

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

CRYSTAL PAPARONE-DONADIO,

Plaintiff,

v.

DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; BOARD OF EDUCATION EMPLOYEES LOCAL 372, DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO; NEW YORK CITY DEPARTMENT OF EDUCATION; CITY OF NEW YORK,

Defendants.

**Case No. 1:21-cv-8278**

Hon. \_\_\_\_\_

**COMPLAINT**

AND NOW comes Plaintiff Crystal Paparone-Donadio, by and through her undersigned attorneys, and states the following claims for relief against Defendants District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO (“District Council 37”); Board of Education Employees Local 372, District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO (“Local 372”);<sup>1</sup> the New York City Department of Education (“Department”); and the City of New York<sup>2</sup>, and avers as follows:

**SUMMARY OF THE CASE**

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for monetary relief to redress the ongoing deprivation of Plaintiff’s rights, privileges, and/or immunities under the First and Fourteenth Amendments of the United States Constitution. This deprivation is caused by Defendants’ contracts, policies, and practices, under color of state law, including the state’s Public

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<sup>1</sup> District Council 37 and Local 372 are jointly referred to herein as “Defendant Unions.”

<sup>2</sup> Department and the City of New York are jointly referred to herein as “City Defendants.”

Employees' Fair Employment Act, N.Y. Civ. Serv. Law, Article 14 (the "Taylor Law"), under which Defendants forced Plaintiff to remain a union member and had union dues or fees seized from Plaintiff's wages even though she is a public employee who resigned from and objects to financially supporting Defendant Unions.

2. The United States Supreme Court held that the First Amendment of the United States Constitution 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).

3. Defendants violated Plaintiff's constitutional rights by refusing to accept her resignation of union membership for months and by deducting and retaining payments of union dues and/or fees from her wages as a condition of her employment without her consent after Plaintiff resigned from Defendant Unions.

4. Defendants' concerted conduct violates Plaintiff's First and Fourteenth Amendment rights to free association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience.

5. Additionally, Defendants acted in concert, by and through their agents and officials, to deduct and to accept union dues or fees from Plaintiff's wages without providing her any meaningful notice or opportunity to object to the ongoing deductions, the process by which the money was deducted, or the ways in which her money is used. These omissions violate Plaintiff's Fourteenth Amendment right to due process.

6. Because Defendants ignored Plaintiff's membership resignation and deducted union dues or fees from Plaintiff's wages in violation of her constitutional rights, Plaintiff seeks written judgment awarding compensatory and nominal damages for the violation of her First and Fourteenth Amendment rights, as well as attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

## JURISDICTION AND VENUE

7. This action arises under the Constitution and laws of the United States of America. 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 Plaintiff's rights, privileges, and immunities under the Constitution of the United States, particularly the First and Fourteenth Amendments thereto.

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

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

## PARTIES

10. Plaintiff Crystal Paparone-Donadio is, and was at all relevant times hereto, a “public employee” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.7 (McKinney 2020). She is employed by the New York City Department of Education as a Level 2 Substance Abuse Prevention and Intervention Specialist. Plaintiff is in a bargaining unit represented by Defendant Unions exclusively for purposes of collective bargaining. Plaintiff was a member of Defendant Unions but has not been a member since the date of her resignation letter.

11. Defendant District Council 37 is an “employee organization” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.5. District Council 37 and/or its affiliates represent certain New York City Department of Education employees, including Plaintiff, exclusively for purposes of collective bargaining. District Council 37 maintains a place of business at 125 Barclay Street, New York, New York and conducts its business and operations in the Southern District of New York.

12. Defendant Local 372 is an “employee organization” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.5. Local 372 represents certain New York City Department of Education employees, including Plaintiff, exclusively for purposes of collective bargaining. Local 372 maintains a place of business at 85 Broad Street, 16th Floor, New York, New York and conducts its business and operations in the Southern District of New York.

13. Defendant New York City Department of Education is a “public employer” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.6. Defendant Department, by and through then-Chancellor Richard A. Carranza, is a signatory to the collective bargaining agreement (“CBA”) with Local 372 governing the terms and conditions of Plaintiff’s employment.

