

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Chicago Teachers Union, Local No. 1, American)
Federation of Teachers,)

Plaintiff;)

v.)

Board of Education of the City of Chicago; a body)
politic and corporate, and Mary Richardson)
Lowery, Norman Bobins, Tariq Butt, Roxanne)
Ward, Peggy Davis, Alberto Carrero, Jr., and Ron)
Huberman, in their official capacities;)

Defendants.)

Case No. 10-CV-4852

Judge
Magistrate

COMPLAINT

Introduction

1. In violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution, the defendants, the Board of Education of the City of Chicago and its officers, have unlawfully dismissed or announced the imminent dismissal of 850 tenured teachers and other education personnel and deprived them of their property rights in tenured employment without the individualized determinations required by Illinois law, 105 ILCS 5/34-18(31), if the collective bargaining agreement does not otherwise apply.

2. As set out in this complaint, Plaintiff Chicago Teachers Union (CTU) emphatically contends that the collective bargaining agreement with its seniority and job protection provisions does apply—and in the grievances attached to this complaint, CTU seeks to enforce the job protection, seniority and reassignment rights of tenured teachers

under provisions of Sections 39-5, 42-2, Appendix H (Exhibits A, B, and C) and other provisions of the “Agreement Between the Board of Education of the City of Chicago and Chicago Teachers Union Local 1 American Federation of Teachers AFL CIO, July 1, 2007 to June 30, 2012” (“Board-CTU Agreement” or “Agreement”).

3. However, even if such contractual seniority and retention rights were found not to apply—and even as the grievances attached to this complaint are pending—the Board and its officers have no statutory authority to carry out *any* reduction in force except under 105 ILCS 5/34-18(31). That statutory provision requires the Board and its officers to issue rules that apply to all the teachers now being dismissed and under these rules to make individualized determinations of the “qualifications, certifications, experience, performance ratings or evaluations and any other factors relating to an employee’s job performance” of all such teachers, as set out in the language of 105 ILCS 5/34-18(31). Under the Due Process Clause of the Fourteenth Amendment the Board and its officers necessarily must issue such rules and provide each affected teacher with an opportunity to be heard as to why such teacher or educator is more qualified and experienced and should be retained in some suitable position as the statute contemplates.

4. Under 42 U.S.C. § 1983, Plaintiff CTU brings this action to assert the constitutional rights of its affected members now being dismissed without any such general rules being put in place by the Board and its officers. CTU’s affected members have had no opportunity or other procedural due process required by the Fourteenth Amendment to present their qualifications and experience and be given notice and an opportunity to be heard as to why they should be retained. Accordingly, Plaintiff CTU seeks a preliminary and permanent injunction to bar the Board and its officers from

summarily dismissing these teachers and other educators *en masse* without any such general rules in place and without making the individual determinations required by 105 ILCS 5/34-18(31) which is applicable to *any* reduction in force, including the one that is now occurring.

5. Sections 39-5, 42-2, Appendix H and other provisions of the Board-CTU Agreement and the binding policies and practices associated with them, afford seniority, displacement and tenure protections to senior teachers so as to ensure an orderly reduction in force. As set forth in the grievances, these provisions of the Board-CTU Agreement apply here. However, since the Board and its officers are refusing to comply with these provisions while the grievances are pending and since 105 ILCS 5/34-18(31) would otherwise apply to *any* reduction in force that the Board and its officers are carrying out, the Board and its officers are obligated to comply with 105 ILCS 5/34-18(31) even while they are breaching the Agreement. The board must issue some general rules and make individual determinations under those rules of the “qualifications, certifications, experience and performance ratings...” of each affected teacher and other educators to ensure that the most qualified of them are retained.

6. Plaintiff CTU seeks an injunction *either* to restrain the Board defendants under 42 U.S.C. §1983 from depriving members of CTU of their property rights in their tenured contractual employment in violation of the Due Process Clause of the Fourteenth Amendment without an individualized hearing or determination as to whether they are entitled to retention in some position based on their qualifications under 105 ILCS 5/34-18(31)—*or*, in the alternative, under this Court’s supplemental state law power, to restrain the defendant Board from conducting layoffs outside of the order of seniority and

without contractual job protections afforded under Sections 39-5, 42-2, Appendix H and other provisions of the Board CTU Agreement until the parties' dispute as to whether these contractual seniority rights apply can be decided in binding and expedited arbitration.

7. Finally, in addition to an injunction to enforce constitutional rights to procedural due process and to cease all layoffs out of seniority pending arbitration, plaintiff CTU also seeks a declaratory judgment that the defendant Board may not take any action under Illinois law to override or impair these collective bargaining rights, in violation of Article I, section 10 of the United States Constitution which prohibits any quasi legislative action by the Board to override such a contract. ("No State shall ...pass any... Law impairing the Obligation of Contracts...")

Parties

8. Plaintiff CTU is a labor organization within the meaning of Section 2(c) of the Illinois Educational Labor Relations Act, 115 ILCS 5/2(c), representing roughly 32,000 professional educators and Board of Education employees, the vast majority of the unionized workforce in the Chicago Public Schools. It is the recognized bargaining representative for all teachers and Paraprofessional and School Related Personnel ("PSRP") in the Chicago Public School system. It has associational standing to bring the claims in this Complaint on behalf of its members. It maintains offices at 222 Merchandise Mart Plaza, Suite 400, Chicago, Illinois 60654.

9. Defendant Board of Education of the City of Chicago (the "Board" or "BOE") is an educational employer within the meaning of Section 2(a) of the Illinois Educational Labor Relations Act, 115 ILCS 5/2(a), and is the entity charged by law with

maintaining a free school system within the city of Chicago. It maintains offices at 125 South Clark Street, 6th Floor, Chicago, Illinois 60603.

10. Defendant Mary Richardson Lowery is President of the Board of Education of the City of Chicago and is sued in her official capacity.

11. Defendants Norman Bobins, Tariq Butt, Roxanne Ward, Peggy Davis, and Alberto Carrero, Jr., are members of the Board of Education of the City of Chicago and are sued in their official capacities.

