



Labor & Employment Law Update

TEL: 661.636.4830
FAX: 661.636.4843
E-mail: sls@kern.org
www.schoolslegalservice.org

March 20, 2009

DISTRICT DECISION NOT TO REELECT PROBATIONARY TEACHER IS NOT SUBJECT TO GRIEVANCE ARBITRATION

In Sunnyvale Unified School District v. Jacobs (Cal.App.6th Dist., February 18, 2009), the question before the appellate court was whether a school district's decision not to reelect a probationary teacher was subject to arbitration under a collective bargaining agreement, where it was alleged the decision was made in retaliation for the teacher's participation in protected union activities. The court concluded that, pursuant to Board of Education v. Round Valley Teachers Association, (1996) 13 Cal.4th, 269, the school district's nonreelection decision was not subject to contractual arbitration.

In Sunnyvale, a second year probationary teacher was notified that he would not be reelected. The teacher's union filed a grievance alleging the district's decision was in retaliation for the teacher's participation in union activities. Although the allegations, if true, would be an unfair labor practice under the California Educational Employment Relations Act (EERA), the union did not pursue a charge with the Public Employment Relations Board (PERB). Rather, since the collective bargaining agreement prohibited the same conduct the EERA prohibited, the union pursued the matter as a breach of the collective bargaining agreement.

Pursuant to the contractual grievance procedures, the matter proceeded to arbitration. The arbitrator found that the nonreelection was "motivated by retaliation" of the District for the teachers "protected rights under the Collective Bargaining Agreement and related statutes." The arbitrator ordered, among other things, that the teacher be reinstated.

The union then petitioned the superior court to confirm the arbitrator's award. The district petitioned to vacate the portion of the award ordering reinstatement. The district argued that Education Code section 44929.21(b) gave it the absolute right to decide whether or not to reelect a probationary teacher and, that, under Round Valley, the arbitrator did not have the authority to order reinstatement.

The superior court agreed with the district and vacated the reinstatement. The appellate court affirmed the superior court citing Round Valley, in which the court held that contract provisions requiring a district to give an explanation as to why it did not retain a probationary teacher and allowing the teacher to appeal the decision were invalid. The appellate court noted: “That is not to say that a district’s power to deny tenure for any lawful reason insulates it from scrutiny when it allegedly has done so for an unlawful discriminatory reason.” “But that scrutiny cannot be imposed by the collective bargaining agreement.” “Where, as here, the decision is alleged to be in violation of the [EERA], . . . the remedy lies with [PERB].”

It should be noted that when our office is requested to negotiate an arbitration clause, it is our practice to recommend language prohibiting an arbitrator from hearing any challenge to a district’s nonreelect decision. Should you need assistance in reviewing the arbitration language in your district’s bargaining agreements or if you have any questions regarding this decision, please contact this office.

— Carol J. Grogan, Counsel

Labor & Employment Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.