

2014 IL App (2d) 130512-U  
No. 2-13-0512  
Order filed January 13, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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LEONORE PIOLI and HERMAN EDELSON,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiffs-Appellants,	)	
	)	
v.	)	No. 12-CH-4631
	)	
NORTH CHICAGO COMMUNITY UNIT	)	
SCHOOL DISTRICT NO. 187,	)	Honorable
	)	Mitchell L. Hoffman,
Defendant-Appellee.	)	Judge, Presiding.

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JUSTICE SPENCE delivered the judgment of the court.  
Presiding Justice Burke and Justice Schostok concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Defendant school board did not violate section 24-12 of the School Code (105 ILCS 5/24-12 (West 2012)) in laying off plaintiffs at the end of the school year and not rehiring them in the fall. Therefore, we affirmed the trial court's grant of summary judgment for defendant.
- ¶ 2 Plaintiffs, Leonore Pioli and Herman Edelson, filed suit against defendant, North Chicago Community Unit School District No. 187, after plaintiffs were laid off from their tenured teaching positions in spring 2012 and were not rehired for open positions in fall 2012. Plaintiffs argued that defendant's actions violated section 24-12 of the School Code (105 ILCS 5/24-12

(West 2012)). The parties filed cross-motions for summary judgment, and the trial court granted summary judgment in defendant's favor. We affirm.

¶ 3 Plaintiffs filed a complaint for declaratory and injunctive relief on September 12, 2012, alleging as follows. Plaintiffs were tenured teachers employed by defendant, a public school district. On March 23, 2012, defendant sent notices to each plaintiff informing them that the school board had resolved to honorably dismiss them at the end of the 2011-12 school term because of the board's decision to decrease the number of teachers employed in the school district. It was common practice for Illinois school boards to issue such notices during the spring term because of statutory notice requirements and the uncertainty of the funding available for teacher employment for the fall term. "Under the practice, the dismissals [were] not made effective in the fall term if sufficient funding [became] available." Here, funding became available in the fall term, and defendant did not decrease the number of teachers during that term, but instead hired new teachers to replace plaintiffs. In doing so, defendant deprived plaintiffs of their tenure rights to continued employment.

¶ 4 Plaintiffs attached to their complaint copies of their dismissal letters. The letters conclude: "Your last day of employment in the District, subject to the use of snow or emergency days, shall be May 31, 2012."

¶ 5 Plaintiffs cited section 24-12 of the School Code, which governs the removal or dismissal of tenured teachers "as a result of a decision of a school board to decrease the number of teachers employed by the board." 105 ILCS 5/24-12(b) (West 2012).<sup>1</sup> Prior to June 2011, that section

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<sup>1</sup> Section 24-12 applies only to school districts with populations under 500,000. 105 ILCS 5/24-11(b) (West 2012).

required districts to notify teachers of layoffs 60 days before the end of the school term. 105 ILCS 5/24-12(a) (West 2010). The section also used tenure and seniority to determine the order of teacher layoffs. Specifically, a school board was required to lay off untenured teachers before laying off any tenured teacher qualified for the same positions. *Id.* Among tenured teachers, teachers with the least amount of years of service would be dismissed first, unless otherwise provided by a collective bargaining or similar agreement. *Id.* If the school board had vacancies within one year from the beginning of the following school term, the positions had to be offered to the laid off, tenured teachers if they were legally qualified to hold the positions. *Id.* Extended periods of rehiring applied if the percent of teachers dismissed exceeded certain amounts. *Id.*

