

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

JENNIFER KUMPF,

Plaintiff,

v.

NEW YORK STATE UNITED TEACHERS; BUFFALO  
TEACHERS FEDERATION; BUFFALO CITY SCHOOL  
DISTRICT,

Defendants.

Case No. 1:22-cv-402 (BKS/CFH)

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

**COMPLAINT**

AND NOW comes Plaintiff Jennifer Kumpf, by and through her undersigned attorneys, and states the following claims for relief against Defendants New York State United Teachers (“NYSUT”) and Buffalo Teachers Federation (“BTF”) (referred to collectively as “Defendant Unions”); and the Buffalo City School District (“District”), and alleges as follows:

**SUMMARY OF THE CASE**

1. This is a civil rights action pursuant to 42 U.S.C. § 1983 for declaratory, injunctive, and monetary relief to redress the past and 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 Employees’ Fair Employment Act, N.Y. Civ. Serv. Law, Article 14 (the “Taylor Law”), under which Defendants have had and continue to have union dues or fees seized from Plaintiff’s wages even though she is a nonmember public employee who 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). Defendants have violated and are violating Plaintiff's constitutional rights by deducting and accepting payments of union dues or fees from her wages without her consent.

3. Despite Plaintiff's resignation from union membership and her nonmember status, Defendants continue to seize and to accept union dues or fees from Plaintiff's wages as a condition of her employment after Plaintiff became a nonmember.

4. Defendants' concerted conduct under color of state law 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 acting in concert and under color of state law, by and through their agents and officials, deducted and continue to deduct and accepted and continue to accept union dues or fees from Plaintiff's wages without providing her any meaningful notice or opportunity to object to the ongoing deductions, to the process by which the money was and is deducted, or to the ways her money was used and is being used. These omissions violate Plaintiff's Fourteenth Amendment right to due process.

6. Because Defendants deducted and continue to deduct union dues or fees from Plaintiff's wages in violation of her constitutional rights, Plaintiff seeks declaratory and injunctive relief against all Defendants, as well as compensatory and nominal damages, and 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, 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, particularly the First and Fourteenth Amendments thereto, as well as 42 U.S.C. § 1988.

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

9. This action is an actual controversy in which Plaintiff seeks a declaration of her rights under the United States Constitution. Pursuant to 28 U.S.C. §§ 2201 and 2202, this Court may declare Plaintiff's rights and grant further necessary and proper relief, including injunctive relief, under Federal Rule of Civil Procedure 65.

10. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because one defendant resides in this judicial district and all defendants are residents of New York State (in which this district is located.)

### **PARTIES**

11. Plaintiff Jennifer Kumpf is a citizen of the United States of America, 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. Plaintiff is employed by the District as a second grade classroom teacher in the instructional division of the Buffalo Public Schools System and is thus part of the bargaining unit that is represented exclusively for purposes of collective bargaining by BTF. Plaintiff was a member of Defendant Unions but is not any longer and has not been a member since the date of her resignation.

12. Defendant NYSUT is an “employee organization” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.5. NYSUT maintains a place of business at 800 Troy-Schenectady Road, Latham, New York 12110 and conducts its business and operations throughout the State of New York, including in the Northern District of New York.

13. Defendant BTF is an “employee organization” within the meaning of the Taylor Law, *see* N.Y. Civ. Serv. Law § 201.5, and is a local affiliate of NYSUT. Pursuant to the collective bargaining agreement (“CBA”) between BTF and the District, BTF represents Plaintiff exclusively for purposes of collective bargaining. BTF maintains a place of business at 271 Porter Avenue, Buffalo, New York 14201 and conducts its business and operations within the State of New York.

