

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

TINA CURTIS,

Plaintiff,

v.

HOTEL & RESTAURANT EMPLOYEES &
BARTENDERS UNION LOCAL 217, AFL-CIO;
THE CITY OF NEW HAVEN; NEW HAVEN
BOARD OF EDUCATION,

Defendants.

Case No. 3:22-cv-317

COMPLAINT

FEBRUARY 28, 2022

AND NOW comes Plaintiff Tina Curtis, by and through her undersigned attorneys, and states the following claim for relief against Defendants Hotel & Restaurant Employees and Bartenders Union Local 217, AFL-CIO (“UNITE HERE” or the “Union”); the City of New Haven (“City”); and the New Haven Board of Education (“Board”), and avers as follows:

SUMMARY OF THE CASE

1. Defendants coerced Ms. Curtis into union membership by explicitly telling her in writing that she was required to pay money to UNITE HERE as a condition of her employment with Defendant Board, as their joint agreement requires. Doubling down, Defendants have denied her request to resign her Union membership and end payment of money to Union.

2. Defendants’ enforcement of the requirement in their collective bargaining agreement and dues deduction authorization documents to require employees to pay Union as a condition of employment violates Ms. Curtis’s First and Fourteenth Amendment rights to free association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience.

3. Ignoring her resignation, Defendants, acting in concert, continue to collect full union dues from Ms. Curtis and are preventing her from disassociating herself from UNITE HERE. She

thus seeks compensatory and nominal damages against all Defendants, and punitive damages against UNITE HERE, for the violation of her First and Fourteenth Amendment rights, as well as attorneys' fees and costs.

JURISDICTION AND VENUE

4. 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 Ms. Curtis's rights, privileges, and immunities under the Constitution of the United States, and particularly the First and Fourteenth Amendments.

5. This Court has jurisdiction over Ms. Curtis's claims under 28 U.S.C. § 1331—because the claims arise under the United States Constitution—and 28 U.S.C. § 1343—because she seeks relief under 42 U.S.C. § 1983.

6. This action is an actual controversy in which Ms. Curtis 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 Ms. Curtis's rights and grant further necessary and proper relief, including injunctive relief pursuant to Federal Rule of Civil Procedure 65.

7. Venue is proper in this Court under 28 U.S.C. § 1391(b), because Defendants are domiciled in and operate or do business in this judicial district and because the events giving rise to this action occurred in this judicial district.

PARTIES

8. Plaintiff Tina Curtis is employed as lead cook by Board. She is thus an "employee" within the meaning of the Municipal Employees Relations Act ("MERA"), Conn. Gen. Stat. § 7-467(2). Ms. Curtis is represented exclusively for purposes of collective bargaining by UNITE HERE, pursuant to MERA.

9. Defendant UNITE HERE is an “employee organization” within the meaning of MERA, Conn. Gen. Stat. § 7-467(6). UNITE HERE maintains a place of business at 425 College Street, New Haven, Connecticut, and conducts its business and operations throughout the State of Connecticut and within the District of Connecticut.

10. Defendant City is a “municipal employer” within the meaning of MERA, Conn. Gen. Stat. § 7-467(1).

11. Defendant Board is a “municipal employer” within the meaning of MERA, Conn. Gen. Stat. § 7-467(1).

FACTUAL ALLEGATIONS

12. Acting in concert under color of state law, Defendants Board and UNITE HERE have entered into collective bargaining agreements that control the terms and conditions of Ms. Curtis’s employment.

13. The first collective bargaining agreement (“CBA”) effective during the relevant time frame, dated July 1, 2016, to June 30, 2020, is attached hereto as “Exhibit A” and is incorporated herein.

14. On information and belief, the CBA remains in effect or has been replaced with a new agreement with the same or substantially similar provisions.

15. MERA, which applies to Ms. Curtis’s employment, provides that “Municipal employers and employee organizations are authorized to negotiate provisions in a collective bargaining agreement calling for the payroll deduction of employee organization dues and initiation fees.” Conn. Gen. Stat. § 7-477.

