IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAMPA EDUCATION ASSOCIATION, Petitioner, vs. NAMPA SCHOOL DISTRICT NO. 131, Respondent.	**CASE NO. CV-2013-2962-C** **ORDER ON SUMMARY JUDGMENT**

I. Factual Background

This case involves no genuine issue of material fact[1]; instead, the issue is a legal one. The case arises as a result of the financial difficulties the Nampa School District faced in the fall of 2012. Earlier that year, the Nampa Education Association (NEA) and the local Board of Trustees attempted to negotiate the terms of the master employment

[1] Pettioners alleged a material fact – that the teachers were pressured or coerced into signing the addendum contracts. However, as held below, the Court has stricken the portions of the affidavit that provide the factual support for those allegations for hearsay reasons. As such, there is no longer any factual allegation regarding the voluntariness of the contract, nor is a review of the voluntariness issue necessary to determine whether the addendum contract is illegal on the grounds articulated by the parties.

contracts for the teachers of the Nampa School District. Contract negotiations were unsuccessful and as a result, no master contract was formalized and the contract salary amount in the Continuing Teachers Contract reflected the "last best offer" of the district. The Continuing Teachers Contracts (Contract) complied with the State Board of Education requirements in all respects and the teachers began teaching pursuant to those contracts in the Fall of 2012.

Thereafter, the Nampa School District faced significant budget shortfalls. The Nampa School District Superintendent, through the District's human resource officer, drafted an Addendum to Continuing Teacher Contract (Addendum). Neither the local Board of Trustees nor the Nampa Education Association (NEA) negotiated the terms of this Addendum. The parties agree, although for different reasons, that the Addendum Contract does not comply with I.C. § 33-513. The Addendum requests each individual teacher donate one to four furlough days for which the teacher would not receive any compensation but the accrual or availability of benefits would not be affected. These Addendum Contracts were presented to the teachers through meetings at the various schools through the school district human resource officer. The Addendum states that any contribution of furlough days is voluntary on the part of the teacher. Some, although it is not clear how many or what percentage, of the teachers agreed to furlough various numbers of days. After signing the initial Addendum Contract, some teachers increased or decreased the number of days they had initially agreed to furlough.

The NEA, the Petitioner in this case, then sent two separate letters to the Nampa School District Superintendent, advising him that from the Petitioner's perspective, these contracts were illegal because: 1) the contracts amount to illegal direct dealing

between the district and the individual teachers; 2) the Petitioner, not individual teachers, was the negotiating body for the teachers; and, 3) the contracts were not on a form approved by the State Board of Education, in violation of Idaho Code § 33-513(1).[2] The district did not respond and thereafter, the contracts were executed and the furlough days were completed. At the time Petitioner instituted the above-entitled action asking this Court to declare the contracts illegal as a matter of law, the Addendum Contracts had been fully executed and the furlough days had already been applied.

Both parties filed motions for summary judgment. The Plaintiff's motion included the affidavit of Mandy Simpson, the president of the NEA at the time the Continuing Teacher Contracts and Addendum Contracts were executed. The Respondent has objected to various paragraphs of Ms. Simpson's Affidavit on hearsay grounds.

II. Motion to Strike

Idaho Rule of Civil Procedure 56(e) provides in pertinent part: "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." These requirements "are not satisfied by an affidavit that is conclusory, based on hearsay, and not supported by personal

[2] Of note, two different sets of statutes are applicable in this case. At the time the Continuing Teachers Contracts were executed, the "Students Come First" legislation was in effect. However, following the election in November 2012, those sections of the law were repealed by the voters and formalized by the Governor on November 8, 2012. Consequently, the Addendum Contract is governed by different law than the Continuing Teacher Contract, although the change in the law does not affect the outcome of the case.

