

FILE COPY

Filed 7/1/2015

RED RIVER UNITED : NUMBER: **147503**
VERSUS : 26TH JUDICIAL DISTRICT COURT *Div. A*

BOSSIER PARISH SCHOOL BOARD :
and D. C. MACHEN, JR. : BOSSIER PARISH, LOUISIANA

PETITION FOR WRIT OF MANDAMUS

NOW COMES, plaintiff, RED RIVER UNITED, a chartered local of the American Federation of Teachers, member AFL-CIO, and domiciled at 1726 Line Avenue, Shreveport, Louisiana, who respectfully represents:

1.

Made defendants herein are:

- (a) BOSSIER PARISH SCHOOL BOARD (“School Board”), a body corporate with the authority to sue and be sued, and which may be served through its President, Glenwood L. “Glen” Bullard, at 1501 Lexington Drive, Bossier City, Louisiana 71111; and
- (b) D. C. Machen, Jr., Bossier Schools Superintendent, (“Superintendent Machen”) who may be personally served at his place of employment, 410 Sibley Street, Benton, Louisiana 71006.

2.

Red River United has the capacity to sue based on La. Code Civ. P. art. 689 and Rule 17(b) of the Federal Rules of Civil Procedure. As an AFL-CIO affiliated labor union with a substantial number of members employed as teachers or support personnel by the School Board, Red River United has the standing to sue defendant for declaratory and injunctive relief for its members based on *United Food & Commercial Workers Union Local 751 v. Brown Group, Inc.*, 517 U.S. 544, 116 S.Ct. 1529 (1996); *International Union, United Auto., Aerospace and Agr. Implement*

Workers of America v. Brock, 477 U.S. 274, 106 S.Ct. 2523 (1986); *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 97 S.Ct. 2434 (1977); *Warth v. Seldin*, 422 U.S. 490, 95 S.Ct. 2197 (1975); and *Caddo Federation of Teachers & Support Personnel v. Caddo Parish School Bd.*, 41 So.3d 1259 (La.App. 2 Cir. 6/23/10).

3.

During the 2014-15 school year, a number of Red River United building representatives filed grievances on behalf members against the School Board for the failure of a number of school principals to provide a duty-free lunch for its teachers.

The law at issue is La. Rev. Stat. 17:434(A)(1), adopted by the Louisiana Legislature in 1988 and amended in 1999, which provides:

The State Board of Elementary and Secondary Education shall adopt necessary rules and regulations requiring, beginning with the 2000-2001 school year, each city and parish school board to provide a minimum of forty-five minutes daily planning time, or its weekly equivalent, and a minimum of thirty minutes for lunch each day which shall be duty-free for every teacher actively engaged in the instruction and supervision of students in the public schools. Implementation of planning time and lunch periods as required in this Section for teachers shall not result in a lengthened school day.

4.

The law is quite clear and basic. It provides that all teachers providing direct instruction to students are entitled to a "minimum of thirty minutes for lunch each day." The defendants have failed or refuse to meet this "minimum" for a daily lunch break for its teachers. As an example of what it means to be duty-free, the Code of Federal Regulations Title 29, Section 785.19 (effective 2010), promulgated by the U. S. Department of Labor defines a "bona fide meal period" as one where the employee is "completely relieved from duty for the purposes of eating regular meals."

5.

On February 19, 2015, the grievance was submitted to the School Board, which deferred action pending a recommendation from Superintendent Machen on how best to implement a thirty (30) minute duty-free lunch period in all schools. Despite having had four (4) months to present his plan, Superintendent Machen has refused or failed to comply with the request of the School Board.

6.

Pursuant to La. Rev. Stat. 17:100.4, the Red River United teachers, who are employed by the School Board, have the right to have their grievance on this question properly heard and disposed of in a timely manner. The inaction or refusal to act by Superintendent Machen has deprived the teachers of a “fair and objective resolution of their complaints,” under this statute.

7.

The law provides no relief by ordinary means for Red River United’s members to obtain redress for the inactions of Superintendent Machen and the School Board to comply with the statute requiring they provide teachers with a thirty (30) minute duty-free lunch period daily, and further delay may cause injustice. Accordingly, the grounds for issuance of a writ of mandamus under La. Code Civ. Proc. art. 3862 are satisfied.

8.

La. Code Civ. Proc. art. 3865 provides, “Upon the filing of a petition for a writ of mandamus, the court shall order the issuance of an alternative writ directing the defendant to perform the act demanded or to show cause to the contrary.”

9.

Red River United is entitled to an alternative writ of mandamus directing Superintendent Machan to make his recommendation to the School Board on how best to implement a thirty (30) minute duty-free lunch period in all schools, or show cause at a day and time by this Court why he should not comply.

10.

Red River United is entitled to an alternative writ of mandamus directing Superintendent Machen and the School Board to comply with La. Rev. Stat. 17:434(A)(1), and give its members, and all teachers, each a minimum of 30 minutes duty-free lunch daily.

