

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
FIFTH DIVISION

**LONNIE CONEY, BELINDA PEARL
and PULASKI ASSOCIATION OF SUPPORT STAFF**

PLAINTIFFS

v. **CASE NO. 60CV2012-1091**

**KEITH COOPER, CHERYL HOWEY,
REGENA ENGLISH, BECKY DEL RIO,
JAMES WATSON, *JOHN SPARKS,*
CHARLES BLAKE, DERRICK BROWN
*BILL GOFF, THE PULASKI COUNTY SPECIAL
SCHOOL DISTRICT and THE ARKANSAS DEPARTMENT
OF EDUCATION***

DEFENDANTS

FIRST AMENDED COMPLAINT

Come the Plaintiffs, Lonnie Coney, Belinda Pearl (“Individual Plaintiffs”) and Pulaski Association of Support Staff (“PASS”), (“Plaintiffs”), by and through their attorneys Mitchell, Blackstock, Ivers & Sneddon, PLLC, and for their First Amended Complaint state:

1. Lonnie Coney and Belinda Pearl are non-management classified employees employed by the Pulaski County School District and are residents of Arkansas.

2. The Pulaski Association of Support Staff (“Association” or “PASS”) is a duly incorporated non-profit entity with its membership consisting of non-management classified employees employed by the PCSSD.

3. The Pulaski County Special School District (“District” or “PCSSD”) is an Arkansas school district with the power to sue and be sued and to enter into binding contracts under Ark. Code Ann. § 6-13-102(a). The Defendants added in this Amended Complaint are listed in italics in the style.

4. Keith Cooper, Cheryl Howey, Regena English, Becky Del Rio, James Watson, John Sparks, Charles Blake, Derrick Brown and Bill Goff (“Defendants”) are classified employees employed by the PCSSD and are residents of Arkansas.

5. The Individual Plaintiffs are employed by written contracts which incorporate a set of personnel policies, referred to as the Professional Negotiations Agreement (“PNA”).

6. Arkansas Department of Education (“ADE”) is an agency of the State of Arkansas.

7. The contracts and the PNA are not attached to the Complaint because they exceed 50 pages and because the Defendants and PCSSD are governed by the same PNA and have, or have access to, a copy of the PNA.

8. This case is brought in part under Ark. Code Ann. § 6-111-101, *et seq.*, the Arkansas Declaratory Judgment Act, and seeks a declaration regarding the parties’ rights under Arkansas Law.

9. This action against the ADE is brought in part under the Administrative Procedures Act §§ 25-25-206 and 25-15-207.

FACTS and LAW

10. On May 16, 2011, the Arkansas State Board of Education placed the District in fiscal distress.

11. Subsequently, on June 20, 2011, the ADE dissolved the PCSSD Board of Education, removed the superintendent, placed the Commissioner of ADE (“Commissioner”) in the position of the School Board and the Commissioner appointed a temporary superintendent who answers to the Commissioner.

12. As of July 1, 2012, the Commissioner appointed an acting superintendent who also answers to the Commissioner.

13. Under Ark. Code Ann. § 6-17-2302(a), the PCSSD is permitted to enter into a written agreement with an organization representing the majority of non-management classified employees of the District for the purpose of negotiating personnel policies, salaries and educational matters of mutual concern.

14. PCSSD has entered into such an agreement, which agreement is part of the PNA.

15. The term of the PNA is for five years (with reopeners) starting with the 2010-2011 work year and continuing through the 2014-2015 work year, at which time the entire PNA is renegotiated.

16. Under Ark. Code Ann. § 6-17-2302, as long as PCSSD is under a contractual policy agreement to negotiate personnel policies with PASS, none of the provisions of the Personnel Policies Law, Ark. Code Ann. §§ 6-17-2302 *et seq.* (“PPC Law”), apply to the District.

17. If a provision of the PNA is subject to being reopened for negotiation, the District can, by following the specific procedure in the PNA, modify those parts of the PNA being negotiated.

18. To effect a change in parts of the PNA that are reopened for negotiations, the District must follow the three step impasse procedure in Article I Section 10 & 11 - negotiations, mediation, and a presentation to the School Board – before it can modify the PNA.

19. The 2010-2015 PNA provides that each year two Articles of the agreement will be reopened for negotiations – Article IV Section 5, Salaries Payable, and Article V Section 1, Carrier Plan (hereinafter “Reopener Sections”).

