

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

MONROE COUNTY SCHOOL BOARD,            )  
  )  
          Petitioner,                            )  
  )  
vs.    )     Case No. 10-2791  
  )  
MARK HOOPER,                                )  
  )  
          Respondent.                         )  
\_\_\_\_\_  )

RECOMMENDED ORDER OF DISMISSAL

This matter came before Administrative Law Judge Edward T. Bauer on the Joint Pre-Hearing Stipulation, filed by the parties on September 23, 2010.

APPEARANCES

For Petitioner: Scott C. Black, Esquire  
Venis and Bowling of the Florida  
Keys, P.A.  
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For Respondent: Mark Herdman, Esquire  
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STATEMENT OF THE ISSUE

The dispute in this case arises out of Petitioner's termination of Respondent's Employment with the Monroe County School District.

PRELIMINARY STATEMENT

By letter dated May 7, 2010, Petitioner Monroe County School Board notified Respondent that it had reviewed his file and concluded that he had not satisfied the statutory requirements for a professional service contract. The correspondence further informed Respondent that his "annual contract is not being renewed for the 2010-2011 school year." Subsequently, on May 10, 2010, Leon Fowler, the President of United Teachers of Monroe, advised Petitioner in writing that Respondent was requesting a hearing with the Division of Administrative Hearings to challenge Petitioner's action.

On May 20, 2010, counsel for Petitioner forwarded Respondent's request for an administrative hearing to the Division of Administrative Hearings. This cause, while initially assigned to Administrative Law Judge John G. Van Laningham, was transferred to the undersigned on June 30, 2010.

Upon review of the Joint Pre-Hearing Stipulation, filed by the parties on September 23, 2010, the undersigned concluded that the Division of Administrative Hearings lacked subject matter jurisdiction to adjudicate the dispute in this cause. During a telephone conference on September 27, 2010, the undersigned advised the parties that the final hearing was cancelled and that a Recommended Order of Dismissal would follow.

### FINDINGS OF FACT

1. Having determined, for the reasons detailed below, that the Division of Administrative Hearings lacks jurisdiction in this cause, the undersigned declines to make findings of fact, as such would be a nullity.

### CONCLUSIONS OF LAW

2. As noted above, the parties submitted a Joint Pre-Hearing Stipulation in this matter that detailed their respective positions.

3. Petitioner acknowledges in the Pre-Hearing Stipulation that Respondent was converted to Professional Service Contract (PSC) status in or around 2002. However, Petitioner now contends, some eight years after the fact, that Respondent did not meet the requirements for a PSC when the parties originally entered into the agreement. In particular, Petitioner asserts that "Respondent was ineligible to obtain PSC as he had not been a member of the instructional staff for the required (3) years," and further, that it "can find no evidence of the required recommendation by the Superintendent of Schools to the Board authorizing the conversion from Annual Contract status to PSC." Due to these alleged deficiencies, Petitioner reasons that:

[A]ny subsequent renewals of Respondent's employment on an Annual Contract/PSC status were statutorily invalid and void.

Similarly, the recommendation to convert Respondent back to PSC instructional for the 2009-2010 school year was improper as the initial requirements for PSC were not met. Having failed to properly qualify and obtain [a] PSC, Respondent's employment could only be by way of annual contract. Ultimately, Respondent received notice from the current Superintendent, Dr. Burke, that he failed to meet the requirements for [a] PSC and that his annual contract would not be renewed for the 2010-2011 school year.

4. Accordingly, the crux of Petitioner's argument is that it was entitled, due to its own unilateral mistakes of fact,<sup>1</sup> to rescind the PSC Petitioner and Respondent entered into in 2002 and deem Respondent to have agreed to work under an annual contract, which could be non-renewed at the pleasure of the superintendent.

5. Respondent points out, in his section of the Pre-Hearing Stipulation, what appears to be undisputed: he entered into a PSC in 2002 and maintained uninterrupted PSC status through the end of the 2009-2010 school year. However, contrary to Petitioner's argument, Respondent contends that he satisfied the statutory requirements for a PSC, and as such, could only be terminated by Petitioner with cause. Respondent further asserts, quite sensibly, that even if he did not meet the statutory requirements of a PSC, Petitioner should be estopped from replacing his PSC with an annual contract to which he never assented.

