

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
SIXTH DIVISION

TERESA GRAY, KEITH BROACH,  
RENITA L. THOMPSON, STEVEN B. THOMPSON,  
ELEANOR BURRESS and MARNITA A. BISBEE

PLAINTIFFS



Filed 07/30/2007 11:09:01  
Pat O'Brien Pulaski Circuit Clerk

VS.

CASE NO. CV 2007-7476

KATHERINE MITCHELL, MICHAEL DAUGHERTY,  
CHARLES ARMSTRONG, DIANE CURRY,  
MELANIE FOX, BAKER KURRUS and LARRY BERKLEY  
(in their Official Capacities as Members of the Board of  
Education of the Little Rock School District);  
THE BOARD OF EDUCATION OF THE LITTLE ROCK  
SCHOOL DISTRICT OF PULASKI COUNTY, ARKANSAS;  
and the LITTLE ROCK SCHOOL DISTRICT OF PULASKI  
COUNTY, ARKANSAS

DEFENDANTS

ORDER

On the 27<sup>th</sup> day of July, 2007, came on for hearing all pending motions and from the pleadings filed herein, the argument of counsel, the testimony and evidence presented, and all other things and matters properly before the court, the court doth find as follows:

1. Dr. Brooks' *Motion to Intervene*, filed on July 26, 2007, is not ripe for consideration.
2. The defendants' *Second Motion to Quash Subpoena*, filed on July 26, 2007, is granted.
3. The defendants' *Motion for Protective Order and Motion to Quash Subpoena*, filed on July 26, 2007, is denied.
4. The plaintiffs' *Motion to Shorten Defendants' Time to Answer Plaintiffs' Requests for Admission and Brief Memorandum in Support Thereof*, filed on July 25, 2007, is denied.

5. The Rule 12(b) (6) portion of the defendants' motion filed on June 25, 2007, is denied.

6. The Rule 56 portion of the defendants' motion filed on June 25, 2007, is addressed in a separate order entered on even date hereof.

7. The plaintiffs' *Petition for Preliminary Injunction*, filed on July 16, 2007, is denied. At the hearing, the plaintiffs failed to present any evidence of standing to bring the action or of the probability of success on the merits of the action.

IT IS SO ORDERED.



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TIMOTHY DAVIS FOX  
CIRCUIT JUDGE

7/30/07  
DATE

cc: John Gill, *Esq.*  
Eugene Sayre, *Esq.*  
Don Trimble, *Esq.*  
Morgan E. Welch, *Esq.*

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PLAINTIFFS

Filed 07/30/2007 11:11:28  
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VS.

CASE NO. CV 2007-7476

KATHERINE MITCHELL, MICHAEL DAUGHERTY,  
CHARLES ARMSTRONG, DIANE CURRY,  
MELANIE FOX, BAKER KURRUS and LARRY BERKLEY  
(in their Official Capacities as Members of the Board of  
Education of the Little Rock School District);  
THE BOARD OF EDUCATION OF THE LITTLE ROCK  
SCHOOL DISTRICT OF PULASKI COUNTY, ARKANSAS;  
and the LITTLE ROCK SCHOOL DISTRICT OF PULASKI  
COUNTY, ARKANSAS

DEFENDANTS

SUMMARY JUDGMENT

On the 27<sup>th</sup> day of July, 2007, came on for hearing the defendants' *Motion for Summary Judgment*, and from the pleadings filed herein, the argument of counsel, and all other things and matters properly before the court, the court doth find as follows:

1. This action is an illegal exaction challenge to the payment of severance pay by the Little Rock School Board to Dr. Roy Brooks.

2. The case presents an issue of first impression.

3. The following material facts are not in dispute between the parties:

(a) Dr. Roy Brooks and the Board of Education of the Little Rock School District of Pulaski County, Arkansas, entered into a three-year contract on June 29, 2004, entitled, "Employment Contract Between Dr. Roy Brooks And The Board Of Education Of The Little Rock School District Of Pulaski County, Arkansas."

(b) Paragraph 11(E) of the contract provides that:

**E. Unilateral Termination By Board of Education.** The BOARD may, at its option, and by a minimum of ninety (90) days notice to

**SUPERINTENDENT**, unilaterally terminate this contract. In the event of such termination, the **DISTRICT** shall pay to **SUPERINTENDENT**, as severance pay, all of the aggregate salary allowances and other compensation he would have earned under this employment contract from the actual date of termination to the termination date set forth in this employment contract, unless otherwise agreed to.

(c) On June 29, 2005, the parties executed a "First Amendment To The Employment Contract Effective July 1, 2004 Between Dr. Roy Brooks And The Board Of Education Of The Little Rock School District Of Pulaski County, Arkansas."

