IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FRANCISCO MOLINA,	:	
Plaintiff,	:	No. 19-0019
vs.	:	
PENNSYLVANIA SOCIAL SERVICE UNION,	:	Judge Yvette Kane
ET AL.,	:	
Defendants.	:	

BRIEF IN SUPPORT OF DEFENDANT LEHIGH COUNTY BOARD OF COMMISSIONERS' MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT [1]

STATEMENT OF FACTS

The Pennsylvania Social Service Union, Service Employees International Union, Local 668 ("Local 668"), represents certain Lehigh County employees for collective bargaining purposes. Local 668 and the Lehigh County Board of Commissioners, acting on behalf of Lehigh County, entered into a collective bargaining agreement ("CBA") with a term of January 1, 2014, through December 31, 2018. The Plaintiff, Francisco Molina, was employed by Lehigh County as a social services aide 3 with the Lehigh County Office of Children and Youth Services. He was terminated from this position on August 14, 2018. Plaintiff was a member of the bargaining unit while he was employed by Lehigh County.

[1] Defendant Lehigh County Board of Commissioners joins in Defendants Local 668 and Catanese's Motion to Dismiss, but, in view of Local Rule 7.8(a) ("No brief may incorporate by reference all or any portion of any other brief."), has refrained from incorporating by reference their Brief. In lieu of incorporation by reference, argument herein is set forth succinctly in order to avoid duplication.

Plaintiff commenced this lawsuit under 42 U.S.C. Section 1983. by filing a Complaint (Doc. 1) on January 7, 2019. The named Defendants were Local 668; Stephen Catanese ("Catanese"), the president of Local 668; the Lehigh County Board of Commissioners ("Board of Commissioners"); Lehigh County Office of Children and Youth Services; Phil Armstrong, Lehigh County Executive; and M. Judith Johnston, Lehigh County Director of Human Services. On February 11, 2019, Plaintiff filed a First Amended Complaint (Doc. 20) against Local 668, Catanese and the Board of Commissioners.[2]

Section 3.1 of the CBA provides in relevant part that an employee "may resign from the Union during a period of fifteen (15) days prior to the expiration of this agreement." Section 3.2 of the CBA provides that the employer shall deduct by-weekly membership dues from employees who request in writing that such deductions be made, and that "the authorization shall be irrevocable during the term of the Agreement." These provisions in the CBA are authorized under the Pennsylvania Public Employe Relations Act ("PERA"), specifically 43 P.S. § 1101.301(18), 43 P.S. § 1101.705 and 43. P.S. § 1101.401. *FAC, ¶¶ 15-17.*

On or about January 10, 2018, Local 668 called a meeting of the bargaining unit. During this meeting, Local 668 requested that its members sign new membership cards, including authorization and assignment of dues deductions.

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[2] The claims against the Lehigh County Office of Children and Youth Services, Phil Armstrong and Judith Johnston were deleted.

Local 668 told its members that the new membership cards were required because all previously-signed membership cards were invalid. Neither the prior membership card nor the new membership card informed employees that they had a First Amendment right not to associate with Local 668 or requested that its members affirmatively consent to a violation of the First Amendment rights. Plaintiff did not sign the new membership application and, other than his previously-signed membership cards, did not affirmatively waive consent to a violation of his First Amendment rights. *FAC, ¶¶ 22-27.*

On June 27, 2018, Plaintiff asked the County to stop deducting union payments from his wages. The County told Plaintiff that he must contact Local 668 by certified letter, returned receipt requested, in order to stop union payments. On or about July 16, 2018, Plaintiff sent his resignation letter to Local 668. by letter dated January 8, 2019, Local 668 advised Plaintiff that it had received his requested to withdraw from the union and was refunding the dues withheld from the July 6, 2018, pay period through the August 17, 2018, pay period. *FAC, ¶¶ 28-39.*

In Count I, Plaintiff alleges that he was unconstitutionally prevented from resigning from Local 668 because of PERA and the CBA, and that he was unconstitutionally forced to continue paying dues to Local 668 after tendering his resignation. Plaintiff seeks a refund of any post-resignation dues he paid to Local

668, and seeks to enjoin the enforcement of the challenged provisions of PERA and the CBA.

