



BACKGROUND (JUNE 2017)

Americans for Fair Treatment v. Reading Education Association & Reading School District

THE EXECUTIVE SUMMARY

The Fairness Center represents Americans for Fair Treatment (“Americans”) in a lawsuit and administrative complaint challenging the Reading Education Association’s (“REA’s”) practice of forcing the Reading School District (“District”) to expend taxpayer dollars on the salary and benefits of the REA President. The practice of paying these union officials, often referred to as “ghost teachers,” hurts other Pennsylvania school districts as well.

Since 2011, the REA President cost Reading taxpayers more than \$580,000, even while working exclusively for the union. On top of receiving a generous salary and other benefits, the REA President is accruing seniority as if he were still teaching in the classroom. Additionally, the President continues to collect pension credits in the Public School Employees’ Retirement System (“PSERS”) as if he were working as a public school employee.

Americans is filing a lawsuit and administrative complaint with PSERS to expose this misuse of taxpayer dollars and hold the REA, the District, and PSERS accountable.

THE PROBLEM

The District is composed of [19 public schools serving approximately 17,600 students](#) in Reading, Pennsylvania, and employs approximately 2,000 staff. The city of Reading faces many challenges. The National Education Association has described the District as “America’s most poorly funded school district.” Data from the United States Census Bureau estimates that [39.6% of Reading residents live in poverty](#) compared to a Pennsylvania-wide average of 13.2%, and a national average of 13.5%. The estimated percentage of individuals in Reading 25 years of age or over with a bachelor’s degree or higher is only 9.2%, compared to a Pennsylvania-wide average of 28.6%, and a national average of 29.8%. And the low education levels in Reading seem to be negatively affecting the average per capita income. From 2011-2015 Reading’s average per capita income was \$13,217 compared to a Pennsylvania-wide average of \$29,291, and a national average of \$28,930.

Students of the District are, unfortunately, performing well below other students across the state. Results from the 2016 Pennsylvania System of School Assessment (“PSSA”) show that, in math for grades four through eight, the District demonstrated the worst average growth, [negative 16.94](#), among all 633 districts and charter schools in the state of Pennsylvania. Reading ranked 494 out of 500 School Districts in math proficiency with 88% of students not able to attain basic grade level proficiency in math. The PSSA scores for reading proficiency were not much better. The District’s

growth rate was a [negative 7.57](#), the third worst score among all 633 Pennsylvania charter schools and school districts. The District [ranked 493rd in reading proficiency](#) out of 500 school districts with 75.8% of students unable to attain basic grade level proficiency in reading. Poor academic performance follows Reading's students to high school where only 65.1% graduated in 2016 compared to 89.2% statewide and a national average of 86.7%.

In light of these numbers, one would expect REA to be making every effort to get its teachers more classroom support and resources. However, since at least 2008, REA has taken teachers *out* of the classroom on at least a part-time basis and forced the District to pay full salary and benefits.

Beginning in 2011, the District and REA actually expanded the practice, entering into an agreement permitting REA's President to work *full*-time for the union while still receiving his entire salary and all benefits from the District. Despite no longer teaching, REA's President continued to accrue seniority and pension credit in PSERS. The arrangement cost the District well over half-a-million dollars since 2011, money that could have supported the District's education efforts.

In fact, in 2012, the District laid off [110 teachers](#) along with hundreds of other employees, yet REA's President kept his salary and benefits. In 2013, the State of Pennsylvania put the District on [Financial Watch Status](#) because of its poor financial health, yet REA's President kept his salary and benefits. And in 2014, Pennsylvania's Auditor General said the financial health of the District and its unwillingness to take corrective action "[continues to place the education and the future of its students in jeopardy.](#)"

Throughout this time, REA's President continued to receive a generous, full salary and benefits from taxpayers despite not being in the classroom. As recently as the 2015-2016 school year, REA President Hettinger received salary and benefits worth \$131,514.76, nearly ten times the average annual per capita income of Reading residents.

