

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE
COUNTY, FLORIDA

CASE NO.: 2011-28308-CA-01

SHAWN BEIGHTOL

Plaintiff,
vs.

MIAMI-DADE COUNTY SCHOOL
BOARD; ALBERTO CARVALHO, in
his official capacity as Superintendent of
Schools, Miami-Dade County Public
Schools,

and

UNITED TEACHERS OF DADE,
LOCAL 1974, AND KAREN
ARONOWITZ, in her offician capacity as
president of the United Teachers of Dade,

Respondents.

COMPLAINT - MOTION FOR INJUNCTIVE ORDER

Petitioner, SHAWN BEIGHTOL, hereinafter, Beightol, files this action seeking an emergency injunctive order against respondents, Miami-Dade County School board, hereinafter MDCPS and the United Teachers of Dade, hereinafter, UTD, and says as follows.

Jurisdiction

1) Respondents' principal headquarters are located in MIAMI-DADE COUNTY, FLORIDA.

2) Petitioner is an employee of MDCPS and a member of [the bargaining unit represented by] the labor union, UTD

3) Florida Statutes 447.507 and 447.509 establishes the State Circuit Court as the proper venue to request injunctive relief for violations of F.S. 447.

Preliminary Statement

4) Plaintiff challenges the legality and fairness of the ratification of MDCPS' agenda item D-22 (Item D-22 “REQUEST FOR APPROVAL OF MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN MIAMI-DADE COUNTY PUBLIC SCHOOLS (M-DCPS) AND THE UNITED TEACHERS OF DADE (UTD) TO IMPLEMENT A PLAN TO SUPPORT THE PROPOSED RACE TO THE TOP (RTTT) SCOPE OF WORK ”) scheduled for September 7th, 2011 at the MDCPS monthly board meeting.

5) Item D-22 is the acceptance and implementation of a contested significant Collective Bargaining Agreement (CBA) amendment ratification vote conducted by UTD August 29th – 31st, 2011.

6) The ratification vote conducted by UTD has been challenged as an unfair labor practice for its alleged multiple violations of Florida Administrative Code (FAC) 60CC-4.002 to the Florida Public Employees Relations Commission (PERC), assigned Case Number CB11073 and placed on the docket for hearing.

7) The basis for the filed complaint against UTD is “insufficient notice” for the ratification vote on matters of significance to the members of the bargaining unit. UTD sent an email notification 2 business days before the ratification began, an email that was not received by certain members of the bargaining unit and did not contain required clarifying language to indicate that it was open to all members of the bargaining unit.

8) Due to the case load and rate of hearings, it is not expected that a PERC order will be issued before the implementation of MDCPS board item D-22 with its financial and employee evaluation consequences.

9) The petitioner has offered a settlement solution to UTD and MDCPS regarding PERC Case Number CB11073 that would allow for a timely resolution of the disputed ratification vote and its consequences without damage to any parties involved.

10) The petitioner and numerous other teachers have contacted MDCPS via email to request that board item D-22 be delayed until either the settlement might be enacted or PERC issues its order. No indication has been provided to the petitioner that such email communication has been considered.

11) The petitioner requests that this Court assume jurisdiction and declare the board item D-22 premature and to block its ratification by MDCPS pending PERC's ruling on the underlying labor ratification vote's validity in order to prevent a series difficult reversals

of action on the likely ruling by PERC that the labor ratification vote upon which D-22 consists to be invalid.

Parties

12) Shawn Beightol is a chemistry teacher for Miami-Dade County Public Schools. He has worked for MDCPS since December of 1993. He is not a dues paying member of the UTD, but is a member of the collective bargaining unit affected by the ratification vote announced Wednesday, August 24th, 2011, conducted Monday, August 29-31, 2011 and now being voted for adoption by MDCPS September 7, 2011.

13) The Miami-Dade County School District is a public entity created by F.S. 1001.30. The District is governed by the Miami-Dade County School Board (MDCPS). MDCPS is responsible for the establishment, organization and operation of all public schools within Miami-Dade County.

14) Alberto Carvalho is the Superintendent of Schools for Miami-Dade County. He is designated by School Board Rule 6Gx13-2A-1.02 as the executive agent of the MDCPS and chief administrative officer of the school system. He is responsible for carrying out MDCPS orders and directives, including the board item D-22 at issue in this petition. This petition comes against Alberto Carvalho in his official capacity.

