

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

BRANDT ROBINSON, BETH WEATHERSTONE,
VICKI HALL, CAROLYN LOFTON,
CORY WILLIAMS, and CHRISTINE MAYER,

Plaintiffs,

vs.

GERARD ROBINSON, as Florida Commissioner
of Education; STATE BOARD OF EDUCATION;
and STATE OF FLORIDA, DEPARTMENT OF
EDUCATION,

Defendants.

FILED
2011
SEP 14 A 8:00
CLERK OF CIRCUIT COURT
LEON COUNTY, FLORIDA

FILED

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CASE NO.: 2011 CA 2526
Judge Shelfer

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiffs, Brandt Robinson, Beth Weatherstone, Vicki Hall, Carolyn Lofton, Cory Williams, and Christine Mayer, bring this action pursuant to Chapters 26 and 86, Florida Statutes, and allege:

1. This is an action for declaratory and injunctive relief asking the Court to declare facially unconstitutional and permanently enjoin implementation of certain newly enacted provisions of Florida law that violate the right to collective bargaining guaranteed by Article I, Section 6 of the Florida Constitution.

2. The provisions of Florida law challenged in this suit facially deny or abridge Plaintiffs' right to bargain regarding the following mandatory subjects of collective bargaining: wages, employment contracts, performance evaluations, promotions, and workforce reductions.

3. Because Defendants cannot demonstrate that this denial or abridgement of collective bargaining is justified by a compelling state interest and is the least restrictive means of advancing a compelling interest, the provisions challenged in this suit are in facial violation of Article I, Section 6 of the Florida Constitution, and must be permanently enjoined.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this action pursuant to Article V, Section 5(b) of the Florida Constitution; Sections 26.012 and 86.011, Florida Statutes (2010); and Rule 1.610, Florida Rules of Civil Procedure.

5. Venue is proper in Leon County, Florida, pursuant to Section 47.011, Florida Statutes, because the Defendants reside in Leon County.

PARTIES

Plaintiffs

6. Plaintiff Brandt Robinson is a social studies teacher at Dunedin High School in Pinellas County, Florida. Plaintiff Robinson is a member of the Pinellas Classroom Teachers Association.

7. Plaintiff Beth Weatherstone is an algebra teacher at Gifford Middle School in Indian River County, Florida. Plaintiff Weatherstone is a member of Indian River County Education Association.

8. Plaintiff Vicki Hall is a speech therapist for the St. Johns County School District. Plaintiff Hall is a member of the St. Johns Education Association.

9. Plaintiff Carolyn Lofton is a kindergarten teacher at Skycrest Elementary School in Pinellas County, Florida. Plaintiff Lofton is a member of the Pinellas Classroom Teachers Association.

10. Plaintiff Cory Williams is a middle school social studies teacher at Laurel/Nokomis School in Sarasota County, Florida. Plaintiff Williams is a member of the Sarasota Classified/Teachers Association.

11. Plaintiff Christine Mayer is a first grade teacher at Ashton Elementary School in Sarasota County, Florida. Plaintiff Mayer is a member of the Sarasota Classified/Teachers Association.

Defendants

12. The state officials designated to enforce the provisions challenged in this lawsuit are GERARD ROBINSON, the Florida Commissioner of Education and Executive Director of Education; the STATE BOARD OF EDUCATION (“Board of Education”); and the STATE OF FLORIDA DEPARTMENT OF EDUCATION.

13. Defendant GERARD ROBINSON is the Florida Commissioner of Education and Executive Director of Education (“Commissioner”). The Commissioner is the chief educational officer of the state. Pursuant to Section 1001.10(6), Florida Statutes (2010), the Commissioner has the authority and duty to advise and counsel the State Board of Education on all matters pertaining to education; to recommend to the State Board of Education actions and policies that should be acted upon or adopted; and to execute or provide for the execution of all acts and policies that are approved. Commissioner Robinson is sued in his official capacity.

14. Defendant STATE BOARD OF EDUCATION (“Board of Education”) is a body corporate created by Article IX, Section 2 of the Florida Constitution, and is the head of the Department of Education. It supervises the system of free public education as provided by law.

15. Defendant STATE OF FLORIDA DEPARTMENT OF EDUCATION (“Department”) is an agency of the State of Florida created by Section 20.15, Florida Statutes. Among other responsibilities, the Department is required, pursuant to Section 1001.10(4), Florida Statutes, to assist school districts in the development of policies, procedures, and training related to employment practices for instructional personnel and school administrators.

BACKGROUND

16. Article I, Section 6 of the Florida Constitution provides:

Right to work.—The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

17. Article I, Section 6 of the Florida Constitution confers upon public and private employees a fundamental right to engage in collective bargaining.

