SB 7/PERA FAQs (October 7, 2011)

1. RIF

A. General

Q1a: It seems that there is a disincentive for a veteran teacher to help a colleague or new teacher. After all, if I want to protect my job, isn't it better for there to be non-tenured teachers and teachers in groups lower than me? Why would I help them get better evaluations than me?

Q1b: There seems to be a disincentive to help new teachers and colleagues. After all, in order to preserve your own job, it would be helpful to have teachers in tiers 1 and 2. It may actually cost a teacher her job if she helps a colleague improve and move up a tier. Is this correct?

A1: We don't believe that this should have any impact on our colleagues' incentive to help new teachers. Remember that once teachers are in Groups 3 or 4, they are RIF'd by seniority. So our goal should be to help all teachers get into the higher groups in which case our system would not be that different than it is now. In this bill, seniority still counts and is protection for our effective tenured teachers. Also, the local union, through members its selects to participate on the new joint RIF committee, has the ability to move some teachers from group 3 to group 4 based on things other than evaluations, for example, being a mentor for a new teacher could be a criteria for moving a tenured teacher into group 4. That would be an incentive to help new teachers.

Q2: Will seniority be considered in RIFs?

A2: What has been agreed to does NOT throw seniority out. Seniority remains an important part of the process, but it is now one of several factors. What will be considered in RIF/Recall procedures are certifications, qualifications, performance evaluations, and seniority. In addition we have language that addresses attempts to RIF more senior staff just to save money. Seniority will be one of a number of considerations under the new procedures.

Q3: Does performance replace seniority in RIF decisions in SB7?

A3: Reduction in force lists will now be determined by four major criteria for teaching positions in a district:

1. Certification
2. Qualifications
3. Performance Evaluations
4. Seniority

For each teaching position, teachers who possess the necessary certification and qualifications for the position will be categorized into four groups:

- Group 1 -- Non-tenured teachers who have not received a summative rating in time for RIF notices
- Group 2 -- Teachers who receive an unsatisfactory or a needs improvement in one of their last two evaluations
- Group 3 -- Teachers who are consistently proficient or satisfactory
- Group 4 -- Highest performing teachers defined by a joint union/management committee.

If for some reason an evaluation was not done when scheduled, the teacher will be considered to have received a rating of satisfactory/proficient, as long as the teacher has had at least one prior evaluation in the district.

(**IMPORTANT NOTE: The summative rating categories will change in 2012.** Before they change from excellent, satisfactory and unsatisfactory to excellent, proficient, needs improvement, and unsatisfactory, any teacher who received a satisfactory under the current 3-rating system (excellent, satisfactory, unsatisfactory) will be considered proficient for the purposes of RIF.)

According to numerous studies, the majority of tenured teachers currently receive excellent ratings, so most will fall into Group 4. The group of teachers most likely to receive satisfactory ratings is non-tenured. So for the first year (2012-2013 school year) that the SB 7 RIF procedure might have impact, it won't be very much different than it is now.

Once these groups have been established, then inverse seniority is the way teachers will be RIF'd. The teachers with the least amount of experience being RIF'd first. (Except the non-tenured teachers in Group 1 who will be dismissed at the district's discretion).

Unions, through a joint committee composed of equal representation of management and union-selected teachers, will be able to move groups of teachers from Group 2 to Group 3. For example, the joint union-management committee may decide that any teacher who has a

needs improvement and a proficient or excellent in their last two evaluations may be in Group 3, as it shows the teacher has made improvement.

In addition, the joint union-management committee can decide the criteria for being placed in Group 4. For example, teachers with National Board certification or teacher mentors may all be placed into Group 4.

Q4: What happens if an evaluator doesn't do the actual evaluations or doesn't provide a timely summative review? Can't this negatively affect a teacher who may otherwise be doing a great job? In other words, can it be a way for an evaluator to get rid of a teacher?

A4: No. If the evaluator fails to give a timely summative review to a tenured teacher, the summative rating will be satisfactory/proficient for RIF purposes, but only if the teacher has had at least one prior evaluation in the district. Furthermore, a teacher will likely have rights to grieve under the CBA or otherwise challenge an evaluator's failure to give a summative rating.

Q5: For the last several years, teachers in the District have been receiving either "proficient", "needs improvement" or "unsatisfactory." Having received those ratings, they don't necessarily fall correctly into the categories for RIF lists (e.g., the District's "proficient" was more akin to "excellent"). If the District establishes its RIF lists next year with the historical ratings, no one could be in Category 4 (as there were no "excellent" ratings), and possibly very few will be in Category 3. Can language be bargained that equates old ratings to new ratings (e.g., if they received a "proficient" under the old system that would equate to an "excellent" in the new system, thus that person could be in Category 4 for RIF purposes)?

A5: The law requires districts which have had modified categories through a waiver to establish a basis for equating those modified ratings to the statutory categories for RIF purposes. Therefore, there would be nothing prohibiting the district from equating its current "proficient" category under its modified categories to excellent for RIF categorization purposes. However, once it is required to go to the 4-category system, which statutorily includes a proficient v. satisfactory category, we believe it would be more difficult to equate proficient under its modified system to excellent.

Q6: Having trouble understanding distinction between "certification" and "qualifications."

A6: Certification is how you are authorized to teach at the state level (i.e., early childhood, elementary, high school, special) & qualifications includes not only endorsements and coursework requirements set by the state ("legal qualifications"), but also additional requirements which the particular district might have for a position, i.e., CRISS training, Masters' degree, etc..

Q7: Will the statutory basis for RIF in the first paragraph of Section 24-12 -- "If a teacher in contractual continued service is removed or dismissed as a result of a decision by the board to decrease the number of teachers employed by the board or to discontinue some particular type of teaching service" -- remain the same?

A7: Yes.

Q8: Will the issue of qualifications be bargainable?

A8: Maybe. While the determination of qualifications is a management right, to the extent that such qualifications are used to determine whether an existing employee is RIF'd or recalled, at least the impact of such qualifications is a mandatory bargaining subject. The IELRB, however, has not clearly decided this issue.

Q9: Are job descriptions a mandatory subject of bargaining?

A9: This is an unsettled area of the law. Generally, job descriptions are a management right, but certain changes to existing job descriptions could constitute a change in terms or conditions of work that would trigger bargaining or could be a change that would change the bargaining unit status of an employee and so trigger a bargaining obligation. Also see answer to Q8 above. Keep in mind, however, that a change in job description cannot target an individual, but must apply to all those covered by that job description.

Q10: For the Group 1 RIF - do these people have to be RIF'd before anyone else?

A10: Yes.

Q11: Am I correct in assuming that Group 1 gets RIF'd first, then people in Group 2, then Group 3 and finally Group 4?

A11: Yes.

Q12: In recalling from Groups 3 and 4 - are they required to recall from Group 4 before recalling from Group 3?

A12: The last category RIF'd would be recalled first, so generally yes, Group 4 individuals would be recalled first, if they were qualified for the vacancy.

Q13: Will the notification dates for RIFs remain the same?

A13: No, it will be 45 days instead of 60.

B. District Abuse

Q1: Won't more experienced teachers be dismissed purely to save money?

A1: Regarding your concern that the new law will result in more experienced teachers being dismissed purely to save money, this concern was front and center in the discussions with Senator Lightford. The local union will have the ability to take appropriate action should the district begin such practice and demand the rescinding of such action. IEA, IFT, and CTU would never have agreed to legislation that would have given districts that kind of discretionary unilateral power. More details and suggestions below in Question and Answers 3 & 4.