knowledge." *Posey v. Ford Motor Credit Co.,* 141 Idaho 477, 483, 111 P.3d 162, 168 (Ct. App. 2005)(citing *State v. Shama Res. Ltd. P'ship,* 127 Idaho 267, 271, 899 P.2d 977, 981 (1995)). Further, when considering evidence presented in support of or opposition to a motion for summary judgment, a court can only consider material which would be admissible at trial. *Gem State Ins. Co. v. Hutchison*, 145 Idaho 10, 14, 175 P.3d 172, 176 (2007)(citing *Petricevich v. Salmon River Canal, Co.,* 92 Idaho 865, 869, 452 P.2d 362, 366 (1969)). Thus, if the admissibility of evidence presented in support of a motion for summary judgment is raised by objection by one of the parties, the court must first make a threshold determination as to the admissibility of the evidence "before proceeding to the ultimate issue, whether summary judgment is appropriate." *Id.* at 14, 176 (citations omitted).

In this case, the objectionable portions of Ms. Simpson's affidavit are:

Paragraph 2: The Nampa Education Association was duly chosen as the representative organization of the teachers within the Nampa School District for the 2013-2013 school year.

Paragraph 3: The Nampa Education Association was recognized by the Nampa School District as the representative organization of the teachers within the Nampa School District for the 2012-2013 school year.

Paragraph 4: the Nampa Education Association has been duly chosen and recognized as the representative organization of the teachers within the Nampa School District for the past several decades.

Paragraph 7: On or about the week of December 10, 2012, the Nampa School District began pressuring teachers to sign an addendum contract by requiring teachers

to attend mandatory "emergency" meetings where the addendum contract was presented.

Paragraph 8: Attached as Exhibit "B" and incorporated by this reference is a true and correct copy of the form addendum contract (for both continuing and category A contracts).

Paragraph 9: Many teachers were told that the addendum contracts had to be signed and returned within a matter of a few days (December 17th).

Paragraph 10: Many teachers felt pressured to sign the addendum contracts by the Nampa School District and did not consider it voluntary. These teachers expressed fear of retaliation should then not sign the addendum contracts or if they were to publically [sic] state that the contracts were not voluntarily signed.

Paragraph 13: During the week of December 10, 2012, where teachers were being pressured to sign the addendum contracts, I directed legal counsel to draft a letter to the Nampa School District Explaining the situation.

Paragraph 14: Attached as Exhibit "C" and incorporated by this reference is a true and correct copy of a December 14, 2012 letter from Paul Stark to Dr. Thomas Michaelson, Superintendent of the Nampa School District.

Paragraph 15[3]: As the high pressure tactics continued, I again directed legal couns8el to draft a second letter to the Nampa School District to explain the situation.

[3] The Court asked why the Respondent did not object to the first phrase of Paragraph 15 given its other objections. The Respondent indicated it did also object to the beginning phrase of Paragraph 15.

Paragraphs 2, 3, 4, and 8

Paragraphs 2, 3, 4, 8 and 14 are all offered for the truth of the matter asserted – that NEA was, and has been for some time, the exclusive negotiating entity for the teachers in the Nampa School District. The Affiant, Ms. Simpson, does not provide a factual basis for how she knows this information – whether she has that knowledge as a result of her status as the President of the Association or whether she gleaned that information from conversations with others. Regardless, the parties all agreed to these facts at oral argument so any objection is mooted by the Respondent's subsequent acceptance and acknowledgement of these facts. Similarly, although the Addendum Contract would be hearsay for which no exception has been offered, all of the parties agree that the Addendum Contract submitted is a true and accurate copy, and both parties have submitted the document and asked the Court to consider it, as it is the subject matter of the underlying action.

As such, the Court will not strike Paragraphs 2, 3, 4, and 8 of Ms. Simpson's affidavit.

Paragraph 7, 9, 10, 13, and 15

Paragraphs 7, 9, 10 and the first phrase of Paragraphs 13 and 15 are hearsay for which no exception has been offered. While Ms. Simpson indicates she has "personal knowledge" of the facts, it is not clear how she obtained that knowledge and therefore, Plaintiff's have not established sufficient foundation establishing that information as admissible evidence. As such, paragraphs, 7, 9, 10, the portion of paragraph 13, being with the word "During" and ending with the word "contracts," and the first phrase of

paragraph 15 will be stricken from the affidavit and will not be considered by this Court for purposes of the Motions for Summary Judgment.