20. The Reopener Sections were opened for negotiations for the 2011-2012 school year. Agreements were reached on changes to these Reopener Sections without having to resort to the third step of the procedure – a presentation to the School Board.

21. On February 2 and 3, 2012, PASS and the District, with the Commissioner of ADE signing as the School Board, executed an addendum to the 2010-2015 PNA that modified the Reopener Sections of the PNA.

22. On February 13, 2012, the Arkansas State Board of Education added another reason to its list of reasons from May of 2011 for placing the District in fiscal distress.

23. The reason was that the District spent more than it took in during 2010-2011 and it was determined that this jeopardized the fiscal integrity of the District.

24. Thereafter, the District presented ADE with a fiscal distress plan to address the additional reason by proposing to cut approximately \$11 million from the budget for 2012-2013 school year.

25. To address this budget cut, the fiscal distress plan included proposed changes to various parts of the PNA.

26. PASS sent a letter on February 14, 2012, to reopen negotiations on the Reopener Sections for the 2012-2013 school year.

27. In negotiations on February 21, 2012, the District proposed to PASS “modifications” of the entire PNA by deleting almost every Article, not just those that the District had identified in its fiscal distress plan.

28. PASS disputed the District’s claim that the entire PNA could be opened for negotiations under the three step impasse procedure - negotiations, mediation and a presentation before the School Board.

29. Other than the Reopener Sections, other parts of the PNA could not be reopened without the agreement of the parties under Article I Section 5 of the PNA.

30. PASS and the District proceeded to negotiate the Reopener Sections.

31. Impasse was reached in the negotiations process and the parties then went to the second phase of the impasse procedure - mediation.

32. In mediation, the parties addressed both the Reopener Sections and those provisions of the PNA that were based on fiscal policies of the District.

33. On March 6, 2012, during mediation, PASS submitted a proposal to the District on the Reopener Sections and, conditionally, the other provisions of the PNA that were based on fiscal policies of the District.

34. On March 7, 2012, the District countered that proposal and on the same day PASS countered the District's proposal.

35. The District did not make a counter proposal.

36. On April 4, 2012, PASS submitted another revised proposal, but again the District did not counter the proposal in mediation.

37. The District told PASS and the mediators (State and Federal) that it would review the April 4, 2012, proposal and contact the mediators with a response.

38. Not only did the District not counter the proposal, the District also did not declare impasse which, if declared in mediation for the Article Reopeners, would have taken the parties to the third step in the PNA impasse procedure.

39. On or about April 10, 2012, the District submitted a revised fiscal distress plan ("Revised Fiscal Plan") to ADE and asked that the Commissioner of ADE, acting as the School

Board for the District, approve the Revised Fiscal Plan for submission to ADE for approval by ADE.

40. The Revised Fiscal Plan included specific recommended changes in classified personnel salaries and benefits in the PNA which were contractually agreed to in the PNA.

41. There were specific provisions in the Revised Fiscal Plan that addressed the fiscal policy changes that the District said needed to be made to address the budget issue that also impacted the PNA.

42. However, the Revised Fiscal Plan also included a request by the District to “establish the authority of the administration to manage the district personnel reasonably, without discrimination and consistent with law” through a “change” in District policies.

43. This request in the Revised Fiscal Plan was the guise under which the District presented a request to the Commissioner of ADE to direct the District to withdraw recognition of PASS and gut the PNA of any provisions the District did not like, regardless of whether or not they had anything to do with the District’s fiscal policies.

44. In its Revised Fiscal Plan, the District does not attribute any financial impact to this disguised request to gut the entire PNA and withdraw recognition.

45. Thereafter, the ADE, at the request of the District, ordered the District to withdraw recognition of PASS and terminate all provisions of the PNA.

46. On April 20, 2012, the Commissioner of ADE ordered the superintendent of PCSSD to:

- Withdraw recognition of PACT and PASS as the collective bargaining units of the district’s licensed and classified staff
- Terminate the PNAs for PACT and PASS effective June 30, 2012

- Implement personnel policies for certified personnel and classified staff to be effective July 1, 2012.
- Implement all items identified in the revised fiscal distress plan.

47. The District then notified PASS that recognition was withdrawn and that all the terms of the PNA would come to an end on June 30, 2012, and that the new personnel policies would become effective on July 1, 2012.

