

The Leader

February 2018

A new twist on disciplinary matters

As has been noted ad nauseam in this newsletter, the District often reinterprets the notions of due process and equal protection in such interesting ways that one can only suspect the folks at CO must have attended the law school division of Trump University. The ASC has been arguing for more than twenty years that the District's interpretation of the right to representation is in violation of the Supreme Court's decision regarding such matters. (*NLRB v J. Weingarten, Inc. 1975*)

In that decision the US Supreme Court held that the right to representation arises only upon the individual's request for such representation, not as a matter of fact, as the District has maintained. As most of our administrators are aware, the District has long required that the principal or other administrator advise a teacher or other employee that they have a representative present when they are to be questioned regarding some matter. (The obvious deviation to this general and incorrect MPS dictate is that this same obligation does not apparently apply when an ASC member is about to be questioned. Thus the equal protection issue rears up.) When the ASC spoke to the MPS attorney on this matter, even going so far as to bring a copy of the *Weingarten* decision along for her to read, the response was, "Well, we don't do it that way," to which I could only reply, "No kidding."

The importance of this whole discussion is not just that administrators and supervisors are treated differently, but that the MPS practice has often tainted or erased efforts by our members to take action when an employee was suspected of any kind of incompetence, violating District policies, violating the law, and on and on.

Always one to enjoy a good story, I feel compelled to recount an occasion where a school secretary had purchased personal items of some expense through the school account. When the principal discovered the purchases (about a year after the fact), she asked the secretary if she knew anything about them, not suspecting that her trusted secretary would have done it herself. The secretary, however, then admitted that she had made those unauthorized purchases, but assured the principal she intended to pay the debt back soon. The principal contacted CO and was informed that there was nothing to

be done because she had failed to advise the secretary that she had the right to union representation before she asked her about the purchases. Bad enough, right? But then the principal was told by her supervisor to go ahead and pay for the purchases - sheets and other bedding - out of her school account. (I know you probably know how that would have turned out.) At this point the principal called the ASC.

So finally we arrive at the "new twist" mentioned at the outset. When an ASC member is confronted by MPS for misconduct or other disciplinary matters, it is the practice for the District to present "evidence" of the wrongful behavior. That evidence usually includes the nature of the infraction, a listing of specific MPS policies which were violated (as a clarification point, usually they simply list a whole bunch of policies in the hope that they may be correct on one of them), witnesses, statements from the witnesses or individuals directly involved, and a narrative of what exactly happened. In other words, there is an effort to try to inform the employee of exactly what they did wrong and how the District knows of it.

We now have a situation where the District provides no specifics, no indication of what the employee did wrong, only that there was some sort of violation, and no evidence at all. It makes it hard to defend against accusations which are unknown and unverified. How did this happen?

Unfortunately the ASC has, over some time, faced situations where the MTEA has engaged in behavior intended to intimidate our members. In the past they have insisted on publishing ASC member salaries in the newspaper, circulated surveys among their members asking them to evaluate administrators, and releasing the results of those surveys to the school board, and abusing and intimidating administrators and supervisors by what can only be described as taunting and bullying behavior. All of this in lieu of seeking truth.

Now, thanks to District action, we have an employee rights division at Central Office which is required to accept and inquire into complaints from employees regarding bullying, harassment, discrimination, and intimidation by other employees. (Employee Handbook, Part III, C, D.) This provision in the Handbook is being used by the MTEA and others to intimidate and harass administrators on a frequent basis. Whenever an employee feels that they are being mistreated by being required to work, show up on time, treat others with quiet respect, or go about their actual job with energy and sobriety, they will file a complaint with the District.

The complaint will, in due course, be investigated, the administrator put in the awkward and embarrassing position of having to provide a defense, and then usually penalized in some fashion. Often that discipline is nothing

more than being required to attend some training on how to get along with difficult people, or how to communicate more effectively to people who don't wish to hear it.

Most of you know of someone who has had a complaint filed against them for bullying, harassing, etc. What we believe is that the use of these provisions in the Employee Handbook by teachers and others is bullying itself. That is not to say that there are members – or nonmembers – of the ASC who may at times be difficult themselves. But the sheer number of complaints, coupled with the content of those complaints, is astounding. And when the complaint reaches so low as to not require actual validation and verification, we have found a new twist on due process and equal protection.

ASC officer elections

The ASC Board of Directors has two vacant positions available in our elections this spring. The offices of President and Treasurer are open, and we strongly urge interested persons to apply. Assuming we have contested elections for those offices, we will distribute ballots to all active members later this spring. Please contact the ASC office if you wish to be a candidate for either position.

A note to our retirees

A number of ASC retirees have contacted the office recently regarding the “Medicare reimbursement” as it deviates from their previous reimbursement for Medicare B premiums. The background is that MPS had previously covered the cost of those premiums so long as each retiree had sufficient room left within the maximum health care premium costs provided to that individual. That amount provided for each person is the amount of the cost of health insurance at the time of each individual's retirement, so long as the retiree meets the other requirements in order to receive lifetime health insurance.

The questions surfaced when MPS was paying only the minimum Medicare Part B reimbursement, which is in the neighborhood of \$104 per month. As a result of government action in January 2017, the actual cost of Medicare B may increase dependent upon each individual's actual annual income. The result is that many retirees were paying an additional amount for their Medicare coverage.

In discussions with MPS, and upon objections from many retirees both within the ASC and otherwise, the District has now determined that the obligations imposed on the District by past contracts and legal decisions requires that they pay the difference between the \$104 and whatever is now being billed to the individual. (This decision is, as

always, subject to arbitrary and unexplained changes and any given moment.)

MPS will be mailing an information sheet to retirees who are under Medicare and enrolled in Social Security sometime this month...or thereabouts. In essence the information sheet will require that each retiree verify the amount they are being billed for Medicare B coverage by submitting the Social Security form which identifies that amount. If you are unable to locate the necessary form, contact the Social Security office.

The ASC Holiday Party

We wish to thank all of you who attended the annual ASC Holiday Party. The event was very well attended, with the actual number of attendees greater than previous events. A very special thank you to those of you who brought gifts and contributions to be distributed to those in our community in need of our assistance. We had two truckloads of items, which was a generous and much needed contribution at this time of year.

An ASC website

The ASC is soliciting anyone for the development of a new website for our organization. We know that there are schools in MPS who have talented staff and students who do website development, but we don't know who exactly or how to contact them. If you know of anyone who would like to help us create a new website, please contact the ASC at 453-4400.

Notary services and retirement issues

The ASC provides free notary service to ASC members. In addition, we are providing retirement advice to those who may wish to retire under the “early retirement window” as it currently exists. While it is not the general practice of the ASC to refer our members to outside sources for legal and other assistance, we have in the recent past made arrangements with attorneys and others who will provide special assistance to our members at a reduced rate for wills, trusts, retirement planning, estate planning, and other issues. We provide free attorney assistance for matters regarding your employment with MPS.