

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

STEVEN RAMOS; SCOTT ARMSTRONG; and
JAMES WILLIAMS,

Petitioners,

vs.

ALLENTOWN EDUCATION ASSOCIATION;
PUBLIC SCHOOL EMPLOYEES' RETIREMENT
SYSTEM; and ALLENTOWN SCHOOL DISTRICT,
Respondents.

No. ____ MD 2016
ORIGINAL JURISDICTION

NOTICE TO PLEAD

**TO: ALLENTOWN EDUCATION ASSOCIATION; PUBLIC SCHOOL EMPLOYEES
RETIREMENT SYSTEM; and ALLENTOWN SCHOOL DISTRICT**

You are hereby notified to file a written response to the enclosed Petition for Review in the Nature of a Complaint for Declaratory Judgment and Equitable Relief within thirty (30) days from service hereof or a judgment may be entered against you.

Date: February 24, 2016

/s/ Karin M. Sweigart

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**PETITION FOR REVIEW IN THE NATURE OF A COMPLAINT FOR DECLARATORY
AND EQUITABLE RELIEF**

INTRODUCTION

Petitioners Steven Ramos and Scott Armstrong (“Taxpayers”), and James Williams (collectively, “Petitioners”), by and through counsel, respectfully request that this Court issue a declaratory judgment and provide equitable relief. Specifically, Petitioners request that this Court declare constitutionally invalid the Public School Employees Retirement System’s (“PSERS’s”) pledging of the Commonwealth’s credit to individuals working full-time for a teachers’ union, under the guise of “full release time,” memorialized here in collective bargaining

agreements (“CBAs”) between the Allentown Education Association (“AEA”) and the Allentown School District (“District”) since 1990.¹

The practice of full release time allows the AEA President to work full time for the AEA while still receiving wages, benefits including insurance, and other contractual advantages including seniority preferences and pension credits, as if he or she was still a public employee. As a result of the practice, PSERS has promised scarce and valuable pension dollars to individuals well in excess of what they are entitled to receive under the law.

Additionally, Petitioners ask this Court to declare that full release time is fundamentally invalid and to grant equitable relief in the form of a permanent injunction and the return of the funds improperly taken by the AEA to the District and the Commonwealth. Alternatively, Petitioners request that this Court find that PSERS granted pension credit to the AEA President contrary to statute and grant appropriate relief.

In support thereof, Petitioners allege the following:

1. Partial or full release time provisions have been in place from at least 1985.

BASIS FOR JURISDICTION

1. Petitioners file this Petition for Review in this Court's original jurisdiction pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa.C.S. §§ 7531-7541.

2. This Court has jurisdiction under section 761(a)(1) of the Judicial Code, 42 Pa.C.S. § 761(a)(1).

PARTIES SEEKING RELIEF

3. Petitioner Steven Ramos is a taxpayer and resident of Allentown, Pennsylvania. Steven's children attended schools in the Allentown School District, and Steven is a graduate of William Allen High School in the District.

4. Petitioner Scott Armstrong is a taxpayer and resident of Allentown, Pennsylvania. Scott is also a former Allentown School Board member.

5. Petitioner James Williams is a public school teacher and PSERS member currently contributing to PSERS and accruing pension credit.

GOVERNMENT UNIT AND OTHER INDISPENSIBLE PARTIES

6. Respondent PSERS is a governmental cost-sharing multiemployer defined benefit pension plan. 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.

7. Respondent AEA is an unincorporated association and an "employee organization" as defined in both the Public School Code of 1949 ("Public School Code"), 24 P.S. § 11-1101-A, and the Public Employee Relations Act ("PERA"), 43 P.S. § 1101.301(3).

8. 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 Public Employee Relations Act ("PERA"), 43 P.S. § 1101.301(1).

GENERAL STATEMENT OF MATERIAL FACTS

STANDING

9. The CBA provision permitting full release time hurts Allentown students, teachers, residents, and taxpayers.

10. Taxpayers' property taxes fund Allentown schools pursuant to section 6-672 of the Public School Code, 24 P.S. § 6-672. Sworn affidavits from Steven Ramos and Scott Armstrong attesting to their residency and status as taxpayers of Allentown and the Commonwealth are attached hereto as, respectively, Exhibits A and B and incorporated herein by reference.

