

**IN THE SUPREME COURT OF PENNSYLVANIA**

**No. 47 EM 2014**

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**THE SCHOOL REFORM COMMISSION and THE SCHOOL DISTRICT OF  
PHILADELPHIA**

**Petitioners**

**v.**

**PHILADELPHIA FEDERATION OF TEACHERS, LOCAL 3, AFT, AFL-CIO  
SCHOOL REFORM COMMISSION**

**Respondent**

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**STATEMENT AND MEMORANDUM OF AMICUS CURIAE  
OF  
THE ALLIANCE FOR PHILADELPHIA PUBLIC SCHOOLS**

**IN SUPPORT OF THE RESPONSE OF THE PHILADELPHIA  
FEDERATION OF TEACHERS, LOCAL 3, AFT, AFL-CIO**

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**STATEMENT AND MEMORANDUM OF AMICUS CURIAE  
OF THE ALLIANCE FOR PHILADELPHIA PUBLIC SCHOOLS  
IN SUPPORT OF THE RESPONSE OF THE PHILADELPHIA  
FEDERATION OF TEACHERS, LOCAL 3, AFT, AFL-CIO**

This Statement of Amicus Curiae is filed pursuant to Pa.R.A.P. 531, by The Alliance for Philadelphia Public Schools (APPS) as citizens of Philadelphia who will be most affected and impacted by any decisions of the School Reform Commission to unilaterally impose working conditions and work rule changes upon the Philadelphia Federation of Teachers. Simply stated -- the working conditions of Philadelphia's teachers are the learning conditions of our schoolchildren.

For the reasons stated below, we support the Response of the Philadelphia Federation of Teachers and the Statement in Support of Response, filed by Senator Lawrence M. Farnese, et al.

**The Alliance for Philadelphia Public Schools**

The Alliance for Philadelphia Public Schools (APPS) is an advocacy group of concerned citizens and stakeholders in our public schools who advocate for the "best practices" in school governance, leadership and pedagogy. Our membership includes parents of students who are presently enrolled in Philadelphia's public schools and concerned community members, along with active and retired teachers, administrators, counselors, librarians and school nurses.

APPS members regularly attend and participate in School Reform Commission meetings whether they are "action meetings" where resolutions are passed, or policy discussion meetings where public engagement is purportedly sought. We also regularly

participate in public meetings of the School District and those of other advocacy groups and stakeholders of Philadelphia's public schools. We hear and listen to the voices of the total school community of Philadelphia in more settings and more forums than any official of the School District.

Though some of our members are also members of the Philadelphia Federation of Teachers, and this Amicus Curiae filing supports the PFT response, this memorandum is not filed at the request of, nor in consultation with the leadership of the PFT.

### **Summary of Argument**

We, as parents of students in Philadelphia's schools and as school community members, are the primary stakeholders in our public schools. We have not been heard in this matter in any meaningful way and wish to be heard now. It is our position that the present course of conduct of the School District of Philadelphia is not in the best interests of our schoolchildren, their school communities and our common good as citizens of Philadelphia.

Nowhere in Section 6-696 does it explicitly state that the School Reform Commission (SRC) can unilaterally impose working conditions on our children's teachers and support staff. 24 P.S. § 6-696. Nor, does it implicitly authorize the SRC to dictate working conditions or ignore their public responsibility to negotiate a labor agreement which provides our children with the stability of their teachers which our children need and deserve. Additionally, the *Pennsylvania Sunshine Act* protects our right to be heard in a meaningful manner in this matter. 65 Pa.C.S.A. § 701 et seq.

Because it is in the best interests of our children and our community, we ask the Court to preserve the status quo ante until the School District and the Philadelphia

Federation of Teachers bargain a collective agreement which provides us with a first rate profession of teaching, and provides us with a stable and highly professional teaching force. Such an agreement will reduce the present instability and turmoil of our schools which our children and our teachers face every day.

## STATEMENT OF AMICUS CURIAE

### **I. The Position of APPS**

We believe that Democracy is the best practice in the governance of our public schools and that the ideals and principles of which American Democracy embodies are essential to well governed and well led schools. Inclusion of the local school community in the decision-making of public school governance is part of the required democratic process. It is our position that the *Pennsylvania Sunshine Act* requires that we, as stakeholders and citizens, be provided with the opportunity to participate in the decision-making processes of our public school system and the right to comment in a public forum *before* any action is taken by the SRC or the School District.<sup>1</sup> 65 Pa.C.S.A. § 701 et seq.