¶ 6 Effective June 13, 2011, section 24-12(b) was amended to change the criteria by which teachers were laid off. P.A. 97-8, § 5 (eff. June 13, 2011). While layoff procedures for the 2010-11 school year remained largely the same (see 105 ILCS 5/24-12(a) (West Supp. 2011)), several significant changes were made for layoffs during the 2011-12 and subsequent school years. 105 ILCS 5/24-12(b) (West Supp. 2011). First, districts are now required to notify teachers of layoffs 45 days before the end of the school term (*id.*), rather than 60 days. Further, to determine the order of layoffs, teachers are to be divided into four groups. 105 ILCS 5/24-12(b) (West Supp. 2011). The first group consists of untenured teachers who have not received a performance evaluation rating.<sup>2</sup> *Id.* Group two consists of each teacher with a “Needs

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<sup>2</sup> By September 1, 2012, each school district was required to evaluate nontenured teachers at least once per year and tenured teachers at least once every two years, although tenured teachers rated as either needing improvement or unsatisfactory must be evaluated at least once in the following school year. 105 ILCS 5/24A-5 (West 2012).

Improvement” or “Unsatisfactory” performance evaluation rating on either of the teacher’s last two evaluations. *Id.* The third group consists of teachers who have at least “Satisfactory” or “Proficient” on their last two performance evaluations (or on their last evaluation if only one rating is available). *Id.* The fourth group consists of teachers who either: (1) have an “Excellent” rating on their last two performance evaluations, or (2) have “Excellent” ratings on two of their last three evaluations, with a third rating of “Satisfactory” or “Proficient.”<sup>3</sup> *Id.* Teachers are to be dismissed according to their groups, with group one teachers dismissed first and group four teachers dismissed last. *Id.* Within group 1, the sequence of dismissal is at the school district’s discretion or based on a contractual agreement. *Id.* Within group 2, teachers with the lowest average performance evaluation ratings must be dismissed first. *Id.* For teachers within group 2 with the same evaluation rating, seniority determines dismissal unless there is another procedure in place by contract. This same rule applies for teachers within groups 3 and 4. *Id.* If the board has any vacancies within one year of the beginning of the following school term, the positions must be “tendered” to qualified teachers in groups 3 and 4; teachers in these groups are “eligible for recall.” *Id.* Longer periods apply if the percent of teachers dismissed exceeds certain amounts. *Id.*

¶ 7 Plaintiffs filed a motion for summary judgment on November 29, 2012. In affidavits attached to the motion, plaintiffs stated that they were tenured special education teachers in group 2 under section 24-12.

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<sup>3</sup> A joint committee consisting of equal representation chosen by the school board and teachers has a degree of flexibility in changing the criteria for groups 2 through 4. See 105 ILCS 5/24-12(c) (West 2012).

¶ 8 Defendant filed a cross-motion for summary judgment on March 21, 2013. It argued that it had fully complied with section 24-12 in dismissing plaintiffs. Defendant attached to the motion an affidavit from one of its assistant superintendants, Christine Wesling. She stated that during the 2011-12 school year, defendant was operating at a \$9 million deficit. In 2011, the State Board of Education mandated that defendant cut \$3.2 million from its operating budget for the following school year. Around January 2012, defendant's "scheduling team" conducted its annual meeting in which it examined student enrollment and needs, including in the special education department. Using that assessment, Wesling and others determined that the special education department could reduce its budget and still fulfill its staffing needs by, in part, eliminating two high school special education teaching positions and not filling another four student services positions at the middle and elementary school levels that were expected to be vacant due to voluntary and involuntary terminations. Around February 2012, Wesling made this recommendation to the administration and ultimately to the school board.

¶ 9 Defendant also attached to its motion the affidavit of Martha Gutierrez, its executive director of human resources. She stated in relevant part as follows. During the 2011-12 school year, the school board decided to decrease the number of teachers defendant employed. Teachers were assigned to groups based on their performance evaluations. A list was made of the groups using assigned numbers rather than teachers' names in order to provide anonymity. Gutierrez provided this list to defendant's "Reduction in Force Joint Committee," which consisted of three teachers' union representatives, one attorney, and an administration member. The committee decided to dismiss, among others, teachers numbers 50 and 138 based on the grouping criteria; these numbers were assigned to plaintiffs. The school board held a public hearing on March 15, 2012, on the subject of dismissal. At the conclusion of the hearing, the

