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An Historical Study of the Dismissal of Tenured Teachers in Illinois, 1941-1989

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AN HISTORICAL STUDY OF THE DISMISSAL OF TENURED TEACHERS IN ILLINOIS: 1941-1989

by

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VITA

The author, Janice Lynn Paron, is the daughter of Paul and Delores (Miner) Ruppert. She was born in Chicago, Illinois, December 29, 1952.

Her elementary and high school education was obtained in the public schools of Chicago. In March of 1975, Mrs. Paron graduated from University of Illinois at Chicago and received a Bachelor of Science degree in Elementary Education. She completed her Master of Education in Educational Administration from Loyola University in May, 1986.

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CHAPTER 1

INTRODUCTION

Background

Tenure is the right for teachers to qualify for continued employment free from unlawful, arbitrary, and capricious dismissal by a school board. Dismissal of tenured teachers can only be initiated upon cause by the board of education, and must provide the teacher with an opportunity for due process procedures. As it is conferred by legislative action, it is only applicable to public school teachers.

Historically, the concept of teacher's tenure dates back in the United States to the 1880s with the inception of the civil service plan under the administration of President Andrew Jackson. Civil service was developed as a result of national criticism to the "spoils system" that had come into prominence during that era. On January 16, 1883, the first civil service act was passed as "An act to regulate and improve the civil service of the United States," (22 Stat. 403).

In 1885, the matter of tenure of school officials was brought forth as a proposal by the National Education Association. The tenure sought was a form of civil service

for the teaching profession. The National Education Association concluded

> that tenure for public school teachers would be for the good of the schools and the general public, and that it would protect the profession from personal or political influence and be made free from the malignant power of spoils and patronage.[1]

Tenure developed rapidly following the civil service plan of 1883. The first statewide tenure law was enacted in New Jersey in 1909. Nationally, the basic objectives of the different plans that followed were to protect teachers against unjust removal after having undergone an adequate probationary period by: eliminating arbitrary intent for demotion or termination of position; minimizing malicious or capricious acts; and setting aside political or partisan trends. It was also thought that with the added guarantees, the profession would attract and retain quality teachers.[2]

Between 1935 and 1940 an astounding amount of legislative activity occurred. The National Education Association (N.E.A.) reported that

> 23 percent of the teachers in the United States were covered under tenure legislation in 1936. In 1938, twenty-one states had one or more tenure bills presented to the legislature. New tenure laws of varying importance were enacted in ten states. Legislation covered approximately 37 percent of all teachers in the U.S., an

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[1]A narration of the history and purpose of tenure provided in McSherry v. City of St. Paul, 202 Minn. 102, 277 N.W. 541 (1938).

[2]Ibid.

increase of 14 percent over a two-year period.[3]

By 1947, 42.6 percent of teachers in the United States were under tenure, 32.5 percent were under continuing contract laws, 8.4 percent were under laws permitting long-term contracts, 2.3 percent were under laws requiring annual contracts and 11.2 percent were without an legislature protection.[4]

Although tenure legislation developed rapidly, it did not do so without controversy. Teacher associations viewed tenure as "the teachers' Bill of Rights."[5] The associations felt that

> although some districts employed fair and orderly procedures in dismissal, many did not afford teachers the same rights as a criminal on trial for his life-a hearing as guaranteed by the Bill of Rights. Anything less than dismissal for good and just cause established beyond doubt by fair and just means, was a denial of democracy.[6]

George D. Strayer, a proponent of teacher tenure, studied the operation of tenure law in Chicago in 1932. His conclusions regarding the "case for tenure" were expressed in The Administration of Schools as follows:

> 1. It conforms to an increasing social concern for the economic security of all works.

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[3]Donald DuShane, "The Status of Tenure Legislation," Journal of the National Education Association (May 1938): 155.

[4]Committee on Tenure and Academic Freedom-National Education Association, Teacher Tenure: Analysis and Appraisal, Washington, D.C., 1947, p. 10.

[5]"Sneak Attack on Education," The Clearing House, (April 1943): 540.

[6]Ibid.

> 2. Security of tenure tends to remove personal, political, and other unprofessional pressures from teachers.
> 3. It places the emphasis of personnel practice on improved methods of selection of teachers at entrance to training as well as at the time of appointment.
> 4. It emphasizes good supervisory practices, placing a premium on leadership rather than on coercive methods.
> 5. It does not materially increase the difficulty of removing the unprofessional teacher after a certain length of service. A teacher should be removed from service for insubordination, incompetency, and unprofessional conduct.[7]

According to the 1943 American School Board Journal, not everyone viewed tenure favorably, e.g., most notably school boards and administrators. It was feared that tenure protection would prevent the dismissal of the incompetent teacher, making the position of the permanent teacher impregnable.[8]

At a panel discussion sponsored by the Lake Shore Division of the Illinois Education Association in 1940, Dr. E.H. Hanson, superintendent of schools at Rock Island, presented the following points in defense of not implementing tenure:

> 1. The people, through their boards of education, should formulate and establish school policies. Would tenure in practice nullify school policies? Could tenure legislation be drawn in a manner such that the competent teacher can gain protection, yet boards of education would not relinquish control?
> 2. The school system should insure that teachers will grow professionally in order to preserve democracy and

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[7]George D. Strayer, The Administration of Schools, 1932 in Eloise P. Bingham, "Teachers Professional Problems II-Continuing Tenure," The Illinois Teacher (April 1940): 540.

[8]"Courts and Teacher Tenure," American School Board Journal (October 1943): 47.

> the best welfare of the children. Would the threat of discharge be needed to force teacher growth?
> 3. A school system should operate on sound business principles. Does tenure legislation render impossible any necessary retrenchment program?[9]

The debate on tenure has continued. Over the years it has been discussed relative to collective bargaining and most recently to implementation of school reform.

Tenure controversy also spilled into the courtroom. As states adopted tenure laws, more often than not courts were called upon to interpret dismissal decisions based statutory tenure regulations. In early dismissal cases, judges frequently determined whether a teacher was tenured or still within the probationary period. Decisions pointed toward a necessity for fairness on the part of the school boards with their staffs.

In one such case regarding fairness, Langan v. School District of the City of Pittson, Pennsylvania in 1939, a teacher was voted as tenured by a bare majority of the board of education. Two months later new members were elected. The new board without notice to the teacher, by resolution declared her contract void. Because her contract was void, the board of education reasoned that no rights are to be conferred by a void instrument. The teacher felt that she was within the tenure act and took her case to court. The Supreme Court of Pennsylvania ruled that:

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[9]"Teacher Tenure Legislation," American School Board Journal (December 1940): 32.

> if all that were required to void a teacher's contract were a mere statement by the new board that the teacher was not necessary at the time of her appointment, then the safeguards of the tenure act would be valueless. . .[10]

Recent court decisions have placed the meaning of teacher's tenure under a federal constitutional overlay of substantive and procedural due process as guaranteed by the 14th Amendment of the United States Constitution. Between 1972 and 1976 courts (federal and state) consistently applied the U.S. Supreme Courts holdings. Two federal supreme court cases, Board of Regents v. Roth and Perry v. Sindermann added another dimension. Prior to those decisions, boards and administrators had only to remain within the limitations of state statutes. With additional guidelines, personnel decisions now were to be free from constitutional violations. Taken together these cases balanced school board prerogatives, with teacher constitutional rights.[11]

Often a probationary or nontenure teacher may have asserted a property right when dismissed prior to the end of a contract, but in general it is acknowledged that no property interest existed beyond the end of a contract.

Purpose of Study

The purpose of this study was twofold. First, it sought to examine and narrate the development of Illinois teacher

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[10]Langan v. School District of City of Pittson, 6 A.2d 772 (1939).

[11]Board of Regents v. Roth, et al., 92 S. Ct. (1972), 408 U.S. 564, 33 L. Ed.2d 548 (1972); Perry et al., Sindermann, etc., 408 U.S. 593, 33 L.E.2d 570 (1972).

employment statutes; and second, to analyze the dismissal of tenured elementary and secondary teachers in public school districts throughout the state. Of the two issues which were studied, the focal point was dismissal for cause of tenured public school teachers between 1941 and 1989. In order to have deduced conclusions regarding teacher dismissal, the implications and effects of teacher employment legislation upon dismissal needed to be addressed. Further, in presenting a thorough analysis and fostering a clear understanding of current teacher dismissal practices, a detailed legal background of employment provisions were provided pre-dating tenure law to the year 1900.

It was a further purpose to establish an overview of tenure law and court cases for future use by educators, school board members, and researchers. This overview could act as a tool which would assist in the formulation of district employment policies and guidelines or serve as a basis for additional research.

Organization of the Study

Both issues in this study, tenure and dismissal of tenured teachers, were legally based. Tenure itself was legislatively enacted in the Illinois Revised Statutes in 1941. Procedures for teacher dismissal, including a judicial review of administrative decisions of termination of employment, were amended into the revised statutes under tenure. Causes for dismissal were also listed in the Illinois

Revised Statutes, although in a separate section. Therefore, the primary source of documents to be analyzed were the Illinois Revised Statutes and Illinois court cases pertaining to teacher dismissal at the appellate and supreme court levels between 1900 and 1989. Federal court cases were also reviewed when the claims brought by teachers were believed to be a violation of the United States Constitution. Secondary sources of information were also utilized and included dissertations and articles with respect to tenure and teacher dismissal.

Through the use of content analysis of primary and secondary sources, this study endeavored to answer the following research questions:

1. What was the legal statutory law history for dismissal of tenured teachers in elementary and secondary public schools of Illinois?
2. What was the legal case law history for dismissal of tenured teachers in elementary and secondary public schools of Illinois?
3. What were the trends and issues for dismissal of tenured teachers in elementary and secondary public schools of Illinois?

As Illinois courts did not allude to the political and social aspects of tenure these concepts in case commentary, were not included as research questions. Therefore, it was beyond the scope of this dissertation to delve into the

political and social aspects of this country during the development of teacher tenure in Illinois.

In answering these research questions, secondary sources such as dissertations and articles from educational periodicals and law reviews were first surveyed to obtain a general background of knowledge. This information was found through employing an Eric search and using Education Index and West's Illinois Digest.

Primary sources, which were Illinois teacher employment statutes and judicial cases from local and federal courts, were then researched for information more specifically relating to the topics of study. All court case citations were located in local and federal law indices. Only court cases which dealt with dismissal of elementary or secondary tenure teachers for cause as specified in SEC. 10-22.4 were selected. This section stated that teachers could be dismissed by a board of education for:

> Incompetency, cruelty, negligence, immorality, or other sufficient cause, . . . failing to complete a one-year remediation plan with a "satisfactory" or better rating, and whenever, in its opinion, he is not qualified to teach, or whenever, in its opinion, the interests of the schools require its. . .[12]

In order to answer the research questions posed, statutes and court cases were sectioned into time periods historically significant to teacher employment legislation. Within each time period statutes and case law were examined

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[12]ILL. REV. STAT. Ch. 122, Sec. 10-22.4 (1988).

separating Chicago from downstate school districts. These districts were not intermixed as Chicago was governed by different state statute, than those school districts in the rest of the state.

Once the statutes and court cases were grouped according to a designated time period, the conclusions of the study were developed by analyzing the following variables:

1. Criteria for dismissing tenured teachers identified in the Illinois Revised Statutes from 1941 to 1989.
2. Types of teacher dismissal cases heard by Illinois courts between 1900 and 1989.
3. Grounds for dismissal cited by the school board.
4. Allegations, behaviors, and actions cited by the school board to establish grounds for dismissal.
5. Issues brought forward by the dismissed tenured teacher in appealing the school board's dismissal decision.
6. Rationale given by the Illinois courts for reversals or affirmations of public school board decisions.
7. Major elements that influenced changes in dismissal law for tenured teachers in Illinois public schools.

Definition of Terms

The following legal terms were defined to facilitate clarity and understanding when used in the investigation of

this study. Definitions were taken from Barron's Law Dictionary[13] unless otherwise indicated.

Adjudicate: The determination of a controversy and a pronouncement of a judgment based on evidence presented.

Affirm: The assertion of a higher court that the judgment of the court below is correct and should stand.

Amend: The alteration of an established law.

Appeal: A resort to a higher court for the purpose of obtaining a review of a lower court decision and a reversal of the lower court's judgment or the granting of a new trial.

Appellant: The party who appeals a decision and brings the proceeding to a reviewing court. (This party may also be referred to as the challenger, appealer, or contender.)

Board: Board of directors, board of education, or board of school inspectors.[14]

Cause: Teacher dismissal reasons from employment as specified in state tenure law. (The responsibility for substantiating cause rested with the initiating school board. In the Illinois Revised Statutes, cause was defined as incompetency, cruelty, negligence, and immorality. It further empowered a board of education to dismiss a teacher for "other sufficient cause", whenever, in the opinion of the board, "the interests of the schools required it," or whenever, in the

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[13]Steven H. Gifis, Barron's Law Dictionary (New York: Barron's Educational Series, Inc., 1984).

[14]ILL. REV. STAT. Ch. 122, Sec. 24-10 (1988).

opinion of the board, the teacher was "not qualified to teach." Temporary mental or physical incapacity to perform teaching duties or marriage were not a cause for dismissal.[15]

Charges: Specific acts or incidents which establish or support one or more of the causes for dismissal.[16]

Dismissal: Termination of the teacher's services for cause by action of the school board prior to the lawful expiration of the contract.[17]

Liberty Interest: An infringement by a school board or administrative action which imposes a stigma or other disability that forecloses the teacher's freedom to take advantage of other employment opportunities or otherwise injured that employee's good name or reputation in the community.[18]

Plaintiff: The party who initially brings the suit or seeks remedy in a court of law. (This party may also be referred to as complainant, accuser, claimant, or litigant.

Probationary Service: A trial period of employment served by teachers before being eligible for tenure. (It was required of teachers in Illinois school districts outside of

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[15]Id., Sec. 10-22.4 (1988).

[16]Gerard E. Dempsey, Formal Dismissal and Suspension Procedures Under Illinois Tenure Law (Chicago, Illinois: Institute for Continuing Legal Education, 1985), 13.22

[17]Nancy Sindelar, "Issues and Outcomes of Federal Court Cases Involving Teachers Dismissed for Incompetent Behavior: 1900 to 1986" (Ph.D. Dissertation, Loyola University, 1986).

[18]MINN. STAT. ANN., 1984.

Chicago, to serve two years of probationary service, before qualifying for contractual continued service. Teachers of Chicago must have served three years before the conferment of a permanent appointment.)[19]

Procedural Rights: "Due process" rights that safeguard the protection of an individual's substantive rights. To compel due process protection, the teacher must show that a sufficient "property" or "liberty" interest was present.[20]

Property Interest: A legitimate claim of entitlement to continued employment. (In terms of teacher tenure.)

Statutory Law: An act of the legislature, adopted pursuant to its constitutional authority.

Substantive Rights: Rights that are guaranteed by the U.S. and state constitutions to "liberty" and to "property", and those constitutionally valid statutory rights granted by the Legislature.[21]

Teacher: Any or all school district employees regularly required to be certified under laws relating to the certification of teachers.[22]

Tenure: The right for a teacher to be eligible for continued employment free from unlawful, arbitrary, and capricious dismissal by a school board. (In Illinois, tenure

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[19]ILL. REV. STAT. Ch. 122, Secs. 24-10 and 34-84 (1988).

[20]MINN. STAT. ANN., 1984.

[21]Id.

[22]ILL. REV. STAT. Ch. 122, Sec. 24-10 (1988).

in school districts outside of Chicago is referred to as contractual continued employment; while in Chicago it is called a permanent appointment.)[23]

Writ of Certiorari: A common law writ, issued from a superior court to one of inferior jurisdiction, commanding the latter to certify and return to the former the record in the particular case. (The writ is issued in order that the court issuing it may inspect the proceedings and determine whether there has been any irregularities.

Writ of Mandamus: A writ issued from a court to an official compelling performance of a ministerial act that the law recognizes as an absolute duty, as distinct from other types of acts that may be a matter of the official's discretion. (It is used only when all other judicial remedies have failed or were inadequate.)

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[23]Id. at secs. 24-10 and 34-84 (1988).

CHAPTER 2

HISTORICAL OVERVIEW OF TENURE IN ILLINOIS

Introduction

This chapter seeks to overview teacher tenure laws and other teacher employment legislation in Illinois from 1909 to 1989. In doing so, dismissal procedures that generated from tenure law will be emphasized. Chapters thereafter will analyze legislation from the Illinois Revised Statutes pertaining to dismissal of tenured teachers and accompanying case law from the state and federal levels in a chronological fashion.

Early History of Tenure in Illinois: 1917-1941

The concept of tenure is not new to Illinois. Teachers and principals of Chicago have been provided with a type of tenure status since 1917, that has provided permanent appointment by merit upon fulfilling three years of satisfactory probationary service.[1] The permanency of the appointment has been subject to the rules of the board of education for conduct and efficiency and subject to removal for cause by the members of the board of Education.[2] At this

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[1]ILL. REV. STAT. Ch. 122, Sec. 138 (1917).

[2]Id. at Sec. 161 (1917).

same time however, teachers in Illinois downstate districts have not been provided with any type of rights associated with tenure. It has been within the powers and duties of the boards of these districts to dismiss teachers.

In districts with one thousand to one hundred thousand inhabitants, the boards of education could "dismiss and remove a teacher, whenever in their opinion he was not qualified to teach, or whenever in their opinion the interests of the school require it."[3] School districts with under one thousand inhabitants, were governed by school directors. Statutorily, they also had the right to "dismiss a teacher for incompetency, cruelty, negligence, immorality or other sufficient cause."[4]

Although state statute specified that dismissal be based on some type of cause in the early 1900s, no district of any type mandated that any form of due process be given to the teacher before termination of employment. Prior to the enactment of tenure law, Illinois courts at various levels of the judicial system issued rulings to reaffirm the guidelines of the state statute and prohibited the removal or dismissal of teachers during the period of their annual contracts unless boards could prove cause.

In one such case, the Illinois Supreme Court held in Hartmann v. the Board of Education of Westville Township High

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[3]Id. at Sec. 127a (1917).

[4]Id. at Sec. 115 (1917).

School District No. 220,[5] that boards of education had the power to dismiss teachers during the course of their contracts for cause only. The power of dismissal or removal "was not intended to bestow upon... [boards of education] arbitrary power to dismiss without cause, and without specifying any reason for such dismissal."[6] Other cases followed Hartmann[7] in the 1930s, but did not produce any change in the teacher dismissal process. Concurrently, there was no new legislation enacted which would allow for any type of protection of a teaching position.

It was not until July 1, 1941 in the Sixty-second General Assembly, that the legislature followed Chicago's lead and established law while afforded teachers greater employment security for downstate school districts. Section 136b of the Illinois Revised Statutes was created for districts with a board of directors and less than one thousand inhabitants, which SEC. 136c applied to districts with a board of education and with more than one thousand but less than five hundred thousand inhabitants.[8] Chicago was excluded from both of these provisions and remained covered under SEC. 161.

Section 136b provided terms of employment whereby

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[5]Hartmann v. Board of Education of Westville Township High School District No. 220, 356 Ill., 577, 191 N.E. 279 (1934).

[6]Id.

[7]Id.

