The Successes and Failures of the Chicago School District’s Processes of Firing Tenured Teachers

Tenure has been one of the most debated about issues in the realm of employment education employment since “1887, [when] nearly 10,000 teachers from across the country met in Chicago for the first-ever conference of the National Educator's Association, now one of the country’s most powerful teachers' unions.”¹ It has recently been brought back to the forefront in Chicago’s education system with a brash of teacher lay-offs related to budget issues.

The issue is discussed between, unions, school boards and teachers in every manner, from what tenure actually consists of to the actual ability to negotiate for tenure. Tenure directly relates to the process and justifications of laying teachers off. In Chicago, Illinois, the Board of Education and Chicago Teachers Union negotiated a collective bargaining agreement that allows tenured teachers, to be terminated in certain situations.²

The removal of tenured teachers policies, in the Chicago Public School District collective bargaining agreement is based on language that looks simple when discussing budget and classroom size issues and more complicated on firing tenured teachers for performance. However in practice the simple ideas of balancing a budget can be manipulated and abused much easier than the complicated process of firing a tenured teacher for cause. There should be more exact wording for the context of terminating tenured teachers due to budget issues, while the language used for terminating tenured teacher due to performance is precise enough to be effective.

The language in the collective bargaining agreement provides for termination of tenured teachers in the following circumstances: when the school is closed, there is a drop in enrollment, or “the

¹ Stephey, M.J., A Brief History in Tenure, TIME U.S., Nov. 17, 2008 at ¶5
² Agreement Between the Board of Education of the City of Chicago and the Chicago Teacher’s Union, Local No.1, American Federation of Teachers, AFL-CIO, July 1, 2007-June 20, 2012, App. H, Section 2(B)
educational focus of the [school] is changed. The first two criterions are straight forward and make common sense. First, if there is a school that is closed for a reason beyond the districts control, such as a budget crisis or some sort of other disaster there would physically be no jobs left. Even tenure cannot cure a problem like that. Situations “not under the districts control” are implied because closures that are under their control are classified under the final category. Again, in situations where the enrollment in a school drops, and teachers are not needed in order to meet the student-faculty ratio a district has decided on, a school district cannot be expected to create more students. In today’s financial climate, legitimate monetary waste in a public program should not be tolerated. The first two reasons that the district can terminate a teacher are very straightforward, and from a common sense perspective, should be evaluated as fair.

However, even though on the face this seems to be a fair power for the school administration to have, there are situations in which these budgets can be distorted in order to fire tenured teachers needlessly. The following occurrence has occurred in the Chicago School district recently.

In 2010, The Reader and journalist Ben Joravsky covered a story where a teacher was fired due to budget issues. Joravsky has been noted for talking about important issues in the Chicago public school system. The Chicago Teachers Union refused to give up a %4 raise that was due to them later that year. After the refusal, the school board unanimously decided to give the CEO at the time the power of “redefinition”. This gave the current CEO of Chicago Public Schools the power to raise class sizes, thus limiting the number of teachers needed to teach those students. He was then able to fire the teachers who were no longer needed, as noted in the collective bargaining agreement. This was done in a time of financial emergency so the CEO and school district claimed they could fire tenured teachers without giving them their full due process rights.

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3 Agreement Between the Board of Education of the City of Chicago and the Chicago Teacher’s Union, Local No.1, American Federation of Teachers, AFL-CIO, July 1, 2007-June 20, 2012, App. H, Section 1
According to the article, the process used to fire the teachers during “redefinition” was not based on teaching ability. In 2012, after this story, the Illinois School Code added basic provisions to guide personnel decisions in which ability is one of the few characteristics listed. However, these attributes that are to be considered when making the personnel decisions are guidelines and are not listed in order of importance.\(^4\) The teacher fired had recently received a national board certification, an award that the administration at the Chicago Public Schools looks very highly on.

There were other pieces of corruption in the story as well, because as the CEO was asking for the teachers to forego a raise, he was giving himself and his colleagues raises.\(^5\) There was no direct proof that the budget problem was caused by this, however it does show that the administrators hold on to a dangerous autonomy on budget decisions.

