

AN ANALYSIS OF COURT CASES INVOLVING
REDUCTION IN FORCE OF K-12 PUBLIC
SCHOOL EMPLOYEES, 1984-2010

by

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ABSTRACT

As more and more school systems are forced to implement reduction-in-force, litigation over reduction in the number of professional personnel, as well as job security, will continue to increase. As a result, there is a need for school administrators to develop a better understanding of the issues, outcomes, and legal trends resulting from litigation involving reduction-in-force policy implementation. This study was a document-based qualitative study that was historical in nature and embedded in the review of case law. The cases were briefed and analyzed to determine the issues, outcomes, and legal trends surrounding the implementation of reduction-in-force policy in public school systems across the country. The study involved 147 cases over a 27-year period starting in 1984 and ending in 2010. The study revealed six issues (enrollment decline, budgetary restraints, consolidation/reorganization, reduction in teaching positions, curricular changes, and other good or just cause) that tended to lead to the implementation of reduction-in-force. Outcomes consisted of 99 cases resulting in summary judgment for the school system, 40 cases where summary judgment was awarded to the employee, and 8 cases that resulted in summary judgment being awarded to both. Legal trends that were consistent included school systems being awarded summary judgment when it was determined they were following their reduction-in-force policy, they abided by the collective bargaining agreement if one had been established, and they acted in a manner that was not considered arbitrary, fraudulent, unreasonable, or based upon an erroneous theory of law. When this failed to happen, the trend was for summary judgment to be granted to the employee(s). The conclusion of the

study provided results that were used in developing guiding principles for school administrators to be aware of when developing and implementing reduction-in-force policy.

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CONTENTS

ABSTRACT	ii
ACKNOWLEDGMENTS	iv
LIST OF TABLES	x
I INTRODUCTION TO THE STUDY	1
Introduction.....	1
Statement of the Problem.....	2
Significance of the Problem.....	3
Statement of Purpose	4
Research Questions.....	4
Assumptions.....	4
Limitations	5
Delimitations.....	6
Definitions.....	6
Organization of the Study	12
II LITERATURE REVIEW	13
Introduction.....	13
Statutory Reasons for Reduction In Force	14
Enrollment Decline	14
Fiscal or Budgetary Basis	15
Reorganization or Consolidation of School Districts	18

Reduction in the Number of Teaching Positions	19
Curricular Changes	19
Other Good or Just Cause	20
Non-statutory Reasons for Reduction In Force	20
Collective Agreements.....	20
Bad Faith/Pretext	21
Order of Release	21
Tenure Status	22
Seniority	23
Inverse Seniority	23
Other Criteria	23
Scope of Bumping.....	25
Procedural Due Process	25
Notice and Reasons.....	25
Hearing.....	26
Recall Rights.....	26
Summary	27
III METHODOLOGY AND PROCEDURES.....	28
Introduction.....	28
Research Questions.....	29
Research Materials.....	29
Methodology.....	30
Digests.....	31

Reporters	31
Data Collection	32
Case Brief Method	33
Data Analysis	34
Summary	36
IV DATA PRODUCTION AND ANALYSIS	38
Introduction.....	38
Case Briefs	38
1984.....	38
1985.....	61
1986.....	105
1987.....	144
1988.....	167
1989.....	174
1990.....	185
1991.....	200
1992.....	209
1993.....	220
1994.....	240
1995.....	255
1996.....	262
1997.....	274
1998.....	283

1999.....	288
2001.....	291
2002.....	295
2003.....	301
2004.....	310
2005.....	316
2006.....	319
2007.....	331
2008.....	334
2009.....	341
2010.....	346
Data Analysis	350
V SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS.....	406
Introduction.....	406
Summary	406
Guiding Principles	413
Discussion.....	419
Conclusions.....	420
Recommendations for Further Study	420
REFERENCES	422

LIST OF TABLES

1 Cases350

2 Master Table355

3 State Breakdown368

4 Enrollment Decline379

5 Budgetary Restraints387

6 Consolidation/Reorganization.....396

7 Discontinuance of Position400

8 Curricular Changes404

9 Other Good and Just Cause.....405

CHAPTER I
INTRODUCTION TO THE STUDY

Introduction

In school systems across the country it is sometimes necessary to reduce the number of employees due to adverse circumstances. This process is known as reduction in force, also referred to as RIFing, lay-offs, or furloughing employees (Mawdsley, 2007). Although state statutes continue to be the main source of law pertaining to reduction in force, there are some non-statutory reasons that exist through collective bargaining agreements (Zirkel, 1983). The most frequent statutory reasons are enrollment decline, fiscal or budgetary restraints, consolidation or reorganization of school districts, reduction in the number of teaching positions, curricular changes, and other good or just cause (Zirkel 1983). In contrast, Alexander (1984) indicated that declining enrollment, financial exigency, and discontinuance of a service appear to be the causes of most reduction in forces. At times, closing schools is presented as a viable option based on results of lower maintenance and operational costs along with the need for fewer faculty and staff (Alexander, 1984). Nonetheless, the closing of school(s) can precede a reduction in force, but is not considered a circumstance leading to the reduction-in-forcing process. The closing of school(s) has a direct correlation to the circumstances previously mentioned and therefore is a result and not a cause. It is important to note for this study that reduction in staff, layoffs, or furloughing employees are synonymous terms that can be used in place of reduction in force.

Regardless of the circumstances leading to reduction in force, this is a difficult scenario for all individuals involved, from those that are responsible for making the decision to those that feel the effects personally. Reduction in force is nothing new to the business of public education and became prevalent when the population growth in the United States started declining in the 1970s (Rasmussen, 1979).

Statement of the Problem

As more and more school systems are forced to implement reduction in force, litigation over reduction in the number of professional personnel, as well as job security, will continue to increase. Therefore, there is a need for school administrators to develop a better understanding of the issues, outcomes, and legal trends resulting from litigation involving reduction-in-force policy implementation. Therein lies the problem. The literature review has demonstrated that there are few studies regarding reduction in force in general, and none that comprehensively look at how the courts have looked at reduction in force over an extended, specified period of time. The research problem for this study is therefore the absence of information concerning the issues, outcomes, and trends related to reduction in force of school personnel.

School systems across the country are not exempt from the huge task of balancing their budgets on a yearly basis. This task simply involves reducing expenditures or increasing revenues. This is not an easy endeavor, and given the country's current economic woes in addition to the economic decline over the past couple of years, this task can be rather daunting. With student enrollment declining along with funding, many school systems are being placed in the awkward position of having to make drastic cutbacks, which, in most cases, directly affects personnel. Given that as much as 85% or more of a district's operating budget is directly related

to compensating personnel, implementing a reduction in force might help balance an otherwise deficit budget (Cambron-McCabe, McCarthy, & Thomas, 2004). School systems find themselves at a crossroad not knowing which way to go. Because the necessary funding is no longer available, RIFing is implemented to cut costs but the litigation that often follows can prove to be even more costly. This common scenario serves as a no-win situation for everyone involved.

Significance of the Problem

There is a need for public school administrators to understand reduction-in-force policy in order to avoid costly and unnecessary litigation brought against their school system. In addition, this research can provide some guiding principles for school administrators during reduction-in-force situations. It is vital that administrators understand relevant court cases that address this issue.

Reduction-in-force provisions are often found in teacher tenure laws and statutes related to teacher employment (Zirkel, 1983). Other areas that contain vital information toward having a knowledgeable understanding of reduction in force are local collective bargaining agreements, case law, and administrative regulations (Alexander, 1984).

Understanding the seriousness of reduction in force and the devastating effects it can have on personnel and school systems, it seems crucial that public school administrators become knowledgeable about the laws and regulations pertaining to reduction in force. This is not an area where a slight understanding is sufficient, but in fact the lack of sufficient knowledge could prove to be very costly. In order to construct effective and appropriate procedures that fall in line with legal precedents regarding reduction-in-force policy and procedure, administrators at all

levels within a school system should be very clear on what can and cannot be done. Lack of knowledge and understanding could lead to litigation nightmares.

Statement of Purpose

The purpose of this research was to qualitatively study court cases over the past 27 years resulting from reduction-in-force implementation within public school systems across the country.

Research Questions

1. What were the issues in court cases about reduction in force occurring from 1984 through 2010?
2. What were the outcomes in court cases about reduction in force occurring from 1984 through 2010?
3. What were the trends that have developed in regard to reduction-in-force rulings from 1984 through 2010?
4. What legal principles for school administrators may be discerned from court cases about reduction in force from 1984 through 2010?

Assumptions

The study was based upon the following assumptions:

1. All of the relevant cases used in this study were reported in the West National Reporter System.

2. It was assumed all the court cases used had been adjudicated in compliance with existing local, state, and federal laws.

3. It was assumed that West editors accurately identified reduction-in-force cases in the Key number 345 (Schools) K147.10 (Abolition of position; reduction in staff).

Limitations

The following limitations are relevant and should be taken into consideration when reviewing this study:

1. This study was conducted by a student in the educational leadership program at The University of Alabama and not a licensed attorney. The student received training in education leadership and not in educational law. While an attorney is trained to seek a precedent or persuasive particular case to inform his/her practice, an educator working as a qualitative researcher seeks meaning from a mass of data.

2. Qualitative research innately emphasizes the biases of the researcher. Every effort was made by the researcher to minimize and eliminate the effect of any researcher bias.

3. Court cases reviewed are those categorized under West key number 345 (Schools) K147.10 (Abolition of position; reduction in staff) from the years 1984 through 2010 and were subject to the West editor's personal views.

4. The Westlaw digests and reporters are subject to editorial opinion and the possibility of error.

Delimitations

The following delimitations are relevant and should be taken into consideration when reviewing this study:

1. The cases reviewed for this study represented litigation that resulted from reduction-in force implementation in public school systems across the country from 1984 through 2010.
2. The study was limited to K-12 public educational institutions. Cases that involved private schools and universities were not addressed.
3. All cases used in this study were limited to those heard at state courts, federal district court, federal appellate court, and the United States Supreme Court levels.
4. The study does not include a legal examination of reduction-in-force policy and implementation absent from the public school environment.
5. The guidelines and principles suggested were based upon themes, patterns, and trends found in court opinions accompanied by legal commentaries and other analysis to support the findings.

Definitions

The legal and educational terms used to establish ideas in this study are defined as follows:

Abeyance: “Temporary inactivity or suppression: cessation or suspension for a period of time” (Merriam-Webster, 1996, p. 2).

Acquiesce: “To accept, comply, or submit tacitly or passively” (Merriam-Webster, 1996, p. 10).

Abolish: “To end the observance or effect of” (Merriam-Webster, 1996, p. 2).

Amicus curiae: “One that is not a party to a particular lawsuit but is allowed to advise the court regarding a point of law or fact directly concerning the lawsuit” (Merriam-Webster, 1996, p. 25).

Appeal: “A proceeding in which a case is brought before a higher court for review of a lower court’s judgment for the purpose of convincing the higher court that the lower court’s judgment was incorrect” (Merriam-Webster, 1996, p. 28).

Appellant: “A person or party who appeals a court’s judgment” (Merriam-Webster, 1996, p. 28).

Appellee: “The party to an appeal arguing that the lower court’s judgment was correct and should stand” (Merriam-Webster, 1996, p. 29).

Arbitrary: “Depending on individual discretion (as of a judge) and not fixed by standards, rules, or law” (Merriam-Webster, 1996, p. 30).

Arbitration: “The process of resolving a dispute (as between labor and management) or a grievance outside of the court system by presenting it to an impartial third party or panel for a decision that may or may not be binding” (Merriam-Webster, 1996, p. 31).

Attrition: “A normal loss of personnel, as by retirement” (Webster, 2002, p. 39).

Bona fide: “Made in good faith; without fraud or deceit” (Black, 2004, p. 186).

Breach of contract: “Violation of a contractual obligation by failing to perform one’s own promise, by repudiating it, or by interfering with another party’s performance” (Black, 2004, p. 200).

Bumping: “Displacement of a junior employee’s position by a senior employee” (Black, 2004, p. 208).

Case law: “Law established by judicial decisions in cases as distinguished from law created by legislation” (Merriam-Webster, 1996, p. 67).

Certiorari:

An extraordinary writ issued by a superior court (as the Supreme Court) to call up the records of a particular case from an inferior judicial body (as a Court of Appeals) – Certiorari is one of the two ways to have a case from a U.S. Court of Appeals reviewed by the U.S. Supreme Court. Certification is the other. The Supreme Court may also use certiorari to review a decision by a state’s highest court when there is a question as to the validity of a federal treaty or statute, or of a state statute on constitutional grounds. Certiorari is also used within state court systems. (Merriam-Webster, 1996, p. 72)

Collective bargaining: “Negotiations between an employer and a labor union usu. on wages, benefits, hours, and working conditions” (Merriam-Webster, 1996, p. 84).

Collective bargaining agreement: “An agreement between an employer and a labor union produced through collective bargaining” (Merriam-Webster, 1996, p. 84).

Common law: “A body of law that is based on custom and general principles and embodied in case law and that serves as precedent or is applied to situations not covered by statute” (Merriam-Webster, 1996, p. 88).

Continuance: “The postponement of the court proceedings in a case to a future day” (Merriam-Webster, 1996, p. 101).

Declaratory: “Serving to declare, set forth, or explain: as (a): declaring what is the existing law (b): declaring a legal right or interpretation” (Merriam-Webster, 1996, p. 124).

Defendant: “The party against whom a criminal or civil action is brought” (Merriam-Webster, 1996, p. 128).

De jure: “Existing by right or according to law” (Black, 2004, p. 458).

De novo: “Allowing independent appellant determination of issues” (Merriam-Webster, 1996, p. 132).

Due process: “A course of formal proceedings (as judicial proceedings) carried out regularly, fairly, and in accordance with established rules and principles” (Merriam-Webster, 1996, p. 152).

Estop: “Literally, to stop up” (Merriam-Webster, 1996, p. 170).

Evidentiary: “Being, relating to, or affording evidence” (Merriam-Webster, 1996, p. 173-174).

Exigent: “Requiring immediate aid or action” (Merriam-Webster, 1996, p. 179).

Financial exigency: “A significant decline in the Board of Education financial resources that is brought about by a decline in enrollment or by other action or events that compel a reduction in the school’s current operational budget” (McGhehey, 1981, p. 15).

Furlough: “A leave of absence from military or other employment duty” (Black, 2004, p. 698).

Federal courts: “A court established by the federal government and having jurisdiction over questions of federal law” (Merriam-Webster, 1996, p. 189).

Good cause: “A substantial reason put forth in good faith that is not unreasonable, arbitrary, or irrational and that is sufficient to create an excuse for an act under the law” (Merriam-Webster, 1996, p. 69).

Grievance: “A cause of distress (as an unsatisfactory working condition or unfair labor practice) felt to afford a reason for complaint or dispute” (Merriam-Webster, 1996, p. 217-218).

Holding: “A ruling of a court upon an issue of law raised in a case: the pronouncement of law supported by the reasoning in a court’s opinion” (Merriam-Webster, 1996, pp. 227-228).

Injunction: “An equitable remedy in the form of a court order compelling a party to do or refrain from doing a specified act” (Merriam-Webster, 1996, p. 246).

Inter alia: “Among other things” (Merriam-Webster, 1996, p. 253).

Just cause: “Cause that a person of ordinary intelligence would consider a fair and reasonable justification for an act used esp. in cases involving termination of employment and denial of unemployment benefits” (Merriam-Webster, 1996, p. 69).

Litigation: “The process of carrying on a lawsuit” (Black, 2004, p. 952).

Mandamus:

An extraordinary writ issued by a court of competent jurisdiction to an inferior tribunal, a public official, an administrative agency, a corporation, or any person compelling the performance of an act *usu. only* when there is a duty under the law to perform the act, the plaintiff has a clear right to such performance, and there is no other adequate remedy available. (Merriam-Webster, 1996, p. 304)

Mitigate: “To make less severe or intense” (Black, 2004, p. 1023).

Peremptory: “Permitting no dispute, alternative, or delay; not providing an opportunity to show cause why one should not comply” (Merriam-Webster, 1996, p. 359).

Petition: “A formal written request made to an official person or body (as a court or board)” (Merriam-Webster, 1996, p. 363).

Plaintiff: “The party who institutes a legal action or claim” (Merriam-Webster, 1996, p. 365).

Prerogative writ: “A writ granted as an extraordinary remedy at the discretion of the court in its jurisdiction over officials or inferior tribunals” (Merriam-Webster, 1996, p. 538).

Prima facie: “Sufficient to establish a fact or case unless disproved” (Merriam-Webster, 1996, p. 380).

Pursuant: “In compliance with; in accordance with; under” (Black, 2004, p. 1272).

Quash: “To make void” (Merriam-Webster, 1996, p. 401).

Relator: “A party other than the plaintiff upon whose information, knowledge, or relation of facts an action is brought when the right to bring the action is vested in another” (Merriam-Webster, 1996, p. 417).

Remand: “The act or an instance of sending something (such as a case, claim, or person) back for further action” (Black, 2004, p. 1319).

Remittitur: “A procedure under which a court may order the reduction of an excessive verdict” (Merriam-Webster, 1996, p. 420).

Respondent: “One who answers or defends in various proceedings” (Merriam-Webster, 1996, p. 430).

Set-off: “The reduction or discharge of a debt by setting against it a claim in favor of the debtor” (Merriam-Webster, 1996, p. 453).

Speculative: “Involving, based on, or constituting intellectual speculation” (Merriam-Webster, 1996, p. 464).

Statute: “A law enacted by the legislative branch of a government” (Merriam-Webster, 1996, p. 469)

Statutory law: “A law that exist in legislatively enacted statutes esp. as distinguished from common law” (Merriam-Webster, 1996, p. 470).

Substantive: “Of or relating to a matter of substance as opposed to form or procedure” (Merriam-Webster, 1996, p. 478).

Summary judgment:

Judgment that may be granted upon a party’s motion when the pleadings, discovery, and any affidavits show that there is no genuine issue of material fact and the party is entitled to judgment in its favor as a matter of law. (Merriam-Webster, 1996, p. 269)

Transfer: “To convey or remove from one place or one person to another; to pass or hand over from one to another, esp. to change over the possession or control of” (Black, 2004, p. 1536).

Trier of fact: “The judge in a bench trial or jury in a jury trial that carries the responsibility of determining the issues of fact in a case” (Merriam-Webster, 1996, p. 503).

Turpitude: “Inherent baseness or depravity” (Merriam-Webster, 1996, p. 509).

Writ: “An order or mandatory process in writing issued in the name of the sovereign or of a court or judicial officer commanding the person to whom it is directed to perform or refrain from performing a specified act” (Merriam-Webster, 1996, p. 538).

Organization of the Study

Chapter I served as an introduction to the study. A statement of the problem, the significance of the problem, the purpose of the study, the research questions, the definitions of operational terms, the limitations of the study, and the assumptions were included.

Chapter II contains a review of literature in the research area, which includes the history of public education and public education employment. Employment issues in public education will be addressed, which will lead into reduction-in-force policy and implementation.

Chapter III will describe the methodology and procedures utilized throughout the study. A thorough understanding of case research is outlined.

Chapter IV includes the case briefs, case analysis, and summary.

Chapter V includes the summary, conclusions, and recommendations for further research.

CHAPTER II

LITERATURE REVIEW

Introduction

Statements such as the following are becoming quite common in the field of education across the country, “Forty elementary teaching positions will be eliminated by Tucson Unified School District at the end of the school year because of declining enrollment and budget constraints” (US Fed News Service, 2008, p. 1).

School systems must operate their reduction-in-force policy with care and in an informed manner. People in our society are more likely to initiate litigation when they feel they have been wronged. Administrators within school systems need to be both careful and well-informed before making employment decisions that could come back in some form of legal action that has to be defended.

This literature review addresses the pertinent reasons for the implementation of reduction-in-force policy in school systems across the country. From a legal perspective there are both statutory and non-statutory reasons for reduction-in-force guidelines. Within the statutory component, the key issues that will be addressed are the effects of declining student enrollment within schools, financial exigency resulting in budget cuts and adjustments, the reorganization or consolidation of school districts, the reduction in the number of teaching positions, curriculum changes, and any other good or just cause. Within the non-statutory component, there are two key elements that will be addressed. These elements are collective bargaining agreements, and the legal concepts of bad faith and or/or pretext. This literature review also addresses issues

pertaining to employees once reduction-in-force policy has actually been put into action. These issues include the order of release, procedural due process rights, and recall rights. Within the order of release component, specific elements reviewed will be teacher tenure status, which encompasses teachers who have acquired tenure status or a property right in a position. Other elements include seniority, inverse seniority, other criteria, and scope of bumping. Within the procedural due process component, the elements reviewed will be notice, reason, and hearing.

Although there are numerous court cases over the past 27 years, the specific literature pertaining to reduction in force appears to be somewhat sparse. However, a thorough review of legal and educational resources on the topic of reduction in force is summarized in this chapter.

Statutory Reasons for Reduction In force

State statutes continue to be the main foundation of law when it comes to reduction in force (Russo, 2004). Although there might be numerous reasons, the most common statutory reasons are enrollment decline, fiscal constraints, reorganization and/or consolidation of school districts, reducing the number of teaching positions, changes in school curriculum, and other good or just cause (Zirkel, 1983).

Enrollment Decline

In 2003, the nation's fourth largest school district, Miami-Dade, received significantly less state aid based upon the district's shrinking enrollment. Almost 7,000 fewer students enrolled than was projected, costing the district approximately \$26 million. Minneapolis found itself in the same position after its enrollment was 1,400 fewer than anticipated, which attributed to it patching a \$26.8 million deficit (Gewertz & Reid, 2003).

In a Pennsylvania case, *Andresky v. West Allegheny School District* (1981), the state's statutory condition of a "substantial enrollment decline" as a reason for reduction in force was put to the test. An appellate court ruled that a reduction in the school district's population of 10% over a 5-year period was adequate to meet the statutory standard. Zirkel (1983) reported that previously recorded decisions in the cases of *Phillipi v. School District* (1977) and *Smith v. Board of School Directors* (1974) showed a 27% decline over a 6-year period and a 15.7% decline over a 10-year period, respectively, provided a range of enrollment declines in the state of Pennsylvania, indicating a consistency in the rulings.

When looking at other states' statutes regarding reduction in force, it becomes a little more complicated. For example, in the state of California there are two permissible reasons that fall under their statute. The first is a decline in average daily attendance and the second is the discontinuance of a particular kind of service. Previous cases within the state held that attrition must be considered when totaling the number of certified employees who can be released as a result of a decline in average daily attendance (Zirkel, 1983).

Fiscal or Budgetary Basis

Financial exigency takes place when a school district faces a bona fide reduction in its operating budget that results in the school system doing away with specific employment issues. Courts have typically supported school districts that reveal the need to reduce their teaching force when there is proof that a financial problem exists (Essex, 2008). In addition, Essex (2008) stated,

The courts, in supporting financial exigency, usually require school districts to demonstrate the following:

1. A bona fide financial crisis exists.
2. There is rational relationship between the benefits derived from dismissal and the alleviation of the financial crisis.
3. A fair and uniform set of due process procedures is followed in dismissal decisions.
(p. 290)

According to Gewertz and Reid (2003), if school finance has specific seasons, the current season would be very cold for school systems across the country. From coast to coast districts are being put in positions where they are forced to make painful budget cuts. As political and economic forces converge, the result is one of the deepest school budgetary crises in decades. Fortunately, some states have been able to find some compassionate alternatives to help support educators during the worst round of budget deficits since World War II (Winans, 2003).

Gewertz and Reid (2003) reported that Minneapolis, Minnesota, proposed to abolish 289 teaching positions and to increase class sizes in 2004 to close a projected \$28.6 million gap in its fiscal budget. Baltimore, Maryland, proposed furloughing all 12,000 of its school system's employees for several days to make up for a projected \$31 million deficit. Because union opposition to this proposal was so strong, it instead took 3 or more unpaid days from 30 of its top administrators. Portland, Oregon, weighed the possibility of reducing the school year by 9 days. Austin, Texas, projected it might have to eliminate as many as 450 full-time and part-time teachers from its payroll to close a \$59 million gap in its next year's budget. San Diego, California, after huge statewide cutbacks were implemented, cut an additional \$47 million from its budget only months after slashing it by \$10 million. The result of this reduction eliminated 239 non-teaching positions. Los Angeles, California, found itself in an awkward position by having to reduce its \$10 billion dollar budget by \$240 million for 2 consecutive years. Their proposal was to increase class size and make drastic cuts in administration and other programs. Alameda Unified School District in California decided that it would do without educators and

issued reduction-in-force notifications to all 635 teachers (Winans, 2003). Seattle, Washington, made adjustments to cut its \$443 million budget by \$12 million by paring back on administrative personnel and services while also reducing professional development across the system, eliminating 10th grade summer school and the purchase of any additional or new textbooks. Boston, Massachusetts, while preparing for a \$100 million budget shortfall, asked all principals to cut their 2003-2004 building budgets by 10% in addition to the district making class sizes larger, consolidating schools, and laying off staff (Gewertz & Reid, 2003).

Two important cases decided prior to 1980 illustrated two key lessons in reference to reduction-in-force policy based upon fiscal or budgetary basis (Zirkel, 1983). In a Pennsylvania case, *Theros v. Warwick Board of School Directors* (1979), the appellate court reversed a previous decision where a business educator had been suspended based on the school board's right to release employees based upon reasons of economy. The appellate court pointed out that the governing statutes specified three reasons for reduction in force but none of which included fiscal grounds. The court ordered that a more specific statement of reason be provided and that a hearing be conducted where teachers had been suspended under the statute of "program reorganization" where only "declining enrollment" had been specified as a reason. Zirkel (2003) stated, "The lesson from this case is that if the state statute expressly enumerates proper reasons, they should be strictly followed" (p. 176).

In a Missouri case, *Frimel v. Humphrey* (1977), the appellate court held that a local board of education had legally fulfilled its duty when it placed 10 non-tenured teachers on leave because its statute specifically specified that "insufficient funds" was a reason for reduction in force. "Thus, as in the college and university sector where reduction in force is commonly

referred to as ‘fiscal exigency,’ courts tend to give local authorities the benefit of the doubt” (VanGieson & Zirkel, 1981, pp. 39-40).

Reorganization or Consolidation of School Districts

It is important to remember that when a reorganization is the primary reason for a RIF, and not consolidation, teachers can look for protection in a strict interpretation of the statute being enacted (Zirkel, 1983). Such was the case of *Lake Lehman School District v. Cigarski* (1981) when the Pennsylvania Supreme Court, who was divided equally in their votes, upheld the return of four teachers, two full-time and two part-time, who had been removed from their duties during a discretionary reorganization across the district. It was determined by the court that the reorganization did not qualify as a curricular revision or a required reorganization as is specified in Pennsylvania’s statute (Zirkel, 1983).

When consolidation of school districts serves as the key component in creating a new school district, the question most often at hand is whether or not teacher(s) who have acquired tenure in the former district carry it with them to the new district (Zirkel, 1983). Often state statutes attempt to provide a clear solution to this dilemma, but courts have on various occasions failed to come to a majority consensus in cases where there is ambiguity. An example of this was *Hensley v. State Board of Education* (1962) where the New Mexico Supreme Court interpreted a previous version of the state’s present statute to imply that the consolidated school district was a continuation of the constituent districts that required the teachers’ tenure rights to be honored (Zirkel, 1983). In contrast to this ruling, Zirkel (1983) also referenced *Beckett v. Roderick* (1969) where the Maine Supreme Court ruled that a new regional school district was created by special legislation and not by the general laws of the state. More specifically, the court determined that

because a school was closed for the purpose of not meeting state standards causing pupils to be sent to other school districts, tenured teachers involved in the move had no carryover rights unless the receiving school districts agreed to accommodate.

Reduction in the Number of Teaching Positions

The barring of teaching positions as an underlying principle for reduction-in-force implementation can be very unclear in statutes that specifically specify it as its basis (Zirkel, 1983). Zirkel (1983) reported that a case in Maine served as an example of this when a local school board voted to limit its systems budget for the upcoming academic year to a two mill increase that ultimately resulted in the elimination of two teaching positions within the district.

According to Zirkel (1983), results have a tendency to vary across statutory jurisdictions, in general,

Courts tend to accept the board's purported abolition of a position where the duties were largely redistributed to existing personnel; but they have looked with disfavor when the duties are allocated in the form of one or more functionally equivalent new administrative positions. Similarly, courts have tended to look with disfavor on the elimination of teachers' positions when new teachers are hired for suspiciously similar positions. (p. 8)

Curricular Changes

When it comes to the area of litigation involving curriculum changes within a district or school, California appears to have the lead. California's statute provides that the reduction and or the discontinuance of particular kinds of services can serve as a legitimate reason for RIF (Zirkel, 1983).

Other Good or Just Cause

As the term “other good or just cause” implies, this could cover a vast array of implications. This term appears to be a “catchall” provision found in many state statutes and has been the basis for many, ongoing litigations (Zirkel, 1983, p. 9). Over the years, courts have had a tendency to interpret such phrases very broadly as was the case in *School Community of Foxborough v. Koski* (1979). In this case the Massachusetts Court of Appeals determined that a school committee held the power under the statute’s “good cause” provision to do away with a physical education teacher’s position on fiscal grounds (Zirkel, 1983).

Non-statutory Reasons for Reduction In Force

Collective bargaining agreements serve as the main non-statutory reason for reduction in force. Zirkel (1983) reported that courts across the country have made it very clear that they will not stand for school boards who use reduction in force as a fabricated excuse for letting teachers go.

Collective Agreements

There are many states that allow collective bargaining agreements within their reduction-in-force policies. However, the terms and conditions, as with any law, need to be very specific. A collective bargaining agreement designed for a school system in the state of Michigan allowed a reduction in staff in the incident of a loss in financial resources. In the case, *Port Huron Area School District v. Port Huron Education Association* (1982), the state court of appeals interpreted reduction in financial resources as not to be coexistent with the reduction in a projected surplus of the district but only applied to a deficit in revenue (Zirkel, 1983).

Some states have laws that are very specific in barring any type of collective bargaining in reduction-in-force decisions (Thomas, McCabe, & McCarthy, 2009). Collective bargaining plays a key role in the RIF process, which, in turn, plays a significant role in how RIF decisions are made (Collins & Nelson, 1983).

Bad Faith/Pretext

It is a difficult situation at best for a court to prove pretext. In this circumstance, a court does not search out impermissible motives if there appears to be adequate evidence supporting the stated permissible reasons (Zirkel, 1983). For instance, the Supreme Court of North Dakota in *Reed v. Edgeley Public School District* (1981) stated the following, “[Our precedent] requires only that the reasons for non-renewal be sufficient to justify the contemplated action. That there may be other additional reasons for non-renewal is immaterial” (Zirkel, 1983, p. 10). This ruling was in response to a teacher’s claim that the true reason for his non-renewal was based on the board’s personal resentment of him and not because of a declining enrollment and diminishing funds.

Order of Release

At the point a bona fide reason for reduction in force has been determined by a school district, the next step that must be performed is the order of release in which employees will be let go. Some statutes clearly provide the order in which this process should take place in regard to tenure, seniority, or other criteria.

Tenure Status

The teacher tenure statute serves as the primary substantive restraint on RIFs. Collins and Nelson (1983) stated that a statute's main purpose is to "maintain an adequate and competent teaching staff, free from political or arbitrary interference, whereby capable and competent teachers might feel secure, and more efficiently perform their duty of instruction" (p. 250). Many tenure statutes stipulate that charges involving disciplinary reasons for an employee's dismissal must be substantiated. If this is the case, it could be argued that teacher tenure statutes do not apply to layoffs based on reduction-in-force policy (Collins & Nelson, 1983).

Because of financial hardship and student enrollments declining and not increasing, many school districts have had to implement staff reductions through their RIF policies. Unfortunately, staff reductions have become a threat not only to non-tenured teachers but tenured teachers as well (Thomas et al., 2009). However, in cases involving reduction in force between tenured and non-tenured teachers where the statute is unclear, the vast majority of courts have accorded tenured teachers precedence over their non-tenured counterparts (Zirkel, 1983). It is important to note that the trend favoring tenured teachers needs to be clearly stated in the statute being used. A school board in the state of South Dakota recognized a policy in which priority was given to those teachers on a continuing contract over those on a non-continuing contract. When a teacher who had obtained 11 years of service was released from her math position and was replaced by a non-continuing contract teacher, the state supreme court ruled that the school board failed to support the exception with adequate verification (Zirkel, 1983).

Seniority

Seniority-based layoffs seem to be the norm for the public education profession.

Sawchuk (2009) stated,

According to a database maintained by the National Council on Teacher Quality, a Washington-based group that advocates stronger state teacher quality policies, all but five of the nation's 25 largest school districts follow seniority-based layoff policies set by contracts or state law. And all but one of those five is located in a right-to-work state without mandatory collective bargaining for teachers. (p. 12)

More often than not, layoffs are enforced based on the affected teachers' certification area(s). For example, if a school system needs to cut back on the number of high school social studies teachers it is employing, it begins by cutting from the bottom of the high school social studies seniority list until the budget cuts that are needed are met.

Inverse Seniority

Unlike the trend favoring tenured teachers over non-tenured teachers, courts have not noticeably moved to interpret inverse seniority into statutes that are quiet on the topic and have refused to carry over the seniority standard of reduction-in-force statutes involving cases of teacher transfer and teacher demotion (Zirkel, 1983).

Other Criteria

In 1979 the state of Pennsylvania changed its statute to abolish the merit portion of a seniority-plus-merit formula that had up to that point been used to determine the order in which teachers would be laid off. Under the original formula, both seniority and merit were quantitatively combined when there existed a considerable difference in teacher efficiency

ratings. On the other hand, seniority was used in isolation when no considerable difference in ratings was evident (Zirkel, 1983).

The state of Oregon's statute required the board, before implementing a RIF, to make every attempt to transfer teachers to other positions they were qualified to serve by using both seniority and merit to make their decision. For example, in *Cooper v. Fair Dismissal Appeals Board* (1977), the state's intermediate appellate court decided the board failed to meet its obligation when it retained a teacher who had factual, but not legal qualifications, while dismissing a permanent teacher with legal qualifications. The plaintiff/teacher had acquired certification in the area of industrial arts but was limited to only teaching woodworking and drafting, which were two areas experiencing a decline in enrollment. The retained teacher who had less seniority than the plaintiff had obtained college training along with teaching experience in mechanical industrial arts courses. At the time, these courses were fully enrolled but the retained teacher only had acquired certification in the area of social studies. However, seniority prevailed in this case where merit was conceivably factual, but not legal (Zirkel, 1983).

In the state of Iowa, the case *Von Krog v. Board of Education* (1980), both seniority and merit were implemented in a reduction-in-force provision where there existed a collective bargaining agreement. This provision stated that the teacher who was least qualified was to be the first released from their duty except in situations where teachers had equal qualifications. In this situation, the teacher with the least seniority in the affected area was to be released first. The appellate court later upheld the board's judgment in defining qualifications objectively by attributing points to years of experience and training. This allowed seniority to play a partial role in the merit step along with the exclusive role in the second step of the contractual progression (Zirkel, 1983).

Scope of Bumping

Zirkel (1983) stated, “Bumping rights are typically limited to the area(s) in which the affected teacher is qualified” (p. 13). In addition to legal qualifications, another problem is whether boards possess a duty and to what extent this duty allows them to realign their staff to appropriately bring about bumping rights. Along with this is the matter pertaining to the relationship between reduction-in-force requirements and affirmative action mandates (Zirkel, 1983).

Procedural Due Process

School districts should only enforce reduction-in-force policies if they ensure that substantive and practical due process requirements pertaining to school personnel are met (Essex, 2008). In order for the requirements to be met there are three issues that must be considered, “why,” “who,” and “how.” Most states provide some form of statute regarding procedural due process for educational personnel who are to be laid off. This usually consists of a proper notice and the employee’s right to a hearing (Zirkel, 1983). Because these provisions are usually found in tenure statutes or administrative procedure acts, and not RIF policies, it is important to determine whether or not the statutory due process requirements apply to RIF and whether or not the due process clause of the Constitution provides shelter in these circumstances (Zirkel, 1983).

Notice and Reasons

Lack of statutory agreement has appeared in cases concerning proper notice (Zirkel, 1983). Wisconsin’s Supreme Court established that both the notice and timing of layoffs had to be bargained because they were directly related to the employee’s best interest and had an impact

on wages and job security (Thomas et al., 2009). In a Michigan case, *Dailey v. Board of Education* (1983), the court of appeals ruled that the state's fair dismissal act that requires a non-tenured teacher receive a notice of unsatisfactory service a minimum of 60 days prior to the non-renewal did not apply to the non-tenured teacher based entirely on economic grounds (Zirkel, 1983).

Hearing

In the state of Nebraska, NESAs (Nebraska State Education Association) represents all of its members at RIF hearings. District administrators are required to provide written RIF criteria and prove that a change in circumstances has taken place, or will take place, that justifies an employee's RIF (Winans, 2003).

Recall Rights

Thomas et al. (2009) reported that the Supreme Court of South Dakota held to the decision that the procedures of how staff would be selected during the recall process were negotiable.

Many teachers now have recall rights that usually last up to one year from the time they were released. Based upon this actuality, the issue arises as to whether or not the layoff has the conclusiveness normally associated with the term dismissal or termination (Collin & Nelson, 1983).

Summary

Reduction in force is governed by state law and usually, in school systems where unions are present, by terms of collective bargaining contracts that have been established and must be followed. The implementation of a school system's reduction-in force policy can be carried out effectively when followed accurately in regard to state statute and the collective bargaining agreement if in a state where this exists. Court decisions regarding reduction in force will affect how school administrators design and implement reduction-in-force policies to insure it is done in a manner that does not infringe upon an employee's rights. School administrators need to become knowledgeable when dealing with the implementation of reduction-in-force policies. Adequate training in the area of legal issues that arise from the implementation of reduction-in-force policies is a need for dealing with and trying to avoid litigation that can occur. Reviewing current case law as it pertains to reduction in force will provide this information.

From a study of literature, although limited, the issues regarding reduction-in-force implementation is debated in court systems across the country. These issues consist mainly of enrollment decline, financial exigency, and failure to follow collective bargaining agreements that have been developed. There is a need for research regarding case law to address these issues so that future litigation in the area of reduction in force can hopefully be avoided. Trends in court cases will be examined in an effort to provide school administrators with the procedures and guidelines that need to be followed to insure the proper development and implementation of reduction-in-force policies in public school systems across the country.

CHAPTER III

METHODOLOGY AND PROCEDURES

Introduction

This study was a document-based qualitative study that was historical in nature and embedded in the review of case law. The cases evaluated pertained to reduction-in-force implementation in K-12 school districts across the country. The time period involved was a 27-year span ranging from 1984-2010. This timeframe was used in order to analyze a significant number of cases and to achieve a thorough interpretation and understanding of case law involving reduction in force.

Both primary and secondary source materials were used throughout this study. Published federal and state court decisions served as the foundation for the primary source materials used in this study. Secondary source materials included both educational and legal journals. By using a combination of both sources, the researcher was able to conduct the study in the appropriate legal and historical framework.

The court decisions during this timeframe, 1984-2010, provided important data that specified legal trends in court decisions across the country. Furthermore, these trends offered insight into the future of educational legal issues facing employees and school systems when reduction-in-force policies are put into action. Hopefully, the insight gained from this study will provide school administrators additional knowledge in confronting future legal issues related to reduction in force as well as avoiding potential litigation.

Research Questions

1. What were the issues in court cases about reduction in force occurring from 1984 through 2010?
2. What were the outcomes in court cases about reduction in force occurring from 1984 through 2010?
3. What were the trends that have developed in regard to reduction-in-force rulings from 1984 through 2010?
4. What legal principles for school administrators may be discerned from court cases about reduction in force from 1984 through 2010?

Research Materials

The materials used in this study included cases from 1984-2010 that were held at the United States Supreme Court, United States Courts of Appeals, United States Federal District Courts, and the state appellate courts. During this timeframe, there were approximately 147 cases dealing with the issue of reduction-in-force implementation in K-12 public school systems. These cases were not specific to one area of the United States but encompassed cases across the entire country. However, specific regions of the country were more involved in litigation due to the involvement of teacher unions and collective bargaining agreements aiding the cause of disgruntled employees. Other areas that experienced more of a decline in student enrollment and financial exigency saw more litigation as well.

Educational and legal periodicals were used to understand the historical perspective of reduction-in-force policy and implementation. Other scholarly articles, law books, and legal

dissertations were also used to gain a better understanding of reduction-in-force policy as it had been implemented in school systems across the country.

Methodology

An analysis of court cases from 1984-2010 decided by the United States Supreme Court, United States Courts of Appeals, United States Federal District Courts, and state appellate courts was researched for this study. Some court cases before this time period were used in the historical context of reduction-in-force implementation and litigation. Other materials used were law reviews, legislative studies, scholarly articles, and legal references.

The overall purpose of this qualitative study was to provide meaningful and appropriate insight to school administrators in regard to how the courts have ruled over the past 27 years in reduction-in-force cases involving K-12 public school systems across the country. Qualitative research serves as a proficient process when answering questions about specific contexts and is well-suited to comprehend new theories that might be developed (Gay & Airasian, 2003). Merriam (1998) believed that qualitative researchers are interested in how groups or individuals have constructed meaning and how these groups or individuals make sense of the world they live. It is through qualitative research that the researcher is allowed to be free from preset categories of analysis and to seek case studies in order to analyze them with a sense of depth, openness, and detail (Patton, 1990). The researcher reviewed court cases using a case study method while conducting the research. Cresswell (1998) described a case study as an explanation of a case over a period of time where data collection is taken from several sources of contextual information. When case law is studied over a period of time in an effort to describe events, causes, effects or trends, historical qualitative research is established (Gay & Airasian, 2003).

This form of historical analysis is helpful in gaining knowledge on a previously unexplained topic while also examining questions that do not have definite answers (Marshall & Rossman, 1995).

Digests

To obtain information for this study, the West's Education Law Digest System was used. This system served as an invaluable resource based on its many issues related to law and education. Each specific topic found within the digest contains numerous court cases pertaining to that specialization. The topic the researcher selected for this study was West key number Schools 147.10 (Abolition of position; reduction in staff).

The West's Education Law Digest system was instrumental in deciphering data that were relevant to this study. After identifying the key number Schools 147.10 (Abolition of position; reduction in staff) in the digest, the researcher then concluded that there were more than 100 cases pertaining to this topic, which was more than an adequate amount of information to start and complete the study. These cases served as the foundation for this research study. The West's Education Law Digest also provided, with the identifying key number, a brief description of the case, which proved to be very helpful in the research process. In addition to this description, the digest placed all the cases in chronological order starting with the highest and moving to the lowest court to rule in the case.

Reporters

Closely aligned with the West's Education Law Digest is the West's Education Law Reporter that is also made available through the West Publishing Company. Specifically, the

reporter contains cases that have been decided between 1982 and the present. Within the reporter system these cases are divided into one of seven geographic regions. A key feature of the reporter system is that it contains a complete analysis of each case, the opinion of the court, an applicable summation, and notes of each case. By providing this information, West's Education Law Reporter was equipped to provide the researcher with a thorough understanding of the relevant issues and decisions in each individual case.

Once the cases pertaining to reduction in force were located from the West's Education Law Digest, each case was then located by the case citation in the West's Education Law Reporter. The timeframe included in this study was all the cases decided from 1984 to 2010. The opinions of the courts during this timeframe provided the data for this qualitative study. Considering this, each case was meticulously reviewed and analyzed to decipher legal issues, trends, and outcomes that could emerge from the data to provide the researcher with answers to the research questions pertaining to this study.

Data Collection

The research for this study was obtained and collected in a variety of venues. Most of this research took place at the law library on the campus of Georgia State University in Atlanta. Research was also conducted in the law library and educational library on the campus of the University of Georgia in Athens. Being a student at The University of Alabama and residing in Georgia made physical research at The University of Alabama difficult. Therefore, the Alabama Virtual Library was very useful in providing access to various websites and databases that were used to obtain information for this study. Other sources used in collecting data for this study were the WESTLAW computerized research system, the West's Education Law Digest, and

West's Education Law Reporter. This allowed the researcher to perform a thorough examination of court cases regarding reduction-in-force policy in public school systems across the country.

Case Brief Method

Each case in this study was briefed and analyzed using a consistent and standard form of analysis. This form of analysis was provided by Statsky and Wernet (1995) in their book *Case Analysis and Fundamentals of Legal Writing*. Statsky and Wernet (1995) stated that case briefs serve as a viable method when analyzing the opinions of the court and help in comprehending the findings. Case briefs also serve as a qualitative method to interview the judge presiding in each case via the written opinion of the court. Each case reviewed allowed the researcher the opportunity to both read and analyze the case by breaking down the court's opinion into six specific categories. These categories included case citation, key facts, issue(s), holding(s), reasoning, and disposition. By following this format, the researcher was permitted to dissect the opinion of the court and put it into a more structured and condensed format. The outline for the case analysis in this study is as follows:

1. Citation: "Identifying information that will enable you to find a law, or material about the law, in a law library" (p. 450).
2. Key facts: "A fact that is essential to the court's holding. A fact that would have changed the holding if that fact had been different or had not been in the opinion" (p. 453).
3. Issue(s): "A specific legal question that is ready for resolution" (p. 452).
4. Holding(s): "The answer to a legal issue in an opinion; the result of the court's application of one or more rules of law to the facts of the dispute" (p. 452).

5. Reasoning: “The explanation of why a court reached a particular holding for a particular issue” (p. 455).
6. Disposition: “Whatever must happen in the litigation as a result of the holdings that the court made in the opinion” (p. 128).

After each case was briefed for this study the researcher analyzed the information for data trends in the area of reduction-in-force implementation in K-12 public schools. Given the results of this data, legal issues, outcomes, and trends were developed from the case briefs in an effort to provide effective guidelines for school administrators.

Data Analysis

As previously stated, this research study was a qualitative study combined with a historical research perspective. This study consists of the researcher addressing the research questions by identifying themes, trends, and specific patterns that evolved as a direct result of the interpretation of the cases reviewed. The decisions from the cases reviewed in this study served as qualitative interviews. The results of the interviews were then categorized. This type of data collection and analysis is what Merriam (1998) referred to as “a simultaneous activity in qualitative research that begins with the first interview, the first observation, or the first document read” (p. 151). In order to conduct a true case study, Cresswell (1998) suggested analyzing the chronology of events in order to establish the evidence in each of the phases. This type of data analysis allows the researcher to expand upon findings that are both realistic and dependable. At the point that all the data have been collected, it is then that a concentrated analysis can take place as the research continues.

Case briefing was used as the process of developing categories and finding common occurrences in the study (Marshall & Rossman, 1995). In an effort to comprehend new meanings about cases, Stake (1995) encouraged the use of categorical generalization, direct interpretation, correspondence and pattern, and naturalistic generalization. Categorical aggregation is defined as “finding sums or distribution of coded data” (p. 169). Direct interpretation is defined as “drawing key meanings even from a coded event” (p. 170). Correspondence and pattern is defined as “the search for consistency in patterns and consistency in certain conditions” (p. 78). Naturalistic generalization is defined as “interpretation based largely on experience” (p. 172).

Once the case briefs in this study regarding reduction in force over the 27-year period, 1984-2010, were read and researched, specific variables for analysis were identified. The following procedures were then used to analyze the data:

1. Demographic data were acknowledged so that cases could be categorized by the year in which they were decided and then they were placed in alphabetical order.
2. The cases were also placed into specific categories by the area of litigation involved in the case.
3. After the cases were categorized by area of litigation, each case was notated with the party that prevailed at the last court level hearing the case. Although the party that was awarded summary judgment is not necessarily significant to this study, the reason behind why summary judgment was awarded is paramount, especially in cases where the school system was found to be at fault.
4. A list of cases was assembled during the categorization process that identified the key issue(s), holdings, and outcome.

Axial coding, the process of finding and determining relationships between categories and subcategories (Pandit, 1996), was also used in analyzing the data found in this qualitative study. The purpose of using the axial coding process was to discover how categories relate to subcategories in reference to properties, dimensions, and incidents (Strauss & Corbin, 1998). In addition, this specific type of coding aided the researcher in accurately determining what themes, trends, and patterns existed within the cases reviewed during the 1984 -2010 timeframe.

For purposes of this study, the case briefs and the decisions of the courts were analyzed at length to determine what legal trends existed in the area of reduction-in-force litigation. Because of the huge number of cases being briefed for this qualitative study and the increased potential for researcher bias to be evident, it is possible for questions of validity to be raised about the data collected (Gay & Airasian, 2003). Although it is common for events that occurred in the past to be “interpreted” through the eyes of the researcher (Gall, 2003), it is important for the researcher to examine the data before coming to any conclusions.

Summary

It is imperative for school administrators at all levels to understand and be cognizant of the liability issues surrounding them in reference to reduction-in-force policy and implementation. The cases briefed in chapter IV of this study aided the researcher in identifying specific patterns and trends that have developed over the past 27 years. These patterns and trends were based upon the analyses of the holdings from the United States Supreme Court, the United States Courts of Appeal, the United States District Courts, and the state appellant courts. From these patterns and trends the researcher hopes that problem situations can be identified more

readily in an effort to foresee potential litigation issues regarding reduction in force and remain out of court.

CHAPTER IV

DATA PRODUCTION AND ANALYSIS

Introduction

This chapter provides a description of 147 court cases that dealt with reduction-in-force policy within public school systems across the country. The data included cases from *Gill v. Dutchess County Bd. of Co-op. Educational Services*, 472 N.Y.S.2d 435 (1984) through *Perrea v. Cincinnati Public Schools*, 709 F.Supp.2d 628 (S.D. Ohio. W. Div., 2010). The cases encompassed suits that transpired over a 27-year period from 1984 through 2010. Each case was analyzed according to Statsky and Wernet's (1995) format as described in the book, *Case Analysis and Fundamentals of Legal Writing*. The cases are listed in chronological order, alphabetized within the year, and include the case citation, key facts, issue(s), holding(s), reasoning, and disposition.

Case Briefs

1984

Citation: *Gill v. Dutchess County Bd. of Co-op Educational Services*, 472 N.Y.S.2d 435 (N.Y.App.Div.2.Dept., 1984).

Key Facts: Petitioner Gill, an employee of the Dutchess County Board of Cooperative Educational Services (BOCES), taught a class of six hearing-impaired students. Five of these students were from the Wappingers Central School District and one was from the Arlington Central School District. Petitioner Robinson, also from the BOCES, taught educable mentally

retarded students. Although petitioners claimed that she taught students from the Pine Plains and the Red Hook Central School Districts, respondent insisted that she taught only students from Red Hook. Neither petitioner had the most or the least seniority in their own tenure areas. In the spring of 1982, both the Wappingers Central School District and the Red Hook Central School District informed the BOCES that they would withdraw their programs from the BOCES and conduct the programs within their own district. The BOCES deemed these actions as “takeovers.” In separate letters dated May 14, 1982, BOCES advised Gill that she would be a teacher in the Wappingers Central School District and advised Robinson that she would be a teacher in the Red Hook Central School District, both effective September 1, 1982. Both Gill and Robinson were informed that they would maintain their same tenure status as they had at BOCES.

Issue: At issue is whether teachers who are employed by BOCES in programs that are taken over are then automatically dismissed by BOCES and transferred to the employment of the takeover district regardless of seniority.

Holding: The Supreme Court of New York found that under N.Y. Education Law 3014-b that the takeover of specific programs from the employer by school districts did not automatically result in the transfer of displaced employees to the school districts taking over the programs. It was still the employer’s responsibility to comply with procedures for handling displaced employees and in this case they failed to do so.

Reasons: The respondent in this case stated that the facts of this case were practically identical to the facts of *Koch v. Putnam-Northern Westchester Bd. of Coop. Educational Services*, (98 AD2d 311). In this case, the argument was rejected that BOCES teachers, who were employed in a displaced program, are automatically dismissed by BOCES and transferred

to the employment of the takeover district by law. The respondent held that the seniority protections afforded to employees by section 2510 of the Education Law mandates that when BOCES was required to do away with positions as a result of the program takeover, it was required to discontinue the services of teachers having the least amount of seniority within the tenure area of the position that had been abolished. If, on the other hand, the number of teaching positions needed by the districts to maintain the program was less than the number of teachers eligible to be considered, then pursuant to subdivisions 2 and 4 of section 3014-b, those teachers who had been dismissed from their duties would be placed on a chosen list of candidates for appointments to future vacancies as they became available.

Disposition: The Supreme Court of New York, Appellate Division, Second Department, reversed the trial court's judgment and reinstated the appellant's claim.

Citation: *Haskell v. School Committee of Framingham*, 461 N.E.2d 251 (Mass.App., 1984).

Key Facts: Miss Haskell was first employed by the school in September 1968 as a middle school typing teacher in the area of business education. She had been employed in the Framingham school system for 11 years as well as other school systems. By 1979 she had been employed long enough to be a contributing member of the teacher's retirement fund for more than 20 years. In August, 1979, the superintendent of the Framingham schools, Dr. Benson, notified Miss Haskell by letter that at a school committee meeting to be held on October 9, 1979, he was going to recommend to the committee that she be terminated due to the elimination of the teaching position she filled. At this meeting, Dr. Benson presented that this termination resulted from an earlier meeting in December 1978, where the committee had determined to discontinue the eighth grade typing program that would eliminate four positions including that of Miss

Haskell's. At the October 9 meeting it was also revealed that Dr. Benson and his staff had considered the possibility of transferring Miss Haskell to the high school to do commercial teaching. However, it was a unanimous decision that Miss Haskell had not had the training in the last 10 years that would enable her to displace an already tenured person teaching in the position. Dr. Benson's recommendation was accepted by a five to one vote, which was more than a two-thirds vote of the whole committee. On October 12, 1979, Dr. Benson presented to Miss Haskell her notice of termination that would take effect on October 31, 1979, due to the elimination of her position.

Issue: At issue is whether, after dismissal for budgetary reasons from which an appeal has been taken, does failure to give notice to the teacher's retirement board invalidate the dismissal. .

Holding: The case was heard de novo in the Superior Court of Massachusetts by a District Court judge sitting in statutory authority. The judge found that the school committee had complied with the procedural requirements of G. L. c. 71, 42 and that the dismissal was for "good cause." The judge also found that Miss Haskell was neither discharged or removed, but was on a leave of absence in a non-paid status with an important right of recall. The trial judge apparently thought that this right was enclosed in the collective bargaining agreement that was in force at that time.

Reasons: The action of the school committee in December 1978 that eliminated funding for Miss Haskell's position, as well as terminating her employment in October 1979, was a complete separation for good cause. The recall provisions of the collective bargaining agreement did not indicate such a definite likelihood of employment. It appeared that the abolishment of the middle school typing position was a matter of budgetary concern. In *Boston Teachers Local 66 v. School Committee of Boston*, 386 Mass. 197, 216, thereafter referred to as the "B.T.U. case," it

was held that the notice and hearing requirements did not apply to dismissal of tenured teachers completely because of budgetary reasons. The collective bargaining agreement provided that in the event of a reduction in force, all affected teachers would be eligible to apply for recall to fill any vacancy that became available provided they were still on the recall list within a 2-year period after they were laid off.

Disposition: The Appeals Court of Massachusetts affirmed the trial court's decision of upholding the school committee's dismissal of teacher.

Citation: *Hockney v. School Committee of Lynn*, 747 F.2d 50 (C.A.1.Mass., 1984).

Key Facts: The teacher plaintiff, Karen Hockney, sought a review of a judgment of the United States District Court for the District of Massachusetts. On appeal she contended that she was denied her constitutional rights to due process and equal protection when the defendant school committee laid her off. Ms. Hockney claimed that the defendant school committee violated her constitutional rights to due process and equal protection as well as her contractual rights under a collective bargaining agreement when she was laid off during the 1982-1983 school year. The plaintiff, who was a tenured teacher in the system, was one of a large number of teachers laid off due to cuts in the budget coming from the passage of "Proposition 2 ½." The plaintiff, Ms. Hockney, also argued that she was denied the equal protection of laws because she was released from her position when two teachers without tenure were not laid off. The district court revealed that these two teachers had received special training, which qualified them to teach classes in which the plaintiff was not qualified to teach. The plaintiff also failed to prove that any type of discrimination had taken place.

Issue: At issue is whether the plaintiff's constitutional rights to due process were jeopardized when she was laid off due to cuts in the budget resulting from the passage of legislation.

Holding: The United States Court of Appeals held that the plaintiff failed to establish that the defendant's action to terminate her employment violated her constitutional rights to due process and equal protection of the law.

Reasons: The plaintiff, Karen Hockney, argued that Mass. Gen. Laws ch. 71, 42 was unconstitutional as it applied to her and violated her constitutional rights to due process. However, the court found that this law did not apply to the plaintiff. The statute's constitutionality was therefore not applicable to the defendant's actions in connection with the plaintiff. Also, the plaintiff did receive notice and opportunity for a hearing that was sufficient to satisfy her constitutional right to due process. The plaintiff's argument that she was denied the equal protection of laws because she was laid off when two teachers without tenure were not laid off was also found to lack substance. Another argument of the plaintiff was that she was not given thirty days notice prior to the School Committee's meeting at which the vote was taken to terminate her position. However, the district court ruled that this type of notice within the law was inapplicable when a teacher who has established tenure is laid off completely due to budgetary reasons. Under the provisions of the collective bargaining agreements, the plaintiff could have initiated a grievance before she was terminated. However, it was determined by the district court that the plaintiff had committed procedural errors in her attempt to file a grievance, which resulted in her losing the right to a hearing under the terms of the agreement.

Disposition: The United States Court of Appeals for the First Circuit affirmed the judgment given by the district court that the plaintiff's constitutional rights to due process and equal protection had not been violated.

Citation: *Old Bridge Tp. Bd. of Educ. v. Old Bridge Educ. Ass'n*, 473 A.2d 82 (N.J.Super.App., 1984).

Key Facts: Teacher, Barbara Wolfe, employed by appellant board of education as a tenured 1/5 part time business education teacher, was let go based on a reduction in class enrollment. She received her layoff notice on July 1, 1981, a couple of months after the specified date in her employment contract. The notice stated the Ms. Wolfe was not to return for the 1981-1982 school year. Her contract employment rights appeared in an agreement between the Board and the Old Bridge Education Association. The contract provided in a paragraph that teachers should be notified of their contract and salary status for the ensuing year no later than April 30th. There also failed to be any claim that Ms. Wolfe was laid off in bad faith. Ms. Wolfe challenged her lay-off to the Public Employment Relations Commission (PERC) who in turn let the issue be determined by binding arbitration. The arbitrator came to the decision that the appellant broke the notice provision in Ms. Wolfe's contract and that she should in return made whole. The arbitrator awarded Ms. Wolfe her full year's salary along with fringe benefits.

Issue: At issue is whether a school board is permitted to terminate employees any time it determines in good faith that a reduction in force is necessary.

Holding: The Superior Court of New Jersey held that negotiated lay-off procedures could not take away the right that N.J. Stat. Ann. 18A:28-9 gave boards of education to reduce their workforce at any time for any statutory good cause.

Reasons: The Board argued that it may lay off tenured teachers whenever it is advisable in the opinion of the Board based on the reduction in the number of students. The Superior Court affirmed PERC's determination for the reasons it gave. However, it also concluded that while the statute preempts Ms. Wolfe's tenure and contract rights to employment, it does not preempt the right to negotiate reasonable termination procedures that are consistent with the policy of the statute revealed in *N.J. State College Locals v. State Bd. of Higher Educ.*, 91 N.J. 18, 32, 34 (1982). As to the liability issue, the arbitrator determined that the Board broke the notice provision of the contract. It was ruled that the arbitrator's award to Ms. Wolfe was made without regard to the statute denying the board their right. The Superior Court found that a fair accommodation of the statutory purpose and an employee's contract right to notice of termination would require that any damages be based on the adverse effect of the notice being late and not on the adverse effect of the termination of employment. Under the statute the termination was lawful meaning that Ms. Wolfe need not be made whole but that the damages awarded to her should be based on any economic harm that she may have suffered by reason of the 2-month delay in receiving her notice. Judge Petrella, in this case, was in disagreement with the majority interpretation. He stated that boards of education have the right to reduce employment in their respective districts for reasons of declining economy or because of the reduction in the number of students. The right to do so is unencumbered by any other law regarding education or tenure. For an arbitrator, to award as was done in this case, would significantly interfere with the management of reduction-in-force policy. Based on this fact alone, Judge Petrella would reverse PERC's determination and not set aside the arbitrator's award in part but in its entirety.

Disposition: The Superior Court of New Jersey affirmed the decision of the respondent that negotiations could be made in the lay-off process but could not take away from the Board its right to reduce its workforce at any time for statutory good cause. The court also set aside the arbitrator's award to Ms. Wolfe.

Citation: *Powers v. Commission On Professional Competence*, 204 Cal.Rptr. 185 (Cal.App.5.Dist., 1984).