12. Defendant Ron Huberman is the Chief Executive Officer of Chicago Public Schools and is sued in his official capacity.

Jurisdiction and Venue

13. This Court has jurisdiction over Counts I, II, and III pursuant to federal question jurisdiction, 28 U.S.C. § 1331, as well as under 28 U.S.C. § 1343(a)(3)-(4) for claims arising under 42 U.S.C. § 1983, the Civil Rights Act of 1871, for Counts I and II, and under 28 U.S.C. § 2201, the Declaratory Judgment Act, for Count III.

14. This Court has supplemental jurisdiction over Counts IV and V pursuant to 28 U.S.C. § 1367(a). Count IV arises under the law of the State of Illinois and claims that the defendant Board has failed to issue appropriate rules make appropriate individual determination as to which teachers should be retained pursuant to 105 ILCS 5/34-18(31). Count V arises under the Illinois Uniform Arbitration Act, 710 ILCS 5/1, et seq., and Section 10(c) of the Illinois Educational Labor Relations Act, 115 ILCS 5/10(c). Count V seeks an order restraining any layoffs contested under pending grievances until the contractual grievances attached here can be resolved in binding arbitration.

15. Venue is proper under 28 U.S.C. § 1391(b) as all defendants reside in this judicial district and a substantial part of the events involved occurred within this judicial district 6.

Facts

16. The Board of Education and CTU have a collective bargaining agreement that provides seniority rights for teachers, staff and support personnel. The seniority and reassignment rights of teachers and education support personnel are set out in Articles 39, 42-2, Appendix H and other provisions of the collective bargaining agreement, namely, the Agreement between the Board of Education of the City of Chicago and the Chicago Teachers Union Local 1, effective for the period July 1, 2007 to June 30, 2012 (“Agreement or Board-CTU Agreement”).

17. The seniority and reassignment rights of teachers and education support personnel also exist by virtue of past practice under the Agreement.

18. Article 42-2 of the Agreement provides that “[t]he reassignment and layoff of appointed tenured teachers with appropriate certifications due to changes in staffing needs (reassigned teachers) is governed by the policy set forth in Appendix H. The BOARD shall not change said policy during the term of this Agreement.”

19. Appendix H requires that “tenured teachers with appropriate certifications will be selected for retention based on seniority.” See Exhibit C, “Appendix H.” As a result of such provisions in the Agreement, teachers have a right to layoff by seniority and reassignment where appropriate. Similar provisions apply to other non-teacher educators. Appendix H further requires that teachers are placed in a reassigned teacher pool due to “school closings, consolidations, reconstitution, drop in enrollments and

phase out” and are afforded interim and/or permanent teaching positions for up to ten months before they may be dismissed.

20. Subsequent to the adoption of the Agreement, the Board issued a set of regulations that ensured such layoffs would be conducted by “system wide seniority” and that teachers may utilize the reassigned teacher pool to avoid dismissal.

21. The requirement of layoffs by “system wide seniority” consistent with Article 42-2 and Appendix H is set out in rules and regulations relating to layoffs, “Reassignment and Layoff of Regularly Certified and Appointed Tenured Teachers.”

22. This rule or regulation incorporates Appendix H. It was adopted on December 19, 2007, is designated as 07-1219-PO1, and is attached as Exhibit D.

23. Pursuant to Board Rule 4-6, all layoffs of CTU member teachers must occur pursuant to the policy set forth at 07-1219-PO1.

24. The Board’s rule of layoff by “system wide seniority,” attached as Exhibit D, applies “when an attendance center or a program is closed, there is a drop in enrollment, the educational focus of the attendance center is changed such that available teaching positions cannot accommodate some or all current regularly certified and appointed teaching staff, or when an attendance center is subject to actions taken pursuant to Sections 34-8.3 or 8.4 of the Illinois Schools Code.” It also applies when “changes in an attendance center or program require removal of some but not all tenured teachers,” or when an attendance center is reconstituted. This rule is applicable to the reductions in force at issue here.

25. In 1995, 12 years prior to the Board’s enactment of its rule as to layoffs (07-1219-PO1, attached as Exhibit D), the General Assembly of Illinois provided certain

powers for the Board, including sub-paragraphs (1) and (31) of 105 ILCS 5/34-18 which authorize the Board to promulgate rules for layoffs and reductions in force. Such rules expressly require the Board to consider criteria that include but are not limited to the, “qualifications, certifications, experience, performance ratings or evaluations” of the teachers who are affected by a reduction in force.

26. Specifically, under 105 ILCS 5/34-18(31) the Board shall “promulgate rules establishing procedures governing the layoff or reduction in force of the employees and the recall of such employees, including, but not limited to, criteria for such layoffs, reductions in force or recall rights of such employees and the weight to be give to any particular criteria. Such criteria shall take into account factors including, but not be limited to, qualifications, certifications, experience, performance ratings, or evaluations, and any other factors relating to an employee’s job performance.”

27. With the exception of the resolution of June 23, 2010, discussed below with respect to a limited number of teachers with “unsatisfactory” evaluations, the Board has issued no rule that defines *any* criteria for a reduction in force other than the rule adopted on December 19, 2007 and previously described and attached as Exhibit D incorporating the seniority and retentions provisions of Appendix H of the Agreement.

28. To date, except as modified in a limited way by the resolution of June 23, 2010, the rule attached as Exhibit D incorporating Appendix H of the Agreement is the only Board rule applying to a reduction in force. The Board acknowledged, in effect, in the aforesaid rule attached as Exhibit D, that nothing in the Illinois School Code or Illinois law bars the Board from voluntarily entering into labor agreements with the CTU

concerning reductions in force. The preamble to the Board's Layoff Policy attached as Exhibit D states, in relevant part:

The Illinois School Code and other statutes permit collective bargaining on decisions regarding reductions in force. . . . The [Layoff] Policy set forth below reflects the agreements reached with the Chicago Teachers Union.

Firings in Disregard of Seniority or Qualifications.