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<sup>1</sup> The Pennsylvania *Sunshine Act* sets forth the procedures for public decision-making of public agencies. The SRC has a responsibility to follow those procedures in making all decisions which effect the public, as here. As we point out in footnote 4, the SRC, nor the School District, has any legal authority to bring this action without first fully complying with the procedures of the Sunshine Act, and passing a resolution to file this action in the first instance, which they have not done. The purpose of the *Sunshine Act* are set forth in Section 702, Legislative findings and declarations, which states:

(a) Findings. ♦ The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decisionmaking of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.

(b) Declarations. ♦ The General Assembly hereby declares it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter.

We, and the public in general, have been excluded from that process in this matter. Our right to be heard on the issues which the SRC now puts before the Court has not been considered and has been circumvented by the SRC. The Court's decision in this matter will ultimately affect the well being of our schoolchildren and our community. The community of Philadelphia is an interested party, because we and our children -- are the affected party. That reality should not be overlooked by the Court or taken lightly by anyone.

The quality of teachers which our district attracts and keeps within our community ultimately effects our schoolchildren and us as a community. This action of the SRC, intended to strip Philadelphia teachers of their bargaining rights and due process rights and unilaterally impose working conditions and teacher layoff practices, will not serve that purpose. It will further erode the quality and viability of our teaching force. As evidenced by our recent history, such unilaterally determined practices will chase qualified teachers away, cause many of our highly talented teachers to leave our district, and destroy the profession of teaching in a manner which will ultimately hurt our schoolchildren.

It is our position that the School Reform Commission has a legal and ethical duty to act in the best interests of our children, their communities, our total school community, and of course – the common good of our citizenry. This action reflects the abdication of the responsibility of the Commonwealth of Pennsylvania, and Governor Corbett, to fund our schools properly and adequately for a 21<sup>st</sup> century education for our children. We submit that this action is improperly influenced by macro and micro political forces

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which are designed to dismantle our public schools and turn them into private enterprises for the self interests of a few.

This action of the School Reform Commission is not in the best interests of our students and our community and is counterproductive to our goals and the expectations of our community. It will not advance the legal duty of the state to provide a “thorough and efficient system of public education” in Philadelphia as required by our Pennsylvania Constitution. The present adversarial position of the School District is destructive to our school community and the collegial and collaborative leadership practices which are necessary to make all of our public schools great schools for children.

A collaborative, professional culture is necessary to bring us into the 21<sup>st</sup> century in educational practices. That precept is well founded in study after study of effective leadership and school governance.<sup>2</sup> There is no research based study which advocates for the unilateral and autocratic imposition of rules of conduct of professional learning communities.<sup>3</sup>

Public education is a public trust mandated by our Pennsylvania Constitution. We, as citizens and beneficiaries of the public trust, and our interest in this matter should not be, and cannot be, subtracted from the rubric of decision-making. There are more parties of interest in this matter who have a stake in its outcome than the two parties of this present action. The public is also “due a process” which includes us in public decision-making and rule making which is protected by the *Pennsylvania Sunshine Act*.<sup>4</sup> Our

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<sup>2</sup> For a comprehensive review of the relevant academic and legal research on the best practices in school governance and leadership, see, *Whose School is It? The Democratic Imperative for Our Schools*, Migliore, R. (2007): Havertown. Integrity Press.

<sup>3</sup> *Id.*

<sup>4</sup> Section 708 (a) of the *Pennsylvania Sunshine Act* allows the School Reform Commission to meet in executive session to discuss litigation and labor issues. However, it does not grant the

rights, and the rights of all members of our community, teachers included, should be preserved as matter of public policy.

Therefore, we ask the Court to fashion an order which requires both the School District of Philadelphia and the Philadelphia Federation of Teachers to return to the bargaining table and to bargain, in good faith, a contract which protects our rights and our children's rights to be taught by a strong and viable "profession of public school teachers" and protects our teachers' right to bargain for reasonable working conditions, rules of conduct, and salary.

