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SPRINGFIELD

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LABOR:
Civil Service Commission's
Power to Discharge and
Suspend Employees

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Civil Service Commission
State of Illinois
425 1/2 South Fourth Street
Springfield, Illinois 62701

Dear Ms. Lousin:

I have your predecessor's letter concerning certain collective bargaining agreements between State agencies and employee organizations. The letter describes these agreements as follows:

" * * *

Recently collective bargaining agreements have been signed between various departments of State government and employee organizations

which were designated to represent certain groups of employees within those departments. In the bargaining agreements provisions are included for a procedure wherein a certified employee may process an appeal of a discharge or suspension through the steps of the grievance procedure as established in the collective bargaining agreement. * * * The final step in that procedure is the recourse to an arbitrator or hearing officer selected from a list submitted by both parties to the agreement. The arbitrator's decision then becomes the final decision in the dispute.

* * *

Your predecessor asked whether the provisions regarding the appeal of discharges and suspensions in these collective bargaining agreements were valid.

One of the powers of the Civil Service Commission is to hear and determine written charges for discharge, demotion or suspension of employees who are under jurisdiction B of the Department of Personnel. Section 10 of the Personnel Code (Ill. Rev. Stat. 1975, ch. 127, par. 63b110) provides in pertinent part:

"The Civil Service Commission shall have duties and powers as follows:

* * *

(6) To hear and determine written charges filed seeking the discharge, demotion of employees and suspension totaling more than thirty days in any 12-month period, as provided in Section 11 hereof, and appeals from transfers from one geographical area in the State to another, and in connection therewith to administer oaths, subpoena

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witnesses, and compel the production of books and papers.

* * *

This statutory provision expresses the legislative determination that the sole method for reviewing discharges and suspensions of certified State employees is by appeal to the Civil Service Commission. No contract by any department of State government can diminish, alter, impair, or otherwise affect the statutory powers and duties conferred on the Civil Service Commission. Therefore, it is my opinion that the provisions regarding the appeal of discharges and suspensions in the collective bargaining agreements described in your predecessor's letter are invalid.

This conclusion is supported by the reasoning in two Supreme Court cases concerning the power of a school board to terminate the employment of teachers. School boards are empowered to terminate the employment of teachers by dismissal or by the nonrenewal of probationary teachers' contracts. (Ill. Rev. Stat. 1975, ch. 122, pars. 10-22.4 and 24-11 through 24-15.) In Illinois Education Association v. Board of Education (1975), 62 Ill. 2d 127, a collective bargaining agreement between a school board and a teachers' association provided an evaluation procedure that was to be

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followed before a teacher could be dismissed; the evaluation was to be conducted by persons who were not board members. The Supreme Court held that the school board was not required to follow the evaluation procedure because its statutory power to dismiss teachers could not be restricted by the terms of the collective bargaining agreement. The court ruled that its holding in Illinois Education Association was controlling in Board of Trustees v. Cook County College Teachers Union, Local 1600 (1976), 62 Ill. 2d 470. That case involved an evaluation procedure in a collective bargaining agreement between the board of trustees of a community college district and a teachers' union. The board failed to follow the evaluation procedure in dismissing and promoting certain teachers, and the union requested arbitration as provided for in the agreement. The court ruled that the arbitrator was without authority to grant employment contracts or promotions as a remedy for the board's failure to follow the evaluation procedure. The court held that because the board's statutory power to grant employment contracts and promotions was discretionary, it could not be delegated to the arbitrator.

The Personnel Code gives the Civil Service Commission the power to decide whether State employees should be discharged or suspended. Thus, like a school board's power

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to dismiss and promote teachers, the Commission's power to review discharges and suspensions is statutory. The collective bargaining agreements described in your predecessor's letter provide that the arbitrator has the power to decide whether or not an employee should be discharged or suspended. This provision is in direct conflict with the Commission's statutory power. For this reason, the provision is invalid just as the attempted transfer of the school board's statutory power to dismiss and promote was invalid in the Illinois Education Association case.

In section 10 of the Personnel Code the legislature clearly makes it the responsibility of the Civil Service Commission to review discharges and suspensions. This statutory responsibility may be limited only by legislation. It may not be limited by the terms of collective bargaining agreements between State agencies and State employees. Thus, any reinstatement of a certified State employee by an arbitrator with or without back pay is a nullity.

Very truly yours,

A T T O R N E Y G E N E R A L