29. The defendant Board has claimed at various times that it faces a fiscal shortfall in the coming fiscal year while giving conflicting and changing estimates as to what the fiscal shortfall may be.

30. On June 15, 2010, the Board of Education passed two contradictory resolutions with respect to its ability to meet the fiscal shortfall.

31. The first Board resolution of June 15, 2010 made an express finding that the Board anticipated it had sufficient funds to meet its contractual obligation to meet the salary increases set forth in the coming year in the Board CTU Agreement. Exhibit E.

32. The second Board resolution of June 15, 2010 made a conflicting finding that the fiscal shortfall was so great as to require a reduction in force. In the second resolution, attached as Exhibit F, the Board authorized defendant Huberman to engage in a reduction in force affecting members of CTU "because of financial exigency and resulting cost saving measures." The Board provided no rules for conducting such a reduction in force and made no reference to 105 ILCS 5/34-18(31) at all.

33. In the resolution of June 15, 2010, the Board authorized such a reduction in force by claiming a deficit that is based on assumptions, several of which have proven wrong or no longer apply.

34. Since the resolution of June 15, 2010, the Board has dismissed or announced the imminent dismissal without any recall rights a total of over 850 tenured teachers and other education personnel—including some of the City’s best and most experienced teachers.

35. Furthermore, the Board is planning additional *en masse* summary dismissals without any recall rights of qualified teachers having excellent or superior evaluations with no individualized consideration as to whether such qualified teachers should be retained and reassigned in preference to others.

36. Absent such consideration and in violation of the seniority rights of tenured teachers, the Board is hiring new untested teachers off the street and keeping less expensive probationary teachers with little or no experience.

37. In the many of these *en masse* summary dismissals, the Board has eliminated nearly all but not quite all of a program, presumably to claim incorrectly or falsely that there is no “program closing” within the meaning of Appendix H of the Board-CTU Agreement.

38. For example, on June 16, 2010, apparently attempting to avoid Article 42-2 and Appendix H of the Board-CTU Agreement, the Board eliminated in all but name the program for literacy coaches, who were elite and highly qualified teachers recruited from their classrooms for the purpose of “teaching other teachers.”

39. These elite literacy coaches—who were veteran higher salaried teachers—were summarily dismissed without any recall rights or rights to return to their classrooms while far less qualified and less expensive teachers have been retained in the schools where they used to teach.

40. Likewise, apparently using the same stratagem, the Board has eliminated in all but name the program for city wide special education teachers, who provide legally required special education services to charter schools or facilities for students expelled from other high schools or with other special education needs.

41. Likewise, elite teachers who serve as math mentors for other teachers or who work with students in hospitals have been summarily dismissed without regard to their qualifications and with no attempt to retain or reassign them

42. On June 23, 2010, after the summary dismissals of these elite teachers, the defendant Board passed an additional resolution. The resolution of June 23, 2010 authorized defendant Huberman to dismiss teachers who have negative evaluations or evaluations of “unsatisfactory,” “does not meet expectations,” or the equivalent. Exhibit G.

43. At various times the Board and individual Board defendants have implied to the media and the public that most if not all of the summary dismissals involve these teachers with “unsatisfactory” evaluations, when in fact such teachers are a small minority of those being dismissed.

44. The resolution of June 23, 2010 does make reference to 105 ILCS 5/34-18(31) but only with respect to this minority of teachers in remediation or with “unsatisfactory” evaluations. The resolution states in part:

“WHEREAS, the section 5/34-18(31) requires the Board of Education of the City of Chicago to “promulgate rules establishing procedures governing the layoff or reduction in force of employees and the recall of such employees, including but not limited to, criteria for such layoffs, reductions in force or recall rights of such employees and the weight to be given to any particular criterion. Such criteria shall take into account factors, including but not limited to, qualifications, certification, experience, performance ratings or evaluations, and any other factors relating to an employee’s job performance.”

“NOW THEREFORE, be it resolved by the Board of Education... that, to comply with 105 ILCS 5/34-18(31):

(1) In determining the order of layoff for appointed teachers (tenured and probationary) the Chief Executive Officer or his designee shall take performance ratings or evaluations into account with respect to appointed teachers at each school or unit experiencing reductions by first laying off appointed teachers who either (a) are under remediation under 105 ILCS 5/24A-5 or Article of the Chicago Teachers Union collective bargaining agreement or (b) any appointed teachers whose last performance rating was ‘unsatisfactory,’ ‘does not meet expectations’ or any equivalent rating indicating deficient performance;

(2) The Chief Executive Officer or designee shall continue to apply criteria for order of layoff of appointed teachers (tenured and probationary), if any, set forth in the Chicago Teachers Union collective bargaining agreement, only to the extent that it is consistent with this resolution...

However, the Board did not issue any other rules or regulations that give weight criteria to the qualifications, performance and other criteria of teachers who have not only satisfactory but excellent or superior evaluations and are being dismissed without any individualized consideration of the criteria under the statute.

45. Furthermore, while highlighting to the media that teachers with “unsatisfactory” evaluations are being dismissed, the Board and its officers have dismissed no such teachers under the resolution of June 23, 2010, although at least some dismissals are anticipated. Instead, the Board and its officers have dismissed qualified teachers with no individualized consideration of the criteria listed in the statute.

46. On July 20, 2010, the Board and its officers sent out notices of dismissal to 400 classroom teachers and 200 other educators and staff in “Track E” elementary schools.

47. On or about July 20 2010, the Board and its officers sent out additional notices of dismissal to teachers and other educators and staff in approximately six to seven “Track E” high schools, the schools opening on August 9, 2010.

48. On information and belief, the Board has determined to dismiss up to 1500 teachers and education support personnel, including those already dismissed, before the start of the 2010-2011 school year.

49. With respect to these actual and still anticipated summary dismissals without recall, the Board and its officers have violated, breached or just ignored the seniority provisions of Article 42-2 and Appendix H and other provisions of the Agreement providing for layoff by seniority and reassignment to other teaching positions for which such teachers may be suited under Appendix H.

