
Michigan Court of Appeals Rules Teacher Discipline is a Prohibited Subject of Bargaining

By Nancy Mullett / Mar 27, 2018

On February 22, 2018, the Michigan Court of Appeals held that Michigan Employment Relations Commission (MERC) properly concluded that the Association's efforts to arbitrate a grievance over an individual teacher's discipline and the alleged denial of her due process rights were prohibited subjects of bargaining under §15(3) of the Public Employment Relations Act (PERA), MCL 423.215(3). Consequently, the Association's attempt to enforce provisions of the collective bargaining agreement that were related to teacher discipline constituted an unfair labor practice and violated the Association's duty to bargain in good faith in under §10(2)(d) of PERA.

On March 31, 2015, the District's principal issued a probationary teacher a written reprimand for failing to prohibit male and female students from undressing in a locker room at the same time. On April 17, 2015, the Association filed a grievance challenging the written reprimand alleging, that the District violated the parties' collective bargaining agreement, as well as the grievant's due process rights under the Fifth and Fourteenth Amendments of the United States Constitution.

The District denied the grievance stating, in part, that teacher discipline was a prohibited subject of bargaining under PERA. The Association persisted and made a demand for arbitration on the ground that the discipline violated the (probationary) teacher's due process rights by failing to allow the teacher to respond to the allegation before issuing discipline. The District claimed the demand for arbitration was improper for the reasons stated in the grievance denial and because the due process claim was an unfounded attack on the District's disciplinary policies. When the Association failed to withdraw its demand for arbitration, the District filed a motion for summary disposition and filed an unfair labor charge against the Association.

MERC found and the Court of Appeals affirmed the decision in favor of the District on all points.

- First, the plain language of MCL 423.215(3)(m) precludes collective bargaining in three separate instances (1) "decisions about the development, content, standards, procedures, adoption, and implementation of a policy regarding discharge or discipline of an employee" or (2) "decisions concerning the discharge or discipline of an individual employee" or (3) "the impact of those decisions on an individual employee or the bargaining unit."
- The Association's claim that it can challenge individual disciplinary decisions that are "arbitrary and capricious" contravenes the rules of statutory construction where the "arbitrary and capricious" standard of review as stated in MCL 423.215(3)(m) applies only to the adoption, implementation or maintenance of "a policy for discharge or discipline of an employee that includes a standard for discharge or discipline that is different than the arbitrary and capricious standard" (Emphasis added).
- Collective bargaining provisions pertaining to a prohibited subject are not enforceable and consequently, any underlying claims, including due process claims, are prohibited as well. *Calhoun Intermediate Sch Dist*, 314 Mich App at 48-50; *Mich State AFL-CIO*, 212 Mich App at 487.

If you have any questions about the decision, please contact Nancy Mullett or another member of Clark Hill's Education and Municipal Practice Group.