The most worrisome part about these stories is that the teachers and their unions had no idea a policy like redefinition existed. There was no mention of it in the collective bargaining agreement. Most of this power was based on the districts power to lay off tenured teachers due to problems with the budget. However, these budget problems are not well-defined. This should be a worry to tenured teachers with advanced degrees and qualifications that stand to make more money in salary and benefits than their counterparts. The collective bargaining agreement does state that in cases such a class size increase the firing will be decided by seniority or tenured teachers with the least amount of experience get fired first.\(^6\) If highly qualified teachers happen to be newer and more costly; and the Chicago School District has figured a way to turn a budget problem into a no-hassle way of firing them, the effect can be disastrous on the students. Sometimes as an administrator, the big picture is lost when trying to figure out something as cut and dry as a budget. A teacher with certain advanced

\(^4\) ILCS 5/34-18.31 (2012)
\(^6\) Agreement Between the Board of Education of the City of Chicago and the Chicago Teacher’s Union, Local No.1, American Federation of Teachers, AFL-CIO, July 1, 2007-June 20, 2012, App. H, Section 2(A)
degrees and certifications may look like a costly expenditure instead of a valuable asset. One way to fix this is to outline other cost reducing actions before the board is allowed to claim a budget emergency, raise class sizes, and fire tenured teachers.

There are criticisms to proposing a better defined budget action plan as well. Especially, a plan inspired the article from The Reader. First, this accusation of corruption that the article is based one that was first discovered by the same writer who wrote this article. That inherent bias against the school board may have resulted in an incomplete telling of the facts. It may be possible that the school district did try other things before they voted on the “redefinition” plan. Even if they did not, the decision on what expenditure to cut is something that should be up the administration. The “redefinition” of classroom sizes may have saved other important resources such as computers or text books that needed to be bought. It is hearsay that all the extra money was given to the school board as raises. On top of that, it could be seen as even less fair and worse for the students if during the “redefinition” degrees were weighted heavier than seniority. There can be no replacement for experience in the classroom and getting rid of teachers based on qualifications may be a misleading theory that may actually put children at a disadvantage.

In response, the article is undoubtedly biased toward the side of the teachers union and the particular teacher involved. However, the point of the story is that it is possible for school districts to get around the protection that tenure offers teachers, with a vote by the board of education. When a school is firing teachers due to class size, and budget concerns most teachers at the school have not done anything worthy of termination. It is a purely economic decision. That does not mean that there are not situations where “redefinition” type plans are needed and the theories used by the school to lay-off teachers cannot be perfect. Seniority is as good of a way any to do it. However, there may be evidence that even this provision outlined by the collective bargaining agreement may be in danger of being circumvented.
There is a lawsuit related to “redefinition” against the Board of Education of Chicago, involving the same CEO, where older teachers are suing for getting fired and citing age discrimination (It may involve the same teacher from the previous article, but because it is a class action he name is not listed on the case). The two woman acting as representatives for the suit claim that they were very close to having worked enough year to trigger their pensions. The year before the suit, the school board required that teachers have certain certifications before they can teach certain classes in the school. On the face this is a positive rule, however for a teacher who has been teaching for 18+ years this may be arduous task that may take some time. The year before this teacher was to get her requisite certification and her pension, she was fired due to a “redefinition” plan. The teacher had seniority but her termination was based on the fact that she did not have that certification she was poised to receive. This was done even though her other qualification and past reviews had been very impressive. The plaintiffs are accusing the school board of firing them due their age, and inferring that some of the motivation was to not wanting to pay them their pensions.\(^7\)

In this case, it could be known by the school district that teachers of a certain age would not be able to complete the new certification requirements by the time they decided to fire people due to “redefinition”. The motives are still not proven, however this does prove that the school board can find a way to fire tenured teachers who are deemed to be too pricy, whether that is due to high qualifications or potential pension payouts. Seniority would not be a bad plan, if it were a plan that could not corrupted by the overwhelming need to balance the budget at any cost. In this time of economic uncertainty in the school systems, it seems that “redefinition” scenarios can be conjured up instantly, stripping the stability and peace of mind provided by tenure. Budget issues are straight forward on paper but can be manipulated easily for the use of school administrators. Performance

\(^7\) Ferkel v. Board of Education of the City of Chicago, No. 1:11-cv-09322 (Northern Dist. IL filed Dec. 30, 2011)
based lay-offs are more complex on paper, but are much more arduous to try to manipulate for personal interests.

