

STATE OF INDIANA	)	IN THE MARION SUPERIOR COURT
	) SS:	CIVIL DIVISION, ROOM THREE
COUNTY OF MARION	)	CAUSE NO. 49D03-1107-PL-028585

INDIANA STATE TEACHERS ASSOCIATION )  
 and TERESA MEREDITH, )

Plaintiffs, )

vs. )

INDIANA DEPARTMENT OF EDUCATION and )  
 DR. TONY BENNETT, in his official capacity )  
 as Indiana Superintendent of Public )  
 Instruction, )

Defendants. )

**FILED**

AUG 17 2011

*Elizabeth A. White*  
 CLERK OF THE MARION CIRCUIT COURT

**ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION**

This cause is before the Court on Plaintiffs Indiana State Teachers Association and Teresa Meredith's (collectively, "ISTA") Motion for a Preliminary Injunction enjoining Defendants the Indiana Department of Education and Dr. Tony Bennett, in his official capacity as Indiana Superintendent of Public Instruction (collectively, "IDOE") from requiring school corporations throughout the State of Indiana to use the regular teacher's contract form attached as "Exhibit B" to ISTA's Verified Complaint. For the following reasons, ISTA's motion is granted, and IDOE is preliminarily enjoined from using "Exhibit B" to the Verified Complaint as the regular teacher's contract form under I.C. § 20-28-6-3 and I.C. § 20-28-6-5, until such time as the Court can enter a final judgment in this case. In support of this Order, the Court makes the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACT

1. Plaintiff Indiana State Teachers Association is a not-for-profit association whose membership consists of teachers and other school personnel throughout the State of Indiana, having a principal place of business in Marion County, Indiana.

2. Plaintiff ISTA represents approximately 45,000 members before school corporations on employment matters, including engaging in collective bargaining and addressing contract issues.

3. Plaintiff Indiana State Teachers Association possesses associational standing to maintain this suit. *Save the Valley, Inc. v. Indiana-Kentucky Elec. Corp.*, 820 N.E.2d 677, 680 (Ind. Ct. App. 2005).

4. Plaintiff Teresa Meredith is an individual, an Indiana citizen, and a resident of Shelby County, Indiana. Ms. Meredith is an elementary school teacher in the Shelbyville Central School Corporation.

5. Plaintiff Meredith possesses individual standing to maintain this suit.

6. Defendant the Indiana Department of Education is a creature of the Indiana General Assembly that was established: (1) to perform the duties required by statute; (2) to implement the policies and procedures of the State Board; (3) to conduct analytical research to assist the State Board in determining the State's educational policy; (4) to compile statistics concerning the ethnicity, gender, and disability status of students in Indiana schools, including statistics for all information that the Department receives from school corporations on enrollment, number of suspensions, and number of expulsions; and (5) to provide technical assistance to school corporations. I.C. § 20-19-3-1; I.C. § 20-19-3-4(a).

7. Dr. Tony Bennett ("Dr. Bennett") is the duly elected Superintendent of Public Instruction pursuant to Article 8, § 8 of the Indiana Constitution and I.C. § 20-19-1-1.

8. Dr. Bennett is also the director of the Indiana Department of Education. I.C. § 20-19-3-2.

9. The Indiana Department of Education and Dr. Bennett are proper Defendants in this action.

10. On or about July 21, 2011, Dr. Bennett issued a memorandum to the superintendents at all of the school corporations throughout the State of Indiana regarding a new regular teacher's contract form. This memorandum states: "All teacher contracts beginning with the 2011-2012 school year must be on these forms."

11. Attached to this memorandum was a regular teacher's contract form that Dr. Bennett issued pursuant to his statutory obligations contained in I.C. § 20-28-6-3(1)(A)(i).

12. Pursuant to I.C. § 20-28-6-5, school corporations must use the regular teacher's contract form provided by IDOE without amendment.

13. The regular teacher's contract form provided by IDOE states on its face that a school corporation must recreate the document *verbatim* and without amendment.

14. School corporations throughout the State of Indiana have and will require ISTA's members, including Ms. Meredith, to agree to and to execute the regular teacher's contract form at issue in order to be employed as a teacher at the applicable school corporation. Under Indiana law, public school corporations must use the uniform teacher's contract. I.C. § 20-28-6-4(b).

## CONCLUSIONS OF LAW

1. The Indiana Court of Appeals has held:

Generally, the trial court considers four factors in determining the propriety of injunctive relief: (1) whether plaintiff's remedies at law are inadequate; (2) whether the plaintiff can demonstrate a reasonable likelihood of success on the merits; (3) whether the threatened injury to the plaintiff outweighs the threatened harm a grant of relief would occasion upon the defendant; and (4) whether the public interest would be disserved by granting relief. *L.E. Services, Inc. v. State Lottery Com'n of Indiana*, 646 N.E.2d 334, 349 (Ind. Ct. App. 1995), *trans. denied*. . . . [W]hen the plaintiff is seeking a permanent injunction, the second of the four traditional factors is slightly modified, for the issue is not whether the plaintiff has demonstrated a reasonable likelihood of success on the merits, but whether he has in fact succeeded on the merits. *Plummer*, 97 F.3d at 229.

*Ferrell v. Dunescape Beach Club Condominiums Phase I, Inc.*, 751 N.E.2d 702, 712-13 (Ind. Ct. App. 2001); *Indiana Ass'n of Beverage Retailers, Inc. v. Indiana Alcohol & Tobacco Comm'n*, 945 N.E.2d 187, 196 (Ind. Ct. App. 2011).

