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# Update on Pontiac Cases Involving Unfair Labor Practices

By Eric C. Griggs / Nov 18, 2014

Last year, we published an [e-alert](#) summarizing Administrative Law Judge David Peltz's preliminary decision and recommended order in *Pontiac School District v Pontiac Education Association*, MERC Case Nos. C11 K-197 and CU12 D-019.

The Union appealed that decision and order, and on October 16, 2014 the Michigan Employment Relations Commission issued its decision. On appeal, the Commission found that the District had no duty to bargain over a teacher's reassignment, since the matter is a prohibited subject of bargaining under §15(3)(j) of the Public Employment Relations Act (PERA). The Commission further found that the Union violated its duty to bargain under §10(3)(c) by advancing to arbitration the teacher's grievance over her reassignment.

The most significant part of the decision, however, is that the Commission determined that PERA does not authorize it to award attorney fees and costs. As such, the Commission found that the judge exceeded his authority when he recommended that the Commission order the Union to reimburse the District for costs and attorney fees incurred as a result of arbitrating the grievance involving the teacher's reassignment. This is an unfortunate decision for employers, since the possibility of having to pay an employer's attorney fees and costs would have likely deterred unions from pursuing grievances regarding prohibited subjects.

Commissioner Bob LaBrant's concurring opinion is also noteworthy. He wrote that the Union's filing of an unfair labor practice challenging the District's refusal to apply provisions in an expired contract regarding a prohibited subject is, in itself, an unfair labor practice. Commissioner LaBrant also wrote that he would have reversed the judge's preliminary decision that recommended the Commission find that the Union had not committed an unfair labor practice by filing an unfair labor practice charge over a prohibited subject, but the District did not appeal that decision to the Commission. Commissioner LaBrant's opinion, while not precedent-setting, suggests that if a union charges an employer with violating PERA by refusing to bargain over a prohibited subject, the Commission may consider that act an unfair labor practice and rule in the employer's favor if it files a charge against the union.

If you have questions regarding the *Pontiac* decision, please contact Eric Griggs at (616) 608-1147 | [egriggs@clarkhill.com](mailto:egriggs@clarkhill.com) or your Clark Hill Education Law attorney.