

IN RE: COMPLAINT OF THE LOUISIANA FEDERATION OF TEACHERS AND THE AMERICAN FEDERATION OF TEACHERS O/B/O CERTAIN FILIPINO TEACHER LOCAL MEMBERS

RESPONDENT: UNIVERSAL PLACEMENT INTERNATIONAL, INC. AND LOURDES NAVARRO

FINDINGS AND ADMINISTRATIVE DETERMINATION OF THE LOUISIANA WORKFORCE COMMISSION

The Secretary of the Louisiana Workforce Commission (LWC) designated the undersigned to serve as a hearing officer to hear evidence regarding the Complaint of the Louisiana Federation of Teachers and the American Federation of Teachers (hereinafter LFT and AFT, respectively)¹ o/b/o certain Filipino teachers brought pursuant to the Louisiana Private Employment Service Law, La. R.S. 23:101 *et seq.* (“LPES”) The teachers unions contend that Respondent Universal Placement Inc., (“UPI”) violated the LPES. It was stipulated that at all relevant times UPI was not licensed to operate a private employment service in the State of Louisiana. La. R.S. 23:104 provides: “[n]o person, company, corporation, or partnership shall operate, solicit, or advertise an employment service in this state unless licensed by the assistant secretary.” The teachers contend that because UPI was not licensed the contracts between UPI and the individual teachers are void *ab initio*. The teachers seek an order compelling UPI to refund the fees collected to the teachers. The teachers further seek the imposition of statutory fines, penalties and attorney’s fees against UPI.

¹ Avoyelles Parish Filipino teachers intervened in these proceedings and assert the same claims asserted by the LFT and AFT on behalf of their member teachers. Hereinafter the teachers represented herein by AFT and LFT and the Avoyelles Parish intervening teachers will sometimes be collectively referred to as the “teachers” or “Filipino teachers”.

The threshold issue is whether UPI is operating an employment service in the State of Louisiana as defined by the LPES. UPI argues that it is not operating an employment service *in this state*² and therefore it does not fall within the letter of La.R.S. 23:104 which provides that

No person, company, corporation, or partnership shall operate, solicit or advertise an employment service *in this state* unless licensed by the assistant secretary.

UPI contends that it “operates an employment service in the State of California, the product of which is supplying foreign teacher services to schools in various states.”

UPI is splitting hairs. It was established that UPI placed employees (teachers) with various school districts in Louisiana. It was also established that UPI solicited the placement of these teachers to various school systems in Louisiana. The evidence established that UPI made proposals to certain Louisiana School districts to place qualified Filipino teachers to fill teaching positions. The evidence established that East Baton Rouge and Avoyelles Parish, among others, accepted UPI’s proposal and in fact hired Filipino teachers recruited by UPI or its business affiliate PARS. The evidence further established that UPI entered into a contract with the Louisiana Department of Education in September 2007 for the stated purpose of “provid[ing] the [Recovery School] District with teacher recruitment and placement services which meet the needs of the District.” The State paid Universal a per teacher fee for successfully placing teachers in the Recovery School District.

² UPI does not have an office in the State of Louisiana. It was stipulated that UPI is a California Corporation licensed to do business in Louisiana by the Louisiana secretary of State.

The evidence overwhelmingly established that UPI solicited employment services in the State. The word “solicit” means “to seek”. The term “employment service”, is defined by La. R.S. 23:101 as offers to procure employment for a candidate or an employer. UPI solicited employment services from the following districts: Recovery, Caddo, East Baton Rouge, East Carroll, Jefferson and LaFourche Parishes. UPI sent marketing materials to various Louisiana school districts offering to “deliver highly qualified, experienced, well trained and credentialed teachers”.³ UPI ultimately placed some 361 teachers⁴ in the aforementioned school districts. UPI operated an employment service in Louisiana and therefore the LPES statutes apply to UPI. In addition to failing to obtain a license in violation of La. R.S. 23:104, the evidence showed that UPI also violated the following rules and regulations applicable to employment services operating in Louisiana:

1. The evidence established that UPI charged the teacher applicants a “marketing fee” which is prohibited by La. R.S. 23:111B(2).
2. The evidence established that UPI collected placement fees from the teacher applicants “prior to actual commencement of work” in violation of Section 107.A.5 of Title 40 of the Louisiana Administrative Code.
3. The evidence established that UPI collected fees from teacher applicants who did not ultimately commence work on the job procured by UPI in violation of La. R.S. 23:111B(3)(e) and Section 107.A.6 of Title 40 of the Louisiana Administrative Code.

³ Proposal to East Baton Rouge Parish Schools, Parties Joint Exhibit 1, in globo

⁴ Stipulation of the parties, #7

4. The evidence established that UPI's contracts with the teacher applicants obligated the teachers to pay UPI a fee of 10% of the teacher's gross monthly income for the first 24 months of employment. This contractual provision violates La. R.S 23:111B(3)(a) which limits an employment services fees to the applicant's first year's gross earnings.

5. The evidence established that UPI violated La. R.S 23:111B(3)(b) which requires the employment service to adjust its fee upward or downward based on the actual gross earnings of the applicant. Mr. Navarro, the UPI representative, acknowledged in his testimony that some of the teachers were due a refund of the placement fees collected by UPI because the actual salary received was in some cases less than the projected salary upon which UPI's fees were originally determined.