Key Facts: Plaintiff teacher, William Henry Powers, Jr., was dismissed from his teaching duties after allegedly violating various provisions of Cal. Educ. Code 44932 and 44933 involving his method of teaching a creative writing class. Based solely on jurisdictional grounds, the trial court ordered all charges against Mr. Powers to be dismissed. The court held that contrary to Mr. Powers assertions, time constraints had been followed and that a speedy trial had been followed. The District first employed Mr. Powers in 1967 and except for a brief stint teaching in a fifth grade classroom, he taught sixth grade. Most of the charges brought against Mr. Powers involved his creative writing program in that he encouraged his students to write about any topic they chose without there being any restriction. On occasion, students' stories would focus on class members and would contain derogatory, insulting, and abusive remarks. Many times the stories would be read aloud in class and the offensive words would be "bleeped" out. Students were allowed to remove themselves from the writing activity but only after having their name placed on the board. In 1973, school administrators held conferences with Mr. Powers concerning the instruction of his creative writing program. In 1976, it was once again discovered that Mr. Powers was again teaching his creative writing program to sixth graders in the same manner that had been discussed by administration 3 years earlier. Mr. Powers defended his program from the stance that he did not wish to do anything that would stifle his students' creativity by limiting

them to more traditional writing assignments. He stated that he tried to discourage stories containing questionable content and denied any intent that he encouraged any of his pupils to write stories that would be deemed offensive by others. The commission noted that Mr. Powers had been an active member in union affairs for a number of years as well as serving as an officer of the local teacher's union. He had edited and written articles and editorials that were critical of the Districts and some of its policies. While during a Department of Health, Education, and Welfare (HEW) investigation of the District, Mr. Powers aided the HEW attorneys by giving them information about possible violations of the District regarding its use of bilingual aides. However, the commission found that the reasons for filing the dismissal charges against Mr. Powers were the causes stated in the statement of charges and not dissatisfaction with the exercise of his constitutional rights.

Issue: At issue is whether the District's decision to transfer Mr. Powers out of the classroom pending his hearing limited his constitutional rights.

Holding: The Court of Appeal of California held that in difference to Mr. Powers assertions, time constraints constituted good cause for continuance of his dismissal hearing and that nothing in Cal. Gov't Code 11524 prevented a continuance on the hearing officer's own motion.

Reasons: The Court of Appeal of California found that the continuance did not deny the plaintiff's rights to a speedy hearing and the substitution of a panel member was not prejudicial to the plaintiff and did not deny him any rights. Mr. Powers failed to show that the transfer he was given prejudiced him and he was fully paid during that time. It was concluded that the trial court erred in its rulings on the jurisdictional issues and found it was not necessary for the commission to make a specific finding of the teacher's unfitness to teach when dismissing the

teacher for unprofessional conduct related to classroom activities. The District's action in transferring the teacher out of the classroom pending his hearing did not invalidate the District's dismissal action. The District's failure to serve its original petition was not good grounds for the dismissal of the petition. The commission did not fail to make sufficient findings on the complaint that the teachers constitutional rights were limited. The commission at the time that it acted did not have the power to stay the dismissal.

Disposition: The Court of Appeals of California reversed the judgment and remanded the case to the trial court to make the appropriate findings. It was ordered that this be done by utilizing the independent-judgment test and to determine on the merits whether the evidence warranted the teacher's dismissal.

Citation: *Ross v. Springfield School Dist. No. 19*, 691 P.2d 509 (Or.App., 1984).

Key Facts: The petitioner, Frank Ross, was employed by the Springfield School District for 19 years as a permanent teacher and most recently as an elementary school librarian. During a police undercover investigation of an adult bookstore, Mr. Ross was discovered having sexual intercourse with another man in a movie arcade booth in the bookstore. When this activity became known, a number of parents complained to the school district's administrators. As a result of this action, the school district chose to terminate Mr. Ross on grounds of inefficiency, gross unfitness, and immorality. Mr. Ross challenged his dismissal and the charge of inefficiency was found to be unproven. However, the Board upheld his termination from his position on the other grounds of gross unfitness and immorality. Mr. Ross then filed an action seeking judicial review of the termination. The court found that the Board's interpretation of immorality was proper and that Mr. Ross's sexual encounter in public was sufficient grounds for termination.

Issue: At issue is whether a school district can terminate an employee for acts of immorality in a setting that is not private when it impairs the employee's ability to function effectively as a teacher.

Holding: The Supreme Court of Oregon, on review, held that FADB was bound by a decision of the Teachers Standards and Practices Commission in favor of petitioner, Mr. Ross, on the issue of gross unfitness and the FDAB had failed to articulate a coherent connection between the facts it found and its conclusion that petitioner's actions were immoral.

Reasons: The court's role is to review the agency's interpretation of the law to determine whether it is erroneous but to not set forth its own interpretation. The court accepts the agency's findings of the historical facts if they are supported by substantial evidence, but the application of those facts is reviewed to the appropriate legal standard as a matter of law. In this case, if a teacher's actions do not meet one of the statutory grounds for dismissal, no amount of public opposition to them can override protected tenure rights. On remand from the Oregon Supreme Court, FDAB provided its interpretation of immorality as it was used in the teacher dismissal statutes and found that the plaintiff's conduct was immoral under that standard. Based on this, the dismissal was upheld. The Court of Appeals also agreed with FDAB in that the petitioner's actions unmistakably violated the contemporary moral standards of the state of Oregon and that the petitioner had full notice that his action was immoral within the meaning of ORS 342.865(1)(b). The court also ruled that once the information became public, the petitioner's ability to function as a teacher was severely impaired or disappeared altogether. The nexus required between the petitioner's behavior and his role as a teacher that was needed to justify his dismissal was provided by the parent's reaction. Because of this, FDAB did not err in affirming the district's dismissal of Mr. Ross.

Disposition: The Court of Appeals from Oregon affirmed the Fair Dismissal Appeals Board decision to dismiss the petitioner, Frank Ross, from his position of teacher / librarian on the grounds of gross unfitness and immorality.

Citation: *Schmidt v. Independent School Dist. No. 1, Aitkin*, 349 N.W.2d 563 (Minn.App.1984).

Key Facts: Aitkin Education Association, respondent, received notification on January 28, 1993, that in accordance with the master contract between them and the teacher's association, anticipated staff reductions were eminent. The notice stated that the position of Mr. Calvin Schmidt, appellant, would be terminated based on a reduction of one position in the instrumental staff. On May 2, 1983, the respondent board followed through with the proposal placing the appellant on an unrequested leave of absence without pay or fringe benefits that would go into effect at the end of the 1982-1983 school year. On May 4, 1983, the appellant received notice of the termination that the board approved with a majority vote in accordance with Minnesota Statute 125.12, Subdivision 6b, discontinuance of position. The notice informed the appellant that he was entitled to a hearing before the school board if a written request was submitted within 14 days. No request for a hearing would serve as acceptance of the proposed action. On May 17, 1983, the appellant submitted his written request for a hearing to the Board who set the date for May 27, 1983 and later postponed the date until June 8, 1983. The appellant's counsel moved for a dismissal of the hearing when only a Board Chairman was present to reside and not an independent hearing officer. The Board's counsel requested a recess at which time they conducted an off record discussion with the Chairman. The Chairman denied the appellant's motion but agreed to acknowledge on record that the proceeding would continue under objection and that he was a member of the Board that had previously voted to place the appellant on

unrequested leave. Mr. Patrick DeSutter, superintendent for the respondent Board testified about the District's drop in overall student enrollment, anticipated financial concerns, and the reason for eliminating the instrumental music teaching position. Although the objections were overruled, the appellant's counsel objected to the testimony regarding enrollment decline and financial hardship since no evidence of this had ever been provided. At the conclusion of the case, the appellant's counsel moved for dismissal based on lack of evidence concerning the elimination of the appellant's position. On June 13, 1983, the respondent Board voted to terminate the appellant's position.

Issue: At issue is whether the Board's notice of proposed unrequested leave of absence stated the specific reasons that were required by statute and whether a independent hearing examiner was require to attend the hearing.

Holding(s): The Court of Appeals of Minnesota held that the proposal notice to the appellant teacher regarding an unrequested leave of absence was adequate because the specific grounds were specified in the listed statute. The Court also held that although an independent hearing officer was not mandated to be present by the aforementioned statute, one should be hired absent extenuating circumstances, which were not present.

Reasons: The Court of Appeals of Minnesota determined that the notice of proposed termination informed the appellant teacher that the bases of the termination were the statutory grounds listed in Minnesota Statute 125.12, Subdivision 6b. Although the notice specifically stated "discontinuance of position" as the primary reason for the termination and never mentioned, "lack of pupils" or "financial limitations," these are grounds referenced in the statute and were therefore part of the notice. Minnesota Statute 125.12 (1982) does not require a school board to have an independent hearing examiner when conducting an unrequested leave hearing,

however, the Minnesota Supreme Court has strongly recommended that an independent hearing officer be employed in all cases, *Ganyo v. Independent School District No. 832*, N.W.2d 497 (Minn. 1981).

Disposition: The Court of Appeals of Minnesota reversed the Board's decision and remanded for a new hearing.

Citation: *Smith v. Alabama State Tenure Com'n*, 454 So.2d 1000 (Ala.Civ.App., 1984).

Key Facts: The Macon County Board of Education notified Ms. Florine Smith by letter, on May 26, 1981, of its intention to abolish her position of attendance supervisor and transfer her to an undesignated teaching position in the Vocational Educational Program. Upon receiving this notice, Ms. Smith gave notice of her intent to contest the proposed transfer and demanded a hearing. The board sent Ms. Smith another letter informing her of the planned transfer and the time and place of the scheduled hearing. However, where she would be transferred was not specified. Reasons given to Ms. Smith for the abolishment of her position were severe reductions in funding due to federal cutbacks, state funding proration, lack of an educational budget and the need for an experienced staff to be utilized in areas of need. The letter further provided as a statement of fact, but not as part of the reason for the transfer, that Ms. Smith was not certified to occupy the position of attendance supervisor. A hearing was held and it was determined by the board that Ms. Smith should be transferred but her new assignment was not specified. Ms. Smith appealed this decision to the Alabama State Tenure Commission, which concluded that it lacked jurisdiction in the matter. The circuit court denied Ms. Smith's petition for writ of mandamus and reversed the earlier decision in that the tenure commission did have jurisdiction.

Issue(s): At issue is whether the continuing service status (tenure) of a teacher is presumed when a local board of education grants a hearing under the state tenure laws. Also,

whether a board of education must inform a teacher it proposes to transfer of the location of the new assignment.

Holding: The Court of Civil Appeals held that the Alabama State Tenure Commission did have jurisdiction in the matter.

Reasons: The board submitted that the granting of a hearing did not confer Ms. Smith with tenure as a supervisor or vest her with any presumptions under law. Ms. Smith was granted a hearing because she did possess tenure as a teacher. A teacher with continuing service status is therefore entitled to a hearing upon the notice of intent to transfer under § 16-24-6, Code of Alabama 1975. Tenure in any position may only be conferred by compliance within the applicable statutes. In order to obtain tenure in her position, Ms. Smith would have had to be employed as a supervisor as provided by statute, §16-24-2 (b), Code 1975. Evidence presented at the board hearing showed clearly that Ms. Smith had not served at least 3 years as a supervisor. Therefore, because she was not a tenured supervisor, Ms. Smith did not sustain a loss of status when she was reassigned to a teaching position in her area of certification as a vocational teacher. Notification of the location of a new work assignment is not required by §16-24-25, Code of Alabama 1975, which deals with statutory requirements for transferring a teacher who has obtained tenure. This section only requires that the school board give written notice of intent to transfer. In this case, it was well known that there could only be one school in which Ms. Smith could be placed based on her teaching certification.

Disposition: The State Tenure Commission of Alabama heard the case and ruled that the transfer of Ms. Smith was in compliance with the teacher tenure law and was not made for political or personal reasons.

Citation: *St. Louis Teachers Union Local 420 v. St. Louis Bd. of Educ. of City of St. Louis*, 666 S.w.2d 25 (Mo.App.E.Dist., 1984).

Key Facts: Plaintiffs, a teachers' union and other individuals representing various classes of employees, filed suit against defendants, the Board of Education of the City of St. Louis and others. The plaintiffs appealed a judgment that was found in favor of the Board and petitioned for declaratory, injunctive, and other relief. The Board notified a large number of probationary teachers prior to April 15, 1982, that their contracts for the subsequent year would not be renewed based on insufficient funds and reduced student enrollment. In addition, certain permanent teachers were placed on leave of absence, as were some probationary teachers who had not been notified of non-renewal prior to April 15. In addition to this, the Board also placed a number of non-certificated employees on leaves of absence. Employees with the greatest seniority in their positions were retained in those jobs and employees with less position seniority were given the opportunity to take jobs at a lower position for which they were qualified if they had greater seniority in equivalent or higher positions than employees holding those positions. The result of this bumping technique was that the employees placed on leave of absence were those with the least total employment seniority within the system of those employees who qualified for a particular position. Seventeen employees, who were retained at lower level jobs, had greater total employment than employees who continued to hold the higher positions from which these 17 had been removed. These 17 employees had less position seniority, however, than those employees that were retained in their higher positions. No challenge of any kind was raised about those employees placed on leaves of absence.

Issue: At issue is whether a Board can decide not to renew the contract of probationary and permanent teachers when certain probationary teachers did not receive a non-renewal notice before the statutory deadline.

Holding(s): The Court of Appeals of Missouri held that the Board's actions were not based on any impermissible constitutional ground; Mo. Rev. Stat. 168.221.1, dealing with the non-renewal of contracts, was not superseded by Mo. Rev. Stat. 168.221.5, dealing with the lay-off of teachers under contract; Mo. Rev. Stat. 168.91, 168.281 were inapplicable; and the Board fully recognized the contractual right of the employee's paid vacation days and the plaintiffs produced no evidence of damages because all employees received pay for their vacation days.

Reasons: In the state of Missouri the Board may refuse to renew the contract of a non-tenured teacher for any reason or no reason at all, as long the non-renewal is not based on some ground considered impermissible under the Constitution. As was the case in *Williams v. School District of Springfield R-12*, 447 S.W.2d 256 (Mo. 1969) and *White v. Scott County School District No. R-V*, 503 S.W.2d 35 (Mo. App. 1973), there was no contention that non-renewal was based on any ground not permissible constitutionally. Under the statute applicable to this school district, the Board was required to notify the teacher prior to April 15 that their contract was not being renewed for the upcoming year, otherwise it would be deemed to be renewed. In this case the time schedule was met. The plaintiffs also relied upon §168.221.5, RSMo 1978, which provided whenever it was necessary to decrease the number of teachers or principals due to insufficient funds and/or a decrease in student population, the Board may cause the necessary number of teachers or principals, beginning with those serving probationary periods, to be placed on leave of absence without pay, but only in the inverse order of their appointment. The plaintiffs claimed that this was a special statute dealing with reduction of personnel and would override or

supersede the general provisions of §168.221.1, authorizing timely non-renewal. However, the Court disagreed. The Court found that leave could be authorized for probationary teachers at any time they were under contract according to *Frimel v. Humphrey* (555 S.W.2d 350 (Mo. App. 1977)). The Court also stated that the purpose of the probationary period is to enable the Board to assess the qualifications and ability of the teacher to determine whether or not it wants to keep the teacher permanently. To permit a teacher with as little as one day of teaching experience to achieve tenure because of a continuing leave of absence, as a result of insufficient funds, does not coincide with the purposes of the teacher tenure statutes. In reference to “forced” vacations implemented by the board, the Court found there was no merit in this challenge for several reasons. Stating, “accruing vacation days will normally be taken after June 30; however, these days may be used in emergencies or for other compelling reasons with the approval of the supervising authority.” All employees received pay for days they did not work. No employee testified that they would have taken their vacation after July 1 had it not been for the Board’s request that they take it before.

Disposition: The Court of Appeals of Missouri affirmed the trial court’s judgment for the defendants in not renewing the contracts of probationary and permanent teachers.

Citation: *Sutera v. Sully Buttes Bd. of Educ.*, 351 N.W.2d 457 (S.D., 1984).

Key Facts: In 1982, the Sully Buttes School District and the Board began to implement a staff reduction policy because of a declining enrollment. Under this policy it was proposed that teachers within their first or second year of employment with the district were to be staff reduced prior to teachers who were protected by the statutory continuing contract law, provided that there were teachers remaining who were certified and qualified to replace and perform the duties of the teachers who were staff reduced. As part of this policy the Board decided that the school did

not need two tenured social science teachers and that Daniel L. Sutera's position would be eliminated. Mr. Sutera was a teacher of social sciences, driver's education, and physical education in the Sully Buttes School System for 13 years during which time he attained tenure status. Mr. Sutera also held coaching responsibilities each year of his employment. The Board compared Mr. Sutera's position to that of the head high school basketball coach, Mr. Burgard, who was a first year non-tenured teacher. Although the Board recognized that Mr. Sutera was certified to teach all the courses taught by Mr. Burgard, they concluded that Mr. Sutera was unqualified to serve as the head basketball coach at Sully Buttes High School. As a result of this, Mr. Burgard was offered a contract for the 1983-1984 school year and Mr. Sutera was informed that his contract would not be renewed. Mr. Sutera appealed the Board's decision to the circuit court in accordance with SDCL 13-46-1.

Issue: At issue is whether the Board can eliminate a tenured teacher's position when this teacher is certified to replace a non-tenured teacher but the Board's feels the tenured teacher is not "qualified."

Holding(s): The Supreme Court of South Dakota held at trial that: Mr. Sutera had held coaching duties every year that he was employed at Sally Buttes including 3 years as the high school head basketball coach; Mr. Sutera had held the position as head coach of the junior high boys basketball team for the four previous years prior to the non-renewal of his contract; Mr. Sutera's principal admitted that he had done a good job as the coach of the junior high team and that he knew the students well and that they had improved under his coaching; Mr. Sutera was certified to teach all the classes the Mr. Burgard taught; The Board could have taken away Mr. Sutera's responsibilities as the social science teacher and still retained him as a teacher.

Reasons: The Supreme Court of South Dakota noted that all statutory procedural steps were followed in the case. There was no issue of administrative procedural inadequacies and the trial court found that the sole reason for the non-renewal was staff reduction. As long as the school board is legitimately and legally exercising its administrative powers, the courts may not interfere with nor supersede the school board's decision making process as stated in *Schaub v. Chamberlin Bd. of Educ.*, 339 N.W.2d 307 (S.D. 1983). The real issue at hand was whether or not the trial court found that Mr. Sutera was qualified to be the head basketball coach at Sully Buttes. At trial it became apparent that this rationale was factually incorrect and that Mr. Sutera had been a very successful coach, had resigned a previous head coaching position on his own accord, and did so after the Board had offered him a contract to stay on as a head coach. The procedures adopted by a board for it to follow in determining staff reductions have the force and effect of law but must be followed by the board. The Supreme Court of South Dakota found that Mr. Sutera was both certified and qualified to perform all the duties of Mr. Burgard. The court concluded that when the Board rehired a probationary teacher rather than a certified and qualified teacher, the Board in turn violated its own rules for staff reduction and that the Board's decision was based on an error of fact. Therefore, the court ordered that the Board, by its own regulations, renew Mr. Sutera's contract rather than the contract of a probationary teacher.

Disposition: The Supreme Court of South Dakota affirmed the decision of the trial court that the tenured teacher's contract must be renewed and the teacher be reinstated to his position.

Citation: *Work v. Mount Abraham Union High School Bd. of Directors*, 483 A.2d 258 (Vt., 1984).

Key Facts: In July of 1980, the plaintiff, Bertram Work, Jr., was hired by the plaintiff, Mount Abraham Union High School Board of Directors, to teach at the Mount Abraham Union

High School for the 1980-1981 school year. Mr. Work's teaching responsibilities for that year was to conduct a newly created in-school suspension room by providing instruction for suspended students. For the following school year, Mr. Work was asked if he would be interested in filling in for the remedial reading teacher who was planning on taking a 1-year leave of absence from the position. Mr. Work agreed to this assignment and was therefore employed for the 1981-1982 school year. Mr. Work was informed that the remedial reading assignment he was filling in for was probably only for a year and that the teacher whom he was replacing would be permitted to retain the position upon his return. During the summer of 1981, the Board determined that a professional teacher was not needed for the suspension room and that the elimination of this position would save them money. Therefore, the Board eliminated the teaching position for the suspension room and decided to staff the room with teacher aides. In the fall of 1981, the original remedial reading teacher informed the Board of his intent to return to his prior position for the 1982-1983 school year. Afterward, Mr. Work received his notification from the superintendent's office that his contract would not be renewed for the 1982-1983 school year because his previous position as suspension room supervisor had been eliminated and the remedial reading teacher would be returning to his job. In May of 1982, after Mr. Work had received his non-renewal notice, open teaching positions for the upcoming school year were posted. Mr. Work applied and interviewed for two positions but was not hired. Mr. Work filed a hearing before the Board claiming that because he was certified to teach in the areas there were openings, he was entitled to be transferred to one of them. After the hearing the Board affirmed the non-renewal of Mr. Work's contract stating that the positions that he had previously been assigned were significantly different than those now available that he applied for. Mr. Work appealed this decision to the superior court who concluded that the Board did not have just cause

for the non-renewal of his contract and was ordered to continue his employment from the 1982-1983 school year.

Issue(s): At issue is whether the superior court erred in finding that the Board had insufficient cause for the non-renewal of Mr. Work's contract and whether or not Mr. Work was entitled to one of the open positions for the 1982-1983 school year.

Holding(s): The Supreme Court of Vermont held that there was just cause to uphold the Board's decision because Mr. Work was made aware that the assignment he was given was probably only for 1 year and just because a teacher is certified to teach a particular subject and is currently teaching within a school does not give that employee any preferential rights to open positions.

Reasons: The Supreme Court of Vermont concluded that the trial court misconstrued the meaning of "just cause." The Supreme Court of Vermont has consistently stated that "just cause" means some substantial shortcoming that is detrimental to an employer's interests which the law and public opinion recognize as a good cause for dismissal, *In re Gage*, 137 Vt. 16, 18, 398 A.2d 297, 298 (1979) and in accordance with *In re Muzzy, supra*, 141 Vt. at 220, 468, 449 A.2d at 972. The lower court's determination that Mr. Work's employment contract was not specifically limited to a particular assignment or a specified duration does not preclude there being "just cause" to support the non-renewal. The combined effect of Mr. Work being aware of the assignment for one year, along with his original position being eliminated by the Board, provided the board with "just cause" for the non-renewal of his contract. The Supreme Court of Vermont was in disagreement with the superior court in its determination that Mr. Work should be entitled to be hired for one of the open positions he had certification for. At the time the open position became available, Mr. Work had already received his notice of non-renewal for the following

year, which placed him in the same position as other applicants who were not entitled to any preferential treatment. A school board's duty is to make its hiring decisions consonant with its judgment as to the maximum benefit for the school district, *State v. Whitingham School Board*, 138 Vt. 15, 20, 410 A.2d 996, 999 (1979). Just because a teacher has certain certifications to teach specific subject(s) and is already teaching within the school district, does not give that teacher preferred rights to positions that become available. The Supreme Court of Vermont found that the Board had committed no error in failing to hire Mr. Work instead of other applicants whom they truly believed to be more certified. For these reasons it was ruled that the superior court erred in its conclusion that Mr. Work should be employed by the Mount Abraham Union High School Board of directors for the 1982-1983 school year.

Disposition: The Supreme Court of Vermont reversed the judgment of the trial court that had ordered the Board to continue to employ a teacher who had been non-renewed for the following school year.

1985

Citation: *Beeman v. Board of Educ., Oyster Bay-East Norwich Public Schools*, 494 N.Y.S.2d 27 (N.Y.App.Div.2.Dept., 1985).

Key Facts: Petitioner, Jane Beeman, and appellants Reitman and Ranaldo all served in the Oyster Bay-East Norwich school system starting in 1969 and all received tenure in elementary education in 1972. Ms. Beeman started serving in the district several months before the appellants and all were in agreement that Ms. Beeman was the senior teacher, of the three, in the elementary education tenure area. In 1976, Ms. Reitman was assigned to teach a special education program. In 1977, Ms. Ranaldo was assigned to teach a remedial reading program.

Both teachers held certification in these respective areas in addition to their certification in the area of elementary teaching. Ms. Reitman and Ms. Ranaldo continued to teach in these specialized areas since they were given their assignments. In May 1982, the appellant board determined that it needed to reduce the number of elementary classroom teaching positions by one. Ms. Beeman was informed that her position as a tenured elementary classroom teacher would be terminated and her services would no longer be needed after June 30, 1982. At a meeting on August 17, 1982, the elementary teaching positions of Ms. Reitman and Ms. Ranaldo were done away with effective June 30, 1982, but they were reassigned to positions in the special subject tenure areas of special education and remedial reading, respectively, thereby retaining them as employees in the district. The board later gave Ms. Beeman a classroom teaching assignment for 10 days after the conclusion of the 1982-1983 school year but, once again, eliminated her position at the end of the school year.

Issue: At issue is whether the Board of Education had the right to dismiss a teacher with seniority when the special subject areas of special education and remedial reading were part of the general tenure classification of elementary education.

Holding: The Supreme Court of New York held that if there was another tenured elementary teacher who was available in the school district, who had been assigned to classroom duty but was also certified to teach special education and / or remedial reading, then the board had the obligation to determine whether it was possible to rearrange the teaching schedules to preserve the teacher's tenure rights over those of the other teachers or faculty members with less seniority.

Reasons: A board of education is not required to retain a teacher, even if she is more senior, if retaining the teacher would mean assigning her to a teaching area outside her area of

certification, *Matter of Ward v Nyquist*, 43 NY2d 57. Because the petitioner was not certified in the areas of special education and remedial reading, where the appellants did hold these certifications, she could not have been assigned to these positions in their stead (*Matter of Lynch*, 11 Ed Dept Rep 107).

In regard to the placement of the appellants in new probationary assignments in special education and remedial reading, a tenured teacher may not be subjected to a new probationary period when that would deprive the teacher of broader tenure rights (*Matter of Zubal v Ambach*, 103 AD2d 927; *Matter of Smyton, supra*). However, that was not the case here. Although the board properly assigned these teachers as the most junior faculty with appointments in elementary education, it was still responsible for reassigning its multiple certified teachers in positions for which they were certified. By the board's resolution in August 1982, it in effect appointed these appellants to new probationary appointments in the areas of special education and remedial reading. It then transferred them to these areas to retain them in the system. The board's subsequent resolutions in January and November of 1983 merely implemented in form what had already been done in substance, that is, granting the appellant teachers new probationary appointments in the new tenure areas starting in September 1982.

Disposition: The Supreme Court of New York, Appellate Division, held the appeal in abeyance and remitted the case for further evidence regarding the availability of tenured teachers in the district.

Citation: *Bennett v. Board of Educ. of Lorain (County) School Dist.*, 491 N.E.2d 742 (Ohio.App.9.Dist.Lorain.Co., 1985).

Key Facts: Rosemary Bennett, appellant, entered into a 2-year employment contract as a school psychologist with the Board of Education of the Lorain County School District on April

12, 1983. The contract was to be in effect from August 1, 1983 through July 31, 1985 at which time Ms. Bennett would provide psychological services to local school within the county. These services were provided to local school districts by the board, which in return received funding from the State Board of Education. The local districts made the decision in 1984 to withdraw their students from the board's program and begin providing their own psychological services to their students. This decision was made based upon the State Board of Education had stopped providing the board with funding for these services. On July 16, 1984, the board resolved to suspend the contracts of all their school psychologists due to the fact that they no longer needed any psychologist and they were no longer receiving funding from the state. Ms. Bennett was notified of her suspension and in response filed a complaint against the Lorain County Court of Common Pleas on August 10, 1984 that her contract be enforced. The board then filed a motion to dismiss and or for summary judgment on September 11, 1984. The trial court in this case found there to be no genuine issue as to any material fact and granted the board's motion for summary judgment and while dismissing the cause of action at Ms. Bennett's costs.

Issue(s): At issue is whether a school psychologist's contract can be suspended under an "other administrator" clause and if the decline in state funding was relevant to the case and the decrease in enrollment.

Holding: The Court of Appeals of Ohio held that while the parties' disagreement as to the cause of the loss of state funding presented a factual issue, the issue was not relevant to the dispute and was not material. The court also held that the purpose for the decrease in enrollment was irrelevant as long as there was in fact a decrease.

Reasons: The Court of Appeals of Ohio stated that contracts of "other administrators" are always limited contracts and may be suspended under R.C. 3319.17 by R.C. 3319.02. Under this

code a school district is allowed to suspend a teachers' contract in the following manner: When there is a decrease in the enrollment of students, a board of education can decide to decrease the number of teachers and make a reasonable reduction. In making this reduction, the board must proceed to suspend contracts in accordance with the recommendation of the school superintendent who is to, within each teaching field affected, give preference to teachers on continuing contracts and to those teachers who have greater seniority. As a school psychologist, Ms. Bennett was an "other administrator" whose contract could be suspended. Ms. Bennett argued that the code only applied to teachers with continuing contracts that should remain in effect until the teacher resigns, retires or is otherwise terminated or suspended and not to those with limited contracts such as hers, citing *Buchheit v. Hamilton City Bd. of Edn.* (1984). The court disagreed and stated that this case was inapplicable in that it dealt with a non-renewal of a limited contract under which the board did not have to state a reason. The Court of Appeals of Ohio also stated that the cause of reduction in the number of students is beside the point as long as there has in fact been a decrease in student enrollment. In this case both parties agreed that the enrollment of pupils within the schools psychological program had fallen to zero. Therefore, the board was justified in making the decision to suspend school psychologists' contracts.

Disposition: The Court of Appeals of Ohio affirmed the courts judgment because there was no material fact for the court to consider in this case and the board had followed the proper procedure in suspending appellant's contract.

Citation: *Blank v. Independent School Dist. No. 16*, 372 N.W.2d 386 (Minn.App., 1985).

Key Facts: Ms. Rachel Blank, a teacher in the school district was given seniority number 203 on the seniority list for the 1982-1983 school year. Her qualifications were listed as visual handicapped K-12. Ms. Blank was also licensed in elementary education although she at that

point had never been assigned to teach it. Mr. Kent Charron, another teacher in the same district was given seniority number 149. His qualifications were listed as in-school suspension, aide to principal with only teacher certification required, and administrative assistant with only teacher certification required. Mr. Charron was also licensed in other areas in which he had never taught in the school system. Neither Ms. Blank nor Mr. Charron objected to the seniority list that the school district approved in February of 1983. In May of 1984, Ms. Blank and Mr. Charron were placed on unrequested leave of absence based upon the school systems financial limitations and declining enrollment. Both petitioners requested a hearing at which Ms. Blank argued that she was qualified to teach elementary education because she had successfully taught her visually impaired students the core elementary curriculum. Based on this argument, Ms. Blank felt as though she was entitled to bump a less senior elementary education teacher. Mr. Charron argued that he was qualified to bump a less senior dean of students or an assistant principal because he had successfully performed the same duties, but under a different job title. The hearing examiner hired by the school district found that Ms. Blank was not qualified to bump an elementary teacher and Mr. Charron, likewise, was not qualified to bump the dean of students or an assistant principal based upon the collective bargaining agreement that had been established. The school board accepted the hearing examiner's findings and placed Ms. Blank and Mr. Charron on unrequested leave. Both petitioners obtained a writ of certiorari to the district court, which found Ms. Blank and Mr. Charron were not bound by the seniority list because the list did not adhere to the collective bargaining agreement and they were qualified for other positions held by less senior teachers. The court ordered that Ms. Blank and Mr. Charron both be reinstated to their positions with back pay.

Issue(s): At issue is whether or not the failure of the petitioners in this case to challenge a seniority list prior to being placed on an un-requested leave of absence precluded them from raising the issue of their qualifications at the leave of absence hearing? Are the petitioners qualified for other positions that are held by less senior teachers? Did petitioner Blank fail to mitigate her damages so as to bar her from receiving full back pay?

Holding(s): The Court of Appeals of Minnesota held that both Ms. Blank and Mr. Charron were not bound by the seniority list because it did not conform with the format required by the collective bargaining agreement. However, in regard to Mr. Charron, the court reversed the ruling in that he was not entitled to reinstatement because he was attempting to bump a position that was not covered by the collective bargaining agreement.

Reasons: The court stated that a teacher, under normal conditions, should pursue an objection to a seniority list through the grievance process that had been established by the collective bargaining agreement (*Ellerbock v. Board of Education*, 296 N.W.2d 858, 862-63 (Minn. 1978)). However, a teacher may be bound by the list if they had been given the opportunity to challenge a seniority list but decided not to (*Jerviss v. Independent School District No. 294*, 273 N.W.2d 638 (Minn. 1978)). The court stated that if the plaintiff had been capable of challenging her seniority placement before being given her notice of termination, requiring the grievance procedure to be used would have been reasonable. However, the plaintiff was unaware of her seniority placement until she received notice of her placement on her unrequested leave of absence. When there has been no apparent opportunity to challenge a seniority placement prior to the notice of placement on an unrequested leave of absence, the teacher may raise that issue at the hearing. It was argued by the teachers, and found by the trial court, that they should not be bound by the seniority list because it did not conform to the format that was required by the

collective bargaining agreement that required a list showing the name, date of employment, and qualification and subject matter or field. The teachers had no reason to dispute the seniority list as it was prepared and presented. The district argued that qualification is defined as licensure and successful teaching of a subject matter and that teachers have only “successfully” taught courses that they had been specifically assigned to teach regardless of their actual duties. The court believed that to only allow “successfully” taught to apply to courses that were assigned would actually ignore the job function of the teacher and center upon job assignment or title. It would be unacceptable to allow the school district to rely on assigned job titles rather than job content. Mr. Charron’s reinstatement, however, falls on other grounds. The negotiated agreement specifically limits a teacher’s bumping rights to positions covered in the agreement. The position of student dean was not covered within the collective bargaining agreement.

Disposition: The Court of Appeals of Minnesota affirmed the judgment of the lower court by reinstating one teacher with full back pay, but reversed the decision of the other teacher because he was not entitled to reinstatement.

Citation: *Board of School Directors of Chester-Upland School Dist. v. Ashby*, 495 A.2d 665 (Pa.Cmwlth.App., 1985).

Key Facts: Appellees Denise Ashby, Joyce Wells, Lavera Bradley, Rochelle Kilson, Ella MacFarland, and Patricia Vallot were all suspended from their teaching positions when the appellant, Board of School Directors of the Chester-Upland School District, closed three elementary and one middle school at the end of the 1980-1981 school year. The elementary schools were made up of grades first through fifth and the middle school was composed of grades sixth through eighth. The Board of School Directors held hearings discussing the reorganization and furlough of teachers and determined they could furlough teachers with more

seniority that had only taught at the elementary schools while not furloughing teachers with less experience that had taught at the middle school level. It is important to note that the certification for elementary teachers was the same as the certification for middle school teachers. The board argued that the reorganization would make the situation very chaotic and those teachers who had taught at the middle school, and who were familiar with middle school procedures, would be needed most. The board also claimed that elementary teachers with no middle school experience, who had previously been assigned to middle school positions, had opted to return to the elementary level as soon as there were positions available.

Issue: At issue is whether the Board of School Directors of the Chester-Upland School District could furlough teachers with more seniority that had only taught at the elementary level compared to those who had less experience but had taught at the middle school level.

Holding: The Court of Common Pleas of Delaware County held that the suspension of professional employees is controlled entirely by the seniority provision of 1125.1 of the Code, which requires the suspension of school district employees to be based upon seniority within the school district and not experience within a given class or level of education provided that all the employees involved possess the same certification.

Reasons: The Board of School Directors in this case claimed case law provided them with the authority to realign their staff based upon teacher certification and seniority but that the State Board's Certification Guideline #76 permits school districts a degree of discretion when staffing middle schools with elementary certified teachers. The appellants relied upon *Godfrey v. Penns Valley Area School District*, 22 Pa. D. & C. 3d 466 aff'd 68 Pa. Commonwealth Ct. 166, 449 A.2d 765 (1982). Because the court declared that the school district in question was not required to realign its staff across multiple lines of certification in order to assure the continued

employment of its more senior employees, they contended that this gave the school district judgment in determining the realignment of its staff. However, the appellees cited the same case as having the opposite meaning

Disposition: An order that reinstated all the appellee teachers with seniority pursuant to a statutory scheme was affirmed because the court had to comply with the mandate of the statutory construction act. This act stated that when the words of a statute were not clear, the letter of the statute could not be disregarded under the pretext of pursuing its spirit. The ruling was affirmed that the appellant school district could not furlough teachers with more seniority, under the statute.

Citation: *Bochner V. Providence School Committee*, 490 A.2d 37 (R.I., 1985).

Key Facts: A total of 17 teachers originally challenged the Providence School Committee's decision to terminate their positions, but only ten pursued their claim to the Rhode Island Supreme Court. On February 11, 1977, the Providence Superintendent of Schools notified the petitioners by letter of resolutions that would be presented to the committee at its meeting on February 17, 1977. The resolutions presented would suspend and/or terminate their employment at the end of the 1976-1977 school year. At that meeting, the committee approved, inter alia, resolutions Nos. 104, 105, 106, and 108. Because consideration of the petitioners' claims turns on their employments condition and the explanation given for their dismissals, the petitioners were classified into three groups, according to the specific reasons under which they were dismissed. Resolution 106 specifically authorized the suspension of 14 teachers, which included group 1 petitioners, Ida Bochner, Harold Jones, and Marcia Lima, because of a substantial decline in the student enrollment. In February 1977, the projected decline in student enrollment in the Providence School System for the 1977-1978 school year was 273. However, the decline

was much more at 536 when school started in September. Resolution 105 allowed the termination of 45 long-term substitute teachers, which included group 2 petitioners, Angelo DeSimone and James McCabe, Jr., because teachers with greater seniority, for whom this group served as long-term substitutes, were returning to work. Resolution 108 allowed the termination of 25 teachers, which included group 3 petitioners, Martha Boto, Barbara Strawn, Elaine Scanlon, Ann Colanino, and James Robinson, as part of a “program reorganization and the supervision of curricula,” which was needed to make room on the teaching staff for more senior teachers whose positions as department heads and department chairpersons had been eliminated by resolution 104. After petitioners requests for a hearing was held, the school committee confirmed the dismissals on February 28, 1978. The petitioners appealed this decision to the Rhode Island Commissioner on Education, however, their appeal was denied on September 19, 1978. The petitioners then appealed to the Board of Regents on March 22, 1979, who sustained the commissioner’s decision. On June 23, 1979, the petitioners filed an additional complaint in the Superior Court pursuant to G.L. 1956 (1969 Reenactment) §16-13-4, challenging their dismissals and the decision handed down by the Board of Regents.

Issue(s): At issue is whether a group of teachers can be terminated by a decline in enrollment if the projected decline is not “substantial.” Also at issue is whether long-term substitute teachers, who considered themselves tenured, can be dismissed from their position for reasons other than “good and just cause” under the Teachers’ tenure Act.

Holding(s): The Supreme Court of Rhode Island held that the decision to suspend group 1 teachers on the basis of decline in enrollment was reasonable; and group 2 teachers were not covered by Act and therefore did not acquire tenure regardless of their length of service within a school system.

Reasons: All three groups of petitioners represented in this case were heard before a justice of the Superior Court, who found power to review the decision of the Board of Regents in G.L. 1956 (1969 Reenactment) §16-39-4. The trial justice agreed with the Board of regents that group 1 petitioners had been properly suspended under §16-36-6 due to the projected, and actual, decline in student enrollment. Group 2 petitioners had been appropriately terminated on account of the substitute nature of their employment and the return of teachers with greater seniority. Group 3 petitioners proper tribunal was an arbitration proceeding where it was deemed that no statutory rights had been violated by their terminations.

Disposition: The Supreme Court of Rhode Island affirmed the superior court's decision in terminating the group 1 teachers and affirmed the superior court's decision in terminating the group 2 teachers.

Citation: *Caso V. School Committee of Waltham*, 483 N.E.2d 1115 (Mass.App., 1985).

Key Facts: As a result of budgetary restraints, the School Committee of Waltham consolidated its bilingual and foreign language departments. Mr. Adolph Caso, plaintiff, along with Mr. Triantafel had been directors of these departments that were abolished by the reorganization. As a result of the reorganization, the committee created a new position of director of foreign language and transitional bilingual education. Mr. Caso and Mr. Triantafel both applied for this new position. Mr. Triantafel was appointed the position and Mr. Caso in response brought an action against the school committee that Mr. Triantafel was not qualified for the position and that he as the only other candidate was entitled to the job. The judgment entered by the lower court disqualified Mr. Triantafel from the position and ordered that Mr. Caso be appointed the director of the newly created combined department. The school committee and the commissioner appealed this decision.

Issue: At issue is whether the School Committee of Waltham could appoint a teacher to the transitional bilingual program when the teacher's certification was in English and if this qualified as a second language.

Holding: The Appeals Court held that Mr. Triantafel's certification qualified him to teach English as a second language within the transitional bilingual program and that the school committee could therefore appoint him as the director of the foreign language and transitional bilingual education department.

Reasons: It was felt to be apparent from the sequence of events that Mr. Caso had no justifiable grievance. After interviewing Mr. Caso and Mr. Triantafel on June 17, 1981 at a regular school committee meeting, the committee appointed Mr. Triantafel as the director of the combined department. By a letter dated June 30, 1981, Mr. Caso was notified of his demotion from director of bilingual education to teacher of foreign language. Three weeks later, Mr. Joseph Sandulli, acting as counsel for Mr. Cato, sent a letter to the State Department of Education requesting an investigation into the appointment of Mr. Triantafel. The department replied to Mr. Sadulli that a person who is certified to teach English could teach it as a second language in a transitional bilingual program and that qualified Mr. Triantafel for the position. The Court stated that the demotion of Mr. Caso from his position as director of foreign language was supportable for the reason that it was the result of a good faith reorganization rooted in policy and supported in *Breslin v. School Comm. of Quincy*, 20 Mass. App. Ct. 74, 80-81 (1985). The court also found that the school committee was open to reject Mr. Caso and to look at other applicants for the position. Under 603 Code Mass. Regs. 14.05(13)(1979), the school committee was approved to hire as a director of a transitional bilingual education program any teacher who was qualified to teach in a transitional bilingual education program. Based on this, the school

committee could hire Mt. Triantafel as the director of the newly established program. New regulations promulgated by the State Department of Education to take place in 1982 established additional requirements, which Mr. Triantafel did not meet; however, his qualifications under previous regulations carried forward under 603 Code Mass. Regs. §7.02 (6) (1982).

Disposition: The Appeals Court of Massachusetts reversed the judgment of the lower court in favor of the applicant and dismissed the complaint from the plaintiff.

Citation: *Derry Tp. School Dist. v. Finnegan*, 498 A.2d 474 (Pa.Cmwlth.App., 1985).

Key Facts: Ms. Ruth Finnegan, appellee, was a tenured elementary school teacher with 10.5 years of service in the Derry Township School District, appellant. The Board of School Directors voted to suspend Ms. Finnegan from her teaching position on May 30, 1979 due to a substantial decrease in student enrollment. This took place after the superintendent recommended, among other things, that five professional employees, two in the elementary school, one in the intermediate school, and two in the high school, be suspended from their positions. The ratings of the elementary teachers were reviewed and out of a possible 100 rating points, Ms. Finnegan received a total of 46 points, which was the lowest rating given to any of the teachers. Ms. Finnegan requested and received a hearing from the board regarding her suspension. After the board confirmed the suspension, Ms. Finnegan argued that she should have been retained in favor of discharging a temporary professional employee who had recently been elected as the principal. The principal had been employed with the Derry Township School District for less than 2 years, which is necessary under the Code to attain a tenured professional employee status. Her appeal was taken to a trial court which reversed the board's decision and directed the board to reinstate her to her former position. On appeal, the court reversed the order of the trial court stating that the board did not err when it suspended appellee based on Section

1125 of the Public School Code of 1949, 24 P.S. §11-1125, did not require the retention of a tenured professional employee at the expense of suspending a duly elected elementary principal by a teacher who was certified and qualified as an elementary principal but had never been elected to that post.

Issue: At issue is whether the school district should have retained a tenured school teacher in favor of discharging an elementary school principal who was a “temporary employee” not having tenure.

Holding: The Commonwealth Court of Pennsylvania held that to suspend an elementary principal, although he was a temporary professional employee, and replace him with a professional employee who was certified as an elementary school principal, would be totally unreasonable and impractical.

Reasons: The Commonwealth Court of Pennsylvania stated that they must affirm the action of the appellant school district unless they had found the appellee’s constitutional rights to have been violated. The court stated in that the appellee raised no issue of error of law or violation of rights, its scope of review was limited to whether the school district had abused its good judgment in making any findings of fact. The method used by the superintendent in determining which employees to suspend was in accordance with the law in that both teaching and non-teaching staff were reviewed to see where the reductions should be made and what realignments in staff were practical. Section 1125 of the Public School Code of 1949 requires school boards to suspend professional employees on the basis of efficiency rank that had been determined by the appropriate ratings, mandating school board to retain professional employees on the basis of seniority when no differences in ratings were found. In agreeing with *Welsko v. Foster Township School District*, 383 Pa. 390, 119 A.2d 43 (1956), the court stated that where a

reduction in staff is needed, the Board's first consideration should be how to retain teachers with the longest years of service by realigning the staff so that the remaining teachers, after the reduction has been put into place, can teach the subject of those who, because of lesser seniority rights, have been released. In *Tressler v. Upper Dublin School District*, 30 Pa. Commonwealth Ct. 171, 373 A.2d 755 (1977), it was argued that a school board should have compared a professional employees ratings with all professional employees in the district. The court rejected this argument stating that to compare the efficiency ratings of all professional employees when declines in student enrollment are localized, would be fruitless. Even when realignment of a staff is appropriate so as to retain those employees with most years of service, comparison of all professional employees on the basis of efficiency ratings would be unnecessary. It should be done on a department by department basis depending on the plan for realignment of staff. The court believed that the trial court erred when grouping principals and teachers in the same department simply because elementary teachers are not certified by subject. In *Mullen v. DuBois Area School District*, 436 Pa. 211, 259 A.2d 877 (1969), the court made the distinction between a teacher and a principal for compensation purposes, and in making that distinction the Court noted that the principal's responsibilities and duties were more demanding and time consuming than those of a teacher. The court stated that they did not believe that Section 1125 could be read to require the retention of a tenured professional employee at the expense of suspending a duly elected principal and placing in their place a teacher who is qualified and certified as an elementary school principal but had never been elected to serve in that position. It should be noted that although the trial court's decision was reversed, several judges dissented on the grounds that seniority status should have prevailed in this case.

Disposition: The Commonwealth Court of Pennsylvania reversed the order of the trial court that reinstated the appellee because the school district was not required to retain the appellee at the expense of suspending the duly elected principal just because the appellee was tenured and there was another employee qualified to be an elementary principal.

Citation: *Finley v. Independent School Dist. No. 566, Askov*, 359 N.W.2d 749 (Minn.App., 1985).

Key Facts: The Independent School District NO. 566, Askov, Minnesota, respondent, encompasses three small communities in northeastern Minnesota. It has a student enrollment of fewer than 400 students. Ms. Relator Finley was the school district's full-time elementary principal through the 1983-1984 school year with the exception of the 1982-1983 school year when she was employed as half-time principal. Ms. Finley had a continuing contract with the respondent. Because the district was suffering financial problems, the school board sought after ways to decrease expenses. It was discussed at a school board meeting held on April 23, 1984, of eliminating Ms. Finley's full time principal position and giving those responsibilities to the superintendent. Regulations in the state of Minnesota require schools with a minimum of 200, but not more than 400 pupils, to have a licensed principal devoting not less than one-half time to administration and supervision (Minn. Rules 3500.1400 Subpart 1 (1983)). The respondent's superintendent is a licensed elementary principal and stated that he would be willing to assume these half-time responsibilities. Following much discussion on the matter, the school board adopted by a majority vote the motion to do away with the separate position of elementary principal at the end of the 1983-1984 school year. During its May 14, 1984 meeting, the school board approved the type written minutes from this previous meeting. On April 24, 1984, the respondent's superintendent prepared a "Notice of Proposed Placement on Unrequested Leave of

Absence” which was signed by the school board clerk. This notice was presented to Ms. Finley along with a copy of the minutes from the April 23 meeting. Ms. Finley exercised her rights to a hearing and waived the requirement of a hearing by the June 1 statutory deadline. The hearing officer found Ms. Finley’s placement on an unrequested leave of absence to be justified. At its June 25, 1984 meeting, the school board adopted the hearing examiner’s decision by roll call vote. Following that meeting the school board offered Ms. Finley a full-time teaching position.

Issue: At issue is whether the school district complied with the procedural requirements of Minn. Stat. §125.12 (1982) for placing Ms. Finley on unrequested leave of absence.

Holding(s): The Court of Appeals of Minnesota held that the procedure set out in the state statute involved two separate decisions by the school board: (1) a decision to recommend termination or demotion, and (2) a decision, after a hearing if requested, to terminate or demote. According to the Court of Appeals, while a school board can delegate ministerial tasks such as the preparation of a notice form, it cannot delegate its authority to terminate or demote employees with a continuing contract.

Reasons: A continuing contract employee has a protected property notice that can only be terminated under the procedural requirements of Minn. Stat. §125.12 (1982). The Minnesota Supreme Court requires strict compliance with *Perry v. Independent School District No. 696*, 297 Minn. 197, 202, 210 N.W.2d 283, 287 (1973). Subdivision 4 of the statute sets forth the following procedure with clarity; school boards must notify continuing contract employees in writing of the proposed termination and the right they have to a hearing. Only after this notice can a school board terminate employees and it must be by a majority roll call vote. However, subdivision 4 does not specify the exact procedure a school board must follow before issuing a continuing contract employee their notice of proposed termination. Ms. Finley’s main objection

was the school board's failure to adopt a resolution specifically proposing to place her on an unrequested leave of absence. The school board was at fault by not taking a specific action to vote to propose Ms. Finley's unrequested leave of absence and by doing so violated the statute and the case law interpreting the statute. A school board may not delegate its authority to terminate or demote continuing contract employees (*Hong v. Independent School District No. 245, Polk County*, 181 Minn. 309, 232 N.W. 329 (1930)). The school board could have offered Ms. Finley the half-time principal position it created when it eliminated her position, thus making an unrequested leave of absence pointless. Because the school board did not make that decision, the district superintendent and the school board clerk did not hold the authority to serve Ms. Finley notice of the proposed action.

Disposition: The Court of Appeals of Minnesota reversed the decision of the school board that had placed the principal on an unrequested leave of absence because it failed to comply with the procedural requirements of the state statute. Ms. Finley's request for reimbursement of attorney's fees was denied.

Citation: *Gallison v. Bristol School Committee*, 493 A.2d 164 (R.I., 1985).

Key Facts: Ms. Diane Gallison and Mr. Ralph Gizzi, petitioners, were seeking a review of the decision that was made by the Board of Regents for Elementary and Secondary Education. The decision made by the board was that the petitioners, who were both certified elementary school teachers employed by the Bristol School System, had been properly suspended from their teaching positions by the Bristol School Committee because of a decline in student enrollment. The Commissioner of Elementary and Secondary Education found that there had been a decline in pupil enrollment of 108 students at the elementary level for the 1981-1982 school year and that this reduction was a sufficient basis for the school committee to suspend the three least

senior elementary school teachers. Ms. Gallison and Mr. Gizzi both saw the need to suspend teachers but disagreed with the method that was used to determine which teachers would be suspended. Ms. Gallison and Mr. Gizzi appealed their suspensions to the commissioner pursuant to G.L. 1956 (1981 Reenactment) §16-39-2 and argued before the commissioner that §16-13-6 required suspensions of teachers because of declining enrollments must be made on a system-wide seniority basis. The petitioners contended that the school committee was under an obligation to suspend math teachers in the high school that held less seniority than them. The petitioners argued that there were elementary teachers, with more seniority and certified to teach math at the secondary level, whom should have been transferred to the high school to replace math teachers with less seniority. By taking this measure there would have been vacancies created at the elementary level.

Issue: At issue is whether the suspension of teachers is to be made on a system-wide basis pursuant to a system-wide bumping of teachers.

Holding: The Supreme Court of Rhode Island held that in the absence of more unequivocal language from the Legislature, the interpretation by the Board of §16-13-6 was in no way erroneous or unauthorized. The in the student enrollment took place within the elementary grades and it was therefore logical that any teacher suspensions come from within the elementary grades.

Reasons: It was found that the school committee was not required to make involuntary transfers of elementary teachers to the high school to provide a position for Ms. Gallison and Mr. Gizzi at the elementary level. R.I. Gen. Laws §16-36-6 (1956) provided that are to be suspended inversely to the order in which they were hired but does not specifically address whether a systematic bumping process is required when a school committee finds that there has been a

decline in student enrollment in just one division of the school system. A school board, by reason of decline in student enrollment, may suspend teachers in numbers that are necessitated by the decline as long as this is done in the inverse order of their hiring, unless it is necessary to retain certain teachers of specific subjects whose positions cannot be filled by teachers with more seniority. The decline in the student population occurred at the elementary level and therefore is reasonable and within the observation of the legislature that such suspensions should be from within the elementary level. Moreover, it is believed that the legislature was aware of the importance of maintaining high educational standards for students within the school system and that the petitioners' proposal could result in an unwanted disruption within the school system that could negatively affect students' education.

Disposition: The Supreme Court of Rhode Island denied and dismissed the petition for certiorari, quashed the writ, and ordered all the certified papers to the court to be returned with the court's decision endorsed within.

Citation: *Gonzalez v. Marion County Educ. Service Dist.*, 698 P.2d 1042 (Or.App., 1985).

Key Facts: Mr. Ramon Gonzalez, plaintiff, was employed by the defendant, Marion County Education Service District, as a community relations specialist in its Migrant Education Service Center (MESC). Mr. Gonzalez's supervisor decided to terminate his position as a community relations specialist in 1982 when the MESC was forced to cut its budget. Mr. Gonzalez had more seniority than three teachers that were retained and he claimed that the District failed to adequately compare his competence and merit to those retained. He also argued that the District failed to comply with its statutory duty to evaluate teachers' performance biennially and that his most recent evaluations were completed in 1980 and none were made immediately before his termination in 1982. Mr. Gonzalez appealed the decision, which was later

confirmed by the district's superintendent and the school board. Mr. Gonzalez sought a writ of review in the circuit court claiming that the district had failed to comply with ORS 342.934. The circuit court confirmed the district's position to terminate Mr. Gonzalez from his position. Mr. Gonzalez appealed again and the court affirmed the lower court's decision.

Issue: At issue is whether the school district can terminate an employee with more seniority without properly evaluating the teacher's competence and merit to teachers being retained.

Holding: The Court of Appeals held that the school district had provided the lower court with a memorandum that clearly compared the plaintiff's merit and competence to the teachers being retained. Also, the court could not consider so-called errors in the school district's decision that were not raised with the lower court.

Reasons: The court stated that the examination in the memorandum that had been provided to the lower court provided a significant basis for the denial of requested relief. The memorandum was before the board and the superintendent when the decision was made to deny the plaintiff's appeal. ORS 342.934 sets forth the procedure to follow when a reduction in staff is implemented due to a lack of funds. It also states that if a school system wishes to retain teacher(s) with less seniority, the district must determine that the teacher(s) being retained has more competence and merit than the teacher(s) with more seniority who is being let go. Also, it should be noted that because the written determination that complies with the statute was before the superintendent and the board before the determination was made, the court did not make a mistake in its conclusion that the district had complied with the procedure specified by ORS 342.934. The court found, in reference to evaluations, that the purpose of an evaluation is to determine a teachers growth and development in the profession and to evaluate teaching

responsibilities and that in no way did the alleged failure of the school district to complete a recent teacher evaluation take away from the competence of the district's determination under the statute.

Disposition: The Court of Appeals of Oregon affirmed the lower court's judgment of terminating the appellant.

Citation: *Green Forest Public Schools v. Herrington*, 696 S.W.2d 714 (Ark., 1985).

Key Facts: At the time of this litigation, Mr. Hardy Herrington, appellee, was a non-probationary fourth year social studies teacher with the Green Forest Public Schools. The school board, appellant in this case, received notification that there would be a reduction in Minimum Foundation Program Aid Funds for the 1982-1983 school year. Prior to this notice, the school system had already experienced financial hardship. At a school board meeting on February 7, 1983, the superintendent made recommendations regarding reduction of expenditures. One of the recommendations made was to eliminate a teaching position at both the elementary and secondary levels. At a school board meeting held on March 21, 1983, the board voted to eliminate a social studies teaching position and additionally voted to do away with Mr. Herrington's position due to the fact that he held the least seniority of the teachers in the social studies department. Prior to this March meeting, both an elementary teacher and a secondary teacher had resigned their positions. Mr. Herrington was notified of the board's decision both verbally and by certified mail. Mr. Herrington filed a written grievance with the board requesting a hearing that was held in a special session on May 3, 1983. During this meeting the board voted to uphold its prior decision. At this point, Mr. Herrington appealed to the Carroll County Circuit Court, which conducted a hearing on June 1, 1984. The trial court found that the school board had not complied with the requirements of the Teacher Fair Dismissal Act and that they in turn

acted arbitrarily, impulsively, and discriminatorily in applying its hiring and firing procedures. Accordingly, the trial court ordered the board to reinstate Mr. Herrington to his position with back pay. The school board filed a motion for a new trial requesting credit against the decision rendered for the amount of unemployment benefits received by Mr. Herrington during the 1983-1984 school year. This motion was denied.

Issue: At issue is whether the non-renewal of Mr. Herrington's teaching contract by the Board of Directors of the Green Forest Public Schools was implemented appropriately and in a nondiscriminatory manner.

Holding(s): The court held that the board failed to adequately comply with Ark. Stat. Ann. §80-1264.3 because the hearing was conducted after the decision to terminate the teaching position had already been made. The policies were enforced in a discriminatory manner by adopting a policy to employ teachers with less experience because of the difference in salary. The court also held that in reference to the Teacher Fair Dismissal Act of 1979 that a non-probationary teacher was entitled to a written statement of the reason(s) for the suggested non-renewal and to a hearing before the board had reached a decision not to renew.

Reasons: The court stated that they must affirm the trial court's findings of fact unless they are clearly erroneous. In looking over the earlier court proceedings, the court found that it was not their function to substitute judgment for the circuit court's or the school board's (*Moffit v. Batesville School Dist.*, 278 Ark.77, 643 S.W.2d 557 (1982)). Because the hearing over appellee's non-renewal was conducted after the board had already made its decision, the board failed to comply with the requirements of the Teacher Fair Dismissal Act §80-1264.3 and therefore the ruling of the trial court was correct. The appellee was certified to teach English and Social Studies and had taught both while at Green Forest. The school board had adopted a policy

to maintain employees with less experience because of the salary difference. The school superintendent testified that the appellee's social studies position was eliminated based on the board's policy of eliminating one elementary and one secondary position, and that the appellee in this case had the least amount of experience in that specific department. However, the court found that the Board's announced policy was to utilize teachers with less seniority in order to reduce the amount of pay. The court noted that two teachers were retained and assigned the appellee's classes because they held seniority, but the contract of another teacher, to whom the appellee was senior, was renewed while the appellee's was not. The reason given for retaining the teacher was that she was certified in speech, however, when this teacher resigned in the summer of 1983, she was replaced with a teacher that was not certified in speech and had no teaching experience. Based on these facts, the board's policies were obviously applied in a discriminatory manner. School boards possess the right to establish guidelines for implementing necessary reductions in their teaching force. However, when this is done, the procedures they have established must be followed precisely. In this case it was in the application, and not the formation that the appellant erred.

Disposition: The Supreme Court of Arkansas affirmed the denial of the board's motion for a new trial and the order to reinstate the teacher with back pay.

Citation: *Jamison v. Morris School Dist. Bd. of Educ.*, 487 A.2d 749 (N.J. Super. App., 1985).

Key Facts: Dr. Felicia Jamison, plaintiff, was denied reemployment within the Morris School District, defendant. Dr. Jamison was in her third year as vice principal of student affairs and discipline. In a prerogative writ action, Dr. Jamison attacked the school board's decision stating that there was a violation of the Open Public Meetings Act, N.J. Stat. Ann. §10:4-6 et seq.

After a non-jury trial, it was determined that the act had been violated and the written notice to Dr. Jamison was a nullity and that she was entitled to tenure as well as back pay as though she had had no notice that reemployment would not be offered to her.

Issue(s): At issue is whether the school board can dismiss a teacher from their position without giving the proper notice not to reemploy. Can this decision be justified as a reason of reduction in force?

Holding(s): The court held that the plaintiff's meeting with the school superintendent and offers of reemployment that were given the 2 previous years served as sufficient notice of the closed meeting pursuant to N.J. Stat. Ann. §18A:27-10. The court also held that even if the plaintiff was not on notice, the school district corrected its violation of the act by action de novo at open meetings that were held in conformity with the act.

