

# School Boards Have Complete Control Over School Calendar: Application and Implications of Appellate Division Ruling

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From time-to-time, it is sound management practice to review longstanding contract language that continues to appear in current collective negotiations agreements (CNA). This week, a panel of the Superior Court of New Jersey – Appellate Division issued a unanimous decision demonstrating why this practice remains as relevant today as ever.

In *West Morris Reg'l High School Bd. of Educ. v. West Morris Reg'l Educ. Ass'n*, N.J. Super. App. Div.(per curiam) (11 pp.), the teachers' union appealed from a determination by the Public Employment Relations Commission (PERC) that fixing the start and end date of the school calendar were non-negotiable managerial prerogatives. The board and the union previously had negotiated language, which was included in their CNA establishing the school calendar, for 10-month employees, as September 1 – June 30. The teaching staff's start date in that district, as in most districts, occurred when students would not yet be in attendance. During the negotiations for a successor contract, the board took the position that the above contract language violated the board's managerial prerogative to fix the school calendar. Obviously, the board was considering whether it wanted to start the school year in August, but seemingly felt constrained by the parties' longstanding contract language.

Eventually, the board filed a scope of negotiations petition with PERC seeking a determination that the above language unlawfully intruded upon the board's managerial prerogative to fix the school calendar. PERC decided that the contested clause in the contract unlawfully impinged upon the board's managerial prerogative, even though it was part of the parties' earlier contract. On appeal, the union argued that, although the board had the managerial prerogative to establish a school calendar **for students**, the union had negotiated with the board about **the teachers'** calendar when students were not present, including the date that teachers were to start. The union claimed that the statute creating the managerial prerogative, N.J.S.A. 18A:36-2, only pertained to the **students' calendar**. Though the union had not presented this crafty argument to PERC, the Appellate Division reluctantly addressed it and rejected it, thus affirming PERC's decision that the parties' contract language was unenforceable, reasoning that it was well established that setting the school calendar was a managerial prerogative. While issues regarding the negotiable impact of changing the school calendar did remain, the West Morris Regional board no longer was limited by the illegal contract language in the parties' CNA.

## The Takeaway

We find that so many collective negotiations agreements contain language that, if not unlawful when it was negotiated, has become unlawful due to the evolution of the public sector labor and education laws. While it may not be possible, or even

desirable, to excise all such unlawful language in any one set of negotiations, it typically is quite practical to focus upon a few such provisions during each set of negotiations with the eventual goal of bringing the entire contract into legal compliance. It is our experience, that reasonable requests frequently are granted by teachers' unions in the preliminary stages of negotiations, if only as a means for the union to demonstrate its "reasonableness." As with all labor negotiations, advance preparation is the key to achieving a successful result. We are available to review your collective negotiations agreements for language that no longer is enforceable under law, if it ever was enforceable. In particular, in light of this recent decision, you may wish to take proactive action on those items that touch upon managerial prerogatives, such as fixing the school calendar, even if your CNA is in full effect and you are not entering or engaged in negotiations at the moment.