, are employees of the Pennsylvania Turnpike Commission. They are employed in a bargaining unit represented, exclusively for purposes of collective bargaining, by Local 250, pursuant to the Public Employee Fair Share Fee Law (“PEFSFL”), 43 PA.STAT.ANN. § 1102.1, *et seq.* Plaintiffs are not members of Local 250, having resigned their memberships in Local 250 by letters sent to Local 250 at various times since September 2005.

8. Each Plaintiff is a “Public employe” or “employee” within the meaning of the Public Employee Relations Act (“PERA”), 43 PA.STAT.ANN. § 1101.301(2)

9. Defendant Pennsylvania Turnpike Commission (“PTC”) is a “Public employer” within the meaning of the PERA, 43 PA.STAT.ANN. §§ 1101.301(1) & 1102.2, and a “Political

subdivision” within the meaning of 43 PA.STAT.ANN. § 1102.2. By and through its officers and/or agents, the PTC has negotiated a series of collective bargaining agreements with Local 250.

10. Defendant Local 250 is an “Employee organization” and an “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 Defendant PTC, Local 250 represents employees of the PTC, including Plaintiffs, exclusively for purposes of collective bargaining with the PTC. Defendant Local 250 maintains a place of business at 3700 South Water Street, Suite 160, Pittsburgh, Pennsylvania 15203-2365, and conducts its business and operations throughout the Commonwealth of Pennsylvania and within the Western District of Pennsylvania. Upon information and belief, Defendant Local 250 is affiliated with and pays monies to, *inter alia*, the International Brotherhood of Teamsters, the Pennsylvania Conference of Teamsters, the Eastern Conference of Teamsters, Teamsters Joint Council #40, the Pennsylvania AFL-CIO, the “Change to Win” coalition, and unspecified Local and Other Affiliations.

11. Defendant Joseph G. Brimmeier (hereinafter “Brimmeier”) is the Chief Executive Officer of the PTC. As such, he is generally responsible for all operations of the Commission, including labor relations. He is sued in his official capacity.

12. Defendant Anthony Q. Maun (hereinafter “Maun”) is the Director of Accounting and Payroll for the PTC. As such, he is charged with the responsibility of issuing wages to employees of the PTC, including Plaintiffs, and processing all deductions therefore, including for union dues and/or agency fees pursuant to the “Union Security/Dues Check-Off” article of the

PTC/Local 250 collective bargaining agreement. He is sued in his official capacity.

#### IV. CAUSE OF ACTION

13. Acting in concert under color of state law — to-wit, the Public Employee Relations Act, 43 PA.STAT.ANN. 1101.201 *et seq.*, and the Public Employee Fair Share Fee Law, 43 PA.STAT.ANN. § 1102.1, *et seq.* — Defendants PTC and Local 250 have entered into a series of CBAs controlling the terms and conditions of Plaintiffs' (and others) employment.

14. 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 forced-unionism article, which provides in pertinent part that:

##### **Section 1.**

A. Any employee who, on the effective date of this agreement, has joined the Union or who joins the Union in the future must, as a condition of employment, remain a member for the duration of this agreement with the proviso that any such employee may resign from the Union during a period of fifteen (15) days prior to the expiration of this agreement.

\*\*\*\*

Exhibit A, CBA, Article IV, § 1(A). Relevant portions of the CBA are attached hereto and incorporated herein as Exhibit A.

15. Notwithstanding the terms of the forced-unionism article, Plaintiffs resigned their memberships in Defendant Local 250 by sending to it resignation letters at various times since September 2005. The resignation letter sent by Plaintiff Lisa Mulik, identical in substance to that sent by each Plaintiff, is attached hereto and incorporated herein as Exhibit B.

16. In addition to their resignations from union membership, each Plaintiff contemporaneously sent a letter to their employer, informing the PTC of their resignation from union membership, and invocation of their rights under *Hudson, supra*. The letter sent by

Plaintiff Lisa Mulik, identical in substance to that sent by each Plaintiff, is attached hereto and incorporated herein as Exhibit C.

