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By the EdLaw Group at Lindabury

June 15, 2009

TWO ALERTS

The EDUCATION LAW GROUP at Lindabury has extensive experience in the area of school law. We serve as general counsel, special education counsel, and labor counsel for boards of education throughout the State.

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Court Says Broad Definition of Grievance Favors Arbitration for CBA Dispute

By Anthony P. Sciarrillo

The Superior Court of New Jersey, Appellate Division, recently decided in *Berlin Borough Board of Education v. Berlin Teachers' Association*, May 2009, that the trial court erred in failing to apply a presumption in favor of arbitration when interpreting the meaning and extent of a collective bargaining agreement that provided for grievance arbitration. Therefore, the Teachers' Association ("the Association") was entitled to advisory arbitration under the terms of its collective bargaining agreement.

In August 2002, the Berlin Borough Board of Education ("the Board") passed a resolution increasing the minimum number of hours a teacher must work per week to qualify for health benefits. The Association did not challenge the resolution until October 2007, when it filed a grievance stating that the resolution violated the collective bargaining agreement. The Board rejected the grievance. According to the collective bargaining agreement, an aggrieved party who disagrees with the Board's final decision on a grievance may request advisory arbitration. The Association sought advisory arbitration, to which the Board petitioned the court to restrain. The trial judge granted a permanent restraint on the arbitration.

On appeal, the Court held that while the duty to arbitrate does not extend to disputes outside the scope of the contract, doubts must be resolved in favor of arbitration. In so doing, the Court examined the provisions of the collective bargaining agreement to determine whether the Association's claim fell under the Board's contractual duty to arbitrate. If the Association's claim was in fact a grievance, then the duty to arbitrate would apply.

The Court found that the broad definition of grievance in the collective bargaining agreement, "a claim based upon an event or condition which affects the terms and conditions of employment of a teacher or group of teachers," encompassed the Association's complaint. Increasing the number of hours to qualify for medical benefits is a condition that affects the terms and conditions of employment. Therefore, a grievance regarding the resolution to increase this number could be properly submitted to arbitration.

Additionally, the Court looked at the Board's past practices to interpret the collective bargaining agreement. The Board of Education (*cont'd* ▶)

had previously applied a 20-hour work week standard for insurance benefits. As such, a change in this past practice was considered a change in the terms and conditions of employment, which could be properly submitted to arbitration.

Finally, the Court noted that another relevant factor informing its decision was that the arbitration was advisory and not binding. The arbitrator's recommendations were to be additional resources for the Board and the Association, without the adverse consequences normally attributed to binding arbitration.

Cutbacks in Funding for Sports Programs

by James A. Kellar

A recent cross-country survey by the American Association of School Administrators revealed that 10% of schools had cut some form of extracurricular activity in the 2008-09 school year. It is not surprising, that in this economic environment, many school districts are forced to cut back on funding for extracurricular activities, particularly sports programs.

While federal stimulus money promises to inject more money into public school systems (approximately \$100 billion for K-12 education), it is unclear how much money would reach athletic programs. Federal stimulus money will likely get filtered through states, as states receive a \$53.6 billion state fiscal-stabilization fund. While the federal law prohibits money from being used on sports facilities, any money passed onto the school systems will help reduce budget cuts. Regardless of where the stimulus money is applied, it will free up cash which, in turn, may be applied to athletics and other extracurricular activities. Thus, it is likely that sports programs will be an indirect beneficiary of stimulus money.

As state funding continues to decline, many schools are considering cutting sports programs. Districts around the country are implementing a variety of cost-cutting measures designed to avert a decrease in sports programs offered. Some districts have raised student fees for participation, effectively passing on some of the burden to the parents. Along the same lines, districts are increasing fundraising activities and soliciting financial help from the community. Lastly, athletic directors are considering reducing the number of games played and other measures designed to limit travel expenses.

While academic programs rightfully hold a position of primacy within a district's budget, the consequences of reducing sports programs should not go unconsidered. As an indirect consequence of a reduction in athletics programs, a district will likely face a decline in property value which will impact the local property tax revenue to the district. Additionally, besides the entertainment and excitement provided by sports, school athletic programs also perform the more important role of providing students with positive social opportunities that steer adolescents away from less constructive activities.

In any event, it is likely that the declination in funding will continue, threatening sports programs and all extracurricular activities. Districts will be forced to find creative ways to cut costs and pursue alternative avenues of funding while still offering their students the meaningful extracurricular opportunities that are fundamental to the educational experience.

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The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.