Q2: I am concerned about something you addressed in an email to the board of directors that was forwarded to me. You mentioned that non-tenured teachers could have more job security than ever before. This sounds like a positive spin on the issue of RIFs and layoffs not being determined by seniority, which we think is NOT a good thing. This opens the door for administration to dump senior teachers with higher salaries. Could you please expand on this?

A2: The legislation takes into account factors other than pure seniority in RIF/Recall procedures. It also factors in certifications, qualifications and evaluations. We absolutely share your concern that any changes in this process should not and will not be based on any manipulation by administration to lower costs via targeting higher paid staff. More details and suggestions below in Question and Answers 3 & 4.

Q3: What will keep administrators from making personnel decisions based on how much a teacher is paid or a teacher's union activism, as opposed to the quality of the teacher's work and the value of the teacher's experience?

A3: In January 2010, the Performance Evaluation Reform Act (PERA) was passed. That law provided that student growth (**excluding** the ISAT or the Prairie State) data would be used as a significant part of a teacher's evaluation. The changes for teachers go into effect for most districts in 2016.

The law also made a number of changes to principal evaluation, which go into effect in 2012.

- First, principals will now be evaluated every year.
- Second, every teacher evaluator must pass a pre-certification assessment demonstrating their proficiency in evaluating teachers.
- Third, every evaluator of principals must pass a pre-certification assessment.
- Fourth, these assessments are to be developed by an outside provider.

- Fifth, so for the first time every evaluator will have to demonstrate that they are competent or they cannot legally evaluate. These changes are important components to keep in mind as we review the changes in SB7.

SB7 won't change the fact that there is no way to guarantee that all principals are going to be fair, competent and ethical. We cannot guarantee that now – any teacher can be deemed unsatisfactory based on one evaluation (usually consisting of a single observation) and, after a 90 day remediation process, they can be dismissed.

However, there is a provision in the law that allows any member of the joint committee (teacher members are appointed by their union) to require the district to provide information (without teachers' names) regarding the number of years someone has worked, their previous ratings, and their current ratings. If anyone on the committee notices a trend in which numbers of highly paid experienced teachers' summative ratings are being lowered, they can request a full review by the joint committee. Any member of the committee can then issue a public report to the Board and the union flagging such inconsistencies.

The first line of defense on this is making sure the public knows what the administrators in such a district are doing. This becomes an organizing tool with the community – all the data we have from the public shows us that the general public loves their teachers. If the district or even one administrator is targeting experienced, effective teachers for dismissal, the public outcry will be deafening. If they are appropriately lowering ratings, the public support will not be there since our polling data shows the public has little tolerance for keeping and protecting ineffective teachers. The second line of defense could be the filing of an age discrimination. Our third line of defense could be the filing of an unfair labor practice with the IELRB, if information shows that teachers who are union activists are receiving lower evaluations.

Q4: If in the future enrollment decreases, will the District be able to say that it needs to engage in a RIF and invoke the provisions of SB 7, which would enable it to RIF tenured teachers before probationary teachers? Furthermore, since the teachers in Group 2 (which could be tenured) only have the right to consideration for recall, once they are RIF'd, is it correct that they have no rights even if the District now decides that enrollment is actually enough to justify having the extra sections? In short, what stops an employer from gerrymandering a RIF to get rid of tenured teachers from Group 2, especially if they don't have mandatory recall rights?

A4: Here are a couple of points:

- While teachers RIF'd from Groups 1 and 2 do not have statutory recall rights, there is nothing prohibiting a union from bargaining them for such teachers, and such rights would be mandatory subjects of bargaining.

- Most all of our tenured teachers currently would fall into Group 4, the highest performance group, and Group 3, the satisfactory/proficient group. Most non-tenured

teachers fall into Group 3, with a few falling into Group 4. Teachers in groups 3 and 4 are RIF'd according to inverse seniority, so that between tenured and non-tenured in those groups, non-tenured would be RIF'd first.

- The most vulnerable tenured teachers will be those who fall into Group 2. Until the new 4 category evaluation rating system goes into effect in 2012-2013 (moving from excellent/satisfactory/unsatisfactory to excellent/proficient/needs improvement/unsatisfactory), only teachers who have 1 or 2 unsatisfactories in their last 2 evaluations will fall into that group. Once the new rating is implemented, only teachers with 1 or 2 unsatisfactories or needs improvements in their last 2 evaluations will fall into that group. Teachers within this group who have the same evaluation ratings are RIF'd according to inverse seniority, so non-tenured would go before tenured.

- As to what stops a district from gerrymandering a RIF by rating a teacher unsatisfactory or needs improvement to thus make her more vulnerable to being laid off:

    - Once the new PERA student growth evaluation system is implemented, evaluations will be much more objective and less able to be manipulated.
    - If a district starts down-rating tenured teachers, any member of the joint RIF committee can request data on all teacher evaluations listed by years of service. If that data shows that more senior tenured teachers are being down-rated, that member or members of the joint committee will prepare and provide a report to the school board and union. The report can also be released to the media and public in general.
    - Age discrimination and other legal actions such as unfair labor practices (if information shows that union activists are receiving lower evaluations) are available.

Q5: What happens if it's noted, through the data the district provides, that more experienced teachers' performance is being rated lower than in prior years? It's reported to the committee, but WHAT authority does the committee have in stopping this from happening?

A5: The committee doesn't have authority to stop this from happening by itself. The thinking is two-fold: first a public report to the board from the committee is a deterrent; the district will not want to be publicly put on notice for arbitrary lowering of teachers' ratings to make the teachers more vulnerable to RIF. Secondly, we would have the right to file age discrimination claims, among other possible legal actions.

Q6: Would it be easy for a district to release a tenured teacher at the end of his/her career because they may have a lot fewer certifications than many younger teachers but are still highly qualified because of years of service at a particular grade or subject?

A6: Attempts to change job qualifications or standards just to get rid of a tenured teacher would be challenged.

Q7: Let's say a district needs five high school science teachers to cover curricula, which it currently has. One of those teachers is very late in his career (high compensation), not doing a great job, but an adequate job. Can a district add a 6th position for one year, give that new teacher an excellent evaluation, RIF that 6th position the second year and dismiss the veteran teacher because he falls lower on the totem pole in Group 2?

A7: Yes, but there are some protections against that. The joint committee can guard against that by agreeing to move the teacher that has a proficient or satisfactory and a needs improvement to Group 3. A tenured teacher must have two evaluations to qualify for a RIF group. Also, remember that any tenured teacher who receives a "needs improvement" must receive an improvement plan written by the district. There is work and commitment on the part of a district when they give a needs improvement.

C. Joint RIF Committee

Q1: How does the joint union/management committee reach agreement on who moves to group 3; is it consensus or just majority rules?

A1: Majority, but if they cannot agree, then the statutory default is two out of the last three evaluations are "excellent" or "two excellents."

Q2: Joint committee - the "study" will need some statistical help to truly identify whether or not the system is under-valuing the higher compensated, but this is for a much later date.

A2: Yes.

Q3: Explain more about this decision-making committee made up of union members and management. How are the members decided upon and what is their role and actual power?

A3: The joint committee is comprised of equal members from the union and management. The union selects its members, management selects its members and they are dealing with RIF. The committee can decide to change the criteria for Group 4(a district's highest performing teachers) and the committee can change the criteria for Group 3, thereby creating more opportunities for individual teachers to be placed in different groups. The committee works within a timeframe, and if a majority of the committee cannot agree to alternative criteria, then

the district defaults to a statutory requirement. Management cannot impose their last best offer.

D. Recall

Q1: Will the timeline for recall be one year?

A1: Recall timelines have not changed.

Q2: Filling vacancies other than through recall: Is this a reference to voluntary transfer within a district?

