

CLIENT ALERT: Commonwealth Employment Relations Board Finds Writing Extensive College Recommendations Not Intrinsic to Teachers' Profession

In a decision which may have wide-ranging implications for public school districts in Massachusetts, the Commonwealth Employee Relations Board (the "Board") recently rejected a claim by King Philip Regional School Committee (the "Committee") that its teachers were engaged in an illegal "work-to-rule" withholding of services. The Committee alleged that the teachers refused to prepare college recommendations for students, enter grades into the district's computerized grade system, and teach independent study courses. Although the Board found that teachers withheld these particular services, the Board concluded that there was insufficient evidence to show that the duties in question were intrinsic to the teaching profession or that there was a clear past practice of the duties having been performed in the district.

The King Philip Regional School Committee and King Philip Teachers Association ("KPTA"), a division of the Massachusetts Teachers Association, had been negotiating a contract for two years prior to the investigation that led to the present action and had been without a valid contract since September of 2009. At hearing, it was undisputed that at the beginning of the 2010, the KPTA met to discuss its contract status and that the teachers voted "to reconsider whether they were going to continue spending as much time on individually written student letters; whether they were going to continue using the enhanced features of the high school's online grade entry system beyond what was required; and whether teachers were to continue their involvement carrying out independent studies for individual students." According to testimony of the superintendent, following the meeting a teacher reported to her that teachers were upset about the lack of contract and were planning not to write college recommendations for students or do independent studies.

On the unwillingness to enter grades and other educational data into the online grade entry system, the Board found that the evidence was insufficient to show that there was any actual decline of use by teachers and that, in any event, the entry of data, which the School Committee claimed was a condition of employment, was just an "expectation" and not a mandate.

On college recommendation letters, the Board found that there was insufficient evidence, despite acknowledging that 77% of all educational staff at the institution prepare such letters, to find that there has been an established practice with respect to the quality of teacher's recommendations. The Board opined that the voting to "reconsider" how much time was spent writing letters of recommendation was not significant evidence of any withholding of a condition of employment. The Board concluded that because in the past there was no set rule as to content of the college recommendations or oversight on the process by the school, a change to the time spent on those letters was not a withholding of services.

On independent studies ("IS"), the Board held that the choice by the teachers not to engage in the instruction of these classes was not a violation of § 9A because, when faced with the teacher's wholesale denial of all student petitions for IS, the school did not discipline or otherwise require the teachers to engage in these activities until the prohibited practice charge giving rise to the present decision was filed a month later.

The final result of this decision is that the Board has shown an increased willingness to allow teachers to work-to-rule as a bargaining tactic. In the face of evidence of a group decision to lessen efforts on certain regularly performed teacher activities the Board chose to find that there was no prohibited practice conducted by those teachers. All school boards should be wary of similar events occurring in these difficult fiscal times where many hard decisions are being made in salary negotiations. Despite

the fact that work to rule cases are fact specific inquiries, the bar seems to have been raised to an extremely high level in preventing teachers from drawing students directly into their labor disputes.

Colin R. Boyle, Esq. is an attorney with Morgan, Brown & Joy, LLP, and may be reached at (617) 523-6666 or at cboyle@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

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