

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

RAYMOND MICHELINI,

Plaintiff,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL 589, LI, NY; LONG ISLAND RAIL
ROAD COMPANY,

Defendants.

Case No. 1:21-cv-4778

(Hon. _____)

COMPLAINT

Jury Trial Demanded

AND NOW comes Plaintiff Raymond Michielini, by and through his undersigned attorneys, and states the following claims for relief against Defendants International Brotherhood of Electrical Workers, Local 589, LI, NY (“IBEW 589”) and Long Island Rail Road Company (“Employer”), and avers as follows:

SUMMARY OF THE CASE

1. Defendants, a public employer and union, have acted in concert and under color of state law to violate Mr. Michielini’s constitutional and civil rights, specifically under the First Amendment, which protects public employees from forced association with or financial support of a union. *See Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2486 (2018).

2. Defendants, as state actors and through their joint agreements, policies, and practices, have violated Mr. Michielini’s First Amendment rights by enforcing their requirement that he be a union member against his will or that he financially support IBEW 589 as a condition of his employment.

3. Further, Defendants have retaliated against Mr. Michielini for exercising his right under the Railway Labor Act (“RLA”) to refrain from union membership. IBEW 589 has also acted

arbitrarily, discriminatorily, and in bad faith by discriminating and retaliating against Mr. Michielini because of his resignation in denying him certain overtime work rights under the relevant collective bargaining agreement (“CBA”) with Employer, thus breaching its duty of fair representation to Mr. Michielini.

4. In addition to injunctive and declaratory relief, Mr. Michielini also seeks compensatory and nominal damages for the violation of his First and Fourteenth Amendment rights, as well as attorneys’ fees and costs, and damages for the violation of his rights under the RLA.

JURISDICTION AND VENUE

5. This action arises under the Constitution and laws of the United States of America, including the RLA, 45 U.S.C. § 151, *et seq.* It also arises under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of Mr. Michielini’s rights, privileges, and immunities under the Constitution of the United States, particularly the First and Fourteenth Amendments thereto.

6. The Court has jurisdiction over Mr. Michielini’s claims pursuant to 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1337 (interstate commerce), and 28 U.S.C. § 1343 (relief under 42 U.S.C. § 1983).

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

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), because Defendants are domiciled in and operate or do significant business in this judicial district. Additionally, a substantial part of the events giving rise to this action occurred in this judicial district.

PARTIES

9. Plaintiff Raymond Michielini is a public employee, and also an “employee” within the meaning of the RLA, 45 U.S.C. § 151, Fifth. He is employed as a third railman, maintenance of way, by Employer, in a bargaining unit represented, exclusively for purposes of collective bargaining, by IBEW 589. Mr. Michielini was a member of IBEW 589, but chose to resign his membership in IBEW 589 on or about June 1, 2021.

10. Defendant IBEW 589 is a “representative” within the meaning of 45 U.S.C. § 151, Sixth of the RLA, and the exclusive representative of Mr. Michielini for purposes of collective bargaining. IBEW 589 is a party to the CBA and other agreements governing the terms and conditions of Mr. Michielini’s employment, and maintains a place of business at 38B Church Street, Patchogue, New York. It conducts its business and operations throughout the New York City metropolitan area, including within the Eastern District of New York.

11. Defendant Long Island Rail Road Company is a public benefit corporation, and thus a public employer, *see* N.Y. Civ. Serv. Law § 201, and is also a “carrier” within the meaning of the RLA, 45 U.S.C. § 151, First. It is a party to the CBA with IBEW 589 and other agreements governing the terms and conditions of Mr. Michielini’s employment. Employer is a subsidiary of the Metropolitan Transportation Authority, which is a public benefit corporation of the State of New York, and it maintains a place of business at 93-02 Sutphin Boulevard, Jamaica, New York.

FACTUAL ALLEGATIONS

12. Acting in concert under color of state law and under the RLA, Defendants, a public employer and a union, have entered into the CBA and other agreements that control the terms and conditions of Mr. Michielini’s employment. The CBA is attached as Exhibit A and incorporated by reference herein.

13. The CBA contains a “Union Shop Agreement.” Ex. A, Rule 82 & app. T-1.

14. The CBA requires that “all employees . . . shall, as a condition of their continued employment . . . become members of the organization party to this Agreement . . . and thereafter shall maintain membership in such Organization.” Ex. A, app. T-1, sec. 1.

15. The CBA contains a form allowing employees to “cancel the Authorization” for deduction of union dues from their wages. Ex. A, app. T-1, Attachment “B.”

