

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

AMBER WELCH,

Plaintiff,

v.

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO; CIVIL SERVICE
EMPLOYEES ASSOCIATION, INC., LOCAL 1000
AFSCME/AFL-CIO, CITY OF SYRACUSE UNIT
7801-00 OF LOCAL 834; and CITY OF SYRACUSE,

Defendants.

Case No. 5:21-CV-0712 (BKS/TWD)

(Hon. _____)

COMPLAINT

AND NOW comes Plaintiff Amber Welch, by and through her undersigned attorneys, and states the following claims for relief against Defendants Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (“Local 1000”); Civil Service Employees Association, Inc., Local 1000 AFSCME/AFL-CIO, City of Syracuse Unit 7801-00 of Local 834 (“Unit 7801”)¹; and the City of Syracuse (“City”), and avers as follows:

SUMMARY OF THE CASE

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for declaratory, injunctive, and monetary relief, to redress the ongoing deprivation of Plaintiff’s rights, privileges, and/or immunities under the First and Fourteenth Amendments to the United States Constitution.

2. These deprivations are caused by state statutes and Defendants’ contracts, policies, and practices that impair the ability of public employee bargaining unit members of CSEA to end all

¹ Local 1000 and Unit 7801 are referred to herein, jointly and severally, as “CSEA.”

association with CSEA as their exclusive representative and to resign their memberships in CSEA and/or end financial support of CSEA.

3. Defendants have acted under the color of state law, specifically the Public Employees' Fair Employment Act, N.Y. Civ. Serv. Law, Article 14 (the "Taylor Law"), and/or other state laws and are therefore state actors.

4. New York state law and Defendants' policies and practices authorize Defendants to require, and Defendants have so required, Plaintiff to associate with CSEA and to accept its status as her exclusive representative, despite statutory limitations on CSEA's duty to represent Plaintiff, and CSEA's assertion that it will not represent Plaintiff in certain contexts because she is not a CSEA member.

5. Designation of CSEA as Plaintiff's exclusive representative under the Taylor Law violates Plaintiff's speech, petitioning, and associational rights under the First Amendment.

6. Additionally, the Supreme Court of the United States has held that the First Amendment to the Constitution of the United States prohibits the government and unions from compelling nonmember public employees to pay dues or fees to a union as a condition of employment. *See Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018).

7. Defendants violated Plaintiff's constitutional rights by rejecting her resignation of union membership, forcing her to remain a union member, and continuing to deduct payments of union dues from her wages as a condition of Plaintiff's employment after her resignation.

8. Pursuant to the Taylor Law and agreements between CSEA and the City, setting forth terms and conditions of employment for certain public employees, including Plaintiff, Defendants deprived Plaintiff of her constitutional rights, by requiring Plaintiff to remain a member of CSEA and/or to financially support CSEA and by denying her right to end all aspects of union membership, all under the color of state law.

9. Because Plaintiff is forced to accept CSEA as her exclusive bargaining representative for purposes of collective bargaining, Plaintiff seeks declaratory and injunctive relief against all Defendants. Plaintiff also seeks compensatory and nominal damages, and attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

JURISDICTION AND VENUE

10. This action arises under the Constitution and laws of the United States of America, including the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of Plaintiff's rights, privileges, and immunities under the Constitution of the United States, and particularly the First and Fourteenth Amendments thereto, and 42 U.S.C. § 1988.

11. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331—because her claims arise under the United States Constitution—and 28 U.S.C. § 1343—because she seeks relief under 42 U.S.C. § 1983.

12. This action is an actual controversy in which Plaintiff seeks a declaration of her rights under the Constitution of the United States. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court may declare Plaintiff's rights and grant further necessary and proper relief, including injunctive relief pursuant to Federal Rule of Civil Procedure 65.

13. Venue is proper in this Court under 28 U.S.C. § 1391(b), because one or more defendants are domiciled in, and operate or do significant business in, this judicial district, and a substantial part of the events giving rise to the claims in this action occurred in this judicial district.

PARTIES

14. Plaintiff Amber Welch is a “public employee” within the meaning of the Taylor Law, *see* N.Y. Civ. Serv. Law § 201.7 (McKinney 2020), employed by the City of Syracuse as a Community Service Officer. At all relevant times hereto, Ms. Welch has been employed in a bargaining unit

represented, exclusively for purposes of collective bargaining, by CSEA. Ms. Welch was a member of CSEA but has not been a member of CSEA since the date of her resignation letter.

