THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MIRIAM FULTZ, ET AL	:	20-cv-2107
Plaintiffs	:	Judge Jones
	:	
v.	:	
	:	
AMERICAN FEDERATION OF	:	
STATE, COUNTY AND MUNICIPAL	:	
EMPLOYEES, COUNCIL13, ET AL	:	
Defendants	:	

MEMORANDUM AND ORDER

July 16, 2021

Presently pending before the Court is the Motion of Commonwealth Defendants to Dismiss Plaintiffs' Complaint, ("the Motion"), filed by Thomas W. Wolf, Michael Newsom, and Brian T. Lyman (collectively, "the Commonwealth Defendants"). (Doc. 22). The instant claims arose when Plaintiffs, all public employees of the Commonwealth of Pennsylvania, attempted to resign their memberships in the American Federation of State, County, and Municipal Employees, Council 13, ("the Union"). (Doc. 18 at ¶¶ 50-51). While, Plaintiffs allege, the Commonwealth Defendants "do not consider Plaintiffs [. . .] to be members of Council 13" at present, they have nevertheless continued to deduct union membership dues from each Plaintiff's paycheck. (*Id.* at ¶ 53). Plaintiffs now aver that this conduct is in violation of the Supreme Court's recent holding that unions cannot compel non-member public employees to pay dues or fees to a union

as a condition of employment. (*Id.* ¶ 2 (citing *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018))). Commonwealth Defendants disagree, arguing that *Janus* does not apply and asking us to dismiss Plaintiffs' Complaint in its entirety. For the reasons that follow, we will grant in part and deny in part the Motion.

I. FACTUAL BACKGROUND

We take the following from Plaintiffs' Amended Complaint and assume its veracity, as we must.

a. The Parties

Plaintiffs Miriam Fultz, Darleen Dalto, Lucinda Radaker, Lacey Bainbridge, Carol Shaner, Jason Kohute, Kurtis Coates, Lisa Southers, Brittany Zappasodi, Scott Carter, Debra Kerstetter, Ashley Cluck, Blaine Chapman, and Barbara Richter are all current "public employe[es]" and "Commonwealth employe[es]" as those terms are defined by 43 P.S. §1101.301(2) and 43 P.S. §1101.301(15). (*Id.* at ¶¶ 9-22). Each Plaintiff was, at some point, a dues-paying member of the Union, but each resigned their respective membership between May 8, 2020 and December 23, 2020. (*Id.*). Of note, eight Plaintiffs—Miriam Fultz, Darleen Dalto, Lacey Bainbridge, Scott Carter, Debra Kerstetter, Ashley Cluck, Blaine Chapman, and Barbara Richter—joined the Union prior to the Janus decision. (*Id.* at ¶¶ 9-10, 12, 18-22). Six Plaintiffs—Lucinda Radaker, Carol Shaner, Jason Kohute, Kurtis

Coates, Lisa Southers, and Brittany Zappasodi—joined the Union after the Janus decision. (*Id.* at ¶¶ 11, 13-17).

The Union is an "Employe organization" and a "Representative," as those terms are defined by 43 P.S. §1101.301(3) and 43 P.S. § 1101.301(4). (*Id.* at ¶ 23). "Pursuant to collective bargaining agreements, Council 13 represents certain employees of the Commonwealth of Pennsylvania, including Plaintiffs and proposed class members, exclusively for purposes of collective bargaining with the Commonwealth." (*Id.*).