16. City issues wages to employees of Board, including Ms. Curtis, and processes all payroll deductions, including union dues and/or fees for UNITE HERE under Article 2 of the CBA.

17. As authorized by MERA, the CBA contains a “Union Security and Payroll Deduction” article, which requires:

All employees, if not already members, shall within thirty (30) days following the effective date of this Agreement, as a condition of continued employment, become and remain a member of the Union in good standing or pay to the Union an agency fee in recognition of the services performed by the Union.

Ex. A, art. 2, sec. 1.

18. Ms. Curtis has been a public employee, employed by City and Board as a cook for City’s school cafeteria food service, since approximately 2001 and became a member of UNITE HERE shortly thereafter.

19. Ms. Curtis became a member of UNITE HERE because she believed she had to be a member of the Union.

20. On June 27, 2018, the Supreme Court ruled in *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018) that the Constitution prohibits forcing public employees to pay money to a union as a condition of employment.

21. That same day, UNITE HERE issued a press release calling itself a “key ally of the four largest public sector unions,” and stating that the *Janus* decision “rigs the system like never before.” The release is attached hereto as “Exhibit B” and is incorporated herein.

22. In approximately February or March 2019, officials of UNITE HERE told Ms. Curtis that she needed to sign a new document to authorize City and Board to deduct union dues from her wages.

23. The form that officials gave Ms. Curtis, which was an authorization to her employer to deduct union dues, stated:

As an employee working under UNITE HERE Local 217 contract containing a union security clause, you are required, as a condition of employment, to pay dues and/or fees to the Union.

The dues authorization form is attached hereto as “Exhibit C” and is incorporated herein.

24. Defendants, by and through their agents or officials, continue to enforce the requirement in their CBA that public employees like Ms. Curtis pay money to Union as a condition of employment, even though Defendants know of the Supreme Court's decision in *Janus*.

25. Defendants, by and through their agents or officials, misrepresented Ms. Curtis's rights to her in order to coerce her into remaining a member of Union and continuing to pay union dues.

26. Defendants, by and through their agents or officials, willfully interfered with Ms. Curtis's rights to coerce her into giving up her right not to be a union member and not to pay Union.

27. Believing that she had to pay Union regardless of whether she remained a member, Ms. Curtis signed the form on March 6, 2019.

28. Had Ms. Curtis known that she had the choice not to pay Union and not to be a member, she would not have signed the form and would have instead resigned her union membership.

29. Ms. Curtis later began overhearing things about the *Janus* decision, and asked Hannah Schmitt, an organizer and agent of official of UNITE HERE, whether she could resign.

30. Ms. Schmitt told Ms. Curtis that she "couldn't opt out" and that "[President] Biden" had "signed" a bill to "overturn" *Janus*, which would mean that Ms. Curtis would owe "back dues" if she resigned.

31. After Ms. Curtis researched the issue for herself and confronted Ms. Schmitt with her findings, Ms. Schmitt told Ms. Curtis that she knew Ms. Curtis could resign but that she "just didn't want [Ms. Curtis] to opt out."

32. Other officials of UNITE HERE told Ms. Curtis that they “did not know” whether resigning would affect her employment benefits, which further delayed Ms. Curtis’s resignation, while she looked into that issue.

33. Once Ms. Curtis determined that she could resign without consequences for her terms and conditions of employment under the CBA, she resigned in writing by e-mail sent to agents or officials of each defendant in this matter.

34. An agent of UNITE HERE replied to the email and rejected Ms. Curtis’s resignation, telling her, “At this current time your union dues deductions can’t be stopped at this current time [sic].”

35. No other agent or official of Defendants responded to Ms. Curtis’s resignation.

36. No agent or official of Defendants has recognized Ms. Curtis as a nonmember, and, in fact, Defendants continue to treat Ms. Curtis as a member of UNITE HERE.

