



Labor & Employment Law Update

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COURT UPHOLDS DISTRICT'S RIGHT TO TERMINATE TEACHER FOR FAILURE TO OBTAIN DISTRICT-REQUIRED TRAINING

In a decision broadly supportive of the authority of school districts, a California Court of Appeal upheld the power of a school district's to seek termination of a teacher who refuses to obtain training required by the District and collectively bargained. *Ripon Unified School District v. Commission on Professional Competence* (2009 Cal.App. Lexis 1603).

The Ripon Unified School District adopted a rule requiring all of its teachers to become certified to teach English learners. The District bargained with its teachers' union and imposed the requirement in the collective bargaining agreement, along with pay for the cost of the training and an additional stipend. A music teacher with a single-subject life credential in music refused to commit to obtaining the certification. The District moved to terminate her for, among other grounds, "persistent refusal to obey the school laws of the state or reasonable regulations prescribed by the Board of Education or the governing board of the District."

After the administrative law judge threw out the accusation against her, the District sought a writ of mandate in the superior court to set aside the administrative ruling. The court agreed with the District and issued the writ, and the California Court of Appeal for the Third District has now upheld that decision.

The teacher argued that the District had no authority to impose the EL certification requirement or to bargain with the union on this subject. While certification to teach English learners has been an element of all teaching credentials since 2003, the teacher asserted that the Legislature did not require teachers who received their credentials prior to 2003 to obtain the certification. She also cited a statute which prohibits districts from refusing a teacher's pay for refusal to obtain additional education.

In upholding the District's action, the Court took note of the "permissive Education Code" language in Education Code section 35160, observing that ". . . it is the intent of the Legislature to give school districts . . . broad authority to carry on activities and programs . . . which, in the determination of the governing board . . . are necessary or desirable in meeting their needs and are not inconsistent with the purposes for which funds are appropriated." The Court also took note of the District's legal obligation to require all teachers who teach English learners to be certified and the potential consequences for failing to do so (including monitoring and penalties).

The Court held that absent a law prohibiting the District's action, Education Code section 35160 would authorize it. The Court found that the District's training requirement did not impair the teacher's lifetime credential in any way, and that the credentialing statutes "do not prevent a district from requiring a teacher to satisfy additional certification requirements in order to continue in employment." As for collective bargaining, the Court held that while a district cannot negotiate the causes and procedures for dismissing a credentialed teacher, the EL certification requirement is within the permissible scope of collective bargaining. It is a matter reasonably related to hours, wages, and conditions of employment even though it is not specifically enumerated in the Educational Employment Relations Act. (The Court did not, however, reach the specific issue of whether the District was required to bargain the certification requirements.)

This case should have important implications for districts seeking to raise the level of training for certificated employees district-wide. The decision could potentially also serve to bolster the position of districts in layoff decisions where those teachers who comply with reasonable training requirements are "skipped."

It is not yet known whether review by the California Supreme Court will be sought.

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

– Grant Herndon

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