Filing # 93953464 E-Filed 08/09/2019 03:42:10 PM

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, STATE OF FLORIDA**

FLORIDA EDUCATION ASSOCIATION,
et al.,

Plaintiffs,

v. Case No. 2018 CA 1446

DONNA MAGGERT POOLE, as Chair and
Commissioner of the Florida Public Employees
Relations Commission, et al.,

Defendants.

ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO COUNT II OF THE COMPLAINT

This matter is before the Court on Plaintiffs' Motion for Summary Judgment as to Count II of the Complaint. The Court having reviewed the Motion and Defendants' Memorandum in Opposition, having heard argument from counsel for the parties at the hearing held on July 30, 2019, and being otherwise fully advised in the premises, it is hereby **ORDERED AND ADJUDGED** that the Motion be, and the same hereby is, **DENIED**, for the following reasons.

1. In their Complaint for Declaratory and Injunctive Relief, Plaintiffs challenge the constitutionality of certain provisions of Section 33 of Chapter 2018-6, Laws of Florida, enacted to address various legislative concerns about public education in Florida. Section 33, concerning collective bargaining, is codified as

subsections 1012.2315(4)(b) and (c), Florida Statutes, which took effect on July 1, 2019. Only subsection (c) is at issue in this action.

Section 1012.2315(4), Florida Statutes, as amended, provides:

> (4) COLLECTIVE BARGAINING -
>
> (a) Notwithstanding provisions of chapter 447 relating to district school board collective bargaining, collective bargaining provisions may not preclude a school district from providing incentives to high-quality teachers and assigning such teachers to low-performing schools.
>
> (b) Before the start of the 2019-2020 school year, each school district and the certified collective bargaining unit for instructional personnel shall negotiate a memorandum of understanding that addresses the selection, placement, and expectations of instructional personnel and provides school principals with the autonomy described in s. 1012.28(8).
>
> (c)1. In addition to the provisions under s. 447.305(2), an employee organization that has been certified as the bargaining agent for a unit of instructional personnel as defined in s. 1012.01(2) must include for each such certified bargaining unit the following information in its application for renewal of registration:
>
> a. The number of employees in the bargaining unit who are eligible for representation by the employee organization.
>
> b. The number of employees who are represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues.
>
> 2. Notwithstanding the provisions of chapter 447 relating to collective bargaining, an employee organization whose dues paying membership is less than 50 percent of the employees eligible for representation in the unit, as identified in subparagraph 1., must petition the Public Employees Relations Commission pursuant to s. 447.307(2) and (3) for recertification as the exclusive representative of all employees in the unit within 1 month after the date on which the organization applies for renewal of registration pursuant to s. 447.305(2). The certification of an employee organization that does

not comply with this paragraph is revoked.

§ 1012.2315(4), Fla. Stat. (2018).

2. Prior to this change, section 1012.2315(4) consisted solely of what now is subsection (a). Subsection (a) is not challenged in this action. Nor is subsection (b), despite its inclusion in the new legislation. Complaint at ¶ 19 n.1. All that is before the Court is subsection (c), which Plaintiffs refer to as the "Recertification Requirement." Complaint at ¶ 19.

3. While the Complaint sets forth three causes of action, Plaintiffs' Motion addresses only Count II of the Complaint. There, Plaintiffs allege that the Recertification Requirement "abridges Plaintiffs' fundamental right to effective collective bargaining under Article I, Section 6, Florida Constitution." Complaint at ¶ 29. Plaintiffs also allege that the Recertification Requirement "[s]ingl[es] out members of the instructional staff of public school boards to be treated in a manner different than all other classes of public employees in the State" in violation of "their right to equal protection under Article I, Section 2, Florida Constitution." Complaint at ¶ 30. These arguments form the crux of the Motion, in which Plaintiffs contend that the Recertification Requirement "implicates [their] fundamental right to collective bargaining," Motion at 10, and that it unconstitutionally burdens instructional employees but not any other category of public employees, Id. at 11.

4. Plaintiffs further contend that, because the Recertification Requirement abridges their fundamental right to bargain collectively, it should be subjected to the strict scrutiny test, under which the legislation must be stricken unless it is shown both to promote a compelling governmental interest and to be narrowly tailored to advance that interest. Motion at 12 (citing State v. J.P., 907 So. 2d 1101 (Fla. 2004). Plaintiffs acknowledge their burden on a facial challenge to demonstrate that no circumstances exist under which the legislation at issue would be valid. Motion at 9 (citing Fla. Dep't of Revenue v. City of Gainesville, 918 So. 2d 250 (Fla. 2005).

5. Defendants counter that the Recertification Requirement does nothing more than impose minor reporting requirements on unions representing public teachers, that the information to be disclosed is already in the possession of the unions, and that such disclosure will enhance the ability of teachers to choose whether to be represented by a union and, if so, to select which union is to represent them. Defendants note that the need for a union to seek recertification arises only where it is shown that less than 50 percent of the teachers in the bargaining unit are dues-paying members of the union. Defendants also note that the Recertification Requirement does not oust any union from its representative position, but simply strengthens the control of the teachers, as principals within a designated bargaining unit, over their bargaining agent.

