IN THE SUPREME COURT OF FLORIDA

UNITED TEACHERS OF DADE, FEA/UNITED, AFT, LOCAL 1974, AFLC-CIO, et al.,	
Petitioner,	Case No. 67,430
v.	First DCA Docket No. BG-39
DADE COUNTY SCHOOL BOARD, SUPERINTENDENT LEONARD BRITTON, and THE STATE BOARD OF EDUCATION OF THE STATE OF FLORIDA,	On Appeal from the Circuit Court, Second Judicial Circuit, In and for Leon County, Case No. 85-169
Respondents.	

REPLY BRIEF OF INTERVENORS

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ARGUMENT

I. RESPONDENT CONTINUES TO AVOID THE ISSUE--I.E., WHETHER THE PAYMENT OF A WAGE BY THE STATE TO TEACHERS EMPLOYED BY DISTRICT SCHOOL BOARDS DEPRIVES THESE PUBLIC EMPLOYEES THE RIGHTS GUARANTEED THEM BY ARTICLE I, SECTION 6, OF THE FLORIDA CONSTITUTION.

In its Answer Brief, Respondent persists in its mischaracterizations of the issue before this Court, the position of Petitioners, and the implications of a reversal by this Court of the decisions rendered in the courts below. Contrary to Respondent's position, the issue is not whether the Legislature should be compelled to negotiate statewide standards with local unions representing each of the 67 counties. Contrary to Respondent's misrepresentation, the remedy requested is not to require the Legislature to negotiate with these local unions. The issue in this case, as stated in Petitioner's Initial Brief, is whether Florida Statutes 231.533 and 231.534 unconstitutionally deny teachers in Florida the right to negotiate concerning wages. If this Court finds in the affirmative, the remedy requested is that the offending part or parts of the statutes in question be struck down.

With specific reference to the argument of Respondent, it is stated at page 14 of its Answer Brief:

> The real contention of the unions is that the Florida Legislature may not provide extra funds directly to teachers without bargaining about it with teacher unions. The unions thus claim an enhanced right not enjoyed by private employees: the right to bargain with an entity which is the employer of employees whom they represent.

This is not the "real contention of the unions." We do not contend that the Legislature must negotiate the provision of extra funds directly to teachers. In fact, it is our contention that the Florida Legislature may not provide these extra funds directly to teachers under any circumstances. Nowhere is it argued that the certified bargaining agents of teachers in the 67 counties of Florida wish to negotiate with the state, unless, of course, the state becomes the employer of all Florida teachers. We contend only that what the Florida Legislature did was unconstitutional and that bargaining with regard to wages must occur at the local level with the School Board as the employer.

Respondent, perhaps inadvertently, correctly frames the issue in its own words when it states, "Only the Legislature possesses the power to control the amount of the Master Teacher Program award."[1] That is the fundamental question--i.e., whether that "control" is constitutional.

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[1] Answer Brief at page 14. All future references to the Answer Brief will be indicated in the text by (AB. __).

II. RESPONDENT'S ARGUMENT THAT THE MASTER TEACHER PROGRAM AFFECTS ONLY A LIMITED CLASS OF PUBLIC EMPLOYEES WHO VOLUNTARILY PARTICIPATE IS NOT DETERMINATIVE OF THE ISSUE BEFORE THIS COURT.

In the main body of its argument, Respondent seeks to justify the argument that the Master Teacher Program does not abridge public employee bargaining rights in any manner, by making the following creative yet neither legally nor logically compelling argument:

> It is indisputable that the bargaining right of the overwhelming majority of "public employees" remain entirely unaffected by the state Master Teacher Program. The maximum possible impact of the state Master Teacher Program upon the universe of Florida "public employee" collective bargaining rights cannot extend beyond the limited class of continuing contract public school instructional personnel who voluntarily qualify as associate master teachers and who are "compelled" to accept a fixed $3,000 incentive award without being able to bargain over it. (Emphasis added)

(AB. 17) The essence of this argument seems to be that, because a majority of public employees are not affected, and because those who are affected are volunteers, the legislation is not unconstitutional. There is neither case law nor logic to support the proposition that a majority of public employees who are not volunteers must be affected by an action before that action can be declared unconstitutional.

In further response to Respondent's argument in this regard, Petitioner urges this Court to consider that the "award" for the master teacher is not significantly distinguishable from the amount negotiated for supplements for work voluntarily performed by a limited class of teachers in local school districts. There can be little or no question that negotiations concerning the amounts of pay to be awarded for these voluntary activities are clearly mandatory topics of negotiation in Florida. The Florida Public Employees Relations Commission, in In Re Petition for Declaratory Statement of Levy County Education Association and the School District of Levy County, Florida, 11 FPER ¶16096 (1985) (Appeal filed April 10, 1985) stated in pertinent part,

> Other jurisdictions with the statutory definitions of subjects of bargaining similar to ours have interpreted their statutory language as requiring negotiations on supplemental pay. See, e.g., West Hartford Education Association v. Dayson DeCourcy, 162 Conn. 566 (Conn. 1972) (compensation for extracurricular activities must be negotiated); PLRB v. Canon-McMillan School Board, supra; Lois Vanmeter and Wabash City Schools, 1 IPER 157 (Ind. Ed. Emp. Rel. Bd. 1976) (extracurricular salary for high school volleyball, junior high volleyball and high school basketball is mandatory subject of bargaining). Our research has revealed no jurisdiction with a similar statute which has reached a result contrary to the result we reached today.

