NO: 08-CI-05293

JEFFERSON CIRCUIT COURT

DIVISION TWO

SUSAN BUHMANN-RIEHL, ET. AL. PLAINTIFFS

V.

BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY, ET. AL. DEFENDANTS

FINDINGS OF FACT,

CONCLUSION OF LAW AND ORDER

This matter comes before the Court on the Plaintiffs' motion for a temporary injunction. The Defendants have responded. An evidentiary hearing was held on July 21, 2007 and the issues now stand submitted.

FINDINGS OF FACT

1. The Plaintiffs have asked the Court to compel the Defendants to renew their contracts for the upcoming school year and state that they will suffer immediate and irreparable harm pending the outcome of this litigation.

2. The affidavits of fifteen teachers have been tendered to the Court which state that they received non-renewal notices, but had never had negative performance evaluations and were not given an E-1 notice with twelve weeks in which to cure deficiencies. All of the affiants state that they have significant financial and healthcare needs that they will be unable to attend to if terminated.

3. Stephen Neal of the Jefferson County Teachers Association testified that non-tenured teachers are those from years one through four. Upon attaining their fifth year, teachers are entitled to a continuing contract. A change took place in the agreement between the Board and

the Teacher's Association sixteen years ago. At that time, teachers in years two, three and four had the same rights as fifth year teachers.

Form E-2 is used to demonstrate a written violation by a teacher, including misconduct. Teacher performance evaluations are also used. The provisions of Article 8 provide for both performance and discipline.

4. Williams Eckles is the human resources head for the school district. He is involved in labor negotiation. He stated that E-2s are not used in all cases. Some disciplinary matters are not on E-2s. He had a written contract with the principals and asked for non-renewal recommendations. They do not say why the contracts were not renewed.

5. Marty Bell is the deputy superintendent of the Board of Education. Previously, in 90, 91-93, he had Eckles' position. No agreements were made regarding non-renewal.

CONCLUSIONS OF LAW

CR 65.04 (1) sets forth the elements necessary for the issuance of such an injunction. First, there must be a showing that the movant's rights are being violated or are about to be violated. Second, the movant must show that he or she will suffer immediate and irreparable injury before the matter may be adjudicated.

In Maupin v. Stansbury, Ky. App., 575 SW 2d 695 (1978), the Court of Appeals interpreted that rule as indicating that in order to prevail on a motion for injunctive relief, a party must show that he or she has a "concrete personal right" which is in jeopardy. At 698. He or she must also show that there is an immediate need for relief and that the applicant has shown that there is a substantial question upon which he will probably prevail. Further, there must be a balancing of equities between the parties. In his opinion, Judge Martin wrote that, "...if the complaint shows a probability of irreparable injury and the equities are in favor of issuance, it is

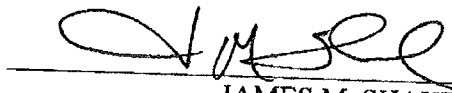
sufficient if the complaint raises a serious question warranting a trial on the merits." At 699. However, as stated in Cyprus Mountain Coal Corp. V. Brewer, Ky., 828 SW 2d 642 (1992), if there is a pecuniary standard to measure damages, then injunctive relief is inappropriate.

The relief sought by the Plaintiffs must be denied. First, K.R.S. 161.750 (2) does not provide for a right of employment as to these employees. It is unclear whether such a right is provided by the Agreement between the Jefferson County Board of Education and the Jefferson County Teachers Association, since a complete copy was not tendered to the Court. However, the Agreement does set forth procedures to be followed when an employee has demonstrated significant deficiencies in performance. Questions of fact appear to remain as to whether those procedures were followed with these teachers. The Court concludes that the Plaintiffs have failed to meet their burden of supporting the motion for injunctive relief. While there is clearly a substantive question of law at stake, there has been no showing that a concrete personal right is in jeopardy and no showing of injury that is not compensable by monetary damages.

ORDER

IT IS HEREBY ORDERED AND ADJUDGED that the Plaintiffs' motion for a temporary injunction is **DENIED.**

ENTERED IN COURT
DAVID L. NICHOLSON, CLERK
JUL - 4 2008
BY_____ DEPUTY CLERK



JAMES M. SHAKE, JUDGE
JEFFERSON CIRCUIT COURT
DIVISION TWO

DATE:_____

cc: Edwin S. Hopson/C. Tyson Gorman/Jennifer B. Starr
Everett C. Hoffman/Don C. Meade