16. The CBA also provides that IBEW 589 has the right to notify Employer of “any employee who it is alleged has failed to comply with the terms of [the Union Shop] Agreement and who the Organization therefore claims is not entitled to continue in employment” and explains the method by which IBEW 589 can seek the termination of an employee who is in “non-compliance” with the Union Shop Agreement. Ex. A, app. T-1, sec. 5.

17. Pursuant to certain terms of the CBA and/or other agreements and policies between them, Employer allows IBEW 589 to select the employees who are offered overtime opportunities. Ex. A, Rule 48A.

18. Pursuant to the CBA and/or other agreements and policies between Defendants, when there are opportunities for overtime, IBEW 589 calls employees of Employer according to a list maintained by IBEW 589, to offer them the opportunity to work overtime.

19. Pursuant to the CBA, overtime opportunities are to be distributed equally among qualified employees. Ex. A, Rule 48A.

20. At all relevant times hereto, Mr. Michielini was a qualified employee for purposes of receiving overtime opportunities as provided for in the CBA.

21. Mr. Michielini became a union member in approximately May 2003, after beginning his current position with Employer, as required by the CBA.

22. After IBEW 589 officials wrongfully accused Mr. Michielini of widely distributing a video unflattering to officials of IBEW 589, Mr. Michielini resigned his union membership on or about June 1, 2021.

23. On information and belief, IBEW 589 considers Employer to control when a member's resignation is effective.

24. Counsel for IBEW 589 has stated that "upon confirmation from the employer" that dues would no longer be deducted, the union would "no longer consider Mr. Michielini a member in good standing."

25. On or about July 15, 2021, Employer ended the deduction of union dues from Mr. Michielini's paycheck.

26. On August 17, 2021, Employer sent a letter to Mr. Michielini, stating that his revocation of dues or fees deductions was effective June 30, 2021, and that, "[w]ith regard to your statement of intent to resign union membership, please be advised that the Labor Organization is aware of your intention."

27. However, to date, no Defendant, or agent or official thereof, has acknowledged to Mr. Michielini that he is no longer a union member.

28. In addition, Defendants required Mr. Michielini to pay dues or fees to the union for approximately a month after his resignation from IBEW 589.

29. No Defendant, or agent or official thereof, has requested or demanded any dues or fees from Mr. Michielini since July 15, 2021.

30. No Defendant, or agent or official thereof, has provided Mr. Michielini with any notice of his rights as a nonmember of IBEW 589.

31. Shortly after Employer stopped deducting membership dues from Mr. Michielini's wages, officials of IBEW 589 did not offer Mr. Michielini certain overtime opportunities, even when he was an eligible employee according to the list and records maintained by IBEW 589.

32. Mr. Michielini asked Mike Mahoney, an executive board member and agent or official of IBEW 589, why IBEW 589 was not calling him for overtime opportunities.

33. Mr. Mahoney told Mr. Michielini that he would not be getting called for overtime anymore, because he is in "non-compliance" with the CBA.

34. Mr. Michielini discussed the situation with his supervisor, an agent of Employer, who told him that his situation is "unprecedented," because Employer does not have employees who are nonmembers of IBEW 589.

35. Defendants have denied overtime opportunities and work to Mr. Michielini because he sought to resign as a member of IBEW 589.

36. At all relevant times hereto, Mr. Michielini is and has been entitled to overtime opportunities under the terms of the CBA.

37. Mr. Michielini would have worked overtime shifts that have been withheld from him by Defendants had he been given the opportunity to do so.

38. Accordingly, since the date that Defendants ceased the deduction of union dues from Mr. Michielini's paychecks, and at least since August 1, 2021, Mr. Michielini has repeatedly lost and is losing opportunities for overtime that would have been offered to him had he been a union member.

39. Continually since on or about August 1, 2021, Mr. Michielini has been denied the opportunity to work overtime and accordingly has suffered lost wages and other monetary and non-monetary, irreparable harm.

40. Continually since on or about August 1, 2021, Mr. Michielini has been denied the opportunity to work overtime due to his request to be a nonmember of IBEW 589 and in retaliation by Defendants for his decision to resign.

41. Defendants have denied and continue to deny overtime opportunities and wages to Mr. Michielini.

42. Defendants are acting pursuant to the CBA and/or their joint policies and practices to alter the terms and conditions of employment for Mr. Michielini due to his choice to no longer be a member of IBEW 589, and to enforce the requirement in the CBA that membership in IBEW 589 and/or payment of fees to IBEW 589 are conditions of employment.

CLAIMS FOR RELIEF

COUNT ONE

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

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

44. 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.

45. The First Amendment protects public employees from forced association with or financial support of a union. *See Janus*, 138 S. Ct. at 2486.