11 FPER ¶16096 at page 313. The foundation of the Commission's decision was a straightforward definition of "wages." "Wages" is expressly made a mandatory subject of bargaining by Section 447.309(1), Florida Statutes (1983). A similar application of a straightforward definition of wages in the instant case will result in the same conclusion--i.e., the "award" of $3,000 to a master teacher is a wage and must be negotiated. "Wages" are paid by employers. The State of Florida is not the employer and therefore cannot pay such a wage.

Petitioner maintains further that there is no distinction between the determination by the Legislature of the amount to be paid a master teacher, and the determination by local school boards regarding the amount to be paid teachers achieving certain standards or credentials such as a master's degree, doctorate, etc.--the pursuit of which is strictly voluntary and affects only a limited class. Yet, there is no question that the School Board must negotiate the salary to be paid these few teachers who achieve these standards. The Legislature is attempting to unconstitutionally impose an additional salary schedule over the one negotiated lawfully by the certified bargaining agent and the employer.

If this Court adopts Respondent's argument, it would be permissible for the Legislature to impose standards and wages without restraint, thus rendering negotiations concerning wages

at the local level a nullity. And, according to the Respondent's argument, the Legislature could do such with impunity, never discussing it with the unions, because the State is not the "employer."

Respondent persists in its argument that the limited impact of the state Master Teacher Program "upon the universe of Florida public employee collective bargaining rights", and the voluntary nature of participation somehow justifies it being distinguished from other mandatory topics of bargaining. Respondent states that "[T]he closely circumscribed reach of the Master Teacher Program in comparison to the public employee population of Florida buttresses the conclusion that no indiscriminate State intrusion on employee bargaining rights is even theoretically involved here, contrary to the inflated rhetoric of unions briefs." (AB. 18) The "closely circumscribed reach of the Master Teacher Program" has nothing to do with whether it affects wages of public employees. Neither the Constitution of Florida nor Chapter 447 require that a majority of public employees be affected before their rights to collective bargaining become vested.

III. PETITIONER/INTERVENORS DO NOT SEEK NEGOTIATIONS WITH THE STATE CONCERNING STATEWIDE STANDARDS. INTERVENORS SEEK, INSTEAD THAT NEGOTIATIONS REGARDING WAGES AND TERMS AND CONDITIONS OF EMPLOYMENT BE NEGOTIATED WITH THE TEACHERS' EMPLOYER--I.E. THE RESPECTIVE LOCAL SCHOOL BOARDS.

Respondent, in addressing Petitioner's Brief, makes reference to the "dubious suggestion" that increased or more stringent standards than those established by the Legislature could be established through local bargaining. The intent and effect of such a statement is to denigrate both school boards and teachers alike, the clear implication being that the Legislature is the only party interested in improving educational standards in the State of Florida.

Respondent then quotes the Intervenor's Brief wherein it was stated, "Appellants in this case have <u>never</u> argued that it was their intent to negotiate statewide standards." Respondent concludes in its brief that these are "wholly irreconcilable notions" which exemplify "the union's consistent inability to articulate precisely how mandatory local bargaining could accomplish anything but the destruction of a uniform statewide award plan (AB. 21, fn. 3)

Respondent's refusal or inability to admit that these two notions are <u>not</u> wholly reconcilable, but, in fact, are consistent, exemplifies its continuous misstatement of the issue

before this Court. Nowhere is it suggested in the above quoted statement by Intervenor, or in any other statement or argument made by Intervenor, that local school boards and certified bargaining agents for teachers should or could negotiate statewide standards. The fact that local school boards and teacher unions can, and do, negotiate county standards and "awards" does not compel the conclusion that these locally negotiated standards are to be applied statewide. What is argued is that the place to negotiate wages concerning standards established by the Legislature, credentials required by local school boards, supplements for voluntary activities by teachers, and any other "wages" is between the local School Board as the employer and the teachers' certified bargaining agent.

Respondent continues to enunciate its misrepresentation of Petitioner's position, stating in its Answer Brief that, "teachers possess no constitutional right to bargain statewide educational standards with the Florida Legislature." Intervenors are reluctant to address this argument further because we maintain that it is a waste of this Court's time. We have never argued that teachers have a constitutional right to bargain statewide educational standards with the Florida Legislature. We would not make such an argument unless the State of Florida is designated the employer for Florida's teachers.