THE LAW

School districts derive their governing authority from the Public School Code. Section 6-610 of the Public School Code states, "[t]he use or payment of any public school funds of any school district, in any manner or for any purpose not provided in this act, shall be illegal." While the Pennsylvania Public Employee Relations Act ("PERA") does provide some additional authorization for teachers' unions to bargain for wages, hours, and conditions of employment, it also states that collective bargaining agreements cannot implement provisions, "in violation of, or inconsistent with, or in conflict with any statute or statutes enacted by the General Assembly..." 43 P.S. § 1101.703. There is no statutory basis for release time within either the Public School Code or PERA. In fact, release time conflicts with the authorized leave statutes of the Public School Code.

Moreover, PERA cannot authorize bargaining over terms and conditions of non-public employment. Under PERA, REA has *only* the authority to bargain over terms of "public employment" under a "public employer."¹ The REA President's full-time work for a *non-public* employer, REA, is outside the scope of public employment.² There is no statutory basis for allowing the District and REA to

¹ 43 P.S. § 1101.701.

² Pennsylvania's appellate courts have held that the performance of union responsibilities during the school day is not public employment. In *Kirsch v. Public School Employees' Retirement Board*, 929 A.2d 663, 670-71 (Pa. Cmwlth. 2007) *aff'd*, 603

bargain collectively for the terms of an employee working for a private entity.

Finally, there are also state constitutional and common law principles that mandate a “public purpose” for expenditures by state and local government. Here, the District and the Commonwealth are spending money that directly and exclusively benefits REA, a private entity, with no return on their investment. The arrangement violates public purpose principles.

CASE LOGISTICS

Forum: BERKS COUNTY (Complaint for Declaratory, Injunctive, and Equitable Relief)

Plaintiff

Americans for Fair Treatment

Defendants

- Reading Education Association
- Reading School District

Forum: PSERS (Formal Complaint)

Complainants

- Keith Williams, vested member of Public School Employees’ Retirement System
- Americans for Fair Treatment

Respondents

- Reading Education Association and Association Presidents
- Reading School District
- Public School Employees’ Retirement System

Relief Sought

Americans for Fair Treatment is requesting that the Berks County Court of Common Pleas declare that release time is illegal, enjoin the provision of the contract allowing for release time for REA’s President, and require REA to reimburse, with interest, the District for the salary and benefits provided illegally to REA’s President.

Mr. Williams and Americans are requesting that PSERS remove the illegally obtained pension credit

Pa. 439, 985 A.2d 671 (2009), the Pennsylvania Commonwealth Court held that the salary received by the plaintiffs for union responsibilities was earned while the plaintiffs “were not employed as a person engaged in work relating to a public school.” The court, therefore, held that the additional salary employees received for performing union responsibilities should not be computed along with the employees’ final average salary for the purpose of PSERS. Similarly, in *Pinto v. State Civil Service Commission*, 912 A.2d 787 (Pa. 2006), the Pennsylvania Supreme Court held that full-time union service did not constitute a civil service position.

and dollars from current and former REA Presidents and declare that the granting of pension credit to private employees for their work on behalf of REA is a violation of the Gift Clause of the Pennsylvania Constitution.

Date Filed

June 1, 2017

THE LEGAL TEAM

David R. Osborne is President and General Counsel at the Fairness Center, where he provides advice and counsel to clients, directs the Fairness Center's legal strategy, and oversees all litigation efforts. Before joining the Fairness Center, David litigated on behalf of healthcare providers and conducted organizational and lobbying efforts for a national trade association. He previously worked as a judicial clerk to a Florida Supreme Court justice and served as official staff to a member of Congress. David graduated from the Florida State University College of Law.

Nathan J. McGrath is Vice President and Litigation Counsel at the Fairness Center, where he litigates and develops legal strategy to advance its mission. Before joining the Fairness Center, Nathan was a staff attorney with the National Right to Work Legal Defense Foundation, Inc., where he practiced constitutional, labor, and administrative law. Nathan was also an associate attorney with Lawlor & Lawlor, P.C., a general practice firm in Pittsburgh, Pennsylvania. Nathan graduated from Regent University School of Law.

Karin M. Sweigart is Deputy General Counsel and Director of External Relations at the Fairness Center, where she focuses on client interaction and litigation activities. Before joining the Fairness Center, Karin served as legislative counsel for the Committee on House Administration in the United States Congress, and counsel to Congressman Dan Lungren. She also served as a Jesse M. Unruh Fellow in the California State Assembly. Karin graduated from the University of St. Thomas School of Law.