15. Defendant Local 1000 is an “employee organization” within the meaning of the Taylor Law, *see* N.Y. Civ. Serv. Law § 201.5. Local 1000 maintains a place of business at 143 Washington Avenue, Albany, New York, and conducts its business and operations throughout the State of New York, including the Northern District of New York.

16. Defendant Unit 7801 is an “employee organization” within the meaning of the Taylor Law, *see* N.Y. Civ. Serv. Law § 201.5. Unit 7801 maintains a place of business at 5815 Heritage Landing Drive, East Syracuse, New York. Pursuant to the collective bargaining agreement (“CBA”) between Unit 7801 and the City of Syracuse, CSEA represents Ms. Welch exclusively for purposes of collective bargaining with the city. Unit 7801 conducts its business and operations within the Northern District of New York.

17. Defendant City of Syracuse is a “government” and/or “public employer” within the meaning of the Taylor Law, *see* N.Y. Civ. Serv. Law § 201.6. The City issues wages to its employees, including Plaintiff, and processes payroll deductions of union dues pursuant to the requirements of the Taylor Law. The City entered into the CBA, which governs the terms and conditions of Plaintiff’s employment, with CSEA, and recognizes CSEA as Plaintiff’s exclusive representative pursuant to the CBA and the Taylor Law.

FACTUAL ALLEGATIONS

The Taylor Law and Defendants’ CBA

18. Under New York law, a union may become the exclusive bargaining representative for a bargaining unit of public employees for collective bargaining purposes by recognition or certification. A union so designated then exclusively bargains on wages, hours, and terms and

conditions of employment on behalf of all the employees in the bargaining unit it represents. N.Y. Civ. Serv. Law § 204.

19. When an employee organization has been certified or recognized as the exclusive representative, the public employer is required to negotiate with the employee organization regarding the terms and conditions of employment for the public employees the employee organization exclusively represents. N.Y. Civ. Serv. Law § 204.2. This requirement on the public employer includes a “mutual obligation” to meet at reasonable times and confer in good faith. N.Y. Civ. Serv. Law § 204.3.

20. Once certified as the exclusive representative, an employee organization has the right “to represent the employees in negotiations . . . and in the settlement of grievances.” N.Y. Civ. Serv. § 208.1(a).

21. A public employee employed in a bargaining unit that is represented by CSEA for purposes of collective bargaining may not engage in any negotiations with his or her public employer, the City, concerning any topic subject to collective bargaining between the City and CSEA, including the terms and conditions of his or her employment.

22. A public employee employed in a bargaining unit that is represented by CSEA for purposes of collective bargaining may not bring or pursue a grievance against the public employer; only CSEA may do that on behalf of bargaining unit members.

23. State law also requires Plaintiff’s employer, the City, to extend to CSEA the right to dues deductions from the wages of its employees. Specifically, the Taylor Law provides that “[a] public employer shall extend to an employee organization certified or recognized pursuant to this article the following rights: . . . (b) to membership dues deduction, upon presentation of dues deduction authorization cards signed by individual employees. . . .” N.Y. Civ. Serv. Law § 208.1.

24. The Taylor Law also provides that “[t]he right to such membership dues deduction shall remain in full force and effect until: (i) an individual employee revokes membership in the employee organization in writing in accordance with the terms of the signed authorization.” N.Y. Civ. Serv. Law § 208.1.

25. The Taylor Law limits the duties an exclusive representative owes to the employees in a bargaining unit it represents who choose not to be union members and authorizes the exclusive representative to treat nonmembers differently than members of the union.

26. Specifically, the Taylor Law provides that “[n]otwithstanding any law, rule or regulation to the contrary, an employee organization’s duty of fair representation to a public employee it represents but who is not a member of the employee organization shall be limited to the negotiation or enforcement of the terms of an agreement with the public employer.” N.Y. Civ. Serv. Law § 209-a.2.

27. Additionally, the Taylor Law enumerates several carveouts from the duty of fair representation:

No provision of this article shall be construed to require an employee organization to provide representation to a non-member:

- (i) during questioning by the employer,
- (ii) in statutory or administrative proceedings or to enforce statutory or regulatory rights, or
- (iii) in any stage of a grievance, arbitration or other contractual process concerning the evaluation or discipline of a public employee where the non-member is permitted to proceed without the employee organization and be represented by his or her own advocate.

