

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JOHN LANCELLOTTA, an individual	:	
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	C.A. No.: 1:22-cv-
	:	
	:	COMPLAINT FOR
	:	DAMAGES
WEST WARWICK PUBLIC SCHOOLS,	:	
a public corporation; and KAREN A.	:	42 U.S.C. § 1983, § 1988
TARASEVICH, Superintendent of Warwick	:	
Public Schools in her official capacity;	:	
LUIS COLON, West Warwick School	:	
Committee Member in her official capacity;	:	
RENE COUTU, West Warwick School Committee	:	TRIAL BY JURY DEMAND
Member in his official capacity;	:	
SUSAN ST. ARMAND, West Warwick School	:	
Committee Member in her official capacity;	:	
JOSEPH DIMARTINO, West Warwick School	:	
Committee Member in his official capacity; and	:	
ANGELA COBURN, West Warwick School	:	
Committee Member in her official capacity,	:	
	:	
<i>Defendants.</i>	:	

COMPLAINT

I. INTRODUCTION

1. This suit seeks a remedy for an injury caused to the Plaintiff inflicted by the Defendants, who retaliated against him for exercising his First Amendment rights and by imposing unconstitutional conditions. This retaliation violated Plaintiff's rights under the First and Fourteenth Amendment.

2. Plaintiff was an untenured teacher employed in the Defendant school district

who taught Spanish and Italian language arts.

3. Plaintiff had received uniformly positive teacher evaluations conducted by the school system, and had never been the subject of any known complaints by students, parents, or coworkers.

4. Plaintiff's contract to teach was not renewed after he opted to leave the teachers' union and cease paying the union.

5. This denial of renewal of his contract resulted in him being denied tenure, and his termination.

6. Plaintiff maintains that his termination via non-renewal was because he left the union and ceased to pay dues. Plaintiff did not want to pay the union because it took positions on political and social matters which did not match his own opinions.

7. The right of public employees to withhold payments to a union that represents them is a First Amendment right as held by the United States Supreme Court in *Janus v. American Federation of State, County Municipal Employees Council 31*, 585 U.S. __; 138 S.Ct. 2448, 2486 (2018).

8. Being denied an employment position on the basis of withholding payment from a union is retaliation against that person for exercising a constitutional right to protected free speech, and is an unconstitutional condition of employment.

JURISDICTION AND VENUE

9. This action is brought under 42 U.S.C. §§ 1983 and 1988.

10. This Court has subject matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343.

11. This Court has authority to grant declaratory and other relief under 28 U.S.C. §§ 2201 and 2202.

12. Venue is appropriate under 28 U.S.C. § 1391 in the District of Rhode Island.

13. Venue is appropriate in this court as Defendant resides in West Warwick, Rhode Island.

PARTIES

14. Plaintiff John Lancellotta is a resident of Rhode Island and resides in West Warwick.

15. Plaintiff John Lancellotta was employed by Defendant West Warwick Public Schools (“Schools”) for the 2018-19 and 2019-20 school years

16. Defendant West Warwick Public Schools operates the public-school system in West Warwick, Rhode Island, and is a public body under the Rhode Island Constitution, Art. XII, and Gen.Laws 1956, § 16-2-11 such that it acts under the color of law in the State of Rhodes Island.

17. Defendant Karen A. Tarasevich is the Superintendent of the West Warwick Public Schools at all relevant times and is made a defendant in her official capacity only.

18. Defendants Luis Colon, Rene Coutu, Susan St. Armand, Joseph DiMartino, and Angela Coburn, are West Warwick Public School Committee members at all relevant times, and are made defendants in their official capacity only.

FACTS

19. Plaintiff incorporates all preceding paragraphs as though fully restated herein.

20. Plaintiff is an experienced teacher who had previously taught language arts in Providence, Rhode Island schools for approximately 12 years.

21. On or about October 1, 2018, Plaintiff began teaching at West Warwick Public Schools.

22. Plaintiff taught Italian and Spanish language arts and had teaching certificates in those subjects.

23. On or about January 24, 2019, Plaintiff received his first job evaluation from the School. This evaluation found: for “Classroom Environment”, he was rated “Highly Effective” in 18 of 21 categories, and “Effective” in 2 of 21. He was not rated in “Demonstrating Instructional Outcomes.” For “Planning and Preparation” he was rated “Highly Effective” in 5 of 7 categories, and “Effective” in 2 of 7 categories. *See* January 24, 2019 Evaluation attached herein as *Exhibit A*.

