NO. 125062

IN THE
SUPREME COURT OF ILLINOIS

MARGARET DYNAK	)	Appeal from the Appellate
	)	Court, Second District,
	)	Case No. 2-18-0551
Plaintiff-Appellant,	)	
	)	
vs.	)	
	)	Sitting in review of a
BOARD OF EDUCATION OF	)	judgment by the
WOOD DALE SCHOOL DISTRICT 7,	)	Circuit Court of
	)	DuPage County
Defendant-Appellee.	)	Case No.
	)	2016-MR-0001368
	)	Hon. Bonnie M. Wheaton,
	)	Judge Presiding

AMICUS BRIEF

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BRIEF OF THE ILLINOIS ASSOCIATION OF SCHOOL BOARDS AND ILLINOIS ASSOCIATION OF SCHOOL ADMINISTRATORS AS *AMICUS CURIAE* IN SUPPORT OF WOOD DALE SCHOOL DISTRICT 7

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POINTS AND AUTHORITIES

ARGUMENT

I. Introduction

If the Illinois Association of School Boards ("IASB") and the Illinois Association of School Administrators ("IASA") wish to fulfill their role as "friends of the Court," they must candidly state that the legislature's two amendments to Section 24-6 of the Illinois *School Code* have not made this provision a model of clarity. 105 ILCS 5/24-6. Moreover, the appellate court opinion below misses the mark on virtually every point except the result. However, IASB and IASA believe that the true intent of the legislature comes into focus after a review of the evolving treatment of pregnant teachers by the courts, the legislature, and school boards over the past 50 years. Once the legislature's intent is understood, it will become clear that the most simple, straight-forward reading of Section 24-6 is the correct interpretation of the statute.

This interpretation of the statute guarantees a teacher the right to use sick leave during any period of disability after the birth of a child regardless of length. For the first 30 calendar days after birth, the teacher is presumed disabled as the school board is prohibited from requesting medical certification of a disability. Thereafter, the teacher may continue to utilize sick leave for disabilities related to birth. However, the school board may require medical certification for a period of disability lasting longer than 30 calendar days.

The legislature's intent was not to grant, in some convoluted manner, paid parental leave unrelated to disability. By amending the statute a second time, the legislature acknowledged that it was *limiting* the use of sick leave to the period of disability after

childbirth. It left the granting of additional benefits to be bargained between school boards and their teacher unions based upon local conditions and resources.

II. The Evolving Treatment of Teachers Who Become Pregnant and Give Birth

Prior to the U.S. Supreme Court's decision in *Cleveland Board of Education v. La Fluer,* 414 U.S. 632 (1974), an Illinois school district could dismiss teachers who became pregnant. In response to *La Fluer,* the Illinois legislature amended Section 10-22.4 of the *School Code* (105 ILCS 5/10-22.4) to prohibit school boards from dismissing teachers due to "temporary mental or physical incapacity." *See Winks v. Bd. of Ed. of Normal Cmty. Unit Sch. Dist. No. 5*, 78 Ill. 2d 128, 140 (1979).

Thereafter, most Illinois school boards still did not permit teachers to use sick leave for the birth of a child and recovery therefrom. Rather, such districts adopted policies that required teachers to take unpaid "maternity leaves" for a length of time beginning sometime prior to birth and ending sometime after recovery from a "normal" birth. *Id.*

These policies were upheld by this Court in *Winks,* which found that under Section 24-6, school boards were not required to grant sick leave to teachers for "normal pregnancy and childbirth." *Id.* The Court held that while any inability to work can be classified as "temporary incapacity," normal pregnancy and childbirth was not a "personal illness" under Section 24-6 entitling teachers to use sick leave. *Id.*

However, in response to a similar case decided by the United States Supreme Court, *General Electric Co. v. Gilbert,* 429 U.S. 125 (1976), Congress amended Title VII of the Civil Rights Act to prohibit discrimination based upon pregnancy. 42 U.S.C.A. § 2000e. Thus, under Title VII, Illinois school boards were required to treat disabilities due to pregnancy, birth, and recovery therefrom just as they treated any other disability. As a

result, it became readily apparent that pregnant teachers could no longer be denied sick leave under Section 24-6 for disabilities related to birth. Nevertheless, the General Assembly did not amend Section 24-6 to make it clear that sick leave was now available for pregnancy-related disabilities (as it had regarding temporary incapacities).