11. District funds, including Taxpayers' property taxes, are being provided to individuals and the AEA through CBA provisions allowing the AEA President to perform full-time union work while still being paid and accruing benefits from the District.

12. Taxpayers have standing because they satisfy the five requirements for taxpayer standing as articulated by the Pennsylvania Supreme Court in Pittsburgh Palisades Park, LLC v. Commonwealth, 888 A.2d 655, 662 (2005).

- a. As a willing party to the CBA, the District is complicit in the AEA's scheme to siphon school district dollars for private union use. As such, judicial review would not otherwise occur and the

government action would otherwise go unchallenged without allowing Taxpayers to bring this action.

- b. Those directly and immediately affected by the complained of expenditures, the District and the AEA, are beneficially affected as opposed to adversely affected. The District is beneficially affected because the provision was bargained for as a part of the negotiation process for the AEA's collective bargaining agreement. The AEA is beneficially affected because it gets a full time employee complete with salary and benefits without having to pay for them. Under the District's and AEA's full release time arrangement, PSERS receives the AEA Presidents' and the District's contributions, despite the fact that the AEA President would not otherwise qualify for creditable service.
- c. Judicial relief is appropriate pursuant to Taxpayers' common interest as citizens and taxpayers, to ensure the legality or propriety of the acts of government.
- d. Redress through other channels is unavailable to Taxpayers. Scott Armstrong already tried to address this issue as part of his responsibilities as an Allentown School Board member. Even

though the School Board received a legal opinion stating the practice was illegal, the board refused to take action. A true and correct copy of the November 19, 2015, Allentown School Board minutes is attached hereto as Exhibit C and incorporated herein by reference. PSERS has failed to pursue action against the AEA and the District despite the fact that the full release time practice has been in place since 1990.

- e. No other persons are better situated to assert a claim against the AEA and the District. Neither party to the contract have any interest in addressing the illegality of the practice of full release time, and the real injury is to taxpayers who are forced to pay the salary and benefits of an individual working for a private organization.

13. Petitioner James Williams, as a member of PSERS, has a substantial, direct, and immediate interest in the proper functioning and solvency of PSERS, which is jeopardized by the provision of pension credit and benefits to employees not permitted by law to receive them. Additionally, PSERS' board members owe a fiduciary duty to James Williams. See 24 Pa.C.S. § 8521. A sworn affidavit from

James Williams attesting to his status as a member of PSERS and to his interests is attached hereto as Exhibit D and incorporated herein by reference.

FULL RELEASE TIME BACKGROUND

14. On January 26, 2012, the AEA and the District agreed to the CBA, intended to govern their relationship from September 1, 2012, through August 31, 2015. The AEA was recognized as “the exclusive representative for collective negotiations covering employees” including classroom teachers, salaried substitute teachers, guidance counselors, and school nurses among others. A true and correct copy of the 2012-2015 CBA between the District and the AEA is attached hereto as Exhibit E and incorporated herein by reference.

15. Although the CBA expired on August 31, 2015, the terms constitute the existing terms and conditions of employment. See Fairview Sch. Dist. v. Com., Unemployment Comp. Bd. of Review, 454 A.2d 517, 521 (Pa. 1982)(“[T]he parties [to a collective bargaining agreement] must continue the existing relationship in effect at the expiration of the old contract.”).

16. Article 28 of the CBA authorizing full release time states:

ARTICLE 28 – ASSOCIATION PRESIDENT RELEASE TIME

For the term of this Agreement, the President shall be entitled to full released time from Professional duties to conduct Association business during the work day,

without loss in wages, benefits or other contractual advantages. Any grants, stipends, awards or other alternative financial arrangements made between the AEA and the PSEA/NEA for President's released time shall be remitted to the District.

Exhibit E.

17. A similar provision authorizing full release time has been included in every collective bargaining agreement since 1990. True and correct copies of every provision governing the relationship between the ASD and the AEA from 1990 to the present are attached hereto as composite Exhibit F and incorporated herein by reference.