Defendant Thomas Wolf is the Governor of Pennsylvania and "is generally responsible for the operations of the Commonwealth and the enforcement of its laws, including labor relations." (*Id.* at ¶ 24). Defendant Michael Newsom is Secretary of the Office of Administration for Pennsylvania, and "negotiated, entered into, and is the signatory to, on behalf of the Commonwealth, the CBA governing the terms and conditions of employment for Plaintiffs and proposed class members." (*Id.* at ¶ 25). Defendant Newsom is also responsible for human relations for Commonwealth Employees. (*Id.*).Defendant Brian T. Lyman is the Chief Accounting Officer for Pennsylvania and "oversees the payroll system for the Commonwealth, which includes processing union dues and other payroll deductions pursuant to the requirements of the CBA." (*Id.*at ¶ 26). The Commonwealth is a "Public employer" within the meaning of 43 P.S. §1101.30(1)

and, "[t]hrough its officers and agents [. . .] negotiated for and entered into the collective bargaining agreement with [the Union] that governs Plaintiffs' and proposed class members' terms and conditions of employment." (*Id.* at ¶ 24).

b. Statutory Framework

> The Public Employe [*sic*] Relations Act, ("PERA"), provides that:
>
> It shall be lawful for public employes [*sic*] 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 of a collective bargaining agreement*.

(Doc. 23 at 8 (citing 43 Pa. Cons. Stat. § 1101.401)) (emphasis added). Specifically, PERA "authorizes public employers and employee organizations and/or representatives to engage in collective bargaining relevant to membership dues deductions." (*Id*. at ¶ 47 (citing 43 P.S. §1101.705)). Pursuant to PERA, the Union entered into collective bargaining agreements, ("the CBA"), with the Commonwealth that "have controlled the terms and conditions of Plaintiffs' [. . .] employment at all relevant times hereto." (*Id.* at ¶ 45).

PERA defines "membership dues deduction" as "the practice of a public employer to deduct from the wages of a public employe [*sic*], with his written consent, an amount for the payment of his membership dues in an employe [sic] organization, which deduction is transmitted by the public employer to the

employe [sic]organization." (*Id.* at ¶ 46 (quoting 43 P.S. § 1101.301(11))). Notably, any such authorizations "shall remain in effect until expressly revoked in writing by the employee in accordance with the terms of the [initial] authorization.

c. Provisions of the Union Agreement

As permitted by PERA, Article 4 of the CBA, entitled "Dues Deductions," requires the Commonwealth, as an employer, "to deduct dues from the wages of an employee for Council 13, subject to the terms and conditions of the CBA." (*Id*. at ¶ 48). Each Plaintiff's Council 13 Membership Card contains the terms of those voluntary dues deduction authorizations. [1]

Those Cards serve as each employee's application for membership in the Union and officially authorize the Commonwealth to make voluntary dues deductions from their paychecks. (Docs. 24-3-24-16). Specifically, Plaintiffs, by signing their respective Membership Cards, agreed to: "voluntarily authorize and direct my Employer to deduct from my pay each pay period, regardless of whether I am or remain a member of the Union, the amount of dues certified by the Union." (*Id.*). Furthermore, the Cards acknowledged that each Plaintiff agreed that:

[1] Plaintiffs have referred to provisions of the Union membership card in their Amended Complaint. *See, e.g.,* Doc. 18 at ¶¶ 55-56. As such, we fully consider the terms of those Union membership cards, even though those provisions may not be explicitly cited by the operative pleading. *See Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006) ("In evaluating a motion to dismiss, we may consider documents that are attached to or submitted with the complaint [and] matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, [and] items appearing in the record of the case").

> This voluntary authorization and assignment shall be irrevocable, regardless of whether I am or remain a member of the Union, for a period of one year from the date of execution of this authorization or until the termination date of the collective bargaining agreement (if there is one) between my Employer and the Union, whichever occurs sooner, and for the years to come, unless I give my Employer and the Union written notice of revocation during the fifteen (15) days before the annual anniversary date of this authorization or, for public sector contracts, during the fifteen (15) days before the date of termination of the appropriate collective bargaining agreement between the Employer and the Union, whichever occurs sooner.

