

THE Extra Mile

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Fourth-Year Probationary Teacher's Challenge to Sufficiency of Nonrenewal Notice Survives Dismissal in Federal Court

In *Roller v. Board of Education of Glen Ellyn School District No. 41*, No. 05 C 3638, 2006 WL 200886 (N.D.Ill. Jan. 18, 2006), a Chicago federal trial court found that a fourth-year non-probationary teacher had a sufficient basis to challenge her non-renewal for lack of specificity of the reasons given by the school board in its non-renewal notice. The court did, however, dismiss the teacher's allegations that the school board violated the *Open Meetings Act* and violated her constitutional rights, as well as the teacher's claim for judicial review of the Board's decision.

Section 24-11 of the *School Code* requires a school board to give a "specific reason" for dismissal of a fourth-year probationary teacher. In this case, the board did not

renew the teacher based on a single negative evaluation and notified her that the dismissal was for being "unsatisfactory in the area of instructional skills." The teacher alleged that this reason was not specific enough under Section 24-11, and she also sought a determination by the court declaring that the board's action in not renewing her employment was arbitrary and against the manifest weight of the evidence.

Moreover, she alleged that her constitutional right to pursue her chosen occupation had been compromised by the board's labeling her "unsatisfactory." Finally, she alleged the board violated the *Open Meetings Act* when it entered into closed session to consider her nonrenewal without reciting her name individually and without first taking a majority vote to enter closed session.

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Educational Labor Board Holds That Administrative Assistant to Technology Director Was Not a Confidential Employee

The Illinois Educational Labor Relations Board ("IELRB") has held that an employee's regular duty to troubleshoot computer problems for a school district's administrators, including members of the district's bargaining team, did not establish that the individual was a confidential employee within the meaning of the *Illinois Educational Labor Relations Act*.

In *Glenview Professional Association, IEA-NEA and Glenview Community Consolidated School District No. 34*, No. 2006-RS-0002-C (Mar. 23, 2006), an ESP Association filed a self-determination petition seeking to add an Administrative Assistant to the Director of Technology to the bargaining unit, and the school district objected on the basis that the position was a confidential employee and was therefore excluded from the bargaining unit.

An Administrative Law Judge issued a decision in favor of the school district, finding that the position had access to confidential labor relations documents in the regular course of her troubleshooting duties based on an analysis of the three factors established in *Board of Control of the Lake County Area Vocational System*, 20 PERI 5 (IELRB, Jan. 20, 2004).

The IELRB reversed the ALJ's decision and held that the Administrative Assistant position was not a confidential employee. Applying the three *Lake County* factors, the IELRB reasoned that the position did not have access to confidential labor relations

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Consumer Price Index

Percent change for the month of **March, 2006**; for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.2	0.2
12 Mth	3.3	3.3
St. Louis-6 Mth	1.3	1.5
12 Mth	3.3	3.5
U.S. Mthly	0.6	0.6
12 Mth	3.4	3.6

April CPI figures will be released May 18, 2006. Visit the most recent CPI figures at www.hlerk.com.

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders/Notes

*Adopt and publish your Board's prevailing wage resolution. Contact **Bob Kohn** for further information.

***Bennett Rodick** will be speaking at an **administrator academy approved** program on special education law on behalf of SELA. May 9: Naperville; May 11: Palatine; June 6: Peoria; June 12: Urbana.

***IAASE Receives the Exemplary Unit Award from the Council for Advancement and Support of Education (CASE).**

For the second year in a row, the Illinois Alliance of Administrators of Special Education (IAASE) has received the CASE Exemplary Unit Award. This award is given to one unit per year for overall excellence as an organization and also recognizes efforts in the areas of professional development, awards, legislation, communication and membership activities.

It is HLERK's pleasure to congratulate our client on this outstanding achievement.

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Government Organizations Release Bird Flu Pandemic Planning Recommendations For Schools

On February 28, 2006, the U.S. Department of Health and Human Services and the Centers for Disease Control issued a federal pandemic planning checklist to guide schools in planning for a possible major disruption of school operations due to an outbreak of the avian bird flu.

Health officials have reported no immediate

threat, but the U.S. Government recommends that schools take steps to prepare for a pandemic, including reaching out to state and local health agencies to plan and coordinate their efforts. The checklist for schools covers the areas of planning and coordination, continuity of student learning and core operations, infection control policies and procedures, and communications planning. To view a copy of the checklist, visit:

<http://www.pandemicflu.gov/plan/schoolchecklist.html>

Appellate Court Affirms Dismissal of Tenured Teacher for Misappropriation of School Supplies

The Illinois appellate court recently held in *Ahmad v. Board of Education of the City of Chicago*, No. 1-04-3695, 2006 WL 845411 (Ill. App. 1st Dist. Mar. 31, 2006) that dismissal of a tenured teacher from the Chicago Public Schools was appropriate for misrepresenting herself as an agent of CPS and ordering school supplies for the purpose of reselling them in her secondary business. Under Section 34-85 of the *School Code* (applicable to Chicago) as well as Section 24-12 (applicable to the rest of the state), tenured teachers can only be dismissed without warning for conduct that is deemed "irremediable." Unlike Section 24-12, however, Section 34-85 expressly provides that immoral conduct is irremediable.

The court affirmed the teacher's dismissal and held that the teacher's conduct was im-

moral and therefore irremediable under Section 34-85 of the *School Code*.

The court noted that "immoral" conduct is defined in a prominent legal dictionary as "shameless" conduct showing "moral indifference to the opinions of the good and respectable members of the community." In this case, the court reasoned, the teacher's actions in intentionally misleading the supplier and her employer to obtain school supplies for resale through her business venture qualified as immoral, and possibly even criminal. Under these circumstances, no warning was required prior to dismissal under Section 34-85. While decided under Section 34-85, the *Ahmad* decision is also relevant to dismissal cases brought under Section 24-12.

For further information regarding this case and its possible implications for cases of teacher misconduct, please contact Ellen Rothenberg or Steve Richart.

Nonrenewal Notice Cont.

The district court dismissed all of the teacher's claims except for the alleged *School Code* violation. Regarding this claim, the court compared the board's notice with other notices of nonrenewal considered in Illinois cases interpreting Section 24-11 and held that "unsatisfactory in the area of instructional skills" was not necessarily a specific enough reason to satisfy Section 24-11. The district court did not hold that this notice was insufficient as a matter of law, only that it was not

clearly sufficient and that further proceedings were required to determine whether the board had provided any other information to the teacher to explain her nonrenewal.

Challenges to non-tenured teacher dismissals, both through the courts and arbitrations are increasingly common.

Please contact Ellen Rothenberg or Steven Richart with questions concerning the impact of this ruling on your school district.

Confidential Employee Cont.

documents in the regular course of her duties, but any such access was merely incidental to her duties and a function of chance, like that of a custodian emptying a superintendent's wastebasket.

The IELRB stated that, while the evidence had established that the employee might encounter confidential labor relations documents while troubleshooting, she was not actually required to read any of the documents she encountered.

The IELRB also distinguished the Administrative Assistant position from the Technology Coordinator discussed in *Woodland Community Unit School District No. 5*, 16 PERI 1026 (Feb. 1, 2000), since the latter employee was also required to access all files in order to maintain the computer system, monitor users, and perform system back-ups.

For more information, please contact Steve Richart or Ellen Rothenberg.

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