



BACKGROUND (FEBRUARY 2016)

Steven Ramos, et al. v. Allentown Education Association, et al.

THE EXECUTIVE SUMMARY

The Fairness Center represents Allentown taxpayers Steven Ramos and Scott Armstrong, and Public School Employees' Retirement System ("PSERS") member James Williams, in a suit challenging Allentown Education Association's ("AEA's") practice of using taxpayer dollars to fund the salary and benefits of AEA's President. The AEA President receives taxpayer dollars for her position despite the fact that she works full-time for AEA.

Since 1990, teachers' contracts between the Allentown School District ("District") and AEA have contained a provision entitling AEA's President to full release time from professional duties "to conduct Association business during the work day, without loss in wages, benefits or other contractual advantages."¹ Since 2000, taxpayers have spent over \$1.3 million to fund the employee of a private organization. The current AEA President left the classroom in 2009 to become AEA's President. While she is on leave doing exclusively AEA work, the District has continued to pay the President's salary, provided her with insurance and benefits, and allowed her to accrue seniority as if she were still working in a classroom. Additionally, AEA's President continues to accrue pension credits in PSERS as if she were a public school employee.

The Fairness Center is filing suit to expose this misuse of taxpayer dollars and hold the District and AEA accountable to the law.

THE PROBLEM

The District is composed of 23 public schools serving 16,692 students in Allentown, Pennsylvania. The District is the third largest school system in Pennsylvania, and employs a total of 2,166 people, of which 1,135 are teachers. [Minority enrollment is 87% of the student body](#) (Hispanics comprise 68.3%), significantly higher than the minority enrollment average of Pennsylvania of 31%. 88.7% of the families served by the District are denoted as "low income." Allentown School District was ranked [486th out of 498](#) Pennsylvania school districts, in 2013, by the Pittsburgh Business Times. [In 2010](#), the dropout rate for high school students was nearly 40%.

The District has been in financial distress for many years. In 2011, the district laid off 112 teachers; two years later, 100 teachers lost their jobs, and in 2014, 60 teachers were handed pink slips. Yet,

¹ Article 28 of the teachers' contract effective 2012-2015 between the AEA and the ASD.

despite its financial woes, since 1990 the District has somehow had enough money to pay the salary and benefits of an individual who doesn't work for the District.

In 2009, AEA's current President, Deb Tretter, left the classroom to become AEA's President. When she moved to the AEA, her salary jumped from \$63,245 to \$73,373, and she received a reclassification to a "Masters Equivalent" level teacher. Even though she is no longer a teacher, she still receives a salary, insurance and benefits, and accrues seniority as if she were still employed as a teacher. She also has been receiving pension credits from PSERS as if she were still employed as a teacher.

Mr. Ramos and Mr. Armstrong are both taxpayers in Allentown. Mr. Ramos has children who previously attended schools in the District and is himself a graduate of William Allen High School in the District. Mr. Armstrong served as a member of the Allentown School Board from 2011-2015. Both Mr. Ramos and Mr. Armstrong have chosen to stand up to AEA's practice of siphoning precious taxpayer dollars for union use out of the financially impoverished district.

Mr. Williams is a member of PSERS with a substantial, direct, and immediate interest in the proper functioning and solvency of PSERS. That interest is jeopardized by the provision of pension credit and benefits to employees not permitted by law to receive them.

It's time for AEA's President to either get back in the classroom or off the public dole.

THE LAW

The Education Code does not authorize teachers to take "release time" to work for a union. The release time policy contained in the teachers' contract between the District and AEA violates the Gift Clause of the Pennsylvania Constitution, the limited statutory authority given to unions under the law, and public purpose principles found in the Pennsylvania Constitution and the common law.

The Pennsylvania Constitution—Article VIII, Section 8

The Pennsylvania Constitution prohibits the Commonwealth from pledging or loaning the credit of the Commonwealth to an individual, a private corporation, or an association. PSERS has violated Article VIII, Section 8 ("Gift Clause") by pledging the credit of the Commonwealth to AEA and AEA's President and allowing her to accrue pension credit contrary to the law as if the AEA's President were a public employee.

Statutorily Limited Authority

The District and AEA are operating outside of their statutory authority for at least two reasons.

First, Pennsylvania's Public Employee Relations Act ("PERA") grants specific authority to public-sector unions, including AEA, to act as public employee unions. Under PERA, AEA has *only* the authority to act as exclusive representative for "public employees" within the scope of their "public employment" under a "public employer."²

² 43 P.S. § 1101.701.

AEA's President is working full-time for a *non-public* employer and doing work outside the scope of public employment.³ There is no statutory basis for allowing the District and AEA to bargain collectively for the terms of an employee working for a private entity.

Second, cases interpreting PERA specifically limit a public employer's ability to "bargain away" control over public employees. These cases recognize the danger for the state and local governments of giving the union the sole discretion to judge employees' duties and fitness for public work.

Here, the District no longer has control over AEA's President's job title and job responsibilities, or supervision over work product or hours worked. The arrangement demonstrates a total lack of institutional control over an individual receiving a government salary.

Public Purpose Principles

There are also state constitutional and common law principles that mandate a "public purpose" for expenditures by the state and local government. Here, the District and the Commonwealth are spending money to directly benefit AEA, a private entity, with no return on their investment. The arrangement violates public purpose principles.

THE CONCLUSION

The release time policy arrangement is not authorized by statute and goes against long standing public purpose principles of both the Pennsylvania Constitution and the common law.

THE CASE LOGISTICS

Plaintiffs

- Steven Ramos
- Scott Armstrong
- James Williams

Defendants

- Allentown Education Association
- Public School Employees' Retirement System
- Allentown School District

Court

³ 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. Commw. Ct. 2007) *aff'd*, 603 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.

The Commonwealth Court of Pennsylvania

Judge

TBD

Relief Sought

The Allentown taxpayers are requesting that the Court enjoin the provision of the teachers' contract allowing for release time for the AEA's President, and require the AEA to reimburse, with interest, the District and the Commonwealth for the salary, benefits, and pension credit provided illegally to the AEA's President.

Date Filed

TBD

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.

Karin M. Sweigart is Assistant General Counsel 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.