

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

<p>Don Huizenga; Nancy Powell; Jim Bendtsen,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>Independent School District No. 11; Anoka-Hennepin Education Minnesota (American Federation of Teachers Local 7007),</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: right;">Court File No. _____</p> <p style="text-align: center;"><b>COMPLAINT JURY TRIAL DEMANDED</b></p>
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1. The current Working Agreement (CBA) between Anoka-Hennepin Education Minnesota (“Union”) and the Independent School District No. 11 (“School”) serving 13 suburban communities in Anoka and Hennepin Counties, Minnesota allows the Union to pull School employees out of work for “business leave”—to work for the Union.

2. However, the Union doesn’t reimburse the School for the full cost of those employees’ salaries and benefits for their days worked for the Union. Instead, the Union reimburses School at the much lower “substitute rate,” and the taxpayers of Minnesota and the School District, such as Plaintiffs, pay for whatever the Union doesn’t.

3. The Union therefore receives services or benefits from the School without paying the School for the full value of those services or benefits.

4. In addition, Union “business leave” includes political activity, such as door-knocking, subsidized by School’s taxpayers.

5. This arrangement violates the Minnesota Constitution, the Minnesota Public Employees Labor Relations Act (PELRA), and the First Amendment to the United States Constitution.

6. Under the Minnesota Constitution, Article 11, section 1, the State cannot pay money from the treasury unless it is appropriated by law. Under section 2, the credit of Minnesota cannot be given or loaned to aid any corporation.

7. Under the PELRA, “public employers . . . are prohibited from . . . contributing other support [to a union].” Minn. Stat. § 179A.13, Subd. 2(2). In addition, “[unions] . . . are prohibited from . . . causing . . . a public employer to pay or deliver . . . any money or other thing of value . . . for services which are not performed or not to be performed.” Minn. Stat. § 179A.13, Subd. 3(10).

8. Under the First Amendment, “[n]either an agency fee nor any other payment to [a public sector] union may be deducted from a nonmember’s wages . . . unless the employee affirmatively consents to pay.” *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2488 (2018). Likewise, taxpayers cannot be forced to subsidize political advocacy with which they disagree.

9. Likewise, a state government agent may not make a payment to a public sector union from taxpayers without their consent, and especially where the public sector union uses those taxpayer dollars for political advocacy.

10. State courts and commissions in New Jersey and Florida have held that these

under-reimbursement arrangements violate state laws.<sup>1</sup>

11. Likewise, this Court should stop the School and Union from violating state and federal law, set aside the portions of the CBA that violate state and federal law, and require the Union to reimburse the School for the value of all services rendered and not reimbursed pursuant to the CBA and any prior CBAs.

12. In addition, the Court should award Plaintiffs their reasonable attorney fees incurred in seeking relief for these violations of their constitutional rights.

### **PARTIES**

13. Plaintiff Don Huizenga is a Minnesota taxpayer and a resident of Anoka County, Minnesota within ISD 11. Huizenga pays taxes to both the State and to Anoka County which are allocated to ISD 11. Huizenga has standing to sue as a taxpayer.

14. Plaintiff Nancy Powell is a Minnesota taxpayer and a resident of Anoka County, Minnesota within ISD 11. Powell pays taxes to both the State and to Anoka County which are allocated to ISD 11. Powell has standing to sue as a taxpayer.

15. Plaintiff Jim Bendtsen is a Minnesota taxpayer and a resident of Anoka County, Minnesota within ISD 11. Bendtsen pays taxes to both the State and to Anoka County which are allocated to ISD 11. Bendtsen has standing to sue as a taxpayer

16. Defendant Independent School District No. 11 is an independent school

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<sup>1</sup> See, e.g., *Isabel del Pino Allen, Charging Party, v. Miami-Dade College Board of Trustees, Respondent*, No. CA-2015-070, Order No. 16U-144, 43 FPER ¶ 6, 2016 WL 3537513 (Florida Pub. Emp. Rel. Comm'n May 27, 2016) (interpreting (Fla. Stat. § 447.501(1)(e)); *Rozenblit v. Lyles*, 461 N.J. Super. 20, 31, 218 A.3d 320, 326 (App. Div. 2019) (interpreting N.J.S.A. 18A:30-7).

district and thus a public corporation existing pursuant to Minn. Stat. § 123A.55 and the Education Code. Its address is 2727 N. Ferry St., Anoka, Anoka County, Minnesota 55303.

