

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

PULASKI ASSOCIATION OF CLASSROOM
TEACHERS ASSOCIATION

PLAINTIFF

FILED 07/12/2010 10:16:01
Pat O'Brien Pulaski County Clerk
D11

VS.

CV2009-7867

PULASKI COUNTY SPECIAL SCHOOL DISTRICT

DEFENDANT

ORDER

On the 28th day of June, 2010 the subject case came on for hearing with the parties appearing by and through their attorneys, and from the pleadings filed herein, the arguments of counsel, the *Stipulations of Fact*, the testimony and evidence presented, 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. § 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 teachers.
3. The *Order* of April 8, 2010 held that the PCSSD Board vote on December 8, 2009 to withdraw recognition of PACT was *ultra vires* because it was in violation of the PCSSD Board's statutorily prescribed duties to have in place either a written policy agreement with an organization representing the majority of teachers or a Committee on Personnel Policies together with written personnel policies.

4. The *Order* of April 8, 2010 resolved certain issues between the parties, including but not limited to the following: (i) the PCSSD has the authority to terminate the Professional Negotiations Agreement ("PNA") provided it does so in compliance with Arkansas law, and (ii) prior to terminating the PNA, the PCSSD is required to have a set of written personnel policies pursuant to A.C.A. § 6-17-201(a) and a Committee on Personnel Policies pursuant to A.C.A. § 6-17-203(a).

5. Subsequent to entry of the *Order* of April 8th, the following relevant actions were taken:

(a) On March 9, 2010, the PCSSD Board voted to establish a Committee on Personnel Policies.

(b) On April 20, 2010 the PCSSD Board voted to withdraw recognition of PACT for collective bargaining purposes effective June 30, 2010, and to move forward with the adoption of personnel policies effective July 1, 2010.

(c) On April 20, 2010 it appears from the Minutes that the PCSSD adopted an "Operating Agreement With Classroom Teachers."

(d) By letter dated April 26, 2010, Robert McGill, then Acting Superintendent, issued a Recommended Notice of Non-Renewal to all certified employees of the PCSSD stating their contracts would be non-renewed effective June 30, 2010 because of the termination of the PNA with PACT. Such letter further advised that all certified employee contracts would be renewed effective July 1, 2010, subject to "personnel policies adopted by the District's Board of Directors in conjunction with a personnel policies committee ..."

(e) More than six hundred certified employees requested a hearing on the Recommended Notice of Non-Renewal.

(f) Rob McGill, then Acting Superintendent, by Memorandum dated April 22, 2010 acknowledged that pursuant to A.C.A. § 6-17-205 the PCSSD Board could not vote on proposed personnel policies any earlier than ten (10) days after the policies were presented to the Committee on Personnel Policies.

(g) On Sunday, June 27, 2010, the ballots were counted and the teacher representatives of the Committee on Personnel Policies were elected.

(h) The parties did not factually supplement the record following the hearing on Monday, June 28, 2010, so the record does not reflect whether the Committee on Personnel Policies ever met prior to July 1st, or if it did meet whether such Committee took any action with respect to voting on personnel policies to be recommended for adoption by the PCSSD Board.

6. Even a cursory review of the Legislature's statutory enactments codified as A.C.A. § 6-17-201, *et seq.*, evidences the significance of the "personnel policies" themselves, the participation of the Committee on Personnel Policies in drafting and propounding those policies, and the substantial involvement awarded by the General Assembly to teachers in participating in the establishment of personnel policies. A.C.A. § 6-17-201(d)(1)(A) prohibits a school district from receiving any additional state foundation funding from the Public School Fund if the policies are not electronically filed in a specified format by a date certain. A.C.A. § 6-17-203(a) provides that the teachers shall have five members of the Committee, with the administration only appointing three members. A.C.A. § 6-17-204(a) incorporates the personnel policies by reference into the individual certified personnel contracts. A.C.A. § 6-17-204(b)(1) and (2) state that any changes or additions to the personnel policies do not take effect until the next fiscal year, unless the changes are approved by the majority of all of the certified personnel, not just by the Committee. Section A.C.A. § 6-17-206(b)(1) provides that every teacher or administrator is to be provided with his or her own copy of any amendments to the personnel policies within thirty days after approval by the Board of Directors. Additionally, A.C.A. § 6-17-207 prohibits the Department of Education from accrediting any school district that does not have written personnel policies.

7. A.C.A. § 6-17-205 addresses the responsibilities and the authority legislatively

delegated to the Committee of Personnel Policies. Section 6-17-205(2) requires Committees to develop a calendar of meetings throughout the year to determine whether additional policies or amendments are needed, to review any policies or changes to policies proposed by the Board, and allows the Committee itself to propose additional policies or amendments to the Board.

