

August 8, 2017

FOR IMMEDIATE RELEASE

**DISTRICT FOUND GUILTY OF VIOLATING NYS LAW
PROPOSED SCHEDULE CHANGES BLOCKED AT THREE SCHOOLS**

New York State Justice Tracy Bannister has found that the Buffalo School Superintendent violated NYS Law when he attempted to use Receivership powers to unilaterally change the starting and ending times at three (3) schools.

NYS Law provides Superintendents (School Districts) with the authority to make unilateral changes in what are called Receivership Schools as long as the changes are being made to improve the education of the students. Receivership schools are schools that have been deemed by NYS to be low-performing schools.

The BTF argued that:

- The changes to the schedules were done to save money over the wishes of many parents and teachers and not to improve the education of the students.
- The Receivership powers granted to the Superintendent (District) were granted based on the previous BTF contract and therefore they are no longer in effect since the BTF and District have entered into a new contract.

After submission of evidence and arguments from the District and BTF, Justice Bannister concurred and ordered that the actions are “stayed until such time as the New York State Commissioner of Education shall determine upon administrative application by either party herein whether the schedule changes attempted by the Respondents as set forth in the Petition are for the purpose of increasing student achievement at the particular schools such as to be appropriate for a receivership agreement modifying the 2016-18 collective bargaining agreement between the parties as required by Education Law §211-f; and it is further ORDERED, that, pursuant to CPLR §7805. Respondents, their employees, agents and assigns are stayed and enjoined from implementing the changes in the starting times or the affected schools set forth in Petition Exhibit F until such time as there is the aforesaid administrative determination of the New York State Commissioner of Education.” (Underlining done by BTF)

BTF President, Phil Rumore, stated “For about two months, we worked with the District to modify the schedules at several schools so that the District could save money this year. Indeed we agreed to allow schedule changes to save money in the third year of the contract (2018-19 school year). Instead of continuing to work with us, the Superintendent and District decided to shove the schedule changes down the throats of the parents, teachers and students. Parents and teachers were angered by this unilateral move and showed their displeasure on signed petitions delivered to the court”.

At a term of the Supreme Court held in and for the County of Erie at the Erie County Courthouse on the 13th day of July, 2017.

PRESENT: HON. TRACEY A. BANNISTER, Presiding

STATE OF NEW YORK
SUPREME COURT COUNTY OF ERIE

In the Matter of

RUYVETTE TOWNSEND, MELISSA RATHKE,
THERESA COLOSI, and BUFFALO TEACHERS
FEDERATION, INC.,

Petitioners,

ORDER

For a Judgment and Order Pursuant to
Article 78 of the Civil Practice and Rules

-against-

BOARD OF EDUCATION of the Buffalo,
City School District, DR. KRINER CASH as
Superintendent of the Buffalo City School
District, and the BUFFALO CITY SCHOOL
DISTRICT,

Index No. 807247/2017
Assigned Justice:
Hon. Tracey A. Bannister

Respondent.

Petitioners having petitioned in this matter, pursuant to CPLR Article 78, for an Order and Judgment declaring that Respondents have acted arbitrarily, capriciously, unlawfully, in bad faith, *ultra vires*, in excess of authority, and in error of law, by changing the starting and ending time of the school days at Schools 3, 59, and 89, in violation of Education Law §211-f, and Respondents having moved to dismiss the proceeding, and the matter having come on regularly before this Court on July 13, 2017,

NOW, upon reading and filing the Order to Show Cause dated June 7, 2017, Verified Petition dated June 5, 2017, affidavits of Maureen McNamara-Uhteg, Sandra Gradolph, Melissa Leumer, Erica Carr, Nicole Larusch, Melissa Farrell, Lisa Chiari, Janeen Schultz, Melissa Rathke, Meagan Silkowski, and Philip Rumore, and exhibits thereto, in support of the Petitioners' application; and the notice of motion to dismiss dated June 15, 2017, affirmation of Shauna Strom dated June 15, 2017, and exhibits thereto, and reply affirmation in further support of Shauna Strom dated July 12, 2017, in opposition to Petitioners' application and in support of Respondents' motion; with there being proof of service of all the foregoing papers upon the respective parties; and after hearing Timothy Connick, of counsel to Robert T. Reilly, attorney for Petitioners, in support of Petitioners' application and in opposition to Respondents' motion to dismiss; and Shauna Strom, of counsel to Nathaniel J. Kuzma, attorney for Respondents, in opposition to Petitioners' application and support of Respondents' motion to dismiss; due deliberation having been had thereon by this Court; and the Court having issued a decision from the bench and a copy of the transcript of said decision being attached hereto and incorporated herein; it is