18. The AEA is not contractually obligated to reimburse the District for any of its costs associated with full release time. Exhibit E.

19. The AEA does not in fact reimburse the District for any of the costs associated with full release time. A true and correct copy of relevant portions of the District's January 8, 2016, Right-to-Know response is attached hereto as Exhibit G and incorporated herein by reference.

20. The current AEA President, Debra A. Tretter ("Tretter"), left the classroom in 2009 to assume "full release time" for the AEA pursuant to the relevant provision of the 2007-2012 CBA. A true and correct copy of relevant

portions of the District's January 8, 2016, Right-to-Know response is attached hereto as Exhibit H and incorporated herein by reference.

21. Tretter's full release time continued from 2009 to the present, where it is now governed by Article 28 of the CBA. Exhibit H.

22. Accordingly, from 2009 to the present, Tretter has not served as a teacher at any District school. Instead, Tretter's full release time allows her to devote all of her time to AEA-related activities. Exhibit E.

WAGES AND BENEFITS

23. Yet, since leaving the classroom in 2009 for full release time, Tretter has continued to receive wages and benefits from the District, funded by taxpayers. Exhibit E.

24. In fact, since 2009, Tretter has received over \$555,000 in wages, over \$76,000 in pension contributions, and over \$134,000 in benefits. A true and correct copy of relevant portions of the District's February 19, 2016, Right-to-Know response is attached hereto as Exhibit I and incorporated herein by reference.

25. Past AEA President Melvin Riddick left the classroom in 2001 to assume full-time employment for the AEA. Exhibit I.

26. From 2001-2009, Melvin Riddick continued to receive wages and benefits from the District, funded by taxpayers. Exhibits F, I.

27. From 2001-2009, Melvin Riddick received over \$512,000 in wages, over 22,000 in pension contributions, and an unspecified amount in benefits. Exhibit I.

28. In recent years, the District has ceased to provide funding for classroom supplies—approximately \$100 per teacher—and teachers have had to purchase their own classroom supplies using their own or solicited funds.²

SENIORITY

29. Tretter has also continued to accrue other contractual advantages pursuant to the full release time provisions, including seniority preference. A true and correct copy of relevant portions of the District's January 8, 2016, Right-to-Know Response is attached hereto as Exhibit J and incorporated herein by reference.

30. As a result of Tretter's accrued seniority, she receives various preferences over a number of other teachers, including but not limited to

2. Jacqueline Palochoko, Allentown teacher uses fundraiser to buy classroom supplies, The Morning Call, August 3, 2015, available at <http://www.mcall.com/news/local/mc-allentown-school-district-teacher-fundraiser-20150731-story.html>.

employment preference in the event of furloughs, transfers, and recalls. See Exhibit E.

31. Article 19 of both the 2007-2012 CBA and the 2012-2015 CBA states that “[t]enured professional employees shall be retained on the basis of seniority rights acquired through continuous tenured, professional service in the Allentown School District in any or all areas of certification.” Exhibits E, F. AEA President Debra Tretter left “continuous tenured, professional service in the Allentown School District” in 2009 yet has continued to accrue seniority. Exhibit J.

32. In 2011, the District released a total of 112 teachers.³ A true and correct copy of relevant portions of the District’s January 8, 2016, Right-to-Know response is attached hereto as Exhibit K and incorporated herein by reference.

33. In 2013, the District released a total of 100 teachers. Exhibit K.

34. In 2014, the District released a total of 60 teachers. Exhibit K.

35. The District would have been able to retain at least one released teacher had the District not been using taxpayer dollars to fund the salary of the AEA President. Exhibit I.

3. Samantha Marcus, Tough talker v. Allentown Teachers, The Morning Call, July 26, 2011, available at http://articles.mcall.com/2011-07-26/news/mc-allentown-schools-hire-negotiator20110726_1_allentown-teachers-paul-blunt-deputy-superintendent-russ-mayo.

PSERS CREDIT

36. In addition, Tretter has continued to accrue pension credit despite no longer working in the classroom. As a result of Tretter's continued accrual of pension credit, the District has contributed over \$76,000 to PSERS since 2009, and the Commonwealth has reimbursed the District over \$47,000 in the same span. Exhibit I.