(*Id*.). In other words, while Plaintiffs are free to resign their Union memberships at any time, they agreed to be financially responsible for Union membership dues for a period of one year from the date of signing their Cards. Plaintiffs may relieve themselves of their dues deductions obligations *only* by notifying the Union and the Commonwealth of their desire to do so, in writing, during the fifteen days prior to the one-year anniversary of their initial Card signing.

d. Plaintiff's Alleged Union Resignations

Each named Plaintiff resigned their respective Union membership between May 8, 2020 and December 23, 2020. (Doc. 18 at ¶¶ 9-22). They did so by providing notice to both the Union and Commonwealth. (*Id.* at ¶ 52). Plaintiffs aver that Commonwealth Defendants "do not consider Plaintiffs and proposed class members to be members" of the Union at this time. (*Id.* at ¶ 53). Nevertheless, Plaintiffs maintain, Commonwealth Defendants "refused to stop deducting dues from Plaintiffs' and proposed class members' wages for Council 13

as of the date of [each] membership resignation" from the Union. (*Id*. at ¶ 54). Instead, Plaintiffs claim, they have been informed that "they must continue dues deductions to and financial support of Council 13 indefinitely, at least until a purported annual 15-day escape window." (*Id.* at 55). As such, Plaintiffs will be required to "re-notify" both the Union and the Commonwealth "of their desire to end financial support of Council 13 within the purported annual 15-day escape window in order to have the Commonwealth cease deducting financial support for Council 13 [from Plaintiffs' wages]." (*Id.*at ¶ 56).

II. PROCEDURAL HISTORY

Plaintiffs commenced this action on November 12, 2020. (Doc. 1). Upon request of the parties, we stayed proceedings in this case on January 12, 2020 pending the Third Circuit's resolution of *Smith v. New Jersey Education Association* and *Fisher v. Governor of New Jersey*. (Doc. 13). After the Third Circuit issued a non-precedential combined opinion in these matters, the parties filed a joint status report indicating that Plaintiffs wished to file an amended complaint reflecting the Third Circuit's findings. (Doc. 16). *See also Fischer v. Governor of New Jersey*, 842 F. App'x 741, 744 (3d Cir. 2021). We granted Plaintiffs' request, and an Amended Complaint was filed on March 1, 2021. (Docs. 17; 18). Their new complaint alleged the following: violation of First Amendment rights (Count I) and violation of procedural due process (Count II).

Commonwealth Defendants filed a motion to dismiss all counts on April 5, 2021. (Doc. 22). They filed a brief in support simultaneously. (Doc. 23). Plaintiffs filed a brief in opposition on May 3, 2021. (Doc. 33). Commonwealth Defendants replied on May 17, 2021. (Doc. 34). The matter is thus ripe for review.

III. STANDARD OF REVIEW

In considering a motion to dismiss pursuant to Rule 12(b)(6), courts "accept all factual allegations as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008) (quoting *Pinker v. Roche Holdings, Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002)). In resolving a motion to dismiss pursuant to Rule 12(b)(6), a court generally should consider only the allegations in the complaint, as well as "documents that are attached to or submitted with the complaint, . . . and any matters incorporated by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, [and] items appearing in the record of the case." *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006).

A Rule 12(b)(6) motion tests the sufficiency of the complaint against the pleading requirement of Rule 8(a). Rule 8(a)(2) requires that a complaint contain a short and plain statement of the claim showing that the pleader is entitled to relief, "in order to give the defendant fair notice of what the claim is and the grounds

upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint attacked by Rule 12(b)(6) motion to dismiss need not contain detailed factual allegations, it must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To survive a motion to dismiss, a civil plaintiff must allege facts that "raise a right to relief above the speculative level…." *Victaulic Co. v. Tieman*, 499 F.3d 227, 235 (3d Cir. 2007) (quoting *Twombly*, 550 U.S. at 555). Accordingly, to satisfy the plausibility standard, the complaint must indicate that defendant's liability is more than "a sheer possibility." *Iqbal*, 556 U.S. at 678. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