(d) On August 24, 2006, the parties executed a "Second Amendment To The Employment Contract Effective July 1, 2004 Between Dr. Roy Brooks And The Board Of Education Of The Little Rock School District Of Pulaski County, Arkansas."

(e) On May 24, 2007, the Board of Education of the Little Rock School District voted to unilaterally terminate Dr. Brooks pursuant to Paragraph 11(E) of the contract between the parties.

(f) The ninety-day notice period will expire during the period of August 22-25, 2007.

(g) Subsequent to the expiration of the ninety-day notice period Dr. Brooks will no longer be employed as Superintendent of the Little Rock Public School District.

4. The amount and method of computation of any "aggregate salary allowances and other compensation," that will be paid to Dr. Brooks pursuant to the Board's exercise of Paragraph 11(E) are presently unknown. These factual matters might constitute material facts in dispute except that it is clear to the court from both the *Complaint* filed in this action and the statements made by plaintiffs' counsel at the hearing that the illegal exaction challenge is to the threshold issue and not to the amount of money which may ultimately be paid to Dr. Brooks.

5. Article 14, Section 2 of the Arkansas Constitution states:

No money or property belonging to the public school fund, or to this State, for the benefit of schools or universities, shall ever be used for any other than for the respective purposes to which it belongs.

6. Article 14, Section 4 of the Arkansas Constitution states:

The supervision of public schools, and the execution of the laws regulating the same, shall be vested in and confided to, such officers as may be provided for by the General Assembly.

7. A.C.A. Section 6-17-301 provides that school boards may employ superintendents by written contract for a three-year period and that such contracts may be renewed annually. Subparagraph (d) of such statute specifically refers to, "salaries, income and benefits."

8. A.C.A. Section 6-13-620(a) (12) gives school boards the authority to, "Do all other things necessary and lawful for the conduct of efficient free public schools in the district."

9. The Arkansas Constitution grants the General Assembly the authority to enact laws regulating the supervision of public schools. Within the parameters of its constitutional authority, the right, and obligation, to establish public policy concerning the operation of public schools is the province of the General Assembly, not the courts.

10. School boards are presently legislatively empowered to use their discretion in determining what is "necessary" for the "conduct of efficient free public schools."

11. The Board had the authority, under current Arkansas law, to utilize its discretion to enter into a contract with Dr. Brooks containing the unilateral termination provision.

12. The *Complaint* must be considered not only as a threshold challenge to the Board's statutory authority to include the unilateral termination provision but also as a challenge to the Board's use of its discretion in exercising the unilateral termination provision

13. The Arkansas Supreme Court, in *Safferstone v. Tucker*, 235 Ark. 70, 357 S.W.2d 3 (1962), held that:

The law appears to be well settled. In this State a broad discretion is vested in the board of directors of each school district in the matter of directing the operation of the schools and a chancery court has no power to interfere with such boards in the exercise of that discretion unless there is a clear abuse of it and the burden is upon those charging such an abuse to prove it by clear and convincing evidence.

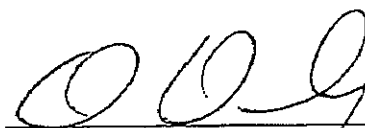
14. The defendants attached a copy of the contract between the Board and Dr. Brooks to the *Motion for Summary Judgment*. The signatures of the members of the Board on the contract are evidence of the Board's utilization of its discretion to include the unilateral termination provision in the contract.

15. The plaintiffs' *Response to Motion to Dismiss or for Summary Judgment* had two attachments, an Affidavit of Teresa Gray and Minutes of the May 24, 2007, Special Meeting of the Board of Directors.

16. The Minutes of the May 24, 2007, Special Meeting provide evidence of the Board's utilization of its discretion to invoke the unilateral termination provision of the contract.

17. After the defendants established a *prima facie* entitlement to summary judgment, the plaintiffs were required to meet proof with proof and demonstrate the existence of one or more disputed material issues of fact. The plaintiffs failed to provide any evidence to meet their burden of proving by clear and convincing evidence that the Board clearly abused its discretion in either including the unilateral termination provision in the contract or in choosing to exercise the unilateral termination provision.

IT IS ACCORDINGLY ORDERED AND DECREED that the defendants are awarded summary judgment and this matter is hereby dismissed with prejudice.



TIMOTHY DAVIS FOX  
CIRCUIT JUDGE

7/30/07  
DATE

cc: John Gill, *Esq.*  
Eugene Sayre, *Esq.*  
Don Trimble, *Esq.*  
Morgan E. Welch, *Esq.*