board decided to honorably dismiss 12 teachers in group 2, including plaintiffs, and 12 other teachers in group 1. Notices of the dismissals were sent on March 28, 2012. According to the notice and the board's resolutions, the dismissal became effective on May 31, 2012, or at the conclusion of any necessary snow days. Around July or August 2012, defendant received new enrollment information and the board again had to alter the number of teachers employed. Defendant did not have this enrollment information in January, when it made its required staffing decision, or on March 28, when the notices went out. It also did not have "final and complete information" on May 31, when the dismissal went into effect. "Once the new positions were created, however, [defendant] was only authorized to recall those teachers who had been dismissed and had been in Groupings 3 or 4; it was expressly prohibited from recalling teachers in Groupings 1 or 2, including [plaintiffs]."

¶ 10 On April 25, 2013, the trial court denied plaintiffs' motion for summary judgment and granted defendant's motion for summary judgment.

¶ 11 On appeal, plaintiffs argue that the trial court erred in denying their motion for summary judgment and granting defendant's cross-motion for summary judgment. Summary judgment is appropriate only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Lazenby v. Mark's Construction, Inc.*, 236 Ill. 2d 83, 93 (2010). When parties file cross-motions for summary judgment, they agree that only a question of law is involved and that the court should decide the issue based on the record. *Millennium Park Joint Venture, LLC v. Houlihan*, 241 Ill. 2d 281, 309 (2010). Statutory interpretation is a matter of law and therefore appropriate for

summary judgment. *Performance Marketing Ass'n, Inc. v. Hamer*, 2013 IL 114496, ¶ 12. We review *de novo* a grant of summary judgment. *Id.*

¶ 12 Plaintiffs' arguments are largely based on the language in section 24-12. In construing a statute, our primary goal is to ascertain and give effect to the legislature's intent, which is best indicated by the plain and ordinary meaning of the statute's language. *Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 12. Where the statute's language is clear and unambiguous, we must apply it without resorting to other statutory construction aids. *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11. We construe the statute as a whole, considering the subject it addresses and the legislature's apparent intent in enacting it. *Schultz*, 2013 IL 115738, ¶ 12. Statutory construction is a question of law, which we review *de novo*. *Id.*

¶ 13 Plaintiffs argue that the trial court's interpretation of the School Code, finding that an actual reduction in force (RIF) was not a condition precedent to implementation of RIF procedures, was erroneous. However, as defendant points out, the record contains no indication of such a finding. Rather, the trial court's grant of summary judgment for defendant was essentially a determination that defendant did not violate section 24-12 in dismissing plaintiffs in spring 2012 and not rehiring them for open positions in fall 2012.

¶ 14 Citing *Birk v. Board of Education*, 104 Ill. 2d 252 (1984), plaintiffs argue that the teacher tenure law must be construed broadly to achieve its primary purpose of protecting the rights of tenured teachers against the whim of school boards. *Birk* states that the primary purpose of the School Code's tenure provisions is to give tenured teachers priority over non-tenured teachers, and as between tenured teachers, to give priority to those with longer lengths of service. *Id.* at 257. However, that statement is made in reference to a prior version of the School Code. See *id.* As stated, while the amended version of section 24-12 kept tenure as the main consideration

when implementing layoffs for the 2010-11 school year (105 ILCS 5/24-12(a) (West Supp. 2011)), it made significant changes for subsequent school years, with performance evaluation ratings becoming the main focus (105 ILCS 5/24-12(b) (West Supp. 2011)); see also *Chicago Teachers Union v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 21 (“When the legislature amends an unambiguous statute by deleting certain language, it is presumed that the legislature intended to change the law in that respect.”). Plaintiffs’ failure to recognize the extent of the decline of tenure protections in layoffs is demonstrated in their description of group 1 teachers as nontenured and the remaining groups as tenured teachers with various performance ratings. While group 1 consists entirely of teachers who have not received a performance evaluation and therefore does not include tenured teachers, a nontenured teacher could still be eligible for groups 2 through 4, as the statute groups teachers according to performance ratings (*id.*), and nontenured teachers are required to be evaluated annually (105 ILCS 5/24A-5 (West 2012)).<sup>4</sup>