37. Deductions by City of union dues for UNITE HERE from Ms. Curtis’s wages have continued to this day.

38. UNITE HERE was motivated by evil motive or intent, or acted with reckless or callous indifference to Ms. Curtis’s constitutional rights, when it, acting with Defendants City and Board, purposely defied the Supreme Court’s *Janus* decision to prevent Ms. Curtis from exercising her constitutional rights to disassociate from Union and not to provide it financial support.

39. Defendants required Ms. Curtis to pay money to UNITE HERE as a condition of employment, and Defendants misrepresented Ms. Curtis’s rights to her in writing more than eight months after the *Janus* decision. Then, Defendants seized and accepted money from Ms. Curtis’s wages knowing that—solely because of Defendants’ deceit—Ms. Curtis believed she was required to pay Union as a condition of her public employment.

40. UNITE HERE was motivated by evil motive or intent or acted with reckless or callous indifference to Ms. Curtis's constitutional rights because it became aware of the constitutional rights defined by the Supreme Court's *Janus* decision on the day it was decided, purposely chose to oppose the *Janus* decision and deliberately act contrary to it, and accordingly violated, misrepresented, and interfered with her constitutional rights.

CLAIMS FOR RELIEF

COUNT ONE

(Violation of *Janus* and the First Amendment)

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

42. 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.

43. Defendants have violated and are violating Plaintiff's First Amendment rights, as explained in the Supreme Court's *Janus* decision, by requiring Plaintiff to pay money to UNITE HERE as a condition of her employment.

44. Defendants have violated and are violating Plaintiff's First Amendment rights, as explained in the Supreme Court's *Janus* decision, by telling Plaintiff that she had to pay money to UNITE HERE as a condition of employment regardless of whether she was a union member.

45. Defendants are acting under color of state law and specifically the provisions of MERA, their CBA, and their deduction authorization paperwork, discussed above, to force Plaintiff to pay UNITE HERE against her will as a condition of employment.

46. There is no state interest, compelling or otherwise, justifying Defendants' requirement that individuals pay money to UNITE HERE as a condition of employment.

47. Defendants, by forcing Plaintiff to pay UNITE HERE, have 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.

48. UNITE HERE was aware of and opposed to the Supreme Court's *Janus* decision, and therefore was motivated by evil motive or intent, or acted with reckless or callous indifference to Plaintiff's constitutional rights, when it violated, misrepresented, and interfered with Plaintiff's constitutional rights.

49. As a direct result of Defendants' concerted actions, taken pursuant to state law and their CBA, Plaintiff:

a. is being prevented from exercising her rights and privileges as a citizen of the United States to disassociate from and not to fund and support the agenda, activities, expenses, and speech of UNITE HERE;

b. is being deprived and is in imminent danger of being deprived of her civil rights guaranteed under the Constitution and statutes of the United States;

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; and

d. is suffering and/or will suffer monetary damages and other harm.

50. 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 irreparable harm for which there is no adequate remedy at law.

COUNT TWO

(Violation of the First Amendment)

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

52. Because Plaintiff is a public employee and is a nonmember employed in a bargaining unit represented exclusively for collective bargaining by UNITE HERE, the First Amendment protects her from being forced to remain a member of and/or to pay money to UNITE HERE as a condition of employment.

53. Defendants are acting under color of state law and specifically the provisions of MERA, their CBA, and their dues deduction authorization paperwork, discussed above, to force Plaintiff to remain a dues-paying member of UNITE HERE against her will and despite her resignation.

54. There is no state interest, compelling or otherwise, justifying Defendants' requirement that individuals remain members of UNITE HERE, or pay it money as a condition of employment, for any length of time.

55. Defendants, by forcing Plaintiff to remain a dues-paying member of UNITE HERE, 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.