Reasons: Decision to give tenure and back pay was reversed based on the fact that the plaintiff's non-reemployment was the result of the school systems reduction in force of school administrators as stated in *In re Maywood Board of Education*, 168 N.J. Super. 45, 55 (App.Div. 1979). If done for reasons of the economy, reduction in force for tenured or non-tenured teachers is entirely within the right of the board. Under *Maywood, supra*, a reduction in force is "non-negotiable and non-grievable." A review such as this should be done before the Commissioner of Education as a school law disagreement.

Disposition: The Superior Court of New Jersey, Appellate Division, reversed the trial court's decision and remanded for judgment that dismissed the complaint for tenure and back pay based on the defendant's school board's reaffirmance of its warranted decision not to renew plaintiff employee's contract and complied with the statutory requirements for open public meetings.

Citation: *Marshall County Cent. Educ. Ass'n v. Independent School Dist. No. 441*, 363 N.W.2d 126 (Minn.App., 1985).

Key Facts: Ms. Patricia Dunning, appellant, was hired by Independent School District No. 441, respondent, on August 17, 1982, as a one-half time art instructor for the 1982-1983 school year. She was not a tenured teacher as defined under Minnesota law. Ms. Dunning's workday started at 11:30 a.m. and ended at 3:45 p.m. for a period of 180 days. Ms. Dunning would have been tenured if her contract had been renewed for the 1983-1984 school year. In a letter dated February 17, 1983, Ms. Dunning requested that the District reassess her contract for the upcoming year because she felt the five art classes she had been assigned were more than half of what the full time teachers were working. However, she knew that nothing could be done regarding her current contract because she had agreed to it. As a result of her letter to the Board, her fifth class, an independent study class, was dropped. This change resulted in Ms. Dunning agreeing to her contract for the 1983-1984 school year because she felt that this was what she had agreed to with the superintendent. Prior to April 28, Ms. Dunning again began to express her concern with her contract but this time voiced her concerns to her principal, Mr. David Kragness. Ms. Dunning's specific concern was with her schedule and her salary. Mr. Kragness advised her that she should follow through with her complaint via the grievance process that had been adopted by the Education Association and the District in a collective bargaining agreement. On April 23, 1983, Ms. Dunning filed a grievance with the school district in an attempt to renegotiate her contract for the 1983-1984 school year. She felt she was not given adequate preparation time and that her salary was not appropriate. On April 29, principal Kragness denied Ms. Dunning's grievance based on a letter he had received from the school District superintendent. The letter was very specific in detailing the hours she worked compared to that of a full time teacher and

that her time was actually a little less than half time. As required in step two of the grievance procedure that had been established, the grievance was submitted to the superintendent but because it was unclear as to the school year Ms. Dunning was making reference to, the grievance was withdrawn and never resubmitted. On May 5, 1983, the superintendent submitted numerous options regarding hours and salary for the art program for the 1983-1984 school year. On May 26, Ms. Dunning informed the superintendent that she would accept her current contract for the upcoming school year but she would not discuss anything further without her representative being present. Later that day, it was recommended by the superintendent to the school board that Ms. Dunning's contract for the 1983-1984 school year not be renewed. On May 26, the school board adopted the resolution terminating Ms. Dunning's contract at the end of the 1982-1983 school year based on her "lack of cooperation."

Issue(s): At issue is whether the appellant's contract was not renewed because she exercised a right granted under the Minnesota Public Employment Labor Relations Act (PERLA) or her First Amendment rights.

Holding: The court held that the non-renewal of the teacher's contract was not an exercise of the district's unconditional discretion under Minn. Stat. §125.12, subd. 3 (1982), but in fact was an unlawful act in violation of the teacher's right to file a grievance. The court observed that under Minn. Stat. §179.65, subd. 1 (1982), a public employee could not be ended for submitting a grievance.

Reasons: Ms. Dunning filed her grievance with the school board on April 23, which was a requirement based on step two of the procedure. The grievance was withdrawn and never resubmitted, however, the failure to resubmit did not terminate the grievance or the negotiations within. A grievance relates to a complaint regarding terms and or conditions of employment,

Ekstedt, 292 Minn. at 161, 193 N.W.2d at 827. The negotiation time from between May 4 and May 26 came about as a result of appellant's grievance and cannot be separate or free. During this timeframe, each party presented several options for a half-time position for the 1983-1984 school year. The board's decision not to renew the contract arose from events that occurred during the negotiation period. Because everything centered on issues raised by the grievance, the non-renewal of the teacher's contract was clearly based on the filing of the grievance. The board's claim of "lack of cooperation" was a meager attempt to terminate the employee for her statutory right to file a grievance.

Disposition: The Court of Appeals of Minnesota reversed the judgment of the trial court and ordered the teacher's reinstatement to her position with back pay.

Citation: *Martin v. School Committee of Natick*, 480 N.E.2d 625 (Mass., 1985)

Key Facts: Mr. William J. Martin, plaintiff, a teacher in the Natick Public School system, filed a law suit in the Superior Court of Middlesex County against the Natick school committee, defendant, and the superintendent of schools, defendant, claiming that his termination was a violation of his contractual, statutory, and constitutional rights. Mr. Martin was a tenured teacher in the Natick Public School System for 21 years as a fifth and sixth grade teacher. His last year of teaching he was assigned a fourth grade class. Mr. Martin received poor evaluations for 3 consecutive school years, starting in 1977 and ending in 1980. On January 21, 1980, Mr. Martin was suspended from his position for 5 days for "unbecoming conduct and/or other good cause." After a hearing was conducted for this suspension, Mr. Martin was suspended for an additional 30 days. Mr. Martin was notified by the superintendent on January 31, 1980, that a hearing would be held on March 11 to decide whether he would be dismissed from his position. There is no indication that this meeting ever took place. Previous to this, the school committee voted on

December 13, 1979, to reduce the number of elementary school teachers by 10 because of a decline in student enrollment. On April 7, 1980, the school superintendent wrote Mr. Martin and informed him that the recommendation to terminate him as a result of the reduction in force had been presented to the school committee. On April 16, 1980, the school superintendent wrote Mr. Martin again informing him that the school committee would be voting on the termination on June 16, 1980. In response, Mr. Martin requested and was granted a hearing that was held on June 16 and June 19. The school committee voted on June 19, 1980, to terminate Mr. Martin from his teaching position for “other good cause,” a reduction in force caused by a decline in enrollment. Mr. Martin was informed of this decision by letter on June 24, 1980. On October 9, 1980, the Teacher’s Retirement Board held a hearing to verify if Mr. Martin’s dismissal was warranted. On March 31, 1980, the board issued its decision keeping Mr. Martin’s dismissal as justified by the reduction in force.

Issue: At issue is whether a school committee can dismiss a tenured teacher as part of a reduction in force without adhering to the notice and hearing requirements having already initiated a process to dismiss the teacher for inefficiency or incapacity.

Holding: The court held that a teacher who was dismissed from their duty because of a decline in student enrollment had no due process right to a hearing because such a teacher had no rightful entitlement to continued employment. When the expectation of continued employment was void, teacher dismissal did not amount to deprivation of a property interest and therefore there was no claim that any property was taken without due process.

Reasons: As long as there exist an actual need for a reduction in force, a school committee is allowed to dismiss teachers from their positions without complying with the notice and hearing requirements of Mass. Gen. Laws ch. 71 §42. The teacher, who pursued but later

abandoned the grievance process provided by the collective bargaining contract, was not entitled under G. L. c. 150E, §8, to declare the same claims in an action challenging the dismissal as part of the reduction in force. No factual matter was offered by the circumstance that the teacher was allegedly notified of his termination a day after the date prescribed by the applicable collective bargaining agreement.

Disposition: The Supreme Judicial Court of Massachusetts affirmed the judgment of the lower court, which approved the school committee's motion for summary judgment in the teacher's claims that his termination from his teaching position was a violation of his constitutional, statutory, and contractual rights

Citation: *May v. Alabama State Tenure Com'n*, 477 So.2d 438 (Ala.Civ.App., 1985).

Key Facts: Ms. Deloris May, appellant, had been employed by the Mountain Brook Board of Education for enough time to have acquired continuing service status or tenure. Ms. May was certified in the area of social studies and taught it for a number of years. Ms. May was also certified secondarily to teach speech and drama. The Board of Education had suffered a drop in student enrollment and the decision was made that a number of teaching positions had to be discontinued. Ms. May was informed that her contract would be terminated because of a reduction in social studies teaching units. Several non-tenured teacher contracts were eliminated as well. Ms. May requested a hearing before the Board at which time the contract cancellation was approved. Ms. May then appealed to the Tenure Commission who also confirmed the Board's decision and established her contract was not "unjustly" canceled. Ms. May, by way of writ of mandamus, filed an action in the circuit court hoping to force the Tenure Commission to change its earlier decision. The trial court denied Ms. May's writ and found that the cancellation of her contract in no way violated the Alabama Teacher Tenure Act. Ms. May appealed this

decision on the grounds that she was qualified to teach other subjects at the school and the Board was obligated to make the necessary changes in the system in order to accommodate her tenured position.

Issue: At issue is whether the Board could eliminate the position of a tenured teacher and not a non-tenured teacher.

Holding: The court held that the evidence that had been provided supported the finding that the reduction in teaching positions was justifiable under Ala. Code §16-24-8 (1975). The court also held that the Board was not obligated to cancel a non-tenured teacher's contract who taught speech, drama, and English in order to hold on to a tenured teacher's contract who was not qualified to teach English.

Reasons: The court noted that the decision made by the Tenure Commission was final and was only subject to review by mandamus if it needed to be determined that there was a procedural error or if the Commission's decision was unreasonable because it was in contradiction to the preponderance of evidence (*Miller v. Alabama State Tenure Commission*, 451 So. 2d 301 (Ala. Civ. App. 1984)). Section 16-24-8, Ala. Code (1975) states that any cancellation of a continuing service contract employee may be made for reasons of incompetency, insubordination, neglect of duty, immorality, justifiable decrease in number of teaching positions or other good and just cause, but no cancellation made be made for political or personal reason. The appellant argued that the Board was not at liberty to cancel her contract when a non-tenured teacher was retained in a position that she could teach. However, the non-tenured teacher was certified and scheduled to teach English classes in addition to the speech and drama classes. From the evidence the Board concluded that the appealing tenured teacher was

not certified to teach English and was therefore not qualified to teach the “same” position as the non-tenured teacher.

Disposition: The Court of Civil Appeals of Alabama affirmed the trial court’s denial of the teacher’s request for a writ of mandamus in a case involving teacher tenure.

Citation: *Mongelluzzo v. School Dist. of Bethel Park*, 503 A.2d 63 (Pa.CmwltH.App., 1985).

Key Facts: From the 1979-1980 school year through the 1983-1984 school year, there was a significant decrease in the overall student enrollment in the Bethel Park School District. Mr. Richard Mongelluzzo and Mr. Frank Toth, both appellants were suspended from their positions for the 1983-1984 school year. Their suspensions were the outcome of the School District’s elimination of its Driver Education program and the alteration and/or reduction of its Industrial Art’s program through the elimination of all photography courses. Neither appellant taught in either one of these programs. Student enrollment in various photography courses had decreased from 215 in the 1979-1980 school year to 199 in the 1982-1983 school year, but enrollment in the Driver Education program had not declined significantly.

Issue: At issue is whether a school district can eliminate or restrict specific programs if the pupil enrollments in those specific programs have not substantially declined.

Holding: The appellant court held that once the school district had determined a significant decrease in overall student enrollment, it has the complete discretion under 24 P.S. §1124(1) of the Public School Code of 1949 to decrease or do away with the appellant’s positions and neither a decrease in a specific class enrollment or approval of the Department of Education need be evidenced.

Reasons: The relevant portion of Section 1124 of the code states that any board of school directors may do away with the necessary number of professional employees for significant decrease in student enrollment in the school district. It is imperative in the scheme of things that a school system be given such discretion. The School District only needs to show that the terminations were based on any one cause permitted by the code. It is clear that in this portion of the code the school district was looking at the substantial decline in student enrollment and they clearly expressed they were proceeding under this portion. In this case, neither a decrease in a specific class enrollment nor the approval of the Department of Education need be revealed. School district must encompass the flexibility in such situations to decide where personnel cuts should take place with regard to the overall education program. In this case, the School District decided it was advantageous to cut appellants' positions than other positions it deemed to be more necessary.

Disposition: The Commonwealth Court of Pennsylvania affirmed the suspensions from the school district because the statute gave the appellee absolute discretion to cut or suspend appellant teachers' positions once it had determined a substantial decrease in the overall pupil enrollment.

Citation: *Ringhoffer v. Bethlehem Area Vocational Technical School*, 38 Pa. D. & C.3d 188 (Pa.Com.Pl., 1985).

Key Facts: Mr. Ringhoffer, appellant, was the instructor for a machine shop class at the Bethlehem Area Vocational School. On April 3, 1984, Mr. Ringhoffer was officially notified of the board's decision to suspend him from his teaching position. The enrollment of the machine shop class that Mr. Ringhoffer instructed decreased from 79 students in 1979-1980 to a projection of 44 for the 1984-1985 school year. This revealed a decrease of 44%. Mr. Ringhoffer

implied that the actual number of students for the 1984-1985 school year was 52 and that this would result in a decrease of only 34% over a 6-year period. It should also be noted that the entire school enrollment decreased from 487 students in the 1979-1980 school year to only 222 students in the 1984-1985 school year, a drop of over 50%. Mr. Ringhoffer requested and was granted a hearing before the board on August 14, 1984. On November 13, 1984, the board unanimously adopted a decision affirming Mr. Ringhoffer's suspension. On March 1, 1985, Mr. Ringhoffer's request to take additional testimony was granted by the court. However, the testimony was restricted by agreement of counsel to the issue of whether Mr. Ringhoffer was prevented from recruiting students for his class. After additional depositions were taken, the board, on May 7, 1985, refused to reverse Mr. Ringhoffer's suspension.

Issue: At issue is whether the school board can suspend an employee from their position on the premise of a decline in enrollment if the decline is not considered to be substantial.

Holding: The court held that the board accurately exercised its judgment pursuant to Pa. Stat. Ann. Tit. 24, §11-1124 to suspend the appellant. The court also noted that the record in this case was absent of any evidence suggesting that the board was just attempting to "get rid" of the appellant through the use of the §11-1124 process. The court felt as though a 16% decrease over a 10-year period was significant.

Reasons: The court found that over a 6-year period the enrollment at the Vocational Technical School decreased over 50%. Whether a decrease in student enrollment is considered to be "substantial" in §1124 has not been defined. This is an area that school boards must implement with caution so that the action is not considered arbitrary based on a misconception of the law or ignorance of the facts (*Phillippi, et al. v. School District of Springfield Township*, 28 Pa. Commw. 185, 367 A.2d 1133 (1977)). The record in this case is devoid of any evidence that

implies the board was acting in a manner to “get rid” of the appellant through utilizing the §11-1124 procedure.

Disposition: The Common Pleas Court of Northampton County denied and dismissed the appellant’s appeal from his suspension.

Citation: *Rosen v. Montgomery County Intermediate Unit No. 23*, 495 A.2d 217 (Pa.Cmwlth.App., 1985).

Key Facts: Appellant teachers, Ms. Janet Rosen and Ms. Phoebe Baxter were suspended from their tenured teaching positions, in the gifted program, by school directors from the Montgomery County Intermediate Unit No. 23, appellee. This decision was made based upon Public School Code, 24 P.S. §11-1124(1), which allowed teacher suspension for the reason of declining school enrollment. However, the lower court upheld the suspension based on §11-1124 (2), which only allowed suspension for economic and reorganization reasons. Because of changes in government funding procedures for intermediate units, the board felt it would be more helpful economically to do away with some of the programs taught at the Intermediate Unit No. 23 and give these programs to individual participating school districts. As a result of this decision, the board adopted a resolution transferring the gifted program back to the individual school districts and suspending some professional employees, including Ms. Rosen and Ms. Baxter. Ms. Rosen and Ms. Baxter appealed the orders of the Court of Common Pleas of Montgomery County that dismissed their petitions for review of adjudications by the Board of School Directors who upheld the suspensions.

Issue: At issue is whether the school directors could terminate tenured teaching positions for a decline in school enrollment.

Holding: The Commonwealth Court of Pennsylvania held that a suspension under 24 P.S. §11-1124 (2) required prior approval from the Department of Education, which had not been obtained. Because the lower court based its findings on that specific section of the Code, this revealed that they had not adequately reviewed the evidence of the adequacy of proof of declining school enrollment under §11-1124(1), which the court found not fitting.

Reasons: The Common Pleas Court concluded that this case was identical to *Cadonic v. Northern Area Special Purpose Schools*, 57 Pa. Commonwealth Ct. 42, 426 A.2d 186 (1981), where a decrease in federal funding for a guidance counseling program resulted in the elimination of the centralized program in support of individual programs by participating school districts. However, the Commonwealth Court of Pennsylvania concluded from *Cadonic* that the elimination of the guidance counselor program was not the result of a decline in enrollment under §1124(1) of the Code, but that the program was ultimately eliminated “to conform with the standards of organization and educational activities required by law” under §1124(2) of the Code. In opposition to the view expressed by the common pleas court as to departmental approval, the review of the record did not disclose any evidence that the Department of Education approved any change in the gifted program. Evidence does show communication between the department and the board documenting that the department advised the board that suspensions pursuant to §1124(1) of the Code, for declining enrollment, did not require departmental approval. The court concluded that §1124(2), which was not used, is the only section that was appropriate for a legitimate suspension in this case. In *Cadonic*, the court continuously held, in a factually similar setting, that a teacher suspension resulting from the elimination of an educational program, based on a change in funding procedures, was not a result of declining enrollment. Therefore, §1124(1) of the Code was not an appropriate basis for the

termination of Ms. Rosen and Ms. Baxter as well as §1124(2) because there was no departmental approval to warrant the terminations.

Disposition: The Commonwealth Court of Pennsylvania reversed the order of the lower court that upheld the suspensions of the appellant teachers, and remanded for reinstatement by the appellee county school directors the positions the appellants previously held along with payment to appellants of back pay and benefits from the date of suspension.

Citation: *Schimmel v. Board of Educ., South Kortright Cent. School Dist.*, 490 N.Y.S.2d 64 (N.Y.App. Div.3.Dept., 1985).

Key Facts: The Board of Cooperative Educational Services of the Second Supervisory District of Delaware, Greene, Schoharie, and Otsego Counties (BOCES) employed Mr. William S. Schimmel, petitioner, as a tenured driver education teacher through July 1981. Because of an insufficient demand of the driver education service from essential school districts, including the Board of Education of the South Kortright Central School District, respondent, BOCES did away with its driver education program. At that time Mr. Schimmel was relieved of his duties because he held the least seniority in that tenure area. In the summers of 1981 and 1982, the respondent school district offered driver education courses and appointed Mr. Harry Nissen as the instructor. Although the respondent informed BOCES that it was going to offer the summer driver education courses, the BOCES failed in letting Mr. Schimmel know of the possible opening. On the other hand, Mr. Schimmel never spoke to BOCES regarding potential employment opportunities. Thereafter, the respondent chose to include the driver education program in its 1983-1984 curriculum. Unlike its hiring process from the previous two summers, the respondent notified Mr. Schimmel by letter of its decision to offer driver education on a part-time basis. The letter also advised Mr. Schimmel that the possibility of a full-time position combining driver

education and industrial arts was being considered. Mr. Schimmel applied for the position but was denied the position on the basis that the open position was not similar to his earlier position and that his previous employment performance with BOCES was not faithful and/or competent. In 1981, Mr Schimmel was disciplined for sleeping in the driver education car on three separate occasions while a student driver was at the wheel. As a result, Mr. Nissen was appointed to the full-time position of driver education and industrial arts teacher.

Issue: At issue is whether the creation of a single full-time position made up of two disciplines was a permissible exercise by the board.

Holding(s): The court held that the proceeding was not time barred and the creation of a new position was an appropriate action of the board and that the new position was dissimilar from the previous position held by the teacher. The court also concluded that since the teacher was disciplined for falling asleep while a student was driving on numerous occasions, the teacher had failed to perform competently.

Reasons: The court noted that the proceeding was not barred by time. The petitioner presented his claim on July 18, 1983, after he was not rehired, which fell within the 3-month Statute of Limitations forced by Education Law §3813 (1). The respondent's argument that the petitioner's claim accrued when it first offered drivers education courses in the summer of 1981 was unpersuasive. Not only did the petitioner fail to make a claim in reference to the summer position and lost wages, but the Education Law imposes no responsibility on released teachers to seek out potential teaching positions. In fact, the boards of cooperative educational services are obligated to notify teachers of openings created by takeovers. In regard to the merits of the petition presented by the petitioner, it is clear that the respondent has the right to put together a curriculum for the school district and is empowered to join or abolish teaching positions for

financial concerns. It is without question that the respondent merged the driver education and industrial arts class in an effort to provide both courses during the 1983-1984 school year. By combining the courses, financial funds were conserved that the board claimed would eliminate an extra expense while providing students with an additional course. It is also clear that the petitioner's claim must fail since he lacked the dual certification need to teach the newly created class. It was also within the board's rights to consider the petitioner's prior performance in its evaluation of his application for the position. The rules of the State Board of Regents clearly recognize that the mandate of Education Law §2510 applies to a board of cooperative educational services, such as BOCES, which has done away with tenure area positions. The law clearly states that in order for an excessed teacher to fill a vacancy, their previous service must have been faithful and competent.

Disposition: The Supreme Court of New York, Appellant Division, Third Department, affirmed the decision dismissing the teacher's suit.

Citation: *Shearod v. Board of Co-op Educational Services of Nassau County*, 486 N.Y.S.2d 62 (N.Y.App.Div.2.Dept., 1985).

Key Facts: Mr. James Shearod, respondent, was let go from his position as a diversified cooperative work-study program teacher (work experience counselor) in the Board of Cooperative Educational Services of Nassau County (BOCES) when his program was abolished. In a proceeding pursuant to CPLR article 78, Mr. Shearod sought a newly created position of a vocational rehabilitation counselor upon the claim that this new position had "similar" duties to his previous position within the meaning of Education Law §2510 (3). The trial court determined that the BOCES, appellant, should reinstate Mr. Shearod to this newly created position along

with back pay and benefits retroactively to September 13, 1982, minus any compensation earned by him during the interim.

Issue: At issue is whether the respondent should be reinstated to a new position on the premise that the duties were similar to a previous position.

Holding(s): The court held that there was a significant difference in the two positions because the responsibility to teach that was required by a work experience counselor was different from that of a vocational rehabilitation counselor. The court also held that the work experience counselor position was pedagogical in nature, requiring a teaching certificate and the rights of the incumbents of that position were governed by the Educational Law. In sharp contrast, the position of a vocational rehabilitation counselor was non-pedagogical in nature, requiring no teaching certificate, and the rights of the incumbents were governed by the Civil Service Law.

Reasons: The Supreme Court of New York found that the duties of the newly created position of vocational rehabilitation counselor were not “similar” to the duties of a work experience counselor within the meaning of Education Law. The major difference in the two positions was in the “responsibility to teach” when comparing a work experience counselor to that of a vocational rehabilitation counselor. In *Matter of Smith v. Board of Educ.*, 97 AD2d 795, 797, the record indicates that the work experience counselor position is pedagogical, requiring a teaching certificate and the rights of the incumbents of that position are governed by the Education Law. On the other hand, the position of the vocational rehabilitation counselor is non-pedagogical, requiring no teaching certificate and the rights of the incumbents are governed by the Civil Service Law. Although Mr. Shearod was on the eligible list of terminated work

experience counselors, he was not eligible to the appointment of the new position based on these facts.

Disposition: The Supreme Court of New York, Appellant Division, Second Department, reversed the trial court's order of reinstatement.

Citation: *State ex rel. Haak v. Board of Educ. of Independent School Dist. No. 625, St. Paul*, 367 N.W.2d 461 (Minn., 1985).

Key Facts: Appellant administrators, Mr. Kent Hinshaw, Mr. Ray Holzworth, Mr. Louis Haak, and Ms. Irene Cummings sought review of an order from the Ramsey County District Court that refused to set aside their demotions from their administrative positions. As a result of a decline in student enrollment and a budget shortfall of approximately \$8 million, the Board of Education of Independent School District No. 625, St. Paul, Minnesota, respondent, eliminated 36 administrative positions at its board meeting held on February 2, 1982. The duties and responsibilities of these positions were condensed into 15 new administrative positions. The superintendent of St. Paul Public Schools thereby issued notices of discontinuances of positions to each appellant and informed them that Minn. Stat. §125.17 (1984) allowed individual hearings regarding the proposed demotions. Mr. Hinshaw was Supervisor of Science and his position and those of 10 other curriculum supervisors were eliminated and consolidated into seven new positions consisting of five Assistant Directors of Curriculum, a Director of Elementary Curriculum and a Director of Secondary Curriculum. Mr. Holzworth was Supervisor of Special Education, Special Learning, and Behavior Problems. His position, along with other supervisory positions in the area of special education, was eliminated and the duties were reassigned to a new Director of Special Education with an assistant for instructional programs and another assistant for related and support services. Mr. Haak was a Supervisor of Administrative Research. His

position was eliminated along with the Supervisor of Research and Evaluation. These duties were reassigned to a new Assistant Director of Research, Evaluation, and Teaching and to a new Director of Administrative Services. Ms. Cumming was Associate Administrator of Student Accounting. Her position, along with the Supervisor of Student Accounting, was eliminated and was assigned to a new Director of Student Accounting. Each appellant elected to have individual and private hearings that were held before three different state hearing examiners. Each examiner determined that the board was justified in its decision to do away with the positions due to the decrease in student enrollment. However, the hearing examiner in each case also stated that the appellant(s) should not have been demoted but should have been reassigned to one of the new positions if they held seniority in that area.

Issue(s): At issue is whether the board can reassign administrators to new positions on the basis of seniority if the new positions are considered a promotion and if administrators are considered teachers under the Teacher Tenure Act.

Holding(s): The court held that the trial court concluded in error that the board had waived or was estopped from asserting its claim that Minn. Stat. §125.17(1)(a) (1984) of the Teacher Tenure Act did not include administrators. The court held that because several of the administrators' old duties were not specifically defined under the Act, the Act did not provide them with protection. The court held that additional evidence was needed to determine whether or not the Act truly applied to the administrators. The court held that additional evidence was needed in order to determine whether or not a collective bargaining agreement provided tenure rights to the administrators. The court held that if the new positions were found to be a promotion, the Act did not apply.

Reasons: The court determined that neither waiver (voluntary relinquishment of a known right) and/or estoppel would preclude the board from asserting that any of the appellants were not considered teachers under the Teacher Tenure Act. The board did not willingly relinquish any rights by giving the administrators hearings before their demotions. In fact, the board was affording the administrators procedural safeguards regardless of whether the Act was applicable. The case the trial court used in establishing waiver, *Winter v. Farmers Educ. & Coop. Union*, 259 Minn. 257, 107 N.W.2d 226 (1961), was considered irrelevant since the board had refused to address the reassignment issue at the demotion hearings and could hardly have chosen the theory upon which it would try that issue. Estoppel would not apply in this case because the administrators did not change their positions or determine their loss on any representation by the board as to their tenure rights. To refuse estoppels to the administrators is not unfair, but to grant it, in turn, would aggravate the public intent that would allow school districts flexibility in running their affairs. In regard to administrators being teachers as stated in the Act, school personnel who are not clearly enumerated in the Act are simply not entitled to the protection it has to offer (*Board of Educ. V. Sand*, 227 Minn. 202, 207, 34 N.W.2d 689, (1948)). The administrators did not fall within any enumerated categories of employees who are to be deemed teachers and therefore should not qualify for any of the Act's protections unless they were regularly employed to supervise classroom instruction. Through analysis of *Sand*, 227 Minn. 202, 34 N.W.2d 689, and *Eelkema v. Board of Educ.*, 215 Minn. 590, 11 N.W.2d 76 (1943), it was determined that an administrative to a school superintendent was not defined as a teacher within the Act. Specifically, administrator's duties included no classroom teaching, little or no supervision of classroom instruction but instead involved research and statistical analysis regarding school administration. According to theses settled policies, it is clear from the law the

Mr. Louis Haak, and Mrs. Irene Cummings were not teacher and therefore not covered under the Teacher Tenure Act. As to Mr. Kent Hinshaw, and Mr. Ray Holzworth, the records consist of factual disputes but the Supreme Court of Minnesota does not make findings of fact. The appellants concluded that if the definition of a teacher precludes them from the protection of the ACT, they should still have protection under the collective bargaining agreement between the school district and the Association of Administrative Personnel. However, this is unable to be determined because the “prior agreement” being referred to in the 1981-1983 contract is not part of the record at this time. Therefore, knowing what kind of tenure is being claimed is unclear. Having been determined that some of the appellants do have Tenure Rights, it needs to be determined whether losing an “old” position entitled them to a “new “ position that was created by the board. This was not decided by the trial court but was remanded to the board for further investigation. The trial court also distinguished that the record was unclear as to how the duties of the “old” positions were realigned to the “new” positions and that it was not possible to tell if the “new” positions held a higher rank than the “old” positions. It was affirmed by the higher court that simply relabeling a position changes nothing.

Disposition: The Supreme Court of Minnesota affirmed the trial court’s order that refused to set aside the administrators’ demotions and remanded the matter to the board. However, the court reversed the trial court’s finding of waiver against the board as undoubtedly erroneous.

1986

Citation: *Beste v. Independent School Dist. No. 697*, 398 N.W.2d 58 (Minn.App., 1986).

Key Facts: An agreement was made between the Independent School District, No. 697 and the Gilbert School District to merge some classes at the secondary level beginning in the

1986-1987 school year. Based on this agreement, a master seniority list was developed covering all teachers in both districts. The teachers with the least seniority were proposed to be placed on ULA. Realtors, Mr. Thomas Beste and Mr. David Kriska, both industrial arts teachers, were placed on ULA by the Independent School District, No. 697. Mr. Beste was placed on ULA to begin with but was later recalled to a full-time position and his appeal was dismissed. Mr. Kriska was placed on ULA full-time and was not offered a position for the 1986-1987 school year. However, a teacher having less seniority than Mr. Beste or Mr. Kriska was retained to instruct a computer teaching class. Five teachers who were placed on ULA eventually requested a hearing but three of these teachers later waived their rights to a hearing and did not appear. The hearing for Mr. Kirska took place on May 26, 1986 before a hearing examiner. At this hearing the only ground suspected as the reason for Mr. Kirska's layoff was discontinuance of position. In a subsequent hearing on May 28, 1986, the hearing officer submitted his proposed findings, conclusions, and recommendations and awarded Mr. Kirska a .4 gifted teaching position and any study halls or other supervisory hours to which he would be eligible based upon his seniority. Referring to *Strand v. Special School Dist. No. 1*, 361 N.W.2d 69 (Minn. Ct. App. 1985), the hearing officer rejected Mr. Kirska's right to bump a less senior teacher assigned to a computer position, stating it would not be reasonable and/or practical. The school board adopted these proposals with some modifications. First, they did not give Mr. Kirska a .4 gifted teaching position. Second, the board did not give Mr. Kirsak any available study hall or supervisory hours but simply placed him on ULA. The board adopted the recommendation of not bumping a less senior computer teacher but in turn deleted any reference to the *Strand* case for their decision. In response, Mr. Kirska appealed these decisions.

Issue(s): At issue is whether Independent School District, No. 697 failed to establish a justification for the relator's ULA decision on the ground of discontinuance of position? Did the Independent School District's decision to place the relator on ULA instead of assigning him to available positions that were either vacant or held by less senior personnel, show erroneous theory of law? Did the Independent School District act unreasonably in not adopting the hearing examiner's recommendations and by not providing reasons for their decision?

Holding(s): The court held that the hearing examiner's conclusions that a school merger resulted in the reduction of the program, that the teacher was employed, and that the decision to place a teacher with less seniority in the same program on ULA appropriately showed that the position was being discontinued. The court also held that the board implemented its power by specifically rejecting the recommendations of the examiner who conducted the hearing and that the board had an obligation to offer a reason as to why it rejected those recommendations.

Reasons: Mr. Kirska correctly pointed out that the discontinuance of a particular position has never been defined by the Minnesota courts and challenged the Court of Appeals to define it as one in which a given curriculum was eliminated. However, the Supreme Court of Minnesota has distinctively rejected the proposal that the discontinuance of a position be equated with a position being eliminated from the curriculum (*Hendrickson v. Independent School Dist. No. 319*, 303 Minn. 423, 425-26, 228 N.W.2d 126, 128 (1975)). Stated in subd.10 of Minn. Stat. §125.12, along with subd.6, it is clear that the discontinuance of any position is a legitimate cause for placing a teacher on ULA if it is proved by knowledgeable evidence. The school board provided much proof in this case that the industrial arts position held by the relator was being discontinued due to school mergers and that the evidence presented fully complied with the statute. The statute previously mentioned states that seniority amongst appropriately licensed

teachers is what determines the order of bumping, realignment, or layoff. It is important to be aware of the differences between bumping and realignment because bumping by seniority and licensure is an unconditional statutory right, where realignment may involve the process of discretion by a school board. In this case the relator was placed on ULA while a less senior teacher was assigned a computer class that required no special licensure to teach. To assign this class to the relator was deemed impractical. It was argued by the school board that since the teacher with less seniority had a math-science background, they were more qualified to teach the computer class than the relator who only had a social science background. However, taking into consideration abilities and qualifications, while commendable, have no place in a bump situation since this is a statutorily mandated procedure. A teacher's ULA rights are governed by statute where only licensure and seniority are used in a bump situation. In this case, the relator attained the right to bump any less senior teacher from a position in which he was qualified and in this case he held a general license that was all that was required to teach the computer course. While it is also true that no specific license is required to teach study hall classes, it has been determined to be an unfair working practice for schools to assign non-licensed personnel to study halls when teachers have held the responsibility. In this case, the respondent school board must continue this practice since this is what traditionally was done. The relator argued that the hearing officer's findings were entitled to "prima facie validity" and must be accepted except for a very good reason. Although Minnesota statute does not require a school board to follow recommendations from a hearing officer, case law suggests that a failure to do so would result in a denial of individual due process. While it is the role of the hearing examiner to come up with findings and conclusions, it is not a requirement that the board accepts and follows them. It is definitely the board, and not the hearing officer, who must make the final decision. If this is the

case, the school board must in turn provide reasons to support their action. In this case it is clear that the respondent rejected the recommendations of the hearing officer and chose to exercise its will and not its judgment. For this reason, their action was seen as arbitrary and subject to reversal by this court.

Disposition: The Court of Appeals of Minnesota reversed the decision of the board that placed the teacher on an unrequested leave of absence (ULA).

Citation: *Bye v. Special Intermediate School Dist. No. 916*, 379 N.W.2d 653 (Minn.App., 1986).

Key Facts: The Special Intermediate School District No. 916, respondent, provides secondary, postsecondary, adult vocational services, and special education services in White Bear Lake Minnesota. The 16 teachers involved in this case all taught in the postsecondary vocational division (AVTI), which serves approximately 1,700 students on a daily basis. The State Board of Vocational Technical Education is responsible for overseeing all the AVTI programs in the state. Without there being any independent taxing authority in the district, the main revenue for its AVTI comes from State aid, while another 20% comes from tuition which is set by the state legislature. The principal account used for paying AVTI staff is Fund 11. The estimated balance of Fund 11 at the end of the 1985 school year was a negative \$325,827 and this had been sustained by internal borrowing. The district estimated that Fund 11, for the 1986 school year, would have a deficit of \$1,157,911 (13.7%) if it kept the same expenditures from the previous year. The State Board had a new policy that forbids other funds in the district to support the AVTI fund and that the AVTI's debt must not exceed 2.5% of the previous fiscal year fund reserve. In addition to this new policy, the respondent had adopted a goal of balancing the budget and to rebuild the fund balance. Based on this, the AVTI was instructed to cut \$1,403,937 from

Fund 11's 1986 budget with approximately \$700,000 coming from the budget for instructional staff. After all cuts were made, the projected balance at the end of the 1986 school year was \$246,028. The respondent adopted goals of not eliminating any programs and would try to maintain minimum student-staff ratios that had been set by the State Board. They then decided that programs below the minimum student-staff ratio, and those that were borderline, could be cut. The district also decided that related services and instruction should be cut before programs and that multiple instructor programs should be reduced before those programs with only one instructor. On March 19, 1985, the school district planned to eliminate 34 positions that would go into effect on June 30, 1985. A notice was sent to each teacher stating the reason for his or her placement on ULA. Twenty-one teachers requested a hearing by an independent hearing examiner and these were granted on April 23, 24, and 29, 1985. The hearing examiner came to the conclusion that Fund 11, from which teacher salaries were paid, had been in a marginal and or deficit position since 1983 and that the financial issue facing the district was the overriding reason for the decision to place these teachers on ULA. The hearing officer also stated that there was a lack of pupils in nine programs that justified a reduction-in-staff. She further concluded that there was no sign or evidence that the school district had acted arbitrarily or unreasonable. She saw no sign of seniority being overlooked and recommended that the affected teachers be placed on ULA at the end of the 1984-1985 school year. The school district adopted these proposals and placed all teachers on ULA. However, several teachers were reinstated before the appeal and 16 teachers appealed by writ of certiorari.

Issue(s): At issue is whether the school district's decision to place 16 teachers on unrequested leave of absence based on financial limitations was supported with adequate evidence? Was the school district's decision with regard to individual teachers supported by

substantial evidence or was it arbitrary? Did the school district violate the seniority provisions of the collective bargaining agreement?

Holding(s): The court held that there was enough evidence to support the conclusion that the financial limitations present in the school district warranted putting the teachers on unrequested leave. The court held that the school district acted carelessly when placing an instructor in a dental lab on unrequested leave when the evidence presented showed that enrollment in the program was increasing, there was a waiting list for admission, and the program's accreditation would be tarnished by the implementation of a staff reduction.

Reasons: The teachers argued that the school district used lack of enrollment as the reason for placing some teachers on unrequested leave but used lack of enrollment along with financial limitations for placing others. The basis for their argument arose from a school district memorandum that outlined a plan to reduce staff while specifically proposing certain positions to be cut in certain categories. However, the evidence indicates that the plan to reduce staff was developed because of the overall budget problems being faced by the district and the district's decision to place all teachers in question on unrequested leave, because of financial limitations, was supported with considerable evidence. The court's review of the decision to place certain teachers on unrequested leave is limited to the decision of whether there was substantial evidence supporting whether the decision was arbitrary, capricious or unreasonable. One data processing teacher was placed on unrequested leave because of financial restrictions. The district did provide evidence in this instance of financial restrictions causing it to place 34 teachers in the data processing field on unrequested leave. Once the district had come to this determination, it did not need to prove financial restrictions for each individual position. However, it was not at liberty to just pick which teachers it wanted to place on leave. In an effort to avoid arbitrary

placements, the district developed specific standards in the form of goals and objectives which none of the teachers challenged. By doing this, the district did not act arbitrarily when placing the data processing teacher on unrequested leave. Several teachers employed in the areas of accounting, horticulture, machine technology, marine and power, vending machine technician, auto mechanics, and remedial reading were placed on unrequested leave because of substantial evidence that the student to teacher ratio in these programs were continuing to drop. The exception to this came in the area in which teachers were employed to teach dental lab. The district did acknowledge that at the time of the hearing the student enrollment was increasing in the program. Testimony indicated that there was a waiting list to get in this program and that cuts in this area would danger the accreditation of the program and the quality of students' education would be negatively affected. The court found in this instance that discontinuing a dental lab position based on a declining enrollment was both arbitrary and unreasonable. Several teachers claimed that their seniority rights were violated when they were placed on unrequested leave. While the record in many of these cases was limited, substantial evidence was found by the court in determining that no teacher's seniority rights were violated.

Disposition: The Court of Appeals of Minnesota affirmed the decision of the school district to place 15 teachers on ULA but reversed the decision involving 1 teacher.

Citation: *Daly v. Grove City Area School Dist.*, 46 Pa. D. & C.3d 281 (Pa.Com.Pl., 1986).

Key Facts: Ms. Jan Daly, petitioner, was a home economics teacher in the Grove City Area School District, respondent. It was agreed by all parties that the Grove City Area School District had a considerable decline in student enrollment resulting in the furloughing of Ms. Daly from her teaching position as a home economics teacher. The district employed another teacher, Ms. Sylvia Roach, in this department also. Ms. Daly was hired on July 13, 1981, as a permanent

half-time home economics teacher and previously served for a semester as a long-term sub in this department as well. From the date she was hired to the date of her furlough, Ms. Daly taught as a half-time home economics teacher. In the 1984-1985 school year, Ms. Daly was hired as a half-time home economics teacher to fill the vacancy made by a regular home economics teacher who went on sabbatical. Therefore, during the 1984-1985 school year, Ms. Daly was employed by the school district as both a permanent half-time teacher and a half-time long-term substitute. In contrast, Ms. Roach was hired by the school district on August 9, 1982, as a permanent full-time home economics teacher, who continued to work in that capacity up to the time of Ms. Daly's furlough. Prior to that, Ms. Roach was employed by the school district in the 1981-1982 school year as a long-term substitute for one-half year.

Issue: At issue is whether the school district, for the purpose of furloughing a teacher from her position, should consider in its calculation substitute teaching time or focus only on permanent teaching time.

Holding: The Common Pleas Court held that the school district properly barred the time the teacher had spent as a substitute from her hours of service in the school system because substitute teachers could not attain seniority rights.

Reasons: The court determined that the term substitute should mean any individual who has been employed to perform duties of a regular employee during the time that the regular employee is absent on sabbatical leave or for other reasons approved by the board. The decision in this case therefore comes down to the interpretation of the hours Ms. Daly spent as a substitute teacher for the Grove City Area School District. The Public School Code does not specifically define seniority nor does it suggest a specific method to compute seniority. However, some case law does look at the position of a substitute and how it relates to seniority. In *Marnell v. Mount*

Carmel Joint School System, 380 Pa. 83, 110 A.2d 357 (1955), the Supreme Court dealt with the dismissal of a school nurse after two school districts were consolidated. In this case the court specifically looked at the difference between a “substitute” and a “temporary professional employee.” The position of Ms. Daly was exactly like that of the nurse in the previous case that was let go. While being employed as a substitute, Ms. Daly never required the status of a professional employee or a temporary professional employee and therefore could not be placed in any other status by the school district because a substitute remains employed by the school district only as long the employee they are filling in for remains absent from the position. Therefore, Ms. Daly could not gain any hours towards seniority during her time employed as a substitute.

Disposition: The Common Pleas Court of Mercer County Pennsylvania affirmed the decision of the Grove City Area School District to furlough the petitioner teacher from her job.

Citation: *Elrod v. Harrisonville Cass R-IX School Dist.*, 706 S.W.2d 465 (Mo.App.W.Dist., 1986).

Key Facts: Mr. Max Elrod, respondent-appellant, worked for the Harrisonville School District, appellant-respondent, as a teacher prior to accepting an administrative position as principal. Mr. Elrod was first employed in the district as a probationary teacher during the 1978–1979 school year. Mr. Elrod signed his first contract with the school system during the 1980–1981 as a permanent teacher and was later assigned to an assistant principal position at the Jr. High School. The law requires the offer of a contract to be issued to a teacher or administrator by April 15 even though the projected revenues for the following school year might not be available. Mr. Cook, the school superintendent, offered Mr. Elrod a letter of intent in February of 1981 to reemploy him for the 1981-1982 school year. The letter stated that due to the uncertainty

in projected revenues and expenditures for the upcoming school year, a salary could not yet be determined but a contract would be issued as soon as this information was available. Mr. Cook and Mr. Elrod also met in February to discuss Mr. Elrod's evaluation as assistant principal at which time Mr. Cook informed Mr. Elrod that he was pleased with his performance and that he could expect a 5% increment. Mr. Elrod requested a 10% increment when he found out that other principals would be receiving as much. Mr. Cook stated that he would look into the matter and later told Mr. Elrod "that 10% would be okay." On April 13, 1981, the school board offered Mr. Elrod a contract, which he signed and returned. A term subjected the contract to modification and/or termination under the Teacher Tenure Act. It later became very clear to the school board that the school district was going to face financial hardship for the 1981-1982 school year and reductions would need to be made. The school district had built up a deficit of more than \$300,000 since the 1979 school year and was looking at less revenue for the upcoming year than they had received prior. The board, in response, acted by placing several teachers on unrequested leave. On June 19, 1981, Mr. Cook contacted Mr. Elrod to inform him that the Board had acted to place him on unrequested leave. Mr. Elrod also received confirmation of this decision by letter stating that this action was taken because of the financial condition of the school system. However, Mr. Elrod was informed that he was selected for enforced leave as assistant principal for another reason: the consolidation of the ninth grade into senior high school had rendered an assistant principal unnecessary at the high school where Mr. Elrod served. Mr. Cook disclosed this information to Mr. Elrod at his evaluation conference in February 1981. Mr. Elrod brought three counts against the school district. Count I was for breach of contract, Count II for violation of 42 U.S.C. §1983, and Count III for fraud.

Issue: At issue is whether the Harrisonville School District breached an employee's contract when he was placed on unrequested leave due to financial hardship.

Holding: The Court of Appeals of Missouri held that the Harrisonville School District did not breach its contract with the principal.

Reasons: The court found that the evidence in the case, in reference to Count I, was probative and that the contract for employment as an administrator was never proven. The only educator position with tenure acknowledged by Missouri law is that of a permanent teacher to teach. Mr. Elrod failed on his part to prove that the contract offered him on April 13, 1981, was for a teaching position. Under the same premise the court ruled that there was no right by Mr. Elrod for continued employment under the terms of the contract which due process would protect by prior notice and having the opportunity for a hearing.

Disposition: The Court of Appeals of Missouri, Western District, reversed the portion of the judgment from the circuit court that found the school district liable for breach of contract while affirming the portion of the judgment the school district had not violated the principal's civil rights.

Citation: *Evans v. Independent School Dist. No. 281*, 396 N.W.2d 616 (Minn.App., 1986).

Key Facts: In a board meeting of the Independent School District No. 281, respondent, held on February 18, 1986, Mr. Mark Thorsell and Ms. Virginia Peterson, relators, were placed on unrequested leaves of absence from their social studies teaching positions. At this meeting the board also recommended the elimination of several coordinators' positions, including that of Dr. Stuart Stockhaus who served as the coordinator of social studies and gifted and talented programs. On February 25, 1986, Dr. Stockhaus requested a hearing pertaining to the board's

decision. Mr. Thorsell failed to request a hearing regarding his ULA in reference to Minn. Stat. §125.12, subd. 4 (1984) and therefore appeared to have accepted his notice. An inaccurate notice was mailed to Mr. Thorsell on March 18, 1986, but the board later responded by sending him a correct notice on April 3, 1986. On April 2, 1986, the Independent School District No. 281 submitted a proposal to place extra classroom teachers on ULA, which included Ms. Peterson and Mr. Evans. On April 3, 1986, both Ms. Peterson and Mr. Evans received notices of their placement for the upcoming school year. At this time, Ms. Peterson requested a hearing but Mr. Evans did not. On April 9, 1986, Dr. Stockhaus chose not to follow through with his previously requested hearing and instead accepted his reassignment to a full-time teaching position in the classroom. Dr. Stockhaus held seniority, as a licensed social studies teacher, over the previously mentioned relators. The hearing examiner, on May 26, 1986, submitted her findings which concluded that Ms. Peterson's placement on ULA was appropriate and Dr. Stockhaus's assignment to her teaching position was appropriate based on his seniority. On May 28, 1986, the school board approved the findings and recommendations of the hearing examiner but Ms. Peterson was removed from her ULA on July 22, 1986, and reinstated to her teaching position.

Issue: At issue is whether the school district acted appropriately in demoting administrators from their current position and then reassigning them to classroom teaching positions.

Holding: The Court of Appeals of Minnesota held that the school district's decision to demote administrators and reassign them to teaching positions was appropriate in that the states statutes allowed the administrators to bump teachers with less seniority.

Reasons: Relators in the case argued that administrators could not legally bump classroom teachers from their position if they had not served previously as teachers in that

district. However, no provision was found in the bargaining agreement to support this claim. Dr. Stockhaus, a member of the bargaining unit represented by the Robbinsdale Association of District Administrative Staff (RADAS), violated no law when he was reassigned to a classroom teaching position. Both the RFT, collective bargaining unit used by the relators, and RADAS were found to be quiet regarding the seniority status involving administrators / coordinators without teaching experience in a specific school district. The Court of Appeals of Minnesota concluded that the trial court did not err from the law when it chose to reassign Dr. Stockhaus to a classroom teaching position which bumped relators in the process. It was not Dr. Stockhaus's experience within the district that was relevant, but his licensure and date of hire. Under Minn. Stat. §125. 12, subd. 6b (b), administrators can bump less senior classroom teachers from their positions regardless of actual teaching experience in the district. To rule differently would discourage administratively licensed teachers from ever accepting administrative positions.

Disposition: The Court of Appeals of Minnesota affirmed Independent School District No. 281's decision to place teachers on unrequested leaves of absence and to demote and reassign administrative coordinators to classroom teaching positions.

Citation: *Glendale School Dist. v. Feigh*, 513 A.2d 1093 (Pa.Cmwlth.App., 1986).

Key Facts: In June of 1984, the Glendale School District's superintendent met with the School Board to recommend the cutting of several school programs in order to plan for an anticipated budget crisis. On June 27, 1984, the Board met and approved the superintendent's recommendations by cutting the elementary music program by virtue of eliminating the instrumental music part of the program. The superintendent followed this approval by requesting approval from the Department of Education which was therefore granted. On July 2, 1984, Mr. John Feigh, appellee, was informed in writing of the elimination of the music program and that

he would be suspended from his position of music instructor. At a hearing before the Board, the appellee's suspension from his position was upheld but was later reversed by the trial court who believed Mr. Feigh was suspended for reasons other than those in §1124 of the Code.

Issue: At issue is whether the appellee in this case could be suspended from his teaching position for financial reasons only based on 24 P.S. §11-1124(2).

Holding: The court held that in reference to code, the appellee could not be suspended from his position only for financial reasons, but the program could be eliminated for financial reasons which would result in the appellee being suspended from his position.

Reasons: The trial court found in this case that the elementary music program was eliminated to make up for a downfall in the school systems budget and was not eliminated to abide by the standards of reorganization that was required by the law or had been recommended by the Department of Education. However, the trial court's decision is at difference with the letter of approval that was sent by the Department of Education to the School District. This is important to note because the letter played a vital role in separating this case from previous cases ruled upon in this court and the Supreme Court. The Commonwealth Court of Pennsylvania sided with the School Board in this case in that earlier cases stood for the proposition that a school board could not suspend a teacher under §1124 for only financial reasons without also supporting other causes for suspension in the section. The court in this case agreed that the School District's decision to do away with its music program was in an honest attempt to find a way of dealing with severe economic issues. While the School District legally could not suspend Mr. Feigh from his position exclusively for financial reasons, it could, with the authorization of the Department of Education, get rid of a non-mandated program for financial reasons. Under those parameters, the provisions provided in §1124(2) become active. As a result of this and the

fact the Mr. Feigh never alleged any improper reason for his suspension, the decision of the Board was affirmed.

Disposition: The Commonwealth Court of Pennsylvania reversed the decision of the Court of Common Pleas of Cambria County. By doing so the court upheld the original decision of the Glendale School District to suspend the music teacher.

Citation: *Hicksville Congress of Teachers v. Hicksville Union Free School Dist. Bd. of Educ.*, 499 N.Y.S.2d 774 (N.Y.App.Div.2.Dept., 1986).

Key Facts: Ms. Miriam Pasetky, petitioner, taught several academic subjects, primarily mathematics in the Hicksville Union Free School District. As of June 1983, she had acquired 6 years and 3 months of seniority within the system. Mr. Axelrod, also a petitioner, taught mathematics and during the same timeframe had accumulated 11 years of seniority within the system. Both petitioners held the least seniority as academic subject teachers. The respondents in the case were three teachers, Milani, Szumigala, and Schack. All three of the respondent teachers taught health and health related subjects in the Hicksville District junior high schools. As of the June 1983 timeframe mentioned earlier, Milani had acquired 11 or 12 years of seniority, Szumigala had acquired 13 years of seniority, and Schack had acquired 16 years of seniority.

Issue: At issue is whether health teachers at the junior high school belong to a different “vertical” tenure area or do they belong to a “horizontal” tenure area labeled “General Junior High School” that is made up of academic subjects.

Holding: The court held that in keeping with N.Y. Educ. Law §2510, school districts were mandated to hold on to teachers according to their seniority and tenure classification in a consistent way.

Reasons: The Supreme Court of New York, Appellant Division, Second Department determined in this case that the earlier decision was consistent only under the conclusion that the school district's health teachers were treated in the past as being a separate tenure area. The court revealed that in three separate district-wide tenure lists that were compiled in 1978, 1979, and 1983, health and academic subject areas were maintained as different categories regarding a teacher's tenure status. Academic subjects such as English, science, math, social studies and foreign languages were collectively categorized into a "Junior High" tenure area. A separate tenure list was compiled for non-academic areas that included health, physical education, music, home economics, and specialized areas such as remedial reading and guidance. The board's decision in 1983 to cluster health teachers together with other junior high teachers in academic areas was both illogical and impulsive and could only be seen as an impermissible reclassification. Base on this, the board should have suspended the least senior health teacher, Milani, instead of Pasetky.

Disposition: The Supreme Court of New York, Appellant Division, Second Department, modified an earlier judgment by reinstating a math teacher with 6 years' of service and affirmed the dismissal of a petition filed by a math teacher with 11 years' of service.

Citation: *James v. Big Beaver Falls Area School Dist.*, 511 A.2d 900 (Pa.CmwltH.App., 1986).

Key Facts: Mr. Paul James, appellant, was a teacher employed with the Big Beaver Falls Area School District, appellee. Mr. James was certified only to teach Social Studies. Ms. Paulette Potter, who is Black, was also employed by the school district, but in contrast to Mr. James, was certified to teach in the areas of Social Studies, Spanish, and Elementary Education. At the time of the suspension, Mr. James was senior to Ms. Potter who, in turn, was senior to another teacher

who was not suspended. Ms. Potter was teaching four classes of Spanish along with two classes of “Black Studies” that she had personally developed. Mr. Robert Blythe was also employed by the school district and was certified to teach in the area of Social Studies. From March 1965 through January 1967, he served 21 months in the armed services before he was honorably discharged. It is important to note that Mr. James and Mr. Blythe shared the same amount of seniority within the school district. In the Beaver Falls Area School District, the collective bargaining agreement involving the suspension of employees with equal seniority, lots were to be drawn. In this case, lots were drawn and Mr. James was found to be the more senior employee. However, under 51 Pa. C.S. §7107, also known as the Veterans’ Preference Act, the school district awarded Mr. Blythe 21 months seniority for the time he spent in the military. As result of this, Mr. Blythe was awarded seniority and Mr. James was suspended from his position.

Issue: At issue is whether the school district properly computed the seniority status of an employee.

Holding: The Commonwealth Court of Pennsylvania held that the Beaver Falls Area School District properly applied the Veterans’ Preference Act when computing the seniority status of an employee and that in doing so was constitutional.

Reasons: The court ruled that Mr. James, after being suspended from his Social Studies teaching position, sought to use Ms. Potters Spanish certification, a certification that he did not hold, as a source of displacing her. It was noted that Ms. Potter held certification in numerous areas and was teaching in more than one. Mr. James held and was only teaching in one area of certification. If Mr. James were to displace Ms. Potter, it would only be in the two social studies classes that she was teaching. This in turn would create an opening regarding Ms. Potter’s four Spanish classes that would need to be filled, ultimately creating a “snowball” effect that would

result in the bumping of one employee and the realignment of two others. For the district to follow through with this would be unreasonable and certainly logical. Based on the fact that it was Ms. Potter who developed the Black Studies course, and that it thrived under her instruction, it is believed that the district did not err when it chose not to replace her with another employee.

Disposition: The Commonwealth Court of Pennsylvania affirmed appellant's suspension because the Big Beaver Falls Area School District followed the statutory procedures for determining a teacher's seniority and evaluating other criteria that was used to determine which three teachers were to be suspended because of a decline in student enrollment.

Citation: *Moore v. Board of Educ., Smithtown Cent. School Dist.*, 500 N.Y.S.2d 710 (N.Y.App.Div.2.Dept., 1986).

Key Facts: Ms. Joan Moore, petitioner, was hired by the Smithtown Central School District, respondent, in 1974 as a part-time communication arts teacher. At that time she was provisionally certified to teach nursery through 6th grade as well as 7th through 12th grade in English. Ms. Moore attained permanent certification in both areas as of September 1, 1978. Ms. Moore continued her employment in the school system as a part-time communications arts teacher until June 30, 1977 when she was offered a position by the school system as a communication skills teacher that would begin on September 1, 1977, with 3-year probation period. Ms. Moore accepted the position on October 31, 1977, at which time for some reason her name appeared on the school system's "reading seniority lists" dated in February and October of 1978 with an effective date of July 1, 1977. Effective September 1, 1979, Ms. Moore received a provisional certificate to teach reading from kindergarten all the way through 12th grade. On June 12, 1979, before having obtained a certificate to teach reading, Ms. Moore was appointed as a reading teacher in the system on a probationary status beginning in September 1979 and ending

in August 1982. Ms. Moore signed and returned the form to the Smithtown Central School District on February 24, 1981, acknowledging she was aware of the probationary period. On September 1, 1982, Ms. Moore completed her probationary period as a reading teacher and was given tenure in this area. On June 30, 1983, the Smithtown Central School District Board of Education was forced to eliminate a position in the reading area due to a decline in student enrollment. At this point, Ms. Moore's employment was terminated because she held the least seniority of any of the tenured reading teachers.

Issue: At issue is whether the Board of Education of Smithtown Central School District appropriately terminated a teacher based on her seniority.

Holding: The Supreme Court of New York, Appellant Division, Second Department, held that the lower court was accurate in its decision to terminate a teacher from her reading position because her prior position in the school system as a communication skills teacher did not count towards her seniority as a reading teacher and that the teacher officially waived her rights when she signed a contract accepting her reading position that identified her seniority date as starting then and that the new reading position was a completely different tenure area from the previous position she had been serving.

Reasons: The Supreme Court of New York, Appellant Division, Second Department, referred to *Matter of Cole v. Board of Educ.*, 90 AD2d 419, 424-425, in determining that the area in which an employee receives tenure is the area in which a probationary appointment was given. Therein, Ms. Moore, in this case, was not in a position to obtain reading seniority until September 1, 1979, and her employment as a communication skills teacher should not have been applied to her tenure as a reading teacher as she so desired. It was also noted that at the time Ms. Moore was appointed to teach communication skills classes, she was certified only to teach

English and had not yet acquired her certification in reading. The court concluded that the decision of the District, placing Ms. Moore on a reading seniority list, was found to be a mistake and was later corrected. Therefore, just because her name appeared on the list did not give her the rights that she sought regarding tenure. The court found not fault at Ms. Moore's employment as a reading teacher being terminated in 1983. It was clear that she had attained tenure in this area but held the least seniority amongst the teachers in this area. Per subdivision 2 of §2510, when a position is terminated, seniority status is determined without including prior service in an independent tenure area that is different. The court also found that Ms. Moore relinquished any rights she might have held regarding earlier seniority credit when she formally accepted her probationary position as a reading teacher starting her tenure as of September 1, 1979.

Disposition: The Supreme Court of New York, Appellant Division, Second Department, affirmed the lower court's decision of dismissing the appellant teacher's petition for review.

Citation: *O'Toole v. Forestal*, 511 A.2d 1236 (N.J.Super.App., 1986).

Key Facts: Ms. Annette O'Toole, appellant, began her employment as a part-time physical education teacher at the Millburn School for the Hearing Handicapped in 1970. At this time the school was run by the Millburn Board of education, appellee. The State Department of Education took over the business of running the school in 1971 and it later became a regional day school at the beginning of the 1982-1983 school year. At this point in time the name of the school was changed to the regional Day School at Millburn (RDSM). In January 1981, Ms. O'Toole's position was cut back from a 3-day a week position to 2 days. However, Ms. O'Toole failed to challenge this decision for 22 months, at which time she filed a petition with the commissioner. As a result of budget problems and tuition increases for RDSM, the Department

of Education chose to eliminate Ms. O'Toole's position along with those of four other teachers. This decision was also justified in that the administrators for RDSM felt the elimination of Ms. O'Toole's position would have no more than a minimal impact on the overall school program and that the classroom teachers would be able to teach the required physical education classes. Because there were no vacancies at any of the other regional day schools, the Department of Education was unable to offer Ms. O'Toole another position at that time. However, after the evidentiary hearing before the Administrative Law Judge was complete, but before the record had been closed, Ms. O'Toole was offered a full-time physical education position that would be split between RDSM and the Regional Day School at Morris. Ms. O'Toole's attorney responded to the offer by letting the Department of Education know that she had moved to Vermont and would not be able to accept the position. All respondents at this point moved that Ms. O'Toole's claim seeking reinstatement in any regional day school be removed along with her tenure rights. Ms. O'Toole chose not to file any type of response in opposition to this motion. Although the Administrative Law Judge chose to deny this motion, the outcome was that the commissioner and the board rejected his denial.

