

DANIEL P. SEBRING,
3919 S. 60th Street,
Milwaukee, WI 53220

Plaintiff,

v.

MILWAUKEE PUBLIC SCHOOLS,
5225 West Vliet Street,
Milwaukee, WI 53208,

Defendant.

Case Code: 30701

Case Type: Declaratory Judgment

COMPLAINT

Plaintiff alleges the following as his complaint:

INTRODUCTION

1. Using taxpayer money, Defendant Milwaukee Public Schools (MPS) pays some of its public employees to engage in activities for private labor unions instead of the school district. Through a policy called “Union Leave” or “Union Release,” MPS gives its labor unions the power to designate MPS public employees as union “representatives” who qualify for this benefit for up to 10 workdays each year. Instead of doing the publicly funded job they were hired to do, these MPS employees are “released” from their jobs but still are able to collect their pay and benefits for “union-related activities” that include, for example, advocating and expressing the union’s position in meetings with management, representing the union at trainings and out-of-town conferences, and any other activity the labor union deems appropriate.

2. The union leave policy is unconstitutional in at least two respects. First, the policy violates the freedom-of-speech guarantee in the Wisconsin Constitution. Freedom of speech

includes the freedom *not* to speak. When the government earmarks tax dollars (in this case, in the form of paying for the salary and benefits of staff who is on “leave” for up to ten days) for the explicit use of a private entity to convey a private political message, like the labor unions in this case, then the freedom of taxpayers not to speak is violated. Second, MPS’ policy violates the public-purpose doctrine of the Wisconsin Constitution. This doctrine requires that tax dollars only be spent for a public purpose and not for a private entity’s private purposes.

3. Plaintiff is a taxpayer whose taxes are used to pay MPS public employees. As such, under the “Union Leave” policy, a portion of Plaintiff’s taxes are given to MPS labor union members for the private purposes of engaging in activities on behalf of a labor union. Plaintiff objects to the use of taxpayer money to support unions or union activity, objects to taxpayer funding of the political messages and advocacy by the union and its public-employee representatives, and objects to MPS using taxpayer money for unconstitutional purposes.

4. Plaintiff is entitled to a declaratory judgment declaring that this policy is unconstitutional, an injunction prohibiting its use, and other appropriate remedies provided by law.

PARTIES

5. Plaintiff Daniel P. Sebring is a resident of the City of Milwaukee and lives within the boundaries of the Milwaukee Public School District. He is a taxpayer, paying local property taxes on an annual basis, state income taxes, and sales taxes. He resides at 3919 South 60th Street, in Milwaukee, Wisconsin.

6. Defendant Milwaukee Public Schools (“MPS”) is a public-school district organized under the laws of the State of Wisconsin. MPS maintains its main office at 5225 West Vliet Street, in Milwaukee, Wisconsin.

JURISDICTION AND VENUE

7. This court has jurisdiction pursuant to Wis. Stat. § 806.04.
8. Venue is proper pursuant to Wis. Stat. § 801.50(2).

FACTS

9. MPS maintains an “Employee Handbook” on its website containing many of the school district’s employment policies.¹ For example, the handbook sets forth MPS’ policies related to seniority, grievances and complaints, and, as relevant here, employee leave and absences.

10. The MPS employee handbook includes a section entitled “Union Leaves/Releases.” In this section, “[e]ach designated collective bargaining unit” has the power to designate any MPS employee in the following employee groups as a union “representative”: classified employees (non-administrators), administrators and supervisors, teachers, substitute teachers, and psychologists. Handbook, pp. 1, 49.

11. MPS employees designated as union representatives are entitled to “a maximum of ten days per fiscal year” of paid leave to conduct union activities. *Id.*

12. In addition to the initial leave, “Any union may request additional leave for its representatives, including full release up to one school year, subject to approval by the District.” If MPS approves union leave in excess of ten days, MPS “will bill the bargaining unit for their salary and benefits of the individual for this time.” *Id.*, p. 50. This suit only challenges the policy of providing of union leave *without* billing the bargaining unit for the associated salary and benefits of the individual for that time.

¹ The entire handbook is available at <https://mps.milwaukee.k12.wi.us/en/Employment/Current-Staff/Employment-Relations.htm>.

13. The handbook further provides for certain categories of union leave which do not count towards the ten-day maximum: grievance or complaint hearings and collective bargaining negotiations. *Id.* Nevertheless, designated union representatives are paid their salary and benefits by MPS for time spent on these activities.

14. Union leave is for the purpose of engaging in “union-related activities.” *Id.*, p. 49.

15. The handbook does not define the term “union-related activities.”

16. During the 2017, 2018, and 2019 school years, MPS spent thousands of dollars paying employees for hundreds of hours working on behalf of labor unions for the labor unions’ private purposes.