56. As a direct result of Defendants' concerted actions, taken pursuant to state law and their CBA, Plaintiff:

a. is being prevented from exercising her rights and privileges as a citizen of the United States to disassociate from and not to fund and support the agenda, activities, expenses, and speech of UNITE HERE;

b. is being deprived and is in imminent danger of being deprived of her civil rights guaranteed under the Constitution and statutes of the United States;

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; and

d. is suffering and/or will suffer monetary damages and other harm.

57. 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 irreparable harm for which there is no adequate remedy at law.

COUNT THREE
(Due Process Violation)

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

59. 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, 336 (1976).

60. Plaintiff has a liberty interest in ending association with UNITE HERE and a property interest in the money being forcibly taken from her wages.

61. Defendants failed to provide meaningful notice to Plaintiff of her right not to pay money to and not to fund the speech of UNITE HERE.

62. More to the point, Defendants did not provide Plaintiff with a meaningful opportunity to object to initial or continued seizure of her funds or a clearly defined process for asserting such an objection.

63. Instead, Defendants misrepresented Plaintiff's rights to her and put the burden on her to learn, assert, and vindicate her rights, with the result that she unwillingly authorized the

deduction of dues from her wages, was delayed in learning and exercising her constitutional rights not to be a union member or to pay Union, and then was subjected to forced deduction of dues after she resigned her union membership and sought to end the deductions.

64. To date, Defendants have yet to meaningfully address Plaintiff's objection or union membership resignation and have failed to provide due process concerning her resignation and the misrepresentation of her rights.

65. UNITE HERE was aware of and opposed to the Supreme Court's *Janus* decision, and therefore was motivated by evil motive or intent, or acted with reckless or callous indifference to Plaintiff's constitutional rights, when it violated, misrepresented, and interfered with Plaintiff's constitutional rights.

66. As a direct result of Defendants' actions, Plaintiff:

a. is being prevented from exercising her rights and privileges as a citizen of the United States to disassociate from and no longer support the agenda and expenses of an organization she did not want to support and from which she would have resigned earlier if she had known her rights;

b. is being deprived of her civil rights guaranteed to her under the Constitution and statutes of the United States and is suffering monetary damages and other harm;

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.

67. 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 irreparable harm, damage, and injury for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Ms. Curtis 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' practice of requiring payment of money to Union as a condition of public employment violates Ms. Curtis's rights under the First and Fourteenth Amendments to the Constitution of the United States;

ii. that Article 2 of the CBA between Defendants, on its face and as applied, violates Ms. Curtis's rights under the First and Fourteenth Amendments to the Constitution of the United States;

iii. that the First and Fourteenth Amendments prevent Defendants from coercing Ms. Curtis into union membership or restricting Ms. Curtis's right to resign from union membership and end financial support of Union at any time; and

iv. that the Fourteenth Amendment requires due process of law in the forcible deduction of monies from Ms. Curtis, including meaningful and accurate notice concerning her rights and a meaningful opportunity to object to the seizure of funds and/or ongoing association with Union.

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 the Court declares unconstitutional; or

- b. enforcing Article 2 of the CBA or any substantially similar provision between Defendants that requires Ms. Curtis to pay money to Union.
- ii. requiring Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them, to:
 - a. expunge Article 2 of the CBA;
 - b. honor Ms. Curtis's resignation from union membership;
 - c. cease the deduction of dues from Ms. Curtis's wages; and
 - d. refund to Ms. Curtis all union dues deducted from her wages since March 6, 2019, plus interest thereon.

C. **Monetary:** A judgment awarding Ms. Curtis nominal and compensatory damages against all Defendants and punitive damages against UNITE HERE, 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 she was coerced into signing the deduction authorization, plus interest thereon, punitive damages, and such amounts as principles of justice and compensation warrant.

D. **Attorneys' Fees and Costs:** A judgment awarding Ms. Curtis 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.

Dated: February 28, 2022

Respectfully submitted,

/s/ Craig C. Fishbein, Esq.

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