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United Union of Roofers, Waterproofers, and Allied Workers, Local Union No. 37 v. North Allegheny School District

Commonwealth Court of Pennsylvania - April 18, 2017 - Not Reported in A.3d - 2017 WL 1382227 - 208 L.R.R.M. (BNA) 3607

School Districts appealed an order of the Court of Common Pleas granting a preliminary injunction to United Union of Roofers, Waterproofers, and Allied Workers, Local Union No. 37 (Union). The preliminary injunction enjoined School Districts from conducting background checks mandated by the Public School Code of 19491 (School Code) and the Child Protective Services Law on Union members assigned to roofing projects on School District property because School Districts did not show that the workers will have "direct contact with children." The trial court further ordered School Districts to take corrective action to permit Union's members who had been excluded by the unauthorized background checks to have access to the work sites.

School Districts appealed, arguing that the trial court erred in granting the preliminary injunction because Union failed to establish any of the legal prerequisites for injunctive relief.

The Commonwealth Court agreed, reversing the trial court's order.

"As noted, the trial court granted a preliminary injunction that did two things: (1) allowed previously disqualified Union members access to School Districts' work sites, and (2) prohibited School Districts from doing background checks on Union members unless the position applied for involved direct contact with children. In doing so, the trial court largely focused on the level of interaction between Union members and children at School Districts' project sites and determined that Union was likely to succeed on the merits of its declaratory judgment action because its members do not have direct contact with children."

"We will not address that question. The underlying declaratory judgment proceeding will resolve the legal question of what constitutes "direct contact with children" under the School Code. Likewise, it will resolve the factual question of whether Union members actually have that level of contact with children. Accordingly, we decline to address these matters at this juncture. However, we will reverse the grant of the preliminary injunction because the injunction does not restore the parties to the status quo during the pendency of the underlying complaint."

"By enjoining School Districts from performing their standard background checks, the trial court disturbed the status quo. As established by the evidence, since at least 2011 School Districts have been doing background checks on employees of independent contractors required by Section 111 of the School Code without ascertaining whether those employees will have direct contact with children. Requiring School Districts 'to show a causal connection between any criminal offenses and the position for which employees are to work to justify an exclusion' does not preserve the status quo. Instead, it institutes a new status quo by revising School Districts' longstanding background check practices."

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