

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

ASSOCIATED BUILDERS AND)	
CONTRACTORS, INC.,)	Case No. 0:19-cv-00656
MINNESOTA/NORTH DAKOTA)	
CHAPTER; and LAKETOWN ELECTRIC)	COMPLAINT
CORPORATION,)	
Plaintiffs,)	
)	
v.)	
)	
MINNEAPOLIS PUBLIC SCHOOLS,)	
SPECIAL SCHOOL DISTRICT NO.1;)	
and NELSON INZ, in his official capacity as)	
Chairperson of the Minneapolis Board of)	
Education,)	
Defendants.)	

INTRODUCTION

1. The Minneapolis Public School District spends tens of millions of dollars each year to build new schools and service schools it currently owns. In so doing, the district demands that non-union (merit-shop) contractors accede to union-only project labor agreements. Those agreements force contractors to hire workers from union hiring halls in lieu of their own employees, and pay into benefit funds that, in light of lengthy vesting periods, often benefit the signatory unions over the contractors’ employees.

2. A contractor that does not agree to these terms cannot work on a project covered by a project labor agreement, even if the contractor submits the lowest bid. If a public entity like the Minneapolis Public School District required Republican contractors to hire workers from Democratic hiring halls, or establish a fund to benefit the Democratic

Party in order to work on a project, there is no doubt that the requirement would violate the First and Fourteenth Amendments to the United States Constitution. The district's discrimination against merit-shop contractors and their employees is no less unconstitutional.

3. Plaintiff Associated Builders and Contractors, Minnesota/North Dakota Chapter (Minnesota ABC) is a statewide professional trade organization representing the interests of 350 construction-related firms and 22,000 employees. Minnesota ABC brings this lawsuit to further its mission and to vindicate the constitutional rights of affected members. Minnesota ABC's mission is to promote and defend the merit shop philosophy, which encourages open competition and a free-enterprise approach to construction based solely on merit, regardless of labor affiliation. Plaintiff Laketown Electric is a family-owned business that has served Minnesotans since 1975. One of the fastest growing companies in Minnesota, Laketown would like to serve those in the Minneapolis Public School District without having to first agree to a union-negotiated project labor agreement.

JURISDICTION AND VENUE

4. Plaintiffs bring this civil rights lawsuit pursuant to 42 U.S.C. § 1983, for the violation of rights secured by the First and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction over these federal claims under 28 U.S.C. §§ 1331 (federal question) and 1343(a) (redress for deprivation of civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202.

5. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) on the ground that a substantial part of the acts giving rise to Plaintiffs' claims have occurred or will occur in Minnesota.

6. Venue in this Division is proper under 28 U.S.C. § 103(3) on the ground that a substantial part of the acts giving rise to Plaintiffs' claims have occurred or will occur in Hennepin County, Minnesota.

PARTIES

Plaintiffs

7. Plaintiff Associated Builders and Contractors, Minnesota/North Dakota Chapter (Minnesota ABC) is a professional trade organization that represents merit-shop construction firms and employees in Minneapolis and elsewhere in Minnesota.

8. Minnesota ABC's mission is to provide the best training, government and legal representation, and programs to ensure members a competitive advantage, and ensure that construction projects are awarded to the most qualified and responsible low bidders. Minnesota ABC has several members who are willing and able to submit bids and work on projects covered by project labor agreements to which the District is a party.

9. Minnesota ABC has had to devote significant resources to counteracting the project labor agreement provisions challenged herein, and similar project labor agreements across Minnesota. Minnesota ABC has actively opposed project labor agreements for years, and has advocated against four project labor agreements in the last three years.

10. Plaintiff Laketown Electric Corporation is a family-owned business based in Waconia, Minnesota. Laketown Electric was founded in 1975 and currently employs over

100 employees. Laketown Electric specializes in electrical service. It constructs and maintains healthcare facilities, commercial buildings, food processing, automation, manufacturing, education, underground projects, and generator systems across Minnesota.

11. Laketown Electric is a merit-shop contractor. Laketown has worked on several projects that are similar in size and scope to the projects covered by project labor agreements in the Minneapolis Public School District. It is willing and able to bid on ongoing and anticipated projects that have incorporated the provisions of the 2004 project labor agreement, and would do so if those projects were not covered by such agreements.