ORDERED, that the Respondents' motion to dismiss is denied; and it is further

ORDERED, that, pursuant to CPLR §7805, this proceeding is stayed until such time as the New York State Commissioner of Education shall determine upon administrative application by either party herein whether the schedule changes attempted by the Respondents as set forth in the Petition are for the purpose of increasing student achievement at the particular schools such as to be appropriate for a receivership agreement modifying the 2016-2018 collective bargaining agreement between the parties as required by Education Law §211-f; and it is further

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ORDERED, that, pursuant to CPLR §7805, Respondents, their employees, agents and assigns are stayed and enjoined from implementing the schedule changes set forth in Petition Exhibit F until such time as there is the aforesaid administrative determination of the New York State Commissioner of Education. *in the starting times of the affected schools*

Dated: Buffalo, New York

July, 2017

Aug 3, 2017

SUPREME COURT JUSTICE

ENTER!

HON. TRACEY A. BANNISTER, J.S.C.

GRANTED

131446:cwa1141

AUG 04 2017
BY
RITA J. VENTURA
COURT CLERK

STATE OF NEW YORK : COUNTY OF ERIE

SUPREME COURT : PART 5

*****X

In the Matter of

RUYVETTE TOWNSEND, MELISSA RATHKE, THERESA COLOSI,
and BUFFALO TEACHERS FEDERATION, INC.,

Petitioners

For a Judgment and Order Pursuant to Article 78
of the Civil Practice Law and Rules

-against-

DECISION

BOARD OF EDUCATION of the Buffalo City School
District, DR. KRINER CASH as Superintendent of
Buffalo City School District, and the BUFFALO
CITY SCHOOL DISTRICT,

Respondents

*****X

25 Delaware Avenue
Buffalo, New York 14202
July 13, 2017

BEFORE: HON. TRACEY A. BANNISTER
SUPREME COURT JUSTICE

APPEARANCES: TIMOTHY CONNICK, ESQ.
Appearing for Petitioners

SHAUNA L. STROM, ESQ.
Appearing for Respondents

PRESENT: NATHANIEL KUZMA, ESQ.

Karen A. Kristich
Supreme Court Reporter

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1 (Excerpt of Proceedings, decision of the
2 Court, as follows)

3 THE COURT: Well, I just spent a few minutes
4 with Counsel before we came out here to hear your
5 arguments to see if there was any possible resolution,
6 my thought being that maybe the schools could be looked
7 at separately, schools with different needs, meeting
8 maybe different transportation needs, and take a look
9 at that, failing schools are under some guidelines, but
10 we have a 2015 decision by the Commissioner that was
11 later overridden to I would say in the bargaining --
12 new Collective Bargaining Agreement. I don't know that
13 she had spoken about the new Collective Bargaining
14 Agreement, and the new Collective Bargaining Agreement
15 does here give the school district the right to make
16 these changes next year. It appears that you wanted
17 them this year and there may be some good reason for
18 that and that's why the agreement also required that
19 there be negotiations with the Buffalo Teacher
20 Federation in order to come to an agreement with regard
21 to educating in the beginning of the school day and end
22 of the school day, and as I was reading through the
23 papers I was very heartened by the fact that there are
24 lots of agreements along the way and there were
25 cooperation, negotiations, but then it stopped, and in

