

STATE OF MINNESOTA
COUNTY OF SHERBURNE

CASE TYPE: OTHER CIVIL
DISTRICT COURT
TENTH JUDICIAL DISTRICT

Becker Education Association,
Local 7016,

Court File No. _____

Plaintiff,

v.

COMPLAINT

Becker Public School District
Independent School District No. 726,

Defendant.

Plaintiff Becker Education Association, Local 7016, (hereinafter “the Union”) for its Complaint against Defendant Becker Public School District, ISD No. 726, Becker, Minnesota, (hereinafter “the District”), states and alleges to the best of its knowledge as follows:

INTRODUCTION

1. Plaintiff brings this action to enjoin enforcement of Defendant’s Communication Plan pursuant to the Minnesota Constitution, Article I, Section 3, the Public Employment Labor Relations Act (PELRA), Minnesota Statutes § 179A. 13 (2020), and the Minnesota Declaratory Judgment Act, Minnesota Statutes § 555.01, *et seq.* (2020) seeking relief from Defendant’s violation.

2. Defendant District has adopted a policy that is antithetical to the values of public education, which encourages personal growth and debate. However, it is

most relevant to the work of this Court that the policies are antithetical to the Minnesota Constitution and a range of Minnesota statutes.

3. A school district cannot strengthen its culture by weakening discussion. Defendant District's attempt to restrain staff and student speech exceeds its authority as a government actor. Adopting content-based speech restrictions and conduct restrictions that are so overbroad as to chill plainly protected expression violates the law and must be enjoined.

PARTIES

4. The School Board of the Becker Public School District of Independent School District No. 726 ("Board") is the governing body of the District and the "public employer" of the employees serving in the District for purposes of PELRA, Minn. Stat. § 179A.03, subd. 15(c) (2020).

5. Defendant District is a school district created pursuant to Minnesota Statutes, chapters 122 and 123, and is an independent governmental subdivision amenable to suit under Minn, Stat. § 123B.25 (2020).

6. The Minnesota Bureau of Mediation Services has certified the Union as the exclusive representative for purposes of collective bargaining under PELRA for teachers in the District.

VENUE AND JURISDICTION

7. This Court has jurisdiction over the Plaintiff's claims pursuant to Minn. Stat. § 484.01, subd. 1.

8. Venue is proper in Sherburne County pursuant to Minn. Stat. § 542.09 because the Defendant District is located there.

FACTS

9. On March 14, 2022, Defendant District held a special school board meeting to which, upon information and belief, it invited speakers to offer an “opposing view” following an earlier presentation regarding ways to support transgender students. Affidavit of Meg Luger-Nikolai (hereinafter, “Luger Aff.”), Ex. A.

10. Upon information and belief, this presentation was met with acute horror by staff and students committed to equity and a supportive school environment.

11. A partial video of the meeting, available at <https://www.becker.k12.mn.us/home/school-board> shows that, at times, members of the audience protested vocally. Upon information and belief, they also held signs in opposition to the speech that the invited presenters offered, and that they also stood quietly and turned their backs while one of the presenters spoke.

12. During this period, some staff members spoke with the press about student mental health and the need for an affirming school culture for individuals. Luger Aff., Ex. B-D.

13. Upon information and belief, certain school board members were displeased by staff and students’ expressive activities. On or about June 20, the Board gave direction to the Superintendent to prevent similar expressions of free speech. Its

directive commenced with an ominous, passive voice directive: “Order will be restored.” Luger Aff., Ex. E.

14. On May 2, 2022, the Board adopted its “Communication Plan.” Luger Aff., Ex. F.

15. The Communication Plan contains a number of requirements, including that all images of the school mascot include an underbite. However, it also contains the following requirement for staff:

- To ensure compliance with data privacy laws and other legal considerations, **employees may not make statements to the media, individuals, or entities outside the District relating to student or personnel matters.** Inquiries regarding such matters must be directed to Directors and Building Administration. The Director of Community Education and Superintendent will oversee district communication and may also be used as a resource on specific inquiries.
- Communication must be tied to the goals, objectives, and emphasis of the school district mission statement.
- Key messaging should position Becker Public Schools as a collaborative, “community centered” school district that is committed to providing an exceptional education for all students[sic]

- **Internal communication must be positive** and a priority.

