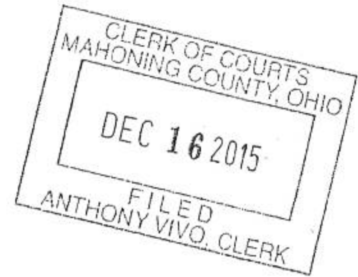
IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO



Youngstown Education Association OEA/NEA	**Case No. 15 CV 3108**
Plaintiff	Judge Lou D'Apolito Magistrate Daniel Dascenzo
vs.	**Magistrate's Decision**
Brenda Kimble, et al	
Defendant	

This matter is before the Court on Plaintiffs' motions for preliminary injunction and mandamus, filed on December 1, 2015, December 8, 2015, and December 10, 2015.

A. Defendants' Motion(s) to Dismiss:

As a threshold matter, the Magistrate will first address the pending motions of Defendants to dismiss for lack of standing and lack of jurisdiction. Upon review and consideration of the motions to dismiss, the Magistrate decides as follows:

Standing

1. Plaintiff YEA has standing as the bargaining unit for teachers within the Youngstown School District. R.C. 3302 requires that the School Board President appoint a "teacher employed by the district". As such, the Plaintiff holds a real interest in the Board President's compliance, or

alleged non-compliance, with the requirements of R.C. 3302.10(B), as one of its members could serve upon such an appointment. YEA is the exclusive bargaining representative of teachers in the Youngstown School District and therefore has standing to represent its individual teacher members in such a capacity with the filing of its current claims seeking relief to enforce a public duty. Although individual members of this representing body would have standing to bring their own claims, the relief requested by YEA does not require the participation of its individual members.

Subject Matter Jurisdiction

2. R.C. 2733.01 states that:

> "A civil action in *quo warranto* may be brought in the name of the state:
>
> (A) Against a person who usurps, intrudes into, or unlawfully holds or exercises a public office, civil or military, or a franchise, within this state, or an office in a corporation created by the authority of this state."

The Magistrate finds that this is not an action in *quo warranto* because there is no challenge by Plaintiffs against Kimble as an individual who has allegedly usurped, intruded into, or unlawfully holds a public office.

Furthermore, the Ohio Constitution, Article 7, Section 7 states that "[e]very person chosen or appointed to any office under this state, before

entering upon the discharge of its duties, shall take an oath or affirmation, to support the constitution of the United States, and of this state, and also an oath of office." Ms. Staten does not currently hold a public office, as she has taken no oath of office, nor has she been sworn in. Before a party is entitled to maintain an action in *quo warranto*, he must not only show his own right to office but also establish that another is actually holding office; *quo warranto* does not lie where no one has actually assumed office. *Steiniger v. Board of Commissioners (1989) 60 Ohio App. 3d 122.*

Ms. Staten, although receiving a letter of appointment to the commission, has not yet taken an oath of office or entered upon a discharge of duties and as such, she does not currently hold any office. *Steiniger, supra*

Plaintiffs' current claims therefore, do not sound in *quo warranto* and under the circumstances no adequate remedy at law is available to Plaintiff through such an action. This Court has proper jurisdiction over this matter.

Additionally, the claims now before this Court are distinct from the claims pending in Franklin County, Ohio in both their make-up of the parties involved as well as in their substance and nature. The Franklin County claims raise the issue of R.C. 3302's constitutionality in both its inception and its application. The claims before this Court relate only to Kimble's alleged non-compliance with said statute. Due to these

substantive differences, the jurisdictional priority rule does not deprive this Court of jurisdiction.

Upon review and consideration of the pleadings of the parties, and pursuant to Civ.R. 12(B), the motions of the Defendants to dismiss for lack of standing and for lack of subject matter jurisdiction are denied.

B. Preliminary Injunction:

With regard to the Plaintiffs' motions for preliminary injunction and mandamus and based upon the evidence presented at the hearing on this matter, the Magistrate finds as follows:

1. R.C. 3302.10 requires the appointee of the Board President to be a teacher employed by the school district.
2. There are no directives or limiting qualifiers contained in the relevant portion of the statute regarding the definition of "teacher" or how the word "teacher" should be utilized in the application of R.C. 3302.10.
3. Within R.C. 3302.10(B)(1)(b) the legislature did not include other titles commonly used in our educational system such as principal, vice principal, guidance counselor, educator, or substitute. The legislature used the word teacher.
4. As such, the Court must give the term "teacher" its common and ordinary meaning.
5. The plain meaning of teacher, in the given context of this statute, is someone whose occupation is teaching others, especially children.

6. With respect to the mandates of R.C.3302.10, the "teacher" is also required to be employed by the school district, or in this instance, the Youngstown City School District.
7. The plain meaning of the statutory language requires that the Youngstown City School Board President's appointee be an individual whose occupation is teaching children in the Youngstown City School District.
8. Staten is currently employed by the school district for the 2015-2016 school year as a Utility Substitute Principal. (See Plaintiff's Ex.2, p.1).
9. Staten is not currently employed as a teacher by the school district.
10. Ms. Staten's occupation is not that of a teacher.