School boards around the state reacted to the amendment of Title VII by offering pregnant teachers a choice: they could use paid sick leave for the period of disability related to birth *or* they could take a longer unpaid maternity leave—generally beginning before birth and for up to two years. *See Scherr v. Woodland Cmty. Consol. Dist. No. 50*, 867 F.2d 974 (7th Cir. 1988); *E.E.O.C. v. Elgin Teachers Assn.*, 27 F.3d 292, 295 (7th Cir. 1994).

Still, teachers (and their unions) sought even better treatment of pregnant teachers. They sought both the use of sick leave during periods of disability followed by a longer unpaid maternity leave. Most school districts did not agree and some were sued under Title VII. However, the federal courts upheld these policies. *See E.E.O.C.*, 27 F.3d at 295; *Maganuco v. Leyden Cty. High Sch.*, 939 F.2d 440 (7th Cir. 1991).

When Congress passed the *Family Medical Leave Act* (29 U.S.C.A. § 2611 *et seq.)* ("FMLA"), it required employers (including Illinois school boards) to grant 12 weeks of unpaid leave—either concurrently with the use of any available sick leave or consecutively with sick leave. Although the FMLA was unpaid, the employer was required to pay the employee's health insurance as it had done prior to the leave. In reaction to the FMLA, most school boards changed their policies (many of which were collectively bargained) to allow use of sick leave, FMLA leave and a longer unpaid maternity leave together. Thus, in some school districts, teachers could (but were not forced to) take sick leave for any

periods of disability (regardless of the length of disability), FMLA leave, and then a longer unpaid maternity leave. But other school districts did not. In those districts, teachers could take sick leave (and FMLA leave) but not in conjunction with the longer maternity leave.

Thus, prior to the amendments to Section 24-6, most Illinois school boards were already granting paid sick leave to any pregnant teacher who became disabled due to pregnancy, birth or recovery therefrom—not because it was mandated by Section 24-6 of the School Code—the *Winks* interpretation remains the law—but because it was mandated by Title VII and encouraged by FMLA.

III. The 2007 and 2009 Amendments to Section 24-6 of the School Code

In 2007, Section 24-6 of the *School Code* was amended to provide that "sick leave shall be interpreted to mean personal illness, quarantine at home, serious illness or death in the immediate family or household, or birth, adoption or placement for adoption." 105 ILCS 5/24-6 (emphasis added). Based upon the historic treatment of sick leave for childbirth, the amendment was intended to achieve two goals.

First, it allowed teachers to use paid sick leave for adoption or placement for adoption to the extent teachers had sick leave available.

Second, it reversed this Court's decision in *Winks*, eliminating *Winks's* distinction between normal pregnancies and childbirth and those that cause complication.[1] *Winks*, 78

[1] We believe that in 2007 the legislature found, contrary to the decision in *Winks*, that there is really no difference between the use of sick leave for personal illnesses and its use for birth. Both required the teacher to be disabled before they can use sick leave. A teacher cannot use sick leave merely because the teacher is pregnant or after she recovers from childbirth. So too, for personal illness. A teacher who may have diabetes or even cancer can only use sick leave for any period of disability. The same for teachers with a broken bone. A teacher who has a broken leg and is consigned to bed is entitled to use sick leave but a teacher who has broken his/her arm or finger would not be so entitled if they could return to work with the help of a splint. Had the Court in *Winks* taken this position, the

