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Attorneys for Defendants

RAYMOND ARTHUR ABBOTT, et al.,	:	SUPREME COURT OF NEW JERSEY
	:	DOCKET NO:
Plaintiffs,	:	
	:	
v.	:	<u>CIVIL ACTION</u>
	:	
FRED G. BURKE, et al.,	:	CERTIFICATION OF
	:	MATTHEW J. GIACOBBE, ESQ.
Defendants.	:	

I, Matthew J. Giacobbe, Esq., of full age, being duly sworn according to law, upon my oath depose and say:

1. I am an attorney-at-law of the State of New Jersey and Senior Partner at Cleary Giacobbe Alfieri Jacobs, LLC. I am fully familiar with the matters set forth herein and, as such, am qualified to make this Certification.

2. I completed my undergraduate studies at Rutgers University in 1989 and graduated from Seton Hall School of Law in 1993.

3. Prior to entering the private sector practice, I served as judicial law clerk for the Honorable Garrett Brown, U.S.D.J. in the United States District Court for the District of New Jersey from 1993 to 1995.

4. Thereafter, I commenced my legal career, focusing on the representation of public and private sector management in all aspects of labor and employment law.

5. Presently, my law firm serves as general counsel and/or labor counsel for over fifty (50) school boards throughout New Jersey, as well as a number of municipalities, counties and independent authorities.

6. During the course of my legal career, I have handled in over one hundred collective negotiations on behalf of various New Jersey public school board clients.

7. During many of these negotiations, my clients have sought to increase the length of the workday, the length of the work year, and/or increase student contact time during the defined work day. My clients have sought these contractual changes to their respective collective negotiations agreements to increase student instructional time and teacher professional development opportunities.

8. In many of the negotiations that I have been involved in, the teachers' union - often represented by the New Jersey Education Association proposes reductions in the length of the

workday, reductions in the length of the work year, and/or reductions in student contact time during the defined work day.

9. The teachers' unions also often seek increases in their individual preparation periods in both length and/or number per week; concomitantly reducing student instructional time.

10. The teachers' unions also often seek reductions in the length of the work year and/or an increase in the number of minimum instruction days, which result in a reduction of student instructional time and time necessary for the school district to conduct teacher professional development.

11. More often than not, school districts encounter tremendous difficulty in increasing student instructional time due to the teacher unions' intransigence to agree to any contractual proposal that results in an increase to the length of the workday, the length of the work year, and/or an increase of student contact time during the defined work day.

12. From my varied collective negotiations experiences, I attribute the difficulty to making meaningful changes in student instructional time to the 2003 enactment of the School Employees Contract Resolution and Equity Act ("SECREA"), codified as N.J.S.A. 34:13A-33.

13. Prior to the enactment of SECREA, if the parties were at impasse and could not resolve the issue after good faith

negotiations, a public employer - including public school boards - were able to unilaterally institute its last best offer. See In re NJ Transit Bus Operations, 125 N.J. 41, 54 (1999) ("it is the employer's last offer, its unilateral last offer, that prevails and, by law, the employees must abide by it").

14. SECREA, which eliminated the last best offer rule for school employee collective negotiations, provides, in relevant part:

Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the commission's impasse procedures, or the utilization or completion of the procedures required by this act, ... no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without specific agreement of the majority representative.

N.J.S.A. 34:13A-33.

15. As a result of the enactment of SECREA, there is no longer any terminal proceeding in New Jersey public school collective negotiations, thereby resulting in more protracted negotiations. Due to the elimination of the "Last Best Offer" the school districts have lost significant leverage to compel a change.

16. Moreover, it has become much more difficult for school districts to make meaningful changes to their respective collective negotiations agreements; including changes to increase student instructional time as a result of the enactment of SECREA.

17. The initial purpose of the New Jersey Employer-Employee Relations Act ("NJEERA") was to assist in the prompt settlement of labor disputes. N.J.S.A. 34:13A-2.

18. In the event that a labor dispute concerning the terms and conditions of employment cannot be resolved after initial negotiations, either party may request that Public Employment Relations Commission appoint a mediator to assist in resolving the impasse. N.J.S.A. 34:13A-6.

19. If the mediator is unsuccessful in reaching a settlement, a fact-finder is then appointed to assist in settling the matter and/or making findings of fact and recommending the terms of settlement. N.J.S.A. 34:13A-34.

20. If the parties do not reach a voluntary agreement within twenty (20) days after the issuance of the fact-finding report, the Public Employment Relations Commission then appoints a super conciliator to assist in negotiations. Id.

21. If the super conciliator fails to resolve the dispute, the super conciliator issues a final report. N.J.S.A. 34:13A-36.

22. Therefore, if the parties cannot agree on an issue or issues - such as increases to the length of the workday, the length of the work year, and/or increases to student contact time during the defined work day - a public school can no longer unilaterally impose its last best of offer since the enactment of SECREA.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: September 13TH, 2016

By:



Matthew J. Giacobbe, Esq.
Cleary Giacobbe Alfieri Jacobs,
LLC