
MERC Confirms Teacher Transfers Are a Prohibited Subject of Bargaining

By Marshall W. Grate / Mar 26, 2014

On March 17, 2014, the Michigan Employment Relations Commission (MERC) issued a Decision and Order adopting the recommended decision of Administrative Law Judge Julia Stern, which dismissed an unfair labor practice charge filed by the Pontiac Education Association/MEA ("Association") against Pontiac School District ("District"). *Pontiac School District and Pontiac Education Association*, MERC Case No. C12 D-070 (March 17, 2014). The Association accused the District of unilaterally changing the terms and conditions of teachers' employment when (1) it issued student questionnaires relating to evaluations of teachers, and (2) when a teacher was transferred from a middle school to a high school for disciplinary reasons.

As for the first allegation about the student questionnaires, MERC concluded that the Association failed to offer evidence supporting its claim that questionnaires increased teachers' duties. There was insufficient evidence to conclude that the District unilaterally changed a mandatory subject of bargaining.

More importantly, MERC ruled that the teacher transfer involved a prohibited subject of bargaining under section 15(3) of the Public Employment Relations Act (PERA), and that the District had no duty to bargain over teacher transfers. The parties' collective bargaining agreement, which contained provisions governing teacher transfers, expired August 31, 2011. Previously effective July 19, 2011, Public Act 103 amended section 15 of PERA adding several prohibited subjects of bargaining, including decisions relating to teacher placement. On January 23, 2012, the District reassigned a teacher, who was accused of inappropriate conduct at a middle school, to its high school. The Association argued that the District had a duty to continue the terms of mandatory subjects of bargaining in the expired collective bargaining agreement, including those relating to teacher transfer, until the parties reached a new successor agreement or impasse.

MERC rejected this argument. The prohibited subjects in Public Act 103 applied immediately after the parties' collective bargaining agreement expired. The District was no longer required to follow prohibited subjects of an expired contract, including those contract provisions that governed teacher transfers. MERC applied the same reasoning to past practices that may have applied to prohibited subjects. Past practice no longer controlled teacher placement.

This MERC decision confirms that public school districts possess sole authority over teacher transfers and placement as well as other decisions that involve prohibited subjects of bargaining. If you have any questions regarding the MERC's *Pontiac School District* decision, please contact your Clark Hill Education School Law attorney.