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LEGAL UPDATE

April 24, 2015

To: Superintendents, Member School Districts (K-12)

From: Mia N. Robertshaw *MNR*
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Subject: Rights to Union Representation and Scope of Protected Activity
Memo No. 09-2015

The Public Employment Relations Board (“PERB”) recently expanded public employees’ rights to union representation as well as the scope of protected activity by certificated teachers. In one case, PERB determined that an employee was entitled to union representation at a meeting regarding reasonable accommodation for the employee’s disability. (*Service Employees International Union v. Sonoma County Superior Court* (Jan. 13, 2015) PERB Decision No. 2409-C.¹) In another decision, PERB concluded that certificated teachers have the right to union representation in their professional relationship with the employer (regarding items of professional concern, such as educational objectives and policies, curriculum, etc.) and not just the employment relationship (regarding wages, work conditions, etc.). (*Crowell v. Berkeley Unified School Dist.* (Feb. 19, 2015) PERB Decision No. 2411.²) Districts should be aware of this expansion in employee rights and the scope of protected activity.

Public Employees’ Rights to Union Representation

In *Service Employees International Union v. Superior Court*, PERB held that an employee was entitled to union representation in an interactive meeting with the employer to explore possible reasonable accommodations to an employee’s disability. (*Service Employees International Union v. Sonoma County Superior Court, supra.*) Although PERB was interpreting the Trial Court Act, the Educational Employment Relations Act (“EERA”) has equivalent provisions as they relate to this PERB decision. By this decision, PERB overruled a prior decision³ which held that there is no right to union representation in interactive meetings to explore accommodations to an employee’s disability.

¹ The decision is available online at <http://www.perb.ca.gov/decisionbank/pdfs/2409C.JRP.pdf>.

² The decision is available online at <http://www.perb.ca.gov/decisionbank/pdfs/2411.pdf>.

³ *Trustees of the California State University* (2006) PERB Decision No. 1853-H.



PERB concluded that the right of representation guaranteed by the Trial Court Act, which applied in the case, included both the employee's right to union representation for an interactive meeting as well as the union's right to represent the employee in the interactive process. Specifically, PERB noted that employees have the right "to participate in the activities of employee organizations 'for the purpose of representation on all matters of employer-employee relations.'" (*Service Employees International Union v. Sonoma County Superior Court, supra*, at 22 (emphasis in original).) PERB determined that "'All matters' include an individual's request to the employer for reasonable accommodation that will ideally enable the employee to continue productive employment." (*Id.*) EERA contains identical language, stating that public school employees have the right to participate in the activities of employee organizations "for the purpose of representation on all matters of employer-employee relations." (EERA, § 3543(a).)

However, to protect the employee's right to privacy and right not to participate in union activities, PERB determined that the union only has the right to represent an employee in the interactive process when the employee requests union representation. (*Service Employees International Union v. Sonoma County Superior Court, supra*, at 24.)

Scope of Protected Activity by Teachers

In *Crowell v. Berkeley Unified School District*, PERB concluded that EERA protects certificated teachers' right to be represented in *both* their *professional and* employment relationship with their public school employer. (*Crowell v. Berkeley Unified School Dist., supra*.)

Typically, an employee's complaint regarding a professional concern would not be protected activity, while an employee's complaint regarding a workplace concern would be protected activity. PERB determined that EERA has a broader view of what constitutes protected activity in the public school arena as compared to other areas of public employment. PERB determined that "EERA is the only statutory scheme whose purpose includes an explicit recognition and protection of the public employee's professional relationship with the public sector employer as distinct from, or at least as encompassed within, the public employee's employment relationship with the public sector employer." (*Crowell v. Berkeley Unified School Dist., supra* at 16.)

Accordingly, PERB determined that EERA protects certificated teachers' right to union representation in their professional relationship with the employer, including teachers' "right to have a voice in the formulation of educational policy." (*Crowell v. Berkeley Unified School Dist., supra* at 17.) Applying this conclusion to the case at issue, PERB determined that a teacher who filed a complaint regarding curriculum on behalf of himself and other teachers was engaged in protected activity under EERA.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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