

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

DAPHNE SMITH,

Plaintiff,

v.

COUNCIL 82, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-
CIO; ALBANY COUNTY SHERIFF'S LOCAL 775 OF
SECURITY AND LAW ENFORCEMENT EMPLOYEES,
COUNCIL 82, AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES, AFL-
CIO; and the COUNTY OF ALBANY,

Defendants.

Case No. 1:22-cv-36 (MAD/CFH)

Hon. _____

COMPLAINT

AND NOW comes Plaintiff Daphne Smith, by and through her undersigned attorneys, and states the following claims for relief against Defendants Council 82, American Federation of State, County and Municipal Employees, AFL-CIO (“Council 82”); Albany County Sheriff’s Local 775 of Security and Law Enforcement Employees, Council 82, American Federation of State, County and Municipal Employees, AFL-CIO (“Local 775”) (referred to collectively as “Defendant Unions”); and the County of Albany (“Albany County”), and alleges as follows:

SUMMARY OF THE CASE

1. Despite Plaintiff’s resignation from membership in Defendant Unions, Defendants failed to acknowledge that she was not a member for nearly two years, forcing her to continue to be associated with and financially support Defendant Unions.

2. Therefore, Plaintiff brings this civil rights action pursuant to 42 U.S.C. § 1983 to redress the deprivation of her rights, privileges, and/or immunities under the First and Fourteenth Amendments to the United States Constitution. This deprivation is caused by Defendants’ contracts,

policies, and practices, under color of state law, including the state's Public Employees' Fair Employment Act, N.Y. Civ. Serv. Law, art. 14 (the "Taylor Law"), under which Defendants seized union dues or fees from Plaintiff's wages even though she had resigned and objected to financially supporting Defendant Unions.

3. The United States Supreme Court 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).

4. Defendants violated Plaintiff's constitutional rights by deducting payments of union dues and/or fees from her wages as a condition of her employment without her consent after Plaintiff became a nonmember.

5. 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.

6. 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 her money was deducted, or the ways in which her money is used. These omissions violate Plaintiff's Fourteenth Amendment right to due process.

7. Because Defendants deducted and retain 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

8. 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.

9. 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.

10. 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 and because a substantial part of the events giving rise to this action occurred in this judicial district.

PARTIES

11. Plaintiff Daphne Smith 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). Plaintiff is employed by Albany County as a Corrections Officer and is in a bargaining unit represented exclusively for collective bargaining purposes by Local 775. Plaintiff was a member of Defendant Unions but has not been a member since the date of her resignation.

12. Defendant Council 82 is an “employee organization” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.5. Council 82 and/or its affiliates exclusively represent Albany County employees, including Plaintiff, for collective bargaining purposes. Council 82 maintains a place of business at 63 Colvin Avenue, Albany, New York and conducts its business and operations in the Northern District of New York.

13. Defendant Local 775 is an “employee organization” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.5. Local 775 and/or its affiliates exclusively represent

Albany County employees, including Plaintiff, for collective bargaining purposes. Local 775 maintains a place of business at 63 Colvin Avenue, Albany, New York and conducts its business and operations in the Northern District of New York.

14. Defendant Albany County is a “public employer” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.6. As such, Albany County issues wages to its employees, including Plaintiff, and processes payroll deductions of union dues and/or fees pursuant to the requirements of the Taylor Law. Albany County is a signatory to the collective bargaining agreement (“CBA”) with Defendant Unions governing the terms and conditions of Plaintiff’s employment.

FACTUAL ALLEGATIONS

15. Acting in concert under color of state law, Defendant Unions and Albany County have entered into the CBA that controls the terms and conditions of Plaintiff’s employment. The term of the CBA is January 1, 2008, to December 31, 2009, 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.

16. Article II, Section 1 of the CBA provides that “the Employer agrees to grant exclusive rights of dues deductions to the Union and will deduct membership dues from the pay of those employees who individually request in writing on authorization cards provided by the Union authorizing such deductions be made.” Ex. A, art. II, sec. 1.

17. Pursuant to the CBA and/or other agreements between Defendants, Albany County oversaw the deduction of union dues and/or fees from Plaintiff’s wages for Defendant Unions and transmitted the union dues and/or fees to Defendant Unions.

18. State law requires Albany County, as Plaintiff’s employer, 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).

21. On information and belief, Albany County requires its employees to effectuate their union membership resignations and/or revocations of consent to union dues deductions through Defendant Unions.

22. On information and belief, Albany County denies its 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, Albany County will not cease processing union dues and/or fees deductions even if an Albany County employee so requests.

24. Plaintiff became a member of Defendant Unions after beginning her employment with Albany County in or about 1999.

25. On April 16, 2019, Plaintiff resigned her union membership and revoked authorization of union dues deductions from her wages via letters sent to Council 82 and Albany County.

26. Plaintiff’s April 16, 2019, resignation letters included a request to provide Plaintiff with anything she may have signed supporting either Council 82’s or Albany County’s decision not

to honor her membership resignation and revocation of authorization for union dues deduction from her wages.

