

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

**CBA - NEW YORK**

## **In re Bd. of Educ. of Valhalla Union Free School Dist. v. Valhalla Teachers Ass'n**

**Supreme Court, Appellate Division, Second Department, New York - December 4, 2013 - N.Y.S.2d - 2013 N.Y. Slip Op. 08076**

The Board of Education of the Valhalla Union Free School District entered into a collective bargaining agreement with the Valhalla Teachers Association (VTA). The CBA required, inter alia, that, where a teacher's position has been "excessed" and another position becomes available, the Board must appoint the teacher whose position was excessed to the available position, if the teacher is certified in the teaching area in the available position. At some point at the end of the 2010/2011 school year, a Spanish language teacher retired, and her position became available. On June 28, 2011, the position was filled. In a July 12, 2011, meeting, the Board "excessed" the position of Lisa Petek, a teacher of English as a second language.

The VTA filed a grievance on behalf of Petek, claiming that Petek, who was certified to teach Spanish and had experience teaching the subject in another school district, should have been appointed to the vacant position. The Superintendent of Schools denied the grievance, which was appealed to the Board. The VTA waived its right to a hearing and demanded arbitration pursuant to the CBA's grievance procedures. The Board then filed a petition to permanently stay arbitration, asserting that the CBA provision at issue conflicted with public policy and the mandates of the Education Law. The Supreme Court denied the petition.

The Appellate Division found that the Supreme Court erred in concluding that this dispute was subject to arbitration. The CBA provision at issue mandates that the Board appoint a "certified" teacher, whose position has been "excessed," to a vacant position in the teacher's area of certification. While certification may be a central qualification, the Board has the discretion, under the Education Law, to prescribe additional qualifications (see Education Law § 2573[9] ). The CBA, in effect, divests the Board of its discretion by mandating automatic appointment of certified teachers without inquiry into any additional qualifications the Board may have prescribed. This discretion may not be bargained away. Accordingly, the Board's petition for a permanent stay of arbitration should have been granted.