Defendants

12. Defendant Minneapolis Public Schools, Special School District No. 1, is a school district that covers Minneapolis, Minnesota.

13. Minneapolis Public Schools spend over \$66 million per year on contracted services, which include building new facilities and servicing the 75 buildings that Minneapolis Public School District currently owns.

14. Defendant Nelson Inz is Chairperson of the Minneapolis Board of Education. The Minneapolis Board of Education is a policymaking body responsible for overseeing the District's budget, curriculum, personnel, and facilities. The school board is granted authority to carry out these duties by the State of Minnesota and the Minnesota Legislature. The Chairperson's duties include the duty to execute contracts, such as project labor agreements. Mr. Inz is sued in his official capacity.

FACTUAL ALLEGATIONS

Project Labor Agreements

15. A project labor agreement is an agreement negotiated between a construction project owner and a labor union that a contractor must agree to in order to perform work on a project.

16. Project labor agreements are incorporated into construction contracts and govern the terms of employment for subsequent construction on the project.

17. Project labor agreements are negotiated before employees vote on union representation.

18. Project labor agreements are negotiated before the contractor hires any worker to work on that project.

19. Project labor agreements require contractors to agree to the terms of the agreement before bidding on a contract. Among other things, contractors must agree to perform work in accordance with work rules established by the signatory union.

20. A project labor agreement is considered a part of a bid specification. Non-union contractors who submit the lowest bid cannot work on a project covered by a project labor agreement if they do not agree to the terms of the project labor agreement.

21. Project labor agreements increase the costs of projects. A study published by Paul Bachman and David G. Tuerck in May 2017 found that project labor agreements increased the cost of school construction in Ohio by \$23.12 per square foot.

22. In February 2001, the federal government issued an executive order that prohibited the federal government from using project labor agreements. The executive order was rescinded during the Obama administration.

23. Twenty-four states have enacted state bans on project labor agreements.

The 2004 Minneapolis Project Labor Agreement

24. In 2004, the Minneapolis Public School District adopted a project labor agreement. The project labor agreement specifies the terms of all subsequent construction and repairs in the District. A true and correct copy of the agreement, as incorporated in Defendants' February 25, 2019, Project Manual for Electrical Service, Maintenance, and Repair is attached as Exhibit A. The Project Manual requires a contractor working on a covered project in the Minneapolis Public School District to sign a letter of assent in which it "hereby agrees to accept and be bound by the terms and conditions of the Project Labor Agreement between Minneapolis Public Schools and the Minneapolis Building and Construction Trade Council."

25. The 2004 project labor agreement was negotiated by the signatory unions.

26. The 2004 project labor agreement was negotiated before any employees voted on union representation.

27. The 2004 project labor agreement was negotiated before contractors hired any worker to work on ongoing projects for the Minneapolis Public School District.

28. Under the 2004 project labor agreement, a contractor must agree to the terms of the agreement before it can submit a qualifying bid.

29. Contractors who do not agree to the terms of the 2004 project labor agreement cannot work on any project that incorporates the agreement's terms. A bid by a contractor who has not agreed to the terms of the agreement cannot be accepted.

30. Most of Minnesota's construction workforce is not unionized. As detailed below, the 2004 project labor agreement contains provisions that require contractors to hire from the hiring halls of signatory unions and contribute to fringe benefit funds established by the signatory union.

**The Minneapolis Project Labor Agreement's
Incorporation in Agreements for Current Projects
in the Minneapolis Public School District**

31. The 2004 project labor agreement has been adopted verbatim into ongoing projects. Ongoing projects include projects for Marcy Open Elementary School, Patrick Henry High School, and Jefferson Community School in Minneapolis.

32. Contractors must agree to the terms of the 2004 project labor agreement, as incorporated into project manuals for ongoing projects in the Minneapolis Public School District, before they can submit qualified bids for those projects.

33. Contractors must agree to hire from union hiring halls before they can submit a qualified bid on ongoing projects in the Minneapolis Public School District.

34. Contractors must agree to pay into fringe benefits funds jointly established and administered by the signatory union and signatory employers to a collective bargaining agreement (hereinafter "signatory employers") before they can submit a qualified bid on ongoing projects in the Minneapolis Public School District.

