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CHARTER SCHOOL LABOR RELATIONS ALERT

PERB Rules In Favor of Charter School, Finding It Did Not Engage in Illegal Retaliation When It Non-Renewed Teacher Contracts

In a recent ruling before the California Public Employment Relations Board (“PERB”), the PERB reversed a proposed decision of a PERB administrative law judge (“ALJ”) which had ruled against the Journey Charter School (“JCS”), a Waldorf Methods School. PERB is a quasi-judicial agency that oversees the collective bargaining statutes which govern charter schools and labor associations under the Educational Employment Relations Act (“EERA”).

Initially, the ALJ had held that the JCS governing council’s decision to not renew employment contracts for three teachers was, in part, in retaliation for their protected involvement in seeking representation by the California Teacher’s Association (“CTA”). The ALJ issued a cease and desist order and directed JCS to reinstate the teachers, with back pay and interest. JCS exercised its right to appeal the ALJ’s decision to the PERB Board.

Under the EERA, it is unlawful for the public school employer to retaliate or threaten to retaliate against employees because of their exercise of rights guaranteed by the EERA. To establish a case of discrimination in violation of the EERA, the charging party must be able to prove that (1) the employee engaged in protected activity (i.e., forming a union, meeting with union representatives, etc.), (2) the employer knew of the protected activity prior to taking action, and (3) the adverse employment action (i.e., demotion, discipline, termination, etc.) was taken because of the employee’s involvement in the protected activity. In the absence of direct evidence of an unlawful motive for the employer’s action, PERB looks at a number of factors to determine whether an inference of unlawful motive should be drawn, including but not limited to the timing of the action in relation to the employee’s protected conduct, the employer’s disparate treatment of the employee, and the employer’s inconsistent or contradictory justifications for its actions. If an unlawful motive is proven, then the employer is required to prove it would have taken the adverse action regardless of the employee’s involvement in protected activities.

Upon review, PERB reversed the ALJ’s decision and found that JCS decided not to renew the teachers’ contracts due to, among other things, the arguably divisive contents of a letter mailed to parents, which was not protected activity, rather than the teachers’ attempt at union organization. Furthermore, PERB also found that the nonrenewal of the teachers resulted from other inappropriate conduct on the teachers’ part, including a distasteful remark regarding the Columbine incident made by one of the teachers in the open session of a JCS Board meeting and the teachers’ apparent attempts to undermine the authority of the JCS Board. Consequently, PERB concluded that the employees and CTA failed to sustain its burden of proving that JCS retaliated against the teachers for their alleged participation in EERA protected activity.

This case reaffirms a basic legal rule that employers may not take adverse employment action against an employee if the action is motivated by the employee’s involvement in protected labor organizing activities. Specifically, although cause need not be proven to support a personnel action against an at-will employee, if the circumstances create an inference of

discrimination in any such case, the employer will need to be prepared to defend its at-will personnel action in a manner that demonstrates an illegal basis was not the motivating factor for the personnel action. This possibility points out the importance of maintaining a performance evaluation system and following up on complaints or concerns about employees when they are made and then documenting such matters when required.

For a full copy of the Journey decision, please go to our Resource Documents on our website at www.smymcharterlaw.com.

SMYM is a leader in providing assistance to charter schools in all matters, particularly including labor negotiations and employment law. If you have any questions about this update, please contact Jim Young (jyoung@smymlaw.com) at the Law Offices of Spector, Middleton, Young & Minney, LLP at (916) 646-1400.

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