The next question is whether the failure to obtain a license before engaging in or soliciting employment services impairs the contracts between the parties. Citing *Badon's Employment v. Smith* 359 So.2d at 1286 (1978) complainants ask the LWC to declare the contracts between UPI and the teachers a nullity. Citing the California choice of law clause in its contract with the teachers, UPI argues that "because California law governs the contracts, as long as they are valid in California, regardless of the licensing issue, then the contracts must be construed as valid and enforceable."

UPI essentially contends that choice of law provision in its contracts divests the Louisiana Workforce Commission of its legislative mandate to regulate and license private employment services. The State of Louisiana was not a party to the contract with the teachers and it cannot be bound or prevented from exercising its sovereign power under the statutory scheme because the parties included a California choice of law provision in the contract. The

parties confuse the question of Louisiana's remedial power to order refunds and levy penalties in accordance with the statutory scheme with the question of whether the contract is null. Simply stated, a choice of law provision in a contract between private parties has no effect on this Commission's regulatory powers granted it by statute.

The teachers argue that since the contracts were not submitted for approval as required by La. R.S. 23:111 the contracts are null and void. The LPES does not grant the Commission the power to declare the contracts null and void. An administrative agency has only the power and authority expressly granted by the constitution or statutes. *Hawkins v. State, Through Department of Health and Hospitals*, 613 So.2d 229,234 (La. App. 1st Cir. 1992); *Albe v. Louisiana Workers' Compensation Com.*, 700 So.2d 824 (1997). The Louisiana Workforce Commission is a department of the executive branch of state government. La. Const. Art. IV, § 1. The LWC enabling legislation specifies the nature, extent and scope of the LWC's regulatory authority. The LPES defines the nature, extent and scope of the LWC's regulatory authority over employment services. Having concluded that UPI is an employment service as contemplated by the LPES, the LWC only has the statutory power to levy a fine, grant attorney fees, and/or order a refund.⁵ The LWC is without authority to declare a contract between two parties null. *Badon's Employment v. Smith* is not dispositive. That was a suit for breach of contract brought in District Court. Certainly the district court can declare the contract null but this Commission is limited to the remedies in the statute. The Louisiana Workforce Commission is without power to declare contracts between ostensibly consenting parties null and void. That is a matter for an Article III

⁵ La.R.S. 23:108

Court. The remedies and penalties which the LWC may order for violating the LPES are found in La. R. S. 23:108.

UPI argues that the penalties and remedies in La. R.S. 23:108 do not apply to UPI. UPI argues that “this statute prescribes penalties for violations by a *licensee*” which UPI is not. UPI takes the untenable position that its failure to obtain the required license from the Commission somehow divests the Commission of its legislative mandate to enforce the statutory scheme. To the contrary, La. R.S. 23:108 refers broadly to “employment services” and authorizes the LWC to order the enumerated remedies and fines “[f]or any act or omission in violation of any provision of this Part or any rule or regulation prescribed hereunder”.

La. R. S. 23:108 B (1) authorizes the Secretary (or his designee) to levy a fine not to exceed \$500 and to suspend or revoke a license. UPI is hereby ordered to pay a fine to the Louisiana Workforce Commission in the amount of \$500 for violating the LPES by operating an employment service in Louisiana without first obtaining the requisite license and otherwise failing to comply with the LPES as set forth herein.

La. R.S. 23:108 B (2) authorizes the Commission to award “the prevailing party of the adjudicatory hearing” reasonable litigation expenses not to exceed \$7,500.00. The Commission does hereby order UPI to pay litigation expenses in the amount of \$7,500.00 jointly to the AFT, LFT and Avoyelles Parish Intervenors as the prevailing parties.

La. R.S.23:108 B (3) authorizes the Commission to issue an order requiring an employment service to issue a refund to an applicant determined by the “assistant secretary or his designee” to be entitled to a refund. The parties stipulated to the number of teachers placed in

various Louisiana School Districts. The teachers union offered testimony of 4 teachers. Jave Pajuelas, Ian Paul Caingled, Janet Anober and Richard Santiago who testified to the placement fees they paid to UPI. The other evidence of placement fees paid by the Filipino teachers was offered by way of complainants Exhibit 4. The evidence established that UPI and its Philippines affiliate, PARS also charged the teachers various fees associated with obtaining VISA's and other documents necessary to work legally in the United States. Scrutiny of these fees is not within the regulatory authority of this Commission. The placement fees paid by the Filipino teachers were charged by UPI an unlicensed employment service in violation of Louisiana's Private Employment Service regulatory scheme. UPI is ordered to refund the placement fees paid by the Filipino teachers to UPI.

La. R.S. 23:113 provides that “[a] person who acts as an employment service without a license as provided in this Part shall be guilty of a misdemeanor punishable by a fine of not less than fifty nor more than five hundred dollars, by imprisonment for not more than six months, or both. Unlike the civil administrative fine in La. R.S. 23:108, La. R.S. 23:113 carries criminal penalties. It provides:

A person who acts as an employment service without a license as provided in this Part shall be guilty of a **misdemeanor punishable by a fine** of not less than fifty nor more than five hundred dollars, by imprisonment for not more than six months, or both.

An administrative court does not have jurisdiction over criminal matters, which is expressly conferred on the District Courts by Article V, Section 16 of the Louisiana Constitution. This Commission does not have the power to impose a criminal sanction on the Defendant. The matter will be referred to the appropriate authorities as the Director of the Louisiana Workforce Commission may deem necessary.

These findings and determination were made in Baton Rouge, Louisiana on the 14th day of April, 2010. Counsel for complainants, intervenors and respondent have been provided with this determination and findings by e-mail and by First Class U.S. Mail.


Shelly D. Dick