

FILED
KING COUNTY, WASHINGTON

MAY 23 2008

SUPERIOR COURT CLERK
BY ANDREW T. HAVLIS
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

MOORE ET AL

Plaintiff/Petitioner,

vs.

HCA, STATE OF WA

Defendant/Respondent.

NO. 06-2-21115-4SEA

ORDER ON CIVIL MOTION

The above entitled court having heard a motion As' MOTION FOR PARTIAL
ST ON PART-TIME FACULTY, AND HAVING CONSIDERED THE
PLEADINGS FILED IN SUPPORT OF AND OPPOSITION TO THE
MOTION, AS STATED ^{BEFORE} ~~DURING~~ ARGUMENT

IT IS HEREBY ORDERED that As' MOTION IS GRANTED IN
PART AND DENIED IN PART, AS REFLECTED IN THE
COURT'S ORAL RULING, WHICH WILL BE FILED.

DATED: 5/23, 2008.



Judge Catherine Shaffer

Presented by:

Copy received:

[Signature]
WSBA # 6299
Attorney for Plaintiff

[Signature]
WSBA 5619
Attorney for Defendants.

SUPERIOR COURT IN AND FOR THE STATE OF WASHINGTON
IN AND FOR COUNTY OF KING

DOUGLAS MOORE, et al.)	
)	
Plaintiff,)	KING COUNTY CAUSE
)	No. 06-2-21115-4 SEA
vs.)	
)	COURT OF APPEALS
HEALTH CARE AUTHORITY,)	No.
et ano)	
)	
Defendant.)	

REPORT OF PROCEEDINGS
MAY 23, 2008

BEFORE THE HONORABLE CATHERINE SHAFFER

PETE S. HUNT
CSR Reference No. HUNTPS5708P
Official Court Reporter
King County Superior Court
516 Third Avenue, C912
Seattle, Washington, 98104

(206) 296-9356

A P P E A R A N C E S:

JON P. FERGUSON, AAG
ROBERT D. STEWART, AAG
Attorney at Law,

appeared on behalf of the Plaintiff;

STEPHEN STRONG
STEPHEN FESTOR
Attorney at Law,

appeared on behalf of the Defendant.

1 clear enough that the purpose of the legislative
2 amendment of 2006 was to rush something through at
3 least a partial solution of the problem. And there was
4 no effort in that to preempt the field. The good faith
5 review did not go where it should have gone. And as we
6 raised on a number of occasions. And if it had done
7 what it was supposed to do, it would have come to the
8 conclusion that part-time faculty were eligible for
9 benefits under the career seasonal rule. By averaging,
10 which was the tradition that we discussed in December.

11 THE COURT: Yes.

12 MR. STRONG: Do you have any other questions?

13 THE COURT: No. Thank you.

14 Thank you, everybody.

15 I am going to be very abbreviated about what I
16 say about the posture of this argument because I think
17 it is well set forth in the transcript of your
18 December, 2007 argument and my ruling. And also
19 because I think it is very well set out in your
20 briefing, which is of record here.

21 And I think we are all in agreement about what
22 the record shows.

23 I just want to zero right in then on the
24 issues presented here. And I think there are
25 essentially three major issues before me.

1 The first question before me is whether or not
2 the HCA has the authority under RCW 41.05.053 to set
3 forth criteria, including the criteria of two years of
4 work history before part-time faculty who work for a
5 community college and technical schools qualify for
6 summer benefits.

7 The second and related inquiry before me,
8 which has been sharpened by the usual high quality oral
9 argument I heard, is regardless of what Mader and prior
10 practice say, whether or not the parties in this case
11 with regard to part-time faculty reached an agreement
12 in the Mader settlement. Which the Court approved.
13 That the minimum period of time for part-time faculty
14 to have worked before receiving health benefits would
15 be two years. And that is important because one class
16 of part-time faculty, who I think are before me today,
17 are part-time university faculty not addressed in the
18 053 legislation.

