

No. 22 Civ. 00321 (PAE)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AVRAHAM GOLDSTEIN; MICHAEL GOLDSTEIN;
FRIMETTE KASS-SHRAIBMAN; MITCHELL
LANGBERT; JEFFREY LAX; MARIA PAGANO,

Plaintiffs,

-against-

PROFESSIONAL STAFF CONGRESS/CUNY; CITY
UNIVERSITY OF NEW YORK; JOHN WIRENIUS, in
his official capacity as Chairperson of the New York
Public Employee Relations Board; ROSEMARY A.
TOWNLEY, in her official capacity as Member of the
New York Public Employee Relations Board;
ANTHONY ZUMBOLO, in his official capacity as
Member of the New York Public Employee Relations
Board; CITY OF NEW YORK; THOMAS P.
DINAPOLI, in his official capacity as New York State
Comptroller,

Defendants.

**DEFENDANT CITY OF NEW YORK'S
MEMORANDUM OF LAW IN SUPPORT OF THEIR
MOTION TO DISMISS THE AMENDED
COMPLAINT**

HON. SYLVIA O. HINDS-RADIX

*Corporation Counsel of the City of New York
Attorney for Defendant
100 Church Street
New York, N.Y. 10007*

Of Counsel: Donna A. Canfield

John F. Walpole

Tel: (212) 356-2470

Matter No. 2022-006063

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PRELIMINARY STATEMENT

Defendant the City of New York (“City”) respectfully submits this memorandum of law in support of its motion to dismiss Plaintiffs’ Complaint pursuant to Federal Civil Procedure Rule 12(b)(6). In their Complaint, Plaintiffs’ allege that the City has violated their First and Fourteenth Amendment Rights. As set forth below, Plaintiffs have alleged no facts to support their claims against the City. As such, Plaintiffs’ claims against the City must be dismissed.

STATEMENT OF FACTS¹

Plaintiffs are six professors at City University of New York (“CUNY”) who resigned from the Professional Staff Congress/CUNY, AFT Local 2334, AFL-CIO/AAUP (“PSC”), the union that represents the CUNY instructional staff bargaining unit. See Compl. at ¶ 1, ECF No. 1. All Plaintiffs allege is that PSC’s views do not fairly represent their interests, and that they are forced “into a defined bargaining unit with others who do not share the same interests, and require some Plaintiffs to continue to financially subsidize PSC’s speech even though they have resigned their membership in the union.” Id. at ¶5.

Specifically, Counts One and Two of the Complaint claim that Defendants PSC, CUNY, and individually-named Defendants John Wirenius (“Wirenius”), Rosemary A. Townley (“Townley”), and Anthony Zumbolo (“Zumbolo”) have deprived them of their First Amendment rights to free speech and association as per their enforcement of the Public Employees’ Fair Employment Act (N.Y. Civil Service Law Article 14), known as the “Taylor Law,” and the collective bargaining agreement between the PSC and CUNY. Id. at ¶¶ 96, 106.

¹ This statement of facts is derived from the factual allegations set forth in the Complaint, ECF No. 1.

Count Three of the Complaint, brought by three of the six Plaintiffs, Avraham Goldstein (“A. Goldstein”), Frimette Kass-Shraibman (“Kass-Shraibman”), and Mitchell Langbert (“Langbert”), alleges that they were compelled to financially support PSC in violation of the First Amendment when the deduction of union dues from their wages continued after they resigned from the PSC. *Id.* at ¶¶ 5, 108, 117. Plaintiff Avraham Goldstein alleges that the City, through its Office of Payroll Administration (“OPA”), denied his request to end union dues deductions from his wages unless authorized by PSC, despite resigning from PSC in August 2, 2021. *Id.* at ¶¶ 11, 36, 72, 74-75. Similarly, Plaintiffs Kass-Shraibman, and Langbert allege that Defendant Thomas P. DiNapoli (“DiNapoli”) denied their requests to end union dues deductions from their wages unless authorized by PSC, despite resigning from PSC on September 17, 2021, and June 22, 2021, respectively. *Id.* at ¶¶ 12-13, 73-74, 76-77.