24. On or about February 8, 2019, Plaintiff sought a meeting with Sean Doyle, President of the West Warwick Teachers’ Alliance labor union, which represented Plaintiff as his certified collective bargaining unit. *See* February 8, 2019 Email attached hereto as *Exhibit B*.

25. Plaintiff sought this meeting because he did not want to pay the union because it took positions on political and social matters which did not match his own opinions.

26. On or about February 11, 2019, Sean Doyle responded by saying: “The district considers the [union] to be a ‘district partner’. In my twenty-seven years here, the [school district] has never carried an (sic) non-union member in it’s (sic) employment.” *See* February 11, 2019 Email attached hereto as *Exhibit C*.

27. Plaintiff considered this February 11 email to be a threat where it stated that no

non-union employee had ever been “carried” by the school district.

28. In that February 11 email, union leader Sean Doyle asked Plaintiff to meet with the head of Plaintiff’s department, and clearly stated the department head’s union affiliation and activity: “Please let me know if you would entertain a meeting with me and John Giovanelli to discuss this further. John is an active member on two of our union committees, the WWTA Education Committee and the WWTA Community Relations and Education (CoRE) committee.”

29. Plaintiff also considered the actions in the previous paragraph a threat.

30. On or about February 28, 2019, Plaintiff met with union leader Sean Doyle and his department head, John Giovanelli. At this meeting it was resolved that Plaintiff would not leave the union, but would be allowed to divert a portion of his dues payments to a fund for student scholarships.

31. He was evaluated again by the Schools on or about November 14, 2019. This evaluation found: “Educator-student interactions are appropriate, positive, and respectful to groups of students... Educator creates an authentic discussion among students ... engage students in the discussion, stepping aside when appropriate. Students ensure that all voices and ideas are heard ... Projects, activities, and assignments are appropriately challenging for all students... and cognitively engage students in complex learning.” Classroom Environment effectiveness ratings: “Highly Effective” in 3 out of 21 categories. “Effective in 1 of 21.” Unrated in 17 of 21. Nothing less than “Effective.” See November 14, 2019 Evaluation attached hereto as *Exhibit D*.

32. On or about December 9, 2019, Plaintiff formally resigned from the union and ceased making payments to it. He resigned from the union via submission to the Schools,

which it forwarded to the union.

33. On or about December 13, 2019, four days after Plaintiff resigned from the union, Department head John Giovanelli requested a meeting with the Director of Secondary Schools, Phil Solomon, to discuss school issues.

34. On or about December 18, 2019, John Giovanelli met with Phil Solomon. The decision was then made to recommend not renewing Plaintiff's contract – effectively firing him and denying him tenure.

35. On or about February 2, 2020, Plaintiff was notified that the School superintendent, Defendant Karen A. Tarasevich, was going to recommend his non-renewal at a February 10, 2020 meeting of the West Warwick School Committee.

36. On or about February 10, 2020, the School Committee met and did not renew Plaintiff's contract.

37. On or about February 24, 2020, Plaintiff filed a timely appeal with the School Committee and sought a hearing.

38. After a long COVID-related delay, an administrative hearing with the School Committee was held on December 1, 2021.

39. At the December 1 hearing, the matter was not concluded and was adjourned to be continued until later. Witness John Giovanelli was warned to not discuss these matters with the union or anyone else between then and the conclusion of the hearing. The hearing chair ordered that: “You are being questioned by [Plaintiff's attorney]. You are not to speak about your testimony to counsel for the school district ... or anyone associated with them. ... or with anybody. I think that's fair. ... Absolutely no contact regarding this case, his testimony, with anybody.” See the December 1, 2021 Hearing

Transcript, attached as *Exhibit E*, pages 117-118.

