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MOSHE ROZENBLIT; and QWON KYU RIM,

Plaintiffs,

vs.

MARCIA V. LYLES, in her official capacity as  
Superintendent of the Jersey City Board of Education;  
VIDYA GANGADIN, in her official capacity as  
President of the Jersey City Board of Education;  
JERSEY CITY PUBLIC SCHOOLS OF THE CITY OF  
JERSEY CITY; JERSEY CITY BOARD OF  
EDUCATION; and JERSEY CITY EDUCATION  
ASSOCIATION, INC.;

Defendants.

**SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, GENERAL  
EQUITY - HUDSON COUNTY**

**DOCKET NO.**

**COMPLAINT, RULE 4:5-1  
CERTIFICATION AND  
DESIGNATION OF TRIAL COUNSEL**

## **Introduction**

1. The Jersey City School District (“District”) has negotiated labor contracts with its teachers’ unions that provide for paid “release time,” also called “association business time,” whereby teachers are diverted from their mission of educating students and placed under the direction and control of a private labor organization for its own private benefit—all while they continue to be paid with taxpayer money. The benefits of work performed during release time inure entirely to the teachers’ unions, while the District receives insufficient consideration in exchange for this misuse of taxpayer funds.

2. Under release time practices, teachers (including certificated personnel, attendance counselors, and teacher assistants) perform the union’s private business at taxpayer expense. No significant limit, control, or accountability is placed on the union’s use of these public resources. Indeed, not only do the majority of release time activities not advance any public purpose, they are often directly opposed to the interests of New Jersey and Jersey City taxpayers.

3. Because the District receives nothing in return for paid release time, this grant and others like it represent a plain violation of Article 8, § 3, ¶¶ 2, 3 of the New Jersey Constitution—hereafter collectively referred to as the “Gift Clause”—which prohibit the giving or lending of public money or credit to any private entity.

4. Plaintiffs seek to enforce the New Jersey Constitution’s Gift Clause and its requirement that government funds be spent only to advance truly public purposes rather than unjustly enriching favored private interests at the expense of the taxpaying public.

### **Parties, Jurisdiction, and Venue**

5. Plaintiff Moshe Rozenblit is a citizen of the United States and a resident of the city of Jersey City in the State of New Jersey. Plaintiff Rozenblit pays property tax and sales tax in Jersey City and in the Jersey City School District, and pays income tax to the State of New Jersey.

6. Plaintiff Qwon Kyu Rim is a citizen of the United States and a resident of the State of New Jersey. Plaintiff Rim pays income tax to the State of New Jersey.

7. Defendant Marcia V. Lyles, Ed.D. (“Lyles”) is Superintendent of the Jersey City Board of Education, and hence of the Jersey City Public Schools of the City of Jersey City, and is sued in her official capacity only.

8. Defendant Vidya Gangadin (“Gangadin”) is President of the Jersey City Board of Education, and is sued in her official capacity only.

9. Defendant Jersey City Public Schools of the City of Jersey City (“District”) is a school district and political subdivision organized under the laws of the State of New Jersey.

10. Defendant Jersey City Board of Education (“Board”) is a body corporate organized under the laws of the State of New Jersey and is the governing body of the District.

11. Defendant Jersey City Education Association, Inc. (“JCEA”) is a New Jersey domestic non-profit corporation, and is a local affiliate of the New Jersey Education Association, which is the state affiliate of the National Education Association, a national educators’ professional organization.

12. Jurisdiction over this action and its claims is provided by N.J. CONST. art. VI, § 3, ¶ 2; N.J.S.A. §§ 2A:16-52, 2A:16-60, and 10:6-2(c) and (d).

13. Venue is proper pursuant to Rule 4:3-2(a).

### **Facts Common to All Claims**

14. The JCEA is a public labor union with complete organizational independence from the District, including power to choose and manage its own board of trustees, staff, and mission statement.

15. The JCEA is the sole and exclusive bargaining representative for all certificated personnel, commonly referred to as “teachers,” attendance counselors, and teacher assistants employed in the District.

16. On or about September 1, 2013, Defendant Lyles, Defendant Gangadin, representatives and General Counsel of the District, JCEA President Ronald Greco, and JCEA First Vice President Andrea Pastore, executed an agreement entitled “Contract Agreement between The Jersey City School District and The Jersey City Education Association covering the period September 1, 2013 to August 31, 2017” between the District and JCEA (“Agreement”). A true and correct copy of the Agreement is attached hereto as Exhibit 1.

17. Under the Agreement, the District bestows lopsided benefits on JCEA, which constitute an unconstitutional subsidy and gift under the New Jersey Gift Clause as defined and in the manner described below.

18. The District finances the benefits to JCEA under the Agreement through State income tax revenue and local District tax revenue.

19. Plaintiff Rozenblit pays property tax and sales tax in the District and pays income tax to the State. Because his taxes finance the Agreement, he is directly harmed by the District’s grant of illegal subsidies and gifts to JCEA in the Agreement.

### *JCEA Release Time*

20. Under the Agreement, the District grants the president of the JCEA, and his or her designee, permission to devote *all* of his or her time exclusively to Association business and affairs (“release time”).

21. The Agreement’s release time provisions also permit JCEA to release District certificated personnel (teachers), attendance counselors, and teacher assistants from their official educational duties to perform union duties exclusively, while still receiving full pay, benefits, and insurance coverage from the District.

22. Release time provisions are set forth in Article 7 of the Agreement, entitled “Association Rights,” §§ 7-2.3 and 7-2.4. The “Association” referred to therein is Defendant JCEA.