For the reasons set forth below, all claims against the City must be dismissed, as Plaintiffs have failed to plead facts sufficient to maintain an action against the City.

ARGUMENT

POINT I

PLAINTIFFS’ FAIL TO ALLEGE THAT THE CITY PARTICIPATED IN THEIR COMPELLED ASSOCIATION WITH THE UNION

Counts One and Two of the Complaint claims that Defendants PSC, CUNY, and individually-named Defendants Wirenius, Townley, Zumbolo have deprived them of their First Amendment rights to free speech and association as per their enforcement of the Taylor Law, and the collective bargaining agreement between the PSC and CUNY. Nowhere in the Complaint do Plaintiffs allege that the City compelled Plaintiffs’ association with PSC.

Therefore, Counts One and Two against the City must be dismissed with prejudice.

POINT II

PLAINTIFFS’ § 1983 CLAIMS MUST BE DISMISSED FOR FAILING TO PLEAD A MONELL VIOLATION

Plaintiffs’ § 1983 claims alleging violations of the First and Fourteenth Amendments to the United State Constitution must be dismissed, as Plaintiffs have failed to plead any facts that would plausibly suggest that the alleged violations were the result of a municipal policy or custom. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 691 (1978). In order to maintain an action brought pursuant to § 1983 against a municipality, a plaintiff must plausibly allege that the “challenged acts were performed pursuant to a municipal policy or custom.” Duplan v. City of N.Y., 888 F.3d 612, 621 (2d Cir. 2018) (citing Patterson v. Cty. of Oneida, 375 F.3d 206, 226 (2d Cir. 2004)).

“To establish municipal liability under § 1983, a plaintiff must do more than simply state that a municipal policy or custom exists.” Santos v. New York City, 847 F. Supp. 2d 573, 576 (S.D.N.Y. 2012) (citing Dwares v. City of New York, 985 F.2d 94 (2d Cir. 1993)). “Rather, a plaintiff must allege facts tending to support, at least circumstantially, an inference that such a municipal policy or custom exists.” Santos, 847 F. Supp. 2d at 576. “[A] conclusory, boiler plate assertion of a municipal policy or custom [is] insufficient to survive a motion to dismiss.” Trujillo v. City of New York, No. 14-CV-8501 (PGG), 2016 U.S. Dist. LEXIS 194168, at *24 (S.D.N.Y. Mar. 29, 2016) (collecting cases).

As an initial matter, there are no facts to suggest that the City had any involvement in the deduction of dues from of Plaintiff Kass-Shraibman, and Plaintiff Langbert after they resigned their memberships from PSC. Instead, the Complaint plainly states that Defendant DiNapoli, the New York State Comptroller, oversaw the deduction of union dues from Plaintiffs

Kass-Shraibman, and Langbert. Therefore, Plaintiff Kass-Shraibman's, and Plaintiff Langbert's § 1983 claims against the City should be dismissed.

In contrast, Plaintiff A. Goldstein, alleges that the City violated his First Amendment rights by continuing to deduct dues from his paychecks after he resigned union membership. However, there are no facts in the Complaint to suggest that the deduction by the City, through OPA, occurred as a result of an unconstitutional municipal policy or custom. Although the First Amendment prohibits the government from compelling a public employee to contribute union fees where the employee has elected not to participate in union membership, Plaintiff A. Goldstein fails to allege that the challenged acts were performed pursuant to any *municipal* policy or custom. Instead, Plaintiff A. Goldstein attributes his compelled financial support to unconstitutional provisions of the Taylor Law, which is a state law, and not a City policy. Thus, Plaintiff A. Goldstein has not made out a Monell claim against the City.

Accordingly, the Count Three Plaintiffs cannot maintain claims their 42 U.S.C. § 1983 claims against the City, and they must be dismissed with prejudice.

CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court dismiss the Complaint, that judgment be entered for the City, and that the City be granted costs, fees, and disbursements, together with such other and further relief as this Court deems just and proper.

Dated: New York, New York
April 20, 2022

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel for the City of New York
Attorney for Defendant City of New York
100 Church Street, Room 2-187
New York, NY 10007
(212) 356-2470
jwalpole@law.nyc.gov

By: /s/
John F. Walpole
Assistant Corporation Counsel