19 The third issue before me today I think on
20 everything presented and in the interest, frankly, of
21 efficiency, is whether or not the HCA had authority to
22 require that an employee work at least half-time per
23 quarter, or per semester. Rather than simply over a
24 nine month or academic year, period.

25 And I think those are three discrete issues

1 here. And I think I can address all three on this
2 record.

3 With regard to the first question about the
4 effect essentially of 41.05.053, I think I have to
5 return to some basic principles here of court deference
6 to legislatures. Certainly the overall history, and I
7 am speaking very broadly now, and as I mentioned in my
8 December, 2007 ruling, has been legislative protection
9 of the ability of career seasonal workers to receive
10 benefits. And that I think is something that the Mader
11 court clearly recognized in its ruling.

12 But having said that, the entity in control of
13 deciding when it is that particular employees are
14 eligible for benefits is not the Court and it is not
15 the HCA and it is not the Supreme Court, it is the
16 legislature. Mader is at its heart an exercise in
17 legislative interpretation. And that is also my role.
18 The first rule of legislative interpretation from the
19 Court's point of view is to determine what did the
20 legislature say, and how do I carry that out. Because
21 I don't sit here as Senator Shaffer, or Representative
22 Shaffer, nor does any member of the Supreme Court or
23 for that matter any member of the HCA.

24 So I have to look at 41.05.053 as at least
25 meaning what it says on its face. And what it says on

1 its face is that there are some criteria for part-time
2 academic employees at employing community and technical
3 college districts to receive benefits. And
4 specifically it says that those folks have to have
5 worked in each of the two proceeding academic years.

6 And the second thing it says very clearly, is
7 that they have to have had an average of half-time or
8 more for three quarters of the academic year.

9 And otherwise they don't get benefits.

10 I agree with plaintiffs that the legislature
11 also said at Subsection 5 of 053 that this section does
12 not preclude individuals from being eligible for
13 benefits under other laws or rules that may apply or
14 for which they may be eligible. But of course there
15 are no other rules that apply or under which
16 individuals may be eligible. Part of this lawsuit has
17 been an argument about the restrictiveness of the HCA's
18 rules.

19 And I don't think there are other laws
20 either. Because I don't think the legislature meant to
21 say, you know, we passed 053 except where our prior
22 legislation applies. And if they did mean to say that
23 I think they would have. In fact, I think they would
24 have amended their prior legislation.

25 I cannot say that the Mader decision is itself

1 another law, it is a case decision. And I think the
2 legislature knows how to refer to case decisions. And
3 as I said, it is a case decision that boils down to a
4 matter of legislative interpretation of prior
5 legislation. So it is not itself a law. It is an
6 interpretation of earlier law.

7 I do not know what political bargains led to
8 the language of 053. Maybe the legislature knew about
9 the language of the Mader settlement agreement. Maybe
10 the legislature wanted to indicate that there has to be
11 some sort of continuity for faculty, at least over a
12 two year period before they can receive benefits.
13 Maybe they thought that would be appropriate as a
14 matter of policy.

15 Whatever their reasoning, their language is
16 clear. And I have to follow it. So to the extent that
17 the HCA contends before me, that under 053 that part-
18 time faculty who work for community and technical
19 college districts must have worked for two years, two
20 proceeding academic years, and must have worked with an
21 average academic work load of half-time or more for
22 three quarters of the academic year, they are right.
23 And they are entitled to enforce this legislation by
24 rule-making.

25 I concur with plaintiffs that that is not

1 terribly fair considering that other people who are not
2 part-time faculty will be eligible earlier, one
3 assumes, for benefits, but, that is the kind of
4 determination the legislature makes all the time. And
5 they are entitled to make it and I have to defer to
6 it.