50. Yet while breaching or ignoring the seniority provisions of the Agreement which apply to a reduction in force, neither have the Board and its officers complied with the provisions of 105 ILCS 5/34-18(31) which otherwise apply to any reduction in force if there were no Agreement or if the Agreement could be set aside. Even if the Board should claim the right to take action while the grievances are pending, the Board still must make the individual determinations required by 105 ILCS 5/34-18(31) to issue rules to ensure individualized consideration of teachers who have superior qualifications, certifications and experience *and* to ensure they are retained.

51. Rather than provide such individualized consideration or any opportunity to be heard, the Board and its officers have pressed many of these qualified teachers to take early retirement, with the effect of reducing the Board’s liability for higher pension benefits if those teachers were to continue working.

52. In some cases, the Board and its officers given such teachers three days to make such decisions under duress and the threat of losing their accumulated sick day leave if they refuse to retire.

53. Likewise, in continuing with these dismissals of qualified teachers, the Board and its officers continue to use the pretext that, as described in the media, “the Chicago public schools will only reach into the very bottom of the evaluation ratings to lay off teachers.” See Exhibits J and K.

54. The Board and its officers have never sought to correct or qualify these statements.

55. Meanwhile in the mass dismissals that have occurred or are anticipated, the Board and its officers are operating without any rules consonant with the seniority provisions of Article 42-2 and Appendix H or the criteria set out 105 ILCS 5/34-18(31) requiring defendants to assess the “qualifications, certifications, experience, performance ratings or evaluations other factors relating to an employee’s job performance...”

56. On July 15, 2010, plaintiff CTU filed three contractual grievances to enforce the rights of the CTU members under Articles 39-5, 42-2 and Appendix H of the Board CTU Agreement. See Group Exhibits I1-I4.

57. The grievances dispute the contention of the Board and its officers that the summary dismissals are not the result of “program closings” or other Appendix H factors and seek the retention of these qualified and experienced teachers and educators who are now being laid off without any reassignment or recall rights under Appendix H or other provisions of the Agreement

58. The first grievance (attached as Exhibit I1) asserts the seniority and reassignment rights of the literacy coaches, special education instructors, math mentors, and related education support personnel.

59. The second grievance (attached as exhibit I2) asserts the seniority and for-cause protection from dismissal rights of teachers who have received unsatisfactory evaluations.

60. The third grievance (attached as exhibit I3) also asserts the seniority and reassignment rights of citywide teachers who have been subject to dismissal in connection with de facto program closings or other summary *en masse* actions in which qualified teachers are not being retained or reassigned, and in which their contractual right to retain their prior positions or assert their rights under Appendix H were denied.

61. By letter dated July 15, 2010, CTU President Karen Lewis requested that the Board proceed to expedited arbitration of the three grievances and postpone the dismissals pending the arbitration of these grievances which are not only in violation of Articles 39-5, 42-2, Appendix H of the labor contract and binding policies and practices, but beyond any other legal authority the Board and its officers may have.

62. Furthermore, since the reductions will increase the class sizes for many Chicago public school students, there is an urgent need for such expedited arbitration. While the grievances are pending, the Board and its officers are subjecting these students to class sizes that may turn out to have been needlessly increased and teachers less qualified than those now being laid off.

Count I

(Section 1983: Deprivation of Due Process Rights of Teachers)

63. Plaintiff CTU incorporates paragraphs 1 through 62 herein.

64. Plaintiff CTU, as the bargaining representative of its members, is entitled to assert their constitutional rights to procedural due process before the property rights in tenured employment of such members may be deprived by the Board and its officers.

65. As set forth above, CTU seeks to assert the contractual rights of its members to be laid off by order of seniority under Article 42-2 and Appendix H of the CTU Board Agreement and has filed the three contractual grievances attached as Exhibits I1, I2, and I3 to be resolved in binding arbitration under the Agreement.

66. While the Board and its officers have violated these contractual provisions as set forth in these grievances, they are also acting unlawfully under their statutory authority for reductions in force, even if the provisions of Article 42-2 and Appendix H were not found to apply—that is, by the unilateral action that they are taking even while the grievances are pending.

67. Specifically, without providing the affected CTU members any opportunity to be heard as required by the Due Process Clause of the Fourteenth Amendment and in violation of 42 U.S.C. §1983, the Board officers who are the individual defendants have caused and will continue to cause *en masse* summary dismissals of teachers and other staff without issuing any rules or giving any individualized consideration under such rules of the “qualifications, certifications, experience, performance ratings or evaluation, and any other factors relating to an employee’s job performance” as required by 105 ILCS 5/34-18(31) if Article 42-2 and Appendix H were to be found not to apply.

68. By refusing to hold off such dismissals without recall until the contractual dispute can be arbitrated and by conducting such *en masse* summary dismissals without the individual determinations required by 105 ILCS 5/34-18(31), the same Board officers have denied and will continue to deny the constitutional rights of affected CTU members to notice and an opportunity to be heard as to why they are qualified to be retained in this reduction in force and have their rights to procedural due process under the Fourteenth Amendment in the conduct of such dismissals under applicable state law.

69. In further denial of such due process in the deprivation of property rights created pursuant to contract and the Illinois School Code, the Board officers have not even issued rules or set up procedures to consider the qualifications, certifications, experience, performance ratings or evaluations, and other factors relating to the performance” of the hundreds of dismissed teachers who have excellent or superior evaluations and who have a legal right to be retained in a reduction in force under state law.

70. Likewise in further denial of due process in the deprivation of property rights created pursuant to contract and the Illinois School Code, the same Board officers have made no provision for recall rights or reassignment of such superior and experienced teachers so as to ensure that only the most qualified teachers are retained in connection with any reduction in force.

71. By such acts denying any notice and opportunity to be heard as to the qualifications of various CTU members to be retained and by other acts denying due process in the deprivation of property rights created pursuant to contract and the Illinois School Code, and in violation of 42 U.S.C. §1983, the same Board officers have denied

and will continue to deny the constitutional rights of various CTU members under the Due Process Clause of the Fourteenth Amendment.