48. Ark. Code Ann. § 6-17-2302 provides:

The provisions of this subchapter [“Subchapter 23”] shall not apply in any school district which chooses to officially recognize in its policies an organization representing the majority of the non-management classified employees of the school district for the purpose of negotiating personnel policies, salaries, and educational matters of mutual concern under a written policy agreement. (Italics added)

49. Subchapter 23 provides a method for the election of a Personnel Policies Committee (“Committee”) including requirements that the Committee organize itself in October, conduct an election by mid-October and that the election of Committee members be conducted solely and exclusively by non-management classified employees.

50. Under the Personnel Policies Committee Law, Ark. Code Ann. § 6-17-2305(a), the Committee “shall organize itself” in October, elect a secretary and chair and “shall develop a calendar of meetings throughout the year” to review policies.

51. Also under the Personnel Policies Committee Law, Ark. Code Ann. § 6-17-2303 (d) and (e), the election of the Committee “shall be conducted by mid-October” and “shall be solely and exclusively conducted by the non-management classified employees, including the distribution of ballots to all non-management classified employees.”

52. Even though Subchapter 23 does not apply to PCSSD, one or more of the Defendants, along with other employees of the PCSSD, attempted to form a Committee under Subchapter 23.

53. Towards the end of February 2012 and the first part of March 2012, one or more of the Defendants, along with others, attempted to form a Committee through a nomination and balloting process.

54. The election, including the distribution of the ballots, was not conducted exclusively and solely by non-management classified employees.

55. The election and balloting process, including the distribution of ballots, was conducted in many places by non-management classified employees including administrators, teachers and management classified employees.

56. On March 5, 2012, it was announced that Defendants Keith Cooper, Cheryl Howey, Regena English, Becky Del Rio, James Watson, and John Sparks had been elected to the Committee. Thereafter, the District appointed the following administrators to the Committee: Charles Blake, Derrick Brown and Bill Goff.

57. The Defendants are now purporting to act as a validly formed and elected Committee under Subchapter 23 and PCSSD has now recognized the Committee as a validly formed and elected Committee under Subchapter 23.

COUNT I

ADE's Actions Were Ultra Vires, Exceeded the Scope of its Statutory Authority and Were Arbitrary, Capricious and in Bad Faith

58. The ADE adopted "Rules Identifying and Governing the Arkansas Fiscal Assessment and Accountability Program" which track the language in Ark. Code Ann § 6-20-

1908(f) that authorizes ADE to make binding recommendation to a district superintendent “regarding staffing of the district” and regarding “fiscal practices of the district.”

59. The application of these rules, in particular Rules 7.06 and 7.07, by the ADE threatens to injure the Plaintiffs in their person, business and property as more fully set out herein.

60. On April 20, 2012, acting under the alleged authority of Ark. Code Ann § 6-20-1908(f) the Commissioner of ADE ordered the superintendent of PCSSD to withdraw recognition, terminate the PNA and implement personnel policies.

61. In so doing, the ADE exceeded the scope of its statutory authority.

62. In so doing, the ADE’s actions were ultra vires.

63. In so doing, the ADE acted arbitrarily, capriciously and in bad faith.

64. The ADE does not have the statutory authority to order the wholesale scrapping of the PNAs under the guise of this statute and corresponding Rules.

65. There are specific provisions in the PNA, such as the amount of classified employees’ salaries, amount of their benefits and the length of their contracts, that are based on “fiscal practices” of the District.

66. The PNA contains a plethora of employee policies, many of which have been in effect for over a decade, that are not based on fiscal practices of the District but instead are policies that ensure the fair and equitable treatment of classified employees and provide the classified employees with a meaningful voice in contract negotiations and grievance processing.

67. A few examples of those PNA provisions include:

Article I Sections 1, 2, 3, 9, 10, 11, 12

Article II Sections 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13

Article III Section 9

Article IV Sections 1, 2

68. Furthermore, the “staffing of the district” language in Ark. Code Ann. § 6-20-1908 does not provide ADE with the authority to direct the District to scrap any part of the PNA.

69. “Staffing of the district” is the number of workers a district needs or should maintain.

70. The PNA does not address how many workers the District needs nor should maintain.

71. The ADE cannot direct the District to implement personnel policies because to implement said policies the District would have to violate Ark. Code Ann. § 6-17-202 *et. seq.*, and the ADE has no authority to direct the District to violate State law.

