

SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA  
CIVIL DIVISION

WASHINGTON TEACHERS' UNION, LOCAL # 6, )  
AMERICAN FEDERATION OF TEACHERS, AFL-CIO )  
1825 K Street, N.W., Suite 1001 )  
Washington, D.C. 20006 )  
Plaintiff )

v. )

MICHELLE RHEE, CHANCELLOR )  
District of Columbia Public Schools )  
825 North Capitol Street, N.E., 9th Floor )  
Washington, D.C. 20002 )

and )

DISTRICT OF COLUMBIA PUBLIC SCHOOLS )  
825 North Capitol Street, N.E., 9th Floor )  
Washington, D.C. 20002 )

and )

ADRIAN FENTY, MAYOR of )  
THE DISTRICT OF COLUMBIA )  
1350 Pennsylvania Ave. N.W., Suite 419 )  
Washington, D.C. 20004 )

and )

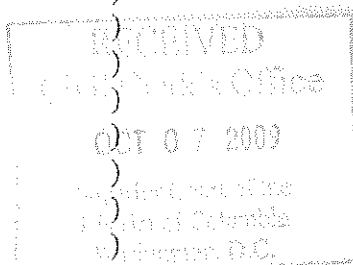
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Defendants. )

Civil Action No. \_\_\_\_\_

0007482-09



COMPLAINT

This is an action by the Washington Teachers' Union, Local # 6, American Federation of Teachers, AFL-CIO ("WTU" or "Union") for a preliminary and permanent injunction to prohibit

Michelle Rhee, Chancellor of the District of Columbia Public Schools (“DCPS”) and DCPS from terminating hundreds of WTU bargaining unit members, including teachers, before resolving the Union’s grievance over whether the mass discharge of bargaining unit employees, including teachers, violates the collective bargaining agreement (“WTU Contract”). On October 2, 2009, DCPS announced the mass discharge of 266 WTU bargaining unit members, including 229 classroom teachers (collectively referred to as “teachers”) because of what DCPS claims to be a “budget shortfall” for the 2009-2010 School Year. DCPS’ claims that a “budget shortfall” made a reduction-in-force (“RIF”) necessary, are belied by the facts. The approved budget for the 2009-2010 School Year is larger than the approved budget last School Year, and the student population is smaller. Further, during the spring and summer of 2009, DCPS hired 934 new classroom teachers, a number far in excess of the number of new teachers hired for any school year in the recent past, and far in excess of the number DCPS knew it needed based on the student population for the 2009-2010 School Year. DCPS knew or should have known that packing the bargaining unit with 934 new teachers who were not needed given the student population for the 2009-2010 School Year would result in a need to reduce the number of teachers employed by DCPS. Shortly after having hired 934 new teachers, DCPS, on October 2, 2009, announced that it would conduct a “RIF” to reduce the number of teachers it employed, and notified 266 bargaining unit members, including 229 classroom teachers, that they would be discharged effective November 2, 2009. There was no announced need to reduce the number of teachers employed by DCPS before DCPS hired 934 new teachers. A substantial number of the 229 classroom teachers DCPS issued RIF notices to were among the older, more senior teachers in the WTU bargaining unit, and were not among the 934 new teachers DCPS had just hired during the spring and summer of 2009. On these facts, DCPS’ attempt to disguise this

mass discharge as a “RIF” caused by a “budget shortfall” is clearly a pretextual attempt to sidestep the WTU Contract and to discharge a substantial number of veteran teachers while at the same time depriving those teachers of their discharge rights and the grievance-arbitration procedure contained in the WTU Contract agreed to by both WTU and DCPS. WTU has asked DCPS to delay the discharges pending arbitration, but DCPS has refused. WTU therefore seeks a preliminary and permanent injunction so the arbitration process will not be rendered futile.

### **PARTIES**

1. The WTU is the exclusive certified representative of a unit of employees, including teachers, and has in effect a collective bargaining agreement with DCPS covering these employees (“WTU Contract”).