N.Y. Civ. Serv. Law § 209-a.2.

28. Finally, the Taylor Law also provides: “Nor shall any provision of this article prohibit an employee organization from providing legal, economic or job-related services or benefits beyond those provided in the agreement with a public employer only to its members.” N.Y. Civ. Serv. Law § 209-a.2.

29. The provisions of Section 209-a remove many of the traditional protections and guarantees of exclusive representation provided to public employees under New York law, through the duty of fair representation.

30. Acting in concert under color of state law, the City and CSEA have entered into the CBA that controls Plaintiff's terms and conditions of employment. The term of the CBA is January 1, 2018, to December 31, 2020, but, on information and belief, it remains in effect. Relevant portions of the CBA are attached hereto as "Exhibit A," and incorporated by reference herein.

31. In Article 1 of the CBA, the City recognizes CSEA as "the sole and exclusive bargaining agent for all employees in the negotiating unit . . . for the purpose of collective bargaining negotiations and the administration of grievances arising under this Agreement." Ex. A, art. 1, sec. 1.2.

32. Pursuant to the CBA, the City is required to deduct "biweekly" membership dues from "employees authorizing such deductions," and CSEA is entitled to have "deductions made from the wage and salary of employees of said bargaining unit who are not members." Ex. A, art. 4, sec. 4.1.

33. The CBA also guarantees that CSEA "shall have all the applicable rights insured to it under" the Taylor Law. Ex. A, art. 4, sec. 4.3.

Plaintiff's Union Membership & Resignation

34. Plaintiff was hired by the City as a Community Service Officer on or about June 11, 2011, and became a union member on or about the same date.

35. Plaintiff later became an officer of Unit 7801.

36. A dues deduction authorization to Local 1000 signed by Plaintiff provides, "I may revoke this authorization by sending a letter stating my intent to resign, along with my name, address, telephone number, and CSEA ID number, by United States Postal Service First Class Mail

to: CSEA Statewide Secretary, Civil Service Employees Association, Inc., 143 Washington Avenue, Albany, N.Y. 12210.”

37. During her time as a union member, Plaintiff became increasingly frustrated with CSEA’s representation of her and with the ways in which it conducted its business, especially in light of CSEA’s conduct that she witnessed as an officer.

38. On September 22, 2020, Plaintiff resigned her union membership and sought to end union dues deductions via her initial resignation letter, mailed to Local 1000, 143 Washington Avenue, Albany, New York 12210, which stated her intent to resign and included her name, address, telephone number, CSEA ID, and an electronic signature.

39. A copy of this letter was also sent to the City, on or about the same date, September 22, 2020.

40. CSEA and the City received Plaintiff’s initial resignation letter and had knowledge that Plaintiff wished to resign her union membership and end deduction of union dues from her wages.

41. The City continued deducting union dues for CSEA from Plaintiff’s wages after September 22, 2020.

42. On information and belief, the City and CSEA have a joint policy that CSEA determines and notifies the City when the City should stop deductions of union dues from one of its employees’ wages.

43. By letter dated September 22, 2020, Richard Bebo, Statewide Secretary for Local 1000, wrote a letter to Plaintiff that her resignation letter dated September 22, 2020, had been received, but that it “does not contain the required information.” A copy of the “Denial Letter” is attached hereto as Exhibit B and incorporated by reference herein.

44. The Denial Letter did not set forth what “required information” was missing from Plaintiff’s resignation letter.

45. The Denial Letter further stated that “[i]f you still wish to resign your membership,” Plaintiff had to send another letter with her “name, address, telephone number, CSEA ID number and signature by United States Postal Service First Class Mail” to 143 Washington Avenue, Albany, New York 12210. Ex. B.

46. Plaintiff’s initial resignation letter contained all the information the Denial Letter listed as required for resigning membership, including name, address, telephone number, membership number, and signature, and was sent to the listed address.

47. Plaintiff’s initial resignation letter contained all the information required by the dues deduction authorization Plaintiff had signed.

48. The Denial Letter also threatened that “as a non-member, CSEA has no obligation to represent you in any: Disciplinary matters; Justice Center Matters; Administrative matters—DHR, EEOC, Expungement hearings; State Court matters; Federal Court matters; Licensing hearings; Civil Service section 71, 72, and 73 proceedings; or during any interrogation or meeting with your employer.” Ex. B.