## **II. The Political Context of This Matter**

The political nature of this action and the context from which it is begotten should not go unrecognized by this Court. Act 46 is in great controversy in Philadelphia. Ever since it was imposed upon Philadelphians it has caused much turmoil in our schools and much turmoil for our schoolchildren. The closing of 24 schools last year, and the resultant disarray it has caused for our children is just one prime example of what Act 46 has begotten.

This year, the SRC plans to reconstitute more schools and turn others over to private charter management organizations, further creating turmoil for our children. It is

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School Reform Commission or the School District of Philadelphia any legal authority to file a lawsuit against the PFT without first duly passing a resolution authorizing the district to file a legal action. There has been no such resolution. Section 708(c) requires that all "action" of the SRC be done at an open meeting pursuant to public processes. Section 708(c) states: "Limitation. Official action on discussions held pursuant to subsection (a) shall be taken at an open meeting. Nothing in this section or section 707 (relating to open meetings) shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of section 704 (relating to open meetings). Since this action was filed without following the procedures mandated by the *Sunshine Act*, which includes our right to be apprised of the contemplated action and comment on its propriety, the filing of this action is arguably *void*. There is no resolution of the SRC which grants any School District official legal authority to file this action.

common knowledge that those actions are also much in controversy with parents, students and the community. The SRC, and subsequently the Department of Education, argues that the change in work rules and the abrogation of long standing due process protections which they embody are necessary for them to carry out their purposes of creating a well functioning system of public education. We do not agree.

If the SRC did not choose to close our public schools, reconstitute schools, and transform others into privatized versions of schools operated by charter management organizations, such work rule impositions such as the elimination of seniority in teacher layoffs and recall would not be at issue. They, like the provisions of Sections 11-1124 and 11-1125.1 of the School Code, are designed to be invoked only when there are reductions of workforce and are based on due process considerations.<sup>5</sup>

The privatization of the American school house is a hotly contested national political issue, and the turning over of our public schools to private entities is hotly contested in Philadelphia. The most respected and credible authority who thoroughly studies those issues is the former U.S. Assistant Secretary of Education, and highly respected educational historian, researcher and professor, Diane Ravitch. She points to

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<sup>5</sup> Sections 11-1124 and 11-1125.1 of the School Code are commonly known as the “last in first out provisions” or LIFO provisions. They are statutory provisions which are “teacher tenure” provisions. As such they inure to all professional employees of the School District whether or not they are PFT members and whether or not they are covered by the PFT collective bargaining agreement. They are essentially “due process” provisions concerning teacher evaluations and ratings, and the due process rights of all professional employees to challenge, and be heard, on the issue of the propriety of teacher ratings and lay offs. The School District now asserts that Act 46 gives them the right to suspend that due process provision of the School Code. As we discuss in section IV of this memorandum of law, that would raise Due Process Clause constitutional issues which would effect all employees of the district who are not now parties to this action. Because the right to a hearing to contest teacher ratings and discharges is “constitutionally guaranteed” by the Due Process Clause, any provision of Act 46 purporting to give the SRC the authority to suspend those provisions, must be ruled as “*unconstitutionally void.*” *Mosley v. City of Pittsburgh School District*, 702 F.Supp.2d 561, 582-583 (2010).



and discusses the relevant research in her scholarly treatise: *The Reign of Error – The Hoax of the Privatization Movement and the Danger to America’s Public Schools*.

The PFT contract has never prevented nor stood as an obstacle to well founded reforms in our schools. Neither the School District, nor the Department of Education has stated nor factually shown how any provisions of the PFT contract has impeded any well reasoned school reform. They can not point to even one instance.

The PFT contract provides reasonable rules, customs and usages which protect teachers from arbitrary decisions and which protect only good teachers from being improperly transferred or discharged without good cause and without legitimate reason. Its provisions contractually protect the great ideals of the profession of teaching and learning such as freedom of speech, academic freedom and freedom of association.<sup>6</sup>

Those ideals and the freedom of thought and advocacy are necessary for a well functioning public school system and a well functioning Democracy. The public policy supporting the protection of those rights in public school settings is reflected throughout our large body of school law, and is codified in our School Code. 24 P.S. § 11-1121 *et seq.*

The PFT contract only enhances those public policies we cherish as Americans. The labor agreement, our statutes and our case law create a “community system” of rules and obligations by which our teachers and administrators, as professional public

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<sup>6</sup> Without such reasonable work rules our public school district will become a lawless organization wherein administrators have license to do whatever they want for whatever reason they want without any constraints. They could do what they please regardless of the negative affects their actions may have on our children and our community.

employees, live by. Every provision in it ultimately effects our children, our parents, and our community in a fundamental way.