18. Article I, Section 6 of the Florida Constitution confers upon public employees the same rights to engage in collective bargaining as are conferred upon private employees, with the exception of the right to strike.

19. The collective bargaining right conferred by Article I, Section 6 of the Florida Constitution may not be denied or abridged unless justified by a compelling state interest and implemented with the least restrictive means necessary to advance the state’s compelling interest.

20. Article I, Section 6 of the Florida Constitution is implemented in part by Section 447.309, Florida Statutes, which directs public employers and certified employee organizations to bargain collectively to determine the wages, hours, and terms and conditions of employment of public employees within the bargaining unit.

21. Both private and public employees have long held and long exercised the right to collectively bargain with respect to wages, employment contracts, performance evaluations, promotions, and workforce reductions.

SENATE BILL 736

22. During the 2011 Legislative Session, the Florida Legislature passed Senate Bill 736, which it entitled the "Student Success Act." The Governor signed Senate Bill 736 on March 24, 2011.

23. Senate Bill 736 imposes comprehensive, binding requirements upon school districts, administrators, and teachers with respect to wages, employment contracts, performance evaluations, promotions, and workforce reductions, as follows:

- a. *Wages* - Newly enacted Section 1012.22(1)(c), Florida Statutes (Ch. 2011-1, § 4, Laws of Fla.), imposes highly detailed, compulsory requirements with respect to the determination of teachers' wages, including:
 - i. *Grandfathered vs. Performance Salary Schedule* – mandates that teachers hired before July 1, 2014 be placed on a "grandfathered" salary schedule and those hired after that date be placed on a "Performance salary schedule;"
 - ii. *Consequence of Opting Performance Salary Schedule* – permits teachers on continuing contract or professional service contracts hired before July 1, 2014 to opt into the performance salary schedule, but only if they irrevocably relinquish their existing contracts and convert their employment to an annual contract;

- iii. *Calculation of Performance Salary Schedule* - specifies that the base salary for the performance salary schedule must be the salary paid in the prior year, including adjustments only;
 - iv. *Advanced Degrees* - prohibits school boards from considering advanced degrees in setting salary schedules unless the advanced degree is in the individual's area of certification and is only a salary supplement;
 - v. *Salary Adjustments* – imposes requirements upon the mathematical relationship between the annual salary adjustments for teachers rated as “highly effective” and those rated as “effective,” and prohibits an annual salary adjustment for a teacher rated other than “highly effective” or “effective;” and
 - vi. *Salary Supplements* – mandates the activities for which a district school board must provide salary supplements.
- b. *Employment contracts* – Newly enacted Section 1012.335, Florida Statutes, mandates that teachers hired on or after July 1, 2011 must be awarded a “probationary contract” and declares newly hired teachers ineligible for any contract under Section 1012.33, Florida Statutes. (Ch. 2011-1, § 5, Laws of Fla.)
 - c. *Performance evaluations* - Newly enacted Section 1012.34(3), Florida Statutes, specifies four discrete levels of performance and mandates that “[a]t least 50 percent of a performance evaluation must be based upon data and indicators of student learning growth” and further mandates the manner in which districts must measure “student learning growth.” (*Id.* § 2).
 - d. *Promotions* - Newly enacted Section 1012.22(1)(e), Florida Statutes, mandates that the “primary consideration” by the superintendent in recommending a promotion must be an individual’s “demonstrated effectiveness under s. 1012.34.” (*Id.* § 4).
 - e. *Workforce Reductions* - Newly enacted Section 1012.33(5), Florida Statutes, which, in the event of workforce reduction, specifies how a district school board must determine which employees are retained and the order in which employees must be released, and prohibits a school board from prioritizing retention of employees based upon seniority. (*Id.* § 13).

24. The provisions specified in paragraph 23 (the “challenged provisions”) mandate certain wages or terms and conditions of employment for public school teachers, thus prohibiting Plaintiffs from engaging in meaningful collective bargaining with their employers to reach alternate agreements regarding these subjects.

25. The provisions in Senate Bill 736 regarding changes to the evaluation system for teachers and administrators took effect upon the act becoming law; the remainder of the bill’s provisions became effective upon July 1, 2011. Ch. 2011-1, §§ 2, 21, Laws of Fla.

COUNT I

Wages - § 1012.22(1)(c), Fla. Stat.

26. The allegations in Paragraphs 1 through 25 are realleged and incorporated herein by reference.

27. Pursuant to Article I, Section 6 of the Florida Constitution, teachers have a constitutional right to bargain collectively with school districts regarding the wages, hours, and terms and conditions of their employment.

28. Newly enacted Section 1012.22(1)(c), Florida Statutes, mandates the salary schedule pursuant to which teachers must be paid.

29. Newly enacted Section 1012.22(1)(c), Florida Statutes, requires teachers who wish to opt into the performance schedule to irrevocably relinquish their existing employment contracts.

