

agreements at issue in this action. Education Minnesota is named as a defendant because of its role in negotiating the provisions of the collective bargaining agreements which the EEOC now claims are discriminatory, and because it represents the interests of the beneficiaries of the agreements. The relief sought will affect Education Minnesota's rights and legal relations with the District and the EEOC.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 as the issues raised in this matter are Federal Questions arising under the Commerce Clause, Tenth and Fourteenth Amendments to the Constitution of the United States and the Age Discrimination in Employment Act of 1967, § 2, et seq., 29 U.S.C. § 621, et seq., as amended. To the extent supplemental issues are raised by this Complaint, this Court has jurisdiction over such issues pursuant to 28 U.S.C. § 1667.
5. Venue pursuant to 28 U.S.C. § 1391 is proper because a substantial part of the events giving rise to this action occurred in this District in that the agreements were collectively bargained-for, and administered, in the State of Minnesota, and because Education Minnesota resides, may be found, or maintains principal offices within the District, and because an agency of the United States or the United States is a party. Venue is also appropriate under 28 U.S.C. § 1402 (a)(1).

COUNT I
CONTRIBUTION AND INDEMNITY - COMMON LAW

6. The District realleges and incorporates herein all preceding paragraphs as if fully set forth in this Paragraph.
7. The District for its Answer to the EEOC's Complaint has denied liability and further herein alleges that in the event it should be determined that any damages were caused in whole or in part by anyone other than the District, and the District is found liable, the District's liability is only secondary, passive, indirect or vicarious, whereas Education Minnesota was guilty of unlawful conduct, which was the actual, direct and primary cause of the alleged damages, so that the District is entitled to indemnity or contribution from Education Minnesota.

COUNT II
LEGAL EFFECT OF COURT'S RULINGS UPON EDUCATION MINNESOTA

8. The District realleges and incorporates herein all preceding paragraphs as if fully set forth in this Paragraph.
9. Education Minnesota was the collective bargaining negotiator on behalf of the teachers whom the EEOC now claims are discriminated against by the collective bargaining agreements at issue herein.
10. Because of Education Minnesota's status as unions involved in the collective bargaining process, it faces potential liability if the Court alternatively determines the collective bargaining agreements do not comply with the ADEA.
11. An actual controversy exists between the District and Education Minnesota as Education Minnesota may be liable for the alleged ADEA violations if the Court determines the ADEA

may be constitutionally applied to the District, and if it is further determined that the agreements violate the ADEA.

12. If the Court determines that the ADEA may be constitutionally applied to the District by the EEOC, then the District is entitled to a determination that Education Minnesota is bound by this Court's determinations on all issues raised in this action.

PRAYER FOR RELIEF

WHEREFORE, the District prays for the following relief from this Court:

- a. That the EEOC, or anybody on whose behalf the EEOC is acting, take nothing by the EEOC's Complaint;
- b. That the EEOC's claims, or the claims of anybody on whose behalf the EEOC is acting, be dismissed with prejudice and on the merits;
- c. If the District is adjudged or it is otherwise determined that the District is liable for any damages as alleged, which liability is expressly denied, then the District's liability is only secondary, passive, indirect or vicarious, whereas Education Minnesota's unlawful conduct was the actual, direct and primary cause of any alleged damage, so that the District is entitled to indemnity or contribution from Education Minnesota;
- d. That the District receive judgment for its costs, disbursements, and fees incurred herein as consistent with and allowed by applicable law; and
- e. For such other and further relief as is just and equitable.

JURY TRIAL DEMAND

The District demands Trial by Jury in this matter.

JOHNSON & CONDON, P.A.

Dated: October 22, 2004

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