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**Illinois Supreme Court Upholds Dismissal of Fourth-Year Non-Tenured Teacher Against Claim of Violation of Teacher's Right to Union Representation at Evaluation Meetings**--In a long-awaited decision, the Illinois Supreme Court has reversed the appellate court and held a special education cooperative did *not* commit an unfair labor practice when it non-renewed a fourth-year probationary teacher. The Court found the teacher did not engage in protected union activity because she had no right to union representation during post-observation "remedial" meetings.

*As reported in the November 2009*

*Extra Mile, your professional organizations, the Illinois Association of School Boards and Illinois Association of School Administrators retained HLERK to file a friend of the court brief with the Supreme Court in support of the Cooperative.*

In *Speed District 802 v. Warning*, Docket No. 108785 (February 25, 2011), a fourth-year probationary teacher was placed on a "correction plan" calling for regular meetings between the teacher and principal to evaluate her progress. The plan stated that failure to follow the plan could result in her termination. The teacher insisted that a union

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**Illinois Civil Unions Law Signed/Raises Employee Benefits Issues**--On January 31, 2011, Governor Quinn signed into law the *Illinois Religious Freedom Protection and Civil Union Act (P.A. 96-1513)*, which will become effective June 1, 2011. The Act defines a "civil union" as a legal relationship between two persons, of either the same or opposite sex, established pursuant to the Act, and has the stated purpose of providing persons entering into such union with the "obligations, responsibilities, protections, and benefits afforded or recognized by the law of Illinois to spouses." Importantly, the Act states that a "party to a civil union" shall be included in any definition or use of the terms "spouse," "family," "immediate family," "dependent," "next of kin," and other terms that denote the spousal relationship, as those terms are used throughout the law.

Despite the sweeping title of the Act, the religious freedom portion of the law provides only that it shall not be interpreted to interfere with or regulate the religious practice of any religious body or require any religious body to officiate a civil union.

This Act will impact several areas of school personnel administration, most notably the provision of employee benefits. One key issue will be the extent to which the Act will require the

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**Consumer Price Index**

Percent change for the month of **January 2011**, for the urban wage earners & clerical indices as reported by the Bureau of Labor Statistics.

	All Urban (CPI-U)	Workers (CPI-W)
Chicago-Mthly	0.6	0.7
12 Mth	1.4	1.7
St. Louis-6 Mth	1.3	1.4
12 Mth	2.5	2.7
U.S. Mthly	0.5	0.5
12 Mth	1.6	1.8

February CPI figures will be released March 14, 2011. For the most recent CPI, visit our website at: [www.hlerk.com](http://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**

- It's time to update your student handbooks! Send in the enclosed order form to purchase the HLERK model student handbook checklist or contact **Lori Martin** to request a review of your existing student handbook.
- IASB has published model procedures and FAQ regarding the recently passed *Care of Students with Diabetes Act* [www.iasb.com/law/diabmats.cfm](http://www.iasb.com/law/diabmats.cfm). **Bennett Rodick** and **Stan Eisenhammer** assisted IASB in preparation of the documents. HLERK thanks IASB general counsel **Melinda Selbee** for her leadership in this vital project. Contact **Nancy Krent** or **Bennett** with inquiries.

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**Union Rep. Cont.** representative accompany her to the meetings. The principal stated that the teacher did not have the right to the union representative's attendance because the meetings were about performance and not discipline. After the principal allowed the union representative to attend but prohibited the representative from commenting during the meetings, the principal gave the teacher unsatisfactory reviews and notified her that her teaching contract would be terminated at the end of the year.

The union filed an unfair labor practice against the cooperative. The union alleged that the cooperative retaliated against the teacher for her insisting on having a union representative present at her meetings, which it claimed was a protected union activity under the *Illinois Educational Labor Relations Act*. The Illinois Educational Labor Board (IELRB) agreed holding that the cooperative committed an unfair labor practice and ordered the cooperative to reinstate the teacher with tenure and back pay. An Illinois appellate court affirmed the IELRB decision.

The Supreme Court reversed the appellate court's decision on a 4-3 vote. In so doing, the Court found that the teacher failed to prove she engaged in protected union activity because she had no right to have union representation at the post-observation and remediation meetings absent language in the collective bargaining contract granting teachers such right. Accordingly, there could be no finding that the cooperative discriminated against her for engaging in protected activity.

The Court, therefore, did not consider whether reinstating the teacher to a tenured position was an appropriate remedy. Interestingly, two of the three dissenting justices would not have granted the teacher tenure even though they found that the cooperative illegally retaliated against the teacher. Rather, they would have granted her another year of probationary service as the appropriate remedy. ***As school districts make their teacher employment decisions, the SPEED ruling is a welcome support. Call Stan Eisenhammer with questions concerning the decision or Tina Christofalos with your employment non-renewal and dismissal issues.***

**Civil Unions Cont.** extension of benefits to same-sex civil union partners of school employees. In order to trigger the protections of the Act, a benefit must be one that is "afforded or recognized by Illinois law to spouses." The Department of Insurance, for example, is analyzing whether coverage of "spouses" under employee health insurance policies is a benefit "afforded or recognized by Illinois law," and thus required to be extended to civil union partners under this Act, and is planning to post a website Factsheet as soon as possible.

Some benefits, however, are governed by federal rather than State law. With respect to eligibility for benefits derived under federal law, the federal *Defense of Marriage Act* ("DOMA"), which defines marriage as a legal union between one man and one woman, may override the State law definition. For example, participation in Section 125 cafeteria plans, which allow pre-taxing of certain insurance premiums and flex spending, is limited to employees, dependents and spouses, all as defined under federal law which is currently subject to DOMA. DOMA, however, has been ruled unconstitu-

tional in Massachusetts and is being challenged in other states as well. This week the Obama administration announced it would no longer defend DOMA in these constitutional challenges. In addition, there is another federal bill making its way through Congress that would expressly legalize same-sex marriages. Accordingly, it is unclear whether DOMA will still be effective on June 1, when the Illinois civil union legislation is implemented.

Hopefully, additional information will soon become available, including whether the State of Illinois will require health insurance coverage of civil union partners as spouses, and under what circumstances (i.e., self-insured plans vs. fully insured plans). In the meantime, school districts should be in contact with their health insurance providers and legal counsel to determine the necessity of modifications to health plan documents, including Section 125 cafeteria plans, and other benefits arrangements in advance of the June 1, 2011, effective date of the Act. ***Contact Heather Brickman or Barb Erickson with your Civil Union Act or employee benefit inquiries.***

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