STATE OF WISCONSIN **CIRCUIT COURT BRANCH 9** **DANE COUNTY**

DAVID BLASKA,

Plaintiff,

v. Case No. 14 CV 2578

MADISON METROPOLITAN SCHOOL DISTRICT BOARD OF EDUCATION, MADISON METROPOLITAN SCHOOL DISTRICT, and MADISON TEACHERS, INC.,

Defendants.

DECISION AND ORDER DENYING DEFENSE MOTION TO STRIKE

STATEMENT OF THE CASE

Plaintiff David Blaska is a taxpayer in the Madison Metropolitan School District.[1] In that capacity, he sues for a declaratory judgment under § 806.04, Stats., and for an injunction under § 813.02, Stats., addressing the 2015-2016 collective bargaining agreements between defendants Madison Metropolitan School District and Madison Metropolitan School District Board Of Education, on the one hand, and defendant Madison Teachers, Inc., on the other. He alleges the collective bargaining agreements are "unlawful, invalid and void" because they (1) are the product of unlawful collective bargaining under §111.70 (4) (mb), Stats., (2) contain terms that violate Wisconsin law, and (3) violate the rights of teachers under §111.70 (2).

[1] Because this decision addresses defendants' motion to strike, the factual allegations in the complaint, and all reasonable inferences therefrom, are assumed to be true and form the context for the motion. *First Nat. Bank of Wisconsin Rapids v. Dickinson*, 103 Wis. 2d 428, 432 (Ct. App. 1981).

Under § 802.06 (6), Stats., defendants move to strike paragraphs 1 (c), 11, 28, 33, 41, and portions of paragraph 25 of the Complaint. These allegations generally allege rights enjoyed by Madison Metropolitan School District teachers, and injuries to those rights caused by the collective bargaining agreements at issue.

Specifically, the allegations defendants seek to strike are:

> 1.
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> ...
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> (c) the CBAs violate the rights of teachers under Wis. Stat. § 111.70 (2)
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> ...
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> 11. Pursuant to Act 10, teachers have the right, among other things, to (a) refrain from union activity, (b) not pay union dues, and (c) not pay any amount under any so-called "fair share" agreements, i.e. non-union teachers being forced to pay union dues against their wishes.
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> ...
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> 28. Under Wis. Stat. § 111.70 (2) teachers have the right to refrain from union activities, the right to refrain from paying union dues and the right not to be bound by a so-called "fair share" agreement.
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> ...
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> 33. In addition, the CBAs violate Wis. Stat. § 111.70 (2) by forcing teachers to pay union dues or "fair share" payments even if the teacher does not want to belong to the union.
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> ...
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> 41. In addition, the CBAs require School District employees covered under the CBAs to pay union dues or "fair share" payments in violation of Act 10 and prohibit them from negotiating their own terms and conditions of employment. Continuing to implement the CBAs exposes the School District to financial exposure for claims by teachers for violation of this provision.

Additionally, defendants move to strike "portions of paragraph 25 relating to deductions of union dues, fair share payments and the like..." (Defendants' Motion to Strike, Answer and Affirmative Defenses, page 1.)

The motion to strike has been fully briefed. Oral argument has not been requested nor is it necessary. The motion is thus ripe for resolution and is DENIED for the following reasons.

ANALYSIS AND DECISION

Defendants ground their motion to strike on the law of standing. More particularly, they argue that because plaintiff is neither a teacher nor an employee in the Madison Metropolitan School District, "he therefore lacks both standing and a factual basis on which to assert those allegations." (Defendants' Motion to Strike, Answer and Affirmative Defenses, page 1.)

Defendants' motion misconstrues the purpose of plaintiff's harm-to-teachers allegations. Plaintiff makes no claim as a teacher, nor on behalf of the teachers, and therefore whether he has standing to make such a claim is beside the point.

Rather, plaintiff alleges standing as a taxpayer, which provides the setting in which the defense motion to strike must be evaluated pursuant to § 802.06 (6), which reads:

> **(6) Motion to strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, scandalous, or indecent matter. If a defendant in the action is an insurance company, if any cause of action raised in the original pleading, cross-claim, or counterclaim is founded in tort, or if the moving party is the state or an officer, agent, employee, or agency of the state, the 20-day time period under this subsection is increased to 45 days.