49. Plaintiff sent an additional resignation letter, dated October 1, 2020, which contained the same information as her initial letter resigning from CSEA and its affiliates.

50. No Defendant, or agent or official thereof, confirmed that Plaintiff was no longer a member of CSEA and its affiliates in response to Plaintiff’s October 1, 2020 letter.

51. The City ceased deduction of union dues for CSEA from Plaintiff’s wages for the first time after her resignation in her pay period issued on October 29, 2020.

52. By letter dated January 22, 2021, in response to correspondence from undersigned counsel, Mr. Bebo stated that Plaintiff's membership resignation was "processed" after October 6, 2020.

53. CSEA claims that it only received a resignation from Ms. Welch that was "properly executed" on October 6, 2020, which, on information and belief, was her letter dated October 1, 2020, and not her initial resignation letter.

54. Defendants, pursuant to the CBA, the Taylor Law, and/or their joint policies and practices, acted in concert under color of state law to force Plaintiff to remain a member of CSEA.

55. Defendants, pursuant to the CBA, the Taylor Law, and/or their joint policies and practices, acted in concert under color of state law to collect, distribute, accept, and/or retain union dues deducted from Plaintiff's wages for nearly a month after her membership resignation.

56. Defendants have taken and continue to retain and spend purported union dues from Plaintiff's wages against her will and without her consent.

57. Despite Plaintiff's resignation from CSEA, CSEA remains her exclusive representative for collective bargaining purposes.

58. Plaintiff believes that CSEA does not represent her interests, beliefs, or needs related to the terms and conditions of her employment and in interactions with her employer.

59. Due to CSEA's status as Plaintiff's exclusive representative, Plaintiff cannot represent herself in connection with her terms and conditions of employment with the City or to associate with a different representative of her choosing.

60. Due to CSEA's exclusive and statutory entitlement to meet and confer with the City regarding the terms and conditions of Plaintiff's employment, Plaintiff cannot exercise the meet and confer rights CSEA possesses as the exclusive representative.

61. Plaintiff believes that CSEA will continue not to represent her interests as a nonmember of CSEA when it acts as her exclusive representative regarding the terms and conditions of her employment, because CSEA did not represent her interests while she was a member.

62. Pursuant to state law, the duty of fair representation that CSEA owes to Plaintiff is limited to “the negotiation or enforcement of the terms of an agreement with the public employer,” and CSEA has no duty to represent Plaintiff in any of the situations designated in Section 209-a of the Taylor Law.

63. The exceptions to the duty of fair representation permitted by Section 209-a reduce what the duty of fair representation previously required unions to provide to bargaining unit nonmembers before the enactment of Section 209-a.

64. CSEA has stated, and Plaintiff believes, that CSEA will not represent her in the matters listed in the Denial Letter, Ex. B.

65. The circumstances under which Plaintiff has been told she would not be entitled to representation, including the carveouts in Section 209-a and the matters listed in the Denial Letter, could occur imminently and without prior notice to Plaintiff.

66. Plaintiff does not want to associate with CSEA or to have CSEA speak on her behalf during employment negotiations, and desires to petition her employer herself for her needs regarding the terms and conditions of her employment.

67. Plaintiff objects to the compelled association with and financial subsidization of any activities of CSEA and/or its affiliates for any purpose.

CLAIMS FOR RELIEF

COUNT ONE

(Violation of 42 U.S.C. § 1983 and
the Constitution of the United States)

68. Plaintiff re-alleges and incorporates by reference all allegations contained in the foregoing paragraphs of this Complaint as if fully set forth herein.

69. The First Amendment protects “[t]he right to eschew association for expressive purposes,” *Janus*, 138 S. Ct. at 2463, because the “[f]reedom of association . . . plainly presupposes a freedom not to associate.” *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984).

70. “[M]andatory associations are permissible only when they serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.” *Knox v. SEIU*, 567 U.S. 298, 310 (2012).

71. In the context of public-sector unions, the Supreme Court has recognized that “[d]esignating a union as the employees’ exclusive representative substantially restricts the rights of individual employees. Among other things, this designation means that individual employees may not be represented by any agent other than the designated union; nor may individual employees negotiate directly with their employer.” *Janus*, 138 S. Ct. at 2460.

72. The duty of fair representation “is a necessary concomitant of the authority that a union seeks when it chooses to serve as the exclusive representative of all the employees in a unit.” *Janus*, 138 S. Ct. at 2469.