Ill. 2d at 140. But it did no more. This interpretation becomes clear when the statute was amended again in 2009. After the 2009 amendment, Section 24-6 now reads in relevant part:

> The school boards may require a [medical] certificate… as a basis for pay during leave after an absence of 3 days for personal illness or 30 days for birth or as the school board may deem necessary in other cases. If the school board does require a certificate as a basis for pay during leave of less than 3 days for personal illness, the school board shall pay, from school funds, the expenses incurred by the teachers or other employees in obtaining the certificate. For paid leave for adoption or placement for adoption, the school board may require that the teacher or other employee provide evidence that the formal adoption process is underway, and such leave is limited to 30 days unless a longer leave has been negotiated with the exclusive bargaining representative. 105 ILCS 5/24-6 (emphasis added).

Based upon the legislative history, the legislature did not intend to grant some type of paid parental leave after birth or adoption of a child, limited only by the amount of sick leave a teacher may have accumulated. Rather, it intended to limit the use of sick leave to the teacher's period of disability. It did so by allowing a school board to ask for a medical certification after 30 calendar days (as opposed to just stating that a teacher has 30 work days of leave to be used for birth).

There was no intent to create some sort of paid parental leave unrelated to a teacher's disability. In fact, the legislature feared that the prior amendment may have accidentally created a potentially unlimited leave that was unrelated to disability. As stated in the legislative debates:

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legislature would not have needed to amend the statute to add birth. We note that the fact the legislature took almost 30 years to amend the statute is of no consequence. As stated previously, use of sick leave for disabilities due to pregnancy and childbirth was already mandated under Title VII and many school districts were complying with this mandate by granting sick leave for disabilities related to pregnancy and birth.

> Pihos: The point of my legislation is to make sure that the intent of this Bill isn't misused. What we did is we created unlimited maternity leave and for adoption…
> Nekritz: And so this sets sort of a ceiling on that then, and then… and then from there it can be negotiated?
>
> Pihos: Absolutely. That's correct.
>
> 95th Ill. Gen. Assem. House of Representative Proceedings, April 9, 2008, at 15 (statements of Representatives Pihos and Nekritz).

For that reason, the legislature adopted the 2009 amendments to limit the use of sick leave to the period of disability. This issue of paid parental leave (or other additional benefits) was left to school boards and their unions to work out on their own based upon local conditions.

IV. The Simplest Interpretation of Section 24-6 is the Correct Interpretation

The simplest interpretation of Section 24-6 is consistent with the intent of the legislature and is supported by the historic treatment of sick leave for pregnancy and childbirth by the courts and school boards. Contrary to the contention of the Plaintiff, the amendments allow teachers to use sick leave for childbirth in the same way as they use sick leave for personal illness—so long as they are disabled. And they may use sick leave whether their disability arises out of a normal childbirth or because of a complication.

The amendments overruled the ruling in *Winks* and are consistent with the evolving treatment of sick leave for childbirth over the years. Section 24-6 now guarantees a teacher the right to use paid sick leave during any period of disability after the birth of a child regardless of length. For the first 30 calendar days after birth, the teacher is presumed disabled as the school board is prohibited from requesting medical certification of a disability. Thereafter, the teacher may continue to utilize paid sick leave for disabilities

related to birth. However, the school board may require the teacher who remains disabled beyond 30 calendar days to provide medical certification. The only difference between use of sick leave for personal illness and the use of sick leave for childbirth is when a school board may request a medical certification.

The need for medical certification after 30 calendar days for childbirth makes it clear that the use of sick leave for childbirth is tied to the time of disability of the teacher as opposed to some arbitrary time solely dependent on the time of year a teacher gives birth as the Plaintiff claims. (We note in this case the Plaintiff makes no claim that she was disabled during the period after summer vacation.) The 30-day restriction makes sense: it protects the teacher from being harassed by a school board that requests multiple unnecessary medical certifications, yet it allows a school board to request a medical certification after a reasonable period of time to prevent abuse.

