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September 26, 2024

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Re: Career and Technical Association v. Auburn Vocational School District Board of Education

To whom it may concern,

The Career and Technical Association (“CATA”) is a labor union that represents a bargaining unit of employees who are employed by the Auburn Vocational School District Board of Education (“Board”). For the past thirteen years, CATA and the Board have been engaged in a dispute over payment of wages owed to teachers under Section 21.4 of the Parties’ collective bargaining agreement (“CBA”). Below please find an explanation of what has taken place up to this point.

A) Background

The dispute between CATA and the Board arose out of a disagreement over the meaning and application of Section 21.4 of the Parties’ CBA. Section 21.4 is titled “Eighth Period Stipend,” and it states that: “Teachers who are assigned classroom instruction duties in lieu of a planning period shall be compensated at a rate of 10% of the teacher's annual salary.”

The Eighth Period Stipend was originally created by former Auburn Superintendent, Thomas Schultz. According to Schultz, “[t]he primary purpose for the stipend when it began was to additionally compensate a teacher who taught eight periods not to compensate for not having a planning period.” (10/16/20 Judgment Entry, p. 3, ¶ 3). Schultz believed it was unfair to compensate a teacher who taught eight periods the same as one who taught seven or fewer periods. (*Id.*).

In 2011, the Board created a planning period at the beginning of the teacher work day before the start of the student day. The Board then assigned teachers to duties during every single period of the student day, and it stopped paying teachers the Eighth Period Stipend. The Board alleged that it no longer had to pay the stipend because the teachers now had a planning period outside of the student day.

CATA disagreed with the Board’s new interpretation of Section 21.4. CATA maintained that the teachers who were assigned to duties during every period of the student day were still

September 26, 2024

Page Two

performing an extra period of duties in lieu of what would otherwise have been a planning period during the student day. When the Board refused to pay these teachers the Eighth Period Stipend, CATA sued the Board in the Lake County Court of Common Pleas (“Trial Court”). CATA filed the lawsuit on December 13, 2011.

B) Litigation and Joint Stipulations

It took almost ten years from when CATA filed the lawsuit in 2011 until the Trial Court entered its final appealable order on October 14, 2021. Throughout the course of litigation, CATA and the Board entered into a series of six joint stipulations on the issues of payment and damages, should CATA prevail in its claim for breach of contract. Beginning on January 14, 2013, the Parties stipulated, *inter alia*, that:

If Plaintiff prevails in this action, either by dispositive motion or after trial, and the Court determines that Defendant breached its collective bargaining agreement with Plaintiff by its failure to compensate Plaintiff’s bargaining unit members in accordance with Article XXI, Section 21.4. of collective bargaining agreement, the present and/or former bargaining unit members of Plaintiff listed in Exhibit A attached hereto shall be entitled to be paid by Defendant the amounts stated in Exhibit A for the school years indicated. Such payments shall be subject to withholding required by federal, state and local laws and the parties’ collective bargaining agreement, including the listed bargaining unit members’ STRS contributions. For the 2012-13 school year payment will be pro-rata through the date of judgment, with the remainder of the payment made pursuant to Defendant’s normal payroll schedule. Defendant and the listed bargaining unit members each shall be responsible for their respective contributions to STRS. Defendant shall submit the contributions of both the employer (Defendant) and the bargaining unit members to the STRS that would have been submitted had the bargaining unit members received the payments reflected in Exhibit A. Defendant shall be solely responsible for the payment of any and all interest that may be determined by the STRS to be due on the Defendant’s and the listed bargaining unit members’ contributions to the STRS.

(01/14/13 Joint Stipulations) (emphasis added); *see also* (01/21/15 Supplemental Joint Stipulations); (10/20/15 Supplemental Joint Stipulations); (08/22/16 Second Supplemental Joint Stipulations); (10/16/17 Third Supplemental Joint Stipulations); (03/22/21 Joint Stipulations).