14. Defendant District is a “public employer” within the meaning of the Taylor Law. *See* N.Y. Civ. Serv. Law § 201.6. The District issues wages to its employees, including Plaintiff, and processes payroll deductions of union dues for Defendant Unions from Plaintiff’s wages pursuant to the requirements of the Taylor Law and the CBA. The District maintains a place of business at 712 City Hall, Buffalo, New York 14202. The District entered into a CBA with Defendant BTF that governs the terms and conditions of Plaintiff’s employment and recognizes BTF as Plaintiff’s exclusive representative pursuant to the CBA and the Taylor Law.

### **FACTUAL ALLEGATIONS**

15. Acting in concert under color of state law, BTF and the District 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. The preamble of the CBA provides that the Board of Education of the City of Buffalo recognizes BTF “as the exclusive representative of the teaching personnel of the Board” and recites that “the parties have agreed to negotiate in good faith with respect to the salaries, welfare provisions, teaching conditions, hours, and certain matters of educational policy for all of the teaching personnel employed by the Board. Ex. A at preamble. This bargaining unit encompasses Plaintiff’s second grade classroom teacher position. *E.g., id.; id.* at art. I.

17. The CBA provides that BTF has the right to “payroll deductions . . . in such a manner that increases in dues will automatically increase the amount deducted from each warrant.”

*Id.* at art. VI, sec. K. The CBA references a “payroll deduction authorization form” that includes “language whereby the teacher authorizes the Board to do this effective September 1 upon official notification from the President of [BTF] of such dues increases by July 1.” *Id.*

18. The CBA further states that the District is an “Agency Shop” and that the “Board agrees to deduct from the wages of all employees in the negotiating unit who are not members of [BTF], any agency fee in the amount equivalent to the dues of [BTF] and to promptly transmit the sums so deducted to [BTF].” *Id.* at art. XL, sec. A.

19. State law requires Plaintiff’s employer, the District, to extend to Defendant Unions the right to dues deductions from the wages of its employees.

20. 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.

21. 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.

22. Plaintiff became a member of Defendant Unions after beginning her public employment for the District in or about 2014.

23. Upon information and belief, when Plaintiff began her employment for the District, no one informed her that she had a right not to join Defendant Unions.

24. Upon information and belief, when Plaintiff began her employment for the District, she was given a membership card and dues deduction authorization and was required to sign it as a condition of her employment. Thereafter, the District automatically took deductions from Plaintiff’s

wages for the benefit of Defendant Unions. *Compare* Ex. A at art. VI, sec. K (providing for a form that teachers would sign to authorize dues deductions).

25. On March 19, 2018, at the request of Defendant Unions, Plaintiff signed another membership agreement and dues deduction authorization for the benefit of Defendant Unions. This is attached hereto as “Exhibit B.”

26. Upon information and belief, prior to March 19, 2018, Plaintiff did not sign and did not have any card describing or otherwise purporting to limit when she could revoke the deduction of union dues and/or fees from her wages as a nonmember. *Compare* Ex. A at art. XL, sec. A (providing for “agency fee” payments from all union nonmember teaching personnel equivalent to the dues deductions for union members).

27. In or about 2021, Plaintiff experienced a significant health issue, which made it difficult for her to continue fully performing the in-person classroom instruction her job duties require. Plaintiff accordingly reached out to Jennifer Burke, a BTF union-representative supervisor who is assigned to Plaintiff’s school, and asked for assistance in obtaining a work-from-home exemption from the District. Ms. Burke refused; she responded by throwing up her hands and asking Plaintiff “What do you want me to do?” Based on this interaction, Plaintiff decided to resign from Defendant Unions.

28. On or about October 24, 2021, Plaintiff resigned from Defendant Unions and revoked her dues deduction authorization.

29. On November 1, 2021, Philip Rumore, the president of BTF, sent Plaintiff a letter. Rumore acknowledged receipt of Plaintiff’s “letter requesting to withdraw [her] membership” from BTF. Rumore stated that Plaintiff was “permitted to drop [her] membership at any time” but that she had “signed a membership card with maintenance of dues language.” Rumore concluded based

on this that Plaintiff had a “contractual obligation to pay an amount equal to the balance of union dues until the next window period (August 1, 2022).”