[8]ILL. REV. STAT. Ch. 122, Secs. 136b and 136c (1941).

teachers, principals, and superintendents would be eligible for a contract of not more than a three year time period, after having fulfilled two years of consecutive probationary service in a district. This section further stipulated that all employees were

> to be notified not later than March 15 of the year in which any regular employment contract expires, whether he is to be reemployed . . . If the teacher is not to be re-employed, he must be given reasons in writing.[9]

Section 136c's provisions differed somewhat. Whereas teachers in smaller districts with board of directors were delegated eligibility for continuing contracts; teachers in larger districts with board of education and school inspectors and covered under SEC. 136c, could gain tenure or contractual continued service. The four most critical elements of tenure as outlined in SEC. 136c were: 1) the probationary period; 2) causes for dismissal; 3) the right to a hearing; and 4) the right to an appeal.[10]

1) The Probationary Period

After two years of probation, at least one of which had to be after July 1, 1941, teachers were placed on contractual continued service until the age of sixty-five, unless they were given the notice of dismissal with reasons at least sixty days before the end of such probationary period. The probationary period could have been extended to three years

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[9]Id. at Sec. 136b (1941).

[10]Id. at Sec. 136c (1941).

for teachers who had no previous teaching experience.[11]

2) Causes for Dismissal of Tenured Teachers

Causes for dismissal were those that were mentioned in SECS. 115 and 127 of the Illinois Revised Statutes. Section 115 named specifically incompetency, cruelty, negligence, immorality, or other sufficient cause.[12] Section 127 read that the board may dismiss any teacher "whenever, in the opinion of the board of education, he is not qualified to teach, or whenever, in the opinion of the board of education, the interests of the schools may require it."[13] After a teacher was conferred with tenure, that teacher could not be dismissed until it was approved by a majority vote of all members of the board of education; after due notice with reasons for dismissal in writing; and after a hearing by the board if requested by the teacher within ten days after the notice of dismissal.[14]

3) The Right to a Hearing

The teacher had the right to a hearing although the statutes did not specify who the hearing officer should be. This hearing could be made public at the request of either teacher or the school board. Specifically, the teacher was given the right to be present with counsel and to cross-

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[11]Id.

[12]Id. at Sec. 115 (1941).

[13]Id. at Sec. 127 (1941).

[14]Id. at Sec. 136c (1941).

examine witnesses; the right to present defenses to the charges against him or her; and the right to call upon the board to subpoena witnesses for the teacher up to the limit of ten witnesses. It was the responsibility of the board to arrange for a stenographic record of the proceedings at the hearing. A transcript of such record would be available at the cost of the party requesting it.[15]

4) The Right to an Appeal

Teachers also had the right to appeal the decision of the employing board through an appeal committee appointed by the county superintendent of schools. The appeal committee would review the evidence as recorded and if it found such action justified, reverse the decision of the employing board. This action would then reinstate the teacher to the former position.[16]

Post-Tenure Law: 1941-1961

Between 1941 and 1961 most changes in the law represented a clarification and a refinement in the language of the original tenure act. The most major change in the statute was the restructuring of SECS. 136b and 136c which then became SECS. 24-10 to 24-12.

Section 136b, which dealt with terms of employment for teachers in a district with a board of directors, was renumbered to SEC. 24-10 and except for a few minor changes,

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[15]Id.

[16]Id.

the language virtually remained the same. The thrust of this statute was that teachers who fell within the jurisdiction of SEC. 24-10, were not eligible for the same due process rights, (a hearing for instance) as outlined in SECS. 24-11 and 24-12.[17]

An Illinois Supreme Court decision in 1946, Pack v. Sporleder,[18] made it clear that SEC. 136b (SEC. 24-10) had no provision for specific charges against a teacher or any of the other procedures as set forth in SEC. 136c (24-12). Accordingly, in Pack supra, written notice to a teacher by board of school directors, setting forth its reasons why a teacher was not to be rehired, was sufficient compliance with this section.[19]

Previously, SEC. 136c included both terms of employment and procedures for dismissal of tenured teachers.[20] The numbering of the 1961 revision, split SEC. 136c into two parts--SEC. 24-11 which outlined terms of employment of contractual continued service and SEC. 24-12 which listed dismissal procedures for teachers, both applicable to districts with a board of education or a board of school inspectors.[21]

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[17]Id. at Sec. 24-10 (1941).

[18]Pack v. Sporleder, 394 Ill. 130, 67 N.E. 2d 198 (1946).

[19]Id.

[20]ILL. REV. STAT. Ch. 122, Secs. 24-11 and 24-12 (1961).

[21]Id.

No significant changes occurred in SEC. 24-11. In the first paragraph of this section, "school term" was rewritten to read "one year" relative to full-time teaching experience prior to the probationary period. It also required the employing board to give written notice of an extension of probationary period at least sixty days before the "end of the period of two consecutive school terms"[22] in lieu of "notice before the end of such two-year period."[23]

Alterations to SEC. 24-12 dealt mainly with teacher dismissal regarding an increase in the school population. The effect of change in boundaries of school districts by reason of the creation of a new school district on contractual continued service status of teachers, was added in 1949 and incorporated into the 1961 revision.[24] That section was amended again in 1955. Added to SEC. 24-12 (then 136c), was the proviso that

> the board must first remove all teachers who had not entered upon contractual continued service, before removing teachers who had entered upon such service in the event such removal was the result of a decrease in the number of teachers employed or the discontinuance of teaching services.[25]

Thus, when positions were going to be eliminated, non-

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[22]In ILL. REV. STAT. Chap. 122, Sec. 24-11 (1961), the word 'term' replaced the word 'year'.

[23]The phrase 'one-year' and 'two-year period' were both located in ILL. REV. STAT., Chap. 122, Sec. 136c (1941).

[24]Id. at Sec. 136c (1949).

[25]Id. (1955).

tenured teachers would be discharged before tenured teachers. This same section also required that when the board reinstated positions, tenured teachers were to be rehired over non-tenured so far as they were legally qualified to hold such positions. Reasons for dismissal were stated in SEC. 10-22.4, applicable to board of director districts and districts governed by boards of education and boards of school inspectors. Those causes did not precipitate dismissal for Chicago teachers as different procedures were dictated under a separate statute, SEC. 34-85. That statute did not define the limitations for cause; rather it stated that teachers may only be removed for it.[26]

Causes for dismissal in SEC. 10-22.4 included incompetency, cruelty, negligence, immorality or other sufficient cause and whenever in the opinion of the board a teacher was not qualified to teach, or whenever in the opinion of the board the interests of the schools required it. A 1949 amendment added that marriage was not a cause for removal.[27]

The Hearing Officer: 1975

The year 1975 brought a notable addition to tenure law--an impartial hearing officer and rules thereof for dismissal of a tenured teacher. Prior to the new regulations, a hearing had to be requested by the teacher in writing within a period of ten days after the service of notice. The hearing would be

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[26]Id. at Sec. 34-85 (1961).

[27]Id. at Secs. 6-36 and 7-13.

held and the decision rendered within a period of sixty days, with a ten-day interval between the notice and the hearing.[28]

With the 1975 legislation, the board of education was required to schedule a hearing, "unless the teacher within ten days requests in writing of the board that no hearing be scheduled . . . ."[29] In other words, the burden of requesting a hearing previously was the responsibility of the teacher. With new legislation a hearing was automatic, unless a teacher sought the contrary. The hearing was to be scheduled between thirty and sixty days after an approval of a motion to dismiss by the board of education.[30]

The highlight of the statute was that the hearing officer was to be selected from a list of five prospective impartial hearing officers, provided by the State Board of Education. The teacher and the board or their authorized agents or attorneys would then alternately strike one name from the list until only one name remained. That person would then become the hearing officer.[31] This 1975 legislation meant that boards of education could no longer serve as the hearing body.

Another change regarding dismissal in 1975, involved the list of causes in SEC. 10-22.4. To the already established

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[28]Id. at Sec. 24-12 (1975).

[29]Id.

[30]Id.

[31]Id.

list, it was added that temporary mental or physical incapacity to perform teaching duties as found by a medical examination was not a cause for dismissal.[32]

Post-Reform: 1985

Since the inception of the first tenure statute in 1941 for districts outside of Chicago, there has been a clause included which referred to remediability of cause. According to SEC. 136c it read: "Before service of notice of charges on account of cause that may be deemed to be remediable, there shall be given the teacher reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges."[33]

When it was determined that a tenured teacher's performance would possibly call for dismissal, the district would have proceeded to ascertain whether the causes were remediable or non-remediable. If the causes were remediable, then a notice to remedy was to be sent out to the teacher to allow reasonable time to correct those causes before a formal motion to dismiss was made.

Remediability versus irremediability was a subject of controversy in several court cases. Gilliland v. Board of Education, illustrated the difference between the two terms in 1977, when the Supreme Court of Illinois stated that:

A cause for discharge may be deemed irremediable if

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[32]Id. at Sec. 10-22.4 (1975).

[33]Id. at Sec. 136c (1941).

> evidence indicated that damage had been done to the students, the faculty, or the school itself, and that the damage could not have been corrected if timely written warnings had been given by the teacher's superiors. Uncorrected causes for dismissal which originally were remediable in nature can become irremediable if continued over a long period of time.[34]

In 1985, the additional stipulation of a remediation period of one-year was legislated into the remediability clause of SEC. 24-12. A remediation plan of one year was applicable, beginning with the 1986-87 school, if the teacher had deficiencies which were deemed remediable and had been given an evaluation rating of "unsatisfactory."[35] (The district itself defined the standards of unsatisfactory under ART. 24A.) Teachers whose deficiencies were determined to be irremediable by the board of education were not subject to a one-year remediation period. However, districts were still bound to the other procedures for dismissal defined in SECS. 24-12 and 34-85, such as notice or hearing.

The remediation plan was designed to correct the cited deficiencies. The teacher who was rated unsatisfactory, as well as a district administrator qualified under SEC. 24-3 and a consulting teacher selected by the participating administrator or the principal of the teacher who had been rated unsatisfactory, must participate in the remediation

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[34]Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622 of Tazewell County, 67 Ill.2d 143, 8 Ill. Dec. 84, 365 N.E.2d 322 (1977).

[35]Under the reform act of 1989 for the City of Chicago, teachers who have been rated satisfactory were subject to a forty-five day remediation period.

plan.[36]

Participating administrators evaluated and rated the teacher on remediation, on a quarterly basis over a year's time. A consulting teacher's role was to provide advice to the teacher on how to improve teaching skills and to successfully complete the remediation plan. It was not permissible for a consulting teacher to evaluate the teacher on remediation.[37] If the teacher under remediation did not complete the one-year remediation period with a "satisfactory" or better rating, he was subject to dismissal for cause under SEC. 10-22.4.[38]

Nontenured Teachers

While this paper is concerned only with the analysis of dismissal of tenured teachers, the confines of nontenured or probationary teachers need to be explained in order to present a more complete picture of tenure.

Illinois employment statutes, such as SEC. 24-11 and 34-84, mandated that districts follow certain procedures in dismissing teachers, varying according to whether a teacher was probationary or tenure. Procedures for dismissing teachers and the definition of tenured versus probationary, were specified by the size of the district.

Tenure and dismissal procedures for teachers in school

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[36]ILL. REV. STAT. Ch. 122, Art. 24A-5 (1985).

[37]Id.

[38]Id. at Sec. 10-22.4--Effective January 1, 1988.

districts with a population having less than 500,000 inhabitants were outlined in 1989, in SECS. 24-11 to 24-16. This included boards of educations, boards of school inspectors and boards of school directors. Falling within this category were "special charter districts, and community unit districts, high school districts, and community consolidated districts."[39] (Districts of this type were often referred to as "downstate," because they were outside of Chicago.) Employment status in those districts was referred to as a contractual continued service, with a probationary[40] length of two school terms.

Sections 34.84 to 34.85b applied to teachers in a district with a population of over 500,000 people. Thus far, the only city falling into this category has been Chicago. Section 34.85 labeled tenure as permanent appointment. Length of probationary service time was three years before being eligible for such appointment.

First-Year Probationary Teachers

Chicago teachers must have served three years of 'probationary' service before being qualified for permanent appointment. Prior to September 1, 1989, the term teacher included both teachers and principals whereby both groups were

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[39]Lee O. Garber and H. Hayes Smith, Law and the Teacher in Illinois (Danville, Illinois, 1965), p. 70.

[40]Probationary was defined as "serving for trial..." in Anderson v. Board of Education of School District No. 91, 390 Ill. 412, 61 N.E.2d 579 (1945).

eligible for tenure rights. Since that time, the law was amended to include only teachers as being eligible for permanent appointment. No distinction was made in terms of due process rights for first through third-year probationary teachers in Chicago. Rights due probationary teachers included notice and reason with all final decisions for dismissal made by the school board.[41]

The first probationary year for teachers covered under SEC. 24-11[42] in downstate districts, was described as any "full time employment from a date before November 1 through the end of the school year." If the board decided not to rehire the teacher for the next school year, written notice must have been given at least sixty days before the end of the school term. If the school board failed to give notice before the specified timeline, the teacher would be considered reemployed for the following school term.[43] Notice for first-year probationaries did not require including the reason for the non-renewal.

Second-Year Probationary Teachers

Second-year probationary teachers were those completing their second consecutive years of full-time teaching in a

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[41]ILL. REV. STAT. Ch. 122, Sec. 34-85 (1988).

[42]"Teacher" meant any or all school district employees required to be certified under laws relating to the certification of teachers. - ILL. REV. STAT. Ch. 122, Sec. 24-11 (1985).

[43]ILL. REV. STAT. Ch. 122, Sec. 24-11 (1985).

district. Should the district not want the teacher to enter into contractual continual service (tenure), written notice and reasons for dismissal were to be sent to the teacher by certified mail (with return receipt) at least sixty days before the end of the second term.[44]

If the teacher had not had one school term of full time teaching before the two-year probationary period, the school board, at its discretion, may have extended this period for one additional school year. This notice had to be sent by certified mail sixty days before the end of the second, consecutive school term. The notice had to state the reasons for the extension and outlined the corrective actions which the teacher needed to take in order to satisfactorily complete probation.[45]

Summary

The intent of providing tenure in Illinois was to provide teachers in public schools with protection against arbitrary dismissals and a continuing guarantee of employment. Additionally, it allowed for a legal and systematic method of dismissing the inefficient teacher.

Tenure was first conferred to teachers in Chicago in 1917. The rest of the state followed suit in 1941, with SECS. 136b and 136c of Chap. 122 of the Illinois Revised Statutes. Section 136b provided teachers in smaller districts with a

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[44]Id.

[45]Id.

board of directors, continuing contracts subject to notification. Larger districts governed by a board of school inspector or a board of education, followed the regulations of SEC. 136c. This statute allowed teachers to be eligible for contractual continued service after a two-year probationary period. Teachers under contractual continued service could only be dismissed for cause, with notice, reasons, and a hearing. Tenure continued to be refined over the years. In 1961, the language of the original statute was refined for more clarity. The numbering was also changed to its present state--SECS. 136b and 136c became SECS. 24-10 and 24-11 to 24-12.

Separate regulations for board of director districts were eliminated in 1967, when these districts were added to those under the provisions listed in SEC. 24-11. Regulations for Chicago continued to remain apart from others under SECS. 34-84 and 34-85. Two additional changes have been made to tenure legislation in the last two decades: an impartial hearing officer in 1975 and a one-year remediation period for unsatisfactory teachers after 1985.

First and second-year probationary teachers were not considered to be tenured. The statutes specified different legal procedures for dismissal of personnel in those two classifications. First-year probationaries could be dismissed with only notice and second-year with notice and reason.

Although the direction tenure will take in the future is

unclear, it will undergo continual judicial interpretations. Chapter Three examines statutes and past interpretations of case law dealing with tenure during the years 1900 to 1961.

CHAPTER 3

EARLY HISTORY OF TENURE IN ILLINOIS

1900-1961

Introduction

Illinois teacher employment legislation between 1900 and 1961 was characterized by the establishment of uniform guidelines for tenure. Regulations governing tenure were amended to the Illinois Revised Statutes in 1917, for teachers of Chicago and in 1941, for board of education districts outside Chicago. Tenure was designed specifically to protect teachers against the capricious action of school boards. According to one Illinois Appellate Court in 1949, the objective of tenure was to:

> Improve the Illinois school system by assuring teachers of experience and ability a continuous service and a rehiring based upon merit rather than failure to rehire upon reasons that are political, partisan, or capricious.[1]

Tenure in Illinois developed on two different fronts. On one front was Chicago and on the other was all districts outside of Chicago. Historically, the initiatives of Chicago paved the way for tenure legislation in Chicago and districts

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[1]Betebenner v. Board of Education of West Salem Community High School District No. 201, et al., 336 Ill. App. 448, 84 N.E.2d 569 (1949).

outside Chicago (also referred to as downstate school districts) remained separate, each affecting the other as tenure law evolved in Illinois. Thus, an interactive relationship formed between the two. In this study of tenure law in Illinois, both statutes and accompanying case law were examined from 1900 to 1961. Within this frame, tenure statutes and related case law were analyzed regarding the dismissal of elementary and high school teachers.

One of the outcomes of tenure law and teacher dismissal cases was that quite often tenured teachers and employers reached a settlement without using litigation. Those settlements, of course, are not included in case law and, therefore, are not part of this study.

Teacher Employment Policy in Illinois Downstate School Districts: 1900-1940

Before the establishment of tenure law for downstate districts in Illinois in 1941, there was only one statutory guideline for school boards to follow when dismissing a teacher. More specifically, Illinois state statute vested boards of education and boards of directors with the power to dismiss teachers for cause. However, each type of school district governing board had different powers in relation to dismissing teachers for cause. In 1900, CHAP. 122 of the Illinois Revised Statutes outlined the following powers, accorded to board of director and board of education districts when dismissing teachers:

> Section 115: The BOARD OF DIRECTORS (in districts with under 1,000 inhabitants) shall be clothed with the power to ... dismiss a teacher for incompetency, cruelty, negligence, immorality, or other sufficient cause.[2]
>
> Section 127: The BOARD OF EDUCATION (in districts with of 1,000 and not over 100,000 inhabitants) shall have all the powers of school directors, be subject to the same limitations, and in addition thereto they shall have the power ... to dismiss and remove any teacher, whenever in their opinion he is not qualified to teach, or whenever in their opinion the interests of the school require it.[3]

Cause for teacher dismissal for board of education or board of inspector districts was divided into two parts. Section 115, the first part, dealt with the actual conduct of the teacher and included incompetency, cruelty, negligence, immorality, or other sufficient cause and applied to board of director and board of education districts.[4] The second part, SEC. 127, "Whenever in the opinion of the board he is not qualified to teach or whenever in their opinion the interests of the school require it" applied only to board of education districts.[5] This latter type of cause depended on the opinion of the board of education.

In Board of Education v. Stotlar, in 1901, the Illinois Appellate Court made a distinction between SECS. 115 and 127 when it stated that:

> Whenever in their opinion the interests of the school require it was the cause in itself and was separate from

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[2]ILL. REV. STAT. Ch. 122, Sec. 115 (1900).

[3]Id. at Sec. 127.

[4]Id. at Sec. 115.

[5]Id. at Sec. 127.

incompetency, cruelty, negligence, immorality, or other sufficient cause.[6]

Although SECS. 115 and 127 enumerated cause, no legal safeguards were embodied into those sections which would have obligated boards to offer teachers any form of due process, such as notice or a hearing, upon being discharged from duty. Thus, teachers were open to possible political or arbitrary dismissals by school officials as "sufficient cause" and "best interests" allowed boards of education a broad interpretation. Three of the five Illinois appellate and circuit court cases between 1900 and 1916, used either the "best interests" or "sufficient cause" as a reason for dismissal. However, school districts had to predetermine that these two causes were reasons for dismissal at the time of discharge. When one district tried to add "the interests of the school require it" as a cause for teacher dismissal during a court hearing, the appellate court ruled in 1911 that: "causes for dismissal contained in the order removing a school teacher were binding upon directors"[7] and they were estopped from showing other or different cause.