Luger Aff., Ex. F, 34-35 (emphasis added). The Communication Plan also requires that staff used a prescribed email signature, and upon information and belief, this is intended to bar staff from including their pronouns in their signature. Staff include pronouns in their signature both to inform parents about the appropriate way to address them, and also to signal to any recipients that they are affirming of all school community members.

16. The Communication Plan also includes a prescribed signature “phrase”: “The mission of Becker Public Schools is to prepare self-directed learners to thrive in a changing global community,” which constitutes compelled speech and, upon information and belief, is not a wholly accurate reflection of reality.

17. Upon information and belief, a staff member who violates this policy will be subject to discipline and adverse employment actions.

18. Upon information and belief, staff members will be required to acknowledge receipt and future compliance with this policy as a condition of employment, and one Union member has been summarily removed from public relations duties she previously performed for compensation.

19. Defendant District imposed this policy without bargaining or offering to bargain with the Union about its content or its implications.

20. The Communication Plan contains no exceptions or other limiting clauses.

21. The prior restraint discussed in paragraph 14 is not content neutral, and it encompasses protected speech. It limits staff and students to saying kind things about the District, internally and externally. This prohibits all District employees, including Plaintiff’s members, from speaking about personnel issues at school board meetings at which anyone not employed by the District is present. For example, an employee who offered comment on the effects of staff cuts on student outcomes in the District would be insubordinate and subject to discipline if a member of the press or public was present at the same time.

22. This policy prohibits staff members from addressing the District's school board about school climate and concerns about student mental health, even in the aggregate, if members of the press or public are present.

23. The prior restraint on discussing personnel matters sweeps so broadly that it prohibits speaking publicly about one's own experiences, pay, work location, assignments, final discipline, and other items. This is inconsistent with the Minnesota Government Data Practices Act, Minn. Stat. § 13.43, which identifies several categories of information that cannot be made private by fiat.

24. The prior restraint on discussing personnel matters precludes filing administrative charges or even consulting with agencies such as the Minnesota Occupational Health and Safety Administration and the Minnesota Department of Human Rights.

25. This prior restraint also precludes speaking with a Bureau of Mediation Services mediator during collective bargaining, because both the Bureau and its mediators are "entities outside the District."

26. This prior restraint precludes informational picketing in violation of Minn. Stat. § 179A.13, subd. 1(2).

27. This prior restraint contravenes PELRA's expression of views clause, contained in Minn. Stat. § 179A.06, subd. 1.

28. The prior restraint on public discussions of student matters bars any internal or external conversation about aggregate student test data, data regarding

disciplinary referrals, and other matters of a public concern that are not private educational data.

29. The prior restraint on discussing issues “relating to student . . . matters” precludes staff from complying with Minnesota’s Maltreatment of Minors statute, Minn. Stat. § 260E.01, et seq. Teachers are mandated reporters, and Minn. Stat. § 260E.06 requires that reports of maltreatment of a student be made to “local welfare agency, agency responsible for assessing or investigating the report, police department, county sheriff, tribal social services agency, or tribal police department”—all of which are entities outside of the District.

30. Because the District’s Communication Plan bans maltreatment reports, it subjects students to the possibility of uninterrupted child abuse and requires staff to choose between their employment and their statutory obligation as mandated reporters.

31. The District’s overbroad and vague prohibition on internal communication that is not “positive” violates the Minnesota Safe and Supportive Schools Act, Minn. Stat. § 121A.031, which requires staff to make internal reports regarding intra-student bullying, and prohibits retaliation for making these reports.

Count I
(Minnesota Constitution)

32. The allegations of Paragraphs 1-31 are realleged and incorporated herein.

33. Article I, Section 3 of the Minnesota Constitution states, in relevant part:

The liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of such right.

34. Through the adoption of content-sensitive prior restraints in an overbroad and vague policy, Defendant District has violated the free speech rights of Plaintiff's members. Plaintiff asks that the Court enjoin further violations.

**Count II
(PELRA)**

35. The allegations of Paragraphs 1-34 are realleged and incorporated herein.

36. Defendant District has unilaterally adopted a Communication Plan that creates a new condition of employment for Plaintiff's members, without bargaining with Plaintiff.

37. The District's Communication Plan is in violation of the parties' collective bargaining agreement, and the past practices enforceable thereunder.

