

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

AMY MULLEN and NEA TIVERTON,
LOCAL 833, NEARI, NEA
Plaintiffs,

v.

C.A. No. 1:20-cv-179

TIVERTON SCHOOL DISTRICT,
TIVERTON SCHOOL COMMITTEE, by and
through its members, DR. JEROME LARKIN,
DIANE FARNWORTH, SALLY BLACK,
DEBORAH PALLASCH, and ELAINE PAVAO,
in their individual and official capacities,
and PETER SANCHIONI, in his individual
capacity and his official capacity as
SUPERINTENDENT OF TIVERTON
SCHOOL DISTRICT.
Defendants.

VERIFIED COMPLAINT

Plaintiffs Amy Mullen and NEA Tiverton, Local 833/NEARI/NEA, by and through their undersigned counsel, files the following Complaint against Defendants Tiverton School District, Tiverton School Committee, by and through its members, in their individual and official capacities, and Superintendent Peter Sanchioni, individually and in his official capacity.

NATURE OF THE ACTION

1. Amy Mullen (hereinafter “Plaintiff” or “Mullen”) was a teacher employed by Defendant Tiverton School District in Tiverton, Rhode Island from 1994 until her termination on April 15, 2020. Mullen is also President of Plaintiff NEA Tiverton, Local 833. This action is on behalf of Plaintiffs for declaratory, injunctive, and equitable relief and monetary damages to redress the injuries Plaintiffs have suffered as a result of Defendants’ violation their rights under

the First Amendment of the United States Constitution. The Complaint states a cause of action under federal law for deprivation of civil rights.

JURISDICTION

2. Jurisdiction is rested upon 28 U.S.C. § 1331 and 28 U.S.C. § 2201. The injuries sustained are pursuant to 42 U.S.C. § 1983 for constitutional violations of Plaintiffs' free speech and association rights under the First Amendment of the United States Constitution.

PARTIES

3. Plaintiff Amy Mullen is a resident of the State of Rhode Island.

4. Plaintiff NEA Tiverton, Local 833/NEARI/NEA (hereinafter "the Union") is a labor organization and the exclusive bargaining representative for teachers employed by the Tiverton School District.

5. The Tiverton School District ("the District" or "Tiverton School District") is a School District established under the provisions of Title 16 of the Rhode Island General Laws. It may be sued in its official capacity.

6. The powers, duties and liabilities of the Tiverton School District are vested in the Tiverton School Committee pursuant to Title 16 of the Rhode Island General Laws.

7. Defendant Dr. Jerome Larkin is the Chairperson of the Tiverton School Committee and is sued in his official and individual capacity.

8. Defendants Diane Farnworth, Sally Black, Deborah Pallasch and Elaine Pavao are members of the Tiverton School Committee and are sued in their official and individual capacities.

9. Pursuant to Title 16 of the Rhode Island General Laws, the Tiverton School Committee has overall policy responsibility for the employment and discipline of school department personnel.

10. At all relevant times, the Tiverton School Committee has had the power and authority to negatively affect the terms and conditions of Mullen's employment with the Tiverton School District by, *inter alia*, terminating her employment with the District.

11. At all relevant times, Defendants Larkin, Farnworth, Black, Pallasch and Pavao (hereinafter referred to as "the School Committee") were servants, agents and/or employees of the Tiverton School District and were acting under color of state law when they took action to violate Plaintiffs' constitutional rights.

12. Defendant Peter Sanchioni is the Superintendent of the Tiverton School District and the chief administrative agent of the Tiverton School Committee. He is sued in his individual and official capacities.

13. At all relevant times Defendant Peter Sanchioni (hereinafter referred to as "the Superintendent" or "Sanchioni") was a servant, agent and/or employee of the Tiverton School District and was acting under color of state law when he took action to violate Plaintiffs' constitutional rights.

14. At all relevant times, the Superintendent had the power and authority to negatively affect the terms and conditions of Mullens's employment by preferring charges and accusations against Plaintiff and recommending the termination of her employment to the School Committee.

FACTS

15. Plaintiff Amy Mullen has been employed as a special education teacher by Defendant Tiverton School District for over twenty-five years.

16. Mullen has received consistently positive performance evaluations and accolades from peers and supervisors throughout her career.

17. Mullen is also a member of the Union.

18. Mullen has served as President of the Union for twenty years.

19. The Union is the exclusive bargaining agent for teachers employed by the Tiverton School District.

20. Pursuant to the Certified School Teachers' Arbitration Act, R.I. Gen. Laws § 28-9.3, the Tiverton School Committee is obligated to bargain with the Union over all terms and conditions of its teachers' employment.

21. In or about July, 2018, Peter Sanchioni began serving as Superintendent for the Tiverton School District.

22. During the period July, 2018 to the present, Superintendent Sanchioni repeatedly violated the collective bargaining agreement between the District and the Union, acted with animus towards Mullen as Union President, sought to diminish Mullen's role as Union president and failed and refused to bargain with the Union regarding terms and conditions of teachers' employment. As a result, the Union filed several grievances and unfair labor practice charges against the District.

23. In early March, 2020, as a result of the COVID-19 pandemic, school districts throughout Rhode Island began planning for possible school closures and remote learning.

24. Mullen, in her capacity as Union President, became aware that the Superintendent was in the process of developing a “distance learning plan” to enable students to receive instruction remotely, without face-to-face contact with a teacher in the classroom.

25. On March 12, 2020, Mullen, in her capacity as Union President, attended a Professional Development Committee meeting.

26. Before the meeting began, Mullen told Sanchioni she would be sending him an e-mail requesting bargaining over any “distance learning plan.” Sanchioni responded that he would not negotiate with her. He told Mullen she could “go ahead and file a grievance.”