27. Neither Council 82 nor Albany County responded to Plaintiff's April 16, 2019, letters.

28. On December 9, 2020, Plaintiff confirmed her resignation and revocation of consent to dues deductions via a handwritten, notarized letter sent to Council 82.

29. Around this time, Plaintiff again requested that Defendant Unions provide her with anything she might have signed authorizing the deduction of union dues and/or fees from her wages on at least two occasions.

30. Defendant Unions have never provided Plaintiff with any such authorization.

31. On December 10, 2020, Plaintiff again resigned her union membership and revoked authorization of union dues deductions from her wages via letters sent to Council 82 and Albany County.

32. Shortly thereafter, an agent or official of Council 82 verbally informed Plaintiff that the union would not accept her previous letters because she did not use Council 82's "Resignation from Union Membership and Revocation of Authorization from Payroll Deductions" Form.

33. On information and belief, Plaintiff never agreed to use Council 82's resignation form to effectuate her resignation from union membership or to revoke authorization of union dues deductions from her wages by Albany County for Defendant Unions.

34. Nonetheless, Plaintiff emailed a completed resignation form to Council 82 on or about January 11, 2021.

35. Dues deductions from Plaintiff's wages for Defendant Unions ceased on or about January 27, 2021.

36. Albany County enforced Defendant Unions' requirement of the resignation form by refusing to end the deduction of dues and/or fees from Plaintiff's wages until she submitted the resignation form.

37. Defendant Unions have not recognized and honored Plaintiff's union membership resignation.

38. Defendants continued to deduct, process, accept, and/or retain union dues and/or fees from Plaintiff's wages from April 16, 2019, the date of her initial resignation, until about January 27, 2021.

39. Defendants never provided Plaintiff with written notice of her constitutional rights 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.

40. No Defendant or any agent or official of Defendants asked Plaintiff to agree to pay money to Defendant Unions as a nonmember or to otherwise waive any constitutional rights following her resignation from Defendant Unions.

41. Plaintiff never received notice from Defendants that she had the constitutional right not to pay union dues or fees to Defendant Unions when she was a nonmember.

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

43. Defendant Unions and Albany County, acting in concert pursuant to the CBA, the Taylor Law, and their joint policies and practices, refused to immediately end union dues deductions from Plaintiff's wages upon her membership resignation and revocation of dues deduction authorization.

44. Defendant Unions and Albany County, acting in concert pursuant to the CBA, the Taylor Law, and their joint policies and practices, refused to end union dues deductions from Plaintiff's wages unless she filled out a "resignation form" provided by Defendant Unions.

45. From the date of Plaintiff's resignation through on or about January 27, 2021, Defendants continued to deduct and/or retain purported union dues or fees from Plaintiff's wages even though Plaintiff had resigned her union membership and revoked any consent to pay Defendant Unions.

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

47. 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.

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

49. 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)

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

51. 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.

52. 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.

53. 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.

54. The Taylor Law, Sections 201 and 208, on their face and/or as applied by Defendants, authorize or require Defendants, by and through their agents and/or officials, to force public employees to remain union members despite their resignation of or expressed intention to resign union membership and to end financial support of a union.

55. 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 allegiance to and financial support of an employee organization, such as Defendant Unions.

56. 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.

57. 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.

58. Because Plaintiff is not a member of Defendant Unions, the First Amendment protects her from being forced to financially support or otherwise be associated with Defendant Unions.

59. 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.

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

61. Defendant Unions acted and are acting in concert and under color of state law with Albany County, by and through their agents, to deduct and retain payments from Plaintiff's wages after she became a nonmember.

62. 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.

63. Defendants' actions caused Plaintiff to provide financial support, including of the political activities and speech of Defendant Unions, without her consent.

64. Defendants acted under color of state law in seizing payments from Plaintiff's wages via payroll deduction pursuant to state law and Defendants' joint policies and practices despite Plaintiff's resignation and revocation of consent to payroll deductions.

65. Defendants, by forcing Plaintiff to provide financial support to Defendant Unions via payroll deduction despite her revocation of consent to dues deductions and without clear and compelling evidence that she 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.

66. 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 no longer support the agenda, activities, expenses, and speech of Defendant Unions;
- b. was 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)

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

68. 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).

69. 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).

70. 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*.

71. 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 Albany County or the use of her funds by Defendant Unions.

72. Defendants acted arbitrarily and violated Plaintiff's due process rights by requiring her to submit a form controlled and provided by Defendant Unions to effectuate her resignation and end the deduction of dues from her wages, despite her resignation and revocation of consent nearly two years earlier.

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

74. 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 a nonmember of Defendant Unions.

75. 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 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 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 as authorized by the Taylor Law, the CBA,

Defendants' joint policies and practices, and/or any other purported authorizations for deducting dues or fees that required Plaintiff to provide financial support to Defendant Unions and/or their affiliates after resignation of her union membership without proper constitutional notice and waiver. These damages include, but are not limited to, the amount of dues deducted from her wages after her resignation of union membership, plus interest thereon, nominal damages, 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: January 18, 2022

s/ Tyler K. Patterson

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