A: Yes, and for new hires.

Q3: Is this language a response to the assumption/fact that some contracts have the right to choose like a hiring hall based solely upon seniority?

A3: Yes.

Q4: If so, I'd like to know where this right exists so I can help my members understand.

A4: It exists in some locals' contracts. An initial analysis of several areas (the areas of some of the legislators on the Senate Ed Reform Committee) showed very few of our contracts actually have this.

E. Bargaining Issues

Q1: Do you have some initial suggestions and facts about buying some more time to bargain aspects of the new law and about the RIF/Recall process and the Joint RIF Committee?

A1: Yes.

1. **Buy Some Time to Bargain Issues Through an MOU**: If your local desires to bargain some issues raised by SB 7 but there isn't sufficient time to learn, understand and comfortably negotiate them, propose a "placeholder" MOU which will allow you to come back and bargain the issue once the parties have become better informed. Attached are 2 possible MOUs, one if you have a zipper clause in the CBA and another if you don't.

2. **RIF/Recall**: There are several possible RIF/recall subjects which a local may want to bargain. The following are several facts and initial thoughts/suggestions about them.

    a. *Joint RIF Committee* – SB 7 requires a district to establish a joint RIF committee, which is comprised of equal numbers of teachers, chosen by the union, and administrators. The primary responsibility of this committee is to decide whether to (i) modify the criteria for determining which teachers fall into the highest (and least vulnerable) RIF group (Group 4) and (ii) move teachers who receive a Needs Improvement evaluation rating and a Proficient/Satisfactory or Excellent evaluation rating in their last 2 evaluations from RIF Group 2 to RIF Group 3. The work of the joint committee is separate and distinct from the bargaining process. Its work is NOT negotiations. Who is on the committee is critical. We will in the near future be providing guidance on suggested criteria for joint committee membership.

        i. The first meeting of the joint committee must occur on or before December 1, 2011.
        ii. If a majority of the joint committee does not agree to modify the criteria for determining which teachers fall into Groups 2 or 4, then teachers will be grouped according to the default language in the law: Group 2 will consist of teachers who have received an Unsatisfactory or Needs Improvement in at least 1 of their last 2 evaluations and Group 4 will consist of teachers who have received 2 consecutive Excellent ratings or have received 2 Excellents and a Proficient/Satisfactory in their last 3 evaluations.
        iii. If a majority of the joint committee decides to modify the Group 4 criteria or move certain teachers from Group 2 to Group 3, the decision to do so must be made by February 1 of the school year in which the RIF notices will be sent, i.e., February 1, 2012 for RIF notices sent in Spring 2012. If a decision is not made by February 1 of a school year, teachers will be grouped by the default language in the law or modifications made by the joint committee in the prior school year. Note: As the Needs Improvement evaluation rating is not required until the 2012-2013 school year, the earliest effect a joint committee's determination to move teachers with a Needs Improvement and a Proficient/Satisfactory or Excellent from Group 2 to Group 3 will be with the Spring 2013 RIF list and RIF notices, unless a district begins use of the Needs Improvement rating prior to the 2012-2013 year.
        iv. The joint committee will make its decisions by majority vote.

v. **The joint committee is NOT responsible for categorizing/placing individual teachers into each group; that is the responsibility of school administration.**

vi. Possible Bargaining Issues for Local and District – While the joint committee's work is not bargaining, there may be issues regarding the joint committee and its work that a district and local may want to bargain:

1. Number of members on the joint committee
2. When joint committee begins to meet
3. Stipend/release time for joint committee members
4. Additional responsibilities for the joint committee beyond what law provides
5. Combining Joint RIF Committee and Joint PERA Committee into one committee
    a. The skills and expertise of a local's representatives on each of these committee may be different, so combining the committees may not be prudent

b. *Date for Annual RIF List* – SB 7 requires a district to distribute the annual RIF list (formerly known as the seniority list) at least 75 days before the end of the school term v. February 1, as was the case under the previous law. A local may want to bargain an earlier date for the RIF list.

c. *Date for Additional Qualifications for RIF*: When it comes to establishing the annual RIF list, SB 7, like the old law, requires that teachers first be categorized/placed into teaching positions for which they hold the state-required certification and legal qualifications. Unlike the old law, the new law permits a district to add additional qualifications above state-required legal qualifications which a teacher would need to have in order to hold a teaching position. In order to use additional qualifications in establishing the annual RIF list and RIFs based on that list, these qualifications must have been incorporated into the job description for the particular teaching position by no later than May 10 of the prior school year. For example, an additional qualification for a teaching position must be in that position's job description by no later than May 10, 2012 to be able to be used for RIF lists and notices in Spring 2013. A local may want to bargain an earlier date for when additional qualifications need to be incorporated into a job description for use in determining the RIF list.

d. *Date of Additional Qualifications for Recall*: As with RIF, unlike the old law, SB 7 permits a district to add additional qualifications above state-required legal qualifications which a teacher would need to have in order to be recalled into a teaching position. In order to use additional qualifications for determining whether a RIF'd teacher is qualified to hold a vacant position, these

qualifications must have been incorporated into the job description for the particular teaching position by no later than May 10 of the school year prior to the vacancy becoming available. For example, an additional qualification for a teaching position must be in that position's job description by no later than May 10, 2013 to be able to be used for recalls into vacancies which occur in Summer of 2013 and the 2013-14 school year. A local may want to bargain an earlier date for when additional qualifications need to be incorporated into a job description for use in determining recalls.

e. *Adding Additional Qualifications in Job Descriptions*: Whether the decision to modify existing bargaining unit job descriptions to include additional qualifications which then could be used to determine RIF lists or recalls is a mandatory subject of bargaining has not been clearly decided by the IELRB. Nevertheless, the impact of including additional qualifications in a job description may very well determine whether a teacher ends up being RIF'd, recalled or otherwise maintains/fills a particular teaching position. As such, this impact is clearly a mandatory bargaining subject; and the decision to include the additional qualifications may very well also be a mandatory bargaining subject. Therefore, in addition to deciding whether to include additional qualifications in a job description, a local may also want to bargain such impact issues as:
    i. Grandfathering existing teachers from the additional qualifications;
    ii. Providing existing teachers several years to meet the additional qualifications;
    iii. Providing funds for teachers to acquire the additional qualifications.

f. *Should Local First Raise the Issue of Additional Qualifications and Job Descriptions*: Whether a local should raise the issue of job descriptions and the possible inclusion of additional qualifications before the district is open for debate. Many school districts haven't reviewed their job descriptions in years and may have no desire at this point to do so or to modify them to include additional qualifications. So, a local first approaching a district about additional qualifications and job descriptions may raise the issue when it wasn't on the district's radar screen. As some locals already have CBA language which requires a district to at a minimum provide them with notice and an opportunity to provide input on job descriptions, waiting for that notice may be the best option at this point. Furthermore, as modifications of job descriptions will most likely have to be approved by or at least presented to a school board, waiting for that to occur for a local to initiate a bargaining demand may be another good option. Of course, if a local desires to first raise the issue, it certainly can do so.

g. *Recall Rights for Group 1 and Group 2 RIF'd Teachers:* SB 7 provides that teachers in Groups 3 and 4 who are RIF'd have statutory recall rights into

vacant positions for which they are certified and qualified based on inverse order of RIF (last RIF'd, first recalled), unless the local and district agree to a different recall order. Teachers in Groups 1 and 2 who are RIF'd have no statutory recall rights, although they may be considered for vacant positions. A local may want to bargain recall rights for these teachers.

h. *Alternative Method for RIF/Recall Other than Inverse Seniority*: When inverse seniority is to be considered, SB 7, like the old law, permits a local and school district to agree to use an alternative method that is based on objective v. subjective criteria. A local may want to bargain such an alternative method and include it in its CBA.

