

Do Not Hire: Illinois Supreme Court's Decision Regarding Mandatory Grievance Arbitration

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A recent **Illinois Supreme Court** decision examined an **Illinois Educational Labor Relations Board** policy allowing a "Do Not Hire" designation to be placed in teachers' personnel files without notice and held that the Board was not compelled to arbitrate the grievances. **Bd. of Educ. of the City of Chicago v. Ill. Educ. Labor Rels. Bd.**, 2015 IL 118043.

Background

The Board of Education of the City of Chicago (Board) and the Chicago Teachers Union (Union) were parties to a collective bargaining agreement that established a grievance procedure, which resulted in binding arbitration. The Board notified the Union of a new policy that allowed the Board to designate as ineligible for re-hire probationary appointed teachers who were non-renewed twice or who were non-renewed with an unsatisfactory performance rating. The Board placed a "Do Not Hire" designation in these teachers' personnel files.

Grievances were filed over the "Do Not Hire" policy. The Union requested the Board to cease placing "Do Not Hire" designations in Union members' files if the terminations were not for cause and to allow Union members to seek employment within the Chicago Public Schools. The Board refused to arbitrate the grievances, arguing that hiring decisions were elusive management rights.

The Union filed an unfair labor practice charge with the Illinois Educational Labor Relations Board (Labor Relations Board) against the Board of Education of the City of Chicago alleging that the Board violated the Illinois Educational Labor Relations Act, 115 ILCS 5/14(a)(1), by refusing to arbitrate grievances. The Labor Relations Board ordered the Board of Education to arbitrate the grievances and grant the relief the Union requested.

On direct administrative review, a divided panel of the appellate court reversed the Labor Relations Board's decision and concluded that the Board of Education was not obligated to arbitrate the grievances. The Union and the Labor Relations Board filed a petition for leave to appeal with the Illinois Supreme Court.

Illinois Supreme Court Decision

The Board argued it was contractually and statutorily excluded from arbitration because it had a managerial right over hiring decisions and could designate a probationary appointed teacher as ineligible for re-hire.

First, the Illinois Supreme Court examined section 14(a)(1) of the Illinois Educational Labor Relations Act. Under the Act, a school district's refusal to submit an employee grievance to binding arbitration under a collective bargaining agreement is usually a violation of the Act. However, a school district may refuse to arbitrate a grievance when (1) there is no contractual agreement to arbitrate or (2) the dispute is not subject to arbitration because the subject matter of the dispute conflicts with Illinois law.

Second, the Court considered whether there was a contractual agreement to arbitrate grievances concerning the



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"Do Not Hire" designation policy. The collective bargaining agreement stated that a grievance, defined as a complaint involving a work situation, was subject to binding arbitration. Although the collective bargaining agreement broadly defined a grievance, the definition did not include the Board's ability to make hiring decisions.

In addition, the agreement involved a provision stating that the Board was not required to bargain over matters inherent to managerial policy. To solve this dilemma, the Court considered if the dispute involved wages, hours, and terms and conditions of employment. *Central City Educ. Ass'n v. Ill. Educ. Labor Rels. Bd.*, 149 Ill. 2d 496, 523 (1992). A term and condition of employment directly affects the welfare and work of employees and can include health insurance and pension contributions. *Vienna School Dist. No. 55 v. Ill. Educ. Labor Rels. Bd.*, 162 Ill. App. 3d 503, 507 (4th Dist. 1987). The Court concluded that the "Do Not Hire" policy did not relate to terms and conditions of employment, but instead, related to the Board's ability to initiate employment.

The Court held that the Board alone was vested with the ability to select employees. The Board's policy of placing a "Do Not Hire" designation in the files of probationary teachers directly related to the Board's exclusive right to determine its own hiring guidelines. Any restriction of the Board of Education's authority to designate non-renewed probationary teachers as ineligible for re-hire would conflict with the managerial rights provision in the Illinois Educational Labor Relations Act and the teacher dismissal provisions in the Illinois School Code.

In essence, the Court concluded that a Board of Education has the final authority with respect to teacher employment. Even if the collective bargaining agreement at issue in this case had included a provision requiring a "Do Not Hire" grievance to be arbitrated, the Illinois Educational Labor Relations Act would have prohibited enforcement because the provision would violate or conflict with Illinois law. Nevertheless, this case emphasizes the importance of constructing narrow grievance definitions in collective bargaining agreements to avoid litigation.

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