

IN THE COURT OF COMMON PLEAS, BERKS COUNTY, PENNSYLVANIA

AMERICANS FOR FAIR TREATMENT :
 :
 vs. : NO. 2017-13215
 :
 READING EDUCATION ASSOCIATION :
 and READING SCHOOL DISTRICT :

**PRELIMINARY OBJECTIONS OF DEFENDANT, READING EDUCATION ASSOCIATION,
TO PLAINTIFF'S COMPLAINT**

Defendant, Reading Education Association, by and through its attorneys, Pancio Law Group, LLC, hereby files the following Preliminary Objections to Plaintiff's Complaint for Declaratory, Injunctive, and Equitable Relief, and in support thereof, respectfully avers as follows:

1. Plaintiff is "Americans for Fair Treatment" (hereinafter referred to as "Plaintiff"), an organization allegedly incorporated at 100 North Broadway Avenue, Suite 1500, Oklahoma City, Oklahoma 73102. *See*, Plaintiff's Complaint attached hereto as **Exhibit A** at ¶3.
2. Plaintiff identifies itself as a corporation which "facilitates and supports litigation" on behalf of "those who have suffered public sector union abuse." *See*, **Exhibit A** at ¶3.
3. Defendant, Reading Education Association (hereinafter referred to as "REA"), is an "employee organization" under the Public Employee Relations Act ("PERA"). *See*, 43 P.S. §1101.301(3).
4. Defendant, Reading School District (hereinafter referred to as "the School District") is an "employer" under the Public Employee Relations Act ("PERA"). *See*, 43 P.S. §1101.301(1).
5. Plaintiff filed a Complaint for Declaratory Judgment and Injunctive and Equitable Relief against Defendants, REA and the School District. *See*, **Exhibit A** generally.

6. Plaintiff's Complaint requests, *inter alia*, that this Honorable Court declare the practice of "Release Time" fundamentally invalid under state law and grant equitable relief in the form of a permanent injunction. *See, Exhibit A* generally.

7. Pursuant to the Collective Bargaining Agreement/Memorandum of Understanding between the School District and the REA, the REA President shall be granted ". . . full-time release, with all terms and conditions of employment to be treated as if the president were a teacher on special assignment."

8. By way of background, the release time provision was created through labor-management bargaining between the REA, as the designated employee representative, and the School District, as the public school employer, pursuant to Pennsylvania law.

9. Since 1971, Pennsylvania public school districts and designated employee representatives have been empowered to contract about all items that bear on the question of wages, hours and conditions of employment. PLRB v. State College Area Sch. Dist., 337 A.2d 262 (Pa. 1971).

10. As President of the REA, the President is, and has always been, an employee of the School District. Pursuant to the Release Time provision, the President is released from performing teaching duties during the school work day so that he or she can engage in the extensive labor-management related duties associated with the ongoing labor-management relationship between the School District and the REA.

11. The President's position is a part of the School District and the REA's requirement under Pennsylvania law to participate in ongoing labor-management relations. *See, Public Employee Relations Act ("PERA"), Act of 1970, July 23, P.L. 563, No. 195, 43 P.S. § 101.101 et seq.*

PRELIMINARY OBJECTION PURSUANT TO PA.R.C.P. 1028(a)(1)
LACK OF STANDING

12. REA hereby incorporates all paragraphs by reference.

13. Plaintiff's Complaint must be dismissed pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(1), as Plaintiff does not have standing to bring the present action.

14. Pennsylvania Rule of Civil Procedure 1028(a)(1) allows for the filing of preliminary objections based upon a lack of jurisdiction over the subject matter. *See*, Pa.R.C.P. 1028(a)(1).

15. Standing to bring a suit is a prerequisite for a person to obtain a judicial resolution of a dispute. Lincoln Party v. Gen. Assembly, 682 A.2d 1326, 1329 (Pa. Commw. Ct. 1996).

16. To have standing, a plaintiff must demonstrate that it is aggrieved by the action or matter that is challenged. Fumo v. City of Philadelphia, 972 A.2d 487, 496 (Pa. 2009); Pittsburgh Palisades Park, LLC v. Commonwealth, 888 A.2d 655, 659-60 (Pa. 2005).

17. A plaintiff is aggrieved only if they are adversely affected and have a substantial, direct and immediate interest in the matter at issue. Fumo, *supra* at 496; Lincoln Party, *supra*.

18. A plaintiff must demonstrate that it has a "sufficiently close causal connection between the challenged action and the asserted injury to qualify the injury as 'immediate' rather than 'remote.'" Lincoln Party, *supra*; William Penn Parking Garage, 464 Pa. at 202, 346 A.2d at 286.