17. MPS continued to spend taxpayer dollars on this policy during the 2020-21 school year.

18. MPS’ Labor Unions operate completely independently of MPS and are not under the control of MPS or the Milwaukee School Board.

19. Under the union leave policy, union representatives use paid union leave time to engage in, among other things: union committee meetings, union conferences, union trainings, union employee appreciation events, and to conduct other union business, all while being paid their taxpayer-funded salaries and receiving taxpayer-funded benefits.

20. These labor unions also engage in electoral activity, lobby to influence public policy, and make political donations.

21. Under the union leave policy, public employees using union leave are not obligated to provide an accounting to MPS for how such time is used.

22. MPS does not audit any labor union’s use of union leave time.

23. MPS does not control or direct the activities of union members while they are using union leave time.

24. As a result of its union leave policy, MPS spends taxpayer money to subsidize the speech and activities of labor unions.

25. MPS is funded, in large part, by taxes paid by state and local taxpayers, including Plaintiff.

26. MPS receives more than \$800 million per year from state and local taxpayers in annual revenue.

27. Plaintiff lives and owns property in the City of Milwaukee and pays property taxes.

28. Plaintiff also pays state income taxes and sales tax.

29. Plaintiff's taxes fund MPS, including the paid leave under the union leave policy.

30. Plaintiff disagrees with the views expressed by, and much of the advocacy engaged in by various public sector labor unions, including MPS' Labor Unions, and does not wish to subsidize their activities, but is required to do so based upon MPS' union leave policy.

31. MPS' Labor Unions engage in, among other things, union training, recruitment of new members, hearings, grievance proceedings, and negotiations.

**COUNT ONE – DECLARATORY JUDGMENT
VIOLATION OF THE WISCONSIN CONSTITUTION'S
GUARANTEE OF FREEDOM OF SPEECH**

32. Plaintiff realleges and incorporates the preceding allegations of the complaint.

33. "Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Wis. Stat. § 806.04.

34. The Wisconsin Constitution guarantees the freedom of speech: “Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press.” Wis. Const. Art I, § 3.

35. The Wisconsin Constitution guarantees “the same freedom of speech . . . as do the First and Fourteenth amendments of the United States [C]onstitution.” *Lawson v. Housing Auth. of City of Milwaukee*, 270 Wis. 269, 274, 70 N.W.2d 605 (1955).

36. Yet it remains the “prerogative of the State of Wisconsin to afford greater protection to the liberties of persons within its boundaries under the Wisconsin Constitution than is mandated by the United States Supreme Court under the Fourteenth Amendment.” *State v. Doe*, 78 Wis. 2d 161, 171, 254 N.W.2d 210 (1977).

37. The freedom of speech “includes both the right to speak freely and the right to refrain from speaking at all.” *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448, 2463 (2018) (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)).

38. The government may not compel a person to speak or adopt an opinion not his own. Relatedly, “[c]ompelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns.” *Janus*, 138 S. Ct. at 2464 (collecting cases). Quoting Thomas Jefferson, the U.S. Supreme Court has agreed that “to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves and abhor[s] is sinful and tyrannical.” *Id.*

39. Under the First Amendment, an individual cannot be forced to subsidize a message he disagrees with, when expressed by a private entity. *See e.g., United States v. United Foods, Inc.*, 533 U.S. 405, 410 (2001) (collecting cases). “[C]ompelled subsidization of private

speech seriously impinges on First Amendment rights.” *Janus*, 138 S. Ct. at 2464; *cf. Madison Teachers, Inc. v. Walker*, 2014 WI 99, ¶ 59, 358 Wis. 2d 1, 851 N.W.2d 337 (“[t]he First Amendment does not compel the government to compel its employees to subsidize speech.”)

40. The United States Supreme Court has further explained that the compelled subsidization of private entities’ speech violates the First Amendment, especially when the speech involves “political matters.” *Johanns v. Livestock Mktg. Ass’n*, 544 U.S. 550, 557–58 (2005) (collecting cases).

41. Public sector labor unions, such as those who benefit from MPS’ union leave policy, are not viewpoint neutral, and instead, their activities express views on “important political issues.” *Harris v. Quinn*, 573 U.S. 616, 636 (2014) (“In the public sector, core issues such as wages, pensions, and benefits are important political issues.”).

42. Unions speak on “a wide range of subjects.” Union speech supports political or ideological activities and includes “sensitive political topics” including speech related to public spending on education, topics addressed during collective bargaining, positions taken in during grievance procedures. *Janus*, 138 S. Ct. at 2475–6.

43. When an MPS employee uses taxpayer-funded union leave, that employee is engaged in union-related activities, providing support to the union, and expressing support for the unions’ political or ideological activities or policy positions, either explicitly or implicitly, including various issues regarding public policy reflected in the relationship between MPS and union members as employees.

