STATE OF LOUISIANA PARISH OF OUACHITA FOURTH JUDICIAL DISTRICT COURT

DEANNE WILLIAMS

VERSUS NO. 13-1268

MONROE CITY SCHOOL BOARD

FILED: AUG 16 2013

CONSTANCE T. PSS

BY: _____

DEPUTY CLERK OF COURT

RULING ON PETITION FOR
DECLARATORY AND INJUNCTIVE RELIEF AND FOR
THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER

The petitioner, DeAnne Williams, is a tenured teacher employed by the Monroe City School Board ("Board").

FACTS AND ANALYSIS OF ACT 1

By letter dated February 28, 2013, from Derenda Flowers, Interim Superintendent of the Monroe City School System, Petitioner was notified that she was subject to disciplinary actions, which could include termination of her employment. The letter detailed the charges, and advised her that she had seven days to respond, all in accordance with LSA-R.S.17:443 B (1), as amended by Acts of 2012, No. 1, Sec 3, effective July 1, 2012. (Hereafter "Act 1"). This was step one prescribed by Act 1.

Petitioner timely responded to the Charge Letter, which constituted step two of the prescribed procedure.

The next step was to be termination by the superintendent without any kind of hearing, not even a one-on-one meeting with the interim superintendent to discuss the allegations contained in the charge letter.

The Board has taken the position that action by the superintendent on behalf of the Board and School System could be something less than termination. However, a fair reading of the charge letter caused Petitioner to reasonably fear termination by the superintendent, which is the third step in the procedure authorized by Act 1. And, given the nature of the charges, there is little doubt that termination would have been the next step taken. That is exactly what Act 1 provides for- termination by the superintendent.

To prevent the superintendent from terminating her, Petitioner filed this suit, and the Court issued a preliminary injunction, prohibiting the superintendent from taking step three, terminating Petitioner. The Court has now heard the case in support of a declaratory judgment and a permanent injunction.

In the Court's opinion, tenured employment is a right so important that it cannot be taken away without a hearing of some kind. The case of *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 105 S. Ct. 1487, 84 L.Ed 2. 494 (1985) is of some guidance, but the right involved here is even more important, so some kind of pre-termination hearing is required.

Step four prescribed by Act 1 gives the tenured teacher the right to request a post-termination hearing before a hearing panel. This panel is not an odd-numbered panel of administrative law judges, or some other objective panel; instead, it is a panel consisting of a designee of the superintendent (who would likely do the superintendent's bidding), a designee of the teacher's principal[1] (who would have recommended the termination, and whose designee would be likely to do his or her bidding) and a designee of the teacher, who, however independent, would likely be out-voted from the start. Trusting that the designee of the superintendent and principal would not be subject to their influence would be, simply, dumb. However, once the panel is constituted it would conduct a hearing, according to the procedure. This is step five. And this post-termination "hearing" before this "tenure hearing panel" would commence within seven days after the teacher requests a hearing.

As step six (R.S.17:443 B(2)), Act 1 provides as follows:

> The tenure hearing panel shall submit its recommendation to the superintendent, and the superintendent **may** choose to **reinstate** the teacher. (Emp. Added)

The quoted provision shows that the panel has no power whatsoever, because the superintendent can completely ignore its recommendation. It is also clear that the flawed panel proceeding follows termination of the tenured teacher; otherwise, the word "reinstate" would not have been used in Act 1. See R.S. 17:443 B (2).

[1] Who serves under the authority of the superintendent and is subject to his influence.

If, as step seven, the superintendent maintains his or her decision to terminate the teacher, then the teacher may, as step eight of the procedure, petition the Court for a limited review. Limiting review is acceptable when there is a statutory constituted review panel or board, such as the Board of Review that hears appeals in unemployment cases. However, there is no properly constituted objective board or panel provided for in Act. 1.

Petitioner requests that this Court declare Act 1 unconstitutional and enjoin the Superintendent /Board/School System from utilizing the procedure prescribed by Act 1 to terminate her. She correctly argues that Act 1 procedures, as they related to disciplinary actions against tenured teachers, and particularly termination of tenured teachers, and that is all that R.S. 17:443 B (1) (2) addresses, is unconstitutional.

CONCLUSION

For the foregoing reasons, the Court declares Act 1, unconstitutional as it applies to tenured teachers, and since R.S.17:443 B (1), (2), as amended by Act 1, applies only to tenured teachers, those provisions of Act 1 are unconstitutional, for the reason that the statute denies teachers the due process that is appropriate for the important property right it applies to tenured employment.

Act 1 denies this teacher, and all tenured teachers in Louisiana, the property protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the right to due process guaranteed by Article 1, Sect 2 of the Louisiana Constitution.

Accordingly, the Superintendent /Board/Monroe City School System are permanently enjoined from proceeding against Petitioner using the procedure outlined by Act 1.

Because of the impact of declaring Act 1 unconstitutional, the Court draws to the attention of the defendant Monroe City School Board, the case of *Louisiana Republican Party v. Foster*, 96-0314, 674 So.2d 225, 233-234 (La. 5/21/96), where our Supreme Court held that when an act that amends a statute is found to be unconstitutional it has been ineffective and the statute sought to be amended stands, unaffected by the attempted amendment. That means that school boards may proceed to discipline teachers according to the procedures

provided by the statute in place before the amendment. This simply means that the Monroe City School Board may, if it chooses to do so, initiate disciplinary actions against Petitioner.

Monroe, Louisiana, this 16th day of August, 2013.

BENJAMIN JONES
DISTRICT JUDGE
CIVIL SECTION 3
DIVISION "H"

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