2. VACANCIES

Q1: Does performance replace seniority in vacancy filling decisions in SB7?

A1: These vacancies can be the result of leaves, retirements, or the opening of new positions. The district will now have to base selections for vacancies at least on the following criteria:

- Certifications
- Qualifications
- Merit and ability (including evaluations)
- Relevant experience (which is bargainable)

Certifications and qualifications have always been the primary criteria for filling vacancies. SB 7 does not change this. In some of our CBAs, district-wide seniority has typically been the criterion next considered. Under SB 7, district-wide seniority will be used when all other things are equal – hence the tie-breaker language you have been hearing about. However, years of experience relevant to the vacancy ("relevant experience"), which could in fact equal district-wide seniority, along with merit and ability, will be the next criteria considered.

Two other points to keep in mind about filling vacancies under SB 7:

- First, if there are any RIF'd satisfactory/proficient or highest performing teachers, they will be given first right to fill vacancies for which they are certified and qualified, before the vacancies are filled under the foregoing process.

- Second, if an existing CBA contains different criteria for filling vacancies, those criteria will need to be followed until the CBA expires.

Q2: New language that I read as preventing seniority from being considered in filling vacancies. This may have a substantial impact on bargaining over how open positions are filled.

A2: As to vacancy filling, the new language prevents district-wide seniority to be considered in filling vacancies unless the other factors of certifications, qualifications, merit and ability (performance) and relevant experience are equal. Furthermore, the concept of relevant experience may very well equate to district-wide seniority. While its scope will be able to be bargained, relevant experience means experience relevant to the position being filled. This can include experience in a school building, experience at a grade level, experience in teaching a subject matters, etc.

Q3: Can you bargain how much weight that "relevant experience" is given?

A3: Under existing law, the weight given and what constitutes "relevant experience" may be a mandatory subject of bargaining as it applies to internal applicants for a vacancy, and a permissive subject of bargaining, as it applies to external vacancies. With this new law, we may have to retest these issues, although it specifically provides that it does not affect what is or may be a mandatory subject of bargaining.

Q4: In the "current vacancies," nothing was mentioned about interviews. Is that just an assumption?

A4: The statute only deals with the criteria needed to fill the vacancy, not the procedures a district goes through to actually fill it. It is assumed that most districts use the interview process.

Q5: What if we have language in our current CBA on filling vacancies?

A5: For CBAs in existence on June 13, 2011, to the extent that provisions regarding filling new and vacant positions conflict with the new SB 7 vacancy filling language, the CBA provisions control and remain in effect until the CBA expires or the parties mutually agree to terminate the language earlier.

Q6: Does the new vacancy filling language apply to all vacancies or just those not required to be filled by RIF'd teachers?

A6: The new language only applies to vacancies not required to be filled by RIF'd teachers with recall rights. SB 7 adds a new section to the School Code, Section 24-1.5. It addresses the criteria a school district is required to use in selecting a candidate to fill a new or vacant position, which is not otherwise required to be filled by teachers who have been RIF'd and who have recall rights. RIF'd teachers, provided they are qualified to fill the vacancy, must be offered the position before a district can look to other candidates and, in doing so, apply the criteria listed in Section 24-1.5.

Q7: What does this new vacancy filling statute provide?

A7: This new School Code section provides that a school district's selection of a candidate to fill a new or vacant position must be based upon consideration of factors that include, but are not limited to, certifications, qualifications, merit and ability (including performance evaluations) and relevant experience. Length of continuing service with the district, i.e., district-wide seniority, can only be considered if all other selection factors are determined by the district to be equal.

Q8: Are there issues regarding the factors which must be considered in filling vacancies which a local might want to bargain?

A8: Yes. As applied to existing employees represented by a local, some issues related to the listed factors and the addition of any other factors are mandatory bargaining subjects. Some issues a local may want to bargain include the following:

a. *Relevant Experience*: Relevant experience is a new term. While there is no definition of it in the law, it essentially means experience relevant to the new or vacant position being filled. During negotiations on SB 7, it was agreed that it could mean, among other things, years of teaching experience at a particular school building, grade level, or in a particular discipline. Depending on how it is defined, it could essentially equal district-wide seniority. For example, if it's defined as years of experience at a particular school building and all of a teacher's school district experience is in that building, the teacher's school and district-wide experience will be the same. This is allowable under the law. How relevant experience is defined is, in our opinion, a mandatory bargaining subject, as it applies to existing employees.

b. *Merit and Ability*: Performance evaluations are certainly part of what must be included in assessing candidates' merit and ability. However, a local may want to bargain which evaluations are to be considered. For example, should evaluations which are more than X years old be considered? Should evaluations of performance in positions not relevant to the position being filled be considered? Besides performance evaluations, other assessments of merit and ability may be included. For example, should professional achievements/recognitions/awards from the district or outside organizations be considered? NBPTS certification? The foregoing issues are, in our opinion, mandatory subjects of bargaining.

c. *Qualifications*: Legal qualifications to hold a position, as established by the School Code or ISBE, are obviously included within the term qualifications. Whether additional qualifications are included, what those additional qualifications are, and where and when such additional qualifications must

be established, are bargainable, to the extent a local desires to do so, with at least the impact of these issues being mandatorily bargainable. Unlike the use of additional qualifications for RIF and recall, there is no requirement in SB 7 for additional qualifications to be included in the job description for the vacant position to be able to use in selecting someone to fill a vacancy. A local may want to bargain that any additional qualifications be included in the job description.

d. *Certifications*: Certification means the certificate which ISBE minimally requires to teach in a position. Whether the school district wants to require additional endorsements to the mix, what those additional endorsements are and where and when such additional endorsements must be established, are bargainable, to the extent a local desires to do so, with at least the impact of these issues being mandatorily bargainable.

e. *Additional Criteria:* To some extent, whether additional selection criteria are included may depend on how each of the above 4 statutory criteria is defined. For example, if certain training or professional development is desired, is that included within qualifications or is it considered separately? The inclusion of selection criteria in addition to the 4 statutory ones is, in our opinion, a mandatory subject of bargaining, as it applies to existing employees.

Q9: Are there other issues regarding the filling of vacancies which a local might want to bargain?

A9: Yes. Some of them include the following:

a. *Weight Each Criterion Has in the Selection Process*: SB 7 is silent as to the weight each of the 4 statutory selection criteria (certifications, qualifications, merit and ability, and relevant experience) is to be given in the selection process. Therefore, the weight that each of these criteria receives is, in our opinion, a mandatory subject of bargaining, as it applies to existing employees. Remember as mentioned earlier, however, the new law does prohibit considering district-wide seniority, unless 2 or more candidates for a position are tied after all the other factors are considered.

b. *Vacancy-Filling Procedures*: Nothing in SB 7 changes the fact that the procedures used to fill vacancies are a mandatory subject of bargaining. This includes such items as the timeline for notifying employees of the vacancy, how long, when and where the posting needs to be, the right of qualified employees to be considered/interviewed, provision of reasons to unsuccessful internal candidates, etc.

3. Impasse Procedures

Q1: The school board has essentially not responded with bargaining dates for a successor contract. How would the mediation labor changes apply to this situation where the start of the school year is imminent and contract negotiations have not begun due to the school board's dilatory tactics?