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1 fact then what was invoked was the 2015 current
2 Collective Bargaining Agreement decisional -- I don't
3 know if you call that law -- decisional guidelines from
4 Commissioner Elliott. I don't see how that's going in
5 effect. I think a new Collective Bargaining Agreement
6 overrode it; otherwise, we'd all be going backward
7 instead of forward. So to the extent that the Board is
8 insisting on doing things that are not in the
9 Collective Bargaining Agreement, they are overreaching,
10 okay. Like I said, there may be very good reasons for
11 it, but I don't quite frankly think that there's any
12 educational reason for it. I mean if you follow the
13 bouncing ball, we're talking about money in the bus
14 schedule, we're not talking about instruction or
15 anything that's going to make the school day better for
16 these kids, so I don't buy the Board's position with
17 regard to some of the changes were made for the
18 educational benefit of the children. It seems to me
19 following the bouncing ball, the negotiations between
20 the two of you that are all about schedules and money;
21 maybe schedules more than money, all right, so I am
22 going to deny your motion to dismiss.

23 And with regard to their petition, I think that
24 you should go to -- you should take this up the chain
25 internally. I do think that you do miss the pot

1 appeal-wise, but I'm going to stay any changes to the
2 2017 and 2018 schedule until you do that, okay. And if
3 that gets the matter expedited to any degree, I hope it
4 does, and if it doesn't the schedule stays the same
5 until there's a chance for the Commissioner to act on
6 whether or not this was a decision that was made with
7 regard to the educational -- achieving better
8 educational academic results for these schools. So I'm
9 staying changing the 2017-2018 starting and ending
10 times temporarily to give you the opportunity -- you, I
11 mean the Petitioner -- including the Buffalo Teachers
12 Federation, to give you an opportunity to run that up.
13 I understand that time is of the essence, and I'm
14 keeping the status quo in place.

15 MS. STROM: Your Honor, if I may, I believe,
16 when you mean status quo, that --

17 THE COURT: No change in the early school
18 late school until the Commissioner makes a finding that
19 changes them to a late school that meets some kind of
20 an educational reason.

21 MS. STROM: But they still get the additional
22 time?

23 THE COURT: They're telling me that that's
24 fine, that they didn't have that problem.

25 MS. STROM: Okay, so they will still get the

1 additional twenty-five minutes?

2 MR. CONNICK: It's twenty-five minutes.

3 MR. KUZMA: They agreed to a seven-hour
4 fifteen minute day.

5 THE COURT: Well, I heard you say that you
6 wanted an additional twenty-five minutes. I heard them
7 say --

8 MR. KUZMA: And that's okay, the twenty-five
9 minutes.

10 THE COURT: So you agree with the additional
11 twenty-five minutes.

12 MR. CONNICK: Your Honor, I'll submit an
13 order on notice. I'll send -- we'll work that out. We
14 have agreed to an additional twenty-five minutes, they
15 want an additional twenty-five minutes. I have to look
16 at the schedules because I think at least two of the
17 schools want another ten, but I could be wrong, I have
18 to look at the schedule. If that's the case, we'll
19 work that out.

20 MS. STROM: And I just want to clarify in the
21 sense that the school schedule has been changed to say
22 that they remain the same, they revert back but we can
23 add twenty-five?

24 THE COURT: Correct. If you extend to the
25 early schools and late schools, that seems to be a very

1 big bone of contention. These schools, until the
2 Commissioner says that there's an educational reason
3 for them to not revert back.

4 MS. STROM: Thank you.

5 THE COURT: With regard to the extra
6 twenty-five minutes, you guys need to figure out how
7 that's going to work out, but they've agreed to
8 twenty-five minutes and you want the extra twenty-five
9 minutes, and I do agree that that is an educational
10 consideration and can foster better academic results in
11 a failing school, and to that end we do seem to be in
12 agreement twenty-five minutes is going to be tacked on,
13 but your schedule for changing the nature of the school
14 days from early school to late school, if the
15 Commissioner finds that to be something that will bring
16 around better academic results, so be it, but in the
17 meantime I'm staying any change. So that's the order.

18 MR. CONNICK: Thank you, Your Honor.

19 * * * *

20 The foregoing is certified to be a true and correct
21 transcript of the proceedings in the above matter.

22 *Karen A. Kristich*
23 Karen A. Kristich
24 Official Court Reporter

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