The Parties voluntarily entered into the joint stipulations to limit the range of litigable issues so as to focus the case on the central issue of contractual interpretation – i.e., the meaning and application of Section 21.4. In April 2016, a trial was held before a magistrate judge. In September 2019, the magistrate issued a magistrate’s decision that resolved the central issue of contractual interpretation in favor of CATA.

September 26, 2024

Page Three

CATA and the Board entered into the first five sets of joint stipulations before the magistrate issued his decision on September 30, 2019. In the magistrate's decision, the magistrate specifically acknowledged and referenced the Parties' joint stipulations. (09/30/19 Magistrate's Decision, p. 8). The magistrate attached Exhibit A from the most recent set of stipulations to the magistrate's decision and stated that: "The teachers that were not paid the Eighth Period Stipend and the amounts each are entitled to, subject to federal, state and local withholding and provisions of the collective bargaining agreement including STRS contributions, are attached as Exhibit A." (*Id.*) (emphasis added); *see also (id.* at Ex. A). The magistrate held that:

The failure of Auburn to pay the "Eighth Period Stipend" to the teachers named in Exhibit A and the respective amounts shown in that exhibit, less required governmental withholding and other amounts required under the CBA (such as STRS contributions to name one) constituted a violation or breach of Section 21.4 of the 2009 CBA for each year listed thereon. No stipulation was presented for the 2019-2020 school year as of this writing.

(*Id.* at pp. 12-13) (emphasis added).

Finally, the magistrate proposed that: "An order should issue requiring the Auburn board to pay those teachers named in Exhibit A in the amount or amounts due each less required governmental withholding and other amounts required under the CBA (such as STRS contributions to name one)." (09/30/19 Magistrate's Decision, p. 13) (emphasis added).

On October 16, 2020, the Trial Court adopted the magistrate's resolution of the central issue of contractual interpretation and entered findings in CATA's favor. (10/16/20 Judgment Entry). The Trial Court's October 16, 2020 Judgment Entry also included a copy of Exhibit A from the Parties' most recent joint stipulations. Exhibit A identified those teachers who were owed compensation as of the 2017-18 school year. The October 16, 2020 judgment entry further stated, in no uncertain terms, that: "An order should issue requiring the Auburn board to pay those teachers named in Exhibit A in the amount or amounts due each less required governmental withholding and other amounts required under the CBA (such as STRS contributions to name one)." (*Id.* at p. 14) (emphasis added).

At that time, the Trial Court also ordered that:

A hearing is scheduled to determine: 1) the amount of withholding required by statute, ordinance or CBA for the amounts referenced in No. 16 above; 2) which teachers qualify for the stipend for any post 2017-2018 school year governed by this CBA and the amount due each less required governmental withholding and other amounts required under the CBA; and 3) the request of Career Tech for costs, expenses, disbursements and reasonable attorney fees it may be entitled.

(*Id.*).

September 26, 2024

Page Four

The Trial Court scheduled a trial on the remaining issues identified in the October 16, 2020 Judgment Entry, including the STRS contribution amounts. However, before the trial was held, the Parties filed a sixth and final set of joint stipulations that addressed and resolved the outstanding issues. (03/22/21 Joint Stipulations). For each teacher, the Parties stipulated to the amount of the back wages, the amount of the employee contributions owed to STRS, the amount of the employer contributions owed to STRS, and the amount due to each teacher less the amount owed to STRS. These amounts are set forth in Exhibit A of the March 22, 2021 Joint Stipulations. The Board and CATA also unambiguously stipulated that:

To the extent this Honorable Court enters final judgment awarding CATA's current and former members damages for each year from the 2011-2012 school year to the, 2020-2021 school year, the Parties agree that Exhibit A contains the total amount of damages that the Board owes to each member for those years and the total amounts that are to be remitted to the State Teachers Retirement System of Ohio ("STRS") on behalf of each member for those years with the exception that any damages owed by the Board shall continue to accrue through the date of final judgment and, accordingly, payment of the 2020-2021 school year amounts shall be pro-rated through the date of final judgment, including amounts due to STRS.

(*Id.* at p. 2) (emphasis added).