19. It is not sufficient for the person claiming to be "aggrieved" to assert the common interest of all citizens in procuring obedience to the law. Independent State Store Union v. Pennsylvania Liquor Control Board, 495 Pa. 145, 432 A.2d 1375, 1379-90 (1981).

20. An association may have standing to bring an action on behalf of its members where one of its members is suffering an immediate or threatened injury as a result of the challenged action. Robinson Township v. Commonwealth, 83 A.3d 901, 922 (Pa. 2013).

21. An association claiming standing through one of its members must plead facts which indicate a direct, immediate and substantial injury to the member. Pennsylvania Gamefowl Breeders Assoc. v. Commonwealth, 533 A.2d 838 (Pa. Cmwlt. 1987), *reaff'd after reconsideration*, 583 A.2d 645 (Pa. Cmlwth. 1988).

22. General descriptions of an organization's members cannot establish standing if the plaintiff does not show that a member or members are sufficiently adversely affected to have standing. Armstead v. Zoning Board of Adjustment of City of Philadelphia, 115 A.3d 390, 398, 400 (Pa. Cmwlt. 2015).

23. Standing may be shown without identification of individual members, but only where the complaint's description of the organization's members is sufficient to show that they are aggrieved. North-Central Pennsylvania Trial Lawyers Association v. Weaver, 827 A.2d 550, 554 (Pa. Cmwlt. 2003).

24. Where a plaintiff-organization neither sufficiently identifies affected members, nor pleads sufficient facts to permit a court to determine that they have a substantial, direct and immediate interest, dismissing for lack of standing is proper. Lincoln Party, *supra*.

25. In the instant matter, Plaintiff asserts that it has standing to bring the present action because “. . . at least one of its members has suffered or will suffer a direct, immediate or substantial injury as a consequence of Release Time” *See*, **Exhibit A** at ¶7.

26. Plaintiff asserts that an entity referred to only as “Taxpayer A” is a member of the Plaintiff-organization. *See*, **Exhibit A** at ¶8.

27. Plaintiff asserts that “Taxpayer A” is a for-profit corporation that has operated in Reading for over ten years and pays real estate taxes to the Reading School District. *See*, **Exhibit A** at ¶9.

28. Plaintiff asserts that "Taxpayer A" paid a 2016 School Real Estate Tax Bill of "over \$10,000." *See, Exhibit A* at ¶10.

29. Finally, Plaintiff asserts that "(d)istrict funds, including Taxpayer A's tax dollars, are then used in the context of Release Time to benefit the REA and the REA President." *See, Exhibit A* at ¶12.

30. Plaintiff does not in any way identify the entity referred to as "Taxpayer A." *See, Exhibit A* at ¶¶8-10.

31. In asserting the facts alleged regarding "Taxpayer A," Plaintiff relies solely upon an affidavit by Priya Abraham, who is the alleged Managing Director of Plaintiff-organization.

32. Plaintiff's basis for standing relies entirely upon assertions regarding the strawman "Taxpayer A" and does not identify an affected member of Plaintiff-organization.

33. Moreover, Plaintiff has failed to plead sufficient facts to permit a court to determine that Plaintiff's members generally have a substantial, direct and immediate interest in this matter.

34. Plaintiff includes boilerplate language that "Taxpayer A" has operated in Reading and has paid taxes in Reading; however, these generic averments are not sufficient to demonstrate that "Taxpayer A" had a substantial, direct and immediate interest sufficient for Plaintiff to have standing in the present action beyond the common interests of all citizens generally.

35. Furthermore, without the actual identity of "Taxpayer A," it is impossible to determine whether the alleged member is aggrieved by the action or matter.

36. Accordingly, as Plaintiff has failed to identify an aggrieved member or plead a substantial, direct and immediate interest to its members, Plaintiff does not have standing to bring the present action on behalf of "Taxpayer A".

37. Similarly, Plaintiff does not have standing to bring the action on behalf of "Taxpayer A" by virtue of the "member's" alleged status as a taxpayer.

38. Plaintiff asserts in its Complaint that “Taxpayer A,” satisfies the five requirements for taxpayer standing under Pennsylvania law.

39. In In re Application of Biester, the Pennsylvania Supreme Court created what is referred to as the “taxpayer exception” to the usual standing requirements. In re Application of Biester, 487 P. 438, 409 A.2d 848, 852 (Pa. 1979).