Stotlar[8] also recognized, that dismissal under the "best interests" clause could possibly be capricious. That issue regarding teacher dismissals was not addressed again after

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[6]Board of Education v. Stotlar, 95 Ill. App. 250 (1901).

[7]Darter v. Board of Education of School District No. 30, Ill. App. 284 (1911).

[8]Stotlar, 95 Ill. App. 250.

Stotlar until 1934 when the Illinois Supreme Court stated that although boards of education were vested with the power to dismiss and remove teachers from their job, it wasn't intended that it be done arbitrarily or without any reasonable or just cause. This court further indicated that:

> 'Whenever, in the opinion of the board of education he is not qualified to teach, or whenever, in the opinion of the board of education, the interests of the school require it,' is but another cause of removal.[9]

Sections 115 and 127 wording remaining unchanged through the period between 1900 to 1940. An amendment in 1925, renumbered SECS. 115 and 127 to SECS. 123 and 136 respectively.[10] Section 136b was added along with the specified causes of SECS. 123 and 136 in 1927, and gave teachers in board of inspector and board of education districts of under one hundred thousand inhabitants a continued contract.[11] Board of director districts of under one thousand inhabitants were not adopted into SEC. 136b, until 1937.[12]

A continued contract was not to be confused with contractual continued service. Continued contracts as outlined in CHAP. 122, SEC. 136b, of the Illinois Revised Statutes of 1927, provided that school districts could confer

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[9]Hartmann v. Board of Education of Westville Township High School District 220, 356 Ill. 577, 191 N.E. 279 (1934).

[10]Ch. 122, Secs. 123 and 136 (1925).

[11]Id. at Sec. 136b (1927).

[12]Id. at Sec. 136b (1937).

teachers with a contract of up to three years after the teacher had taught two consecutive years of probationary service. Principals and superintendents were also eligible for a continued contract. Under SEC. 136b, if dismissal of a contracted teacher was warranted, it had to be for cause as elaborated in SECS. 123 and 136 (formerly SECS. 115 and 127).[13] Section 136b also stated that when teaching positions were eliminated, it was permissible for a school board to dismiss without stating the cause. However under those conditions, the district had to give the teacher notice prior to sixty days before the end of the school year and a statement of an honorable dismissal. Notice was not required when a district decided not to renew a teacher's contract at the end of the contract period.[14]

A continued contract offered teachers a longer contract length, but no real protection. There was no obligation on the part of the school board at the end of the contract period to renew, regardless of the triviality of the reason or lack of reason to nonrenew. Because the teacher did not have any form of permanent position with a district, there was no requirement to rehire at the end of the contract period, nor was there any due process requirement.

When the Illinois legislature amended the school code to include continued contracts, the legality of the continued

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[13]Id.

[14]Id.

contract was challenged with respect to ART. 8, SEC. I of the Illinois Constitution in 1940. This passage of the Constitution of Illinois stated that "the General Assembly shall provide a thorough and efficient system of free schools whereby all children of this State may receive a good common school education."[15] Judicially, it was questioned whether the Illinois General Assembly had the vested power to alter employment legislation in any manner, in order to carry out a thorough and efficient system of free schools. In Sloan v. School Directors of District 22, the Illinois Supreme Court responded that the General Assembly was "allowed a broad discretion as to the manner in which to carry out their duty."[16]

Similarly, in the 1937 Groves v. Board of Education of Chicago[17], the alteration of teacher employment legislation was contested when SEC. 133 required compulsory retirement at the age of seventy for Chicago teachers. Although mandatory retirement was a different issue than continued contracts, the holdings of Grove and Sloan were in nature identical: "The length of term and the mode of appointment of school teachers are under the control of the General Assembly."[18]

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[15]ILL. CONST. Art 8, Sec. I (1946).

[16]Sloan v. School Directors of District 220, 373 Ill. 511, 26 N.E.2d 846 (1940).

[17]Groves v. Board of Education of Chicago, 367 Ill. 91, 10 N.E.2d 403 (1937).

[18]Id.

Perhaps these holdings were timely, in view of changes in teacher employment legislation which would come forth after 1940. Sloan and Groves would justify statutory alterations that were to be later amended with the Teacher's Tenure Act of 1941.

Teacher Employment Policy in Chicago: 1900-1940

Chicago teachers were not subject to the same employment statutes as those in the downstate school districts. Rather, the Chicago Board of Education was bound to the provisions of SECS. 133 and 161,[19] of the Illinois Revised Statute in 1900 which read as follows:

> Section 133: The BOARD OF EDUCATION (in districts of over 100,000 inhabitants) shall have the power to dismiss and remove any teacher for cause in the manner provided in section 161 of this act.
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> Section 161: No teacher who has been, or who shall have been, elected by said board of education, shall be removed or discharged, except for cause upon written charges which shall upon the teacher's written request, be investigated and determined by said board of education, whose action and decision in the matter shall be final...

Sections 133 and 161 afforded more rights for Chicago teachers than its counterparts, SECS. 115 and 12.7 applicable to teachers in board of director and board of education districts. Chicago teachers could be dismissed for cause according to SEC. 133. However, before the action to dismiss was final, the teacher could request written charges of cause for dismissal and an investigation into those charges by the board of education. Although teachers of Chicago had this

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[19]ILL. REV. STAT. Ch. 122, Secs. 133 and 161 (1900).

additional option, the effects on fairness were diminished. Because cause was neither statutorily nor judicially defined, its terms may have been subjective depending on the need of the school board.

Seventeen years later, when the Otis Law was passed in 1917,[20] the provisions of SEC. 133 were amended to provide teachers and principals with eligibility for permanent appointment. Permanent appointment was based on three years of satisfactory probationary service and merit. Teachers were still subject to dismissal by cause as outlined previously in SEC. 161, but they had the additional option of being present at a hearing by the school board, to be represented by counsel, to offer evidence, and to present defense.

This statute was the first in Illinois to present the opportunity for permanent teaching status, and to give teachers the right to a hearing if they were to be dismissed from service. Teachers in districts outside of Chicago were not effected by enactment of the Otis Laws in 1917.

To summarize, between 1900 to 1940, judicially initiated concepts basic to employment legislation for all Illinois school districts came forth: Reasonableness of cause and judicial justification for statutory changes in teacher employment (such as tenure itself). Upon these concepts, a framework would be built over the next twenty years to interpret the structure of tenure.

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[20]Id. at Sec. 133 (1917).

Tenure in Downstate Board of Education School Districts: 1941-1961

Teacher employment rights in Illinois were first legislated for Chicago teachers with the establishment of the Otis Law in 1917. This law was followed by provisions for a continued contract for teachers in board of education districts of under 100,000 inhabitants in 1927, and for teachers in board of director districts in 1937.

In 1941, the Teacher Tenure Act was passed, applicable to teachers in board of education districts of under 500,000 inhabitants (formerly 100,000) under SEC. 136c of CHAP. 122 of the Illinois Revised Statutes.[21] Teachers in board of inspector districts were not included in this statute. Their status was retained with a continued contract under the provisions of SEC. 136b.

Section 136c, or the Teacher Tenure Act, afforded teachers the opportunity to be eligible to enter into contractual continued service after a specific probationary period of employment. As the legislature did not attempt to define probationary, the courts construed its meaning. The Supreme Court of Illinois in Anderson v. Board of Education of School District 91 in 1945, directed that the courts should give the word probationary its ordinary meaning. Thus,

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[21]Id. at Sec. 136c (1917).

probationary meant "serving for trial."[22]

Probationary employment service, according to SEC. 136c, must have been two consecutive years in duration, one of which had to be subsequent to the date when the Teacher Tenure Act took effect on July 21, 1941. After 1941, the initial influx of teacher dismissal cases, primarily dealt with determining whether the teacher had fulfilled the probationary period of employment.

One such case involved a teacher who had sought reinstatement to her former position. In Anderson, supra,[23] the teacher contended that she was entitled to contractual continued service as she had taught under two, one-year contracts. She was contracted to teach on May 4, 1940 for the 1940-41 school year, and on May 2, 1941 for the 1941-42 school year. Anderson sought to apply the two, one-year contracts towards fulfilling the probationary period.

In keeping with the ordinary meaning of the word "year," the Illinois Supreme Court ruled that the length of "year" meant a calendar year of twelve months. Therefore, because the teacher's contracts did not collectively amount to twenty-four months, the court held that the required probationary period was not met.[24]

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[22]Anderson v. Board of Education of School District 91, 390 Ill. 412, 61 N.E.2d 562 (1945).

[23]Id.

[24]Id.

This requirement regarding the probationary period was later reaffirmed in 1946, when it was ruled that a superintendent did not meet the two-year period of probation because he had served one year, eleven months and eight days of the period of employment after the date of the Tenure Act.[25] The courts remained bound to the twelve-month calendar year interpretation handed down in Anderson supra, until 1949 in the Illinois Revised Statutes, when the word "year" was amended to read "school term."[26]

Just as the words "year" and "probationary" from SEC. 136c were judicially interpreted in a literal fashion prior to 1949, the probationary service period before and after the enactment of the Tenure Act was also read in like manner. Regarding this period of probationary service the Supreme Court of Illinois in 1945 commented that:

> A statute will be deemed to operate prospectively only . . . A teacher's employment is not automatically probationary by virtue of the statute.[27]

In this passage the court meant that the period occurring prior to the date of the Act could not be counted as probationary, unless there was a contract between two parties stating these terms. Service incurred after the Tenure Act was judicially interpreted as being automatically

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[25]Wilson v. Board of Education of School District No. 125, et al., 394 Ill. 197, 68 N.E.2d 257 (1946).

[26]ILL. REV. STAT. Ch. 122, Sec. 136c (1949).

[27]Anderson, 390 Ill. 412 (1945).

probationary, even if it wasn't specified in the contract. A 1949 appellate court stated, regarding service incurred after the Tenure Act, that:

> All service by teachers under contracts entered into after the effective data of the Tenure Act, even though the contract is silent as to probationary period, is intended and deemed to be probationary until such time as the teacher acquires contractual continued service status.[28]

The determination of whether the probationary period occurred before, or after the Tenure Act was critical for both boards and teachers. Any teacher who had fulfilled the probationary period, would enter into contractual continued service unless the board had decided to dismiss the teacher for cause. Section 136c stipulated that if the employing board at the end of a teacher's second year of probationary service had decided not to retain the teacher, they had to notify the teacher first in writing, by registered mail at least sixty days before the end of the probationary period, providing the specific reasons for dismissal. First-year probationary teachers were not addressed in the Act in terms of the employing board providing the teacher with any type of notification or reason, if the teacher's contract was not to be renewed for a secondary probationary year of service. Therefore, it was not mandated that boards of education serve notice or reason to a teacher, if they wished not to renew the teacher for the following school year.

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[28]Betebenner, 336 Ill. App. 448 (1949).

Although SEC. 136c required teachers to fulfill a two-year probationary term, before establishing eligibility for contractual continued service, this time period could be extended by the school district under certain circumstances. Thus, when a teacher had not completed one year of full-time teaching experience prior to the beginning of the probationary period, the Tenure Act provided a school board with the option of extending a teacher's probation for one additional year. In order to extend this period the board had to give the teacher written notice by registered mail at least sixty days before the end of the two-year period.[29]

Once a teacher was conferred with contractual continued service, by statute, it ceased when the teacher reached the age of sixty-five. Following the teacher's sixty-fifth birthday, employment was then determined on an annual basis.[30]

In spite of a teacher's entry into contractual continued service, the employing board could remove or dismiss tenured teachers for the causes provided in SECS. 123 and 136. These causes were:

> Section 123 - ...Incompetency, cruelty, negligence, or other sufficient cause and
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> Section 136 - ...Whenever in the opinion of the board of education, he is not qualified to teach, or whenever in the opinion of the board, the interests of the

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[29]ILL. REV. STAT. Ch. 122, Sec. 136c (1941).

[30]Id.

school may require it.[31]

In addition to dismissal for cause, SEC. 136c also provided regulations for discharge of a tenured teacher due to a decrease because of the discontinuance of a particular type of teaching service. In such a situation, the statute required that the teacher would receive a written notice of dismissal by registered mail with a statement of honorable dismissal and reasons thereof sixty days before the end of the school term.[32]

In Wilsón, supra, the Supreme Court did not approve the elimination of a position, where the real motive was to remove the employee from his position without justification.[33] This meant that public school districts could not use SEC. 136c reasons unless those conditions specified in SEC. 136c actually were present in the district.

If a tenured teacher was to be removed or dismissed for any of the causes stated in SECS. 123 and 136, provisions for discharge differed from those of a reduction in teaching force. When dismissing teachers for cause, SEC. 136c required that dismissal would not become effective until the charges were approved by a majority vote of all members of the board of education and after a hearing, if requested in writing by

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[31]Id. at Secs. 123 and 136c (1941).

[32]Id. at Sec. 136c (1941).

[33]Wilson, 394 Ill. 197 (1946).

the teacher within ten days after the service of notice.[34]

The statute further provided that written notice of the charges based on cause had to be given to the teacher at least sixty days before the effective date of dismissal, which date was between November first and the date of the close of the school term.[35] A 1959 case ruled that such charges for dismissal had to be substantial.[36]

After the hearing was requested by the teacher it had to be held and the decision rendered within a period of sixty days. No less than ten days could intervene between the date of the notice for the hearing and the hearing itself. The hearing could be public at either the request of the teacher or the board of education. The Tenure Act of 1941, did not specify the utilization of an impartial hearing officer. Members of the board of education, and sometimes the superintendent of the school district, heard the case. Though there was not a provision for an impartial hearing officer, the ACT did provide that the teacher could be present at the hearing with counsel; witnesses could be cross-examined; evidence and defense of the charges could be offered.

Section 136c further stipulated in 1941, that decisions regarding the reasons or causes for dismissal by the board of

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[34]ILL. REV. STAT. Ch. 122, SEC. 136c (1941).

[35]Id.

[36]Lusk v. Community Consolidated School District 95, 20 Ill. App. 2d 252, 155 N.E. 2d 650 (1959).

education were to be considered final, unless a teacher appealed to the county superintendent within a period of ten days. An appeal committee would then review the decision and would either agree with the board of education or reverse the decision of the board and reinstate the teacher.[37] Under the Administrative Review Act, a judicial review of administrative decisions regarding dismissal made by the appeal from the county's office was added in 1945.[38] Duties of the county superintendent's office in the appeal process, were later removed in 1953.

This action, of eliminating the county superintendent's office from the appeal process, gave the school board more adjucative authority. Previously, there was another layer to the appeal hierarchy, the county superintendent, before going on to the administrative review. Because that layer was eliminated, a greater emphasis was placed on the school board to resolve any problems at the local level. Although a school board could not hear legal questions, the courts recognized that school boards were the best forum for the resolution of local educational problems.[39] It was recognized in the Illinois Administrative Review Act, that:

> A school board's findings regarding facts requiring adjudication will generally not be reviewed unless opposed to the substantial weight of the evidence, or unless

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[37]ILL. REV. STAT. Ch. 122, Sec. 136c (1941).

[38]Id. at Sec. 24-8 (1945).

[39]Lucas v. Chapman, 430 F.2d 945 (5th Cir. 1973).

indicative of an abuse of discretion.[40]

One clause in SEC. 136c that conceded boards of education a similar type of local control was remediability. Regarding remediability, SEC. 136c stated in 1941 that:

> Before service of notice of charges on account of causes that may be deemed to be remediable, there shall be given the teacher reasonable warning in writing starting specifically the causes which if not removed, may result in changes.[41]

Remediability became a contended section of the Teacher Tenure Act between boards and teachers. Although what constituted remediability was not defined, the intent of the statute was to allow the teacher sufficient time to remedy deficiencies which could result in charges of dismissal.

A leading Illinois Appellate Court decision pertaining to remediability was in Meredith v. Board of Education of Community Unit School District No. 7 in 1955.[42] In Meredith, the school board dismissed a tenured teacher who had refused to give up his outside activities and because the best interests of the school required it. Meredith was an agriculture teacher for the district and also sold fertilizer and seed oats. As his business expanded, the board believed that it interfered with his teaching duties. Meredith contended that he should not have been dismissed, because the

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[40]ILL. REV. STAT. Ch. 110, Sec. 264 (1945).

[41]Id. at Sec. 136c (1941).

[42]Meredith v. Board of Education of Community Unit School District No. 7, 7 Ill. App. 2d 477, 130 N.E.2d 477, 130 N.E.2d 5 (1955).

cited causes were remediable. This would have required that he be given notice of remediability, thereby making the dismissal invalid.[43]

The appellate court affirmed the decision in favor of the board of education. However, the court did not make reference to whether the cause was remediable, nor that the board had acted in bad faith. Rather the court, in a sense, abdicated its judicial responsibility by holding that it was a discretionary power of the board to determine whether causes for dismissal were remediable. It was also held in Meredith that:

> The best interest of the school of the district is the guiding star of the board of education and for courts to interfere with the exercise of the powers of the board in that respect is an unwarranted assumption of authority and can only be justified in cases where the board has acted maliciously, capriciously, and arbitrarily.[44]

This "guiding star" philosophy became the judicial rule of thumb for court cases involving remediability of cause for dismissal in the late fifties and early sixties. The court, in allowing boards of education to determine remediability of cause as in Meredith, increased the adjudicative authority of boards of education by leaving remediability open to their interpretation. No qualifying guidelines were delineated as to what constituted best interests, rather this was left to the board's determination. It would have seemed plausible

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[43]Id.

[44]Id.

that boards used this to their own benefit. If a board wanted to dismiss a teacher expediently, it could declare the teacher's behavior irremediable and avoid the more time-consuming period of remediation. The legislative intent of tenure was negated when boards did this, because teachers were denied time to remediate which is a part of due process.

Broad discretionary power in determining remediability paralleled the same authority that courts maintained should be extended to the boards in the area of dismissal for sufficient cause and when the interests of the school required it. In Joyce v. Board of Education of City of Chicago, an appellate court again applied the same rule of board discretionary power in 1945, when it said:

> the rule to be deduced from the authorities is that where the statute is silent as to what constitutes cause, the right to determine the question is in the tribunal having jurisdiction of the particular officer or employee.[45]

The board when exercising its discretionary power in determining what constituted sufficient cause for dismissal of a teacher, could only be overruled by the court when there was an abuse of that discretion or when the decision was without substantial evidence. Muehle v. School District No. 38 reiterated this when the court wrote that:

> School districts are vested by the Statute with authority to dismiss a teacher for, among other specified grounds, 'other sufficient cause.' It is axiomatic that such authority vests a discretion trammeled only by proof

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[45]Joyce v. Board of Education of Chicago, 325 Ill. App. 543, 60 N.E.2d 431 (1945).

of that discretion's abuse.[46]

The Administrative Review Act had also elaborated in 1945 on findings being prima facie true and correct: "It is only where its [the board of education] decision is without substantial foundation in the record or manifestly against the weight of the evidence that the same will be set aside."[47]

As with remediability, the courts did not specify the definition of sufficient cause or the interests of the school. The court's lack of interpretation resulted in boards of education claiming almost an absolute discretion in this area. Most any dismissal could be rationalized as sufficient cause or when the interests of the school required it. Further, when outside factors that were unrelated to teaching performance entered into dismissal, the likelihood increased that the factors were motivated by political reasons or personal dislike. With all dismissal cases, the question would be whether the courts were able to reach decisions that recognized if discretionary abuse was present.

Between 1950 and 1961 Illinois court decisions regarding teacher dismissal for sufficient cause or for the interests of the school, were fairly evenly split between favoring the teacher or the board. In those court cases where it was decided in favor of the teacher, it was either because the

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[46]Muehle v. School District No. 38, 344 Ill. App. 365, 100 N.E.2d 805 (1951).