Issue: At issue is whether the State Board of Education can abandon a teacher's tenure and seniority rights for refusing to accept a position after being let go in a reduction in force.

Holding(s): The State Board of Education held that the termination of the petitioner's position was appropriate for financial reasons and that the petitioner abandoned her tenure and seniority rights when she refused to accept a new position. The Board also held that the petitioner's tenure and seniority rights could not be used at another state operated school.

Reasons: It is clear to the Superior Court of New Jersey, Appellant Division, that N.J.S.A. 18A: 60-1's specific legislative intent was to restrict reemployment choices by tenured

personnel to only the institution in which the employee's tenure was attained. If all the regional day schools discussed in this case were maintained by the Department of Education but served as separate entities, the reemployment rights of tenured employees would be limited to where their tenure status was attained. The court felt, in this case, that Ms. O'Toole's claim of an uninformed and impulsive suspension was without value. There was sufficient evidence in terms of economic hardship as being the main reason for Ms. O'Toole's dismissal. Taking into account the financial hardship presented in preparing for the 1982-1983 school year, Ms. O'Toole's dismissal from her physical education position, along with being the least senior in that department, was appropriate under N.J.S.A. 18A: 60-3. The Superior Court of New Jersey, Appellant Division, also agreed with the commissioner's findings that under the circumstances presented in this case, Ms. O'Toole's refusal to accept the new position offered to her was, by law, a rejection of her legal rights to reemployment in the future.

Disposition: The Superior Court of New Jersey, Appellate Division, affirmed the final decision of the State Board of Education that eliminated petitioner's position for economic reasons. The court also held that the petitioner deserted her rights to tenure and seniority when she refused to accept a full-time position she had been offered as well as relinquished her ability to declare her tenure rights at other state operated schools because there was no statutory authority to do so.

Citation: *Poppers v. Tamalpais Union High School Dist.*, 229 Cal.Rptr. 77 (Cal. App.1.Dist., 1986).

Key Facts: Mr. Max Poppers, appellant, was a high school teacher in the Tamalpais Union High School District, respondent. Mr. Poppers taught a variety of subjects including art, social studies, math, creative writing, and physical education in a time period from 1967 to 1981.

Mr. Poppers, along with 51 other teachers, was terminated from his position in 1981 when the school district eliminated certain services and programs. Another teacher, Ms. Olene Sparks, continued to be employed by the respondent although her seniority rating was lower than that of Mr. Poppers' and other teachers. Respondent stated this was the case because no other senior employee had the certification or competency to perform the duties of a grant coordinator and project writer, as was this teacher. Mr. Poppers sought a writ of mandate asking the school district to appoint him to a newly created multi-subject position that was given to a retained teacher with less seniority. The trial court denied Mr. Poppers petition. The Court of Appeals reversed this decision and ordered a writ of mandate and remanded the case to the previous court for further proceedings.

Issue: At issue is whether the Tamalpais Union High School District can dismiss a teacher from a position and retain a teacher with less seniority.

Holding: The court held that the respondent was obligated in this case, under Cal. Educ. Code §44956(a)(1), to appoint the appellant to the vacant position as the most senior terminated employee who was qualified for the position. It also held that the legislative aim of the code was to provide employees, who had been terminated from their positions, with the same rights they would have held if they were still employed.

Reasons: Once the respondent made the decision to staff the new multi-subject position, their judgment was restricted to applicants' evaluations of competency and certification. To transfer a junior employee into the newly created position over an employee with the proper credentials and greater seniority was in violation of the statute.

Disposition: The Court of Appeals of California, First Appellant District, Division One, reversed the decision of the trial court and remanded the case by directing the Tamalpais Union

High School District to give position that it had filled with the transfer of a junior employee to the appellant.

Citation: *Roseville Educ. Ass'n v. Independent School Dist. No. 623*, 391 N.W.2d 846 (Minn., 1986).

Key Facts: On March 28, 1985, the Independent School District No. 623, respondent, placed 26 teachers on unrequested leaves of absence. Each individual teacher was served with a notice of this decision that would go into effect at the end of the 1984-1985 school year. The notice to each teacher stated the reason for the action and that they were permitted to a hearing before the school board if requested within 14 days. On April 25, the school board acted again by placing an additional 10 teachers on leave and followed that by placing one more teacher on leave on April 30. When all proposed actions had been presented, there were a total of 37 layoffs to take place. Of the 26 teachers who received their notices in March, 13 requested a hearing by the deadline. Of the 11 teachers who were given notices in April, 10 requested a hearing by the deadline. A hearing was scheduled for May 20, 1985, at which time the school board determined not to lay off 12 of the 13 teachers who had requested a hearing in March. The board also determined that it would not lay off 9 of the 10 teachers who requested hearings after receiving notices in April. At this point, a representative from the Roseville Education Association presented a letter on behalf of Ms. Glenda Wielinski whose proposed leave was not rescinded and who had withdrawn their request for a hearing. After the board met and passed resolutions rescinding proposed leaves, it cancelled all hearings that had been scheduled.

Issue: At issue is whether the school district can place teachers on unrequested leaves of absence for their failure to request a hearing once they received notice from the board.

Holding(s): The Supreme Court of Minnesota held that if a teacher failed to request a hearing, then the teacher acquiesced the decision of the school district regarding the proposal that their position be eliminated, the teacher accepted the school district's need to eliminate their position either by itself or comparative to other positions within the district that could or could not have been proposed for elimination, the teacher accepted the fact the school district had the right to eliminate positions that it felt warranted dismissal, and the teacher accepted if their position was eliminated that they did not acquire the seniority to bump another teacher and as a result would be placed on unrequested leave.

Reasons: The Supreme Court of Minnesota ruled that eight of the relators in this case did not have their writ of certiorari issued until the 61st day after they received notice of the board's proposal to place them on unrequested leave of absence. Because the writ must have been issued within 60 days for judicial review, it was ruled that the claims of these eight relators must be dismissed, Minn. Stat. §606.01 (1984). The Court also stated that if the claims had been submitted on a timely basis, three of them would have been considered arguable and the remaining five would have been decided unsuccessful. The question to be asked here is, what is the ultimate effect of a teacher's failure to request a hearing? Minn. Stat. §125.12, subd. 4 (1984) is clear that a hearing must be requested within 14 days from the time of a board's proposed action. The Minnesota legislature in 1974 inserted into this statute a specific clause regarding unrequested leaves of absence. Specific to this procedure is that a teacher whose position is eliminated may remain employed by bumping another teacher whose position was not. First, the teacher may challenge the decision of the number of position being eliminated and that the elimination should possibly be made in other departments. Secondly, a teacher whose position is being eliminated may declare seniority and bumping rights. At the time a teacher requests a

hearing, the hearing must be on the board's proposal which can be revised before the hearing takes place. The Supreme Court of Minnesota ruled in this case that by a teacher not requesting a hearing, they in turn accepted the board's decision to eliminate their position. A teacher, who fails to request a hearing, is granting the school board their approval that they have adequate measures and discretion to eliminate positions as they deem necessary. By failing to request a hearing, a teacher also concedes that if their position is eliminated, they lack the ability based on seniority to bump another teacher and will be placed on unrequested leave of absence. This would be the ruling in the case where there have been no changes in the circumstances surrounding the position being eliminated after the time to request a hearing had passed. The Supreme Court of Minnesota ruled in regard to the second step in the unrequested leave proposal that two teachers had their seniority and bumping rights overlooked. Although these two teachers never requested a hearing regarding the proposal of their position elimination, they also never waived their right to bump a teacher with less seniority whose proposed leave was rescinded. Because of this, the Court ruled in favor of the appeals court that the school board's action against these two teachers should be reversed and remanded for further review by the school district.

Disposition: The Supreme Court of Minnesota reversed the appellate court's decision that 13 teachers were improperly placed on unrequested leaves of absence for failure to request a hearing.

Citation: *State ex rel. Bd. of Educ. of Kanawha County v. Casey*, 349 S.E.2d 436 (W.Va., 1986).

Key Facts: On February 27, 1985, Mr. David Gillispe, respondent, was notified by the Board of Education of Kanawha County, plaintiff, that he was being placed on administrative

transfer based on the proposed closure of his secondary school. On May 6, 1985, the board officially voted to place respondent and several other employees on administrative transfer. On July 1, 1985, the respondent filed a petition for a writ of mandamus in the Circuit Court of Kanawha County. In this writ, the respondent requested that he be placed, according to West Virginia Code §18A-4-8b (1984 Replacement Vol.), in the secondary principalship that was currently being occupied by the least senior principal. After a hearing regarding the respondent's petition, the circuit court ruled that by closing the respondent's school, the Kanawha County Board of Education was actually reducing the number of secondary principalships by one and was therefore required to release the least senior secondary principal in favor of the respondent. Although the displaced principal was later placed in a principalship that became available in May of 1985, the plaintiff still sought prohibition of the enforcement of the circuit court's order.

Issue: At issue is whether a secondary principal whose school was being closed could replace the principal of another secondary school who held least seniority in that position.

Holding: The Supreme Court of Appeals of West Virginia held that the closing of the principal's secondary school reduced the number of secondary principalships by one thus making the board obligated to release the least senior secondary principal in favor of the principal whose school had been closed.

Reasons: The Supreme Court of Appeals of West Virginia based its ruling on the rule that when an administrative remedy is provided by a state statute or rules having the effect of law that relief must be required from the administrative body and that such a remedy must be enforced before the courts will act. It would have been meaningless for the respondent to protest his transfer from his school that was being closed. The respondent was not in denial of the transfer but was in disagreement in the manner in which it was being implemented. Because recourse to

the boards proposed actions would have basically been a waist of time for the respondent, he was not held responsible for the administrative remedies doctrine from seeking relief in circuit court.

Disposition: The Supreme Court of Appeals of West Virginia denied the Board of Education of the County of Kanawha's petition for a writ of prohibition against the order from the circuit court that the board must place the respondent principal in another secondary principalship that was occupied by the least senior principal.

Citation: *Strand v. Special School Dist. No. 1*, 392 N.W.2d 881 (Minn., 1986).

Key Facts: Appellant School District No. 1 for the city of Minneapolis was forced to reduce its teaching staff by 401 teachers for the 1984-1985 school year as a result of a decrease in student enrollment and lack of funding. Ms. Arlene Strand, respondent, and Ms. Barbara Johnson, respondent, were 2 of the 72 non-probationary teachers whose positions were terminated. Ms. Strand held the most seniority of the 10 teachers within the home economics department that was banished. Ms. Strand was licensed in the areas of home economics and child development. Ms. Strand contended that her discharge from her position was improper because the school district continued to employ a teacher with less seniority. Ms. Janell Olson, the teacher with less seniority, held a license in home economics, child development, and work experience and was assigned to teach child development and to act as the school district's only work experience coordinator. Another teacher, Ms. Jessie Busse, who held seniority to both Ms. Strand and Ms. Olson, was licensed as a work experience coordinator and in the areas of home economics and child development. Although Ms. Strand would not be able to bump Ms. Olson in regard to the work experience segment of her assignment, Ms. Strand's contention is that the assignments within the three licensed areas should be realigned and or reassigned to the two most senior teachers. Ms. Johnson served as a part-time teacher in the adult basic and continuing

education department. At the time Ms. Johnson was discharged from her position, Sister Marie Diehl continued to be employed despite her age of 72 and despite the district's policy of mandatory retirement at age 70. Ms. Johnson contended that the school district had an obligation to follow its retirement policy and to terminate Sister Diehl from her position. This decision by the school district would also make a part-time position available for Ms. Johnson.

Issue(s): At issue is whether the school district can terminate the position of a senior teacher to that of a junior teacher when the certifications are the same and positions can be realigned. Also at issue is whether the school district can force the termination of a position based on an employee's age.

Holding: The Supreme Court of Minnesota held that the termination of a teacher, who held the most seniority within her department, had her rights violated under the Teacher Tenure Act when the school district retained a teacher with less seniority. The Supreme Court of Minnesota also held that the school district violated no law when it retained a senior teacher over the age of 70.

Reasons: The Supreme Court of Minnesota determined in this case that it is important to understand the definition of the word "position" in regard to the Teacher Tenure Act. The contexts in which the term appears in different subdivisions of Minn. Stat. §125.17 are amply different. While the court admitted that they had not confronted this issue exactly as presented in this case, the attempt was made to determine the definition of a teacher's "position" under the Teacher Tenure Act as it relates to "relative place, rank or standing in the school system (*State ex rel. Ging v. Board of Education*, 213 Minn. 550, 585, 7 N.W.2d 544, 562 (1942)). What makes it more difficult in articulating the exact definition in this case is that although the legislature in Minnesota has obviously adopted a policy that strongly favors the retention of

senior teachers, it has also made it obvious that public school districts must attain adequate flexibility to effectively make decisions regarding these issues in the schools. Therefore, what must be considered in this case is the teacher's length of service, the teacher's license, the needs of the school system as it relates to the welfare of students and the public, and how course schedules need to be realigned to aid in the retention of the teachers with the most seniority. Under these considerations, the Supreme Court of Minnesota concluded that the Teacher tenure Act mandates a practical realignment of course assignments to protect the seniority rights of the teachers in this case. In this case, where reassignment of the most senior teachers preserves the employment of the next most senior teacher, reassignment serves as a reasonable requirement. The Supreme Court of Minnesota rejected the contention that the school district had a legal obligation to terminate a senior teacher from her position because she was over 70 and this was the district's stated retirement policy. Referring to Minn. Stat. §181.81, this action is unlawful unless there is a law that specifically authorizes such an action. While the statute prohibits compulsory retirement prior to the age of 70, nothing precludes waiver of compulsory retirement by mutual agreement of the employer and employee. Even if the court were to concede that a mandatory retirement age was part of the teacher's contract in this case, the teacher filing the complaint has no standing or rights to enforce the terms of the senior employees contract. The Supreme Court of Minnesota held in this case that the retention of a teacher over the age of 70 did not amount to the violation of any duty that the school district owed to the teacher who filed the complaint.

Disposition: The Supreme Court of Minnesota affirmed the decision of the court of appeals that the senior respondent's termination was improper with modification for realignment.

The Supreme Court of Minnesota reversed the court of appeal's judgment that found the junior respondent's termination to be improper.

Citation: *Verdeyen v. Board of Educ. of Batavia Public School Dist. No. 101*, Kane County, 501 N.E.2d 937 (Ill.App.2.Dist., 1986).

Key Facts: Ms. Joann Verdeyen, plaintiff, a registered nurse in the state of Illinois since 1962, was hired by the defendant school district, Batavia Public School District No. 101, for the 1974-1975 school year. At this time, the plaintiff applied for and was issued a letter of approval from the State Board of Education for the 1974-1975 school year and was later issued another letter of approval for the 1975-1976 school year. The Illinois State legislature amended Ill. Rev. Stat. 1983, ch. 122, par. 10-22.23 in 1975, making it that any school nurse to be employed by a school board on or after July 1, 1976, must attain a school service personnel certificate in agreement with the requirements set in section 21-25 of the Illinois School Code. However, any nurse who had been hired before this date was not required to attain this certificate in order to keep their employment. Section 21-25 also stated that any applicant who applied for a school service personnel certificate must hold a bachelor's degree from a recognized institution of higher learning. In this case, the plaintiff still needed 12 credit hours to complete her bachelor's degree by the proposed deadline of July 1976. The plaintiff, filed along with her motion for summary judgment against the defendant that she met with the school district's superintendent before registering for her college term in the summer of 1976. The meeting was to determine whether she needed to complete the requirements for her bachelor's degree that summer that would have allowed her to attain her school service personnel certificate before the beginning of the 1976-1977 school year. The plaintiff stated that the superintendent informed her that it was not necessary for her to attain her certification before the beginning of the 1976-1977 school

year. The superintendent stated in his affidavit that he did not remember the specifics of this meeting but that it would have not been out of the norm for him to have informed the plaintiff that she did not have to attain her certification prior to the beginning of the 1976-1977 school year since she had already been hired as a school nurse prior to the July 1, 1976 deadline. The plaintiff stated that she, based on the information she was given, did not complete the requirements for certification until the following summer (1977) at which time she received her school service personnel certificate. On March 23, 1983, the plaintiff received written notification from the defendant that her full-time position was being reduced to a part-time position as a result of financial hardship in the district. Over the next 2 school years, the plaintiff worked part-time while another school nurse, Ms. Judy Grosklag, who was hired in August of 1996, continued to be employed by the school district on a full-time basis. In the plaintiff's motion for summary judgment, she contended that Ms. Grosklag should have been reduced to the part-time position because she held 2 years less seniority in the school district. The plaintiff believed that defendant should have counted her seniority from the time she was hired in 1974 and not from her date of certification in 1977.

Issue: At issue is whether the school district failed in granting seniority to the defendant at the appropriate time during her employment.

Holding: The Appellate Court of Illinois, Second District, held that under §10-22.23, the employee did not become certified as a school nurse within the school district until she completed the requirements for her bachelor's degree, applied for her school service personnel certificate, and was issued the certification.

Reasons: The Appellate Court of Illinois, Second District, determined that the plaintiff in this case did not automatically become certified for tenure as a result of the 1975 amendment to

section 10-22.23 of the School Code. The plaintiff did not qualify until the 1979-1980 school year but school nurse, Ms. Judy Grosklag, qualified a year earlier. It is important to understand the language of this amendment and that the section of the School Code, that was amended, clearly states that there is no exception to the rule regarding the attainment of a school service personnel certificate. There is also no indication of any kind that the experience a school nurse had prior to July 1, 1976, would make her eligible to be considered for certification despite having a certificate.

Disposition: The Appellate Court of Illinois, Second District, held that the Board of Education of Batavia Public School District acted appropriately in reducing the plaintiff with less seniority to a part-time position. The Appellate Court of Illinois, Second District, affirmed the circuit court's grant of summary judgment in favor of the board.

Citation: *Wooten v. Dekalb County Bd. of Educ.*, 504 So.2d 280 (Ala.Civ.App., 1986).

Key Facts: Mr. Charles Wooten, plaintiff, who had acquired tenure as a supervisor, was informed by the Dekalb County Board of Education, the defendant, his special education supervisory position was being abolished and as a result he would be transferred to a classroom teaching position. The plaintiff appealed this decision of the board to the State Tenure Commission who upheld the board's decision.

Issue: At issue is whether the school board can eliminate a supervisory position of a tenured employee while maintaining other non-tenured supervisors.

Holding: The Court of Appeals of Alabama held that the board's decision to abolish the supervisor's position was appropriate and since the supervisors' positions that were retained were not instructional positions, the plaintiff's tenure status had no effect on their positions.

Reasons: The Court of Civil Appeals of Alabama rendered its decision by pointing out the plaintiff's supervisory position that was abolished was the last instructional supervisory position that had been used and that an instructional supervisor deals directly with teachers regarding instruction. However, this was not the case with the two non-tenured supervisory positions that were retained because one was a lunchroom supervisor and the other was a cafeteria supervisor, neither of which dealt with supervising teachers in relation to student instruction. Clearly these positions were administrative in nature and the plaintiff's tenure status in his position was not similar. The board's decision to abolish the plaintiff's supervisory position was supported by the evidence that was presented.

Disposition: The Court of Civil Appeals of Alabama affirmed the judgment of the trial court that ruled the Dekalb County Board of Education's decision to eliminate the plaintiff's supervisory position was appropriate.

Citation: *Wygant v. Jackson Bd. of Educ.*, 106 S.Ct. 1842 (U.S.Mich., 1986).

Key Facts: In an effort to relieve and address racial tension in the community, in 1972, the Jackson Board of Education, along with the Jackson Education Association (union), put into place a provision within their collective bargaining agreement that in the event it became necessary to lay-off teachers, those teachers with the most seniority would be retained as long as the percentage of minority teachers let go did not exceed the percentage of minority teachers employed at that time. The purpose of the provision was to protect a previously adopted hiring policy that was implemented in an effort to increase the number of minority teachers within the district. However, prior to this provision, the Minority Affairs Office of the Jackson Public Schools sent out a questionnaire requesting teachers views on layoff policy. The questionnaire presented two views: one was to continue with the existing policy based on seniority and the

other was a freeze of minority layoffs that would ensure the retention of minority teachers to maintain a correct proportion to the make-up of minority students. Of the teachers who responded to the survey, 96% expressed a view in favor of the straight seniority system. During the 1976-1977 and 1981-1982 school years, non-minority teachers were terminated from their positions while minority teachers with less seniority were retained. The displaced non-minority teachers, petitioners, brought a suit against the Jackson Board of Education, respondent, on grounds that their policy of laying off non-minority teachers was in violation of the Equal Protection Clause of the Fourteenth Amendment, Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. §1983, and other state and federal statutes. The District Court dismissed the teachers' claims on the grounds that the terminations were permissible because the school district was attempting to remedy "social discrimination" by providing minority teachers as role models for minority school children. On appeal, the United States Court of Appeals for the Sixth Circuit affirmed the decision for similar reasons.

Issue: At issue is whether the termination of employees done in an effort to remedy social discrimination is a violation of the Equal Protection Clause and other federal and state statutes.

Holding(s): The Supreme Court of the United States found the lay-off procedures of the respondent, to achieve racial equality, placed a tremendous hardship on the non-minority petitioners and caused a significant disruption to their lives. The Supreme Court of the United States also found the lay-off procedures of the respondent to not be adapted well enough to support a convincing state interest and as result failed to satisfy the burden of the Equal Protection Clause.

Reasons: The Supreme Court of the United States found the layoffs of non-minority teachers to be a violation of the Equal Protection Clause of the Fourteenth Amendment and that

this clause did not require the affirmative action plan of a public employer to be preceded by any findings that the employer had previously committed any acts of discrimination. The Supreme Court also determined in its findings that any governmental preference to employees based on racial criteria needed to be acceptable based on a overwhelming governmental interest and the resources selected by the government to effectuate its purpose must be specifically customized to achieve that goal. It also determined that a school board's concern regarding minority role models for minority students and how that could help alleviate societal discrimination served as an inappropriate measure in the hiring and firing of teachers; a public employer needed to have overwhelming evidence of previous discrimination before considering an affirmative action program; what is deemed to be societal discrimination serves as an insufficient foundation for implementing discriminatory practices that work against innocent people; just because a race-based layoff plan has been accepted by a labor union does not mean that a junior non-minority member's constitutional rights are to be waived since they would bear most of the burden; and a state would need to meet most of the burden when implementing a plan based on race.

Disposition: The Supreme Court of the United States reversed the appellate court's decision to lay-off respondent's by ruling the Jackson Board of Education's policies were not tailored enough to achieve a compelling state purpose and that they did not satisfy equal protection demands.

Citation: *Zink v. Board of Educ. of Chrisman*, 497 N.E.2d 835 (Ill.App.4.Dist., 1986).

Key Facts: In the spring of 1983, the Board of Education of Chrisman Community Unit No. 6, respondent, voted to close down part of its home economics program. Ms. Jean Zink, petitioner, was notified at this point that her position for the 1983-1984 school year would be reduced to half-time. Petitioner made known to the superintendent that she was certified to teach

physical education and requested to bump a full-time tenured teacher with less seniority, Mr. David Chandler, from his position. At this point the superintendent notified the petitioner that it was the board's determination that she was not qualified to teach physical education class she was requesting to take over. Regarding certification, petitioner received a Bachelor of Science degree in School Vocational Home Economics from Indiana State Teachers College in 1961 along with a teaching certificate for grades 6 through 12 in the areas of clothing and textiles, food and nutrition, home management, and physical education. Petitioner filed an action against the respondent that she was entitled to the full-time physical education position pursuant to Ill. Rev. Stat. 1983, ch. 122, par. 24-12 and the requested hearing was held on November 7, 1985. Petitioner testified to her certification as well as her teaching experience that began in 1961. Petitioner acknowledged that at no time since 1940 had she taken any college level courses in physical education, read any scholarly publications regarding physical education, and that other than a few times substituting in a physical education class, had never taught a physical education course. However, Ms. Susan Bentz, assistant State Superintendent of Education, testified that petitioner was certified to teach physical education, in addition to other subjects, but the format in which the petitioner had received this certification had been discontinued since the time she had received the certification. Because the petitioner's certificate did contain an endorsement for physical education, she was technically "legally certified" to teach in that field but had not met the "current" requirements of the state to do so. One also must be aware of the additional responsibilities Mr. Chandler held in his position as a physical education teacher. They included supervising male students in the locker room, assistant varsity basketball coach and boy's track coach. Based on these responsibilities, superintendent of schools, Mr. Ronald McIntire, resolved that the petitioner was not qualified to teach physical education based on her academic record,

lack of recent course work, and lack of teaching experience even though these qualifications had not been put in writing. On appeal, petitioner argued that her endorsement for physical education on her certificate was all she needed to be legally qualified. Respondent argued that despite the endorsement for physical education, the petitioner was still unqualified for the position because she would not be able to perform all the duties and responsibilities currently carried out by Mr. Chandler.

Issue: At issue is whether the school board could reduce a teacher to a part-time position while maintaining a teacher with less seniority in a full-time position.

Holding: The Appellate Court of Illinois, Fourth District held that the petitioner was not legally qualified to assume the desired position and that her position had been properly condensed. The court also held that because the petitioner was a female, she was not legally qualified to perform the responsibilities of the physical education position she was trying to attain.

Reasons: The Appellate Court of Illinois, Fourth District determined that a teacher with more seniority does have the right to bump a teacher with less seniority if the teacher is qualified for that position. The Appellate Court here also referenced the decision in *Herbach v. Board of Education* (1981) whose statute was designed to give some continuity and stability to students while providing teachers with job stability and an environment free from random hiring and firing practices that would ultimately attract the best teachers while also retaining them. The key dispute in this case surrounded what constitutes a teacher be “legally qualified” for a position. The Supreme Court of Illinois ruled in *Lenard v. Board of Education* (1979) that at the lowest level, a teacher is legally qualified if they meet the State Board of Education’s hour requirements along with attaining a valid teaching certificate. In this case, the petitioner did; however, the

court ruled that although she was legally qualified to teach physical education, she was not legally qualified to hold the specific physical education position she was seeking based on the specific requirements of the position. The definition of the term legally qualified must be defined by looking at reasonable requirements set forth by the school board and the more senior teacher must be able to fulfill the responsibilities of the less senior teacher. For obvious reasons, the petitioner was not able to perform all the responsibilities thus making her not legally qualified. The court found their ruling to be consistent with the ruling of *McLain v. Board of Education* (1978) where the plaintiff was qualified to teach a position but unable to assume all the responsibilities because of their gender. As a result, a person's "sex" can be used as a bona fide reason in determining whether or not a person is legally qualified to hold a specific position.

Disposition: The Appellate Court of Illinois, Fourth District, affirmed the trial court's judgment of not reinstating the petitioner teacher to a full-time position because she was not legally qualified to fill the position.

1987

Citation: *Bednar v. Westwood Bd. of Educ.*, 534 A.2d 93 (N.J.Super.App., 1987).

Key Facts: Petitioner, Charles Bednar, was a tenured full-time elementary art teacher in the Westwood school system for 17 years. At that time he held an instructional certificate with a comprehensive subject field endorsement in art. At the conclusion of the 1984 school year, he was reduced from his full-time position to a part-time position teaching an elementary art class. At that time, the Westwood school system employed five art teachers, four of whom had attained tenure. The petitioner and one other teacher only held experience at the elementary level with the petitioner having less seniority. The other three art teachers held experience exclusively at the

high school or seventh and eighth grade. One of these teachers had been employed for less than 2 years and therefore had not required tenure. However, he was retained in his high school position as a full-time teacher while the petitioner, who had acquired tenure, was reduced to part-time in his elementary position. The Westwood Board of Education, respondent, argued that because the petitioner had acquired no experience at the high school level, his tenure did not allow him to acquire a position at that level over someone who had experience. The petitioner filed a petition of appeal to the New Jersey Commissioner of Education claiming that the reduction in his hours to part-time was in violation of his tenure and seniority rights. The Commissioner was not in agreement and denied the petition, which was later affirmed by the State Board of Education.

Issue: At issue is whether the school system can reduce a tenured employee from a full-time position to a part-time position while keeping a non-tenured employee at a full-time position.

Holding: The Superior Court of New Jersey, Appellate Division, held that state law never intended to establish employment rights for non-tenured employees and that the concept of seniority could not be used to defend retaining a non-tenured employee in a position where a tenured employee possessed the appropriate certification but held no experience.

Reasons: The Superior Court of New Jersey, Appellate Division, determined that the petitioner's claim had merit in that his tenure as an art teacher gave him the right to avoid a system reduction in force by claiming the secondary art position of a non-tenured teacher with experience. The court found that tenure is created in the state by statute, *N.J.S.A. 18A:28-1*, and that one of its purposes is to give some security to teachers who meet its standard by their length of service as was the case in *Spiewak v. Rutherford Bd. of Ed.*, 90 N.J. 63, 74 (1982). Although the tenure law does give the school system the right to implement a reduction in force, it clearly

states that dismissals must be made on the basis of one's seniority according to standards that have been adopted by the state. Those standards are clear in that seniority is measured by an employee's years of employment within a specific job category, which is normally narrower than all the subject fields that can be found on a teacher's certificate. The court determined that teachers who are non-tenured, that have been dismissed from their positions as a result of a reduction in force, are not entitled to re-employment rights within the statute. The State Board of Education fairly attempted in this case to rule that a teacher with tenure should not be permitted to claim a position where there is no experience but has the appropriate certification. The problem with this approach in reference to the statute is seniority is considered "determinative." The statute in no way authorizes the weakening of a teacher's tenure rights by affording a non-tenured teacher with "seniority." The court found in this case that the tension created between the concept of tenure and seniority was completely created by the board. Whether the board's approach in this matter was sound educational policy or not, it eroded teacher tenure rights that are very clear within the statute.

Disposition: The Superior Court of New Jersey, Appellate Division, reversed the judgment of the State Board of Education who denied the petitioner's application claiming that his tenure rights had been violated by the Westwood Board of Education when his hours were reduced from full-time to part-time.

Citation: *Hein v. Board of Educ., Unified School Dist. No. 238, Smith County*, 733 P.2d 1270 (Kan.App., 1987).

Key Facts: Mr. Jerome Hein, appellee, was a tenured teacher in the Unified School District No. 328, Smith County. The appellee was certified in the areas of health and physical education, English, and driver's education. During the 1982-1983 school year, the appellee

taught subjects in the areas of English and driver's education. In the spring of 1983, the Board of Education, appellant, contacted the appellee where he was asked to appear before the Board to discuss his teaching contract. During this meeting it was brought to the appellee's attention that the Board was considering the creation of a new class that would be entitled "English, Speech, Drama, and Creative Writing." This new class would take the place of a previous English IV class that had been taught by a teacher who was retiring at the end of the school year. The appellee was asked if he was qualified to teach speech and drama, at which time he was not. In April of 1983, the Board met and voted not to renew the appellee's contract for the upcoming school year. As a result of this decision, the appellee sought due process for his non-renewal and participated in a hearing where the panel, in a unanimous decision, recommended that if he were to obtain certification in the area of speech and drama within the next 2 years, his contract should be renewed. The appellant rejected the proposal of the hearing panel and chose not to renew the appellee's contract. The appellee appealed this decision to the district court of Smith County where it was ruled that the appellant acted arbitrarily, capriciously, and unreasonably and that the appellant was ordered to reinstate the appellee to his position along with back pay and interest to the beginning of the 1983-1984 school year.

Issue: At issue is whether the school board can make a curriculum change in the component of a particular course in an effort to do away with a tenured teacher for a non-tenured lower salaried teacher.

Holding: The Court of Appeals of Kansas held that the appellant Board, acting in the appearance of good faith staff reductions as a result of economic hardship, made a curriculum change in one aspect of a specific course in order to eliminate a tenured teacher's position in support of a non-tenured teacher with a lower salary.

Reasons: The Court of Appeals of Kansas ruled that it was in disagreement with the appellant for a number of reasons but specifically the finding that the classes taught by the appellee during the 1982-1983 school year were going to continue to be taught in the upcoming year with the only difference being a change in the name of the class. The Court of Appeals of Kansas also concluded that the appellant was going to hire a non-tenured teacher to replace the appellee in this position and found this decision not to be in good faith, therefore, being arbitrary, capricious, and unreasonable. Although the appellee had never attained certification in the areas of speech and drama, he could have attained a provisional certification in these areas for a 2-year period while taking additional courses to become fully certified, which he had agreed to do. In a previous case, *Gillett v. U.S.D. No. 276*, 227 Kan. 71, 605 P. 2d 105 (1980), the Supreme Court of Kansas ruled that a tenured teacher could be non-renewed if good cause was shown, the school board was acting in good faith, and the school board's aim was maintaining an efficient school system. However, the Supreme Court of Kansas also noted in this case that a true bona fide reduction-in-staff was a good cause for non-renewal, it went further in cases involving that of tenured teachers referring to the decision in *Coats v. U.S.D. No. 353*, 233 Kan. 394, 40, 662, P.2d 1279 (1983). The ruling here was that a determination made based off of good faith had the possibility of weakening the Teacher Tenure Law by possibly retaining probationary teachers while terminating tenured teachers certified to teach same subjects. The court determined that it was the responsibility of the school board to conduct thorough examinations in reference to teacher competence, interest, and training when reduction-in-staff was to take place so that when there were both tenured and non-tenured teachers within the same department, non-tenured teachers should be terminated first. The Court of Appeals of Kansas also made reference to *Farmer v. Holton Schools*, 138 Mich. App. 99, 359 N.W.2d 532 (1981), admitting that this was

under a different statute, it was still determined that school boards should not establish standards that would allow a non-tenured teacher the opportunity to fill a position, over a tenured teacher, even if the non-tenured teacher was more qualified in regard to the proposed changes in the new position. The vacancy should not be denied the tenured teacher unless there were “substantial differences” between the old position and the new. In this case the Court of Appeals of Kansas found that the change in the new class was not substantial since the elements of both speech and drama had been present in the English IV class for many years prior and the appellant made no effort to consider or accept the appellee’s offer to become provisionally certified in the one component area.

Disposition: The Court of Appeals of Kansas affirmed the judgment of the trial court that found the appellant board of education acted arbitrarily, capriciously, and unreasonably when it eliminated the appellee’s tenured position in favor of a non-tenured lower-salaried employee.

Citation: *Jarrett v Wattsburg Area School Dist.*, 533 A.2d 1008 (Pa., 1987).

Key Facts: Ms. Suzanne Jarrett, appellee, was hired by the Wattsburg Area School District, appellant, in 1974 to serve as a guidance counselor. At the time the appellee was hired, she was certified in that area. Mr. James Tonk was hired by the appellant in 1971 and in 1976 completed the course work for certification as a guidance counselor but at that time did not apply for certification through the Department of Public Instruction. At the time the appellant school district implemented a reduction in force, Mr. Tonk was teaching Spanish and drivers education, along with serving as a study hall and lunch supervisor. The Board, in April of 1983, put into place the reduction of the drivers education program at the request of the superintendent. When these changes were approved, it caused the need for additional reductions to be made in the staff along with other necessary adjustments for the 1983-1984 school year. Because there were other

certificated teachers who could assume the reduced drivers education courses as well as Mr. Tonks' Spanish classes, he became a candidate for furlough. In response, Mr. Tonks proceeded by applying to the Department of Public Instruction for his guidance counseling certificate on May 10, 1983 and received it in June of 1983. In response to this information, the school superintendent then recommended that the appellee be suspended from her position because she held less seniority to Mr. Tonks in reference to their dates of hire. The Board approved this recommendation and the appellee was notified in writing that the suspension from her position would take place at the beginning of the 1983-1984 school year. Appellee requested and received a hearing regarding her proposed furlough. The Board upheld her suspension at which time she appealed the decision to the court of common pleas.

Issue: At issue is whether the Board's decision to place a teacher on furlough began the day the Board made the decision, the day after when the teacher was notified of the decision, or the first day of the upcoming new school year.

Holding: The Supreme Court of Pennsylvania held that the other employee (Mr. Tonks) had greater seniority than the appellee and held the requisite certificate needed on the effective date of the suspension.

Reasons: The Supreme Court of Pennsylvania made its determination with guidance from a decision that had previously been made regarding *Pookman v. School District of the Township of Upper Saint Clair*, 506 Pa. 74, 483 A.2d. 1371 (1984). In this case the school district made the decision not to renew teachers contracts and this would take place on the last day of the current contract. Because teachers had not received a contract at the end of a 2-year period, they were not considered tenured under state statute and therefore could be treated as non-tenured employees. The Supreme Court of Pennsylvania found it relevant in the *Pookman* case to not

look at the date of the Board's decision as the effective date but to look solely at the date the decision went into effect, the last date of the employee's contract. Therefore, the appellee was properly notified that her furlough would effectively take place at the beginning of the 1983-1984 school year, August 29, 1983. The Supreme Court of Pennsylvania also made reference to the standard procedure of the school district to reevaluate, prior to the beginning of a new school year, the planning decisions made by the Board the previous spring. The decision to do so would likely come about from unexpected events such as a death, resignation, or any event that would alter what had been previously planned. In instances such as these, last minute decisions would have to be made and more often than not would be made based on seniority status. Based on this, Mr. Tonks held higher seniority than did the appellee and held the requisite certificate to be a guidance counselor on the effective date of the appellee's suspension.

Disposition: The Supreme Court of Pennsylvania reversed the decision of the lower court that had affirmed an order of the common pleas court reinstating appellee to her guidance counseling position.

Citation: *Law v. Mandan Public School Dist.*, 411 N.W.2d 375 (N.D., 1987).

Key Facts: Mr. Geoff Law, appellant, was hired to teach building trades at Mandan High School for the 1976-1977 school year and exclusively taught this class up through the 1980-1981 school term. Due to a drop in enrollment in this specific program, his position was reduced to part-time along with receiving other part-time duties in the areas of physical education, industrial arts, and CPR. Before the 1985-1986 school year began, the building trades class was eliminated completely due to lack of student enrollment. During this school year the appellant taught three sections of physical education, one wood working class in the area industrial arts, and another wood working class for the trainable mentally challenged. On March 10, 1986, the Mandan

Public School District, appellee, voted to consider the nonrenewal of the appellant's teaching contract due to insufficient funds, lack of enrollment, and elimination of position. At this time the appellant received written notice of the hearing at which his nonrenewal would be discussed. In a conversation between the appellant and the school principal, Wallace Schmeling, he was informed that he was the only employee being considered for nonrenewal based on the fact that the other three teachers teaching in the building trades program had been hired to teach industrial arts. At the nonrenewal hearing held on March 25, 1986, the appellant and his counsel were present along with the appellee's superintendent who presented the evidence for the nonrenewal based on the school systems reduction-in-force policy. The evidence presented was that there was such a drop in student enrollment for the building trades department, a teacher was no longer needed to fill this position. Because the appellant was hired specifically to fill this position, it was only logical that his contract be the one that was nonrenewed. When the principal was questioned regarding the appellant and his certification to also teach industrial arts, it was noted that this was not applicable to the hearing. At the completion of the hearing, the appellant requested and was granted a continuance of hearing that took place on March 31, 1986. At this time, the appellant brought forth evidence regarding his qualifications and compared himself to three other industrial arts teachers, all of which had less years of experience and all but one had less academic training. The appellant also brought out that during his 10 years of experience at the high school, he probably had attained more experience teaching industrial arts than any of the other employees who were being retained. The appellee voted to nonrenew the appellant's contract and on April 3, 1986, the appellant received his letter of nonrenewal. The appellant issued a complaint against the appellee for breach of contract, failure to perform a required evaluation, and nonrenewal for insufficient reasons and requested a writ of mandamus to the

school district requiring that he either be reinstated to his position or that he be awarded the proper damages. On August 6, 1986, a hearing was held and at its conclusion the appellant's complaint was dismissed and his motion for a writ of mandamus was denied.

Issue: At issue is whether the school district followed the procedures in its reduction-in-force policy.

Holding(s): The Supreme Court of North Dakota held that the district court's decision that the school district had compared the appellant's qualifications to those of other industrial arts teachers under its reduction-in-force policy was not clearly a mistake. The Supreme Court of North Dakota also held that the "strict compliance" standard to the appellant's notification should not be applied in this case because it was not applicable to the reason for the nonrenewal.

Reasons: The Supreme Court of North Dakota ruled that the trial court firmly believed that the Mandan Public School System's reduction-in-force policy did not apply to this case because it required the comparison of employees in like positions, and since the appellant's position had been eliminated, there was not another position in which it could be compared. The difference in position came about through the interpretation of the reduction-in-force policy. The appellant believed that the comparison of like teachers would include any teacher that taught courses he was academically trained to teach regardless of whether he had taught them or not. Because this type of comparison was never made, the appellant believed the appellee breached his contract. The Supreme Court of North Dakota ruled that although the industrial arts courses and the building trades courses were related, they were two separate courses of study relieving the school system of the obligation of comparing the appellant and those teachers. In fact, the appellant in this case was asking the school system to retain him in a position for which he was never hired over that of a teacher who was hired and did teach in that position. The Supreme

Court of North Dakota concluded that the appellee in no way violated its reduction-in-force policy in determining to terminate the appellant from his building trades position.

Disposition: The Supreme Court of North Dakota affirmed the district court's order that denied the plaintiff's motion for a writ of mandamus and dismissed his suit against the Mandan Public School District for breach of contract, failure to perform a required evaluation, and non-renewal of his teaching contract for inadequate reasons.

Citation: *Murphy v Pierre Independent School Dist. No. 30-2*, By and Through Bd. of Educ., 403 N.W.2d 418 (S.D., 1987).

Key Facts: Ms. Marlyn Murphy, appellant, was hired by the Pierre Independent School District, appellee, to teach at the rural Rousseau school for the 1978-1979 school year. In March 1980, after 2 years of employment, the appellant was informed by the appellee that her contract would not be renewed for the upcoming 1980-1981 school year. At the time the appellant was notified of her nonrenewal, she was given no reason for the termination based on her employment as a nontenured teacher. The appellant brought action against the appellee for breach of contract after her termination. The trial court entered summary judgment for the appellee and denied the appellant's motion for summary judgment.

Issue: At issue is whether the school district acted appropriately in nonrenewing the contract of a nontenured teacher while providing no reason for the termination.

Holding: The Supreme Court of South Dakota found that the appellee school district had authority, under S.D. Codified Laws §13-43-10.2, not to renew the nontenured teacher's contract without providing any reason for the decision.

Reasons: The Supreme Court of South Dakota interpreted SDCL 13-43-10.2 to provide school boards with broad discretion when making decisions to fire nontenured teachers without

giving reasons. Based on this discretion, it would be contradictory to say that a school system's reduction-in-force policy would be interpreted to limit a board's authority to not renew the contract of a single nontenured teacher. Although the school district's reduction-in-force policy does provide in some sections some "priority" to nontenured teachers when reducing its staff, the policy itself cannot override SDCL 13-43-10.2 and the stronger interests it provides school boards in terminating nontenured teachers.

Disposition: The Supreme Court of South Dakota affirmed the summary judgment of the trial court that had determined that the appellee school district had authority to not renew the non-tenured appellant's contract without giving any reasons.

Citation: *Pocahontas Community School Dist. v. Levene*, 409 N.W.2d 698 (Iowa.App., 1987).

Key Facts: Ms Alice Levene, appellant, was employed by the Pocahontas Community School District, appellee, as a sixth grade teacher for a total of 17 years. Per notice and recommendation from the superintendent, the school board voted to terminate the appellant's contract of employment that would take place at the end of the 1984-1985 school year. The board determined that the appellant held the least seniority of all the elementary teachers with equal skill, competence, and same qualifications. Evidence showed that over a 10-year period there had been an enrollment decline of 33% resulting in a significant loss of funds to the district. At the time of the decision, there were 21 third grade students and two third grade teachers. The appellee determined that one teacher could effectively teach this class. The appellant appealed the board's decision to an adjudicator stating that "just cause" was never established in reference to financial and/or enrollment figures. The appellant argued that the school system had an unspent balance of \$348,000 that was to carry over into the 1985-1986 school year and \$190,000

was already available to the district. For this reason, a “need” to cut a position was not evident. The appellant also revealed that the next year’s projected third grade enrollment would only be one student less resulting in a drop of only 4.5%. The appellant argued that based on this evidence; there was not a “need” to remove her from her position.

Issue: At issue is whether the school district could terminate a tenured employee from her position based on a decline in enrollment over a 10-year period that resulted in a loss of funds.

Holding: The Court of Appeals of Iowa held that the appellee school district met its requirement of showing “just cause” for terminating the appellant from her position by showing a preponderance of evidence related to budgetary concerns and its lack of need for her services.

Reasons: The Court of Appeals of Iowa looked at the enrollment decline over a 10-year period from 1975 to 1985 where there was a decline of 33.1%. This had a significant effect on the school district since each student represented a sum of \$2,424 that the school district would not receive for the 1984-1985 school year. With all the obligations that needed to be paid, the school district would find itself in the whole close to \$8,000. In addition to the monetary issues, the school system found that the drop in student enrolment at the third grade would result in reduced efficiency if two teachers were used to teach a total of 21 students. Reference was made to *Von Krog v. Board of Education of Beaman-Conrad-Liscomb Community School District*, 298 N.W.2d 339 (1980), which showed evidence of financial necessity when salary increases constituted for five-sixths of expected new income and that a lack of teacher need for specific services served as just cause for terminating one’s contract. The review of the facts revealed that the appellee school district met its required burden of proof of showing just cause by presenting a preponderance of evidence regarding budget problems, declining student enrollment, and the need for a sufficient utilization of staff by reducing the third-grade teaching staff by one teacher.

Disposition: The Court of Appeals of Iowa affirmed the district court's decision to terminate appellant's teaching position as a third grade teacher and that the appellee school district had followed the terms and agreement between the district and the teacher's association.

Citation: *Proviso Council of West Suburban Teachers Union, Local 571 v. Board of Educ., Proviso Tp. High Schools, Dist. 209, Cook County*, 513 N.E.2d 996 (Ill.App.1.Dist., 1987).

Key Facts: Mr. John Spalding, appellant, and Mr. Robert Kruse, teacher, were both teachers with tenure in the Proviso Township High Schools, District 209. The appellant was hired to teach social studies in the 1972-1973 school year. Mr. Kruse was hired in the same year to teach physical education and later was transferred to the social studies department in the 1976-1977 school year. During this time, he taught a full load of courses while maintaining a very good attendance record. In contrast, the appellant was given disability leave for the 1979-1980 school year and upon his return was given five study halls and one teaching assignment at his request. Effective for the 1981-1982 school year, the system's superintendent requested that there be a reduction in the teaching staff by retaining Mr. Kruse as a social studies teacher with the "crossover" capability to teach in the physical education department while terminating the contract of the appellant. On March 16, 1981, the appellee board of education took the recommendation of the superintendent and voted it through. The following day the appellant received written notification of his dismissal and that he would not be employed by the school system for the 1981-1982 school year. At this point, the appellant filed a grievance through his union representative on the grounds that the appellee's superintendent violated the collective bargaining agreement (CBA) by dismissing him from his position. The superintendent denied the grievance and in response sent an additional letter on March 31, 1981, to the appellant stating the

grievance procedures listed in the CBA along with supporting reasons for his dismissal. In this letter the superintendent made a point to emphasize the greater versatility of Mr. Kruse in that he could teach both social studies and physical education while the appellant could only teach social studies.

Issue: At issue is whether the board of education violated its collective bargaining agreement when it determined who was “better qualified” between two employees with equal seniority.

Holding: The Appellate Court of Illinois, First District, First Division, held that the collective bargaining agreement did not give any weight regarding factors that would be involved in determining amongst teachers with equal seniority who was “better qualified” for a position.

Reasons: The Appellate Court of Illinois, First District, First Division, concluded that the appellee had not breached the appellant’s contract and had acted in good faith when coming to its decision to let go of the appellant from his position. Within the CBA regarding the grievance and arbitration requirements when determining between employees of equal seniority for one position, there must be a valid agreement under Illinois law and such was the case here. Courts under most circumstances will put into place contracts that call for a board to follow specific procedures when those procedures are in line with ordinary concepts of fairness and come about as the result of collective bargaining, *Classroom Teachers Association v. Board of Education of the United Township High School District No. 30* (1973). While it should be noted that the appellant’s grievance against the appellee was subject to arbitration, Ill. Rev. Stat. 1985, ch. 122, par. 24 provides school boards the privilege to maintain the power and authority to transfer a teacher to any position that he or she has the qualifications to fill and to reduce the teaching staff

by means of layoffs whenever it is deemed economically necessary in the opinion of the board. Contrary to the appellant's and union's claim, the board's determinations regarding seniority and teacher qualifications are excused from arbitration in that decisions of this importance should be made by educational experts such as those on a school board. In instances such as this where a board has agreed to follow specific procedural guidelines when making such a decision, the process of determining the qualifications of a teacher cannot be subjected to arbitration but must be made at the discretion of the board.

Disposition: The Appellant Court of Illinois, First District, First Division, affirmed the trial court's judgment that the superintendent of the appellee board of education was acting within his power when discharging appellant teacher.

Citation: *Randall v. Hankins*, 733 S.W.2d 871 (Tenn., 1987).

Key Facts: Mr. Imogene Randall and Mr. Harold Reynolds, appellants, were both tenured teachers who taught in the Greenville City School System. The appellants had taught for a total of 9 years and 17 years, respectively, in the school system. Both appellants' positions were abolished by appellees, superintendent Mr. Ben Hankins and the Greenville City Board of Education, at the end of the 1981-1982 school year. There was no complaint or disagreement from the appellants as to why the positions had to be abolished pursuant to T.C.A. §49-5-511(b)(1). Two other positions, in addition to those of the appellants, were also eliminated at the end of the 1981-1982 school year. One of those employees was later rehired and the other resigned from the Greenville City School System. Both appellants chose not to resign and continued to hold tenure since the time their positions were eliminated. Although they both sought reemployment in other school systems, neither of them was ever successful in finding employment. They also continued to seek reemployment in the Greenville City School System

but were unsuccessful up through the second hearing in this case that ended in 1984. On January 7, 1983, appellants filed a lawsuit against the appellees which was the second year following the abolishment of their positions. The case was first tried in June of 1983 and the Board was found to have provided both appellants with the entitlements they were required to receive regarding their reinstatement to positions in the 1981-1982 and the beginning of the 1982-1983 school year. On April 24, 1984, the Court of Appeals reversed this decision on the grounds that the appellants had not been given priority when being considered for reemployment under the state statute and in fact a reinstatement list had never been created. The appellants were awarded back pay for the period in which their tenure rights had not been honored and were to be reemployed at the first vacancy in which they were qualified to fill. While the decision from the Court of Appeals was forthcoming, the appellee broadly revised its procedures regarding a preferred list for reemployment and the evaluation process of the employees on the list. A second hearing for the case came about in November 1984, where it was found that the appellee had properly considered both appellants for position in which they were qualified after June 1983. However, it was found that there was an opening in March 1982 and August 1982 for which neither appellant was offered a position. Both appellants were awarded back pay from those dates up through June 1983 and remained on the preferred list for reemployment. Appellants appealed again and the same panel of judges found that the priority rights of the appellants had not been honored until August 1984 and therefore awarded back pay for an additional year from the previous ruling. The Court of Appeals, found in this ruling, that the revisions the appellee had made in its reemployment provisions were given to the appellants and found no evidence that the rights of the appellants had been violated following the decision on August 23, 1984.

Issue: At issue is whether tenured teachers whose positions were abolished received preferential consideration for reappointment.

Holding: The Supreme Court of Tennessee held that the appellants were not entitled to an authoritative order of reinstatement and that the appellant court correctly applied Tenn. Code Ann. §49-5-511(b)(3) in determining that the newly established procedures for employee reinstatement were in compliance.

Reasons: The appellants in this case felt as though they were permitted to a peremptory order from the Supreme Court of Tennessee reinstating them immediately based on the findings of the trial court and the Court of Appeals who ruled their precedence as tenured employees was not honored by the appellee for three consecutive school years, 1981 thru 1984, following their dismissal. The Supreme Court of Tennessee established that there was no violation of the appellants rights during most of the first year following their dismissal and they were properly awarded full compensation from the time their program was abolished up through August 1984 when it was clearly determined that they were properly considered for reemployment in the system and were to be awarded priority for future positions they were qualified to teach if any were to become available. Unlike the statutes in other jurisdictions, the Supreme Court of Tennessee referred to the second part of the statute in question that clearly shows the Board of Education has the right to determine the appropriateness of the teacher being considered for reemployment upon the basis of an evaluation by the Board itself in regard to the employee's competence, capability, and suitability to the position at hand as to take into consideration the best interest of the students that would be effected from where the vacancy exists. This provision alone makes it difficult for a Board of Education to be mandated to grant automatic reinstatement to a tenured employee when the Board is clearly given discretion to consider other factors.

However, these other factors when considered by the Board must reveal that the tenured employee is not “fit” to assume the vacant position.

Disposition: The Supreme Court of Tennessee affirmed the decision of the appellate court that ruled in favor of the defendants, Greeneville City Board of Education and the superintendent, when they found plaintiff teachers were not entitled to an unconditional order of reinstatement after their teaching positions had been abolished.

Citation: *Robertson v. Alabama State Tenure Com’n*, 513 So.2d 636 (Ala.Civ.App., 1987).

Key Facts: Mr. Ardee Robertson, Jr., the appellant, was a teacher with continuing service status in the Baldwin County School system. On August 27, 1985, the principal informed the appellant that he would be teaching American History in addition to his normal load of four art classes. On September 4, 1985, the principal informed the appellant that he would be teaching two American History classes, two art classes, and two study halls. The appellant protested that his reassignment to teach different subjects at the same school, within the same grade level, was considered a transfer in reference to the state tenure law. The Baldwin County Board of Education felt that this was a misinterpretation of the law. The appellant appealed to the Alabama State Tenure Commission, appellee, pursuant Ala. Code §16-24-37 (1975), that provided tenured teachers the opportunity to appeal transfers or terminations when they were denied a hearing before the employing board. The Tenure Commission denied the appellant’s request for a hearing. The appellant petitioned the Baldwin County Circuit Court for a writ of mandamus for a review. The trial court ruled that the reassignment of position was not considered a transfer within the meaning of the statute and dismissed the appellant’s appeal for lack of jurisdiction.

Issue: At issue is whether the teacher's reassignment to teach different subjects, at the same school, within the same grade level, is considered a transfer within the meaning of the state statute.

Holding: The Court of Civil Appeals of Alabama held that a teacher's transfer from one position to another was not intended to cover assignments to teach different subjects within the same grade level.

Reasons: The Court of Civil Appeals of Alabama determined that a change involving the teaching duties of a teacher, but not involving a change of position, was not considered a transfer within the meaning of the statute and therefore the appellant was not entitled to a hearing before the employing board of education.

Disposition: The Court of Civil Appeals of Alabama affirmed the trial court's judgment that dismissed the appellant teacher's petition for a writ of mandamus that required the appellee Alabama State Tenure Commission to review his reassignment.

Citation: *Rochester Area School Bd. v. Duncan*, 529 A.2d 48 (Pa.Cmwlth.App., 1987).

Key Facts: Mr. James Duncan, appellee, was certified to teach only in the content area of science. Mr. Kenneth Boffo, also certified only in the content area of science, had fewer years of experience in the school district than the appellee but served in the military for a total of 23 months. The Rochester Area School Board, appellant, decided that a suspension of certain employees was necessary due to a decline in pupil enrollment. Because of the Veterans' Preference Act, 51 Pa. C.S. §7107, the appellant computed Mr. Boffo's military service in determining his seniority and as a result retained him in the science position while releasing the appellee. The Board also continued to employ principal Douglas who held certification in the areas of science and physical education and whose bump into science actually displaced the

appellee. Mr. Cascio who taught science was also certified in physical education and Mr. Katich who also taught science was certified in English and home economics. All three of these professional employees held more seniority in the school district than did the appellee. It was the Board's conclusion based on the Public School Code that the appellee was the proper employee to suspend and discarded the notion that another science teacher with more seniority, and holding other areas of certification, should be transferred to a non-science position so that an employee with less district wide seniority than the appellee could be furloughed. It is important to note that the Board used each employee's date of hire, not first day of work, when computing seniority amongst all the employees involved. The appellee appealed the decision of the Board to the Common Pleas Court who ruled that the appellant had not used the Veteran's Preference Act properly in making its decision and that the appellant should have considered realignment of teachers with multiple certifications in order to retain the appellee.

Issue: At issue is whether the appellant school board applied the Veterans' Preference Act properly when calculating teachers' seniority.

Holding: The Commonwealth Court of Pennsylvania held that the Veterans' Preference Act was properly applied and as long as the date of hire was used to determine seniority for all the employees, the method was fair.

Reasons: The Commonwealth Court of Pennsylvania concluded that the appellant properly used the Veterans' Preference Act along with the Public School Code that dealt with the suspension of professional employees in inverse order of seniority and such application was constitutional. Nothing was found to be arbitrary in the Board's adding military service to the front end of the employee's hire date in order to credit him with his military time. As long as the hire date was used as the starting point for all employees the method of determining seniority is

fair and in fact might serve as a better way to actually determine employee seniority. As far as realignment of positions, the trial court erred in this decision because the appellee did not hold the same additional certifications that the other employees held at the time of the dismissal.

Disposition: The Commonwealth Court of Pennsylvania reversed the judgment of the trial court that ruled appellant school board should retain appellee teacher in a science teaching position. The trial court erred when it required the school board to realign teachers with multiple certifications in order to retain appellee.

Citation: *Westgard v. Independent School Dist. No. 745*, 400 N.W.2d 341 (Minn.App., 1987).

Key Facts: Mr. Robert Westgard, relator, was employed by the Independent School District, No. 745, respondent, since 1970. He was licensed to teach health and physical education as a major and social studies as a minor. Under Minnesota law a teacher can teach full-time in their major area and up to part-time in their minor. During the 1985-1986 school year, the relator taught health and physical education on a full-time status. Although he held the least seniority amongst physical education teachers in the district, he was one of few who held a license to teach health. Because of financial hardship, the respondent placed the relator and several other teachers on unrequested leave of absence in April 1986 for the upcoming 1986-1987 school year. The relator requested a hearing that took place in May 1986. The hearing officer's finding was to place the relator on unrequested leave, which was adopted by the respondent on May 28, 1986. The relator appealed the decision on the grounds that the district failed to follow *Strand v. Special School District No. 1*, 392 N.W.2d 881 in that they did not realign teaching positions in order to preserve his seniority rights. The relator was later recalled to teach a .4 health position for the 1986-1987 school year. Because of the law regarding major and minor certifications and

the amount of time that could be taught, the relator felt as though he should have been allowed to teach a .4 social studies class and replace a social studies teacher with less seniority through the process of bumping.

Issue: At issue is whether the school district was at fault by not allowing the relator the opportunity to exercise his contractual rights and bump a teacher with less seniority or by refusing to realign positions.

Holding: The Court of Appeals of Minnesota held that the *Strand* case required the respondent school district to realign both class schedules and teaching duties in order to continue the employment of the teachers who held the most seniority.

Reasons: The Court of Appeals of Minnesota ruled that within the Teacher Tenure Act of Minnesota, the Minn. Stat. §125.17 mandates a school system to perform both realistic and logical realignment of course assignments to protect the seniority rights of its employees. Although the respondent argued that it was not obligated to comply with the ruling of *Strand* because it was decided under the section that deals with cities of the first class and not the Federation of Teachers, the Court of Appeals of Minnesota disagreed. While it is clear that the two statutes include a different language in how they are written, the theory of seniority and tenure for professional employees is one in the same. Any teacher, whose services are eliminated for discontinuance of position, or a decline in student enrollment, shall receive first consideration for other positions within the school system for which they are qualified to teach. As a result, the distinction between tenure and seniority and the fact that *Strand* specifically dealt with seniority, the Court of Appeals of Minnesota concluded that *Strand* applied to teachers who were employed in cities of first class and those employed by school districts governed under the Federation of Teachers. Although the respondent did offer the relator a .4 health position, it did

not allow him to bump a teacher with less seniority and never attempted any type of realignment. In fact, it appears that the respondent created a teaching schedule and then attempted to put the relator within the schedule rather than making an effort to realign subjects and teaching assignments to make sure that the teachers that were retained were the ones with the most seniority in that given area.

Disposition: The Court of Appeals of Minnesota reversed the judgment of the respondent school district to place teacher on unrequested leave of absence for one school year and remanded the school district to reinstate the teacher to his previous position.

1988

Citation: *Bauer v. Board of Educ., Unified School Dist. No.452, Johnson, Kan.*, 765 P.2d 1129 (Kan., 1988).