35. Contractors spend resources to prepare for the bidding process. For example, contractors often propose budgets to facilitate bidding and management of construction projects.

36. Contractors who assent to the terms of the 2004 project labor agreement, as incorporated in project manuals for ongoing projects, cannot renege without penalty. The penalties include financial penalties and damage to a contractor's ability to be considered a "responsible bidder" by the Minnesota Department of Labor.

37. The bidding period is short. The issues in this case are capable of repetition yet evading judicial review.

38. The Minneapolis Public School District will incorporate the union hiring provision and the fringe benefits provision in agreements for future construction projects in the Minneapolis Public School District.

Union Hiring Provision

39. Article III of the 2004 project labor agreement is entitled "Union Recognition." Section 2 of Article III, which Defendants have incorporated in ongoing projects in the Minneapolis Public School District, states: "The hiring of employees shall be governed by the procedures set forth in the Agreements set in Schedule A."

40. Schedule A includes a list of labor unions that perform construction tasks.

41. These unions include Boilermakers No. 647, Iron Workers No. 512, and Sheet Metal Workers No. 10.

42. Labor unions often engage in political activities and are often associated with particular viewpoints.

43. Minneapolis Building & Construction Trades Council, the union that entered into the 2004 Project Labor Agreement with the Minnesota Public School District, advocates for union labor. The unions listed in Schedule A also advocate in favor of union labor.

44. Minneapolis Building Trades Council contributed exclusively to candidates in the Minnesota Democratic-Farmer-Labor Party in 2018. The International Brotherhood of Electrical Workers spent \$254,624 in political expenditures in 2018. Most of the expenditures went to candidates in the Minnesota Democratic-Farmer-Labor Party. All of IBEW's contributions to political parties went to the Minnesota Democratic-Farmer-Labor Party.

45. The unions listed in Schedule A share pro-union viewpoints that differ from Minnesota ABC and other merit-shop contractors, including Laketown Electric.

46. Hiring halls are arrangements in which an employer obtains employees through referrals from a union. An exclusive hiring hall is a hiring hall in which an employer exclusively hires employees referred by the union that operates the hiring hall.

47. The 2004 Minneapolis project labor agreement provides for an exclusive hiring hall.

48. Union hiring halls encourage union membership. *See NLRB v. Local 334, Laborers Int'l Union of North America, AFL-CIO*, 481 F.3d 875, 880 (6th Cir. 2007).

49. Contractors operating under the project labor agreements who have incorporated the terms of the 2004 Minneapolis project labor agreement must obtain their employees from the hiring halls of the signatory union.

50. Hiring halls may, and often do, require contractors to employ workers that are not the contractors' own employees. Union hiring halls may, and often do, require contractors to employ union workers.

51. Union hiring halls allow a union to give a preference for workers with experience gained under that union's collective bargaining agreement.

Fringe Benefits Provision

52. Article V of the 2004 project labor agreement is entitled "Wages and Benefits." Section 2 of Article V, which Defendants have incorporated in ongoing projects in the Minneapolis Public School District, states: "The Contractors agree to pay contributions to the established employee's benefit funds in the amounts designated in the appropriate Schedule A."

53. The provision requires contractors to contribute to employee benefit funds jointly established and administered by the signatory union and signatory employers.

54. This provision does not guarantee that a contractor's employees will collect the benefits from an employee benefit fund jointly established and administered by the signatory union and signatory employers.

55. The funds established under this provision can have multi-year vesting periods. In some cases, the funds will inure to the benefit of the signatory union rather than to the contractor's employee.

56. Merit-shop contractors are contractors who do not regularly operate under collective bargaining agreements with unions.

57. Unions use money to fund political activities. Merit-shop contractors often oppose activities that unions engage in. Contributions from merit-shop contractors to funds jointly administered by unions and signatory employers regularly fund activities to which the contractors, including Plaintiffs, are opposed.

58. Merit-shop contractors can establish their own benefits funds for employees. Many merit-shop contractors, including Laketown Electric, do establish benefit funds for their employees.