37. Because Tretter's years of service for purposes of PSERS currently includes 7 years that it should not, her PSERS annual payments will be worth approximately \$11,000 more per year than she should be receiving.

38. In order to continue to accrue pension credit through PSERS when an individual is not employed by a school district, there are guidelines provided by PSERS to determine if an individual is eligible. A true and correct copy of the Commonwealth of Pennsylvania – Public School Employee's Retirement System Guidelines for Completing Your Application to Purchase Credit for an Approved Leave of Absence is attached hereto as Exhibit L and incorporated herein by reference.

39. Unless a leave of absence is approved according to the guidelines, an individual no longer employed by the District may not receive pension credits. Exhibit L.

40. According to the guidelines provided by PSERS, an approved leave of absence must be approved by the school board and found documented in the school board minutes. Exhibit L.

41. According to the guidelines provided by PSERS, when on an approved leave of absence, the individual and not the District is responsible for both the member's share and the employer's share. Exhibit L.

42. When an individual takes an approved leave of absence, PSERS provides an employer verification form to confirm a member's leave of absence information and determine eligibility to retain service, salary, and contributions during the leave. A true and correct copy of the Commonwealth of Pennsylvania – Public School Employee's Retirement System Approved Leave of Absence – Employer Verification is attached hereto as Exhibit M and incorporated herein by reference.

43. Since 2009, AEA President Debra Tretter has not been employed by the District for purposes of contributions to PSERS.

44. There is no record of a leave of absence for AEA President Debra Tretter being approved by the Allentown School Board. A true and correct copy of the Right-to-Know response from PSERS is attached hereto as Exhibit N and incorporated herein by reference.

45. PSERS has no record of the District, the AEA, or the AEA President ever informing PSERS of either the AEA President's separation from service or approved leave of absence. Still, PSERS has continued to treat Tretter as a full and active contributing member of PSERS. Exhibit N.

46. Since leaving the classroom in 2009, over \$76,000 has been transferred to PSERS from the District for the current AEA President's pension. Exhibit I.

47. Since leaving the classroom in 2009, over \$47,000 has been given by the Commonwealth to the District for the current AEA President's pension.

48. From 2003-2009, former AEA President Melvin Riddick was not employed by the school district for purposes of contributions to PSERS. Exhibit F.

49. PSERS estimates their current unfunded liability is \$37.3 billion. A true and correct copy of the PSERS Active Member Newsletter Volume 1 – 2016 is attached hereto as Exhibit O and incorporated herein by reference.

50. That \$37.3 billion number assumes that current PSERS assets will grow at an investment rate of 7.5%. However, for 2015, PSERS' actual investment return rate was 3.04% which will greatly increase their unfunded liability. A true and correct copy of the PSERS October 6, 2015, Press Release is attached hereto as Exhibit P and incorporated herein by reference.

51. Every individual receiving pension credit and pension dollars who should not be enrolled in the system adds to PSERS' financial problems.

52. PSERS members' chances of receiving full retirement benefits from PSERS are lessened by the inclusion of individuals in the system who are not public employees.

CONTINUING FULL RELEASE TIME

53. At a meeting of the Finance Committee-of-the-Whole on October 8, 2015, then-School-Board-member Scott Armstrong requested that the District Solicitor "research the legality of the District paying for the Teachers' union president salary." A true and correct copy of the October 8, 2015, minutes of the Finance Committee of the Whole is attached hereto as Exhibit Q and incorporated herein by reference.

54. At the School Board's November 15, 2015, meeting, Armstrong discussed the Solicitor's opinion with the board which stated that paying the salary of the full-time teacher union's president was illegal. Exhibit C.

