



IELRB Affirms ALJ Decision Regarding Bus Subcontracting/IASB Retains HLERK to File Appellate Brief--

On April 18, 2013, the Illinois Educational Labor Relations Board (“IELRB”) issued an opinion upholding the decision of an Administrative Law Judge (“ALJ”) that McLean County Unit District No. 5 violated the IELRA by unilaterally entering into a contract for transportation services with an outside contractor, and terminating union members for their union activity.

In *American Federation of State, County, and Municipal Employees, Council 31, and McLean County Unit Dist. 5 a/k/a Board of Educa-*

tion of McLean County Unit Dist. 5, the district began bargaining with the union about subcontracting a few months after the union became the exclusive bargaining representative of the district’s bus drivers and monitors.

The district decided to subcontract its transportation services with an outside contractor and the union filed an unfair labor practice charge, alleging that the district violated the IELRA by retaliating against the transportation employees for obtaining union representation.

The IELRB reasoned that the union
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Circuit Court Upholds Validity of RIF Under SB7--In *Lawler and Frakes v. Peoria School District No. 150*, the Circuit Court of Peoria County recently dismissed a lawsuit filed by two former tenured teachers of the district who were dismissed per a reduction in force (“RIF”) under the new RIF procedure put in place by SB7 in 2011.

The RIF of the plaintiffs and, more importantly, the district’s refusal to recall the plaintiffs into vacant teaching positions for the following school year were upheld by the court despite the fact that the district realized, prior to the beginning of the following school year, there would be no reduction in teachers when the school year began in the fall.

In this case, successfully defended by **Stanley Eisenhammer** and **Tony Loizzi**, the board approved the RIF of 54 teachers, (10 tenured and 44 non-tenured) which became effective on the last day of the school year. The RIF was based on the board’s good faith decision to decrease the number of full-time teachers due to uncertainty regarding student enrollment numbers and its future funding at the time that RIF dismissal notices must be issued per the *School Code*.

The sequence of dismissal for the 2012 RIF was for the first time governed by the *School Code*
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Consumer Price Index

Percent change for the month of **April 2013**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago Mthly	0.0	0.1
12 Mth	0.9	0.8
St. Louis, 2nd Half 2012		
6 Mth	0.8	0.6
12 Mth	2.2	2.1
U.S. Mthly	-0.1	-0.2
12 Mth	1.1	0.9

May CPI figures will be released June 14, 2013. For the most recent CPI, visit our website at: www.hlerk.com.

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Reminders & Notes

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IELRB Cont. met its burden to show unlawful motive for purposes of retaliation through the timing of the decision to subcontract, inconsistencies, disparate treatment and by showing that by discharging the employees, the district engaged in conduct that would predictably undermine employee's statutory rights.

Further, the IELRB held that the ALJ's use of precedent with respect to the notice and opportunity to bargain requirements before implementing a unilateral change was well-settled law, and the district presented no argument that would justify departing from that law.

The IELRB also upheld the ordered remedy of rescinding the contract with the third party as appropri-

ate make-whole relief, and not unduly burdensome. In addition to upholding the ALJ's remedies, the IELRB also extended the certification period, during which the IELRB dismisses any representation or decertification petitions, because of the district's unlawful refusal to bargain.

The district has appealed the ruling to the Illinois Appellate Court.

The Illinois Association of School Boards has retained HLERK to file a "friend of the court" brief representing the interests of all member Illinois boards of education. Contact Stan Eisenhammer with questions.

RIF Cont. Code's new RIF procedure under SB7. The new law replaced seniority lists with a "sequence of honorable dismissal list," which includes all full-time teachers, whether tenured or not, placed into one of four groupings based on their most recent performance evaluations. Once teachers are placed in the four groups, the honorable dismissals must be made in order of the groupings with teachers in group 1 to be dismissed first and teachers in group 4 dismissed last. After being dismissed, the new law only affords recall rights to vacant positions to teachers placed in groups 3 and 4.

The 54 teachers affected by the RIF included all of the district's group 1 and group 2 teachers and a portion of its group 3 teachers. Both plaintiffs in this case were placed in group 2.

After the RIF was approved, all the affected teachers received the mandatory 45-day dismissal notice. Then, during the summer, as the district's funding was received and student enrollment data became accurate, the district offered any reinstated teaching positions to those dismissed teachers who were afforded recall rights under the *School Code*. After the district exhausted all teachers with recall rights, the remaining vacant positions were filled with new hires.

Plaintiffs were not entitled to recall rights under the *School Code* because they had been dismissed from Group 2. As a result, they were not offered a position with the district for the 2012-2013 school year despite the fact that they had attained tenure with the district and possessed the certifications needed for some of the reinstated positions. Instead, pursuant to the new Section 24-1.5 of the *School Code*, the district hired new teachers that it believed were more qualified for the vacant positions. In the end, the district began the 2012-2013 school year with more full-time teachers than it had employed the previous school year.

In dismissing the case, the court held that the uncertainty of enrollment and state funding were valid reasons for a RIF at the end of the school year even though the district was later able to obtain enrollment numbers as well as state funding that led to the end result of an actual increase in teaching positions. The plaintiffs have appealed the Circuit Court's decision.

Read the Extra Mile for updates on this key litigation, the first case in Illinois challenging under SB7. Contact Stan Eisenhammer or any of our personnel/labor group attorneys with your SB7 and PERA inquiries.

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