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SCHOOL LAW GROUP

School Board Has Right to Reduce Educational Support Personnel From Full-Time to Part-Time

An Illinois appellate court has held that a school board has the authority to restructure the full-time positions of its educational support employees, into part-time positions, even when the amount of work remains essentially the same and results in the need to hire more part-time ESPs to handle the work. The Court rejected the union claim that if an ESP is removed or dismissed from their full-time position (by being reduced to part time), the Illinois School Code creates recall rights to ESPs to their current full-time positions and that the Board must continue to offer such full-time employment, before a Board has the right to restructure the work requiring the hiring of more part-time employees. In reaching this conclusion, the Court made it clear that ESPs do not enjoy the same recall rights as tenured teachers. The particular provisions of your collective bargaining agreement may impact this type of action as well.

A summary of the decision follows herein. A copy of the full decision can be accessed at the following link:

Haag v. The Board of Education of Streator Elementary School District 44, 2017 IL App (3d) 150643 (May 9, 2017)

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SUMMARY OF DECISION

Facts

The Streator Elementary School District operated under deficit reduction plans for many years until being placed on the ISBE financial watch list. At the end of the 2012-2013 school year, the Board adopted a deficit reduction plan which reduced all full-time ESPs to part-time at no more than 29 hours of work per week. The full-time ESPs affected were custodians, special education aides and behavior interventionists. The ESPs' union demanded bargaining regarding the effect of this deficit reduction plan, including the reduction of ESPs from full to part-time. The parties did bargain and the Board stated that the reduction was due to economic need. The Board ultimately reduced 6 custodians to part-time and issued honorable dismissals to 3 special education aides, while reducing all other aides to part-time all effective at the end of June. On July 13th, the Board advertised to fill the new part-time positions created. All of the former full-time employees were offered the part-time positions.

Issue

The union sued the Board claiming that the employees had "recall" rights under the School Code and since there was enough work to keep the ESPs employed full time, they had to be recalled into full-time positions.

The union argued that Section 10-23.5 of the Code expressly prohibits any reduction of ESP hours or employment unless one of two conditions is met: 1) the purpose of the reduction is "to decrease the number educational support personnel employed" by the District, or 2) "to discontinue some particular type of educational support service." The union contended that since the Board was not reducing the number of ESPs employed (since the number of employees actually increased with the hiring of part-time ESPs) and since it did not discontinue any educational support service, that it violated the School Code and must reinstate the ESPs to their former full-time positions.

The Board argued that this same section of the School Code being relied upon by the union actually means that notice of dismissal with recall rights under Section 10-23.5 applies *only* if the Board is reducing hours for one of these two reasons, i.e. either by decreasing the number of ESPs or eliminating a type of edu-



cational support service, noting that the courts have previously consistently held that ESPs are considered to be “at-will” employees who have significantly less job protections than tenured teachers.

Analysis

The Court concluded that the union position on Section 10-23.5 would improperly elevate ESPs to an equal footing as certified teachers when it comes to expectations of continued employment and tenure protections from employment termination or reduction of hours and that such a position had already been specifically rejected by the courts several times.

The Court agreed with the School Board that recall rights for ESPs under the School Code are triggered when employees are “removed or dismissed,” not when their hours of employment have been reduced. Notably, the Court went on to conclude that there is no authority to support the union argument that a school board cannot reduce the hours of employment of ESPs. Only tenured teachers enjoy that protection.

The parties in this case properly engaged in impact bargaining before the Board of Education finalized and implemented these personnel decisions.

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