A1: The local should file the 45-day notice with the IELRB. Under the changes made by SB 7, the purpose of this notice is the same as the old 15-day notice: to inform the IELRB that the parties have failed to reach an agreement and have not requested mediation. The IELRB is required to invoke mediation, unless the parties jointly stipulate to defer it. This should force the district to engage in at least some way. After 15 days from the date mediation commences, the union can declare an impasse which will kick in the final offer posting process. While the intent behind the 15 day language is 15 days from the first substantive interchange between the mediator and the parties, if the district is unresponsive, the local could reasonably use the date the parties are notified of the mediator selection to begin the 15 days. If the district is unresponsive to its duty to send its final offer within 7 days to the union, the mediator and the IELRB, the local should still meet its duty. If after another 7 days the mediator or the parties jointly do not inform the IELRB that an agreement has been reached, then the IELRB will post the final offers. If the district hasn't complied, we assume the IELRB will post only the union's. The union can then make whatever PR use it wants. Also, it is our belief that an employer's failure to comply with any of these new duties would be grounds for a bad faith bargaining ULP and possibly injunctive relief, but no one really knows yet.

Q2: I was bargaining all day yesterday (it went nowhere) and we are going to try one more time before we ask for a mediator. I told the Bd. this, and their supt. stated that we would then have to post our final offers in the newspaper. I thought that the only time you needed to post was once an impasse was declared, and that posting was just to the IELRB not to the local media. Am I correct?

A2: What the new law requires is that any time 15 days after mediation has commenced, either party can declare impasse. That then kicks in the public posting process, which requires each party to provide to the other, the mediator and the IELRB their final offers and cost summaries (if applicable) on unresolved issues, by no later than 7 days after impasse is declared. Once that is done, if over the next 7 days the parties, with or without the help of the mediator, do not reach an agreement, the IELRB will post the final offers on its website, unless the mediator or the parties jointly tell the IELRB that an agreement has been reached. At that time, the school district is required to distribute notice of the availability on the IELRB's website of each party's final offers to all news media that have filed an annual request for notices from the school district pursuant to the Open Meetings Act. There is nothing prohibiting either party from otherwise distributing final offers or other information about bargaining to the media in addition to what the law requires, unless their bargaining ground rules provide restrictions, prohibitions, etc.

Q3: Is a local now required to go through the public posting period in order to strike?

A3: While technically a local is not required to go through the public posting period in order to strike, as the public posting period is only a strike prerequisite if it has been initiated (see Section 13(b)(2) of the IELRA) and it is only initiated if either party or the mediator declares impasse (see Section 12(a-5) of the IELRA), strategically and politically it should be seen as a requirement. If the public posting period hasn't been initiated and completed by the time a local wants to strike, the strike could be delayed by the employer declaring an impasse. Thus, a local would have to wait for close to a month before it could strike. In addition, many people, including legislators and the media, believe that the public posting period is required in order to strike. As a result, if a local strikes without going through the public posting period, there is little doubt that the law will be changed to clearly and absolutely require it to do so before striking.

Q4: Does SB 7 change when the 10-day notice of intent to strike can be filed?

A4: No. Nothing in SB 7 alters when the 10-day notice can be filed. It can be filed at any time, including prior to the completion of the public posting period.

Q5: Once the IELRB has posted the parties' final offers on its website and the school district has notified media of its availability, does SB 7 prohibit the parties from distributing this information in other ways?

A5: No. The only restriction on further distribution might be in any bargaining ground rules to which the parties have agreed.

Q6: Does declaring impasse to initiate the public posting period authorize the school district to unilaterally impose its final offer on all unresolved issues?

A6: Most likely no. While some employers might take the position that declaration of impasse which initiates the public posting period constitutes an impasse which authorizes it to impose its last offer, it is our opinion that, by itself, such declaration does not constitute such authorization. This is particularly true if the declaration of impasse occurs before the existing CBA has expired. Even if the declaration of impasse and all the circumstances surrounding it met the legal requirement for constituting an impasse which would otherwise permit an employer to implement its last offer, such implementation could not occur until the existing CBA expired. Bottom line, if an employer decides to take the position that the declaration of impasse to initiate the public posting period by itself authorizes it to impose its last offer on unresolved issues, we are prepared to litigate.

Q7: What circumstances must exist for there to be an impasse which permits a school district to unilaterally impose its last offer?

A7: Nothing in SB 7 materially alters the test established by the IELRB in **Kewanee CUSD, 4 PERI 1136 (1988)**, for determining whether an impasse exists which authorizes an employer to impose it last offer. Over the years, the IEA Legal Department has termed such an impasse as "Big I" impasse. To determine whether a "Big I" impasse exists, the IELRB looks at the "totality of circumstances," including: bargaining history, the good faith of the parties, the length of negotiations, the importance of the issues as to which there is no agreement, and the contemporaneous understanding of the parties. An impasse can still exist even if it is not a "Big I" impasse. Section 12 of the IELRA is entitled "Impasse Procedures," and sets forth timelines and actions which need to occur to assist the parties in reaching an agreement when they are having difficulty doing so. The term impasse is used several times in this section, not as a legislative determination that an employer can unilaterally implement its last bargaining offer, but as a condition precedent to taking steps to aid the parties in bargaining. The new public posting period is an example of such use. When used in this way and to generally describe lack of movement in bargaining, such impasse is what the IEA Legal Department has termed "Little i" impasse.

Q8: What are some additional points that should be remembered about impasse?

A8: In addition to the information included in the preceding questions and answers about impasse, one should know the following points:

- Merely seeking the assistance of a mediator does not necessarily mean the parties are at "Big I" impasse.
- Engaging in strike activity does not necessarily mean that the parties are at "Big I" impasse (but strikes are one of the conditions that can break an impasse).
- Impasse on one or several issues does not suspend the duty to bargain on the remaining issues.
- At "Big I" impasse, an employer may, but does not have to, impose changes in terms and conditions of employment that do not exceed what was proposed in bargaining.
- A "Big I" impasse only *suspends* the duty to bargain. Any changed condition or circumstance that renews the possibility of fruitful discussions in more than a minimal respect will terminate the suspension of the duty to bargain. **Southern Illinois University, IELRB Case No. 2001-CA-0013-S (IELRB Opinion and Order, 11/26/03)**.
- An employer is not permitted to make any unilateral changes until an overall impasse is reached.
- At "Big I" impasse, the employer may not make any unilateral changes in subjects over which there had been no bargaining.
- An employer is required to notify the union prior to its unilateral implementation.

Q9: Has SB 7 changed the process a local should follow if it is likely headed for a strike at the beginning of the school year?

A9: Yes, in at least the following ways:

- Advance up the pre-strike assessment, incorporating among other things the assessments and other actions mentioned in the following dot points.
- If mediation has not been initiated by 45 days prior to the beginning of the school year, file notice with the IELRB, which will require it to invoke mediation.
- Understand that if impasse is declared, the employer may attempt to unilaterally impose its final offers. Assess the factors relied upon by the IELRB and plan a strategy if the employer decides to take such action.
- Ensure that the public posting period is initiated and completed by the date the local wants to strike. From the date that the posting period is initiated by either party filing the declaration of impasse with the IELRB, it will take 28 days for the posting period to be complete. Use the SB 7 Workgroup Contract Mediation Worksheet, to assist in determining the appropriate dates.
- As the public posting period will subject both parties' final offers on unresolved issues to public review, the local should assess the reasonableness of both its and the district's latest offers. How does it feel about its offers as compared to the district's and how the public will view them?
- Knowing where the community is on the local's issues is even more essential now that the parties' bargaining positions will be made public. Gather and assess public polling data on the critical bargaining and strike issues.
- Discuss the mediator v. IELRB posting issue to which you were confidentially alerted on July 1 with the local and the IEA Deputy/Associate General Counsel with whom you work.
- Develop a public relations strategy and plan for when the offers are made public. Contact the IEA Communications Department for assistance.