The last reason a tenured teacher may terminated is not as clear based on the wording of the agreement. This is when teachers are fired because the school is changing their “educational focus”. At first glance this would seem to refer to some type of change in the school’s content. For example, a regular public school becoming a school that specializes in music. However, this is not what it is referring to, and what it is referring is not made entirely clear by the collective bargaining agreement. The term “change in educational focus” morphs into the term “reconstitution” later in the collective bargaining agreement.\(^8\) The consolidation should make it easier to understand the meaning of this vague collection of words, but there is no definition of “reconstitution” either. According to the *BYU Educational and Law Journal* reconstitution permits the superintendent of schools to terminate entire staffs at under achieving schools and hire new personnel who are committed to the objectives of educational reform set out for that particular district.\(^9\) This definition does shed light on the term’s relevance to the school boards’ power to terminate tenured teachers. The next question is what constitutes an underachieving school?

The language used in the agreement in instances of reconstitution is the school may remove tenured teachers “in accordance with section 34-8.3 of the Illinois School Code and the relative weight of the criteria prescribed there will be the Chief Executive Officer” according to a school improvement plan the nature of specific teacher’s job.\(^10\) Section 34-8.3 of the Illinois School Code, remediation and

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\(^8\) Agreement Between the Board of Education of the City of Chicago and the Chicago Teacher’s Union, Local No.1, American Federation of Teachers, AFL-CIO, July 1, 2007-June 20, 2012, App. H, Section 1-2(B)


\(^10\) Agreement Between the Board of Education of the City of Chicago and the Chicago Teacher’s Union, Local No.1, American Federation of Teachers, AFL-CIO, July 1, 2007-June 20, 2012, App. H, Section 2(B)
probation of attendance centers, refers to the process after a school does not comply with a school improvement plan.\textsuperscript{11}

Under this law there is a 4 step plan outlined for a tenured teacher to be fired after showing some sort of deficiency as a teacher. First, the superintendent can monitor schools in order to make sure they are following their school improvement plan. Failure may be indicated by reading and math achievement scores, an increased drop-out rate, a decreased graduation rate, a decrease in student attendance or another “pervasive breakdown in the educational program”. If a superintendent does identify the school as nonperforming he may try to remedy the problem by creating a new school improvement plan, and implementing the plan or any other program that may remedy the problems. If these solutions are not remedying the problems to the superintendent’s satisfaction, he may place the school on probation. Once a school is on probation, a new school improvement plan is made, however this plan must be more specific as far as actions taken by the school to improve their situation, and must include specific expenditures designed to remedy the problems. If after a year of probation the remedies are unfruitful then the superintendent may take more drastic measures such as the replacement of faculty members and the reconstitution of the school.\textsuperscript{12} The only amount of time mentioned in the law is that the reconstitution may begin after a year of being on probation. The amount of time it takes to be put on probation is not listed and can be assumed to be up to the discretion of the superintendent as to when he feels the other remedies are not working. This should be enough time for a teacher to realize what is going on and do research on the collective bargaining and laws that decide their future. This research would include scanning the various school improvement plans and matching their work with the expectations of the superintendent in order to figure out if they are in danger of losing their jobs.

\textsuperscript{11} 105 ILCS 34-8.3 (2009)
\textsuperscript{12} 105 ILCS 34-8.3 (2009)
However, doing research to figure out if they are an effective teacher, while trying to be an effective teacher is not something society should expect from our teachers. The key issue in this process is whether or not the expectations of the school improvement plans and its repercussions are clearly communicated to the staff in a timely manner. After combing the collective bargaining agreement and the Illinois School code one could get an outline of the events that must occur before a tenured teacher gets removed based on performance. In the Collective Bargaining Agreement, the term “school improvement plan” when referring to the rubric is used to measure school performance before and after a school is on probation.

That term is defined by the Illinois School Code. The Code prescribes certain goals that are important to the school district but does not limit itself to them. In no particular order the goals are as follows: meeting or exceeding state performance standards; requiring attendance and graduation rates meeting or exceeding national norms; adequately preparing students for employment after high school; and assuring that students are receiving high academic quality that reflects high expectations for a student’s capacity to learn.\textsuperscript{13} The standards are specified to be represented by specific data analysis of the students’ performance, descriptions of specific actions taken by faculty to facilitate these goals, and specific descriptions of the aspects of the curriculum that are designed to facilitate these goals.\textsuperscript{14} Even though these plans are still up to the discretion of the superintendent the guidelines are very specifically described in the law about how an administrator should go about making a “school improvement plan”. The process of reconstitution, even though drastic, is very well thought out and the expectations should be clear to the teachers who are affected by it. The onus should not be on the teachers to be knowledgeable about the law, however once they know what is expected of them reconstitution should not come as a surprise.