2. However, "when the acts sought to be enjoined are unlawful, the plaintiff need not make a showing of irreparable harm or a balance of the hardship in his favor." *Ferrell*, 751 N.E.2d at 713; *Sadler v. State ex rel. Sanders*, 811 N.E.2d 936, 946 (Ind. Ct. App. 2004) ("[w]here the conduct sought to be enjoined is clearly in violation of a statute, . . . the moving party need not demonstrate irreparable harm or that the balance of hardships is in his favor."). In other words, "where the action to be enjoined is unlawful, the unlawful act constitutes *per se* 'irreparable harm' for purposes of the preliminary injunction analysis. When the *per se* rule is invoked, the trial court has determined that the defendant's actions have violated a statute and, thus, that the public interest is so great that the injunction should issue regardless of whether the plaintiff has actually incurred irreparable harm or whether the plaintiff will suffer greater injury

than the defendant." *Short On Cash.Net of New Castle, Inc. v. Department of Financial Institutions*, 811 N.E.2d 819, 823 (Ind. Ct. App. 2004).

3. A teacher employed in a public school must be employed on a uniform teacher's contract or a supplemental teacher's contract. I.C. § 20-28-6-4(b).

4. ISTA is likely to succeed on the merits of its Verified Complaint for the following reasons:

a. IDOE's regular teacher's contract form violates Indiana's common law principles governing employment contracts and is illusory. Contrary to IDOE's argument, nothing in Indiana law or the newly enacted statutes gives Dr. Bennett or IDOE the authority to contravene general contract principles and laws that have been established and govern in Indiana.

b. The regular teacher's contract form that is prescribed by I.C. § 20-28-6-3 is an employment contract, and as such, the form must comply with general principles of contract law, including the laws governing employment contracts.

c. The regular teacher's contract form drafted by Dr. Bennett fails to satisfy these general principles of contract law and employment contract law in that paragraph four of the form gives a school corporation the unilateral authority to change a teacher's number of hours and days to be worked. As such, the contract fails to state a specific duration or ascertainable term of employment, is unenforceable, and is illusory. *Orr v. Westminster Village N., Inc.*, 689 N.E.2d 712, 717 (Ind. 1997).

d. The regular teacher's contract form drafted by Dr. Bennett converts a teacher's employment with a school corporation to an at-will employment relationship which is impermissible under Indiana law.

e. The regular teacher's contract form drafted by Dr. Bennett also violates I.C. § 20-28-6-2(a)(3)(E).

f. Indiana Code § 20-28-6-2(a)(3)(E) requires that a regular teacher's contract state the number of hours per day that a teacher is expected to work as discussed pursuant to I.C. § 20-29-6-7.

g. Stating a minimum number of hours to be worked does not satisfy this statutory requirement which requires the actual number of hours a teacher is expected to work to be included in the regular teacher's contract.

h. The regular teacher's contract drafted by Dr. Bennett also violates Indiana Code § 20-28-6-2(a)(3)(E) in that it does not require the school corporation to discuss the number of hours to be worked per day. Indeed, it makes such a discussion impossible because the parties cannot have a meaningful discussion regarding the number of hours that a teacher is expected to work per day if the number is identified as a "minimum" number, and the parties cannot effectively bargain salaries until they both understand how many hours per day a teacher is expected to work.

i. The regular teacher's contract drafted by Dr. Bennett is unconscionable in that it gives school corporations the authority to unilaterally modify the number of days and hours that a teacher must work, but it does not require the school corporation to pay for the additional labor or any other additional consideration.

j. The terms and conditions as set forth in the document are contradictory and vague and therefore preclude a true meeting of the minds of the parties.

5. Although ISTA need not make a showing that its remedies at law are inadequate because the regular teacher's contract form at issue is unlawful, the Court finds that ISTA has made such a showing. Specifically, ISTA will suffer an irreparable harm if its members, including Ms. Meredith, are required to sign an invalid and illegal contract.

6. The threatened injury to ISTA outweighs any potential harm to IDOE. IDOE will suffer no harm; ISTA members face the loss of bargaining rights, positions, seniority, compensation and jobs if the Court does not issue a preliminary injunction.

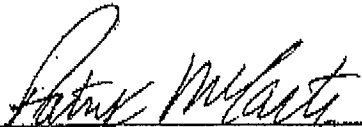
7. The public interest would be served by the issuance of a preliminary injunction because the negotiation of teachers' contracts could have a detrimental effect upon the overall education environment and interfere with the normal public school education process. *Irwin R. Evens & Son, Inc. v. Board of Indianapolis, Airport Auth.*, 584 N.E.2d 576, 581 (Ind. Ct App. 1992); *IEERB v. Mill Creek Classroom Teachers Assoc.*, 456 N.E.2d 709, 711-12 (Ind. 1983).

8. Because ISTA is not seeking monetary damages, no bond will be required pursuant to Indiana Trial Rule 65(C).

9. Accordingly, in order to maintain the *status quo*, Defendants are preliminarily enjoined, pursuant to Trial Rule 65, from requiring and permitting school corporations to use the regular teacher's contract form at issue in this case until such time as the Court can make and enter a final judgment.

10. The Court further Orders that Superintendent of Public Instruction, Dr. Tony Bennett, notify all school corporations in the State that they should not and cannot use the regular teacher's contract form at issue in this case until further Order from this Court, and also forward a copy of this Order to all school corporations in the State.

ALL OF WHICH IS ORDERED, ADJUDGED AND DECREED THIS 17 DAY OF  
AUGUST, 2011.

  
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PATRICK L. McCARTY, JUDGE  
MARION SUPERIOR COURT  
CIVIL DIVISION, ROOM 3

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