[47]ILL. REV. STAT. Ch. 110, Sec. 264 (1945).

cause was found to be remediable or because there was insufficient evidence to sustain the finding. Insubordination and a lack of discipline were found to be remediable in 1958,[48] while a 1961 appellate court decision ruled there was insufficient evidence where a board was unable to show the teacher's failure to do his duty.[49] In the matter of Hauswald v. Board of Education of Community High School District No. 217, an insufficiency of teaching techniques was found to be remediable and did not qualify for immediate dismissal under the "best interests" clause.[50]

Dismissals of public school teachers in Illinois which were upheld in favor of the boards of education were for such reasons as the use of profanity in the classroom, involvement in a job outside of school,[51] uncontrollable temper with peers and students,[52] and public intoxication.[53]

In Keyes v. Board of Education of Maroa Community Unit

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[48]Smith v. Board of Education of Community Unit School District No. 1, 19 Ill. App. 2d 224, 153 N.E.2d 377 (1958).

[49]Allione v. Board of Education of South Fork Community High School District No. 310, 29 Ill. App. 2d 261, 173 N.E.2d 13 (1961).

[50]Hauswald v. Board of Education of Community High School District No. 217, 20 Ill. App.2d 49, 155 N.E.2d 319 (1958).

[51]Meredith, 7 Ill. App.2d 477 (1955).

[52]Pearson v. Board of Education of Alton Community Unit School District No. 5, 12 Ill. App.2d 344, 138 N.E.2d 326 (1956).

[53]Scott v. Board of Education of Alton Community Unit School District No. 11, et al., 20 Ill. App.2d 292, 156 N.E.2d 1 (1959).

School District No. 2 of Macon and DeWitt Counties, dismissal of a superintendent for actively participating in fomenting controversy, conflict and dissention in the district and failing to cooperate with the Board and his subordinate was affirmed by the Illinois Appellate Court. It was made clear in Keyes, supra in 1959, that the court was not concerned with the wisdom of the decision of the Board, but only if whether it was contrary to the manifest weight of the evidence.[54]

Very specifically, in cases involving sufficient cause and the interests of the school, the Illinois courts consistently looked at the manifest weight of the evidence to determine if the dismissal was valid. Courts did not always look at the politics involved in the dismissal though, despite the premise that a board of education's discretionary abuse would be overruled. Where a superintendent was dismissed for fomenting controversy, conflict, and dissention[55] and an agriculture was dismissed for his outside fertilizer and seed oat business,[56] the underlying reason was more than likely political in nature.

Overall appellate and supreme court interpretations of the Tenure Act, between 1941 and 1961 in Illinois, were generally conservative. Because courts could not draw upon

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[54]Keyes v. Board of Education of Maroa Community Unit School District No. 2, 20 Ill. App.2d 504, 156 N.E.2d 763 (1959).

[55]Wilson, 394 Ill. 197 (1946).

[56]Meredith, 7 Ill. App.2d 477 (1955).

tested decisions, interpretations of tenure statutes were structured so as not to enlarge its scope. In doing so, court decisions more than often favored the boards of education rather than teachers.

One issue that was not addressed in the Teacher Tenure Act of 1941 was that of married female teachers, in relation to dismissal from a teaching position. The issue was whether it was beyond the power of boards of education to adopt rules that were not statutorily regulated.

In Templeton, et al. v. Board of Education of Township High School District No. 201, et al. in 1948,[57] the appellants, a group of married female teachers, not only felt that their statutory rights were violated, but also that their constitutional rights were denied. District No. 201, in 1936, had adopted the policy of not hiring married women. Those who were employed and already married were allowed to stay no more than two years beyond that year. The board agreed to hold this policy in abeyance between 1938 and 1945, because the United States was at war. At the close of the war the board decided to reaffirm and enforce its former policy that married women could only be retained two years after marriage. The appellants filed for a writ of mandamus to reinstate them to their former positions. On a direct appeal from the Circuit Court, the Illinois Supreme Court dismissed the writ of

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[57]People ex. re. Templeton et al. v. Board of Education of Township High School District No. 201, et al., 399 Ill. 204, 77 N.E.2d 200 (1948).

mandamus and intervened with a writ of certiorari. Further, the court stated in Templeton that:

> The application of a statute does not present a constitutional question so as to authorize a direct appeal to this court. The Appellate Court will not render a judgment in conflict with a litigant's constitutional rights.[58]

The case was then transferred to the Appellate Court where it was found "that it was within the power of the Board of Education to have a rule against retention of married female teachers and did not violate the Teacher's Tenure Law."[59] A rehearing was denied.

Earlier cases, such as Christner v. Hamilton in Oak Park (1945)[60] and McGuire v. Etherton in Murphysboro (1944)[61] ruled similarly. The Illinois Appellate Court in McGuire v. Etherton, ruled that it was sufficient cause to dismiss married teachers and "that the School Act gives the power to the Board to adopt and enforce all necessary rules and regulations for management and government of public schools of their district."[62]

Thus, what was found was a situation where married women were encouraged to join the workforce for a short period of

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[58]Id.

[59]Id.

[60]Christner v. Hamilton, et al., 324 Ill. App. 612, 59 N.E.2d 198 (1945).

[61]McGuire v. Etherton County Superintendent of Schools, et al., 324 Ill. App. 161, 57 N.E.2d 649 (1944).

[62]Id.

time, under conditions where being a working woman was socially acceptable. When the unwritten rules changed, many of the women had been the new status and did not want to stop teaching. Many men served in the armed forces between 1940 and 1945, creating a manpower shortage in various areas of employment. As a result, there was a greater demand for females to fill this void in the labor force. The fact of national need and patriotic service at this time removed many of the social disabilities previously incurred by "working women." Immediately after the war, there was a decrease in the need for female employees, as it was more desirable to employ men returning from the war.

Although many women ceased paid employment at the end of World War II, a larger percentage continued in business and industry than in any previous peacetime period of the United States. In 1950, 30 percent of the United States labor forced was composed of women. Nearly half of the women employed were married. Working mothers constituted more than twenty percent of all mothers of children under eighteen. While the total labor force of the United States more than doubled between 1900 and 1951, the number of working women more than tripled.[63] This increase in the amount of working women, coupled with a demand for greater equality, led to changes in the types of jobs open for women in the latter part of the

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[63]American Peoples Encyclopedia, Volume 20, Chicago: Spencer Press, Inc., 1957.

century. The change in Illinois law was a part of this evolution, where in 1949 the legislature established that marriage was not a cause for dismissal from teaching[64] thus making illegal any former contractual provisions against it.

One of the concerns about tenure for married female teachers mentioned in a national survey to superintendents and board members in 1939, was "that married teachers would hang on for dear life to their jobs as long as it was possible, and that would make it difficult for young graduates who were seeking employment."[65] This reason seemed arbitrary and without basis at best, but was indicative of the sentiments at that time. Of those surveyed, forty-four percent of the board members and forty-two percent of the superintendents felt that marriage should be a cause for dismissal of teachers on tenure.[66] Perhaps Illinois did not legislate marriage as not being a cause for dismissal until 1949, because local sentiments paralleled those nationally. Also, in the fifties there was a greater push for establishing teachers' rights in general.

Tenure in Downstate Board of Director Districts: 1941-1961

The terms of employment for teachers in board of

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[64]ILL. REV. STAT. CH. 122, SECS. 6-36 and 7-13 (1949).

[65]"Opinions on Tenure: Schoolboards Members and Superintendents Committee on Tenure," National Education Association, May, 1939, p. 6.

[66]Ibid., p. 22.

director districts, were not included with SEC. 136c either. This district type remained classified under SEC. 136b,[67] with a three-year continued contract for teachers, principals, and superintendents following a two-year probationary period.

Employee dismissal procedures changed somewhat though, due to the influence of the removal process in the new teacher tenure provision. Prior to 1941 notice of nonrenewal in SEC. 136b, was only provided to teachers receiving an honorable dismissal. After being amended, the Act mandated that it was the duty of the board of school directors "on or before April 25 of each year in which any regular employment contract expires to notify in writing said employee concerning his reemployment or lack thereof." Further, when a teacher was not rehired, notification had to be accompanied by the written reasons for the action. Failing to issue a notice would constitute reemployment by default.[68] The proviso of notice in SEC. 136b, did not match the due process rights provided teachers under the tenure statute, SEC. 136c, as board of director districts were not required to provide a hearing or an appeal process. Additionally, any form of security in employment did not go beyond a three-year contract.

Over the next twenty years, few amendments were added to continued contracts and statutes pertaining to tenure. The language of SEC. 136b was refined to reflect greater clarity.

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[67]ILL. REV. STAT. Ch. 122, Sec. 136b (1941).

[68]Id.

Some passages were deleted, while others were added.

Tenure Statutes for Chicago: 1941-1961

The tenure plan for Chicago teachers, first enacted in 1917, was very similar to contractual continued service. There were some differences however, in the technical structure of both statutes.

The length of probationary service for Chicago teachers under SEC. 186, was for three years as opposed to two years for teachers in downstate board of education districts. Also the terminology used for tenure differed in Chicago. Rather than use the term contractual continued service for tenured teachers, SEC. 186 referred to tenure as a permanent appointment. Permanent appointment was based on merit after satisfactory probationary service. The appointment was automatic, if a teacher was not given notice of dismissal.[69]

The actual dismissal of permanently appointed teachers was based upon cause. Other than being subject to the rules of the Board of Education concerning conduct and efficiency, cause was not defined.

Notification and hearing for Chicago teachers also differed from those procedures specified in SEC. 136c for teachers downstate. In SEC. 136c,[70] charges would become effective after being approved by a majority of the board members. After this approval, notice of these charges would

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[69]Id. at Sec. 186 (1941).

[70]Id. at Sec. 136c (1941).

be served at least sixty days before dismissal. A hearing could be called if the teacher requested one within ten days after having been served notice.

As opposed to SEC. 136c, teachers subject to SEC. 186 were served first with a thirty-day notice listing charges. The written charges were then presented by the superintendent, to be heard by the board or an authorized committee at the expiration of the thirty days of the notice presented to the teacher. The teacher could be present at the hearing with counsel, and evidence and defense could be offered. Section 186 did not delineate whether cross-examination of witnesses was permissible. At this hearing the decision of the board was final, with no allowance for appeal to the county superintendent.[71]

The two statutes, SECS. 136c and 186, had many common elements. But at the same time there were some wide variances. It would seem that teachers covered under SEC. 136c, were subject to a greater amount of procedural rights at dismissal. There was a longer length of notice required. By offering sixty days in SEC. 136c, rather than thirty, downstate teachers were allowed considerably more time to prepare their own defense for a hearing.

Chicago teachers, in addition to having had less notice of hearing, did not have the opportunity to correct a deficiency if it was remediable. Remediability was not a

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[71]Id at Sec. 186 (1941).

criterion included in SEC. 186.[72] Also, the tenure for Chicago teachers did not include an appeal process. A dissatisfied teacher's only recourse, would have been to appeal judicially to the circuit court.

Chicago tenure legislation had remained unchanged since 1917, when the Teacher Tenure Act was passed in July of 1941. Chicago, at that time, was a political entity, separate from the remainder of the state. To include Chicago teachers in the Teacher Tenure Act would have meant that downstate groups would have had to work with the Chicago Teacher's Union, the superintendent, the board members, the mayor and others from Chicago to obtain passage of the Act. Thus it would have been easier to leave the statute for Chicago teachers separate, rather than work together for one common status.

Summary

Employment legislation for teachers in Illinois public schools during 1900 and 1961, was characterized by the establishment of a basic set of rules that allowed for job security and provided fair and consistent procedures for tenured teachers being dismissed. The amount of job security and the procedures to be used in the event of discharge depended upon whether the teacher was probationary or tenured and according to the size of the district in which the teacher was employed. In Donahoo v. Board of Education of School District No. 303, the Illinois Supreme Court commented on the

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[72]Id.

difference between dismissal rights for probationary teachers and tenured teachers when it commented that:

> The legislature recognized the difference between dismissing the probationer and the teacher who had gained contractual continued service, by providing the more elaborate and strict method for dismissal of the latter.[73]

Teacher tenure legislation was enacted in 1917 for Chicago teachers, 1941 for teachers in a board of education or board of school inspector district of under 500,000 inhabitants, and 1967 for teachers in a board of directors district of under 1,000 inhabitants.

Although tenure regulations afforded more employment rights in the workplace for teachers, this was somewhat overshadowed as school boards had vast powers in terms of discretionary authority. Some sections of the Tenure Act were vaguely written and were open to broad interpretations. The court chose to strictly construe this passages, so as not to enlarge the intent of the statute. In this manner, their interpretations were more advantageous to boards of education than teachers. Although teachers had more employment rights in the 1960's than they did in the early 1900's, the balance of power between teacher and board still leaned toward the board.

Chapter Four will continue to explore tenure legislation and related case law involving dismissal of tenured teachers

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[73]Donahoo v. Board of Education of School District No. 303, et al., 413 Ill. 422, 109 N.E.2d 787 (1952).

in the era of pre-reform, from 1961 to 1975. Constitutional issues will also be examined, in relation to Illinois statutory provisions for tenure.

CHAPTER 4

THE HEARING OFFICER: 1961-1975

Introduction

Illinois tenure legislation developed during 1961 to 1975, whereby there was an emphasis placed on establishing greater employment rights for tenured teachers at dismissal. This was achieved through the addition of guidelines for an impartial hearing officer and a more thorough judicial scrutiny over a school board's determination of remediable versus irremediable cause for dismissal. Further, "property" and "liberty" interests as reviewed in the landmark decisions made by the U.S. Supreme Court in Board of Regents v. Roth[1] and Perry v. Sindermann[2], also effected teacher employment rights in Illinois.

This chapter records statutory treatment of tenure in Chicago and downstate Illinois public school districts from 1961 to 1975. Additionally federal and state case law is analyzed, focusing on the issues of:

1. Remediability;

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[1]Board of Regents, 408 U.S. 564, 33 L.E.2D 548, 92 S. Ct. 2701 (1972).

[2]Perry v. Sindermann, 408 U.S. 593, 33 L.E.2D 570, 92 S.Ct. 2694 (1972).

2. Tenure status of Illinois superintendents and principals; and
3. "Property" and "liberty" interests.

Tenure in Downstate Districts: 1961-1975

The most prominent change in Illinois employment statutes during the period between 1961 and 1975, was the addition of an impartial hearing officer to preside over tenured teacher dismissal hearings. According to SEC. 24-12 of the Illinois Revised Statutes of 1975, a hearing officer's duty was to render a decision as to whether the tenured teacher would be dismissed, unless the decision of the hearing officer was to be reviewed according to the provisions of the Administrative Review Act.[3] Prior to 1975, the school code designated that school boards officiate over hearing proceedings and make the final decision to dismiss a tenured teacher.

Other requirements of SEC. 24-12 regarding the dismissal hearing were that unless a teacher within ten days requested in writing that no hearing be scheduled, the school board was required to hold a hearing on the dismissal charges before a disinterested hearing officer. There were two qualifications that the statute specified for the hearing officer: (1) accreditation by the National Arbitration Association; and (2) nonresidency in the school district in which the teacher being dismissed was employed. From a list of five prospective

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[3]ILL. REV. STAT. CH. 122, Sec. 24-12 (1975).

candidates provided by the Illinois State Board of Education, the school board and the teacher or either of their legal counsels would alternately strike a name from the list until one name remained. This person would then become the hearing officer. Final selection of the hearing officer had to be completed within a five-day period.

Other duties accorded to the hearing officer by SEC. 24-12 were to:

1. Issue subpoenas. A limitation of ten witnesses could be subpoenaed on behalf of either the board or the teacher. Testimony of witnesses was to be taken under oath administered by the hearing officer.
2. Keep a record of the proceedings by employing a reporter to take stenographic or stenotype notes of all testimony. Costs of employing the reporter would be paid by the State Board of Education.

Although Illinois school boards no longer maintained jurisdiction to make final dismissal decisions with the 1975 hearing officer legislation, it was still their responsibility to fulfill certain statutory procedural steps. Those steps included:

1. Determining if cause for dismissal was remediable before making a motion to dismiss. If remediable, the board had to give the teacher reasonable warning in writing alerting the teacher that if the

causes were not removed they would result in charges.

2. Adhering to other distinct statutory guidelines:
   a. Approve motion to dismiss containing specific charges by a majority vote of its members.
   b. Serve written notice to the teacher to be dismissed at least twenty-one days before the hearing date.
   c. Set hearing date no less than thirty days nor more than sixty days after motion to dismiss.[4]

In 1975, "reasonable warning" had not been defined statutorily or judicially within any precise time frame. Remediability's definition generated judicial activity before and after 1975, as boards of education broadly construed its meaning in the absence of state statutory guidelines. Two major Illinois court decisions however, Meredith v. Board of Education of Community Unit School District No. 7 (1955) and Gilliland v. Board of Education (1977) attempted to clarify the parameter of remediability.[5]

Meredith, supra[6] was one of the first decisions which directly addressed the issue of remediability.

Generally during the period immediately after the

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[4]Id.

[5]Meredith, 7 Ill. App.2d 477 (1955); Gilliland v. Board of Education of Pleasant View Consolidated School District No, 622, 67 Ill. 2d 143, 365 N.E.2d 322 (1977).

[6]Meredith, 7 Ill. App.2d 477 (1955).

initiation of tenure, the Illinois court system held to the doctrine of interpreting the tenure act so as not to expand the act's meaning and burden the persons (referring to school boards) subject to its operation.[7] Donahoo, supra, in 1951, stated that

> It has been repeatedly held by the Appellate Courts of this state that the tenure law, being in derogation of the common law and creating new liability, should be strictly construed in favor of the Board of Education.[8]

Maintaining that same posture, the appellate court in Meredith ruled that in determining remediability of cause,

> The best interests of the schools of the district is the guiding star of the boards of education and for the courts to interfere with the exercise of the powers of the board in that respect is an unwarranted assumption of authority and can only be justified in cases where the board has acted maliciously, capriciously, and arbitrarily.[9]

This philosophy of "best interests," changed somewhat in ensuing years, when several Illinois courts reiterated that the judicial system was vested with the power of review to test the exercise of the school board's discretion. Thus, a review by the court could determine whether the board's findings were against the manifest weight of the evidence[10] Without this judicial insulation, tenure laws would have had

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[7]Anderson, 390 Ill. 412 (1945).

[8]Donahoo, 346 Ill. App. 241 (1951).

[9]Meredith, 7 Ill. App.2d 477 (1955).

[10]Eveland v. Board of Education Paris Union School District, 340 Ill. App. 308, 92 N.E.2d 182 (1950). Meredith, 7 Ill. App.2d 477 (1955). Werner v. Community Unit School District No. 4, 40 Ill. App.2d 491, 190 N.E.2d 184 (1963).

no value as protection to teachers as boards would have then been able to arbitrarily or without cause dismiss teachers. Courts looked for boards of education to prove that reasons and causes for discharge existed, and also that the reasons and causes were not remediable. Thus, in the foregoing years leading to the 1977 Gilliland decision,[11] what developed was a criterion for a more strict judiciary examination of a school board's determination of irremedial cause.

In keeping with the philosophy of an austere scrutiny after Meredith, the appellate court in Jepsen v. Board of Education of Community School District No. 307 (1958)[12] and later Werner v. Community Unit School District No. 4 (1963),[13] noted that

> A cause not remediable is where damage has not been done; . . . such that . . . any of the causes proved inflicted damage or injury to the school, students or faculty.[14]

In the Jepsen[15] case, the teacher had accused the principal of the school of knowingly permitting an ineligible player to participate in a football game. It was felt by the appellate court, that the cause for dismissal, which was the

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[11]Gilliland, 67 Ill.2d 143 (1977).

