May 26, 2011

The Honorable Gary L. Lammers
Putnam County Prosecuting Attorney
336 E. Main St., Suite B
Ottawa, Ohio 45875

SYLLABUS: 2011-019

A collective bargaining agreement between a school district board of education and its employees may not define the term "financial reasons" for the purpose of determining whether a reduction in teaching staff is authorized by R.C. 3319.17(B).

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OPINION NO. 2011-019

The Honorable Gary L. Lammers
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Dear Prosecutor Lammers:

You have requested an opinion whether the term "financial reasons," as used in R.C. 3319.17(B)(1), may be defined in a collective bargaining agreement between a school district board of education and its employees. For the reasons discussed below, I conclude that the term may not be defined in a collective bargaining agreement.

R.C. 3319.17 authorizes a board of education to reduce the number of teachers it employs within the school district in specified circumstances. In particular, "[w]hen … the board decides that it will be necessary to reduce the number of teachers it employs, it may make a reasonable reduction … [for] financial reasons." R.C. 3319.17(B)(1). The term "financial reasons" is not defined in R.C. 3319.17 or elsewhere in R.C. Title 33.

"[A] collective bargaining agreement cannot be read to impose restrictions which do not exist in the law upon the authority of the [state highway patrol retirement] board." 1990 Op. Att'y Gen. No. 90-002, at 2-9. Significantly, the plain language of R.C. 3319.17(B) provides a board of education sole authority to determine when a reduction is necessary—a board of education may make a reasonable reduction in staff "[w]hen … *the board decides* that it will be necessary." (Emphasis added.) Ohio courts consistently have stated that a board of education has broad discretion under R.C. 3319.17(B) to determine what constitutes a reasonable reduction of teaching staff. *Mink v. Great Oaks Inst. of Tech. and Career Dev. Bd. of Educ.*, Hamilton App. No. C-050118, 2005-Ohio-6821, 2005 Ohio App. LEXIS 6131, at ¶18 (Dec. 23, 2005); *Wolfe v. Bd. of Educ. of the Lawrence County Joint Vocational Sch. Dist.*, 150 Ohio App. 3d 50, 2002-Ohio-6067, 779 N.E.2d 780, at ¶8 (Lawrence County). Defining the term "financial reasons" in a collective bargaining agreement, in effect, limits what a board of education is permitted to consider as "financial reasons" and, in turn, limits when a board may determine that a reduction is necessary. Therefore, such a definition impermissibly constrains a board of education in the exercise of the broad discretion bestowed upon the board by R.C. 3319.17. *See* 1990 Op. Att'y Gen. No. 90-002, at 2-9.

Moreover, in construing a statute, we must give effect to legislative intent. *See State v. Jackson*, 102 Ohio St. 3d 380, 2004-Ohio-3206, 811 N.E.2d 68, at ¶34 ("[t]he paramount consideration in determining the meaning of a statute is legislative intent"). The purpose of R.C. 3319.17 is to give boards of education the flexibility to adjust teaching staff levels should the need arise based upon one of the reasons set forth in R.C. 3319.17(B). *Dorian v. Euclid Bd. of Educ.*, 62 Ohio St. 2d 182, 184, 404 N.E.2d 155 (1980); *see also Phillips v. South Range Local Sch. Dist. Bd. of Educ.*, 45 Ohio St. 3d 66, 68, 543 N.E.2d 492 (1989). "In these instances the General Assembly recognized the need to give the boards flexibility, even in removing teachers under continuing contracts." *Dorian v. Euclid Bd. of Educ.*, 62 Ohio St. 2d at 184. By limiting what a board of education is permitted to consider as "financial reasons" and when a board may determine that a reduction is necessary, a collective bargaining agreement's definition of the term "financial reasons" limits the flexibility that the General Assembly intended to confer upon a board.

Further, where, as here, such limitations or qualifications are not included in the statute, we must give effect only to the words used and not insert words not used. *See Perrysburg Twp. v. City of Rossford*, 103 Ohio St. 3d 79, 2004-Ohio-4362, 814 N.E.2d 44, at ¶7; *see also Wachendorf v. Shaver*, 149 Ohio St. 231, 78 N.E.2d 370 (1948) (syllabus, paragraph 5) ("[t]he court must look to the statute itself to determine legislative intent, and if such intent is clearly expressed therein, the statute may not be restricted, constricted, qualified, narrowed, enlarged or abridged"). A collective bargaining agreement, therefore, cannot include a definition that inserts words to define "financial reasons" that were not included by the General Assembly in R.C. 3319.17.

This conclusion is supported by a recent Ohio Supreme Court decision in which the court declined to limit the discretion and flexibility given to a board of education under another provision of R.C. 3319.17(B). *Mink v. Great Oaks Inst. of Tech. and Career Dev. Bd. of Educ.*, 2005-Ohio-6821, 2005 Ohio App. LEXIS 6131. In this case, the court addressed a challenge to a school district's decision to suspend a teacher's contract based on the authority granted in R.C. 3319.17(B) to implement a reduction in force based on "declining enrollment," a term not defined by statute. *Id.* In *Mink*, the teacher argued for a specific definition of "declining enrollment." The teacher claimed that R.C. 3319.17(B) required a reduction in the actual number of students in a school district as a condition precedent to a reduction in force. The school district, however, calculated enrollment based on a formula that calculates a "full-time equivalency" ("FTE") number. *Id.* at ¶7, ¶16.

Ruling in the school district's favor, the court noted the flexibility and broad discretion given to a board of education under R.C. 3319.17. *Id.* at ¶18. The court found that "R.C. 3319.17 does not define the term 'decline in enrollment.' Nothing in the statute requires a school board to reduce only the specific programs that have lost students, but neither does it prohibit considering only those programs." *Id.* at ¶19. The court further stated that to hold otherwise "would also be inserting words in the statute that are not present, which this court may not do." *Id.* at ¶20.

Similarly, the General Assembly did not limit what a school board may consider in determining what qualifies as "financial reasons" for purposes of R.C. 3319.17(B). Accordingly, parties to a collective bargaining agreement may not define the term and thereby insert words into the statute and restrict the flexibility and discretion of a board of education.

In sum, it is my opinion, and you are hereby advised that a collective bargaining agreement between a school district board of education and its employees may not define the term "financial reasons" for the purpose of determining whether a reduction in teaching staff is authorized by R.C. 3319.17(B).

Respectfully,

MICHAEL DEWINE
Ohio Attorney General