Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: October 22, 2015 CASE NUMBER: 2015CA1608
Larimer County 2015CV30523	
Plaintiff-Appellee: Thompson Education Association, **v.** **Defendant-Appellant:** Thompson School District No R2-J Board of Education.	Court of Appeals Case Number: 2015CA1608
ORDER OF COURT	

TO: THE PARTIES

Upon reconsideration of the Emergency Motion for Stay Pending Appeal filed by Appellant Thompson School District No. R2-J Board of Education (District), which was previously denied by a motions division of this Court, and upon consideration of the parties' briefs filed on the merits of the appeal of the preliminary injunction, the Court ORDERS that the preliminary injunction entered by the district court is STAYED pending further order of this Court.

This Court has the authority to stay a district court order, including a preliminary injunction, under C.A.R. 8(a). We consider four factors: (1) whether the stay applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3)

whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. *Romero v. City of Fountain*, 307 P.3d 120, 122 (Colo. App. 2011).

We first conclude that the District has made a strong showing that it is likely to succeed on the merits of the appeal of the preliminary injunction. The 2014-15 Memorandum of Understanding (MOU) has expired by its terms. Under the separation of powers doctrine, and the local school district control provision of the Colorado Constitution, the District has made a strong showing that a court lacks the power to order a school district to abide by an expired collective bargaining agreement. *See* Colo. Const. art. III; Colo. Const. art. IX, § 15; *City of Louisville v. Dist. Court*, 190 Colo. 33, 37, 543 P.2d 67, 70 (1975) ("It is an exceedingly delicate matter for the courts to interfere by injunction with the action, or contemplated action, of a legislative body in any case; and such interference cannot be justified, except in extreme cases and under extraordinary circumstances." (quoting *Lewis v. Denver City Waterworks Co.*, 19 Colo. 236, 34 P. 993 (1893))). Thus, even if Appellee Thompson Education Association (TEA) proves at trial that the District breached the MOU, the district court likely could not order a one-year extension of the expired-MOU.

Moreover, while we agree with the dissent that there is no reason for us to revisit the district court's findings that the District breached its contractual duty to

negotiate in good faith a renewal of the 2014-15 MOU, we must consider the court's ability to remedy any such breach. The District has made a strong showing that the remedy presently requested by TEA — that the parties must take a new ratification vote on a tentative 2015-16 MOU but the School Board members would be allowed to vote not to ratify only for certain reasons — is not a legally permissible form of equitable relief that could be awarded by the district court after a trial on the merits. Additionally, by requiring the District to abide by the expired-MOU, the current injunction goes far beyond TEA's requested remedy after a trial on the merits.

"Preliminary injunctive relief is designed [in part] . . . to preserve the power of the district court to render a meaningful decision following a trial on the merits." *Bloom v. National Collegiate Athletic Ass'n*, 93 P.3d 621, 623 (Colo. App. 2004). If no legally permissible equitable relief is available, there is no basis for a preliminary injunction requiring the District to continue to abide by the expired MOU, given that the preliminary injunction was designed to allow the district court to impose equitable relief following trial.[1]

The District will suffer irreparable injury absent a stay because the District has the constitutional responsibility to govern the affairs of the District. The

[1] We express no opinion on whether Appellee Thompson Education Association may have an action for damages for breach of the MOU by the District.

preliminary injunction interferes with the District's ability to exercise this constitutionally-mandated function.

The issuance of the stay likely will injure TEA, but we conclude that the balance of all the *Romero* factors favors granting the stay.

Although the public has an interest in ensuring that public officials abide by their contractual obligations, the public interest in the exercise of the powers granted by the Colorado Constitution to duly elected officials to manage the school district, without unnecessary interference by the courts, weighs against a preliminary injunction under the facts presented.

The Court will issue an opinion in due course deciding the merits of the appeal of the preliminary injunction.

BY THE COURT

Navarro, J.
Berger, J.

*Webb, J. dissents