72. Plaintiff CTU is also entitled to preliminary injunctive relief to restrain these *en masse* dismissals and to reinstate all laid off teachers and other staff who have been denied their constitutional rights so long as and until the contractual grievances attached as Exhibits I1-I3 can be resolved in binding arbitration and for permanent injunctive relief if it is found that Article 42-2 and Appendix H do not apply.

73. Plaintiff CTU incorporates herein the paragraphs of 123 through 132 below setting forth the prerequisites for preliminary injunctive relief and states that the denial of the constitutional rights of affected CTU members is in itself irreparable injury.

WHEREFORE, plaintiff CTU prays this Court to:

- A. Declare that in violation of 42 U.S.C. §1983 and the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, the individual Board defendants have denied CTU members who have been summarily dismissed their constitutional rights to individualized determinations as to whether they meet specific weighted criteria which the Board should have but failed to promulgate and apply to them under 105 ILCS 5/34-18(31) and thereby denied CTU members their rights to procedural due process, including notice and an opportunity to be heard under the Fourteenth Amendment, while the plaintiff CTU's contractual grievances are pending.
- B. Grant preliminary and permanent injunctive relief against the individual Board defendants in their official capacities for their unlawful deprivations

of the property rights of such affected CTU members in their tenured contractual employment without notice and an opportunity to be heard in individual determinations of their qualifications and to receive other procedural due process required by Due Process Clause of the Fourteenth Amendment in connection with Illinois state law for this reduction in force, while the plaintiff CTU's contractual grievances are pending.

- C. Grant plaintiff CTU its legal fees and costs under 42 U.S.C. §1988 and such other legal and such other relief as may be required.

Count II

(Section 1983: Deprivation of Due Process – Retroactive Application of New Rule)

74. Plaintiff CTU incorporates paragraphs 1 through 70 herein.

75. By the acts set forth above, the Board defendants plan to dismiss without recall CTU members who were under remediation or who had evaluations of “unsatisfactory” or the equivalent, solely on the existence of such past evaluations in their records.

76. By the acts set forth above, the Board defendants plan to dismiss without recall CTU members who were under remediation or who had evaluations of “unsatisfactory” or the equivalent, solely on the existence of such past evaluations in their records.

77. While these may ultimately be a small number of those to be dismissed, such members of CTU have had no prior notice that such evaluations would be used as

the basis of summary dismissals by a rule created and applied retroactively by resolution of June 23, 2010.

78. As a result they have had and will have no opportunity to be heard that such placement in remediation or unsatisfactory evaluations are unfair or without substantial basis.

79. Furthermore, since no such rule existed or was anticipated by them at the time the evaluations were made, such members did not make the efforts that they might have made to challenge or rebut such evaluations had they known that as of June 23, 2010 they would be subject to dismissal without recall even for a single unsatisfactory evaluation.

80. Prior to the resolution of June 23, 2010 announcing this rule of dismissal to be applied retroactively, such CTU members justifiably assumed that the provisions of Article 42-2 and Appendix H of the CTU-Board Agreement would be applied in the event of a reduction in force and that ordinary seniority would apply to CTU members who had not been dismissed for poor performance under 105 ILCS 5/24A

81. Prior to the resolution of June 23, 2010, other than the seniority provisions of the Board CTU Agreement, the only applicable rule for a reduction in force was the rule adopted by the Board on December 19, 2007, "Reassignment and Layoff of Regularly Certified and Appointed Tenured Teachers," attached as Exhibit D.

82. Such rule incorporates the seniority provisions of Appendix H of the Board CTU Agreement and does not give any prior or reasonable notice to plaintiff CTU or any member that a remediation or an "unsatisfactory" evaluation might be used to

justify a summary dismissal retroactively outside of the order of seniority provided in the Agreement.

83. By the acts set forth above, and in violation of 42 U.S.C. §1983, and apart from the violation of the contractual rights of these CTU members, the Board officers who are named as defendants have unlawfully declared their intent to dismiss without recall such members who are under remediation or who have an unsatisfactory evaluation in violation of their rights to procedural due process under the Fourteenth Amendment by the unfair and retroactive application of this rule and without an opportunity to be heard now that the prior evaluation was unfair and without reasonable basis.

84. Accordingly, by the acts set forth above, and in violation of 42 U.S.C. §1983, the Board officers who are named as defendants have denied or will deny fundamental fairness and due process required under the Due Process Clause of the Fourteenth Amendment to the CTU members who are under remediation or who have an unsatisfactory evaluation and are now subject to dismissal without recall. At a minimum, under the Due Process Clause of the Fourteenth Amendment, such CTU members are entitled to notice and an opportunity to be heard that such evaluations are not fair or do not justify their dismissal in light of the other criteria that must be considered under 105 ILCS 5/34-18(31).

85. Plaintiff CTU is also entitled to preliminary injunctive relief to avoid irreparable injury from the violations of the constitutional rights of the affected CTU members.

86. WHEREFORE plaintiff CTU prays this Court to:

- A. Declare that in violation of the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. §1983, and by planning to apply retroactively a rule requiring summary dismissal without recall for any teacher who was under remediation or received an “unsatisfactory” evaluation without any prior notice of such a rule at the time the remediation was initiated or the evaluation was received and without providing the affected CTU members any opportunity to show that such action was unfair and they should not be dismissed under the criteria of 105 ILCS 5/34-18(31), the individual Board officer defendants will deprive such CTU members of fundamental fairness and procedural due process under the Fourteenth Amendment.
- B. Grant preliminary and permanent injunctive relief against the individual Board officer defendants to prohibit them from depriving such CTU members of their property rights in their employment in such a manner in violation of the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. §1983
- C. Grant plaintiff CTU its legal fees and costs under 42 U.S.C. §1988 and such other relief as may be appropriate.

Count III

(Section 1983: Impairment of Contractual Obligation)

- 87. Plaintiff CTU incorporates paragraphs 1 through 83
- 88. Plaintiff CTU has filed various grievances seek to restrain any reduction in force unless such reduction in force occurs pursuant to Article 42-2 and Appendix H of the CTU Board Agreement. See Exhibits B and C.

