

INTRODUCTION

Minneapolis Public Schools¹ and its Amici spill a lot of ink complaining that a “complete stranger” has sued to prevent MPS from carrying out an unconstitutional provision of a contract between it and its teachers. Plaintiff-Respondent Deborah Clapp, however, is not a stranger. She is a Minneapolis taxpayer, and this Court, since at least 1877, has recognized taxpayers as proper parties to bring such actions in Minnesota courts. This Court should not accept MPS’s and its Amici’s invitation to undermine this important check on government power.

STATEMENT OF FACTS

Clapp is a Minneapolis homeowner and resident since 2017. App. Add. 2, ¶ 1. She pays property tax yearly on her residence, and, as a real property owner residing in Minneapolis, her tax dollars fund MPS. *Id.* As a taxpayer whose tax money is being spent by MPS, Clapp is seeking to prevent MPS from carrying out one of the provisions of its contract with the Minneapolis Federation of Teachers Local 59. App. Add. 3, ¶ 7.

According to the teachers’ union, the contract contains a section entitled “Article 15. Protections for Educators of Color.” *Id.*, ¶ 8. Under that provision, teachers of color are exempt from seniority-based layoffs and reassignments, meaning the next senior teacher who is not “of color” would be laid off or reassigned. App. Add. 3, ¶ 9. Article 15 also mandates that MPS reinstate teachers of color over more senior teachers who are

¹ Defendants-Appellants in this case are Minneapolis Public Schools, the Minneapolis Board of Education, and the MPS Superintendent. For ease of reference, they will be collectively referred to as “Minneapolis Public Schools” or “MPS.”

not “of color.” *Id.* There are no similar provision covering educators who are not “of color.” *Id.*, ¶ 8. Prior to the contract, teachers were laid off or reassigned in order of seniority, with the least senior teachers laid off or reassigned first, without regard to race or ethnicity. *Id.*, ¶ 10. Similarly, teachers were reinstated in order of seniority, with the more senior teachers reinstated first, without regard to race or ethnicity. *Id.*

After a tentative agreement was reached, all parties to the contract publicly addressed the provision providing preferences, protections, and privileges for MPS teachers of certain races and ethnicities. Add. App. 4, ¶¶ 11-13. Specifically, on March 25, 2022, the MPS superintendent at the time stated:

Minneapolis Public Schools, the Board, the Administration has had very much a focus and a priority to create a contract that allows us to recruit and retain and prioritize our educators of color And you’ll see that we remained focused on that commitment. That was a priority. That was one of the most significant priorities that we talked about all through the negotiation process, and our negotiations team did a wonderful job of maintaining that focus and certainly we need our students to feel the representation in the educators, and that commitment remains.

Id., ¶ 11. The teachers’ union president said, “We now have a legal document holding both the district and the union accountable to protect and support educators of color.” *Id.*,

¶ 12. Another union leader stated that the contract is “a nation-leading model that exempts teachers of color from seniority-based layoff[s]” and includes “national-leading language on protecting teachers of color.” *Id.*, ¶ 13.

Under its terms, the contract took effect on July 1, 2021 and remains in effect until the next contract is signed. *Id.*, ¶ 14. During this period, approximately 31 percent of

MPS's costs will be paid for with local property taxes. *Id.*, ¶ 15. Such costs include programs, services, and other expenses, including expenses associated with the process of laying off, reassigning, reinstating, and retaining teachers. *Id.*

To implement the contract, including laying off, reassigning, reinstating, and retaining teachers in accordance with Article 15, MPS is using and will use public money. *Id.*, ¶ 16. In addition, MPS also is spending and will spend public money in furtherance of and to ensure compliance with Article 15. *Id.* Moreover, according to the former superintendent, MPS will need to lay off or reassign approximately 220 teachers between 2022 and 2027. App. Add. 5, ¶ 17. To lay off or reassign teachers, MPS must undertake a comprehensive process, which includes identifying all teachers employed at the school where the layoffs or reassignments are to occur; identifying positions to which teachers may be laid off or reassigned; several rounds of employment interviews for those reassigned positions; reference checks of teachers to be reassigned; and an appeal process, which includes mediation. *Id.* To comply with Article 15, MPS also will now have to identify and prioritize the race and ethnicity of each teacher to be laid off, reassigned, reinstated, and retained, as well as the next, more senior teacher. *Id.* Each step will cost money. *Id.*

ARGUMENT

I. Clapp Has Standing.

Because MPS moved to dismiss Clapp’s lawsuit pursuant to Rule 12.02 of the Minnesota Rules of Civil Procedure, the allegations of the complaint are reviewed *de novo*. *Halva v. Minn. State Colleges & Univs.*, 953 N.W.2d 496, 500 (Minn. 2021). The Court “must ‘accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party.’” *Id.* (quoting *DeRosa v. McKenzie*, 936 N.W.2d 342, 346 (Minn. 2019)). This Court has recognized that “Minnesota is a notice-pleading state” and that “[p]laintiffs may plead their case ‘by way of a broad general statement which may express conclusions rather than ... by a statement of facts sufficient to constitute a cause of action.’” *Halva*, 953 N.W.2d at 500 (quoting *N. States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (Minn. 1963)). Stated another way, “‘absolute specificity in pleading’ is not necessary; rather, ‘information sufficient to fairly notify the opposing party of the claim against it’ is satisfactory.” *Halva*, 953 N.W.2d at 500 (quoting *Hansen v. Robert Half Int’l, Inc.*, 812 N.W.2d 906, 917-18 (Minn. 2012)).

Moreover, although the statements of MPS and the teachers’ union indicate a strong likelihood of proving the facts alleged, “it is immaterial whether or not the plaintiff can prove the facts alleged.” *Martens v. Minnesota Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000). As this Court has consistently held:

A claim is sufficient against a motion to dismiss if it is possible, on any evidence that might be produced, to grant the relief demanded. Thus, a pleading will be dismissed only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support

granting the relief demanded. And all pleadings shall be so construed as to do substantial justice.

Halva, 953 N.W.2d at 501 (internal quotation marks and citations omitted); *DeRosa*, 936 N.W.2d at 346; *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014); *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010); *Martens*, 616 N.W.2d at 739-40. In short, because this case was dismissed on a motion to dismiss, Clapp has not had the opportunity to prove any of her allegations as true. If the Court believes it needs additional information about how MPS is carrying out Article 15 and the money it is spending to do so to resolve the legal issues in this case, the case should be sent back to the District Court for jurisdictional discovery.

Notwithstanding its current procedural posture, Clapp could not have brought a more straightforward case. She alleges that she lives in Minneapolis and pays property tax on the home she has owned since 2017. App. Add. 2, ¶ 1. She also alleges that Minneapolis Public Schools is funded in part by her tax dollars. *Id.*; App. Add. 4, ¶ 15. In addition, she alleges that MPS spends those tax dollars to carry out the various provisions of its contract with the teachers' union. App. Add. 4, ¶¶ and 16; App. Add. 5, ¶ 17. Finally, she alleges that one of those provisions violates the Minnesota Constitution. App. Add. 5, ¶ 19. Therefore, she alleges that her tax dollars are being used in an unlawful manner. App. Add. 5, ¶ 22.

From as early as 1877 – if not earlier – this court has held that a taxpayer may bring the type of claim that Clapp has brought, with no exceptions. For example, in *Sinclair v. Board of County Commissioners*, a taxpayer sought to enjoin the county from