IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-PL-64

Culver Community Teachers Association, Decatur County Education Association, Smith Green Community Schools Classroom Teachers Association, and West Clark Teachers Association,

Appellants-Petitioners,

West Clark Community Schools,

Intervenor,

–v–

Indiana Education Employment Relations Board,

Appellee-Respondent.

Argued: April 29, 2021 | Decided: September 16, 2021

Appeal from the Marion Superior Court
No. 49D01-1810-PL-41794
The Honorable Heather Welch, Special Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 19A-PL-2989

Opinion by Justice Massa

Chief Justice Rush and Justices David, Slaughter, and Goff concur.

Massa, Justice.

For the 2017–2018 school year, four Teachers Associations and their respective school corporations collectively bargained over various ancillary duties, such as supervising detention. The Indiana Education Employment Relations Board found the parties violated Indiana law, because they bargained over impermissible subjects and curtailed the schools' unfettered authority to direct teachers' performance of these various ancillary duties. The Teachers Associations jointly petitioned for judicial review, which the trial court denied. We are asked to decide whether teachers unions and schools may collectively bargain over a limitation on—or a definition of—ancillary duties. Because the plain language of the relevant statutes prohibits the parties from bargaining over what constitutes an ancillary duty, we affirm the trial court.

Facts and Procedural History

For the 2017–2018 school year, the Culver Community Teachers Association, Decatur County Education Association, Smith-Green Community Schools Classroom Teachers Association, and West Clark Teachers Association negotiated and ratified collective bargaining agreements with their respective schools.[1] Pursuant to Indiana Code section 20-29-6-6.1, the ratified agreements were submitted to compliance officers appointed by the Indiana Education Employment Relations Board. The compliance officers concluded that each agreement contained a provision that violated Indiana Code section 20-29-6-4, which permits bargaining only for salary, wages, and related benefits.

The noncompliant provision in Culver's agreement defined ancillary duties as "meetings, professional development trainings, and other school

[1] Both Indiana and federal courts recognize exceptions to the mootness doctrine. *See, e.g.*, *Seo v. State*, 148 N.E.3d 952, 965 (Ind. 2020) (Massa, J., dissenting) (discussing state and federal mootness doctrines). Here, under either standard, the Court is presented with a justiciable controversy because this same issue is likely to arise again between the same parties when they return to the bargaining table.

activities outside the contractual day or contractual year." Appellants' App. Vol. II, p.207. It specifically excluded lesson planning and grading from the definition and required teachers to perform ten hours of ancillary duties per school year for no additional pay. Although the parties may bargain **wages** for an ancillary duty, the provision was deemed noncompliant because "[w]hat constitutes an ancillary duty is not a bargainable subject pursuant to Indiana Code § 20-29-6-4 and 20-29-6-4.5." *Id.*, pp. 194–95.

In Decatur's collective bargaining agreement, the noncompliant provision stated that a teacher supervising "Friday Night Detention" shall be paid a flat rate of $75.00 "for 12 students or less." Appellants' App. Vol. III, p.33. The provision was deemed noncompliant because the "conditions of the assignment, i.e. for 12 students or less, is not a bargainable subject pursuant to Indiana Code § 20-29-6-4 and 20-29-6-4.5." *Id.*, p.17.

For Smith-Green, the noncompliant provision stated that if a substitute is not available for a period of time, "upon mutual agreement, a teacher may be requested to supervise a class's instructional time during his/her preparation period." *Id.*, p.95. The provision was deemed noncompliant because the parties had bargained to require "mutual agreement" of the teacher before the school could assign the teacher to serve as a substitute, which is not a bargainable subject pursuant to Indiana Code sections 20-29-6-4 and 20-29-6-4.5. *Id.*, p.81.

For West Clark, the noncompliant provision stated that "[i]f a teacher is asked to, and accepts responsibility for, writing lesson plans, grading assignments, and entering grades for these assignments in the absence of a certified teacher for a week or longer, the teacher will receive an additional four hours of pay per week." *Id.*, pp. 115–16. Again, the provision was deemed noncompliant because the teacher "must agree to accept the duty." *Id.*, pp. 129–30. The parties cannot bargain any limitations or restrictions on the school's ability to assign the duty.

The Teachers Associations appealed to the Board. After a hearing, the Board adopted and affirmed the compliance officers' reports for each

collective bargaining agreement. The Board found the Teachers Associations and their respective schools "impermissibly bargained for a definition of, or limitation on, what constitutes an ancillary duty, in violation of Indiana Code section 20-29-6-4, which permits bargaining only for salary, wages, and salary and wage related fringe benefits." Appellants' App. Vol. II, p.12. The Teachers Associations then jointly petitioned for judicial review. Based on its "reading of the statute and supporting Indiana law," the trial court found the Board's interpretation of Indiana Code section 20-29-6-4 to be reasonable and denied the petition. *Id.*, p.20. The Teachers Associations appealed.