Paragraph 14

Finally, the fact of sending of the letter as outlined in Paragraph 14 is not hearsay, and the Court will consider that the letter was sent. The contents of the letter, without adequate foundation, are hearsay. Ms. Simpson has not provided any information in her affidavit about how she knows this letter is the same as the letter sent to the district, therefore, there is insufficient foundation to consider the letter except as hearsay and thus, the Court will grant the Respondent's motion and will strike that Portion of Paragraph 15 that relates to the content of Exhibit C.

III. Justiciability

A. Standing

Respondent argues that Plaintiff has not established standing and that the issue is moot since the contracts have been fully executed. While an association may have standing in its own right, it must establish an injury to itself to justify any relief. *Glengary-Gamlin Protective Ass'n, Inc. v. Bird,* 106 Idaho 84, 87, 675 P.2d 344, 347 (Ct. App. 1983). (Ct. App. 1983) *citing Warth v. Seldin,* 422 U.S. 490, 515, 95 S.Ct. 2197, 2213 (1975).

> The three most basic propositions of the doctrine of standing that our Court uses to guide its decisions were outlined in *Boundary Backpackers v. Boundary County* as being (1) that standing "focuses on the party seeking relief and not on the issues the party wishes to have adjudicated;" (2) that in order "to satisfy the case or controversy requirement of standing, litigants generally must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury;" and (3) that "a citizen and taxpayer may not

> challenge a governmental enactment where the injury is one suffered alike by all citizens and taxpayers of the jurisdiction."

128 Idaho 371, 375, 913 P.2d 1141, 1145 (1996) (quoting *Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989)). Standing may be predicated upon either a threatened harm or a past injury. *In re Jerome Cnty. Bd. of Comm'rs*, 153 Idaho 298, 308, 281 P.3d 1076, 1086 (2012) citing *Schneider v. Howe,* 142 Idaho 767, 772, 133 P.3d 1232, 1237 (2006). "There is no question that an association may have standing in its own right to seek judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy. *Bear Lake Educ. Ass'n, By & through Belnap v. Bd. of Trustees of Bear Lake Sch. Dist. No. 33*, 116 Idaho 443, 448, 776 P.2d 452, 457 (1989).

The only injury alleged in the Petition is that the Addendum was not on a form approved by the State Board of Education. The Memoranda, both in opposition to the Respondent's Motion for Summary Judgment, and in Support of the Plaintiff's Motion for Summary Judgment, reference Idaho Code § 33-513(1) and the public policy reasons that such an Addendum is, in essence, part of the contract for employment.

In order to establish standing based on a statutory violation, the Petitioner must show "a direct nexus between the vindication of [its] interest and the enforcement of the [statute]," *Linda R.S. v. Richard D.*, 410 U.S. 614, 619, 93 S. Ct. 1146, 1149, 35 L. Ed. 2d 536 (1973), in order to insure that "the relief requested would redress appellant's claimed injury." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.,* 528 U.S. 167, 203, 120 S. Ct. 693, 716, 145 L. Ed. 2d 610 (U.S.S.C. 2000).

In this case, the association has asserted as injury the District's failure to comply with Idaho Code § 33-513. At the time the Continuing Teacher Contracts and the

Addendum were executed, the Petitioner was "the sole representative of the teacher employees of the District and is the medium through which individual teachers collectively seek to reach first a negotiation agreement and later a Master Agreement with the Board of Trustees of [Nampa] School District." *Bear Lake Educ. Ass'n, By & through Belnap v. Bd. of Trustees of Bear Lake Sch. Dist. No. 33*, 116 Idaho 443, 448, 776 P.2d 452, 457 (1989). Although a Master Contract was never formalized, the negotiation of wage or compensation contracts, and insistence that local boards comply with §33-513, is still within the exclusive province of the Petitioner and therefore, a contract purporting to affect wage and compensation would be injurious to Petitioner if it was not properly negotiated. As such, Petitioner has an interest in ensuring that contracts entered into between the teachers and the local board comply with statutory requirements. In this case, a declaration that the Addendum Contract is illegal would adequately redress Petitioner's injury – that the contract fails to comply with I.C. § 33-513. As such, the Petitioners have established standing in this case.[4]