6. Defendants therefore argue that the right to bargain collectively is not abridged by the Recertification Requirement. Defendants also contend that no fundamental right is at stake in this action, that no suspect classification for equal protection purposes is involved here, and that accordingly the rational basis test applies, under which legislation need only to be shown to have a rational relationship to a legitimate state interest. Defendants maintain that the rational basis test is satisfied because of heightened concerns about teacher attrition and public education in Florida, discussed below. Defendants stress that a heavy presumption favors upholding the legislation at issue, citing Fraternal Order of Police, Miami Lodge No. 20 v. City of Miami, 243 So. 3d 8994, 897 (Fla. 2018).

7. The parties agree that there are no genuine issues of material fact for purposes of Plaintiffs' Motion, and that the Motion raises only questions of law.

8. Turning to the governing legal principles, it is well settled that considerable deference must be given to legislation that regulates workers' rights under Article I, Section 6 of the Florida Constitution. Dade County Classroom Teachers' Association v. Ryan, 225 So. 2d 903 (Fla. 1969); City of Tallahassee v. Public Employees Relations Commission, 393 So. 2d 1147 (Fla. 1st DCA 1981).

9. The right to engage in collective bargaining under Article I, Section 6 belongs to the workers, not to labor unions or other bargaining representatives. See Schermerhorn v. Local 1625 of the Retail Clerks Int'l Ass'n, AFL-CIO, 141 So. 2d

269, 272-73 (Fla. 1962). These worker protections under Florida law apply regardless of whether an employee might be called a "free rider"—i.e., a worker who wants the benefits of union representation but refuses to pay union dues for that representation.

10. The Recertification Requirement does not abridge workers' fundamental right to bargain collectively under Article I, Section 6 of the Florida Constitution.

11. Nor does the Recertification Requirement give rise to a claim under the Equal Protection Clause. At the outset, it bears noting that neither public school teachers nor labor unions qualify as a suspect class under equal protection jurisprudence. It is settled that, unless a suspect class or fundamental right protected by the Florida Constitution is implicated by the challenged legislation, the rational basis test is the proper standard. See Estate of McCall v. United States, 134 So. 3d 894, 901 (Fla. 2014); Samples v. Florida Birth-related Neurological Injury Compensation Association, 114 So. 3d 912, 917 (Fla. 2013). Accordingly, it is the rational basis test, not strict scrutiny, which applies here.

12. "To satisfy the rational basis test, a statute must bear a rational and reasonable relationship to a legitimate state objective, and it cannot be arbitrary or capriciously imposed." Estate of McCall, 134 So. 3d at 901.

In Samples, the Florida Supreme Court further elaborated on the test, stating:

> To be entitled to relief under the rational basis test, the Samples must show that the parental award provision does not bear some rational relationship to legitimate state purposes. It is not our task to determine whether the legislation achieves its intended goal in the best manner possible, but only whether the goal is legitimate and the means to achieve it are rationally related to the goal. A statute does not fail rational basis scrutiny simply because it might have gone farther than it did.

Samples, 114 So. 3d at 917 (citations and internal quotation marks omitted). Thus, under the rational basis test, the challenged legislation need not be perfect or ideal. It is enough that it has a legitimate goal and that it utilizes rationally-related means to achieve that goal.

13. Here, the goal of the statute is to afford public-school teachers greater control over the collective bargaining where the union dues-paying members of a bargaining unit comprise less than 50 percent of the teachers. The means for reaching that goal is the requirement that the union representatives must furnish the requisite data per the statute's provisions. The provisions themselves do not oust the union from its representative position, but instead trigger the opportunity for the employees to reconsider whether to alter the status of their representation.

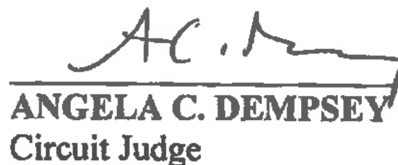
14. That the challenged provisions do not apply to other public employees outside the sphere of public educational instruction does not invalidate them. In Fraternal Order of Police, Miami Lodge No. 20 v. City of Miami, 243 So. 3d 894 (Fla. 2018), the Florida Supreme Court stated: "Equal protection is not violated

merely because some individuals are treated differently than others. Instead, it requires that persons similarly situated be treated similarly." Id. at 899.

15. Florida recognizes the need for further accommodations when it comes to public school teachers. Florida explicitly recognizes that a severe teacher shortage exists, *see* § 1012.07, Fla. Stat., warranting heightened concern for retaining teachers rather than suffering their attrition, *see* § 1012.05, Fla. Stat. The bulk of the provisions of Chapter 1012, Florida Statutes, concern public school personnel issues, evidencing a clear and justifiable determination by the Legislature to treat those personnel—including public-school teachers and other instructors—differently from other public employees. See also Florida Police Benevolent Association v. State of Florida, 818 So. 2d 584 (Fla. 1st DCA 2002).

16. For these reasons, Plaintiffs' claims that section 1012.2315(4)(c), Florida Statutes, violates Article I, Section 6 and Article I, Section 2 of the Florida Constitution are without merit and must be rejected. It follows that Plaintiffs' motion for summary judgment in their favor on these claims must be denied.

DONE AND ORDERED in Tallahassee, Florida, on August 9, 2019.



ANGELA C. DEMPSEY
Circuit Judge

Copies to: All counsel of record