



18-Month Cash Settlement Formula Sets Maximum Payout for Termination of Superintendent's Employment Contract

The California Court of Appeals ruled that a portion of a settlement resulting from the early termination of a superintendent exceeded the 18-month maximum "cash settlement" formula set forth in the Government Code. (Page v. MiraCosta Community College, ___ Cal.Rptr.3d ___ [2009 WL 4021535]; Gov. Code §§ 53260, 53261.)

The board of trustees of a community college district met in closed session with the superintendent and her attorney to discuss resolution of claims that the superintendent believed she had against the district. The parties negotiated a settlement, under which the superintendent agreed to step down from her position, and the district agreed to pay the superintendent the following: (i) her salary for 18 months; (ii) health benefits for 18 months; (iii) contributions to the state retirement system for 18 months; (iv) \$43,500 in personal attorney's fees; and, (v) \$650,000 for damages. A local taxpayer filed a lawsuit challenging the legality of the payout and alleging violations of the Ralph M. Brown Act open meeting law.

Under Government Code section 53260, if an employment contract with a local agency employer is terminated, the employee may receive: (1) his or her monthly salary multiplied by the number of months left on the unexpired term of the contract (if less than 18 months); or, (2) if the unexpired term of the contract is greater than 18 months, the maximum cash settlement may be no more than an amount equal to the monthly salary of the employee multiplied by 18. This formula is the maximum ceiling on the amounts that may be paid by a local agency employer. The settlement must not include any other items except health benefits, which may be continued for the same duration of time as covered in the settlement.

Here, the court concluded that the purpose of the law was to set strict limits on settlements arising from termination of a superintendent's contract. The court stated, "it is of no consequence that an employee under contract asserts legal claims against the local agency employer prior to contract termination." Interpreting the applicable statutes, the court ruled that where an employment contract is terminated, any cash settlement is capped at 18 months of salary. Because the law prohibits other items, such as money damages or attorney's fees, from being included in the settlement, the court ruled that the terms of the settlement agreement violated the law.

The court noted that nothing prevents the employer from separately settling unrelated claims, as long as the settlement is contained in a separate agreement accompanied by claims filed under the Government Tort Claims Act. However, in this case, the superintendent had not formally asserted any tort claims.

With regard to the Brown Act's open meeting requirement, the court reviewed the "pending litigation" exception and the prohibition on "serial meetings." Under Government Code section 54952.2, a board is permitted to meet in closed session to receive legal advice from its attorney regarding pending litigation. In addition, the law prohibits a board from using "personal intermediaries" to exchange facts in order to reach a collective concurrence outside the public forum. For example, the Brown Act would be violated

if the board participated in serial meetings by which a majority of the board develops a collective concurrence as to action to be taken.

Here, the taxpayer alleged that the board convened a closed session which included the board's attorney, the superintendent, and the superintendent's attorney. In addition, throughout the closed session, individual trustees repeatedly left the boardroom to meet with a retired judge, who spoke to the trustees about the resolution and settlement of the superintendent's claims against the district. The court viewed the board's negotiations in closed session with the superintendent and her attorney to be outside the scope of the pending litigation exception. Moreover, the court stated that it could be concluded from the taxpayer's allegations that the board used the judge as a personal "go between" to conduct information gathering in furtherance of collectively reaching terms and conditions for the resolution and settlement of the superintendent's claims in closed session.

The 18-month cash settlement formula contained in the Government Code and the Brown Act's open meeting requirements apply to public agencies, including school districts and county offices of education. If you have questions regarding this case, please contact one of our four offices.

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