The Parties further stipulated that “the amounts due to STRS shall be remitted by the Board on behalf of the employer and employee, as applicable, with the Board and individual each responsible for their respective contributions,” and that “any interest and/or penalties due to STRS shall be paid for solely by the Board, as determined by STRS.” (*Id.* at p. 4).

At the time of the March 22, 2021 Joint Stipulations, the Board was not arguing that the back wages at issue were anything other than STRS-qualifying compensation. There was no dispute between the Parties over damage categories. Rather, at that time, the Board was only arguing that the award of back wages should be limited to certain years. (03/01/21 Bd. Brief, p. 5) (Board arguing that it was not liable for any damages beyond December 13, 2011 because “such damages would constitute an impermissible award of front-pay”); (*id.* at pp. 7-8) (Board arguing that CATA was required to amend the complaint to recover damages for each year); (*id.* at p. 8) (Board asking the court to deny “CATA any damages for causes of action arising after December 13, 2011” based on R.C. 4117.09(E)). For this reason, the March 22, 2021 Joint Stipulations had a separate exhibit for each year in the event that the Trial Court awarded damages for some years, but not others. (03/22/21 Joint Stipulations, pp. 2-4, Exs. C-L). However, at that time, there was absolutely no dispute over the issue of STRS contributions, and the Parties both unambiguously stipulated that the amounts in question were STRS-qualifying compensation.

On October 14, 2021, the Trial Court entered its final Opinion and Judgment Entry. (10/14/21 Opinion and Judgment Entry). In the judgment entry, the Trial Court specifically addressed the pending trial. (*Id.* at p. 18). The Trial Court found that “prior to the trial, the parties

September 26, 2024

Page Five

submitted joint stipulations that addressed all the remaining issues outlined in the October 16, 2020 judgment entry thereby eliminating the necessity to take any evidence.” (*Id.*). The Trial Court then rejected the Board’s arguments about which years should and should not be included in the judgment, and the Trial Court entered final judgment awarding damages for each year from the 2011-12 school year through the 2020-21 school year in accordance with Exhibit A from the March 22, 2021 Joint Stipulations. (*Id.* at pp. 18 - 21, 24).

In the Opinion and Judgment Entry, the Trial Court described Exhibit A and explained that: “The exhibit shows the name of each Career Tech member, summarizes the total stipend amount due each, summarizes the total amount each employee owes to STRS, summarizes the amount of Auburn’s contribution to STRS for each Career Tech member, and states the net amount due each Career Tech member.” (*Id.* at p. 21). The Trial Court also specifically held that the compensation that it ordered the Board to pay was “back pay” and “past wages due.” (*Id.* at pp. 19, 20).

C) Direct Appeal

The Board appealed the October 14, 2021 Opinion and Judgment Entry. *Career & Tech. Assn. v. Auburn Vocational School Dist. Bd. of Education*, 11th Dist. No. 2021-L-113, 2022-Ohio-2737, 194 N.E.3d 78. On appeal, the Eleventh District affirmed the Trial Court’s judgment in favor of CATA. *Id.* at ¶ 109; *see also id.* at ¶ 56 (upholding the Parties’ joint stipulations). The Board then sought review by the Supreme Court of Ohio, which declined to accept jurisdiction. *Career & Tech. Assn. v. Auburn Vocational School Dist. Bd. of Edn.*, 168 Ohio St.3d 1527, 2023-Ohio-86, 200 N.E.3d 1151. Thereafter, the Board moved the Supreme Court of Ohio to reconsider, and on March 28, 2023, the Supreme Court of Ohio denied the Board’s motion for reconsideration. *Career & Tech. Assn. v. Auburn Vocational School Dist. Bd. of Edn.*, 169 Ohio St.3d 1476, 2023-Ohio-921, 205 N.E.3d 566. Therefore, as of March 28, 2023, the Board had fully exhausted its appeals.