15) The UTD is the sole bargaining agent for the approximately 23,000 teachers of Miami-Dade County Public Schools (MDCPS).

16) Karen Aronowitz is the president of the UTD. This petition comes against Karen Aronowitz in her official capacity.

Statement of Facts

17) On August 18th, 2011, the 20,000+ public school teachers of Miami-Dade County Public Schools returned to work from their summer break.

18) On August 19th, a mandatory meeting of all teachers was held at teachers' respective school sites in which they were required to watch an informational video (<http://prodev.dadeschools.net/> - lower right of screen) explaining to the teachers how their job performance evaluation process has been changed in response to the passage of Florida Senate Bill 736 (see http://ipegs.dadeschools.net/pdfs/IPEGS_Update.pdf for the script of the video). The video did not mention that the changes were pending bargaining unit ratification. The effect of the video was that this was the change to the teacher evaluation method imposed by the passage of S.B. 736.

19) On Wednesday, August 24th, 2011 at 6:01 PM, the plaintiff received an email from the president of UTD, Karen Aronowitz, announcing the bargaining unit's opportunity to ratify the contract changes described at certain website addresses (see attachment A). The ratification vote “window” is announced: “Voting Window – Monday, August 29 (8:00 am) to Wednesday, August 31 (5:00 pm).”

20) This announcement, the only official announcement the bargaining unit received from our bargaining agent, came with 2 business days' notice of the start of the ratification process, denying bargaining unit members adequate time to study the contract language changes; to organize, meet and discuss amongst ourselves; to meet corporately with our bargaining agent representatives for questions and answers; to schedule and meet with our Employer's representatives qualified to answer questions; and to schedule and meet with other qualified professionals (labor lawyers, educational specialists).

Likely To Succeed On The Merits

21) 2 business days' notice on substantial CBA changes that will result in evaluation of performance and dispensing of performance pay is not sufficient notice as described in FAC 60CC-4.002. In other similar motions for injunctive relief regarding CBA changes or ratifications, effective noticing time of 38 days and 34 days between announcement of the proposed changes and the receipt of the actual paper ballots [see Shelley vs. American Postal Workers Union, Civil Action No. 11-0677 (BAH)] are implied as sufficient. Regarding a member's choice to stop paying a labor organization membership fees (dues) and to cease being a dues paying member, F.S. 447.303 requires 30 days notice to the employer and the labor organization. Such a time frame and consideration should be extended to the employee from the employer (MDCPS) and labor organization (UTD) in return on substantial matters affecting compensation and employment reviews. Regardless of the applicability of such expectation of "fair" and equal treatment and consideration, the 2 days notice in this ratification notification cannot be defended in any light as having been "communicated sufficiently in advance...to permit the members of

the bargaining unit a reasonable opportunity to consider the matters... (FAC 60CC-4.02(1)).”

22) Furthermore, the manner in which the contract language change ratification vote was announced fails to satisfy Florida's Public Employees Relations Commission Rule 60CC-4.002 (Ratification by Members of Bargaining Unit) on the following points:

a) it specifies (60CC-4.002(1)(a)-(d) means of communication to include “posting in conspicuous places,” “personal delivery,” “mailing,” or “advertising.” Instead it chose an after-hours school email 2 days before the vote.

b) Not all bargaining unit members have access to email. On questioning, security guards (members of the affected bargaining unit) have reported that they had received no notification of the ratification vote. A communication from a district administrator also supports that email notification did NOT go out to “All Staff” but rather to “Teachers.” In addition to teachers, there are security guards, paraprofessionals, secretaries, and counselors in the affected bargaining unit.

c) The email UTD sent out does not state that “all members of the bargaining unit are eligible to vote” (60CC-4.002(2)(c). Such a statement is necessary, particularly in the first week of school when the email was sent (a very hectic, information saturated time for MDCPS employees) in order to prevent the inadvertent dismissal of such communications as pertaining only to dues paying members.

d) The vote was conducted by internet E-vote which cannot and is not organized to allow vote counting to be observed publicly (required by 60CC-4.002(3) & (5)(d). In fact, UTD is currently being investigated in court and by its “parent” organization, the

American Federation of Teachers for its use of this very same voting procedure on account of discrepancies in vote results reported. On this point, consider what multi-university/academic NSF funded think tank ACCURATE has to say on electronic voting (this opinions was solicited by the department of labor to render a decision regarding the usage of E-Voting by Unions). This is their conclusion:

"In summary, electronic voting is an extremely difficult computer-facilitated activity to assure with confidence. ACCURATE recommends that voter-verified paper records (VVPRs) be required for voting systems involved with critical elections. Further, VVPRs are not meaningful themselves without robust audit processes that serve as a check on the voting system, ensuring that the reported election outcome is correct. We strongly urge the Department of Labor to refrain from issuing guidelines that permit internet voting, as in many respects there are no effective methods for ensuring security, integrity and reliability of such systems." - <http://accurate-voting.org/docs/comments/accurate-olms-comment-mar2011.pdf>

23) On this latter point of Evoting – except an insufficiently noticed email (lacking minimum required language as described above), no physical notification went out. With a paper ballot ratification or a school site/work location ratification, there is a physical message and reminder that a ratification vote affecting work conditions is underway. The effect of missing or not receiving the single email 2 days prior means the employee will not by chance stumble upon the UTD website and discover a vote is occurring which affects his/her work conditions and pay.

24) This is the 2nd ratification vote within 3 months with insufficient notification, the first being a vote allegedly held on/around June 6th. No date can be given because no notice was given, so employees (the petitioner included) did not know when the vote was to take place, yet in the June 7th MDCPS Board Meeting, the results of the alleged ratification vote (claiming 92% support) were accepted and voted on by MDCPS. This insufficiently (no) noticed ratification vote has also been filed as an Unfair Labor Practice Complaint with PERC and [has been assigned the Case Number CB-11-076]. See <http://pdfs.dadeschools.net/Bdarch/2011/Bd061511/agenda/D-22.PDF>

Likely To Suffer Irreparable Harm In The Absence Of Preliminary Relief

25) This court is the only institution with the authority and jurisdiction to act to grant injunctive relief from the MDCPS adoption of the insufficiently noticed CBA changes for MDCPS teachers and employees in the UTD bargaining unit in a timely manner. PERC's docket is booked through November.

26) By September 30th, monies will be distributed as a consequence of this insufficiently noticed ratification vote if it is approved as expected by MDCPS (expected since they negotiated it).

27) If PERC invalidates the UTD ratification vote of the CBA changes as expected, PERC will require the consequent actions to be reversed.

28) It is likely that in the time that PERC requires to hear and issue an order, financial rewards dispensed as a result of consequent job evaluations will have been spent by the recipients, producing a difficult financial situation to recover the \$14 million that is scheduled to be awarded to teachers.

29) Additionally, the job performances that will be assigned on the basis of the formula described in the earlier referenced proclamation of the changes (http://ipegs.dadeschools.net/pdfs/IPEGS_Update.pdf) and enacted by MDCPS acceptance of the challenged UTD ratification vote could result in negative personnel evaluations as well as positive. It is likely that irrecoverable work opportunities may be granted or denied based on the challenged ratification vote.

30) Furthermore such financial compensations (and denials) and evaluations are inequitably assigned, with employees having students directly measured by FCAT having the benefit of their own MERIT measured by the FCAT, while other teachers not having students assessed on the subject they teach (science, art, government, 3rd grade reading, etc) will be assessed on the average Reading Proficiency of the children of their school. Some teachers will also be eligible for consideration of financial reward on the basis of multiple measures while others on NONE related to their actual work/impact on their students.

31) The petitioner fears that his filing of an Unfair Labor Practice Complaint with PERC that will be heard after the fact of the dispensing of financial rewards and positive work

changes (promotions, assignments) may result in negative attention and publicity when PERC invalidates the ratification vote as anticipated. UTD has on 2 other occasions used instances of the petitioner's activism to cast him in bad light, ultimately leading to his expulsion from the UTD (October 2006 and May 2008).

**Likely That the Threatened Injury Outweighs Any Harm Caused by Granting
Injunction**

32) The petitioner has offered to settle the PERC filed Case Number CB11073 immediately to produce an agreement that contains input by the professional associations of bargaining unit employees affected by the proposed CBA changes. Such a settlement would be under the authority of UTD but expand the scope of input to the many and diverse unit members affected by the current proposed agreement. It would be properly noticed so that all bargaining unit members would have time to think about the impact of the proposed changes and have the opportunity to vote. This court's granting of the injunction against the acceptance of the challenged ratification vote would provide MDCPS and UTD with the less disruptive opportunity to rewrite the evaluation formula within the parameters of the law (F.S. 1012.34/SB 736) and represent it to the bargaining unit with proper notification and information.

