

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

STEVEN RAMOS; SCOTT ARMSTRONG;	:	
and JAMES WILLIAMS,	:	
	:	
Petitioners,	:	
	:	
vs.	:	No. 150 MD 2016
	:	Original Jurisdiction
ALLENTOWN EDUCATION ASSOCIATION;	:	
PUBLIC EMPLOYEES' RETIREMENT	:	
SYSTEM; and ALLENTOWN SCHOOL	:	
DISTRICT,	:	
	:	
Respondents.	:	

TO: Steven Ramos, Scott Armstrong, and James Williams

You are hereby notified to file a response to the enclosed Preliminary Objections and Motion to Dismiss within twenty (20) days from service hereof or a judgment may be entered against you.

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individuals who are on full-time union release under the collective bargaining agreement (the “CBA”) by and between the Association and the Allentown School District (the “District”). The Petitioners also asked this Court to declare that certain provisions of the collective bargaining agreement in place between the Association and the District are illegal and void as against public policy and permanently enjoin full-time union release, order the Association to return certain funds to the District, and declare that PSERS unlawfully credited services performed by the President of the Association. (Complaint, p. 1-2)

**Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(5):
Lack of Capacity to Sue**

2. Standing is a threshold matter. Prior to judicial resolution of a dispute, an individual must, as a threshold matter, show that he has standing to bring the action. Bergdoll v. Kane, 557 Pa. 72, 731 A.2d 1261, 1268 (1999). The traditional concept of standing focuses on the idea that a person who is not adversely impacted by the matter he seeks to challenge does not have standing to proceed with the court system's dispute resolution process. *See* William Penn Parking Garage v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269, 280-81 (1975) (plurality).

3. A controversy is worthy of judicial review only if the individual initiating the legal action has been "aggrieved." An individual can demonstrate that he is aggrieved if he can establish that he has a substantial, direct, and immediate interest in the outcome of the litigation in order to be deemed to have standing. An interest is "substantial" if it is an interest in the resolution of the challenge which "surpasses the common interest of all citizens in procuring obedience to the law." Likewise, a "direct" interest mandates a showing that the matter complained of "caused harm to the party's interest," i.e., a causal connection between the harm and the violation of law. Finally, an interest is "immediate" if the causal connection is not remote or speculative. In re Hickson, 573 Pa. 127, 821 A.2d 1238, 1243 (2003).

3. The keystone to standing in these terms is that the person must be negatively impacted in some real and direct fashion. If the individual "is not adversely affected in any way by the matter he seeks to challenge [, he] is not 'aggrieved' thereby and has no standing to obtain a judicial resolution of his challenge. In particular, it is not sufficient for the person claiming to be 'aggrieved' to assert the common interest of all citizens in procuring obedience to the law." Independent State Store Union v. Pennsylvania Liquor Control Board, 495 Pa. 145, 432 A.2d 1375, 1379-80 (1981)).

4. The Petitioners do not have legal standing to assert the claims that are the basis for the Petition for Review because they have not been adversely impacted by the actions complained of and are not individually aggrieved by those actions.

5. Petitioner Ramos avers only that he is a taxpayer and resident of the Allentown School District; that he graduated from the District; and that he has children who also attended the schools of the District. (Complaint ¶ 3)

6. Petitioner Armstrong avers only that he is a taxpayer and resident of the Allentown School District and that he is a *former* Allentown School Board Member. (Complaint ¶ 4)

7. Petitioner Williams avers only that he is a public school teacher [in a district *other than* the Allentown School District] and that he is a member of PSERS. (Complaint ¶ 5)

8. The Petitioners do not aver and do not have a “substantial interest” in the resolution of the challenge which “surpasses the common interest of all citizens in procuring obedience to the law.” Petitioners have not alleged any peculiar, individualized interest in the outcome of finding the release time provisions of the Allentown collective bargaining agreement unlawful or unconstitutional that is greater than that of any other citizen.

9. The Petitioners do not aver and do not have a direct interest in this matter. The Petitioners have not alleged that they have or will suffer any personal harm because of the release time provisions of the Allentown collective bargaining agreement that is greater than other citizens who pay taxes and who are unable to personally direct how funds are allocated by PSERS and the District.

10. The Petitioners do not aver and do not have immediate or present harm and have not established a causal link between the complained-of activity – a contractual provision authorizing paid release time for the Association president present in the collective bargaining agreement, with full pension credit within PSERS - and any actual harm allegedly suffered by the Petitioners.

11. Petitioners do not aver that the release time provisions of the Allentown collective bargaining agreement, and the attendant PSERS membership of the Allentown Education Association President, have or will harm them in any way that is not remote or speculative, and they have failed to demonstrate that they have an immediate interest.

12. Petitioner Williams' assertion that he has individual standing as an active member of PSERS fails because there is no averment that his personal pension benefits have or ever will actually be adversely affected, or put in any significant risk (as opposed to a speculative, questionable and quite remote

theoretical potential risk). Such speculative potential harm at an unforeseen future time is insufficient to support standing.

