

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
RICHARD McNICHOL,

Plaintiff,

vs.

**COMPLAINT**

SHERIFF LOU FALCO, sued in his official  
and individual capacities, COUNTY OF  
ROCKLAND and CHIEF ANTHONY  
VOLPE, sued in his official and  
individual capacities,

,

Defendants.

-----X

By and through his attorneys, Sussman & Watkins, plaintiff hereby sues  
defendants for violations of his rights as guaranteed by the First Amendment to the  
United States Constitution:

**1. PARTIES**

1. Plaintiff Richard McNichol is a resident of the County of Rockland and of legal age.
2. Defendant Lou Falco is the Sheriff of the County of Rockland, the final policy maker with regard to personnel actions complained of herein, a resident of the County of Rockland and of legal age. He is sued in his official and individual capacities.

3. Defendant COUNTY OF ROCKLAND is a municipal corporation organized pursuant to the laws of the State of New York and may be sued for the unconstitutional actions of final policy-makers acting using the authority provided to them by the County Charter.

4. Defendant ANTHONY VOLPE is a Chief in the Sheriff's Department and has been assigned by defendant FALCO to administer the jail and implement defendant FALCO's policies therein. He resides within this judicial district, is of legal age and is sued in his official and individual capacities.

5. The challenged actions of defendants FALCO and VOLPE, as set forth herein, were taken under color of state law and constitute state action.

## II. JURISDICTION

6. As plaintiff alleges that the individual defendants, acting outside of their lawful authority and for pernicious and unconstitutional motives, brought disciplinary charges against plaintiff due to the latter's union activity and protected speech, this Honorable Court has jurisdiction over this matter pursuant to 28 U.S.C. secs. 1331, 1343 (3)& (4) and 42 U.S.C. secs. 1983 and 1988.

## III. FACTUAL ALLEGATIONS

7. Plaintiff was employed as a corrections officer at the Rockland County Jail.

8. In 2014-2015, plaintiff served as Vice President of the Rockland Corrections Officers Benevolent Association ["the Association"].

9. During the 2011 election, the Association supported defendant Falco for the elected office of County Sheriff.

10. However, between the years 2011 and 2015, defendant Falco demonstrated increasing hostility toward the interests of Association members.

11. On account of defendant Falco's hostile policies, as a leading representative of the Association and in the interests of union members, plaintiff McNichol came into repeated conflict with defendants Falco and Volpe.

12. Specifically, in violation of the collective bargaining agreement [hereinafter "CBA"] between the County and the Association, defendants ordered the transfer of a probationary female officer to a post which had been bid and held by a male officer.

13. As an officer of the Association, plaintiff vehemently opposed this action since it violated the terms of the CBA.

14. At defendant Falco's direction, defendant Volpe then met with the Jail's female officers, who were not permitted union representation, and told them to propose a solution to the under-staffing of female officers on specific shifts.

15. At a second meeting called with the female officers on the same subject, union representation appeared and defendant Falco directed defendant Volpe to cancel the meeting.

16. Following this event, counsel for the union advised defendant Falco to cease and desist from meeting with union members [as opposed to union leadership] about mandatory subjects of bargaining, like changes to policies and procedures governing shift assignments.

17. Following receipt of this letter, defendant Falco threatened the union leadership, including plaintiff, with unilateral elimination of critical terms from the CBA.

18. Thereafter, defendant Falco sought to alter longstanding policies including those governing corrections officers' personal leave day rights and overtime practices.

19. Again, as an elected officer of the union, plaintiff opposed these changes and, on behalf of the Association, filed charges with the New York State Public Employees Relations Board [hereinafter "PERB"], claiming that defendant Falco's actions contravened the CBA.

20. Defendants Falco and Volpe were fully aware of plaintiff's personal involvement in these activities.

21. In the spring 2015, Richard Vasquez, then a police chief in Orange County, announced that he would run as a Republican against defendant Falco, a Democrat, in the November 2015 election.

22. Plaintiff and the COBA leadership publicly supported Mr. Vasquez.

23. In or about June 2015, shortly after Mr. Vasquez announced his candidacy with the support of the Association's leadership, including plaintiff, defendant Falco confronted plaintiff and union president Cocuzza and complained that the Association had failed to interview him or endorse him for re-election.

24. Association President Cocuzza and the plaintiff responded that they had interviewed him during the prior four years and that all he had done was to strip Association members of their contractual rights.

25. Defendant Falco became outraged at plaintiff and the union president and, thereafter, publicly accused them of failing support his bid for reelection because they were benefitting from overtime which he tried to curtail.

26. Defendant Falco dispatched a supporter, Kezek, the father of a deputy sheriff, to photograph deputy sheriffs who appeared at the announcement of Vasquez's candidacy for the position of Sheriff.