In a divided opinion, the Court of Appeals reversed and remanded. The panel concluded that the parties merely "agreed as to what constituted an ancillary duty and bargained regarding the compensation therefor," which "is not the same as bargaining." *Culver Cmty. Tchrs. Ass'n v. Ind. Educ. Emp. Rel. Bd.*, 153 N.E.3d 1130, 1141 (Ind. Ct. App. 2020) (emphasis omitted), *vacated*. The panel remanded to the Board with instructions to adopt the collective bargaining agreements. *Id.* at 1143. Dissenting, Judge Riley would have affirmed the trial court because under "the plain terms of the statute, what constitutes an ancillary duty cannot be a subject for collective bargaining." *Id.* (Riley, J., dissenting). The Board sought transfer, which we granted. 165 N.E.3d 75 (Ind. 2021).

Standard of Review

We may set aside an agency action only if, relevant here, it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Ind. Code § 4–21.5–5–14(d)(1). The party seeking judicial review has the burden of demonstrating the action's invalidity. I.C. § 4–21.5–5–14(a). We review an agency's conclusions of law de novo. *Nat. Res. Def. Council v. Poet Biorefining-N. Manchester, LLC*, 15 N.E.3d 555, 561 (Ind. 2014).

We also review questions of law, such as the interpretation of a statute, de novo. *Pierce v. State*, 29 N.E.3d 1258, 1265 (Ind. 2015). When construing a statute, our primary goal is to determine and effectuate the legislature's intent. *Cooper Indus., LLC v. City of South Bend*, 899 N.E.2d 1274, 1283 (Ind. 2009). To discern that intent, we first look to the statutory language and

give effect to its plain and ordinary meaning. *Jackson v. State*, 50 N.E.3d 767, 772 (Ind. 2016). Where the language is clear and unambiguous, "there is 'no room for judicial construction.'" *Id.* (quoting *St. Vincent Hosp. & Health Care Ctr., Inc v. Steele*, 766 N.E.2d 699, 704 (Ind. 2002)). We presume the legislature intended the statutory language to be applied "logically and consistently with the statute's underlying policy and goals, and we avoid construing a statute so as to create an absurd result." *Walczak v. Lab. Works–Ft. Wayne LLC,* 983 N.E.2d 1146, 1154 (Ind. 2013).

Discussion and Decision

The Teachers Associations argue "there is nothing in Indiana law that prevents the parties from describing the conditions for which the pay will be provided." Appellants' App. Vol. III, p.185. In support of their argument, they claim the holdings in *Indiana Education Employment Relations Board v. Nettle Creek Classroom Teachers Association* and *Jay Classroom Teachers Association v. Jay School Corporation* make "clear that [the] parties have the ability to agree on what constitutes an ancillary duty and specifically define the job for which the person is to be paid." *Id.* (citing 26 N.E.3d 47 (Ind. Ct. App. 2015); 45 N.E.3d 1217 (Ind. Ct. App. 2015), *aff'd in part, rev'd in part*, 55 N.E.3d 813 (Ind. 2016)).

We first conclude that the relevant statutes prohibit the parties from bargaining over what constitutes ancillary duties. Next, we review the holdings of *Nettle Creek* and *Jay Classroom* and conclude they allow bargaining over wages for ancillary duties, but not over the duties themselves. Because we conclude these statutes and holdings do not authorize the bargaining at issue, we affirm.

I. The General Assembly imposed strict limitations on bargainable subjects and vested schools with the authority to direct teachers' work assignments.

Our Constitution guarantees the citizens of Indiana a tuition-free, "general and uniform system of Common Schools . . . equally open to all."

Ind. Const. art. 8, § 1. Because public schools ensure these constitutional rights, the citizens of Indiana have a fundamental interest in the "development of harmonious and cooperative relationships between school corporations and their certified employees." *Jay Classroom*, 55 N.E.3d at 816–17; I.C. § 20-29-1-1(1). This fundamental interest imposes upon the State the "basic obligation to protect the public by attempting to prevent any material interference with the normal public school educational process." I.C. § 20-29-1-1(3). Recognizing that obligation, the General Assembly has enacted statutes to govern the collective bargaining process between schools and teachers, with the objective of "alleviat[ing] various forms of strife and unrest." I.C. § 20-29-1-1(2).