14. Defendant City of New York is a “public employer” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.6. The City of New York issues wages to employees, including Plaintiff, and processes payroll deductions of union dues and/or fees pursuant to the requirements of the Taylor Law.

### **FACTUAL ALLEGATIONS**

15. Acting in concert under color of state law, Local 372 and Defendant Department have entered into the CBA that controls the terms and conditions of Plaintiff’s employment. Relevant portions of the CBA are attached hereto as “Exhibit A” and incorporated by reference herein.

16. Article 1 of the CBA provides that “the Board recognizes the Union as the exclusive bargaining representative of all employees employed in the title of Substance Abuse Prevention and Intervention Specialist. . . .” Ex. A, art. 1.

17. Pursuant to the CBA and/or other agreements between Defendants, the City of New York processes the deduction of union dues and/or fees from Plaintiff’s wages for Defendant Unions and transmits them to Defendant Unions.

18. State law requires Plaintiff's employer, the City of New York, to extend to Defendant Unions the right to dues deductions from its employees' wages.

19. 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.

20. 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(b)(i).

21. Upon information and belief, the City Defendants require employees to effectuate their union membership resignations and revocations of consent to union dues deductions through Defendant Unions.

22. Upon information and belief, the City Defendants deny employees' requests to resign their union membership and/or to end union dues and/or fees deductions from their wages without authorization from Defendant Unions.

23. Absent this authorization from Defendant Unions, the City Defendants will not cease processing union dues and/or fees deductions even if presented with a union membership resignation letter and revocation of consent to dues deductions directly from an employee.

24. Plaintiff became a member of Defendant Unions after beginning her employment with the City Defendants in or about 2017.

25. On October 16, 2020, Plaintiff resigned her union membership and revoked authorization of union dues deductions from her wages via letters sent to District Council 37 and Defendant Department.

26. Neither District Council 37 nor the City Defendants responded to Plaintiff's October 16, 2020 letters.

27. To date, Defendant Unions have not recognized Plaintiff as a nonmember of Defendant Unions.

28. The City of New York deducted union dues and/or fees for Defendant Unions from Plaintiff's wages for nearly eight months after her resignation, until on or about June 6, 2021.

29. Defendant Unions retain the monies deducted from Plaintiff's wages after her resignation of union membership.

30. Defendants never provided Plaintiff with written notice of her constitutional rights, including the right as a nonmember to choose not to pay any union dues or fees to Defendant Unions or to due process, including notice and an opportunity to object to how any nonconsensual union dues or fees taken from her are used.

31. Plaintiff never waived her constitutional right as a nonmember not to pay union dues or fees to Defendant Unions.

32. Defendants, acting in concert pursuant to the CBA, the Taylor Law, and their joint policies and practices, refused to acknowledge and/or honor Plaintiff's resignation of union membership and to immediately end union dues deductions from Plaintiff's wages.

33. Defendants, pursuant to the CBA, the Taylor Law, other agreements between them, and/or their joint policies and practices, acted and are acting in concert under color of state law to collect, distribute, accept, and/or retain union dues or fees deducted from Plaintiff's wages after she resigned from Defendant Unions.

34. Defendant Unions continue to retain purported union dues or fees deducted from Plaintiff's wages after her resignation of membership in Defendant Unions and her revocation of authorized dues deductions from her wages for Defendant Unions.

35. Defendants have taken and accepted union dues or fees from Plaintiff's wages against her will and without her consent.

36. Defendants, acting in concert under color of state law, did not provide Plaintiff with meaningful notice or opportunity to object to dues deductions for Defendant Unions, the process by which her money is deducted, or the ways in which her money is spent.

37. On information and belief, Defendant Unions use the financial support forcibly seized from Plaintiff while she was a nonmember for purposes of political speech and activity, among other purposes.

38. Plaintiff objects to the compelled association with and financial subsidization of any activities of Defendant Unions and/or their affiliates for any purpose.