72. The Plaintiffs request that the Court declare that ADE exceeded its authority and enjoin the ADE from directing the District to withdraw recognition of PASS, to enjoin the ADE from directing the District to terminate the PNA and to enjoin the ADE from directing the District to implement personnel policies.

COUNT II

**The ADE Impaired the Plaintiffs’ Contractual Rights in Violation of
Article 2, Section 12 of the Arkansas Constitution and
Article I, Section 10, Clause 1 of the United States Constitution**

73. The ADE’s directive to the District to withdraw recognition and terminate the entire PNA pursuant to Ark. Code Ann § 6-20-1908(f) constitutes an illegal impairment of contractual relations under Article 2, Section 12 of the Arkansas Constitution and Article I, Section 10, Clause 1 of the United States Constitution.

74. The termination of the Plaintiffs’ contractual rights in the PNA is a substantial impairment of the Plaintiffs’ contractual rights.

75. This impairment of the Plaintiffs' contractual rights is not reasonable and necessary for any significant and legitimate public purpose.

76. Since the ADE's self-interest is at stake in connection with this substantial contract impairment, the extent of any alleged reasonable and necessary significant public purpose is subject to stringent examination.

77. The Plaintiffs request that the Court declare that ADE violated the Plaintiffs' constitutional rights by illegally impairing their contracts and enjoin the ADE from directing the District to withdraw recognition of PASS and to enjoin the ADE from directing the District to terminate the PNA.

COUNT III

The District Breached the PNA By Withdrawing Recognition and Terminating the Entire PNA

78. The District breached the PNA by withdrawing recognition.

79. The recognition provision in the PNA is binding on the District for the term of the PNA.

80. The District breached the PNA by unilaterally terminating the plethora of provisions of the PNA that were not subject to modification through the three step negotiation procedure.

81. The District breached the PNA by unilaterally supplanting the PNA with a new set of personnel policies.

82. The Plaintiffs request the Court declare that the District's actions were unlawful and in breach of the PNA and declare that the PNA remain in full force and effect.

COUNT IV

The District Breached the PNA by Failing to Complete the Negotiation Process Before Modifying the PNA Provisions That Were Subject to Modification Through the Impasse Negotiation Procedure.

83. The provisions of the PNA that were subject to the impasse negotiations procedure, the District breached the PNA by never completing the impasse negotiation procedure.

84. The provisions in the PNA that were subject to the impasse negotiation procedure were the Reopener Sections

85. The next steps in the process under the PNA would have been continued mediation and then a presentation before the School Board unless the parties reached an agreement during any step of the process.

86. The Plaintiffs request that the Court order the District to complete the impasse negotiation procedure set out in the PNA for those provisions of the PNA that are subject to the impasse negotiation procedure.

COUNT V

The District Violated State Law by Recognizing a Personnel Policy Committee and Withdrawing Recognition

87. Pursuant to Ark. Code Ann. § 6-17-202, the District has recognized PASS for a five year term for the purpose of negotiating personnel policies under a written policy agreement.

88. The PNA contains that written policy agreement.

89. Under Ark. Code Ann. § 6-17-202, none of the provisions of the law dealing with a personnel policies committee apply to the District because it has recognized PASS for the purpose of negotiating policies.

90. The District has violated the law by recognizing the Committee and adopting the policies reviewed by the Committee.

91. The Plaintiffs request the Court enter an order declaring the above described actions by the District illegal.

COUNT VI

The Committee is Illegal and Has No Power Nor Authority

92. The formation of the Committee was illegal because the law under which the Committee was purportedly formed has no applicability to PCSSD because PCSSD has entered into an Agreement with PASS (PNA, Article I Section 1) to negotiate all personnel policies and PCSSD has breached its Agreement with PASS by recognizing the Committee for the purpose of developing a set of policies that the PCSSD has adopted to take the place of the entire PNA.

93. On that basis, the Plaintiffs are entitled to an Order declaring that Subchapter 23 has no applicability to PCSSD because of the Agreement with PASS, and that, therefore, the Committee to which the Defendants have allegedly been elected is invalid, that the Defendants and PCSSD have none of the rights, powers or privileges set out in Subchapter 23, that any actions taken by the Defendants and PCSSD related to the Committee are null and void and that PCSSD is precluded from recognizing and dealing with the Committee as an entity that has any power to draft or propose or consider personnel policies for PCSSD.

