
Public School Secretarial Positions are Non-Instructional Support Services for Purposes of Subcontracting Under PERA

By Marshall W. Grate / Feb 11, 2015

In an unpublished decision, the Michigan Court of Appeals affirmed a decision of the Michigan Employment Relations Commission (MERC) that dismissed an unfair labor practice charge against a public school district when it subcontracted the services of its secretaries without bargaining with their union, the Michigan Education Association (Association). *Reese Public School District v Reese Professional Support Personnel Association MEA/NEA*, Mich App, No. 316528 (December 30, 2014) (unpublished).

Under Section 15(3)(f) of the Public Employment Relations Act (PERA), MCL 423.2153(f), the decision of whether or not to contract with a third party for non-instructional support services is a prohibited subject of bargaining and within the sole discretion of the public school employer. Without any collective bargaining negotiations, the Board of Education for the Reese Public School District voted to privatize secretarial services and, as a result, six secretaries lost their jobs. The Association filed an unfair labor practice charge contending that the secretarial services were instructional support services rather than non-instructional support services.

The Michigan Court of Appeals cited to the case of *Pontiac School District*, 295 Mich App 147 (2012). In *Pontiac*, MERC and the Court of Appeals concluded that occupational and physical therapists, because they consulted closely with teachers in working with students that gave them skills to perform better in the classroom, performed instructional services. Accordingly, a school district could not subcontract those services without first engaging in collective bargaining negotiations with their union.

In contrast, the Reese court concluded that the secretaries' duties consisted primarily of administrative or clerical support services such as answering phones, arranging meetings, and taking and maintaining records. Any tasks performed in relation to students were "incidental and occasional," which were not instructional. The secretaries did not consult with teachers to develop ways to enable students to perform better in the classroom. Consequently, the Court of Appeals affirmed MERC's decision dismissing the unfair labor charge.

There was a dissenting opinion which argued that the majority and MERC applied the incorrect legal standard. According to dissent, if secretaries worked closely with teachers or instructional staff, then their services could be characterized as instructional support rather than non-instructional support. As instructional support services, the prohibited subject of bargaining in Section 15(3)(f) would not apply, and a public school employer would be legally obligated to bargain with their association before it could subcontract their services. The majority opinion rejected this analysis, concluding that MERC's findings compelled the determination that secretaries provided non-instructional support services.

This case offers legal confirmation for treating secretaries as non-instructional support for the purpose of deciding whether to subcontract their services under Section 15(3)(f) of PERA. This means that a board of education can decide to subcontract secretaries without the requirement of bargaining with their collective bargaining representative. If you have any questions regarding this decision, please contact your Clark Hill education law attorney.