

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Kevin Stewart,

Plaintiff,

COMPLAINT

-against-

JURY TRIAL DEMANDED

The Eastchester Fire District and Eastchester
Professional Firefighters Local 916,

Defendants.

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COMPLAINT FOR VIOLATIONS OF LMRDA §301

I. JURISDICTION AND VENUE

1. **Federal Question Statute:** 29 U.S.C §185 et. seq. (Labor Management Relations Act).
2. **Jurisdictional Statute:** 28 U.S.C. §1331 (Federal Question).
3. **Supplemental State Law Statute under 28 U.S.C. § 1367:** New York Labor Law §191.
4. **Basis for venue in the Southern District of New York:** (i) 28 U.S.C. §1391(b)(1)- A Defendant resides in the Southern District of New York, and (ii) 28 U.S.C. §1391(b)(2)- A substantial part of the events or omissions giving rise to the claim occurred in the Southern District of New York.

II. THE PARTIES

5. Plaintiff Number 1:

Name: Kevin Stewart
Street Address: 714SW 16th St,
City, State, Zip Code: Boynton Beach, FL 33426
Abbreviation: Referred to herein as (“Plaintiff Stewart”)

6. Defendant Number 1:

Name: The Eastchester Fire District
Industry: Fire Protection
Street Address for service: 255 Main Street
City, State, Zip Code for service: Eastchester, NY 10709
Abbreviation: Referred to herein as (“EFD”)
Connection to Plaintiff. At all relevant times hereto, Plaintiff Stewart was employed by the EFD, and the EFD had the ability to perform one or more of the following actions: (1) hire the Plaintiff, (2) terminate the employment of the Plaintiff, (3) set the Plaintiff’s wage rate, (4) maintain payroll records concerning the Plaintiff, or (5) institute work rules for the Plaintiff.

7. Defendant Number 2.

Name: Eastchester Professional Firefighters Local 916

Industry: Labor Relations

Street Address for service: 20 Midland Ave.

City, State, Zip Code for service: Bronxville, NY 10708

Abbreviation: Referred to herein as (“Local 916”)

Connection to Plaintiff. At all relevant times hereto, Local 916, a labor union, was Plaintiff Stewart’s exclusive collective bargaining agent concerning the terms and conditions of his employment with EFD.

III. PLACE OF EMPLOYMENT

8. The address at which (“Abbreviation Plaintiff Number 1”) was employed or sought employment by the defendant(s) is:

Street Address: 255 Main Street

City, State, Zip code: Eastchester, NY 10709.

IV. BACKGROUND FACTS.

9. EFD employed Plaintiff Stewart as a fire fighter.
10. Plaintiff Stewart was a member of Local 916 while employed by EFD.
11. EFD and Local 916 were bound by a collective bargaining agreement that set forth the terms and conditions of the EFD firefighters.
12. One of the contractual benefits provided to the EFD firefighters, including Plaintiff Stewart is terminal leave.
13. Article 8; paragraph 6 provides:

“Every Member who retires from the Department under honorable circumstances shall be granted 60 calendar days terminal leave, which is understood by the Parties to be 60 calendar days of time off or payment for two (2) calendar months which is equal to two-twelfths (2/12ths) of the firefighter’s base annual salary rate during the final year of service.”
14. Plaintiff Stewart retired from service on September 1, 2021.
15. Plaintiff Stewart notified EFD of his retirement in writing and provided for a two week notice.
16. Thereafter, Plaintiff Stewart attempted to secure terminal leave as required by the union contract. However, EFD would not provide him with the terminal pay.
17. In response, Plaintiff Stewart went to file a grievance with Local 916 claiming that he was denied his terminal leave contractual benefit, which is approximately \$14,000.00.
18. However, Local 916 refused to process the grievance and refused to explain to Plaintiff Stewart the basis on which he was not entitled to terminal pay.

19. On November 22, 2021, Local 916's attorney sent Plaintiff Stewart a text message stating that he was not entitled to terminal leave and to not contact him ever again. The text message did not offer any explanation for the Union's basis for concluding EFD owed Plaintiff Stewart terminal pay.
20. On information and belief, Local 916 had no valid basis for refusing to process the grievance and denied processing the grievance in an arbitrary or in bad faith. Moreover, the other union members would have gained a benefit by the Union clarifying the conditions under which the terminal pay is available and could have possibly expanded the basis on which a Firefighter such as Plaintiff Stewart would be entitled to terminal leave. However, Local 916 failed to take any action and prejudiced its membership.

FIRST CAUSE OF ACTION
(Breach of Contract)
(29 USC §185)

21. Plaintiff repeats, re-alleges and reincorporates all allegations as though fully set forth herein.
22. 29 USC §185 provides that an employee such as Plaintiff Stewart can bring a breach of contract claim against his Union and Employer for breach of a collective bargaining agreement.
23. Both Defendants are subject to the LMRA and Plaintiff Stewart was protected by its provisions.
24. Plaintiff Stewart exhausted his remedies by contacting Local 916 and attempting to grieve the violation of the union contract, and when Local 916's attorney told Plaintiff Stewart to not contact them again, he had no other alternative other than to start this lawsuit.
25. By Local 916's bad faith and arbitrary decision to not process Plaintiff Stewart's grievance concerning the EFD denial of his terminal pay, Local 916 breached its duty of fair representation.
26. When the EFD refused to pay Plaintiff Stewart his terminal pay, EFD breached its obligation's under the union contract.
27. Pursuant to the union contract, Plaintiff Stewart is entitled to receive his terminal pay, and by the EFD's refusal to pay and Local 916's refusal to process the grievance, Plaintiff Stewart has suffered damages.

SECOND CAUSE OF ACTION
(Failure to pay wages)
(NY Lab. Law §191 & 198-C)

28. Plaintiff repeats, re-alleges and reincorporates all allegations as though fully set forth herein.
29. The provisions of NY Lab. Law §191 & §198-c protect Plaintiff Stewart and cover the EFD.
30. NY Lab. Law §191 provides that an employer like the EFD must pay an employee all wages owed, and NY Lab. Law §198-c provides that an employer must pay all wage supplements such as terminal leave must be paid within 30 days of the date the benefit accrued.
31. The Defendants willfully refused to pay Plaintiff Stewart his terminal leave. As such, in

addition to the terminal leave, Plaintiff Stewart is entitled to liquidated damages, prejudgment interest, reasonable attorney's fees and the costs of the action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks the following relief:

- A. Unpaid wages, and an additional and equal amount as liquidated damages pursuant to the union contract, NY Lab. Law §191 and NY Lab. Law §198-c;
- B. Pre-judgment interest and post-judgment interest;
- C. Reasonable attorney fees and costs of the action;
- D. Such other relief as this Court shall deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Fed. R. Civ. P., Plaintiff demands a trial by jury on all questions of fact raised by this Complaint.

Dated: White Plains, New York
January 14, 2022

EL-HAG & ASSOCIATES, P.C



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