

School Districts Can Require Criminal Background Checks For Individuals Working On School Property Even If They Do Not Have Any Contact With Children

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United Union of Roofers, Waterproofers and Allied Workers, Local Union No. 37 v. North Allegheny School District, et al., 49 C.D. 2018, 2019 WL 5556265 (Pa. Cmwlth. Oct. 29, 2019). Commonwealth Court confirms that school districts can require criminal background checks and/or bar employees from working in certain jobs based on the results of those background checks.

Factual Background:

In the summer of 2015, Pennsylvania Roofing Company successfully bid on a roofing project for the Fox Chapel Area School District. The project manual required each Pennsylvania Roofing employee to obtain criminal background checks as mandated by Section 111 of the School Code and Section 6344 of the Child Protective Services Law (“CPSL”). Eight Union members were denied clearance to work as a result of the background checks.

At about the same time, North Allegheny School District retained Massaro Construction Management Services to serve as construction manager for a roofing project at three project sites. Similarly, the general conditions agreed to by Massaro and North Allegheny required all workers to obtain criminal background checks in accordance with Section 111 of the School Code and Section 6344 of the CPSL. Six Union members were denied clearance to work on the North Allegheny roofing projects as a result of the background checks.

The Union subsequently filed a complaint against the School Districts seeking a declaration that: (1) the Union’s members were exempt from the requirements of Section 111 of the School Code and Section 6344 of the CPSL; (2) the Criminal History Record Information Act (“CHRIA”) prohibits the School Districts from refusing to employ Union members based on criminal background checks; and (3) the School Districts’ exclusion of Union members was a violation of due process.

The trial court agreed with the Union’s first argument and entered an order that allowed the previously disqualified Union members access to the School Districts’ work sites and prohibited the School Districts from conducting background checks on Union members unless the position applied for involved direct contact with children.

Discussion

Section 111 of the School Code, entitled criminal history of employees and prospective employees; conviction of certain offenses, provides, in relevant part:

(a.1) Beginning April 1, 2007, this section shall apply to all . . . independent contractors and their employees, except those employees and independent contractors and their employees *who have no direct contact with children*.

. . . .

(b) Administrators of public and private schools, intermediate units and area vocational-technical schools **shall require prospective** employees to submit with their employment application, pursuant to [CHRIA] (relating to criminal history record information), a report of criminal history record information from the Pennsylvania State Police or a statement from the Pennsylvania State Police that the [Pennsylvania] State Police central repository contains no such information relating

to that person. . . .

24 P.S. § 1-111 (emphasis added). Section 111 of the School Code thereafter delineates certain crimes and the corresponding employment ban for the individuals identified in Section 111(a.1) of the School Code.

The Union asserted that because Section 111(a.1) of the School Code contains an exception from the criminal background check requirement for employees who have no direct contact with children, and the School Districts did not present evidence that the Union employees would have direct contact with children, the School Districts violated Section 111 by requiring criminal background checks and barring Union employees from working as a result thereof.

The School Districts, on the other hand, argued that while Section 111 of the School Code requires school districts to perform background checks for those individuals who have direct contact with children, it does not prohibit school districts from conducting background checks for individuals working on school property who do not have any contact with children.

The Commonwealth Court agreed with the School Districts. After reviewing the text of Section 111(a.1) of the School Code, the Court concluded that, as a matter of statutory construction, the statute does not prohibit school districts from requiring criminal background checks and/or barring employees from working in certain jobs based thereon.

The Court therefore reversed the trial court's order and remanded the matter to address the Union's CHRIA and constitutional arguments.

Practical Advice

Though the CHRIA and constitutional claims remain, the *United Union* confirms that the School Code does not prohibit school districts from insisting that all workers working on school property submit background checks and barring workers that fail such checks. Accordingly, while this case should be monitored by District's and their solicitors, the conditions contained in Fox Chapel's project manual and North Allegheny's general conditions are valid and similar conditions, until further notice, may be utilized by all school districts on their projects.

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