8. A.C.A. § 6-17-205(b)(2) states:

(2) New personnel policies or amendments to existing personnel policies proposed by the board of directors may not be voted on by the board of directors as a school district policy unless the final form of the policy to be voted on has been submitted as a proposed policy to the committee for consideration at least ten (10) working days before the vote of the board of directors. (emphasis added)

9. The Committee on Personnel Policies was not finally formed until Sunday, June 27, 2010. The record does not evidence whether it ever met, and if so whether it took any action on personnel policies. Those facts are not material to a legal resolution based upon the clear and unambiguous statutory directives. The PCSSD Board had no legal authority in April, 2010 or at any time prior to establishment of the Committee on Personnel Policies to adopt or revise any personnel policies. Further, after establishment of the Committee on Personnel Policies on Sunday, June 27, 2010, the ten working day submission requirement deprived the PCSSD Board of any legal authority to vote on policies or policy amendments until well after June 30, 2010.

10. As of June 30, 2010, the PCSSD had created a committee on personnel policies in accordance with A.C.A. § 6-17-203(a), but the PCSSD did not have a legally enacted set of written personnel policies as required by A.C.A. § 6-17-201(a).

11. On June 30, 2010, the effective date of the PCSSD's April 20, 2010 vote to terminate its agreement with PACT, the PCSSD had established a properly constituted Committee on Personnel Policies, but it did not have a set of written policies established in either

strict or substantial conformance with Arkansas law.

12. The PCSSD's vote to withdraw recognition of PACT on April 20, 2010, effective June 30, 2010, is accordingly *ultra vires* and constitutes a violation of their statutorily prescribed duty. Accordingly, the vote of April 20, 2010 is declared null and void and the PNA remains in effect between the parties.

13. The court has attached a Rule 54(b) certificate to this *Order*, as the findings and conclusions declared in this *Order* and the *Order* of April 8, 2010 contain significant issues of first impression, which should be resolved by the Arkansas Supreme Court at the earliest possible opportunity.

14. A.C.A. § 16-7-202(a) states, in part:


(a) It is the duty of all trial and appellate courts of this state, and they are hereby vested with the authority to encourage the settlement of cases and controversies pending before them by advising the reference thereof to an appropriate dispute resolution process agreeable to the parties, ..."

15. The court is aware that mediation was previously ordered in this matter. It is now July of 2010, the 2010-2011 school year will begin in less than three months, and even if expedited the appellate process takes months. As the resolution of this litigation affects the proper, efficient, and constitutionally required education of thousands of students, the Court orders that the parties schedule and complete mediation no later than three weeks from the date of entry of this *Order*. The mediation is to address issues resolving finalizing the terms and conditions of the PNA to the certified teachers' contracts for the 2010-2011 school year, together with any other unresolved issues relating to this case. All of the members of the PCSSD Board, all of the present officers of PACT, and all of the members of the recently constituted PCSSD

Committee on Personnel Policies, are ordered to personally attend and be present for the entire mediation procedure.

16. Until further order of the court, all of the individuals referenced in the preceding paragraph are also ordered to personally attend and be present at all hearings in this matter.

IT IS SO ORDERED AND DECREED.



HONORABLE TIMOTHY DAVIS FOX
CIRCUIT JUDGE
7/12/10

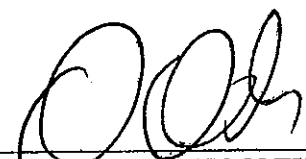
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RULE 54(B) CERTIFICATE

With respect to the issues determined by the above *Order*, the court incorporates all of its findings of fact and conclusions of law for the purpose of executing this Rule 54(b) certification.

Upon the basis of the foregoing factual findings, the court hereby certifies, in accordance with Rule 54(b)(1), Ark. R. Civ. P., that it has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the *Order* shall be a final judgment for all purposes.

Certified this 12th day of July, 2010.



HONORABLE TIMOTHY DAVIS FOX
CIRCUIT JUDGE
7/12/10

Date

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

JUDY STOCKRAHM, CHERYL CARPENTER,
BEN BELTON, LOVEIDA INGRAM and
BRENDA ROBINSON, as Individuals And Class Representatives

PLAINTIFFS

CV2010-3074

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PULASKI COUNTY SPECIAL SCHOOL DISTRICT

DEFENDANT

JUDGMENT

On the 28th day of June, 2010 the subject case came on for trial with the parties appearing by and through their attorneys, and from the pleadings filed herein, the arguments of counsel, the *Stipulations of Fact*, the testimony and evidence presented, 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 named plaintiffs are all certified teachers employed by the PCSSD, and have filed this action in their individual capacities and as class representatives pursuant to A.R.C.P. Rule 23.
3. An agreed *Order* certifying the plaintiff class was entered of even date herewith.
4. The certified plaintiff class is defined as:

All certified teachers employed by the PCSSD during the 2009-2010 school year that requested a hearing under the Arkansas Teacher Fair Dismissal Act (“TFDA”) in response to the PCSSD Superintendent’s form letter recommending non-renewal.