40. The hearing was reconvened on January 27, 2021.

41. Despite the order to not discuss, it was revealed that Giovanelli did discuss the matter with the union and its attorneys. On January 8, 2021 he consulted with Sean Doyle and union lawyer Audrey L. Lambert by phone. (*See* the January 27, 2021 Hearing Transcript, attached as *Exhibit F*, pages 127-129 and 142.). This came to light through a document request from Plaintiff's attorney to the district. (*Id.*, page 130.). There was also a second conversation between him and the union. (*Id.*, page 149.). Giovanelli says the topic of conversation was that he was being questioned on things he was not expecting to be questioned on. (*Id.*, page 154-157.). He wanted union counsel with him when he testified. (*Id.*, page 157.).

42. At the two hearings, witnesses appearing including Phil Solomon and Defendant Karen Tarasevich. Both testified that they relied solely on the judgment and evaluation of John Giovanelli regarding the non-renewal of Plaintiff's contract. Defendant Tarasevich testified that she made the ultimate decision based solely on Giovanelli's recommendation: She received Giovanelli's recommendation up the chain of command from Solomon. (*Id.*, page 235.). The judgment of Giovanelli was the sole basis for her determination of non-renewal. (*Id.*, page 236.). This was based on her trust of Giovanelli. "So I have every – Mr. Solomon brought that report to me. I had every confidence in the judgment set forth." (*Id.*, pages 236-237.). That was the first and only time a concern about Plaintiff's job performance had been brought to her. (*Id.*, page 238.). She says she did ask the principal, but the principal said she didn't know Plaintiff Lancellotta well as Defendant Tarasevich had only been in the building a couple months. (*Id.*, page 241.).

She says she discussed his union membership with the school's director of finance as a matter of business. (*Id.*, page 249.) She informed the union of the decision to non-renew, which she says is what she would typically do. (*Id.*, page 250.) On cross examination, she stated that no concern had ever been brought to her before about Plaintiff. (*Id.*, pages 255 and 264-265). She never spoke directly to Giovanelli about him. She never received any written document about any concerns. She did not reach out to any other faculty. She did not familiarize herself with any of his extracurricular efforts. She never spoke with Plaintiff. (*Id.*, pages 268-269.). She never saw him teach (*Id.*, page 276). She has never even met him. (*Id.*, page 277.). She acknowledged that she knew that he had questions about his union dues. (*Id.*, page 270.). She had never had a union member resign or cease paying dues before. (*Id.*, page 270.). Although she never spoke directly with Giovanelli about Plaintiff, she trusted his opinion and that was the sole basis for the decision. (*Id.*, page 274-275.).

43. Defendant Tarasevich and witnesses Phil Solomon and John Giovanelli all stated that the sole problem they had with Plaintiff's teaching was that he was too stern and not friendly and participatory enough with staff and students. This problem was never indicated in any teacher evaluation.

44. Throughout this administrative hearing process, the union worked with the administration against Plaintiff: The attorney for the district contacted the union president and union lawyer to ask if teacher Ed Davis and John Giovanelli could be made available to testify for the district. (*See Exhibit G*, Email of November 15, 2020.). The union president, union lawyer, and the district's lawyers collaborated. The district's lawyer told them: "We really need them for the non-renewal hearing and I want to firm

things up.” (*Id.*) The subject line of the email was “Witness Prep.” (*Id.*).

45. Upon information and belief, the union and the Schools set up a Zoom call on November 17, 2020.

46. The union and the Schools had a second Zoom meeting set for November 30, 2020.

47. Before the hearing on December 1, 2020, the union president, union lawyer, and the Schools' lawyer were alone together in a separate Zoom “room.” The districts’ lawyer asserts that they did not have any substantive discussions. (Transcript, Ex. E, page 10.)

48. The union lawyers sought to advise and/or represent the witnesses, and not Plaintiff, despite the fact that the witnesses faced no disciplinary action nor anything else that would require a lawyer. (*Id.*, pages 13-16.).

49. Despite being told not to discuss his testimony, John Giovanelli spoke with union officials on at least two occasions between the two hearings. Giovanelli spoke not only with the union lawyer, Christopher Lambert, but also with the union president, Sean Doyle. (Ex. F, pages 127-129 and 142.)

50. Another teacher was called to testify at the hearing against Plaintiff. It was the union president Sean Doyle, who is also the Chair of that teacher's department, who called him and asked him to testify about Plaintiff. (Ex. E, pages 37-38.).

51. Another teacher was hired to replace Plaintiff. His replacement was not certified to teach Spanish, but the Schools sought and received an emergency certification so that she could teach it.

