



School Board Did Not Violate OMA By Signing Separation Agreement During Closed Session Because of Subsequent Approval During Open Session--The Illinois Appellate Court, reversing two binding opinions of the Attorney General, found that the Board of Education of Springfield School District did not violate the Open Meetings Act (“OMA”) in its approval of a separation agreement with the district’s superintendent.

In *Board of Education of Springfield School District No. 186 v. The Attorney General of Illinois*, 2015 IL App

(4th) 140941, the appellate court found that the board did not violate the OMA by signing the separation agreement in closed session because that did not constitute a final action.

Rather, the court found final action occurred when the board voted to approve the separation agreement during the open session of a subsequent board meeting. Further, the board did not violate the OMA by failing to adequately inform the public of the separation agreement, despite failing to provide details about the agreement during the board

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School Board Authority to Terminate Employment of Tenured Teacher Limited in First Appellate Court Decision Under SB7--In a major ruling, the Illinois Appellate Court has reinstated a tenured teacher who a board of education had dismissed due to misconduct notwithstanding an ISBE hearing officer’s recommendation to the contrary.

In 2011, SB7 amended the Illinois tenured teacher dismissal statute by changing who had the ultimate authority to dismiss a tenured teacher for misconduct (as opposed to for performance) under Section 24-12 of the *School Code*. Prior to 2011, a board of education would preliminarily dismiss a teacher, but an Illinois State Board of Education independent hearing officer had binding authority to dismiss the teacher. Beginning with the 2011—2012 school year, however, the Legislature shifted final authority from the hearing officer to the board of education in misconduct cases.

On December 3, 2015, the Illinois Appellate Court significantly eroded what was thought to be school boards’ increased authority. In the first reported case under the new SB7 causal dismissal process, *Beggs v. Board of Education of Murphysboro C.U.S.D. No. 186*, a hearing officer recommended a tenured teacher’s

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Consumer Price Index

Percent change for the month of **November 2015**, for the urban wage earners and clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	-0.4	-0.6
12 Mth	0.2	-0.4
St. Louis, 1st Half 2015		
6 Mth	-0.7	-0.9
12 Mth	-0.9	-1.2
U.S. Mthly	-0.2	-0.3
12 Mth	0.5	0.1

December CPI figures will be released January 20, 2016.

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Reminders & Notes

- **Join HLERK at the President’s Reception at the annual Illinois Association of School Personnel Administrators’ conference in January. In addition, a variety of HLERK attorneys will be speaking at the conference.**
- **Join HLERK at the Winter Conference of the Illinois Alliance of Administrators of Special Education in February. Michelle Todd will present the *Legal Update* at the Executive Committee Meeting while a variety of HLERK attorneys will address the conference.**

Offices
Arlington Hts. 847-670-9000
O’Fallon 618-622-0999
Peoria 309-671-9000

Tenured Teacher Cont. reinstatement, and the Murphysboro Board of Education overrode the hearing officer's recommendation, pursuant to its authority under Section 24-12. The teacher appealed the board's decision in court, and both the trial court and the appellate court ordered her reinstatement.

In the 2011—2012 school year (the first year under SB7), Ms. Beggs was a 19-year veteran teacher with a history of proficient or better evaluations. Her father passed away during the preceding summer, and her mother's health began to deteriorate significantly during the 2011—2012 school year. This caused Beggs to miss a considerable number of days of work that year, exhausting her accumulated sick leave, and arrive late and unprepared for her first-period class.

After the district issued a "letter of concern" and a temporary unpaid suspension, the board approved a notice of remedial warning. Beggs was directed to report to work on time, to be prepared to teach "bell-to-bell," and to have lesson plans available for any days when she would be absent. Following her suspension, Beggs returned to work for two days and then requested and received a leave of absence. She returned from that leave for two more days and then was absent again for four days, prompting the board to proceed with her dismissal. Incidentally, her mother passed away shortly after she was dismissed.

The teacher appealed to an ISBE hearing officer, and the hearing officer heard evidence regarding three alleged violations of Beggs's notice of remedial warning. All three related to being late to work, being unprepared to teach her first-period class, and not having lesson plans available for her substitute. The hearing officer concluded that the perceived violations either did not occur or were not "the type of serious breach of [the notice of remedial warning]" that supported or

could form the basis of her dismissal, and he recommended that the teacher be reinstated. The hearing officer specifically considered conflicting testimony and credibility, but he also factored in Beggs's positive work history, the effect of her parents' poor health on her, the short remediation period, and the fact that the remediation period began during—rather than after—her personal crisis.

In determining its proper standard of review, the court acknowledged that school boards have now been granted the final decision-making authority under Section 24-12. Nevertheless, the court determined that by prohibiting a school board from departing from a hearing officer's findings unless it determines the findings to be against the manifest weight of the evidence, the legislature intended a certain level of deference to remain with the hearing officer.

Accordingly, the court would only uphold the school board's final decision if "all reasonable and unbiased persons clearly agree that the hearing officer erred, and that the evidence presented at the hearing begs the opposite conclusion."

This ruling will make it harder for school boards to overrule the findings of an ISBE hearing officer in dismissals involving tenured teacher misconduct. It also reinforces the need to carefully consider the facts and the entire context of a teacher's situation before moving to dismiss. We will provide an update if the district appeals this case.

Tenured teacher dismissals are complex litigation matters requiring highly specialized and experienced legal expertise. For questions regarding the impact of this case on your district, contact Tina Christofalos or Chris Hoffmann.

OMA Cont. meeting, because a copy of the agreement was posted on the district's website prior to final action being taken.

At its February 4, 2013, meeting, the board entered closed session and six of seven board members signed a separation agreement with the district's superintendent. The board took no further action to approve the separation agreement during an open session of that board meeting.

