



June 1, 2017

Jennifer A. Mills
Deputy Chief Counsel
Public School Employees' Retirement Board
5 North 5th Street
Harrisburg, PA 17101
(717) 720-4686

Re: Keith Williams' & Americans for Fair Treatment's Formal Complaint to the Public School Employees' Retirement System ("PSERS")

Counsel Mills:

Pursuant to sections 35.9 and 35.10 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code. §§ 35.9–35.10, which governs administrative proceedings before PSERS, 1 Pa. Code §§ 31.1–31.28, Complainants Keith Williams ("Williams") and Americans for Fair Treatment ("Americans") (collectively, "Complainants") file this formal complaint alleging that retirement credits and retirement dollars have been provided to current and former presidents of the Reading Education Association ("REA") contrary to title 24, sections 8102 and 8302(b), of the Pennsylvania Consolidated Statutes and Article VIII, Section 8 of the Pennsylvania Constitution ("Gift Clause"). In support thereof, Complainants aver the following:

PARTIES

1. Complainant Williams is a vested PSERS member and professional employee (or "teacher") of Conewago Valley School District in New Oxford, Pennsylvania. Williams resides at [REDACTED]
[REDACTED]
2. Complainant Americans is a not-for-profit corporation and Internal Revenue Service-approved 501(c)(3) organization that equips and empowers Americans to receive fair

treatment from government unions. Americans facilitates and supports litigation to enforce and expand human and civil rights for those who have suffered public-sector union abuse. Its membership includes public-sector union members and nonmembers as well as supporters of public-sector employees, including taxpayers of the Reading School District (“District”). Americans is incorporated in Oklahoma with an address of 100 North Broadway Avenue, Suite 1500, Oklahoma City, Oklahoma 73102.

3. Respondent PSERS is a governmental cost-sharing multiemployer defined benefit pension plan. 24 Pa.C.S. §§ 8101–8536. PSERS and its board are responsible for the “uniform administration” of the Commonwealth’s public school employees’ retirement system. 24 Pa.C.S. § 8502(h). PSERS’ board members are trustees of the Public School Employees’ Retirement Fund, which is located in the State Treasury and funded by the Department of Revenue, 24 Pa.C.S. § 8522, and they “stand in a fiduciary relationship to the members of the system.” 24 Pa.C.S. § 8521. Public school districts, as employers, are required to pay into the system, 24 Pa.C.S. § 8327, and the Commonwealth reimburses them a portion of their payment, 24 Pa.C.S. § 8535. PSERS’ administrative budget is reviewed and evaluated by the Governor’s Office of the Budget, passed by the General Assembly, and signed into law by the Governor. 24 Pa.C.S. § 8502. PSERS’ address is 5 North 5th Street, Harrisburg, Pennsylvania 17101.

4. Respondent REA is an unincorporated association and an “employe organization” as defined in both the Public School Code of 1949 (“Public School Code”), 24 P.S. § 11-1101-A, and the Public Employe Relations Act (“PERA”), 43 P.S. § 1101.301(3). The REA’s address is 1800 North 12th Street, Reading, Pennsylvania 19604.

5. Respondent District is a school district of the second class, as classified within the Public School Code, 24 P.S. § 2-202, an “employer,” as defined in the Public School Code, 24 P.S. §

11-1101-A, and a “public employer,” as defined in the PERA, 43 P.S. § 1101.301(1). The District’s address is 800 Washington Street, Reading, Pennsylvania 19601.

6. Respondent Mitchell Hettinger (“Hettinger”) is the current (or departing) REA President and is currently listed by the District as a teacher at Southern Middle School within the District. His home address is unknown, but his employment address is 1800 North 12th Street, Reading, Pennsylvania 19604.

7. Respondent Bryan Sanguinito (“Sanguinito”) is a teacher at Southern Middle School within the District and a former REA President. His home address is unknown, but his employment address is 931 Chestnut Street, Reading, Pennsylvania 19602.

8. Respondent Robert H. Miller (“Miller”) is a former REA President. His address is unknown.

STATEMENT OF FACTS

“Partial Release Time”

9. The REA and District agreed to a collective bargaining agreement to govern their relationship from September 1, 2008, through August 31, 2012 (“2008 CBA”). Ex. A, at 20.