4. Tenure

Q1: Is tenure as good as gone?

A1: No. Teachers who are granted tenure will have to demonstrate proficiency through the evaluation process, as is currently required.

Q2: Are teachers who currently have tenure going to have to re-attain tenure under this new reform?

A2: No, people currently in the system do not have to restart a tenure track probationary period.

Q3: What changes are made to tenure?

A3: First, nobody loses tenure who has it now. Nobody goes backwards or has to restart their path to tenure as long as they remain employed by their district. SB7 includes a way for truly outstanding new teachers to attain tenure in three rather than four years and allows for a tenured teacher who moves to a new district to possibly attain tenure in the new district in only two years.

Q4: How has tenure changed?

A4: The SB 7 tenure changes go into effect after the PERA law is implemented in a district. The changes are all related to obtaining tenure.

- Some things have stayed the same. There is still a four year probationary period. In order to receive tenure (and let's remember what tenure legally is and isn't – it i**s** access to just cause and due process rights that are not afforded to probationary employees, it **is not** a lifetime guarantee of a job), a teacher has to demonstrate a level of proficiency through his or her performance evaluations. In order to attain tenure, a non-tenured teacher must receive two proficient or excellent evaluation ratings in two of the last three years with a proficient or excellent evaluation in the fourth year.

- If for some reason an evaluation was not done when scheduled, the teacher will be considered to have received a rating of satisfactory/proficient.

- If, at the end of the four year probationary period, a teacher does not receive the requisite performance ratings, the district is compelled to non-renew the teacher.

- Teachers can receive tenure if they receive three excellent ratings in a row, and not have to wait for the fourth year.

- And finally, if after the PERA law is implemented a tenured teacher has received proficient or excellent ratings and they move districts, they are eligible to receive tenure in the new district in two years with two consecutive excellent evaluations.

Again, the new tenure provisions go into effect after a district implements the PERA changes. So, current probationary teachers are grandfathered under the current law and will achieve (or be denied) tenure under the current law's provisions.

Q5: What happens if an evaluator doesn't do the actual evaluations or doesn't provide a timely summative review? Can't this negatively affect a teacher who may otherwise be doing a great job? In other words, can it be a way for an evaluator to get rid of a teacher?

A5: No. If the evaluator fails to give a timely summative review to a tenured teacher, the summative rating will be proficient for tenure acquisition, even if the teacher has not had at least one prior evaluation in the district. (In contrast, for such failure to result in a satisfactory/proficient rating for RIF purposes, the teacher must have had at least one prior evaluation in the district.) Furthermore, a teacher will likely have rights to grieve under the CBA or otherwise challenge an evaluator's failure to give a summative rating.

Q6: Will a tenured teacher who voluntarily transfers to a new district be subject to termination if they do not achieve excellent evaluations over a four-year period?

A6: No. The teacher is eligible for tenure in two years upon excellent performance but if she doesn't receive it at that time, she can continue to move ahead and get tenure according to the same standards that everyone else is under. In other words, she needs to have two proficient or excellent ratings in two of the last three years, with a proficient or excellent required in the fourth year. She will not be subject to termination if she does not achieve excellent evaluations over a four-year period. However, a non-tenured teacher can still be non-renewed with no reasons given in years 1, 2 and 3.

Q7: My question is what happens if they do not receive an excellent at the new school?

A7: See answer to Question 6 above.

Q8: The proposal for a three-year track is a movement even further away from the philosophy of Danielson because people aren't supposed to be "excellent" forever, let alone the first years they're in a new district.

A8: Excellent is a high bar for a new teacher. However, we wanted to get some movement toward an accelerated tenure provision and this was the only way to move forward. When the new evaluation law goes into effect, student growth will be a significant factor in a teacher's evaluation which will add some objectivity to a previously completely subjective evaluation. We believe that may help some new teachers receive excellent.

Q9: Portability rule, while a victory, is a further problem with the "excellent" tag.

A9: Agreed. We have been trying to get our foot in the door with this for a long time and although it may be difficult, we think there will be experienced, excellent teachers who will be able to take advantage of this.

Q10: With regard to attaining tenure: for the 4-year period - if a non-tenured teacher receives a proficient or excellent rating in two of the last three years and/or a proficient or excellent rating in the 4th year - does the employer have to rehire them (give them tenure), or can they still choose (for whatever goofy reason) to non-renew them?

A10: Unfortunately, they can still non-renew them for whatever goofy reason they choose, although the district cannot nonrenew for an illegal reason such as race, age, gender, disability or union discrimination.

5. Dismissal

Q1a: If a teacher is dismissed for "cause" for having 2 unsatisfactory evaluations and she proves to the hearing officer that she is indeed an excellent teacher, does the school board have to follow this recommendation? How binding is the opinion of the hearing officer?

Q1b: When a teacher is dismissed for cause (2 "unsatisfactory" evaluations), they are allowed to request a hearing with an impartial hearing officer. If the teacher wants any say in choosing the impartial hearing officer, the member or association needs to pay 50% of the costs. During the process that the teacher is not paid. The teacher can prove to the hearing officer that she is indeed an excellent teacher. The hearing officer prepares a report of their fact findings and a recommendation that teacher be returned to her former position. Then the board can ignore the recommendation and release the teacher (as long as they state the reasons publicly). Is this correct?

A1: The current law is this: A teacher receives an unsatisfactory and is put on a 90 day remediation plan. If the teacher does not successfully remediate and receives another unsatisfactory, he is dismissed without pay. If he chooses to fight the dismissal he receives a hearing with a hearing officer and the state board pays.

The new law moves the costs to the district and the union (or the cost will be totally borne by the district if the union decides not to represent the teacher) from the state. There are two reasons for this. One is that all parties, the unions and management groups agree that we need a higher quality hearing officer. The state doesn't pay them anything close to the going rate and because the state is broke and so far behind, they actually often don't pay them at all.

Before the evaluation law changes the Hearing Officer will make a final decision on performance dismissals just as it is currently. After the evaluation law changes (2015 – 2016 or 2016 -2017), then there is another option for performance dismissals. This includes mandatory evaluation training for school board members and a second evaluator during the remediation process. If the district does not want to adhere to these requirements, then they cannot opt for the dismissal process that ends up with a Hearing Officer making a recommendation to the Board. If the Board does adhere to these requirements but does not agree with the

recommendation of the Hearing Officer to reinstate the teacher and therefore upholds the teacher's dismissal, the teacher can appeal the decision to the courts. There is nothing in the legislation that talks about stating the reasons publicly.

Q2: I understand why we would want to make sure we get the most qualified hearing officers possible, but if their decision isn't binding, does it really matter if they are qualified or not? A district can still dismiss a teacher who has proven she deserves to stay. From my understanding, if the decision is appealed to the courts, the court would only be deciding if the process was followed properly. So ultimately, as long as a district follows the process, they can easily dismiss a good teacher. I am very nervous that we have made it very attractive for districts to GIVE unsatisfactory evaluations to veteran teachers at the top of the pay scale. These teachers can prove that they are proficient or excellent to a highly qualified hearing officer... and still get released. It feels that we have given up tenure, without saying we have given it up.

A2: See Question and Answer 3 below.

Q3: How has tenured teacher dismissal changed?

A3: Though dismissal has changed, the fundamental system we have in place has not changed.