The School District's agreement with the PFT is more than merely a labor contract – it is a social contract. The normal processes of its development through public and democratic processes, should not be disturbed.

### **III. The Alleged Budgetary Crisis Is A Matter of Choices Made by the Governor, the Department of Education and the School District of Philadelphia.**

It is well publicized that the root cause of the present monetary problems of the School District can be directly traced to the budgetary policies and determinations of the administration of Governor Corbett. We find it quite hypocritical of the Department of Education to assert that it is necessary to abrogate the democratic rights of Philadelphians because of the present financial distress, when their administration, along with the Corbett administration's policies and practices, in fact, created the present financial distress of the district.

There are many advocates in Philadelphia and across our state who point to the lack of a fair funding formula for our schools. It is common knowledge that the present administration has abandoned the funding formula used by the prior administration of Governor Rendell, and replaced it with an arbitrary process. The result is the present state of affairs in Philadelphia.

There are many very credible and highly respected advocates in our community who assert that such underfunding of our schools is purposeful and driven only by political ideology to turn our public schools into markets for private profit. Such

privatization has caused our budget to explode and compromised our ability to fund our regular public schools.

Additionally, there are millions of dollars in our state and local budgets, which we submit are unnecessarily allocated for the insidious practices of high stakes testing and incessant use of test preparation materials in our schools. They are practices which limit the curriculum for our students and the pedagogy of our teachers with no credible evidence of any scholastic improvement. It is widely reported that those practices are under attack in Philadelphia and across our nation, and so are the inordinate amounts of dollars attributed to such questionable practices.

All the while, our students go without the basic necessities of an adequate education. Such inadequacies include the lack of basic supplies, insufficient number of counselors, school nurses, assistant principals, support specialists, librarians, and school libraries, etc.

We submit that there needs to be a “factual record” created by the parties before the Court rules on the issues raised in this action. Neither the School District, nor the Department of Education has proven in any way the factual basis which purportedly underpins their assertions. There has been no proof of facts which would validate the School District’s assertion that it is necessary to impose conditions upon our children’s teachers, and in turn – our children.

This case illuminates the absurdity of Act 46 and the Distressed Schools Act. They allow the Secretary of Education, who acts under the direction of the governor, to declare our district distressed when it is the Governor’s policies and failure to fund our public schools properly, which create the financial distress in the first instance. The SRC,

whose 3 members are also appointed by the governor, in turn, carry out the Governor's political policies. The Governor, as evidenced by this action – intends to take rights away from Philadelphia's citizens, and only Philadelphia's citizens. How constitutionally repugnant is that?

The public officials and officers of our Commonwealth have created the financial situation which they now use to assert that they have license to abrogate the rights of Philadelphians.

**IV. A Similar Provision of the School Code to Act 46, Section 17-1704.1-B has been ruled by the U.S. District Court, Western District of Pennsylvania to be “unconstitutionally void” on its face and as applied.**

We do not wish to, nor attempt to, infringe on either party's right to frame the issues of this case by interjecting constitutional claims herein. Counsel for both parties have stated their cases very well. However, so the Court may take cognizance of ancillary due process issues, we do want to point the Court to the case of *Mosley v. City of Pittsburgh Public Schools District*, 702 F. Supp.2d 561, 582-583 (2010). In that well-reasoned case, Section 17-1704.1B of the School Code was declared to be unconstitutional on its face and as applied, and therefore, *unconstitutionally void*. *Id.* at 582.

That provision of the School Code was ruled by the District Court as being *void* because it took away the rights of a professional public employee to continued employment without affording him adequate procedural safeguards. They are due process rights and procedural protections which are “constitutionally guaranteed” to teachers and all professional employees of the district. Those rights inure to them as individuals regardless of whether there is a PFT contract in force and regardless of whether a teacher

or other professional employee is a PFT member. They are rights guaranteed to every citizen who works for a public school employer.

Those constitutional rights and procedural protections are codified in the tenure provisions of the School Code. 24 P.S. 11-1121 et seq. The Department of Education and the SRC can not be granted the authority to abrogate rights granted by the U.S. and Pennsylvania constitutions. Those rights are constitutionally guaranteed.