11. At the time of her appointment by Board President Kimble, Ms. Staten was employed by the school district as a Utility Substitute Principal, and not as a teacher. (Pl. Ex. 2, p.1).

12. "Ordinarily, a party requesting a preliminary injunction must show that (1) there is a substantial likelihood that the plaintiff will prevail on the merits, (2) the plaintiff will suffer irreparable injury if the injunction is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction." *Blakeman's Valley Office Equip. Inc. v. Bierdman (2003), 152 Ohio App.3d 86 citing, Procter & Gamble Co. v. Stoneham (2000), 140 Ohio App.3d 260, 267.*

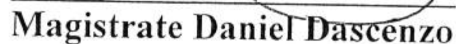
13. Each element must be established by clear and convincing evidence. *Id.* In determining whether to grant injunctive relief, no one factor is dispositive. *Cleveland v. Cleveland Elec. Illum. Co. (1996), 115 Ohio App.3d 1, 14.* The four factors must be balanced with the "flexibility which traditionally has characterized the law of equity." *Id.*
14. Based upon the evidence presented during the hearing, the relevant portions of the record, as well as the language of R.C. 3302.10, the Magistrate finds that Plaintiffs have a substantial likelihood of success of prevailing on the merits in the present case.
15. Under even the most basic interpretation of the statutory language at issue, Staten is simply not a teacher employed by the Youngstown City School District. Rather, she is a substitute principal employed by the school district. The two positions are separate and distinct. And under no common, ordinary interpretation could one reasonably conclude that these different titles are synonymous.
16. Next, the Magistrate finds that the Plaintiff would suffer irreparable harm if injunctive relief is not granted. The statute requires Kimble to appoint a teacher to the Academic Distress Commission. If Kimble is not enjoined from neglecting to perform her duty in this respect, then a teacher will lose the opportunity to provide their valuable input as it relates to Commission activities.
17. The Magistrate further finds that no third parties will suffer substantial harm as the result of granting Plaintiff's request for injunctive relief.

Despite Kimble's seemingly well-meant efforts to appoint someone who she deemed "well rounded", the fact remains that the individual she appointed is not a teacher as required by the statute. Furthermore, the attorney general's argument that any ruling granting injunctive relief will cause the Commission to be further delayed is not well taken. This Court has been charged with adjudicating a controversy, which exists because the plain language of the statute was not followed in the first instance. Keeping in mind the Commission's arguments, any further delays can be easily mitigated by simply complying with the relevant statute as it was written by our legislature.

18. Finally, the Magistrate finds that that the public interest will be served by granting injunctive relief. The public interest is best served when those charged with a statutory duty to perform ultimately follow the mandates of the law and actually perform the duties for which they are responsible.
19. To be entitled to writ of mandamus, relator has burden of establishing that he or she has clear legal right to relief prayed for, that respondent has clear legal duty to perform requested act, and that relator has no plain and adequate remedy in ordinary course of law. *State ex rel. Luna v. Huffman (1996) 74 Ohio St.3d 486.*
20. Based upon the evidence, Plaintiff/Relator has satisfied the required elements demonstrating that it is entitled to the relief prayed for.
21. Upon consideration of the evidence presented, the relevant portions of the record, the arguments of counsel, and pursuant to Ohio Civ.R. 65, the

Plaintiffs have demonstrated by clear and convincing evidence that they are entitled to injunctive relief.

22. The Plaintiff's motions for preliminary injunction are sustained.
23. The Plaintiff/Relator's motion for a writ of mandamus is sustained.
24. Defendant Brenda Kimble is hereby enjoined from appointing Defendant Carol Staten, or any other individual who is not a teacher employed by the Youngstown City School District, to the Academic Distress Commission.
25. Within 48 hours of the entry of judgment in this matter, Kimble is mandated to perform the duties for which she is responsible pursuant to R.C. 3302.10(B)(1)(b) and appoint a teacher employed by the Youngstown City School District to the Academic Distress Commission.
26. The Academic Distress Commission, except to the extent previously stipulated to by the parties, is hereby enjoined from proceeding with any action under R.C. 3302.10 until such appointment is made by Kimble. The 60 day time period in which the Commission shall appoint a CEO per R.C. 3302.10(C)(1) is hereby tolled and shall not commence to run until Kimble's appointment to the Academic Distress Commission has been properly made pursuant to the statute.
27. This matter shall be set for further proceedings as deemed necessary by the Court, including trial on the merits. Bond is continued.



12-16-15
Date

Magistrate Daniel Dascenzo

The parties shall have fourteen (14) days from the filing of this decision to file written objections with the Clerk of this Court. Any such objections shall be served upon all parties to this action and a copy must be provided to the Court. A party shall not assign as error on appeal the Court's adoption of any factual finding or legal conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to the factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b). Any party may request the magistrate to provide written findings of fact and conclusions of law. In accordance with Civ. R. 52, this request must be made within seven (7) days from the date of filing this decision.

THE CLERK SHALL SERVE NOTICE OF THIS ORDER UPON ALL PARTIES WITHIN THREE (3) DAYS PER CIV. R. 5.