[12]Meredith, 7 Ill. App.2d 477 (1955). Jepsen v. Board of Education of Community Unit School District No. 307, 19 Ill. App.2d 204, 153 N.E.2d 417 (1958).

[13]Werner, 40 Ill. App.2d 491 (1963).

[14]Jepsen, 19 Ill. App.2d 204 (1958). Werner, 40 Ill. App.2d 491 (1963).

[15]Jepsen, 19 Ill. App.2d 204 (1958).

teacher accusing the principal of concealing or attempting to conceal the ineligibility of a football player was irremediable. Accordingly, with the accusation having been made, the damage to the school, students or the faculty was done and could not have been repaired or remedied.

Werner's charges centered around alleged incompetency. Contrary to the Jepsen[16] decision, an Illinois appellate court ruled in Werner that the cause was remediable because:

> There was nothing in the record to suggest damage or injury was inflicted to the school, students or faculty which could not have been remedied if complaints had been made to Werner when knowledge of the causes first came to the attention of her superiors and there was not evidence or reason inferable from the record why plaintiff would not have corrected the causes if her superiors had warned her or made complaint about the causes.[17]

Key to the two cases and those which followed was not so much the damage the teacher's behavior could or did cause, but whether the behavior could have been corrected upon being warned. Warning of causes which might become charges for dismissal was considered by Illinois courts to be an important right guaranteed to teachers through tenure law. This concept was emphasized repeatedly in different court decisions regarding teacher dismissal. Hauswald, supra, had stated that "the right for teachers to be informed about causes that are remediable and to have the opportunity to correct such causes

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[16]Id.

[17]Werner, 40 Ill. App.2d 49 (1958).

go to the heart of the Tenure System."[18] In teacher dismissal cases, such as Werner,[19] where cause was judicially deemed remediable, it was often because there was no evidence that a plaintiff was given either repeated or single warnings by a superior. School boards frequently circumvented this requirement of sending a warning notice by countering that the causes were irremediable; thus a letter of warning to the teacher was unnecessary. Perhaps in recognizing that districts might have attempted to manipulate the guidelines to their own benefit, the court in 1973, required that boards of education make a determination of remediability and place it on record. In Waller v. Board of Education of Century Community Unit School District #100 it was required that:

> On appeal, a record could not be properly reviewed unless there was a showing that the Board made a determination regarding remediability of causes and unless its reasons are expressed in such a fashion that the reviewing court can pass judgment on them.[20]

This court felt it to be only reasonable that a record be maintained by the Board disclosing its findings regarding remediability, because the law itself[21] stated that the Board's decision was subject to review. In further justifying its reasons for enjoining boards of education to record

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[18]Hauswald, 20 Ill. App.2d 49 (1958).

[19]Werner, 40 Ill. App.2d 491 (1963).

[20]Waller v. Board of Education of Century Community Unit District No. 100, 13 Ill. App.3d 1056, 302 N.E.2d 19 (1973).

[21]Id.

findings of remediability Waller, supra cited Donahoo in stating that:

> A board would not so readily dismiss when its reasons therefor will be submitted to the bar of public opinion. Such a statement would give the teacher a chance to know his weaknesses and try to correct.[22]

Because the school board in the Waller case failed to make any finding on record regarding remediability of the enumerated causes, the court felt that the board of education was not in accordance with the intent of the law. Therefore this action prejudiced the rights of the teacher. For this reason the action of the board was reversed.

Illinois courts further ascertained in 1974, that it was the sole responsibility of the board of education to serve written notice of warning of causes which might become charges. A principal's letter of direction, as cited in the Everett decision, would not serve as warning.[23]

As remediability of cause continued to evolve judicially, more stringent guidelines continued to develop for dismissing a tenured teacher. Another such case was Glover v. Board of Education,[24] in 1974. The appellate court in Glover added that

> If defects which are remedial in nature continue for a long enough period of time and where the teacher refuses

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[22]Donahoo, 413 Ill. 422 (1952).

[23]Everett v. Board of Education of District 101, 22 Ill. App.3d 594, 317 N.E.2d 753 (1974).

[24]Glover v. Board of Education, 2 Ill. App.3d 1053, 316 N.E.2d 534 (1974).

or fails to remedy them, they have been considered irremedial.

With the inclusion of the Jepsen,[25] Werner[26] and Glover[27] decisions, the following questions emerged to apply against a school board's decision to designate cause as irremediable:

1. Was the dismissal in the best interests of the schools of the district? (Meredith--1955)[28]
2. Was the determination of irremediable cause arbitrary, malicious, or capricious in intent? (Meredith--1955)[29]
3. Did any of the causes inflict damage or injury to the school, students or faculty? (Jepsen-1958)[30] and Werner--1963)[31]
4. Did the causes which were remediable in nature continue over a long period of time or did the teacher fail to remedy them? (Glover--1974)[32]

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[25]Jepsen, 19 Ill. App.2d 204 (1958).

[26]Werner, 40 Ill. App.2d 49 (1958).

[27]Glover, 21 Ill. App.3d 1053 (1974).

[28]Meredith, 7 Ill. App.2d 477 (1950).

[29]Id.

[30]Jepsen, 19 Ill. App.2d 204 (1958).

[31]Werner, 40 Ill. App.2d 49 (1958).

[32]Glover, 21 Ill. App.3d 1053 (1974).

Gilliland[33], an Illinois Supreme Court decision in 1977 [and later Aulworm[34] in 1977 and Grissom[35] in 1978] confirmed the aforementioned points in its holding with the following criterion for determining remediability:[36]

1. Did any of the causes damage the students, faculty or school?
2. Could the conduct resulting in that damage have been corrected had the teacher's superiors warned him or her?
3. Did the cause go uncorrected over a long period of time? Uncorrected causes for dismissal which were originally remediable in nature can become irremediable if continued over a long period of time.

The Illinois Supreme Court in Gilliland,[37] stressed that although it is the responsibility of the board of education to determine irremediability of cause; the board's findings are not immune from judicial review. If after being applied to statutory and judicial criterion, a teacher's cause for

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[33]Gilliland, 62 Ill. App.3d 143 (1977).

[34]Aulworm v. Board of Education of Murphysboro Community Unit School District 186, 67 Ill.2d 434, 10 Ill. Dec. 571, N.E.2d 1337 (1977).

[35]Grissom v. Board of Education of Buckley-Loda Community School District No. 8, 75 Ill.2d 314, 26 Ill. Dec. 683, 388 N.E.2d 398 (1979).

[36]Gilliland, 62 Ill. App.3d 143 (1977).

[37]Ibid.

dismissal was found by the court to be remediable; a board's findings would be against the manifest weight of the evidence. In turn the board would then have lacked jurisdiction to proceed with the dismissal, as the teacher was not given written warning to remediate and an opportunity for correction as stipulated by SEC. 24-12 of the Illinois School Code.[38]

Between 1962 and 1976, Illinois courts found lack of discipline to be remediable in nature. Such was the case in Wells v. Board of Education of Community School District No. 221[39] (1967), Yesinowski v. Board of Education of Bryon Community Unit School District No. 226[40] (1975), and Paprocki v. Board of Education of McHenry Community High School District No. 156 (1975)[41] However in Gilliland[42], lack of discipline and control were found to be irremediable because discipline was combined with a number of causes and was continuous in nature. Gilliland's misconduct, which included incompetency, cruelty, and negligence; also damaged her students and the school itself.

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[38]ILL. REV. STAT. CH. 122, Sec. 24-12 (1975).

[39]Wells v. Board of Education of Community School District No. 221, 85 Ill. App.2d 312, 230 N.E.2d 6 (1967).

[40]Yesinowski v. Board of Education of Byron Community School District No. 226, 28 Ill. App.3d 119, 328 N.E.2d 23 (1975).

[41]Paprocki v. Board of Education of McHenry Community High School District 156, 31 Ill. App.3d 112, 334 N.E.2d 841 (1975).

[42]Gilliland, 67 Ill. App.3d 143 (1977).

Other causes in dismissal cases of tenured teachers which were held to be irremediable included a teacher's:

1. Noncooperation with the staff and principal;[43]
2. Willful and intentional violation of a board's request not to attend a conference unrelated to the school curriculum;[44]
3. Uncontrollable temper outbursts over a period of two years;[45]
4. Uncorrected lack of cooperation, disciplinary methods, etc. over an extended period of time;[46] and
5. Failure to follow a sabbatical leave plan for full-time study.[47]

These dismissal cases shared some commonalities, which lead to causes being upheld by courts as irremediable. One such common factor was ample documentation by the board of education of warning notices sent regarding remediable defects in teaching and sufficient time to remedy said shortcomings.

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[43]Robinson v. Community Unit School District No. 7, 35 Ill. App.2d 325, 182 N.E.2d 770 (1962).

[44]Yuen v. Board of Education of School District No. U-46, 77 Ill. App.2d 353, 222 N.E.2d 573 (1966).

[45]Kallas v. Board of Education of Marshall Community Unit District No. C-2, 15 Ill. App.3d 450, 304 N.E.2d 527 (1973).

[46]McLain v. Board of Education School District No. 52, 36 Ill. App.2d 143, 183 N.E.2d 7 (1962).

[47]Pittel v. Board of Education School District 111, 315 N.E. 179 (1974).

Exemplifying this concept was McLain v. Board of Education, School District No. 52.[48] The appellate court in McLain ruled that repeated oral and written notifications over a period of months of teaching deficiencies and opportunity to remedy indicated compliance with statutory requirements. Under such circumstances it then became common for courts to rule those causes irremediable, when a teacher was repeatedly warned to correct teaching faults and failed to comply with directives. In Kallas v. Board of Education of Marshall Community Unit School District No. C-2, the court recognized that although temper outbursts were remediable; it did not entitle them to remain remediable forever.[49]

A third type of commonality leading to irremediability of cause were those which the court had decided were injurious to either the students, faculty, or school. A teacher's absence and intentional violation of a Board rule was held to be a loss to the students, in Yuen v. Board of Education of School District No. U-46, as damage was done and could not be remedied.[50]

As previously stated in the second chapter of this dissertation, that the provisions for remediability of cause in SEC. 24-12, only applied to teachers who had entered into contractual continued service. "Teacher" according to the

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[48]McLain, 36 Ill. App.2d 143 (1962).

[49]Kallas, 15 Ill. App.3d 450 (1973).

[50]Yuen, 77 Ill. App.2d 353 (1966).

aforementioned section, was defined as any or all school district employees regularly required to be certified under laws relating to the certification of teachers. Further, in order for "teachers" to enter into tenure he or she must have been "employed for a probationary period of two school terms."[51]

These terms did not succinctly specify that administrators were excluded and thus, not eligible for contractual continued service. Rather, the nature of the requirements in SEC. 24-12 for tenure were broad. Within the definition of "teacher," regularly certified employees could have included administrators such as superintendents or principals, in addition to teachers. Probationary service was not limited to time spent teaching. Instead this service was described as being "employed" for two school terms.

Since tenure laws were initiated in Illinois in 1941, administrative eligibility for contractual continued service was judicially debated. In the case of Wilson v. Board of Education of School District No. 126, in 1946,[52] the petitioner sought a writ of mandamus to be reinstated as superintendent from the position of principal and to have paid to him his previous salary. Wilson based his claim upon the fact that because he had been employed as superintendent from July 1, 1941 to June 30, 1942 and July 1, 1942 to June 30,

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[51]ILL. REV. STAT. CH. 122, Sec. 24-12 (1989).

[52]Wilson v. Board of Education of School District No. 126, 3394 Ill. 197, 68 N.E.2d 257 (1946).

1943, he had fulfilled the requirements of contractual continued service. Thus, because the board of education did not abrogate his rights under the Teacher Tenure Law, he should have been reemployed for the next fiscal year as a superintendent. It was ruled by the Illinois Supreme Court that Wilson was ineligible to receive tenure, as he had not completed two calendar years of probationary service. However the issue of whether superintendents were within the statutory definition of "teacher," was not discussed.

In 1956, the appellate court in McNely v. Board of Education held that a superintendent who did no teaching was still included within the provisions of the Teacher Tenure Law. Legislative policy regarding this decision was stated accordingly:

> It was the policy of the legislature to include within the Teacher Tenure Law only those employees required to be certified. It stated that policy by the simple method of defining teachers for the purposes of the act, as 'any or all school district employees' regularly required to be certified under laws relating to the certification of teachers . . . the certification of superintendents and public acquiescence therein, coupled with the later statutory enactment in conformity thereto, leaves us with the inevitable conclusion that superintendents are . . . 'teachers' within the definition of the Teacher Tenure Law.[53]

Therefore, as relayed by this appellate court, the term "teacher" included superintendents, principals, supervisors, and teachers. All of the aforementioned were district employees regularly required to be certified under the laws

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[53]McNely v. Board of Education, 9 Ill.2d 143, 137 N.E.2d 63 (1956).

and teachers. All of the aforementioned were district employees regularly required to be certified under the laws relating to the certification of teachers.

Another appellate court decision in 1967 agreed with the McNely[54] decision and further stated that superintendents only have tenure as a teacher. In Lester v. Board of Education of School District No. 119,[55] the question was not whether a superintendent was within the scope of the Tenure Act; but whether he had tenure as a superintendent. Justification for the ruling was based on the fact that superintendents were "teachers" according to tenure law and acquired tenure as a certified employee of the school. Because tenure law permitted boards of education to assign a teacher to a position the teacher was qualified to fill; a board was justified in this type of action as long as it wasn't in the nature of chicanery or subterfuge designed to subvert the provisions of the law.

Six years after the Lestor decision, separate statutes were added to the state code which referred to principals and superintendents under a multi-year contract with a school district. These statutes, SECS. 10-23.8 and 10-23.8a,[56] required that any principal or superintendent upon accepting

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[54]Id.

[55]Lester v. Board of Education District No. 119, 230 N.E.2d 893 (1967).

[56]ILL. REV. STAT. Ch. 122, Secs. 10-23.8 and 23.8a (1977).

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This action then left boards of education with two types of options for employment of principals or superintendents. With the first option, as outlined in SECS. 24-11 to 24-16,[58] a principal or superintendent could sign yearly contracts and become eligible for contractual continued service as a teacher. If the district wished to dismiss a superintendent or principal, it would have to follow those afforded teacher under the tenure act. As stipulated by SEC. 24-11,[59] this status would not prohibit a school board from transferring a principal or superintendent to another position which the principal or superintendent was qualified to fill and to make such salary adjustments as the board deemed desirable. Additionally if salary adjustments were uniform or based upon some reasonable classification, notice and hearing of a reduction in status would be unnecessary.

Sections 10-23.8 and 10-23.8a & b, offered the second option of employment of superintendents and principals for boards of education of public schools in Illinois. Superintendents or principals could be offered multi-year contracts of no less than three years, except for a person serving as superintendent for the first time in Illinois. In this case, a superintendent or principal could be offered a

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[57]Id. at Secs. 24-11 to 24-16 (1977).

[58]Id.

[59]Id.

contract two years in length.[60] Superintendents, under the provision of SEC. 10-23.8, could not be moved to another position. However principals, under the 1986 amendment of this same section, could be reclassified upon written notice and reasons. A private hearing could be requested by the principal. If unsatisfied with the results of the private hearing, a principal could also request a public hearing. If a board of education decided not to renew the contract of a superintendent or principal, it must have provided written notice with reasons and a hearing. Notice must be given by April 1 of the year the contract expired; while a hearing must be provided ten days after the receipt of notice, upon a superintendent's or principal's request.

The difference between the two options lies with procedures for nonrenewal. With a one-year contract under tenure law, it was less complicated not to rehire a superintendent or principal if he was tenured. Nonrenewal of a first-year probationary superintendent or principal only required notice, while the second-year probationary required notice and reasons.

These procedures contrasted with those for superintendents or principals hired under a multi-year contract. Whenever a school board wished to nonrenew under these circumstances; notice, reasons, and hearing had to be accorded to the employee. In the author's opinion, it was

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[60]Id. at Secs. 10-23.8 and 12.23.8a (1975 & 1973).

actually easier and less costly for districts to hire on one-year contracts, because it would give districts the options of bypassing the hearing process. However, as opposed to the strict judicial scrutiny of remediation of cause where new guidelines made it more difficult for boards to dismiss tenured teachers; this legislation favored boards of education. The two statutory provisions provided school boards with two possible alternatives, whereby the school district would choose the most beneficial.

Tenure Statutes in Chicago: 1961-1975

Although Chicago tenure law was legislated well before the rest of the state in 1917,[61] Chicago lagged behind downstate districts in other tenure developments. The original Teacher Tenure Act of 1941[62] for downstate teachers included provisions for remediability. It was amended to include administrative review in 1945[63] and the use of an impartial hearing officer in 1975.[64] Remediability of cause was legislated for Chicago in 1963,[65] while administrative review was added in 1963 and the impartial hearing office in

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[61]Id. at Sec. 161 (1917).

[62]Id. at Sec. 136c (1941).

[63]Id. at Sec. 136c (1945).

[64]Id. at Sec. 24-12 (1975).

[65]Id. at Sec. 34-85 (1963).

1979.[66] Additionally, Chicago administrators were not eligible for the provisions of the multi-year contract of SECS. 10-23.8 to 10-23.8b.[67] According to SEC. 34-85,[68] principals in Chicago maintained eligibility for tenure as principals until 1989. Downstate principals under SEC. 24-12[69] were never conferred tenure as a principal.

Aside from the delays in tenure legislation between Chicago and downstate districts, differences in wording of the aforementioned passages were minimal. Regarding remediability of cause, SEC. 24-12 (Downstate) read:

> Before setting a hearing on charges stemming from causes that are considered remediable, a board must give the teacher reasonable warning in writing, stating specifically the causes which if not removed, may result in charges.[70]

Whereas, SEC. 34-85 (Chicago) stipulated that:

> Before service of notice of charges on account of causes that may be deemed to be remediable, the teacher or principal shall be given reasonable warning in writing, stating specifically the causes which, if not removed, may result in charges.[71]

The two passages vary in terms of when cause must be deemed remediable. It was further required upon downstate

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[66]Id. at Sec. 34-85 (1979).

[67]Id. at Secs. 10-23.8 & 8a (1975 & 1973).

[68]Id. at Sec. 34-85 (1979).

[69]See Secs. 136c (1941) to 24-12 (1989).

[70]Id. at Sec. 24-12 (1979).

[71]Id. at Sec. 34-85 (1979).

districts through SEC. 24-12,[72] that this be done before setting a hearing. Scheduling a hearing date was hingent upon an approval by the board of education of a motion containing specific charges and a twenty day period where the teacher could request a hearing not be held. In holding a literal interpretation of this clause for downstate public school districts, a board of education then had up to twenty days after the approval of the motion containing the specific charges for dismissal; in which to determine remediability of cause.

Remediability of cause under guidelines for dismissal of tenured Chicago teachers in SEC. 34-85, had to have been determined before service of notice of charges. Before serving notice of charges a motion had to be approved by the board of education; which contained written charges, specifications and a request to the State Board of Education to schedule a hearing. Written notice had to be sent to the teacher or principal no more than ten days after the adoption of such motion. Thus, the board of education had the period of teacher's tenured employment plus ten days, in which to determine remediability of cause. This meant in actuality that downstate districts had ten more days to deem cause as being remediable.[73]

Although there were many dismissal cases of tenured

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[72]Id. at Sec. 24-12 (1979).

