

Detroit judge rules against restraining order over teacher “sickouts”

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In a highly political decision, a Detroit judge on Monday denied a request by the emergency manager over the Detroit Public Schools (DPS) for a temporary restraining order against a wave of teacher “sickout” protests that have hit the district over the last several months.

After the job actions shut down the school district during President Obama’s visit last week, Emergency Manager Darnell Earley filed a complaint against 23 rank-and-file teachers for allegedly violating the state’s law prohibiting strikes by public employees.

The witch-hunt character of the legal action was underscored by the fact that the district selected teachers based on public statements, interviews, postings on Facebook and other expressions of free speech, and then published their names and addresses in widely accessible court documents.

Accusations that individual teachers had engaged in an illegal strike were exposed as a fraud. Evidence was presented that several educators had been on long-term medical leave, including one for treatment of breast cancer. The claim by the district that teachers at the Diann Banks Williamson School had called a sickout the morning of the hearing was belied by the fact that the school only has eight teachers and all were presently in court.

Of the original 23 teachers named in the lawsuit, the judge rejected legal action against all but two: Ivy Bailey, the current president of the Detroit Federation of Teachers (DFT), and Steve Conn, the former local president. The judge scheduled a February 16 hearing on the district’s request for a preliminary injunction against the DFT, Bailey and Conn.

Outside the court, 200 protesters marched in support of the persecuted teachers while hundreds of students defied five-day suspensions and walked out of Cass Technical, Renaissance and Communication and Media Arts High

Schools to defend the teachers and protest overcrowded classes.

With the teachers enjoying popular support and state authorities already embroiled in a crisis over the poisoning of water in nearby Flint—involving the actions of the same state-appointed emergency manager now overseeing DPS—the judge decided to put on hold, at least temporarily, a direct confrontation between the courts and the rebellious teachers. The action gives the DFT more time to suppress the movement, which has erupted outside of its control.

In her opening remarks, Judge Stephens made a point of informing teachers that they all needed legal counsel for the proceeding because “plaintiffs are asking me to enjoin conduct, declare it illegal and end it.” She added, “Failure to abide can result in fines, larger fines, contempt of court and loss of liberty for a period of time.” Such repressive measures are being kept ready and will be used if the DFT fails to suppress the teachers’ insurgent movement.

In his opening statement, the school district’s attorney, George Butler, made it clear the greatest “crime” the teachers had committed was taking up a struggle independently of and in opposition to the DFT and its decades-long collaboration with the destruction of public education and teachers’ living standards.

“We deal with only one organization—the DFT,” Butler said. “By law they are the exclusive bargaining representative for teachers, and they have a long and distinguished career of representing the teachers. We cannot talk to others, no matter who they say they represent. We have to deal with the DFT. When it becomes that the DFT is unable to stop their own members from striking, the law dictates that we come into court and seek injunctive relief while we pursue, if we pursue, any other corollary remedy that may arise from the actions of the teachers.”

Butler argued that teachers and other public employees

essentially had no free speech rights, particularly when it came to expressing their political opposition to the emergency management control of the district or the planned restructuring of the school district being debated in the state legislature.

He cited the corporatist arrangement between the state and the trade unions embodied in the state's Public Employment Relations Act (PERA) of 1947, which prohibits strikes by teachers and allows teachers to collectively act only "through their chosen representative."

Butler claimed, "We are not interested in retaliatory action against people who may have had their hearts in the right place, may have had valid grievances to express, and real concerns about the quality of the education their students are receiving, but there is a right way to air them, and there is only one organization that by law we are allowed to deal with, and that is the DFT. If we were to talk to any other organization purporting to present the teachers' grievances," Butler claimed, "we would be violating the law and subject to unfair law practices."

The teachers took matters in their own hands precisely because their "exclusive representative" works on the other side, collaborating with the state to suppress opposition to the relentless demands for austerity.

For his part, the attorney for the DFT argued that the union had not sanctioned the sickouts but "understood the frustration." The district could have pursued other avenues by working within the union-approved disciplinary procedure instead of going to court to stop the protests, he said, adding, "With the Flint crisis and the Detroit education crisis, the latter is not advanced by injunctions."

Well aware of the popular outrage over the persecution of the teachers, the judge said she would not allow hearsay evidence against them and would not grant the district's request to order teachers to "cease and desist from work stoppages." In regards to the DFT, she challenged the claim that the DFT was encouraging participation in a strike, particularly since its president had repeatedly stated the DFT did not support the sickouts.

Speaking to the attorney for the school district, she said, "That presumes that you want me to make a finding that they are encouraging their members to participate in a strike... I understand they have an obligation not to encourage for facilitate...but what would you have the union do other than say, 'The union is not on strike'?" She then agreed to allow the district to provide further

evidence to substantiate its claims.

Without any case against individual teachers, the district's attorney said he was "deferring" the request for injunctive relief and would not "expose any individual named teacher who is not acting in a representative capacity for the union or any other organization to any jeopardy at all."

In order to discredit the teachers, the district and the news media have sought to make an amalgam between protesting teachers and former DFT President Steve Conn who has sought to take credit for the protests to regain his position as union president. Conn, a member of the pseudo-left By Any Means Necessary (BAMN) group, has repeatedly and recklessly called for strikes and sickouts without engaging in any such activity that would expose him to legal repercussion.

While pointing to the obvious violation of the First Amendment contained in the district's legal action, Conn's attorney, Shanta Driver, a leading member of BAMN, framed the entire case as one of returning the ousted president to his position and helping the local Democratic Party establishment regain control of the school district. She claimed that responsibility for the attack on public education was solely in the hands of Republican Governor Rick Snyder, and that Conn's removal from the DFT presidency by the union's executive board cleared the way for Snyder to push his plan to privatize and charterize the schools.

Driver previously represented the Democratic Party-controlled Detroit school board in legal proceedings against the emergency manager. Both she and Conn speak for a section of the Democrats and trade union bureaucracy who have been marginalized by the state takeover. In the name of restoring "democracy" and ending the "racist control of Detroit," they are pushing for a restructuring of the school district that would allow an affluent layer of upper middle class politicians, preachers and phony "civil rights" leaders to cash in on the dismantling of the public schools and the growth of for-profit charters.



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