40. Taxpayer standing is allowed as a limited exception to the ordinary requirement of substantial, direct and immediate interest. Fumo, *supra* at 503-06.

41. Pursuant to Biester, taxpayers may challenge a governmental action provided that: (1) the governmental action would otherwise go unchallenged; (2) those directly and immediately affected by the complained of expenditures are beneficially affected and not inclined to challenge the action; (3) judicial relief is appropriate; (4) redress through other channels is unavailable, and; (5) no other persons are better situated to assert the claim. Biester, *supra*; Flora v. Luzerne Cty., 103 A.3d 125, 132 (Pa. Cmwlth. 2014).

42. Where another party is better situated to assert the challenge that the plaintiff seeks to raise, the mere fact that it has not chosen to do so is not sufficient to support taxpayer standing. Fumo *supra* at 506.

43. In addition, even where the five (5) requirements for taxpayer standing are satisfied, the plaintiff must allege some adverse effect of the challenged action on taxpayers as a whole. Upper Bucks County Vocational-Technical School Education Association v. Upper Bucks County Vocational-Technical School Joint Committee, 474 A.2d 1120, 1122 (Pa. 1984).

44. Plaintiff asserts that “Taxpayer A” has standing to bring the action under taxpayer standing. *See*, **Exhibit A** at ¶13.

45. However, Plaintiff has failed to identify an actual taxpayer member on whose behalf it seeks to invoke the exception.

46. Plaintiff is a national organization incorporated in the State of Oklahoma whose “membership includes public-sector union members and nonmembers as well as supporters of public-sector employees,” many of whom are unquestionably not taxpayers of the subject district. *See, Exhibit A* at ¶3.

47. It is not sufficient for Plaintiff to allege – based solely upon an affidavit by an employee of the Plaintiff-organization – that one of Plaintiff’s members is a taxpayer and therefore Plaintiff is entitled to standing under the limited taxpayer exception, without providing any verifiable or identifying information regarding said alleged taxpayer.

48. Plaintiff’s fundamental failure to identify a named taxpayer aside, Plaintiff does not have standing as Plaintiff fails the five (5) part test set forth in Biester.

49. Pursuant to the first prong, there is no indication that the Release Time provisions would go unchallenged without Plaintiff’s intervention.

50. Plaintiff asserts that, as willing parties to agreements containing Release Time provisions, “the District is complicit in the REA’s scheme to siphon school district dollars.” *See, Exhibit A* at ¶13(a).

51. However, other than the baseless accusation that Defendants are colluding to “siphon school district dollars,” Plaintiff has failed to proffer any evidence that the provision would otherwise go unchallenged.

52. To the contrary, the agreement between Defendants is limited in time and is regularly renegotiated through the involvement of school board members on behalf of taxpayers.

53. Accordingly, if taxpayers are not satisfied with the decisions of school board members, taxpayers may express any dissatisfaction through the ballot.

54. Similarly, pursuant to the second prong of the Biester test, Plaintiff asserts that Defendants are “beneficially affected” by the Release Time provision and therefore unlikely to challenge it. *See*, **Exhibit A** at ¶13(b).

55. However, other than the fact that Defendant School District is a party to the agreement, Plaintiff has failed to identify a meaningful way in which Defendant School District benefits from the provision. In fact, Plaintiff makes a conclusion of law without the requisite facts to support the same.

56. With regard to the third prong of the Biester test, Plaintiff’s Complaint asserts that “(j)udicial relief is appropriate to ensure the legality or propriety of the acts of government.” *See*, **Exhibit A** at ¶13(c).

57. Plaintiff’s assertion regarding judicial relief is overly vague and, if accepted as true, would mean that judicial relief is appropriate in all scenarios where a government entity may be involved or affected.

58. Moreover, judicial relief is not appropriate in this case, as both Defendants are entitled, under Pennsylvania Law, to bargain regarding the terms of their employment.

59. Defendant REA is a public employee organization pursuant to the Public Employee Relations Act (“PERA”). *See*, 43 P.S. §1101.301(3).

60. Defendant School District is a public employer pursuant to the Public Employee Relations Act (“PERA”). *See*, 43 P.S. §1101.301(1).

61. As previously stated, Pennsylvania public school districts and designated employee representatives have been empowered to contract about all items that bear on the questions of wages, hours and conditions of employment since 1971. PLRB, *supra*.

62. Accordingly, as Defendants are authorized to contract about the terms of their contracts, judicial intervention is not appropriate in this matter.