13. The Petitioners do not have standing under the “taxpayer exception” to traditional standing requirements recognized by the Pennsylvania Supreme Court in In re Application of Biester, 487 Pa. 438, 409 A.2d 848, 852 (Pa. 1979). Under *Biester*, taxpayers, even ones not personally aggrieved, may challenge a governmental action provided that they satisfy the following requirements: (1) the governmental action would otherwise go unchallenged, (2) those directly and immediately affected by the complained of expenditures are beneficially affected and not inclined to challenge the action, (3) judicial relief is appropriate, (4) redress through other channels is unavailable, and (5) no other persons are better situated to assert the claim. Flora v. Luzerne Cty., 103 A.3d 125, 132 (Pa. Cmwlth. 2014).

14. The purpose underlying *Biester's* relaxation of the general rules regarding standing and their requirement of a substantial, direct, and immediate interest in the matter, is to enable citizens to challenge governmental action which would otherwise go unchallenged in the courts. Faden v. Phila. Hous. Auth., 424 Pa. 273, 227 A.2d 619, 621-22 (Pa. 1967). Taxpayer standing "allows the courts, within the framework of traditional notions of 'standing,' to add to the controls over

public officials inherent in the elective process the judicial scrutiny of the statutory and constitutional validity of their acts." Pittsburgh Palisades Park, LLC v. Commonwealth, 585 Pa. 196, 888 A.2d 655, 661-662 (Pa. 2005) (quoting *Biester*, 409 A.2d at 851 n.5).

17. Petitioners' "taxpayer standing" claim must fail because it fails to satisfy *any* requirement for standing.

18. As set forth below in detail, to the extent that the Complaint challenges PSERS' receipt of pension contributions and award of pension service credit for the Association president while on full release time assignment: (1) the governmental action would *not* otherwise go unchallenged if petitioners had raised the issue with PSERS; (3) judicial relief is *not* appropriate, because the issue is committed to the administrative jurisdiction of PSERS; and (4) redress through other channels *is available*, via a complaint to PSERS pursuant to the Administrative Code. *Compare*, Keith v. Commonwealth, Department of Agriculture, 116 A.3d 756, 760 (Pa. Cmwlth. 2015) where the Petitioners, who were challenging the legality of several regulations promulgated by the Department of Agriculture, were awarded "taxpayer standing" in large measure because, prior to instituting the action, they had requested that the Department review the regulations and also requested that the Independent Regulatory Review

Commission (IRRC) review the regulations. Both the Department and the IRRC declined to review the regulations. This Court found that these allegations strongly suggest that redress through other channels was futile and thus that judicial scrutiny was required to insure that the regulations adopted by the Department conform to the law under which they were promulgated.

19. To the extent that the Complaint challenges the legality of the full time release provisions of the Allentown collective bargaining agreement, there is an existing process by which the governmental action can be and is challenged on a regular basis: collective bargaining.

20. In addition, the averment that the District is “beneficially affected and not inclined to challenge the action,” is baseless. In the context of collective bargaining, the financial interests of the District and those of the Association are clearly opposed. Absent a specific allegation of fraud or illegal collusion, which does not exist in fact, and is not set forth in the Complaint, the assertion that “The District is beneficially affected because the provision was bargained for as part of the negotiation process for the AEA’s collective bargaining agreement” (Complaint ¶ 12(b)) should be rejected on its face.

WHEREFORE, the Association respectfully requests that this Honorable Court dismiss the Petition for Review in its entirety because the Petitioners lack legal standing.

**Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(7) and (8):
Failure to Exhaust Statutory Remedies; Existence of a Full, Complete,
and Adequate Non-Statutory Remedy at law.**

21. The averments of paragraphs 1 through 20 are incorporated by reference.

22. Preliminary objections are appropriately granted where Petitioners have failed to “exercise or exhaust a statutory remedy.” *See* Pa.R.C.P. 1028(a)(7). In addition, preliminary objections are appropriately granted where Petitioners enjoy a “full, complete, and adequate non-statutory remedy at law.” *See* Pa.R.C.P. 1028(a)(8). Both of these criteria are met in this case.

23. The Petitioners have failed to exhaust the administrative remedies that are available to them, and still have a full, complete, and adequate non-statutory remedy at law. Specifically, the relief that Petitioners seek regarding pension service credit for release time lies with PSERS. That agency has exclusive jurisdiction to initially determine whether service performed by an individual for a public school district in Pennsylvania is creditable under the Public Employees

Retirement Code, subject to appellate judicial review. 2 Pa.C.S. §702; 24 Pa.C.S. §8501(a).

24. The Petitioners could have filed an informal complaint with PSERS pursuant to 1 Pa.Code §35.5. Under that provision of the Administrative Code, the Petitioners could have raised this issue with PSERS via a simple “letter or other writing.” 1 Pa.Code §35.5. This would not have interfered with the filing of a formal complaint. *See* 1 Pa.Code §35.5.