17. Defendant Anoka-Hennepin Education Minnesota is an association with its address at 3200 Main St. NW, Ste. 360, Minneapolis, MN 55448.

### **JURISDICTION AND VENUE**

18. The Court has personal jurisdiction over the defendants, who reside in Minnesota.

19. This Court has subject-matter jurisdiction over Plaintiffs' First Amendment and 42 U.S.C. § 1983 claims against Defendants herein pursuant to 28 U.S.C. § 1331.

20. This Court has subject-matter jurisdiction over Plaintiffs' state law claims against Defendants herein pursuant to 28 U.S.C. § 1367, because they arise from the same business leave arrangement, and are thus so related to claims in the action within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

21. Venue is proper pursuant to 28 U.S.C. § 1391(b) because this cause of action arose in Anoka County, Minnesota, within the District of Minnesota, and because Defendants reside within the District of Minnesota.

### **STATEMENT OF THE CLAIM**

#### ***Under Minnesota Law, School Districts Cannot Pay Unions Money Without Receiving Corresponding Services***

22. The Minnesota Constitution and Minnesota Statutes forbid a school district from paying a union any money unless the school district receives a corresponding service

from the union.

23. Under Minn. Const. art. XI, § 1, “No money shall be paid out of the treasury of this state except in pursuance of an appropriation by law.”

24. Under Minn. Const. art. XI, § 2, “The credit of the state shall not be given or loaned in aid of any individual, association or corporation except as hereinafter provided.”

25. Union is an “association” under the meaning of Minn. Const. art. XI, § 2.

26. School districts “are arms of the state and are given corporate powers solely for the exercise of public functions for educational purposes.” *GME Consultants, Inc. v. Oak Grove Dev., Inc.*, 515 N.W.2d 74, 76 (Minn. Ct. App. 1994).

27. Upon information and belief, School receives about 70% of its budget money from state revenue, 21% of its budget money from property taxes paid by district residents, and the remaining money from other local revenue, local sales and transfers, and federal money.

28. School thus gives or loans the credit of the state when it provides Union a benefit for which Union does not pay.

29. In addition, under Minnesota law, arms of the state cannot spend public funds on anything unless the thing has a public purpose. *R. E. Short Co. v. City of Minneapolis*, 269 N.W.2d 331, 336 (Minn. 1978).

30. There is no public purpose in subsidizing leave for School employees to engage in Union business that benefits Union and not taxpayers. There is no public purpose in subsidizing leave for School employees to engage in political advocacy on Union’s behalf.

31. Also, under the PELRA, “public employers . . . are prohibited from . . . contributing other support [to a union].” Minn. Stat. § 179A.13, Subd. 2(2). In addition, “[unions] . . . are prohibited from . . . causing . . . a public employer to pay or deliver . . . any money or other thing of value . . . for services which are not performed or not to be performed.” Minn. Stat. § 179A.13, Subd. 3(10).

32. Where a public employer pays the full cost of time off for Union employees to do Union work but is not fully reimbursed for that time, the public employer commits an unfair labor practice and violates the PELRA, section 179A.13, Subd. 2(2).

33. Where a union causes a public employer to pay the full salary of an employee to do work for the Union, while the Union fails to fully reimburse the public employer, the union commits an unfair labor practice and violates the PELRA, section 179A.13, Subd. 3(10).

34. Finally, under the First Amendment to the United States Constitution, “[n]either an agency fee nor any other payment to [a public sector] union may be deducted from a nonmember’s wages . . . unless the employee affirmatively consents to pay.” *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2488 (2018).