5. The reason given in the Notice of Non-Renewal of the teacher contracts was:

1. The Professional Negotiations Agreement between the District and the Pulaski Association of Classroom Teachers for 2006-2009 will be replaced effective July 1, 2010 by the adoption of personnel policies pursuant to Ark. Code Ann. §§ 6-17-201, *et seq.*

6. On May 17, 2010, the PCSSD Board adopted the reasons set forth in the Notices of Non-Renewal as true and accepted the Acting Superintendent’s recommendation that the employment contracts of the teachers be non-renewed.

7. A.C.A. Section 16-17-1510(d) provides nonprobationary teachers with the right to appeal to this court within seventy-five (75) days of a Board’s decision not to renew a teacher’s contract.


8. An *Order* has been entered in the consolidated matter of *Pulaski Association of Classroom Teachers Association v. Pulaski County Special School District*, Case No. 2009-7867, declaring that although the PCSSD had a Committee of Personnel Policies in place by June 30, 2010, it did not have a set of written personnel policies established in either strict or substantial conformance with Arkansas law.

9. As the PCSSD did not have legally promulgated written personnel policies on June 30, 2010, there was no just and reasonable cause for the PCSSD Board’s vote on May 17, 2010 to terminate the plaintiffs’ contracts.

10. To the extent it may be required by the appellate court to appeal this decision, the court has attached a Rule 54(b) certificate to this *Judgment*.

IT IS ORDERED AND ADJUDGED that the PCSSD’s vote on May 17, 2010 to terminate the plaintiffs’ contracts was without just and reasonable cause; such vote is declared

void; and the plaintiffs' contracts with the PCSSD that incorporate the terms and conditions of the PNA remain in full force and effect.



HONORABLE TIMOTHY DAVIS FOX
CIRCUIT JUDGE

7/12/10


Date

RULE 54(B) CERTIFICATE

With respect to the issues determined by the above *Judgment*, the court incorporates all of its findings of fact and conclusions of law for the purpose of executing this Rule 54(b) certification.

Upon the basis of the foregoing factual findings, the court hereby certifies, in accordance with Rule 54(b)(1), Ark. R. Civ. P., that it has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the judgment shall be a final judgment for all purposes.

Certified this 12th day of July, 2010.



HONORABLE TIMOTHY DAVIS FOX
CIRCUIT JUDGE

7/12/10

Date

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL SIXTH DIVISION

JUDY STOCKRAHM , CHERYL CARPENTER, BEN BELTON,
LOVEIDA INGRAM and BRENDA ROBINSON,
as Individuals and Class Representatives

PLAINTIFFS

v. CASE NO. CV 2010-3074

PULASKI COUNTY SPECIAL SCHOOL DISTRICT

DEFENDANT

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ORDER OF CLASS CERTIFICATION

Upon agreement of the parties, the Court hereby finds and holds:


1. The Plaintiff Class has met the prerequisites for certification in A.R.C.P. 23 (a)(1)-(4).
2. The Court finds that questions of law and fact are common to the members of the Class and that those predominate over any questions affecting only individual members and that a class action is superior to other available methods for a fair and efficient adjudication of the controversy.
3. The Class is defined as all those certified teachers employed by the Pulaski County Special School District ("PCSSD") who requested a hearing under the Arkansas Teacher Fair Dismissal Act ("TFDA") in response to the PCCSD Superintendent's form letter recommending non-renewal.
4. The Class claims are as follows:
 - (a) That the TFDA cannot be used as a means to alter the PCSSD's teacher personnel policies;
 - (b) Alternatively, the PCSSD did not comply with the TFDA procedurally or substantively;

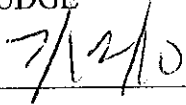
(c) That any changes to the PCSSD's personnel policies must be made in accordance with the Professional Negotiations Agreement ("PNA"); and

(d) Alternatively, that the PCSSD has not complied with Personnel Policies Law.

5. Under the provisions of A.R.C.P. 23(c), since no monetary relief is sought, no notice need be given to Class members

IT IS SO ORDERED.



CIRCUIT JUDGE


DATE

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