



Transcripts of Court Case...

By: Greg Gadams, FTA President (4/21/09)

On March 29, 2009, the Executive Board majority filed a lawsuit against FTA President Greg Gadams in the Fresno County Superior Court. The Board majority asked the Court to issue a temporary restraining order and moved for a preliminary injunction against the President to:

- 1) prevent him from spending FTA funds
- 2) require that his name be removed as a signatory to all FTA accounts
- 3) prevent him from terminating FTA's contracts with Barry Bennett (attorney) and Gail Gaston (PR consultant)
- 4) and to prevent him from using FTA letterhead without Executive Board approval.

On April 1, 2009, the Fresno County Superior Court Judge, the honorable Donald R. Franso, Jr., denied the Executive Board majority's application for a Temporary Restraining Order.

On April 17, 2009, the Court also denied its motion for a preliminary injunction. The Court ruled that the balance of the equities was in President Gadams' favor and that there was no clear violation of any rule or bylaw by President Gadams' or the FTA Representative Council. The Court also observed that CTA had intervened and that the Court did not want to intrude on that intervention process which should be allowed to take its course.

The Court found that FTA is bound by CTA bylaws as well as its own and that the Board majority had not exhausted its internal union remedies. The Court also found that the FTA Board majority's March 3, 2009 meeting, at which it adopted motions to retain legal counsel and to sue President Gadams, was in violation of the California Corporations Code due to inadequate notice of the meeting and that the motions adopted at that meeting were therefore void or invalid.

Please find attached the Court's transcripts of the April 17th

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO
CENTRAL DIVISION

Before the Honorable Donald R. Franson, Jr., Judge
Department 97D

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FRESNO TEACHERS ASSOCIATION,)
Plaintiff,) Case No. 09CECG01094
-vs-)
GREG GADAMS,)
Defendant.)

Fresno, California April 17, 2009

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REPORTER'S TRANSCRIPT

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A p p e a r a n c e s :

FOR THE PLAINTIFF RANDALL M. PENNER
Penner & Bradley
1171 W. Shaw, Suite 102
Fresno, CA 93711

FOR THE DEFENDANT CHARLES T. TAYLOR
Lang, Richert & Patch
5200 N. Palm Avenue, Suite 401
Fresno, CA 93704

DOLLY M. GEE
Schwartz et al LLP
6300 Wilshire Blvd #2000
Los Angeles, CA 90048-5202

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Reported By:
Shelly A. Davis, CSR
Certificate No. 8947

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SESSIONS

PAGE

APRIL 17, 2009
MORNING SESSION

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1 FRIDAY, APRIL 17, 2009 -- MORNING SESSION

2 (The following proceedings were had in
3 open court, in the presence of the Court
4 and Counsel, to wit:)

5 THE COURT: We'll call the case of Fresno Teachers
6 Association versus Gadams, case ending number 094. If I could
7 have everyone's appearance.

8 MR. PENNER: Good morning, Your Honor. Randall Penner on
9 behalf of the plaintiff FTA.

10 MR. TAYLOR: Good morning, Your Honor. Charles Taylor of
11 Lang, Richert and Patch appearing on behalf of defendant Greg
12 Gadams.

13 MS. GEE: Good morning, Your Honor. Dolly Gee on behalf
14 of defendant Greg Gadams.

15 THE COURT: Good morning.

16 MS. GEE: And this is Greg Gadams.

17 THE COURT: Very good, thank you.

18 We're here on a hearing for a preliminary injunction
19 filed by the plaintiff, Teachers Association. I've had a
20 chance to review the papers originally filed and the
21 supplemental ones since our last hearing.

22 Mr. Penner, do you have anything further you'd like to
23 add?

24 MR. PENNER: I do, Your Honor. Recent events have shown
25 that Mr. Gadams does not respect the governance policies of
26 the FTA, as well as in my opinion shows disrespect for the

1 Court. Between last hearing and -- and today where we were
2 asked to brief the issues of who had hiring and firing powers,
3 he totally ignores what happens, and three days ago he
4 unilaterally hired an associate director. I just found out
5 about that two days ago. I have additional pleadings that
6 address that, including all e-mails.

7 It's very clear, Your Honor, that what has occurred in
8 the last two weeks roughly, they were -- that the Executive
9 Board was in the process of -- of attempting to hire an
10 associate director, and what was occurring is motions were
11 being passed, certain information was being sought by the
12 Executive Board, the defendant would not provide that
13 information, and then what occurred is all of a sudden an
14 e-mail went out like two, three days ago saying, oh,
15 nevermind, I hired him, without any input or decision-making
16 from the Executive Board. It's just another indication of
17 what is occurring in this case.