35. Likewise, a state government agent may not make a payment to a public sector union from taxpayers without their consent, and especially where the public sector union uses those taxpayer dollars for political advocacy. *See id.*

***Under the CBA Between School and Union, the School Pays for Its Employees to Work for the Union Without Complete Reimbursement***

36. The CBA between School and Union provides as follows in Article IV, Section 13:

Section 13. AHEM Leave: AHEM shall be allowed 100 days per year for AHEM business with AHEM reimbursing the School District for required substitute cost. Any unused AHEM days at the end of the school year may be accumulated for use the next year.

Subd. 5. AHEM will not be required to reimburse the substitute cost for AHEM days used by AHEM negotiation team members during non-student contact days.

37. Article XIV, Section 2, Subdivision 3 of the CBA sets a “substitute deduction” amount at \$138 per day for teachers.

38. The Anoka-Hennepin Schools website states the substitute rate of pay for teachers as either \$135 or \$145 per day.

39. According to the CBA, the lowest salary of a teacher is \$42,536. Assuming 187 days of work—the number assumed by CBA Article X, Section 1—the minimum cost of wages for a teacher per day for School is approximately \$227.47.

40. According to the CBA, the highest salary of a teacher is \$92,712. Assuming 165 instruction days—the state minimum under Minn. Stat. § 120A.41—the maximum cost of wages for a teacher per day for School is approximately \$561.89 per day.

41. In addition, upon information and belief, Union does not pay the pro-rata benefits costs when a teacher takes leave from School to work for Union. *See* CBA, Appendix C, section VI (Compensation), IX (Retirement). Available at: <http://ahem.mn.aft.org/sites/default/files/>

article\_pdf\_files/2019-11/teachers\_20190701.pdf.

42. Upon information and belief, Union has requested and continues to request that School allow Union members who are teachers to take leave to engage in Union business.

43. Upon information and belief, Union has requested and continues to request that School allow Union members who are teachers to take leave to engage in political advocacy on behalf of Union, including door-knocking and other political or campaign activities.

44. Due to these provisions, upon information and belief, Union removes teachers from work for School, and those teachers then go to work for Union, including political or campaign advocacy. At the same time, School pays the teachers' full salaries plus benefits, and Union only reimburses School at a substitute rate.

45. Thus, School is subsidizing Union business in violation of the Minnesota Constitution and the PELRA.

46. Upon information and belief, School is also subsidizing Union leave, and thus spending Plaintiffs' taxpayer dollars, for teachers to do political advocacy for Union's preferred causes in violation of Plaintiffs' First Amendment right not to fund political advocacy with which Plaintiffs disagree.

47. In addition, Union is causing School to pay for its workers in violation of the Minnesota Constitution and the PELRA.



**CAUSES OF ACTION**

**Count One  
Declaratory Judgment  
28 U.S.C. § 2201 *et seq.***

48. Plaintiffs incorporate the preceding paragraphs by reference.

49. A justiciable controversy exists between Plaintiffs and Defendants regarding the parties' rights and obligations arising out of and related to the CBA between Union and School.

50. In addition, a justiciable controversy exists between Plaintiffs and Defendants because Plaintiffs' taxpayer dollars are being paid to Union for teachers to do Union work by virtue of the leave arrangement described above.

51. In addition, a justiciable controversy exists between Plaintiffs and Defendants because Plaintiffs' taxpayer dollars are subsidizing Union political or campaign advocacy against Plaintiffs' wishes pursuant to the arrangement described above.

52. Federal law grants this Court the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. 28 U.S.C. § 2201(a).

53. Federal law also allows persons affected by written contracts and statutes to have determined any question of construction or validity arising under the contract or statute and obtain a declaration of rights, status, or other legal relations thereunder. *E.g.*, *Hatridge v. Aetna Cas. & Sur. Co.*, 415 F.2d 809, 811 (8th Cir. 1969) (Blackmun, J.).

54. A contract may be construed before or after any breach thereof. *Maytag Corp. v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, 687

F.3d 1076, 1081 (8th Cir. 2012).