Performance Dismissal Option 1

Let's discuss performance dismissal first. Both currently and under the new law, if a teacher receives an unsatisfactory and does not successfully remediate in 90 days, they are dismissed. The teacher and the teacher's union representative would carefully review the district's case to see if there were violations to the process, if the administrator was biased against the teacher, or if the teacher was discriminated against. If there was a demonstrable violation in any one of the above mentioned items, the teacher would appeal the dismissal. Although teachers are permitted to fight the dismissal on the basis of the substance of the evaluation, they are very rarely successful in such a challenge – this is current law. Nothing in the new law changes any of this.

Once the teacher decides to fight the dismissal, he or she receives a hearing before a hearing officer mutually selected by him/her and the district. There are new training requirements for hearing officers and the cost of the hearing officer is shifted to the parties – the district and the union share the costs. Under current law, the State picks up the cost of the hearing officer.

The biggest changes to this process are the timelines which have been streamlined. The entire process now can take no longer than 120 days compared to 1 – 2 years. The hearing officer makes his/her decision and it is final. However, like current law, neither the district nor the teacher is "bound" by the hearing officer's decision and either party can appeal the decision through the courts if it doesn't like it.

Performance Dismissal Option 2

After the PERA law is implemented in 2016 -2017 for most districts, another performance dismissal option will be available. This option includes an even more streamlined dismissal process that ends up with the hearing officer making his/her decision as a recommendation to the Board. If the board does not concur with the decision of the hearing officer and dismisses the teacher, the teacher can appeal to the courts. If the district decides to access this process it must do two things: First, it must train its school board members in the new PERA evaluation system and second, it must provide a second evaluator during the remediation process. That second evaluator cannot be someone who reports to the first evaluator. The pool of second evaluators will be comprised of union appointed and district appointed members. If the second evaluator finds that the teacher successfully remediated but the district still decides to dismiss the teacher, the district must demonstrate to a hearing officer why its assessment of the teacher's performance is more valid than the second evaluator's assessment.

There has been some question as to why we agreed to this. There was widespread support for this concept from the legislators on the education reform committee, as hearing officer recommendations to school districts is a common practice in many other states and, in fact, already occurs in the Chicago Public Schools. We put in a number of protections, and since we have a right to a full appeal to the courts, we decided it was better to go with this process, than one the legislators would design on their own. All three unions agreed. Moreover, as most teachers and union representatives know, they help most teachers avoid dismissal by getting them to be successful in the remediation process. The new PERA law is expected to provide better qualified evaluators and better assessment systems. Additionally, a second, independent evaluator should provide more objectivity to the assessment of the teacher's performance.

Conduct Dismissal

These cases involve infractions that typically have nothing to do with performance evaluations. These are situations where teachers are accused of inappropriate or illegal behavior. In these cases the hearing officer will make a decision as to whether the conduct was proven or not, and whether it is remediable or irremediable. Under SB 7, the decision of the hearing officer will be a recommended decision to the school board. If the teacher disagrees with the decision of the board, the teacher can appeal that decision to the courts. The hearing officer will make findings of fact in addition to the recommended decision. The board must accept the hearing officer's findings of fact unless the findings are against the manifest weight of the evidence. On court review, the court must consider both the hearing officer's findings as well as the board's decision. These two requirements are safeguards that do not exist either in the Chicago Public Schools dismissal procedure or the dismissal procedures in most every other state.

Q4: The statute allows the Board to reject an ISBE Hearing Officer's decision and also allows the Board to provide its own supplemental findings after the decision has already issued. This places the entire burden on the teacher to again appeal and overcome the Board's arbitrary decisions, which may now be supplemented by "facts" that were never introduced before the H.O. I have to wonder whether it will be possible to win a dismissal hearing when the Board can change the "facts" after a hearing has already taken place.

A4: As for the dismissal process, while we would rather have not had the HO decision be a recommendation to a school board which can reject it, what we got was 1) that the board is bound by the HO findings of fact unless they are against the weight of the evidence and then it can make its supplemental findings and 2) that the HO findings of fact and recommendation to retain a teacher will have to be considered by the reviewing court in making its decision on appeal; it will not just be the board findings and decision which will be reviewed. Chicago has neither of these in its HO system. Additionally, the Board will not be able to add "new facts" to its decision, but will be able to make supplemental findings only based on evidence introduced at the hearing. If the Board attempts to add "new facts" to tis decision, the teacher will have a claim she was denied due process.

Q5: Who will undertake the training for hearing officers? ISBE or private training providers?

A5: ISBE will be responsible for providing the training or contracting it out to another entity implementing standards adopted by ISBE.

Q6: Unions pay the cost for a tenured teacher being fired for poor performance. Is this the LOCAL union or the STATE organization?

A6: For hearings based on dismissal notices sent out prior to July 1, 2012, the state will continue to pay for the cost of the hearing officer. Beginning with hearings based on dismissal notices sent on or after July 1, 2012, the teacher and the district will split the cost of a hearing officer mutually selected by them from an ISBE-provided list. If IEA provides legal services to that teacher, IEA will pick up that cost. A teacher will also have the option of allowing the district to select the hearing officer from the ISBE list. In that case, the district will pay 100 percent of the hearing officer costs.

Q7: How much would this add to the local/state budget?

A7: We will budget for it. We will set our budget based on our past experience with dismissal cases.

6. Evaluation

Q1a: As SB 7 reads, I can be rated unsatisfactory 2 years in a row by my department chair and then lose my job.

Q1b: All it will take now is two evaluations with something negative and a tenured teacher in Illinois is out of a job and has his/her certificate suspended or revoked? Why was this agreeable to the unions?

A1: An unsatisfactory evaluation **begins** the process that can lead to dismissal. Tenured teachers receiving unsatisfactory evaluations have always been at risk of termination. If you look carefully at the new law and how it will work once the new evaluation system is put in place, you will see that there are provisions that will allow for a person to be given support to try to improve if their performance is rated unsatisfactory. The new evaluation system also will require that the evaluators are pre-certified and trained to perform the evaluations.

Q2: Personally, I'm that teacher that enjoys working with low achievers, at risk populations, move ins. Their parents have my phone number. Do I stop because test scores will reflect badly on me professionally?

A2: No. Before student growth evaluation is implemented in your district (in most districts likely not before fall 2016), a joint committee composed of equal representatives of union-selected teachers and administrators will meet to decide what role student test scores as well as other measures of student growth will have in a teacher's evaluation. Among factors they will need to take into account will be such things as student mobility and attendance, IEP and ESL students, etc. Also, student growth will be measured not by the results of a test, but by how students' performance has grown over the year while in a teacher's classroom as measured by multiple measures. If the joint committee cannot reach a consensus, the district's student growth evaluation plan will default to the model currently being developed by the state, in which union representatives are having significant say. Furthermore, student growth will only be a part of a teacher's evaluation; teacher practice, including relationships with parents and other practice factors, will also make up a significant part of the evaluation.

Q3: Since Math, Science and English are the only subjects tested, how is this bill going to protect a teacher with 25 or more years from being terminated so the school board can hire someone cheaper? Those of us in small schools can have a class of 15 students and if just three could care less about some ISAT test so they just make "pictures" coloring in the dots (yes I have had it happen). That would be 20% academic warning and we would be told WE are not doing are jobs. Students don't take notes, don't do homework and parents don't make them. I have been told by a father that "when his son is at school he is my problem, not his". I would like to know what protects us from this?

A3: Your concern is exactly why the new PERA evaluation law allows each school district and local association the ability to determine locally how student growth is to be measured and

specifically does NOT allow for using one standardized test score as the measurement. How your local and local school district work out the methodology for measuring student progress and allow for outliers like someone who just fills in the bubbles, does no homework, etc., is the purpose of the joint PERA committee. In addition, keep in mind that evaluators under the PERA provisions will be required to be pre-certified as competent in performing evaluations and this should add objectivity and professionalism to how the staff is evaluated.

