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THE Extra Mile

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EDUCATION EDITION

October 2010

Illinois Appellate Court Reverses TRS/Allows Former Superintendent to Recover Portion of Health Insurance Premium "Converted" to Salary--In *Sartwell v. Board of Trustees of the Teachers' Retirement System of the State of Illinois*, 2010 WL 3331484 (4th Dist., 2010), recently litigated *pro bono* by HLERK attorneys **Stanley Eisenhammer** and **Debra Jacobson**, the Illinois Appellate Court reversed TRS and held that Mr. Sartwell was entitled to recover the portion of a health insurance benefit that he had "converted" into salary to pay for health insurance through his wife's new employer.

The TRS "conversion rule" provides that a member of TRS may not "convert" non-creditable benefits, such as health insurance, into salary within seven years of that member's retirement. The purpose of the rule is to prevent members from inflating their pensions near retirement.

In 2005, Mr. Sartwell re-negotiated his employment contract with the Board and the parties agreed to remove Mr. Sartwell's health insurance benefit from his employment contract, as he was able to obtain much less expensive insurance through his wife's new employer. Under the new contract, the Superintendent also

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Consumer Price Index

Percent change for the month of **August 2010,** for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.1	0.0
12 Mth	0.6	1.0
St. Louis-6 Mth	1.1	1.2
12 Mth	2.3	2.8
U.S. Mthly	0.1	0.1
12 Mth	1.1	1.4

September CPI figures will be released October 18, 2010. For the most recent CPI, visit our website at: www.hlerk.com

Reminders & Notes

- HLERK is delighted to announce that former ISBE special education hearing officer **Sheana Hermann** is joining HLERK! Sheana joins the firm as of counsel in our special education/ litigation practice group. Sheana will join us at the October 12th IASA Conference: *The Year in Review: The Highlights and Lowlights of Illinois School Law 2010.*
- School districts/joint agreements must make their Annual Statement of Affairs public by December 1st by submitting it to ISBE for posting on the ISBE website, having copies available at the main office and publishing a summary in the newspaper.

Illinois Appellate Court Allows Autistic Student's Service Dog in School--In *K.D. v. Villa Grove Community Unit School District No. 302*, 2010 WL 3450075 (4th Dist. 2010), the Fourth District Appellate Court ruled that K.D., an autistic student, could bring a specially-trained dog to school, finding the dog was a service animal under the *School Code*.

K.D's parents filed suit after the district refused to let the dog, Chewey, accompany K.D. to school. The parents asserted that Chewey was a service dog under Section 14-6.02 of the *School Code*, which requires districts to allow service animals "such as guide dogs, signal dogs or any other animal individually trained to perform tasks for the benefit of a student" to accompany the student to all school functions. The district objected on the grounds that Chewey was not a service dog under the statute.

During the trial, the parents claimed Chewey was trained to prevent K.D. from running away through tethering and apply deep pressure to calm K.D. during a tantrum. K.D.'s mother also testified that Chewey helped K.D. sleep at night, made morning transitions to and from school less difficult, and helped K.D. focus on his homework.

The district contended that the plaintiffs failed to show Chewey was a "service animal" under the

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Arlington Hts. 847-670-9000
Belleville 618-355-7850

Service Dog Cont. statute because the dog provided no tangible tasks for K.D.'s benefit, did not respond to commands as expected, and had caused K.D. to regress in his educational and functional development.

The trial judge held that Chewey was a service animal under the *School Code*, finding that the evidence was uncontradicted that the dog was individually trained to "attempt to benefit an autistic child."

The appellate court affirmed, finding that that record established Chewey was individually trained to perform tasks for K.D.'s benefit and that the dog provided "some benefit" to K.D. The court held that the district's remaining arguments exceeded the plain meaning of the statute.

This is the *second time* in less than a year that an Illinois court has held that a district was required to permit a trained dog to accompany an autistic child to school. The Fifth District Appellate Court, in *Kalbfleisch v. Columbia Community Unit School District No. 4*, 396 Ill.App.3d 1105 (5th Dist. 2009) (See September 2009 *Extra Mile)*, held that an autistic student's specially-trained dog was a service animal under the *School Code*, despite the district's assertion that the animal provided no educational benefit to the student.

Although the above-mentioned cases do not involve the *Americans with Disabilities Act* ("ADA"*)*, it is important to note that the ADA's newly-revised regulations limit the definition of service animals to dogs and, in some narrow circumstances, to miniature ponies. The ADA regulations also require the tasks performed by the service animal to be "directly related to the handler's disability." *Id*. The provision further provides that, "the crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition." *Id.*

School districts continue to confront a dizzying array of service requests. Contact Bennett Rodick or Jay Kraning with questions concerning your related service issues.

Insurance Premium Cont. agreed to assume the additional role of grade school principal. As a result, his new salary almost equaled his previous year's salary plus the cost of his health insurance benefits.

In the fall of 2005, as part of a regular audit, TRS sent Mr. Sartwell a letter informing him that should he retire within seven years, the removal of the health insurance benefit from his contract would constitute an improper "conversion" under TRS rules, unless he could prove none of the purposes of the conversion was to increase his pension. At the time, Mr. Sartwell had no intent of retiring within seven years; however, due to unforeseen circumstances, he actually retired in 2008.

Accordingly, in early 2008, Mr. Sartwell appealed TRS' earlier finding of potential conversion. TRS denied his appeal, reducing his creditable earnings by the value of the health insurance benefit, approximately $13,000.

Mr. Sartwell had claimed his health benefit was discontinued at the District because he was able to access cheaper health insurance due to his wife's change in employer, which he maintained qualified as a "change in family status" under the rule. He also said he was compensated for taking on increased administrative duties after deactivation of his district's high school, which was not for the purpose of increasing his pension.

Mr. Sartwell appealed the TRS ruling to the Appellate Court, and the court *reversed* TRS' administrative ruling, in part. On the issue of conversion, the court ruled Mr. Sartwell's wife's change in employer qualified as a "change in family status" under the rule. Accordingly, the court awarded Mr. Sartwell the portion of the $13,000 amount which Mr. Sartwell stated was "converted" to cash to pay for his health insurance through his wife's employer (approximately $5,000).

The court, however, denied him further relief, deferring to TRS' finding that the record did not contain enough evidence to support Mr. Sartwell's contention he was paid more in salary to compensate him for "increased" administrative duties at the District.

If you would like a copy of this decision, or if you have questions regarding its implications, please contact Stanley Eisenhammer or Debra Jacobson.

CONTACT US:
info@hlerk.com

3030 Salt Creek Lane . Suite 202 . Arlington Heights, Illinois 60005
23 Public Square . Suite 260 . Belleville, Illinois 62220