55. Based on the Court's authority under 28 U.S.C. § 2201, Plaintiffs request that the Court declare as follows:

- a. The CBA between Union and School violates the Minnesota Constitution and the PELRA because it causes School to subsidize Union leave for School's employees using taxpayer dollars.
- b. Union and School violate the Minnesota Constitution and the PELRA because teachers are paid their full salary and benefits, using taxpayer dollars, to take Union leave without full compensation from the Union to School.
- c. Union and School violate the First Amendment to the United States Constitution when they use taxpayer dollars to subsidize Union political or campaign speech via Union leave provisions.

56. The Court should preliminarily and permanently enjoin the Union from removing teachers from their work for School to work for Union absent full payment for their wages and benefits for each day teachers work for Union.

57. Because state law has, for decades, outlawed School and Union's leave arrangement, School and Union have no substantial justification for their actions.

**Count Two**  
**Money Had and Received/Reimbursement to School District**

58. Plaintiffs incorporate the preceding paragraphs by reference.

59. "[I]t is well settled that a taxpayer may, when the situation warrants, maintain an action to restrain unlawful disbursements of public moneys; to recover for the use of the public subdivision entitled thereto money that has been illegally disbursed, as well as to restrain illegal action on the part of public officials." *Oehler v. City of St. Paul*, 219 N.W. 760, 763 (Minn. 1928).

60. As the allegations above describe, Union has received and is receiving taxpayer dollars without consideration because teachers take Union leave, while the School pays the teachers' full salaries and benefits, and the Union only reimburses School at the much lower substitute rate of pay per day of leave.

61. As described above, this arrangement violates Minnesota law and the United States Constitution.

62. Because this arrangement violates the law, the Court should compel Union to compensate School for the value of the unpaid or underpaid leave taken by teachers for at least the six years prior to the date this action commenced.

63. Likewise, Plaintiffs are entitled to injunctive relief restraining the further unlawful disbursement of public money from School to Union.

**Count Three**  
**Violation of the First Amendment**  
**42 U.S.C. §§ 1983, 1988**

64. Plaintiffs incorporate the preceding paragraphs by reference.

65. Defendants are state actors for purposes of 42 U.S.C. § 1983. School is an arm of the state, and Union receives subsidized leave pursuant to the CBA and exists and acts pursuant to the PELRA.

66. Defendants' actions described herein violate the First Amendment because they force Plaintiffs to subsidize unwanted political advocacy. *See, e.g., Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2488 (2018).

67. Plaintiffs are entitled to injunctive relief prohibiting Defendants' ongoing violation of federal law based on their actions under the CBA.

68. Plaintiffs are entitled to recover their costs, disbursements, and attorney fees upon prevailing and a post-judgment application for the same under 42 U.S.C. § 1988.

### **PRAYER FOR RELIEF**

Plaintiffs respectfully request that the Court grant the following relief:

- A. A declaration as follows or in substantially similar fashion:
  - 1. The CBA between Union and School violates the Minnesota Constitution and the PELRA because it causes School to subsidize Union leave for School's employees using taxpayer dollars.
  - 2. Union and School violate the Minnesota Constitution and the PELRA because teachers are paid their full salary and benefits, using taxpayer dollars, to take Union leave without full compensation from the Union to School.
  - 3. Union and School violate the First Amendment to the United States Constitution when they use taxpayer dollars to subsidize Union political or campaign speech via Union leave provisions.
- B. A preliminary and permanent injunction prohibiting School from subsidizing Union leave and Union from taking teachers from work with School absent full payment of wages and benefits from Union to School for the leave;
- C. The compelled reimbursement of School by Union for all under-reimbursed Union leave taken by teachers at School for at least the past six years prior to the date this action was commenced;
- D. An award of attorney fees in favor of Plaintiffs and against Defendants upon Plaintiffs prevailing in this litigation and a post-judgment application for the same, pursuant to 42 U.S.C. § 1988;
- E. An award in favor of Plaintiffs and against Defendants for all taxable costs

and disbursements allowed by law, upon post-judgment application for the same; and

F. An award of all other relief that the court may deem just, proper, or equitable.

**UPPER MIDWEST LAW CENTER**

Dated: December 2, 2020

/s/ James V. F. Dickey

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