Under the two-pronged approach articulated in *Twombly* and later formalized in *Iqbal*, a district court must first identify all factual allegations that constitute nothing more than "legal conclusions" or "naked assertions." *Twombly*, 550 U.S. at 555, 557. Such allegations are "not entitled to the assumption of truth" and must be disregarded for purposes of resolving a 12(b)(6) motion to dismiss. *Iqbal*, 556 U.S. at 679. Next, the district court must identify "the 'nub' of the … complaint – the well-pleaded, nonconclusory factual allegation[s]." *Id.* Taking

these allegations as true, the district judge must then determine whether the complaint states a plausible claim for relief. *See id.*

However, "a complaint may not be dismissed merely because it appears unlikely that the plaintiff can prove those facts or will ultimately prevail on the merits." *Phillips,* 515 F.3d at 231 (citing *Twombly*, 550 U.S. at 556-57). Rule 8 "does not impose a probability requirement at the pleading stage, but instead simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element." *Id.* at 234.

IV. DISCUSSION

Commonwealth Defendants make three arguments in favor of dismissal: (1) *Janus* does not affect the rights of public sector employees who *voluntarily* join a union; (2) holding Plaintiffs to the terms of the bargain does not violate the First Amendment; and (3) Plaintiffs are not entitled to the specific waiver procedures they now request. (Doc. 23). In response, Plaintiffs alleged that *Janus* does apply to their case and that, even if it does not, the Membership Cards by which they joined the Union constitute unenforceable contracts. Furthermore, Plaintiffs allege that they were not provided "readily ascertainable" procedures by which to cease payments to the Union in violation of their due process rights. (Doc. 33). We begin by considering the applicability of *Janus* to the present set of facts.

a. Applicability of Janus

In 2018, the Supreme Court held that "[n]either an agency fee nor any other payment to the union may be deducted from a nonmember's wages, nor may any other attempt be made to collect such a payment, *unless the employee affirmatively consents to pay*. By agreeing to pay, nonmembers are waiving their First Amendment rights, and such a waiver cannot be presumed." *Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2486, 201 L. Ed. 2d 924 (2018).

Here, Plaintiffs argue that *Janus* applies to their own plight as nonmembers of the Union who are "being forced to pay nonmember dues against their will." (Doc. 33 at 7). In support thereof, they note that the Membership Card is not "limited to terms of union membership[, but r]ather, also embedded in the relevant membership card is a provision that asks public employees to agree to pay dues as *nonmembers* [. . . while] the card bears no notice to the nonmembers as to their right to not pay union fees to Council 13 if they are nonmembers." (*Id.* at 9). In sum, Plaintiffs argue that "the membership card does more than simply govern membership: it requires signees to agree to pay dues to the union as nonmembers. And that completes the alleged violation here, because without a valid constitutional waiver, '[n]either an agency fee nor any other payment to the union

may be deducted from a nonmember's wages.'" (*Id.* at 11 (*citing Janus*, 138 S. Ct. at 2486)).

Commonwealth Defendants disagree, maintaining that *Janus* is not applicable to the instant case. (Doc. 34 at 3). In support thereof, they note that:

> Plaintiffs are not in the same position as the public employees in *Janus*, who declined Union membership and paid a mandatory fair share fee. Here, Plaintiffs were notified that they had the option to join the Union—or not join the Union—and they all exercised their First Amendment right to join the Union. Plaintiffs all signed the Membership Cards, which clearly state how dues deductions will be made and the circumstances under which dues deductions may cease. In exchange for the ongoing benefits of membership, Plaintiffs paid dues and agreed to the 15-day resignation "window" provision they now challenge.

(*Id.*). In sum, Commonwealth Defendants maintain that *Janus* does not apply when an employee has voluntarily signed a contract to join a Union—the Supreme Court *only* considered whether non-union members could be assessed "fair share fees" "for the benefits they received from union representation on behalf of all public employees in their bargaining unit" *without* their consent. (Doc. 23 at 13). Other than the prohibition on charging mandatory fees to non-members, Commonwealth Defendants argue, states are permitted to "keep their labor-relations systems exactly as they are." (*Id*. (citing Janus, 138 S. Ct. at 2485 n. 27)).