11.

Following hearing on the matter, Red River United is entitled to have the above requested writs made peremptory. La. Code Civ. Proc. art. 3866.

WHEREFORE, Petitioner prays as follows:

- (1) That service of process of this petition be made upon the defendants, the Bossier Parish School Board and D. C. Machen, Jr., and that it answer within the delays allowed by law;
- (2) That an alternative writ of mandamus issue directing Superintendent Machan to make his recommendation to the School Board on how best to implement a thirty (30) minute duty-free lunch period in all schools, or show cause on a day and time set by this Court why he should not comply;
- (3) That an alternative writ of mandamus issue directing Superintendent Machen and the School Board to comply with La. Rev. Stat. 17:434(A)(1), and give all teachers, a minimum of 30 minutes duty-free lunch daily;

(4) That after hearing, that this Court's writs of mandamus directing the actions of the defendants be made peremptory; and

(5) For all other equitable and just relief.

WEEMS, SCHIMPF, HAINES, LANDRY,
SHEMPELL & MOORE (APLC)

By



Brian D. Landry (#21688)
912 Kings Highway
Shreveport, LA 71104
Telephone: 318/222-2100
Facsimile: 318/226-5152

**PLEASE SERVE PETITION AND
ALTERNATIVE WRIT OF MANDAMUS ON:**

(1) **Bossier Parish School Board**
through its President,
Glenwood L. "Glen" Bullard
1501 Lexington Drive
Bossier City, Louisiana 71111

(2) **D. C. Machen, Jr.,**
Bossier Schools Superintendent,
410 Sibley Street
Benton, Louisiana 71006

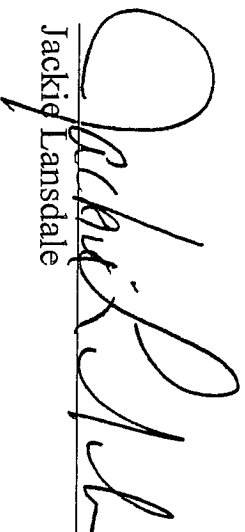
VERIFICATION

STATE OF LOUISIANA

PARISH OF CADDO

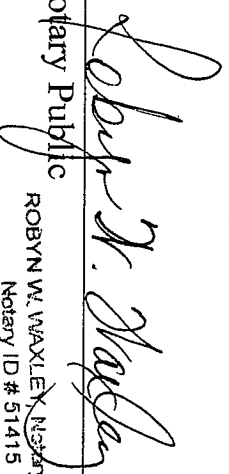
BEFORE ME, the undersigned Notary Public, in and for the State and Parish aforesaid, personally came and appeared Jackie Lansdale, who, after being first duly sworn, did depose and state that:

- (1) She is the President of Red River United, the Petitioner in the foregoing Petition;
- (2) She has read same in its entirety; and
- (3) All of the allegations contained therein are true and correct to the best of her knowledge, information and belief.



Jackie Lansdale

SWORN TO AND SUBSCRIBED before me, Notary Public, on this 30th day of June, 2015.



Notary Public
ROBYN W. MAXWELL, Notary Public
Notary ID # 51415
Bossier/Caddo Parishes, LA
My Commission is for Life

RED RIVER UNITED : NUMBER:

VERSUS : 26TH JUDICIAL DISTRICT COURT

BOSSIER PARISH SCHOOL BOARD
and D. C. MACHEN, JR. : BOSSIER PARISH, LOUISIANA

ALTERNATIVE WRITS OF MANDAMUS

Pursuant to La. Code Civ. Proc. art. 3865, finding that a writ of mandamus has been filed by petitioner, Red River United, against defendants, the Bossier Parish School Board and D. C. Machen, Jr., Superintendent of Bossier Schools, alleging their failure to comply with an Acts of the Louisiana Legislature directing that all school teachers be given a thirty (30) minute duty free lunch period daily, and to resolve grievances, the Court issues the following alternative writs of mandamus:

- A. D. C. Machen, Jr. be and is hereby directed to fully comply with La. Rev. Stat. 17:434(A)(1) and 17:100.4, and report back to the Bossier Parish School Board his implementation plan for giving school teachers a thirty (30) minute duty free lunch, so that the grievance of Red River United members can be disposed of by the School Board in a fair and objective manner; and
- B. D. C. Machen, Jr. and the Bossier Parish School Board be and are hereby directed to fully comply with La. Rev. Stat. 17:434(A)(1) giving school teachers a thirty (30) minute duty free lunch; or
- C. IN THE ALTERNATIVE, it is ordered that both D. C. Machen, Jr. and

the Bossier Parish School Board show cause on the _____ day of July, 2015 at _____ o'clock _____. M., why the writs of mandamus issued in the alternative in this matter should not be made peremptory.

THUS DONE AND SIGNED in Benton, Bossier Parish, Louisiana, this
_____ day of June, 2015.

District Judge