

Order

Michigan Supreme Court
Lansing, Michigan

January 31, 2024

Elizabeth T. Clement,
Chief Justice

166145

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Megan K. Cavanagh
Elizabeth M. Welch
Kyra H. Bolden,
Justices

KALAMAZOO PUBLIC SCHOOLS,
Charging Party-Appellee,

v

SC: 166145
COA: 363573
MERC: 21-G-1465-CU

KALAMAZOO EDUCATION ASSOCIATION,
MEA/NEA,
Respondent-Appellant.

/

On order of the Court, the application for leave to appeal the August 10, 2023 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

WELCH, J. (*dissenting*).

In a split decision, the Court of Appeals held that a person who holds a teaching certificate but is hired to work as a guidance counselor is still considered a “teacher” for purposes of placement under MCL 423.215(3)(j) of the public employment relations act (PERA), MCL 423.201 *et seq.* However, because I agree with Judge YATES’ dissent that a guidance counselor is not a “teacher” under MCL 423.215(3)(j), I respectfully dissent from the Court’s order denying leave to appeal.

In 2014, appellee Kalamazoo Public Schools (the District) hired Tiffany Spencer as a guidance counselor. In addition to her counseling credentials, Spencer also holds a state teaching certificate with endorsements in language arts and social studies for grades 6 through 12. In April 2021, the District unilaterally and involuntarily transferred Spencer from her counselor position into a vacant social studies classroom-teacher position. Appellant Kalamazoo Education Association (the KEA) filed a grievance on Spencer’s behalf contesting the transfer decision. The District denied the grievance. In response, the KEA submitted a demand for arbitration under the relevant collective-bargaining agreement. The District subsequently initiated this case in the Michigan Employment Relations Commission (MERC), alleging an unfair labor practice on the basis that the issue of “teacher placement” is a prohibited subject of bargaining under MCL 423.215(3)(j) of PERA.

The KEA argued that under the collective-bargaining agreement, Spencer is a guidance counselor, not a teacher, because she does not teach students in the classroom, and therefore, the statute does not prohibit arbitration. Both parties filed motions for summary disposition, and the administrative law judge (ALJ) ruled in favor of the District

on the ground that Spencer is a “teacher” because, under MCL 38.71(1) of the teacher tenure act (TTA), MCL 38.71 *et seq.*, “[t]he term ‘teacher’ . . . means a certificated individual employed for a full school year by any board of education or controlling board.” The KEA filed exceptions to the ALJ’s ruling with MERC. MERC declined to use the TTA definition and instead relied upon dictionary definitions of “teacher,” thus reversing and dismissing the unfair-labor-practice charge.¹

The District appealed, and in an unpublished split decision, the Court of Appeals majority, Judges RIORDAN and MARKEY, reversed MERC’s order and remanded for further proceedings. See *Kalamazoo Pub Schs v Kalamazoo Ed Ass’n MEA/NEA*, unpublished per curiam opinion of the Court of Appeals, issued August 10, 2023 (Docket No. 363573). Judge YATES dissented. Reading MCL 423.215(3) of PERA and the TTA *in pari materia*, the majority applied the TTA’s definition of “teacher” and held that “the protections of the TTA extend to a ‘teacher’ under that act, regardless of whether that teacher is “employed in a capacity other than as a classroom teacher.’ ” *Id.* at 7, citing MCL 38.91(7) of the TTA. The majority held that Spencer is a “teacher” under MCL 423.215(3)(j) and that, therefore, the matter of her classroom placement is a prohibited subject of bargaining under MCL 423.215(3)(j). *Id.* at 8.

In his dissent, Judge YATES concluded that a guidance counselor is not a “teacher” for purposes of MCL 423.215(3)(j) of PERA. *Kalamazoo Pub Sch* (YATES, J., dissenting), unpub op at 1. He disagreed with the majority’s adoption of the TTA definition of “teacher” to interpret MCL 423.215(3)(j). Instead, because MCL 423.215(3)(j) does not

¹ See *Kalamazoo Ed Ass’n, MEA/NEA v Kalamazoo Pub Schs*, MERC Decision & Order (Case No. 21-G-1465-CU), issued Oct 11, 2022, p 8:

The word “teacher” has been variously defined as “a person who teaches, especially in a school” (*Oxford Languages*); “one that teaches, especially one whose occupation is to instruct” (*Merriam-Webster*); “a person who teaches or instructs, especially as a profession” (*Dictionary.com*); “someone whose job is to teach in a school or college” (*Cambridge Dictionary*); “a person who teaches, usually as a job at a school or similar institution” (*Collins English Dictionary*). An individual employed as a Guidance Counselor meets none of these definitions of a “teacher.”

define “teacher,” Judge YATES believed that the Legislature intended to use the TTA definition only in the sections of MCL 423.215(3) that explicitly refer to it. *Id.* at 3-4. Unlike the majority’s interpretation reading the statutes together *in pari materia*, Judge YATES reasoned that the lack of references to the TTA in MCL 423.215(3)(j) strongly suggests that the Legislature did not intend that the TTA would apply to that provision. *Id.*, quoting *People v Peltola*, 489 Mich 174, 185 (2011) (“‘Generally, when language is included in one section of a statute but omitted from another section, it is presumed that the drafters acted intentionally and purposely in their inclusion or exclusion.’”).

Judge YATES believed that MERC properly relied on dictionary definitions of the word “teacher” and, accordingly, correctly concluded that “[a]n individual employed as a Guidance Counselor meets none of these definitions of a “teacher.”” *Id.* at 3. Furthermore, Judge YATES agreed with MERC that a definition of “teacher” that includes guidance counselors would not advance the purpose of MCL 423.215(3)(j). *Id.*²

Because I agree with Judge YATES that a guidance counselor is not a “teacher” for purposes of PERA and, therefore, that Tiffany Spencer is not a “teacher” subject to the prohibition under MCL 423.215(3)(j), I respectfully dissent from this Court’s decision to deny the KEA’s application for leave to appeal.

² While not relevant to this case, the Legislature has since amended PERA to eliminate MCL 423.215(3)(j). See 2023 PA 115, effective February 13, 2024. This amendment makes clear that “teacher placement” is subject to the collective-bargaining process.



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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 31, 2024

Clerk