89. Plaintiff CTU seeks binding arbitration of such grievances.

90. As set forth above, by the resolution of June 23, 2010, the Board and its officers invoked 105 ILCS 5/34-18(31) to override the provisions of the Board CTU Agreement with respect to the teachers under remediation or with negative evaluations.

91. In the grievance attached as Exhibit I2 for which plaintiff CTU seeks expedited arbitration, the plaintiff CTU seeks to enforce the contractual seniority rights of the teachers with negative evaluations, notwithstanding the action of the Board and its officers in the resolution of June 23, 2010 to take legislative action overriding the rights of certain CTU members to be laid off in accordance with their seniority under Article 42-2 and Appendix H, whether or not they are under remediation or have received “unsatisfactory” evaluations.

92. Accordingly, to assert its rights under the grievance and arbitration procedures, CTU seeks a declaratory judgment that the Board resolution of June 23 2010 taking legislative action to override such contractual rights with respect to such CTU members is in violation of Article I, section 10 of the United States Constitution which prohibits the defendant Board and individual Board defendants from any legislative or quasi legislative act substantially impairing its own contractual obligations in the Board CTU Agreement.

93. The resolution of June 23, 2010 is a substantial impairment of the Board’s contractual obligation to plaintiff CTU since the Board itself took this act with great formality and publicity and claimed it would be the sole basis for the dismissals of teachers to come.

94. Nonetheless, while constituting a substantial impairment, the action of the Board and individual defendants in passing the resolution serves no important or overriding public purpose, and indeed even facilitates the illegal purpose of providing a pretext for dismissal of qualified teachers.

95. Furthermore, to meet any fiscal emergency referred to in the resolution of June 15, 2010, the Board and its officers remain free to carry out any reduction in force pursuant to Article 42-2 and Appendix H.

96. In addition, to discharge any employee who is in fact unsatisfactory, the Board and its officers remain free to use the procedures set forth for for-cause termination under the Agreement, Article 39-5 (Exhibit A), and of 105 ILCS 5/24A-8 as set out in the Illinois School Code for removal of such teachers.

97. Plaintiff CTU also seeks declaratory relief that in the future and when such summary dismissals occur, the Board and its officers cannot lawfully invoke or rely upon 105 ILCS 5/34-18(31) to issue other rules to override collective bargaining obligations to which the Board voluntarily agreed, including the Board's own rule with respect to a reduction in force as now set out in Section 504.2 of the Manual and for which plaintiff CTU gave up valuable consideration in obtaining at the time the current Board CTU Agreement was adopted.

98. Accordingly, by the resolution of June 23, 2010 formally overriding Article 42-2 and Appendix H of the Board CTU agreement with respect to certain teachers, and in violation of 42 USC 1983, the Board officers who are defendants in this action have unlawfully deprived plaintiff CTU of their rights under Article I, section 10

of the Constitution of the United States with respect to impairment of contractual obligations.

WHEREFORE, plaintiff prays this Court to:

- A. Declare that as set forth above and in violation of Article I, Section 10 of the United States Constitution, the individual Board officers who are defendants in this action have unlawfully impaired and sought to override the obligations of the Board to plaintiff CTU and its members under Article 42-2 and Appendix H of the Agreement and as codified in 504.2 of the Chicago Public Schools Policy Manual.
- B. Enjoin the individual Board defendants from conducting any layoffs under the resolutions of June 15, 2010 and June 23, 2010 and other legislative or quasi legislative act purporting to override any and all contractual obligations of the Board to plaintiff CTU with respect to the reduction in force.
- C. Grant plaintiff CTU its legal fees and costs under 42 U.S.C. §1988 and any other appropriate relief. .

Count IV

(Unlawful Reduction in Force)

99. Plaintiff CTU incorporates paragraphs 1 through 95
100. While the plaintiff CTU contends that the provisions of Article 42-2 and

Appendix H of the Agreement are controlling and seeks arbitration of its contractual grievances, defendant Board is now acting on the premise that such provisions are not controlling and do not bar its use of summary dismissals outside of the order of seniority.

101. Because the defendant Board is proceeding by unilateral action outside and in disregard of the provisions of Article 42-2 and Appendix H while these grievances are pending, the defendant Board is necessarily acting under such statutory authority it may have under 105 ILCS 5/34-18(31).

102. Since the Board is in non-compliance with the provisions of 105 ILCS 5/34-18(31) and is not issuing rules or making individual determinations with respect to the “qualifications, certifications, experience, performance ratings or evaluations” of the teachers who have been or will be summarily dismissed, the defendant Board is acting ultra vires and without authority to proceed with this reduction in force as it has been conducted to date.

103. Because the defendant Board has not conducted the reduction in force within the legal parameters of 105 ILCS 5/34-18(31) and has no other legal basis to invoke for its actions while the contractual dispute between the defendant Board and plaintiff CTU is being arbitrated, the plaintiff CTU seeks injunctive relief to bar any reduction in force by the defendant Board outside of or beyond its statutory authority under the Illinois School Code at least until plaintiff CTU’s contractual grievance can be resolved.

WHEREFORE, plaintiff CTU prays this Court to:

- A. Restrain or enjoin the Board and its officers from conducting any further summary dismissals not in compliance with the Board’s duty to make

individual determinations of the qualifications of the affected CTU members as required by 105 ILCS 5/34-18(31) of the Illinois School Code and to retain and reassign such teachers as appropriate under the criteria set forth in such statute.

- B. Issue injunctive relief requiring the defendant Board to comply with the rule adopted on December 19, 2007, “Reinstatement and Layoff of Regularly Certified and Appointed Tenured Teachers,” and the appropriate rule for other staff passed on that day.
- C. Reinstatement such teachers and education support personnel who have been wrongfully dismissed without consideration of the criteria that must be applied to them under 105 ILCS 5/34-18(31) in connection with the current reduction in force.
- D. Grant such other relief as may be appropriate.

