



Labor and Employment Law Update

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READY – SET – GO: TEACHER DISMISSAL IN THE WAKE OF *BOLIOU V. STOCKTON UNIFIED SCHOOL DISTRICT*

Once a school district decides it has statutory cause (Ed Code §44932(a), §44933)¹ to dismiss a permanent teacher, it must be fully prepared to face up to the challenge. One district learned the hard way that once the dismissal hearing process is commenced, the district cannot later decide to unilaterally turn back and dismiss the charges without significant consequence.

In *Boliou v. Stockton Unified School District* (2012) 207 Cal.App.4th 170, the district was faced with a student allegation that her high school math teacher duct taped her mouth for talking excessively in class. The district filed charges of dismissal against the teacher (§§44934, 44941), who demanded a hearing (§44941). At this point in the process, the district had the option of rescinding the charges or proceed to hearing. (§44943) The district opted to proceed to hearing. The matter then ran its course through 18 months of formal discovery and various evidentiary motions, some of which the district lost (likely leading the district to believe it had a weak case). Just two (2) days prior to the hearing, the district unilaterally dismissed the charges. The teacher requested that the Commission on Professional Competence (CPC)² determine that he not be dismissed. (§44944(c)(1)) He also requested that the district pay his attorney's fees and costs (over \$125,000.00). (§44944(e)(2)) CPC claimed it had no authority to make such a determination because there had been no trial on the merits. The trial and appellate courts, however, disagreed and stated that the statutory dismissal scheme provided no process by which the district could unilaterally prevent the hearing from going forward by thereafter rescinding the charges against the teacher.³ CPC was required to prepare a written decision that either the employee be dismissed, suspended without pay for a specific period of time or that the employee not be dismissed or suspended. (§44944(c)(1)) In that the teacher

¹ All references are to the Education Code unless otherwise specified.

² The CPC is a three member panel composed of a non-affiliated credentialed teacher selected by the district, one by the employee and an administrative law judge (ALJ) of the Office of Administrative Hearings (OAH). (§44944(b))

³ In civil proceedings, the plaintiff (the party who brought the action), generally has the absolute right to voluntarily dismiss the action "any time before the actual commencement of trial." (CCP §581(c)) Trial actually commences "at the beginning of opening statement or argument of any party or his or her counsel, or if there is no opening statement, then at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence." (CCP §581(a)(6)) CPC and the district believed the hearing had not yet commenced and thus, when the district dismissed the charges, OAH had no authority to determine that the teacher not be dismissed nor did it believe it could award fees and costs.

could not be dismissed (the district withdrew the charges prior to hearing and thus failed to present its case), the teacher was also entitled to his attorney's fees and costs from the district.

The lesson to be learned from *Boliou* is that once the district decides to terminate (and/or suspend) a permanent teacher, it must be confident and prepared to finish the race should a hearing be requested. Best practices dictate, in the wake of *Boliou*, that the district's intent to dismiss be preceded by, and fully based on, a thorough and impartial investigation of the teacher's misconduct. Such misconduct should be adequately documented in the employee's personnel file. Involving legal counsel early in the investigatory and decision-making process is crucial to an informed decision to proceed to hearing, attempt early settlement/resolution, or rescind the charges.

~ KELLY A. LAZERSON

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