59. Even if a contractor has a pre-existing employee benefit fund for its employees, this provision requires the contractor contribute to a fringe benefit fund jointly established by the signatory union and signatory employers. These two funds may provide duplicative benefits.

INJUNCTIVE RELIEF ALLEGATIONS

60. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

61. Defendants are responsible for incorporating and enforcing the union hiring provision and the fringe benefits provision from the 2004 Minneapolis project labor agreement in project manuals for ongoing projects in the Minneapolis Public School District.

62. These provisions violate Plaintiffs' civil rights. Because of these violations, present and future, Plaintiffs are now and will continue to suffer deprivation of their constitutional rights.

63. If not enjoined by this Court, Defendants and their agents, representatives, and employees will continue to enforce the union hiring and fringe benefits provisions in project labor agreements, in contravention of Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution.

64. Pecuniary compensation to Plaintiffs or other victims of such continuing discrimination would not afford adequate relief.

65. Injunctive relief is necessary to prevent a multiplicity of judicial proceedings on these same or similar issues.

66. Accordingly, injunctive relief is appropriate and proper.

DECLARATORY RELIEF ALLEGATIONS

67. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

68. An actual and substantial controversy currently exists between Plaintiffs and Defendants as to their respective legal rights and duties. Plaintiffs contend that Defendants are adopting and enforcing project labor agreements in violation of the First and Fourteenth Amendments to the United States Constitution. Defendants dispute that their actions are unconstitutional.

69. There exists a present justiciable controversy between the parties concerning the constitutionality and legality of the union hiring and fringe benefits provisions in project labor agreements adopted by Defendants. Plaintiffs will be directly, adversely, and irreparably harmed by Defendants' actions in enforcing and implementing project labor

agreements, and by Defendants' continuing administration, implementation, reliance, and enforcement of them now and in the future.

70. A judicial determination of rights and responsibilities arising from this actual controversy is necessary and appropriate at this time.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

The Union Hiring Provision Violates the Free Speech Clause of the First Amendment

71. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

72. The First Amendment prohibits Defendants from discriminating on the basis of viewpoint. *Rosenberger v. Rector and Visitors of the Univ. of Virginia*, 515 U.S. 819, 829 (1995).

73. The First Amendment prohibits Defendants from making public employment subject to an express condition of political beliefs or prescribed expression. *O'Hare Truck Service, Inc. v. City of Northlake*, 518 U.S. 712, 717 (1996).

74. The First Amendment prohibits Defendants from conditioning the ability to work on public projects on the worker's political beliefs or prescribed expression. *See id.* Contractors who work on public projects are not considered to be in policymaking positions.

75. Labor unions are political entities. Therefore opposition to labor unions is inherently political. *See State Emp. Bargaining Agent Coal. v. Rowland*, 718 F.3d 126, 134 (2d Cir. 2013).

76. The union hiring provision is not narrowly tailored to a compelling governmental interest.

77. There is no compelling governmental interest in requiring contractors to hire from union hiring halls. Any interest in preventing work stoppages and ensuring the timely completion of projects could be satisfied with contractual provisions between a contractor and the Minneapolis Public School District.

SECOND CLAIM FOR RELIEF

The Union Hiring Provision Violates the Free Association Clause of the First Amendment

78. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

79. The freedom of association presupposes a freedom not to associate. *Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984).

80. The First Amendment right to association protects one's right to be a member of a union. *Steckelberg v. Rice*, 184 F. Supp. 3d 746, 757 (D. Neb. 2016). This right also protects one's ability to participate in union activities. *See id.*

81. The First Amendment right to association protects one's right to not be a member of a union. *See Roberts*, 468 U.S. at 623. This right also necessarily protects one's ability to not participate in union activities. *Id.*

82. Defendants require contractors to agree to union-negotiated terms before they work on a project covered by the 2004 project labor agreement, or by an agreement incorporating the terms of the 2004 project labor agreement. Among these terms is the

requirement that a contractor must hire employees from the hiring halls of the signatory unions.

83. The union hiring provision directly and substantially interferes with the ability of Plaintiffs and Plaintiffs' employees to freely associate.

84. By not being able to submit qualified bids on ongoing projects that have incorporated terms from the 2004 project labor agreement because they refuse to agree to those terms, Plaintiffs, their members, and their employees miss out on profits from those projects.