46. The CBA requires that employees of Employer, as a public employer, maintain their union membership, and therefore association with and financial support of the union, as a condition of employment.

47. There is no state interest, compelling or otherwise, justifying the requirement that public employees remain members or financial supporters of a labor organization for any length of time.

48. This forced membership requirement, and the requirement that he provide financial support to IBEW 589 against his will, impinges on Mr. Michielini's rights to free association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

49. In an attempt to enforce this forced membership requirement, Defendants delayed acceptance of Mr. Michielini's resignation, requiring him to remain a member and to provide financial support to IBEW 589 after his resignation.

50. In an attempt to enforce this forced membership requirement, Defendants have not recognized Mr. Michielini's resignation from IBEW 589 or his status as a nonmember bargaining unit member.

51. In an attempt to enforce this forced membership requirement, pursuant to the CBA, Defendants have made union membership and financial support a condition of Mr. Michielini's employment, by preventing him from working overtime hours as provided for in the CBA.

52. As a direct result of Defendants' actions taken under the CBA, and/or Defendants' joint policies and practices, Mr. Michielini:

a. is being deprived of his civil rights guaranteed to him under the Constitution and statutes of the United States and has suffered monetary damages and other harm; 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.

53. If not enjoined by this Court, Defendants and/or their agents and officials will continue to effect the aforementioned deprivations and abridgments of Mr. Michielini's constitutional rights, thereby causing irreparable harm, damage, and injury for which there is no adequate remedy at law.

COUNT TWO

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

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

55. 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.

56. The First Amendment protects public employees from forced association with or financial support of a union. *See Janus*, 138 S. Ct. at 2486.

57. As authorized by the RLA, *see* 45 U.S.C. § 152, Eleventh, the CBA requires that Mr. Michielini, an employee of a public employer, maintain his union membership, and therefore association with and financial support of IBEW 589, as a condition of his employment.

58. There is no state interest, compelling or otherwise, justifying the requirement that public employees remain members or financial supporters of a labor organization for any length of time.

59. The RLA's authorization to Employer, as a public employer, to force Mr. Michielini to remain a member or financial supporter of IBEW 589 against his will impinges on Mr. Michielini's rights to free association, self-organization, assembly, petition, and freedoms of speech,

thought, and conscience, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

60. Acting as authorized by the RLA, Defendants required Mr. Michielini to remain a union member against his will, in part by delaying acceptance of Mr. Michielini's resignation for at least a month, forcing him to remain associated with and provide financial support to IBEW 589 despite his stated desire to resign.

61. In an attempt to enforce the RLA's membership requirement, Defendants have not recognized Mr. Michielini's resignation from IBEW 589 and his status as a nonmember bargaining unit member.

62. In an attempt to enforce the RLA's forced membership requirement, Defendants have made union membership and financial support a condition of Mr. Michielini's employment, by preventing him from working overtime hours as provided for in the CBA.

63. As a direct result of Defendants' actions pursuant to the RLA, Mr. Michielini:

a. is being deprived of his civil rights guaranteed to him under the Constitution and statutes of the United States and has suffered monetary damages and other harm; 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.

64. If not enjoined by this Court, Defendants and/or their agents and officials will continue to effect the aforementioned deprivations and abridgments of Mr. Michielini's constitutional rights, thereby causing irreparable harm, damage, and injury for which there is no adequate remedy at law.

COUNT THREE

(Violation of the Railway Labor Act against All Defendants)

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

66. The RLA protects the rights of railway employees to refuse to join a union and to otherwise disassociate from a union. These rights are in RLA, Section 2, Third, 45 U.S.C. § 152, which prohibits interfering, influencing, or coercing employees in their choice of bargaining representatives, and RLA, Section 2, Fourth, 45 U.S.C. § 152, which protects the right of employees to “join, organize, or assist in organizing” a union of their choice as well as the right to refrain from any of those activities. *See Ellis v. Bhd. of Ry., Airline & S.S. Clerks, Freight Handlers, Express & Station Emps.*, 466 U.S. 435 (1984); *Int’l Ass’n of Machinists v. Street*, 367 U.S. 740 (1961); *Ry. Emps.’ Dep’t v. Hanson*, 351 U.S. 225 (1956).

67. The RLA prohibits retaliation against an employee for protected activity.

68. Mr. Michielini’s decision to resign his membership in IBEW 589 was a protected activity under the RLA.

69. Defendants violated and are violating the RLA when they require, in their CBA, that Mr. Michielini remain a member of the union as a condition of employment, and when they alter the terms and conditions of his employment because he did not remain a member of IBEW 589.

70. Defendants’ agreement in the CBA that employees, like Mr. Michielini, who do not remain union members can be terminated from their employment is a violation of the RLA.