18 THE COURT: Before we go on to any other issue, why don't
19 you respond to that, Ms. Gee.

20 MS. GEE: Yes, Your Honor. This is obviously something
21 that's been sprung on us at this point, but it is my
22 understanding that there was a vote of the Executive Board to
23 hire the individual, and that there are minutes to that
24 effect. And Mr. Gadams sent an e-mail to all of the Executive
25 Board members informing them about the hiring of this
26 individual.

1 THE COURT: When was the board resolution to -- or board
2 vote to hire?

3 MS. GEE: A new assistant executive director.

4 THE COURT: Yes, but when was it?

5 MS. GEE: March 2nd. So there are minutes to that
6 effect.

7 MR. PENNER: If I --

8 THE COURT: Continue.

9 MR. PENNER: -- may I approach the Court, I have the
10 documentation.

11 MS. GEE: Your Honor, I would object to all of this last
12 minute filing. I think that there are three issues before
13 this Court, and this is not one of them.

14 THE COURT: Well, he can file it; it doesn't mean I have
15 to consider it.

16 MR. PENNER: Well, Your Honor, if it only occurred two
17 days ago there was nothing I could do.

18 THE COURT: As I said, I'm going to allow you to file it,
19 but I can't promise you I'm going to --

20 MR. PENNER: Can I approach?

21 THE COURT: Please. I cannot promise you I can consider
22 it.

23 MR. PENNER: There you go, sir.

24 THE COURT: Thank you.

25 MR. PENNER: And, you know, I say that with a little bit
26 of caution because this is a personnel matter, and so maybe it

1 should be filed under seal.

2 THE COURT: I left some notes on my desk, let me come
3 right back and we'll discuss that in a second.

4 (Whereupon off the record.)

5 THE COURT: Okay. What is contained in the -- these
6 records that you're offering to the Court?

7 MR. PENNER: What is contained is a declaration of Eva
8 Ruiz that authenticates the e-mails, and there's three
9 exhibits, they're set of e-mails. The first is -- deals with
10 the communications back and forth as to, you know, what should
11 be offered to this gentleman. Exhibit B deals with e-mails
12 where the defendant on 4-12 finally says we're not having the
13 Executive Board meeting, I've already hired him. And then
14 Exhibit C, which is the exhibit that -- the motion that
15 counsel refers to deals -- is the motion, and I -- I read
16 this, "I move that offered Osee," who's the gentleman, "a
17 contract with contingency that he clears on a background check
18 to include DMV and credit check. We will make an offer of
19 first step and we will negotiate."

20 So it's clear that the offer was contingent on the
21 information regarding this particular gentleman, and the
22 defendant never provided that information until very late in
23 the game, and then unilaterally hired him without any kind of
24 vote by the Executive Board.

16 Mr. Penner, continue.

17 MR. PENNER: If you read, if you look at Exhibit C, it is
18 not a motion to hire him, it says "we will make an offer and
19 we will negotiate."

20 THE COURT: Right.

21 MR. PENNER: So there was never a decision by the
22 Executive Board to hire this guy.

23 MS. GEE: Your Honor, if someone makes an offer of
24 employment and the other side accepts, that usually
25 constitutes a hiring.

26 THE COURT: How do you explain the -- what is offer of

1 first step, what does that mean?

2 MR. PENNER: It's a level, it's a pay level.

3 MS. GEE: Salary.

4 THE COURT: And will negotiate, what does that mean?

5 MS. GEE: Negotiate the salary that's being offered.

6 THE COURT: Right.

7 MS. GEE: So in other words, they're offering the first
8 step, and if the other side --

9 THE COURT: Is there a salary range --

10 MS. GEE: Right.

11 THE COURT: -- for the first step?

12 Okay, continue.

13 MR. PENNER: Going to what the Court asked us to provide
14 additional briefing, I think this all based -- is based on and
15 the whole matter is contingent upon whether or not that
16 March 3, 2009 meeting was a valid meeting. If it was a valid
17 meeting, then the motions passed at that meeting are also
18 valid, and it answers all of the Court's questions in my
19 client's favor.

20 THE COURT: How do you get around the Corporations Code
21 requirement that you have to give 48 hours notice for the
22 meeting?