38. Defendant District has committed an unfair labor practice by refusing to bargain in good faith in violation of Minnesota Statutes § 179A.13, subdivision 2(5) (2020). Its unilateral implementation of changes to the teachers' working conditions represents an attempt to weaken and undermine Plaintiff as a bargaining representative. Plaintiff will be irreparably harmed if the District is not ordered to cease its refusal to bargain over terms and conditions of employment.

**Count III
(PELRA)**

39. The allegations of Paragraphs 1-38 are realleged and incorporated herein.

40. Defendant District has promulgated a policy that expressly prohibits the expression of views about “personnel matters,” which includes employees’ terms and conditions of employment.

41. Minn. Stat. § 179A.13, subd. 2(1) (2020) proscribes interference with the rights guaranteed under PELRA, including its expression of views clause, which permits employees to:

[E]xpress or communicate a view, grievance, complaint, or opinion on any matter related to the conditions or compensation of public employment or their betterment...

Minn. Stat. § 179A.06, subd. 1 (2020). Any policy that both 1) prohibits any external communications *and* 2) requires that all *internal* communications be “positive” in nature violates this right.

42. Based on the ongoing, irreparable harm to Plaintiff as an exclusive representative if Defendant does not comply with PELRA, Plaintiff is entitled to immediate injunctive relief.

**Count IV
(PELRA)**

43. The allegations of Paragraphs 1-42 are realleged and incorporated herein.

44. Defendant District has promulgated a policy that bars intra-district communications that are not positive, such as a union newsletter or union-wide email that is not supportive of administration.

45. These prohibitions interfere with and restrain Plaintiff's members in the exercise of their right to join a union participate in its activities, and seek the protection of the collective bargaining agreement it negotiates, as guaranteed under 179A.13, subd. 2(1) (2020), because they are unable to communicate about union and personnel matters in a manner that is not positive.

46. Based on the ongoing harm to Plaintiff if Defendant does not comply with PELRA, Plaintiff is entitled to injunctive relief.

Count V
(Minnesota Human Rights Act)

47. The allegations of Paragraphs 1-46 are realleged and incorporated herein.

48. The Minnesota Human Rights Act ("MHRA") provides that it is unlawful for an employer "because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, familial status, membership or activity in a local commission, disability, sexual orientation, or age..." to "...discriminate against a person with respect to hiring, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment." Minn. Stat. § 363A.08 (2021). The MHRA also prohibits educational institutions from "discriminat[ing] in any manner in the full utilization of or benefit from any

educational institution, or the services rendered thereby to any person because of race, color, creed, religion, national origin, sex, age, marital status, status with regard to public assistance, sexual orientation, or disability....” Minn. Stat. § 363A.13 (2021).

49. The MHRA prohibits reprisals against employees who oppose a practice prohibited by the MHRA, or who have “filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing” relating to a charge of discrimination. *See* Minn. Stat. § 363A.15 (2021). Reprisals include *any* form of intimidation, retaliation, or harassment. *Id.*

50. Defendant District has promulgated a Communication Plan that bars staff from offering anything other than “positive” communications. This violates Minn. Stat. § 363A.15 by prohibiting Plaintiff’s members from reporting concerns of discrimination against students and staff to the District to the Minnesota Department of Human Rights, or speaking out elsewhere in opposition to discriminatory practices.

51. Additionally, by adopting an email signature policy that precludes one’s chosen manner of gender expression, the Communication Plan constitutes discrimination in violation of Minn. Stat. § 363A.08.

52. Based on the ongoing harm to Plaintiff if Defendant does not comply with the Minnesota Human Rights Act, including the threat of discipline for reporting concerns of discrimination, Plaintiff is entitled to injunctive relief.

Count VI
(Maltreatment of Minors Act)

53. The allegations of Paragraphs 1-52 are realleged and incorporated herein.

54. Defendant District's Communication Plan, which bars all staff communication about students with any outside entity, is a facial violation of Minn. Stat. § 260E.06 (2020).

55. The District's Communication Plan also violates Minn. Stat. § 260E.07 (2020), which prohibits all employers from retaliating against individuals who make mandated reports to the appropriate agency.

56. Based on the ongoing harm to Plaintiff's members and students in the District if Defendant does not comply with the Maltreatment of Minors Act, including encouraging staff to violate that law, Plaintiff is entitled to injunctive relief.