Prior to 2011, the law **required** teachers and their employers to bargain salary, wages, related fringe benefits, and hours, but **permitted** them to "bargain collectively, negotiate, or enter into a written contract" concerning a host of other topics, including work assignments, student discipline, and expulsion and supervision of students. I.C. §§ 20-29-6-4, 20-29-6-7(b) (2005). In 2011, the General Assembly overhauled these statutes and "eliminated permissive bargaining subjects altogether, while also limiting mandatory bargaining subjects to just wages, salaries, and related fringe benefits." *Jay Classroom*, 55 N.E.3d at 817 (citations omitted). Put another way, schools and teachers must bargain wages, salary, and benefits, but they may not bargain anything else. I.C. § 20-29-6-4(a) (school employers shall bargain collectively on salaries, wages, and related fringe benefits); I.C. § 20-29-6-4.5(a)(5) (a school employer may not bargain collectively on "[a]ny subject not expressly listed" in I.C. § 20-29-6-4).

Also in 2011, the General Assembly vested school employers with the authority to manage and direct the work of teachers, and to maintain the efficiency of school operations. I.C. § 20-29-4-3(1), (5). A collective bargaining agreement may not include provisions that conflict with these rights of school employers. I.C. § 20-29-6-2(a)(3). And in 2015, the General Assembly empowered the Board to review ratified collective bargaining agreements for compliance with these collective bargaining statutes. I.C. § 20-29-6-6.1. This expansion of oversight was meant to ensure that all ratified collective bargaining agreements comply with Indiana law.

II. Indiana precedent allows schools and teachers to bargain over wages for ancillary duties, but not over the duties themselves.

The parties and lower courts have all disagreed over what *Nettle Creek* and *Jay Classroom* mean for this case. Before turning to the holdings themselves, we briefly review the various interpretations and arguments made about these two cases. The Teachers Associations and the Court of Appeals agreed that *Jay Classroom* and *Nettle Creek* authorized the parties' bargaining here. *Culver,* 153 N.E.3d at 1141. The Board argued reliance on *Nettle Creek* and *Jay Classroom* was misplaced because the specific issues and holdings in those cases are irrelevant here. The trial court concluded that neither case allows the Teachers Associations to "bargain for what the ancillary duty is because Indiana law provides that only schools have the authority to direct the work of teachers and maintain efficient school operations." Appellants' App. Vol. II, p.20 (internal citations omitted). Judge Riley argued the panel relied on dicta from *Nettle Creek* and *Jay Classroom*, "neither of which addressed the issue at hand." *Culver*, 153 N.E.3d at 1143 (Riley, J., dissenting).

In *Nettle Creek*, the teachers organization had requested additional compensation for required hours worked outside the normal workday. The Board struck a proffered provision that the school "shall have the right to require a total of fifteen [] hours [of] after school activities per semester for each full-time teacher, without additional compensation," but for each hour in excess of the fifteen, the compensation would be thirty-four dollars per hour. 26 N.E.3d at 50. The Board concluded this provision was an "improper attempt" by the teachers organization "to bargain for an overtime compensation system that is inconsistent with both Federal and Indiana law." *Id.* at 49. The Court of Appeals concluded that "while teachers are not entitled to earn overtime for the completion of direct teaching functions," the relevant legal authority does not exclude the bargaining for and potential receipt of additional wages for the completion of required ancillary or voluntary co-curricular duties." *Id.*

Relevant here, the *Nettle Creek* panel recognized that schools "may require [their] teachers to undertake, or a teacher may agree to undertake,

certain duties beyond a teacher's 'normal' teaching duties." *Id.* at 56. Specifically, a school may require its teachers to perform certain ancillary duties, such as professional development and training, supervising detentions on the weekend, or substituting for another class. *Id.* In addition, teachers may agree to take on certain co-curricular responsibilities, such as coaching athletic teams or sponsoring an academic or extracurricular club. *Id.* Teachers may indisputably negotiate for additional wages for responsibilities associated with these co-curricular duties, and the panel found that teachers may also negotiate for additional wages for ancillary duties. *Id.* In sum, *Nettle Creek* addressed the question of whether ancillary duties entitle teachers to additional compensation, rather than whether Indiana Code section 20-29-6-4 provides teachers the ability to bargain with a school corporation as to what constitutes an ancillary duty.