The *Mosley* court said it quite simply:

“As the Supreme Court stated in *Loudermill*, a legislature may not constitutionally authorize the deprivation of such an interest in continued employment without appropriate procedural safeguards.” *Mosley* at 581, citing *Loudermill*, 470 U.S. at 541.

It is well settled in Pennsylvania law that both the tenure provisions of the School Code and labor agreements give teachers and all professional employees property rights to continued employment which can not be taken from them without due process of law. *Bradley, et al v. Pittsburgh Board of Education, et al*, 913 F. 2d 1064 (3<sup>rd</sup> cir. 1990); *Board of Regents v. Roth*, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972); *Andresky v. West Allegheny School District*, 437 A.2d. 1075 (Pa. Cmwlt. 1981).

The tenure provisions of the School Code, its rating system, and the mandatory procedural requirements, including the right to a hearing to contest teacher ratings, provide for procedural protections which are constitutionally required. *Id.*

The School District and the Department of Education ask the Court to give it license to circumvent and in essence abrogate the constitutional protections embedded in our School Code. Those protections can not be abrogated and the SRC can not be granted the authority to suspend those statutory provisions because they are “constitutionally

guaranteed.” *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 541, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985).

In *Loudermill* the U.S. Supreme Court, in the eloquent words of Justice White made it clear:

If a clearer holding is needed, we provide it today. The point is straightforward: The Due Process Clause provides that certain substantive rights – life, liberty and property – cannot be deprived except pursuant to constitutionally adequate procedures. The categories of substance and procedure are distinct. Were the rule otherwise, the Clause would be reduced to a mere tautology. “Property” cannot be defined by the procedures provided for its deprivation any more than can life or liberty. The right to due process “is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest in [public] employment, it may not constitutionally authorize the deprivation of such an interest, once conferred, without procedural safeguards.” *Loudermill* at 541; Citing *Arnett v. Kennedy*, 416 U.S. 134, 167, 94 S.Ct. 1633, 1650. 40 L.Ed.2d 15 (1974).

Those rights inure to every School District professional public employee personally as individuals. Any ruling in this matter effects the rights of individuals and our citizens as persons. All effected citizens who are not represented by the parties in this action. The School District, through this action seeks license to lay off teachers, who are professional public employees under the School Code, without following any rational procedure and turn its public employees into “at will” employees where they fire teachers for any reason they so choose, including improper reasons. Professional employees, whether union members or not, are not at will employees.

The SRC are not, and can not be, the “grand dictators” of the rights of Philadelphia’s citizens in public employment. Nor should the School District and the SRC, an unelected and politically appointed body, be allowed to be the grand dictators of

the learning conditions of our children. All of this ultimately and fundamentally effects all of our school communities and our children.

Intertwined in this action are the rights of all of Philadelphia's citizens, and the rights of all school district educators to freedom of thought and freedom of speech. If we allow the district administrators unfettered discretion to lay off teachers for whatever reason they so choose, without following prescribed and mandatory procedures, we are jeopardizing and compromising the very vitality of our educators to serve our children in accordance with our highest ideals.

In the case of *Keyishian v. Board of Regents*, the U.S. Supreme Court stated quite eloquently the heart of this matter as they discuss our freedoms and our rights:

Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore of special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. "The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*. [Citation omitted.] The classroom is peculiarly the "marketplace of ideas." The Nation's future depends upon the leaders trained through wide exposure to that robust exchange of ideas which discovers truth "out of a multiple of tongues, [rather ] than through any kind of authoritative selection." *Keyishian v. Board of Regents*, 385 U.S. 589, 603-604, 87 S.Ct. 675, 684 (1967).

We similarly believe that nowhere is it more important to protect everyone's rights, especially the rights of freedom of thought, speech and due process, than in the realm of Pre K-12 public education.

### **Conclusion**

For the reasons herein stated, we support the position of the Philadelphia Federation of Teachers and ask that the School Reform Commission, and the School

District of Philadelphia bargain with the Philadelphia Federation of Teachers and establish amicable working conditions, along with teacher salary provisions, which will attract the best and brightest to join our teaching profession, remain in our teaching force, and ultimately -- serve our children well.

We have seen enough turmoil in our schools.

Respectfully submitted,

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