STATEMENT OF THE RELIEF SOUGHT

55. Petitioners seek declaratory and equitable relief to stop the AEA's practice of full release time. The release time provision that has been included in every CBA from at least 1990 to the present is a violation of the law (1) because

the provision violates the Pennsylvania Constitution; (2) because the parties lack the capacity to bargain for the employment of an individual who is not a public employee; (3) because the District bargained away control of a public employee; and (4) because the provision violates public policy. Accordingly, this Court should (5) issue a permanent injunction against full release time; and (6) require the AEA to reimburse the District and the State for all the money received under the release time provision. Alternatively, in securing pension credit for those serving full release time, the District and the AEA have violated title 24, sections 8102 and 8302(b), of the Pennsylvania Consolidated Statutes.

**COUNT I: FULL RELEASE TIME IS VOID UNDER THE PENNSYLVANIA
CONSTITUTION
(All Petitioners against all Respondents)**

56. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

57. Article VIII, Section 8 of the Pennsylvania Constitution (“Gift Clause”) reads:

The credit of the Commonwealth shall not be pledged or loaned to any individual, company, corporation or association nor shall the Commonwealth become a joint owner or stockholder in any company, corporation or association.

58. Through full release time, PSERS has pledged the credit of the Commonwealth to current AEA President Debra Tretter, former AEA President Melvin Riddick, and to the private association the AEA.

59. Specifically, Tretter has received credit toward a PSERS public pension for the time she served under full release time, in violation of the Gift Clause.

60. Since 2009, the District and the Commonwealth have continued to contribute toward Tretter's retirement as if she was a District employee, in violation of the Gift Clause.

61. Various AEA Presidents serving since 1990 have triggered retirement contributions from the District and the Commonwealth as if they were District employees, in violation of the Gift Clause.

62. The AEA has received a public pension for the AEA President—its employee—and has therefore received the benefit of not having to provide the AEA President with retirement benefits, in violation of the Gift Clause.

63. A public purpose is necessary before the Commonwealth's credit can be "pledged or loaned." See Tosto v. Pennsylvania Nursing Home Loan Agency, 331 A.2d 198, 205 (Pa. 1975).

64. Full release time does not serve a public purpose.

65. There is no public purpose served by PSERS providing a pension to AEA Presidents—private employees doing private sector work employed by private organizations.

66. Funds provided by the District and the Commonwealth toward AEA Presidents' pension do not serve a public purpose.

67. Any funds disbursed by PSERS and reflecting credit given while an AEA President was serving under full release time do not serve a public purpose.

68. Even if full release time and provision of pension credit to AEA Presidents served a public purpose, the arrangement between the AEA and the District is not reasonably designed to achieve those ends.

69. Accordingly, this Court should declare void the provision allowing for full release time.

**COUNT II: FULL RELEASE TIME IS VOID BECAUSE THE PARTIES LACK CAPACITY
(All Petitioners against Respondents AEA and the District)**

70. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

71. “The law of this Commonwealth makes clear that a contract is created where there is mutual assent to the terms of a contract by the parties

with the capacity to contract.” Shovel Transfer and Storage, Inc. v. Pennsylvania Liquor Control Bd., 739 A.2d 133, 136 (Pa. 1999) (emphasis added).

72. The Public School Code describes “collective bargaining” as conference or negotiation between the “employer” and “representative of the employes . . . with respect to wages, hours and other terms and conditions of employment.” 24 P.S. § 11-1111-A. Likewise, PERA describes “collective bargaining” as a conference or negotiation between a “public employer” and a “representative of the public employes . . . with respect to wages, hours and other terms and conditions of employment.” 43 P.S. § 1101.701 (emphasis added).

73. The AEA President, or any other employee on full release time from public employment, is not a public employee for purposes of the Public School Code or PERA, respectively. See 24 P.S. § 11-1101-A; 43 P.S. § 1101.301(2).⁴

74. The AEA is not a public employer for purposes of the Public School Code or PERA. See 24 P.S. § 11-1101-A; 43 P.S. § 1101.301(1).

4. “[W]here one may be in the general employ of another, yet he may, with respect to particular work, be transferred to the service of a third person, in such a way that he becomes, for the time being, the [employee] of that person with all the legal consequences of that relation.” Robson v. Martin, 140 A. 339, 341 (Pa. 1928).

75. The AEA President, or any other employee on “release time” from public employment, ceases to be engaged in public “employment” for purposes of the Public School Code or PERA.