17. Defendant Local 250, by its Secretary-Treasurer, Gary F. Pedicone, responded to the resignations of Plaintiffs by sending to them a notice, stating in part that each Plaintiff remained liable for a “financial core fee” equal to 92.01% of full union dues. A true and correct copy of the notice sent to Plaintiff Lisa Mulik, identical in substance to that sent to each Plaintiff, is attached hereto and incorporated herein as Exhibit D.

18. Defendant Local 250, by its Secretary-Treasurer, Gary F. Pedicone, also responded to the resignations of Plaintiffs by instructing the PTC and/or its officials to deduct a reduced fee from those Plaintiffs equal to 92.01% of full union dues. A true and correct copy of said letter is attached hereto and incorporated herein as Exhibit E.

19. Notwithstanding each Plaintiffs’ resignation from union membership, and invocation of their rights to pay reduced fees under *Hudson*, the PTC has continued automatically to deduct, and Local 250 has continued to accept payment by the PTC of, agency fees (denominated as “financial core” or “Fair Share”) equal to 92.01% of full union dues from each Plaintiffs’ wages.

20. As nonmembers subject to a forced-unionism provision, Plaintiffs are entitled to receive appropriate procedural safeguards to protect their constitutional rights **prior to** the demand for and/or collection of any fees from them.

21. Plaintiffs did not receive, after their resignations from union membership and prior to the continued collection of fees equal to full union dues from their wages, adequate notice of their 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 250 failed to provide adequate 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 250 failed to provide **any** financial information about the chargeable and nonchargeable expenses of its many affiliates, verified by an independent auditor;
- c. Local 250 failed to provide any opportunity to object and to challenge the amount of its fee before an impartial decisionmaker; and
- d. Local 250 failed to provide any escrow of amounts reasonably in dispute pending the outcome of such a challenge.

22. Said collections of “financial core” or agency fees from Plaintiffs’ wages after their resignations from union membership, and Local 250’s acceptance of those fees from the PTC, occurred without the appropriate safeguards and procedural protections that are necessary for the constitutional seizure of fees, to-wit:

- a. The collection of agency fees equal to 92.01% of full union dues from Plaintiffs’ wages, as described above in ¶ 19, occurred without the required disclosure of the major categories of Local 250’s expenditures, and allocation between chargeable and nonchargeable components, verified by an independent audit;
- b. The collection of agency fees equal to 92.01% of full union dues from Plaintiffs’ wages, as described above in ¶ 19, occurred without the required audit of union expenditures and the allocation between chargeable and nonchargeable categories of expenditures for each and every Local 250 affiliate receiving a portion of the fee;
- c. The collection of agency fees equal to 92.01% of full union dues from



Plaintiffs' wages, as described above in ¶ 19, occurred without the required reasonably prompt opportunity to challenge Local 250's calculation of the fee before an impartial decisionmaker; and

d. The collection of agency fees equal to 92.01% of full union dues from Plaintiffs' wages, as described above in ¶ 19, occurred without the required escrow of amounts reasonably in dispute pending challenges to the amount of the fee before an impartial decisionmaker.

23. Defendant seizure, and Local 250's acceptance, of agency fees equal to 92.01% of full union dues collected from Plaintiffs by the PTC after Plaintiffs' resignations from union membership, under color of state law, without providing any of the procedural protections required under the United States Constitution, violates their rights, privileges, and immunities granted by the First, Fifth, and Fourteenth Amendments to the United States Constitution, and in violation of 42 U.S.C. § 1983.

24. Plaintiffs object to the compelled financial subsidization of the activities of Defendant Local 250 for any purposes other than collective bargaining, contract administration, and grievance adjustment for the bargaining unit of employees in which they are employed, and/or for any other purposes for which they cannot be compelled to subsidize their collective bargaining representative.