¶ 15 Plaintiffs argue that the trial court’s ruling effectively eliminates tenure, empowering a school district to dismiss any tenured employee at the “pure whim” of the board. Plaintiffs argue that ignoring the requirement of an “actual RIF” enables a school board to give any and all tenured teachers an unchallengeable unsatisfactory evaluation and then issue a layoff notice.

¶ 16 We note that section 24-12, as amended, does not remove all of the protections of tenure in layoff situations, as laid-off tenured teachers with performance ratings of satisfactory or higher have priority for positions they are qualified to teach that become available in the fall. 105 ILCS

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<sup>4</sup> Tenure is generally obtained after four academic years of full-time service. See 105 ILCS 5/24-11(c) (West 2012).

5/24-12(b) (West 2012). Also, contrary to plaintiffs' argument that a "school board" could give teachers an unsatisfactory rating, school boards do not conduct evaluations, but rather trained evaluators do. See 105 ILCS 5/24A-3 (West 2012). If a teacher receives a "needs improvement" rating, within 30 days the evaluator (in consultation with the teacher) is to develop a plan addressing the areas requiring improvement. 105 ILCS 5/24A-5(h) (West 2012). For a teacher that receives an "unsatisfactory" rating, the school district is to create a remediation plan within 30 days. If the teacher is tenured and receives such a rating, there is to be 90 days of remediation in the classroom (unless a collective bargaining agreement provides a shorter time). 105 ILCS 5/24A-5(i) (West 2012). A consulting teacher with at least five years' experience, familiarity with the subject area, and an "excellent" rating on his or her most recent evaluation is to participate in developing the remediation plan and advising the teacher. 105 ILCS 5/24A-5(j), (k) (West 2012). The evaluator must also conduct additional evaluations during the remediation period. 105 ILCS 5/24A-5(k) (West 2012). Therefore, contrary to the idea that schools are free to assign ratings of "need improvement" and "unsatisfactory" on a "whim" and en masse, there are significant administrative repercussions for assigning such ratings.

¶ 17 Moreover, each school district must create a joint committee with equal representation selected by the school board and teachers. 105 ILCS 5/24-12(c) (West 2012). School boards must also create an annual honorable dismissal list categorized by positions and group numbers, and the union representative must receive the list at least 75 days before the end of the school term. 105 ILCS 5/24-12(b) (West 2012). Within 10 days of the distribution of the list, a joint committee member may request a list showing the most recent and prior performance evaluation ratings of each teacher, as identified only by length of service in the district. If the committee member believes, in good faith, that a disproportionate number of senior teachers have received a

lower evaluation rating than prior ratings, the member may request that the joint committee review the issue. The member or committee may then submit a report of the review to the school board and union representative. 105 ILCS 5/24-12(c)(5) (West 2012). Thus, there is a statutory procedure in place that is designed to bring to light, before the end of the school term, any recent trends in giving senior teachers lower performance evaluation ratings. Also, if the number of honorable dismissal notices based on economic necessity is greater than 5 dismissals or 150% of the average number of teachers honorably dismissed in the prior three years, whichever is more, the school board must hold a public hearing on the question of dismissals, and a majority of board members must approve the reduction. 105 ILCS 5/24-12(b) (West 2012). Thus, any large scale dismissal would be subject to public scrutiny.