27. Mullen replied that she would file a grievance but that she found it unfortunate that Sanchioni would rather waste the District’s funds on legal fees than collaborate with the Union to ensure an effective “distance learning plan.” She then suggested that the Professional Development Committee meeting begin.

28. Later that evening, Mullen sent Sanchioni an e-mail reminding him that any online learning plans need to be negotiated with the Union. The e-mail also requests that Sanchioni contact Mullen “as soon as possible to set up a meeting for this purpose.”

29. On March 18, 2020, Mullen was contacted by a union member and informed that the Superintendent was holding a meeting at 11:30 a.m. that day to discuss his “distance learning plan.” The member asked the Union to attend.

30. On March 18, 2020, Mullen, in her capacity as Union President, arrived at the meeting early. She advised the Superintendent that the Union should be part of the discussion about any “distance learning plan.” Sanchioni raised his voice, told Mullen she was not invited to the meeting and told her he would write her up for insubordination if she did not leave.

31. Mullen advised Sanchioni that he could not write her up for insubordination because she was not acting as a teacher, but in her capacity as Union President. She further informed him that the Union should have input in into any “distance learning plan” before it is submitted to the Rhode Island Department of Education (“RIDE”).

32. Sanchioni informed Mullen that the Plan had already been submitted to RIDE. Mullen left before the meeting began.

33. On March 21, 2020, Sanchioni sent an e-mail to Mullen chastising her for attempting to represent her members. Sanchioni placed Mullen on paid administrative leave pending an investigation. He also directed Mullen to “cease and desist all communication with parents, students, school committee members and staff member of the Tiverton Public Schools. Failure to comply will be construed as insubordination, and result in further disciplinary action.”

34. This was not the first time Sanchioni issued a gag order prohibiting Mullen from speaking with her union members. In March, 2019, Sanchioni placed Mullen on administrative leave in violation of the parties’ collective bargaining agreement and directed Mullen, as Union President, not to communicate with her members during the leave. Mullen was subsequently reinstated, but Defendants’ gag order remains subject to an unfair labor practice Complaint issued by the Rhode Island State Labor Relations Board in Case No. ULP 6240.

35. By letter dated April 6, 2020, Sanchioni advised Mullen that he intended to recommend to the Tiverton School Committee that Mullen be suspended without pay until the end of the 2020-2021 school year, and that she be terminated at the end of that school year. According to the letter, “[t]he reason for these actions is [her] persistent disruption and insubordination, particularly as it relates to a plan for distance learning in response to the

COVID-19 pandemic that closed the schools.” The letter identified Mullen’s statements at the March 12 and March 18 meetings as the basis for her discipline.

36. On April 14, 2020, the Tiverton School Committee voted unanimously to terminate Mullen from her teaching position.

37. By letter dated April 15, 2020, the Chairperson of the Tiverton School Committee, Defendant Larkin, informed Mullen that her employment was terminated due to the conduct outlined by the Superintendent in his April 6, 2020 letter.

38. Upon information and belief, Defendants’ gag order, prohibiting Mullen from communicating with her union members, remains in effect.

39. On April 17, 2020, Mullen received notice that her health insurance would be terminated effective April 30, 2020.

COUNT I

FIRST AMENDMENT RETALIATION CLAIM FREEDOM OF SPEECH

40. Plaintiff hereby incorporates by reference paragraph 1 – 39 as if set forth herein.

41. Plaintiff was not terminated for speech or actions made in her capacity as an employee of the District.

42. Defendants terminated Plaintiff to retaliate against her for speech made in her capacity as Union President.

43. Plaintiff’s request to discuss “distance learning plans” in her capacity as Union President constitutes a matter of public concern.

44. Defendants, and each of them, violated Plaintiff’s First Amendment Rights by retaliating against her for protected speech and activity involving matters of public concern.

45. By terminating Plaintiff's employment, Defendants are restraining both Mullen's and the Union's speech.

46. The violations of Plaintiff's First Amendment Rights were proximately caused by a policy or custom of the District and School Committee of retaliation and/or through the acts and omission of those delegated with final policymaking authority with respect to Plaintiff's employment.

COUNT II

FIRST AMENDMENT RETALIATION CLAIM FREEDOM OF ASSOCIATION

47. Plaintiff hereby incorporates by reference paragraph 1 – 46 as if set forth herein.

48. At all relevant times, Plaintiff was President of the Union.

49. Defendants were fully aware of Plaintiff's position with the Union.

50. Pursuant to the Bylaws governing the Union, Mullen may only serve as President of NEA Tiverton so long as she remains an employee of the Tiverton School District.

51. Defendants terminated Mullen's employment to prevent her from fulfilling her duties as Union President and in retaliation for her seeking to represent, and speak on behalf of, her members.

52. Defendants, and each of them, terminated Plaintiff's employment in retaliation for her association with the Union, including her attempt to enforce her members' rights and discuss matters of public concern.

53. By terminating Plaintiff's employment, Defendants are restraining both Mullen's and the Union's associational rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs seek all remedies available pursuant to 42 U.S.C. § 1983, including but not limited to, cessation of retaliatory conduct, reinstatement, compensatory damages, equitable remedies, punitive damages, injunction against futures acts, attorneys' fees and costs, and pre- and post-judgment interest.

JURY TRIAL DEMAND

Plaintiffs pray trial by jury on all issues triable by right to a jury.

VERIFICATION

I, Amy Mullen, a competent person of the full age of majority, declare:

I am a plaintiff in this action. I hereby verify that the facts and matters and the actions of the Defendants contained in the foregoing Verified Complaint are, to the best of my personal knowledge and belief, true and accurate.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Amy Mullen
Amy Mullen

Plaintiffs,
By their attorney,

/s/ Elizabeth Wiens
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