52. The Schools’ proffered explanation for non-renewing Plaintiff's contract was a

pretext.

53. The real reason Plaintiff's contract was not renewed was because he ceased payment to the union.

COUNT I
RETALIATION FOR EXERCISING FIRST AMENDMENT RIGHTS

54. Plaintiff incorporates all preceding paragraphs as though fully restated herein.

55. “[A]s a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech. *Hartman v. Moore*, 547 U.S. 250, 256, 126 S.Ct. 1695, 164 L.Ed.2d 441 (2006). If an official takes adverse action against someone based on that forbidden motive, and ‘non-retaliatory grounds are in fact insufficient to provoke the adverse consequences,’ the injured person may generally seek relief by bringing a First Amendment claim. *Ibid.*” *Nieves v. Bartlett*, ___ U.S. ___; 139 S.Ct. 1715, 1722 (2019).

56. The elements of a First Amendment retaliation claim are: “(1) whether the employee spoke as a citizen on a matter of public concern, (2) whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the general public, and (3) whether the plaintiff can show that the protected expression was a substantial or motivating factor in the adverse employment decision.” *Barton v. Clancy*, 632 F.3d 9, 28 (1st Cir. 2011), quoting *Curran v. Cousins*, 509 F.3d 36, 45 (1st Cir. 2007) (internal quotation marks omitted).

57. The right to refrain from paying dues or fees to a public sector union is a First Amendment right as held in *Janus v. American Federation of State, County Municipal*

Employees Council 31, 585 U.S. __; 138 S.Ct. 2448, 2486 (2018).

58. Plaintiff ceased paying dues or fees to the union representing his bargaining unit.

59. Choosing not to pay dues to a public-sector union is an activity protected by the First Amendment.

60. Subsequent to ceasing to pay dues, Plaintiff suffered an adverse employment action at the hands of his employer, the Defendant.

61. The Defendant did not have a valid reason for the adverse employment action other than his cessation of union support.

62. Defendant's non-renewal and termination of Plaintiff was a substantial or motivating factor in the adverse employment decision.

**COUNT II
PLACING UNCONSTITUTIONAL CONDITIONS ON EMPLOYMENT**

63. Plaintiff incorporates the preceding paragraphs as though fully restated herein.

64. A public body may not deny a benefit to a person because he exercises a constitutional right. *See, e.g., Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013).

65. “The unconstitutional conditions doctrine vindicates the Constitution’s enumerated rights by preventing the government from coercing people into giving them up...” *Id.* at 2579.

66. It does not matter that Plaintiff did not have a right to his employment with the Schools. “It is settled that the unconstitutional conditions doctrine applies even when

the government threatens to withhold a gratuitous benefit.” *Id.*, at 2590.

67. A teacher’s lack of tenure does not defeat his claim that he was denied renewal because he exercised his constitutional rights. *Perry v. Sindermann*, 408 U.S. 593 (1972).

68. Plaintiff exercised his constitutional right to refuse to pay dues or fees to his public-sector union.

69. Plaintiff was punished by Defendant with non-renewal because he exercised his constitutional right.

70. Punishing a person for exercising his constitutional right has a coercive effect. “[A governmental body] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests – especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited.” *Id.*, at 2697.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff asks that this Court:

- (1) Find for Plaintiff that he was discriminated against by Defendant for exercising his First Amendment rights;
- (2) Award Plaintiff his monetary damages for his lost employment and any other damages he can show;
- (3) Pursuant to 42 U.S.C. 1988, award Plaintiff his costs, including reasonable attorneys’ fees incurred in the cost of litigating this case; and,
- (4) Any and all other relief as this Court finds to be just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury in this action of all issues so triable.

By his Attorneys,

Joseph S. Larisa, Jr.

Joseph S. Larisa, Jr. (#4113)
Larisa Law
50 South Main Street, Suite 311
Providence, RI 02903
(401) 743-4700
Joe@larisalaw.com

DATED: December , 2022

Pro Hac Vice Forthcoming:

/s/ Patrick J. Wright
Derk Wilcox

Patrick J. Wright
Derk Wilcox
Mackinac Center for Public Policy
140 W. Main Street
Midland, MI 48640
(989) 631-0900
Wilcox@mackinac.org