76. The District and the AEA had no authority to enter into a collective bargaining agreement with respect to an individual who is not a public employee, not engaged in public employment, or not employed by a public employer.

77. The District and the AEA had no authority to provide a private employee with PSERS credit.

78. A District employee working full time for the AEA is employed by the AEA, not employed as a person engaged in work relating to a public school.

79. The AEA and not the District has the right to select the employee who serves as the AEA President.

80. The AEA and not the District has the power to discharge the AEA President.

81. The AEA and not the District has the power to direct both the work to be done and the manner in which such work will be done by the AEA President.

82. The AEA President is subject to the direction of the AEA.

83. The AEA President is subject to the control of the AEA.

84. The AEA President is subject to the supervision of the AEA.

85. The District has no direction, control, or supervision over the AEA President.

86. The AEA and the District have no authority to bargain for terms of full release time.

87. The District has no authority to pay the salary of a union worker or provide a union worker with the benefits of public employment.

88. Accordingly, this Court should declare void—and enjoin the provision of—full release time.

**COUNT III: FULL RELEASE TIME IS VOID BECAUSE THE DISTRICT BARGAINED
AWAY ITS CONTROL OVER A PUBLIC EMPLOYEE
(All Petitioners against Respondents AEA and the District)**

89. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

90. “[l]t should be recognized that a governmental agency does not have the freedom of a private enterprise to relinquish powers inherently essential to the proper discharge of its function.” Commonwealth, Pennsylvania Liquor Control Bd. v. Indep. State Stores Union, 553 A.2d 948, 954 (Pa. 1989); see Cnty. of Centre v. Musser, 548 A.2d 1194, 1201 (Pa. 1988) (holding that, since a prison is not a “private enterprise,” but rather a “government institution,” the prison

must retain appropriate powers to ensure it achieves the “governance and maintenance” with which it is statutorily charged).

91. Currently, the District is not supervising or providing oversight for the AEA President for whom it is providing a salary and benefits, including contributions to PSERS.

92. The District has no accounting for how the AEA President is spending her time, what her responsibilities are, or how she is performing.

93. The District was unable to name an individual or a job title for a Supervisor for AEA President Debra Tretter. Exhibit G.

94. The District does not have a record of AEA President Debra Tretter’s work attendance. See Exhibit G.

95. The District improperly relinquished its power and oversight over one of its employees and no longer has control over the governance and maintenance of that employee with which it is statutorily charged.

96. Accordingly, this Court should declare void—and enjoin the provision of—full release time.

**COUNT IV: FULL RELEASE TIME VIOLATES PUBLIC POLICY
(All Petitioners against all Respondents)**

97. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

98. The District's provision of full release time is void as against public policy.

99. A contractual provision may not be enforced if "to do so would be contrary to a clearly expressed public policy." Williams v. GEICO Gov't Employees Ins. Co., 32 A.3d 1195, 1200 (Pa. 2011).

100. "The fundamental public policy, expressed in the Constitution and underlying school laws, is to obtain a better education for the children of the Commonwealth." Walker's Appeal, 2 A.2d 770, 772 (Pa. 1938).

101. Full release time does not obtain a better education for the children of the Commonwealth. In fact, it harms students because it obligates the District to devote resources that benefit the AEA President and the AEA, not students or teachers teaching students.

102. Because of the release time provision, in 2011, 2013, and 2014, the District had to furlough a minimum of one additional teacher, a direct harm to

students resulting in larger class sizes, less personalized instruction, and loss of continuity in teaching. Exhibit K.

103. Since 2000, over \$1.3 million has been taken from Allentown students for the benefit of the AEA President and the AEA, a private organization. This \$1.3 million could have been used for additional teachers, supplies, better school infrastructure, or a myriad of other possibilities that would have benefited students.

104. Full release time harms students, directly violating clearly articulated public policy, and this Court should declare void and enjoin the provision allowing for union work on school time using state and District funds.