30. Newly enacted Section 1012.22(1)(c), Florida Statutes, mandates the base salary level for the performance salary schedule,

31. Newly enacted Section 1012.22(1)(c), Florida Statutes, prohibits advanced degrees from being considered in setting salary schedules unless the advanced degree is in the individual's area of certification.

32. Newly enacted Section 1012.22(1)(c), Florida Statutes, imposes mathematical limitations upon the relationship between salary adjustments for teachers rated as "highly effective" and those rated as "effective."

33. Newly enacted Section 1012.22(1)(c), Florida Statutes, prohibits annual salary adjustments for teachers rated other than "highly effective" or "effective."

34. Newly enacted Section 1012.22(1)(c), Florida Statutes, mandates the activities for which a district school board must provide salary supplements.

35. The provisions of newly enacted Section 1012.22(1)(c), Florida Statutes, delineated in paragraphs 28-34, prescribe the determination of Plaintiffs' wages without regard to collective bargaining.

36. By mandating certain wages, newly enacted Section 1012.22(1)(c), Florida Statutes, denies or abridges Plaintiffs' right under the Florida Constitution to collectively bargain regarding their wages and terms and conditions of employment.

37. Defendants cannot demonstrate a compelling need to deny or abridge Plaintiffs' constitutional right to collectively bargain with respect to wages or terms and conditions of employment.

38. Defendants cannot demonstrate that newly enacted Section 1012.22(1)(c), Florida Statutes, is the least restrictive means of advancing any alleged compelling interest.

39. Newly enacted Section 1012.22(1)(c), Florida Statutes, is facially unconstitutional in violation of Article I, Section 6 of the Florida Constitution, and its enforcement should be permanently enjoined.

COUNT II

Employment Contracts - § 1012.335, Fla. Stat.

40. The allegations in Paragraphs 1 through 25 are realleged and incorporated herein by reference.

41. Pursuant to Article I, Section 6 of the Florida Constitution, teachers have a constitutional right to bargain collectively with school districts regarding the wages, hours, and terms and conditions of their employment.

42. Newly enacted Section 1012.335, Florida Statutes, mandates the terms of the employment contract that must be awarded to teachers hired after July 1, 2011, and declares newly hired teachers ineligible for any contract under Section 1012.33, Florida Statutes.

43. The provisions of newly enacted Section 1012.335, Florida Statutes, prescribe the availability and terms of teachers' employment contracts without regard to collective bargaining.

44. By mandating the availability and terms of teachers' employment contracts, newly enacted Section 1012.335, Florida Statutes, denies or abridges Plaintiffs' right under the Florida Constitution to collectively bargain regarding their wages and terms and conditions of employment.

45. Defendants cannot demonstrate a compelling need to deny or abridge Plaintiffs' constitutional right to collectively bargain with respect to wages or terms and conditions of employment.

46. Defendants cannot demonstrate that newly enacted Section 1012.335, Florida Statutes, is the least restrictive means of advancing any alleged compelling interest.

47. Newly enacted Section 1012.335, Florida Statutes, is facially unconstitutional in violation of Article I, Section 6 of the Florida Constitution, and its enforcement should be permanently enjoined.

COUNT III

Performance Evaluations - § 1012.34(3)

48. The allegations in Paragraphs 1 through 25 are realleged and incorporated herein by reference.

49. Pursuant to Article I, Section 6 of the Florida Constitution, teachers have a constitutional right to bargain collectively with school districts regarding the wages, hours, and terms and conditions of their employment.

50. Newly enacted Section 1012.34(3), Florida Statutes, mandates the specific levels of performance to be used in performance evaluations.

51. Newly enacted Section 1012.34(3), Florida Statutes, mandates that at least 50 percent of a performance evaluation must be based upon data and indicators of student learning growth.

52. Newly enacted Section 1012.34(3), Florida Statutes, mandates the manner in which school districts must measure “student learning growth.”

53. The provisions of newly enacted Section 1012.34(3), Florida Statutes, prescribe the terms of teachers’ performance evaluations without regard to collective bargaining.

54. By mandating the terms of teachers’ performance evaluations, newly enacted Section 1012.34(3), Florida Statutes, denies or abridges Plaintiffs’ right under the Florida

Constitution to collectively bargain regarding their wages and terms and conditions of employment.

55. Defendants cannot demonstrate a compelling need to deny or abridge Plaintiffs' constitutional right to collectively bargain with respect to wages or terms and conditions of employment.

56. Defendants cannot demonstrate that newly enacted Section 1012.34(3), Florida Statutes, is the least restrictive means of advancing any alleged compelling interest.

57. Newly enacted Section 1012.34(3), Florida Statutes, is facially unconstitutional in violation of Article I, Section 6 of the Florida Constitution, and its enforcement should be permanently enjoined.