6. If the parties were in agreement in this matter that Respondent possessed a PSC, it is clear that the Division of Administrative Hearings would have subject matter jurisdiction to adjudicate the lawfulness of the dismissal. See § 1012.33(6), Fla. Stat. (2010) (Providing that any member of an instructional staff that is dismissed for cause during the term of the contract may request a hearing to dispute the charges, which shall be heard, at the district school board's election, by either the Division of Administrative Hearings or in a direct hearing conducted by the school board); § 120.569, Fla. Stat. (2010); § 120.57, Fla. Stat. (2010).

7. The problem, however, is that the parties have taken conflicting positions as to whether a PSC presently exists. As discussed above, Petitioner asserts that the PSC conferred in 2002 was voidable, and as such, it was free to rescind the PSC, treat Respondent as an annual teacher, and decline to renew his "annual contract" for the 2010-2011 school year despite the fact that Respondent had never agreed to such a contract. On the other hand, Respondent contends that he has properly held PSC status since 2002, which requires Petitioner to demonstrate just cause to terminate his employment.

8. Accordingly, the instant case does not involve the question of whether an educator committed misconduct that would allow the school board to terminate his employment for cause (a

dispute over which the undersigned would have jurisdiction), but rather, the distinct issue of whether Petitioner breached its PSC with Respondent when it declared the contract void and refused to continue performing its obligations thereunder, including the obligation to continue Respondent's employment unless just cause for termination were shown to exist. While no doubt inconvenient for the parties, it is well-settled that contractual disputes are exclusively matters for judicial consideration and cannot be litigated in this forum or an administrative body. Worldwide Research Services Corp. v. Department of Financial Services, 2007 Fla. Div. Adm. Hear. LEXIS 664 (DOAH December 6, 2007) (dismissing cause for lack of jurisdiction where "Petitioner seeks to have a contract dispute . . . resolved in this forum. Be it an oral or written contract, the resolution of contract disputes is the exclusive jurisdiction of Article V courts"); Vincent J. Fasano, Inc., v. School Board of Palm Beach County, Fla., 436 So. 2d 201, 202-203 (Fla. 4th DCA 1983) (holding that claim for "breach of contract is ordinarily a matter for judicial rather than administrative or quasi-judicial consideration"); Peck Plaza Condo. v. Division of Fla. Land Sales and Condos., 371 So. 2d 152, 153-154 (Fla. 1st DCA 1979) (holding Division of Administrative Hearings lacked jurisdiction to adjudicate contract dispute; "Jurisdiction to interpret . . . contracts is, under our system,

vested solely in the judiciary"); see also Fla. State University v. Hatton, 672 So. 2d 576, 579 (Fla. 1st DCA 1996) (noting that the Division of Administrative Hearings is a quasi-judicial forum and not a court of competent jurisdiction).

9. For these reasons, the Division of Administrative Hearings lacks subject matter jurisdiction to resolve what is plainly a contract dispute between the parties. Respondent is, of course, free to seek redress for wrongful termination or breach of contract in the appropriate judicial forum.

RECOMMENDATION

It is

RECOMMENDED that Petitioner dismiss Respondent's request for an administrative hearing for lack of jurisdiction.

DONE AND ENTERED this 29th day of September, 2010, in Tallahassee, Leon County, Florida.



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EDWARD T. BAUER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of September, 2010.

ENDNOTE

<sup>1</sup> The undersigned notes that Petitioner's argument in this regard appears to lack support in the law. See Limehouse v. Smith, 797 So. 2d 15, 17 (Fla. 4th DCA 2001) ("However, a party's performance under a contract is not excused on the basis of a unilateral mistake when the mistake is the result of the party's own negligence and lack of foresight, or the other party has relied upon his performance so that rescission would be inequitable").

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.