25. On information and belief, portions of the dues collected by Local 250 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, initiative and other political activities which do not concern legislative ratification of, or fiscal appropriations for, the individual nonmember's collective bargaining agreement.
  - b. defending District Council 33 and/or its affiliates against efforts by competing labor organizations to obtain representation rights;
  - c. litigation which does not concern the individual nonmember's bargaining unit;
  - d. public-relations activities;
  - e. organizing, defending challenges from other unions, maintenance of membership, and other membership activities undertaken to protect or strengthen Defendants' or their affiliates' existing status as exclusive bargaining representatives;
  - f. membership recruitment and members-only programs, activities, services, or benefits;
  - g. social activities;
  - h. charitable, religious, and ideological activities, causes, or contributions;
- and,
- i. Union literature reporting on or involving such activities.

26. On information and belief, portions of the fee demanded by Defendant Local 250 have been and/or will be used by Defendant and/or its affiliates for purposes which Defendant cannot prove to be constitutionally chargeable to Plaintiffs because Defendant Local 250, 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.

27. Plaintiffs' decisions to resign from union membership and object to the payment

of full union dues are exercises of their rights to freedom of speech, association, petition, belief and thought guaranteed against state action by the First and Fourteenth Amendments to the United States Constitution. Defendants' actions, acting in concert to negotiate and enforce agreements compelling Plaintiffs to pay agency fees to Local 250 and/or its constituent locals, even for the costs of exclusive representation on behalf of their bargaining unit, infringe upon those fundamental rights.

28. The First and Fourteenth Amendments to the United States Constitution require that the procedures for the collection of agency fees be carefully tailored to limit the infringement on the fundamental rights of nonunion employees to serving the compelling state interest that justifies such fees in the manner least restrictive of the nonunion employees' freedoms of speech, association, petition, belief and thought.

29. The First and Fourteenth Amendments to the United States Constitution require that the activities for which nonmembers are required to pay agency fees: (a) be germane to collective-bargaining activity; (b) be justified by the government's vital policy interest in labor peace and avoiding so-called "free riders"; and (c) not significantly add to the burdening of free speech that is inherent in the allowance of an agency or union shop.

30. The First and Fourteenth Amendments to the United States Constitution require that Local 250 and all of its affiliates prove their ratio of chargeable expenses to total expenses.

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

Plaintiffs reassert the foregoing and further allege:

31. The Pennsylvania Public Employee Fair Share Fee Law, 43 PA.STAT.ANN.

§ 1102.1, *et seq.*, and/or the forced-unionism provisions of the PTC/Local 250 CBA, as applied by Local 250 and the PTC, violate Plaintiffs' First and Fourteenth Amendment rights, in that they do not comply with any of "the constitutional requirements for the ... collection of agency fees." *Hudson*, 475 U.S. at 310.

32. The Pennsylvania Public Employee Fair Share Fee Law, 43 PA.STAT.ANN.

§ 1102.1, *et seq.*, the forced-unionism provisions of the PTC/Local 250 CBA, and their failure to provide all constitutionally-adequate policy and procedures regarding the seizure of compulsory agency fees from nonmembers, as applied by Defendants, violate Plaintiffs' First and Fourteenth Amendment rights, in that they require, and there has been, deduction of agency fees for purposes which are not constitutionally chargeable, or for purposes as to which Local 250 and its affiliates cannot meet their burden of proving chargeability.

33. The Pennsylvania Public Employee Fair Share Fee Law, 43 PA.STAT.ANN.

§ 1102.1, *et seq.*, as applied through the forced-unionism provisions of the PTC/Local 250 CBA, violates the First and Fourteenth Amendments to the United States Constitution in that it requires agency fees to be, and they are, calculated in a manner that is arbitrary and not designed to ensure that the fees include only constitutionally chargeable costs, *i.e.*, the costs of exclusive representation within the bargaining units for which Local 250 is, and/or its constituent locals are, the exclusive representative(s).

