

EMPLOYEE RIGHTS UNDER PERA AND SB 7 WHERE ARE WE NOW?

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Introduction

- The Performance Evaluation Reform Act (PERA) became law in January 2010.
- In June 2011, Senate Bill 7 (SB 7) was signed into law.
- This presentation will focus on key aspects of PERA and SB 7 as they relate to employee evaluation, retention and teacher dismissal.

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Ensuring Your District has Established Procedures in Compliance with PERA and SB 7

- PERA – Evaluation Plans and Collective Bargaining Agreements
 - Performance ratings categories
 - Frequency and timing of evaluations
 - Professional development plans
 - Remediation plan procedures
- SB 7 – Collective Bargaining Agreements
 - Teacher vacancy appointment procedures
 - RIF layoff process
 - RIF recall provisions
 - Teacher qualifications for sequence of dismissal (SOD) list position categories
 - Seniority definition and “tie-breaker” provisions

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Duty to Bargain: PERA – Teacher Evaluation Plans

- General Rule: Procedural components of teacher evaluation plans are mandatory subjects of bargaining. However, substantive criteria, weight, and areas evaluated in teacher evaluation plans are not mandatory bargaining subjects.

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Duty to Bargain – SB 7/Reduction in Force (“RIF”)

- Duty to bargain issue: Under Illinois law, an employer's decision to RIF or lay off employees for financial reasons (i.e., cost savings) is a mandatory subject of bargaining.

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Strategies for Key Issues

- PERA
 - Tenured and non-tenured teachers must be rated “excellent,” “proficient,” “needs improvement,” or “unsatisfactory.”
 - Timing of evaluations
 - Non-tenured: evaluate at least once every school year
 - Tenured: at least once every two years. Teacher must be rated at least once in school year following “needs improvement” or “unsatisfactory” rating.
- SB 7
 - SB 7 RIF “grandfather” provisions no longer apply. All CBA provisions regarding RIF, seniority, and RIF recall must comply with SB 7 requirements.

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▣ **Joint RIF Committee:**

- The scope of Joint RIF Committee is limited by SB 7 to the following issues:
 - Criteria for excluding a teacher from Group 2 and placement into Group 3;
 - Alternative definition for Group 4;
 - Including a performance evaluation rating from another District;
 - For performance ratings determined prior to September 1, 2012, the basis for assigning performance ratings to be used in sequence of dismissal; and
 - Upon request from a committee member, review of the SOD List to determine whether there is a trend of more senior teachers receiving lower performance ratings.
- ▣ **Bargaining tip:**
 - Do not include Joint RIF Committee provisions in the CBA.

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▣ **RIF recall rights:**

- ▣ SB 7 limits RIF recall rights to tenured and non-tenured teachers in RIF Groups 3 and 4, and in limited circumstances teachers in RIF Group 2.

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□ SOD List - Teacher Qualifications:

- SB 7 provides that teachers must be placed in RIF Groups “categorized into one or more positions the teacher is qualified to hold.” The teacher’s qualifications for positions are based upon the teacher’s “legal qualifications or any other qualifications established in a District job description.”

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□ SOD List – Revised Definition for Group One Teachers:

- Group One teachers shall include those teachers who:
 - Are not in contractual continued service (tenure); and
 - Satisfies one of the following criteria:
 - Has not received a performance evaluation rating;
 - Is employed for one school year or less to replace a teacher on leave;
 - Is employed on a “part-time basis” as defined in *The School Code* (less than five days a normal school week or less than a full day).

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□ Seniority:

- SB 7 provides that “length of continuing service in District” is determining factor in deciding order of RIF layoff of teachers in RIF Groups 3 and 4, and to some extent, 2.

□ Contract Language Implications:

- Option: Define “length of continuing service” as beginning with continuous full-time probationary teaching service, count part-time teaching on a pro-rata basis, and exclude unpaid leaves of absence in excess of 90 days from calculation of service.

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- SB 7 requires that SOD list be based upon each teacher’s RIF Group placement in each category of position they are legally qualified to hold.

- SB 7 prohibits Districts from considering a teacher’s seniority as a factor in filling vacant positions unless all other factors are equal.

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□ Contract Language Implications:

■ Include seniority “tie-breaker” provision: Add a “seniority tie-breaker” clause to determine the order of layoff if two or more teachers in same RIF Group have same length of continued service.

■ Example: Total District service horizontal lane placement, total teaching service outside District.

