Judge tosses out Detroit Public Schools lawsuit against teacher “sickouts”

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Last Thursday Michigan Court of Claims Judge Cynthia Stephens ruled against the Detroit Public Schools (DPS) in the teacher “sickout” lawsuit filed last January, concluding the case.

The lawsuit was filed by DPS, under the jurisdiction of emergency manager Steven Rhodes, at the height of the teachers’ job actions last winter. It sought to criminalize the protests, which were organized independently of the Detroit Federation of Teachers, to oppose unsafe school buildings, years of DFT-backed pay and benefit cuts and threats to privatize the district. DPS alleged that the “sickouts” constituted strike action, illegal under the 1947 Michigan Public Employment Relations Act (PERA).

Dismissing the complaint against the final two teachers, Stephens admitted their actions constituted the “exercise of free speech” and that she had no legal grounds to sanction the teachers.

The legal action, which originally targeted 22 teachers and four so-called advocacy groups, was aimed at intimidating teachers and quashing the growth of support to the teacher sickouts. High school students joined their teachers in boycotting classes, and parents and other workers solidarized themselves with educators. Protesting teachers posted photos of the black mold, leaking ceilings and unsafe school buildings on social media, making conditions in Detroit schools a national scandal.

There was another critical purpose to the suit. In addition to the rank-and-file teachers named in the pleading were the Detroit Federation of Teachers (DFT) and its interim president Ivy Bailey. The appearance of Bailey on the document may have appeared contradictory at first, as the sickouts were conducted in defiance of the union. But the school district and its government backers calculated that the threats of fines, and even possible jail time, would provide added incentive for the union to suppress opposition and facilitate the state reorganization of the Detroit Public Schools necessary to ensure the investments of Michigan bondholders.

The DFT and its parent organization, the American Federation of Teachers, are fervent supporters of Obama and Hillary Clinton, and have long collaborated with the reactionary “school reform” policies of the Democratic and Republican parties. From the beginning of the protests, the DFT, with the full backing of AFT President Randi Weingarten, had sought to undermine the protests. However, in the aftermath of the suit, they announced their full-throated support to the plan by Republican Governor Rick Snyder for the dissolution of the district.

In return for services rendered, the DPS dropped Bailey and other DFT officials from the list of defendants.

The final act in the case was last week’s dismissal of the two remaining defendants, former DFT president Steve Conn and Nicole Conaway of the pro-union pseudo-left group By Any Means Necessary (BAMN). The court used their public statements on the sickouts, which falsely alleged that they were leading them, as evidence.

In an eight-page decision, Stephens dismissed the DPS argument that it was illegal for defendants to voice approval of the work stoppages, acknowledging this “interpretation is offensive to fundamental rights of free speech.”

The judge’s decision was highly political. It had less to do with her reading of the First Amendment than the judge’s recognition that the unions had already succeeded in suppressing opposition to the highly contentious school reorganization legislation that took

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effect July 1.

There is little doubt that the same, if not a different judge, would quickly dispense with any concerns about free speech and impose punishing sanctions against teachers, including jail time, if a powerful movement emerged outside of the control of the unions that challenged bipartisan destruction of public education.

The Michigan legislature has streamlined PERA's ability to fine and penalize teachers for striking as part of the restructuring deal backed by the DFT and the AFT. In a draconian perversion, this law now places the burden of proof of innocence upon the accused "striker" rather than the employer.

State officials quickly assured the district that it would foot the legal bill of $320,000 for the prosecution of the case, demonstrating the high-level decision to utilize the courts' powers against the protests. The district had declined to employ their in-house lawyers in the case, seeking instead to maximize their case with a more prestigious (and expensive) firm. This was under conditions where teachers were told there was no money to cover their contractual pay over the summer months.

It should also be noted that the rebellion of teachers against the assault on public education reached its high point during Obama's visit to the city, when the teachers staged their largest protest, in defiance of the DFT. Subsequently, the administration, via Education Department Secretary John B. King, signaled its support to the DPS reorganization, urging the legislature to stop "dragging its feet." The practices of the new Detroit Public Schools Community District (DPSCD) will be pro-privatization, class-based and will open the doors for charterization of the district, entirely in keeping with Obama's education policies.

Throughout the struggle, the *World Socialist Web Site* and the WSWS *Teacher Newsletter* took a principled stand in defense of teachers, opposing the anti-democratic character of the lawsuit, pointing out that the state and its courts "aimed to intimidate and silence the courageous and independent mobilization of teachers in defense of their students and the right to high-quality public education." We warned that the reactionary pro-capitalist policies of the DFT, and their hangers-on in BAMN, were undermining the struggle to unite education workers by promoting racial divisions and seeking to corral the struggle behind a corrupt layer of African American Democratic politicians in the name of "local control."

As the new school year begins, the attacks on public education in the state are escalating. Detroit teachers start work without a contract and, by all accounts, with the district in complete disarray. Hundreds of teaching positions are vacant and there are almost no building improvements. Teachers and students will be returning to worse conditions this year than those that drove the sickouts in the last school year. DPSCD held an emergency teacher fair last week in order to try and lure teachers to fill classrooms.

The School Reform Redesign Office, which Michigan Governor Rick Snyder now oversees directly, has threatened to move ahead in closing "priority schools," the 5 percent of lowest-performing schools in the state. This could affect as many as 40 within the new Detroit Public Schools and up to 100 statewide.

Meanwhile, a significant portion of the "old district" Detroit Public Schools' debt, $370 million in bonds sold in 2011 and 2012, is due to be refinanced prior to October 1, 2016. Standard & Poors, the Wall Street rating agency, has slashed the ratings on this debt twice since late June, relegating the bonds to junk status—a decision that will increase the cost of debt servicing and potentially extend the length of time necessary to repay the bondholders.

Even more concerning are the implications for the already underfunded pension funds of school employees. The DPS "old district" is both responsible for pension liabilities and payments to the bondholders. While overseeing the Detroit municipal bankruptcy case, Rhodes made the precedent-setting ruling that federal bankruptcy law overrode the state constitution's protection of public employee pensions and that they could be cut to satisfy the demands of wealthy bondholders. It was just announced that Rhodes will stay on in his highly lucrative position of DPSCD emergency manager until January 2017, maintaining his $18,000 monthly salary.

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