34. The Pennsylvania Public Employee Fair Share Fee Law, 43 PA.STAT.ANN.

§ 1102.1, *et seq.*, as applied through the forced-unionism provisions of the PTC/Local 250 CBA, violates the First and Fourteenth Amendments to the U.S. Constitution because it requires, and there have been, deduction of agency fees: (a) although nonmembers have not been provided with constitutionally adequate notice and procedures for challenging the amount of the fee; and

(b) before the constitutionally required notice and opportunity to make challenges have been given.

35. Portions of Local 250's union-determined fee have been or will be used for purposes which Defendants cannot prove constitutionally to be chargeable because Defendants, or some of them, have failed to maintain contemporaneous business records showing the chargeable or nonchargeable nature of expenses and/or time records of salaried employees and/or in other ways will fail to satisfy their burden of proof.

36. Accordingly, unless restrained by this Court, Defendants will continue the aforementioned deprivations and abridgements of Plaintiffs' First Amendment rights, thereby causing irreparable harm, damage, and injury that is inherent in the violation of First Amendment rights, for which Plaintiffs will have no adequate remedy at law. In addition, Defendants' aforementioned abridgement of Plaintiffs constitutional rights have been deprived and will continue to deprive Plaintiffs of their wages without due process of law.

37. As a direct result of Defendants' unlawful actions, Plaintiffs:

(a) have been prevented from exercising their rights and privileges, afforded them by the United States Constitution, to be free from compulsory dues deductions absent compliance with "the constitutional requirements for the ... collection of agency fees," *Hudson*, 475 U.S. at 310;

(b) have been prevented from exercising their rights and privileges, afforded them by the United States Constitution, to be free from compulsory union fee seizures attributable to union activities which cannot constitutionally be charged to nonmembers, and to be free from having their property used, even temporarily, for nonchargeable activities;

(c) have been deprived of their civil rights which are protected by the statutes of the United States;

(d) have suffered monetary damages in the amount of the agency fees which Defendants have illegally seized from them; and

(e) have suffered irreparable harm, injury, and damage to their First and Fifth Amendment rights for which there is no adequate remedy at law.

38. There is no compelling state interest for government to require nonunion employees to pay for the union's political, ideological, and other nonbargaining activities.

## **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 forced-unionism provisions of the collective bargaining agreement between Defendants Local 250 and the PTC, on its face and as applied, unconstitutionally abridges the Plaintiffs' rights under the First, Fifth, and Fourteenth Amendments to the Constitution of the United States;

2. that the Public Employe Relations Act, 43 PA.STAT.ANN. §§ 1101.301(18) & 1101.705, and the Public Employee Fair Share Fee Law, 43 PA.STAT.ANN. § 1102.1, *et seq.*, on their face and/or as applied, violates the First, Fifth, and Fourteenth Amendments to the United States Constitution; and

3. that the First and Fourteenth Amendments prevent the Defendants from

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 forced-unionism provisions of the collective bargaining agreement between Defendants Local 250 and the PTC; and

c. requiring Plaintiffs to pay for the political, ideological, and other nonbargaining activities of Local 250 and/or its affiliates.

2. requiring Defendants, their officers, employees, agents, attorneys, and all other persons in active concert with them, to refund to each Plaintiff all union dues and/or agency fees deducted from their wages subsequent to the date of each resignation.

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

**D. Attorneys' Fees and Costs:** A judgment awarding Plaintiffs 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: 21 March 2007

Respectfully submitted,

/s/ W. James Young

W. JAMES YOUNG, ESQ.

PA 56300; DC 427089

c/o National Right to Work Legal Defense  
Foundation, Inc.

8001 Braddock Road, Suite 600

Springfield, Virginia 22160

TELEPHONE — (703) 321-8510

FACSIMILE — (703) 321-9319

ATTORNEY FOR PLAINTIFFS

C:\Documents and Settings\W. James Young\My Documents\Legal Documents\Pennsylvania Cases\Mangino.fed\Complaint.rev.wpd  
Wednesday, 21 March 2007, 10:07:35 AM