[73]Id. at Sec. 34-85 (1979).

teachers pertaining to remediability of cause from downstate public school districts between 1961 and 1975, petitions to the court on this same subject from dismissed Chicago teachers were virtually absent. Szkirpan v. Board of Education of the City of Chicago[74] in 1975, was the only case to reach the appellate court. However it did not deal remediability, rather it was based on a supposed technical error on the part of the board. Other dismissal cases dealt with teachers of probationary status, who sought tenure.[75]

Statutory differences regarding hearing officer legislation for dismissal of downstate and Chicago tenured teachers, were similar to those of remediability of cause. Variations in the law consisted of different procedural timelines. Section 24-12 (Downstate) designated that the district's school board set the hearing date no less than thirty and no more than sixty days after the approval of the motion of charges.[76] It further stated that the hearing officer make the final decision regarding dismissal with reasonable dispatch. As with remediability of cause the timelines required by SEC. 34-85[77] (Chicago) were more

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[74]Szkirpan v. Board of Education of the City of Chicago, 29 Ill. App.3d 1047, 331 N.E.2d (1975).

[75]Thomas v. Board of Education of the City of Chicago, 40 Ill. App.2d 308 (1963). Lipp v. Board of Education of the City of Chicago, 470 F.2d 802 (1972). Provus v. Board of Education, 11 Ill. App.3d 1058 (1973).

[76]ILL. REV. STAT. Ch. 122, Sec. 24-12 (1979).

[77]Id. at Sec. 34-85 (1979).

narrowly defined. It indicated that the State Board of Education schedule a hearing (as opposed to the local school board in downstate districts) no less than twenty and no more than forty-five days after the date the State Board notified the involved parties of the selected hearing officer. As opposed to the hearing officer making the final decision with reasonable dispatch as required in SEC. 24-12,[78] the previously mentioned section specified that hearing officers make final decisions within forty-five days from the conclusion of the hearing as to whether the teacher or principal would be dismissed. Legislation regarding administrative review for the two district types were alike, as both were based on the Administrative Review Act of CH. 110, SEC. 264, of the Illinois Revised Statutes.

Content analysis indicated that although timelines varied, the wordings of teacher dismissal procedures for downstate and Chicago areas had a general likeness. Most interesting is the fact that teacher tenure law was legislated for Chicago public schools in the early 1900's. Yet other rights inherent to the dismissal process for teaches in contractual continued service in downstate areas, (such as remediation of cause or the impartial hearing officer) were amended for Chicago teachers at a much later date. Albeit that the writer does not have the answers as to why this has happened; an examination into the reasons for these

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[78]Id. at Sec. 24-12 (1979).

occurrences could be another topic of future study.

Constitutional Considerations: Property and Liberty Interests

Fourteenth Amendment due process rights apply only if one was deprived of "life, liberty, or property." In order for a public school teacher in Illinois to claim that there was a denial of due process in relation to job security, it must be shown that there was a deprivation of one of these rights.

Two major U.S. Supreme Court cases, Board of Regents v. Roth[79] and Perry v. Sindermann[80] delivered rulings pertaining to liberty and property interests and teacher dismissal. In Board of Regents v. Roth, the supreme court defined these terms. It commented on property interests in the following manner:

> To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must, instead, have a legitimate claim of entitlement to it . . . . Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.[81]

In Roth,[82] the teacher involved who was an assistant professor at a state university, was informed that he would

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[79]Roth, 408 U.S. 564 (1972).

[80]Sindermann, 408 U.S. 593 (1972).

[81]Roth, 408 U.S. 564 (1972).

[82]Id.

not be rehired after his first year of employment. The court concluded that because he had no tenure rights to continued employment and there was no state statute or university policy that secured his interest in reemployment or created any legitimate claim to it, he did not have a property interest protected by the Fourteenth Amendment sufficient to require his superiors to give him a hearing when they declined to renew his employment contract. The courts in Perry v. Sindermann, stated that other factors may influence the creation of "property interests" for teachers.[83] It prescribed that if the customary practices of the institution created a de facto tenure system, then a teacher would have a property interest in reemployment and would be entitled to due process protection prior to dismissal. When Miller v. School District No. 167, reached the U.S. Seventh Circuit Court of Appeals in 1973; it was held that as a matter of Illinois state law, a second-year probationary teacher claim of entitlement to his position was not a property interest.[84] As a cross-reference see also, Shirck v. Thomas (1973), another federal court holding. This court decided that because Illinois statutes required that a second-year probationary teacher be given reasons for dismissal, it did

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[83]Sindermann, 408 U.S. 593 (1972).

[84]Miller v. School District No. 167, 354 F. Supp. 922 (1973).

not create a property interest.[85] An Illinois Supreme court decision in 1976, also ruled that an evaluation clause in a collective bargaining agreement, was not sufficient enough to create a property interest where a school district was required to hold a due process hearing for a non-tenured teacher upon dismissal. Thus, what was brought forth between the federal and state level, was that notice on non-renewal at the completion served upon a second-year probationary teacher does not constitute contractual entitlement to a further employment. Moreover, it does not give right to a due process hearing.

Another constitutional issue upon which Roth expounded was that of "liberty." In interpreting "liberty," the Supreme Court stated that:

> Liberty is not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life . . . . Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and opportunity to be heard are essential.[86]

In Lipp v. Board of Education of City of Chicago[87] a federal court case in 1972, it was recognized that "liberty" takes in two interests of a public employee: the protection of his good name, honor and integrity; and the protection of

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[85]Shirck v. Thomas, 486 F.2d 691 (1973).

[86]Roth, 408 U.S. 564 (1972).

[87]Lipp v. Board of Education of City of Chicago, 470 F.2d 802 (1972).

his freedom to take advantage of other employment opportunities. Illinois tenure law according to SEC. 24-12 did not require a hearing be given to a second-year probationary teacher who was to be dismissed.[88] Nevertheless, if the cause for dismissal would deprive a non-tenured teacher of a liberty right, a hearing would be constitutionally required.

Summary

Immediately preceding the initiation of tenure in downstate areas, legislative action tended to favor teachers by setting forth basic sets of guidelines regarding procedures involving dismissal. During the period between 1961 and 1975, this trend continued. Tenure issues of importance were those regarding the hearing officer, remediability of cause, and constitutional requirements of "liberty" and "property".

Chapter Five will analyze statutory and case law in the area of dismissal of tenured teachers, between 1976 and 1989. Previous concepts, such as remediability and federal rights, will be further researched as well as those which pertain to the upcoming segment of time.

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[88]ILL. REV. STAT. CH. 122, Sec. 24-12 (1975).

CHAPTER 5

TEACHER DISMISSAL AND THE REMEDIATION PROCESS - THE CONSULTING TEACHER: 1976-1989

Introduction

This chapter concludes the author's analysis of statutory and case law of the dismissal of tenured teachers in public schools of Illinois. In the first thirty-four years after the Teacher Tenure Act[1] was introduced, remediation of cause was the most litigated issue involving dismissal of tenured teachers. Until 1975, school boards not only made the initial judgment as to whether cause was remediable or irremediable, but also ascertained the final decision in the dismissal hearing. After 1975, a statutory amendment to the Illinois Revised Code removed the board's power to adjudicate dismissal hearings. This responsibility was then transferred to an impartial hearing officer appointed by the state. However, boards of education still had the authority to make the pre-hearing determination of remediability or irremediability. An Illinois Supreme Court interpretation in Gilliland, supra in 1977, decided upon criteria which must be adhered to when specifying remediability of cause. Gilliland

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[1]Gilliland, 68 Ill.2d 143 (1977).

stipulated the following two-prong test for remediability:

1. Did any of the causes damage the students, faculty, or school?
2. Could the conduct resulting in that damage have been corrected had the teacher's superiors warned him or her?[2]

Additionally, this decision also stated that uncorrected causes for dismissal which were originally remediable in nature; could become irremediable if continued over a long period of time. Gilliland did not define though, the length of this period of remediation. It was not until 1985, that the legislature standardized this timeframe, by specifying that remediation shall be one calendar year in length.[3]

This chapter will further discuss the issues of remediation and tenure legislation related to downstate school districts and Chicago from 1976 to 1989. Court decisions which generated from legislated tenure statutes during this time will also be analyzed.

Tenure in Downstate Districts: 1976-1989

Tenure's original purpose was to provide teachers with the right to an unlawful, arbitrary, and capricious dismissal by a school board.[4] In keeping with this intent, the Tenure Act was continuously amended to intervene in any possible arbitrary interpretations by boards of education. Early amendments to tenure law in the 1940s through the 1960s,

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[2]Id.

[3]ILL. REV. STAT. Ch. 122, Art. 24A-5 (1985).

[4]Id.

constituted clarifications to vague statutory passages. Later changes in the 1970s and 1980s, focused on additional criteria to prevent abuses of the law. In 1975, one such example of additional criteria was designating that an impartial hearing officer would be the responsible party for final decisions in dismissal hearings of tenured teachers. (Before 1975, boards of education were charged with that responsibility.)

Another type of criteria was legislated on September 25, 1985, thereby adding a requisite of a one-year remediation plan which, according to ART. 24A-5 of Illinois Revised Statutes, would be commenced and developed by the district thirty days after completion of an evaluation rating a teacher unsatisfactory.[5] The remediation plan was to be designed to correct deficiencies which were deemed remediable. Additionally, ART. 24A stipulated the following criteria:

1. Three people were to participate in the remediation plan - the teacher rated unsatisfactory; a district administrator who met the requirements of ART. 24A-3;[6] and a consulting teacher.[7]
2. The duration of the remediation was to be for a period of one-year.
3. Evaluation was to take place quarterly during the one-year period, conducted by the participating

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[5]Id.

[6]Id. at Art. 24A-3, Par. F (1986).

[7]Id. at Art. 24A-5 (1985).

administrator. (Unless an applicable collective bargaining agreement provided otherwise.)

4. Consulting teachers could not evaluate the teacher undergoing remediation. A consulting teacher's role was to participate in developing the remediation plan and to provide advice to the teacher rated "unsatisfactory" on how to improve teaching skills and successfully complete the remediation plan. Consulting teachers were precluded from testifying at dismissal hearings under SEC. 24-12, for teachers rated "unsatisfactory" with whom they advised.[8]
5. Any teacher who completed the one-year remediation plan with a "satisfactory" or better would be reinstated to a schedule of biennial evaluation.

SEC. 24-12 added that:

> The hearing officer shall consider and give weight to all of the teacher's evaluations written pursuant to SEC. 24-A. The hearing officer within reasonable dispatch, shall make a decision as to whether or not the teacher shall be dismissed and shall give a copy to both the teacher and the school board.[9]

As the legislation was not worded clearly in its intent, several questions could arise upon review. At issue might be:

1. Whether ART. 24-A required school boards to "initiate" or develop a remediation program;

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[8]Id. at Art. 24-12 (1986).

[9]Id. at Art. 24A-5 (1986).

2. Whether ART. 24-A stipulated that there can be a discharge of a teacher who had undergone remediation with the Board acting in only a ministerial capacity;
3. Whether remediable causes for dismissal which had not been determined according to ART. 24-A through a district evaluation rating of unsatisfactory, need to be subject to a one-year remediation process;
4. Whether a hearing provided by SEC. 24-12 was automatic under circumstances where a teacher had undergone remediation.

Powell v. Board of Education of the City of Peoria, District 150 and Illinois State Board of Education,[10] an Illinois Appellate Court decision in 1989 addressed these first two issues in its opinion. As to whether ART. 24-A required school boards to "initiate" or develop a remediation program it held that "district administrators are permitted under the statute to develop the individual teacher's remedial plans under the overall supervision of the school board."[11] It was noted by this court that a 1989 amendment to ART. 24-5, PAR. F[12] specifically permitted administrators to develop and

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[10]Powell v. Board of Education of the City of Peoria, District 150 and Illinois Board of Education, No. 3-89-0084 (Ill. App.3d Sept. 23, 1989).

[11]ILL. REV. STAT. Ch. 122, Art. 24-12 (1986).

[12]Id. at Art. 24A-5 (1986).

commence remediation plans. Prior to 1989, PAR. F stated that the district would be responsible for commencement and development of a remediation plan.[13]

Powell also addressed a second issue as to whether there can be a discharge of a teacher who has undergone remediation with the Board acting in only a ministerial capacity.[14] Meaning, could a teacher be dismissed without the Board being directly involved in the teacher's termination of employment? It was held by the court that once a remediation program had been instituted by the administration, the local board had no more responsibility or control over firing or retention of the affected teacher. With the inclusion of the remediation process of ART. 24A in 1985, a new clause was amended to SEC. 24-12 which required that a hearing officer was responsible for reviewing the teacher's evaluations written pursuant to ART. 24A and for deciding whether or not a teacher shall be dismissed. In its rationalization, the court stated that

> The new legislation reflected the legislature's intent to remove from the jurisdiction of local boards the ultimate responsibility on a termination decision following remediation to a disinterested hearing officer.[15]

Although the court in Powell, addressed two issues regarding the 1985 remediation legislation, to date it is the only court case litigated at the appellate level, and

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[13]Id. at Sec. 24-12 (1986).

[14]Powell v. Board of Education.

[15]Id.

therefore other issues have not yet been articulated. Other possible questions may arise due to the additional passages of 1985 through 1989 regarding remediation. Unanswered would be the question of whether it was statutorily necessary to provide a one-year remediation plan for all causes deemed remediable. One possibility would be the occurrence of a teacher deficiency which was cited through observations, rather than evaluations. Accordingly the behavior was not deemed as unsatisfactory, but was categorized simply as cause for dismissal according to SEC. 10-22.4[16] of the Illinois School Code. Thus, the prevailing question would be if the district in this type of situation was legally bound to the one-year remediation period before contemplating dismissal?

Another remaining question pertains to the hearing. In one paragraph of SEC. 24-12 (1989), it stated that "No hearing upon the charges is required unless the teacher . . . requests in writing of the board that a hearing be scheduled . . ."[17] On the other hand, the clause regarding remediability within SEC. 24-12 stated that the decision as to whether a teacher who had undergone remediation will be dismissed, would be decided by the hearing officer at the hearing.[18] (Also held by the Powell decision.)[19] From the author's perspective,

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[16]ILL. REV. STAT. Ch. 122, 10-22.4 (1986).

[17]Id. at 24-12.

[18]Id.

[19]Powell v. Board of Education.

these two clauses conflict each other. However, no additional statutory or case law presently exists to address these issues. Only further judicial scrutiny or legislative amendments will provide clarification.

Historically, Illinois frequently changed provisions within tenure law. Alterations to tenure law during its first forty-nine years of existence, occurred as a result of arbitrary dismissals or the potential for abuse in removing teachers. In 1977, the Illinois Supreme Court had voiced concern that "a procedure whereby a local board function as prosecutor, witness, judge, and jury was too susceptible to abuse." Gilliland as quoted in Board of Education of Valley View v. File in 1980, added that:

> Perhaps as a result of these concerns, SEC. 24-12 was amended by Public Act 79-561 in 1975. Under the provision of this act, the local school board's hearing functions were placed with an impartial hearing officer.[20]

Implementation of a standardized remediation period, was yet another means to remove the likelihood of prejudices within tenure law. Before 1985, remediation periods varied in length from a few months to a few years. Even with the proviso of consistent guidelines for a remediation period though, broad legal interpretations were invoked elsewhere within tenure law. Remediability of cause remained unclear and was exposed to arbitrariness due to a lack of statutory

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[20]Board of Education of Valley View Community Unit School District No. 365U v. File, 89 Ill. App.3d 1132, 412 N.E.2d 1030 (1980).

directives on the subject. A statutory definition of remediableness of cause has been absent from SEC. 24-12[21] (at that time SEC. 136c) since tenure's inception, as the Act vested this consideration to boards of education. Gilliland[22] did provide a two-prong test for remediability in a 1977 supreme court decision. Each prong has been legally debated at length however, by either school boards or the teacher to be dismissed.

This debate was evidenced by the amount of case law generated in the area of remediability. Of the thirty-five dismissal cases which were analyzed regarding remediability from the period between 1976 to 1989, (The thirty-five cases represented Illinois appellate and supreme court decisions regarding dismissal of tenured teachers in downstate public school districts.) remediability was at issue in twenty-five. These twenty-five decisions reflected case law pertaining to teacher deficiencies in four areas:

1. Mismanagement of classroom discipline or excessive disciplinary methods - Eleven cases;[23]

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[21]ILL. REV. STAT. Ch. 122, Sec. 136c (1941).

[22]Gilliland, 67 Ill.2d 143 (1977).

[23]Board of Education of Minooka Community Consolidated School District No. 201 v. Ingels, 75 Ill. App.3d 335, 394 N.E.2d 69 (1975). Board of Education of School District No. 131 v. State Board of Education, 99 Ill.2d 111, 457 N.E. 2d 435 (1983). Combs v. Board of Education of Avon Center School District No. 47, 498 N.E.2d 806 (1986). Fender v. School District No. 25, 37 Ill. App.3d 736, 347 N.E.2d 270 (1976). Gilliland, 67 Ill.2d 143 (1976). Grissom v. Board of Education of Buckley-Loda Community School District No.

2. Immorality - Six cases;[24]

3. Illness - Five cases;[25]

4. General incompetency - Three cases;[26]

(There were forty-three cases in all analyzed. Eight cases[27]

8, 75 Ill.2d 314, 388 N.E.2d 398 (1979). Lowe v. Board of Education of the City of Chicago, 76 Ill. App.3d 348, 395 N.E.2d 59 (1979). Rolando v. School Directors of District No. 125, 44 Ill. App.3d 658, 358 N.E.2d 945 (1976). Stamper v. Board of Education of Elementary School District No. 143, 141 Ill. App.3d 884, 491 N.E.2d 36 (1986). Swayne v. Board of Education of Rock Island School District No. 5, 45 Ill. App.3d 35, 358 N.E.2d 1364 (1977). Welch v. Board of Education Bement Community Unit School District No. 5, 45 Ill. App.3d 35, 358 N.E.2d 1364 (1977).

[24]Board of Education of Tonica Community High School District No. 360 v. Sickley, 133 Ill. App.3d 921, 479 N.E.2d 1142 (1985). Eckmann v. Board of Education of Hawthorn School District, 636 F. Supp. 1214 (N.D. Ill. 1986). Fadler v. Illinois State Board of Education, 153 Ill. App.3d 1024 (1987). McBroom v. Board of Education, Ill. App.3d 463, 494 N.E.2d 1191 (1986). Morelli v. Board of Education, Pekin Community High School District No. 303, 42 Ill. App.3d 722, 356 N.E.2d 438 (1976). Reinhardt v. Board of Education of Community Unit School District No. 11, 61 Ill.2d 101, 329 N.E.2d 218 (1975).

[25]Board of Education School District No. 151 v. Illinois State Board of Education, 154 Ill. App.3d 375 (1987). DeBarnard v. State Board of Education, 123 Ill. 153 (1988). DeOliveira v. State Board of Education, 158 Ill. App.3d 153 (1987). Friesel v. Board of Education of Medinah School District No. 11, 79 Ill. App.3d 460, 398 N.E.2d 637 (1979). Gould v. Board of Education of Ashley Community Consolidated School District No. 15, 32 Ill. App. 3d 808, 336 N.E.2d 69 (1975).

[26]Board of Education, Niles Township High School District No. 219 v. Epstein, 72 Ill. App.3d 723, 391 N.E.2d 114 (1979). Aulworm, 67 Ill.2d 434 (1977). Gilliland, 67 Ill.2d 143 (1977).

[27]Board of Education of St. Charles Community Unit School District No. 303 v. Adelman, 97 Ill. App.3d 530, 423 N.E.2d 254 (1981). Board of Education of School District No. 131 v. Illinois State Board of Education, 82 Ill. App.3d 820, 403 N.E.2d 277 (1980). Board of Education of Valley

entailed decisions based on technical errors on the part of either the school board of the hearing officer.)