¶ 18 Plaintiffs next argue that section 24-12 clearly provides that group 2 teachers have priority retention rights over group 1 teachers. Plaintiffs maintain that defendant dismissed them as group 2 teachers, rehired (effectively retaining) the group 1 teachers it desired, and hired new teachers to replace the dismissed group 2 teachers. Plaintiffs argue that this conduct cannot be reconciled with the “clear language” of the School Code.

¶ 19 We agree with plaintiffs that section 24-12 gives group 2 teachers retention rights over group 1 teachers. However, the “clear language” of the School Code expressly makes only teachers in groups 3 and 4 eligible for recall. In other words, the legislature clearly chose not to give groups 1 and 2 teachers any preference for rehiring in the fall. Where the statute’s language is clear and unambiguous, as in this case, we may not depart from the statute’s plain language by reading in exceptions, limitations, or conditions that the legislature did not express. *Relf v. Shatayeva*, 2013 IL 114925, ¶ 29.

¶ 20 Plaintiffs further argue that section 24A of the School Code retains extensive due process rights for teachers who receive unsatisfactory evaluations. Plaintiffs argue that the tenured teachers who are dismissed for cause under section 24-12 also retain their due process rights. Plaintiffs argue that if the school board can freely dismiss a teacher after his or her initial evaluation, or freely dismiss a tenured teacher, the effect is to repeal the due process rights in sections 24A and 24-12.

¶ 21 Relevant to our analysis of this issue is *Chicago Teachers Union*, 2012 IL 112566. That case involved article 34 of the School Code, which applies only to cities of over one-half million, *i.e.* Chicago. See *id.* ¶ 16. Our supreme court stated that the legislature’s removal of layoff and recall procedures from section 34-84 (105 ILCS 5/34-84 (West 2010)) eliminated any substantive right arising from that section for tenured teachers to be rehired after an economic layoff. *Id.* ¶ 21. The supreme court contrasted the lack of substantive rights of recall for tenured Chicago teachers to the situation of tenured teachers outside of Chicago, stating:

“In contrast, for all other school districts in Illinois, the legislature has mandated that laid-off tenured teachers, with satisfactory or better evaluations, have a right to recall. Subject to their certification and seniority, such teachers have the right to be rehired into new vacancies in their districts for a period of one or two years, depending on the size of the layoff.” *Id.* ¶ 24.

¶ 22 The supreme court rejected the union’s argument that the school board’s power to lay off teachers under section 34-18(31) could not be equal to its powers to permanently remove teachers under other statutory sections. *Id.* ¶ 25. The court stated that although the enabling statute allowed the board to adopt layoff procedures, it did not require the board to adopt recall

procedures. *Id.* ¶ 26. The court further stated that sections 34-84 and 34-18(31) did not create a right to recall procedures during the rehiring process. *Id.* ¶¶ 29-32.

¶ 23 Plaintiffs argue that *Chicago Teachers Union* is not pertinent to this case because the statutes there contain language and a legislative history disparate from the statute at issue here. While we agree that *Chicago Teachers Union* is not directly on point, it does undermine plaintiffs' argument that the procedural protections present in dismissing a teacher for cause and for teachers who receive unsatisfactory evaluations must be paralleled in layoff situations. See also *Powell v. Jones*, 56 Ill. 2d 70, 81 (1973) ("In our judgment the qualitative differences between layoff and discharge are such that variances in procedure are constitutionally permissible."). The supreme court also clearly stated that section 24-12 gives laid-off teachers "with satisfactory or better evaluations" the right to recall (*Chicago Teachers Union*, 2012 IL 112566, ¶ 24), meaning that teachers without these ratings on evaluations do not retain recall rights.