Then at the March 5, 2013, board meeting, the board approved the separation agreement by a six-to-one vote during open session. Four days prior to the March 5, 2013, board meeting, the agenda for the meeting was posted on the district's website. The agenda listed the approval of the separation agreement as a roll call item and provided a link to a copy of the separation agreement.

In two separate binding opinions, the Attorney General found that the board violated OMA by signing the agreement during closed session in violation of Section 2(e) of OMA, and by failing to adequately inform the public of the nature of the agreement, as required by Section 2(e) of OMA. The trial court reversed both binding opinions and found in favor of the board.

The appellate court affirmed the trial court's decision that the board did not violate OMA by signing the separation agreement during closed session at the February 4, 2013, meeting. While Section 2(e) of OMA provides that "no final action may be taken at a closed meeting," the court interpreted this language to mean that applying board member signatures during closed session could not, and did not, constitute a final action.

Instead, the final action to approve the separation agreement occurred when the board voted during the

open session of the March 5, 2013, board meeting.

Moreover, it was proper to consider the separation agreement during closed session of the February 5, 2013, board meeting because it concerned "the appointment, employment, compensation, discipline, or dismissal of specific employees," in accordance with Section 2(c)(1) of OMA.

The appellate court also affirmed the trial court's decision that the board adequately informed the public of the separation agreement prior to taking final action to approve it. The Attorney General argued that the board "considered the agreement to be in effect" prior to the March 5, 2013, action and, therefore, the board did not adequately inform the public of the separation agreement prior to the time the board believed the agreement to be in effect.

The appellate court rejected this argument because a board's subjective belief is irrelevant. The Attorney General also argued that the public was not given details about the separation agreement at the March 5, 2013, meeting.

However, because the district posted the agenda four days before taking final action on the separation agreement, which listed the approval of the separation agreement as a roll call item and provided a link to a copy of the entire agreement, the board met its obligation to adequately inform the public prior to taking action on the separation agreement.

Open Meetings Act compliance is critical to successful management of school board meetings and often give rise to litigation when not managed properly. Contact Heather Brickman or Steve Richart with your OMA inquiries.

Chicago Board of Education Not Required to Arbitrate Do-Not-Hire Policy for Dismissed Non-Tenured Teachers--In an important case on the scope of a school board's obligation to arbitrate grievances, the Illinois Supreme Court recently ruled that the Chicago Board of Education was *not* required to arbitrate disputes over its probationary teacher do-not-hire policy.

The case, *Board of Education of the City of Chicago v. Illinois Educational Labor Relations Board*, 2015 IL 118043, involved a new board policy that declared ineligible for rehire in Chicago schools probationary teachers who were non-renewed twice or who were non-renewed with an unsatisfactory evaluation rating. A "do-not-hire" letter was placed in the personnel file of such teachers.

Four grievances were filed over the do-not-hire policy, and the board refused to submit them to arbitration. Because the policy related to its hiring decisions, which were exclusive management rights, the board argued it was not required to arbitrate the grievances. The union filed an unfair labor practice charge due to the board's refusal to arbitrate. The IELRB found in the union's favor, but the appellate court reversed. The parties then appealed to the Illinois Supreme Court.

Despite an unusually broad grievance definition in the collective bargaining agreement, the Supreme Court concluded that the do-not-hire grievances do not re-

late to terms and conditions of employment, but rather relate to the board's ability to *initiate* employment.

Because the collective bargaining agreement excluded from the bargaining process matters of inherent managerial authority, including the "selection of new employees," the board was not required to arbitrate.

Even if the collective bargaining agreement *had* required do-not-hire decisions to be arbitrated, the Supreme Court ruled that such a requirement would be inarbitrable because it would violate or conflict with Illinois law.

Specifically, restricting the board's authority to designate non-renewed probationary teachers as ineligible for rehire would conflict with the managerial rights provision in the *Illinois Educational Labor Relations Act* and the teacher dismissal provisions in the *Illinois School Code*. In so ruling, the Supreme Court reiterated that school boards *cannot* delegate their discretionary authority to non-renew probationary teachers.

The Supreme Court's ruling reinforces the importance of strong management rights clauses, narrow grievance definitions, and the limitations on school boards' ability to delegate away their authority to dismiss teachers.

To discuss your labor relations needs or the impact of this case on your district, contact Cindi DeCola or Jeff Goelitz.

IASA/SB100-ESSA Conferences--The Illinois Association of School Administrators is pleased to announce a series of three regional conferences discussing the impact of Senate Bill 100 and the *Every Student Succeeds Act*.

Join **Sara Boucek**, IASA general counsel and HLERK alumnus, and a team of HLERK all-stars including **Michelle Todd**, **Stephanie Jones** and **Lori Martin**. Information and registration is available at www.iasaedu.org, and space is limited at all three locations. Dates, locations, and schedule are as follows:

Monday, February 22, 2016

8:00 a.m.—12:15 p.m., Universal Technical Institute, 2611 Corporate West Drive, Main Campus Auditorium, Lisle

Tuesday, February 23, 2016

8:00 a.m.—12:15 p.m., Normal West High School, 501 N. Parkside Road, Auditorium, Normal

Wednesday, February 24, 2016

8:00 a.m.—12:15 p.m., Mount Vernon Primary Center, 401 N. 30th Street, Auditorium, Mt. Vernon

CONTACT US:
info@hlerk.com

3030 Salt Creek Lane . Suite 202 . Arlington Heights, Illinois 60005
804 West US Highway 50 . Suite 220 . O'Fallon, Illinois 62269
401 SW Water Street . Suite 106 . Peoria, Illinois 61602