Count VII
(Safe and Supportive Schools Act)

57. The allegations of Paragraphs 1-56 are realleged and incorporated herein.

58. Defendant District has promulgated a Communication Plan that bars staff from offering anything other than "positive" communications.

59. Plaintiff's members often have the obligation of reporting very unpleasant, not-at-all positive matters related to bullying of LGBTQ+ and BIPOC students, and the Communication Plan would subject staff members making such reports to discipline.

60. This violates Minnesota's Safe and Supportive Schools Act, Minn. Stat. § 121A.031 (2020). It also violates that statute's requirement that employer's "prohibit reprisals or retaliation against any person who asserts, alleges, or reports prohibited conduct or provides information about such conduct and establish appropriate consequences for a person who engages in reprisal or retaliation," by actually *codifying* retaliation.

61. Based on the ongoing harm to Plaintiff's members and students in the District if Defendant does not comply with the Safe and Supportive Schools Act, including encouraging staff to violate that law, Plaintiff is entitled to injunctive relief.

Count VIII
(Occupational Health and Safety Act)

62. The allegations of Paragraphs 1-61 are realleged and incorporated herein.

63. The District's Communication Plan bars external reporting regarding personnel issues and internal communications that are not positive.

64. This precludes employees from enforcing rights under Minn. Stat. § 182.659, subd. 5 (2020), which permits reports to the Department of Labor and Industry in the event of working conditions that are hazardous for employees.

65. In addition, the District's Communication Plan also violates Minn. Stat. § 182.669 (2020), which prohibits reprisals for reporting OSHA violations.

66. Based on the ongoing harm to Plaintiff's members in the District if Defendant does not comply with Minnesota's Occupational Health and Safety Act, Plaintiff is entitled to injunctive relief.

Count IX
(Minnesota Whistleblower Act)

67. The allegations of Paragraphs 1-66 are realleged and incorporated herein.

68. Under the Minnesota Whistleblower Act, Minn. Stat §§ 181.931-37 (2020), Plaintiff's members are entitled to disclose any "violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official."

69. Defendant's Communication Plan specifically bars all communication about student and personnel issues to outside entities, including governmental bodies, under penalty of discipline.

70. These policies plainly prohibit statutorily protected speech.

71. Based on the ongoing harm to Plaintiff's members in the District if Defendant does not comply with Minnesota's Whistleblower Act, Plaintiff is entitled to injunctive relief.

WHEREFORE, Plaintiff prays for relief as follows:

1. For a declaratory judgment finding that the Defendant has violated:
 - a. The Constitution of Minnesota;

- b. Minn. Stat. § 179A.13, subd. 2(1);
- c. Minn. Stat. § 179A.13, subd. 2(5);
- d. Minn. Stat. § 363A.08;
- e. Minn. Stat. § 363A.15;
- f. Minn. Stat. § 260E.07;
- g. Minn. Stat. § 121A.031;
- h. Minn. Stat. § 182.659; and
- i. Minn. Stat. § 181.931.

2. For a judgment declaring that the Defendant has committed unfair labor practices in violation of PELRA, specifically Minnesota Statutes § 179A.13, subdivisions 2(5).

3. Permanently enjoining Defendant District from enforcing its Communication Plan and restoring public relations duties to Plaintiff's members.

4. Awarding attorney fees and costs to Plaintiff as permitted by relevant statute.

5. For such other relief as the Court may deem just and proper.

EDUCATION MINNESOTA

Dated: August 18, 2022

By: 

Meg Luger-Nikolai (Atty. Reg. 0341630)
David Aron (Atty. Reg. No. 0392074)
41 Sherburne Avenue
St. Paul, MN 55103
(651) 292-4823
ATTORNEYS FOR PLAINTIFF

ACKNOWLEDGEMENT

Becker Education Association, Local 7016, the Plaintiff herein, by its attorneys, hereby acknowledge that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minnesota Statutes § 549.211, subdivision 1 (2012), to the parties against whom the allegations in this pleading are asserted.

EDUCATION MINNESOTA

Dated: August 18, 2022

By: 

Meg Luger-Nikolai (Atty. Reg. 0341630)

David Aron (Atty. Reg. No. 0392074)

41 Sherburne Avenue

St. Paul, MN 55103

(651) 292-4885

ATTORNEYS FOR PLAINTIFF

MINNESOTA
JUDICIAL
BRANCH