

THE Extra Mile

GOING THE EXTRA MILE SO YOU DON'T HAVE TO

Circuit Court of Cook County Upholds School Board's Residency Decision--In *Doe v. Board of Education of Wilmette Public Schools District No. 39*, the Circuit Court of Cook County recently upheld the Board of Education's determination that two minor students were not residents of Wilmette for the 2007-08 and 2008-09 school years.

The case, successfully defended by HLERK's **Rob Swain** and **Tony Loizzi**, involved the 2007 enrollment of two children in Wilmette School District No. 39. In this case, the parents submitted a real estate contract for purchase of property in the District with a future closing date that fell within the first month of the school

year. The District allowed the enrollment based upon the parents' assertion that they would provide the district with proof that the closing did indeed occur as planned. The closing never occurred.

During the following months, the parents submitted several real estate contracts and leases that all fell through until they finally entered into a lease in January of 2008 for an apartment in Wilmette.

As the 2008-09 school year began, the district began to suspect that the children were not truly residing in Wilmette but, rather, were living in Chicago. After an investigation, it appeared that the District's

Continued on Page 2

Illinois Appellate Court Rules Charter Schools Are Not Subject to the IELRA--In a case of national import, the Illinois Appellate Court has ruled that charter schools are not subject to the provisions of the *Illinois Educational Labor Relations Act* ("IELRA").

In *Northern Kane Educational Corp. v. Illinois Educational Labor Relations Board*, HLERK attorneys, **Stan Eisenhammer**, **Michelle Todd** and **John Di-John**, successfully appealed a decision from the Illinois Educational Labor Relations Board ("IELRB") on behalf of Northern Kane Educational Corp. ("NKEC"), the governing body of Cambridge Lakes Charter School. Cambridge Lakes operates under a charter issued by Dundee School District No. 300.

In this case, the Appellate Court agreed with NKEC's contention that all Illinois charter schools are exempt from the IELRA, meaning charter school employers are not required to collectively bargain with employees who attempt to organize under the IELRA.

On April 29, 2008, the Cambridge Lakes Education Association ("CLEA") filed a majority interest petition with the IELRB seeking to represent all professional staff at Cambridge Lakes Charter School. NKEC objected to the majority interest petition on the basis that it is not an

Continued on Page 2

Consumer Price Index

Percent change for the month of **August, 2009**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.3	0.3
12 Mth	-2.1	-2.5
St. Louis-6 Mth	-0.9	-1.3
12 Mth	-0.5	-1.0
U.S. Mthly	0.2	0.3
12 Mth	-1.5	-1.9

September CPI figures will be released October 18, 2009. For the most recent CPI, visit our website at: www.hlerk.com

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

Reminders & Notes

- Remember that amendments which completely revamp the *Illinois Open Meetings Act* and *Freedom of Information Act* become effective on January 1, 2009.
- The IASB/IASA/IASBO Joint Conference is rapidly approaching. Visit www.hlerk.com for a listing of the HLERK programs and activities at the Joint Conference. HLERK clients and invited guests will receive an invitation to a special social event for Saturday night of the Conference.
- Did you remember to send ISBE your written "assurance" that your school district, or cooperative to which your school district belongs, has adopted special education procedures implementing the IDEA 2004 amendments?

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Residency Cont. suspicions were true. In October of 2008, the district notified the parents of the determination that their children were not residents and that they would be responsible for paying tuition. The parents requested a residency hearing under Section 10-20.12b of the *School Code*.

After the hearing, the parents objected to the hearing officer, for the first time, that the hearing had been untimely. The Illinois residency statute requires residency hearings to be conducted not less than 10 days and not more than 20 days after notice of the hearing. The parents argued that the re-scheduled hearing date, December 10, was more than 20 days after the original hearing notice date of November 13. Notwithstanding this objection, the hearing officer issued a report recommending that the children be found to be non-residents of the district. The Board of Education adopted the hearing officer's recommendation.

The parents filed suit challenging the Board's determination that their children were not residents. Count I of the complaint requested a temporary restraining order ("TRO") enjoining the school district from excluding the children from the district's schools. The basis

for Count I was that the Board of Education lacked the authority to make the residency decision because of the procedural issue regarding the timing of the hearing. Count II of the complaint sought administrative review of the merits of the underlying residency decision.

The court denied the TRO petition on the grounds that the parents had waived any procedural objection to the timing of their residency hearing because (among other things) the hearing had been rescheduled at the request of their own attorney. The Illinois Appellate Court then denied the parents' appeal, thus affirming the decision of the Circuit Court.

The Circuit Court subsequently affirmed the School Board's decision on the merits. We will keep you apprised of this decision as it moves through the judicial system.

School districts are increasingly facing complex residency issues of the type evidenced by this court ruling. For more information regarding your student residency issues, please contact Rob Swain or Jay Kraning.

Charter Schools Cont. "educational employer" subject to the IELRA. The IELRB issued a decision finding that NKEC is an educational employer subject to the IELRA. NKEC filed an appeal for review of the IELRB's decision regarding jurisdiction before the Illinois Appellate Court in Springfield.

In its decision, the appellate court reasoned that the *Charter Schools Law* specifically exempts charter schools from the IELRA's coverage. Specifically, the court held that because the *Charter Schools Law* affirmatively requires charter schools to adhere to several enumerated laws, including the *Open Meetings Act* and the *Freedom of Information Act*, the IELRA's omission from the *Charter Schools Law* exempts charter schools from adhering to the IELRB's rules and regulations.

As a result, the existing unit of employees at the Charter School, certified by the IELRB in November 2008,

has lost its certification under the IELRA.

However, pursuant to Public Act 96-0104, effective January 1, 2010, the legislature has amended both the IELRA and the *Charter Schools Law* to effectively place Illinois charter schools under the umbrella of the IELRB and require charter school employers to collectively bargain with employees who organize. Accordingly, the employees at Cambridge Lakes Charter School, and all Illinois charter schools, may attempt to organize after the first of the year.

In light of the court's ruling, as well as the new legislation, a variety of labor issues will likely arise and impact charter schools (and their chartering school districts) over the next several months. If you have questions or would like a copy of the decision in this case, please contact Stan Eisenhammer, John DiJohn or Michelle Todd.

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