2. District of Columbia.

3. DCPS is the public school system in Washington, District of Columbia.

4. Mayor Adrian Fenty has statutory control over DCPS.

5. Michelle Rhee is the Chancellor of DCPS.

### **JURISDICTION**

6. This Court is a court of general jurisdiction in accordance with D.C. Code § 11-921(a), and it has the power to grant the injunctive relief requested.

### **STATEMENT OF THE CLAIM**

7. DCPS recently announced a mass discharge of 266 teachers.

8. DCPS labeled the terminations referenced in Paragraph No. 4 as a RIF due to an alleged “budget shortfall,” but in actuality, it was a mass discharge in blatant violation of the WTU Contract.

9. In the 2008-2009 School Year, the approved budget was \$746.6 Million with a total average of \$16,014 per student. The 2008-2009 School Year budget was approved with a projected student enrollment of 47,744.

10. In the 2009-2010 School Year, the approved budget is \$779.6 Million with a total average of \$17,448 per student. The 2009-2010 School Year budget was approved with a projected student enrollment of 44,681.

11. In prior school years, the number of newly hired teachers ranged from 250 to 350.

12. During the spring and summer of 2009, before the 2009-2010 School Year, DCPS hired 934 new teachers.

13. On October 2, 2009, several weeks after hiring 934 new teachers, and just four weeks after the start of the 2009-2010 School Year, DCPS notified 266 teachers that they would be discharged effective November 2, 2009. DCPS claimed this mass discharge was a "RIF" due to a "budget shortfall."

14. Calling the mass discharge a RIF is pretextual because DCPS knew that the budget and projected student enrollment would not be able to accommodate the 934 new teachers it hired just before the start of the 2009-2010 School Year. DCPS knew or should have known that hiring 934 new teachers would lead to an excess number of teachers. Accordingly, DCPS purposefully created a situation of having excess teachers after the start of the 2009-2010 School Year

15. DCPS's labeling of the mass discharge as a RIF is an attempt to discharge veteran

teachers without affording them their rights under the WTU Contract, which includes not being discharged without just cause, progressive discipline, and due process, and access to the grievance-arbitration process.

16. By letter dated September 11, 2009, DCPS informed George Parker, President of the Union of its intent to conduct a mass discharge, saying that “DCPS will conduct a reduction-in-force of school based personnel” and that DCPS expects to give notice of terminations to the teachers by September 30, 2009, with an effective date 30 days after the notice is given.

17. By letter dated September 15, 2009, DCPS informed “DCPS Parent[s] or Guardian[s]” of the mass discharge and that “schools [would] be losing positions as of September 30, 2009.”

18. By letter dated September 16, 2009, DCPS informed “DCPS staff members” of the mass discharge and that “schools [would] be losing positions as of September 30, 2009.”

19. The letters dated September 15, 2009, and September 16, 2009, state that the principals will “consider several factors, including the needs of the school and the performance of staff” to determine which teachers will be discharged.

20. By memo dated September 18, 2009, to “All DCPS Principals,” DCPS instructed principals to conduct a mass discharge in a manner that would violate the provision of the WTU Contract requiring just cause, progressive discipline, and due process before discharge.

21. By letter dated September 28, 2009, the Union filed a group grievance “on behalf of all WTU Bargaining Unit members who have been identified to be and/or will be terminated during the [alleged] Reduction In Force.” The grievance alleges that the mass discharge, resulting in the termination of bargaining unit members violates the WTU Contract, precedent, and other authority.

22. The Union has requested that its grievance be expedited and that no bargaining unit member be discharged until the Union's grievance is resolved through the requested expedited arbitration.

23. By E-Mail correspondence dated September 29, 2009, in response to the Union's grievance, DCPS informed the Union that it "will not 'refrain from implementing the [mass discharge]' as [the Union] requested."

24. School year assignments for teachers began on August 17, 2009, and the first day of school for students was August 24, 2009. Students have been taught by their assigned teachers from that point to the present.

25. Placing or replacing teachers after the start of school is disruptive to the order and functioning of the classroom, the performance of the teachers, and the education of DCPS students. The amount of such disruption increases as the school year progresses.

26. It will be difficult for Defendants to find appropriate assignments for these teachers as the school year progresses. If the Union prevails in its grievance and the arbitrator awards a status quo ante remedy, DCPS will argue that it cannot practically reinstate the teachers due to disruption, thereby rendering the arbitration process ineffectual and futile.