Nevertheless, Intervenor is equally reluctant to risk ignoring compeltely Respondent's eleven pages of argument on this point, however specious. It is enough to state that Respondent continues to misunderstand, one assumes intentionally, that Intervenor's argument that merit raises are negotiable does not compel the inescapable conclusion that the local unions wish to negotiate these raises with the State. To the contrary, as stated previously, the Intervenors wish to negotiate these raises with their respective local school boards.

The state continues its obfuscation of the issue by stating in its brief,

> Had the trial court found the unbargained award constitutionally repugnant and assigned to the State Board of Education, for example, a duty to negotiate concerning the award with the UTD, or with any of the Intervenors, such a result would not have constituted a meaningful enhancement of teacher bargaining rights.

(AB. 26) The Intervenors are compelled to assert again that Respondent attributes to them a theory and motivation which are nonexistent. The Intervenors do not seek to negotiate with the State Board of Education.

Respondent suggests that if this Court agrees with Petitioner, "a drastic curtailment of legislative authority" would result at the cost of the termination of the Legislature's right to regulate public employment." (AB. 27) To suggest, as

Respondent did in its brief, that such a decision would render powerless the Legislature of the State of Florida to regulate public employment is insupportable and patently absurd.

Respondent argues that the Intervenors' theory is "meritless"--i.e., the theory that wages are only to be paid by employers. That this theory is both totally logical and completely supported by law is apparently unimportant to Respondent. Respondent continues, concluding that this "meritless theory...rests on the assumption that the Legislature has power to furnish money to district school boards but not directly to employees--a wholly unfounded assumption devoid of any basis in law or policy." (AB. 27) (Emphasis added) The magnitude of this misstatement, or misunderstanding, of school finance is difficult to comprehend.

In fact, the Legislature routinely furnishes money to district school boards, and not directly to employees. That is how education, in large part, is funded. This Court is requested to take judicial notice of the fact that local school boards receive their annual allocation from the Florida Education Finance Program (FEFP) pursuant to Section 236.081, et seq., Florida Statutes (1983). The funding formula is based upon the number of full-time equivalent students (FTE's) in attendance and the type of programs offered. These discretionary and categorical funds supplied by the state Legislature constitute the major portion of the school board's operating budget from which

the school board determines the amount of wages to be paid to teachers as a result of collective bargaining negotiations with the teachers' certified bargaining agent.

This is exactly what Intervenors maintain should result from this Court's decision--i.e., a finding that it is unconstitutional for the Legislature to award "wages" directly to teachers would, or could, result in the Legislature awarding a fixed amount to school boards for distribution to "master teachers." The process for designation of an individual as a master teacher, and the amount paid to each, would be left to the discretion of the school board and the teachers' certified bargaining agent. For Respondent to suggest that this process is devoid of any basis of law or policy and that it would render powerless the Legislature of the State of Florida to regulate public employment shows a decided lack of understanding of both educational finance and labor law in the State of Florida.

In an attempt to further justify its position, Respondent notes "the trial court was wisely aware that to invalidate the Master Teacher Program would ultimately implicate many other statutory provisions (R. 186)." (AB. 33) Intervenors would argue if that is true, those implications should be considered when they are raised. The fact that there are, or may be, such implications cannot be seriously argued as a reason to ignore the constitutional infirmity of the legislation under review.

Finally, after accusing Petitioners of being somewhat strident in the presentation of its argument in its Initial Brief, Respondent reaches meteoric heights of hyperbole stating,

> If the parochial concerns of a particular local special interest group are permitted to hold hostage legislative action taken in the interest of the general public, "work place democracy," by and for teachers and their unions, will put an end to control of public education by the citizens and their democratically legislative representatives.

(AB. 34) Petitioner relies on the common sense of this Court as it considers the merit of such a statement. Petitioners are not inviting this court to "create a radically new series of collective bargaining relationships never heretofore contemplated by Legislature or judicial authority." (AB. 34) We are simply asking this Court to conclude that the Legislature unconstitutionally denied teachers the right to negotiate wages by the enactment of Florida Statutes 231.533 and 231.534. To the extent that these statutes provide for the payment of wages directly to teachers, those portions of the statutes should be struck down. Nothing more than that is requested, and nothing less than that is required by law.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was mailed this 7th day of October, 1985 to Elizabeth J. duFresne, duFresne and Bradley, P.A., 2950 Southwest 27 Avenue, Suite 310, Coconut Grove, Florida 33133; Frank A. Howard, Jr., Esq., Attorney for Dade County School Board and Leonard Britton, Suite 301, 1450 Northeast Second Avenue, Miami, Florida 33132; Gerald A. Williams, Esq., Haygood & Williams, P.A., 1410 Northeast Second Avenue, Miami, Florida 33132; Judith A. Brechner, Esq., General Counsel, Department of Education, Knott Building, Tallahassee, Florida 32301; Richard T. Donelan, Jr., Esq., Carson & Linn, P.A., Cambridge Centre, 253 West Virginia Street, Tallahassee, Florida 32301; and Jim Smith, Attorney General, The Capitol, Tallahassee, Florida 32301.

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