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California Teacher Tenure Found to Violate Student Rights

By Edvard Pettersson - Jun 11, 2014

California's two biggest teacher unions lost the first round in the broadest court challenge yet to state laws protecting teachers' jobs, setting the stage for what could be a lengthy appeal.

A state judge in Los Angeles yesterday ruled that statutes giving public school teachers lifetime employment after less than two years on the job and making it time-consuming and expensive to fire bad teachers are unconstitutional. The lawsuit was brought by a group of nine students backed by a Silicon Valley entrepreneur.

Superior Court Judge Rolf Treu in his tentative ruling found that low-income and minority students are disproportionately stuck with "grossly" ineffective teachers, leading him to conclude the challenged laws violate the students' fundamental right to equality of education. "Our public education system is failing our children because it has stopped putting their needs and their success above all else," David Welch, the founder of the nonprofit Students Matter organization that backed the lawsuit, said in a statement. "This case was designed to change that."

Welch is the president and co-founder of Sunnyvale, California-based Infinera Corp. (INFN), a maker of optical networking gear. The entrepreneur, who has said "impact litigation" will be a more effective way than politics to bring about change, has joined other business leaders in a nationwide fight with teacher unions over how to better educate students.

Education Secretary

U.S. Secretary of Education Arne Duncan called the ruling a mandate to fix inequities in public education.

"The students who brought this lawsuit are, unfortunately, just nine out of millions of young people in America who are disadvantaged by laws, practices and systems that fail to identify and support our best teachers and match them with our neediest students," Duncan said in a statement.

The two California teacher unions, which intervened to defend the legality of the statutes on behalf of their 445,000 members, have said the case was part of a broader effort to undermine organized labor. They contend smaller classrooms and adequate resources were more relevant to improving public education than attacking teachers.

“This lawsuit has nothing to do with what’s best for kids, but was manufactured by a Silicon Valley millionaire and a corporate PR firm to undermine the teaching profession and push their agenda on our schools,” California Teachers Association President Dean E. Vogel said in a statement. “We plan to appeal this decision.”

Billionaire Push

Billionaires including Microsoft Corp. (MSFT) co-founder and former Chairman Bill Gates, homebuilding and insurance entrepreneur Eli Broad, and Wal-Mart Stores Inc. (WMT)’s Walton family have been pushing for public schools to be run more like businesses. Charter schools, independent of local school districts and typically free of unionized teachers, have been one of their favorite causes.

“We are confident this ruling will be reversed on appeal,” Jim Finberg, a lawyer for the California Teachers Association and the California Federation of Teachers, said in a phone interview. Treu’s decision “ignores overwhelming evidence the current laws are working.”

The unions have 10 days to respond to the tentative ruling, after which the judge has another 15 days to finalize it, Finberg said. Most judges don’t change their mind in the final ruling, Finberg said.

Teacher Unions

In North Carolina, a teacher union last year filed a lawsuit in court to block an overhaul of the state’s tenure laws. On June 6, a judge agreed with the union that the overhaul was unconstitutional to the extent that it pertained to teachers who already had earned tenure.

The state of California, which defended the statutes’ constitutionality separately from the teacher unions, claimed during the trial that tenure helps attract people to low-paid jobs in often-difficult work conditions and protects teachers from pressure by school boards when they teach controversial subjects such as evolution.

“Attracting, training and nurturing talented and dedicated educators are among the most important tasks facing every school district,” California Superintendent of Public Instruction Tom Torlakson said yesterday in a statement. “Today’s ruling may inadvertently make this critical work even more challenging than it already is.”

‘Highly Ineffective’

During the trial, Theodore J. Boutrous Jr., a Gibson Dunn & Crutcher LLP partner representing the students, cited an estimate that about 3 percent of public school teachers in California are “highly ineffective.” That amounts to 8,250 bad teachers in the state teaching 206,250 students every day, resulting in an estimated loss in lifetime earnings for those students because of their poor education of \$11.6 billion, the lawyer said.

The verdict was hailed by Dan Goldhaber, director of the Center for Education Data & Research at the University of Washington at Bothell, who testified at the trial for the plaintiffs.

“I was surprised by how definitive it was,” he said in a phone interview.

Seniority Impact

He has researched the implications of teacher layoffs and found seniority had an overwhelming impact. He found big differences between the effectiveness of teachers getting laid off under the “Last In, First Out” system and those that would be laid off otherwise.

Treu said in his ruling that California is one of only five states that have a tenure period of two years or less and one of only 10 states where seniority is the sole factor in determining whether a teacher is kept on when lay-offs occur. The seniority law is one of the statutes he found unconstitutional.

“This is consistent with what I think is a national push to start using measures of teacher performance to inform personnel decisions,” Goldhaber said.

The case is Vergara v. State of California, BC484642, Los Angeles County Superior Court (Los Angeles).

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