

ELAINE LEWNAU, ET AL

NUMBER 681,213; DIVISION "N"

VERSUS

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

**BOARD OF SUPERVISORS OF SOUTHERN
UNIVERSITY AND AGRICULTURAL AND
MECHANICAL COLLEGE**

STATE OF LOUISIANA

RULING ON ISSUANCE OF PRELIMINARY INJUNCTION

This matter came up for hearing on the 6th day of May, 2019 on motion by Plaintiffs, Elaine Law nau, Christy Moland, Terrilynn Gillis, Marilyn Seibert and Tom Aswell, that this court issue a preliminary injunction against Defendant, Board of Southern University and Agricultural and Mechanical College, ("Southern University"), enjoining Southern University from enforcing, applying and/or implementing any action as a result of Southern University's violation of the Louisiana Open Meeting Law (La. R.S. 42:14) and the Louisiana Constitution (La. Const. Art. 12, § 3). The court, after hearing the testimony of all witnesses and argument by counsel, took this matter under advisement to more carefully consider the issues raised in Plaintiffs request for injunctive relief.

FACTUAL SUMMARY:

Plaintiffs, (excluding Tom Aswell), filed a joint grievance with Southern University on November 20, 2018, contesting certain punitive employment decisions unilaterally ordered by Dr. James Ammons, Executive Vice President/Vice Chancellor of Southern University. In due course, Marla Dickerson, ("Dickerson"), was named Chairperson of the System Wide Grievance Committee, ("Committee"), and notified Plaintiffs that their complaint would be heard before the Committee on March 18 and 19, 2019.

Prior to the Committee convening in the committee room on March 18, 2019, Dickerson met privately with all Committee members to discuss whether the hearing should be open or closed to the public. Dickerson testified that the Committee members unanimously and clandestinely agreed that the hearing be closed to the public.

Thereafter Dickerson and the other Committee members assembled in a boardroom and called the hearing to order with all Plaintiffs being present. Dickerson then asked Plaintiffs whether they desired the hearing be open or closed, and all Plaintiffs moved that it be open to the public. Dickerson then posed the same question to Southern University, which advised through its counsel

that the hearing be closed. Dickerson then authoritatively ordered the Committee hearing be closed to the public, said action being taken without prior motion or vote from any Committee member while the Committee was in open session.

After the submission of brief verbal statements supporting their individual complaints against Southern University, Plaintiffs, and their counsel, over protest, were forced to exit the Committee room. Additionally, Plaintiff, Tom Aswell, an investigative reporter who was present in the Committee room, was escorted and removed from the Committee room in response to Dickerson's order.

CONTENTIONS:

Plaintiffs' contend that the decision by Dickerson to close the hearing was in direct violation of La. Const. Art. 12, § 3 and La. R.S. 42:14 (B) and ©) since no vote was taken by the Committee to go into executive session. Because the record is void both of a motion made by any Committee member moving that the hearing go into executive session and a vote by two-thirds of the members of the Committee approving said motion, Plaintiffs assert that the Committee's acts in closing the meeting and removing the public from the Committee room violated the Open Meeting Law.

Southern University reiterates its contention that the Committee did not constitute a public body. Accordingly, Southern University argues that the Committee had no legal responsibility to comply with laws relative to public meetings. Alternatively, Southern University opposes the issuance of a Preliminary Injunction, asserting that Plaintiffs failed to make a showing that they will suffer irreparable injury, loss or damage. Southern University does not view any allegation contained in Plaintiffs petition for declaratory and injunctive relief as alleging any conduct which was either unlawful or a violation of prohibitory law.

ANALYSIS:

A) Public Body:

The court takes cognizance of its decision rendered on April 16, 2019 which, in connection with the peremptory exception of no cause of action filed by Southern University, found that the Committee was in fact a public body. The court noted that the recommendation to be made by the Committee to the President/Chancellor of Southern University was far too important to be made in a dark room, where no one other than committee members knew what facts and evidence it had considered in affirming, modifying or reversing employment decisions affecting Plaintiffs made by

Dr. James Ammons, Executive Vice President/Vice Chancellor of Southern University. The court observed that the actions taken by the Committee, removing Plaintiffs and the public from the committee room, in essence slammed the door on Article XII, § 3 of the 1974 Louisiana Constitution. The court heard no testimony at the hearing on May 6, 2019 which necessitated reassessment of this earlier finding.