This argument has recently received approval from the Third Circuit. In *Fischer v. Governor of New Jersey*, members of a New Jersey teacher's union argued that the waiting periods set forth in state statues and in their union

membership agreements were unconstitutional under *Janus*, as they allowed Plaintiff's to disassociate from the union, but still required payment of dues as non-members for a set period of time. *Fischer v. Governor of New Jersey*, 842 F. App'x 741, 744 (3d Cir. 2021). As the Third Circuit noted, "[c]hanges in decisional law, even constitutional law, do not relieve parties from their pre-existing contractual obligations." *Fischer*, 842 F. App'x at 752 (internal citations omitted). "Put succinctly, 'a party cannot avoid its independent contractual obligations simply because a change in the law confers upon it a benefit' after the agreement is signed. Ehrheart, 609 F.3d at 596. Rather,

> [b]y binding oneself [to an agreement,] one assumes the risk of future changes in circumstances in light of which one's bargain may prove to have been a bad one. That is the risk inherent in all contracts; they limit the parties' ability to take advantage of what may happen over the period in which the contract is in effect.

Id. at 752 (citing McKeever v. Warden SCI-Graterford, 486 F.3d 81, 89 (3d. Cir. 2007) (quoting United States v. Bownes, 405 F.3d 634, 636 (7th Cir. 2005)). Even in the First Amendment context, the common law of contracts applies as a "law of general applicability." *Id*. at 753. Indeed, this opinion aligns with a "swelling chorus of courts" that has recognized that "'*Janus* does not extend a First Amendment right to avoid paying union dues' when those duties arise out of a contractual commitment that was signed before *Janus* was decided." *Id.* (citing *Belgau v. Inslee*, 975 F.3d 940, 944–45 (9th Cir. 2020) (collecting cases)).

We consequently find that Plaintiffs may not avoid their contractual obligations, for which they received valuable consideration, based upon subsequent changes in contractual law.[2] *Janus* does not provide a basis for challenging their union membership agreements, nor the dues paid pursuant to that agreement. We next consider whether Plaintiffs have stated a claim under traditional contract law.

b. Enforceability of Union Membership Contracts

Even assuming the inapplicability of *Janus*, Plaintiffs argue that dismissal is still not appropriate because we cannot yet determine whether the Membership Cards constitute enforceable contracts. (Doc. 33 at 11). We construe three

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[2] True, several Plaintiffs joined the Union *after Janus* was decided. (Doc. 18 at ¶¶ 13-15; 17). Plaintiffs argue that these deductions are "more egregious, as Defendants knew at the time they asked those Plaintiffs to agree to pay dues as nonmembers that *Janus* required a constitutional waiver to take financial support from nonmembers." (Doc. 33 at 10). Instead, Plaintiffs argue, the membership card terms remained identical before and after *Janus* was decided and Commonwealth Defendants made no effort to inform Plaintiffs of their constitutional rights. (*Id*.). But Plaintiffs point to no case law indicating that *Janus* has imposed an affirmative obligation upon employers to inform employees of the *Janus* decision—indeed, *Janus* only explicitly requires that "the employee affirmatively consents to pay" any union fees. *Janus*, 138 S. Ct. at 2486. On this front, *Janus* merely indicates that such a "waiver must be freely given and shown by 'clear and compelling' evidence. *Id*. We note that the language in the Membership Cards indicates that authorization of dues deductions is "voluntary" and shall occur "regardless of whether [Plaintiffs are] or remain [members] of the union for a period of one year from the date of execution of this authorization [. . .] unless [Plaintiffs] give [. . .] the Union written notice of revocation during the fifteen (15) days before the annual anniversary date of this authorization." (Doc. 23-1). Furthermore, Plaintiffs acknowledged that they "understand that [union dues deduction authorization] is not required as a condition of membership in any organization, or as a condition of continued employment, and is free of reprisal." (*Id*.). We believe that the execution of such Membership Cards, which clearly indicate that Plaintiffs *are not required* to join the Union as a condition of employment, and promise that there will be no reprisals for refusing dues deductions, constitutes such affirmative consent by clear and convincing evidence. Consequently, we find, absent further guidance from the Supreme Court or the Third Circuit, that the language of the Membership Cards constitutes "clear and convincing" evidence of an effective waiver.

