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C A S E A L E R T

SUPREME COURT ENDORSES FLEXIBLE STANDARD URGED BY M&W'S BRENT POHLMAN, REJECTS APPELLATE DIVISIONS "MATHEMATICAL" TENURE CALCULATION FORMULA FOR PART TIME PUBLIC SCHOOL TEACHERS

In [Beryl Zimmerman v. Sussex County Educational Services Commission](#), a case successfully handled by [Brent Pohlman](#), the New Jersey Supreme Court granted certification to determine whether the reduction of a part-time teacher's hours is permissible under the Tenure Act if the applicable collective negotiation agreement does not provide for a minimum number of weekly hours.

Previously the Appellate Division had overruled the Commissioner of Education to hold that the employer must perform a rigid mathematical calculation, based on overall need and total hours available, to quantify the hours which all tenured part time employees must be entitled to work. We filed a petition for certification to the Supreme Court because such an approach would unduly constrain public schools in meeting the often changing needs of their students.

Yesterday the Supreme Court provided much-needed clarification. While the Court agreed that a board of education may not arbitrarily reduce the hours of a tenured part-time teacher even if the

collective negotiations agreement does not guarantee the teacher a minimum number of hours, the Court also rejected the argument that tenured part-time teachers whose hours vary have an entitlement to an annual salary equal to their previous year's employment. The Court acknowledged legitimate managerial factors that inform the allocation of work to employees who do not have contractually guaranteed hours. While a just allocation of those hours must generally favor tenured and more senior staff over non-tenured and less senior staff, in allocating hours it is appropriate for a board of education to consider certification requirements for the assignment, the geography of the assignment, the scheduling needs to the schools being serviced, and changes in minimum or maximum class sizes.

As a result of this decision, boards of education that employ tenured part-time teachers who do not have a minimum number of contractually guaranteed hours will need to explain why a reduction in those teachers' hours from one year to the next is not arbitrary or capricious. It

would be a best practice to develop a policy which sets forth the criteria applicable determining the assignments of part-time teaching staff. If those teachers' hours are reduced from one year to the next, the teacher should receive a written explanation as to why that reduction occurred.

Overall this decision should not affect the day to day or year to year operations of a board of education that employees part-time teachers; rather it will require that the board document changes in staffing needs and articulate to employees the reasons for changes in allocated hours. So long as such reasons are not arbitrary or capricious they will be legally defensible.

The Court did not address the issue of a midyear reduction in hours resulting from changes in student demand. If a tenured teacher's hours were to be reduced midyear because of a decrease in student need, we would recommend offering that teacher the next assignment that becomes available. Such a practice would comply with the spirit of the Court's decision and insulate the employer against potentially unnecessary litigation.

Should you have any questions concerning Zimmerman or any other aspect of the Tenure Act, please do not hesitate to contact [Brent Pohlman](#).

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Methfessel & Werbel

2025 Lincoln Highway · Suite 200 · P.O. Box 3012 · Edison, NJ 08818 · (732) 248-4200
450 Seventh Avenue · Suite 1400 · New York, NY 10123 · (212) 947-1999
1500 Market Street · 12th Floor East Tower · Philadelphia, PA · (215) 665-5622