30. Rumore attached to his letter a “Voluntary Union Membership Withdrawal” form. The form requires that the signatory attest she “understand[s] that [she has] elected to forfeit the benefits the BTF, NYSUT, AFT, and NEA provide to members[.]” It also purportedly requires the signatory to attest that her “decision to withdraw from BTF may result in reduced bargaining strength which may, in turn, be detrimental to future collective bargaining wages, hours, working conditions, and benefits bargained by the BTF for all employees.”

31. Upon information and belief, BTF has allowed at least one other bargaining unit employee to revoke his or her dues deduction authorization outside of Defendant Unions’ alleged August window period.

32. As a nonmember, Plaintiff is not receiving union member benefits from Defendant Unions even though union dues and/or fees have been and continue to be deducted from her wages for Defendant Unions.

33. Defendants claim that Plaintiff’s revoked dues deduction authorization (Ex. B) entitles the District to continue deducting from Plaintiff’s wages financial support for Defendant Unions despite Plaintiff’s resignation, revocation of dues deduction authorization, and nonmember status.

34. The dues deduction authorization contains no notice of or request for waiver of any constitutional rights.

35. Defendants never provided Plaintiff with written notice of her constitutional right as a nonmember to choose not to pay any union dues or fees to Defendant Unions.

36. Defendants never provided Plaintiff with written notice of her constitutional right to due process, including notice and an opportunity to object to how any nonconsensual union dues or fees deducted from her wages are spent.

37. Neither Defendants nor any agent or official thereof asked Plaintiff while a nonmember to agree to pay union dues or fees to Defendant Unions or to otherwise waive any constitutional rights following her union membership resignation.

38. Plaintiff never waived her right not to pay union dues or fees to Defendant Unions when she was not a member of Defendant Unions.

39. Defendants, acting in concert pursuant to the CBA, the Taylor Law, and/or their joint policies and practices, have refused and continue to refuse to end union dues deductions from Plaintiff's wages even after her resignation from Defendant Unions.

40. Defendants, pursuant to the CBA, the Taylor Law, 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 even though she is not a member of Defendant Unions as of the date of her resignation.

41. Since on or about October 24, 2021, the District, acting in concert with Defendant Unions, has deducted and continues to deduct purported union dues or fees from Plaintiff's wages against her will and without her consent.

42. Since on or about October 24, 2021, Defendant Unions have taken and continue to take, receive, and/or accept purported union dues or fees from Plaintiff's wages against her will and without her consent.

43. Defendants, acting in concert under color of state law, have not provided Plaintiff meaningful notice or opportunity to object to union dues or fees deductions, the process by which the money was and is deducted, or the ways in which her money was and is spent.



44. Upon information and belief, Defendant Unions use the financial support they have forcibly seized and continue to forcibly seize from Plaintiff while she was and is a nonmember for purposes of political speech and activity, among other purposes, to which Plaintiff objects.

45. Defendant Unions retain monies deducted from Plaintiff's wages by the District after Plaintiff resigned her union membership.

46. 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)

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

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

49. 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.

50. Section 208 of the Taylor Law and the CBA, on their face and/or as applied by Defendants, authorize and/or require Defendants, by and through their agents, to force public employees to remain union members and/or full dues payers despite their nonmember status and expressed intention to end financial support of a union, in violation of employees’ rights under the First Amendment.

51. Sections 201 and 208 of the Taylor Law, facially and/or as applied by Defendants, permit Defendants to require public employees to maintain unwilling allegiance to and financial support of employee organizations, such as Defendant Unions, and are, therefore, unconstitutional.

52. Defendants' actions, taken pursuant to the Taylor Law, the CBA, and their joint policies and practices, under color of state law, impinge on Plaintiff's exercise of her rights to free association, self-organization, assembly, petition, and freedoms of speech, thought, and conscience that are guaranteed by the First and Fourteenth Amendments of the United States Constitution.

