
Michigan Court of Appeals Confirms Placement of Teachers is a Prohibited Subject of Bargaining

By Marshall W. Grate / Oct 01, 2015

In a recent unpublished decision, the Michigan Court of Appeals confirmed that placement of a teacher is a prohibited subject of bargaining and within the sole authority of a public school employer. *Pontiac School District and Pontiac Education Association*, Mich App No. 321221 (September 15, 2015) (unpublished). In issuing this opinion, the Court of Appeals affirmed a decision and order of the Michigan Employment Relations Commission (MERC or Commission) that involved two issues: (1) whether the School District unilaterally changed the terms and conditions of employment when it required teachers to conduct student questionnaires, and (2) whether the School District could transfer a teacher to a different school as a disciplinary measure.

The Pontiac School District ("District") began instituting a questionnaire that allowed students to comment on their teachers' performance. The teachers contended that the School District committed an unfair labor practice by unilaterally changing the terms and conditions of employment by requiring this questionnaire. The District claimed the questionnaire was necessary to comply with federal grant requirements relating to school improvement. There was a dispute over whether the questionnaire was used in evaluation of teachers.

The Commission found that the questionnaire was not a mandatory subject of bargaining and thus there was no duty to bargain over its content or use. The Pontiac Education Association ("Association") failed to demonstrate that the questionnaire materially changed the terms and conditions of employment.

The Court of Appeals agreed with the Commission's findings. The Association failed to provide sufficient facts that showed the questionnaire increased the workload so that it became a mandatory subject of bargaining. The Court of Appeals did not directly address the question of whether the student questionnaires were used in the evaluation process and, therefore, would constitute a prohibited subject of bargaining.

In addition, the Court of Appeals affirmed the Commission's decision that the teacher transfer for disciplinary purposes was a prohibited subject of bargaining under Section 15(3) of the Public Employment Relations Act, MCL 423.215(3), which treats as a prohibited subject:

Any decision made by a public school employer regarding the placement of teachers, or the impact of that decision on an individual employee or the bargaining unit.

The Court of Appeals rejected the Association's argument that only the Board of Education or Superintendent could decide and implement teacher transfers. The Court of Appeals commented that a government entity can only act through its agents. There was no evidence that the administrator who transferred the teacher lacked authority to make that decision on the District's behalf. Since the transfer took place after the expiration of the bargaining agreement and after the enactment of Section 15(3)(j), which treated teacher placement as a prohibited subject of bargaining, the Commission committed no substantial or material error of law in ruling that the transfer was a prohibited subject of bargaining and that the public school employer had no duty to bargain over this transfer.

Although the *Pontiac School District* case is unpublished, the case adds to the body of legal precedents that have embraced the application and corresponding implications of PERA's Section 15 prohibited subjects of bargaining. MCL 423.215. If you have any questions about the *Pontiac School District's* decision, please contact your Clark Hill education law attorney.