



March 25, 2011

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**TO: Schools Legal Service K-12 Clients**

**FROM: Christopher W. Hine**

**RE: Classified Employee Rehired Into New Classification May Be Put on Probationary Status**

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A recent California Decision has clarified the status of classified employees who are rehired into a lower classification after being laid off from a permanent position with a district. The Court concluded that the rehired employee would be probationary in the new classification and could be terminated without a notice or hearing and without cause. The Decision in *California School Employees Association, et al. v. Governing Board of the Eastside Union High School District* 2011 Cal.App. LEXIS 278, March 15, 2011 was based on the following facts:

Berniece Singer was employed by her district as a school community liaison for over 18 years before she was laid off in 2008. After being laid off and placed on the 39-month reemployment list, Ms. Singer applied for a position as a campus monitor with the district. The campus monitor position was significantly lower in pay than the school community liaison position previously held by Ms. Singer. Under the Court's decision in *Tucker v. Grossmont Union High School District* (2008) 168 Cal.App.4th 640, the district was required to hire Ms. Singer, if she was qualified for the position, in preference to any outside candidate.

At the time Ms. Singer was hired as a campus monitor, she was informed that she would be on probationary status for the first six months of her employment. Before the end of the six-month period, Ms. Singer was notified by the district that she was being released from her probationary position for failure to satisfactorily complete her probation.

Ms. Singer and her union, the California School Employees Association ("CSEA"), filed a petition for writ of mandate to have Ms. Singer reinstated into her position as campus monitor. Ms. Singer and CSEA argued that because Ms. Singer had already achieved permanent status in her school community liaison position, she could not be fired from her position as

campus monitor without notice and hearing and without cause. Ms. Singer and the union asserted that her permanent status did not end when she was laid off from her school community liaison position, but rather continued when she was reemployed in the campus monitor position.

The Court denied the petition for writ of mandate. The Court held that, in a non-merit system district, an employee only obtained permanent status in a specific classification. In examining Education Code section 45101, the Court found the precise language of that section to be persuasive. Section 45101, in applicable part, states:

"(b) 'Permanent' as used in the phrase 'permanent employee' includes tenure in the classification in which the employee passed the required probationary period, and includes all of the incidents of that classification."

The Court found that section 45101 was "consistent with an understanding that permanence is attained in a classification rather than generally by employment with a school district." The Court made it clear that this Decision only applies to non-merit system districts and that the Decision might have a different outcome depending on the interpretation of Education Code sections 45301 and 45305 which are applicable only to merit system districts.

It should be noted that this Court of Appeal decision is not yet final, and there is no indication whether CSEA might seek review in the State Supreme Court.

In light of the above, we recommend that all districts review their salary schedules, job descriptions and collective bargaining agreements to ensure that classifications are clearly delineated. In particular, we have observed during the course of negotiating classified layoffs that different classifications are sometimes grouped together on the district's pay scale and that this could lead to confusion as to which jobs have been placed in a specific classification. Districts are advised to have a separate job description for each classification in order to preserve their rights to require an employee to complete a probationary period in a new classification. It is also important to distinguish between classifications for layoff purposes because an employee is entitled to seniority rights based upon date of hire or time served (depending on the provisions of the collective bargaining agreement) in his/her current classification, plus any higher classifications. A properly drafted job description can resolve any confusion as to which classification is higher and what the specific job duties are for each classification.

If you need further information on this topic, do not hesitate to contact our office.