23 MR. PENNER: Well, I -- Corporation Code requirements are
24 usually in lieu of, but if the governing documents of the
25 corporation, or in this case the FTA, specifically provide how
26 it can be done, then you follow those rules as opposed to the

1 Corporation Code.

2 THE COURT: Do you have any authority for that?

3 MR. PENNER: At the office I do, yes.

4 THE COURT: Okay.

5 MS. GEE: Your Honor, I don't believe that there can be
6 any authority because the bylaws are to comply with the
7 Corporations Code, not the other way around.

8 THE COURT: I agree.

9 MS. GEE: And there is nothing in the bylaws, Your Honor,
10 that provides for any less than 24-hour notice for a so-called
11 emergency meeting when there's questionable facts as to
12 whether there's an emergency or not.

13 THE COURT: Right.

14 Okay, continue.

15 MR. PENNER: Well, I think the bylaws state that on
16 demand if there's an emergency an executive committee meeting
17 can be followed. I suspect that the Corporation Code section
18 deals with an ordinary or regular meeting, but you know, if
19 you have an emergency, I think that the Corporations Code
20 would accept and understand that, you know, if a nuclear bomb
21 was being dropped, you don't have to give 48 hours as to how
22 to respond to it.

23 MS. GEE: Your Honor.

24 THE COURT: We're not in a situation, though, where a
25 nuclear bomb was going to go off.

26 MR. PENNER: I use that as an example.

1 THE COURT: I understand. Are you trying to explain what
2 you think are the exigent circumstances are sufficient to get
3 around any statutory or legal requirement to follow the rules?

4 MR. PENNER: I don't -- I don't think we are getting
5 around statutory requirements. I think if it's an emergency,
6 and the bylaws state how a meeting can be called, all it says,
7 the bylaws say is on demand of the -- of the majority of the
8 members of the Executive Board. And I'll point out again,
9 Your Honor, that there was a regular meeting the evening
10 before, and if you read the declaration of Eva Ruiz, she tried
11 to give notice at that meeting and she was shouted down and
12 not recognized by the president.

13 MS. GEE: Your Honor --

14 THE COURT: It wouldn't have been 48 hours notice, it was
15 the night before.

16 MR. PENNER: True, but it's still an emergency meeting.

17 MS. GEE: Your Honor.

18 THE COURT: Ms. Gee.

19 MS. GEE: There were 11 witnesses to that particular
20 meeting. Ms. Ruiz was not shouted down, she did not make any
21 attempt to give notice of the so-called emergency meeting the
22 next day, and I would like Mr. Penner to look at the bylaws
23 and point out where in the bylaws it has any language about an
24 emergency meeting that can be called in less than 48 hours.
25 What he's referring to and which was cited in his brief was a
26 bylaw that refers to the fact that when you are in a board

1 meeting, that the board can demand that the board go into
2 executive session. That is not tantamount to an emergency
3 meeting.

4 THE COURT: Continue.

5 MR. PENNER: I read the bylaws, it's on page ten, "An
6 executive session may be held upon call of the president or
7 upon demand of a majority of the voting members of the board."

8 THE COURT: An executive session.

9 MR. PENNER: Correct.

10 THE COURT: An executive session is just like Ms. Gee
11 just outlined, it's when the board goes into executive session
12 without anybody other than board members there to talk about a
13 matter of privacy such as a personnel matter.

14 MR. PENNER: And that is what occurred, as I understand
15 it. If you look at Exhibit M, those are the minutes of that
16 Executive Board, and it fits all the proper requirements of
17 what is -- what is to be done in an executive session.

18 THE COURT: Okay. Okay, I'm sorry, Mr. Penner, please
19 continue. I keep interrupting.

20 MR. PENNER: Well, Your Honor, I think, as I said
21 earlier, the decision has to be made whether that March 3
22 meeting was -- was okay. And if so, the motions passed in
23 that meeting were -- were proper meetings -- or proper
24 motions, I'm sorry.

25 THE COURT: Ms. Gee, any last thoughts?

26 MS. GEE: Just some final comments, Your Honor.

1 Plaintiff is seeking a preliminary injunction, which is
2 extraordinary relief, and it is their burden to show that they
3 are entitled to such relief. We don't believe that they have
4 made even a glimmer of a showing that they are entitled to
5 such relief.

6 The bylaws speak very clearly about what the powers of
7 the Representative Council are. Plaintiff totally disregards
8 the powers of the Representative Council in its attempt to say
9 that everything that the Executive Board does is what is
10 controlling in this organization. And the fact of the matter
11 is that the Representative Council is the body that controls
12 the purse, it funds all manner of projects and operations of
13 the organization, and it spoke very clearly in its meetings
14 with duly adopted motions regarding what its policies were,
15 and the majority of the Executive Board chose to disregard
16 those policies.