7 We all know what the remedy is when plaintiffs
8 feel the legislature has not been as generous as
9 perhaps the legislature should have been. And that is
10 to go back to them and ask them to amend their
11 legislation. Which I know everybody who is a plaintiff
12 here is capable of doing through their unions, if not
13 otherwise. And I know the HCA is perfectly capable of
14 showing up and telling the legislature how much that is
15 going to cost.

16 But, with regard to the first issue, that is my
17 ruling. HCA has authority to enforce 053 as written.
18 As to part-time faculty who are employed by community
19 or technical college districts.

20 With regard to part-time faculty who are employed
21 by universities, I do not believe 053 applies to them
22 in its terms. It specifically specifies who it applies
23 to under Subsection 1 of that legislation.

24 But, I do think that Mr. Ferguson is right to point
25 me to the Mader settlement agreement. And specifically

1 to Paragraph 47 of the Mader settlement agreement.
2 Mader was all about part-time faculty. And everybody
3 who was involved in the lawsuit knew that. The lawsuit
4 was specifically intended to and did resolve the
5 plaintiff's claims for damages of any kind relating to
6 or arising out of their exclusion from specific health
7 benefits, which may have arisen at any time to the
8 present as defined in the settlement agreement. And
9 plaintiffs made it plain as to defendants in the
10 settlement agreement that it was intended to apply to
11 all part-time instructors who had worked at least 50
12 percent as full-time employees in the fall, winter and
13 spring quarters of an instructional year. Or, at least
14 50 percent FTE in the winter and spring quarters of an
15 instructional year.

16 Paragraph 47, with that background in mind,
17 contained a promise by the State to undertake a good
18 faith review of eligibility for health care benefits
19 under the instructional year employee regulation, WAC
20 182-12-115(4), of those who work on average half-time
21 or more in an entire instructional year fall, winter
22 and spring quarters for two or more consecutive years.
23 But who do not work more than half-time in each of
24 these three quarters.

25 That is clear authority, I think, to the HCA under

1 the settlement agreement to regulate university part-
2 time employees by requiring that they work two or more
3 consecutive years before receiving health care
4 benefits.

5 This is not my idea, this is the settlement
6 agreement the parties entered into and that the Court
7 approved.

8 The third issue before me is, I think, fairly
9 stated, and that is the question about the HCA's
10 current requirement that part-time faculty work at
11 least half-time in each quarter to qualify for summer
12 benefits. That is not what RCW 41.05.053 requires.
13 Nor is it something that the language of the settlement
14 agreement requires. The HCA regulation is more
15 restrictive than the statute, or for that matter the
16 language of the settlement agreement, as I read it.

17 So, my view, and I am not going to repeat all the
18 reasoning I set forth in my prior ruling about why the
19 HCA can't be more limiting than the legislature has
20 been, is that although the HCA can require two year
21 service before eligibility for benefits kicks in, it
22 must look at whether there has been half-time or better
23 workload by averaging over the nine months or the three
24 quarters of the academic year. It has to track as to
25 community and technical district, and frankly, I think,

1 think that I made an erroneous ruling, until you folks
2 pointed out the settlement agreement's limitations. So
3 let's be cautious with regard to the two year gap and
4 make sure we brief and hear argument on that before I
5 resolve it. Unless you can resolve it by agreement.
6 You know where the Court is coming from now because you
7 have been before me twice now and you have heard my
8 thinking.

9 And I will say one more thing, Mr. Ferguson,
10 as I indicated to you in oral argument, I think it is
11 important for the Court to be able to explain to itself
12 why it would rule differently with regard to averaging
13 over for example a quarter, than it would with regard
14 to averaging for example over a month.

15 MR. FERGUSON: Yes.

16 THE COURT: All right. Let's go ahead then
17 and have you folks sit down briefly and enter into a
18 written order that reflects my oral ruling today,
19 including the correction that I just made to it. And
20 once you have got that signed you are free to go. Feel
21 free also to contact my court reporter to order up the
22 record.

23 Thank you, everybody.

24 MR. FERGUSON: Thank you, Your Honor.
25