Poor classroom management or excessive disciplinary techniques represented the major area of concern to school boards. Thirty-one percent of the analyzed cases pertaining to remediability during this period involved dismissal under these circumstances. What was significant was the fact that the quantity of this type of dismissal case had increased 350 percent, over those same type of dismissal cases litigated between 1961 and 1975. There were three discipline related cases appealed to the courts between 1961 and 1975, as opposed to eleven from 1976 to 1989.

Cases in this category were either classified as behaviors where there constituted poor classroom management or excessive abuse of discipline. In appellate court cases in Illinois where a teacher was cited as overdisciplining his or her students it was held to be irremediable in nature when:

1. The behavior displayed by the teacher exhibited continuing patterns of cruelty and violation in his

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View Community Unit School District No. 365U, 89 Ill. App.3d 1132 (1980). Glover v. Board of Education of Macon Community Unit District No. 5, 62 Ill.2d 122, 340 N.E.2d (1976). Hansen v. Board of Education of School District No. 65, 150 Ill. App.3d 979, 502 N.E.2d 467 (1986). Koerner v. Joppa Community High School District No. 21, 1453 Ill. App.3d 162, 492 N.E.2d 1017 (1986). Massoud v. Board of Education of Valley View Community District No. 365-U, 97 Ill. App.3d 65, 422 N.E.2d 236 (1981). Neal v. Board of Education, School District No. 189, 56 Ill. App.3d, 371 N.E.2d 869 (1978).

relationship with students;[28]

2. The punishment inflicted was so severe as to have been deemed unreasonable;[29]

3. No amount of warning given to the teacher could have remedied the damage done to the student.[30]

An Illinois Supreme Court decision on this subject in 1983, Board of Education of School District 131 v. State Board of Education[31] regarded a teacher who had taught seventeen years in the purported district without a blemish on his record. In the last six months of his career, the teacher Robert Slavin, had difficulty in controlling a few of his fourth-grade students. In the course of disciplining them he was at times, in the opinion of the school district in which he was employed, too rough in handling them. For example, he grabbed and shook one of his students leaving black and blue marks; while another encounter with a different student left scratches. In a separate occasion, a student was thrown on top of his desk hard enough to make the desktop fly up. This behavior was rendered as remediable. It was rationalized by the Illinois Supreme Court that:

1. None of the students missed school or sought medical attention;

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[28]Fender, 37 Ill. App.3d 736 (1976).

[29]Welch, 45 Ill. App.3d 35 (1977).

[30]Id.

[31]Board of Education School District 131, 99 Ill.2d 111 (1983).

2. Serious injury was not incurred to any students;
3. The board of education failed to demonstrate that conduct could not have been corrected had the teacher been warned.[32]

In reaching its decision of remediability, the court applied the two-prong test of Gilliland. The first prong of this test posed the question of whether the conduct caused damage to the student, faculty, or school. In the case at bar, the court responded that the conduct did not significantly damage any of the students. None of the students missed school or sought medical attention as a result of the discipline administered by Slavin. Also as opposed to where the teacher's misconduct extended over four years in Gilliland,[33] Slavin never encountered difficulty with students during seventeen years of teaching until the last six weeks. This conclusion was similarly reached by the appellate court in 1979, in Board of Education of Minooka Community Consolidated School District No. 70 v. Ingels, when it was stated that:

> Except where aggravating circumstances are present, the proof of momentary lapses in discipline and order or a single day's lesson gone awry is not sufficient to show cause for dismissal of a tenure teacher. Yet where brief instances and isolated lapses occur repeatedly there emerges a pattern of behavior which, if deficient, will support the dismissal of a tenured teacher.[34]

This concept of continuing patterns of classroom

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[32]Id.

[33]Gilliland, 67 Ill.2d 143 (1977).

[34]Board of Education of Minooka Community Consolidated School District No. 70, 75 Ill. App.3d 335 (1975).

mismanagement and additionally, serious forms of abuse to students; were upheld as being irremediable in other course cases prior to the Slavin decision. In Fender[35] in 1976, the behavior displayed by teacher continued over a period of several years. Fender's abuse of students was more severe than that of Slavin's. One offense was that of Fender holding a student by her hair and slapping her face ten to thirteen times, causing the child's mouth to bleed.

Rolando v. School District No. 125, in 1975, was also more serious.[36] Rolando used an electronic cattle prod to discipline unruly sixth-grade students. In Lowe v. Board of Education, (1979), the teacher beat the students within a curtain rod, an extension cord, and a club made out of balsa wood nailed together and wrapped with masking tape.[37] Welch v. Board of Education (1977), presented a situation where a teacher paddled a student a second time because the first didn't hurt.[38] The severity of the second paddling warranted that the child's mother bring him to the doctor.

Gilliland's[39] second part of the two-prong analysis asked whether the conduct could have been corrected had the

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[35]Fender, 37 Ill. App.3d 736 (1976).

[36]Rolando, 44 Ill. App.3d 658 (1976).

[37]Lowe, 76 Ill. App.3d 348 (1979).

[38]Welch, 45 Ill. App.3d 35 (1977).

[39]Gilliland, 67 Ill.2d 143 (1977).

teacher been warned. Again in "the Slavin case",[40] the court felt that although Slavin exercised poor judgment when instituting discipline it was nevertheless remediable and should have been called to his attention. Further, although the board of education had an expert witness that Slavin's behavior was irremediable in nature, the court felt that the board did not demonstrate that the conduct could have been corrected had the teacher been warned.

Two important points generated from "the Slavin case" in Board of Education School District 131 v. State Board of Education[41] in 1983, to use a measure of whether a discipline related deficiency was remediable or irremediable. One was the harm caused by the mode of discipline. It was considered slight and thus remediable, if there were no serious injuries to the students and if the student did not miss school or seek medical attention. Also, it was remediable if the behaviors were isolated incidences as opposed to continuous over a period of time.

Discipline cases after "Slavin" held to this rule of thumb. In Swayne v. Board of Education of Rock Island No. 41,[42] it was held remediable when a teacher had placed a boy inside a closet as punishment and later hit the same child in

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[40]Board of Education of School District 131, 99 Ill.2d 111 (1983).

[41]Id.

[42]Swayne, 45 Ill. App.3d 35 (1977).

front of the class with a yardstick three times across the buttocks. Before being hit, the child was instructed to pull down his jeans and bend over and grab his ankles. His underwear remained on. Using "Slavin" as a baseline the court felt the offense to be less serious than that of "Slavin." In two other discipline related cases,[43] both in 1986, the teachers were given notice to remedy deficiencies before dismissal when their classroom discipline was unruly.

Disciplinary mismanagement was only one possible type of teacher incompetency. With other types of behaviors which could be labeled as "incompetency" the courts had held to the same tests as in Gilliland[44] and in the "Slavin" case. The courts in particular looked at whether the cited deficiencies could have been corrected with warning. For example, in Aulworm v. Board of Education of Murphysboro,[45] the teacher's dismissal notice contained eight grounds for dismissal. Among these grounds were such charges as lack of preparation for teaching duties and failure to comply with stated policies of the Board of Education. In actuality these charges amounted to failure to submit lesson plans, attendance forms, and student recognition reports, not conducting a student musical, and inadequately performing his football-coaching duties.

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[43]Combs, 498 N.E.2d 806 (1986). Stamper, 141 Ill. App.3d 884 (1986).

[44]Gilliland, 67 Ill.2d 143 (1977).

[45]Aulworm, 67 Ill.2d 434 (1977).

However using the criteria from Gilliland,[46] the courts considered these behaviors as remediable as they could have been corrected with prior warning.

Although there were many dismissal cases involving improper discipline, in other areas of incompetency there were few. Throughout the history of Illinois tenure, the courts have not come out with a definition of incompetence. Rather, they have dealt with the subject on a case-by-case basis. In each, the courts have ruled by judging according to uniqueness of facts and applicability to the Gilliland[47] two-prong analysis for remediability. So perhaps, the test is not in whether a behavior should be proven as being incompetent, but rather did it qualify as first, not being against the manifest weight of the evidence and second, remediable under the guidelines of Gilliland.[48]

Also relevant to cases of incompetence was the time period over which the purported behaviors occurred. In cases where the deficiencies were continuous in nature, the court was more apt to hold the behavior to be irremediable. Well before Gilliland[49] in 1962, the McLain decision had stated that . . .

Even though separate items may appear remediable, when the

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[46]Gilliland, 67 Ill. App.2d 143 (1977).

[47]Id.

[48]Id.

[49]Id.

> teacher for more than a year repeatedly refuses to accept any recommendations and persists in her rigid ways, there must come a time when they can no longer be regarded as remediable being apparently a character defect.[50]

Other than discipline related, there were few cases litigated in the upper court levels which dealt with incompetency. This phenomena could be reasoned to the courts reservation in specifying a true definition of incompetency. With only guidelines as to remediability provided by state statute at hand, the area of incompetency may have been viewed as vague as to what actually can constitute a basis for dismissal.

As related by Donald Rosenburger and Richard Plimpton in the Journal of Education,

> Administrators are often unclear about the way in which courts will dismiss. They have had no experience in gathering pertinent evidence, presenting it, or defending a point of view in a court of law. Add this to public relations and staff relations, implications of making decisions on competence, and inaction is often the result.[51]

School districts would attempt under the guise of incompetency to dismiss teachers on illness related charges. However in 1975, it was amended into the Illinois Revised Statutes in SEC. 10-22.4 that "temporary mental or physical incapacity to perform teaching duties was not a cause for dismissal."[52] However, SEC. 24-13 of the Illinois School

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[50]McLain, 36 Ill. App.2d 143 (1962).

[51]"Teacher Incompetence and the Courts," Journal of Law and Education (July 1975): 470.

[52]ILL. REV. STAT. Ch. 122, Sec. 10-22.4 (1975).

Code allowed a school board to define temporary illness and incapacity.[53] Section 24-13 also reiterated SEC. 10-22.4 in that a teacher's tenure "is not affected by absence caused by temporary illness or temporary incapacity as defined by regulations of the employing board."[54]

According to the Appellate Court in Board of Education School District No. 151 v. Illinois State of Education[55] in 197, school boards could not define temporary illness or incapacity out of existence. A board of education's power to define was not absolute, rather it was limited by SEC. 10-22.4[56] of the School Code.

Teachers also tried to use the temporary illness clause to their own advantage, as did boards of education. One teacher in 1987,[57] when it became apparent that she would be dismissed for deficiencies cited by the school board as incompetency, submitted a note from her doctor that she was on active medical treatment and needed time off. The board of education granted her sick leave, but still sought dismissal for incompetency. This decision, DeOliveira v. State Board of

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[53]Id. at Sec. 24-13 (1975).

[54]Id.

[55]Board of Education School District No. 151, 154 Ill. App.3d 375 (1987).

[56]ILL. REV. STAT. Ch. 122, Sec. 10-22.4 (1975).

[57]DeOliveira, 158 Ill. App.3d 111 (1988).

Education,[58] was upheld by both the trial and appellate courts that the teacher failed to establish that she suffered from temporary mental incapacity during the remediation period; thus preventing her from substantially performing the tasks required of her. In another similar case in 1988, DeBarnard v. State Board of Education,[59] it was determined that a teacher had not proved by a preponderance of the evidence, that her depression prevented her from complying with the notice to remedy.

Immorality was another cause for dismissal that was open to interpretation. In defining the nature of immorality, the courts looked toward the Gilliland[60] test for remediability. A teacher in Fadler v. Illinois State Board of Education[61] in 1987, was dismissed by reason of immorality for squeezing the breast of a young girl and for placing his hand inside the undergarment of a nine-year old girl. In its holding, the court noted the following in regards to dismissal for immorality:

1. The behavior could not be remedied by a simple written warning.
2. The board is not required to wait until such conduct causes clinical adverse effects on students before finding the conduct immoral and irremediable, while other students may be subject to future abuse.

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[58]Id.

[59]DeBarnard, 123 Ill. Dec. (1988).

[60]Gilliland, 67 Ill.2d 143 (1977).

[61]Fadler, 153 Ill. App.3d 1024 (1987).

3. Plaintiffs conduct was not only harmful to individual student-teachers relationships, but was equally harmful to the reputation of and faith in the faculty and school.[62]

With respect to the second part of the two-prong analysis of remediability in Gilliland,[63] the court felt that it was not an appropriate test to apply to situations involving alleged immoral conduct of a teacher. Contrary to the court's opinion, it could be argued that if a teacher was asked to refrain from improper touching that he would do so. However, the court in response, felt that a more appropriate focus was not whether the conduct could have been corrected by a warning, but rather the effects of the conduct on the child and the school could not be corrected.

An earlier decision, McBroom v. Board of Education District 202[64] (1986), also took the posture of the second prong of Gilliland[65] being inappropriate to apply to cases where the teacher was to be dismissed for immorality. In the case at bar, the cause for dismissal related to criminal charges. It was alleged that a teacher stole a check from a student's locker and cashed it. In the court's view it stated:

> If it only took a promise never to engage in the improper conduct again, it is clear that it would be very

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[62]Id.

[63]Gilliland, 67 Ill.2d 143 (1977).

[64]McBroom, Ill. App.3d 463 (1986).

[65]Gilliland, 67 Ill.2d 143 (1977).

difficult, if not impossible to satisfy the second prong of the remediability test.[66]

One type of charge regarding immorality which was problematic were pregnancies out of wedlock. The board of education in Reinhardt v. Board of Education of Alton Community Unit School District Number 11[67] in 1975, charged that a teacher had become pregnant will unmarried and that she had falsely told her principal that she was pregnant. They also alleged that Reinhardt's conduct was a cause of notorious discussion and adverse public comment. It was unclear, however, to the Illinois Supreme Court what evidence was presented and what it was they may or may not have been contrary to the evidence. Because the court could not judge whether the findings were constitutionally proper, there could be no judicial review. It was to be noted that the trier of facts before administrative review in this case, was the board of education. Although it was tried at the Supreme Court level in 1975, the antecedents of the case began in 1972, before hearing officer legislation.

In a more serious blunder by a board of education, a jury awarded $3.3 million to a teacher dismissed for similar reasons in 1986. Surrounding this case, Eckmann v. Board of Education of Hawthorn School District,[68] was the fact that

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[66]McBroom, Ill. App.3d 463 (1977).

[67]Reinhardt, 61 Ill.2d 101 (1975).

[68]Eckmann, 636 F. Supp. 1214 (N.D. Ill. 1986).

the teacher supposedly was raped by a hitchhiker while she was returning from a retreat from a convent. Also, Eckmann was a devout Catholic in a heavily Lutheran town. She did not report the rape to the police. Further, she was "counseled" by her principal who was also the superintendent (also a devout Catholic and opposed to abortion) that she had no cause to worry about loss of her effectiveness as a teacher. She gave birth in July, 1986 and then decided to raise her child as a single parent. Eckmann was fired the following January primarily on the ground of immorality. Testimony at the hearing consisted of doubts as to whether she was really raped. In part, the board's action was their response to an ad hoc group of parents urging Eckmann's dismissal.

Eckmann appealed administratively claiming violation of her constitutionally protected rights. In a subsequent trial it was purported by the board of education, that Eckmann never really fit in. Again, the reasons were unclear to the court. As the trial progressed the Board added other charges not linked to her pregnancy dealing with events from six months to three years old. The court, regarded these charges as a "post hour smoke screen."[69]

Eckmann's rights were identified by the court as "a choice to conceive and raise her child out of wedlock without unwarranted state intrusion;"[70] thus invoking the doctrine of

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[69]Id.

[70]Id.

privacy. Commentators on this issue have noted that school districts have had difficulty in promoting grounds of immorality because of an unwed pregnancy,[71] as it is a fundamental right protected by the U.S. Constitution.[72] As noted in Mount Healthy v. Doyle,[73] a U.S. Supreme Court case, "once a conduct moves to the fundamental right status, a board must demonstrate a compelling need to dismiss the teacher."[74] A question to be raised is if such decisions should be insulated by protective fundamental right; thus depriving local school boards of the authority to dismiss unwed pregnant teachers. The answer to this question cannot be sought according to local values in school districts. Rather, it should be embodied in further judicial scrutiny.

Tenure in Chicago: 1976-1989

Although Chicago tenure statutes pertaining to remediability of cause, the hearing officer, etc. were amended into law after statutes of the same nature for downstate

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[71]See "Eckmann v. Board of Education of Hawthorn School District: Bad Management Makes Bad Law," Journal of Law and Education (Spring 1988): 281-297.

[72]Amendment XIV of the U.S. Constitution reads in part "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." The right to bear children would be a liberty issue.

[73]Mount Healthy v. Doyle, 429 U.S. 274 (1977).

[74]Id.

areas, both Chicago and downstate public school districts were regulated by the one-year remediation clause in SEC. 24A-5 in 1986.[75] In 1989, as part of school reform legislation, the Chicago remediation period was changed from that of a one-year period to forty-five days.[76] This change could have been due to political pressures placed on legislators by lobbying through the Chicago Principal's Association. At the time, the coalition of principals sought legal action because the reform legislation stripped principals of tenure and place them under a three-year contract governed by each individual school council. Perhaps in a compromise agreement between legislators and the Chicago Principal Association, removal of tenure rights were traded for a shorter remediation period of unsatisfactory tenured teachers.

Components other than the specified remediation period and the consulting teacher in Chicago tenure provisions of SECS. 34-84 and 34085 remained for the most part unchanged after 1977. Compulsory retirement at age seventy was removed from SEC. 34-84 in 1989,[77] as were any prior provisions relating to tenure rights of principals. Principals were placed under a three-year performance contract. Removal from this contract had to have been based on cause.

Aside from the aforementioned changes to Chicago tenure

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[75]Ill. REV. STAT. Ch. 122, Art. 24A-5 (1986).

[76]Id. at Art. 24A-5 (1989).

[77]Id. at Sec. 34-84 (1989).

provisions, there were also additional changes to procedures regarding a hearing. In 1979, the school board was required by SEC. 34-84[78] to notify the State Board of Education to schedule a hearing in it notion to dismiss. Hearing notification was changed for both downstate and Chicago in 1988,[79] when it was amended that no hearing was required unless requested by the teacher within ten days after the receiving notice. Therefore, a hearing was not automatically scheduled. The burden of initiating a hearing now rested with the teacher. It was possible that a teacher may not request a hearing, thus benefitting both the school board and the state by eliminating the high cost associated with hearings.

Emphasis on case law for dismissal of Chicago tenured teachers differed from those of the downstate areas in the years between 1976 and 1989. Of the cases litigated in Chicago over this thirteen year period, the following areas were noted:

1. Procedural errors - Three cases[80]
2. Dismissal or reassignment of principals - Two

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[78]Id. at 1989.

[79]Id. at Secs. 24-12 and 34-85 (1988).

[80]Jones v. Hannon, 58 Ill. App.3d 504 (1978). Littin v. Board of Education of the City of Chicago, 72 Ill. App.3d 889 (1979). Wolfe v. Board of Education of the City of Chicago, 171 Ill. App.3d 298, 324 N.E.2d 1177 (1988).

cases[81]

3. Remediableness of cause - Four cases[82]

4. Other reasons - Two cases[83]

One fourth of the cases prosecuted dealt with the dismissal or reassignment of principals. Prior to 1989, principals in Chicago had tenure as principals,[84] where downstate principals had tenure as teachers only. (Unless they were under multiyear contracts.) Therefore, cases involving dismissal of principals tenured as principals; would exclusively be characteristic of Chicago. This meant that when the Chicago Board of Education sought dismissal of a principal (before 1989), the same procedural regulations were followed as those for teachers.

Remediability of cause did play a role in the dismissal of both tenure teachers and principals after it was amended to SEC. 34-85[85] on August 16, 1977. As with downstate cases

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[81]Stutzman v. Board of Education, 171 Ill. App.3d 670, 525 N.E.2d 903 (1988). McCutcheon v. Board of Education of the City of Chicago, 94 Ill. App.3d 993 (1981).