17 The president has been caught in a very difficult
18 situation where he's trying to decide how to respond to
19 competing requests on the part of the majority of the
20 Executive Board versus the Representative Council, and he has
21 done as best as he can to try to comply with the bylaws by
22 looking at the fact that the Representative Council has the
23 policy making authority, and that his powers are to be
24 exercised subject to those policies. And he has done
25 everything that he has been able to do in good faith, and
26 under the application of the law he is entitled to

1 indemnification for being hauled into court for having done
2 his duty.

3 THE COURT: Mr. Penner.

4 MR. PENNER: Well, I disagree with that. I mean, once
5 again we run into this problem of what is a policy-making
6 decision. You know, a policy is -- is a philosophy, it's not
7 an action. You know, the Executive Board can make policies,
8 certainly, but the governance of the FTA is in the hands of
9 the Executive Board, and if you read the bylaws, it's very
10 clear that all of the matters regarding personnel, regarding
11 signatory on checks, regarding decisions to be made, how to
12 govern the FTA is in the hands of the Executive Board, and
13 just because the executive counsel, you know, passes, you
14 know, an ultra virus motion does not give it power to decide
15 those things. You read those motions that the executive -- or
16 the Representative Council passed, you know, those motions are
17 interfering with the powers of the Executive Board.

18 THE COURT: What happens if the Executive Board passes an
19 action of some sort, implements what they think the policy is,
20 then later the policy is changed by the executive counsel,
21 what happens to that earlier action of the board which now is
22 in violation of later adopted policy?

23 MR. PENNER: You know, I think I'd have to know what the
24 policy is to adequately answer that question.

25 THE COURT: Okay. Anything further?

26 MR. PENNER: No, Your Honor.

1 THE COURT: Okay. There's a strong public policy of the
2 cases about judicial restraint when deciding internal disputes
3 involving private organizations such as a union and various
4 membership, and I start with that. I also have to balance the
5 factors in the case, the likelihood that the plaintiffs will
6 prevail, which I think is -- is a substantial question, and
7 the irreparable harm of denying it. You take those factors,
8 and I come down on the side of the defendants on this case.

9 I don't think that there's any clear bylaw or rule that
10 was violated by either Mr. Gadams or the Representative
11 Council such as the court -- which would require the court to
12 intervene unless and until the CTA, which I think is -- has
13 the power to intervene in this case, and I think you should
14 run that out, and the Court is not going to get involved in
15 that intervention.

16 The next step if they cannot resolve this dispute by the
17 intervention is to form a trusteeship of the union, and
18 hopefully that won't happen, but that is -- there's -- I think
19 there's a strong likelihood that the FTA is bound by the
20 California Teachers Association bylaws, as well as its own.

21 I also think that there's pretty strong evidence that the
22 March 3rd meeting was in violation and contravention of the
23 bylaws, and more importantly the California Corporations Code,
24 so any actions that took place at that meeting would be void
25 or invalid.

26 The board is free to seek a referendum on any issue that

1 might be in dispute, but that's a more complicated process.

2 Also, I'm not sure that the Court should intervene in
3 this matter because the administrative remedies within the
4 bylaws, CTA bylaws and the Fresno Teachers Association bylaws,
5 if those administrative remedies have been exhausted.

6 I know we have an election pending, or you have an
7 election pending, I don't know what the status is, but the
8 date for counting the ballots has not yet come, so I think
9 bottom line, the CTA intervention should take its course.

10 As far as the expense issue for the attorneys' fees on
11 both sides, that is something that can play itself out, I
12 think, during the course of this litigation, and whoever is
13 the prevailing party can file a request for attorneys' fees.
14 But as Ms. Gee pointed out, the power of the purse belongs
15 with the policy-making council, and so I -- I don't know who's
16 essentially going to be writing the check for the attorneys as
17 the course of this litigation proceeds.

18 So for that reason, the preliminary injunction will be
19 denied.

20 MS. GEE: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. TAYLOR: Thank you, Your Honor.

23 THE COURT: Ms. Gee, if you and Mr. Taylor want to
24 perhaps get a copy of the last part of this transcript and put
25 together an order, essentially confirms in maybe a more
26 articulate language what I just outlined, but I think my

1 thoughts were laid out.

2 MR. TAYLOR: I was just going to ask Shelly if she can
3 provide us with a copy of the transcript, and we will do that,
4 Your Honor.

5 THE COURT: Very good.

6 MS. GEE: Thank you, Your Honor.

7 MR. TAYLOR: Thank you very much. Have a good weekend.

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