10. The 2008 CBA contained a provision under “Article XII: Association Rights and Privileges,” which read, in part:

J. Release time for Association President

The President of the [REA] shall be scheduled for a maximum of two (2) classes or if elementary Employee no more than one-half (1/2) session per day by the Administration.

In the event the President is a middle school or high school Teacher, the Employee shall not be assigned a homeroom.

Ex. A, at 48 (hereinafter, “Partial Release Time”).

11. Under Partial Release Time, the REA was not contractually obligated to reimburse the District for any of the costs, including the REA President’s salary, benefits, and pension contributions, associated with Partial Release Time. *See* Ex. A, at 48.

12. Under Partial Release Time, the REA did not reimburse the District for any of the costs, including the REA President's salary, benefits, and pension contributions, associated with Partial Release Time.

13. Miller was REA President for the REA under Partial Release Time from at least 2009 to 2011 pursuant to the 2008 CBA.

14. From 2009 to 2011, Miller served part-time as a teacher at a District school and spent the rest of his working time on REA-related activities. *See* Ex. A, at 48.

15. Sanguinito worked part-time for the REA pursuant to the 2008 CBA until, as discussed further below, Partial Release Time was expanded.

16. Upon information and belief, during Miller's and Sanguinito's time as REA Presidents, Miller and Sanguinito received full retirement credit for the time spent out of the classroom as REA President even though they were not engaged in school service.

17. Time spent outside the classroom as REA President is not school service. *See Kirsch v. Pub. Sch. Emps.' Ret. Bd.*, 929 A.2d 663 (Pa. Cmwlth. 2007), *aff'd on other grounds*, 985 A.2d 671 (Pa. 2009) (determining that individuals on Release Time "were employed by the unions. They were not employed as a 'person engaged in work relating to a public school.'" 929 A.2d at 670 (citation omitted)); *cf.* Ex. B, at 3.

18. Partial Release Time does not qualify as "leave for service with a collective bargaining organization" under title 24, section 8102, of the Pennsylvania Consolidated Statutes.

19. Upon information and belief, during their time as REA Presidents, the District reported to PSERS that Miller and Sanguinito were engaged in school service on a full-time basis.

20. Upon information and belief, Miller, Sanguinito, and any other REA President on Partial Release Time benefited from the District's retirement contributions as if they had rendered

school service during the time they worked outside the classroom as a private employee for the REA as the REA President.

21. Upon information and belief, Miller has already retired and received retirement dollars in excess of what he is entitled to under the law, contrary to title 24, sections 8102 and 8302(b), of the Pennsylvania Consolidated Statutes, and in violation of the Gift Clause.

22. REA Presidents on Partial Release Time have been credited with PSERS service in violation of title 24, sections 8102 and 8302(b), of the Pennsylvania Consolidated Statutes.

23. REA Presidents on Partial Release Time have had retirement contributions credited to them from the District and the Commonwealth in violation of the Gift Clause.

“Full Release Time”

24. On June 7, 2011, the REA and the District agreed by MOU (“2011 MOU”) to expand Partial Release Time by amending Article XII, Section J., and stating, in part:

The District and the [REA] agree to amend Article XII: Association Rights and Privileges, Section J. Release Time for Association President, with the following language:

The position of [REA] President shall be full-time release.

All terms and conditions of employment shall be as if the President were a teacher on special assignment.

The President shall be returned to the identical position he/she vacated to assume the presidency.

The position/program vacated by the President shall be filled by a long-term substitute for the duration of the President’s term of office.

This MOU is a subject for Bargaining for the successor agreement to the current Collective Bargaining Agreement.¹¹

Ex. A, at 5 (hereinafter, “Full Release Time”).

¹ The final paragraph was handwritten and appears to have been initialed by the signatories to the MOU—the President of the REA and the District Superintendent.

25. On August 24, 2016, the District ratified a new collective bargaining agreement, which was intended to govern the relationship between the REA and the District from September 1, 2012, to August 31, 2019 (“2016 CBA”). Ex. C.