73. As authorized under the Taylor Law, the City recognizes CSEA as “the sole and exclusive bargaining agent for all employees in the negotiating unit,” which includes Plaintiff, “for the purpose of collective bargaining negotiations and the administration of grievances arising under this Agreement.” Ex. A, art. 1, sec. 1.2.

74. By designating, certifying, and/or recognizing CSEA as Plaintiff's exclusive representative, New York law, the City's certification, and the CBA violate Plaintiff's rights under the First and Fourteenth Amendments to the United States Constitution.

75. CSEA's status as exclusive representative compels Plaintiff to associate with CSEA.

76. CSEA's status as exclusive representative compels Plaintiff to speak and to petition government, because it authorizes and requires CSEA to speak for Plaintiff.

77. CSEA's status as exclusive representative attributes CSEA's speech and petitioning to Plaintiff.

78. CSEA's status as exclusive representative restricts Plaintiff's speech, petitioning, and associational rights.

79. Moreover, Section 209-a of the Taylor Law limits the scope of the duty of fair representation that CSEA owes to Plaintiff as a nonmember of CSEA.

80. These limitations further abridge Plaintiff's constitutional rights, removing protections for Plaintiff in the context of the forced speech and association inherent in CSEA's exclusive representation of her.

81. Plaintiff's constitutional rights are further abridged because of the Taylor Law's authorization of only limited duties owed by the exclusive representative to nonmembers, as compared to members of the union.

82. The Taylor Law, facially or as applied by Defendants, violates Plaintiff's constitutional rights by authorizing exclusive representation without protections to minimize the impingement on Plaintiff's constitutional rights.

83. As a direct result of Defendants' concerted actions, taken pursuant to state law, the CBA, and their joint policies and practices, Plaintiff:

a. is being prevented from exercising her rights and privileges not to speak through, associate with, or petition through a private organization;

b. is being deprived of her civil rights guaranteed to her under the Constitution of the United States; and

c. is in imminent danger of suffering irreparable harm, damage, and injury inherent in the violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law.

84. If not enjoined by this Court, Defendants and/or their agents will continue to effect the aforementioned deprivations and abridgments of Plaintiff's constitutional rights, thereby causing her to suffer irreparable harm.

COUNT TWO

Alternative to Count One
(Violation of 42 U.S.C. § 1983 and
the Constitution of the United States)

In the event it is determined that no constitutional violation occurred as alleged in Count I, Plaintiff alleges the following:

85. Paragraphs 1 to 67 of this Complaint are incorporated by reference as if fully set forth herein.

86. As authorized under the Taylor Law, in the CBA, the City recognizes CSEA, and CSEA has acted and continues to act, as "the sole and exclusive bargaining agent for all employees in the negotiating unit," which includes Plaintiff, "for the purpose of collective bargaining negotiations and the administration of grievances arising under this Agreement." Ex. A, art. 1, sec. 1.2.

87. Defendants have violated, and are threatening to violate, Plaintiff's constitutional rights through the authorization and implementation of the limited duty of fair representation, and the statutory carveouts, authorized in the Taylor Law, and particularly in Section 209-a.2.

88. CSEA, as stated in the Denial Letter, has asserted that “as a non-member, CSEA has no obligation to represent” Plaintiff in a variety of proceedings, as detailed above, as well as “during any interrogation or meeting with your employer.” Ex. B.

89. Accordingly, CSEA has affirmatively communicated to Plaintiff that it will act as authorized by the Taylor Law and will refuse to represent her in accordance with the Taylor Law’s limitations on the duty of fair representation in Section 209-a.2 and its carveout provisions, and the situations CSEA listed in its Denial Letter.

90. As the Supreme Court has recognized, the duty of fair representation “is a necessary concomitant of the authority that a union seeks when it chooses to serve as the exclusive representative of all the employees in a unit.” *Janus*, 138 S. Ct. at 2469.

91. Section 209-a.2 of the Taylor Law, and particularly its carveout provisions, removes protections previously provided under the duty of fair representation to public employees who are forced into association with an exclusive representative.

92. Section 209-a.2, particularly its limitations on the duty of fair representation, carveouts eliminating protections for public employees in certain situations, and provisions allowing for differential treatment of nonmembers, violates Plaintiff’s constitutional rights by allowing exclusive representation without the required duty of fair representation.

93. Therefore, Section 209-a.2, insofar as it limits the duties owed by employee organizations to public employees who choose not to be union members, is unconstitutional, on its face and as applied to Plaintiff.