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

54. Because Plaintiff is a nonmember public employee who is employed in a bargaining unit represented exclusively for collective bargaining by BTF, the First Amendment protects her from being forced to financially support or otherwise be associated with Defendant Unions and from having the District deduct nonconsensual financial support for Defendant Unions from Plaintiff's wages.

55. Because Plaintiff is a public employee who is not a member of Defendant Unions, the First Amendment protects her from having nonconsensual financial support deducted from her wages for Defendant Unions.

56. 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.

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

58. Plaintiff has not waived her constitutional right to not financially support Defendant Unions after she became a nonmember following her resignation of membership in Defendant Unions.

59. Defendant Unions acted and are acting in concert and under color of state law with the District, by and through their agents, to seize, process, accept, and/or retain union dues or fees deducted from Plaintiff's wages after she became a nonmember.

60. These forced payroll deductions and the continued retention of monies deducted from Plaintiff's wages after she resigned from Defendant Unions violate Plaintiff's rights protected by the First and Fourteenth Amendments of the United States Constitution as well as 42 U.S.C. § 1983 because they force her to financially support Defendant Unions' political activities and speech without her consent.

61. By deducting and collecting financial support from Plaintiff via payroll deduction despite Plaintiff's revocation of consent to dues deductions, Defendants are depriving Plaintiff of her First Amendment rights to free speech and association that are secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

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

- a. was and is being prevented from exercising her rights and privileges not to fund and support the agenda, activities, expenses, and speech of a private organization;
- b. was and is being deprived of her civil rights guaranteed under the Constitution and statutes of the United States; and
- c. has and is suffering monetary damages and other harm.

63. 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.

**COUNT TWO**

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

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

65. The Fourteenth Amendment of the United States Constitution guarantees due process to persons facing deprivation of liberty or property by state actors. *See Mathews v. Eldridge*, 424 U.S. 319, 348–49 (1976).

66. 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).

67. 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*.

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

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

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

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

a. is being 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;

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

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.

72. 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.

#### **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' actions in forcing Plaintiff, as a nonmember, to provide past and ongoing financial support to Defendant Unions, and Sections 201 and 208 of the Taylor Law, to the extent they relate to, authorize, and/or require Defendants to do so, on

their face and/or as applied, violated and violates the First and Fourteenth Amendments of the United States Constitution;

ii. that any taking and/or retention of union dues or fees from Plaintiff after her resignation of membership in Defendant Unions and without proper constitutional notice and waiver violates her rights under the First and Fourteenth Amendments of the United States Constitution; and that any provisions in the Taylor Law, the CBA, or any other purported authorizations that allow or require such deductions of union dues or fees are unconstitutional;

iii. or, alternatively, that the First and Fourteenth Amendments require Defendant Unions to provide Plaintiff with constitutionally adequate notice and a meaningful opportunity to object to the nonconsensual monies being seized from her wages and the purposes for which the monies are used, including the notice and procedures required by *Hudson*.

B. **Injunctive:** A permanent injunction requiring Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them:

i. to not enforce against Plaintiff any provisions in the Taylor Law, the CBA, or any other purported authorizations for deducting dues or fees that require her to provide financial support of Defendant Unions and/or their affiliates after resignation of her union membership without proper constitutional notice and waiver, or to otherwise engage in conduct or enforce any provisions of the Taylor Law or the CBA declared unconstitutional under Part A;

ii. not to collect or retain any money from Plaintiff in the form of union dues or fees through deductions from her wages or any other manner, or otherwise to seek to enforce the terms of any purported authorizations for deducting dues;

iii. or, alternatively, to provide constitutionally adequate notice and procedures regarding the District's payroll deductions of forced financial support for Defendant Unions from Plaintiff's wages.

C. **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 union membership, plus interest thereon, and such amounts as principles of justice and compensation warrant.

D. **Attorneys' Fees and Costs:** A judgment awarding Plaintiff 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: April 29, 2022

**s/ David R. Dorey**

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