One more thing, the Plaintiff claims that the 30-day restriction on when a medical certification is required must be school days and not calendar days. Plaintiff's interpretation of the term "days" is incorrect because (1) it is not logical, (2) it is inconsistent with Article 24 of the School Code, and (3) it is inconsistent with Section 24-6 itself.

First, if the Plaintiff's interpretation is correct, then the medical certification is not tied to the disability but to the happenstance of when the teacher gives birth. A teacher who gives birth the day after school starts could be required to provide medical certification approximately six weeks after birth. However, a teacher who gives birth the day after school ends in June, could not be required to provide a medical certification for approximately 18 weeks after birth.

Second, when the term "days" is used in Article 24, it is always used to connote calendar days. *See e.g., Howard v. Bd. of Ed. of Freeport Sch. Dist. No. 145*, 160 Ill. App. 3d 309, 311 (2d Dist. 1987). When the legislature intended to use school days, it expressly says so. 105 ILCS 5/24A-5.

Third, the use of "30 days" is not attached to the number of sick leave days that may be used for birth (in which case it would logically mean 30 school or work days). Rather, as stated previously, it is tied to when a medical certification is required (in which case it would logically mean 30 calendar days as discussed above).[2]

Therefore, the simplest interpretation is the correct one. A teacher may use sick leave for any disability arising out of the birth of a child. For the 30 calendar days after birth, a teacher is presumed disabled. After the first 30 calendar days a teacher may continue to use sick leave for as long she is disabled if the teacher can produce a medical certificate indicating that she remains disabled. If a school board and its union want to provide more benefits, such as a paid parental leave unrelated to disability, they may to do so, based on local conditions.[3]

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[2] We note that it is generally accepted that many, if not most, teachers need 6 weeks to recover from a normal birth. However, there is no magic in 6 weeks. For example, the Seventh Circuit noted in *E.E.O.C. v. Elgin Teachers Association.*, 27 F. 3d 292 (7th Cir. 1994), that teachers may be able to return sooner and others later. "Surely the EEOC does not believe that pregnancy invariably incapacitates a woman for six weeks." *Id.* at 295. Allowing a school board to request medical certification after four weeks permits a school board to know when the teacher will be returning in a reasonable time before the teacher actually returns—allowing the school board time to plan for the teacher's return.

[3] The legislature also treats sick leave for adoption not as some type of parental leave. The use of sick leave for adoption is tied to the commencement of the adoption process; not when the child is finally adopted. Thus, a teacher could have exhausted the full 30 days before the child is even brought home.

In the end, it is a fair result for both the school board and the teacher.[4]

CONCLUSION

IASB and IASA believe that teachers should be able to use sick leave when they become disabled due to pregnancy, childbirth, or recovery therefrom, just as if they suffered a broken leg. This right should be balanced with the ability to check, when appropriate, whether the teacher continues to be disabled and when she is expected to return. A simple, straightforward interpretation of Section 24-6 produces this result without engaging in linguistic gymnastics.

We understand the desire of the Plaintiff to have more paid time off so she can remain home with her baby—even when she is not disabled. But the amendments to Section 24-6 do not go that far. That issue has been left to school boards and their unions to work out. Therefore, IASB and IASA request this honorable Court to affirm the decision of the appellate court.

Respectfully submitted,

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[4] And the result does not turn on the happenstance of the placement of a comma or on the application of some worn out and long forgotten Latin phrase as the Plaintiff suggests (See paragraphs 24-28 of Appellant's Brief).

CERTIFICATE OF COMPLIANCE

I, Stanley B. Eisenhammer, an attorney, do hereby certify that this Brief conforms to the requirements of Illinois Supreme Court Rule 341(a) and (b). The length of this Brief, excluding the pages and word contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 9 pages.

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