23. JCEA is not contractually required to account for its use of release time nor is the District contractually granted permission to audit JCEA’s use of release time.

24. The District has insufficient policies, procedures, rules or regulations regarding how release time may be used.

25. The District has insufficient mechanisms to determine how release time is being used.

26. District officials and employees using release time are not required sufficiently account to the District, its Board, or any other government official for how release time is used.

27. JCEA’s president who occupies a full-time release position does not have to account for his or her time in any fashion to the District.

28. Upon information and belief, the JCEA president ordinarily reports to JCEA headquarters rather than to his or her respective District office or classroom.

29. The Agreement requires the District, at its sole expense, to annually provide the JCEA president with regular District parking and office space.

30. The JCEA president's designee ("JCEA designee") also occupies a full-time release position as mandated by the Agreement to carry out Association business. *See* Agreement § 7-2.3.

31. The JCEA designee is not required to be present in his or her District office or classroom, and is merely required to notify the District superintendent or his or her designee as to where and when he/she is carrying out such Association business during school time.

32. On information and belief, the release time provisions of the JCEA agreement are estimated to cost approximately \$1.2 million over a five-year period. *See* NEW JERSEY COMMISSION OF INVESTIGATION, UNION WORK PUBLIC PAY: THE TAXPAYER COST OF COMPENSATION AND BENEFITS FOR PUBLIC-EMPLOYEE UNION LEAVE, at 14-15 (May 2012), *available at* <http://www.state.nj.us/sci/pdf/SCIUnionReport.pdf>.

### **Count One—Gift Clause**

33. Plaintiffs incorporate by reference the preceding paragraphs as though fully set forth herein.

34. As a State and local District taxpayer, Plaintiff is responsible for paying and/or remitting property, sales, income and other taxes, and will bear a share of the burden for replenishing the coffers of the District for revenues lost from the benefits granted to JCEA pursuant to the Agreement.

35. Article 8, § 2, ¶ 1 of the New Jersey Constitution provides that "[t]he credit of the State shall not be directly or indirectly loaned in any case." Article 8, § 3, ¶ 2 of the New Jersey Constitution provides that "[n]o county, city, borough, town, township or village shall hereafter

give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation . . . .” Article 8, § 3, ¶ 3 of the New Jersey Constitution provides that “[n]o donation of land or appropriation of money shall be made by the State or any county or municipal corporation to or for the use of any society, association or corporation whatever.” These provisions are referred to collectively herein as the “Gift Clause.”

36. A payment by the State or one of its political subdivisions to a private entity is proper under the Gift Clause only if: (1) the payment is for a public purpose; and, (2) the means to accomplish that public purpose are consonant with that purpose. To constitute a “public purpose,” the activity must be one that serves a benefit to the community as a whole, and which, at the same time, is directly related to the function of government. To be consonant with a public purpose, the private entity receiving the benefit of the expenditure must represent the controlled means by which the government accomplishes the public purpose, causing the private entity to take on the form of a special public agent as an arm of the government for purposes of carrying out a traditional government purpose.

37. The release time benefits JCEA enjoys under the Agreement serve to promote its private purposes, and do not serve a public purpose because they do not benefit the public welfare and the community as a whole.

38. The release time provisions of the Agreement lack sufficient government control to enable the unions to act as an arm of the government for purposes of carrying out a traditional government purpose.

39. The release time provisions of the Agreement are so inequitable and unreasonable as to amount to an abuse of discretion on the part of Defendants.

40. For all those reasons, the benefits the District has granted to JCEA, including release time to further the mission and organizational existence of JCEA, fail to meet the strict standards New Jersey public entities must meet if their expenditures are to be deemed constitutional under the Gift Clause. Those benefits therefore constitute impermissible subsidies and gifts to associations, which exceed Defendants' lawful powers in violation of N.J. CONST. art. 8, § 2, ¶ 1; § 3, ¶¶ 2 and 3, and in violation of the New Jersey Civil Rights Act, N.J.S.A. 10:6-1 et seq., and in particular § 10:6-2(c) ("Any person who has been deprived of ... any substantive rights, privileges or immunities secured by the Constitution or laws of this State ... may bring a civil action for damages and for injunctive or other appropriate relief.").

#### **Application for an Order to Show Cause**

41. As set forth above, Defendants are prohibited from spending public funds to subsidize JCEA through the grant of release time and other benefits. Accordingly, pursuant to Rule 4:52-1(a), it is appropriate and proper for this Court to issue an Order requiring Defendants to show cause why an interlocutory injunction should not be granted pending the disposition of this action.

#### **Request for Relief**

For their relief, Plaintiffs request that this Court take the following actions:

- A. In accordance with and pursuant to the uniform declaratory judgments law, N.J.S.A. § 2A:16-51 et seq., the New Jersey Civil Rights Act, N.J.S.A. § 10:6-2(c), and the Court's inherent equitable powers, declare that the aforesaid release time



provisions of the Agreement are unconstitutional, and temporarily, interlocutorily, and permanently enjoin their further effect;

- B. Award Plaintiffs costs and attorneys' fees pursuant to Rule 4:42-8(a); Rule 4:42-9(a)(8); and N.J.S.A. § 10:6-2(f);
- C. Award Plaintiffs such other and further relief as may be just and equitable.

#### **Certification of Compliance**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

#### **Designation of Trial Counsel**

G. Martin Meyers is hereby designated as trial counsel in the above captioned matter.

#### **Certification**

I certify that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding. No other action or arbitration proceeding is contemplated.

**RESPECTFULLY SUBMITTED** this 4th day of January, 2017, by:

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