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Implementing The PERA Evaluation Process

- By November 1 of the year preceding PERA Implementation:
- By applicable implementation date, District evaluation plan must consider student growth as a significant factor
- Notice of evaluation must be provided

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Professional Development Plans and Remediation

- Professional Development Plan (“PDP”)
 - Tenured teachers only
 - Rated “needs improvement” 30 school days after the completion of the NI evaluation.
- Practical considerations for PDP’s
 - Duration
 - Assessment of teacher’s performance
 - Consequences at the end of the PDP

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Professional Development Plans and Remediation

- Remediation Plans
- **Changes** to the Remediation Provisions Instituted by PERA
 - Duration
 - Evaluation during the remediation period
 - Dismissal upon a “unsatisfactory” or “needs improvement” rating

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Dismissal of Tenured Teachers

- The dismissal process
- Selection and compensation of the hearing officer
- Time frame for hearing
- Disclosures required by each party prior to hearing
- Hearing Officer's decision
- Alternative process under PERA
- Reservation of Rights

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Scenario One

- The District's current CBA expires in 2016. The CBA's provisions require that RIF and RIF recalls be conducted strictly according to tenure and seniority. The District's most senior tenured teacher is the local Union president who just received a "needs improvement" on her most recent performance evaluation. The local Union president is employed as a guidance counselor and has no certifications or endorsements entitling her to teach beyond her current position of employment. The District is eliminating one of its two counselor positions as a budget reduction measure. The other guidance counselor is a second year non-tenured teacher who received an "excellent" on her last evaluation. The Union president is insisting that the non-tenured teacher be dismissed before her according to the expiring CBA's RIF language. Who should the District dismiss?
 - Would it matter if the other counselor was a part-time, non-tenured teacher?
 - What if the other counselor was non-tenured and had also received a "needs improvement" on her last evaluation?

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Scenario Two

- The District must increase class sizes and eliminate several elementary positions as a budget reduction measure. Many of the elementary teachers targeted for dismissal have certifications and endorsements that would allow them to teach at the junior high school and high school levels. The District will have several upper level math and science positions available due to retirements, but the elementary teachers targeted for RIF have no experience teaching at those levels. The District has recently developed individualized job descriptions for its teaching positions, where none previously existed, that require prior teaching experience for upper level math and science positions. The Union has also just demanded to bargain over these newly developed descriptions.
 - May the Board include recent teaching or educational experience in the job description?
 - Must the Board bargain with the union over those newly developed job descriptions?

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Scenario Three

- The District's CBA also contains a provision requiring the District to post a seniority list by February 1st of each school year. Instead of posting a seniority list, the District posted its newly created Sequence of Dismissal list along with the names of all of the teachers on the list. The Union has filed a grievance claiming a violation of the CBA because the list does not contain the seniority dates of the teachers, and, additionally, because the District did not develop the SOD list in cooperation with the Union.
 - Must the District post a seniority list?
 - Should the SOD list be developed in cooperation of the union?

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Scenario Four

- Due to protracted labor negotiations and disagreements over the application of the District's new evaluation plan, the District's administrators struggled this year to complete all evaluations prior to the completion of the SOD list. As a consequence, the District provided the SOD list to the Union president on the 75th day prior to the end of the school year without having evaluated all of its teachers scheduled to be evaluated this year. Fortunately, the Administration was able to complete all of the evaluations prior to the 45-day deadline for conducting its RIF, thereby significantly altering the SOD list and impacting those who would be dismissed.
 - How would the list have changed?

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Scenario Five

- **Teacher Dismissals – Background Facts**
 - The Cherry Valley School District recently discovered that one of its tenured auto shop teachers utilized an “alternative” classroom management technique for maintaining discipline. Rather than redirecting misbehaving students or referring them for disciplinary action, the teacher, Mr. Amp, disciplined students by subjecting them to a non-lethal shock from a small engine. Apparently, the offending student would place his hands on the engine while Mr. Amp intentionally misconnected jumper cables to the engine—resulting in a shock to the student. The students were allowed to trade a detention for a shock from the engine. The practice continued until Mr. Amp imposed his engine shock therapy to a special education student. The student traded three detentions for three shocks. The next day, when faced with more detentions, the student asked for the engine shock instead. Mr. Amp refused and the student complained to the school counselor. From there, the situation unraveled and the teacher admitted to his unorthodox methods.

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Scenario Five- Continued

- Teacher Dismissals – Scenario
- Mr. Amp was scheduled for his performance evaluation this year and the District is now considering how to address the situation. Other than this issue, the District expected that his overall evaluation rating would be at least proficient given 20 plus years of previously good evaluations.

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Scenario Five- Continued

- Teacher Dismissals – Questions
- Should the District evaluate Mr. Amp and, if so, what effect should his conduct have on his overall evaluation?
- Could the District institute termination proceedings against Mr. Amp without an overall unsatisfactory performance rating?
- Is the District required to issue Mr. Amp a notice to remedy prior to initiating termination proceedings?
- What does the District need to do to start the termination process?
- Does the Board of Education have to act to initiate termination proceedings and, if so, what must it do?

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Scenario Five- Continued

- Teacher Dismissals – Questions (cont.)
- Is Mr. Amp automatically entitled to a hearing on his dismissal?
- Who conducts the hearing on Mr. Amp's dismissal?
- How is the hearing officer selected and who pays for the hearing officer?
- Are there hearing procedures that must be followed?
- Is the hearing officer's decision final and binding?
- What if the Board disagrees with the hearing officer's recommendation?
- Can Mr. Amp appeal the Board's decision to terminate his employment?

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QUESTIONS?

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