No. 125062

IN THE SUPREME COURT OF ILLINOIS

MARGARET DYNAK,	)	
	)	**Appeal from the Appellate**
Plaintiff-Appellant,	)	**Court of Illinois, Second**
	)	**Judicial District**
vs.	)	**Case No. 2-18-0551**
	)	
THE BOARD OF EDUCATION OF WOOD DALE SCHOOL DISTRICT	)	**Appeal from the Circuit**
	)	**Court of DuPage County**
	)	**Case No. 2016-MR-001368**
Defendant-Appellee.	)	**Hon. Bonnie M. Wheaton**
	)	

ILLINOIS FEDERATION OF TEACHERS' BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFF-APPELLANT MARGARET DYNAK

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POINTS AND AUTHORITIES

I. THE ILLINOIS FEDERATION OF TEACHERS HAS A SIGNIFICANT INTEREST IN THE SUBJECT OF THE APPEAL

The Illinois Federation of Teachers (IFT) is a state-wide organization representing approximately 60,000 employees in 228 school districts who are covered by the statute at issue in this case, *Section 24-6 of the Illinois School Code (105 ILCS 24-6).* The Plaintiff-Appellant, Margaret Dynak, is employed as a teacher by Wood Dale School District 7 (the District), and is represented by the Wood Dale Education Association, an affiliate of another state-wide organization representing educational employees, the Illinois Education Association-NEA.

Because the interpretation of this important statute will affect many of the members of IFT, IFT submits this brief in support of Plaintiff-Appellant, and agrees with her interpretation and analysis of the text and history of Section 24-6 of the Illinois School Code, and with the identification of the flaws in the majority opinion of the Appellate Court. In particular, IFT agrees that Section 24-6 provides the right to use the remainder of the 30 days of paid sick leave at the beginning of a school year, where an employee gave birth at the end of the preceding school year, and that intervening non-work days do not reduce the statutory right to use up to 30 days of accumulated sick leave for birth, without medical certification.

II. THERE IS A DIRECT RELATIONSHIP BETWEEN THE FAMILY MEDICAL LEAVE ACT AND THE CHILD CARE PROVISIONS OF THE ILLINOIS SCHOOL CODE

IFT submits this amicus brief to make a further point in support of Appellant's position, regarding the relationship between *Section 24-6 of the School Code and the Family Medical Leave Act (FMLA), 29 U.S.C. § 2601 et. seq.*

The FMLA and the implementing regulations of the United States Department of Labor provide that an employee covered by the FMLA is entitled to an unpaid leave from work for up to 12 weeks in a 12 month period "for birth" in order to care for a new born child for up to 1 year following the birth. *CFR, Title 29, paragraph 825.112.*

Those regulations further specifically address how that unpaid FMLA leave for the birth of a child applies to school districts and employees, where there are intervening summer breaks. Such leave for birth "taken for a period that ends with the school year and begins the next semester is leave taken consecutively rather than intermittently. The period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement." *29 C.F.R. § 825.601(a).* Under these express provisions, for a birth at the end of one school year, an employee requesting to take 12 weeks of FMLA leave is entitled to take some of the leave at the end of one school year and then the remainder of the leave at the beginning of the next year.

The record in the subject proceeding has established – and, indeed, it is undisputed – that the Wood Dale School District granted the plaintiff teacher an FMLA leave for child care at the beginning of the school year following the birth of her child in the last day and one-half of the preceding school year. The teacher utilized 1 ½ days of paid leave of the 30 days allowed her under Section 24-6 of the School Code. The record also contains the fact – again undisputed – that the School District denied the teacher's request to use the remaining 28 ½ of paid leave pursuant to the 30-day allowance for birth under Section 24-6.

The majority of the Appellate Court ruled that the School District's denial of the teacher's request to utilize the remaining 28 ½ days of paid leave did not violate Section 24-6. The basis of the majority's opinion was that, to grant the requested leave would create an "absurd" effect under Section 24-6, because, it ruled, the use of sick leave for birth is constrained by the use of sick leave for *personal illnesses*, even though the majority ruled that sick leave used for birth and sick leave used for illness are two distinct categories. The majority held that the relevant provisions of Section 24-6 are not ambiguous. In arriving at its decision, the majority did not spell out how the 30-day provision of Section 24-6 would apply to nonscheduled workdays, such as the Winter and Spring breaks, holidays and weekends during the 30 days following a birth.

III. THE RELEVANT PROVISIONS OF THE SCHOOL CODE ARE UNAMBIGUOUS

There are certain provisions in the relevant parts of Section 24-6 which are unambiguous:

1) paid "sick days" are a benefit for a covered employee for absent unpaid days of work;

2) a covered employee who gives birth is exempted from the statutory requirement for 30 days that an employee must provide medical certification, whereas certification is required for absences due to illness that exceed 3 days; and

3) an employee is not to receive "sick pay" for days on which they are not scheduled to work.

The relevant statutory provision does not set out how the 30-day exemption is to be calculated where there is a break in the workdays. The dissenting Appellate Court opinion correctly determined that the statute is unambiguous in allowing a covered employee to use paid leave "for birth" for up to 30 days without proof of medical disability from work, and therefore the plaintiff teacher was entitled to apply 28 ½ days of paid leave which were remaining of her 30 day entitlement beginning on her next scheduled work day in the following semester after the Summer break. However, the majority of the Appellate Court interposed a limitation where there was no textual or other support for doing so, and did not enumerate how or when employees may use 30 days of accumulated sick leave for birth when there is an intervening break between the birth and the next work day.

The IFT submits that the fact the School District granted the plaintiff teacher an FMLA leave for childcare at the beginning of the school year following the birth adds further support to the Appellant's position and the Appellate Court dissent. The rules and regulations of the United States Department of Labor allow an employer to require an employee to utilize paid leaves concurrent with the unpaid FMLA leave. *CFR Title 29, paragraph 825.206* And the regulations expressly permit such leave to span a summer, without "counting against" the entitlement to the maximum amount of permitted leave. It is apparent that the 30-day medical certification waiver following birth in Section 24-6 was intended to allow an employee to utilize earned paid "sick" days for childcare and bonding. Section 24-6 as it existed before it was amended in 2007 only provided for paid sick days following a birth if in fact the employee was medically certified unable to work on scheduled days. With the statutory amendment (and another amendment in 2009 adding the 30-day provision for medical certification), leave for birth no longer depends on

physical incapacity. Thus, the unambiguous purpose of the FMLA leave and the 30-day paid leave for birth under School Code is identical; i.e., to allow the employee time with the baby unrelated to the parent's physical condition.

IV. CONCLUSION

The IFT submits that the Appellate Court majority opinion is in error and the dissent correctly interpreted Section 24-6. Any modification of the provisions in Section 24-6 cannot be imposed judicially but would require legislative action. Therefore, the IFT submits that the Supreme Court should sustain the Appeal and affirm the Appellate Court dissent, and rule that Section 24-6 requires school districts to allow employees to use 30 of accumulated sick days for birth, irrespective of any intervening non-workdays.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this Brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statements of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the Brief under Rule 342(a) is 5 pages.

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