---

[4] In order to establish standing on behalf of its members, the Organization must establish all three of the following elements: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit." *Id.* at 88, 675 P.2d at 348. When an association seeks standing for its members, the association must allege that at least one of its members face injury and could meet the requirements of standing on an individual basis. *In re Jerome Cnty. Bd. of Comm'rs,* 153 Idaho 298, 308, 281 P.3d 1076, 1086 (2012), citing *Selkirk–Priest Basin Ass'n, Inc. v. State ex rel. Andrus,* 127 Idaho 239, 241–42, 899 P.2d 949, 951–52 (1995). "As the record does not include any indication that Friends of Minidoka had a member who was an affected party suffering potential harm to real estate in the area surrounding the proposed LCO site, Friends of Minidoka cannot meet the first requirement for associational standing-no member has standing to sue in their own right." *Id.* at 298, 281 P.3d at 1088.

Plaintiff has not alleged sufficient facts to assert standing on behalf of its individual members. Unlike the organizations in *In re Jerome County Bd. of Com'rs*, in this case, there is nothing in the Record that lists or otherwise indicates the membership

B. Mootness

The Respondent argues that the issue in this case is moot because the contracts have been fully executed and therefore, no relief is available. Petitioners argue that the relief requested can be granted through the declaration and thus, the issue is not moot.

The general rule of mootness doctrine is that, to be justiciable, an issue must present a real and substantial controversy that is capable of being concluded through a judicial decree of specific relief. *Idaho Sch. for Equal Educ. Opportunity v. Idaho State Bd. of Educ.,* 128 Idaho 276, 281-82, 912 P.2d 644, 649-50 (1996).

Furthermore, the controversy must be live at the time of the court's hearing. *Id.* at 282, 912 P.2d at 650. If, however, the issues presented are no longer live and if the parties lack a legally cognizable interest in the outcome, those issues are not justiciable, but are moot and thereby preclude review. *Id.* at 281, 912 P.2d at 649. A party lacks a legally cognizable interest in the outcome when even a favorable judicial decision would not result in relief. *See Murphy v. Hunt,* 455 U.S. 478, 481-82, 102 S.Ct. 1181, 1183, 71 L.Ed.2d 353, 356-57 (1982). *Freeman v. Idaho Dep't of Correction*, 138 Idaho 872, 875, 71 P.3d 471, 474 (Ct. App. 2003).

"An action for declaratory judgment is moot where the judgment, if granted, would have no effect either directly or collaterally on the plaintiff, the plaintiff would be unable to obtain further relief based on the judgment and no other relief is sought in the action." *Idaho Sch. for Equal Educ. Opportunity By & Through Eikum v. Idaho State Bd.*

---

of the Plaintiff organization included any one of the teachers who signed the Addendum Contract. If the Petitioner had alleged and supported by facts that any one of its members signed the Addendum Contract, then it would have met the first prong of the test. However, failing to specifically allege that an identified member of the association has suffered, or will suffer, an injury deprives the Plaintiff organization of standing on this basis.

of Educ. By & Through Mossman, 128 Idaho 276, 282, 912 P.2d 644, 650 (1996), citing 22A Am.Jur.2d *Declaratory Judgments* § 41 (1988). The existence of the required elements for declaratory relief, including the existence of a "controversy," should be determined as of the time of the court's trial or hearing, rather than at the commencement of the action. *See, e.g., Golden v. Zwickler,* 394 U.S. 103, 108, 89 S.Ct. 956, 959, 22 L.Ed.2d 113 (1969)."

In this case, Petitioner has not asked for any relief except to have the contracts declared illegal. However, if the relief asked for is granted, that declaration would have an effect – either directly or collaterally – as Petitioner can thereafter use the declaration, if granted, to prevent future types of contracts. Additionally, if the Addendum Contract is determined to be illegal, Petitioner could seek further relief on behalf of its members. As such, although the contracts have been fully executed, the issue is not moot.

