

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

GREGORY TOWSE,

Plaintiff,

v.

CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,
LOCAL 1000, AFSCME, AFL-CIO,

Defendant.

Case No. 1:21-cv-1347 (BKS/DJS)

Hon. _____

COMPLAINT

AND NOW comes Plaintiff Gregory Towse, by and through his undersigned attorneys, and states the following claims for relief against Defendant Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO (“CSEA”), and avers as follows:

SUMMARY OF THE CASE

1. Despite Plaintiff’s resignation from membership in CSEA, CSEA failed to acknowledge that he was not a member for nearly seven months, forcing him to continue to be associated with and financially support CSEA.

2. Therefore, Plaintiff brings this 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 to the United States Constitution. This deprivation is caused by CSEA’s contracts, policies, and practices with the State of New York (“the State”), 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 CSEA and the State forced Plaintiff to remain a union member and seized union dues or fees from his wages even though he is a public employee who resigned from and objects to financially supporting CSEA.

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. CSEA violated Plaintiff's constitutional rights by refusing to accept his resignation of union membership and by working in concert with the State to have payments of union dues or fees deducted from his wages as a condition of employment without his consent for months after Plaintiff resigned from CSEA.

5. CSEA's conduct, in concert with the State, violates Plaintiff's First and Fourteenth Amendment rights to free association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience.

6. Additionally, CSEA acted in concert with the State, by and through its agents and officials, to deduct and to retain union dues or fees unlawfully taken from Plaintiff's wages without providing him any meaningful notice or opportunity to object to the ongoing deductions, the process by which his money is withheld, or the ways in which his money is used, violating his Fourteenth Amendment right to due process.

7. Because CSEA and the State ignored Plaintiff's membership resignation and deducted union dues or fees from Plaintiff's wages in violation of his constitutional rights, Plaintiff seeks written judgment awarding compensatory and nominal damages for the violation of his 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, 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 United States Constitution, and particularly the First and Fourteenth Amendments thereto, and 42 U.S.C. § 1988.

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

10. Venue is proper in this Court under 28 U.S.C. § 1391(b) because CSEA is domiciled in, and operates or does 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

11. Plaintiff Gregory Towse is, and was at all times relevant hereto, a “public employee” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.7 (McKinney 2020). He is employed by the State of New York Division of Military and Naval Affairs as an Office Assistant. Plaintiff is employed in a bargaining unit represented by CSEA exclusively for purposes of collective bargaining. Plaintiff was a member of CSEA but has been a nonmember since the date of his resignation letter.

12. Defendant CSEA is an “employee organization” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.5. Pursuant to the collective bargaining agreement (“CBA”) between CSEA and the State, CSEA represents Plaintiff's bargaining unit, the Division of Military and Naval Affairs Unit, exclusively for purposes of collective bargaining with the State. CSEA maintains a place of business at 143 Washington Avenue, Albany, New York and conducts its business and operations in the Northern District of New York.

FACTUAL ALLEGATIONS

13. Acting in concert under color of state law, the State and CSEA 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.

14. Article 4 of the CBA provides that "CSEA shall have exclusive payroll deduction of membership dues. . . ." and that "no other organization shall be accorded any such payroll deduction privilege for membership dues. . . ." Ex. A, section 4.2.

15. Pursuant to the CBA and/or other agreements between CSEA and the State, the State processes the deduction of union dues and/or fees from Plaintiff's wages for CSEA and transmits them to CSEA.

16. State law requires Plaintiff's employer, the State, to extend to CSEA the right to dues deductions from its employees' wages.

17. 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.

18. 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.

19. In 2018, the Office of the New York State Comptroller issued State Agencies Bulletin No. 1664-1, which affects "employees who are seeking to initiate or terminate deductions for union dues." The bulletin states that agencies should "notify employees to contact their union" to terminate dues or membership status.

20. Plaintiff became a union member after beginning his employment with the New York State Division of Military and Naval Affairs in or about January 2017.

21. On September 17, 2020, Plaintiff resigned his CSEA membership and sought to end union dues deductions from his wages via letters sent to CSEA and the State.

22. Plaintiff's resignation letters included his name, address, telephone number, electronic signature, and one of his account numbers assigned by CSEA.

23. CSEA responded to Plaintiff's resignation letter via letter dated September 21, 2020, and informed Plaintiff that he would have to resign his union membership in accordance with CSEA's "Board-approved policy."

24. The State responded to Plaintiff's resignation letter on November 3, 2020, via letter, and informed Plaintiff that dues deductions for CSEA would be discontinued only after Plaintiff contacted CSEA to terminate his union membership.

25. CSEA refused to allow Plaintiff to resign his union membership and refused to instruct the State to end the deduction of dues from Plaintiff's wages until April 5, 2021.

26. CSEA failed to refund to Plaintiff the union dues or fees it accepted from his wages after his resignation on September 17, 2020.