arguments in favor of this proposition: [3] (1) "valuable consideration may not be present in the purported membership card contracts" because "most" Plaintiffs were already members of the Union before they signed their membership cards; (2) the membership cards lack "plain terms" that are central to the contract, such as an ambiguity concerning the "annual anniversary date" of each Membership Card; and (3) the Union "could be found to have materially breached the contract by failing to perform." (Doc. 33 at 13-14).

To evaluate these arguments, we look to Plaintiffs' Amended Complaint, as we must. While Plaintiffs ground these arguments in contract law, they are meant to illustrate that Commonwealth Defendants are not entitled to dismissal of Plaintiffs' §1983 claim because the contracts may be unenforceable and, consequently, may not insulate their allegedly unconstitutional dues deductions by sufficient waiver of First Amendment rights. But we see no factual allegations whatsoever that would support these contractually based arguments.

In their Amended Complaint, Plaintiffs do not allege that their execution of the Membership Cards was not supported by adequate consideration.[4] They do not

[3] In addition, Plaintiffs argue that *Fischer* does not mandate dismissal as it only addresses contracts signed before the *Janus* decision. As we previously discussed, we find that Plaintiffs voluntarily contracted to pay Union dues, and Plaintiffs have presented no case law which indicates that such contractual obligations can be thrown over.

[4] We cannot *imply* that Plaintiffs have alleged a lack of consideration based upon their argument that "most" Plaintiffs were already Union members when they signed their Membership Cards. (Doc. 33 at 13). For example, Plaintiffs allege that Miriam Fultz resigned her

allege that the term "annual anniversary date" is ambiguous. Instead, Plaintiffs focus exclusively on the alleged unconstitutionality of these actions. While these two concepts are admittedly connected in this case, we cannot conjure allegations of an unenforceable contract from thin air to support Plaintiffs' §1983 claims. Plaintiffs raise these arguments for the first time in their opposition brief, and it thus not appropriate for us to consider any new factual allegations they raise in support thereof now.

Only their allegation of a material contract breach finds root in Plaintiffs' Amended Complaint. They alleged that dues deductions have been deducted after their resignation from the Union (in line with the requirement to pay dues until the 15-day escape window), but that "they are not entitled to union member rights and benefits as of the date of their resignation." (Doc. 18 at ¶ 56-57). They argue that being forced to pay dues without receiving the rights and benefits of union membership constitutes "altering the terms of the contract" and "could be found" to be a material breach." (Doc. 33 at 15). But this argument still fails to state a claim for relief for two reasons. First, Plaintiffs do not allege that the failure to provide benefits while still collecting dues *actually violated the membership*

Union membership "on or about June 29, 2020." (Doc. 18 at ¶ 9). But we see no allegation as to when she joined the Union or when she signed her Membership Card, should those be two separate dates. To be sure, we can consider her Membership Card itself to determine the date of execution, but we have no allegation whatsoever that Plaintiff Fultz was already a member of the Union before that date. The same can be said for the allegations of other named Plaintiffs.

contracts. Instead, we fail to see an alleged connected between these facts and *any* of Plaintiffs' legal claims. We cannot write into existence an allegation that Commonwealth Defendants' actions violate the bargained-for contract, and we will not do so now.