IV. Motion for Summary Judgment

Under I.R.C.P. 56(c), the Plaintiff shall be entitled to summary judgment if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Doe v. Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986). In determining whether an issue of material fact exists, all disputed facts are liberally construed and all reasonable inferences made in favor of the non-moving party. *G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 808 P/2d 851 (1991). If the record contains conflicting inferences upon which reasonable minds could differ, summary

judgment should not be granted. *Sewell v. Neilson Monroe, Inc.,* 109 Idaho 192, 706 P.2d 81 (Ct.App.1985). This requirement is a strict one. *Clarke v Prenger*, 114 Idaho 766, 760 P.2d 1182 (1988). The burden of proving the absence of a material fact rests at all times upon the moving party. *G&M Farms v Funk*, supra. This burden is onerous because even "circumstantial evidence can create a genuine issue of material fact." *Doe v Durtschi*, 110 Idaho 466, 716 P.2d 1238 (1986).

Once the moving party establishes the absence of a genuine issue, the burden shifts to the nonmoving party to show that a genuine issue of material fact on the challenged element of their claim does exist. Idaho R. Civ. P. 56(e); *Kiebert v. Goss,* 144 Idaho 225, 228, 159 P.3d 862, 865 (2007); *Navarrete v. City of Caldwell*, 130 Idaho 849, 949 P.2d 597 (Ct.App.1997**).** The opposing party's case must not rest on mere speculation because a mere scintilla of evidence is not enough to create a genuine issue of fact. *G&M Farms v. Funk Irrigation Co.*, supra; *Callies v. O'Neal,* 147 Idaho 841, 846, 216 P.3d 130, 135 (2009). If the Plaintiff fails to submit evidence to establish an essential element of his claim, summary judgment is appropriate. *Post Falls Trailer Park v. Fredekind*, 131 Idaho 634, 962 P.2d 1018 (1998). Moreover, a party against whom a motion for summary judgment is sought may not merely rest on allegations contained in his pleadings, but must come forward and produce evidence by way of deposition or affidavit to contradict the assertions of the moving party and establish a genuine issue of material fact. *Sammis v. Magnetek, Inc.,* 130 Idaho 342, 941 P.2d 314 (1997); *See also* I.R.C.P. 56(c). Failure to do so will result in an order granting summary judgment. The district court is not required to search the record for evidence of an issue of material fact; it is the nonmoving party's burden to bring that evidence to

the court's attention. *Vreeken v. Lockwood, Eng'g, B.V.,* 148 Idaho 89, 103-04, 218 P.3d 1150, 1164-65 (2009). Failure to do so will result in an order granting summary judgment. *Sammis v. Magnetek, Inc.,* 130 Idaho 342, 941 P.2d 314 (1997).

> The fact that both parties file motions for summary judgment does not necessarily mean that there are no genuine issues of material fact. *Moss v. Mid–Am. Fire & Marine Ins. Co.,* 103 Idaho 298, 302, 647 P.2d 754, 758 (1982). Moreover, the filing of cross-motions for summary judgment does not transform "the court, sitting to hear a summary judgment motion, into the trier of fact." *Id.* When cross-motions have been filed and the action will be tried before the court without a jury, however, the court may, in ruling on the motions for summary judgment, draw probable inferences arising from the undisputed evidentiary facts. *Riverside Dev. Co. v. Ritchie,* 103 Idaho 515, 519, 650 P.2d 657, 661 (1982); *see also Drew v. Sorensen,* 133 Idaho 534, 537, 989 P.2d 276, 279 (1999). Drawing probable inferences under such circumstances is permissible since the court, as the trier of fact, would be responsible for resolving conflicting inferences at trial. *Ritchie,* 103 Idaho at 519, 650 P.2d at 661. Conflicting evidentiary facts, however, must still be viewed in favor of the nonmoving party. *Argyle v. Slemaker,* 107 Idaho 668, 670, 691 P.2d 1283, 1285 (Ct.App.1984).

Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Trust, 147 Idaho 117, 123-24, 206 P.3d 481, 487-88 (2009). When both parties file a motion for summary judgment relying upon the same facts, issues, and theories, the parties essentially stipulate that there is no genuine issue of material fact which would preclude the district court from entering summary judgment. *Brown v. Perkins,* 129 Idaho 189, 191, 923 P.2d 434, 436 (1996). *Hunting v. Clark Cnty. Sch. Dist. No. 161*, 129 Idaho 634, 637, 931 P.2d 628, 631 (1997).

At issue in this case is whether the Addendum Contract is a contract pursuant to I.C. § 33-513(1), which provides in pertinent part:

> The board of trustees of each school district, including any specially chartered district, shall have the following powers and duties:

1. To employ professional personnel, on written contract in form approved by the state superintendent of public instruction.

Petitioners assert that this contract was an employment contract, but that it was not on an approved form as required by statute and therefore, was an illegal contract. Respondents argue that it was not an employment contract and therefore, was not required to be on any approved form and, consequently, is perfectly legal. Both parties agree that the Continuing Teachers Contract complied with Idaho Code § 33-513 and that the Addendum Contract was an "Addendum to Continuing Teacher Contract."

Whether a contract is illegal is a question of law for the court to determine from all the facts and circumstances of each case. *Trees v. Kersey,* 138 Idaho 3, 6, 56 P.3d 765, 768 (2002). The illegality of a contract can be raised at any stage in litigation. *Id.* In fact, the court has the duty to raise the issue of illegality *sua sponte. Id.* Whether a contract violates a statute is a question of statutory interpretation and is a matter of law for the Court to determine from all the facts and circumstances of each case. *Id.*.

> Statutory interpretation begins with the literal language of the statute. *Paolini v. Albertson's, Inc.,* 143 Idaho 547, 549, 149 P.3d 822, 824 (2006). The statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings. *Id.* When the statutory language is unambiguous, the plain meaning of the statute must be given effect, and the court need not consider rules of statutory construction. *Payette River Prop. Owners Ass'n v. Bd. of Comm'rs of Valley County,* 132 Idaho 551, 557, 976 P.2d 477, 483 (1999). It should be noted that the court must give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant. *AmeriTel Inns, Inc. v. Pocatello–Chubbuck Auditorium Dist.,* 146 Idaho 202, 204, 192 P.3d 1026, 1028 (2008).

Wernecke v. St. Maries Joint Sch. Dist. No. 401, 147 Idaho 277, 282, 207 P.3d 1008, 1013 (2009).

A contract made for the purpose of furthering any matter prohibited by statute is illegal, unenforceable, and void. *Kunz v. Lobo Lodge, Inc.,* 133 Idaho 608, 611, 990 P.2d 1219, 1222 (Ct.App.1999) (citing *Porter v. Canyon County Farmers' Mut. Fire Ins. Co.,* 45 Idaho 522, 525, 263 P. 632, 633 (1928)). When a court is faced with an illegal contract, it denies enforcement of the contract. *Trees,* 138 Idaho at 9, 56 P.3d at 771.

According to Black's Law Dictionary: addendum is "a thing that is added." To employ means "to engage in one's service; to hire." To hire "implies a request and a contract for compensation."

In this case, Respondent's conceded at oral argument that the Addendum Contract was part of the employment contract and it attempted to, and in fact, did, modify the Contract by reducing the amount of compensation agreed upon in the Contract. Employment contracts are required to be on a form approved by the state superintendent of public instruction pursuant to I.C. § 33-513. This Addendum purported to reduce the compensation afforded to the teachers and to remove the protections of I.C. § 33-513 without any indication that it did so in a form approved by either the State Superintendent of Public Instruction or the State Board of Education. Therefore, the Addendum Contract is ineffective at altering the terms of the Continuing Teacher Salaries and is void.

On a separate ground, this Court finds the Addendum Contract is illegal because it failed to comply with Idaho Code §§ 33-1272 and -1273. Various Idaho Code sections are relevant to this analysis:

I.C. § 33-1272(3) provides in pertinent part:

> negotiations means meeting and conferring ...by the local board of trustees and the authorized local education organization or the respective

> designated representatives of both parties for the purpose of reaching an agreement upon matters and conditions subject to negotiations as specified in a negotiation agreement between said parties.