27. Despite multiple requests from Plaintiff, CSEA has refused to provide Plaintiff with his CSEA membership agreement or any authorization signed by Plaintiff allowing for the deduction of union dues or fees for CSEA from his wages by the State.

28. The State deducted union dues and/or fees for CSEA from Plaintiff's wages until about April 15, 2021, almost seven months after Plaintiff's September 17, 2020, resignation from CSEA.

29. CSEA retains the monies deducted from Plaintiff's wages after he resigned from CSEA on September 17, 2020.

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

31. Plaintiff never waived his constitutional right as a nonmember not to pay union dues or fees to CSEA.

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

33. CSEA, acting in concert with the State under color of state law, pursuant to the CBA, the Taylor Law, other agreements between them, and/or their joint policies and practices, accepted and/or retains union dues or fees deducted from Plaintiff's wages after he resigned from CSEA.

34. CSEA continues to retain purported union dues or fees deducted from Plaintiff's wages after his resignation of membership in CSEA and revocation of his authorization to deduct dues from his wages by the State for CSEA.

35. The State deducted, and CSEA accepted, union dues or fees from Plaintiff's wages against his will and without his consent.

36. CSEA, acting in concert with the State under color of state law, did not provide Plaintiff with meaningful notice or opportunity to object to dues deductions for CSEA, the process by which his money is deducted, or the ways in which CSEA spends his money.

37. On information and belief, CSEA uses the financial support forcibly seized from Plaintiff while he 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 CSEA and/or its 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. Sections 201 and 208 of the Taylor Law, on their face and/or as applied by CSEA and the State, and/or their agreements, authorize and/or require the State and CSEA to force public 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, in violation of employees' rights under the First Amendment.

44. Sections 201 and 208 of the Taylor Law, facially and/or as applied by CSEA and the State, permit CSEA and the State to require public employees to maintain unwilling association with and financial support of a public employee organization, such as CSEA and are, therefore, unconstitutional.

45. This forced membership requirement impinges on Plaintiff's exercise of his 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 CSEA and the State, authorizes CSEA and the State to violate Plaintiff's constitutional rights by deducting union dues or fees from his wages without his consent in violation of the United States Constitution as explained in *Janus*, 138 S. Ct. 2448.

47. Because Plaintiff has resigned his union membership, the First Amendment protects him from being forced to financially support or otherwise be associated with CSEA against his will and without his 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. Defendant bears the burden of proving that these criteria are satisfied.

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

50. Plaintiff has not waived his constitutional right not to financially support CSEA after he resigned his membership in CSEA.

51. CSEA acted under color of state law with the State to seize and/or accept deductions of payments from Plaintiff's wages after he became a nonmember.

52. These forced payroll deductions, the retention of monies deducted from Plaintiff's wages since his union membership resignation, and CSEA's 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 him to provide financial support, including of the political activities and speech of CSEA, without his consent.

53. CSEA acted under color of state law in seizing payments from Plaintiff's wages via payroll deduction in concert with the State and pursuant to state law, their joint policies and practices, and the provisions of the CBA between them, despite Plaintiff's status as a union nonmember and his revocation of consent to payroll deductions.

54. CSEA, by acting with the State to accomplish the deduction of financial support from Plaintiff via payroll deduction despite his revocation of consent to dues deductions, and without clear and compelling evidence that he waived his constitutional rights, deprived Plaintiff of his 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 CSEA's actions in concert with the State, taken pursuant to state law, the CBA, and joint policies and practices, Plaintiff:

- a. was prevented from exercising his rights and privileges to disassociate from and no longer fund and support the agenda, activities, expenses, and speech of CSEA;
- b. has been deprived of his 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. CSEA and the State have not implemented policies and procedures that are narrowly tailored to reduce the impingement on Plaintiff's constitutional rights.

60. CSEA and the State have not provided Plaintiff with notice of or a meaningful opportunity to object to the seizure of a portion of his wages via payroll deductions by the State or the use of his funds by CSEA.

61. Plaintiff has never waived his due process rights.

62. CSEA refused to act with the State to end the deduction of dues from Plaintiff's wages or to provide Plaintiff with any purported authorization from Plaintiff for doing so.

63. As a result of CSEA and the State's failure to provide procedural safeguards to protect Plaintiff's due process rights, Plaintiff was forced to pay fees even though he is not a member of CSEA.

64. As a direct result of CSEA's concerted actions with the State, taken pursuant to state law, including but not limited to Section 208 of the Taylor Law; the CBA between CSEA and the State; and their joint policies and practices, Plaintiff:

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

b. was deprived of his 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 CSEA awarding Plaintiff nominal and compensatory damages for the injuries sustained as a result of CSEA's unlawful interference with and deprivation of his constitutional and civil rights, including, but not limited to, the amount of dues deducted from his wages after his resignation of membership in CSEA, plus interest thereon, nominal damages, and such 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.

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

Respectfully submitted,

Dated: December 16, 2021

s/ Tyler K. Patterson

Tyler K. Patterson, Bar Number: 701528

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