Key Facts: Mr. James M. Bauer, appellant, was a certified tenured teacher who taught shop and metals for a period of 7 years at Stanton County High School and a small engines class at the junior high. The appellant was also certified by the Kansas State Board of Education to teach social science and power mechanics from July 1, 1980 through September 30, 1985. On October 1, 1985, another certificate was issued to the appellant for the same subjects that was good through September 3, 1991. Due to a projected enrollment decline in the auto mechanics class for the 1985 school year, the Board decided not to offer this class. Since an industrial arts teacher who had more seniority could teach the appellant's other class, the Board voted unanimously not to renew the contract of the appellant. The Board also voted, at this same meeting, not to renew the contract of a junior high teacher who was certified in social science and physical education. As a result, a nontenured teacher was hired by the appellee to teach

social science and physical education and the appellant was never considered for the social science position. The appellant claimed that because he was certified to teach social science, he was improperly terminated from his position and requested a due process hearing pursuant to K.S.A. 72-5436 *et seq.* in that the pre-enrollment figures given were not accurate, the school administration, without approval from the Board, had no power to change the course of study, and the Board failed to follow its own reduction-in-force policy in making its determinations. The appellant appealed the decision of the district court that upheld the Board's decision and on March 24, 1988, the Court of Appeals affirmed this decision based on the grounds that "certified" is not a synonymous term with "qualified" and although the appellant was certified in the area of social science, he had never shown that he was qualified to teach the subject. In fact, the appellant had never taught a social science class and all his work experience outside of his teaching career was in the field of industrial arts.

Issue: At issue is whether the appellee Board properly considered the appellant's certifications when filling available positions.

Holding: The Supreme Court of Kansas held that Board of Education was at fault in not considering the appellant teacher for all positions he was qualified to teach and in fact was unaware that he was certified to teach social science.

Reasons: The Supreme Court of Kansas determined that when the Court of Appeals made its ruling for the appellee Board, it failed to identify that the Board had never made any determination regarding the appellant's qualifications to teach courses in social science. Under Kansas law, when a board of education determines not to renew the contract of a tenured employee during a reduction in force, it is a requirement to examine the competence, interest, and training of the employee. Under *Coats*, 233 Kan. At 401-02, tenured teachers are protected

from dismissal without good cause. This must be supported by considerable evidence and the burden of proof is the Board's responsibility, not the terminated employee. Lacking any good cause that can be shown through documentation, a teacher who has attained tenure will be given first choice in filling vacancies. In addition, the Court of Appeals also failed to take into account the power granted to the State Board of Education whereby it attains authority over public school systems and all local boards of education. Within this legislation it is clear that they are to perform an examination that is designed to insure the "certification" of a teacher is also a reliable indicator that the teacher has the basic knowledge and "qualifications" necessary to perform in the state of Kansas. The Supreme Court of Kansas made reference to the state constitution in support of the appellant's claim that his certification, from the state of Kansas, in social science, indicated that he had taken the proper steps and passed the required examination that was designed to determine the effectiveness, fitness, and "qualifications" to teach in a particular area. Based on this, a teacher should be able to rely on their certification as proof of their being qualified. Although the Board raised the question that they should have some degree of discretion in shaping the curriculum and defining teaching responsibilities, the cases they used to support this did not involve the nonrenewal of a tenured employee and the hiring of an outside nontenured employee.

Disposition: The Supreme Court of Kansas reversed the lower court's judgment and reversed the trial court's judgment of supporting the appellee board of education's decision to terminate appellant teacher from his position. The Supreme Court of Kansas remanded the case to the trial court with an order to reinstate the appellant teacher to his position along with determining his back pay based on the amount of time the nontenured teacher had taught the social science class.

Citation: *Gibbons v. New Castle Area School Dist.*, 543 A.2d 1087 (Pa., 1988).

Key Facts: Mr. Charles E. Gibbons, appellee, was principal of George Washington Junior High School that served Grades 7 thru 9. In June of 1982, the school board decided to close down this school leaving Franklin Junior High as the only remaining junior high that would serve all seventh and eighth graders in the district. The senior high school that had served students Grades 10 thru 12 would now serve all Grade 9 students as well. The closing of George Washington Junior High caused two secondary administrators positions to be abolished. The assistant principal at Franklin Junior High and the assistant principal of New Castle Senior High School were returned to teaching positions because they were the two administrators with the least seniority at that time. Mr. Amen Hassen, principal, and Mr. Robert Navarra, assistant principal, both of whom had more seniority than the appellee, were assigned to the vacated positions. The appellee was reassigned to the assistant principal position at New Castle Senior High School while making the same salary as the principal. At the request of the appellee, the board held a hearing to review their decision involving his placement. The board affirmed its decision on the grounds that the current principal at New Castle Senior High School, Mr. Frank Datillo, should remain the principal, even though he had less seniority, in order to maintain the educational program that had been established and that the appellee's lack of administrative experience at the senior high school level could be detrimental to the program, especially at a time when the ninth grade was being added. The appellee challenged this decision based on 24 P.S. §11-1125.1 (c), that school districts shall realign staff so that more senior employees are provided with opportunities to fill positions they are certified for that are being filled by less senior employees. The board felt that this section of the statute only applied where a suspension had occurred and in this case that was not the issue.

Issue: At issue is whether the school district erred in its decision to move a junior high principal into an assistant principal's position at the high school while allowing the principal at the high school, which had less seniority, to maintain his position.

Holding: The Supreme Court of Pennsylvania held that it was not the purpose of the Public School Code to require a certified professional to be either promoted or advanced in status and that when the board placed two administrators with less seniority into teaching positions while placing the appellee in one of the vacated administrative positions, the board had fully complied with the code.

Reasons: The Supreme Court of Pennsylvania determined that Section 1125.1 should not control the language presented in the subsection being considered and that it should be noted there is typically a true distinction between a subsection and an independent section of a statute. Section 1125.1 clearly established a legal policy on how school districts were to implement a reduction in staff while also protecting the professional employees who had attained tenure. Nothing in regard to Act 1979-97 indicated that the longstanding statute of granting judgment to school boards to appoint professional staff on the basis of the educational needs of the district had changed and that appointing positions completely on the basis of seniority was not appropriate. The Supreme Court of Pennsylvania agreed with the view expressed by the Pennsylvania Association of Elementary and Secondary School Principals that it is beyond the interpretation of §1125.1 to require a professional to be advanced or promoted in status. When the appellant returned two administrators with less seniority to the classroom and gave the appellee the opportunity to fill one of the vacated positions, it was in compliance of §1125.1 (c).

Disposition: The Supreme Court of Pennsylvania reversed the order of the lower court who had reversed the judgment of the appellant school district's decision to transfer appellee principal from his school that was being closed to another school as assistant principal.

Citation: *New Mexico State Bd. of Educ. v. Abeyta*, 751 P.2d 685 (N.M., 1988).

Key Facts: Mr. Johnny Abeyta, respondent, was a tenured teacher employed by the Cuba Independent School District, petitioner. The respondent was certified in social studies and art but in the 1983 school year was teaching a class outside the social studies program that was federally funded. These funds were cut for the 1984-1985 school year causing the petitioner to implement its reduction-in-force policy that eliminated the respondent's position, leaving two certified social studies teachers to fill two positions. When the hearing actually took place it was determined that the enrollment decrease for the upcoming 1984-1985 school year was a projection and had never actually materialized. Of the three tenured social studies teachers, the respondent scored the least on the performance scale regarding performance, service, and education, and as a result was chosen as the teacher whose contract would be terminated. The respondent then was placed on the performance scale with a tenured art teacher where he was once again unsuccessful. He then requested to bump a nontenured bilingual teacher but was not successful because he had never received his bilingual certification. The respondent proceeded by filing an appeal and a de novo hearing was held before the State Board of Education in July and September of 1984. At this time the new law in New Mexico allowed the State Board, through de novo provisions, to continue with legal action as though it had started at that level. The petitioner's objective at this hearing was to show that there was no available position for the respondent to teach for which he was qualified. The State Board concluded that there was

significant evidence that the petitioner had acted appropriately and the decision to terminate the respondent from his position was made in good cause.

Issue: At issue is whether the Cuba Independent School District was required to perform a realignment in order to avoid the termination of a tenured teacher.

Holding: The Supreme Court of New Mexico held that the school district was not required to perform a realignment and by doing so would have negatively affected the educational program in the social studies department and in the library. By performing a realignment, the most qualified social studies teacher would have been placed in the library and the librarian would have been replaced by an employee who had no desire to leave their social studies position.

Reasons: The Supreme Court of New Mexico supported the decision of the petitioner in that the realignment of the social studies teaching staff, and the librarian, would have affected the educational setting in a negative manner. To have gone along with the respondent's proposal for realignment, two very effective teachers in their current positions would have been moved to other positions where they would have been less effective. The impact of this would have been very difficult to overcome and would have put the school in a position to have to rebuild programs that were effective and meeting the needs of students. There always exist the strong opinion of retaining teachers who have acquired tenure. However, the quality of a students education and the standard of teaching should never be overlooked

Disposition: The Supreme Court of New Mexico reversed the judgment of the court of appeals that stated petitioner board of education was required to conduct a realignment to avoid respondent teacher's dismissal. The Supreme Court of New Mexico reinstated the State Board of

Education's decision that upheld the termination of respondent teacher in that it was aligned with the local board's reduction-in-force policy.

1989

Citation: *Butler v. Board of Educ., Unified School Dist. No. 440, Harvey County*, 769 P.2d 651 (Kan., 1989).

Key Facts: Mr. Kenneth Butler, appellant, was a tenured industrial arts teacher in the Unified School District No. 440 of Harvey County Kansas, appellee. On March 31, 1986, he was also certified in the area of physical education for Grades 7-12. Of the three teachers who were certified in the area of industrial arts, the appellant held the least seniority. It was based on this fact that his contract was nonrenewed when the appellee determined that the school district must make cuts in the number of teaching positions in the area of industrial arts as a result of a nationwide enrollment decline. This determination was not in question based on a student enrollment decline in the program of over 250 in 1981 to a low of 139 in 1985. However, the appellant objected to the decision on the grounds that the appellee never considered a rescheduling of classes whereby he would take classes that were being taught by teachers who were nontenured. On January 13, 1986, the superintendent for the 1985-1986 school year, Mr. Earl Guiot, informed the appellee Board that he had inherited an overstaffing problem from the previous superintendent as a result of the hiring of a head high school football and basketball coach without reducing the staff to accommodate. Because the school was overstaffed in the area of industrial arts, the superintendent recommended that the appellant become certified in the area of elementary physical education or have his contract nonrenewed. The appellant's qualifications were compared to those of the nontenured football coach who at the time of the termination was

teaching physical education Grades 5-7, freshman physical education with an additional component for health, and two advanced high school physical education courses. Although the football coach was nontenured, the appellee chose to retain him since the appellant, although tenured, was not certified to teach elementary health and physical education and was not qualified to teach three of the six classes being taught by the coach. Once the appellant's contract was nonrenewed, he filed for a due process hearing in accordance with K.S.A. 72-5436 *et seq.* where the hearing committee recommended his reinstatement, although not unanimously. Because the committee was not unanimous in its decision, the appellee Board rejected the recommendation to reinstate.

Issue: At issue is whether the Board can retain a teacher/coach who is nontenured while terminating the contract of a tenured employee.

Holding: The Supreme Court of Kansas held that while tenured teacher were protected from undeserved dismissals, it did not provide them with privileges or immunities that would interfere with the control or effective operation of a school.

Reasons: The Supreme Court of Kansas looked at *Coats v. U.S.D. No. 353*, 233 Kan. 394, 662 P.2d 1279 (1983) in helping make its ruling. It is the responsibility of the Board to perform a good faith examination of all teachers in the area where the reduction in force is to occur and where both tenured and nontenured teachers are qualified, nontenured teachers should be terminated first. While it was determined by the Supreme Court of Kansas that the teaching assignments could have possibly been rearranged to accommodate the appellant, this process would have not been appropriate based on the certifications of the appellant or the economic condition of the school. A teacher who has attained tenure has the right to employment within the school system if this can be accomplished by assigning subjects that are taught by a

nontenured teacher. In this case however, there is a tenured teacher who is not certified in all of the subjects being taught by the nontenured teacher and to make the needed adjustments the entire schedule would have to be overhauled while ending up with three part-time teachers. The Board is not required to make such drastic changes in the rearrangement of teaching duties.

Disposition: The Supreme Court of Kansas affirmed the decision of the appellee Board of Education to nonrenew the appellant's contract.

Citation: *In re Independent School Dist. No. 318 Hearing*, 435 N.W.2d 81 (Minn.App., 1989).

Key Facts: Ms. Gladys Brown, relator, was a full-time elementary teacher for the 1987-1988 school year. At the end of the year, she was placed on an unrequested leave of absence by the respondent school board of the Independent School District No. 318. Because of a significant decline in the school district's general fund, the respondent also proposed to place 27 other teachers on unrequested leave along with a budget cut of approximately \$1.5 million. The relator requested, and was granted, a hearing that took place on April 25, 1988. Shortly thereafter, on May 23, the hearing officer ruled in favor of the relator on the grounds that teachers with less seniority, and probationary teachers, were retained in positions in which the relator was certified to teach. Even though the relator was recalled to a half-time morning position for the 1988-1989 school year, it was determined by the hearing officer that she still maintained the right to bump less senior teachers from other morning half-time positions. Because the relator could not teach two morning positions, the respondent would need to create a new half-time afternoon position in order for the relator to be full-time. Both positions were Title I positions designed to tutor elementary students in the areas of reading and math. These positions had originally been designed to take place in the morning in order to not conflict with the regular teaching of reading

and math. It was also important to keep these tutorials to half-time, and in the morning, because there was evidence to show that was when they were the most successful. The respondent school board chose not to accept the recommendation of the hearing officer and determined that keeping the Title I programs in the morning was in the best interest of the students. On July 19, 1998, the relator filed a petition for a writ of certiorari to review this decision of the respondent board.

Issue: At issue is whether the school board is obligated to allow the relator to bump a less senior, or probational half-time employee, in order to restore her position to a full-time teaching position despite the fact that the position does not actually exist.

Holding: The Court of Appeals of Minnesota held that the school board did not make a mistake in determining the relator teacher did not have the right to require them to create a new position so that she would have the opportunity to teach two separate half-time positions making her full-time.

Reasons: The Court of Appeals of Minnesota agreed with the relator on the grounds that her contract provided her with the legal right to bump a less senior, or probational employee, from their position under Minn. Stat. §125.12, subd. 6b. However, the Court of Appeals of Minnesota found no power through the statute to support the stance of creating a new position if this was not in the best interest of students. Because the facts in the case were not supportive of this decision being what was in the best interest of students, this could not be considered a normal bumping situation. In order for a teacher with seniority, who has been placed on an unrequested leave of absence, to effectively exercise their right to bump a less senior teacher, they must first be able to find an already existing position in which they are qualified to teach that is being occupied by a teacher with less seniority (*Hendrickson v. Independent School District No. 319*, 303 Minn. 423, 425-26, 228 N.W.2d 126, 128 (1975)). The relator here was not

seeking to bump an employee from an existing position but was requesting that the respondent school board create a new position.

Disposition: The Court of Appeals of Minnesota affirmed the decision of the school board that placed the teacher on an unrequested leave of absence.

Citation: *McKeesport Area School Dist. v. Cicogna*, 558 A.2d 116 (Pa.Cmwlth.App., 1989).

Key Facts: Mr. William Cicogna, appellee, was a certified teacher in the McKeesport Area School District, appellant. The appellee was certified in the area of accounting and taught in the business education department where he held less seniority than any other employee that was employed. As a result of a decline in enrollment in the cooperative education program, the appellant made the decision to reduce the number of employees from two to one for the upcoming 1984-1985 school year. With only 27 students enrolled in the program for the 1984-1985 school year, this revealed a drop in enrollment of 45 students from the previous year. Mr. Angelo Permigiani was retained as the only cooperative education teacher in the district because he held seniority. Ms. Vivian Gessner, who also held more seniority than the appellee, was moved from her position in the cooperative education department over to the business education department where she bumped the appellee from his position. It was in June of 1984 that Ms. Gessner removed social studies from her certification, which resulted in a realignment not being performed. If this was not the case and a realignment had been performed, the appellee would not have had to be furloughed from his position.

Issue: At issue is whether the appellee teacher was let go from his position as a result of a decline in student enrollment.

Holding: The Commonwealth Court of Pennsylvania held that the appellee's dismissal from his position was not from a significant decrease in student enrollment but was from the appellant allowing a teacher to delete one of the areas of her certification.

Reasons: The Commonwealth Court of Pennsylvania determined that the Public School Code, 24 P.S. §11-1124, did not give the appellant school district authority to grant approval for a certification change of an employee that was unrelated to the proposed enrollment decline that resulted in eliminating the appellee from his position while retaining an employee with less seniority. The school board's responsibility in the matter was to assign teachers to a variety of positions based on their certification in order to make sure that the employee with the least amount of seniority would be laid off first. The reality that the furlough of the appellee was paralleled by the reinstatement of a teacher with less seniority verified that the student decline in enrollment warranted the suspension of six teachers and not seven. If there was no evidence to support the decision to furlough the appellee from his position because of a decline in enrollment, then it must be safe to say that the furlough was a result of a realignment that took place after an employee's certification in social studies was removed.

Disposition: The Commonwealth Court of Pennsylvania affirmed the decision of the trial court that directed the appellant school district to reinstate appellee teacher, along with back pay, when appellee was furloughed after the authorized revision of another teacher's certification.

Citation: *Phillips v. South Range Local School Dist. Bd. of Educ.*, 543 N.E.2d 492 (Ohio., 1989).

Key Facts: Ms. Catherine Phillips, appellant, was a business education teacher employed by the appellee school district from January 1972 until August 1985. During that timeframe the appellant was employed under a succession of limited contracts until April of 1981 when she

was issued a continuing contract. Between 1976 and 1985 there was a noted decline in the student enrollment in the district and at the high school in the business education department. On July 15, 1985, it was determined by the appellee that the business education courses for the upcoming 1985-1986 school year would be reorganized so they could all be taught by one teacher. As a result, the appellee, referring to Ohio Rev. Code §3319.17, suspended the appellant from her contract to go into effect on September 1, 1985. The appellant later filed a complaint against the appellee on the grounds that the suspension of her contract was improper because the decision was not based on a declining enrollment. After the appellant's motion for a preliminary injunction was denied on December 17, 1985, she filed for a summary judgment against the appellee board disagreeing that her suspension from her position was valid under R.C. 3319.17 and requested that she be reinstated to her continuing service status while receiving back pay and all costs. The appellee filed their own motion for summary judgment in response challenging that they had acted within guidelines in suspending the appellant's contract based on a decline in the student enrollment. The trial court ruled in favor of the appellee on the grounds that although there was no evidence of a short-term enrollment decline, there was an overall decline ranging from 1976 through 1986 and this was sufficient under R.C. 3319.17.

Issue: At issue is whether the Board of Education acted properly in suspending a teacher with a continuing contract from her position on the grounds of a declining district wide enrollment.

Holding: The Supreme Court of Ohio held that a long term decline in the district's enrollment could not be used as the basis for its reduction of teachers under R.C. 3319.17 when the record showed that in the year of the reduction there was no decline in student enrollment.

Reasons: The Supreme Court of Ohio determined that in order to allow the appellee board of education to freely use declining enrollment when the enrollment was no longer declining, as a reason to suspend a teacher from their position would weaken the teacher tenure law. Only when there is a definite and present decline in enrollment should there be an actual reduction in the number of teachers. Although a decline in enrollment does not always occur over a short period of time, it can happen gradually. The records revealed in this case that there was no decline in the high school enrollment during the year of the appellant's suspension and, in fact, the enrollment had grown at the high school over the previous 2 years while maintaining consistency across the district.

Disposition: The Supreme Court of Ohio reversed the summary judgment granted to the appellee board of education in the appellant's action against the school board for improper suspension of her contract based on a decline in student enrollment.

Citation: *Taborn v. Hammonds*, 380 S.E.2d 513 (N.C., 1989).

Key Facts: Mr. Leo Taborn, plaintiff, taught an emotionally handicapped class in the Durham City School System of North Carolina. This class was part of an exceptional children program that received funding from the state and federal government. Due to a substantial decrease in the funding, the Durham City Board of Education, defendant, was forced to implement a reduction in force within the program. This case was on appeal for the second time after the Court of Appeals vacated the judgment of the Superior Court that had upheld the decision of the board to release the plaintiff from his position. The Court of Appeals concluded that the defendant's findings did not support the dismissal of the plaintiff and remanded the case for a new hearing. As a result of the remand, a letter was sent to the plaintiff explaining the reasons for recommending his dismissal that included no funding for the program for the

1984-1985 school year for the number of positions that had previously been funded in the program and in an effort to make the appropriate adjustments, the Durham City School System followed its Reduction in Instructional Personnel policy. As a result, the factors considered in the selection of dismissal candidates included educational credentials and teaching experience in the North Carolina Public Schools. The plaintiff held the lowest certification level of all the teachers in the program along with the least amount of experience. It was also determined that an experienced teacher was available to be transferred into the position that was currently held by the plaintiff. On February 25, 1987, the defendant held a second hearing in accordance with the remand that revealed that they were informed that there allotment of 970 students in the program was being reduced to 726 students and the funding was being reduced to that of 748 students, this would reduce the allotment by over \$58,000. Based on this information, the superintendent determined that the decline in funds needed to be addressed in the 1984-1985 school year rather than putting it off to later years when things could be worse. By consolidating and eliminating positions within the Exceptional Children Program, the system would still be able to provide a meaningful program to its students.

Issue: At issue is whether the Board was justified in reducing the number of teaching positions within a specific program when the school district had lost a significant portion of the funds for that program

Holding: The Supreme Court of North Carolina held that under N.C. Gen. Stat. §115C-325 (e)(1)1, the Durham City Board of Education was justified in reducing the number of teachers in the exceptional children's program based on a considerable decrease in state and federal funds.

Reasons: The Supreme Court of North Carolina came to its decision because it determined there was a rational basis for the decision to reduce the number of teaching positions in the Exceptional Children Program. Because the defendant Board was faced with significant reductions in funding for this program, it was justifiable for them to come up with a solution that was program specific and not necessary to look across the entire budget to try to find a remedy to provide the salary of teaching positions when money originally available for a program becomes unavailable due to a reduction in funds for an external grant program. It was the legislature's intent through N.C.G.S. §115C-142, to help students with special needs by not allowing funds appropriated for such programs to be used for other purposes and not to provide special education teachers with additional protection against dismissal, due to a reduction in force, than was provided for other career teachers. The Supreme Court of North Carolina also concluded that it was very clear that the legislature also intended for local school boards to be given wide diplomacy in determining whether or not to reduce personnel positions in response to a decrease in funding.

Disposition: The Supreme Court of North Carolina reversed the ruling of the appellant court that had reversed the trial court's decision that upheld the Durham City Board of Education's termination of plaintiff teacher.

Citation: *Whitling v. Keystone School Dist.*, 560 A.2d 909 (Pa.Cmwlth.App., 1989).

Key Facts: Mr. Gary Whitling, appellant, was certified to teach in the field of chemistry and was hired by the Keystone School District, appellee, on November 10, 1976. The appellant taught in the science department and at the time of the Board's decision was the employee with the least amount of seniority. The appellant received a letter dated May 27, 1987, that notified him that he would be suspended from his position as of June 30, 1987. The suspension would

come about as the result of a decrease in the student enrollment within the vocational-agricultural department. The vocational-agricultural department consisted of one teacher who was certified to teach agriculture and general science. This teacher was moved to the science department as a result of the curtailment therefore making the appellant the employee in the department with the least amount of experience. The appellant appealed the Board's decision and requested a hearing at which time he presented evidence that he was enrolled in courses that would provide him with an additional certification in the field of drivers education that would go into effect as of August 13, 1987. The appellee Board entered its mediation on July 20, 1987, at which time it concluded that the school district only needed to consider the appellant's certification at the time of the suspension and that it was not required to anticipate the appellant's additional certification. The appellant filed an appeal to the trial court contesting this decision who later determined that the appellee was accurate in its decision because there was no definite information that the appellant would be certified in drivers education.

Issue: At issue is whether the School District failed to consider the appellant's anticipated certification in another area before furloughing him from his position.

Holding: The Commonwealth Court of Pennsylvania held that on the date the appellant was suspended from his position there was no definitive information that he would be certified in drivers education and the appellee's decision was consistent with the law.

Reasons: The Commonwealth Court of Pennsylvania relied upon the ruling of the Supreme Court's decision in *Gibbons v. New Castle Area School District.*, 518 Pa. 443, 449. 543 A.2d 1087, 1089 (1988), where it was established that school districts hold the responsibility of reducing staff while protecting the seniority of tenured professional employees. However, the court also concluded that in *Wattsburg Area School Dist.* the court properly determined in this

case that the school district was in error when it placed priority on an employee's seniority and failed to look at the educational and practical implications of a realignment. Therefore, the Commonwealth Court of Pennsylvania determined that the appellee's decision to suspend the appellant from his position were consistent with the law as the school district is at liberty to consider the educational soundness and realistic implications of its decision along with an employee's seniority.

Disposition: The Commonwealth Court of Pennsylvania affirmed the order of the trial court that affirmed the ruling of appellee school board to suspend appellant teacher.

1990

Citation: *Anderson v Cortland City School Dist.*, 554 N.Y.S.2d 769 (N.Y.Sup., 1990).

Key Facts: Ms. Joan Anderson and other petitioners were employed by the Onondaga-Cortland-Madison Board of Cooperative Educational Services (OCM BOCES) as certified teaching assistants. The petitioners had been contracted to work for the Cortland City School District, respondent, to help provide special education services within the system. The respondent notified OCM BOCES in the spring of 1989 that their contract was going to be discontinued and that they were going to provide their own special education programs for the upcoming 1989-1990 school year. As a result of this takeover, OCM BOCES was forced to do away with 40 teaching assistant positions. Basing their claim upon Education Law §3014-b, the petitioners felt as though they were entitled to reemployment with the school district in a position similar to the one they had once held or to be placed on a preferred list of eligible candidates for upcoming openings.

Issue: At issue is whether the school district acted appropriately when dismissing the petitioners from their positions without affording them tenure rights because they were teaching assistants and not teachers.

Holding: The Supreme Court of New York, Onondaga County, held that a teaching assistant can only perform their duties under the direct supervision of a licensed teacher and the statute the petitioners used as their bases was to protect the tenure of teachers and not teaching assistants.

Reasons: The Supreme Court of New York, Onondaga County, determined that the statute pleaded by the petitioner teaching assistants did not pertain to them as teaching assistants. Education Law §3014-b gives teachers, not teaching assistants, specific rights in the occurrence of a takeover and these protections are afforded to them because the qualifications and responsibilities of a teacher are considerably different from those of teaching assistants. If the law were to apply to teaching assistants, it would be directly indicated in the language of the statute. It is clear that the primary purpose of this section of the law is to protect the tenure rights of teachers and as a result the petitioners claim should be dismissed.

Disposition: The Supreme Court of New York, Onondaga County, found that the state statute pleaded by the petitioners was not applicable to them in their positions as teaching assistants and therefore dismissed their petition for employment.

Citation: *Beason v. Rapides Parish School Bd.*, 558 So.2d 281 (Pa., 1990).

Key Facts: Instructional supervisors, Mr. Francis Beason, Mr. Alvin Rollins, Mr. Irvin Brouillette, Ms. Connie Chenevert, and Ms. Hope Teague, all defendants, filed a law suit against the Rapides Parish School Board, defendant. Their claim was that they had been inappropriately classified as Supervisor IIIs and as a result were improperly demoted in both rank and salary. On

July 7, 1970, the defendant approved specific salary schedules that pertained to all supervisory personnel. They were divided into three categories (I-III) and each category had its own pay schedule. Instructional Supervisors were considered to be category II and it was determined that the plaintiffs were performing work at this level. In addition, the categorization of supervisory personnel was left up to the superintendent and the approval of the School Board.

Superintendent, Mr. Allen Nichols, testified that in the middle to late seventies, the School Board faced financial issues and in an effort to cut back they implemented an attrition program in 1978 that proved to be very unpopular and was rescinded by the School Board on January 2, 1979. In this plan, no employees were dismissed from their position but new employees were given reduced monthly or hourly work schedules. Superintendent Nichols also testified that the decision was made later to do away with the classification and pay scale of all category II Supervisors as non-federally funded supervisors. Preceding the 1978-1979 school year, no individuals, including the plaintiffs, were promoted from Supervisor III to Supervisor II and at the time of the trial only one Supervisor II remained employed by the school district. Although the defendant never officially eliminated the Supervisor II category, Superintendent Nichols followed the requests of the School Board and as a result left no legal foundation for any recovery. The plaintiffs appealed and argued that Superintendent Nichols acted arbitrarily in determining their position and salary without having the required authorization from the School Board.

Issue: At issue is whether the Instructional Supervisors were improperly classified leading them to being demoted in their rank and salary.

Holding: The Court of Appeal of Louisiana, Third Circuit held that the supervisory category of concern had been abolished but that there had been no lowering of salary or professional rank that would be in violation of the Teacher's Tenure law.

Reasons: The Court of Appeal of Louisiana, Third Circuit, determined that the plaintiffs were tenured teachers before they took on the position of supervisor and were required to hold teacher certificates as a requisite of employment. This made them teachers and in reference to *State ex rel. Parker v. Vernon Parish School Board*, 222 La. 91, 62 So. 2d 111 (La. 1952), were under the authority of a school board to have their salaries adjusted as long as the school board was not abusing its power. The school board in this case approved any change that was made by the superintendent and they were fully aware of all decisions that had been made regarding the placement of Supervisors at category III. The Court of Appeal of Louisiana, Third Circuit, found that the School Board refused to promote the plaintiffs because they could not afford the increase in pay schedules for so many supervisors and this was acceptable within the policy. Although the Supervisory II category was done away with, there was no lowering of salary or professional standing of any of the plaintiffs that would have constituted a violation of the Teachers' Tenure Law.

Disposition: The Court of Appeal of Louisiana, Third Circuit, affirmed the decision in favor of the defendant school board against the plaintiffs concerning their employment as supervisors.

Citation: *Dallap v. Sharon City School Dist.*, 571 A.2d 368 (Pa., 1990).

Key Facts: Teacher appellants, Ms. Jan Dallap, Ms. Sharon Cunningham, Ms. Betty Yohman, Mr. Les Catron, Mr. Tom Ristvey, Ms. Sally Fabian, Ms. Michele Grunenwald, Ms. Ruth Lavin, Ms. Shirley Antos, Ms. Sheila Schneider, Ms. Ann Dunsmore, Mr. Chris Carney,

Ms. Bonnie Fowler, and Ms. Barbara Pisarcik were suspended from their position by the appellee school district, Sharon City School District. This suspension was to take place at the conclusion of the 1981-1982 school year. The appellants challenged this decision as to whether the furlough actually needed to take place in reference to a decline in student enrollment. This claim was not pursued in the court of common pleas and many of the appellant teachers were recalled to their positions before the beginning of the 1982-1983 school year.

Issue: At issue is whether the School District failed to follow 24 P.S. §11-1125.1 properly when it dismissed teachers from their positions while retaining other teachers with less seniority. Also at issue is how much flexibility the school board is provided in its determination of what moves need to be made that serves the school best.

Holding: The Supreme Court of Pennsylvania held that because specific conditions made it possible for more than one realignment to take place, the appellee school board should have considered the impact of those realignments on the educational program to find out which one was most appropriate while allowing more senior employees to retain positions for which they were properly certified.

Reasons: The Supreme Court of Pennsylvania determined that P.S. §1125.1 was violated in that the plan the appellee school district chose to follow furloughed teachers with more seniority while retaining teachers with less seniority in positions that more senior employees held the appropriate certification. In these instances, the employee with less seniority should have been furloughed. In implementing a realignment, as the result of a decline in student enrollment, school districts are responsible for replacing less senior employees with those that hold more seniority and carry the appropriate certification for the position being filled. When more than one realignment is a possibility, the school district should take into consideration the impact on the

educational program and go with the plan that is most sound, as long as more senior employees are provided with positions they are certified to teach that are being held by employees with less seniority.

Disposition: The Supreme Court of Pennsylvania reversed and remanded the order of the trial court to determine the proper remedy. The appellee school district was found to be in violation of the Public School Code where appellant teachers were furloughed and a less senior teacher was retained in a position that the appellants' certification was adequate.

Citation: *In re Battaglia*, 451 N.W.2d 46 (Minn.App., 1990).

Key Facts: In July 1986, the Askov and Sandstone School Districts entered into a contract based on Minn. Stat. §122.535 (1984). By doing so, the school districts implemented a cooperative secondary education program that forced all students in 7th through 9th grades to attend a new Junior High in the Askov district. All students in 10th through 12th grades would attend a new senior high in the Sandstone district. Part of the agreement between the two districts was that employees of each district would not be considered employees of the other district under any circumstances, including termination. The agreement specifically stated that all teachers would retain their seniority based on their home district and a joint seniority list would not be put together unless it was negotiated and agreed upon by each district. However, in June of 1987 the two districts entered into a Joint Powers of Agreement following Minn. Stat. §471.59 (1986) that supplemented the earlier agreement providing a Joint Powers Board the right to make decisions on all issues regarding certified personnel. As a result, teachers in the combined secondary program were assigned to become exchange teachers in the junior and/or senior high school regardless of which district actually employed them. After 2 years of operation, the Askov District sought to place some teachers on unrequested leave of absence based on lack of pupils

and financial limitations. In the spring of 1989, a committee comprised of individuals from both districts made a recommendation to the Joint Powers Board that the number of teaching positions at the junior high and senior high school be reduced, based on seniority, and regardless of district in which teacher was employed. On April 3, 1989, the Askov School Board adopted a resolution that the positions of relators Mr. Daniel Battaglia, Mr. Douglas Blechinger, Mr. Gregory Ciurleo, and Ms. Rosanne Haynes be discontinued for reasons of deficit in general fund, reduction in state funding and enrollment decline. Relator Ciurleo was later given the opportunity to teach half time, but declined. On May 19, 1989, a hearing was held at the request of the relators. At this time the superintendent testified that the school district had reduced the number of teaching positions in the area of physical education, industrial arts, and music. It was established that Mr. Battaglia, Mr. Blechinger, and Mr. Ciurleo all taught in these areas respectively and that each of the exchange teachers were employed by the Sandstone District and attained more seniority than the relators. However, the superintendent alleged at this time that the school district was not following a joint seniority list.

Issue: At issue is whether the Joint Powers Board's decision to place relator teachers on unrequested leaves of absence was arbitrary or contrary to law.

Holding: The Court of Appeals of Minnesota held that financial limitations and a decrease in student enrollment served as an appropriate basis for placing teachers on ULA but also held that filling the positions with instructors who had no seniority in the school district, but had greater seniority in the other school district, was done in error by using a combined seniority list.

Reasons: The Court of Appeals of Minnesota determined that a single statutory ground for placing a teacher on ULA had been established in *Laird v. Independent School Dist. No. 317*,

346 N.W.2d 153, 156 (min. 1984). The school board properly indicated in each notice to each relator a reduction in funding and a decline in enrollment as the reasons for its actions and that these were the statutory reasons for the layoff. This served as a sufficient basis for placing teachers on an ULA in this case. The Askov and Sandstone School Districts did enter into an agreement for a cooperative secondary program under Minn. Stat. §12.535 and that it would be controlled by a Joint Powers Board established under Minn. Stat. §471.59 (1986). However, the joint powers agreement in this statute never made any reference to a joint seniority list. While the statute did allow for the joint powers to execute the school districts common powers, the earlier agreement made between the two districts specifically prohibited the use of a joint seniority list unless each district negotiated such a condition with its representative. The Askov and Sandstone Districts in this case did not have the authority to implement a combined seniority list. Although the superintendent testified that this was not what had happened, the facts were overwhelming that they did. The board chose to fill the positions with teachers who had no seniority in the Askov District but who attained greater seniority in the Sandstone District. Therefore, the Joint Powers Board erred in using a combined seniority list when it placed relator teachers on unrequested leaves of absence.

Disposition: The Court of Appeals of Minnesota reversed and remanded the decision of the school district and directed the school board to reinstate relator teachers with both pay and benefits retroactive to the date on which they were placed on unrequested leaves of absence.

Citation: *Jackson v Randolph County Bd. Of Educ.*, 565 So.2d 641 (Ala.Civ.App., 1990).

Key Facts: Ms. Mary Jackson, appellant, was employed by the Randolph County Board of Education, appellee, for a period of 2 years. As a non-tenured teacher, the appellant was informed in May of her second year of teaching that she would not be reemployed for her third

year. The appellant filed a suit against the appellee claiming that they failed to follow the procedures outlined in their board policy regarding staff reduction and recall rights when they did not offer her a vacant position following her non-renewal. It was determined by the trial court that the board policy for staff reduction and recall rights was not relevant in this case and found in favor of the board. The appellant followed this decision with an appeal.

Issue: At issue is whether the Board of Education followed the appropriate procedures in their policy on reduction in staff and recall rights when non-renewing the appellant teacher for her position and not offering her a vacant position.

Holding: The Court of Civil Appeals of Alabama held that the nonrenewal of the appellant “probationary” teacher was within the legal guidelines of its discretion. The court also held that because the appellant teacher was not dismissed or terminated from her position, the policy was not applicable.

Reasons: The Court of Civil Appeals of Alabama determined that there was adequate evidence to support the appellant’s contract not being renewed because of financial limitations being faced by the board. The appellant was employed and paid for the full term of her contract. The appellant was not dismissed or terminated from her position but was non-renewed. This is well within the board’s managerial discretion. The Court of Civil Appeals of Alabama agreed with the ruling of the trial court in that the board’s policy was found to be somewhat limited in its range of operation and were not found to be applicable to facts and issues in this case.

Disposition: The Court of Civil Appeals of Alabama affirmed the judgment of the trial court that found in favor of the appellee Board of Education.

Citation: *O’Hair v Board of Educ. Unified School Dist. No. 300, Comanche County*, 805 P.2d 40 (Kan.App., 1990).

Key Facts: Mr. Carl O'Hair, appellee, taught in the appellant school district, Unified School District No. 300, Comanche County, since 1969. At the time he was nonrenewed, he was a part-time assistant principal and taught three classes, government, American history, and world history, at Coldwater High School. In April of 1986, the appellee, and one other tenured teacher, had their contracts nonrenewed when the Board was forced to reduce its budget because of a drastic loss in district appraisal value coming from a result of decreased oil prices. The year following the appellee's nonrenewal, other administrators assumed his administrative responsibilities while three other tenured teachers took over his classes. Two of these teachers, Mr. Amaro and Mr. Fiegel, although certified in the appropriate areas, held less seniority in the system than did the appellee. The other tenured teacher, Mr. McNeely, also held less seniority than did the appellee and there were also some concerns regarding his certification. Although Mr. McNeely had previously taught American history, this certification had since been dropped. Calls were made to his previous college and the State Department of Education to verify that Mr. McNeely was eligible to teach American history. In August 1988, Mr. McNeely received a provisional certificate to teach American history although he taught the course the 2 previous years noncertified. At the time the appellee received the notice that his teaching certificate would not be renewed, he requested a hearing pursuant K.S.A. 1989 Supp. 72-5438. The hearing was delayed until January 30, 1989, at which time the appellant presented evidence of the procedures they had followed in determining the nonrenewal of the appellee's contract. At the hearing, the appellee presented his evidence supporting why he should have been given a full-time schedule teaching high school physical education and American history at another high school in the district. It was determined by a 2-1 vote that the appellant board was justified in its nonrenewal of the appellee. The lone dissenting vote came from the fact that teachers with less seniority were

hired to replace a teacher who held more tenure. On February 15, 1989, the appellant board heard findings regarding due process but at that time made no decision. Prior to the next meeting to be held on March 6, 1989, superintendent, Mr. James Chadwick, put together a resolution at the request of the board confirming the nonrenewal of the appellee's contract. Following its executive session, the appellant board then returned to an open meeting where it voted unanimously to approve the contract nonrenewal. The appellee appealed this decision to the district court, which reversed the appellant's decision based on the opinion that they acted arbitrarily, capriciously, and unreasonably in determining the nonrenewal of the appellee.

Issue: At issue is whether the appellant board of education acted appropriately when determining the nonrenewal of the appellee tenured teacher.

Holding: The Court of Appeals of Kansas held that the appellant board's decision in choosing the appellee tenured teacher was supported by considerable evidence, the board's policies regarding reduction in force were appropriately followed, they were not compelled to make three tenured teachers part-time in order to retain the appellee teacher, the educational opportunities of students were not compromised, and the appellant board in no way acted in bad faith.

Reasons: The Court of Appeals of Kansas determined that K.S.A. 1988 Supp. 60-2101(d) does provide the district court jurisdiction to review a Board's decision to determine if the decision was made within the appropriate scope of its authority, was the decision supported by evidence, and to make sure the Board did not act fraudulently, arbitrarily, or capriciously. The Court of Appeals of Kansas held in *Gillett v. U.S.D. No. 276*, 227 Kan. 71, 75, 605 P.2d 105 (1980) that in cases determining the nonrenewal or dismissal of a teachers contract, the courts are compelled to consider the rights of the teacher, the school board, and school children, to make

sure they receive a worthy education in a proper school environment. It is the court's obligation to make sure it delivers a ruling that is fair and equitable to the teacher and the school board, while maintaining as minimal a disruption as possible in the educational environment. The Court of Appeals of Kansas also determined in *Million v. Board of Education*, 181 Kan. 230, Syl. Para. 1, 310 P.2d 917 (1957), that although the Teacher Tenure Act protected tenured teachers from unjust release of any kind, it did not provide them with special privileges or immunities that would permanently retain their position and salaries while interfering with the efficient operation of the public school system. It is clear the appellant Board's decision to reduce expenditures for the 1986-1987 school year were valid and needed no further discussion. The appellee argued that the appellant school board's decision to nonrenew his contract was not reached properly by failing to evaluate his competence, skill, interests, and training, which was a direct violation of policy. However, because the appellee did not argue this point during the due process hearing, or raise the issue at the district court, it could not be raised for the first time on an appeal. Upon review of records from the due process hearing, ample evidence was presented that showed the school board followed policy when selecting the appellee's contract for nonrenewal and credentials of both tenured and nontenured employees were looked at to determine who could be dismissed without negatively impacting the school's educational program. Nowhere in Kansas's law does it state that a reduction in the size of a teaching staff must be accomplished on a seniority basis and this should not be the case here. The appellant Board's decision was supported by significant evidence and their policies were followed appropriately. Based upon the specific facts of this case, the balancing test of *Gillett*, and the teachings of *Butler*, the board was not obligated to make three tenured teachers part-time in an effort to retain the appellee nor were the educational opportunities of the students compromised when Mr. McNeely was allowed to

teach American history for 2 years, while he was not properly certified. In no way did the board act in bad faith in their determination.

Disposition: The Court of Appeals of Kansas reversed the trial court's decision and reinstated the appellant board's decision to non-renew the tenured appellee's contract.

Citation: *Stewart v. Fort Wayne Community Schools*, 564 N.E.2d 274 (Ind., 1990).

Key Facts: Ms. Kathleen Stewart, plaintiff, was hired by Fort Wayne Community Schools, defendant, in 1978 as a psychometrist. During her employment with the defendant, the student population continually declined, property taxes were frozen, and federal funds were tightened resulting in the defendant school system having to reduce its teaching and administrative staff. In May 1981, the school system's superintendent, Dr. William Anthis, met with the plaintiff and all psychometrists to inform them of the upcoming reductions in force that would affect them and the administrative staff. At this time it was shared that those individuals who were kept would need to be able to perform a variety of different duties and anyone who had multiple certifications from the state would have a better chance of being retained. The plaintiff only held one certification but immediately began to take classes to attain her classroom teaching certificate. In the upcoming months she took a total of 24 hours of courses but stopped more than 30 hours short of what she needed for her certification. In November 1981, the defendant decided to start combining the positions of guidance counselor and psychometrist. Guidance counselors were required to hold a classroom teaching certificate according to state law. The defendant did acknowledge that there were certain situations where they would need to allow some psychometrist additional time in order to attain the required certification. These individuals would have the title of "acting psychometrist/counselor." However, the plaintiff was neither certified as a classroom teacher or a guidance counselor. In November 1981, a committee

was put together to interview those candidates for this new position where several factors were considered. The committee felt that the plaintiff failed to exhibit much ambition in attaining her counselors certificate and was not very clear about her future role with the school system. On March 22, 1982, the plaintiff was made aware that she along with six other employees would be laid off from their positions. Of the employees that were chosen for the new position, two of them were nontenured psychometrists who held a teaching certificate but not one for guidance counseling. The plaintiff complained that during her interview with the committee, she was asked to make an instantaneous decision as to whether or not she planned on seeking additional certification in the area of school counseling. To make such a commitment and lifestyle change seemed to the plaintiff to be an unfair labor practice by the defendant. It was later discovered that the defendant failed to notify the plaintiff that there was a state statute allowing employees the right to a pre-termination hearing that she had not been afforded. As a result, the plaintiff was reinstated for the 1982-1983 school year as a psychometrist at which time she attained tenure, which allowed her to pursue this suit against the defendant school system. During this school year the deputy superintendent, Dr. James Robbins, notified the plaintiff in writing that based on a continuing decline in enrollment, the school system was looking at further cutbacks and needed teachers with dual certifications. Based on this, it was being recommended to the school board that her contract be cancelled and that she could at this time request a hearing with the board. On March 14, 1983, a hearing took place at which time the plaintiff's contract was cancelled effective June 17, 1983.

Issue: At issue is whether the defendant school system failed to follow the state tenure law when discharging the plaintiff from her position while retaining a nontenured teacher.

Holding: The Supreme Court of Indiana held that the state teacher tenure law, Ind. Code 20-6. 1-4-10 (1984) had not been violated by the defendant school system when rendering its judgment.

Reasons: The Supreme Court of Indiana determined that the plaintiff's claim against the defendant school system was not applicable in that the defendant neither violated state law or employment policy which would have made their decision not to retain the plaintiff arbitrary or capricious. By the decision not falling into one of these categories, the plaintiff's substantive due process claim failed. Under the Indiana statute, if procedural requirements are followed including the assignment of a legal cause for cancellation, there is substantial evidence to support the legal cause, and if the hearing is fair, the proceeding is lawful, which is the case here. This test, known as the "substantial evidence test" was used in similarly related cases *Stiver v. State ex rel. Kent* (1936), 211 Ind. 370, 1 N.E.2d 592 and *Stiver v. State ex rel. Kent* (1936), 211 Ind. 380, 1 N.E.2d 1006. Under this standard the reviewing court must consider the record as a whole and not just the evidence that is favorable to the school board. The plaintiff argued that the board's actions were contradictory to the teacher tenure law as was set out in *Watson v. Burnett* (1939), 216 Ind. 216, N.E.2d 420, where a tenured teacher was released while nontenured teachers were retained. In this case the school board was ordered to reinstate the tenured teacher. Relying on this decision, the plaintiff argued that because neither she nor the nontenured teachers held a counselors certification, she was just as qualified to hold the position as "acting psychometrist/counselor" as they were. The Supreme Court of Indiana in the *Watson* decision would protect the plaintiff in this case only in the instance that she was qualified for the position she sought. In the plaintiff's own account to the Court of Appeals, she conceded that she was not qualified to work as a counselor under state law. The plaintiff in this case does not meet the

qualifications for relief under *Watson v. Burnett*, which requires the tenured teacher to be as well-qualified for the position as the nontenured teacher(s) who were retained. Based on the declining enrollment and financial limitations, the school system was forced to reduce its staff. It was decided that this could be accomplished while meeting all requirements and needs by combining the psychometrist and guidance counseling positions. Both nontenured teachers who were retained held classroom teaching certifications, which the plaintiff did not, and were closer to attaining their guidance counselor's certification than was the plaintiff, which made the defendant's decision the most reasonable under the circumstances.

Disposition: The Supreme Court of Indiana reversed the judgment of the lower courts and affirmed the decision of the defendant school board in the dismissal of plaintiff teacher.

1991

Citation: *Board of Educ. of Town of Thomaston v. State Board of Labor Relations*, 584 A.2d 1172 (Conn. 1991).

Key Facts: Mr. Fred Schipul taught English at Thomaston High School for a period of 18 years. In December 1985, he applied for the position of English department chairperson, which was vacant. The Board of Education of the Town of Thomaston, plaintiff, held a meeting in January, 1986, at which time they gave the position to a teacher with less seniority. Mr. Schipul filed a grievance based on the provisions of the collective bargaining agreement that required the board to promote the most senior teacher when there were two or more applicants holding equal qualifications for a position. On August 10, 1986, an arbitrator upheld the grievance and ordered the plaintiff to promote Mr. Schipul to the department chair position retroactively to January 1986. However, before the arbitration was awarded, the plaintiff board eliminated all department

head positions from their budget and then reinstated them, except the English department head position, two weeks after the award was issued. The plaintiff board paid Mr. Schipul, based on the arbitrator's award, what he would have received as the department head until the position was eliminated but never allowed him to hold the position. The plaintiff board later admitted that their sole purpose in not restoring the English department head position was to prevent Mr. Schipul from holding the position because they felt he was unqualified. The Thomaston Education Association, on behalf of Mr. Schipul, filed an unfair labor practice charge with the labor board claiming the board's actions interfered with Mr. Schipul's right to file a grievance. The State Board of Labor Relations, defendant, upheld the charge and ordered the plaintiff board to comply with the arbitrator's decision and restore the department head position.

Issue: At issue is whether the School Board committed an unfair labor practice against an employee when they eliminated a position the employee was applying for.

Holding: The Supreme Court of Connecticut held that the school board's actions constituted an unfair labor practice and a refusal to participate in arbitration in good faith was in violation of the Teachers Negotiation Act according to Conn. Gen. Stat. §10-153e(b).

Reason: The Supreme Court of Connecticut determined that the school board's action did in fact constitute an unfair labor practice. The school board was adamant that since the arbitrator's decision was not about future elimination of positions but concerned what was in existence as of January 1986, the elimination of a position in August 1986, could not be considered a denial of the arbitrator's decision and that because the establishment of teaching positions is discretionary, the elimination of a position could not be considered unfair. However, the Supreme Court of Connecticut concluded that since the school board's decision to eliminate a position nullified the arbitrator's award to the employee, this constituted a refusal on the school

board's part to participate in good faith in mediation and arbitration. Therefore, in accordance with General Statutes §10-153e(b)(4) and (5) of the Teachers Negotiation Act (TNA), the school board committed an unfair labor practice.

Disposition: The Supreme Court of Connecticut reversed the judgment of the lower court and remanded the case with directions to render judgment dismissing the board's appeal from the decision and order of the labor board.

Citation: *Gross v. Board of Educ. of Elmsford Union Free School Dist.*, 574 N.E.2d 438 (N.Y., 1991).

Key Facts: Ms. Florence Gross, petitioner, was employed by the Elmsford Union Free School District, respondent, in 1969 as a remedial reading teacher and received tenure in the 1972 school year. In the 1977 school year, the petitioner's teaching position was abolished according to §2510 (2) of the Education Law when it was determined that she held the least amount of seniority in that position. The petitioner later obtained a resolve that she had been wrongfully terminated from her position and submitted an order requesting her reinstatement. At this time the petitioner submitted a CPLR article 78 where she sought reinstatement including back pay and benefits. While the article 78 proceeding was in progress, the respondent rehired the petitioner to teach a variety of positions with the understanding that she was not waiving any of her rights by accepting them. In the 1980 school year, the petitioner was offered and accepted a full-time teaching position that she kept until 1982 when the position was abolished. In the 1983 school year, the petitioner accepted a position as a part-time remedial reading teacher, which continued through the fall semester of the 1984-1985 school year. The petitioner was offered this same position for the following semester but declined for personal reasons. In September 1985, the Supreme Court of New York approved the petitioner's petition and ordered

that she be reinstated as a full-time tenured teacher, including back pay and benefits going back until June 24, 1977. It was determined that the petitioner should receive the amount of salary covered in the collective bargaining contract minus any income she had attained from teaching during the time of her wrongful discharge.

Issue: At issue is whether the amount of back pay that was ordered to be paid to the petitioner was appropriate.

Holding: The Court of Appeals of New York held that the petitioner had a duty to mitigate damages by accepting the respondent school system's offer to teach a part-time position in the spring of 1985 and that the awarded back pay be adjusted by the amount the petitioner would have earned had she not declined that offer.

Reasons: The Court of Appeals of New York determined that the respondent school district in no way acted in bad faith when implementing the petitioner's discharge but made a mistake when they thought she was the employee with the least amount of seniority. Taking into account the economic hardship faced by the respondent, it was the petitioner's responsibility to lessen the economic impact by accepting their tender of employment and to take the appropriate steps to minimize her loss. It is important to note that under these circumstances of economic hardship, and not a teacher being suspended pending disciplinary charges, an excessed teacher needs to seek alternative employment if their intention is to continue working even while pursuing legal action. Although the petitioner in this case was free to refuse employment for personal reasons, she is not then entitled to recover the amount of back pay that would have been earned had the position been accepted.

Disposition: The Court of Appeals of New York affirmed the order of the Appellant Division of the Supreme Court with costs to the appellant teacher.

Citation: *Hampson v. Board of Educ., Thornton Fractional Tp. High Schools, Dist. 215, Cook County, Ill.*, 576 N.E.2d 54 (Ill.App.1.Dist., 1991).

Key Facts: In 1968, Ms. Celia M. Hampson, appellant, was hired as a Spanish teacher by the appellee, Thornton Fractional Township High School. The appellant received her tenure in 1970 but only taught part-time from 1975 through 1979 but did request for a full-time teaching position in 1977 that was denied. On March 21, 1979, the appellant was dismissed by the appellee due to a reduction in force. The dismissal letter was inaccurate in that it classified the appellant as a nontenured teacher based on her part-time status. The appellant filed a grievance challenging her nontenured categorization that took place on March 24, 1979. Although the appellant noted that she had acquired her tenure back in 1970 and had never lost any of her tenure rights, her grievances were denied. The appellant then filled a mandamus on August 8, 1979, based on §24-12 of the Code (Ill. Rev. Stat. 1977, ch. 122, par. 24-12), in which she requested to be reinstated to her position and that her dismissal be revoked because of her tenure status. Section 24-12 at that time allowed that when a teacher with tenured status was removed or dismissed from their position by a school system to decrease the number of teachers employed, all nontenured teachers must be removed first. The appellee's response was that the appellant had either abandoned her tenure or was not qualified for any available position and that the reason for her dismissal was due to economic hardship. The appellee felt that due to the economic issues faced by the school system, they did not violate any section of the state code whether the appellant was tenured or not. On May 10, 1982, the appellee was directed by the circuit court that it would need to file charges with the Illinois State Board of Education in reference to §24-12. This order also stated that the appellant was suspended "pending the institution and ultimate resolution of dismissal proceedings." Several months later on October

25, 1982, before any administrative meetings had taken place, the circuit court entered a declaratory decision declaring the appellant was a tenured teacher since April 21, 1970, and had done nothing to lose that status. This decision confirmed that the appellant's discharge was a matter that needed to be heard by the State Board of Education under §24-12. At this hearing, the hearing officer ruled that the appellant was not qualified to create any claim for any available teaching positions nor did he have the authority to consider the discharge since the code did not provide hearings to tenured teachers dismissed for reasons such as economic hardship. On August 2, 1983, the appellant proceeded to file a First Amendment Complaint in the circuit court in search of a review of the hearing officer's decision. On June 12, 1987, the circuit court judge reconsidered and reversed the order that originally sanctioned the administrative hearing and ordered that a de novo review take place in the structure of an evidentiary hearing.

Issue(s): At issue is whether the appellant was properly discharged from her position because of a reduction in force, was the reduction in force an excuse for the dismissal, and could the appellant have bumped anyone from their position.

Holding: The Appellate Court of Illinois, First District, Second Division, held that the appellee's notice of discharge was appropriate under §24-12 of the Illinois School Code because it properly stated the reason for the appellant's dismissal although the wrong statutory provision was provided. It was also determined by the Court that the evidence supported the decision that the appellee's reduction in force was "nonpretextual."

Reasons: The Appellate Court of Illinois, First District, Second Division, determined that although the appellee's breakdown at not providing a proper notice could have resulted in a voiding of its reduction-in-force policy, under *Bremen*, the appellant in this case was heard and given full consideration for reinstatement. Had the appellee provided the correct notice, the

appellant would have not received any greater consideration under the law than she was provided. The notice provided to the appellant, although inaccurate, gave both a statement of dismissal and the reason thereby complying with the legislative objective of §24-12. Because the appellant was found at the circuit court, through two different judges, to have attained her tenure, the appellee, under code was not required to hold any type of administrative hearing when it dismissed her for economic necessity. Evidence was presented and was very clear that prior to the reduction in force, Spanish classes were small. As a result of the reduction in force that was implemented, four classes were spread out both maximizing the time of the retained teachers while increasing the average class size. The school schedule for the semester following the implementation of the reduction in force revealed that this took place.

Disposition: The Appellant Court of Illinois, First District, Second Division, affirmed the lower court's denial of mandamus relief to the appellant teacher against the appellee board of education.

Citation: *Matter of Hagen*, 465 N.W.2d 707 (Minn.App., 1991).

Key Facts: Mr. Gregory Hagen, relator, was placed on unrequested leave of absence by Independent School District #736, Belgrade-Elrosa, and Independent School District # 737, Brooten, who held a cooperative agreement. Based on this agreement, each school district was responsible for its own elementary school but the secondary schools were consolidated with Grades 7-9 in Belgrade-Elrosa and Grades 10-12 in Brooten. In the spring of 1990, the cooperative boards were experiencing budget issues from the Brooten school district. One solution to the problem was the elimination of an industrial arts position that was being taught by the relator teacher who at the time was tenured and was teaching full-time. On March 12, 1990, in alignment with Minn. Stat. §125.12, subd. 6b (1988), the Brooten School Board passed a

resolution that placed the relator teacher on an unrequested leave of absence based on discontinuance of position, lack of pupils and financial limitations. In accordance with the same statute (subd. 4), the relator requested an independent hearing that took place on March 27, 1990. At this hearing the relator presented his case that if the school board would realign its staff that would save his position while reducing or eliminating the need for a probationary teacher. His proposal was that all senior teachers who held certification in physical education should be placed in those classes currently being taught by probationary teachers. By doing this, industrial arts classes would open up that he would be able to teach. On April 24, 1990, it was recommended by the hearing officer to the school board for them to reconsider the possibilities of realignment. At a public school board meeting on May 14, 1990, it was reiterated to the school board by the superintendent and principals as to why realignment was not a viable option for the school system. In response, the school board passed a resolution, that failed to contain findings of fact that was required by Minn. Stat. §125.12, subd. 10, placing relator teacher on unrequested leave of absence. At another board meeting on June 25, 1990, they adopted findings of fact related to their previous meeting in May where the relator teacher had been placed on unrequested leave. These findings were issued at a subsequent meeting on June 26, 1990, which was then followed by the relator's appeal on August 9, 1990.

Issue: At issue is whether the respondent school board had enough evidence to support their decision not to realign its staff so that the full-time position of the relator teacher would be protected.

Holding: The Court of Appeals of Minnesota held that there was adequate evidence to support the respondent board's decision not to realign the staff, as this would impact both teachers and their elementary school system in a negative way.

Reasons: The Court of Appeals of Minnesota determined that a financial savings by the respondent school board served as one of several proper reasons for its decision to place the relator teacher on an unrequested leave of absence. Although the request made by the relator to realign the staff was a possibility, this action would have created a system wide disruption resulting in teachers at both the secondary and elementary levels making adjustments that would affect flexibility in class scheduling and teacher assignments. After reviewing the records, there was substantial evidence to support the respondent's decision revealing that the proposed realignment by the relator would have caused problems with the system's transportation and would have created a loss of savings. The transportation requirements resulting from the realignment would have made teachers drive between school for only one class which would have had a significant impact on scheduling and assignment flexibility for students. The school board also presented evidence that the proposed realignment would have had a negative effect on cost reduction by costing them more to maintain the relator's salary as opposed to that of a part-time or probationary teacher. While it is practically impossible to give a precise test by which staff reductions can be determined, it is possible to look at the factors that can be considered on a case by case basis. The Court of Appeals of Minnesota supported the decision of the respondent school board in this case in reference to *Westgard v. Independent School Dist. No. 745*, 400 N.W.2d 341, 345-46 (Minn. App. 1987) where similar actions were taken.

Disposition: The Court of Appeals of Minnesota affirmed the decision of the school board to place relator teacher on an unrequested leave of absence.

1992

Citation: *Board of Educ. of County of Grant v. Townshend*, 418 S.E.2d 359.