In Count II, Plaintiff alleges that Defendants have seized dues from him without his consent or agreement to waive his rights. Plaintiff seeks to recover dues paid to Union 668, and also seeks injunctive relief prohibiting Defendants from deducting further dues.

In Count III, Plaintiff alleges that Defendants failed to afford him meaningful notice of his right to object to associating with or subsidizing the speech of Local 668. He seeks declaratory relief requiring "due process" with respect to the "continued seizure of his funds," as well as monetary and injunctive relief.

QUESTIONS PRESENTED

1. Whether Plaintiff's claims for prospective injunctive and declaratory relief must be dismissed for lack of jurisdiction?

   Suggested Answer: Yes.

2. Whether Plaintiff's claim for a refund of membership dues deducted from his paycheck after his resignation must be dismissed for lack of jurisdiction?

   Suggested Answer: Yes.

ARGUMENT

1. Plaintiff's claims for prospective injunctive and declaratory relief must be dismissed for lack of jurisdiction.

"The rules of standing, whether as aspects of the Article III case or controversy requirement or as reflections of prudential considerations defining and limiting the role of the courts, are threshold determinants of the propriety of judicial intervention." Worth v. Selvin, 422 U.S. 490, 517-18 (1975). "[T]he irreducible constitutional minimum" of standing requires a party to set forth specific facts indicating the existence of an actual or imminent injury that is causally connected to the defendant's challenged action and will be "'redressed by a favorable decision'" Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (citation omitted). "Courts assess whether a party has established injury-in-fact, causation, and redressability by considering whether the alleged injury falls within the 'zone of interest' that the statute or constitutional provision at issue was designed to protect; whether the complaint raises concrete questions, rather than abstract ones that are better suited to resolution by the legislative and executive branches; and whether the plaintiff is asserting his own legal rights and interests, as opposed to those of third parties." Anjelino v. New York Times, 200 F.3d 73, 88 (3d Cir 1999).

Plaintiff is not at risk of future deductions of dues

Plaintiff does not have standing to seek relief from future dues deductions on the theory that he is currently paying dues to Local 668. All deductions of union dues from Plaintiff's pay ended last August, prior to the filing of this lawsuit; Plaintiff has been terminated from his employment with Lehigh County; and Plaintiff has no intention of becoming a member of Local 668 in the future.

Plaintiff alleges that he has filed a grievance related to his termination and may be reinstated at some point in the future. However, this is purely speculative and, as such, insufficient to establish standing to obtain prospective injunctive and declaratory relief. See Bain v. California Teachers Association, 891 F.3d 1206, 1214 (9th Cir. 2018) (possibility that former bargaining unit member might return to teaching and thereafter rejoin bargaining unit was insufficient to establish standing to challenge practices that applied to bargaining unit members).

Furthermore, no dues would be deducted from a backpay award or future wages even if Plaintiff were reinstated. Prior to Plaintiff's termination, Local 668 had already instructed Lehigh County that Plaintiff was no longer a member and no further dues should be deducted from his pay. *Declaration of Claudia Lukert* (*"Lukert Decl."),* ¶6 & Ex. C.[3] Because Article III, §3.2 of the CBA provides that

[3] The Declaration of Claudia Lukert is attached hereto. This evidence may be considered by the Court to evaluate whether it maintains subject matter jurisdiction. See Gould Electronics v. U.S., 220 F.3d 169, 176-77 (3d Cir. 2000)

the County will deduct membership dues only from "those employees who individually request in writing that such deductions be made," the County will deduct dues from future wages only if Plaintiff provides a new, voluntary written authorization for the County to restart his dues deductions. *Lukert Decl,* ¶11.

Plaintiff is not at risk of being compelled to remain a member in the future.

Plaintiff cannot demonstrate any likelihood of being injured in the future by member resignation practices. Local 668 received Molina's resignation letter on July 20, 2018, advised Lehigh County to stop deducting dues on August 10, 2018, refunded all dues collected after Plaintiff's resignation, and no longer considers Plaintiff a union member. *Lukert Decl. ¶¶6-7, 13 & Exh. C.* Furthermore, Plaintiff does not plan to become a member of Local 668 in the future. See *Lyons*, 461 U.S. at 100 (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974)).

