

The Report Card Newsletter

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The Mechanics of Reductions-in-Force Under SB 7

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This issue of the *Report Card* is the third in a series covering the various changes in the education reform package proposed in SB 7, which became law in Illinois on June 13, 2011. P.A. 97-0008 (Act). This article focuses on the new reduction-in-force (RIF) procedures applicable to Illinois school districts, excluding Chicago Public Schools, beginning in the 2011-2012 school year.

Under the Act, 45 days' prior written notice of a RIF must be given to impacted teachers. The notice must include a statement of honorable dismissal and the reason for the dismissal. Previously, 60-days' written notice was required. Before implementing a RIF, a school board must also categorize each teacher into the position(s) for which he or she is certified and qualified. Specific qualifications included in a job description in effect as of May 10 prior to the school year in which the sequence of dismissal for a RIF will be determined may be taken into consideration when developing the honorable dismissal list.

The new Act creates four groups in which teachers must be categorized for purposes of a RIF:

- **Group 1** includes nontenured teachers who have not received a performance-evaluation rating.
- **Group 2** includes teachers who have received a "needs improvement" or "unsatisfactory" performance evaluation rating on any one of their last two performance-evaluation ratings.
- **Group 3** includes teachers receiving at least a "satisfactory" or "proficient" rating on both of their last two performance evaluations, and teachers receiving at least a "satisfactory" or "proficient" on their last performance-evaluation rating, if only one rating is available. This group excludes teachers who qualify for Group 4.
- **Group 4** includes teachers receiving "excellent" ratings on their last two performance evaluations ratings or two of the teacher's last three must be "excellent," with the other evaluation being at least "satisfactory" or "proficient."

Traditionally, teachers were dismissed in inverse order of seniority. Under this new framework, teacher dismissals are to occur in sequential order beginning with Group 1 and ending with Group 4. This framework puts a greater emphasis on teacher qualifications, certifications and performance-evaluation ratings as determinative factors in making dismissal decisions.

While the Act minimizes the role of seniority in making employment decisions, seniority remains relevant to some dismissal decisions. School boards have complete discretion to determine the sequence of dismissal for teachers in Group 1. Seniority may be implicated if a RIF affects teachers in Groups 2, 3 or 4. The sequence of dismissal for teachers in Group 2 is determined initially based upon the average performance-evaluation ratings of teachers in the group, using the last two performance-evaluation ratings, when available, to calculate the average. When the average performance-evaluation ratings of teachers in Category 2 is the same, seniority will be used as the tie-breaker. Seniority also governs the sequence of dismissal for teachers in Groups 3 and 4. School boards and teachers have the authority to contract around these seniority provisions.

The diminished role of seniority reflects a new focus on performance evaluations, which now include a teacher's grouping and ranking on a sequence of honorable dismissal list. The Act puts greater pressure on school administrators to show fidelity to the evaluation process. If a school board fails to complete a required performance evaluation in any given year, the teacher's performance-evaluation rating for that school year is deemed proficient for purposes of determining a sequence of dismissal.

Given the greater emphasis on performance evaluations, it can be expected that grievance filings relating to them will increase. That being said, a pending grievance or arbitration will not prevent a school board from using a performance-evaluation rating to determine the sequence of dismissal. However, if a performance evaluation-rating is nullified as the result of an arbitration determination, it may not be used in determining the sequence of dismissal.

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Regardless of whether a RIF occurs during a given school year, the school board, in consultation with the teachers' union, annually must establish a sequence of honorable dismissal list categorizing teachers by positions and the four groupings described above. This list must be given to the union 75 days or more before the end of the school term. School boards retain the right to modify the list up to 45 days prior to the end of the school term, which corresponds to the deadline for giving impacted teachers written notice of an honorable dismissal.

After a RIF occurs, school districts are only required to recall teachers who fall into Groups 3 and 4—in reverse order of the RIF, unless the governing contract states otherwise—and into positions for which they are listed as qualified. Teachers dismissed from these high-performing groups are granted recall rights for one calendar year from the start of the next school term following their dismissal. Recall rights are extended to two calendar years from the next school term following dismissal, if the number of honorable dismissals based on economic necessity exceeds 15 percent of the number of full-time equivalent positions filled by certified employees, excluding administrators, during the preceding year.

There is a public-accountability trigger featured in the new law. Whenever the number of honorable dismissals based on economic necessity exceeds 5, or 150 percent of the average number of teachers honorably dismissed in the preceding three years, whichever is greater, a school board must hold a public hearing on the question of dismissals. The numerical trigger is written to reduce the number of public hearings triggered by successive years of RIFs at a school district. For example if in 2012, 2013 and 2014, a school board dismissed 5, 10 and 15 teachers, respectively, as part of a reduction in force, at least 16 teachers would have to be terminated in 2015 in order to trigger a hearing on the issue $((5 + 10 + 15) / 3 \times 1.5)$. After board review and a hearing, the dismissals may be approved by a majority vote of the board members.

By December 1, 2011, the Act also mandates the creation of a joint committee with decision-making authority that may influence RIF procedures. The joint committee must be equally composed of representatives selected by school boards and representatives selected by teachers or their exclusive bargaining representatives. There is no statutory cap on the number of committee members. The committee has five defined powers:

- The joint committee must consider and may agree to criteria for placing into Group 3, teachers who otherwise would not have qualified for inclusion in the group because they received a "needs improvement" and either a "proficient" or "excellent" in their last two performance evaluations.

- The joint committee can consider and agree to an alternative definition for Group 4. This alternative definition must take into account prior performance-evaluation ratings and may not permit the inclusion of a teacher in the grouping with a "needs improvement" or "unsatisfactory" performance evaluation on either of the teacher's last two performance-evaluation ratings.
- The joint committee may agree to a performance-evaluation rating definition for its school district that includes teacher performance-evaluation ratings issued by other school districts.
- If a school district uses a performance-evaluation tool that is inconsistent with Section 24A-5(d) of the Illinois School Code, the joint committee must consult with the school district to create a basis for converting a teacher's performance-evaluation ratings into a rating that complies with Section 24A-5(d).
- Any joint-committee member has the authority to request the performance-evaluation ratings of each teacher identified on a sequence of honorable dismissal list within 10 days after the list is released. The school board then has five days to respond to the request, identifying teachers on the list by their length of service, rather than name. Based on this information, a committee member who has a good faith belief that a disproportionate number of senior teachers have received a recent performance-evaluation rating lower than the prior rating, may request that the joint committee review the list to uncover any such trend. After this review, any part or whole of the committee can submit a report of its findings by the end of the applicable school term. This power of review does not pose any significant limitation on district discretion when implementing a RIF because the statute specifies that it does not impact the order of honorable dismissal or a school district's authority to carry out a RIF.

All matters requiring agreement must be supported by a majority vote of all committee members. All agreements must be reached on or before February 1 of a school year in order for the agreement to apply to the sequence of dismissal determined during that school year. Once an agreement is reached, it is effective until the agreement is amended or terminated by the joint committee.

Any provisions regarding RIFs in a collective bargaining agreement in effect prior to January 1, 2011, and expiring before June 30, 2013, are unaffected by the Act. All collective bargaining agreements, however, must comply with these provisions by July 1, 2013.

For further information, please contact **Scott E. Nemanich**, **Alex Breland** or your regular Hinshaw attorney.

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