27. In exchange for the assistance of CO Kezek's father, defendants Falco and Volpe favorably altered the terms and conditions of his son's employment and failed to charge him with disciplinary offenses for which they charged another similarly-situated officer, who, they understood, supported Vazquez.

28. Likewise, defendant Falco's son, a sergeant, began engaging in hostile activities toward officers aligned with Mr. Vasquez, including Cocuzza, Tchor, Helchowski, Muscatella, Dworkin, Cassas, Lans, Seigel, Millien and plaintiff.

29. Indeed, within the several months following their public appearance supporting Mr. Vasquez, defendants Falco & Volpe selectively suspended or threatened with criminal charges/termination union members Helchowski, Muscatella, Cassas, Lans and plaintiff.

30. Through defendant Volpe, in the early fall 2015, defendant Falco advised plaintiff that if he did not resign from his position, he would be criminally prosecuted for "stealing time".

31. Following this conversation, implementing defendant Falco's unconstitutional retaliatory policies, defendants continued to reprise against Association members, firing two excellent probationary officers, Chadwick and Fondarco, who were supporting Vasquez's candidacy.

32. During one debate held during the 2015 campaign for Sheriff, defendant Falco claimed that the plaintiff and Cocuzza had steered other correction officers not to support him so the two of them could keep receiving substantial overtime.

33. In fact, the Association endorsement followed an appearance by Mr. Vasquez before seventy corrections officers who unanimously chose to endorse his candidacy.

34. Throughout the campaign, defendants Falco and Volpe attacked the Association leadership, including plaintiff, claiming that they were abusing overtime and costing the County money.

35. In fact, in opposing changes in overtime rules, plaintiff advocated for adherence to the terms of the negotiated CBA.

36. During the election campaign, defendants Falco and Volpe demanded that plaintiff and Cocuzza drop the PERB cases the Association had initiated to challenge unilateral changes defendants had made to the CBA.

37. In early November 2015, Falco won re-election as Sheriff.

38. The following day, defendants Falco and Volpe propounded disciplinary charges against plaintiff relating to matters which had occurred months before.

40. These charges were highly selective as the "offenses" charges reflected common practices at the Jail, practices knowingly engaged in without complaint by supporters of the Sheriff.

41. Two months after the election, Falco initiated the criminal prosecution of Association President Cocuzza, again in a highly selective manner.

42. In claiming that both plaintiff and Cocuzza "stole money" and "falsified records," defendants Falco and Volpe knowingly proceeded against them for practices both knew were longstanding and common at the jail.

43. Defendants Falco and Volpe so acted for two reasons: to punish plaintiff and Cocuzza for their ongoing union activity and advocacy by which they opposed his unilateral charges to the collective bargaining agreement and to punish them for

the union's support of his opponent in the general election and their own support of Mr. Vasquez.

44. After being charged with disciplinary charges and told that he would be charged criminally, plaintiff, who is over the age of 75, decided to resign.

45. Said resignation was forced and given only to avoid the expense and stress of facing baseless criminal charges.

46. In deciding to use his position to implement a policy of retaliating against Association leaders and members who supported his political opponent, defendant Falco set policy for defendant County of Rockland.

47. Defendants Volpe and Falco knowingly implemented defendant Falco's policy of retaliation and selective prosecution and discipline against those Association members, including plaintiff, who supported his political opponent.

48. As a consequence of their adverse actions and repeated threats to plaintiff, which derived from plaintiff's protected activity as a union member and as a citizen, defendants have caused plaintiff emotional anguish, stress, loss of income and benefits.

#### IV. CAUSES OF ACTION

49. Plaintiff incorporates paras. 1-48.

50. By suspending plaintiff in retaliation for his union activities, defendants County, Falco and Volpe violated the First Amendment's freedom of association clause.

51. By suspending plaintiff in retaliation for his support of Vasquez in the general election for Sheriff, defendants County, Falco and Volpe violated plaintiff's rights under the First Amendment's freedom of speech clause.

**V. PRAYER FOR RELIEF**

WHEREFORE, this Honorable Court should accept jurisdiction over this matter, empanel a jury to hear and decide all issues within its jurisdiction, award plaintiff make whole relief with pre and post-judgment interest, reinstate plaintiff to his position, award to plaintiff the costs and fees associated with the initiation and prosecution of this action and enter any other relief warranted by the interests of justice and equity.

Respectfully submitted,

  
MICHAEL H. SUSSMAN [3497]

SUSSMAN & WATKINS  
PO BOX 1005  
1 RAILROAD AVENUE  
GOSHEN, NY 10924  
(845)-294-3991

Counsel for Plaintiff

Dated: 22 March 2016