Plaintiff also lacks standing to obtain a declaration that Defendants have not provided union members with constitutionally adequate notice of their right to resign or a constitutionally adequate opportunity to exercise that right, or for an injunction ordering such relief. Because Plaintiff is not a member of Local 668 and does not plan to rejoin Local 668, the entry of an order requiring Defendants to provide union members with information about resignation rights or requiring Defendants to change when and how they accept a member's resignation would have no impact on him. See Brown v. Buhman, 822 F.3d 1151, 1166 (10th Cir.

2016), *cert. denied*, 137 S.Ct. 828 (2017) (courts lack jurisdiction to consider claims for prospective relief where plaintiff "no longer suffers actual injury that can be redressed by a favorable judicial decision") (quotations omitted).

Plaintiff also lacks standing to challenge the union security provision in the CBA. The union security provision was never applied to Plaintiff, inasmuch as he was allowed to resign from the union and stop paying dues prior to the expiration of the CBA. Furthermore, Plaintiff was terminated by the County on August 14, 2018, and therefore, is not subject to any provisions of the CBA. Finally, Plaintiff has no plans to re-join the union. See McNair, 672 F.3d at 223-25 (former magazine subscribers lacked standing to seek injunctive relief against allegedly unlawful renewal policy).

Plaintiff also lacks standing to seek a declaration that certain provisions of PERA violate the First and Fourteenth Amendments. Plaintiff is no longer a public employee union member, and therefore, not subject to the challenged provisions. Plaintiff would become subject to the challenged provisions in PERA only if he returns to public employment and rejoins Local 668, but he has no plans to do so. See Barrows v. Jackson, 346 U.S. 249, 255 (1953) ("[A] person cannot challenge the constitutionality of a statute unless he shows that he himself is injured by its operation.").

2. Plaintiff's claim for a refund of membership dues deducted from his paycheck after his resignation must be dismissed for lack of jurisdiction.

Plaintiff seeks to recover all dues deducted from his wages both before and after his resignation.

In Count I, Plaintiff alleges that he suffered monetary damages in the form of continued deduction of union membership dues following his resignation. However, these dues have already been returned to Molina. *See Lukert Decl. ¶¶13-14.* Plaintiff is not entitled to any further retrospective relief, since his retrospective damages under § 1983 are limited to those necessary "to compensate injuries caused by the constitutional deprivation" he alleges. See *Memphis Community Sch. Dist. v. Stachura*, 477 U.S. 299, 309 (1986) (internal quotation, emphasis, and brackets omitted).

Given that Plaintiff has already received all of the retrospective relief sought in Count I, his claim is moot and should be dismissed. See Friedman's, Inc. v. Dunlap, 290 F.3d 191, 197 (4th Cir. 2002). See also Sands v. NLRB, 825 F.3d 778, 783-85 (D.C. Cir. 2016) (unfair-practice claim against union for purportedly failing to inform member that she had option of paying agency fees rendered moot by union's tendering of refund of dues paid).[4]

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[4] It will ultimately be demonstrated that Plaintiff is also not entitled to a refund of pre-resignation dues.

CONCLUSION

For the reasons hereinbefore stated in full, the Board of Commissioners requests that:

1. Plaintiff's claims for prospective declaratory and injunctive relief be dismissed for lack of jurisdiction.
2. Plaintiff's claims for retrospective monetary relief arising from Defendants' receipt of post-resignation dues be dismissed for lack of jurisdiction.
3. Count I be dismissed in its entirety for lack of jurisdiction over the relief sought therein.
4. The potential relief under Counts II and III be limited to recovery of pre-resignation dues.

Respectfully Submitted:

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.8

Pursuant to Local Rule 7.8(b)(2), I hereby certify that the foregoing brief, excluding the caption page, tables, and signature block, includes 4,561 words, as determined by the word count feature of the word processing program used to prepare the brief.

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