Count V

(State Law Claim in Aid of Arbitration)

104. Plaintiff incorporates paragraphs 1 through 101.

105. Plaintiff CTU seeks to arbitrate, pursuant to the labor agreement, whether the Board has violated the Agreement, including its Articles 39, 42 and Appendix H, and its policies and practices, by its outright dismissal of tenured teachers and education support personnel without regard to their length of service with the Board or other job protections afforded them under the agreement.

106. Plaintiff CTU and defendant Board are parties to a collective bargaining agreement (“Agreement”) with a term from June 1, 2007 to June 30, 2012.

107. The Agreement contains a dispute resolution procedure for resolving grievances and culminating in final and binding arbitration of grievances. Article 3 of the Agreement defines a “grievance” to include virtually any dispute involving conditions of employment, specifically:

A grievance is a complaint involving a work situation; a complaint that there has been a deviation from, misinterpretation of or misapplication of a practice or policy; or a complaint that there has been a violation, misinterpretation or misapplication of any provisions of this Agreement.

108. Agreement Article 3 Section 3-7.1 authorizes the CTU to initiate grievances at any step of the grievance procedure. Agreement Article 3 Section 3-5 authorizes the CTU to advance any unresolved grievance to final and binding arbitration before a neutral arbitrator selected from a permanent panel established by the parties.

109. Under Article 39 of the Agreement, the Board conducts teacher evaluations of tenured teachers every one or two years. Under Section 39-5.1, a school principal may issue an “unsatisfactory” evaluation to a tenured teacher. Section 39-5.3 then requires the establishment of a remediation plan within 30 days of the unsatisfactory evaluation that is “designed to correct the areas identified as unsatisfactory”. Under Section 39-5.6, any teacher that fails to successfully complete the remediation plan is subject to removal for cause under Sections 24A-5(m) and 34-85 of the Illinois School Code. Section 34-85 of the Illinois School Code, incorporated into Article 39, bars “removal” of any tenured teacher without cause, and after notice and hearing.

110. In Article 42-2 of the CBA, the Board voluntarily agreed to conduct layoffs or reductions in force by order of seniority.

111. Art. 42-2 of the CBA provides that, “[t]he reassignment and layoff of appointed tenured teachers due to changes in staffing needs (reassigned teachers) is governed by the policy set forth in Appendix H.”

112. Appendix H requires that, “tenured teachers with appropriate certifications will be selected for retention based on seniority.” It further provides that tenured teachers may be placed in the reassigned teacher pool for ten school months, during which the teacher may obtain paid temporary or permanent placement in another teaching position and thereby postpone or avoid dismissal. See Exhibit H. The Board incorporated Appendix H into the Board’s own rules relating to layoffs, adopted December 17, 2007, and entitled “Reassignment and Layoff of Regularly Certified and Appointed Tenured Teachers,” designated as 07-1219-PO1. This resolution is reflected in Section 504.2 of the CPS Policy Manual, and attached as Exhibit D. (“Layoff Policy”).

113. The Agreement is binding and not in conflict with Illinois law. In adopting its Layoff Policy, the Board acknowledged that nothing in the Illinois School Code or Illinois law bars the Board from voluntarily entering into labor agreements with the CTU concerning reductions in force. The preamble to the Board’s Layoff Policy states, in relevant part:

The Illinois School Code and other statutes permit collective bargaining on decisions regarding reductions in force. . . . The [Layoff] Policy set forth below reflects the agreements reached with the Chicago Teachers Union.

114. On July 15, 2010, under Article 3-6 of the Agreement, the plaintiff CTU filed grievance no. 10-07-163(se) for in excess of 200 teachers who had been dismissed as of that date, including the literacy coaches, special education instructors and other teachers laid off without compliance with Article 42-2 and Appendix H of the

Agreement. A copy of the grievance is attached as Exhibit I3. The grievance alleges that the defendant Board is obligated under the Article 42-2 and Appendix H of the Agreement to conduct any layoffs or reduction in force by order of seniority under the Agreement and afford these teachers the reassignment rights under Appendix H.

115. On July 15, 2010, under Article 3.6 of the CBA, the CTU filed grievance no. 10-07-130(se) for in excess of 200 teachers whom the Board had indicated by its June 18, 2010 letter would be selected for dismissal because they had received recent “unsatisfactory” evaluations or its equivalent or who were in remediation. A copy of the grievance is attached as Exhibit I2. The grievance alleges that the defendant Board is obligated under Articles 39-5, 42-2 and Appendix H of the Agreement, the Illinois School Code and the Board’s own policies to retain these teachers unless they are dismissed for cause, after notice and hearing.

116. On July 15, 2010, under Article 3.6 of the Agreement, the CTU filed grievance no. 10-07-129(se) for the 800 teachers whom the Board dismissed without any criteria or retention or recall and without any of the benefits and privileges afforded under Appendix H of the Agreement. A copy of the grievance is attached as Exhibit I1. The grievance alleges, among other things, that these dismissals will occur without the protections afforded under Article 42-2 and Appendix H of the Agreement and the CPS Policy Manual. More dismissals are imminent.

117. On information and belief, the Board has historically observed the practice of selecting tenured teachers for dismissal based on years of service and not based on the most recent evaluation or remediation, and it is departing or intends to depart from that practice.

118. On information and belief, the Board has historically observed the practice of affording dismissed tenured teachers the benefits and privileges afforded under Appendix H of the Agreement, and it is departing or intends to depart from that practice.

119. On information and belief, the Board has historically observed the practice that teachers who receive an unsatisfactory evaluation or are placed in remediation have not been dismissed except for cause and after notice and hearing, and the Board now departs or intends to depart from that practice.

120. On July 15, 2010 CTU President Karen Lewis submitted grievance nos. 10-07-163(se), 10-07-130(se) and 10-07-129(se) by letter to the Director of the Office of Employee Relations. A copy of the letter is attached as Exhibit I4. The letter states, in relevant part:

Given the immediacy of the situation, and the potential for irreparable harm to the teachers due to their loss of employment, I am requesting that the Board of Education postpone any planned terminations through permanent layoff that are the subject of the enclosed grievances until the grievances are resolved. Representatives of the Chicago Teachers Union are available to meet with you on an expedited basis. Should the parties be unable to resolve the issues, we also offer to expedite the arbitration process.