44. MPS’ union leave policy is not the same as vacation, which is also available to employees under a separate policy. MPS employees are certainly free to engage in union

business while on vacation time, but they are not required to do so. MPS' union leave policy is *exclusively* available to "engage in union-related activities." Handbook, pg. 49.

45. "[A] taxpayer has the right to raise, on behalf of himself and other taxpayers, a constitutional issue affecting his and their individual rights." *City of Appleton v. Town of Menasha*, 142 Wis. 2d 870, 877, 419 N.W.2d 249 (1988) (collecting cases).

46. As a taxpayer, Plaintiff has suffered a loss as a result of MPS' unconstitutional union leave policy. "In order to maintain a taxpayer's action, it must be alleged that the complaining taxpayer and taxpayers as a class have sustained, or will sustain, some pecuniary loss ..." *S.D. Realty Co. v. Sewerage Comm'n of Milwaukee*, 15 Wis. 2d 15, 21, 112 N.W.2d 177 (1961) (citing *McClutchey v. Milwaukee County*, 239 Wis. 139, 300 N.W. 224 (1941)). "Any illegal expenditure of public funds directly affects taxpayers and causes them to sustain a pecuniary loss." *S.D. Realty Co.*, 15 Wis. 2d at 22.

47. Because he is a Wisconsin and Milwaukee taxpayer, Plaintiff is required to provide financial support to labor union speech as a direct result of MPS' union leave policy, specifically, they are forced to fund staff time *exclusively* to engage in union-related activities.

48. Plaintiff may not opt out of paying taxes and may not direct that the taxes he pays are not used to subsidize the activities of MPS' Labor Unions.

49. Plaintiff disagrees with labor union speech and advocacy on, among other things, endorsing of candidates for office, election canvassing in support of favored candidates, lobbying the state legislature, filing of grievances, collective bargaining, representing employees at grievance and complaint hearings, and attending union meetings, training, and conferences.

50. Consequently, MPS directing tax dollars to fund union activities without Plaintiff's consent via its union leave policy violates the Wisconsin Constitution by forcing Plaintiff to subsidize the political speech of labor unions.

51. Unless the Court declares the MPS policy of providing union leave for up to ten days without billing the labor union to be unlawful and invalid, Plaintiff will continue to be forced to subsidize the speech of a private organization with which he disagrees.

COUNT TWO – PUBLIC PURPOSE DOCTRINE

52. Plaintiff realleges and incorporates the preceding allegations of the complaint.

53. “The public purpose doctrine, although not recited in any specific clause in the state constitution, is a well-established constitutional doctrine.” *Jackson v. Benson*, 218 Wis. 2d 835, 896, 578 N.W.2d 602 (1998) (citing *Hopper v. City of Madison*, 79 Wis. 2d 120, 128, 256 N.W.2d 139 (1977)).

54. “Public funds may be expended for only public purposes. An expenditure of public funds for other than a public purpose would be abhorrent to the [C]onstitution of Wisconsin.” *State ex rel. Warren v. Nusbaum*, 59 Wis. 2d 391, 414, 208 N.W.2d 780 (1973).

55. “[W]hat constitutes a public purpose is, in the first instance, a question for the legislature to determine.” *Libertarian Party v. State*, 199 Wis. 2d 790, 810, 546 N.W.2d 424 (1996).

56. The Wisconsin Legislature has not passed any legislation supporting union leave policies.

57. The union leave policy allows the expenditure of public funds solely to support and advance the mission and expressive advocacy goals of a labor union.

58. MPS' policy of providing monetary support in the form of salary and benefits to labor unions to support union activities is not spending money for a "public purpose" and thus the policy itself is unconstitutional.

59. Even if MPS' policy of providing paid employees to a private labor union to support that union's activities were somehow a "public purpose," there are no regulations for control and accountability to secure the public interests, and the policy is still unconstitutional in such a case. "To test the propriety of expending public monies to a private institution for public purpose, this court must determine whether the private institution is under reasonable regulations for control and accountability to secure public interests." *Davis v. Grover*, 166 Wis. 2d 501, 542, 480 N.W.2d 460 (1992) (citation omitted).

60. Since this policy allows the expenditure of funds for a non-public purpose, or in the alternative, such an expenditure lacks any regulations for control and accountability to secure such a purpose, it is unconstitutional. Plaintiff is harmed by the unlawful expenditure of his tax dollars.

61. Unless this Court declares the MPS' policy to be unlawful and invalid, Defendant will continue to expend public monies in violation of the public-purpose doctrine.

REQUEST FOR RELIEF

Plaintiff requests the following relief:

- A. Declare that MPS' union leave policy wherein certain employees are granted up to ten days of paid leave to engage in union related activities is unconstitutional;
- B. Enjoin MPS from enforcing its union leave policy;
- C. Award Plaintiff his costs and attorney fees;
- D. Award such other relief as the Court may deem appropriate.

Respectfully submitted this 8th day of July, 2021.

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