**COUNT V: PERMANENT INJUNCTION
(All Petitioners against all Respondents)**

105. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

106. Permanent injunctions are appropriate when the parties “establish [their] clear right to relief. . . . [T]he part[ies] need not establish either irreparable harm or immediate relief, and a court may issue a final injunction if such relief is necessary to prevent a legal wrong for which there is no adequate redress at

law.” Pestco, Inc. v. Associated Prods., Inc., 880 A.2d 700, 710 (Pa. Super. 2005)
(citation omitted).

107. Petitioners have established their clear right to relief.

108. There is no adequate redress at law for continuing provision of public resources to a private employee. Petitioners should not be made to continually seek restitution for such action.

109. This Court should issue a permanent injunction to stop the continuing practice of release time and the devotion of public resources, including PSERS credit, for private purposes.

**COUNT VI: UNJUST ENRICHMENT / INJUNCTION REQUIRING RESTITUTION⁵
(All Petitioners against all Respondents)**

110. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

111. The AEA has been unjustly enriched through full release time, in the provision of public salaries, benefits, and pension credits to its employees.

5. Money improperly distributed by a government agency may also be recouped for the benefit of taxpayers through a claim in assumpsit for moneys improperly disbursed. See Consumer Party of Pennsylvania v. Commonwealth, 507 A.2d 323, 327 (1986), abrogated on other grounds by Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth, 877 A.2d 383 (2005).

112. Allowing the AEA to retain the benefits provided by the District and the State would be unjust, inequitable, and unconscionable because retention would unjustly deprive the District of significant funds to which they are entitled.

113. The District and the Commonwealth are therefore entitled to an injunction requiring that the AEA provide restitution for those funds ceded to the AEA under full release time.

**ALTERNATIVE COUNT I: PENSION CREDIT ILLEGALLY GRANTED
(All Petitioners against all Respondents)**

114. The allegations of the foregoing paragraphs are realleged and incorporated by reference as if set forth fully herein.

115. PSERS has granted pension credit to both the current and former AEA President contrary to title 24, sections 8102 and 8302(b), of the Pennsylvania Consolidated Statutes.

116. Accordingly, this Court should declare that the AEA, PSERS, and the District acted contrary to the law and grant appropriate equitable relief as set forth in supra, at Counts V and VI.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray that this Court grant relief requested herein, specifically that this Court render a judgment in their favor and against Defendants:

- A. Declaring that the provision of full release time is invalid;
- B. Permanently enjoining its further effect;
- C. Relief in the form of an injunction requiring the AEA to return improperly disbursed funds to the District and the Commonwealth, with interest, including the full amount of the salary, benefits, and pension illegally taken and accrued under the full release time provision;
- D. Alternatively, declaring that PSERS has granted pension credit to both the current and former AEA President contrary to title 24, sections 8102 and 8302(b), of the Pennsylvania Consolidated Statutes and require relief an injunction requiring the AEA to return improperly disbursed funds to the District and the Commonwealth, with interest, including the full amount of the salary, benefits, and pension illegally taken and accrued under the full release time provision.

E. Granting any other declaratory or equitable relief this Court
deems appropriate

Respectfully submitted,

THE FAIRNESS CENTER

Date: February 24, 2016

/s/ Karin M. Sweigart

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VERIFICATION

I, Steven Ramos, being subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

Date: February 21, 2016

By: _____

VERIFICATION

I, Scott Armstrong, being subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

Date: February 21, 2016

By: _____

VERIFICATION

I, James Williams, being subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities, hereby state that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief.

Date: February XX, 2016

By: _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Petition for Review and referenced exhibits has on this date been served on Respondents as follows:

Public School Employees Retirement System (certified mail)
5 N. 5th Street
Harrisburg PA 17101-1905

Allentown Education Association (commercial carrier)
2101 Mack Blvd.
Lower Level
Allentown, PA 18103

Allentown School District (commercial carrier)
31 S. Penn Street
Allentown, PA 18102

Attorney General Kathleen Kane (certified mail)
1600 Strawberry Square
Harrisburg, PA 17120

Date: February 24, 2016

/s/ Karin M. Sweigart

Karin M. Sweigart

PA Attorney ID#: 317970

David R. Osborne

PA Attorney ID#: 318024

630 Freedom Business Center Dr., Suite 109

King of Prussia, PA 19406

570.574.9289

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