94. As a direct result of Defendants’ concerted actions, taken pursuant to state law, the CBA, and their joint policies and practices, Plaintiff:

- a. is being deprived of her civil rights guaranteed to her under the Constitution of the United States; and

b. is in imminent danger of suffering irreparable harm, damage, and injury inherent in the violation of First and Fourteenth Amendment rights, for which there is no adequate remedy at law.

95. If not enjoined by this Court, Defendants and/or their agents will continue to effect the aforementioned deprivations and abridgments of Plaintiff's constitutional rights, thereby causing her to suffer irreparable harm.

COUNT THREE

(Violation of 42 U.S.C. § 1983 and the First and Fourteenth Amendments of the United States Constitution)

96. Plaintiff realleges and incorporates by reference all allegations contained in the foregoing paragraphs of this Complaint as if fully set forth herein.

97. The First Amendment to the Constitution of the United States protects associational, free speech, and free choice rights, and the Fourteenth Amendment to the Constitution of the United States incorporates the protections of the First Amendment against the States.

98. The First Amendment requires 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.” *Janus*, 138 S. Ct. at 2486.

99. There is no state interest, compelling or otherwise, justifying the state’s requirement that individuals remain members of or provide financial support to a private organization, including a labor organization, for any length of time.

100. Sections 201 and 208 of the Taylor Law, on their face and/or as applied by Defendants, authorize and/or require Defendants, by and through their agents and/or officials, to force employees to remain union members and/or full dues payers despite their expressed intention

to resign union membership and end financial support of a union. This is a violation of Plaintiff's First Amendment rights.

101. Sections 201 and 208 of the Taylor Law, facially and/or as applied by Defendants, permit Defendants to require that employees maintain unwilling association with and financial support of CSEA and are, therefore, unconstitutional. This forced membership requirement impinges on Plaintiff's rights to free association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience, as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States.

102. The Taylor Law, on its face and/or as applied by Defendants, authorizes Defendants to violate Plaintiff's constitutional rights by deducting union dues from her wages without her consent, in violation of the Constitution of the United States as explained in *Janus*, 138 S. Ct. 2448.

103. The First Amendment protects Plaintiff from having Defendants require her to remain a member of CSEA.

104. Because Plaintiff has resigned her membership in CSEA, the First Amendment protects her as a nonmember public employee from having Defendants deduct nonconsensual financial support for CSEA from her wages as a condition of employment.

105. A valid waiver of constitutional rights requires clear and compelling evidence that the putative waiver was voluntary, knowing, and intelligent and that enforcement of the waiver is not against public policy. Defendants bear the burden of proving that these criteria are satisfied.

106. Plaintiff has not waived her constitutional rights as a nonmember not to provide financial support via payroll deduction or other method to CSEA.

107. Defendants rejected Plaintiff's resignation from union membership and deducted and collected financial support for CSEA from Plaintiff's wages via payroll deductions after Plaintiff's resignation from union membership and revocation of consent to union dues deductions.

108. Defendants' actions, pursuant to Defendants' joint policies and practices, and without clear and compelling evidence that Plaintiff waived her constitutional rights, deprived Plaintiff of her First Amendment rights to free speech and association, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

109. As a direct result of Defendants' actions under the Taylor Law, the CBA between the City and Unit 7801, and/or Defendants' joint policies and practices, Plaintiff:

a. was prevented from exercising her rights and privileges to disassociate from and no longer support the agenda and expenses of a private organization with which she no longer agreed and/or to which she no longer wished to belong as a member; and

b. was deprived of her civil rights guaranteed to her under the statutes of the United States and suffered monetary damages and irreparable and other harm.

COUNT FOUR

(Violation of 42 U.S.C. § 1983 and the
First and Fourteenth Amendments of the United States Constitution)

110. Plaintiff realleges and incorporates by reference all allegations contained in the foregoing paragraphs of this Complaint as if fully set forth herein.

111. The Fourteenth Amendment to the Constitution of the United States guarantees due process to citizens facing deprivation of liberty or property by state actors. *See Mathews v. Eldridge*, 424 U.S. 319, 348–49 (1976).

112. Section 208 of the Taylor Law requires public employers to give the “right” to “membership dues deduction” to employee organizations until a public employee revokes “in writing in accordance with the terms of the signed authorization.”