### **CLAIMS FOR RELIEF**

#### **COUNT ONE**

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

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

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

41. 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.

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

43. The Taylor Law, Sections 201 and 208, on their face and/or as applied by Defendants and/or Defendants' agreements, authorize and/or require the City Defendants, by and through their agents and/or officials, and Defendant Unions to force public employees to remain union members and/or full dues payers despite their expressed intention to resign union membership and/or to end financial support of a union in violation of public employees' rights under the First Amendment.

44. Sections 201 and 208 of the Taylor Law, on their face and/or as applied by Defendants, permit Defendants to require public employees to maintain unwilling association with and financial support of public employee organizations, such as Defendant Unions, and are, therefore, unconstitutional.

45. This forced membership requirement impinges on Plaintiff's exercise of her 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.

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

47. Because Plaintiff has resigned her union membership, the First Amendment protects her from being forced to financially support or otherwise be associated with Defendant Unions against her will and without her consent.



48. 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.

49. Plaintiff has not waived her constitutional right as a nonmember not to provide financial support via payroll deduction, or other method, to Defendant Unions.

50. Plaintiff has not waived her constitutional right not to financially support Defendant Unions after she resigned her membership in Defendant Unions.

51. Defendant Unions acted and are acting in concert and under color of state law with the City Defendants, by and through their agents, to seize, process, accept, and/or retain deductions of payments from Plaintiff's wages after she became a nonmember.

52. These forced payroll deductions, the retention of monies deducted from Plaintiff's wages since her union membership resignation, and Defendant Unions' failure to recognize and/or honor Plaintiff's union membership resignation, violate Plaintiff's rights protected by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 by causing her to provide financial support, including of the political activities and speech of Defendant Unions, without her consent.

53. Defendant Unions acted under color of state law in seizing payments from Plaintiff's wages via payroll deduction in concert with the City Defendants and pursuant to state law and Defendants' joint policies and practices despite Plaintiff's status as a union nonmember and her revocation of consent to payroll deductions.

54. Defendants, by deducting and collecting financial support from Plaintiff via payroll deduction despite her revocation of consent to dues deductions, and without clear and compelling evidence that she has waived her constitutional rights, deprived and are depriving 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.

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

- a. was prevented from exercising her rights and privileges to disassociate from and to no longer fund and/or support the agenda, activities, expenses, and speech of Defendant Unions;
- b. has been deprived of her civil rights guaranteed under the Constitution and statutes of the United States; and
- c. has suffered monetary damages and other harm.

### **COUNT TWO**

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

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

57. 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).

58. Additionally, public-sector unions and public employers have a responsibility to provide procedures that minimize constitutional impingement inherent in compelled association and speech and that facilitate the protection of public employees' rights. *See Chi. Tchr. Union, Loc. No. 1 v. Hudson*, 475 U.S. 292, 307 & n.20 (1986).

59. Defendants have not implemented policies and procedures that are narrowly tailored to reduce the impingement on Plaintiff's constitutional rights, including the constitutionally required

procedures and disclosures regarding the use of union dues or fees taken from her as recognized in *Hudson*.

60. Defendants have not provided Plaintiff with notice of or a meaningful opportunity to object to the seizure of a portion of her wages via payroll deductions by the City Defendants or the use of her monies by Defendant Unions.

61. Plaintiff has never waived her due process rights, including her right not to subsidize the speech and activities of Defendant Unions.

62. As a result of Defendants' failure to provide procedural safeguards to protect Plaintiff's due process rights, Plaintiff was forced to pay fees even though she is not a member of Defendant Unions.

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

a. was prevented from exercising her rights and privileges to disassociate from and to no longer support the agenda, activities, speech, and expenses of a private organization that she objects to supporting; and

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

#### **PRAYER FOR RELIEF**

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

A. **Monetary:** A judgment against Defendants 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 her wages after her resignation of membership in Defendant Unions,

nominal damages plus interest thereon, and such other amounts as principles of justice and compensation warrant.

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

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

Respectfully submitted,

Dated: October 7, 2021

s/ Tyler K. Patterson

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