

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

Appellate Court Upholds IELRB Decision for Union Regarding Agreement for Dock Days in Teacher Strike

In *Board of Education, Granite City Community Unit School District No. 9 v. Sered*, Case No. 1-04-3223, the Appellate Court for the Third District upheld an Illinois Educational Labor Relations Board ("IELRB") decision in which the IELRB held that the District committed an unfair labor practice when it allegedly reneged on an agreement regarding dock days at the end of a strike.

According to the opinion of the court, members of both the Union and the Board's bargaining teams met during a side bar to determine the number of dock days the Union would suffer after a strike. Allegedly, the members of the Board team proposed that there would be no dock days if the Union would agree to some extra duties. The Union agreed and the parties left

for the evening with an agreement that the Union would prepare language for a tentative agreement to be signed the next day.

When the Union presented language to the full Board team, the Board rejected the language, inserted dock days, and omitted the extra duties.

The court held that the members of the Board and Union teams that met had the authority to make an agreement. Further, the court held that the Board committed an unfair labor practice when it refused to honor the agreement entered into by members of the Board team. The court also upheld the IELRB's "make whole" remedy, which required the Union to be made whole for the loss of pay and benefits caused by the District's unfair labor practice.

Please contact Stan Eisenhammer or Stephanie Jones with questions about the decision or its impact on your district.

ISBE Issues New Proposed Special Education Rules for Class Size

On March 17, 2006, the [Illinois State Board of Education](#) issued new proposed regulations for class size as it relates to special education students. ISBE previously determined in February that school districts and cooperatives would need more time to comply with new class size regulations to plan for their staffing needs. Therefore, the new proposed rules retain current class size requirements in special education until 2008-2009, at which time new provisions would go into effect.

The current regulations calculate maximum class sizes for special education classes based primarily upon on a student's type of disability or impairment. The [proposed regulations](#) that would go into effect starting in the 2008-2009 school year, however, determine special education class size based upon the percentage of the day a student is removed from the regular education classroom. For example, in a class where any student is removed from the regular education classroom for more than 60 percent of the school day, the class must have one qualified teacher for each eight students in attendance during that class period, subject to certain exceptions.

The prior proposed class size regulation, which caused much concern in the school community, has been withdrawn. ISBE will accept written public comment on the proposed special education rules for the next six months.

Contact Bennett Rodick or Debra Kaplan with questions concerning the new proposed class size rules.

Consumer Price Index

Percent change for the month of **February, 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	-0.3
12 Mth	3.5	3.5
St. Louis-6 Mth	1.3	1.5
12 Mth	3.3	3.5
U.S. Mthly	0.2	0.1
12 Mth	3.6	3.7

March CPI figures will be released April 18, 2006. Visit the CPI at <http://stats.bls.gov/eag/eag.us.htm>.

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

* File statements of economic interest as required by law.

* Send a record of Board of Education minutes to the school district's treasurer.

* It's time to update your student handbooks. Send in the attached order form to order the HLERK model student handbook checklist or contact **Heather Brickman** to request a comprehensive review of your student handbooks.

* Join **Heather Brickman** at the UIS Administrator's Roundtable in Springfield on April 5th where she will discuss contract implications of the new TRS regulations.

* **Bennett Rodick** will be speaking at an administrator approved program on special education law on behalf of SELA. See Article, p.2 for dates/locations.

Offices:

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Illinois *Open Meetings Act* Lawsuit Reinstated by Appellate Court

In a decision released on February 22nd the Illinois Appellate Court reversed the dismissal of a lawsuit against a county board for violations of the *Open Meetings Act* (“OMA”).

In *Feret v. Schillerstrom* a DuPage County resident filed suit against the DuPage County Board claiming the Board violated the OMA in 2003 when it failed to put a resolution in support of the expansion of O’Hare Airport on the meeting agenda in advance of the meeting.

In 2004, the Board passed a similar resolution (this time with the proper notice) on the same subject of airport expansion. The Board subsequently asked the court to dismiss the case as “moot” because, with the passage of the 2004 resolution, the Board claimed it had “abandoned” the 2003 resolution. Therefore,

the Board argued, the matter had resolved itself.

The appellate court, however, disagreed with the Board’s claim and ruled that the case was *not* moot because the resolution in 2004 was not identical to the 2003 resolution. The court explained that the earlier resolution was, in fact, never repealed and continues to be operative because it was never expressly repealed by the board, nor was it in direct conflict with the 2004 resolution. Therefore, the court stated, the 2003 resolution remains in effect and the plaintiff is entitled to move forward with the case in the trial court.

Open Meetings Act litigation and issues continue to impact boards of education. Contact Bob Kohn with your Open Meetings Act inquiries or send in the attached order form to purchase the firm’s model Open Meetings Act policy and procedures.

Elmwood Park Cases Bring Student Immigration Status to the Forefront

In a story widely reported by the news media in February, the Elmwood Park School District sued the Illinois State Board of Education (ISBE) in federal court seeking a judgment that it could legally refuse to enroll students who were in the U.S. on B-2 tourist visas under federal immigration laws. The District also asked the court to prevent ISBE from pulling its state recognition and funding over a student they had refused to admit based on her B-2 visa status.

The District had refused to admit the Ecuadorian student (“Sharon M.”), because she was in the U.S. on a B-2 tourist visa. The District argued that because Sharon M. had a B-2 visa, she had no intention of leaving her foreign residence, and enrolling her would be a violation of federal immigration laws that prohibit B-2 visa holders from enrolling in courses of study. ISBE, however, maintained that the District could not refuse to enroll Sharon M. because students have a federal right to attend public schools regardless of

their immigration status. After the lawsuit was filed by the District, ISBE withdrew its recognition of the District entirely and voted to cut off \$3.3 million in state aid to the District. The District subsequently withdrew the lawsuit.

In a related case, *Doe v. Elmwood Community Unit School District*, a Czech student is suing the same District for denying her enrollment based on her B-2 visa status. In this case, the court has ruled that the student’s B-2 visa was invalid and therefore, she was in the U.S. illegally. The District has since enrolled the student based on the holding of the U.S. Supreme Court case, *Plyler v. Doe*, which states that public schools may not refuse to enroll undocumented aliens. Despite this development, however, this case is still pending because the plaintiff has other unresolved claims based on due process and equal protection.

The Extra Mile will keep you apprised of progress in the Doe litigation. Please contact Terry Hodges with questions.

Highly Qualified Teacher Worksheet Introduced

At the end of February, the Illinois State Board of Education, the Illinois Education Association and the Illinois Federation of Teachers introduced their [interactive worksheet](#) for determining if a teacher is highly qualified. The worksheet allows teachers to answer a series of questions and determine if they meet the requirements to be considered a highly qualified teacher.

When completed, the teachers may print a report for their records or to provide to their employer to demonstrate that they are highly qualified. The worksheet is posted on the ISBE website and available to everyone.

According to the ISBE website, the worksheet will be replaced sometime this summer with a program developed solely by ISBE.

For more information regarding the interactive worksheet or regarding highly qualified teachers, please contact Stephanie Jones in our Belleville office or Sara Groom Boucek in our Arlington Heights office.

Administrator Academy Special Education Programs Coming Up/Save the Date!

Save the date for the upcoming administrator approved Special Education Leadership Academy Programs: May 9: Naperville; May 11: Palatine; June 6: Peoria; June 12: Urbana. You will soon receive an invitation from SELA for these vital programs.

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