Minneapolis Schools Will Lay Off White Teachers First

The Minneapolis Public Schools have adopted a race-based layoff provision that violates the Constitution and Title VII of the Civil Rights Act. "A Minneapolis teachers union contract stipulates that white teachers will be laid off or reassigned before "educators of color" in the event Minneapolis Public Schools (MPS) needs to reduce staff," reports *Alpha News*:

After the Minneapolis Federation of Teachers (MFT) and MPS struck a deal on March 25 to end a 14-day teacher strike, the two sides drew up and ratified a new collective bargaining agreement complete with various proposals.

One of the proposals dealt with "educators of color protections." The agreement states that if a non-white teacher is subject to excess, MPS must excess a white teacher with the "next least" seniority.

"Starting with the Spring 2023 Budget Tie-Out Cycle, if excessing a teacher who is a member of a population underrepresented among licensed teachers in the site, the District shall excess the next least senior teacher, who is not a member of an underrepresented population," the agreement reads.

This violates a well-known Supreme Court decision overturning the race-based layoff of a white teacher, and contradicts a well-known federal appeals court decision, which ruled that race-based layoffs of white teachers violate Title VII of the Civil Rights Act.

It is illegal under Title VII of the Civil Rights Act. When it comes to termination (as opposed to hiring or promotion under an affirmative-action plan), an employer can't racially

discriminate even against whites. The Third Circuit Court of Appeals ruled in 1996 that an school district can't consider race even as a tie-breaker, in deciding who to lay off, even to promote diversity, because that (a) unduly trammels the white teacher's rights—even affirmative action plans are supposed to be mild and not unduly trammel someone's rights, and getting fired as opposed to being denied a promotion unduly trammels someone's rights—and (b) putting that aside, the school district couldn't consider race to promote diversity when black people weren't seriously underrepresented in its workforce as a whole. That ruling was *Taxman v. Board of Education of Piscataway,* 91 F.3d 1547 (3d Cir. 1996).

It is also unconstitutional, for more complicated reasons, under the Supreme Court's decision in *Wygant v. Jackson Board of Education* (1986). In that case, the Supreme Court overturned race-based layoffs by a 5-to-4 vote. Five justices said a school district can't lay off white teachers to remedy societal discrimination against blacks. Four of those five also said that the Constitution forbids laying off people based on race (as opposed to considering race in hiring and promotions) even to remedy a school district's ***own*** discrimination. (Justice Powell's opinion announcing the judgment of the court, and also Justice White's concurrence).

The fifth justice who voted to strike down the race-based layoff of a white teacher in that case (Justice O'Connor) seems not to have reached that issue because she said there was no reason for the school system in that case to consider race **in anything** (even hiring or promotion, much less layoffs), because the district didn't claim it was remedying its own discrimination, as opposed to societal discrimination (societal discrimination is never a valid reason to use race, according to the Supreme Court's decision in *Richmond v. J.A. Croson Co.* (1989)).

But Justice O'Connor also said the layoff provision was unconstitutional because it was tied to a hiring goal that has

no relation to the remedying of employment discrimination, and thus was not "narrowly tailored." Minneapolis's race-based layoff provision is unconstitutional for similar reasons: It applies based on a yardstick unrelated to remedying employment discrimination—whether a group is "underrepresented among licensed teachers in the District." Underrepresentation does not prove discrimination: The Supreme Court ruled that the fact that blacks were severely underrepresented among city contractors did not prove discrimination against black people that would justify affirmative action in their favor, in its decision in *Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

The provision also appears to be unconstitutional for yet another reason, because there does not appear to be a "strong basis in evidence" for the collective bargaining agreement's claim that there are "continuing effects of past discrimination by the District." The Supreme Court requires proponents of racial preferences to have a "strong basis in evidence" for the claim that blacks were subjected to discrimination by the institution giving them a preference, and that there are lingering effects of that discrimination. *See, e.g.*, *Shaw v. Hunt*, 517 U.S. 899 (1996).

Since the teachers union supported the adoption of this discriminatory provision, it may also be liable for discrimination along with the school district. Unions are subject to liability for racial discrimination under Title VII, *see, e.g.*, *Woods v. Graphic Communications* (1991), and the Supreme Court has ruled that people who conspire with the government to discriminate can sometimes be sued along with it under the Constitution, *see* *Adickes v. S.H. Kress & Co.* (1971).

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