Defendants characterize the harm-to-teacher allegations as "immaterial, impertinent, and scandalous" to plaintiff's claims. (Defendants' Motion to Strike, Answer and Affirmative Defenses, page 2.)[2]

However, as seen from what follows, the allegations are neither "impertinent" nor "immaterial" given plaintiff's status as a taxpayer litigant, and the gravamen of plaintiff's complaint.

Taxpayer Standing: To satisfy standing requirements in a declaratory judgment action under Wisconsin law, a taxpayer need only show he has sustained, or will sustain, some pecuniary loss, however infinitesimal. *S.D. Realty Co. v. Sewerage Comm'n of City of Milwaukee*, 15 Wis. 2d 15, 21 (Wis. 1961). Thus, standing is a *material* issue upon which plaintiff bears the burden of proof and persuasion. The harm-to-teachers allegations are included in the Complaint

[2] They understandably make no argument demonstrating the "scandalous" nature of the allegations because there is none to be made. Thus, this contention will be considered no further. On the other hand, the teacher allegations are somewhat "redundant", although not enough to justify a motion to strike, which is probably why the defense ignored this argument as well.

as part of the plaintiff's showing that he has or will sustain some pecuniary loss sufficient for standing as a taxpayer. That is, the allegations are *relevant* to proving the *material* issue of standing. This is true for at least two reasons.

First, plaintiff alleges that certain public expenditures pursuant to the collective bargaining agreements violate Wisconsin law. Some of these involve administration expenses for dues reductions for defendant Madison Teachers, Inc.

> Any illegal expenditure of public funds directly affects taxpayers and causes them to sustain a pecuniary loss. This is because it results either in the governmental unit having less money to spend for legitimate governmental objectives, or in the levy of additional taxes to make up for the loss resulting from the expenditure. Though the amount of the loss, or additional taxes levied, has only a small effect on each taxpayer, nevertheless it is sufficient to sustain a taxpayer's suit. Bechthold v. City of Wauwatosa (1938), 228 Wis. 544, 550, 277 N.W. 657, 280 N.W. 320. In Wagner v. City of Milwaukee (1928), 196 Wis. 328, 330, 220 N.W. 207, 208, it was stated:
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> 'The illegal disbursement of this money would constitute an invasion of the funds of the city in which each individual taxpayer has a substantial interest, notwithstanding the fact that the payment of this sum would not necessarily result in increased taxation. *The fact that the ultimate pecuniary loss to the individual taxpayer may be almost infinitesimal is not controlling.*' (Emphasis supplied.)

Id. at 22.

Second, plaintiff alleges that any teacher harmed by the expenditures of public funds pursuant to the illegal collective bargaining agreements has a potential cause of action against the Madison Metropolitan School District for damages which, along with the attendant litigation expenses and attorneys fees, would harm all taxpayers, including plaintiff. Defendants cite several cases from jurisdictions other than Wisconsin for the proposition that standing cannot be predicated upon the threat of future litigation alone. Beyond the fact that these cases have exceedingly dubious applicability here,[3] they merit no further consideration because, as set forth above, the potential for future litigation is not the sole or even primary basis for plaintiff's alleged standing.

As clearly relevant to the material issue of standing, the harm-to-teachers allegations are not properly the subject of a motion to strike. Moreover, it cannot be reasonably disputed that plaintiff's Complaint as a whole easily clears the low hurdle for taxpayer standing under Wisconsin law.

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[3] All three cases cited address federal court standing under Article III of the United States Constitution, which is a qualitatively different analysis from Wisconsin taxpayer standing. Moreover, none of the cases involves taxpayer standing.

Plaintiff's Theory of the Case: Another basis for denying the motion to strike the teacher allegations is the nature of plaintiff's claims for relief, i.e., declaratory judgment on the illegality of the subject collective bargaining agreements, and injunction prohibiting their continued enforcement. For plaintiff to carry his burden of proof, he must adduce evidence in support of his claims. Under plaintiff's theory, some payments under the collective bargaining agreements to or on behalf of the teachers violate Wisconsin law. Worded differently, the teacher allegations are *pertinent*, i.e., relevant, to the *material* liability issues at the heart of plaintiff's case. They are thus not appropriately stricken.

Dated this 9th day of February, 2015.

BY THE COURT

Richard G. Niess
Circuit Judge

CC: Counsel of record