COUNT IV

Promotions - § 1012.22(1)(e), Fla. Stat.

58. The allegations in Paragraphs 1 through 25 are realleged and incorporated herein by reference.

59. Pursuant to Article I, Section 6 of the Florida Constitution, teachers have a constitutional right to bargain collectively with school districts regarding the wages, hours, and terms and conditions of their employment.

60. Newly enacted Section 1012.22(1)(e), Florida Statutes, mandates that the primary consideration by the superintendent in recommending a promotion must be an individual's "demonstrated effectiveness under s. 1012.34."

61. The provisions of newly enacted Section 1012.22(1)(e), Florida Statutes, prescribe the matters which a superintendent must consider in recommending a promotion without regard to collective bargaining.

62. By mandating the superintendent's primary consideration in recommending a promotion, newly enacted Section 1012.22(1)(e), Florida Statutes, denies or abridges Plaintiffs' right under the Florida Constitution to collectively bargain regarding their wages and terms and conditions of employment.

63. Defendants cannot demonstrate a compelling need to deny or abridge Plaintiffs' constitutional right to collectively bargain with respect to wages or terms and conditions of employment.

64. Defendants cannot demonstrate that newly enacted Section 1012.22(1)(e), Florida Statutes, is the least restrictive means of advancing any alleged compelling interest.

65. Newly enacted Section 1012.22(e), Florida Statutes, is facially unconstitutional in violation of Article I, Section 6 of the Florida Constitution, and its enforcement should be permanently enjoined.

COUNT V

Workforce Reductions - § 1012.33(5), Fla. Stat.

66. The allegations in Paragraphs 1 through 25 are realleged and incorporated herein by reference.

67. Pursuant to Article I, Section 6 of the Florida Constitution, teachers have a constitutional right to bargain collectively with school districts regarding the wages, hours, and terms and conditions of their employment.

68. Newly enacted Section 1012.33(5), Florida Statutes, requires, if a workforce reduction is needed, that a school board retain employees based solely upon educational program needs and the performance evaluations of employees within the affected program areas.

69. Newly enacted Section 1012.33(5), Florida Statutes, requires, if a workforce reduction is needed, that the school board first release employees with the lowest performance evaluations within the program areas requiring reduction, then release those with the next lowest performance evaluations, and continue in like manner until the needed reductions have occurred.

70. Newly enacted Section 1012.33(5), Florida Statutes, prohibits, if a workforce reduction is needed, a school board from prioritizing retention of employees based upon seniority.

71. The provisions of newly enacted Section 1012.33(5), Florida Statutes, prescribe the method, conduct and considerations a school board must follow in the event of a workforce reduction without regard to collective bargaining.

72. By mandating the method, conduct and considerations a school board must follow in the event of a workforce reduction, newly enacted Section 1012.33(5), Florida Statutes, denies or abridges Plaintiffs' right under the Florida Constitution to collectively bargain regarding their wages and terms and conditions of employment.

73. Defendants cannot demonstrate a compelling need to deny or abridge Plaintiffs' constitutional right to collectively bargain with respect to wages or terms and conditions of employment.

74. Defendants cannot demonstrate that newly enacted Section 1012.33(5), Florida Statutes, is the least restrictive means of advancing any alleged compelling interest.

75. Newly enacted Section 1012.33(5), Florida Statutes, is facially unconstitutional in violation of Article I, Section 6 of the Florida Constitution, and its enforcement should be permanently enjoined.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Court:

(1) Declare that the following newly enacted provisions of Florida law facially violate Article I, Section 6 of the Florida Constitution by denying or abridging Plaintiffs' fundamental right to engage in collective bargaining regarding the wages or terms and condition of their employment:

- a. Newly enacted Section 1012.22(1)(c), Florida Statutes (Ch. 2011-1, § 4, Laws of Fla.), with respect to the determination of teachers' wages;
- b. Newly enacted Section 1012.335, Florida Statutes, with respect to the availability and terms of employment contracts;
- c. Newly enacted Section 1012.34(3), Florida Statutes, with respect to the terms of teachers' performance evaluations;
- d. Newly enacted Section 1012.22(1)(e), Florida Statutes, with respect to the primary consideration by the superintendent in recommending a promotion; and
- e. Newly enacted Section 1012.33(5), Florida Statutes, with respect to workforce reductions.

(2) Permanently enjoin Defendants from enforcing the provisions specified in paragraph (1).

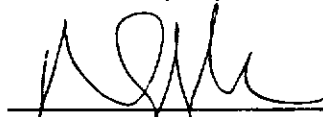
(3) Award Plaintiffs their attorneys' fees, expenses, and costs incurred in prosecuting this lawsuit.

(4) Order such other and further relief as this Court may deem appropriate.


Respectfully submitted,

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