The concerns you raise about other subjects and students who are unmotivated and underperforming despite the best efforts of yourself and our members are valid and we believe, as you read the details, you will see that we have taken care to keep this in mind. It might make you feel at least a little bit better to know a number of the legislators, as this bill was discussed and voted on, stated not everything can be fixed in a bill and specifically referenced parental involvement or lack thereof and students who do not come to school with no intent of giving it their best efforts.

Q4: I want to know about the IEA position on using student evaluation in teacher evaluation. What information is available about the PARCC assessment and its planned effect on teacher evaluations?

A4: We believe you are referring to the PERA legislation and the new evaluation system that it calls for in the coming years? The new law requires that student growth will be a factor in teacher evaluation. The law calls for each local district and union to develop the system they will use to measure student growth and how much weight to give that measurement. It can be as low as 30% or as high as 50%. If a local district and union fail to develop a plan, then a state model plan (yet to be developed) would be utilized with student growth weighting at 50%. The law was specifically written to give local flexibility as to how student growth will be measured and factored into the evaluation. It specifically DOES NOT require the use of a standardized test (except for Chicago).

Another provision of the law requires that adequate and sustainable revenue needs to be available to the districts before this must be implemented. Currently that standard has not been met.

Q5: I am under the impression that the new evaluation procedures cover certified teachers who are providing instructional services (e.g. teaching classes that are part of the district's curriculum) to students. Am I overlooking any potential impacts to other staff that may or may not be certificated that provide services to students such as speech and language pathologists, OT's, PT's, etc. regarding the evaluation component of the law?

A5: PERA applies to tenured and non-tenured teachers. The OTs, PTs, and non-certificated nurses are not "certificated under the School Code," so this provision of the Code would not apply to them.

Technically speaking, the new PERA evaluation procedures apply not just to teachers who are providing instructional services, as teacher is defined, as it always has been in 24A, as "any and all school district employees regularly required to be certified under the laws relating to the certification of teachers." This includes such positions as certificated speech pathologist, nurses, resource coordinators, social workers, psychologists, or other certificated employees that provide services to students. The obvious difficulty is coming up with a student growth measurement for those who are not directly involved in the students' instruction. Prior to the new PERA law, how were these non-instructional certified staff evaluated under 24A by the district, if at all? Based upon one very brief conversation with ISBE about this, it is clearly an issue that will need to be resolved.

Q6: If a School District received a waiver pertaining to the evaluation's rating (excellent, proficient, unsatisfactory) from the State to use the following ratings on the evaluation rating (proficient, unsatisfactory and needs improvement), can the School District apply for another waiver to continue using the modified rating system?

A6: Under the PERA passed in January 2010, once a district implements its student growth evaluation plan (required for most districts by no later than 2016-17 SY), no waivers from the 4 categories will be permitted. While ISBE could technically still grant a waiver up to that time, we have recently learned that it likely will not, and in fact it appears that it may take the position that all such waivers will expire beginning the 2012-2013 school year. We are currently discussing that issue with ISBE. Furthermore, any district which has a waiver from the statutory categories must establish a basis for assigning each teacher a rating which equates to the statutory categories when it comes to evaluations used for the new RIF process.

Q7: Who pays for the training of evaluators and expenses, if any, incurred by evaluators? Who pays for mandatory professional development?

A7: The state has to provide training and the pre-certification process. If it fails to do so, the law can't go into effect.

Q8: How are evaluators selected?

A8: The evaluators are selected in the same way they are now; typically the school's principal or other district administrator is selected by the district. The new PERA law does provide for peer evaluators, but only if the union agrees.

Q9: Explain the training process an evaluator must go through by an outside source, and what training will these individuals have to train the evaluators?

A9: The PERA law states that the pre-certification process and the training have to be developed within the ISBE guidelines. ISBE will not provide the training themselves (according to the law), but they must oversee the process for developing both the pre-certification and training processes. They will develop an RFP for both, and the Performance Advisory Evaluation

Committee (a statewide representative group) will work with them to design the parameters from which both processes will move forward. Whoever receives the contract to do the training will have to demonstrate that they have experience in training evaluators.

Q10: Can you challenge the action taken based upon an evaluation?

A10: If a teacher receives an unsatisfactory evaluation rating, the School Code procedures regarding a remediation plan must be followed. As of now, additional challenges to whether the proper procedure was followed may be available depending on the collective bargaining agreement.

Q11: What happens if the administrator is not a certified evaluator and a non-tenured teacher does not get an appraisal because of that; are they still in the 1st RIF group?

A11: We will legally challenge the evaluator's right to evaluate anyone if they are not certified well before the RIF list comes out.

Q12: Can an evaluation be grieved?

A12: The substance of the evaluation cannot be grieved, but failure to follow the procedures can be grieved.

Q13: It is my understanding that there are multiple effective dates for PERA: the four ratings (unsatisfactory, needs improvement, proficient, excellent) have to be incorporated in evaluation plans by Sept. 1, 2012 (24A-5); the inclusion of student growth as a factor in evaluations – anywhere from 2012 to 2016 (24A-2.5). Which date is being used when saying "pre-PERA" and "post-PERA"?

A13: At this time, the pre- post-PERA line will be drawn by the date by which a district must implement student growth as a factor in evaluations (for most districts either 2015-2016 or 2016-2017). Under SB 7, a local and district can agree in writing to move up the date as early as the 2013-2014 school year.

Q14: Will the evaluation schedule remain as is with tenured teachers evaluated every two years, or will that schedule be changed if the proposal becomes legislation?

A14: That will not change, except that teachers who receive a needs improvement rating will be evaluated the next year. Currently, tenured teachers are required to be evaluated at a minimum of every two years, although a teacher can be evaluated more often. That will not change.

Q15: What happens if an evaluator doesn't do the actual evaluations or doesn't provide a timely summative review? Can't this negatively affect a teacher who may otherwise be doing a great job? In other words, can it be a way for an evaluator to get rid of a teacher?

A15: No. If the evaluator fails to give a timely summative review to a tenured teacher, the summative rating will be proficient for tenure acquisition and RIF purposes. Furthermore, a teacher will likely have rights to grieve under the CBA or otherwise challenge an evaluator's failure to give a summative rating.

Q16: Is there any discussion/hope that the four categories will be aligned to Danielson's framework? "Needs improvement" is not equal to "basic," and last year's law as written undermines the professional development philosophy.

A16: There has been some discussion about that, but as you point out, "needs improvement" as it is intended in the law does not equate to "basic," according to Danielson. The key is to figure out what combination of performance levels from Danielson would equate to "needs improvement." It is not intended that the levels of performance would equate equally to the summative ratings. For example, a teacher would not have to be distinguished on every one of Danielson's components to receive an excellent summative rating. We know that would be impossible. So, the key is for the joint committees and for the state default model to reflect a high level of performance but not an impossible one. The same is true for "needs improvement."

7. Action Against Certificate

Q1: Suspension/Revocation: Early in the spring webinar PowerPoint there is a reference to the revocation/suspension process being triggered. Would it be limited to the content area that the teacher was using when the summative was performed or to the teacher's entire certificate?

A1: The entire certificate. However, the new law allows the state superintendent to take less severe certificate action, i.e., require professional development, training and/or coursework over a set time period.

8. Scope of Bargaining on Issues Which Don't Have Separate Category

Q1: Are the changes re: length of school day/year applicable only to CPS or throughout the state?

A1: Only to CPS.

9. Performance Pay

Q1: Is performance pay included in SB 7?

A1: There is NO performance pay component in SB7.