COUNT VII

Alternatively, the Committee was Illegally Formed and has no Power or Authority

94. In the alternative, if the Court should hold that a Committee can be formed under Subchapter 23 even though there is an Agreement between PASS and PCSSD to negotiate

personnel policies which Agreement precludes the application of Subchapter 23, the Plaintiffs allege that the Committee was not validly elected because:

- (a) The Committee was not formed in the first quarter of the school year and the election was not held by mid-October as required by Subchapter 23;
- (b) The Committee did not, therefore, have the opportunity to schedule a calendar of meetings to be held through the school year as required by Subchapter 23;
- (c) The election was not conducted solely and exclusively by the non-management classified employees in violation of Subchapter 23;
- (d) The election was conducted in part by administrative employees; and
- (e) As a result of all of the above, the non-management classified employees employed by PCSSD cannot, with this Committee, receive the full and fair opportunity to have a truly representative body consider policies or changes to policies over the course of the entire school year as is guaranteed by Subchapter 23.

95. On this alternate basis, the Plaintiffs are entitled to an order declaring that the Committee to which the Defendants have allegedly been elected is invalid and the Defendants and PCSSD have none of the rights, powers or privileges set out in Subchapter 23.

96. If the Court should hold that a Committee can be formed under Subchapter 23 even though there is an Agreement between PASS and PCSSD to negotiate personnel policies which Agreement precludes the application of Subchapter 23, in the alternative and on the basis that the Committee was not formed in compliance with Subchapter 23, the Plaintiffs contend that the PCSSD is precluded from adopting any personnel policies that would be applicable to the PCSSD classified non-management employees.

COUNT VIII

The District is Estopped from Claiming that the Committee was Formed in Compliance with the Law

97. In the alternative, PCSSD is estopped from claiming any entitlement under Subchapter 23 to claim that the Committee was validly formed because PCSSD's actions precluded the formation of the Committee in a timely manner and in compliance with Subchapter 23.

98. The District recognized and negotiated with PASS through the fall of 2011 and the first part of 2012 and never, during that time period, indicated that it was going to withdraw recognition and direct the formation of the Committee.

99. This resulted in the Committee being formed in a hurried process at the end of the school year and deprived the employees of the opportunity guaranteed by law to have an elected body review and recommend policies throughout the school year.

100. The Plaintiffs request that the Court declare that the Committee was formed in violation of the law, that the District is the cause of that violation and, therefore, the District cannot claim that it has followed the necessary process for submitting policies to the Committee for review.

101. As a result, the Plaintiffs request that the Court declare that the policies that the District plans to implement next school year cannot be implemented.

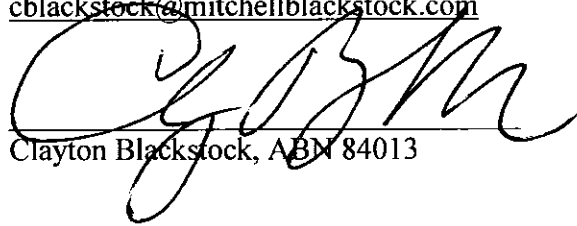
102. Under Ark. Code Ann. § 16-111-110, this Court may, upon application, grant further relief based on a declaratory judgment if it is necessary or proper, and the Plaintiffs reserves the right to petition the Court for further relief should the Plaintiffs believe that further relief is necessary or proper.

WHEREFORE, the Plaintiffs pray that the Court grant the relief requested in the First Amended Complaint, award attorney fees and costs, and all other just and proper relief.

Respectfully submitted,

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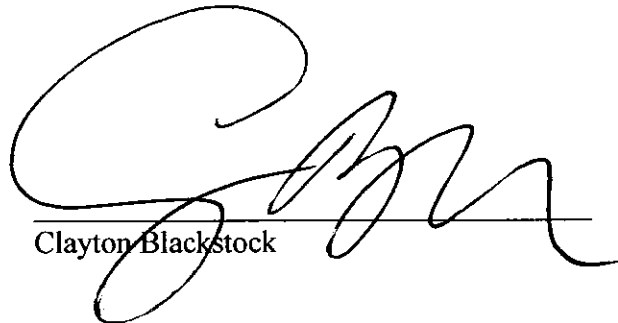
Clayton Blackstock, ABN 84013

CERTIFICATE OF SERVICE

I hereby state that a copy of the foregoing pleading was served on the following by US Mail, postage prepaid, on this 4 day of May, 2012:

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Dover Dixon Horne PLLC
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Little Rock, AR 72201

Via Certified Mail
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Clayton Blackstock