113. Therefore, the Taylor Law prevents employees from resigning union membership or ending dues deductions from their wages unless they resign in accordance with their authorization.

114. Plaintiff revoked her dues deduction authorization and resigned her membership in accordance with the terms of the authorization she had signed, by letter dated September 22, 2020.

115. Nevertheless, CSEA, in the Denial Letter, informed Plaintiff that her resignation did not “contain the required information,” without setting forth what information was missing.

116. The Denial Letter added requirements and conditions for Plaintiff’s resignation that were not contained in the dues deduction authorization Plaintiff had signed.

117. In fact, Plaintiff’s initial resignation letter, dated September 22, 2020, contained the same information as the second letter, dated October 1, 2020, that CSEA said was “properly executed.”

118. Moreover, Defendants knew that Plaintiff wished to end her union membership and the deduction of union dues from her wages.

119. Nevertheless, Defendants failed and/or refused to recognize Plaintiff as a nonmember of CSEA at the time of her initial resignation, or for several months thereafter.

120. The City refused to end the deductions of dues from Plaintiff’s wages at the time of her initial resignation, even though the City had notice of Plaintiff’s resignation and revocation of consent to dues deductions and could verify that it contained all the information required.

121. CSEA’s refusal to acknowledge Plaintiff’s initial resignation, and the City’s refusal to end the deduction of union dues from her wages at that time, deprived Plaintiff of her Fourteenth Amendment rights to due process, as well as her liberty interests in ending her association with and financial support of CSEA and her property interest in her salary.

122. Defendants acted under color of state law, and particularly their CBA and Section 208 of the Taylor Law, in refusing to acknowledge or process Plaintiff’s membership resignation, or to end the deduction of union dues from her wages.

123. Because Plaintiff met, in whole or substantive part, each of the conditions described in Plaintiff's dues deduction authorization and the Denial Letter with her September 22, 2020, resignation, and that resignation was not processed, the process Defendants afforded is too burdensome and onerous to satisfy due process.

124. Additionally, Defendants' process in refusing to allow Plaintiff to resign her union membership and in requiring her to send an additional resignation letter with identical, or substantively identical, information, despite actual knowledge of Plaintiff's intent to resign, deprived Plaintiff of due process, and of her liberty and property interests.

125. Defendants' actions, and Section 208's requirement that the City extend CSEA the right to dues deductions until Plaintiff revoked "in accordance with the terms of the signed authorization," as applied to Plaintiff, violated Plaintiff's constitutional rights, including her right to due process, and deprived her of her liberty and property interests.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court order the following relief:

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 Federal Rule of Civil Procedure 57, declaring:

i. that the provisions of New York law and Defendants' certification, recognition, and/or agreement, as well as any CBA provisions, that provide that CSEA is the exclusive representative of Plaintiff for purposes of collective bargaining with Plaintiff's employer violates Plaintiff's constitutional rights and are unconstitutional;

ii. or, alternatively to Part A.i, that Section 209-a.2 of the Taylor Law, and CSEA's actions and representations to Plaintiff regarding its duties, or lack thereof, to represent her, violate Plaintiff's constitutional rights.

iii. Further, that any taking of union dues from Plaintiff after her initial resignation of membership in CSEA violated her rights under the First and Fourteenth Amendments of the United States Constitution, and that any provisions of the Taylor Law, the CBA, and/or any other purported authorizations that authorize or require such deductions of union dues from her wages are unconstitutional; and

iv. that the First and Fourteenth Amendments to the Constitution of the United States prevent Defendants from restricting Plaintiff's right to resign from union membership at any time.

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

i. enjoining Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them, from:

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

b. recognizing CSEA, or any other employee organization, as Plaintiff's exclusive representative without her consent;

c. or, alternatively to Part B.i.b, acting as authorized by Section 209-a.2 or as stated in the Denial Letter, or otherwise recognizing or acting with a lessened duty of fair representation to Plaintiff as a nonmember, as compared to members of CSEA.

ii. requiring Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them, to:

a. recognize and honor Plaintiff's resignation from union membership, retroactive to the date of her initial resignation; and

b. refund to Plaintiff all union dues deducted from her wages from the date of her initial resignation, plus interest thereon.

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

D. **Attorneys' Fees and Costs:** A judgment awarding Plaintiff costs and 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.

Respectfully submitted,

Dated: June 17, 2021

s/ Tyler K. Patterson

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*motion for admission *pro hac vice* to be filed