71. Defendants violated and are violating the RLA by altering the terms and conditions of Mr. Michielini’s employment as provided for in the CBA, specifically by denying him overtime opportunities, in retaliation for his decision to exercise his rights under the RLA and resign his membership in IBEW 589.

72. Defendants caused and are causing Mr. Michielini to suffer monetary and non-monetary harms through their violation of the RLA by requiring Mr. Michielini to remain a union member and by retaliating against him for his failure to do so.

73. Defendants' retaliation against Mr. Michielini for exercising his protected rights under the RLA caused and is causing Mr. Michielini to suffer monetary and non-monetary harms.

COUNT FOUR

(Breach of the Duty of Fair Representation against IBEW 589)

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

75. Under the RLA, a union acting as the exclusive representative of employees owes a fiduciary duty of fair representation to all the employees that it represents, both members and nonmembers. *See Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65 (1991). That duty is "akin to the duty owed by other fiduciaries to their beneficiaries." *Id.* at 74.

76. "[A] union breaches its duty of fair representation if its actions are either 'arbitrary, discriminatory, or in bad faith.'" *Id.* at 67 (quoting *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)).

77. IBEW 589 owes a duty of fair representation to Mr. Michielini.

78. IBEW 589 breached and is breaching that duty through actions that are discriminatory, arbitrary, or in bad faith, by retaliating against Mr. Michielini, or otherwise altering the terms and conditions of his employment, due to his decision to resign his union membership and end his association with IBEW 589.

79. IBEW 589 breached and is breaching its duty of fair representation to Mr. Michielini by discriminating against Mr. Michielini through denying him opportunities to work overtime hours, as provided for in the CBA.

80. IBEW 589 breached and is breaching its duty of fair representation to Mr. Michielini by bargaining for and enforcing provisions in the CBA that require him to be a member and allow

IBEW 589 to seek his termination if he fails to maintain his membership in and financial support of IBEW 589.

81. IBEW 589's breach of its duty caused and is causing Mr. Michielini to suffer monetary and non-monetary harms.

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 Defendants' CBA provisions and policies that require Mr. Michielini to remain a member of IBEW 589 or provide financial support to IBEW 589 as a condition of employment violate the First and Fourteenth Amendments to the United States Constitution;

ii. that Defendants' actions in enforcing the challenged CBA provisions and policies requiring Mr. Michielini to be a member of IBEW 589 as a condition of employment, and in altering the terms and conditions of his employment due to his decision to resign his union membership, violate the First and Fourteenth Amendments to the United States Constitution;

iii. that any provisions of the RLA, to the extent they relate to and/or authorize Defendants to require Mr. Michielini to remain a member of IBEW 589, or to provide financial support to IBEW 589, as applied to Mr. Michielini as the employee of a public employer, violate the First and Fourteenth Amendments to the United States Constitution; and

iv. that Defendants' actions in enforcing the challenged CBA provisions and policies requiring Mr. Michielini to be a member of IBEW 589 or to provide financial support to IBEW 589 as a condition of employment, including altering the terms and conditions of his employment because of or in retaliation for his decision to resign his union membership, violate the RLA and breach IBEW 589's duty of fair representation.

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, which this Court declares illegal;

b. enforcing any provisions in the CBA, Defendants' policies and practices, and/or any subsequent substantially similar provisions agreed to between Defendants, which require Mr. Michielini to remain a member of IBEW 589 and/or provide financial support to IBEW 589 as a condition of employment;

c. seeking the termination of or any other alteration to the terms and conditions of Mr. Michielini's employment as a result of his decision to resign his union membership or otherwise exercise his constitutional rights; and

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

a. retroactively recognize Mr. Michielini's resignation to the date of his resignation, on or about June 1, 2021, and refund all dues taken from him since that date, plus interest thereon;

b. restore Mr. Michielini's eligibility to work overtime as provided for in the CBA; and

c. restore to Mr. Michielini all wages lost as a result of Defendants' denial of overtime opportunities to Mr. Michielini since the date of his resignation, plus interest thereon.

C. **Monetary:** A judgment awarding Mr. Michielini nominal and compensatory damages for the injuries sustained as a result of Defendants' unlawful interference with and deprivation of his constitutional and civil rights, and the violation of the RLA and breach of the duty of fair representation, including, but not limited to, any dues deducted from his wages after his resignation, the lost wages for overtime opportunities he should have been offered, plus interest thereon, and such other amounts as principles of justice and compensation warrant.

D. **Attorneys' Fees and Costs:** A judgment awarding Mr. Michielini 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: August 24, 2021

s/ Tyler K. Patterson

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