25. If unsatisfied with the informal complaint outcome, or in the alternative, the Petitioners could have sought relief by filing a formal complaint with PSERS under 1 Pa.Code. §35.9. This avenue of redress is available to “a person complaining of anything done or omitted to be done by a person subject to the jurisdiction of an agency, in violation of a statute or regulation administered or issued by the agency.” 1 Pa.Code. §35.9. The procedure outlined in this section of the Administrative Code has been made available to individuals who do not generally have standing to contest an agency’s decision. *See Powers v. Dept. of Health*, 550 A.2d 857 (Pa. Commw. Ct. 1988), *appeal denied* 574 A.2d 75 (Pa. 1989) (allowing competitor of out-patient therapy care, denied standing to contest decision of Department of Health, to file formal complaint under 1 Pa.Code. §35.9).

26. The PSERS Board, empowered to decide the issue raised by Petitioners in this proceeding, would have then been required to “satisfy the complaint or to answer the same in writing within [prescribed time periods.] If, in the judgment of the agency, a violation of a statute or regulation administered or issued by the agency has been alleged and has not been satisfied adequately, the agency will either invite the parties to an informal conference, set the matter for a formal hearing, or take another action which in the judgment of the agency is appropriate.” 1 Pa.Code. §35.9.

27. In the alternative, the Petitioners could have sought relief by petitioning PSERS for a declaratory order under 1 Pa.Code §35.19. This Court has held that it is within the power of an agency to review actions for declaratory judgment pursuant to this section of the Administrative Code. *See, e.g. Kaiser Energy, Inc. v. Dep’t. of Env’tl. Res.*, 535 A.2d 1255 (Pa. Commw. Ct. 1988) (holding that Board of Property could properly review an action for declaratory judgment between private parties and the Commonwealth).

WHEREFORE, the Association respectfully requests that this Court dismiss the Petition for Review in its entirety because the Petitioners have failed to exercise and exhaust their administrative remedies, and because the Petitioners have an adequate remedy at law.

**Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(1):
Lack of Jurisdiction**

28. The averments of paragraphs 1 through 27 are incorporated by reference.

29. When this Court dismisses the Complaint as to PSERS for the reasons above, it immediately becomes proper for this Court to dismiss the Complaint in its entirety as to the Association and the District as well because this Court will no longer have jurisdiction over any of the Petitioners' claims. The original jurisdiction of this Court can only be sought under the circumstances in 42 Pa.C.S. §761. If the relevant Commonwealth agency in this case, PSERS, is dismissed from the case, this Court no longer has jurisdiction over any of the Petitioners' claims.

30. Although the District is a political subdivision of the Commonwealth, any challenge by the Petitioners to its determination to enter into the CBA provision at issue is properly addressed to the court of common pleas of the county in which the District is located. In the present case, that court is the Lehigh County Court of Common Pleas.

31. The Association is a private, unincorporated association, not an entity that provides any basis for the exercise of this Court's original jurisdiction over the claims contained in the Complaint.

WHEREFORE, the Association respectfully requests that this Court dismiss the Petition for Review in its entirety because it lacks original jurisdiction over the claims contained therein.

**Preliminary Objection pursuant to Pa.R.C.P. 1028(a)(4):
Legal Insufficiency of Pleading (Demurrer)**

32. The averments of paragraphs 1 through 31 are incorporated by reference.

33. The Complaint is legally insufficient because the Petitioners failed to allege any facts supporting a constitutional or statutory violation.

34. The Petitioners have alleged no facts supporting a violation of Article VIII, Section 8 of the Pennsylvania Constitution. The Constitutional provision erroneously referred to as the “gift clause” by the Petitioners, is in fact a clause prohibiting the pledge of the Commonwealth’s credit or joint ventures with private parties and has nothing to do with the facts alleged in the Complaint.

35. Moreover, Petitioners have alleged no facts which would allow this Court to find that the actions of PSERS or the District constituted pledging the Commonwealth’s credit to an improper or private purpose.

36. The Petitioners have also failed to allege any facts that justify taking full-time union release out of the scope of public sector bargaining. Since 1971, Pennsylvania public school districts and employee representatives have been empowered to contract about all items that bear on the question of wages, hours and conditions of employment. PLRB v. State College Area Sch. Dist., 337 A.2d 262 (Pa. 1971). The mere fact that a particular subject matter may be covered by legislation does not remove it from collective bargaining.

37. The CBA provision which offends the politics of the Petitioners unquestionably concerns the wages, hours, and job duties of District employees who are on full-time union release. The parties reached an agreement regarding what these employees would do and how they would be compensated, as was their right and their obligation under the Public Employee Relations Act, 43 P.S. 1101.101 *et seq.* The Petitioners, despite their strong objection about this type of work, allege no facts that could permit this Court to void a lawfully bargained contract provision.

WHEREFORE, the Association respectfully requests that this Honorable Court dismiss the Petition for Review in its entirety because the Petitioners have failed to state a legal claim on which relief can be granted.

WHEREFORE, the Association respectfully requests that this Honorable Court **SUSTAIN** the foregoing preliminary objections and **DISMISS** the Petition for Review in its entirety.

Respectfully submitted,

/s/Thomas W. Scott

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