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By the EdLaw Group at Lindabury

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## Ambiguous Leave Provision in Collective Bargaining Agreement Results in Breach of Contract Claim

By Pearl Ann E. Hendrix

*In Hedges v. Board of Education of the Manchester Regional High School District* (March 18, 2008), the Law Division of Passaic County, New Jersey, held that the school district's requirement that a tenured female teacher who completed maternity leave during the school year remain out of work without pay until the next school year did not violate the New Jersey Law Against Discrimination (NJLAD), but may have been a breach of the child-rearing provision in the collective bargaining agreement (CBA).

Jamye Sage Hedges, a tenured teacher at Manchester Regional High School and a member of the Manchester Education Association bargaining unit, notified the Superintendent that she was pregnant and that her anticipated delivery date was in July 2005. She requested four weeks of unpaid maternity leave and asked to return to work in April 2006. The Superintendent explained to Hedges that the child-rearing leave of absence provision in the CBA required that she return at the beginning of the following school year. Hedges was given the choice of taking leave that ended on June 30, 2006, or returning to work after her leave under the federal Family and Medical Leave Act and New Jersey Family Leave Act expired on December 7, 2005. The Board denied Hedges request to return to work in April 2006, and Hedges sued.

In deciding the case, the court looked closely at the child-rearing leave provision of the CBA, which read as follows:

g. (1) Maternity/Paternity Child-Rearing Leave and Maternity Disability

(a) Maternity/Paternity Leave (Child-Rearing) shall be granted to a teacher, without pay, upon application to the Board specifying the dates upon which the teacher wishes the leave to commence and terminate; and with the provision that a return from such leave shall be at the beginning of the school year next following the granting of leave for a non-tenured staff member, and an additional school (cont'd ▶)

year shall be granted upon the request of a teacher who is under tenure. The Board is not required to continue employment of a non-tenured teacher beyond the year in which the leave is taken.

The court granted the Board's motion for summary judgment on the NJLAD claim, holding that the CBA provision was gender neutral and teachers were not required to take maternity leave. The court noted that the CBA provision was unlike the CBA provision in *Castellano v. Linden Bd. of Ed.*, 79 N.J. 407, 410 (1979), where the Court held that a mandatory one-year maternity leave policy constituted sex discrimination in violation of NJLAD. The CBA provision in *Castellano* "was a discriminatory contractual mandate that required the continued absence without pay of new mothers who were ready, willing, and able to return to work."

However, the court denied the Board's motion for summary judgment on the breach of contract claim. The court explained that the CBA provision was open to interpretation and the contractual language ambiguous. The plaintiff's interpretation of the CBA provision was that it did not require tenured teachers, but only non-tenured teachers, on maternity leave to return to work the school year after the leave terminated.

The Board, on the other hand, believed that the CBA provision applied equally to tenured and non-tenured teachers. The Board asserted that the only distinction was that tenured teachers had the option to remain on maternity leave for an additional school year. It did, however, require a tenured teacher to

remain out of work for the remainder of the school year in which the leave was taken.

The court explained that it was unclear whether the CBA provision permitted tenured teachers who requested maternity leave, but terminated the leave during the school year, to return to work at the end of the maternity leave instead of at the beginning of the next school year following the year the leave was taken.

Boards of education should be aware that when the courts find contractual language to be ambiguous, they will look to past practices of the contracting parties to interpret the contract's provisions. In *Hedges*, the teacher cited two instances in the past where the Board permitted tenured teachers taking maternity leave to return to work during the same school year as the provided leave, and not at the beginning of the next school year. The court noted that interpretation of the child-rearing provision depends on the credibility of extrinsic evidence or on a choice among reasonable inferences to be drawn from extrinsic evidence. It is essential that leave policies are unambiguous in order to avoid confusion in their interpretation.

While mandatory maternity leave policies violate NJLAD, child-rearing leave policies that are optional or that can be exercised at a teacher's sole discretion and are gender neutral are not prohibited.



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