Key Facts: Ms. Patricia Townshend, appellee, was employed by the Grant County Board of Education, appellant, for over 20 years. She had taught and at the time of the proposed transfer was serving as principal of St. Petersburg Elementary School. The appellee was serving in her third year as principal when she received written notice on March 27, 1990, that because of a significant loss in funding the appellant school system would have to implement “reorganization and program changes” resulting in her being recommended for a transfer for the upcoming school year. The appellant board based this decision on W. Va. Code §18A-2-7 and 18A-4-8b as the power behind its action. The appellee requested a hearing before the appellant board that took place on April 24, 1990, at which time she presented reasons as to why she should not be demoted from her position as principal. However, it was determined by the board to approve the recommendation of the superintendent regarding a reduction in force and transfer. As a result of this decision, the appellee filed a Level IV grievance with the West Virginia Education and State Employees Grievance Board that took place on July 3, 1990. During the grievance process, the appellee shared that W. Va. Code §18-9A-4 was not properly followed and that she was not the least senior administrator. At a hearing held on August 28, 1990, the appellee’s grievance was granted by the appellant board’s senior hearing officer on grounds that the state code had been amended effective March 15, 1990, where as central office administrators were to be eliminated before assistant principal and principals. The hearing officer determined that the appellant had reduced the number of principals improperly and by transferring the appellee to a teaching position had violated the statute’s language. The appellant was ordered to return the appellee to her position as principal at the beginning of the second semester so that the negative effect from

the earlier decision would be minimal on students and staff. The appellee reported after her reassignment that the appellant created a new principal position that was given to an elementary principal with seniority and their former principal position was eliminated. As a result, another principal position was eliminated and this principal was given the appellee's position based on seniority. The appellee claimed that no central office administrators or assistant principals were included in this transfer of positions, which was in violation of the state code. The appellant appealed the decision of the hearing officer but the Circuit Court affirmed the decision granting the appellee's grievance. In August of 1990, the state code at issue was amended but this went into effect after the appellant performed its original reduction in force transferring the appellee from her principalship to a teaching position.

Issue: At issue is whether the transfer of the appellee principal to a teaching position was in violation of state code.

Holding: The Supreme Court of Appeals of West Virginia held that the appellant board failed to follow the state code for reducing a work force, and although the code was amended, it had to follow what was in effect at the time the appellee filed her grievance.

Reasons: The Supreme Court of Appeals of West Virginia determined that even though the appellant argued that the legislature never intended for the language of the statute to be interpreted the way it was, it was interpreted appropriately. Although the language of the statute might have been both clear and vague, it mandated that reductions in force be implemented in a specific order and in this case it was not. The hearing officer was correct when it upheld the appellee's grievance because the appellant failed to look at central office administrators, and assistant principals, before reducing its principal work force.

Disposition: The Supreme Court of Appeals of West Virginia affirmed the decision that granted the appellee teacher a grievance against the appellant board of education.

Citation: *Kent v. Sawyer Public School Dist., No. 16*, 484 N.W.2d 287 (N.D., 1992).

Key Facts: Ms. Avis Kent, appellant, was notified that her teaching contract was not going to be renewed for the 1989-1990 school year. The Sawyer Public School System, appellee, sought to reduce its expenses for that term by implementing a reduction in force based on a continuous budget decline and drop in student enrollment. After the cutting of certain programs and services failed to remove the anticipated deficits, the appellee chose to combine second and third grades forcing them to eliminate one teacher. At this time, the appellee's superintendent evaluated each elementary teacher and recommended that the appellant be nonrenewed. At the time the appellant was notified of her nonrenewal, she was finishing up a 2-year leave of absence accompanying her husband who worked in the military. The appellant requested a hearing, which was granted and at which time the school board voted not to renew her teaching contract. Before the beginning of the next school term, the appellee made notice of a fourth grade teaching vacancy for a teacher who could also coach. The appellant was neither trained nor experienced in coaching and was therefore not considered for the position. At this time the appellant sued the appellee school district for wrongful dismissal claiming they failed to follow their reduction-in-force policy and that their effort to combine the new teaching position with coaching responsibilities was their way of excluding her from the position and was sexual discrimination. The trial court determined the appellee board followed proper procedures in nonrenewing the appellant's contract and her claim of sexual discrimination was without finding. On appeal, the appellant claimed the appellee superintendent used improper criteria in choosing her as the teacher for nonrenewal and again did not follow proper reduction-in-force procedure along with

discriminating against her based on her sex by implementing coaching responsibilities. The appellant complained that the superintendent rated her and the other elementary teachers on six qualities but not on adaptability to meet both the present and future needs of the district, which was the only one mentioned in the policy. Although the superintendent rated the appellant the lowest of all the elementary teachers, based on the records he received from her school, at the trial he had some difficulties explaining how he scored some of the qualities, which led the appellant to suggest that her nonrenewal had not been handled satisfactorily.

Issue: At issue is whether the appellee school district followed its reduction-in-force policies when nonrenewing the contract of the appellant.

Holding: The Supreme Court of North Dakota held that the trial court was correct in its determination that the appellee school district had followed its reduction-in-force procedures when deciding not to renew the teaching contract of the appellant and was aware of the appellant's certification, experience, and qualifications in comparison to the other elementary teachers.

Reasons: The Supreme Court of North Dakota determined that the trial court was accurate in its assessment that the term "adaptability" was very subjective and that the reduction-in-force policy did not confine what could be considered when determining the adaptability of an employee. The applicable statute, NDCC 15-47-38, in no way specified the exact criteria to be looked at when comparing teachers as a result of a reduction in force and in no way mandated a board to list the reasons for selecting one teacher over another when implementing a reduction in staff based on financial limitations. This was also the determination in *Reed v. Edgeley Public School District No. 3*, 313 N.W.2d 775 (N.D. 1981). It is important to note that the appellee school board's comparison of teacher qualifications is what is important to consider and not

those of the superintendent's. As in *Law*, 411 N.W. 2d at 380, this case reveals how the appellee school board was made aware of the appellant's qualifications, certification, and experience in comparison to the other elementary teachers and the board fully understood that she was one of two teachers only certified to teach grades first through eighth, while the other teachers being looked at had additional certifications. This presented adequate evidence regarding the appellant's qualifications, along with the district's economic hardship, for her nonrenewal to be substantiated. Because the appellee board properly applied its reduction and force procedures, along with following the state statutory guidelines, it is clear they did not abuse their power or act arbitrarily in the nonrenewing of the appellant's contract. In regard to the appellant's claim of sex discrimination and the new position being created for a male to specifically keep her from the position, there was no credence to this claim in any manner. Upon the resignation of a fourth grade teacher, a male teacher was hired because he also had a degree in physical education and had coaching experience, neither of which the appellant held. A newly hired home economics teacher was specifically hired because she was qualified to coach. There was no evidence, or anything on record that would suggest the appellant's claim was something that had happened in the past or in this situation held any merit.

Disposition: The Supreme Court of North Dakota affirmed the trial court's judgment of nonrenewing plaintiff teacher and that the defendant school district followed proper procedures.

Citation: *Lee v. Giangreco*, 490 N.W.2d 814 (Iowa., 1992).

Key Facts: Ms. Laurie Mallone Lee, appellee, taught industrial arts at the Iowa School for the deaf (ISD) from August 1978 through May 1987. She was the only female on a seven member staff. She instructed a wide range of industrial arts classes, specializing in drafting, and worked primarily with junior and senior high students. However, she also on occasion worked

with primary grade students as needed. The appellee also held numerous certifications in the areas of science, social studies, math, and language arts in grades seven through twelve, along with being very skilled in American Sign Language. After a steep decline in enrollment, from a high of 430 students in 1978 to 130 students in 1986, Mr. Joseph Giangreco, superintendent, appellant, made the decision to reduce the staff and informed the appellee by letter she was being let go at the conclusion of the 1986-1987 school year. However, the letter never addressed any specific reason for the appellee's termination other than her service, as a full-time teacher, would not be needed. The letter did make reference to the appellee's right to meet with the appellant privately and of her right to appeal the decision to the Iowa Board of Regents. The appellee met with the appellant where it was shared with her that she was being terminated because they only needed one drafting teacher and there were other teachers, hired at the same time, who were also serving roles in coaching as well as teaching. In April 1987, the appellee's attorney met with the Iowa Board of Regents, where she argued that her client was not able to contest her termination properly when she met with the appellant because she was terminated without any stated reason. It was not until later on May 1, 1987, that the appellant shared with the appellee that two other teachers with comparable seniority also had certification in driver's education and physical education, making them more versatile employees. No mention was made of the appellee's additional certifications. The Board of Regents denied the appellee's claim and affirmed the appellant's decision in terminating her contract. The appellee followed this decision by filing suit under 42 U.S.C. §1983 (1986), declaring deprivation of procedural and substantive due process and gender based discrimination. While a jury tried the due process claims, the discrimination claim was tried at the district court. The jury issued decisions in favor of the appellee and the appellant filed for a new trial.

Issue: At issue is whether the appellant superintendent acted appropriately in terminating the appellee from her position and afforded her procedural and substantive due process rights to which she was permitted as a tenured state employee.

Holding: The Supreme Court of Iowa held that the appellant's letter of termination gave no reason as to why the appellee was singled out as the only employee for the staff reduction.

Reasons: The Supreme Court of Iowa determined that the appellee's due process rights were violated under 42 U.S.C. §1983. In *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S. Ct. 780, 786, 28 L. Ed. 2d 113, 119 (1979), the United States Supreme Court described the "root requirement" for due process as the "opportunity for hearing before an individual is deprived of any significant property interest." The court in *Loudermill* held that any proposed action against a tenured employee entitles that employee to either oral or written notice of the reason for the termination, an explanation of the evidence, and an opportunity for the employee to present their side of the story. The Eighth Circuit Court of Appeals has determined that the minimum due process required for the most informal termination procedure must include, "clear and actual notice of the reasons for the termination in sufficient detail to enable him or her to present evidence relating to them." Although the appellant admitted in this case that the initial letter to the appellee gave no specific reason why she was chosen for termination from a staff reduction, he felt the opportunity for her to meet with him, and her chance to appeal his decision to the Board of Regents, satisfied the standard set forth in *Loudermill*. The Supreme Court of Iowa also determined that the records revealed that ISD did not have a set policy to implement in the event of a reduction in force and at the time there was no collective bargaining agreement. It was revealed that there were 27 other employees with less seniority than the appellee that were not

terminated from their positions and is believed that any reasonable jury would not accept the appellant's reason for the appellee's termination.

Disposition: The Supreme Court of Iowa affirmed the jury verdict in favor of the appellee teacher who brought action against the appellant superintendent for deprivation of procedural and substantive due process as well as gender based employment discrimination.

Citation: *Mackey v. Newell-Providence Community School Dist.*, 483 N.W.2d 5 (Iowa.App., 1992).

Key Facts: Ms. Elaine Mackey, appellant, was a tenured teacher in the Newell-Providence Community School District, appellee, and had taught there for a total of 27 years. On March 2, 1990, the appellee's superintendent informed the appellant in writing that he was recommending to the board that her contract be terminated based on an enrollment decline in first grade, the grade she currently taught, and fiscal discretion resulting in the need to maintain the school from an economical perspective. The notice also included a clause stating the appellant would be recalled if the enrollment was enough to have two first grade classes once school started for the upcoming school year. The notice also stated that because the staff had not been reduced by attrition, teacher performance, as determined by an administrator's evaluation, would be what was used as the final factor in the decision to terminate her contract. The appellant requested a hearing and was granted one on March 27, 1990, at which time her contract was terminated. The appellant appealed the appellee's decision to an adjudicator who ruled in favor of the board's decision to terminate her contract. The appellant then filed for a judicial review and the trial court also ruled in favor of the appellee board and adjudicator. Any termination of a nonprobationary employee was governed by a collective bargaining agreement between the teachers and the school district. This agreement included steps to continuously study

enrollment trends and the budget as it relates to specific programs and levels, and before any staff was reduced, careful analysis of the educational program would be made along with making every effort to reduce the staff through attrition. However, because the ultimate goal is to provide the best education possible for all students, teacher performance would be the ultimate criteria and the administration and board of education would determine this. The appellant felt as though the appellee school board failed to follow these policies in that it did not adequately determine the student enrollment for the upcoming school year and the appellee failed to notify her of her termination by February 1, which was part of the agreement.

Issue: At issue is whether the appellee school district and board of directors followed its own policies and procedures, along with the collective bargaining agreement, when terminating the appellant's contract.

Holding: The Court of Appeals of Iowa held that the appellee board properly determined the enrollment for the upcoming school year and followed the requirements of Iowa Code 279.15 (1989).

Reasons: The Court of Appeals of Iowa determined that ultimately the board is an elected body who has the power to make its own decisions when deciding who should be terminated when a reduction in staff is implemented (Waterloo, 338 N.W.2d at 156), and as long as the decision of the board is based on a set policy, it cannot be challenged in court unless the policy is found to be illegal or irrational. The appellee superintendent had surveyed the district's student enrollment since 1985-1986 and was aware of past enrollment trends. It is not really clear if the appellant was notified by the February 1 deadline but it is clear that she was notified on March 2, 1990, which falls within the jurisdiction of the requirements set forth in §279.15 (1989). The appellee superintendent performed an evaluation of the appellant and other teachers being

considered and determined that she was the least effective. Three parents also testified stating their concerns with the appellant's teaching methods and classroom management and discipline practices. Although these comments and opinions played a part in the process, the decision to terminate was made by the administrator and not the parents. The ultimate goal of any school system should be to provide the best educational setting for students that attend their schools. The Court of Appeals of Iowa believes that took place here and finds no fault in any decisions to terminate the appellant from her position.

Disposition: The Court of Appeals of Iowa affirmed the judgment of the trial court that ruled in favor of the defendant school district's termination of plaintiff nonprobationary teacher.

Citation: *State ex rel. Van Dorn v. Mt. Gilead Exempted Village School Dist. Bd. of Edn.*, 604 N.E.2d 239 (Ohio.App.5.Dist.Morrow.Co., 1992).

Key Facts: Ms. Michelle Van Dorn, appellant, taught home economics in the Mt. Gilead Exempted School District, appellee, beginning in the 1980 school year. The appellant had been given a 3-year limited contract, from the fall of 1986 through the spring of 1989, and as a member of the Mt. Gilead Teachers' Association, was covered by a collective bargaining agreement between the association and appellee school board. During the 3-year contract period, the appellee board received money from the state for its home economics program. In April of 1989, the appellee board offered the appellant a 1-year full-time probationary contract for the 1989 1990 school year, which the appellant signed. The appellee later became aware of a significant decline in student enrollment, in the home economics program, going from 21 students in 1988-1989 to only 6 in the 1989-1990 school year. As a result of this decline, the appellee lost all funding from the state for this program. On July 25, 1989, the appellee board voted to suspend the appellant's full-time contract, stating that a reduction in force was needed

based on a decrease in student enrollment and a financial decline. At this same meeting, the appellee board offered the appellant a 1-year, probationary, part-time contract, at 45.16% of her original full-time salary. On August 9, 1989, the appellee and appellant entered into the part-time contract for the 1990-1991 school year where the appellant was employed at 66.23% of her regular full-time salary. The appellant later complained and sought a declaration that because of the collective bargaining agreement between the teachers association and the appellee, she was permitted to a multi-year contract and that a reduction in force should have no effect on this taking place. She later asked for damages and a writ of mandamus claiming “unjust enrichment” and that she was performing her job based on full-time hours but only receiving part-time pay. The trial court granted summary judgment in favor of the appellee stating that “reasonable minds” could make the decision that a reduction in force was lawful under R.C. 3319.17 and based on this the appellant’s claims were unjustified.

Issue: At issue is whether the appellee school district could terminate the appellant teacher’s contract based on a decline in student enrollment and was the collective bargaining agreement followed.

Holding: The Court of Appeals of Ohio, Fifth Appellate District, Morrow County, held that Ohio Rev. Code Ann. §3319.17 made it allowable for the appellee school district to use its good judgment in determining whether to terminate teachers if a decrease in student enrollment made it necessary to put into place a reduction in force.

Reasons: The Court of Appeals of Ohio, Fifth Appellate District, Morrow County, determined that in *Ott v. Buckeye Local School Dist. Bd. of Edn.*, a home economics teacher was suspended due to a reduction in student enrollment but was later recalled for a half-time position. The trial court in this case found the reduction in force to be proper under R.C. 3319.17. It is

clear from the minutes at the appellee's board meeting that the appellant was suspended from her full-time contract and recalled for a part-time position. Although the appellee recalled the appellant at the same meeting, there was an interval of time that took place between the suspension, and the recall, making the number of teachers reduced and making the decision a valid reduction in force. The appellee superintendent stated that he notified the teacher association president, as well as the president-elect, on two separate occasions regarding the appellant's suspension. The appellant stated in her affidavit with the association president regarding the reduction, that he informed her that he had never been made aware of a reduction in force taking place. However, the collective bargaining agreement only stated that the association receive notice, and this was done through the discussion between the appellant and the association president.

Disposition: The Court of Appeals of Ohio, Fifth Appellate District, Morrow County, affirmed the decision of the trial court that granted the appellee school district summary judgment in its termination of appellant teacher.

1993

Citation: *Ballato v. Board of Educ. of Town of Stonington*, 633 A.2d 323 (Conn.App., 1993).

Key Facts: The plaintiffs in this case refer to Ballato, Smith, Wood, and Landon. Each plaintiff was hired by the defendant school board to be employed in the area of "nurse-teacher." Although they were to perform clinical nursing duties, they were also to perform clinical nursing functions as well as teach health education classes dependent upon their certification. Ballato was hired by the board in September 1973, and was certified as a nurse-teacher in August 1975.

Smith held her certification at the time she was hired in June 1988. Wood was hired in April 1985, and was certified in June 1985. Landon was hired in April 1985 and was certified in February 1989. The plaintiffs spent the majority of their time performing clinical nursing duties and one plaintiff spent as little as 14% teaching health education, as was noted during the 1990-1991 school year. At a meeting that took place on June 24, 1991, Mr. Thomas Reale, superintendent, suggested that the defendant board consider the suspension of the plaintiffs from their positions under General Statutes §10-151 (d) whereby they should be provided written notice prior to their termination as well as another written notice, upon request, stating the reasons for the proposed termination. These letters were provided to each individual plaintiff. Plaintiffs followed this with an additional request for a hearing to discuss the possibility of their termination. On July 30, 1991, an administrative hearing took place with an impartial hearing officer whose findings revealed that the plaintiffs, a few years earlier, had their own bargaining unit and bargained with the defendant concerning their individual salaries and circumstances surrounding their employment. On the premise of them holding certain classroom duties, they pursued, in the spring of 1989, to become members of the Stonington Education Association, which negotiated teacher contracts for the teachers bargaining unit. At this point, an agreement was made for 1986-1989, with the stipulation that the agreement would stay in place until another collective bargaining agreement was negotiated. Mr. Thomas Makela, who served as the president of the association at the time, voiced his concern regarding the possible impact the plaintiffs joining the association would have on its current members. Despite these concerns, the association proposed that the plaintiffs be made part of the teachers bargaining association, but the board declined. A petition was later brought to the state board of education to resolve whether or not the plaintiffs should be included as part of the bargaining unit as well as be

entitled to representation by the association. On July 14, 1989, a memorandum of agreement was filed with the town clerk that stated the seniority for the plaintiffs within their contract and the association would no longer be effective as of August 29, 1989, and a prior agreement between the plaintiffs and the defendant board expired when the memorandum of agreement was ratified by the association in September, 1989. In addition to the issue of seniority and the plaintiffs, the memorandum agreement changed other components of the 1986-1989 collective bargaining agreement. On August 22, 1991, the board adopted the recommendation from the superintendent and the plaintiffs were eliminated from their positions following the seniority list that was adopted and approved. Nurses would perform clinical duties at that point and teachers, with more seniority, would handle teaching duties. Plaintiffs Ballato, Smith and Landon were later rehired as full-time nurses where Wood was rehired as a part-time teacher for the 1991-1992 school year.

Issue: At issue is whether the defendant board properly terminated the contracts of the defendants following the state statute and whether the seniority list used to determine the plaintiffs was appropriate.

Holding: The Appellate Court of Connecticut held that the evidence presented was supported by the trial court's decision to uphold the board's resolve that a certain memorandum of agreement with regard to their seniority should control plaintiffs.

Reasons: The Appellate Court of Connecticut determined that there was a significant increase in the defendant's budget from the 1990-1991 school year to the 1991-1992. Although there was an 8% increase in teachers' salaries and a 30% increase in health insurance costs, the budget remained the same. As a result, the board chose to reduce its expenses in several ways, one being to eliminate 20 full-time teaching positions. To decide which teachers would be

affected by the reduction in force, it was very important to determine what seniority list had been settled upon by the association and the board. The final seniority list that was used listed the plaintiffs Landon, Wood, and Smith as having 1 year of seniority and Ballato as having 0. These were years of experience in the system as of September 9, 1990. The president of the teachers' association met with the defendant's superintendent in reference to the final seniority list and made no protest to the list or the date. Although there were some concerns by the plaintiffs regarding the elimination of positions and the position still being taught, it was concluded that the budgetary constraints did require the elimination and consolidation of a variety of teaching positions and the defendant did this determination in good faith.

Disposition: The Appellant Court of Connecticut affirmed the trial court's approval to the defendant board of education in its motion to dismiss plaintiff teachers claim against the termination of their employment.

Citation: *County School Bd. of York County v. Epperson*, 435 S.E.2d 647 (Va., 1993).

Key Facts: Ms. Virginia Epperson, and Ms. Anne Marie Boelt, appellees, were employed by the York County School Board, appellant, at Magruder Elementary School for the 1991-1992 school year. The appellees received notification in writing that their placement for the upcoming school year would be in a different location and the reassignments were being instituted in an effort to "optimize the instructional program throughout the school division." The appellees, in May 1992, filed a grievance that was signed by them and their attorney. Using the correct form and following the state's procedure, the appellees filled out the form requesting that they could stay at Magruder Elementary in their current capacity and wanted the appellant to follow its policies that were listed in the policy manual. The appellees then completed the next step in the grievance process by meeting with their principal who informed them that he lacked the

authority to grant their request. The appellees proceeded by scheduling a meeting with their superintendent after they had submitted a written request once again stating the reason for their grievance. At that time, the superintendent's designee attached a response stating that he had received and understood the explanation given by the appellees regarding their grievances. Before the appellees actually met with the superintendent, he brought the grievability issue to the appellant board, who after reading a letter from the appellees attorneys and hearing their oral argument, voted four to one that the issues being presented were not grievable issues. This decision was appealed by the appellees to the circuit court that reversed the decision of the appellant board and remanded that they allow the appellees to submit their grievances. The appellant board was later provided an appeal by the Supreme Court of Virginia.

Issue: At issue is whether the statement of grievance filed by the reassigned teachers had to be considered a grievance by the school board.

Holding: The Supreme Court of Virginia held that the appellees written statements did not include any facts from which it could have been determined that the appellant school board failed to follow appropriate policies regarding teacher assignments because the appellees statement's included only "conclusory statements."

Reasons: The Supreme Court of Virginia determined that Code §22.1-297 provides the superintendent with the authority to assign teachers to positions in the school system where they have been placed by the board. If there is an issue of grievance, there is a process to be followed pertaining to Code §22.1-306 to 314 where statutes are followed in an effort to resolve disputes concerning the use of local school board policies, rules, and regulations as they affect the work of employees. This process is normally a four-step procedure where a teacher may begin by submitting a grievance to their immediate supervisor. The next step in the process is to allow the

school board to decide whether the issue is “grievable” or not. The primary focus of this appeal, regarding the teachers’ grievance, is based on the actual definition of the term where by it is considered a complaint and or dispute relating to the teachers employment, but not under every circumstance. The term, pertaining to the statute, does not include issues in this case related to the hiring, transferring, or assignment and retention of teachers within a school division. The facts here can be compared to those in *Tazewell County School Board v. Gillenwater*, 241 Va. 166, 400 S.E.2d 199 (1991), where it was determined that a teacher’s complaint did not represent a grievance, as defined by the Code, when the teacher claimed the school board failed to apply a specific rule, policy, regulation, or procedure in carrying out their involuntary transfer. Following these same measures, the documentation in this case shows the issues here are not grievable under the *Gillenwater* test. The appellees in this case clearly documented that they had been involuntarily transferred based on a reduction in staff that the appellant followed appropriately and their statements contained in no way any information or facts that showed the appellant failing to follow its regulations. In reference to the appellees concern that they were not given preference based on their length of service and qualifications, this policy was only applicable in a system wide reduction, not in a particular school. The overall conclusion here is that the appellees statements of grievance do not contain facts from which it can be inferred in any way that the appellant school board failed to follow through with its own policy. Hence, the Supreme Court of Virginia ruled that the trial court was wrong in their determination that the appellees complaints were actually considered grievances within the meaning of the Code.

Disposition: The Supreme Court of Virginia reversed the trial court’s decision that the appellee teacher’s assertions against the appellant school board were grievable and dismissed the trial.

Citation: *Dennerly v. Board of Educ. of Passaic County Regional High School Dist. No. 1, Passaic County*, 622 A.2d 858 (N.J., 1993).

Key Facts: Ms. Elsa Dennerly, respondent, was employed by the Board of Education of Passaic Valley Regional High School, District One, appellant, as a guidance counselor and served in that position for a period of 27 years. In 1989, the position of guidance counselor was abolished from the district. The respondent had attained tenure as a guidance counselor within the certificate area of “educational services.” The respondent also held an additional certificate in the area of “instruction,” but guidance counseling was not a position under that specific certification. In 1985, Dr. Louis Centolanza, superintendent of the appellant board, sent a survey to staff, and parents, which resulted in responses that were very critical of the entire guidance - counseling department. As a result of the responses, the superintendent proposed that the appellant board create a new position, “Director of Pupil Services,” whose primary function would be to manage the guidance-counseling department in the 1985-1986 school year and to implement a performance evaluation of its staff. In the spring of 1986, he suggested a restructuring of the guidance department that would include the gradual elimination of the guidance counselor position and the creation of a new position that would be known as “class supervisor.” Each class supervisor would supervise a class of pupils throughout their 4 years in high school and the plan was to hire one individual each year to fill the class supervisor position and during this transition process, guidance counselors were to remain in their current positions. The new position would require both an educational services certificate, and an administrative certificate, since it would require more supervisory functions than previously required of a guidance counselor. In addition to monitoring student performance, the class supervisor position would also include the responsibility of evaluating teachers and implementing in-school

discipline. The first two individuals appointed to these new positions held the dual certifications that were required but the respondent never applied for either position because she had not acquired her administrative certificate. In May 1988, the appellant district advertised for the position of a class supervisor for the class of 1992. At this time the respondent applied for the position but would not obtain the administrative certificate until July. The position was given to another candidate who was qualified based on certification but had never taught in the district. The appellant board posted its final opening for class supervisor for the class of 1993, which the respondent applied for and was denied. Thereafter, the guidance counselor position was done away with and the respondent was terminated from her position in 1989. The respondent appealed this decision along with being denied for the class supervisor position. It was determined by the Administrative Law judge that her tenure rights were not transferable across positions because they were not similar. This decision was later reversed at the Appellate Division and the respondent was ordered to be reinstated as a class supervisor.

Issue: At issue is whether the appellant board applied the tenure requirements correctly when they denied the appointment of the respondent to a newly created position for which she held the credentials but never had attained any work experience.

Holding: The Supreme Court of New Jersey held that the dual certification requirement for the new position of “class supervisor” was appropriate and the position of guidance counselor was significantly different from the work performed by the new supervisors.

Reasons: The Supreme Court of New Jersey determined that in the state of New Jersey, a teacher’s tenure is authorized by the Tenure Act, *N.J.S.A. 18A: 28-1 to-18*, and no individual can attain tenure in any position or any school district who does not hold the appropriate certification for the position as issued by the state board of examiners. In addition, the individual must serve a

probationary period of three consecutive years in a school district, or three consecutive academic years, if employed at the beginning of the next academic year, or the likeness of more than three academic years within any four academic years. It must also be noted that an educator who has acquired tenure in a specific area will also have tenure in all positions falling under that certification. However, that is not the issue here in that the respondent sought to “transfer” her tenure she had attained as a guidance counselor to a position under a completely different area of certification. Although the respondent had met the requirements to receive the additional certification, she had not built up any work experience in that area to acquire tenure. The appellate court in this matter came to the decision that although there is a difference between multiple endorsements under one certificate, and multiple certificates, they did not feel the difference was “meaningful” enough in regard to tenure. In opposition, the District and State Boards felt that a comparison of different endorsements, and the requirements under each certificate, revealed a significant difference between the two certificates that needed to be taken into perspective. Although the respondent argued that the newly created position of class supervisor was the only one that existed in the entire field of education requiring two separate certifications, there exists no evidence that would make this requirement arbitrary, irrational, invalid, or unlawful. The dual certification is neither authorized by any regulation, nor prohibited by any regulation.

Disposition: The Supreme Court of New Jersey reversed the lower court’s ruling to reinstate respondent teacher regarding her tenure under one certificate area and ruled in favor of the appellant school district.

Citation: *Gray v. Birmingham Bd. of Educ.*, 641 So.2d 279 (Ala.Civ.App., 1993).

Key Facts: This case consists of two cases that were consolidated to be considered by the court. The plaintiffs in this case are both tenured and non-tenured employees of the Birmingham Board of Education, defendant. In one instance the plaintiffs filed for summary judgment on the grounds that there was no issue of material fact. The trial court granted summary judgment for the defendant and the plaintiffs appealed. In the other case, employees received notices of termination based on the recommendation of the superintendent. The recommendation of the superintendent was that the teacher's aides category be reduced by 112 employees to help reduce the cost of "proration" on the system. The tenured plaintiffs who received termination notices were governed under the Teachers Fair Dismissal Act. At the time the plaintiffs received their termination notices, the defendant was operating under a revised reduction-in-force policy that had been adopted on July 9, 1991. As is required by §16-11-18, Ala. Code 1975, the superintendent, who recommended the new policy, met with the teachers' unions who represented the majority of the employees in the system, before the new policy was adopted. The record showed that on this same date of July 9, 1991, the defendant revised its reduction-in-force policy for non-certified employees as well as voted to terminate these employees from their positions. Under the old policy established in 1981, the plaintiffs would not have been candidates for termination because the policy required a notice be given at least 45 days prior to the beginning of the school year. However, the new policy only required a 30-day notice that must be followed by a hearing.

Issue: At issue is whether the defendant school board's action that resulted in the termination of the plaintiff employees was a violation of the provisions set forth in §16-11-18, Ala. Code 1975.

Holding: The Court of Civil Appeals of Alabama held that statutory requirements for the adoption and filing of the new policy were met.

Reasons: The Court of Civil Appeals of Alabama determined that §16-11-18, Ala. Code 1975 was followed appropriately when the defendant revised its reduction-in-force policy. In reference to the statute, the defendant, before adopting any written policies, consulted with the professional organization(s), which represented the majority of the certified employees, along with assistants, principals, teachers and interested citizens. However, despite these steps, the plaintiffs contend that in order for the reduction-in-force policy to have actually been amended, it had to have been filed with the State Superintendent of Education. Although there is some truth to this claim, the State Superintendent testified that there is not a specific timeline given for boards to file their policies with the state in order for them to be official and their exist no penalty for not having done so in a specific period of time. The Court of Civil Appeals of Alabama revealed that when the statute was read in its entirety, it clearly revealed that the filing process only takes place after a policy has been adopted and that the purpose of this is for record keeping and in no way has any effect on the functionality of the policy.

Disposition: The Court of Civil Appeals of Alabama affirmed the decision of the trial court that upheld defendant board of education's termination of plaintiff employees.

Citation: *Kaczmarcik v. Carbondale Area School Dist.*, 625 A.2d 126 (Pa.CmwltH.App., 1993).

Key Facts: Mr. Paul Kaczmarcik, petitioner, served as the vice-principal of the Junior / Senior High School of the Carbondale Area School District, respondent, for several years as well as transportation director for which he received a yearly stipend. In preparation for the 1991-1992 school year, the respondent board passed a motion to eliminate the petitioner's position of

vice-principal and furlough seven teachers as a result of a substantial decline in student enrollment and economic concerns. Because the elimination of the petitioner's position was considered a demotion and he refused to consent, a hearing had to take place before the respondent in accordance with 24 P.S. §11-1151. The petitioner notified the respondent that the hearing date of July 10, 1991, was not suitable for him, which resulted in it being rescheduled for August 27, 1991. However, the respondent rescheduled the hearing for September 5, 1991, without consent from the petitioner. Mr. Ned Abrahamsen was later selected by the respondent as the hearing officer, an act that the petitioner was not in agreement with. At the hearing, the petitioner's demotion was discussed along with him being relieved of his transportation coordinator position. Dr. Joseph F. Como, the respondent's superintendent, then presented information that described in detail the drop in student enrollment of 13.6% over the 5-year period leading up to the petitioner's demotion. He also revealed that close to 63% of that drop was at the secondary level and that the petitioner held the least seniority of the five administrators currently in the school district. The superintendent also testified that the decision to eliminate the position of vice-principal was made by the Board of Directors, but not at his request. Through the ongoing cross-examination of witnesses, the petitioner was able to bring out that no discussion concerning the "educational" impact of the elimination of his position, had ever taken place. Once examination was complete, the hearing officer ruled that the demotion of the petitioner was appropriate based upon the significant decline in student enrollment and economic problems. He also ruled that the petitioner failed to show that his demotion to a teaching position was in any way arbitrary or based upon other unacceptable considerations. The petitioner sought review from the Secretary of Education who dismissed his appeal.

Issue: At issue is whether the school district acted appropriately when eliminating the vice-principal position and demoted the petitioner to a teacher position.

Holding: The Commonwealth Court of Pennsylvania held that the petitioner failed to prove that his demotion from vice-principal to teacher was arbitrary, discriminatory, or based upon other improper considerations by the respondent school district.

Reasons: The Commonwealth Court of Pennsylvania determined that, despite the petitioner's claim of not being given a timely hearing required by §1151 of the School Code, he was in fact afforded a timely hearing that was to take place in a 15-day timeframe from the time the written notice of demotion was given. The petitioner was unable to attend the original scheduled date and agreed to waive the time requirement referred to in §1127 so that the hearing could be rescheduled at a time that was suitable for both parties. However, despite having an agreed upon date for the hearing, the School Directors for the respondent changed this date, without approval from the petitioner, for a time that was later. The petitioner argued that this change in date violated the timeliness of §1127. By having earlier agreed to waive the time requirement, the petitioner gave the respondent the right to set another date. In actuality, the hearing was held within nine days of the date that was agreed upon after the petitioner waived the time requirement, falling well within the 15-day time period set forth in §1127. The petitioner also felt as though the appointment of a hearing officer was not within the guidelines of the School Code because the code specifically states that a hearing should be conducted by the "board of school directors" and the hearing officer was not a member of the school board. There is some ambiguity surrounding this concern and one that has never been decided upon by the appellate court of this Commonwealth. However, the decision reached in *Acitelli v. Westmont Hilltop School District*, 15 Pa.Commonwealth Ct. 214, 325 A.2d 490 (1974) does help in

resolving this concern whereby only three of six members of the board were present for a vote, a quorum of the board was present at every hearing and every vote. The applicable clarifications from *Acitelli*, are relevant in this case in that the time of the hearing, five of the school directors were present and a sixth arrived while the hearing was still in progress. In addition, all nine members of the respondent Board voted on the final resolution recommended by the hearing officer. The petitioner also failed to present any evidence at any time the members of the Board did not consider the entire record of the hearing before casting their final vote. The petitioner also claimed that his demotion from vice-principal to teacher was illegal in reference to the state Code. That same claim was presented in *Sharon City School District v. Hudson*, 34 Pa.Commonwealth Ct. 278, 286, 383 A.2d 249, 253 (1978), where the Commonwealth Court of Pennsylvania ruled that in order for the demotion of an employee to be overturned excluding procedural errors, the employee must prove the action “to be arbitrary, discriminatory, or founded upon improper considerations.” It was found in this case that the reason for the demotion was a declining enrollment, primarily at the Junior and Senior High level, and economic concerns. The reduction in force implemented resulted in a savings for the respondent school district. In *Hudson*, similar demotion was upheld and that is the controlling decision in this case.

Disposition: The Commonwealth Court of Pennsylvania affirmed the order of the State Department of Education that dismissed petitioner’s appeal of his demotion from a vice-principal position to teacher.

Citation: *Kransdorf v. Board of Educ. of Northport-East Northport Union Free School Dist.*, 613 N.E.2d 537 (N.Y., 1993).

Key Facts: Ms. Sandy Kransdorf, respondent, was employed by the Northport Union Free School District, appellant, for 3 years (1984-1987) as a full-time substitute math teacher. In July 1987, she was made a part-time math teacher for the upcoming school year that was to begin on September 9, 1987. Approximately one month later on October 5, 1987, the appellant Board named the respondent to a full-time probationary position and made the appointment retroactive back to September 14, 1987, making the part-time position only for a period of four working days. The respondent finished that year and the following school year, 1988-1989, as a full-time probationary teacher. In June 1989, the respondent was notified that her position would be “excessed” under Education Law §2510, and that she would be terminated because of her lack of seniority in the district. The appellant gave the respondent no seniority credit for the 3 years she was employed as a full-time substitute teacher but calculated it from the time she was appointed as a full-time probationary math teacher on September 14, 1987, giving her a total of 2 years. It is important to note that another teacher began working for the appellant as a full-time substitute in the 1985-1986 school year and at the end of the 1988-1989 school year had acquired 4 years of seniority from serving in that position. If the respondent had been given seniority credit for her time employed as a full-time substitute, she would have in fact had 5 years of seniority, not making her the least senior. The respondent requested a judgment that would give her the 5 years of seniority that she felt she was entitled to and the Supreme Court granted her petition by remitting the topic back to the Board.

Issue: At issue is whether the appellant Board followed the correct procedure in calculating the seniority of the respondent.

Holding: The Court of Appeals of New York held that in order for an employee to receive seniority credit for a full-time substitute teaching position under §2510, (2), that position need not to have been held immediately preceding the full-time probationary position.

Reasons: The Court of Appeals of New York determined that reference should be made to the decision of the Commissioner of Education in *Matter of Carey*, 31 Ed Dept Rep 394, and 8 NYCRR 30.1 [f]. Here the issue was the same in addressing the amount of seniority a teacher should be given for years served as a full-time substitute teacher prior to their appointment as a probationary full-time teacher. In *Carey*, there was some time during the 6-year period of employment that there were two interruptions where the teacher taught part-time, with the last being a 5-month period directly preceding the appointment to a probationary position. When the position was abolished, the teacher was not given seniority credit for her full-time substitute service because it did not immediately precede her appointment into the full-time position that was being abolished. Prior to *Carey*, it had been determined by the Commissioner that the purpose of Education Law §2510 was to provide a type of preference to in regard to rehiring employees that had lost their positions as a result of “excessing.” However, *Brewer*, was cited holding that section 2510 should be furthered by allowing teachers to receive seniority credit for full-time substitute teaching even if the time in this position had been interrupted. The Commission went on to say that a teacher should loose seniority rights when they break service with the school district but not when it is interrupted by a part-time position in the same district. The Court of Appeals of New York determined that no prior ruling of the Commissioner suggested in any way that an employees full-time substitute work must come “immediately” before that full-time probationary appointment in order for it to be included in one’s time of seniority.

Disposition: The Court of Appeals of New York affirmed the order of the trial court that granted the respondent teacher's petition to review the appellant board of education's decision to terminate her from her probationary position.

Citation: *McKee v. Board of Educ. of Town of Watertown*, 627 A.2d 951 (Conn.App., 1993).

Key Facts: Mr. Alexander McKee, plaintiff, was a tenured guidance counselor employed by the Watertown Board of Education, defendant. The plaintiff held a standard certification from the state of Connecticut in guidance counseling allowing him to work with students in grades kindergarten through twelve as well as students in special education. The plaintiff was employed under the provisions of the collective bargaining agreement between the defendant and the Watertown Education Association, who also served as the bargaining agent for the teachers employed by the defendant. On July 17, 1989, in reference to General Statutes §10-151 (d) (5), and article XXI of the collective bargaining agreement, the defendant decided to terminate the plaintiff from his position. The plaintiff followed by requesting to bump a teacher with a shorter period of service from a High School Special Education Counselor position. Although the defendant school board required a certification in counseling and special education to hold this position, the state only required certification in school counseling, which is what the plaintiff held. The plaintiff requested a hearing, regarding the aforementioned statutes, before a neutral panel that recommended in a 2 to 1 decision that his contract be terminated. On November 1, 1989, the defendant accepted the recommendation of the panel and terminated the plaintiff's employment. On November 28, 1989, the plaintiff appealed this decision to the Superior Court later reversed the decision finding that the defendant board had acted illegally.

Issue: At issue is whether the defendant board acted legally when terminating the plaintiff's position.

Holding: The Appellate Court of Connecticut held that the plaintiff could only be terminated from his position following the guidelines set forth in the collective bargaining agreement that required only the standard certification as a guidance counselor.

Reasons: The Appellate Court of Connecticut determined that the guidance provided through the General Statutes §10-151 (d), concerning an employee's termination, were clear that a teacher must have the same proper certification to fill a position when going through the process of bumping. The decision to terminate the plaintiff in this case was reversed after it was determined that the defendant acted illegally when the neutral panel departed from the language set forth in the collective bargaining agreement when that language was clear. The panel was legally wrong when it imposed the additional certification from the defendant into the job description and for the board to follow through with the decision was legally wrong as well. The language in the collective bargaining agreement is clear in that a standard certification is all that is needed for the position the plaintiff is pursuing and he should have been appointed to this position to replace a teacher with less seniority.

Disposition: The Appellant Court of Connecticut affirmed the trial court's judgment to uphold the plaintiff teacher's appeal and reversed the defendant board of education's decision to terminate his employment.

Citation: *Piquard v. Board of Educ. of Pekin Community High School Dist. no. 303*, 610 N.E.2d 757 (Ill.App.3.Dist., 1993).

Key Facts: Ms. Renae Piquard, appellant, was hired by the Board of Education of Pekin Community High School District No. 303, appellee, in August 1979 to teach physical education.

Although the appellant's certification declared that she was eligible to teach both physical education and health, these were two separate departments in the district at the time she was hired. They were not combined into one department until somewhere around 1985. Since 1980, the appellee board had kept a seniority list of its employees in an effort to keep track of its teachers and their seniority. The list was very detailed and was divided into categories of tenured teachers and teachers in each department. Although the plaintiff was listed on the physical education seniority list, she was never listed on the one pertaining to those teachers in the health department. The plaintiff was notified in March 1991, that she was being dismissed from her position at the end of the school year due to a reduction in force where it had been determined by the appellee board there were too many teachers in the physical education department. The board determined, from the seniority list, that the appellant held the least seniority in the physical education department and was not qualified to teach in any other position. Although there were five teachers with less seniority than the appellant, it was determined that four of them were not eligible to be dismissed because they were currently performing duties in other departments. Ms. Sandra Burrell, was the only teacher left with less seniority, but was listed on the health seniority list and was going to be used in that department for the upcoming 1991-1992 school year. On September 13, 1991, the appellant filed a complaint for mandamus and declaratory relief in quest of back pay and reinstatement and claimed that her dismissal was a violation of her rights under Ill. Rev. Stat. 1991, ch. 122, par. 24-12. In response, the appellee board filed a defense claiming that the dismissal was appropriate and followed the guidelines set forth in the collective bargaining agreement between them and the Pekin Teachers' Alliance. The appellee then filed for summary judgment stating that the appellant at no time disputed any of the seniority list making them final.

Issue: At issue is whether the appellee board maintained proper seniority lists to be used during a reduction in force and whether they violated the appellant's tenure rights when they retained a teacher not qualified to teach a course and dismissed the appellant who was qualified.

Holding: The Appellate Court of Illinois, Third District held that the collective bargaining agreement clearly established a sequence of dismissal to be followed and that the appellant's dismissal was suitable because an alternative method to determine the sequence of dismissal in a reduction in force was provided. The collective bargaining agreement in no way diminished the rights of the appellant teacher.

Reasons: The Appellate Court of Illinois, Third District determined that the collective bargaining agreement clearly established a sequence of dismissal that was to be followed by the appellee board and that the seniority lists established by the appellee were appropriate as to the placement of teachers and their years of service. The appellant contended that she should have been retained because she had seniority over the teacher who was kept and was qualified to teach the position. The appellee's actions here were proper in that the teacher who was retained to teach the health position was on the seniority list and the appellant was not subjecting her to the dismissal. Under the School Code an alternative method to determine the sequence of dismissal can be established as long as the rights of tenured teachers are not diminished. The Appellate Court of Illinois, Third District, agrees in this case that the collective bargaining agreement that had been established did provide for an alternative method in determining the sequence of dismissal in a reduction in force and because it is based upon inverse seniority, it follows the statute appropriately. The appellee Board's system of maintaining its seniority list did not violate the terms of the collective bargaining agreement because an updated list for each department was provided each year. Although there was not an actual health department, the record revealed that

the appellee had always maintained its seniority lists by departments and subjects from the very beginning. Because this was consistent, the collective bargaining agreement was not violated. In addition, the agreement also stated that a challenge must be made within 60 days after the lists were posted by any teacher who was not in agreement. After this 60-day period this list became “conclusive” regarding a teacher’s years of service. The appellant never challenged the exclusion of her name from the health seniority list, which was clearly her responsibility under the terms of the collective bargaining agreement.

Disposition: The Appellant Court of Illinois, Third District, affirmed the decision of the trial court that granted summary judgment for the appellee school district when it dismissed appellant teacher from her physical education position.

1994

Citation: *Byrd v. Green County School Dist.*, 633 So.2d 1018 (Miss., 1994).

Key Facts: Mr. James Rodney Byrd, appellant, was employed by the Green County School District, appellee, from 1983 through 1988 as a teacher and then a coach. After completing his Master’s degree in counseling and psychology, he was hired by the appellee in 1985 as an elementary and junior high guidance counselor. In March 1986, the appellee adopted its reduction-in-force policy in an effort to meet the terms of the State’s Minimum Foundation Program levels of funding. The measures developed for the reduction in force were done so in an effort to balance the need of fairness to all teachers while maintaining what was in the best interest for students during the implementation of a reduction in force. The appellee school district on numerous occasions had cut lumber from one of its land sections to meet budget deficits not covered by tax revenues. Starting in 1984, lumber valued at \$1,327,532 had been cut

at the request of the appellee at an average gain of \$331,883 per year. After the Forestry Commission completed its annual evaluation of the appellee's timberland in May 1988, it suggested that lumber sales should drop to an average annual rate of about \$50,000. At a meeting on February 12, 1988, the appellee school district made it known that a reduction in staff would be required based on a significant cut in the district's budget over the next 3 years. One of the recommendations was to cut the number of guidance counselors in the district and to hire the appellant as a teacher and not a guidance counselor. However, in a meeting held on February 29, 1988, the appellee Board unanimously voted to re-employ the appellant, along with seven other teachers and counselors, in their current positions for the 1988-1989 school year. On June 12, 1988, the appellee Board was made aware, by the superintendent, that there was a \$401,095 deficit in the budget. Based on the need for drastic cuts to be made, the appellee Board voted on June 27, 1988, not to renew the contracts of the appellant and 19 other employees. On June 29, 1988, the appellant and the other employees received written notices of the appellee's decision to nonrenew their contracts for the upcoming school year. In the letters it was noted that the decision was not a reflection of past performance but was a result of the lack of funds in the district, and by reducing the staff the school system would be able to operate at, or close to, the funding level permitted by the state of Mississippi. Due process hearings were held in August 1988, at which time the hearing officer ruled that in accordance with the appellee's reduction-in-force policy and Miss. Code Ann. §37-9-59, the financial crisis at hand constituted a "good cause" for the termination of school personnel. The appellant was notified on September 29, 1988, that his contract was not being renewed by which he appealed to the Chancery Court of Green County on October 5, 1988. The chancellor found that the appellee's actions in terminating the appellate were not supported by substantial evidence making their decision

arbitrary. The chancellor entered a judgment ordering the appellee to pay the appellant damages in the amount that he would have earned for the 1988-1989 school year plus legal interest.

Issue: At issue is whether the appellee Board's decision to terminate the appellants contract constituted good cause in accordance with the School Employment Procedures Law of 1977.

Holding: The Supreme Court of Mississippi held that the late notice to the appellant put his discharge outside the provisions of Miss. Code Ann. §37-9-105 (1990), for nonrenewal of teacher contracts without showing good cause.

Reasons: The Supreme Court of Mississippi determined the need to only concern themselves with the implementation of the appellee's reduction-in-force policy and whether or not it constituted a "good cause" for the termination of the appellant's contract. A question that needs to be considered is whether or not the appellee school district had a good reason to take away the appellant's newly renewed contract when financial problems implemented a reduction in force. This makes evident a conflict in the statute regarding the release of a teacher from their contract pertaining to a conduct related cause, Miss. Code Ann. §37-9-59, and a cause for nonrenewal for the upcoming year prior to the April 8 deadline referred to in §37-9-105. The Supreme Court of Mississippi found the statute in question not to pertain to the case "sub judice" since the appellant was not removed from his position based on some type of misconduct as implied by the statute. Neither can it be said that the appellant's contract was suspended according to the statute where a decision is made by a school district not to offer a renewal for the following year. The appellee decided to offer the appellant a contract for the following school year on February 29, 1988. However, when they decided that they were going to rescind his contract, they sent notification on June 29, 1988, the day before the end of the fiscal school year

and the scholastic year. Because the appellee Board failed to issue this notice prior to April 8, 1988, as is required by §37-9-105 (c), this could no longer be considered as the reason for the nonrenewal. If the appellee's argument were to be accepted in this case, teacher contracts would be vulnerable for nonrenewal any time a school system found itself in a financial crisis. The appellee's last moment realization of its financial crisis did not serve as good cause for the rescission of the appellant's contract in this case. However, it should be taken very seriously that there is definitely a need for the legislature to make provisions for reductions in force that need to take place after the April 8 deadline has passed.

Disposition: The Supreme Court of Mississippi affirmed the finding of the court that there was not a "good cause" for the abolishment of the appellant teacher's contract by the appellee school district and awarded damages to the teacher.

Citation: *Colonial Educ. Ass'n v. Colonial School Dist.*, 645 A.2d 336 (Pa.Cmwlth.App., 1994).

Key Facts: Ms. Patricia Lieberman, appellant, was employed as a part-time health and physical education teacher by the Colonial School District, respondent. Before the end of the 1990-1991 school year, the respondent suspended the appellant from her position based on a declining student enrollment. This was based on a 58% decrease over an 18-year period where the system's student enrollment went from 8,634 students in 1972 to 3,661 students in 1990. The appellant requested a hearing before the Board who chose to uphold the suspension once the hearing was over. The appellant, along with the Colonial Education Association, appealed this decision to the Court of Common Pleas of Montgomery County, which dismissed their request for a review.

Issue: At issue is whether the respondent School District appropriately suspended the respondent from her position based on a decline in student enrollment.

Holding: The Commonwealth Court of Pennsylvania held that the respondent school district erred in suspending the appellant school teacher because it inappropriately used its power in viewing the student enrollment decrease over an 18-year period and was unable to provide any proof of a significant decrease in the student enrollment over a reasonable period of time.

Reasons: The Commonwealth Court of Pennsylvania determined that the respondent Board of Education violated the respondent's constitutional rights because their decision to suspend her from her position was not supported with substantial evidence pursuant to 2 Pa.C.S. §754 (b). The Colonial Education Association, representing the respondent, claims that not only was an 18-year timeframe too long when looking at a student decline but that there was no decline at all the year the respondent was suspended from her position. It is also clear in the amended version of the school code that a Board cannot suspend a teacher from his or her position if there is a projected increase in the student enrollment for the upcoming year. In the year the respondent was suspended, 1990, the student enrollment had actually increased from the year before.

Disposition: The Commonwealth Court of Pennsylvania reversed the decision of the trial court that had affirmed the respondent school district's suspension of appellant teacher. The court also ruled that the school district was to reinstate teacher to her previous position with back pay, seniority, and benefits.

Citation: *Cooper v. Board of Educ. of Shenendehowa Cent. School Dist.*, 615 N.Y.S.2d 135 (N.Y.App.3.Dept., 1994).

Key Facts: Appellant teachers were certified in the areas of Construction Trades, Vehicle Maintenance/Auto Mechanics and Unique Placement Success and taught in the Shenendehowa Central School District, respondent. These courses were offered through the Saratoga-Warren Counties Board of Cooperative Educational Services Program (BOCES) in which the respondent was a component district. Preceding the end of the 1991-1992 school year, the respondent informed the BOCES that they would be discontinuing their participation in the program pertaining to the courses taught by the appellants. As a result, these positions were done away with by the BOCES. In June 1992, the respondent board approved two new technology education programs for the upcoming school year in the areas of Construction Systems Technology and Automotive Systems Technology. They also approved two new business education programs in the areas of Career Exploration Internship and Business Information Processing. The appellants felt as though these new courses were a “takeover” of the programs they taught within the BOCES and was a direct violation of Education Law §3014-b, which explains in detail the rights of excessed BOCES teachers. As a result, the appellants, *inter alia*, sought to force the respondent to hire them as teachers. It was found that a “takeover” did not actually occur in reference to Education Law §3014-b and the appellants’ petition was dismissed by the Supreme Court.

Issue: At issue is whether the respondent Board failed to comply with the provisions of Education Law §3014-b when it discontinued the positions of the appellants and created new positions to replace them.

Holding: The Supreme Court of New York, Appellate Division, Third Department, held that the appellant teachers’ failed to show that a takeover occurred under N.Y. Educ. Law §3014-b as the respondent Board submitted undisputed evidence that the programs were only

similar in name but consisted of a different curriculum and benefits in reference to what credit could be applied toward high school graduation or college admission and required certification in completely different tenure areas.

Reasons: The Supreme Court of New York, Appellate Division, Third Department, determined that in order to resolve the issue of a “takeover,” there are several factors that must be considered including, the reason(s) why the respondent withdrew from the BOCES, the program offered by the BOCES, the new program(s) offered by the respondent, are the program(s) comparable, why the respondent may have hired new probationary teachers, and the reasons why the appellants were released from their positions. Based on these reasons, it is clear that the Supreme Court correctly ruled that the appellants in this case never clearly established that a “takeover” had actually taken place. The respondent revealed how the new programs were designed in an effort to improve instruction by developing classes that were different from those that had been available through the BOCES model. The respondent also revealed how these new programs were only similar to the old ones in name but contained different content, a different state approved curriculum, different benefits towards graduation and college credit, and a completely different certification pertaining to tenure area. The respondent did not hire new probationary teachers to fill the new positions, as was claimed, but filled the positions with teachers already employed.

Disposition: The Supreme Court of New York, Appellant Division, Third Department, affirmed the judgment that dismissed the appellant teachers’ action to the respondent board to rehire them after the board discontinued its participation in the cooperative educational service program.

Citation: *Geren v. Board of Educ. of Town of Brookfield*, 650 A.2d 616 (Conn.App., 1994).

Key Facts: Mr. Russell Geren, plaintiff, was a tenured high school teacher who was employed by the Brookfield Board of Education, defendant. In the fall of 1987, the plaintiff gave a 16-year-old female student a birthday card and several flirtatious notes, which she gave to her parents. The parents reported this to the school principal who ordered the plaintiff teacher to have no contact of any kind with the student until the investigation into the matter had been completed. The plaintiff teacher later approached the female student wanting to know why she reported him to her parents and the school. At that point, school superintendent Mr. Michael Perrone, defendant, was made aware of the situation and immediately ordered the suspension of the plaintiff teacher with pay until the matter was resolved. In a meeting between the superintendent and the teacher, the teacher claimed he could not remember writing any notes because he was under a lot of stress as a result of the stock market crash in October. Based on the seriousness of the matter, the superintendent suggested to the plaintiff that he resign from his position or face termination. On December 16, 1987, in accordance with General Statutes §10-151, the Teacher Tenure Act, the defendant board voted to consider the termination of the plaintiff's contract. In response, the plaintiff submitted his resignation in exchange for being placed on 1 year's leave with pay and an additional payment for "job location" assistance. The defendant board accepted the resignation on December 21, 1987, that would go into effect on December 31, 1988. In August 1988, the plaintiff wrote a letter to the board revoking his resignation on the grounds that he felt he had been pressured into making this decision during a time in his life where he was under a lot of stress and dealing with depression. The defendant superintendent refused to accept the revocation. In response, the plaintiff teacher filed a writ of

summons along with a revised complaint that the defendants did not follow procedural due process and breached his employment contract when they failed to hold a hearing to determine if the “voluntariness” of his resignation deprived him from a “property and liberty interest.” After judgment was found for the defendants on both counts, the plaintiff appealed to the next court.

Issue: At issue is whether the board’s consideration to terminate the plaintiff’s contract in accordance with the Teacher Tenure Act was considered a breach of contract.

Holding: The Appellate Court of Connecticut held that the plaintiff failed to comply with Conn. Gen. Prac. Book, R. App. P. §4065, which required him to support his statement of facts with appropriate references as well as not permitting reliance on any facts that were not set forth in a statement of facts or appropriately included into the brief.

Reasons: The Appellate Court of Connecticut determined that the rules of practice are specific in placing the burden of proving an error directly on the appellant and that it is the appellant’s responsibility to prove that any type of error was harmful (*State v. Williams*, supra, 231 Conn. 250). The appellant teacher here failed to comply with Practice Book §4065, which requires support of the statement of facts with appropriate references to the record or transcript and does not permit the reliance on facts not appropriately incorporated into the brief. Because this was not done, there is no relevance to the claim that there was a breach of contract. It is not the role of the court to guess at possibilities but to review claims based on a complete factual record developed by a trial court.

Disposition: The Appellate Court of Connecticut affirmed the judgment in favor of the superintendent and Board.

Citation: *Luzerne Intermediate Unit No. 18 Educ. Ass’n v. Pittston Area School Dist.*, 650 A.2d 1112 (Pa.Cmwlth.App., 1994).

Key Facts: Luzerne Intermediate Unit, appellant, provided special education services in the areas of school psychologists, professional employees to staff learning support classes, and speech and language support classes to numerous school districts in Luzerne County, appellee, prior to the beginning of the 1992-1993 school year. Due to a significant decline in student enrollment, coupled with budgetary restraints, the appellee decided to realign its staff and provide these services on its own. In March 1992, the appellee's staffing was approved by the Department of Education to eliminate 15 programs/classes and furlough the least senior employees. In accordance with the Transfer of Entities Act (Act) of the Public School Code of 1949, 12 programs from the appellant were transferred to the appellee school district. The appellee district then realigned its staff in order to use five of its own teachers to staff five of the transferred programs. The appellee then employed six teachers from the appellant to staff the remaining programs. These six teachers were then placed on step three of the appellee's salary schedule and were granted with up to 2 years of seniority credit for the time they served with the appellant. The appellant, in response, filed a grievance against the appellee stating that it was the appellee's responsibility, in regard to the Act, to fill the programs that were transferred with professionals from the appellant, as well as provide them with seniority credit for all their years of service with the appellant. Both the appellant and the appellee filed cross motions for summary judgment against the other and the trial court ruled that the appellee was not obligated to hire all 12 teachers from the appellant because only 6 teachers were needed to staff the programs that were transferred. The trial court also ruled that the appellee improperly applied seniority credit to the transferred teachers and they should have been given seniority credit for all their years of service with the appellant. Both of these rulings were appealed.

Issue(s): At issue is whether the appellee school district was in violation of the Act when it failed to hire professionals from the appellant to fill all the transferred positions and did the transferred employees receive the appropriate amount of seniority credit for their time of service with the appellant.

Holding: The Commonwealth Court of Pennsylvania held that because the appellee school district had properly certified professional teaching personnel that were available to fill the transferred classes and programs, it was not required to attain additional employees from the appellant teachers association.

Reasons: The Commonwealth Court of Pennsylvania determined that the legislature's intent through the Act was to protect teachers, not just the Intermediate Unit teachers but also the district employees. In *Education Association v. North Hills School District*, Pa. Commonwealth Ct. 211,624 A.2d 802 (1993), the court clearly stated that steps should be taken to protect Intermediate Unit teachers when it is foreseen that many of them could be suspended; however, the Act also intended to protect the jobs of school district employees when it stated that a transferred employee must be employed if needed "as long as there is no suspended professional employee in the receiving entity who is properly certificated to fill the position." Based upon the appellee's realignment of its staff due to a declining student enrollment, the professional employees in the district would maintain their jobs. The appellee's realignment did away with the need for 15 employees. The limited transfer of the appellant's programs and classes allowed the appellee to hold on to 5 employees, which allowed them to reduce the number of furloughed employees to 10. Although the 5 appellee employees were never actually suspended as stated in the Act, the outcome of employing all 12 appellant employees would have made the 5 appellee employees have to be furloughed. Based on this it was the Act's intention to protect the appellee

district's employees. In regard to seniority, the Commonwealth Court of Pennsylvania found that there was no evidence whereby there had ever been a "past practice" of only granting a maximum of 2 years of seniority credit when teachers were transferred according to the Act because there had never been such a transfer to take place in the appellee district before. The Department of Education of Pennsylvania interpreted the statute to imply that whatever seniority was recognized by the "sending" employer must be recognized by the "receiving" employer. Therefore, the ruling of the trial court granting full seniority to the transferred employees must be considered correct.