Section 33-1272(1) defines a professional employee as a "certificated employee," which includes teachers and I.C. § ;33-1273(1) requires that:

> "the local education organization selected by a majority of the qualifying professional employees shall be the exclusive representative for all professional employees in the district for purposes of negotiations. A local board of trustees or its designated representative shall negotiate matters covered by a negotiations agreement only with the local education organization or its designated representative.

Finally, Idaho Admin. Code r. 08.02.01.150: states, "The State Superintendent of Public Instruction has approved a standard employment contract form. Any deviation from this contract form must be approved by the State Superintendent of Public Instruction and reviewed for reapproval once every three (3) years. (Section 33-513, Idaho Code) (4-1-97).

There is a complex set of statutory provisions governing the process by which teachers' salaries, benefits and employment conditions are negotiated. "...[T]he procedures set forth in I.C. §§ 33-1271 to -1276 reflect the legislature's determination that structured negotiation procedures would benefit not only school districts and teachers, but the public as well. *Gilbert v. Nampa Sch. Dist. No. 131*, 104 Idaho 137, 147, 657 P.2d 1, 11 (1983).

At oral argument, both parties agreed that the number of working days and the commensurate salary are issues usually negotiated by the local board and the education association. Here there was an agreement apparently between the school superintendent human resource officer and individual teachers. The school superintendent, individually or through the human resource officer, did not have the

statutory authority to negotiate a reduced salary or wages unless he was designated by the local board of trustees but even so, the designee of the local board can *only* negotiate matters covered by the negotiation agreement with the local education organization or its designee.

Here, the school superintendent, in presenting individual teachers with a variety of days, and allowing teachers to select a specific number of days to furlough and then to subsequently modify the number of agreed-upon furlough days, was negotiating with individual teachers regarding the compensation each teacher would forego based on the number of days the teacher agreed to furlough. This negotiation is specifically precluded under the statute. Moreover, the superintendent is deemed to know that the individual teachers had no authority to negotiate in this fashion and thus, he superintendent had no justifiable reason to believe the individual teachers had the authority to enter into contracts that altered their wage or compensation when such contract was negotiated outside the statutory process. *Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 117-118, 898 P.2d 43, 48049 (1995).

Because the individual teachers entering the contracts did not have the authority to contract for reduced wages or compensation when such reduction was negotiated outside the statutory procedure, there was a lack of authority to contract, rendering the Addendum Contracts void. 146 Idaho 527 (2008) citing Woodward v. City of Grangeville, 13 Idaho 652 (1907).

As such, because the Addendum Contracts do not comply with I.C. §§ 33-513 or 33-1272 and -1273, this Court finds the Addendum Contracts are unenforceable and therefore, grants Petitioner's motion for summary judgment.

THEREFORE, IT IS HEREBY ORDERED, that Petitioner's Motion for Summary Judgment is GRANTED and Respondent's Motion for Summary Judgment is DENIED.

Dated: August AUG 16 2013, 2013.

MOLLY J HUSKEY

Molly J. Huskey
District Judge

CLERK'S CERTIFICATE OF SERVICE

AUG 16 2013

I HEREBY CERTIFY that on this _____ day of August, 2013, I caused to be served a true and correct copy of the foregoing **ORDER ON SUMMARY JUDGMENT** by the method indicated below, and addressed to the following persons:

Paul J. Stark
Idaho Education Association
620 N 6th St.
P.O. Box 2638
Boise, ID 83702

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ E-Mail

William F. (Bud) Yost
Chip Giles
Yost Law, PLLC
4 Ogden Ave
PO Box 1275
Nampa, ID 83653

- ☐ U.S. Mail
- ☐ Hand Delivered
- ☐ Facsimile
- ☐ Overnight Mail
- ☐ E-Mail

CLERK OF THE DISTRICT COURT

By: S BROWN
Deputy Clerk