D) “Motion for Interpleader”

Six months after the Board exhausted its appeals, the Board contacted the Trial Court on September 26, 2023, and “inquired about where the funds should be sent for distribution.” (11/06/23 Plaintiff’s Reply, Ex. 1) (email from Judge Condon). A few days later, on October 2, 2023, the Board filed what it called a “motion for interpleader.” (10/02/23 Motion for Interpleader). Notwithstanding the repeated joint stipulations and the express language of the Trial Court’s judgment entries on October 16, 2020 and October 14, 2021, the Board used its “motion for interpleader” as an opportunity to try to argue that it was somehow not required to remit STRS contributions for the back wages owed under the judgment.

At this point, it should be noted that, prior to litigation, the Board always withheld and remitted STRS contributions on Eighth Period Stipend payments. It should also be noted that Auburn’s Eighth Period Stipend was modeled after the Sixth Hour Stipend at the Polaris Career Center and that the Polaris Career Center has always remitted STRS contributions for its stipend

September 26, 2024

Page Six

payments. Finally, it should be noted that CATA and the Board actually contacted STRS in May 2023, which was several months before the Board filed its “motion for interpleader.” In May 2023, STRS Chief Legal Officer, Stacey Wideman, confirmed that STRS would, in fact, accept contributions on the Eighth Period Stipend payments that were awarded under the judgment. (11/06/23 Plaintiff’s Reply, Ex. 2) (email from STRS Chief Legal Officer). It needs to be emphasized that STRS can only accept contributions on STRS-qualifying compensation. STRS cannot accept contributions on payments that are exempt from STRS. The Board’s attorney participated in the correspondence with STRS, and the Board was fully aware that STRS was willing to accept the contributions. Nevertheless, on October 2, 2023, the Board proceeded to file its “motion for interpleader” in which the Board tried to argue that the Eighth Period Stipend payments awarded under the judgment were somehow exempt from STRS contributions.

The Trial Court denied the Board’s “motion for interpleader” on November 21, 2023. (11/21/23 Journal Entry). In response to the “motion for interpleader,” the Trial Court also issued a nunc pro tunc order pursuant to Civ.R. 60(A). (11/20/23 Nunc Pro Tunc Order). In the nunc pro tunc order, the Trial Court once again reiterated and confirmed that the back wages awarded under the judgment are to be treated as STRS-qualifying compensation. (*Id.*). The Trial Court confirmed that the judgment proceeds are “to be distributed by Auburn directly to each member enumerated in Exhibit A in the amounts stipulated, as set forth in Exhibit A, less governmental withholding and the stipulated amounts owed to STRS.” (*Id.*).

E) Appeal of the Nunc Pro Tunc Order

In December 2023, the Board sought to appeal both the Trial Court’s decision to deny the “motion for interpleader” and the nunc pro tunc order. On appeal, the Board not only challenged the validity of the nunc pro tunc order, but the Board also began advancing a completely nonsensical interpretation of the nunc pro tunc order itself. Specifically, the Board started to claim that the Trial Court’s nunc pro tunc order actually: “orders the Board to pay a total judgment of \$1,486,045.78 less both the STRS contribution amounts of \$188,107.82 and \$208,046.31, which is a total amount of \$1,089,891.65.” (Board’s Assignments of Error and Brief, p. 4) (emphasis in the original).

As Exhibit A to the judgment clearly shows, \$188,107.82 is the amount of the employee contributions owed to STRS, which are to be deducted from the employees’ back wages and remitted to STRS. (10/14/21 Opinion and Judgment Entry, Ex. A). The other amount of \$208,046.31 is the amount of the employer contributions owed to STRS. Nothing in Exhibit A, the nunc pro tunc order, or the original judgment entry even remotely suggests that the teachers are somehow responsible for paying the Board’s portion of the contributions owed to STRS. Yet, this is exactly what the Board was now claiming.

The Board’s appeal of the nunc pro tunc order was dismissed, and the Eleventh District Court of Appeals adamantly rebuked the Board’s attempt to relitigate the issue of STRS payments. *Career & Tech. Assn. v. Auburn Vocational School Dist. Bd. of Education*, 11th Dist. Lake No.

GREEN HAINES SGAMBATI Co., L.P.A.

