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SIXTH JUDICIAL DISTRICT

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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

PULASKI ASSOCIATION OF CLASSROOM
TEACHERS ASSOCIATION

PLAINTIFF

VS.

CV2009-7867

PULASKI COUNTY SPECIAL SCHOOL DISTRICT

DEFENDANT

ORDER

FILED 04/08/2010 15:44:32
Pat O'Brien Pulaski County Clerk
011

On the 8th day of March 2010, this matter came on for hearing with the parties appearing by and through their representatives and attorneys, and from the pleadings filed herein, the arguments of counsel, the *Joint Stipulations of Facts*, and all other things and matters properly before the court, the court doth find as follows:

1. The Pulaski County Special School District ("PCSSD") is an Arkansas school district with the power to sue and be sued and to enter into binding contracts pursuant to A.C.A. Section 6-13-102(a).

2. The Pulaski Association of Classroom Teachers ("PACT") is a duly incorporated non-profit entity with membership representing more than a majority of the PCSSD certified school teachers.

3. Beginning in 1991, the parties entered into a series of contracts, the present contract being titled a Professional Negotiations Agreement ("PNA").

4. Article XVII of the PNA states, in part:

The Collective Bargaining Agreement, after ratification by the School Board and the Association, shall be effective upon the signing by the President of the Board and the President of the Association and shall remain in effect until a successor agreement is negotiated.

5. The parties began the process of negotiation of a successor agreement in April of 2009, and the negotiators representing both parties ultimately arrived at a set of tentative agreements for a successor PNA.

6. The tentative agreements were ratified by PACT on December 6, 2009.

7. An emergency meeting of the PCSSD Board was held on December 8, 2009, at which time the PCSSD Board voted to withdraw recognition of PACT "effective immediately."

8. On December 10, 2010 Acting Superintendent Rob McGill issued a Memo which stated, in part, "The PACT Contract 2006-2009 will continue to remain in effect," and "Both certified and support staff employees will form a personnel policy committee in compliance with Arkansas State Law."

9. On Thursday, December 10, 2009, a number of the certified teachers participated in a "one-day Fair Treatment Walkout."

10. On December 15, 2009 PACT filed a *Complaint* seeking declaratory judgment regarding that the PNA was effective by its terms until a successor agreement could be negotiated, and for other relief.

11. On December 30, 2009 the PCSSD filed a *Counterclaim* seeking declaratory judgment that some members of PACT engaged in an "illegal one-day strike" on December 10, 2009.

12. The parties agreed that the court would hear all issues at the March 8, 2010 hearing, excepting only the PCSSD's counterclaim for damages.

13. On March 5, 2010 the parties entered into a *Joint Stipulation of Facts* for submission to the court.

14. At the conclusion of the hearing on March 8, 2010 the court ordered the parties to attend mediation.

15. By letter dated March 24, 2010 the court was notified by the mediator that the mediation process was unsuccessful.

16. Article I, Section 9 of the PNA states:

The Board and/or the Administration agree that no reprisal will be taken against any teacher for any reason concerning the teacher's conditions of employment with the District or because of the teacher's membership in or activities on behalf of the Association, including, but not limited to participating in negotiations; **participating in a strike**; filing a grievance; or making a presentation before the Board or Superintendent or any other administrator. (emphasis added)

17. A.C.A. Section 6-17-201(a) requires that each school district in the state "shall" have a set of written personnel policies. Legislative use of the word "shall" generally denotes a mandatory action.

18. A.C.A. Section 6-17-203(a) requires that each school district in the state "shall" have a committee on personnel policies. Legislative use of the word "shall" generally denotes a mandatory action.

19. A.C.A. Section 6-17-201(d)(1)(A) provides that no school district can receive any additional Public School Fund state foundation funding unless it electronically files its written personnel policies by September 15th of each year.

20. A.C.A. Section 6-17-204(a) states that the personnel policies shall be considered as incorporated into all of the teacher contracts.

21. A.C.A. Section 6-17-204(b)(1) states that any changes or additions to the personnel policies shall not be considered a part of the certified personnel contracts until the next fiscal year, unless approved by a majority of the certified personnel.

22. A.C.A. Section 6-17-207 states that, "No school district which does not have a written personnel policies shall be accredited by the Department of Education."

23. A.C.A. Section 6-17-202(a) provides that A.C.A. Section 6-17-201, *et seq.* do not apply to any school district which officially recognizes an organization representing the majority of the school district teachers.

24. Under the terms and conditions of the PNA and applicable statutes, the PCSSD has the authority to terminate the PNA provided it can do so in compliance with Arkansas law.

25. On December 8, 2009, the PCSSD had neither the statutorily required "written personnel policies" nor did it have a "committee on personnel policies."

26. The PCSSD's vote to withdraw recognition of PACT on December 8, 2009 was *ultra vires* and constituted a violation of their statutorily prescribed duty. Accordingly, the vote on December 8, 2009 is null and void and the PNA remains in effect between the parties.

27. The "one-day Fair Treatment Walkout," on December 10, 2009 was a strike.

28. The contract between the parties provides that no reprisal will be taken against any teacher for participating in a strike.

29. The Arkansas General Assembly has not enacted legislation addressing the issue of whether public employee strikes in Arkansas are legal or illegal.

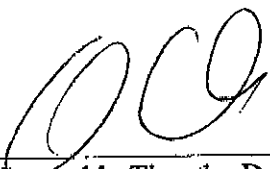
30. The Arkansas Supreme Court has as of the present date not ruled on whether public employee strikes in Arkansas are legal or illegal, and the issue is accordingly, one of first impression.

31. It is the ruling of this court that absent limiting legislative action, the bundle of negotiable contract rights available to public employees with respect to strikes is no different

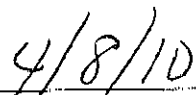
than that enjoyed by non-public employees in their collective bargaining agreements. In this particular case the parties specifically contracted that there would be no reprisals in the event of a teacher strike.

32. The court retains jurisdiction of this matter for ruling on such other issues as are necessary to conclude this matter.

IT IS SO ORDERED AND DECREED.



Honorable Timothy D. Fox
Circuit Judge



Date