Disposition: The Commonwealth Court of Pennsylvania affirmed the decision that the appellee school district was not bound to hire all of the appellant association's teachers and that the teachers who were transferred were to be given seniority credit because additional employees were not needed and there was no past evidence of only granting up to 2 years of seniority.

Citation: *Summers County Bd. of Educ. v. Allen*, 450 S.E.2d 658 (W.Va., 1994).

Key Facts: The Summers County Board of Education, appellant, anticipated a loss in state funding based on a decline in its student enrollment for the 1989-1990 school year. The loss of funding would affect three administrative positions in the county. At the time there were 13 administrative positions in the system, 4 of which were at the county office level. The appellant's superintendent proposed eliminating the positions of assistant superintendent, director of Instructional Materials Center, and principal of Summers County Career Center. The appellant chose to discard the superintendent's recommendation and to do away with the Director of Instructional Materials Center, the principal of Summers County Career Center, Mr. Harold Bandy, appellee, and the assistant principal of Hinton High School, Mr. Michael Allen, appellee. As a result of this decision, both appellees were placed on a transfer list and reassigned to

teaching positions. Appellees followed by filing grievances that *W. Va. Code 18-9A-4*, effective March 15, 1990, was not properly followed because it required the appellant to make all administrative cuts at the central office level. The chief hearing examiner of the West Virginia Education and State Employees Grievance Board heard both grievances, separate of one another, and in both instances determined that *W. Va. Code 18-9A-4* required all administrative cuts to be made at the appellant Board's central office if possible. In appellee Allen's case, the examiner stated that he did not supply adequate information regarding the central office employees in reference to their certification and seniority and therefore could not verify whether he should have retained his position. In appellee Bandy's case, the examiner stated that his vocational education position should not have been eliminated and no central office administrator held the appropriate certification to attain his position.

Issue: At issue is whether the appellant Board of Education followed the appropriate guidelines set forth in *W. Va. Code 18-9A-4* when it eliminated the appellees from their administrative positions.

Holding: The Supreme Court of Appeals of West Virginia held that appellee Bandy's position was not properly eliminated and required the appellant Board to determine if appellee Allen's position was properly eliminated according to code.

Reasons: The Supreme Court of Appeals of West Virginia determined that due to the mandatory language of *W. Va. Code 18-9A-4*, that went into effect on March 15, 1990, the appellant Board was required to abolish administrators at the central office level first. Based on the information presented at the hearing, it could not be determined what effect this would have on appellee Allen's position as assistant principal if all central office administrative positions were eliminated that were not required to be by statute nor was there adequate evidence to

determine if he would have been displaced by an administrator with greater seniority and who held the appropriate certification. Therefore, the finding of the hearing examiner and the circuit court were correct in directing the appellant Board to determine what effect eliminating three positions at the central office level would have had on appellee Allen. Although appellee Bandy's position as principal should not have been done away with in regard to the decision that was made in *Oxley v. Bd. of Educ. of County of Summers*, 190 W. Va. 422, 438 S.E.2d 602 (1993), he should not have been reinstated as the principal of the Career Center since he was not the most qualified applicant for the position. Appellee Bandy only held a principal's certificate and had applied for a temporary permit as a vocational administrator from the W. Va. State Department of Education based on the superintendent's documentation that he was the best qualified applicant available for his assigned position. However, this had taken place prior to the position being posted. Because of the decision made in *Oxley*, the circuit court's decision should be reversed so that appellee Bandy is not reinstated as the principal of the Career Center.

Disposition: The Supreme Court of Appeals of West Virginia affirmed the circuit court's decision that required the appellant board of education to determine if the appellee assistant principal's position was properly eliminated but reversed the decision requiring the board to reinstate the appellee principal.

Citation: *Walkowski v. Duquesne City School Dist.*, 644 A.2d 1277 (Pa.Cmwlth.App., 1994).

Key Facts: Ms. Carol Walkowski, appellee, was employed by the Duquesne City School District, appellant, from October 1983 until November 1986 at which time she was furloughed. Her furlough was the result of a grievance resolution between the appellant, and two other teachers with more seniority, who had previously been furloughed from their positions. In

accordance with the agreement that was reached between the appellant and the CBA representative for the school district, the previously furloughed teachers were rehired and the appellee was informed by written notice that she was being furloughed as of November 14, 1986. The appellant Board denied her request on March 27, 1986, for a hearing because it was not done so in a timely manner. The appellee in response requested the trial court, per mandamus, to direct the appellant Board to grant her a hearing, which was arranged. At the hearing held on April 30, 1990, the appellant Board voted to maintain the appellee's furlough. This decision was appealed to the trial court that ruled in favor of the appellee mandating the appellant Board to grant her back pay for the period of her furlough as of June 11, 1993. The appellant Board appealed this decision.

Issue: At issue is whether the appellant Board acted properly in furloughing the appellee teacher.

Holding: The Commonwealth Court of Pennsylvania held that the appellee was properly furloughed because she was the least senior employee and two senior employees had previously been furloughed by error.

Reasons: The Commonwealth Court of Pennsylvania determined that the appellant Board has the authority per 24 P.S. §11-1124 to furlough employees due to a substantial decline in student enrollment. The period of time to be considered here was not the school year before the appellee was furloughed but the school year before the two recalled teachers were furloughed. As a result of the recalled teachers being furloughed by error, their reinstatement put the appellant school district in the same position it was when the original furloughs were implemented, a significant decline in student enrollment and an oversized staff.

Disposition: The Commonwealth Court of Pennsylvania reversed the order of the trial court stating that the appellant school district acted properly when it exercised its option to place appellee teacher on furlough.

1995

Citation: *Bachak v. Lakeland School Dist.*, 665 A.2d 12 (Pa.CmwltH.App., 1995).

Key Facts: Mr. Steven Bachak, appellant, was a tenured English teacher in the Lakeland School District, appellee. Before the start of the 1993-1994 school year, the appellee Board suspended him from his teaching position due to a decline in student enrollment. This decision was based upon a 20% decrease in student enrollment over a 10-year period having decreased from 2002 students in 1981-1982 to 1,606 students in 1991-1992. Although there was no dispute of this evidence by the appellant, he insisted that there was no decrease the year that he was suspended from his position. The appellant requested a hearing before the appellee Board who chose to uphold their decision of suspension. The appellant then appealed the decision to the trial court that chose to dismiss his petition for review. The appellant then appealed to the Commonwealth Court of Pennsylvania claiming that the appellee district's student enrollment did not decline over a reasonable period of time and as a result was in violation of 24 P.S. §11-1124 in suspending him from his position.

Issue: At issue is whether the appellee school district showed evidence of a significant decline in student enrollment over a reasonable, permissible time period.

Holding: The Commonwealth Court of Pennsylvania held that the appellee school district misused its power when it used an enrollment decline over a 10-year period while excluding the 3 years prior to the appellant's suspension.

Reasons: The Commonwealth Court of Pennsylvania determined that ultimately the appellee school district failed to present data to show a substantial decrease in student enrollment over a reasonable, permissible time period. There are two ways in which a substantial decrease in enrollment can be verified. First, the appellee Board could have presented proof of a general, increasing decline over a “reasonably justifiable” period of time. This type of decline could include an increase, as it did here, as long as there was a cumulative decrease over a reasonable time period. Second, the appellee Board could have shown evidence of a decrease in student enrollment from one year to the next that was so significant that there was no need to look at additional years. However, the appellee board established neither of these examples in this case. The appellee Board also failed to provide any justification as to their use of a 10-year review period. Without providing such justification, such a long period of time is unreasonable in comparison to what the Commonwealth Court had found acceptable in the past. Although the courts have never actually limited a specific number of years that can be looked at by a school district, large school systems in the past have been allowed to look at declines up to 7 years. If that were the guideline used here, there would have only been a decrease of 4.4%, hardly what could be considered a substantial decrease.

Disposition: The Commonwealth Court of Pennsylvania reversed the order of the trial court ruling that the appellant teacher should be reinstated to his teaching position because the appellee school district was unsuccessful in providing evidence that a substantial decrease in student enrollment had taken place over a reasonable period of time.

Citation: *Boner v. Eminence R-1 School Dist.*, 55 F.3d 1339 (C.A.8.Mo, 1995).

Key Facts: In November 1992, the Missouri Department of Education set forth a School Improvement Review, noting several areas that the Eminence R-1 School District, appellee,

needed to make some improvements. The appellee was required to develop, submit, and put into action, an improvement plan or face the consequences of losing its accreditation and be combined with another school district. Along with the numerous areas noted as needing improvement, it was also noted that the financial condition of the school district was a concern in that there was not enough funding to appropriately pay the staff or provide programs at the preferred level. In response to this review, on April 12, 1993, the appellee decided to decrease the number of administrative positions from three to two, reduce the overall number of physical education classes, and combine the elementary and secondary physical education classes with driver's education, creating one position. As a result, Mr. Jeffrey Bonner, appellant, and another physical education instructor were placed on involuntary leaves of absence due to the fact they no longer were properly qualified to hold the newly combined position. Other issues with the appellant were also discussed at the meeting including his coaching ability, his use of inappropriate language at games, and his lack of support for the community. The appellant was notified by letter that the decision to place him on unrequested leave was due to a reduction in staff and a change in job description that made him unqualified to teach the position. The appellant responded by requesting from the appellee Board that they provide written documentation as to how they had reached their decision and then later asked for permission to address them. The appellant was later notified by a school system administrator that his request would be discussed at the upcoming May meeting and he would be placed on the agenda to address the Board. The appellant chose not to appear claiming that it would have been a waist of his time since the Board never supplied him with the information that he had requested. The appellant sued the appellee school system for being placed on an involuntary leave of absence

stating that this was a violation of his due process rights, the Missouri Teacher Tenure Act, and his contract with the district.

Issue: At issue is whether the appellee school Board violated the appellant's due process rights according to the Fourteenth Amendment, the Missouri Teacher Tenure Act, and the contract with the school district.

Holding: The United States Court of Appeals for the Eighth Circuit held that the appellee's financial situation justified the action taken against the appellant, the appellee did not misuse its authority according to the Teacher Tenure Act, and was in compliance according to due process when it offered the appellant the right to a hearing.

Reasons: The United States Court of Appeals for the Eighth Circuit determined that the decisions made were justified by the appellee District's financial situation and this reason alone was supported through Mo. Rev. Stat. §162.152, 162.171, 162.181 (1994). The review of the records in this case does not reveal in any way that the appellee district abused its authority under the Missouri Teacher Tenure Act. The appellee school district acted appropriately in placing the appellant teacher on unrequested leave due to financial issues, and in following the recommendations of the School Improvement Review, the district was required to employ only certified employees for the position being held and in this case the appellant teacher was not adequately qualified. In reference to the appellant's due process claim, due process for tenured employees only provides the opportunity to be heard. The appellant was given the opportunity to be heard and failed to show up for the hearing. The appellee district met all the requirements regarding the appellant teacher's due process rights.

Disposition: The United States Court of Appeals for the Eighth Circuit affirmed the ruling of the district court in that the appellee school district did not abuse its authority under due process, the Teacher Tenure Act, or its own policies.

Citation: *Bricillo v. Duquesne City School Dist.*, 668 A.2d 629 (Pa.Cmwlth.App., 1995).

Key Facts: The Duquesne City School District, respondent, had a separate elementary school building that it maintained through the end of the 1992-1993 school year. Due to its poor condition, the respondent closed the building prior to the beginning of the 1993-1994 school year and moved the elementary program to the same building used for the middle and high school. Although each level was located in one building, the elementary school still maintained its own principal, separate entrances, cafeteria, and physical education facilities. In accordance with state guidelines, middle school classes could be taught by certified elementary or secondary teachers. With all teachers in the same building, the respondent was able to schedule staff in a more efficient manner causing a reduction in the number of professional staff needed to teach classes. In accordance with 24 P.S. §11-1124 (3), the respondent chose to place 16 teachers on furlough. These 16 professional employees, appellants, appealed this decision to the Board challenging that a requirement of a consolidation mentioned in Section 1124 had not taken place since the elementary school continued to hold a “separate” existence. The appellants also claimed that the some of the suspensions were not a result of the consolidation but because certain courses were improperly eliminated. After the information was presented to a hearing officer, the findings presented were that the combining of the schools was a consolidation within the meaning of the Public School Code and there was no evidence of any courses being eliminated improperly. These findings were approved by the respondent Board but were appealed by the appellants to the trial court, who also confirmed but was appealed.

Issue(s): At issue is whether the respondent school district appropriately consolidated its elementary, middle, and high school.

Holding(s): The Commonwealth Court of Pennsylvania held that the consolidation of the schools within a single district was appropriate according to 24 P.S. §11-1124 (3) of the Public School Code and that the suspension of all appellants was acceptable in that no educational programs had been unacceptably eliminated.

Reasons: The Commonwealth Court of Pennsylvania determined that neither the Public School Code nor the Department of Education specifically define “consolidation of schools.” There also is not any Pennsylvania case law that defines the term “consolidation.” Consolidation occurred when the elementary school moved into the same building as the middle school and high school. Even though the elementary school continued to maintain somewhat of a separate identity, it was in the same building as the other two schools allowing for the sharing of overhead costs, the combining of professional and non-professional staff, and the reduction of staff. In accordance with the language of §1124 (3), the consolidation of schools is to take place within a single district, making it unnecessary to hold on to the entire staff. Because the insertion of the elementary school at the same location of the middle school and high school is what is considered to be a consolidation, the suspensions of the appellants were appropriate within the Public School Code. Although there was an Industrial Art’s course that was eliminated, causing one appellant to be suspended from her position based on the reassignment of the other teacher, the respondent school district was allowed to eliminate the course because there were not any students who had signed up to take the class for the following year.

Disposition: The Commonwealth Court of Pennsylvania affirmed the decision of the lower court that affirmed the decision of the respondent school district when it suspended appellant teachers from their positions pursuant to Public School Code.

Citation: *Impey v. Board of Educ. of Borough of Shrewsbury*, 662 A.2d 960 (N.J., 1995).

Key Facts: Ms. Gillian Impey, appellant, was a tenured part-time speech correctionist who was employed by the Borough of Shrewsbury Board of Education, appellee, for approximately 20 years. In July 1990, the appellee Board approved the contract with the Educational Services Commission (ESC) of Monmouth County to provide speech services for the district's speech students during the 1990-1991 school year and to abolish the position of the appellant. As a result of this contract, the appellee school system would save around \$12,000. After the appellant's position was voided, she was placed on a preferred eligibility list for reemployment in her area of certification and seniority. The appellant filed a complaint with the Commissioner of Education who referred the objection to the Office of Administrative Law (OAL). During these proceedings it was determined that the abolishment of the speech correctionist position and the contract with the ESC had no negative effect on the appellee school district's need for speech services. After the administrative law judge and the State Board of Education ruled in favor of the appellee Board, the appellant filed for a notice of appeal with the Appellant division, which also confirmed the previous rulings.

Issue: At issue is whether the respondent Board has the right to subcontract with an educational services commission to provide speech services, abolish the position of a speech correctionist, and do away with the employment of a tenured teacher without violating statutory tenure rights.

Holding: The Supreme Court of New Jersey held that in accordance with N.J. Stat. Ann. §18A: 6-63, the appellee school system was within its rights to go into a contract with an ESC for educational services and that the appellee acted in good faith according to N.J. Stat. Ann. §18A: 28-9, when it reduced its number of employees for economic reasons.

Reasons: The Supreme Court of New Jersey determined that although the appellant teacher does have specific statutory protection regarding employment, the appellee Board has the authority to decrease its number of teachers as long as it is done for reasons of a declining economy. It is clear in this case that the subcontracting with the ESC in no way had any adverse effect on the appellee district's needs to provide speech services for its students. In fact, this decision by the appellee resulted in a more cost-effective delivery of speech services throughout the system. The appellee Board acted in good faith and followed the tenure statute in reducing the number of employees within the district for reasons of the economy.

Disposition: The Supreme Court of New Jersey affirmed the decision of the lower court and upheld the appellee board of education's termination of appellant speech correctionist's because there was extensive and reliable evidence to justify the decision made by the state board of education.

1996

Citation: *Battaglia v. Lakeland School Dist.*, 677 A.2d 1294 (Pa.Cmwlth.App., 1996).

Key Facts: Ms. Nancy Battaglia, petitioner, and Ms. Patricia Mussari, petitioner, were employed by the Lakeland School District, respondent. Ms. Battaglia was employed as a full-time secondary art teacher and Ms. Mussari was employed as a full-time school nurse. During a 10-year period starting with the 1981-1982 school year and ending with the 1991-1992 school

year, the respondent's enrollment declined from 2,002 students to 1,606 students, 20% of the pre-1980 student enrollment. The impact of such a decrease was even harsher at the secondary level where the number of students enrolled in art classes dropped almost 30%. Based on such a decline, the respondent's superintendent suggested that there be some changes in the educational programs and recommended that several employees be suspended or demoted from their positions. On July 3, 1991, the respondent Board adopted a motion putting into place personnel changes based on a significant enrollment decline in accordance with §1124 of the Public School Code of 1949. As a result of this decision, both respondents were demoted from their full-time positions to half-time. Both asked for a timely hearing, which was granted on February 19, 1992. Petitioner Battaglia claimed that the respondent Board's decision was in error because the system's student enrollment had actually increased during the 1991-1992 school year and there was not a "substantial" decline in enrollment over a "reasonable" amount of time as was required by §1124 of the School Code. Although petitioner Mussari was later reinstated to her full-time position, she continued to pursue damages and back pay for the time that she was demoted contending that the respondent violated 24 P.S. §14-1402 (a.1) where all school age students were to be provided with school nursing services and that the total number of students under the care of a school nurse should not exceed 1,500. Both petitioners appealed the decision of the respondent Board to the Secretary of Education who confirmed their demotion.

Issue: At issue is whether the school district acted properly in demoting two full-time employees to half-time positions.

Holding(s): The Commonwealth Court of Pennsylvania held that the respondent Board had the power to determine the demotion or suspension of teachers and employees under the School Code and the 10-year period used to determine an enrollment decline was appropriate in

the case of petitioner Battaglia. The Commonwealth Court of Pennsylvania held that the student to nurse ration found in the School Code had to be followed and by reducing petitioner Mussari to a half time position exceeded the required ratio.

Reasons: The Commonwealth Court of Pennsylvania determined that petitioner Battaglia's argument referring to an earlier case, *Bachak and Colonial Education Association*, although very similar, was inconsistent in that the respondent Board made its decision to demote in July 1991, prior to the beginning of the 1991-1992 school year in which there was a slight increase in the overall student enrollment. The critical issue to keep in mind here is the time period of the review and the information that was available to the Board at the time they reached their decision. If the decision had been made at a later time, a different conclusion could possibly have been reached; however, it would not be just to assume that the Board could predict future changes in the enrollment. There was no evidence presented that the Board knew the student enrollment would increase in the upcoming school year after there had been a decrease over the previous 10 years. Although, prior to this case, a reasonable time period to determine a decline in student enrollment was for a period of 7 years or less, a period of 10 years was upheld for the same purpose in *Smith v. Board of School Directors of Harmony Area School District*, 16 Pa. Commw. 175, 328 A.2d 883 (1974). The District's enrollment decline of approximately 20% over a 10-year period did qualify as a "substantial decrease" under Section 124 (1) of the school code and proves worthy of the demotion of petitioner Battaglia from full time to half time. On the other hand, the Commonwealth Court of Pennsylvania disagreed with the respondent school district's interpretation of the school code in relation to petitioner Mussari. The School Code is clear in that the number of students under the care of one school nurse cannot exceed 1,500. Although the District's reasoning of 1.5 school nurses for an enrollment of 1,606 sounds

appropriate from a statistical perspective, it is not appropriate and is in violation of the School Code. In fact, there is either two nurses on duty or one, never 1.5. When there is only one, the school system is out of compliance.

Disposition: The Commonwealth Court of Pennsylvania affirmed the decision of the Secretary of Education in upholding the decision of the respondent school district board of directors in demoting petitioner teacher from full-time to half time because of a substantial decrease in the student enrollment. The Commonwealth Court of Pennsylvania reversed the decision of the Secretary of Education in upholding the respondent's decision to demote petitioner school nurse because the student-to-nurse ratio exceeded statutory requirements when petitioner was not working.

Citation: *Kvernmo v. Independent School Dist. No. 403*, 541 N.W.2d 620 (Minn.App., 1996).

Key Facts: Ms. Gail Kvernmo, relator, was a home economics teacher for the Ivanhoe School District, respondent, and had been employed since 1973. In spring 1995, the respondent did away with several of the relator's classes causing her to have two classes shy of a full teaching load. As a result, she was placed on an unrequested leave of absence from her full-time teaching position and recalled to a .67 position where she was required to teach three home economics classes and one study hall. Relator claimed the respondent was obligated under the seniority provisions of Minn. Stat. §125.12 to rearrange teaching assignments so she could continue as a full-time teacher. Relator specifically claimed that the respondent was not at liberty to retain teachers with less seniority as study hall supervisors while placing her on unrequested leave. The respondent claimed that although it had been a consistent policy that full-time teachers' schedules reflect a 5-1-1 pattern (five classes, one study hall, one preparation period)

per day, there was no specific license or requirements to manage a study hall. The relator's proposal was rejected by the hearing officer, finding that the statute in question did not require a school to grant additional study halls as classes in regard to seniority and full-time status.

Issue: At issue is whether the respondent school system was required by statute to allow a senior teacher, who was placed on unrequested leave, to take additional study hall classes from less senior teachers in order to maintain her full-time status.

Holding: The Court of Appeals of Minnesota held that the study hall was not part of the relator's work assignment and that the respondent school district could regulate the assignment of study hall classes.

Reasons: The Court of Appeals of Minnesota determined that under §125.12 the first consideration to be made is that the relator, as a senior teacher, may only consider positions for which she is licensed. Because a teacher cannot be "licensed" to conduct study hall classes, seniority rights do not pertain to this case. Although the provisions of teacher employment are usually determined through a collective bargaining agreement, the school district is at liberty to establish certain policies and procedures of employment as long as they are consistent with what had been established in the past (*Foley Educ. Ass'n v. Independent Sch. Dist. No. 51*, 353 N.W.2d 917, 921 (Minn. 1984)). The *Foley* case provides direction as to the importance of past practices in determining a school district's power to do away with study hall assignments. It was in this case that evidence was put into place showing a school district's past practice of assigning study hall supervision for only one period during the school day. In the case at hand, the respondent school district determined that a teacher's work task should not include more than one unity of study hall supervision a day based on a long-term practice that had been established. It was lawful, under these conditions, for the respondent school district to refuse to reschedule

the relator's teaching assignments so that she was supervising three study hall classes per day as opposed to one that had been established and was the norm. Responsibilities and duties that are usually assigned to teachers, as in this case the one study hall a day, become part of the "work jurisdiction" of the bargaining agreement. Thus, the respondent school district, having established a past practice of assigning one study hall per teacher per day is appropriate in this case and in no way should be considered unlawful.

Disposition: The Court of Appeals of Minnesota affirmed the decision of the respondent school district as being lawful when it placed relator teacher on an unrequested leave of absence after many of the teacher's usual courses were cut from the curriculum.

Citation: *Newell v. Wilkes-Barre Area Vocational Technical School*, 670 A.2d 1190 (Pa.Cmwlth.App., 1996).

Key Facts: The Wilkes-Barre Area Vocational-Technical School (WBAVTS) was a vocational school that was jointly owned and operated by five individual school districts. One requirement was that the WBAVTS yearly budget had to be approved by a minimum of four of the five districts. Two of the districts disapproved of the proposed 1993-1994 budget on the premise that WBAVTS was overstaffed based on a declining student enrollment. Dr. Thomas F. O'Donnell, Jr., Administrative Director, reviewed the enrollment data and determined that there had been a substantial overall decline in student enrollment, particularly in the area of Consumer Electronic courses taught by Mr. James Newell, appellant. The recommendation from Dr. O'Donnell, to the Joint Operating Committee (JOC) on June 8, 1993, was to combine the Consumer Electronic courses, taught by the appellant, with the Electronic Technology course, because of the commonalities within the two courses. The recommendation was unanimously approved and on June 25, 1993, Dr. O'Donnell sent a copy of the minutes to the Department of

Education requesting approval of the course merger in accordance with 22 Pa. Code §339.4(f).

At the time of the recommendation, the appellant teacher was the teacher with least seniority and was therefore chosen as the employee to be suspended. In a letter dated July 6, 1993, the appellant was notified by letter of his suspension and that his electronic courses would be combined with another course at the beginning of the 1993-1994 school year, unless the Secretary of Education saw reason not to combine the courses. The appellant requested a hearing to discuss his suspension and on November 28, 1994, was informed that his suspension had been affirmed by the JOC. The appellant petitioned the trial court for a review of this mediation but it was dismissed on the grounds that the suspension was appropriate under both section 1124(1) and section 1124(2) of the Public School Code of 1994.

Issue: At issue is whether the WBAVTS was at liberty to suspend the appellant teacher from his position based upon a decline in student enrollment.

Holding: The Commonwealth Court of Pennsylvania held that the 10-year period used by the Vocational Technical School in determining a decrease in student enrollment was reasonable and that looking at lesser timeframes would have shown a decrease as well.

Reasons: The Commonwealth Court of Pennsylvania determined that the WBAVTS revealed that there was a substantial overall decrease in student enrollment over a reasonable period of time. This can be determined in two ways as was found in *Colonial Education Association v. Colonial School District*, 165 Pa. Commw.286, 645 A.2d 336 (1994). First, a board of education can provide evidence of a decline over a reasonable, justifiable period of time, and second, a board of education can provide evidence of a decrease in student enrollment from one year to the next as long as the decrease is significant enough as to not have to provide data from additional years. Because there was an increase in enrollment the two prior years to the

appellant's dismissal, as was brought forth in the appellant's claim, the second method could not be used in this case. However, the first method could be used as long as the period of time used by the JOC to determine the enrollment decline was a considered reasonable. Although the appellant teacher claimed the time period used was unreasonable because it was over a 16-year timeframe, the WBAVTS insist that the data they used was over a 10-year time period from the 1982-1983 school year till 1992-1993. It also insists that a timeframe of fewer than 10 years could have been used to show the enrollment decline. The Commonwealth Court of Pennsylvania determined that because WBVATS could provide evidence of a decline in enrollment using a time period of less than 10 years, it was necessary to consider the 16-year, or the 10-year timeframe, when making its determination. Although a 10-year time period is pushing the limit of what is considered to be reasonable and justifiable, it was allowed in *Smith v. Board of School Directors of Harmony Area School District*, 16 Pa. Commw. 175, 328 A.2d 883 (1974), where a loss of 114 students from the initial 724 students enrolled in the system, representing a 16% drop, was considered to be substantial. However, in *Bachak v. Lakeland School District*, 665 A.2d 12 (1995), a 10-year time period that resulted in a 20% decline, was not considered reasonable when looking at a period of 7 years that only resulted in a decline of 4.4%. The enrollment size in this case finds itself somewhere between *Smith* and *Bachak*, but the time period of 10 years revealed a decline of 36.6%, considerably greater than the decline in previous cases. When looking at a 7-year time period, there was a decline of 27%, and over a 5-year period there was a decline of 15.95%. These numbers provide the evidence needed to support the opinion that there was a substantial decline in student enrollment over a reasonable amount of time.

Disposition: The Commonwealth Court of Pennsylvania affirmed the trial court's judgment and held there was substantial evidence to support the decision of the JOC in its decision to suspend appellant teacher because of a decline in student enrollment.

Citation: *State ex rel. Boner v. Kanawha County Bd. of Educ.*, 475 S.E.2d 176 (W.Va., 1996).

Key Facts: Petitioners Ms. Patricia Boner, mother of homebound student, Ms. Twylla Bays, mother of homebound student, Ms. Sarah McGuire, homebound teacher, Ms. Georgette Connelly, homebound teacher, Mr. Dewey Lester, homebound teacher, Ms. Judith McHugh, homebound teacher, Ms. Betty Palmer, homebound teacher, and Mr. James Hale, school psychologist, all sought a writ of mandamus against State Superintendent of Schools, Mr. Henry Marockie, respondent, to refrain from abolishing the positions of seven full-time home bound teachers and replacing them with hired individuals who were paid on an hourly basis. Based on a declining student enrollment and a strained budget, the decision was made in the spring of 1994 to do away with all full-time teachers who provided homebound instruction for the respondent. The Board made it very clear that its sole purpose in implementing this plan was to save money for the system. During the 1993-1994 school year there were a total of 449 students being served through the homebound program in the Kanawha County school system. Of the seven budgeted full-time positions for the 1993-1994 school year, three of the positions had been left vacant due to retirements that took place earlier in the spring. In addition to the full-time positions, the respondent school system employed several substitute homebound teachers who were paid by the hour for their services. Although the full-time homebound teachers received all the benefits as the other full-time teachers, the substitutes only received an hourly wage. During the 1993-1994 school year, more than 50 homebound teachers were paid on an hourly basis for providing

homebound instructional services. In the spring of 1994, a decision was made by the respondent to abolish all full-time homebound positions and only have part-time teachers for this position. Despite raising the hourly rate of these instructors, the system was due to save approximately \$72,585 by making this adjustment to their homebound staff. Five of the petitioners were transferred to other positions in the county based on their certifications and seniority, one petitioner retired.

Issue: At issue is whether the respondent Board was justified in eliminating full-time positions and replacing them with hourly paid positions when there was no evidence of any reduction needing to be made.

Holding: The Supreme Court of Appeals held that the respondent Board's plan negatively affected the pool of teachers qualified for homebound instruction by reducing the attractiveness of the program and the decision to eliminate all full-time homebound teaching positions was done arbitrarily.

Reasons: The Supreme Court of Appeals determined that although Boards of Education are at liberty when it comes to making decisions regarding hiring, assignment, transfer, and the promotion of school personnel, it must be remembered that regulations and laws have also been put into place in favor of the employee. What is key in this case is that discretion must be used carefully in determining what is in the best interest of the school and the students and must be done in a manner that is not arbitrary or capricious. In accordance with West Virginia Code §18A-2-2, the terminology is clear that every teacher is to have a contract of employment and teachers are to be employed regarding their contract. By eliminating seven full-time contractual positions, the respondent Board appears to not have followed the same statute? In fact, the respondent Board focused on the term "school personnel" which can be employed on an hourly

basis. The statute in question is clear that all teachers are required to carry out a contract with their boards of education and at the time they acquire the contract they are provided various protections regarding employment and other benefits including salary. It is apparent here that the respondent Board's action was to save money through the elimination of the full-time homebound positions by doing away with salaries and benefits and replacing with hourly wages and no benefits. The respondent Board never disputed this action. If this were the case, a board could follow this same process in eliminating any other group of full-time teachers in order to reduce the costs associated with their contracts of employment. In addition, the respondent Board's plan negatively affected the pool of candidates for the homebound teaching program since the position was no longer a full-time position with benefits. The Supreme Court of Appeals determined that there was nothing in reference to the state statutes that would allow a board of education to select a group of teachers providing full-time instruction to be reduced to hourly wages without any reason showing a need to reduce such instruction. Without a specific reason for reducing the homebound teaching force, the Board's decision here is clearly arbitrary and it was simply done as a way to try to save money while providing the same service.

Disposition: The Supreme Court of Appeals of West Virginia granted in part a writ of mandamus in order to stop the implementation of the state school board's plan to replace petitioner full-time homebound teachers with part-time hourly teachers.

Citation: *Van Derzee v. Board of Educ. of Odessa-Montour Cent. School Dist.*, 644 N.Y.S.2d 847 (N.Y.App.Div.3.Dept., 1996).

Key Facts: Ms. Bette Van Derzee, petitioner, was employed by the Odessa-Montour Central School District, respondent, as a substitute teacher at the beginning of the 1985 school year. In September 1991, the petitioner was employed by the respondent as a non-probationary

part-time teacher. Although the defendant was offered a full-time probationary position on three separate occasions, she chose to stay in her part-time non-probationary position. After the petitioner turned down the respondent's third proposal in January 1994, the position was given to another applicant. Shortly thereafter in the spring of 1994, the respondent school board abolished the petitioner's position and turned the full-time position into a 60% part-time position. The petitioner argued, in reference to CPLR article 78, that the full-time position should have been abolished first, leaving her to fill the part-time position based on her 9 years with the system. The Supreme Court disagreed and dismissed the petitioner's petition for review.

Issue: At issue is whether the respondent Board could eliminate the part-time position of the petitioner.

Holding: The Supreme Court of New York, Appellate Division, Third Department, held that the petitioner was not a tenured or probationary teacher when her part-time position was abolished and as a result was not protected by N.Y. Educ. Law §2510(2).

Reasons: The Supreme Court of New York, Appellate Division, Third Department determined that the petitioner was not tenured, nor on the tenured track, at the time her part-time position was abolished. As a result, her services could be discontinued regardless of the number of years she had been employed in the system. Education Law §2510 (3), specifically applies to the filling of an existing or future vacancy, and in this case a vacancy never existed.

Disposition: The Supreme Court of New York, Appellate Division, Third Department affirmed the dismissal of the appellant teacher's appeal to review a determination of the respondent district board of education's terminating her employment.

1997

Citation: *Borr v. McKenzie County Public School Dist. No. 1*, 560 N.W.2d 213 (N.D., 1997).

Key Facts: Mr. David Borr, appellant, taught for 9 years as a music teacher in the McKenzie County Public School District, appellee. Mr. Jay Diede, the principal, received word on November 19 from an upset parent that the appellant had spoken inappropriately to the junior high band during a recent outdoor practice. Principal Diede visited the appellant's classroom for an observation on November 23, and met with him the following day to discuss the observation and the reported incident. The appellant insisted that he used the word "stunk" and not "suck" and had already presented each member of the band with a letter of apology for his behavior. Principal Diede informed the appellant that either word was unacceptable and insisted that he be accountable to the parents as well. Principal Diede observed the appellant's classroom again on March 2, 1994, at which time he noted a "management problem" in the evaluation that was discussed with the appellant on March 11. During this meeting, principal Diede implied that the "management problem" might have come from the earlier incident. Although the evaluation was put in the appellant's file on that date, the earlier incident involving the band was not stated. Principal Diede received another complaint regarding the appellant on March 15 along with similar complaints that two board members had received from parents. On March 18, principal Diede met with the appellant, after receiving yet another parent complaint regarding his behavior, and recommended that he take advantage of upcoming parent meetings to address these concerns. The appellant was also asked to put together an action plan that needed to be submitted by the end of the month. The appellee Board came to the conclusion on March 30 that there was a need for a reduction in staff based on a decline in the student enrollment. The school

administration was asked for four teachers whom they thought should be nonrenewed, one of which was the appellant. On April 4, principal Diede received the appellant's action plan as to how the issues with his students and their parents were going to be addressed. On April 11, principal Diede placed the complaints he had received from parents (without names) and the action plan into the appellant's personnel file. The superintendent recommended that evening that the appellant's contract, along with three others in the music department, be nonrenewed. The following day, principal Diede met with the appellant to discuss his action plan, shared with him what had been placed in his personnel file, and gave him a letter explaining the recommendation of the Board that would be discussed on April 20. At the hearing, the superintendent revealed a decline in the student enrollment of 1,063 students in 1982-1983 to only 765 students in 1993-1994. The superintendent explained that the appellant had been selected for nonrenewal based on his ineffectiveness as a teacher, which was the first criterion to be considered in the system's reduction-in-force policy. Principal Diede reported to the Board how he had determined the appellant to be ineffective as a teacher and made them aware that the information regarding the parent complaints was not placed in the appellant's file immediately but had been documented on his desk planner, which was where he went to get his information for the hearing. He also shared with the Board that approximately half of the current band was planning on dropping it for the next school year. The nonrenewal hearing was concluded on April 25 at which time a majority of the Board voted to non-renew the appellant's contract.

Issue: At issue is whether the appellee Board wrongfully non-renewed the appellant's contract and abused its discretion.

Holding: The Supreme Court of North Dakota held that the appellee school district did not abuse its discretion in deciding not to renew the teacher's contract.

Reasons: The Supreme Court of North Dakota determined that principal Diede was not in violation of the statutes prohibiting a “secret personnel file” because he notified the appellant teacher of the parental complaints in a timely manner. Under NDCC 15-38.2-02, the appellant teacher could have requested that material be placed in his personnel file; there exist no evidence that he was refused this opportunity at any time. Principal Diede repeatedly discussed parental complaints with the appellant teacher, sought appropriate measures to correct the inappropriate behavior, and thereafter placed the information in the appellant’s personnel file. Although the placement of the information in the file did happen at the same time as the nonrenewal recommendation through the reduction in force, the information was added to the appellant’s file as a result of new parental complaints. Although these new complaints were noted in principal Diede’s planner, as were the original complaints, at no time were they kept secret from the appellant and were brought to his attention quickly as required in NDCC 15-38.2-04. Even though principal Diede’s notes from his planner were not immediately transferred to the appellant’s personnel file, the appellant teacher had his rights to an open and accurate personnel file and in no way was this tainted by the notes principal Diede kept in his desk journal. Although the appellant’s conduct was related to the criteria used by the appellee school district in selecting teachers for nonrenewal in its reduction-in-force policy, the law does not require a school board to specifically state why it selected one teacher over another for nonrenewal but only requires compliance with statutory and contractual obligations. There is no evidence presented in this case that the nonrenewal of the appellant’s teaching contract was arbitrary but appears to have been done appropriately following all guidelines and procedures.

Disposition: The Supreme Court of North Dakota affirmed the dismissal of the appellant teacher’s lawsuit by the appellee school district.

Citation: *DeGeorgeo v. Independent School Dist. No. 833, South Washington County*, 563 N.W.2d 755 (Minn.App., 1997).

Key Facts: Ms. Carol DeGeorgeo, relator, was employed full-time by the Independent School District No. 833, respondent, for the 1995-1996 school year. She was a licensed business education teacher. Based on an enrollment decline in secondary business education courses and financial hardship, the respondent school board made plans to put the three least senior business education teachers, including relator, on unrequested leave of absence at the conclusion of the 1995-1996 school year. In August 1996, a hearing was conducted at which time the hearing officer made the recommendation to place the relator on unrequested leave of absence. The respondent Board adopted the recommendation and the relator sought certiorari review claiming the school board did not truly discontinue her position.

Issue: At issue is whether the respondent school board was at fault in determining the relator's position had been discontinued.

Holding: The Court of Appeals of Minnesota held that the business math course that was to be taught in the district was a component of the math curriculum and required certification in that area to be taught.

Reasons: The Court of Appeals of Minnesota determined that at the time of the hearing, the respondent school board had discontinued spots, equal to 2.2 full-time positions, in their business education program for the 1996-1997 school year. All vacant positions remaining at that point were filled by teachers with more seniority than the relator. The record in this case clearly indicates that the business math course to be taught was part of the math curriculum and required a math license to teach. A teacher having only a business education license could not bump a less senior teacher with a math license teaching this class. Further, there was no evidence in this case

that the relator had more seniority than the teacher she was requesting to bump. At the time the relator was placed on unrequested leave of absence, there was a need to decrease the number of business education teachers from the system due to a declining student enrollment and financial limitations.

Disposition: The Court of Appeals of Minnesota ruled in favor of the respondent school district that placed relator teacher on an unrequested leave of absence.

Citation: *Junction City School Dist. v. Alphin*, 938 S.W.2d 239 (Ark.App., 1997).

Key Facts: Ms. Margaret Alphin, appellee, a school teacher in the Junction City School District, appellant, lost three-sevenths of her teaching salary when the appellant school board chose to reduce the expenditures of the school system by eliminating and reducing staff positions for the 1993-1994 school year. The appellant school system was located on the Louisiana/Arkansas state line and consisted of students from both states. In March 1994, the Arkansas Department of Education notified the district that it would no longer provide “turn-back” funds that it had provided in previous years. At the request of the appellant school district, the Circuit Court entered a provisional injunction that held the upcoming termination of funding in abeyance until the 1994-1995 school year. The appellee requested and was granted a hearing before the appellant Board that took place on July 6 and 7, 1994, at which time she was offered a part-time position that amounted to a three-sevenths reduction in her original salary. The appellee accepted the position under the premise she still had the right to appeal the Board’s decision.

Issue: At issue is whether the appellant Board followed its policy and state law when it reduced the appellee’s contract.

Holding: The Court of Appeals of Arkansas, Division Four held that the manner in which the appellant school district went about reducing the appellee's contract did not comply with its own policies and procedures and as a result was in violation of state law.

Reasons: The Court of Appeals of Arkansas, Division Four, determined that the appellant superintendent used only 2 of 13 criteria of their policies pertaining to reduction in force. The state law prohibited the district from circumventing its own criteria for fairness in a dismissal.

Disposition: The Court of Appeals of Arkansas, Division Four, affirmed on direct appeal but reversed and remanded on cross appeal.

Citation: *Nickel v. Saline County School Dist. No.163*, 559 N.W.2d 480 (Neb., 1997).

Key Facts: Ms. Pamela Nickel, appellant, was employed by the Saline County School District No.163, appellee, as a permanent certificated employee during the 1993-1994 school year. She received notice on March 31 from the appellee that her employment contract could possibly be terminated at the end of the school year due to a reduction-in force. The appellee district's criterion for selection of employees to be terminated was based on eight criteria, but there was no indication of how the criterion was to be weighted. The policy, however, did make reference to situations where there was no considerable difference between employees with like certifications after the eight criterion were considered, then the employee with the longest uninterrupted period within the district should be retained. The appellant requested and was granted a hearing before the appellee Board on April 26, 1994, at which time the six employees being considered for the reduction in force were discussed regarding how they fared pertaining to the eight criteria used for termination. All employees held certification to teach elementary education but state and federal regulations, employee evaluations, and the impact of numerous part-time employees were not found to be relevant. The appellant also held certification in the

area of physical education but this was not deemed a vital part of the district's curriculum because there were so many other teachers who could teach this subject. Although the appellant had made contributions to other programs in the past, she was currently not involved in anything extra for the 1993-1994 school year. The determination of the appellee Board was that because there was no major difference between the appellant and the most similar employee, the appellant would be let go because she had a shorter uninterrupted period of service. The appellant promptly appealed this decision claiming that a probationary certificated employee was retained to perform duties that she was qualified to handle. The district court affirmed the decision of the appellee Board and the appellant appealed to the Nebraska Court of Appeals.

Issue: At issue is whether the appellee Board violated its own policies and the Nebraska state statutes regarding reduction in force when it terminated a permanent employee's contract.

Holding: The Supreme Court of Nebraska held that the appellee school district did not terminate a permanent employee while keeping a probationary employee.

Reasons: The Supreme Court of Nebraska determined that there was sufficient evidence presented by the appellee school district to support their decision to terminate the appellant's contract. Although the appellant argues that one of the employees retained was a probationary teacher at the time the reduction in force was implemented, the evidence and the interpretation of the statute does not coincide nor is it retroactive. A similar issue was raised in *Wang v. Board of Education*, 199 Neb. 564, 260 N.W.2d 475 (1977) where the statute used to determine tenure did not specifically state it should be retroactive. It was determined in this case that the probationary teacher was not that at all and in fact acquired permanent status with the 1991 statute because she had already been employed for at least 6 years half-time to reach the 3 full years of employment needed for permanent status. As far as the appellee not following the proper steps, the appellant

received notification that she may be terminated at the end of the year due to a reduction in force; however, a final decision had not been made prior to the hearing. The appellee provided the appropriate notification required by the statute and did not use procedures that were unlawful. The appellee in this case did not maintain a probationary teacher while terminating the employment of a certified teacher and implemented lawful procedures while following its reduction-in-force policy.

Disposition: The Supreme Court of Nebraska affirmed the decision of the trial court that ruled in favor of the appellee school district terminating appellant teacher's teaching contract.

Citation: *Washington Teachers' Union Local No. 6, American Federation of Teachers, AFL-CIO v. Board of Educ. of the District of Columbia*, 109 F.3d 774 (C.A.D.C., 1997).

Key Facts: As a result of the District of Columbia, appellee, facing a financial crisis, it put forth the authority it had been granted by Congress to implement an emergency reduction in force at which time it terminated the contracts of over 400 teachers, appellants, from their positions in June 1996. Several of the appellant teachers and their unions sued, claiming that the principals of schools selected teachers to be terminated on school-wide seniority as opposed to system-wide seniority, as well as taking into consideration non-seniority factors in ranking them for termination. The appellants felt that this reduction in force was a violation of the collective bargaining agreement, which in turn violated the Contract Clause of the United States Constitution. The appellants also claimed that the decision to terminate their contracts without a pre-termination hearing was a violation of the Fifth Amendment's Due Process Clause. Prior to May 1996, the District of Columbia implemented reductions in force on the foundation of seniority and teachers were grouped regarding tenure as permanent, probationary, or temporary. These groups were divided into subgroups and employees within each subgroup were ranked

according to years of service in the system. Also prior to May 1996, reductions in force were implemented across the system and not just within individual schools. Based on a teacher's seniority and performance rating, they could bump less senior teachers in their competitive area in other schools across the system. However, these procedures were changed at the passage of two statutes, the District of Columbia Financial Responsibility and Management Assistance Act of 1995, and the District of Columbia Appropriations Act of 1996, also known as the Budget Act. Both statutes were passed in order to deal with the District of Columbia's financial crisis. One month after the passage of the Budget Act, the appellee school Board put into place emergency rules instituting new reduction-in-force procedures where school principals were now to fill out a competitive level documentation form (CLDF) on all teachers who were holding positions slated for abolishment. Each teacher was ranked on a scale of 1 to 25 in four established areas. The superintendent informed all principals of the positions that were to be abolished at their schools. Those teachers who were reduced in force based on the CLDF were given 30-days' notice of their termination and were provided severance pay based on their years of service in the system.

Issue: At issue is whether the appellee Board violated the appellants Contract Clause, and Due Process Clause, when it terminated their contracts during an emergency reduction-in-force.

Holding(s): The United States Court of Appeals for the District of Columbia Circuit held that the emergency reduction-in-force procedures approved by Congress were not subject to the Contract Clause and there was no conflict between the reduction-in-force procedures and the established collective bargaining agreement. The court also held that the Due Process Clause did not require a pre-termination hearing since the reduction in force was put into place based on a serious financial crisis.

Reasons: The United States Court of Appeals for the District of Columbia Circuit determined that the emergency reduction-in-force procedures put into place by the appellees were authorized by Congress, removing any connection to the Contract Clause, and there was no evidence of any inconsistency between the procedures and the collective bargaining agreement. Congress is not subject to the Contract Clause even when it is legislating for the District. The collective bargaining agreement in this case made no reference to system-wide seniority procedures if a reduction in force was necessary. All that was stated in the agreement was that the Board must consult with the Union and in this case they did before the reduction in force was implemented. As far as the claim of Due Process, no pre-termination hearings are necessary when a reduction in force is implemented because of a serious financial crisis. In fact, the District of Columbia Law provides for post-termination challenges when a valid governmental interest is at stake that validates the postponement of the hearing until after the event has taken place.

Disposition: The United States Court of Appeals for the District of Columbia Circuit affirmed the judgment of the District Court who ruled the appellee board of education's implementation of a reduction in force did not violate the Contract Clause or the Due Process Clause of the appellant teachers.

1998

Citation: *Vicenzino v. Bedminster Tp. Bd. of Educ.*, 711 A.2d 904 (N.J.Super.App., 1998).

Key Facts: Ms. Marilyn Vicenzino, respondent, was employed as a part-time social worker for the Bedminster Board of Education, appellant. At the time of her termination, she had acquired tenure in her position and served on the district's child study team (CST) where she

took part in making preliminary decisions as to whether a full evaluation was necessary involving children who had been identified as possibly educationally handicapped. The respondent carried out other duties as a social worker and was responsible for managing the cases of 14 students. In March 1996, the appellant Board came to the conclusion that it could save a considerable amount of money if it eliminated the respondent's position and contracted her duties out with the Hunterdon County Educational Services Commission (ESC) to provide social work for its students. They also decided to reassign the respondent's CST duties to the director. All in all, it was estimated that this decision would save the appellant Board around \$15,000. At its meeting on March 21, 1996, the appellant Board voted to do away with the respondent's position and notified her of her termination. She followed up by filing an appeal with the commissioner of education who then referred the issue to the Office of Administration Law. The Administrative Law Judge ruled in the respondent's favor finding that when a school district decides to have its own CST, the learning disability teacher consultant, the school psychologist, and the social worker must all be employees of the school district and cannot be filled by outside contractors. The Commissioner and the State Board of Education confirmed this decision and the Board followed with their appeal.

Issue: At issue is whether the Board could legally eliminate one position of the CST and contract with an outside source to provide those services while maintaining the other CST positions.

Holding: The Superior Court of New Jersey, Appellate Division, held that where a school district has put together a child study team made up of employees from their district they may not eliminate one of those positions and contract out for those services.

Reasons: The Superior Court of New Jersey, Appellate Division, determined that under *N. J. S. A. 18A: 46-13*, a Board of Education is required to provide suitable facilities and programs to meet the needs of all handicapped children as well as provide a child study team that is made up of a school psychologist, a learning disability consultant, and a school social worker. The regulations making up this statute require the members of the child study team to come from within the district. In a similar case, *Impey, supra*, 142 N.J. at 395, 662 A.2d 960, the position of a speech correctionist was abolished under the same statute for economic reasons and the services were contracted out. However, it was determined that the speech correctionist's position did not fall under the child study team referred to in the statute discussed here. In this case, if the Board had chosen to do away with the CST for economic reasons and joined with another Board of Education or State agency to provide services, this decision would have aligned with the state statute and would have been acceptable. As long as the appellant Board in this case chooses to retain its own CST, all the employees must come from within the system to meet the requirements of the statute.

Disposition: The Superior Court of New Jersey, Appellate Division, affirmed the decision requiring the appellant board of education to reinstate respondent employee to her school social worker position.

Citation: *Westport School Committee v. Coelho*, 692 N.E.2d 540 (Mass.App., 1998).

Key Facts: Mr. Marcel Marchand and Mr. Anthony Coelho, defendants, were both tenured teachers in the Westport School System who received written notices that their teaching positions had been terminated for the 1993-1994 school year. On June 22, 1993, the decision was made final to terminate the defendants' from their employment. The defendants requested that arbitration hearings begin in reference to Mass. Gen. Laws ch. 71, §42, as amended by 1993

Mass. Stat. ch. 71, §44, regarding their layoffs by the school superintendent. On October 3, 1994, the Westport School Committee, plaintiff, submitted a protest in the Superior Court against the defendants and the commissioner seeking a decision that the defendants would not be allowed to proceed with arbitration under the Act because they had earlier requested arbitration under the collective bargaining agreement that had already been held and ruled in support of the committee. The plaintiff committee also requested a temporary restraining order to prevent the commissioner from going forward with arbitration under the Act.

Issue: At issue is whether the defendant teachers were permitted to proceed with arbitration pertaining to the state statute.

Holding: The Appeals Court of Massachusetts held that the arbitration measures in the Act only applied to performance-based layoffs and the employees were laid off due to budgetary restraints that were a result of a declining student enrollment.

Reasons: The Appeals Court of Massachusetts determined that it was clear that the defendants in this case were laid off as a result of budgetary reasons that came about from a decline in the student enrollment. The Act makes a clear distinction between layoffs based upon performance and layoffs based upon budget.

Disposition: The Appeals Court of Massachusetts ruled that the defendant teachers were not entitled under the Education Reform Act of 1993 to an arbitration hearing in reference to their layoffs by plaintiff school superintendent and school committee.

Citation: *Wood County Bd. of Educ. v. Smith*, 502 S.E.2d 214 (W.Va., 1998).

Key Facts: Ms. Peggy L. Smith, Ms. Pamela Reynolds, Ms. Ormal Jean Taylor, Mr. Woodrow Mace, Mr. Harold Cunningham, Mr. Gary Sutphin, Mr. Jerry Balderson, Mr. Carl Allen, Mr. William Wright, Mr. Michael McElwee, and Mr. Brian Shockey, appellants, were all

employed as “extracurricular” bus drivers for the Wood County Board of Education, appellee. The appellee Board was mandated to provide full-day kindergarten programs, as opposed to half-day programs, at the beginning of the 1996-1997 school year. As a result, 19 extracurricular bus drivers who drove for the half-day programs were eliminated from their positions. In accordance with a letter from the State Superintendent dated August 26, 1996, the appellee Board chose to replace less senior extracurricular positions that had not been eliminated with employees who held more seniority whose positions had been eliminated. The less senior employees, appellants, filed a grievance over the loss of their positions, which was upheld by the Administrative Law Judge, ALJ, on October 31, 1996, barring the appellee Board from eliminating their extracurricular positions. It was determined by the ALJ that W.Va. Code §18A-4-8(b) did not pertain to the extracurricular bus driver positions. In response, the appellee Board appealed the AJL’s decision to the circuit court, which reversed the decision, which resulted in the final appeal.

Issue: At issue is whether the decision to eliminate extracurricular bus driver positions fell under a reduction in force.

Holding: The Supreme Court of Appeals of West Virginia held that the State Superintendent’s interpretation of the statute was that a reduction in force did take place and the employees who lost their positions could use their seniority to replace less senior employees of extracurricular positions that had not been eliminated.

Reasons: The Supreme Court of Appeals of West Virginia determined that if a board of education makes the decision to reduce the amount of positions for service personnel, it must follow the reduction-in-force procedures outlined in §18A-4-8b. The appellants in this case argued that this statute did not apply to the elimination of extracurricular personnel positions but

fell more in line to that of a transfer. This argument is without value in that it is believed that the statute applies to demotions, assignments, promotions, suspensions, and dismissals. It was clearly determined in *Berry v. Kanawha County Bd. of Educ.*, 191 W. Va. 422, 424, 446 S.E.2d 510, 512 (1994) that a reduction in force can take place when job positions are eliminated and if a board of education decides to reduce the number of job positions for service personnel, it must follow the reduction-in-force procedures outlined in §18A-4-8b. The Supreme Court of Appeals of West Virginia also determined that the ALJ erred in overruling the position of the State Superintendent when it ruled that reduction in force had occurred when half-day kindergarten bus route positions were eliminated.

Disposition: The Supreme Court of Appeals of West Virginia affirmed the ruling of the circuit court that had ruled in favor of the appellee board of education over appellant bus drivers who had filed a grievance over the loss of their extracurricular bus driver positions.

1999

Citation: *Carpenito v. Board of Educ. of Borough of Rumson, Monmouth County*, 731 A.2d 538 (N.J.Super.App., 1999).

Key Facts: Mr. Edward Carpenito, respondent, was a tenured teacher who was employed by the Rumson Board of Education, appellant, since January 22, 1974. The respondent held certification in the areas of English, social studies, and science for Grades -12 with an endorsement that also qualified him to hold the position of principal. The respondent taught science and computers for sixth through eighth grades during the 1981-1986 school years, seventh grade social studies during the 1987-1993 school years, English during the 1989-1990 school year, and health during the 1992-1993 school year. Due to a declining enrollment, the

respondent's seventh grade social studies position was abolished before the beginning of the 1993-1994 school year and he was assigned a full-time teaching position to teach computer, health, and basic skills courses to seventh and eighth grade students. During the 1994-1996 school years, the respondent was given the responsibility of teaching computer and basic skills courses to Grades 4 through 8. At no time did the respondent ever go through a loss of salary or reduction in benefits from the transfer. In April 1995, the appellant Board posted an opening for a seventh grade social studies position, the same one that had been abolished years earlier. The respondent applied for this position but it was given to a non-tenured teacher from outside the district. On August 14, 1995, the respondent filed a petition with the Commissioner of Education on the grounds that his tenure and seniority rights had been violated when he was not reassigned his former position. The appellant Board contended that according to N.J.S.A. 18A: 25-1 it held the authority to transfer staff between and among appropriate teaching assignments as long as the teaching assignment was consistent with the staff member's certification and endorsements. The Commissioner determined that since the respondent's employment had not been terminated, that he was transferred to a position he was properly qualified for, and that he had never suffered any type of loss in reference to salary and benefits, a reduction in force never took place that would have put into place tenure and seniority regulations. The respondent followed this ruling by filing an appeal with the State Board of Education whose Legal Committee originally disagreed with the Commissioner's decision regarding whether a reduction in force had taken place but made the decision to dismiss the petition. The Committee later issued a revised statement making the recommendation that the Commissioner's decision be reversed feeling as though the appellant Board did not have the right to put a teacher with less seniority than the respondent, in the position that at one time was his. The appellant Board was directed to reinstate the respondent to

the newly created seventh grade social studies position. The appellant Board, along with the New Jersey School Boards Association (NJSBA), filed an appeal on the grounds that this ruling was in error since a reduction in force had never taken place.

Issue: At issue is whether the transfer of the respondent teacher from one position to another was part of a reduction in force.

Holding: The Superior Court of New Jersey, Appellate Division, held that the appellant school district could transfer a teacher at any time to any position they were properly certified to hold.

Reasons: The Superior Court of New Jersey, Appellate Division, determined that the respondent's seniority rights were not relevant when the appellant school board transferred him from a position that was being abolished to another position he was adequately certified to teach. The tenured respondent teacher was never dismissed by the appellant but simply transferred to another position without any loss of salary or employee benefits. The respondent had no seniority rights to his former teaching position when it was re-created and the State Board of Education was wrong in their determination. In fact, the appellant Board held the authority to reassign the respondent teacher to any position he was qualified to teach at any time they felt the need to do so. According to *N.J.S.A. 18A:28-9*, a reduction in the number of teachers being employed must take place before a reduction in force takes place. Because the respondent in this case was transferred and not terminated, there was no loss of teaching positions.

Disposition: The Superior Court of New Jersey, Appellate Division, reversed the decision of the State Board of Education ruling that the appellant board of education did not violate respondent's seniority rights because his rights were not affected in any way when he was transferred to another position within his certification without any loss of pay or benefits.

2001

Citation: *Moe v. Independent School Dist. No. 696, Ely, Minn.*, 623 N.W.2d 899 (Minn.App., 2001).

Key Facts: Ms. Tamia Moe, relator, was a continuing contract art teacher who taught both elementary and secondary classes in the Independent School District No. 696, in Ely Minnesota, respondent. At the time the relator was placed on a 15% unrequested leave of absence, she was ranked 38 out of 40 on the teachers seniority list and had a seniority date that began on July 5, 1994. As a result of a decline in student enrollment and loss of budget, the respondent school system did away with a 40-minute segment of an elementary art class for the 2000-2001 school year and proposed placing the relator on an unrequested leave of absence that equaled about 65 minutes a day. The relator responded to this proposal by requesting a hearing before an independent hearing officer to address her seniority rights in accordance with Minn. Stat. §122A. 40, subd. 11 (2000). Following the hearing it was determined by the respondent that the relator's teaching schedule was not one that would allow her to bump supervisory positions held by two teachers with less seniority without significantly compromising the educational needs of the students in the district. The relator felt as though she had the statutory right to bump less senior teachers from supervisory positions in lunch and study hall and by doing so those teachers would be appropriately placed on unrequested leaves of absence and not her. The hearing officer found that the relator's schedule did not match with the supervisory periods of the less senior teachers and by allowing the relator to bump one of them from their position would actually mean that students would be unattended for several minutes each day. The hearing officer concluded that all scheduling must be done in a manner to serve the students best and that could not be overlooked to further an employee's seniority rights.

Issue: At issue is whether the respondent school district placed the relator teacher on an unrequested leave of absence based on an erroneous theory of law.

Holding: The Court of Appeals of Minnesota held that the respondent school district did not come to its conclusion on a flawed theory of law when it determined that the teacher was allowed to bump into an existing secondary supervisory position held by a teacher with less seniority as long as the bump did not require a change in scheduling that was contrary to what was best for the students in the district.

Reasons: The Court of Appeals of Minnesota determined that the relator teacher's contract did not include a negotiated unrequested leave condition making their action governed by state statute. Although it was agreed upon by the respondent school district that the relator did have the right to bump teachers with less seniority from supervisory positions, her teaching schedule would not allow her to do this without leaving students unsupervised for several minutes. Because this would not be in the best interests of the students, no position existed to which the relator could bump. Minn. Stat. §122A.40, subd. 11 provide a board of education the ability to place teachers on unrequested leave of absence in response to a declining enrollment and budget. Because the respondent school district adequately assessed the bumping rights of the relator teacher before placing her on an unrequested leave of absence, there was nothing done that was in error of law.

Disposition: The Court of Appeals of Minnesota affirmed the decision of the respondent school district to place relator teacher on an unrequested leave of absence.

Citation: *State ex rel. Quiring v. Board of Educ. of Independent School Dist. No. 173, Mountain Lake, Minn.*, 623 N.W.2d 634 (Minn.App., 2001).