85. Plaintiffs and their employees will incur additional costs if they agree to the project labor agreement.

86. The Eighth Circuit's decision in *Hanten v. Sch. Dist. of Riverview Gardens*, 183 F.3d 799, 808 (8th Cir. 1999) is distinguishable in several ways. *Hanten* did not directly address the constitutionality of union hiring halls or fringe benefit provisions. The Court's statements in *Hanten* suggest that it may have reached a different result if it were examining a more detailed complaint. *See id.* at 806. Further, *Hanten* relied on the Supreme Court's subsidy case, but the ability to work on a public project is not a subsidy.

THIRD CLAIM FOR RELIEF

The Union Hiring Provision Violates the Equal Protection Clause of the Fourteenth Amendment

87. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

88. The Equal Protection Clause prohibits Defendants from discriminating against persons unless there is a rational justification for doing so. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976).

89. The Equal Protection Clause requires government action to be rationally related to a legitimate governmental interest. *See id.*

90. Favoring union contractors over merit-shop contractors is not rationally related to a legitimate governmental interest. Contractors are not better equipped to work on construction projects merely by virtue of being a union contractor.

91. Favoring employees from union hiring halls over other employees is not rationally related to a legitimate governmental interest. Employees are not better equipped to work on construction projects merely by virtue of coming from a union hiring hall.

FOURTH CLAIM FOR RELIEF

The Union Hiring Provision Violates the Due Process Clause of the Fourteenth Amendment

92. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

93. The Due Process Clause protects individuals from arbitrary restrictions on their right to earn a living. *Bd. of Regents v. Roth*, 408 U.S. 564, 572 (1972).

94. The Due Process Clause requires government action to be rationally related to a legitimate governmental interest. *See, e.g., St. Joseph Abbey v. Castille*, 712 F.3d 215, 222-23 (5th Cir. 2013).

95. Contractors cannot work on public projects unless they agree to the terms of the 2004 project labor agreement, as incorporated in ongoing projects in the Minneapolis Public School District, and hire exclusively from union hiring halls.

96. The requirement that contractors hire from union halls advances no legitimate governmental interest. Any interest in preventing work stoppages and ensuring the timely completion of projects could be satisfied with contractual provisions between a contractor and the Minneapolis Public School District.

FIFTH CLAIM FOR RELIEF

The Fringe Benefits Provision Violates the First Amendment

97. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

98. The fringe benefits provision requires contractors to contribute to employee benefit funds jointly established and administered by the signatory union and signatory employers as a condition of bidding on a project covered by a project labor agreement.

99. Contributions to employee benefit funds jointly established and administered by the signatory union and signatory employers allow the signatory union to use more money on other activities. These activities include lobbying, advertising, membership meetings and conventions, litigation, and other services that may ultimately benefit the union and its members.

100. Contributions to employee benefit funds jointly established and administered by the signatory union and signatory employers fund political advocacy and lobbying directed at the government.

101. Plaintiffs object to many of the positions for which the unions in Schedule A advocate, including the positions that the unions take in collective bargaining.

102. Contributions to employee benefit funds jointly established and administered by the signatory union and signatory employers fund union speech. Union speech involves matters of public concern.

103. The fringe benefits provision is not narrowly tailored to a compelling governmental interest. There is no compelling interest in forcing contractors to contribute to a fringe benefit fund jointly established and administered by a union and signatory employer. Such funds do not always inure to the benefit of the workers, and merit-shop contractors can establish their own fringe benefit funds.

104. The fringe benefits provision does not satisfy exacting scrutiny.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

1. An entry of judgment declaring Defendants' use of the union hiring provision and fringe benefits provision in project labor agreements governing work in the Minneapolis Public School District to be unconstitutional, as applied to Plaintiffs, under the First Amendment and the Fourteenth Amendment to the United States Constitution.

2. An entry of a preliminary and permanent injunction against Defendants prohibiting them from implementing the union hiring provision and the fringe benefits provision in ongoing projects in the Minneapolis Public School District.

3. An award of attorney fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988, or any other pertinent authority.

4. An award of any further legal and equitable relief as the Court may deem just and proper.

Dated: March 12, 2019

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**Pro Hac Vice Admission Pending*