[82]Chicago Board of Education v. Payne, 102 Ill. App.3d 741, 430 N.E.2d 903 (1988). Board of Education of the City of Chicago v. Illinois State Board of Education, 112 Ill. Dec. 236 (1987). Morris v. Board of Education of the City of Chicago, 96 Ill. App.3d 405 (1981). Lowe, 76 Ill. App.3d 348 (1979).

[83]Di Caprio v. Redmond, 38 Ill. App.3d 1031 (1976). Carrao v. Board of Education of the City of Chicago, 46 Ill. App.3d 33 (1977).

[84]ILL. REV. STAT. Ch. 122, Sec. 34-84 (1988).

[85]Id. at Sec. 34-85 (1977).

involving remediability of cause, Chicago was bound to the Gilliland[86] two-prong analysis. Court decisions regarding remediability, such as Lowe v. Board of Education,[87] paralleled those of downstate areas. General incompetency as in downstate areas, was difficult to prove as being irremediability. In both cases regarding incompetency, Morris v. Board of Education of the City of Chicago[88] in 1989, and Board of Education v. Illinois State Board of Education[89] in 1987, they were held to be remediable. Where a teacher beat children with a curtain rod, an extension cord, and club made out of balsa wood nailed together and wrapped with masking tape in the Lowe[90] case, cause was held as irremediable. Insubordination on the part of a principal in McCutcheon v. Board of Education;[91] and possession of marijuana and later cocaine coupled with circumstances in which a teacher functioned unprofessionally in Board of Education v. Payne[92] constituted irremediable conduct.

Although litigated before the 1977 amendment for

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[86]Gilliland, 67 Ill.2d 143 (1977).

[87]Lowe, 76 Ill. App.3d 348 (1979).

[88]Morris, 96 Ill. App.3d 405 (1981).

[89]Board of Education of the City of Chicago, 112 Ill. Dec.236 (1987).

[90]Lowe, 76 Ill. App.3d 348 (1979).

[91]McCutcheon, 94 Ill. App.3d 993 (1981).

[92]Board of Education of the City of Chicago, 102 Ill. App.3d 993 (1981).

determination of remediableness of cause to SEC. 34-85, the court also upheld dismissal for a teacher's indecent liberty with a child while on vacation in Carrao v. Board of Education[93] and insubordination in DiCaprio v. Board of Education.[94]

Other than cases involving disputes over the actual cause for dismissal, three cases involved alleged procedural errors. The appellate court reversed decisions in two cases where there were statutory violations on the part of the board and a third was reviewed because of inadequacies in plaintiff's counsel.

Summary

A major issue litigated between 1976 and 1989 was whether a cause was remediable or irremediable. School boards before motioning to dismiss teachers for cause were required to determine if the cause was remediable in nature. Accordingly if remediable, the school board was to provide written notice to the teacher that if these causes were not corrected, that may result in charges for dismissal. Consistently, the courts in reaching decisions in cases involving remediableness of cause, reviewed data according to the standards set in Gilliland in 1977. As stated previously in this chapter, those elements from the Gilliland two-prong analysis included damage caused by the behavior to the

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[93]Carrao, 46 Ill. App.2d 33 (1977).

[94]DiCaprio, 38 Ill. App.3d 1031 (1976).

students, faculty, or school; and whether the behavior could have been corrected had the teacher been warned. In further analyzing cases involving remediableness of cause in the area of classroom management; the courts looked at the additional criteria as to the degree of damage caused by the teacher behavior to either the students, faculty.

Past tenure statutes did not define the limitations of remedial cause, thus if was often broadly and favorably interpreted by local school boards. This in turn, resulted in an action where teachers sought administrative review of dismissals. These judicial reviews refined the parameters of remediableness of cause. As a whole remediation is still very broad in its intent and will require future litigations to further clarify its meaning. New case law will no doubt arise as a result more strict remediation provisions. Will statutory and case law continue to evolve where more rights are garnered for the teacher or will it emphasize a balance between the rights of the school versus the teacher?

CHAPTER 6

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Summary

The central focus of this research was the study of rights associated with dismissal for cause of tenured public school teachers in Illinois between 1941 and 1989. Tenure itself was initiated in Illinois in 1917 for Chicago teachers and 1941 for teachers in downstate school districts. In order to ascertain implications and effects upon dismissal of tenured teachers, both statutory and case law were examined as primary sources regarding teacher dismissal rights from 1900 to 1989. Case law analysis encompassed eighty-two Illinois court cases from the appellate and supreme court levels, and eight federal courts involving dismissal of tenured teachers in Illinois between 1900 to 1989. Secondary sources included legal periodicals, books, and dissertations. The purpose in researching primary and secondary sources was to:

1. Examine and narrate the development of Illinois teacher employment statutes and
2. Analyze the dismissal of tenured elementary and secondary teachers in public school districts throughout the state.

Through the use of content analysis, the study sought to answer the following research questions and accompanying variables:

1. What was the legal statutory law history for dismissal of tenured teachers in elementary and secondary public schools of Illinois?
   - Criteria used for dismissing tenured teachers identified in the Illinois Revised Statutes from 1941 to 1989.
2. What was the legal case law history for dismissal of tenured teachers in elementary and secondary public schools of Illinois?
   - Types of teacher dismissal cases heard by Illinois courts between 1900 and 1989.
   - Grounds for dismissal cited by the school board.
   - Allegations, behaviors, and actions cited by the school board to establish grounds for dismissal.
   - Issues brought forward by the dismissed tenured teacher in appealing the school board's dismissal decision.
   - Rationale given by the Illinois courts for reversals or affirmations of public school board decisions.
3. What were the trends and issues for dismissal of tenured teachers in elementary and secondary public schools in Illinois?

- Major elements that influenced changes in dismissal law for tenured teachers in Illinois public schools.

Conclusions

Numerous conclusions were drawn from the research regarding the rights of tenured teachers in Illinois from 1941-1989. Following are those conclusions:

1. Few employment rights regarding dismissal were afforded to downstate teachers in the early part of this century, from 1900 to 1940.

Before the Teacher Tenure Act of 1941, no legal safeguards were embodied into the Illinois State Code which would have compelled school boards to offer teachers any form of due process, such as notice or hearing, before being discharged from a teaching position. Employment rights were limited to dismissal for cause and continued contracts.

The Illinois Revised Statutes, 1882, vested boards of education, with the power to dismiss and remove teachers for specific cause. However, because there were no statutory procedures to safeguard a fair dismissal until 1941, teachers were often discharged for capricious reasons.

Continued contracts were incorporated into the context of employment legislation in the late twenties. Under this provision, a teacher could have been conferred a contract of up to three years after the teacher had taught two consecutive years of probationary service. Although a continuing contract

allowed for a three-year contract, teachers were subject to possible political or arbitrary actions by school officials as there was no obligation on the part of the board to renew at the end of the contract period.

2. After 1941, the trend in Illinois as a whole has been to legislate more strict criteria to safeguard the due process rights of teachers conferred with tenure.

The Teacher Tenure Act of 1941, signaled the beginning of the trend toward instilling more employment rights for teachers at dismissal. It was provided through statutory amendments that teachers conferred with contractual continued service in downstate areas or appointed in the Chicago area were afforded the right to notice or dismissal, reasons, and a hearing. Later amendments required that the option for administrative review be made available (1945); an impartial hearing officer make the final decision regarding dismissal (1975); and that teachers undergo a one-year remediation period for remediable deficiencies rated as unsatisfactory before undergoing dismissal proceedings (1985).

3. Tenure provisions for Chicago teachers evolved separately from tenure for downstate teachers.

Tenure for Chicago teachers legislated in 1917. Other rights were enacted for Chicago teachers after their downstate counterparts. This has included provisions for: remediability of cause (1941 - Downstate and 1963 for Chicago), administrative review (1945 - Downstate and 1963 for

Chicago), and impartial hearing officer (1975 - Downstate and 1979 for Chicago). Stipulations for a standardized remediation period of one year were amended for both Chicago and downstate areas in 1985. In 1989, the Chicago remediation period was changed from that of one-year to forty-five days.

4. Before the tenure statute for downstate teachers was enacted, litigated dismissal cases in downstate areas for 1900 through the 1930's, were mainly based on breach of contract in relation to a school board's interpretation of either "best interests" or "sufficient cause" for dismissal.

Before the establishment of tenure law for downstate districts in Illinois in 1941, there was only one statutory guideline for school boards to follow when dismissing a teacher: That of vesting boards of education and boards of directors, through Illinois state statute, with the power to dismiss teachers for cause.[1] Most often school boards dismissed teachers for either "the interests of the school require it"[2] or for "sufficient cause."[3] As early as 1901, in Board of Education v. Stotlar,[4] it was recognized that a school board could have had capricious intentions in dismissing a teacher under the "best interests" clause.

5. Once the legislature amended statutory guidelines

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[1]ILL. REV. STAT. Ch. 122, Secs. 115 and 127 (1900).

[2]Id.

[3]Id.

[4]Stotlar, 95 Ill. App. 250 (1901).

which offered downstate teachers employment rights at dismissal in 1941,[5] the cases heard before Illinois courts questioned interpretations as the statutes' intent was not always clear.

Often the construction of passages in tenure legislation was not clear in meaning, leaving these statutes open to translation. Ultimately either a judicial review or additional legislative amendments clarified the intent of the statute. For example in the original Tenure Act, it was required that a teacher could be eligible for contractual continued service, upon serving two consecutive years of service.[6] "Year" was not defined. An Illinois Supreme Court decision in 1945,[7] defined 'year' to mean twelve months. Therefore, a teacher would have had to have served twenty-four months of probationary service, in order to be eligible for tenure. A 1949 amendment to the Act, changed the word "year" to "school term." Upon the 1949 amendment, a teacher would have then served probationary service according to the length of a school term.

Tenure passages were not always subject to legislative refinement. The term 'remediable' has been the topic of many Illinois appellate and supreme court cases; but has never been delineated through the statutes. Likewise, dismissal for

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[5]ILL. REV. STAT. Ch. 122, Sec. 136c (1941).

[6]Id.

[7]Anderson, 390 Ill. 412 (1945).

'cause' (as specified in SEC. 34-85 for those teachers employed in Chicago[8] has never been legislatively defined.

6. The determination of whether a cause for dismissal was remediable or irremediable was a contended provision of the Illinois Teacher Tenure Act between 1941 and 1989, often subject to judicial review.

Since tenure's inception in 1941, remediability of cause has been a contended section. Although not overtly stated in the Tenure Act, it was implied that a school district must have first made the determination as to whether cause was remediable before recommending dismissal.[9] If cause was deemed remediable, the teacher must have first been served reasonable warning in writing to correct the cited deficiencies which could become charges for dismissal. Contrarily, if cause was cited as irremediable the board of education could have made a motion to dismiss the tenured teacher from employment. It was a discretionary power of the board of education to decide if a cause was remediable or irremediable. Quite logically, dismissal was more expedient if the school board acknowledged cause as irremediable. This point became all the more evident, when a 1985 amendment added a one-year remediation period.[10]

Although remediability was not defined in the statutes,

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[8]ILL. REV. STAT. Ch. 122, Sec. 34-85 (1917-1989).

[9]Id. at Sec. 136c (1941).

[10]Id. at Sec. 24-12 (1985).

it was reviewed extensively in judicial venues. It was necessary that school districts study legal developments regarding the parameters of remediability, before deciding upon dismissing a teacher.

7. Judicial interpretations of remediability evolved over a forty-eight year period, from a stance where a board of education was designated broad discretationary powers in making the determination of remediability, to a balance between protecting the rights of the teacher against the best interests of the school.

The "guiding star" in the Meredith decision,[11] philosophy was the judicial rule of thumb for court cases involving remediability of cause for dismissal from 1955 to 1977. In this decision the court advanced adjucative authority to boards of education, by leaving remediability open to the board's interpretation of what constitutes the best interests of the school district. The only qualifier for judicial interference was if the board acted maliciously, capriciously, or arbitrarily. However, with the Gilliland[12] decision of 1977, this posture changed when criteria were developed to guide the examination of a school board's determination of irremediable cause. Gilliland directed application of a two-prong analysis for remediability. It first posed the question of whether the causes damaged the

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[11]Meredith, 7 Ill. App.2d 477 (1955).

[12]Gilliland, 67 Ill.2d 143 (1977).

students, faculty or school and second if the conduct resulting in that damage could have been corrected had the teacher's superior warned him or her?[13] This court decision took into consideration the needs of the school in the first prong of the analysis, without forsaking the rights of the teacher as evidenced in the second prong of the analysis.

Further judicial review of remediability after 1977 allowed for this same balance between the school and the teacher. Immorality was noted in Fadler v. Illinois State Board of Education[14] in 1987, as being irremediable, with the comments that a board need not wait for adverse effects while other students may become subjected to future abuse. While in regards to excessive discipline the Illinois Supreme Court of Board of Education of School District 131 v. Illinois State Board of Education,[15] applied not only the criterion of Gilliland[16] but also looked at the level of injury to the students.

8. Major elements that influenced changes in statutory dismissal law were union lobbying, public opinion, and case law at both the local and federal levels.

The primary thrust for tenure was through lobbying by

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[13]Id.

[14]Fadler, 153 Ill. App.3d 1024 (1087).

[15]Board of Education of School District 131, 82 Ill. Ap.3d 820 (1980).

[16]Gilliland, 67 Ill.2d 143 (1977).

teacher's unions, first in Chicago and later in the downstate areas. To this date teacher's unions play a large role in the advances of teacher's rights in general. Not necessarily paralleling the viewpoints of teacher's unions, but definitely as influential as public opinion. Public tenets not only shape and mold the local political and legal arena, but nationally as well.

Perhaps as a result of the interplay between the first two elements, the third which is the legal comes into effect. However within the legal sector, statutory law will generate case law and case law will generate changes in statutory law.

Of the three, one element has not outranked the others in creating the most modifications in tenure law. Rather each has played a part in change, separately or together.

9. Although most litigated dismissal cases dealt with either statutory interpretation or remediability of cause, the most currently cited cause within these cases was deficiencies based on incompetency. More often, the behavior and actions related to a type of classroom management.

In cases which reached the appellate or supreme court level in Illinois between 1976 and 1989, thirty-one percent of the cases were based on incompetency as cause for dismissal. This amount was almost four times as many as those incompetency cases litigated at Illinois appellate and Supreme courts between 1961 to 1975. (Cases between 1941 and 1961 were primarily related to statute interpretation.) National

opinions on education are such that schools are now being held more accountable for student achievement. Translating this to the local school level, there will be less tolerance for the incompetent teacher due to societal demands placed upon education.

10. After 1941, cases were reversed when the cause was found to be remediable in nature of when a procedural error occurred in the course of the dismissal process.

As previously stated, school districts were found to be without jurisdiction when a cause was found to be remediable, and decisions were apt to be reversed. With increasingly technical procedures in tenure law, more procedural errors are being made by school districts. Eleven cases between 1975 and 1989 in Illinois were prosecuted over disputes where school boards were at fault over not adhering to guidelines, such as timelines, specific to tenure legislation.

Policy Recommendations

Analysis of primary and secondary sources, revealed that although many procedural regulations exist in Illinois statutes governing dismissal, school districts can successfully dismiss teachers without violating a teacher's substantive rights. Analysis revealed that appeals were most commonly based on cause being remediable in nature; or because statute-based provisions for dismissal were not adhered to by the board of education. In view of this, public school officials should be aware of the following considerations when

contemplating the dismissal of a tenured teacher.

Statutory and Case Law Policy Regarding Remediability of Cause

Since 1941, the Illinois Revised Code had required that:

> a school board must give the teacher reasonable warning in writing stating specifically the causes which, if not removed may result in charges; before setting charges stemming from causes that were considered remediable.[17]

If a cause for dismissal was later found to be remediable either by the hearing officer or the courts, the school board's recommendation to dismiss will be overturned. Remediable causes required specific statutory procedures. In their absence a school would be without jurisdiction to proceed with dismissal. Therefore, it is very critical that school districts first carefully decide that a cause is remediable or irremediable. In weighing this decision, they can be guided by the following considerations derived from Illinois Appellate and Supreme Court decisions:

- Did any of the causes damage the students, faculty, or school? Could the conduct resulting in that damage have been corrected had the teacher's superiors warned him or her? (Gilliland v. Board of Education of Pleasant View Consolidated School District No. 622).[18]
- Uncorrected causes for dismissal which were originally remediable in nature, could be irremediable

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[17]ILL. REV. STAT. Ch. 122, Sec. 24-12 (1941).

[18]Gilliland, 67 Ill.2d 143 (1977).

if continued over a long period of time. (Gilliland vs Board of Education of Pleasant View Consolidated School District No. 622).[19]

Certain causes were held as irremediable under the following conditions:

. Excessive discipline when:

- The behavior displayed by the teacher exhibited continuing patterns of cruelty and violated his relationship with students (Fender v. School District No. 25).[20]
- The punishment inflicted was so severe as to have been deemed unreasonable (Welch v. Board of Education Bement Community Unit School District No. 5).[21]
- No amount of warning given to the teacher could have remedied the damage done the students (Welch v. Board of Education Bement Community Unit School District No. 5).[22]

. Immorality when:

- The behavior could not be remedied by a simple written warning (Fadler v. Illinois State Board of

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[19]Id.

[20]Fender, 79 Ill. App.3d 736 (1976).

[21]Welch, 45 Ill. App.3d 35 (1977).

[22]Id.

Education).[23]

- The conduct was not only harmful to the individual student-teacher relationships, but was equally harmful to the reputation of the faculty and school (Fadler v. Illinois State Board of Education).[24]

Statutory Requirements for Dismissal

Policy recommendations in this area can be summarized in one sentence. In order to prevent decision reversals due to procedural errors, boards of education should follow any mandated timelines and other procedural requirements in a timely fashion according to the letter of the law.

Recommendations for Further Study

In order to study dismissal of tenured teachers in Illinois, it was also necessary to study the elements of tenure. However due to the constraints of research it was not possible to study in depth the political aspects of tenure and dismissal legislation. A particular area of study could be employment legislation for Chicago Public Schools. Chicago has been, legislatively, an entity to itself. Regarding tenure, legal aspects for Chicago were very different from that of the downstate school districts. The political development of Chicago teacher employment provisions, including union influences, deserves a closer look. In order to more fully understand the history of tenure in Chicago, a

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[23]Fadler, 153 Ill. App.3d 1024 (1987).

[24]Id.

comparison study may be made of Chicago and other large urban cities in the United States. Certainly worth comparing would be the dismissal policies of Illinois against states with similar characteristics.

Incompetency seems to be an area of growing concern to school boards, as evidenced by the amount of dismissal cases where the cause was incompetency. To look for further trends one might research Illinois hearing officer decisions pertaining to dismissal of tenured teachers for incompetency.

Immorality is another area where guidelines are being developed regarding dismissal. Of particular interest might be those with a constitutional overlay. What issues may evolve at the federal level and how might this affect future policy development of state statutes.

In general, remediation of cause has made an impact on trends in case law in Illinois. A more in-depth analysis can be made of remediation taking into consideration the aftermath of the new remediation legislation in Illinois. Where is the balance of power moving in Illinois amongst teachers and school boards? Is the power of the school board waning? What are the trends and issues?

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The final copies have been examined by the director of the dissertation and the signature which appears below verifies the fact that any necessary changes have been incorporated and that the dissertation is now given final approval by the Committee with reference to content and form.

The dissertation is therefore accepted in partial fulfillment of the requirements for the degree of Doctor of Philosophy.

December 4, 1990
Date

M A Bailey
Director's Signature