

March 1, 2011

Sraga
SHauser, LLC

Priority Briefing

ILLINOIS SUPREME COURT SAYS TEACHERS DO NOT HAVE A RIGHT TO UNION REPRESENTATION DURING PERFORMANCE BASED EVALUATION CONFERENCES

The Illinois Supreme Court issued its long awaited ruling in *SPEED District 802 v. Warning* on February 25, 2011. The issue presented to the high court by attorneys from Sraga Hauser on behalf of the District was whether a probationary teacher's request to have a union representative present during performance based remediation meetings was "protected activity" as defined by the Illinois Educational Labor Relations Act. In reversing the labor board and the Illinois Appellate Court, the Supreme Court ruled in favor of the District holding that there was not a right, pursuant to law or contract, to have a union representative present at these types of meetings. The Court's opinion did not address an ancillary issue about whether the labor board had the ability to reinstate a non-tenured teacher with tenure rights as a remedy for an unfair labor practice. However, two of the dissenting justices opined that they did not believe reinstatement with tenure rights was permitted under the law.

The Court's ruling makes it clear that the presence of a union representative during a meeting (generally referred to as a "*Weingarten* right") is not required when the meeting is undertaken in order to discuss workplace performance. In other words, unless required by a collective bargaining agreement, a teacher does not have the right to insist upon the presence of a union member at a post-evaluation conference. This ruling does not eliminate *Weingarten* right however; an employee still has the right to a union representative during any investigatory meetings which the employee reasonably believes could result in discipline. These meetings typically involve an investigation into whether an employee has violated a work place rule. Based upon the language in the Court's holding, it is likely that unions will attempt to place specific language in upcoming bargaining agreements to permit attendance at these performance based meetings.

Please contact one of our attorneys if you need further advice about this decision or its impact for your district.

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