In *Jay Classroom*, the Board struck a provision that authorized additional compensation for teachers who volunteered or were assigned to cover a vacancy in another classroom. 45 N.E.3d at 1221. The Court of Appeals found it to be still an "open question" after *Nettle Creek* "whether ancillary duties can occur during the normal, contracted teachers' workday, or whether anything that occurs during the normal, contracted workday is, by definition, considered part of normal teaching duties." *Id.* at 1225. The Court of Appeals ultimately concluded that "compensable 'ancillary duties' can occur during the normal teachers' workday." *Id.* This Court granted transfer and agreed with the Court of Appeals on this issue. *Jay Classroom*, 55 N.E.3d at 815, n.1. Again, the question decided by this case was not whether Indiana Code section 20-29-6-4 provides teachers the ability to bargain with a school corporation as to what constitutes an ancillary duty, but rather whether compensable ancillary duties can occur during the normal, contracted workday.

III. Neither the relevant statutes nor precedent allow the type of bargaining at issue here.

The provisions at issue violate the plain language of the collective bargaining statutes. The General Assembly's intent and statutory language is clear: teachers and schools may bargain on wages, salary, and benefits, but nothing else. I.C. §§ 20-29-6-4(a), 20-29-6-4.5(a)(5). Schools alone have the authority to manage and direct the work of teachers, as evinced by the General Assembly abolishing permissive bargaining topics altogether, including work assignments, and by the plain language of Indiana Code section 20-29-4-3(1). Moreover, a collective bargaining agreement may not include provisions that conflict with this right of school employers. I.C. § 20-29-6-2(a)(3). The holdings in *Nettle Creek* and *Jay Classroom* do not change the result. These cases allowed teachers to be paid for ancillary duties, whenever they occur, but neither case authorizes bargaining over the duties themselves. Teachers and schools may not bargain over work assignments, including ancillary duties, because this is an impermissible bargaining subject and interferes with schools' exclusive rights to assign and direct teachers' work.

For the Decatur contract, this means "12 students or less" is an impermissibly bargained condition that interferes with the schools' ability to assign a teacher to supervise detention. If an unusually high number of students were sentenced to detention on a Friday night (say, 13? 16? 20?), the school principal can still assign a teacher to supervise under the contract as revised by the Board, consistent with the Legislature's directive to explicitly reinforce administrators' authority. This is not to say, henceforth, that a school corporation is without discretion to create different categories of ancillary duties and then bargain over the wages to be paid. For instance, Decatur management could create different categories of ancillary duties, describing one as "Detention 1 – supervising Friday Night Detention of 12 students or less," and "Detention 2 – supervising Friday Night Detention of 13 students or more," and the two

sides could then bargain over wages to be paid for the respective assignments.[2]

This nuance seems admittedly trivial when such a subtle variance would pass muster. Counsel for the Board conceded at oral argument that it would approve this language describing the ancillary duty so long as the contract contains a disclaimer that said description was "not collectively bargained." But given the actual contract language before us, we cannot fault the Board for supervising enforcement of the legislature's will with exacting precision.

For Culver's agreement, the definition of ancillary duties is an impermissible bargaining subject. Schools alone can define what ancillary duties it may require of teachers, who may then bargain for additional wages. As discussed above, the definition of ancillary duties may be included along with the proper disclaimer. If the needs of the school change throughout the year, the school has the flexibility to change the definition of what activities constitute an ancillary duty. As for Smith-Green and West Clark's agreements, both have the similar issue of requiring a teacher's acceptance of an ancillary duty before it may be assigned. The General Assembly has vested the authority to assign and direct work to schools alone. Schools are allowed to direct and assign work to teachers without impediment or constraint, and as *Nettle Creek* and *Jay Classroom* make clear, teachers are allowed to negotiate for additional wages for ancillary duties.

[2] Or the school could define the assignment simply as "Friday Night Detention." Period. With no reference to the number of students to be supervised. Or the school could describe Detention 2 as having two teachers assigned to supervise 13 or more students, as long as the proper disclaimer was added. In fact, Decatur has already engaged in a similar exercise for the extracurricular pay scale. The pay for junior high football coaches is accompanied by the "informational" disclaimer that there will be two coaches "up to 44 participants; one additional if more than 44 participants." Appellants' App. Vol. III, pp. 53–55.

Conclusion

All four provisions impermissibly bargained over what constitutes an ancillary duty and improperly curtailed the authority of schools to direct their teachers. Going forward, teachers organizations and schools may bargain over wages for ancillary duties, and **describe the conditions with proper disclaimers**. But they may not engage in the type of bargaining at issue here. Because the provisions were properly struck by the Board, the trial court correctly denied judicial review. We affirm.

Rush, C.J., and David, Slaughter, and Goff, JJ., concur.

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