Second, the explicit language of the Membership Cards contradicts Plaintiffs' argument. We are only required to take as true those allegations which are plausible on their face. These are not. The Membership Cards explicitly state that the dues deduction authorization is *completely voluntary*, but, once agreed to, "shall be irrevocable, *regardless of whether [Plaintiff is] or remain[s] a member of the Union*, for a period of one year from the date of [. . .] authorization." (Doc. 23-1). This language, on its face, indicates that Plaintiffs may cut all ties to the Union and its membership, but will still be required to pay the authorized dues for a period of one year from the date of their execution of the Membership Cards. Plaintiff's novel argument that such action constitutes a material breach is thus a nonsensical one.

Consequently, we find that Plaintiffs have failed to state a claim for which relief may be granted grounded in an allegedly unenforceable contract. And because Plaintiffs have failed to allege that the Membership Cards are not enforceable, we will hold them to the terms to which they duly agreed.

c. Procedural Due Process

Finally, Plaintiffs argue that they "have alleged due process violations both in the ways their resignations were handled, and in their lack of options for ceasing the forced financial support" of the Union. (Doc. 33 at 15-16). We construe the statement as alleging due process violations both in the handling of Plaintiffs' dues deductions authorizations and in the Union's use of said dues for "'*any* purpose,' including ideological or political speech with which Plaintiffs may disagree." (Doc. 33 at 18). We take each argument in turn.

"In resolving due process claims, courts undertake a two-stage inquiry in which they consider '(1) whether plaintiff has a property interest protected by procedural due process, and (2) what procedures constitute due process of law.'" *Schmidt v. Creedon*, 639 F.3d. 587, 595 (3d. Cir. 2011) *quoting Gikas v. Wash. Sch. Dist.,* 328 F.3d. 731, 737 (3d. Cir. 2003). Commonwealth Defendants "set[ ] aside whether electing to contribute dues can be described as a deprivation" and instead focus upon whether Plaintiffs have adequately alleged that the process provided to them was deficient. (Doc. 23 at 18). We will thus do the same.

Plaintiffs have sufficiently stated a claim that the process by which to cease paying dues was procedurally deficient. They have alleged that they took advantage of the process afforded to them—in this case, informing Commonwealth Defendants that they wished to cease paying Union dues within the alleged

window, as is required by their Membership Cards. (Doc. 18 at ¶ 64). And they have also alleged that "Commonwealth Defendants have continued to [. . .] deduct union dues" for the Union, despite receiving notice that Plaintiffs wished to cease dues deductions during the applicable 15-day window." (*Id.*). We find that these facts are sufficient to survive at this early procedural juncture.

Plaintiffs will be expected to produce evidence indicating that they gave adequate notice to Commonwealth Defendants to cease dues deductions to ultimately prevail on this claim. They will also be required to show that those deductions continued after the alleged provision of notice.[5] We make no judgments on the ultimate success of such claims but must take as true Plaintiffs' allegations at this time. As such, Plaintiffs will be permitted to conduct discovery on the

[5] We note that the Third Circuit has recently held that a failure to cease dues deductions promptly after receiving notice that an employee wished to resign union membership did not give rise to First Amendment claims. *See LaSpina v. SEIU Pennsylvania State Council*, 985 F.3d 278, 287 (3d Cir. 2021). But we believe the instant case to be distinguishable. First, we consider a claim for procedural due process here, not one actionable under the First Amendment, which we have already dismissed. Second, *LaSpina* considered a situation in which an employer had continued to deduct union dues for several months after receiving a clear union resignation, ostensibly because they were inundated with such requests in the wake of *Janus. Id.* at 288. In that case, the employer offered a refund of the deductions, which, the Third Circuit emphasized, were *not* agency or fair-share fees that would receive protection from *Janus*. And most importantly, *LaSpina* did not consider a contractual obligation to continue paying union dues, nor did it address what would happen if an employer or union allegedly continued to collect dues *in contravention of an appropriately bargained-for contract.* Thus, we believe it appropriate to allow this claim to continue at this early juncture, and do not believe doing so would run afoul of *LaSpina*.

