

# *In Brief*

July 2012

## **ILLINOIS SUPREME COURT TO HEAR CASE INVOLVING CONTENTIOUS ARBITRATION AWARD ORDERING REINSTATEMENT OF AT-WILL PARAPROFESSIONAL**

In *Griggsville-Perry Community Unit School District No. 4 v. Illinois Educational Labor Relations Board*, the Illinois Fourth District Appellate Court addressed whether an arbitrator's award ordering reinstatement of a paraprofessional with back pay and benefits went beyond the negotiated language of the collective bargaining agreement ("CBA") between the Board of Education and the Union.

Angie Hires ("Hires") was a long-time, non-certificated paraprofessional with Griggsville-Perry Community Unit School District No. 4 (the "District"). In or around 2003, she was assigned to work in the District's elementary school library; she also assisted at recess and taught keyboarding classes.

In March 2007, the District became concerned about Hires' negative attitude and interactions with students. Around this same time, Hires was experiencing some personal problems at home. The District Principal verbally counseled Hires about these concerns in March and April 2007. The District's concerns remained after the start of the 2007-2008 school year, and the Principal continued to verbally counsel Hires to improve her attitude and interactions with students. The Principal documented each of her conversations with Hires in a spiral-bound notebook; she also placed three written notes in Hires personnel file regarding the discussions in March, April, and October 2007. Hires did not know that any notations had been made to her personnel file. In February 2008, the Principal discussed her concerns about Hires with the Board and recommended that her employment be terminated.

On February 2, 2008, the District Superintendent informed Hires by letter that the Board intended to take action at its March 19, 2008 meeting to non-renew her employment at the end of the 2007-2008 school year. The letter further informed Hires that, although the District was not required to provide a reason, the decision was based on her failure to improve her attitude and interactions with students. Notably, the CBA contained no language which would limit the District's right to terminate Hires, such as a "just cause" provision. The letter also notified Hires of her opportunity to address the Board at the March 19, 2008 meeting.

In early March 2008, Hires and her Union representative reviewed her personnel file, and were later provided with the Principal's three notes from March, April, and October 2007. Shortly thereafter, the Union filed a grievance on Hires behalf disputing the allegations of poor job performance, and complaining that Hires did not have notice or opportunity to respond to the written notes placed in her personnel file which served as the basis for her termination. The District denied the grievance, and with its denial letter provided copies of the pages from the Principal's spiral-bound notebook regarding Hires job performance which helped form the basis for dismissal.

Hires, accompanied by her Union representatives, testified before the Board at the March 19, 2008 Board meeting. After considering her testimony and the information presented by its Administration, the Board voted to deny the grievance and non-renew Hires' employment for the subsequent school year.

## The Arbitration Award

The Union advanced the grievance to arbitration. Despite the arbitrator's concession that the CBA did not include a provision requiring "just cause" for dismissal, he sustained the grievance and ordered that Hires be reinstated with accrued back pay and benefits. In support of his decision, the arbitrator relied upon a provision in the CBA stating that employees required to appear before the Board concerning disciplinary matters must be given prior written notice of the reasons for the meeting. From this language, the arbitrator reasoned that the Board's hearing cannot be a meaningless formality. The arbitrator found that the District violated the CBA because the proceeding before the board was "deficient in the lack of notice, the opportunity to confront and defend, and in the want of a reasoned decision." The arbitrator further ruled that in order to terminate Hires, the District must provide her with a written statement of the "specific acts or omissions – time, place, participants, and utterances – that [the District] alleges justify her discharge."

The CBA contained a provision which stated that "[t]he Arbitrator, in his opinion, shall not amend, modify, nullify, ignore or add to the provisions of the agreement." Believing the arbitrator exceeded his authority under the CBA, the District refused to comply with the arbitrator's award.

## IELRB Decision

The Union filed an unfair labor practice with the Illinois Educational Labor Relations Board ("IELRB") to enforce the arbitrator's award. The IELRB determined that the District had violated Sections 14(a)(8) and 14(a)(1) of the Illinois Educational Labor Relations Act

by refusing to comply with the arbitrator's award. In reviewing scope of the award, including the arbitrator's inference requiring "just cause" for dismissal, the IELRB held that "the arbitrator did attempt to interpret the contract and the award draws its essence from the contract; therefore, the award is binding on the parties." Therefore, consistent with the award, Hires should be reinstated with accrued back pay and benefits.

## Appellate Court Holding

The District appealed the IELRB's decision directly to the Illinois appellate court. In reversing the IELRB decision, the Appellate Court found that the arbitrator's decision went beyond the clear language of the CBA. Specifically, the Court found that the arbitrator applied his "own brand of industrial justice" when he read a "just cause" dismissal provision into the CBA, despite his recognition that the CBA contained no such provision. As such, the award did not draw its essence from the negotiated CBA, and should not have been upheld by the IELRB. The IELRB was ordered to enter judgment in favor of the District.

## Case Status

The Union timely filed a petition for leave to appeal to the Illinois Supreme Court. On May 30, 2012, the Court granted the Union's petition. Robbins Schwartz will keep you apprised on the status of this case.

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