¶ 24 Plaintiffs additionally argue that if their dismissals for economic reasons became effective as of the date listed in the dismissal notice and not at the beginning of the fall term, teachers in groups 3 and 4 would have no recall rights, either. Plaintiffs note that section 24-12(b) states, after discussing lay off procedures, that "[i]f the board or joint agreement has any vacancies for the following school term or within one calendar year from the beginning of the following school term, the positions thereby becoming available must be tendered to the teachers so removed or dismissed who were in groupings 3 or 4 of the sequence of dismissal and are qualified to hold the positions." 105 ILCS 5/24-12(b) (West 2012). Plaintiffs argue that unless teachers are deemed to be dismissed at the beginning of the fall term, a school district could

replace group 3 and 4 teachers in summer, and the positions would not “become available” at the beginning of the fall semester.

¶ 25 Plaintiffs’ argument is devoid of merit. The statute discusses layoff procedures, including notification at least 45 days before the end of the school term, before stating that vacancies for the following school term (meaning the next school year<sup>5</sup>) must be first offered to qualified teachers in groups 3 and 4. A teacher hired during the summer would still be filling a vacancy for the following school year, so teachers in groups 3 and 4 would have priority.

¶ 26 Ultimately, we agree with defendant that it complied with section 24-12. According to Wesling’s affidavit<sup>6</sup>, defendant was operating at a \$9 million deficit during the 2011-12 and was mandated by the State to cut \$3.2 million from its operating budget for the following school year. Wesling and others determined that the special education department could reduce its budget and fulfill its staffing needs by eliminating two high school special education teaching positions and not filling other positions. Wesling made this recommendation to the administration and school

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<sup>5</sup> “ ‘School term’ means that portion of the school year, July 1 to the following June 30, when school is in actual session.” 105 ILCS 5/24-11(a) (West 2012).

<sup>6</sup> We may rely on the facts in Wesling’s affidavit because, as stated, when parties file cross-motions for summary judgment, they agree that only a question of law is involved. *Millennium Park Joint Venture*, 241 Ill. 2d at 309. Even otherwise, plaintiffs have not raised any genuine issue of material fact regarding the statements made in the affidavits. See *Abrams v. City of Chicago*, 211 Ill. 2d 251, 257 (2004) (“If the party moving for summary judgment supplies facts that, if not contradicted, would warrant judgment in its favor as a matter of law, the opposing party cannot rest on its pleadings to create a genuine issue of material fact.”).

board. According to Gutierrez's affidavit, the school board decided to decrease the number of teachers defendant employed. She stated that teachers were assigned to groups based on their performance evaluations, and a list using numbers instead of names was provided to the joint committee. The committee, which included three union representatives, agreed to dismiss plaintiffs and other teachers. At the conclusion of a school board hearing on March 15, 2012, the board decided to honorably dismiss 12 teachers in group 1, and 12 teachers in group 2, including plaintiffs. Plaintiffs received letters informing them of their layoffs within the time period required by the statute; the letters stated that the dismissals would become effective on May 31, 2012, or at the end of any additional snow days. The school district later created new positions for the fall based on new enrollment information. Under section 24-12, teachers in group 2, including plaintiffs, did not have the right to be recalled for the newly available positions. 105 ILCS 5/24-12(b) (West 2012). Accordingly, we affirm the trial court's grant of summary judgment for defendant.

¶ 27 While we understand plaintiffs' contention that their layoffs and lack of recall rights demonstrate a decline in tenure protections, that result is due to a clear decision by the legislature to prioritize teacher evaluations. The statutory amendments do not completely erode tenure protections in layoff situations, as teachers within the same groups and with the same evaluation ratings are dismissed based on seniority considerations. 105 ILCS 5/24-12 (West 2012). Tenured teachers with "unsatisfactory" ratings also receive substantial classroom remediation (105 ILCS 5/24A-5(i) (West 2012)), presumably to help them achieve success (as embodied by a higher rating) in the classroom. However, the tenure benefits during layoffs that plaintiffs currently seek, largely embodied in the prior law, may only be achieved through legislative action.

¶ 28 In conclusion, and for the foregoing reasons, we affirm the judgment of the Lake County circuit court.

¶ 29 Affirmed.