33) Florida's Senate Education Committee has confirmed that other alternatives to using the school average for "reading proficiency" as a measure of a teachers effectiveness have been submitted and approved by the state. The settlement asks for focus groups of teachers to review these alternatives and select measures appropriate to their brand of

teaching/subject not covered by the FCAT (art, music, physical education, social studies, science, counseling, etc).

34) The specifics of the settlement agreement are: a) That MDCPS and UTD provide an avenue for open communication amongst teachers/bargaining unit members to allow for discussion and debate about related work matters – without fear of reprisal or punishment. Currently MDCPS and UTD share the monopoly on the 24,000 email addresses and communication to the bargaining unit members, with no ability for dissenting voices to rebut the statements made by MDCPS or UTD without fear of discipline. The communication system established sets up a one way “rubber stamp” avenue of communication.

b) An immediate convening of sufficient “Focus Groups” to represent the bargaining unit members not measured by FCAT to consider and propose alternatives to the current language of “reading proficiency.” These groups could/should be the NBCT teachers/groups, the Dade County Science Teachers Association, the Dade Art Educators Association, Miami-Dade Council for the Social Studies, Dade Counseling Association, the Florida Bandmasters Association (district 16), and other related PROFESSIONAL associations representing PROFESSIONAL educators in MDCPS. Other School Districts have already established alternative measures – we just need to research, evaluate, and agree within each of our disciplines on the appropriate measure for each group.

c) PERC supervised implementation of the agreed upon changes to the evaluation formula (CBA changes) and PERC censure of the UTD to prevent such inappropriate ratification strategies in the future.

Granting The Injunction Will Not Be Adverse To The Public Interest

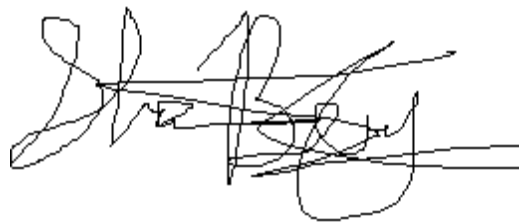
35) Currently, with what little activism that was able to be accomplished with the limited communications channels available to members of the bargaining unit, UTD reports that 1000 teachers voted “NO” to the proposed CBA changes that are to be voted for acceptance by the MDCPS Board Vote September 7th, 2011.

36) It is certain that with increased input and access to communications channels, more bargaining unit members will be involved in the expected ordered replacement ratification vote (or the settled replacement ratification vote). For example, the ratification vote of February 20, 2002 involved 16,676 bargaining unit members compared to UTD's reported 6,900 involved in the instant ratification vote.

37) Such increased voice and participation in the final ratification vote is in the best interest of the community, School System, and the UTD. Such increased voice is best provided for by the granting of the motioned injunctive relief from [the scheduled implementation of MDCPS' September 7th Board approval of Agenda Item D-22 until it can be revised according to a negotiated settlement or ruled upon by PERC (re: Case Number CB-11-073)].

Wherefore, the Petitioner respectfully asks that the [Court] grant the following relief:

1. Assume jurisdiction over this case;
2. Declare that the MDCPS scheduled vote on Board Agenda Item D-22 for September 7th, 2011 of UTD's short noticed ratification vote violates Plaintiff's and other bargaining unit members' rights as protected by the Florida Statute 447 and Administrative Code Rule 60CC-4.002 ("Ratification by Members of Bargaining Unit");
3. Enjoin Defendants United Teachers of Dade, Defendant Karen Aronowitz, Miami-Dade County School Board, MDCPS Superintendent Alberto Carvalho and their respective agents, successors and assigns from [implementing MDCPS Board Item D-22 based changes to the Collective Bargaining Agreement of the UTD represented bargaining unit and from distributing financial rewards/merit/performance pay associated with the RTTT initiative included in the contested union ratification vote].
4. Enjoin Defendants United Teachers of Dade, Defendant Karen Aronowitz, Miami-Dade County School Board, MDCPS Superintendent Alberto Carvalho and their respective agents, successors and assigns to repeal the board ratification of D-22 of September 7th, 2011 and resubmit when either a) a settlement agreement is reached by the petitioner with the defendants or b) PERC issues its order on the Unfair Labor Practice complaint (Case Number CB11073) challenging the validity of the UTD ratification vote upon which Item D-22 is contingent;

A handwritten signature in black ink, appearing to read "Shawn Beightol", written over a set of horizontal lines.

Shawn Beightol

[REDACTED]

[REDACTED]