121. The Board has not responded to the grievances, nor agreed to postpone any dismissals, nor to proceed to expedited arbitration.

122. As set forth above, while the defendant Board is authorized to make rules for a reduction in force under 105 ILCS 5/34-18(31) the Board entered the Agreement voluntarily, limiting its discretion under 105 ILCS 5/34-18(31) with respect to the manner of layoffs, and contractually promised to conduct such layoffs by order of seniority and with the provisions for reassignment set out in Appendix H. Furthermore, the Board adopted Section 504.2 of the CPS Policy Manual attached as Exhibit D

incorporating Article 42-2 and Appendix H as the sole procedure for conducting such layoffs shortly after the Agreement was adopted in 2007.

123. Plaintiff CTU and its members will suffer irreparable injury if the status quo is not maintained pending the outcome of the arbitration of the grievances.

124. First, CTU members are suffering irreparable injury because while the grievances are pending as alleged above, the Board is acting and will continue to act unlawfully outside its authority under 105 ILCS 5/34-18(31). The Board and its officers have denied and will continue to deny the constitutional rights of CTU members to due process and an opportunity to be heard upon the criteria that the Board is obligated to consider under 105 ILCS 5/34-18(31) even under its own claim that it may proceed unilaterally while the grievances are pending. The deprivation of such constitutional procedures by the Board while the grievances are pending is sufficient irreparable injury to justify injunctive relief during this period.

125. Second, plaintiff CTU and its members are likely to suffer irreparable injury if the quality of the teaching in the Chicago Public Schools declines by retention of less experienced teachers and by increase in class size. While summarily dismissing elite teachers without any recall rights, the defendant Board is actually hiring new, untested teachers off the streets who may ultimately teach these larger classes. By degrading the teaching force for reasons of cost, the defendant Board increases the risk of failing or poor performing schools under the standards of the federal No Child Left Behind program. Such a decline would place all teachers at greater risk of administrative sanctions. On information and belief, plaintiff CTU alleges that Board has not issued rules as required by 105 ILCS 5/34-18(31) to protect the quality of teaching staff because

the Board is willing to degrade the quality of such staff by firing more experienced teachers so as to lower labor costs.

126. Third, once the school classrooms have been established based on a reduced number of teachers, the dismissed teachers will have no classrooms to which they may return should they prevail in these grievances, and the Board could not restore their classroom positions without disrupting the instruction of the students. The improperly dismissed teachers' certifications and classroom experience will not correspond precisely to those of teachers retained by the Board, and the dismissed teachers could not replace the retained teachers without further disrupting the instruction of the students.

127. Finally, the Board has taken these unlawful actions to "give teachers a lesson" not to insist on their contractual rights and not to expect to rely upon their seniority rights. At least part of the purpose is to pick out the senior and most experienced teachers who are most loyal to the plaintiff CTU and replace them with new hires or probationary employees who owe their retention not to lawful collective bargaining, but to the discretion or even whim of the Board and its defendants. In short, the purpose of this blatant non-compliance with the contractual provisions of the Agreement is to weaken the CTU as an institution, and such action could have an adverse and long term effect on the bargaining process and on labor peace which the arbitration process cannot ultimately repair.

128. Plaintiff CTU has no adequate legal remedy to restore the status quo unless the dismissals without recall rights are restrained.

129. Meanwhile, the balance of hardships favors the issuance of preliminary injunctive relief. The Board will suffer no properly cognizable injury when: (1) teachers with excellent or superior qualifications are retained instead of being replaced with untested albeit less expensive new hires off the streets or with probationary employees at lower salaries, and (2) it can still conduct layoffs necessary for financial reasons in accordance with the order of seniority as determined in an expedited arbitration. Furthermore, the Board is still free to remove “unsatisfactory” or inadequate teachers for cause pursuant to the provisions set forth for for-cause termination under the Agreement, Article 39-5 (Exhibit A), and of 105 ILCS 5/34 if there is such cause to do so.

130. Furthermore, it is likely that the defendant Board does not face a fiscal emergency justifying such a reduction in force or deplorable increase in class size. On June 15, 2010 the defendant Board authorized the issuance of \$800 million in bonds, based on the premise that the State of Illinois would not provide \$400 million in funding already due, as well as to cover a shortfall of \$375 million in the actual budget. Since it appears that the State funding will now be forthcoming, the Board now has demonstrated its ability to meet the estimated shortfall, assuming that this estimate is even accurate. Finally, the Governor has proposed a tax increase that would eliminate the Board’s deficit altogether and the resolution of that proposal remains to be determined by the end of 2010.

131. Finally, the public interest favors injunctive relief to restrain these layoffs. Such relief ensures that experienced teachers with excellent evaluations are retained if there is ultimately a reduction in force and that the remaining teaching force is qualified

and experienced because of contractual seniority or other factors and are not replaced by still untested probationary teachers or new hires off the street.

132. Accordingly, because of the irreparable injury and lack of a legal remedy as set forth above and because the balance of hardships and public interest favor injunctive relief, and because plaintiff CTU is likely to prevail on the merits of the claims set out in Counts I through V as well as on the merits of these contractual grievances, plaintiff CTU seeks an order restraining dismissals without recall rights outside of the order of seniority while the contractual grievances attached to this complaint are pending. WHEREFORE, Plaintiff CTU prays this Court to:

- A) Enter preliminary and permanent injunctions barring the defendant Board from conducting the layoffs outside of the order of seniority or in a manner other than that provided in Section 42-2 and Appendix H of the Agreement and Section 504.2 of the Chicago Public Schools Policy Manual until the grievance filed by the plaintiff CTU on July 15, 2010 is resolved.
- B) Issue such other relief as may be required or warranted by the law or in the interests of justice.

Dated: August 2, 2010

Respectfully Submitted,

/s/ Thomas H. Geoghegan

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