B) Preliminary Injunction - Irreparable Injury:

A preliminary injunction is an interlocutory procedural device designed to preserve the status quo between the parties pending a trial on the merits; *Acadian Ambulance Service, Inc. v. Parish of East Baton Rouge*, 722 So.2d 317, 322 (La. App. 1 Cir. 11/6/98). An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law; La. C.C.P. art. 3601(A).

Generally, a party seeking the issuance of a preliminary injunction must show that he will suffer irreparable injury, loss, or damage if the injunction does not issue and must show entitlement to the relief sought. This requires a prima facie showing that the party will prevail on the merits of the case; *Adler v. Williams*, 203 So.3d 504, 512-13 (La. App. 1 Cir. 9/16/16). However, a showing of irreparable injury is not necessary when the act sought to be enjoined is unlawful, or a deprivation of a constitutional right is involved; *Dale v. Louisiana Secretary of State*, 971 So.2d 1136, 1141 (La. App. 1 Cir. 10/11/07); *Zachary Mitigation Area, LLC v. Tangipahoa Par. Council*, 231 So.3d 687, 690-91 (La. App. 1 Cir. 9/21/17).

Plaintiffs argue that there is no requirement that irreparable injury, loss or damage be established before an injunction may issue against Southern University. Plaintiffs contend that the evidence of irreparable injury is not required when the conduct sought to be restrained is unlawful or is a violation of a prohibitory law.

The testimony of Dickerson clearly established that prohibitory law was contravened when Dickerson improperly ordered the hearing go into executive session, closing the meeting to Plaintiffs and the public; *Jurisich v. Jenkins*, 749 So.2d 597 (La. 10/19/99), *State Machinery & Equipment Sales v. Iberville Parish Council*, 952 So.2d 81 (La. App. 1 Cir. 12/28/06), *City of Baton Rouge/Parish of East Baton Rouge v. 200 Government Street, LLC*, 995 So.2d 32 (La. App. 1 Cir. 9/23/08).

For all these reasons and considerations:

IT IS ORDERED that all actions affecting Plaintiffs taken by the Committee from March 18, 2019 through the present date, and all future actions affecting Plaintiffs *to be taken* as a consequence of or resulting from evidence introduced in any hearing before the Committee from March 18, 2019 through the present date, be, and the same are hereby declared to be, null and void, said evidence being the unlawful fruit collected by the Committee in contravention of the Open Meeting Law and La. Const. Art. 12 § 3 of the 1974 Louisiana Constitution;

IT IS FURTHER ORDERED that, upon security being posted by Plaintiffs, Elaine Lawnau, Christy Moland, Terrilynn Gillis, Marilyn Seibert and Tom Aswell, in the amount of \$500.00 dollars, a Preliminary Injunction issue in favor of Plaintiffs, Elaine Lawnau, Christy Moland, Terrilynn Gillis, Marilyn Seibert and Tom Aswell, and against Defendant, Board of Southern University and Agricultural and Mechanical College, enjoining, restraining and prohibiting Defendant, Board of Southern University and Agricultural and Mechanical College, from enforcing, applying and/or implementing any action taken in violation of the Louisiana Open Meeting Law and the Louisiana Constitution;

IT IS FURTHER ORDERED that there by judgment in favor of Plaintiffs, Elaine Lawnau, Christy Moland, Terrilynn Gillis, Marilyn Seibert and Tom Aswell, and against Defendant, Board of Southern University and Agricultural and Mechanical College, in the following particulars, to-wit:

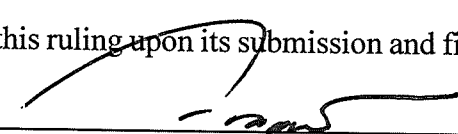
- a) Pursuant to La. R.S. 42:26, Defendant is ordered to pay Plaintiffs' reasonable attorney's fees in the amount of \$8,400.00 Dollars;
- b) Pursuant to La. R.S. 42:28, Defendant is cast in judgment to Plaintiffs in the amount of \$5,000.00 Dollars in statutory damages, said amount being set at the rate of \$100 dollars per day from March 18, 2019 through May 6, 2019;
- c) Defendant is ordered to pay unto Plaintiffs the total sum \$638.00 dollars for court costs in this proceeding.

THIS DONE, READ AND SIGNED in Chambers at Baton Rouge, Louisiana, this 13th day of May, 2019. Judgment to be signed in accordance with this ruling upon its submission and filing.

I hereby certify that on this day a notice of the above judgment was mailed by me, with sufficient postage affixed to:

Done and signed on May 13, 2019

Daphne W. Spander
Deputy Clerk of Court


Richard "Chip" Moore, III
Judge, 19th Judicial District Court
Parish of East Baton Rouge
State of Louisiana