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Illinois Education Reforms to Significantly Impact Collective Bargaining Between Teachers and Schools

On June 13, 2011, Illinois Governor Pat Quinn signed into law SB 7 (Public Act 097-0008) (the "Act"), the most sweeping education reform package that Illinois has seen in many years. The Act amends a section of the Illinois Pension Code, numerous sections of the state School Code, and two sections of the Illinois Education Labor Relations Act (IELRA). This issue of the Report Card is the second in a series covering the various changes to the law that have been affected by the Act. Future articles will focus on the further implementation of the changes mandated by the Act.

The implementation dates for the amendments vary drastically, and many relate to the Performance Evaluation Reform Act (PERA)-implementation date, which is the date by which teacher evaluations must include a consideration of student growth as a significant factor in the rating of the teacher's performance. The PERA-implementation dates are as follows:

1. For Chicago Public Schools (CPS), the PERA must be implemented in at least 300 schools by September 1, 2012, and in the remaining schools by September 1, 2013.
2. For school districts with fewer than 500,000 inhabitants and receiving a Race to the Top Grant or School Improvement Grant, the implementation date is that date specified in the grants for implementing the evaluation system for teachers and principals that incorporate student growth as a significant factor.
3. For the lowest performing 20 percent of the remaining school districts with fewer than 500,000 inhabitants, the PERA must be implemented by September 1, 2015.
4. For all other school districts with fewer than 500,000 inhabitants, the PERA must be implemented by September 1, 2016.
5. EXCEPT THAT, the district and the exclusive bargaining representative may jointly agree in writing to an earlier PERA-implementation date, provided that the date must not be earlier than September 1, 2013, and that written agreement must be provided to the State Board of Education.

This article focuses mainly on the amendments to the IELRA Sections 12 (Impasse Procedures) and 13 (Strikes), because they became effective immediately upon the Act's enactment. In addition, there are various sections of the School Code that should be considered during negotiations, as certain issues addressed in the amendments to various sections of the School Code may arise in the context of bargaining.

The most sweeping aspect of the changes to the IELRA relates to the impasse procedures. The IELRA now includes a transparency clause that requires the disclosure of final offers on unresolved issues prior to strike requirements being met. Until the Act became law, the public was often kept in the dark about the process and the progress of bargaining between the parties. That will no longer be the case as evidenced by the following highlights of those transparencies:

1. After 15 days from the commencement of mediation, either side may declare the negotiations at an impasse. The mediator also may declare the process at an impasse.

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2. After an impasse is declared, the parties have seven days to get their final offers for their unresolved issues to each other and to the mediator. After receipt of the final offers the mediator will hold them for another seven days.
3. After the seven-day holding period, the final offers will then be sent to the Illinois Educational Labor Relations Board (IELRB) for posting on the IELRB website, allowing the public to view all parties' final offers on all unresolved issues.
4. After a 14-day posting period, the collective bargaining unit may strike, provided that it has met all of its other strike requirements.

In addition to the transparency clause, there are some other important changes to IELRA Section 12. They include the ability of the parties to petition the IELRB to initiate mediation at an earlier time than previously was the case; now mediation may be requested within 90 days of the start of the school year, rather than within 45 days of the start of the school year. This will provide some additional time to get mediation started and to resolve the matter earlier than under the previous law. In addition, even if the parties do not request mediation, the IELRB will invoke mediation earlier than before. Now mediation will be required if the parties have failed to reach an agreement within 45 days of the start of the next school year, rather than only 15 days before. This, too, will likely assist in getting contracts settled prior to a strike.

Finally, when there is a final impasse and notification has been posted on the IELRB website, the public will be advised of the impasse issues quickly. This is a result of an amendment to IELRA Section 12 by which the school district will be required to notify all news media that receive notices pursuant to the Open Meetings Act when the postings relating to all impasse issues are posted on the IELRB's website. This will serve to put the information regarding the issues before the public as soon as the information is posted.

As for IELRA Section 13, there are two changes of note, the most important of which is that educational employees, other than those in CPS, may not engage in a strike where mediation has been used without success and if an impasse has been declared, unless at least 14 days have elapsed after the final offer has been made public. During this 14-day period, the parties may feel enough public pressure to resolve the matter in a more timely fashion than under the previous law. In addition to requiring that the collective bargaining agreement has expired, the Act now adds "or been terminated" to a requirement for striking.

The School Code amendments raise additional issues that may come into play in the bargaining context or be controlled by the terms of a current collective bargaining agreement unless either terminated earlier or terminated at a date required by the Act.

1. Suspension or revocation of certificates. The State Superintendent for some time had the authority to initiate an action to suspend or revoke a certificate. The Act now allows the State Superintendent to seek required professional development as a sanction in lieu of or in addition to the suspension or revocation. The certificate holder will be required to pay for that training. Where collective bargaining comes into play is that the Act allows that a collective bargaining agreement entered into after June 13, 2011, may address the funds for that professional training, and may even include a provision precluding the use of funds for that purpose. Therefore, any agreements reached in current or future negotiations may include this subject.

2. New or vacant teaching positions. A new section of the School Code addresses new or vacant positions to be filled, other than those to be filled pursuant to a recall following a reduction-in-force (RIF). If there is a bargaining agreement that was in existence on June 13, 2011, the terms in the agreement (if any) for filling new and vacant positions remain in effect for the term of the agreement, unless the parties mutually agree to terminate those provisions.

3. Removal or dismissal of teachers in contractual continued service—creation of a joint committee. The Act requires that a joint committee composed of equal representation selected by the school board and either its teachers or the exclusive bargaining representative of its teachers, be used to address certain issues that relate to changes made to categorizing teachers into four specific groups that will be used to determine issues relating to tenure, dismissal and recall. The committee will also serve as a "watchdog" group in that it may request the board to provide a list showing the most recent and prior performance evaluation ratings of teachers, not by name, but only by length of continuing service in the district. After reviewing the list, if a joint committee member has a good faith belief that a disproportionate number of

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teachers with greater length of continuing service have received a recent performance evaluation rating lower than the prior rating, that member may request that the joint committee review the list to assess whether such a trend exists.

While it may be that in some cases some teachers slack off after receiving tenure, evaluation ratings given to some probationary teachers may also be higher than should have been given due to some evaluators feeling bad if they were to give a probationary teacher a ranking of “unsatisfactory” in the hope that they will improve over the years. Objective evaluation ratings should be given in accordance with the teacher’s actual performance—no more and no less.

4. Optional alternative evaluative dismissal process for PERA evaluations. As stated, this new provision in the School Code does not come into play until after the PERA-implementation date. However, because the implementation date may come into play during the existence of a collective bargaining agreement that is now being negotiated, and which may extend into the period of the PERA-implementation date, it should be noted that a school district may not, through agreement with a teacher or its teacher representatives, waive its right to dismiss a teacher under this new section.

For more information, please contact your regular Hinshaw attorney.

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