63. Likewise, pursuant to the fourth prong of Biester, redress is available through other channels.

64. As stated, the Release Time provision may be challenged through the ballot box and collective bargaining.

65. Similarly, Plaintiff's claims may be addressed through administrative means.

66. In fact, Plaintiff has filed a Complaint with the Public School Employees' Retirement System ("PSERS") addressing the issues raised in the present action. *See*, Keith Williams' & Americans for Fair Treatment's Formal Complaint to the Public School Employees' Retirement System ("PSERS") attached hereto as **Exhibit B**.

67. Pursuant to 1 Pa. Code §35.5, an individual and/or organization may file in informal complaint with PSERS by means of letter.

68. If dissatisfied with the response of the informal complaint, the individual or organization may file a formal complaint with PSERS pursuant to 1 Pa. Code §35.9.

69. In the instant case, Plaintiff has already begun the process of availing itself of the administrative remedy.

70. Accordingly, redress through other channels is available and Plaintiff is already engaged in said process.

71. Finally, the fifth prong of the Biester test, requiring that no other persons are better situated to bring the claim, cannot be satisfied.

72. Plaintiff has failed identify "Taxpayer A".

73. Without the name of or any meaningful identification of "Taxpayer A," it cannot be stated with any certainty that no other persons and/or entities are better situated to bring the present action.

74. Furthermore, beyond Plaintiff's failure to satisfy the Biester test, Plaintiff's Complaint fails to allege an adverse effect of the challenged action on taxpayers as a whole.

75. Accordingly, in addition to Plaintiff's failure to have jurisdiction on behalf of one of its members, for the aforementioned reasons, Plaintiff also does not have standing under the Biester taxpayer exception.

76. As Plaintiff lacks standing to bring the present action, Plaintiff's claim must be denied and dismissed.

WHEREFORE, Defendant, Reading Education Association, respectfully requests that Plaintiff's Complaint be denied and dismissed, with prejudice.

PRELIMINARY OBJECTION PURSUANT TO PA.R.C.P. 1028(a)(2)
LACK OF VERIFICATION

77. REA hereby incorporates all paragraphs by reference.

78. Plaintiff's Complaint must also be dismissed for the failure to conform to law pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2).

79. Pennsylvania Rule of Civil Procedure 1024 requires that every pleading containing an averment of fact not appearing of record shall be verified. *See*, Pa.R.C.P. 1024(a).

80. The verification shall be made by one or more of the parties filing the pleading. *See*, Pa.R.C.P. 1024(c).

81. In the instant matter, Plaintiff has not provided a verification for the subject Complaint.

82. Plaintiff's Complaint includes an affidavit by Plaintiff's managing director, Priya Abraham, which declares a number of alleged facts related to "Taxpayer A," but does not verify the facts alleged in the subject Complaint.

83. Pennsylvania courts have held that deficiencies regarding verifications, such of the failure to provide a verification, are significant and cannot be brushed aside as mere "legal technicalities." Rupel v. Bluestein, 280 Pa. Super. 65, 75, 421 A.2d 406, 411 (1980).

84. The failure of Plaintiff to provide a verification in this matter is particularly egregious, as Plaintiff does not provide any meaningful identification of "Taxpayer A" and alleges a number of facts not declared in the affidavit by Priya Abraham.

85. Accordingly, Plaintiff's Complaint should be denied and dismissed for failure to conform with the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Defendant, Reading Education Association, respectfully requests that Plaintiff's Complaint be denied and dismissed, with prejudice.

PRELIMINARY OBJECTION PURSUANT TO PA.R.C.P. 1028(a)(2)
INCLUSION OF SCANDALOUS AND IMPERTINENT MATTER

86. REA hereby incorporates all paragraphs by reference.

87. In the alternative, should this Honorable Court decline to dismiss Plaintiff's Complaint in its entirety, Defendant respectfully requests that this Honorable Court strike Paragraphs 14 through 25 of Plaintiff's Complaint pursuant to Pennsylvania Rule of Civil Procedure 1028(a)(2).

88. Pennsylvania Rule of Civil Procedure 1028(a)(2) allows for preliminary objections based upon the inclusion of scandalous or impertinent matter. *See*, Pa.R.C.P. 1028(a)(2).

89. To be scandalous and impertinent, the allegations must be immaterial and inappropriate to the proof of the cause of action. Common Cause/Pennsylvania v. Com., 710 A.2d 108, 115 (Pa. Cmwlth. Ct. 1998), *aff'd*, 562 Pa. 632, 757 A.2d 367 (2000).

