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IN FOCUS

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FOURTH TRY IS A CHARM FOR A FORMER NYC PRINCIPAL'S REVERSE DISCRIMINATION EQUAL PROTECTION SUIT

On July 14, 2025, the Southern District of New York revived a lawsuit against the United Federation of Teachers ("UFT") that had been previously dismissed three times. The suit alleges that the UFT violated the Equal Protection Rights of a former New York City public school principal while acting under color of state law. *Catania v. United Fed'n of Teachers*, No. 1:21-cv-01257 (S.D.N.Y. July 14, 2025).

Patricia Catania claims that her time as the principal of Middle School 224 ("MS 224") was cut short due to a conspiracy between the UFT, several of its officers, and certain teachers at the school that would only be fulfilled once Catania was replaced by a Black principal "for no other reason than that Catania was White/Caucasian." To realize their conspiracy, the defendants, among other approaches, constructed a "false narrative that Ms. Catania wanted to prevent teachers at the school from teaching Black history," according to Catania. By publicizing that narrative to the local media, organizing protests targeting her and filing numerous grievances with the Department of Education, Catania was forced to resign out of fear that she had no other choice, aside from being fired.

Catania initially commenced this action under 42 U.S.C. §§ 1983, 1985 for violation of her rights under the First and Fourteenth Amendments. However, the court dismissed her Free Speech and Due Process claims and granted Catania the ability to replead only for an Equal Protection claim. In her fourth attempt, Catania sufficiently alleged that William Woodruff, one of the UFT's representatives and a named defendant, was quoted as saying during a union meeting at MS 224, "We can Malcolm X her, by any means necessary we will get her out. Change through violence." According to Judge Gregory H. Woods, "Given Malcolm X's complex legacy, the Court cannot say as a matter of law that no reasonable inference could be drawn that Woodruff was referencing what Plaintiff calls 'notions of Black Supremacy and Black Separatism.'"

Based on Woodruff's statement, the court held that a reasonable inference could be drawn that the teachers at MS 224 "were 'knowingly furthering the discriminatory intent' in carrying out Woodruff's plans." One teacher, Mercedes Liriano, explicitly stated that she worked for Catania to be replaced by a Black principal. The court also held that the alleged conduct fell under color of state law, as the teachers were acting in their professional capacity "to harass and defame" Catania. Aside from using the workplace

complaint system to file their grievances, the teachers are alleged to have stoked resentment toward Catania from the students, even leading one to call Catania a "racist, white b**ch."

While Catania named other officers of the UFT as defendants, the court held that she failed to allege the necessary discriminatory intent to state Equal Protection claims and dismissed them from the case.

DEPARTMENT OF LABOR PROPOSED RULE WOULD LESSEN FINANCIAL REPORTING BURDEN FOR SOME UNIONS

The United States Department of Labor ("DOL") published a proposed rule on July 1, 2025 that seeks to lessen financial reporting burdens for some labor organizations. The proposed change would raise the financial threshold at which unions must file more comprehensive annual reports.

Currently, unions with annual receipts totaling $250,000 or more are required to file Form LM-2, the most intensive of the disclosure options. Labor organizations with receipts between $10,000 and $250,000 may instead file Form LM-3, and unions with receipts under $10,000 per year can file Form LM-4. The proposed rule would increase these thresholds significantly: labor organizations with annual receipts totaling $450,000 or more would have to file an LM-2, while those with receipts totaling between $25,000 and $450,000 would be required to file Form LM-3, and those with receipts under $25,000 would be permitted to only file Form LM-4.

In their proposal, the DOL stated that "[t]hese increases are necessary to reflect economic changes and reduce unnecessary reporting burdens on labor organizations whose total receipts, prior to adjusting for inflation, should not necessitate greater filing requirements." The LM-2 threshold was last changed in 2003, when it was raised from $200,000 to $250,000 to account for inflation.

The DOL estimates that under this new rule, 868 organizations would be able to file an LM-3 instead of an LM-2, and 2,089 organizations would now file an LM-4 instead of an LM-3. The agency predicts that the switch for these organizations to less comprehensive reporting would save a collective $7,340,161.08 in operating costs.

The full text of the proposal can be found here.

NLRB GENERAL COUNSEL TELLS REGIONS TO PEPPER SALTS

On July 24, 2025, the National Labor Relations Board ("NLRB" or "Board") Acting General Counsel William Cowen issued Memorandum GC 25-08 titled "Guidance for Investigating Salting Cases" ("GC Memo" of "Guidance") to all NLRB Regions. Salting has been defined by the NLRB as "the act of a trade union in sending a union member or members to an unorganized jobsite to obtain employment and then organize the employees." *Toering Electric Co.*, 351 NLRB 225, fn 3 (2007).

Generally, job applicants are protected from discrimination under the National Labor Relations Act ("Act"). However, according to Cowen, those protections were being abused in salting cases where union salts "have engaged in conduct clearly intended to provoke a decision not to hire them, or have engaged in antagonistic behavior toward the employer that is wholly at odds with an intent to be hired."

In response to this alleged abuse, the Board in *FES (A Division of Thermo Power),* 331 NLRB 9, 12-13 (2000) and *Toering Electric Co.* placed the burden in a salting case on the NLRB General Counsel to show: (1) the employer was hiring or had concrete plans to hire; (2) the applicant had experience or training relevant to the announced or generally known requirements or, in the alternative, the employer has not adhered uniformly to such requirements, or the requirements were themselves pretextual; (3) antiunion animus contributed to the decision not to hire the applicant for employment; and (4) the applicant is genuinely interested in seeking to establish an employment relationship with the employer.

The Guidance instructs the Regions to determine whether the above standard is met as part of its initial investigation and ensure that the evidence gathered bears on "whether the alleged discriminatee applied for employment and possessed a genuine interest in being hired."

As for the application component, Cowen has instructed Regions to look into whether the charging party applied or authorized someone to submit an application on their behalf and look into the circumstances of personal interviews. The Guidance also instructs Regions to look into whether the charging party's union submitted the application in a batch, or mass of applications sent to the employer.

Regions are also instructed to pepper salts with questions, and "deeply probe" regarding their interest in the job. Regions are to ask: "Does the applicant have the requisite experience for the job? Did the applicant engage in any conduct that is incompatible with someone who is genuinely applying for work? Does their resume or other application materials, appear designed to provoke a dispute? Is their behavior during the interview consistent with someone who is genuinely seeking employment? Are there any similar indications that demonstrate their purpose is something other than genuinely seeking employment?" This investigation will not only include testimony from applicants, but review of resumes, applications, social media, and emails between an applicant and employer.

Finally, if after the above peppering, Regions believe a salt is owed damages, Cowen instructed Regions to investigate the backpay period using: "(1) the discriminatee's personal circumstances during the backpay period; (2) union policies and practices with respect to other organizing campaigns; (3) specific union plans for the targeted employer; (4) instructions or agreements between the discriminatees and the union concerning the anticipated duration of the assignment; and (5) historical data regarding the duration of employment of the discriminatees and other discriminatees in similar organizing campaigns."

The GC Memo can be found here.

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