limited issue of procedural due process violations in the continued collection of Union dues.[6]

On the other hand, Plaintiff's argument that the Union's use of their dues for "'*any* purpose,' including ideological or political speech with which Plaintiffs may disagree," violates their procedural due process rights cannot survive a Rule 12(b)(6) motion. (Doc. 33 at 18). At this juncture, we remain silent on whether such a claim could survive at all, but instead find that Plaintiffs have failed to state a claim against *Commonwealth* Defendants on this issue. As Plaintiffs note in their Amended Complaint, any Union dues deducted from an employee's paycheck are "transmitted by the public employer to the employee organization." (Doc. 18 at ¶ 46). And indeed, Plaintiffs further alleged that "[o]n information and belief, Council 13 uses the financial support forcibly seized from Plaintiffs and proposed class members while they are nonmembers for purposes of political speech and activity, among other purposes." (*Id.* at ¶ 72). Absent from these allegations is any claim that the *Commonwealth* Defendants have any say in how Union dues are spent. Instead, Plaintiffs have alleged that Commonwealth Defendants are required by law to transmit Union dues to Union Defendants, who have consequently used

[6] We remain somewhat unconvinced that these allegations would not be better suited to a breach of contract claim. Nevertheless, Plaintiffs have not argued as such, and we cannot thus consider these factual allegations in that vein. Instead, Plaintiffs have alleged a sufficient liberty interest is at play, and have argued that the procedures in place to allow them to cease paying dues have been insufficient to protect their First Amendment rights. Plaintiffs have thus cleared the low bar set by FED. R. CIV. P. 12(b)(6) and will be allowed to proceed.

those dues for political speech with which Plaintiffs disagree. Such allegations are insufficient to show that Commonwealth Defendants have spent Plaintiffs' money *at all* let alone in an objectionable way without the protections of procedural due process.

V. CONCLUSION

We recognize the great impact of *Janus* on labor relations in this county. To be sure, that case has drastically altered the ability of unions to collect contributions from public employees. But *Janus* does not stretch as far as Plaintiffs would have us believe, nor will we push its boundaries unnecessarily, especially in light of the Third Circuit's recent holding in *Fischer*.

Plaintiffs undoubtedly signed their Membership Cards, which clearly laid out the terms of their membership and their union dues responsibilities. Subsequent changes in law cannot forestall Plaintiffs' previous contractual obligations, nor do we see any indication in *Janus* or subsequent case law that a full explanation of the *voluntary* nature of Union membership and dues payment does not satisfy the First Amendment's protections. We cannot impose additional requirements upon Commonwealth Defendants that are not supported in the law, and consequently do not find that *Janus*'s protections extend to our Plaintiffs. Nevertheless, they have sufficiently alleged that Commonwealth Defendants have failed to adhere to

procedures laid out in the Membership Cards and will be permitted to advance that theory to discovery.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Commonwealth Defendants' Motion to Dismiss, (Doc. 22), is **GRANTED IN PART** and **DENIED IN PART** as follows:
    a. The Motion is **GRANTED** on Plaintiffs' Count I (Violation of 43 U.S.C. §1983);
    b. The Motion is **DENIED** on Plaintiffs' Count II (Procedural Due Process) to the extent Plaintiffs argue that Commonwealth Defendants continued to collect union dues after receiving proper notice to cease within the agreed-upon escape window; and
    c. The Motion is **GRANTED** on Plaintiffs' Count II (Procedural Due Process) to the extent Plaintiffs argue that Commonwealth Defendants have improperly used their dues deductions for political or ideological speech.

s/ John E. Jones III
John E. Jones III, Chief Judge
United States District Court
Middle District of Pennsylvania