90. Here, Paragraphs 14 through 25 of Plaintiff's Complaint cite a number of alleged statistics regarding, *inter alia*, the poverty rate of Reading, the average annual per capita income of Reading residents, the graduation rate of Reading students, and the standardized test scores of Reading students. *See*, ¶¶14-25.

91. The aforementioned paragraphs are of no relevance to Plaintiff's claim and are included in an attempt to allege deficiencies in the Reading school system generally, and to try to divert this Honorable Court from the significant deficiencies in Plaintiff's Complaint.

92. Accordingly, the Paragraphs constitute scandalous and impertinent allegations which should be stricken from Plaintiff's Complaint.

WHEREFORE, Defendant, Reading Education Association, respectfully requests that Paragraphs 14 through 25 of Plaintiff's Complaint be stricken, with prejudice.

**PRELIMINARY OBJECTION TO COUNT III OF PLAINTIFF'S COMPLAINT
PURSUANT TO PA.R.C.P. 1028(a)(4)
LEGAL INSUFFICIENCY**

93. REA hereby incorporates all paragraphs by reference.

94. Should this Honorable Court decline to dismiss Plaintiff's Complaint in its entirety, Moving Defendant also respectfully requests that this Honorable Court strike Count III of Plaintiff's Complaint based upon demurrer.

95. Pennsylvania Rule of Civil Procedure 1028(a)(4) allows for the filing of preliminary objections in the nature of demurrer.

96. In the matter at hand, Plaintiff's Count III must be stricken, as it is legally insufficient.

97. Count III of Plaintiff's Complaint asks that this Honorable Court declare void and enjoin the provisions of the contract between Defendants allowing for Release Time based upon the assertion that Release Time violates public policy.

98. However, Plaintiff's arguments regarding public policy are insufficiently pled.

99. Pennsylvania Courts are required to give plain meaning to a clear and unambiguous contract provision unless such provision violates a clearly expressed public policy. Eichelman v. Nationwide Ins. Co., 551 Pa. 558, 711 A.2d 1006, 1008 (Pa. 1998).

100. A party seeking to void an unambiguous provision in a contract based upon public policy grounds bears a heavy burden. Generette v. Donegal Mut. Ins. Co., 598 Pa. 505, 957 A.2d 1180, 1190 (Pa. 2008).

101. The Pennsylvania Supreme Court has been consistently reluctant to invalidate a contractual provision due to public policy concerns, and has held that public policy is “more than a vague goal which may be used to circumvent the plain meaning of (a) contract.” Eichelman, supra; Williams v. GEICO Gov't Emples. Ins. Co., 613 Pa. 113, 120, 32 A.3d 1195, 1200 (2011).

102. Instead, public policy must be ascertained by reference to laws and legal precedents, and not from general considerations of supposed public interest. Eichelman, supra; Williams, supra.

103. In the absence of a plain indication of that policy through long governmental practice or statutory enactments, or of violations of obvious ethical or moral standards, the court should not assume to declare contracts contrary to public policy. Williams, supra; Antanovich v. Allstate Ins. Co., 507 Pa. 68, 76, 488 A.2d 571, 575 (1985).

104. It is only when a policy is so obviously for or against public health, safety, morals or welfare that “there is a virtual unanimity of opinion in regard to it” that the Court may declare the language void against public policy. Mamlin v. Genoe, 340 Pa. 320, 325, 17 A.2d 407, 409 (1941).

105. In the instant case, Plaintiff asserts that Release Time should be void as against public policy, as it “does not obtain a better education for the children of the District.”

106. Plaintiff generally states that there is a public policy to obtain a better education for the children of the Commonwealth. *See*, **Exhibit A** at ¶80.

107. However, Plaintiff does not refer to any laws or legal precedents which demonstrate a public policy interest beyond that of “general considerations” of public interest.

108. Furthermore, Plaintiff failed to proffer evidence sufficient to demonstrate a long governmental practice or history of statutory enactments which would render Release Time contrary to public policy.

109. Moreover, this is not a scenario where there exists “virtual unanimity of opinion” with regard to the public policy concerns of Release Time.

110. To the contrary, there exists a longstanding public policy in favor of collective bargaining and Pennsylvania public employees and Pennsylvania public employers participating in ongoing labor-management relations. *See*, PERA, Act of 1970, July 23, P.L. 563 No. 195, 43 P.S. §1101.101 *et seq.*; *see also*, PLRB, *supra*.

111. Accordingly, Count III of Plaintiff's Complaint is insufficiently pled and should be stricken.

WHEREFORE, Defendant, Reading Education Association, respectfully requests that Count III of Plaintiff's Complaint is stricken, with prejudice.

Respectfully Submitted,

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