#### **FIRST CAUSE OF ACTION**

27. The Union incorporates by reference as if fully set forth herein each and every allegation of paragraphs 1 through 26.

28. An injunction to maintain the status quo pending arbitration requires only an arbitrable dispute and meeting the requirements for equitable relief in the context of arbitration.

29. Article VII of the WTU Contract states that “[n]o employee may be disciplined or discharged except for just cause” and that “[a]ny such discipline or discharge shall be subject to the grievance-arbitration procedure.” Article VII also requires DCPS to follow progressive discipline and adhere to specific procedural steps before discipline or discharge.

30. Among other things, the Union’s grievance alleged a violation of Article VII of the WTU Contract and that DCPS’s mass discharge was without just cause, contrary to the requirements of progressive discipline and due process, or violated the required procedural steps.

31. Among other things, the Union’s grievance demanded that DCPS rescind all discharges and seeks the reinstatement of all employees who were improperly discharged.

32. If the discharges proceed in advance of arbitration, the grievance will not be solved for months, which will create insuperable remedy problems because Defendants will be unable to comply with the resolution of reinstatement, or be unable or unwilling to comply without undue disruption and expense. Frustrating the arbitral process by rendering a remedy ineffectual constitutes irreparable harm.

33. The bargaining unit employees will be irreparably harmed because they are being discharged after the school year has started and schools in other jurisdictions will likely have no vacancies.

34. Defendants will not suffer harm because while the injunction is in place, it will enjoy the services of the bargaining unit employees until such time as the grievance is resolved.

35. The public interest would be damaged by terminating bargaining unit employees after the school year has started because of the immediate and long term disruption in the lives of bargaining unit employees and in the lives of the students of DCPS.

36. The public interest is damaged and the Union irreparably harmed if the parties' alternative dispute resolution process is undermined.

37. Accordingly, an injunction is necessary to preserve the status quo pending the exhaustion of the grievance and arbitration procedure.

### **SECOND CAUSE OF ACTION**

38. The Union incorporates by reference as if fully set forth herein each and every allegation of paragraphs 1 through 37.

39. If the mass discharge is actually found to be a true RIF, Article XLII of the WTU Contract requires DCPS to consult with the Union prior to a RIF. DCPS did not consult with the WTU as required before the RIF.

40. Among other things, the Union's grievance alleged a violation of Article XLII of the WTU Contract and whether DCPS fulfilled its obligation to consult with the Union before conducting a RIF.

41. Among other things, the Union's grievance demanded that DCPS conduct no RIF resulting in the termination of the Union's bargaining unit members before DCPS consulted in good faith with the Union.

42. Accordingly, an injunction is necessary to preserve the status quo pending the exhaustion of the grievance and arbitration procedure.

### **PRAYER FOR RELIEF**

WHEREFORE, the Union respectfully requests that the Court issue a decision and order:

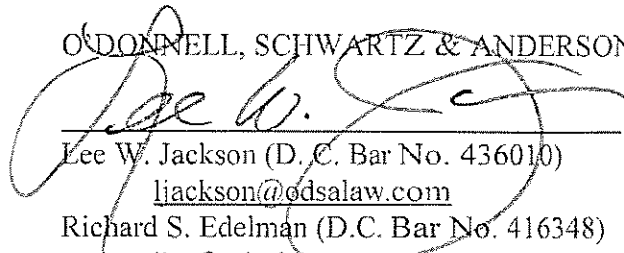
- A. Directing Defendants to maintain the status quo and immediately rescind any and all notices of termination and refrain from terminating any and all

bargaining unit employees due to an alleged RIF, pending resolution of the Union's September 28, 2009, grievance;

- B. Directing Defendants to expedite the Union's September 28, 2009, grievance;
- C. Directing Defendants to maintain the status quo pending completion of the Union's September 28, 2009, grievance; and
- C. Granting the Union such other and further legal and equitable relief as the Court deems just and proper.

Respectfully submitted,

O'DONNELL, SCHWARTZ & ANDERSON, P.C.



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