\textsuperscript{13} 105 ILCS 34-2.4 (2003)
\textsuperscript{14} 105 ILCS 34-2.4 (2003)
The fact that reconstitution is decided by laws created in the legislature would be the main critique by teachers and their supporters. If this is about getting the most out of the students it would make sense for the teachers and the school board to making the decisions about how to accomplish that in the collective bargaining agreement. They undoubtedly have more experience in education. Also, even though the laws clearly state what is to be done before a reconstitution happens and its process that does not always mean it is appropriate. There may be situations where “school improvement plans” are not going to change a certain community. Even though the teachers are trying all the things mandated for them by the school improvement plan, their efforts can be thwarted by outside forces. These can be anything from a lack of parent support, to an impoverished community that has a hunger problem affecting the students learning. In these situations hard working and competent teachers would be fired at no fault of their own and no actual improvement to the school would be made. There are no exceptions listed for these kinds of situations. Tenured teachers may be worried that they may have to absorb the blame because administrators could see these situations as a way to get out of paying the expensive salaries and benefits to them. This may make teachers who already feel like they have a target on their back for having tenure, even more vulnerable.

In response to the first point, that these criteria should be made by the teachers themselves, the legislature is actually better suited to make these decisions. During a collective bargaining agreement process the school board and the teacher’s union may have some biases that do not include the welfare of the students. This is understandable. The nature of the agreement is to protect each of the parties from an abuse of power from the other side. Students’ welfare may be pushed to the side during the negotiations. Legislatures on the other hand are biased in their own right, but their main focus is to get re-elected. Every constituency wants schools to be better, and it is in the legislatures’ best interest to comply with that. They have methods, such as consulting experts, to come up with ideas that accomplish that goal.
Administrators can use a failing school as an excuse to get rid of tenured teachers for budgetary reasons, instead of making decisions that actually turn the school around. Even though the aspects of the school improvement plan are outlined there are certain parts of it beyond test scores that are very discretionary and could be analyzed different ways depending on a person’s motive. For example, “a description of any steps which may be taken by a [school] to educate parents as to how they can assist children” is a part of the school improvement plan. Whether or not the teachers follow those steps, parents may still not assist their children. Again, the blame may be thrust on the teachers. However, even in these situations the teachers do have protection. If they prove that they did follow the action plan set out by the administrators they have a lesser chance of being fired as there is proof of a systemic problem, not an individual one. Then the laid off teacher may have a legitimate legal claim of a wrongful termination suit which may deter the administration from abusing their power when deciding where the fault of a failed school district lies.

The National Council on Teacher Quality agrees that the Illinois system is very good at exiting ineffective teachers because of their emphasis on classroom performance when making personnel decisions. They have a detailed process and explicit standards to rate this classroom performance. However, the same praise may not be true when making these personnel decisions during a budget crisis. This is because the mindset of administrators is completely different in these situations due to the different set of circumstances. The best way to resolve this and make the whole system fair for teachers and students, is to implement standards that require certain measures to be taken before teacher lay-offs, when a budget crisis arises.

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16 2011State Teacher Policy Yearbook: National Summary at 153 (National Council of Teacher Quality2011)
APPENDIX H
REASSIGNMENT AND LAYOFF OF REGULARLY CERTIFIED AND APPOINTED TENURED TEACHERS
Section I - Scope of Policy
Whenever an attendance center or a program is closed, there is a drop in enrollment, the educational focus of the attendance center is changed such that available teaching positions cannot accommodate some or all current regularly certified and appointed teaching staff, or when an attendance center is subject to actions taken pursuant to sections 34-8.3 or 34-8.4 of the Illinois School Code, tenured teachers will be reassigned or laid off in accordance with this policy.

Section 2 - Selection of Tenured Teachers for Removal
A. In Attendance Centers/Programs That Are Not Subject to Reconstitution
If changes in an attendance center or program require removal of some but not all tenured teachers, tenured teachers with appropriate certifications will be selected for retention based on seniority. Provisionals, day-to-day substitutes, Cadre substitutes, temporarily assigned teachers (TATs) and probationary teachers within the attendance center or program will be removed before any regularly certified and appointed tenured teacher with the appropriate certification is removed, in that order.

B. In Attendance Centers/Programs That Are Subject to Reconstitution
In attendance centers that are subject to reconstitution, tenured teachers will be removed in accordance with section 34-8.3 of the Illinois School Code. The relative weight of such criteria shall be determined by the Chief Executive Officer on an individual attendance center basis according to the School Improvement Plan and the type of position to be changed or closed.