26. The 2016 CBA included a new Article XI, Section J., entitled “Release Time for Association President” permanently adopting Full Release Time, stating:

J. Release Time for Association President

The President of the [REA] shall be on full-time release and shall be subject to the terms of the Memorandum of Understanding between the Employer and the [REA] dated June 7, 2011.

Ex. C, at 24.

27. The REA is not contractually obligated to reimburse the District for any of the costs, including the REA President’s salary, benefits, and pension contributions, associated with Full Release Time. *See* Ex. A, at 5; Ex. C, at 24.

28. The REA does not reimburse the District for any of the costs, including the REA President’s salary, benefits, healthcare costs, and pension contributions, associated with Release Time. Ex. A, at 6.

29. Beginning in 2011, Sanguinito began working full-time for the REA pursuant to the 2011 MOU and until 2013, when he concluded his work on Full Release Time. *See* Ex. A, at 5–6.

30. Hettinger has worked full-time for the REA pursuant to the 2011 MOU and the 2016 CBA’s Full Release Time provision since 2013. *See* Ex. A, at 5–6; Ex. C, at 24.

31. Any future REA President would operate under the same Full Release Time arrangement set forth in the 2016 CBA. Ex. C, at 24.

32. Full Release Time as practiced by the REA and District does not qualify as “leave for service with a collective bargaining organization” under title 24, section 8102, of the Pennsylvania Consolidated Statutes.

33. Upon information and belief, during Sanguinito's and Hettinger's time as REA Presidents, the District reported to PSERS that Sanguinito and Hettinger were engaged in school service on a full-time basis. *See* Ex. D.

34. Upon information and belief, Sanguinito, Hettinger, and any other past or future REA President on Full Release Time benefited or will benefit from the District's retirement contributions as if they had rendered school service during the time they worked outside the classroom for the REA as the REA President. *See* Ex. D.

35. REA Presidents on Full Release Time have been credited with PSERS service in violation of title 24, sections 8102 and 8302(b), of the Pennsylvania Consolidated Statutes. *See* Ex. D.

36. REA Presidents on Full Release Time have had retirement contributions credited to them from the District and the Commonwealth in violation of the Gift Clause. *See* Ex. D.

Full and Partial Release Time

37. The REA and the District did not follow PSERS guidelines for purchasing credit for an approved leave of absence for Miller, Sanguinito, and Hettinger. *See* Ex. D.

38. The REA and the District did not receive school board approval documented in the school board's official minutes of an approved leave of absence for the REA Presidents on Full Release Time.

39. The REA Presidents were not responsible for both the member's share and the employer's share of pension contributions while on Full Release Time. Instead, the District continued to pay for the employer's share of pension contributions. Ex. A, at 6.

40. The District did not fill out PSERS' employer verification form² confirming a member's leave of absence information and determining eligibility to retain service, salary, and contributions during Full Release Time for any of the REA Presidents. Ex. D.

41. REA Presidents on Full Release Time have continued and will continue to accrue PSERS pension credit despite not being on an approved leave of absence. Ex. D.

WHEREFORE, Complainants respectfully request that PSERS act to remedy violations of title 24, sections 8102 and 8302(b), of the Pennsylvania Consolidated Statutes and the Gift Clause.

Respectfully Submitted,

THE FAIRNESS CENTER



Karin M. Sweigart
Pa. Attorney I.D. No. 317970
Email: karin@fairnesscenter.org
David R. Osborne
Pa. Attorney I.D. No. 318024
E-mail: david@fairnesscenter.org
Nathan J. McGrath
Pa. Attorney I.D. No. 308845
Email: nathan@fairnesscenter.org
THE FAIRNESS CENTER
225 State Street, Suite 303
Harrisburg, Pennsylvania 17101
Phone: 844.293.1001

Counsel for Complainants

² *Approved Leave of Absence – Employer Verification*, Commonwealth of Pennsylvania - Pub. Sch. Emps.' Ret. Sys. 1 (2014), <http://www.psers.pa.gov/FPP/Forms/Documents/f112.pdf>.