September 26, 2024

Page Seven

2023-L-114, 2024-Ohio-1348, ¶ 10 (holding that the validity and substance of the joint stipulations are the law of the case because the Board “could have challenged the inclusion of STRS payments in the joint stipulation on direct appeal in *CATA I*,” but “the Board did not take issue with STRS payments in its appellate brief” and the issue “was not broached by the Board”).

After the Eleventh District dismissed the Board’s appeal, the Board filed eight separate motions in which it sought reconsideration, en banc review, and certification of various non-existent “conflicts.” The Eleventh District denied all eight motions.

The Eleventh District’s judgment entries are noteworthy for how strongly worded they are. With respect to the issue of STRS payments, the Eleventh District emphatically stated: “Again, and this court emphasizes AGAIN, the Board could have raised the issue in its 2022 appeal to this court, i.e. *CATA I* appeal. It did not.” (05/30/24 Judgment Entry, p. 4) (denying the Board’s “Motion for Reconsideration as to the 2021 Appeal”) (emphasis in the original).¹ Thus, the Eleventh District held that “the issue is both law of the case and res judicata.” (*Id.*).

After the Board’s appeal to the Eleventh District proved unsuccessful, the Board filed a memorandum in support of jurisdiction with the Supreme Court of Ohio, which remains pending at this time. On August 20, 2024, the Board contacted CATA’s attorneys and threatened to make payment pursuant the Board’s nonsensical interpretation of the November 20, 2023 nunc pro tunc order if CATA did not agree to settlement terms. In response, CATA requested a hearing in front of the Trial Court. At the hearing, the Board’s attorney once again advanced the same nonsensical interpretation of the nunc pro tunc order that the Board had previously advanced in the Court of Appeals – i.e., that both the employee and employer STRS contributions are to be deducted from the employees’ back wages. The Trial Court declined to comment on the matter due to the pending memorandum in support of jurisdiction before the Supreme Court of Ohio. However, the Board’s attorney took the opportunity to make it abundantly clear that if and when the Supreme Court of Ohio declines to accept jurisdiction over the Board’s most recent attempt at appeal, the Board will continue to assert the same nonsensical interpretation of the nunc pro tunc order. Based on the representations of the Board’s attorney, the Board is refusing to remit proper payment to STRS without further legal action. The Board’s attorney also made it known that the Board intends to appeal any and all orders that may be issued as the result of such further legal action.

Based on the representations of the Board’s attorney, the Board appears intent on creating endless rounds of appeal at the taxpayers’ expense. There is no question that the amounts at issue are STRS-qualifying compensation. The Board itself stipulated to the issue of STRS payments six

¹ The Eleventh District entered four judgment entries on May 30, 2024. The judgment entry denying the Board’s “Motion for Reconsideration as to the 2021 Appeal” is the second judgment entry on the docket, and it is labeled Filing #184800. The other judgment entries contain similar wording. *See e.g.*, Filing #184799, p. 3 (“This matter has been lingering for too long. Despite the Board’s dissatisfaction, the issues in this litigation have been fully and finally resolved. The Supreme Court of Ohio has declined jurisdiction over the Board’s attempt at discretionary appeal and there is *nothing* in the record or in the law to support the instant ‘motion.’”) (Emphasis in the original).

GREEN HAINES SGAMBATI CO., L.P.A.

September 26, 2024
Page Eight

separate times. Now, the Board is trying to make an even more outlandish argument – i.e., that both the employer-side and employee-side STRS pension contributions should be deducted from the back wages awarded to the teachers. Any argument to this effect is in direct conflict with the express terms of the judgment, the nunc pro tunc order, and the requirements of R.C. Chapter 3307. However, the Board and its attorney have repeatedly shown a willingness to needlessly inflate the costs of litigation with futile arguments and unnecessary filings, and it would appear that the Board and its attorney have no intention of stopping this practice anytime soon.

I hope that you find this information to be useful. If you have any questions, please do not hesitate to contact our office. Thank you.

Respectfully,
GREEN HAINES SGAMBATI CO., L.P.A.



JEFFREY J. GEISINGER