Key Facts: Ms. Ellyn Quiring, relator, became employed as a teacher in 1970 by the Independent School District No. 173, Mountain Lake, Minnesota, respondent. The relator became a lead teacher in the 1991-1992 school year and later became an elementary principal in 1997 and remained so until 1999-2000 when at which time the district's administrative staff consisted of a full-time elementary principal, a part-time secondary principal, a part-time superintendent, and a full-time community education director. The relator principal held continuing contract rights under Minn. Stat. §122A.40, subd. 7 (2000). Mr. William Strom, who served as the part-time superintendent and the part-time secondary principal, held no continuing contract rights. After the respondent Board realized that there was going to be a declining enrollment for the 2000-2001 school year coupled with a budgetary deficit of almost \$676,000, they decided to eliminate the community education director position and all principal positions. As a result, Mr. Strom became the full-time superintendent, which included many of the administrative responsibilities previously carried out by the community education director and the relator. The school nurse, teachers, a contracted special education director, and an administrative assistant to the superintendent carried out other duties and responsibilities that had previously been performed by the relator. On May 31, 2000, the respondent Board submitted a proposal to place the relator on an unrequested leave of absence because her elementary principal position had been eliminated. Because she was employed as a continuing contract teacher, the relator was offered a full-time teaching position for the upcoming 2000-2001 school year. The relator followed this ruling with a request for a hearing that took place in front of an independent hearing officer on June 30, 2000. The hearing officer followed the respondent Board's recommendation to place the relator principal on an unrequested leave of absence, who then petitioned the Court of Appeals for a writ of certiorari.

Issue: At issue is whether the respondent school district properly did away with the relator principal's position.

Holding: The Court of Appeals of Minnesota held that the respondent School District followed the statutory requirements when they reinstated the relator principal as a full-time elementary teacher.

Reasons: The Court of Appeals of Minnesota determined that in reference to the statute in question by the relator, a school board has the authority to place a teacher on an unrequested leave of absence for reasons of discontinuance of a position, decline in student enrollment, financial hardship, or the merger of classes due to district consolidations. When such a decision is made, the teacher whose services were eliminated is to receive first consideration for other positions in the district that they are qualified for. In addition, teachers who have continuing contract rights who are placed on unrequested leave are to be reinstated to positions they are qualified for in inverse order of placement if the position from which they were removed is not available. The respondent school Board followed all statutory requirements when it placed the relator principal on unrequested leave. She was never reinstated to the position of principal because there was not a principal position available for her to fill. Because there was no principal position, the relators continuing contract rights were honored when she was reassigned to the full-time elementary teaching position. Based on the respondent's financial situation and decline in enrollment, the decision that was made to do away with the relator principal's position, place her on an unrequested leave of absence, and relocate her to a full-time teaching position, revealed that no decision was unreasonable or arbitrary and nothing was based on an erroneous theory of law.

Disposition: The Court of Appeals of Minnesota affirmed the respondent school district's decision to place relator school principal on an unrequested leave of absence and into a full-time elementary teaching position.

2002

Citation: *Savre v. Independent School Dist. No. 283*, 642 N.W.2d 467 (Minn.App., 2002).

Key Facts: Ms. Lori Savre, relator, was contracted as a probationary teacher by the Independent School District No. 283, St. Louis Park, Minnesota, respondent, for a period of 3 school years. Facing substantial budget cuts for the 2001-2002 school year, the respondent school district made the decision to not renew numerous probationary teacher contracts including that of the relator. In accordance with Minn. Stat. §122A.40, subd. 5 (2000), the respondent served the relator with a timely notice regarding its decision not to renew her contract at the end of the 2000-2001 school year. In response, the relator appealed the decision by writ of certiorari feeling as though the respondent failed to follow the statute substantially when it did not provide her with three written evaluations each year of her employment. In fact they failed to provide her with any written evaluations at all. The respondent school district claimed that this stipulation in the statute was directory and not mandatory and did not take away from its discretion in eliminating the relator's contract.

Issue: At issue is whether the school district's failure to abide by the evaluation provisions of the statute affected its authority in terminating the relator's teaching contract.

Holding: The Court of Appeals of Minnesota held that the school district's failure to comply with all the evaluation terms of the statute had no affect on its ability to not renew the

teaching contract of the relator for budgetary reasons since they otherwise, to a large extent, complied with pertinent statutory provisions.

Reasons: The Court of Appeals of Minnesota determined that as long as the school district substantially complied with the provisions of Minn. Stat. §122A.40, subd. 5 (2000), the court would not interfere in any way with the school district's decision not to renew the contract of a probationary teacher. Although the respondent school district failed to evaluate the relator teacher the appropriate number of times, because its termination was based on budgetary reasons, they met the criteria of substantially complying with the provisions of the statute.

Disposition: The Court of Appeals of Minnesota affirmed the respondent school district's decision not to renew the teaching contract of relator probationary teacher.

Citation: *Willie v. Board of Trustees*, 59 P.3d 302 (Idaho, 2002).

Key Facts: Mr. Tim Willie, appellant, was hired by the Oneida School District, respondent, to supervise a newly created Alternative School Program and coach football for the 1996-1997 school year. The appellant was certified in the areas of Business Education, Vocational Business Education, Marketing Education, Vocational Marketing, Social Studies, as well as qualified to serve as a Work-Based Learning coordinator. After the initial year, the appellant's contract was renewed by the respondent for the 1997-1998, and 1998-1999 school year, and was agreed upon by both parties to be subject to the state laws of Idaho. Under state law, the contract was subject to a reduction-in-force policy that had been adopted by the respondent Board in the early 1980s. If it was necessary to reduce the staff, the first step would be to look at accomplishing this through attrition, followed by seniority. On February 24, 1999, the respondent Board chose to eliminate the Alternative School Program in favor of hiring an additional science teacher. This came as a result of parents complaining that their children were

not being prepared appropriately in this area to attend college. It was unanimously decided not to renew the contract of the appellant for a fourth year since he was neither certified nor qualified to teach science. No decision was made at that time regarding his coaching responsibilities. A letter dated March 1, 1999, notified the appellant, that the Alternative School Program was being closed and his contract was being non-renewed. The letter stated the decision was made based on a change in curriculum and had nothing to do with performance. At a requested review by the appellant, the respondent Board affirmed its previous decision to non-renew the appellant's contract and also informed him, in another letter dated June 23, 1999, that this non-renewal also included his position as head football coach. On June 21, 1999, the appellant filed a complaint seeking a temporary restraining order, a preliminary injunction, and damages that he later amended twice. On January 22, 2001, the district court granted summary judgment for the school district, which was appealed by the appellant teacher.

Issue: At issue is whether the Board breached the teacher's contract when they non-renewed it based on a curriculum change.

Holding: The Supreme Court of Idaho held that there was no issue of material fact regarding the appellant teacher's breach of contract claim, because there was no reduction in force, just one teacher replacing another.

Reason: The Supreme Court of Idaho determined that the facts in this case revealed that no reduction in force took place because there was no loss in the number of staff when the Alternative School Program was eliminated, just one teacher replacing another. Therefore the reduction-in-force policy did not apply and had no influence on the respondent Board's decision to non-renew the contract of the respondent teacher. As a result, the contract of the appellant teacher was in no way breached.

Disposition: The Supreme Court of Idaho affirmed the decision of the district court when it awarded summary judgment to the school district.

Citation: *Wolfe v. Lawrence Cty. Joint Vocational School Dist. Bd. of Edn.*, 779 N.E.2d 780 (Ohio.App.4.Dist.Lawrence.Co., 2002).

Key Facts: In September 2001, the treasurer of the Lawrence County Joint Vocational School, appellant, notified the superintendent, Mr. Perry Walls, and a representative from the Ohio Department of Education that there was going to be a significant decrease in the number of students attending the district for the 2001-2002 school year. It was determined that there was going to be an approximate decline of 55 students, approximately 14%, which would result in a loss of revenue of approximately \$331,000. At a special meeting held by the Board, Mr. Walls was instructed to determine where the reduction would take place and to notify personnel accordingly. In November 2001, the appellant Board accepted Mr. Wall's recommendation and voted to do away with several programs while combining others. As a result of these recommendations, eight teachers were displaced and had their contracts suspended. Ms. Janice Wolfe, appellee, filed a complaint in the Lawrence County Court of Common Pleas requesting that an injunction be placed on the appellant to prevent them from terminating her contract. The Teacher Association followed by filing a complaint on behalf of the other seven teachers whose contracts had been terminated, seeking an order from the court that would prevent the reduction in force from taking place. After both complaints were combined, the trial court ruled in favor of five teachers but denied the request of the other three. It came to this conclusion on the grounds that any eliminated program would have had to suffer a decline in its student enrollment or funding for the termination of an employee to be appropriate.

Issue: At issue is whether the appellant Board could terminate the contract of employees in specific programs if those programs did not specifically have a loss in enrollment or funding.

Holding: The Court of Appeals of Ohio, Fourth Appellate District, Lawrence County, held that the Board acted appropriately in suspending the contracts of the appellee teachers.

Reasons: The Court of Appeals of Ohio, Fourth Appellate District, Lawrence County determined that the appellant Board in accordance with Ohio Rev. Code Ann. §3319.17, followed the collective bargaining agreement in that it could do away with teacher positions based on a decline in student enrollment. A decline in student enrollment had been clearly established in *Phillips v. South Range Local School District Bd. of Educ.* (1989), 45 Ohio St.3d 66, 543 N.E.2d 492 as a legitimate reason for a Board to terminate contracts of employees. Nothing in the collective bargaining agreement indicated in any manner that the reduction had to take place in specific programs that had suffered a decline in enrollment and that the Board had broad discretion to determine what constituted a reasonable reduction.

Disposition: The Court of Appeals of Ohio, Fourth Appellate District, Lawrence County, reversed the ruling of the Court of Common Pleas and remanded with specific instructions to enter judgment in favor of the appellant board of education over appellee teacher.

Citation: *Zalac v. Governing Bd. of Ferndale Unified School Dist.*, 120 Cal.Rptr.2d.616 (Cal.App.1.Dist., 2002).

Key Facts: Ms. Mary Jo Zalac, appellant, was a certified kindergarten teacher who was employed by the Ferndale Unified School District, respondent, for the 1997-1998 school year. Her employment contract specified that she was hired as a temporary employee in a Categorically Funded Program under the guidelines of Education Code Section 44909. For the next 2 school years, 1998-1999 and 1999-2000, the appellant signed identical contracts to that of

her first year. During this timeframe, the appellant taught one of the two kindergarten classes offered at the school. On March 2, 2000, she was provided with two notices from the respondent school district that revealed she would not be reemployed as a temporary employee and that her teaching services would no longer be needed because one full-time kindergarten class position was being eliminated. In reference to the Education Code, the appellant requested a hearing to determine if there was proper cause for the termination of her position. The Board felt as though it was necessary to do away with certain services within the system and as a result it needed to reduce the number of certificated employees. It was clarified that no permanent or probationary employee who held less seniority than the appellant would be retained to hold a position that she was allowed to hold based on her certification and other qualifications. The appellant followed this decision by requesting a hearing before an administrative law judge, who gave his decision that was adopted by the respondent Board on May 11, 2000.

Issue: At issue is whether the school district followed the proper protocol in letting the appellant go from her position as a temporary employee.

Holding: The Court of Appeals of California, First Appellate District, Division Three, held that the appellant had been accurately classified as a temporary employee within the system and was not entitled to termination procedures specified within the statute pertaining to permanent employees.

Reasons: The Court of Appeals of California, First Appellate District, Division Three, determined that the appellant teacher was hired under a categorically funded program making her a temporary employee. As a temporary employee, opposed to a permanent employee, the respondent school district could refuse to rehire her for her position and this was the decision they made. Although the appellant teacher was categorized as a temporary employee in the

system based on her contract, she was at liberty to challenge her classification, which she did in a timely manner, and the district provided her with the proper notice that she would be terminated from her position for the following school year. A key point to remember here is that the categorical program that the appellant was employed under was not state mandated but was an optional program for schools to apply to participate in. The funds received for this program were received through an application process, not to be part of the base revenue for the school, but to be used for a specific purpose defined by the program. The Legislative Analyst's Office 1993 made it very clear in its report that this program was among their list of categorical programs.

Disposition: The Court of Appeal of California, First Appellate District, Division Three, denied the appellant's petition for a writ of mandate in which she sought to compel the school district not to terminate her kindergarten teacher position.

2003

Citation: *Chilson v. Kimball School Dist. No. 7-2*, N.W.2d 667 (S.D., 2003).

Key Facts: Mr. Mark Chilson, appellant, was employed by the Kimball School District, appellee, as an elementary physical education instructor and middle school teacher for 12 years. During that time, the appellant taught numerous classes, coached a variety of different sports, and served as the school's athletic director. On April 10, 2000, the appellant received in writing a notice that his employment contract would not be renewed for the following year based on a reduction in force. Before the appellant received his written notice, he and other teachers had received some information from the school's business manager, Ms. Eileen Kroupa, appellee, that the school was facing a \$239,000 shortfall for the upcoming school year and that a reduction in force would probably be necessary. After the appellant received his written notice, he filed a

complaint that the school's reduction-in-force policy had been implemented improperly when a non-tenured teacher with less seniority was not removed from their employment before him. The appellant's complaint was heard and denied by the appellee school board on June 13, 2000, and no appeal was filed. However, the appellant did request updated financial records from the school that he received later that summer. The records indicated that the school district did not have a budget decrease but, in fact, ended up with a surplus for the year. The appellant and his wife later filed suit in November claiming deceit, negligent falsification, and failure to re-hire. The appellant later dismissed the claims of deceit and falsification because he failed to follow the 180-day notice that was part of SDCL 3-21-2. The appellee school district moved for summary judgment in regard to their reduction-in-force decision in that the appellant failed to follow the applicable statutes in a timely manner. The circuit court decided in favor of the appellee school district on grounds that the appellant's action was untimely and therefore had to be dismissed. The appellant followed this decision by filing an appeal.

Issue: At issue is whether the school district followed its reduction-in-force policy appropriately.

Holding: The Supreme Court of South Dakota held that the appellant's challenge to the reduction in force did not follow the proper steps outlined in S.D. Codified Laws §3-18-15.2.

Reasons: The Supreme Court of South Dakota determined that the appellant teacher never filed any type of grievance against the appellee school district when it was realized that the expected budgetary shortfall that served as the reason for the reduction in force never took place. The only grievance that was ever presented by the appellant teacher was denied and never appealed. If the appellant was going to challenge the reduction-in-force decision made by the school district, he is required to follow the requisite statutes. In addition, the appellant's contract

specified that in order for a grievance to be filed, it should first be done with the school principal, followed by the superintendent and then the school board. Only then may a grievance be considered. The circuit court correctly ruled that any challenge to the implementation of the reduction in force must follow the specified procedures set forth in SDCL 3-18-15.2 or SDCL 13-46-1.

Disposition: The Supreme Court of South Dakota affirmed the judgment of the trial court that ruled the appellant teacher failed to follow proper procedures in his lawsuit toward appellee school district for non-renewal of his teaching contract.

Citation: *Howard v. West Baton Rouge Parish School Bd.*, 843 So.2d 511 (La.App.1.Cir., 2003).

Key Facts: Mr. James Howard, respondent, was a tenured vocational teacher in the area of auto mechanics for the West Baton Rouge Parish School Board, defendant. The respondent was placed on paid suspension in October 1996 after he reported a gun had been stolen from his car that was parked outside his classroom. In February 1997, the defendant school board gave the respondent teacher a written notice that he was being charged with willful neglect of duty regarding the loss of a firearm on school property. Following a teacher tenure hearing in March 1997, the decision was made to terminate him from his position. The respondent appealed this decision to the district court and to the court of appeals, both of which ruled in favor of the school board. However, on June 29, 2001, the Supreme Court reversed the decision and ordered the Board to reinstate the teacher to his position with all lost salary and damages. In August 1997, the auto mechanics department was eliminated from the curriculum in the defendant school system. This was the only area in which the respondent was certified to teach. On October 18, 2001, Ms. Beverly Triche, superintendent, notified the respondent in writing that the course

he was teaching at the time of his separation from the school system had been eliminated at the end of the 1996-1997 school year and his employment had been terminated based on the defendant Board's reduction-in-force policy. At this time he was also given notice that he could request a review of these results within the next 15 days. On October 29, 2001, the respondent filed a motion to enforce the ruling of the Supreme Court but never requested a review of the reduction in force. The trial court ordered the defendant school Board to reinstate the respondent to his former position with all back pay and benefits from the time he received his last regular payment. The defendant school Board appealed this decision on the grounds that the trial court made a mistake when it ordered the respondent to be reinstated to his position because the position had been eliminated through a reduction in force.

Issue: At issue is whether the respondent employee should be awarded back pay and benefits for a position that was eliminated through a reduction in force after the employee had been terminated and reinstated.

Holding: The Court of Appeal of Louisiana, First Circuit, held that the remedial measures that were put in place after the termination of the employee were properly considered.

Reasons: The Court of Appeal of Louisiana, First Circuit, determined that the respondent's claim that the school district was not allowed to terminate his position through a reduction in force until after he had been reinstated from his earlier dismissal was inaccurate. The choice to eliminate the position was not done in an effort to avoid making back payment but was done as an exercise in discretion. When the Supreme Court reinstated the respondent's position, it was done so without the Court knowing that the position had been eliminated through a reduction in force. Because the respondent failed to ever request a review of the discontinuance of his former position through a reduction in force, the court is not at liberty to even address

whether or not the action taken from the school board had a coherent basis. The decision that was made by the defendant school Board to eliminate the auto mechanics course was not done for any despicable reason, or in bad faith. Having made this decision at a time that no one was teaching the course was a decision that made logical sense.

Disposition: The Court of Appeals of Louisiana, First Circuit, amended the judgment that ordered the defendant school board to reinstate and provide back pay to plaintiff employee after his termination.

Citation: *Lyons v. School Committee of Dedham*, 779 N.E.2d 1004 (Mass.App., 2003).

Key Facts: Ms. Anne Lyons and Ms. Pauline Turner, plaintiffs, were both employed as teachers under the “Chapter I” program in the Dedham Public School system, defendant. The Chapter I program was a federally funded program that was put into place to help provide additional instruction in the areas of reading and math to underachieving elementary and middle school students. In order to qualify for this program, a teacher must have a bachelor’s degree in education, a teacher certification from the Massachusetts Department of Education, an additional certification in reading, and a minimum of 2 years teaching experience. Although there were breaks in the employment periods of the plaintiffs, both had acquired the qualifications to be a teacher within the Chapter I program. As a result of budget cuts, Ms. Turner was laid off in 1994 and Ms. Lyons was laid off in 1995. After plaintiff Turner was notified of her termination, she informed the defendant’s superintendent that she held “professional teacher status” and that her intentions in accordance with Mass. Gen. Laws. 71, §42, seventh par., was to bump an elementary teacher who did not. The superintendent would not recognize her as having this status and she filed a grievance with the Superior Court that her statutory bumping rights had been violated. The court dismissed the grievance in 1994 on grounds that it fell under arbitration.

After this decision was appealed, the Appeals Court ordered the case to be remanded to arbitration. Plaintiff Lyons, after receiving her layoff notification, followed the same route as plaintiff Turner. Although they had separate arbitration hearings, it was agreed upon by both parties that the arbitrator would issue a joint decision and did so in July 1998. The arbitrators came to the conclusion that the plaintiffs were not actually teachers within Mass. Gen. Laws. 71, §§41 and 42 and, as a result, did not have a professional teacher status or the right held there within. The plaintiffs followed this decision with a complaint to the Superior Court to “vacate” the arbitrators’ award. The judge ruled in favor of the plaintiffs on the grounds that the arbitrators ruling violated public policy and remanded the case to the original arbitrators to find an appropriate remedy.

Issue: At issue is whether the defendant school district was required to treat plaintiff teachers under a professional teacher status.

Holding: The Supreme Judicial Court of Massachusetts held that the trial judge’s decision to vacate the arbitration award was erroneous. If the arbitrators made a mistake and misapplied the law, an error of law did not constitute a violation of public policy.

Reasons: The Supreme Judicial Court of Massachusetts determined that the Superior Court judge’s finding that the arbitration award was a violation of public policy was unmistakably incorrect. The reason for the judge’s determination was that the arbitrators’ award ignored the law that was stated in *Brophy v. School Comm. of Worcester*, 6 Mass. App. Ct. 731, 383 N.E.2d 521 (1978). However, what was overlooked here was that a suspected error of law does not constitute a violation of public policy. The plaintiffs never challenged the underlying reason that their positions were terminated as a result of economic hardship. Rather, they contend that the defendants did away with their statutory rights provided under the professional teacher

status. In no way does an arbitrator's resolve of an individual's bumping rights have any affect on a superintendent's judgment to reduce the number of teachers. Prior to the passage of the Education Reform Act, it was considered, along with other factors, whether a teacher who was employed under a federally funded program was entitled to tenure within Mass. Gen. Laws. 71, §41. The passage of the Education Reform Act made several changes to the education statutes including replacing the term "tenure" with "professional teacher status." However, it did not change the term "teacher" as originally used in context. Because it was in the power of the arbitrators' to make the determination of whether the plaintiffs were teachers, it does not need to be determined whether or not they properly applied the laws to the facts in this case. For these reasons, there exists no reason for vacating the arbitration award that was given.

Disposition: The Supreme Judicial Court of Massachusetts ordered that the Superior Court's decision be vacated and that the judgment be entered confirming the arbitration award for the defendant school system and superintendent.

Citation: *Wilder v. Grant County School Dist. No. 0001*, 658 N.W.2d 923 (Neb., 2003).

Key Facts: Ms. Floydene Wilder, appellee, was a permanent certificated full-time teacher at Hyannis Elementary School, appellant, for a total of 16 years. Prior to her full-time employment, she worked for the appellant as a half-time employee for 3 years. During the 2000-2001 school year, the appellant provided educational services for 22 students through the employment of the appellee and 2 other full-time teachers. Each teacher held an elementary endorsement while the appellee held an additional endorsement as a library media specialist. Of the 3 teachers, the appellee held the least amount of service time in the district. On April 10, 2001, the appellee received written notification that the appellant school district was considering not renewing her contract for the upcoming school year based on a reduction in force in the

system and that she had the least amount of tenure among all the tenured employees. In a letter to the appellant dated April 12, 2001, the appellee requested a hearing to address the proposed reduction in force. A hearing was held on May 15, 2001, at which time information was presented showing that the student enrollment for the 2001-2002 school year would be reduced to 11 students. Mr. Lou Schoff, who was employed by the appellant school district to give administrative services, provided information regarding the upcoming school year's budget and testified that he had been asked by the district to come up with a recommendation regarding the implementation of a reduction in force. Having only service records of the employees to come up with his recommendation, Mr. Schoff recommended that the appellant's employment be terminated since she held the fewest years of service in the district. At the close of the hearing, the appellee school Board voted unanimously to end the appellant's contract based on a change in circumstances, a reduction in the number of students, and a reduction in the school's budget. The appellee appealed this decision to the district court, which reversed the decision of the school board on the premise that the decision violated Neb. Rev. Stat. §79-846 because the district's reduction-in-force policy held no "criteria" that would be used to determine the need for a reduction in force. The school district was ordered to reinstate the appellee's contract and the appellant school district appealed the decision.

Issue: At issue is whether the school system's reduction-in-force policy was appropriate pertaining to state statute guidelines.

Holding: The Supreme Court of Nebraska held that the reduction-in-force policy was not appropriate under the statute in that it did not identify any criteria by which a reduction in force decision would be made.

Reasons: The Supreme Court of Nebraska determined that the district court made its decision that the school district's reduction-in-force policy was arbitrary because the policy had no criteria as to how a decision involving a reduction in force could be implemented. Given the statutes and the facts, the Supreme Court of Nebraska affirmed. It is the duty of the court to discover the intent from the language within the statute. An attempt must be given to all parts of a statute and no word, clause, or sentence should be rejected as unnecessary or pointless. The reference made in §79-846 to employee evaluation as one criterion indicates that the Legislature wanted a reduction-in-force policy to contain criteria as to how a reduction-in-force decision would be enforced. Based on this, it is concluded that a school system's reduction-in-force policy that was adopted according to the previously mentioned statute, must contain criteria as to how a reduction-in-force decision will be made. In this case, the appellant's policy is void of any criteria as to how a reduction-in-force decision would be made. Although a school board has been granted a broad range of discretion in deciding what factors it can include in its reduction-in-force policy, no policy has been endorsed or will be endorsed that is absent of any factors to be considered. Accordingly, the appellant's policy in this case does not meet the requirements set forth in §79-846. Although the notification letter presented to the appellee did state that years of service would be considered when the appellant made its decision, a letter cannot serve as a substitute for an appropriate policy under the statute. In this case, it is very clear that the reduction-in-force policy that was developed by the appellant school district was flawed and showed no evidence sufficient with law to support their decision in terminating the appellee's contract.

Disposition: The Supreme Court of Nebraska affirmed the judgment of the district court that reversed the decision of the appellant school district when it terminated the contract of appellee teacher due to an apparent reduction in force.

2004

Citation: *Cook v. Board of Educ. of Eldorado Community Unit School Dist. No. 4*, 820 N.E.2d 481 (Ill.App.5.Dist., 2004).

Key Facts: Ms. Connie Cook, appellant, began working in August 1997 for the Eldorado Community Unit School District No. 4, appellee, as a teacher's aide and worked continuously through August 2001 when she suffered an on-the-job injury resulting in her having to go on medical leave. In February 2002, a letter informed her that her employment was going to be terminated as a result of her prolonged leave of absence. She filed a disability discrimination claim with the Equal Employment Opportunity Commission (EEOC) and the Illinois Department of Human Rights (IDHR) and entered into a settlement agreement on August 9, 2002. Part of the agreement was that she was offered a position as a library aid for the 2002-2003 school year and per her medical restrictions would be offered a position for the next 3 school years as long as she was not affected by a reduction in force. The contract did not specify what aide position would be provided but did require the appellant to give up her right to pursue discrimination charges that had been submitted earlier. In March 2003, the appellant was informed in writing that she would be laid off from her position of library aid as a result of reduction in force. The appellant, the least senior of the district's 3 library aides was laid off along with 10 teacher aides with the least amount of seniority. The appellant was placed on a seniority list for library aides but not the list for teacher aides. She was given credit for all her years of service, starting from her August

1997 start date through the year she was out on medical leave. Only 2 of the teacher aides that were laid off and were on the seniority list for that position held more seniority than the appellant. The appellant sent a letter to the Board requesting that the teacher's aide and library aide seniority list be combined because both positions fell within the same category. She also requested that her name be on both lists if they were not combined. This request was denied by the appellee. On May 23, 2003 the appellant filed a complaint seeking a writ of mandamus forcing the School Board to comply with the educational support personnel layoff statute, 105 ILCS 5/10-23.5, by combining the seniority lists for full-time aide positions or by placing her on a list for both positions she had held. The appellant also filed a claim alleging the School Board breached its settlement agreement by failing to give her the full benefit of her seniority. On June 30, 2003, the appellee Board filed a motion to dismiss both claims pursuant to the Code of Civil Procedures (735 ILCS 5/2-615, 2-619) and was granted their motion on September 3, 2003. The appellant followed by filing for appeal on September 16, 2003.

Issue: At issue is whether the School Board categorized the appellant aide's position correctly when determining her seniority.

Holding: The Appellate Court of Illinois, Fifth District, held that a genuine issue of material fact was raised as to how broad the board could be in defining the category of the position the appellant aid worked.

Reason: The Appellate Court of Illinois, Fifth District, determined cases that interpret teacher tenure law could be applicable to this case regarding similar provisions in the educational support personnel layoff statute despite the fact that the teacher tenure law fails to address "categories" of teaching positions. Because the statute regarding categories is unspoken, school boards do have broad discretion in making determinations as they see appropriate. However, the

appellant's petition and supporting documentation in this case does raise an issue of material fact as to how broad the School Board's definition of category of positions can be. The record contains evidence to support the argument that the two job titles have been treated as one category of position for all purposes other than layoff and recall. The collective bargaining agreement appeared to treat all full-time aides as one category of employee and only contained one classification on the salary schedule called "aides." There exists a strong similarity between the two types of aide positions and although there is no clear description of the two, the positions appear to require the same skill set. Although school boards are provided discretion in defining categories of positions, this does not allow them to categorize positions differently for layoff and recall purposes when compared to other situations. In regard to the school board breaching the appellant's contract, the language in the agreement that promised to assign the appellant to an aid position following the library aid assignment is not clear and should be resolved. Because the appellant raised a genuine issue regarding the obligation of her contract with the appellee, this claim should have never been dismissed.

Disposition: The Appellate Court of Illinois, Fifth District, reversed the decision of the trial court that dismissed the cause and remanded for further proceedings consistent with the decision.

Citation: *Davis v. School Dist. of City of Niagara Falls*, 722 N.Y.S.2d 180 (N.Y.App.Div.4.Dept., 2004).

Key Facts: Mr. Kendall Davis, appellant, was a drafting teacher in the School District of City of Niagara Falls, respondent. Due to economic hardship, the respondent school district eliminated the drafting program from its curriculum and thereby terminated the appellant from his teaching position. The appellant requested that he be transferred to another position in social

studies, business arts, or industrial arts. All of these positions were in a different tenure area and required a different certification. When his request was denied by the respondent school district, he sued them for age discrimination and unlawful retaliation.

Issue: At issue is whether the respondent school district was appropriate in denying the appellant teacher the opportunity to transfer to another position when his was eliminated.

Holding: The Supreme Court of New York, Appellate Division, Fourth Department, held that the summary judgment granted to the respondent school district was appropriate based on the appellant's request to transfer to a position not similar to his former position in accordance with N.Y. Educ. Law §2510 (3)(a). The positions were in different tenure areas and required different certifications.

Reasons: The Supreme Court of New York, Appellate Division, Fourth Department, determined that the school district established valid and nondiscriminatory reasons, in making their employment decision to do away with its drafting class and not transferring the teacher to another position. It was clearly established that the appellant teacher was eliminated from his position when the drafting class was eliminated from the school system's curriculum for economic reasons. The appellant's request to be transferred to another position was properly denied since the other position was not comparable to his previous position in that it was in a different tenure area and required a different certification that the appellant did not hold.

Disposition: The Supreme Court of New York, Appellate Division, Fourth Department, affirmed the summary judgment in favor of the respondent school district's termination of appellant teacher.

Citation: *Hinckley v. School Bd. Of Independent School Dist. No. 2167*, 678 N.W.2d 485 (Minn.App., 2004).

Key Facts: Ms. JoAnne Hinckley, relator, was hired by the Independent School District No. 2167, respondent, to serve as an elementary principal for the 1998 school year. In addition, she held the certification to teach elementary Grades 1-6, and moderate-to-severe mentally handicapped Grades K-12, along with a license to serve as director of special education. The following school year the respondent hired Mr. David Fjeldheim as a high school principal and Mr. Eric Von Broering as a middle school principal. Both of these principals held the appropriate license for Grades K-12. During the 2002-2003 school term the respondent school district closed both its elementary and middle schools and opened a new school to house all students in Grades K-12. At this time, Mr. Fjeldheim served as the principal for Grades 7-12, Mr. Von Broering for Grades K-6, and the relator served as principal on special assignment while also supervising special programs, different title programs, entitlement programs, and special education. Due to budgetary restraints, the respondent school district made the decision to reduce its administrative staff by one employee for the 2003-2004 school year. Mr. Fjeldheim was appointed to K-12 principal and Mr. Von Broering was appointed to assistant to the superintendent/principal. As a result, the relator's position was eliminated and she was placed on an unrequested leave of absence to go in effect on June 30, 2003. The relator requested a hearing regarding this decision in accordance with Minn. Stat. §122A.40, subd. 9 (2002) where it was determined that her license as an elementary principal did not give her the authority to serve as the K-12 principal nor was the school district required to realign any of its jobs to create a position for which she was properly certified.

Issue(s): At issue is whether the school district failed in determining whether the relator was properly certified to oversee a K-12 program and did they fail in refusing to realign positions to protect her seniority rights.

Holding: The Court of Appeals of Minnesota held that to allow the relator principal to serve as the K-12 principal or assistant principal would have been a direct violation regarding the language of §123B.147 and a realignment of positions would not have required the school board to change duties of a position to accommodate the licensure of a more senior teacher.

Reasons: The Court of Appeals of Minnesota determined that it must look at the language of the statute in question and determine whether it is clear or unclear. A statute can only be unclear when the language is open to more than one interpretation. The relator principal felt as though the language in reference to Minn. Stat. §123B.147, subd.1 (2002), where a principal may serve in one building if the student population in that building is K-12, was interpreted wrongly when she was denied the position as principal. She also brought up the fact that when the language was added to the statute in 1991, there were only two types of principal licenses that existed, elementary and secondary. The language of §123B.147, subd.1 is clear in that one principal may supervise a K-12 program when it is located in one building but makes no exception to the rule that each principal must hold a license for the assigned position. The relator's proposed interpretation, which is based on legislative history, may not be substituted here because the legislature's intent is clear. The relator only holds an elementary principal license and not a secondary or K-12 license which she could have obtained. To allow the relator principal to supervise as the K-12 principal or assistant principal would go against the language of the statute and therefore shows the respondent school district did not interpret the law erroneously when making its decision. The relator cited *Strand v. Special Sch. Dist. No. 1*, 392 N.W.2d 881 (Minn. 1986) in her attempt to prove that the school district had a responsibility to reassign job duties so she could maintain an administrative position. However, this case is different in that the relator does not hold a valid license to serve as a K-12 principal or assistant

principal as was the ruling found in *Matter of Nelson*, 416 N.W.2d 848, 850-51 (Minn. App. 1987).

Disposition: The Court of Appeals of Minnesota affirmed the ruling of the respondent school board when it eliminated relator principal from her position and placed her on an unrequested leave of absence.

2005

Citation: *Mink v Great Oaks Institute of Technology and Career Dev. Bd. of Ed.*, 2005 – Ohio- 6821 (Ohio.App.1.Dist.Hamilton.Co., 2005).

Key Facts: Mr. Douglas Mink, appellant, was hired in February 2003 under a limited contract to teach for the Great Oaks Institute of Technology and Career Development District, appellee, for the remainder of the 2002-2003 school year. Great Oaks serves as a joint vocational school made up of four individual campuses that only teach 11th and 12th grade students in academic subjects, technical skills, and vocational skills. In addition to these campuses, Great Oaks also participates in a satellite program in schools over a 12-county area where only vocational classes are taught. Because it is a “school of choice,” students who attend do so by choice and as a result Great Oaks cannot predict its enrollment for the upcoming school year until late spring or early summer after students have applied to one of the four campuses. The appellant was certified in the areas of social studies, history, and political science and was employed to teach social studies on the Scarlet Oaks campus. The appellant did not have a certification in teaching vocational skills, which prohibited him from teaching in the satellite program. In April 2003, the appellee’s director of human resources notified the appellant that he probably would not be offered a position for the upcoming 2003-2004 school year due to a

decline in the student enrollment. Because the appellee had still not received all its applications for enrollment for the upcoming school year, it approved a limited contract for the appellant that would have started on September 1, 2003 and ended on August 31, 2004. The appellee's human resource director later notified the appellant that the school district was enforcing a reduction in force due to a decline in their student enrollment and his contract would be suspended for the 2003-2004 school year. The Board approved this decision on May 14, 2003, and the appellant was notified by certified letter the next day. Because of this decline, the appellee district also terminated a total of 19 teaching and administrative positions and continued to do so as the enrollment continued to drop. The appellant appealed the trial courts summary judgment for the appellee arguing that R.C. 3319.17 (B) required a reduction in the actual number of students throughout the entire district and in accordance with R.C. 3319.11 that he was to be notified of his dismissal prior to an April 30 deadline.

Issue(s): At issue is whether the appellee school district could suspend the appellant's contract due to a decline in enrollment in other areas than where he was employed and were they required to notify him by the April 30 deadline.

Holding(s): The Court of Appeals of Ohio, First Appellate District, Hamilton County, held that the appellee school district could use full-time equivalency (FTE) numbers to determine its number of enrolled students because it received full credit for some students and only partial credit for others. The court also held that the April 30 deadline did not apply in this case under Ohio Rev. Code Ann. § 3319.17.

Reasons: The Court of Appeals of Ohio, First Appellate District, Hamilton County, determined that in accordance with R.C. 3319.17, a joint vocational school district is not obligated to show a decrease in the number of students in the district but could verify a decrease

in enrollment using an FTE formula when partial credit and funding was received for some students and full credit and funding for others. The process of determining funding and enrollment in Ohio for the appellee satellite program is considerably different from the process used for students enrolled on campuses. The appellee received full credit (100%) for those students enrolled on any of its four campuses but only partial credit (12%) for those enrolled in the satellite program. The host school where the satellite program was taught received the remaining enrollment credit and funding. The percentage of enrollment credit and funding the appellee received for students in the satellite program varied. Because of this, the appellee school district submitted an FTE number each year to the state of Ohio to verify its enrollment. The state used this number to calculate the appellee's funding for the year. The appellant contended that there was an actual increase in enrollment for the 2003-2004 school year but the records actually revealed that there was a decrease in every area except one, the satellite non-workforce development program. Although there was an increase in this particular area, it was directly related to the enrollment in the satellite non-workforce developmental program. Because the appellee only received partial credit and funding for students enrolled in the satellite programs, they still saw a decline in enrollment in all other areas and the increase in this one program did not make up for the decreases in all the others in determining the FTE for the district. The legislature put into place R.C. 3319.17 to provide school Boards with flexibility when adjusting staffing needs as in *Ott. Buckeye Local Sch. Dist. Bd. of Ed.* (1986). It also must be noted that nowhere in R.C. 3319.17 is there a definition of what truly constitutes a "decline in enrollment" or where a school Board is obligated to reduce specific programs that have shown a decline in enrollment or exclude those programs. The use of FTE information is an acceptable means for determining whether a decline in student enrollment has taken place for a school district that

relies on this process for funding. To look at differently would be to ignore the actuality of the full and partial funding credits the appellee school district abided by and would take away their flexibility in meeting their staffing needs. The appellant's claim that he was not notified by the appropriate date of April 30 simply does not apply here. Courts, including the Supreme Court of Ohio, have determined that guidelines stated in R.C. 3319.11 do not apply to a reduction in force that is implemented under the guidelines of R.C. 3319.17. The guidelines provided in these are "separate" and "distinct." As a result, the appellee school district was not obligated to require the appellant of his suspension before the date of April 30.

Disposition: The Court of Appeals of Ohio, First Appellate District, Hamilton County, affirmed the judgment of the trial court when the appellee board of education suspended appellant teacher's contract for the upcoming year.

2006

Citation: *Aguilera v. Board of Educ. of Hatch Valley Schools*, 132 P.3d 587 (N.M., 2006).

Key Facts: Ms. Cari Aguilera, respondent, was a certified arts teacher who taught in the Hatch Valley Schools, petitioner. She had completed 2 years as the High School Arts teacher when she was offered a contract for her third year to teach art at the middle school. Due to a reduction in force based on a district-wide financial deficit; the respondent was discharged from her employment during the period of her contract although she was never charged with any infractions related to her "competence, turpitude, or performance." However, in accordance with the New Mexico School Personnel Act, a certified teacher can only be discharged from their position for "just cause" (NMSA 1978, §22-10A-27 (A) (2003)), which can be defined as any reason that is related to an employee's competence, turpitude, or the proper performance of

duties, NMSA 1978, §22-10A-2(F) (2003). The School Board's decision was reviewed by an independent arbitrator who found no "just cause" under §22-10A-2(F) but upheld the decision on the grounds that the reduction-in-force policy was followed. The Court of Appeals reversed the decision in favor of the respondent holding that "just cause" was restricted to reasons of performance, competence, or turpitude and not from the implementation of a reduction in force from financial hardship.

Issue: At issue is whether the statutory "just cause" provides for the release of a teacher when fiscal problems justify a reduction in force, but the teacher's competence, and performance do not.

Holding: The Supreme Court of New Mexico held that the simple meaning of the "just cause" definition was not appropriate but that the judicial interpretations of "just cause" needed to be considered prior to the period the term was defined by the legislature.

Reasons: The Supreme Court of New Mexico determined that a school board possessed the right to terminate a teacher for "adequate cause" and had done so for over 80 years. In 1925 the legislature amended the 1925 version of the Act to say that no teacher could be terminated from their position "except upon good cause," but never defined what this was. In an effort to protect teachers as professionals it was determined that "good cause" had to be related to a teacher's satisfactory performance of their duties and responsibilities (*Stapleton v. Huff*, 50 N.M. 208, 211, 173 P.2d 612, 613 (1946)). As a result, a method was derived from *Swisher v. Darden*, 59 N.M. 511, 516, 287, P.2d 73, 76 (1955) that would be used for the release of a teacher when the reason for letting the teacher go was not for personal reasons. If a teacher was discharged from his or her position as a result of a reduction in force, it was the Board's responsibility to show that there were no other positions available that the teacher was qualified to teach. The

1991 statutory definition of “just cause” proposed to arrange the law to include the Swisher rule into the School Personnel Act, and when a school board was required to implement a reduction in force, it had to satisfy the Swisher rule and verify there was no other position in the district that the teacher was qualified to teach. The petitioner Board in this case never considered the Swisher rule nor did the arbitrator properly apply it to its conclusion. As a result, the Board never proved “just cause” for the dismissal of the respondent teacher.

Disposition: The Supreme Court of New Mexico affirmed the decision of the court of appeals when it reversed the arbitrator’s ruling in favor of petitioner school board that discharged respondent teacher from her teaching position.

Citation: *Craig v. Independent School Dist. No. 361*, 2006 WL 1461079 (Minn.App., 2006).

Key Facts: Ms. Barbara Craig, relator, was employed by the Independent School District No. 361, International Falls, respondent, in the position of a .6451 Title I teacher. The respondent chose to place the relator on an unrequested leave of absence as a result of a declining student enrollment and financial strain. The relator claimed that it was the respondent’s responsibility to realign teaching positions in the system in order to keep her position in tact. At the time of this decision, there was one other Title I teacher who held less seniority than the relator who was placed on an unrequested leave of absence as well. Ms. Brenda Leduc, was the most senior Title I teacher in the system with .6451 of her contract being served in a lead teaching position and .36 being served in a coordinator’s position. The coordinating position consisted of several responsibilities that were considered administrative and not conventional teaching duties. The relator suggested to the respondent school district that they reassign Ms. Leduc to an available

sixth-grade position, assign her to the open Title position, and fill the coordinating position as they saw fit. The respondent considered this suggested realignment but found it to be impractical.

Issue: At issue is whether the respondent school board proceeded under an erroneous theory of law when it placed the relator teacher on an unrequested leave of absence.

Holding: The Court of Appeals of Minnesota held that the respondent school district acted appropriately when it placed the relator teacher on an unrequested leave of absence and that the relator's proposed realignment set-up was not practical, as well, as it did not follow the collective bargaining agreement that had been established.

Reasons: The Court of Appeals of Minnesota determined that the respondent school district acted appropriately in making its decision to place the relator teacher on an unrequested leave of absence and did not proceed under an erroneous theory of law. The relator teacher made reference to *Strand v. Special Sch. Dist. No. 1*, 392 N.W.2d 881 (1986) to sustain her position that the respondent school district had an obligation to realign teaching positions in order for her to keep hers. *Strand* specified that in accordance with the Teacher Tenure Act a school district is required to attempt realignment in an effort to retain the teachers with the most seniority. The *Strand* test put into place four factors that needed to be considered: (1) each case is to be decided based on its own merits, (2) any realignment of staff or positions should be practical and reasonable, (3) school districts are to maintain some discretion in making their decisions, and (4) the implementation of school management initiatives may limit the availability of positions and potential for realignment. When the *Strand* test was applied here, it was determined that Ms. Leduc had been a full-time Title I teacher in the district since 1994, she had not taught as a regular classroom teacher based on her longevity as a Title I teacher, she held many important and irreplaceable responsibilities involving families and the public, and a realignment would be

very confusing and difficult for the Title I program. Therefore, the respondent in no way acted erroneously. Also, the collective bargaining agreement that was in place only allowed for separate seniority lists for Title I teachers and regular education teachers. The agreement in no way made it a requirement for any type of alignment to be made across both lists. While an individual would at some time have to assume these responsibilities, it is clear that the students, the public, and the district would all be best served if this individual were properly trained at the appropriate time. Therefore, there was considerable evidence to support the schools district's decision in this case.

Disposition: The Court of Appeals of Minnesota affirmed the decision of the respondent school district when it placed the relator teacher on an unrequested leave of absence.

Citation: *Dees v Marion-Florence Unified School Dist. No. 408*, 149 P.3d 1 (Kan.App., 2006).

Key Facts: Ms. Kerry Dees, appellant, served as an elementary school counselor in the Marion-Florence Unified School District No. 408, appellee, for approximately 13 years. During that time she had minimal experience as a middle school counselor and occasionally talked to high school students when she was a softball coach in 1985. However, at no time did she ever work as a high school counselor for the district. Due to a declining student enrollment over several years at the elementary level and decreased financial support from the state, the appellant was notified that her contract for the 2003-2004 school year would not be renewed. The appellee Board informed school administration that it would need to reduce the number of employees at the elementary level because it felt this would have the least impact on instruction. The elementary principal, in an effort to relive budget reductions, suggested reducing first grade positions, the elementary Spanish program, and the elementary counseling position. Based upon

this recommendation, the appellee Board passed a motion to nonrenew the appellant's contract for the 2003-2004 school year and issued her a notice dated April 15, 2003. The appellant requested a hearing a couple of weeks later in accordance with K.S.A. 72-5438 and K.S.A. 72-5439 that ran from September 10, 2003, through November 17, 2003, and again from November 17, 2003, through January 6, 2004. However, the hearing did not occur until March 31, 2004, at which time both parties submitted their closing arguments in writing. The final brief was filed with the hearing officer on May 24, 2004. At this time, it was requested by the hearing officer, due to the death of her mother, that the time for her to issue her written statement be extended until July 12, 2004. This notice from the hearing officer asked for any objections at which time none were made. The final decision was issued on September 10, 2004, approximately one year later from the original requested date. The appellant argued that the appellee Board should have nonrenewed the contract of the high school counselor and moved her into that position because she was certified as a K-12 counselor and held more seniority in the District. As a result, the appellant counselor found issue with the nonrenewal of her contract and claimed the appellee Board failed to follow its reduction-in-force policy for a negotiated teacher's contract and that the hearing officer violated her due process rights when they failed to provide a written opinion within the timeframe mentioned in the statute.

Issue(s): At issue is whether the appellant Board followed its reduction-in-force policy in terminating the appellee counselor from her negotiated teachers' contract and did the written statement of the hearing officer fall outside the statutory timeframe.

Holding: The Court of Appeals of Kansas held that the Board followed its contractual provisions when it terminated the counselor from her position and that the counselor's due

process rights were not violated when the hearing officer delayed her decision by 2 months because Kan. Stat. Ann. §72- 5443 (a)'s 30-day timeline was "directory" and not "mandatory."

Reasons: The Court of Appeals of Kansas determined that the appellee District had a negotiated teachers' contract that had a specific procedure that was to be followed in implementing a necessary reduction in force. The steps in this process were followed with the one in question dealing primarily with qualification, certification, and questionable performance. Neither the appellant nor the high school counselor's performance was in question but certification and qualification were the issues. It was determined that before seniority could become the prevalent issue, the qualification issue must be established first. It was the appellee Board's responsibility to decide whether the appellant counselor was fully qualified to perform all the required duties of the high school counselor and it was clear she was not. The appellant's recent teaching experience and training had not prepared her to perform the necessary duties that were needed to hold the high school counselor's position. The evidence presented, in relation to the required steps that were to be followed, clearly established that the appellant was not appropriately qualified to replace the high school counselor, despite having more seniority. The Kansas legislature did not provide guidance in the Continuing Contract Clause, K.S.A. 72-5410, or the Due Process Procedure Act K.S.A. 72-5410, that the reduction of a teaching staff had to be done on a seniority basis only. Although the appellant counselor in this case did hold seniority over the other counselor, there was nothing in the law that prevented the district from making their determination on which counselor held the appropriate training and experience to perform the duties of the position best. In reference to Due Process and the hearing officer's delay in giving a decision, the Board argued that the appellant failed to raise this issue at the appropriate time and therefore could not present this as an appeal. However, because the hearing officer is

not allowed to rule on constitutional questions such as Due Process, the issue of constitutionality can be raised the first time before a court of law (*U.S.D. No. 443 v. Kansas State Board of Education*, 266 Kan. 75, 81, 90, 966 P.2d 68 (1998)). The hearing officer failed to meet the deadline that was agreed upon and did not provide a decision until 2 months afterwards. The 30-day timeline set forth in K.S.A. 72-5443 was “directory” and not “mandatory.” The Court of Appeals of Kansas distinguished that the statute allowed a 30-day period to be extended and or waived because the statute included no words that required the order to be given at any other time and there was no stipulation for penalty or consequence for nonconformity. It can be determined from this that the 30-day timeline is only a procedural requirement, put in place to secure some sense of order and directory in nature. In no way did the failure of the hearing officer to give a written notice within the 30-day timeframe set forth in K.S.A. 72-5443 require the appellee district to reverse their decision or did the delay of the written opinion take away from the appellant’s rights to a Due Process hearing in a meaningful time and manner.

Disposition: The Court of Appeals of Kansas affirmed the decision of the appellee school district not to renew the appellant counselor’s position due to a reduction in force.

Citation: *Milliken-Dees v. Salem City School Dist. Bd. of Edn.*, 855 N.E.2d 932 (Ohio.App.7.Dist.Columbiana.Co., 2006).

Key Facts: Ms. Jennifer Milliken-Dees, Mr. Jeffrey Willis, and Ms. Teresa Dolan, appellees, each held a limited teaching contract that was nonrenewed for the 2004-2005 school year by the Salem City School District, appellant. Each appellee was notified before April 30, 2004, of the appellant’s intent not to renew their contracts. Each appellee followed receiving their notification with a request to be made aware of the specific reasons their contract would not be renewed. As a result, each appellee received the same letter from the appellant stating they

were facing financial difficulties making it difficult to maintain current staffing levels. However, the letter in no way specified why the appellees were chosen for nonrenewal. The appellees requested a hearing at which time the appellant Board chose to follow through with its decision not to renew the limited teaching contracts. The appellees appealed this decision to the Columbiana County Court of Common Pleas in accordance with R.C. §3319.11 (G) (7). The appellees agreed to combine their cases and the trial court issued a three-part judgment. First, the appellant's statement regarding the reason for the nonrenewal of the appellees limited teaching contracts was insufficient. Second, the reason for the nonrenewal did have to be related to the appellees' evaluations. Third, the appellees were allowed back pay and the appellant was not entitled to a set-off. The appellant appealed this decision and the appellees filed a cross-appeal.

Issue: At issue is whether the school district's explanation for nonrenewing the limited teaching contracts of the appellees was sufficient.

Holding: The Court of Appeals of Ohio, Seventh Appellate District, Columbiana County, held that the appellant Board's reason for nonrenewing the appellees limited teaching contracts under Ohio Rev. Code Ann. §3319.11 (G)(2) was nonspecific and offered no individual explanation.

Reasons: The Court of Appeals of Ohio, Seventh Appellate District, Columbiana County, determined that pursuant to R.C. §3319.11(E) a school Board may provide a teacher with a written notice of its intention to nonrenew as long as it is presented by April 30th. The teacher may then request a written statement explaining the specific circumstances behind the nonrenewal, and afterward is allowed a hearing. The appellant Board claims the explanation it provided to the appellees was adequate and that R.C. §3319.11 (G) (1) does not imply that each teacher is entitled to an individual explanation regarding the nonrenewal of their limited teaching

contracts. However, in *Naylor v. Cardinal Local School Dist. Bd. of Edn.* (1994), 69 Ohio St.3d 162, 1994 Ohio 22, 630 N.E.2d 725, the Supreme Court of Ohio ruled that a school district is obligated to present a teacher with a “clear and substantive basis for its decision not to reemploy the teacher for the following school year.” Based upon *Naylor*, a teacher should not have to search for any reason as to why their contract was being nonrenewed and another teacher’s was not. The letter presented to the appellees in this case was inadequate because it never presented a specific reason to any of them as to why their contracts were not being renewed.

Disposition: The Court of Appeals of Ohio, Seventh Appellate District, Columbiana County, affirmed the decision of the trial court, finding the letters provided by the Board for eliminating the appellees limited teaching contracts was inadequate and not specific.

Citation: *Scobey School Dist. v. Radakovich*, 135 P.3d 778 (Mont., 2006).

Key Facts: Mr. Mike Radakovich, respondent, was hired by the Scobey School district, appellant, in 1987 to teach social studies at Scobey High School. During his employment, he only attained certification in the content area of social studies and taught no other courses in the district. During the 1993-1994 school year, Mr. Dustin Hill, District Superintendent, realized that costs for the upcoming school year were going to need to be reduced by approximately \$105,000. To meet this need, it was recommended that the appellant school Board cut its staffing costs by \$60,000. After meeting with Mr. Hill, Mr. George Rider, principal of Scobey High School, met with his faculty to inform them of the possible upcoming reduction in force and shared the guidelines that would be followed if a reduction in force were implemented. Principal Hill recommended to the board that teaching positions be restructured at the school and the respondent’s contract be terminated. On March 21, 1994, the respondent received a letter recommending his termination based on changes being made in school funding and his lack of

multiple teaching endorsements. Following a hearing that was held on April 12, 1994, the appellant Board voted collectively to accept Mr. Hill's recommendation and took the appropriate steps to terminate the respondent from his employment in the district. The respondent challenged this decision in arbitration under the local collective bargaining agreement as a junior and nontenured teacher were retained in the restructuring process to teach social studies courses. After the arbitrator affirmed the respondent's dismissal, he appealed to the County Superintendent of Schools and the State Superintendent of Public Instruction in accordance with Mont. Code Ann. §20-4-203, MCA (1993) and argued his dismissal was in violation of this statute and the CBA. Although both superintendents approved his dismissal, the District Court later reversed the dismissal ruling that the respondent's rights had been violated under the CBA and §20-4-203, MCA (1993). The appellant District appealed this decision to the Supreme Court of Montana.

Issue: At issue is whether the school district violated state statute and the collective bargaining agreement when it dismissed the tenured teacher from his position as a social studies teacher.

Holding: The Supreme Court of Montana held that the decision to dismiss the respondent teacher from his position was not a violation of state statute, the CBA, or any teacher tenure protections outlined in case law.

Reasons: The Supreme Court of Montana determined that in the case of a tenured teacher being dismissed from his or her position, the County Superintendent is the "trier of fact" (*Baldrige v. Board of Trustees* (1997), 287 Mont. 53, 951 P.2d 1343, 1346). The County Superintendent complied with §2-4-623, MCA and entered three important conclusions of law: (1) there was established a "good clause" for the reduction in force, (2) the teacher's termination

from his position was not a violation of §20-4-203, MCA, and (3) the application of “multiple endorsements” as a decisive factor was not simply objective, but was adequately applied by the District. A teacher’s tenure rights are not to be overlooked but should be balanced with the school Board’s ability to manage the school district in a financially dependable manner. This would include the ability to do away with specific programs and activities that could include terminating or reassigning personnel (*Massey v. Argenbright* (1984), 211 Mont. 331, 336, 683 P.2d 1332, 1334). The school District’s loss of revenue constituted a “good cause” for the reduction in force to take place as was established in *Sorlie*, 205 Mont. at 25, 667 P.2d at 403. The County Superintendent was correct in its thinking that it held the authority to restructure the district in a way that would eliminate the full-time social studies position while utilizing teachers who were certified in multiple teaching areas. As a result of this restructuring, a health teacher, math teacher, and physical education teacher, all taught social studies classes in addition to their usual taught classes. The appellant school district eliminated the respondent’s position because it chose to restructure the district in a way that would not have a negative impact on the high school’s educational agenda or its administrative function. The respondent teacher was unqualified to teach any of the restructured positions because he only held certification in one subject area. Because nothing in §20-4-203, MCA, or *Massey*, *Holmes*, and *Harris* line of cases precludes such considerations and action, the appellant school district in this case violated no statute, or any tenure protection provided to teachers, in Montana case law. Although the multiple endorsement criteria are objective, the teacher here either has them or does not. These criteria was put into place in a fair manner as every teacher who was retained met this criteria showing it was correctly applied.

Disposition: The Supreme Court of Montana reversed and remanded the decision of the District Court with guidelines to reinstate the decision of the County Superintendent to terminate the tenured teacher.

2007

Citation: *Bane v. Hebrew Academy of five Towns and Rockaway*, 846 N.Y.S.2d 380 (N.Y.App.Div.2.Dept., 2007).

Key Facts: Ms. Tovah Bane, respondent, became a tenured teacher with the predecessor school of the Hebrew Academy of Five Towns at Rockaway (HAFTR), appellant, in 1951 and continued to hold her tenure after the appellant took over the school. In 1999, the respondent teacher was approached by the principal of HAFTR and asked if she would take on some specific administrative duties, to which she agreed. In April 2006, the respondent was notified that her position was being eliminated due to financial problems. The respondent requested that the decision to terminate her position be reviewed and also requested that she be placed in a teaching position because she was a tenured teacher. The appellant denied her request claiming that when she accepted an administrative position in 1999, she gave away her tenure rights as a teacher. The Supreme Court granted the respondent's appeal inter alia and directed the appellant to reinstate her to a teaching position that she was qualified to teach.

Issue: At issue is whether the appellant school system could refuse a teacher's tenure rights when they accepted an administrative position.

Holding: The Supreme Court of New York, Appellate Division, Second Department, held that the respondent teacher had certain rights as a tenured teacher that included having her employment terminated only for cause and not reasons of finance.

Reasons: The Supreme Court of New York, Appellate Division, Second Department, determined that the appellant school system's decision to terminate the respondent's employment for financial reasons was not based on cause, making the decision arbitrary and capricious under CPLR 7803. The respondent was able to show that she was a tenured teacher and had specific rights preventing the appellant from eliminating her position except for emergent financial reasons, which was not the issue here. The appellant tried to show the respondent as an administrator, and not a teacher, but failed to do so. They used the "Teacher Re-Employment Information Form" to try to establish that the respondent was an administrator but the form specifically stated it was used for teachers. According to the ruling of *Matter of Sanders v. Board of Educ. of City School Dist. of City of N.Y.*, 17 AD3d 682, 683, 794 N.Y.S.2d 95, the appellant's decision to terminate the respondent's employment was not for cause and was therefore arbitrary and capricious.

Disposition: The Supreme Court of New York, Appellate Division, Second Department, affirmed the decision of the Nassau County Supreme Court that granted the respondent's petition to be reinstated to a tenured teaching position.

Citation: *Hanson v. Vermillion School Dist. No. 13-1*, 722 N.W.2d 459 (S.D., 2007).

Key Facts: Ms. Sharon Hanson, appellee, was employed by the Vermillion School District Board of Education, appellant, for 17 years as an elementary and middle school computer teacher. Due to a significant shortfall in profits along with a voters' rejection of an opt-out proposal, the appellant district implemented its reduction-in-force policy to decide which staff positions would be eliminated for the 2004-2005 school year. The reduction-in-force policy that was used was part of the agreement that had been negotiated between the district and the collective bargaining group (Association) that represented the teachers. This agreement was

established during the 2003-2004 school year. At a meeting on March 8, 2004, it was voted by the Board to eliminate the high school computer education courses that were all taught by Ms. Cheryl Lessman, who had been employed with the district for over 30 years. It was determined that Ms. Lessman met the seniority requirements and as a result would be able to bump a teacher with less seniority. However, one requirement within the reduction-in-force policy was in order for a teacher to bump another teacher in another area, that teacher would have had to have taught in that area, within the district, within the past 7 years. Because Ms. Lessman had not met this requirement, she would only be allowed to bump another teacher in a computer science position. Besides the appellee teacher and Ms. Lessman, the appellant district employed two other computer teachers for a total of four. Ms. Lessman met both the seniority and teaching experience requirements to bump into the appellee teacher's position and she notified the district that she planned on exercising this right. On March 23, 2004, the appellant school Board provided notice to the appellee that her professional contract would not be renewed for the 2003-2004 school year. On April 12, 2004, the Association followed by filing a grievance on part of the appellee teacher that was later rejected by the Board on April 14, 2004. The Association appealed this decision to the South Dakota Department of Labor, Division of Labor and Management (DOL) where it was heard and denied by an administrative law judge on April 20, 2005. The Association also appealed this decision to the South Dakota Sixth Judicial Circuit who reversed the previous rulings on the grounds that the District had not properly followed its reduction-in-force policy, according to their interpretation, and the appellee teacher had satisfied both the seniority requirement and the experience requirement. The appellant Board appealed this decision to the Supreme Court of South Dakota who reversed the decision back to its original conclusion.

Issue: At issue is whether the circuit court was wrong in its interpretation of the District's reduction-in-force policy.

Holding: The Supreme Court of South Dakota held that even if the appellant teacher was qualified to teach the technology modules that were required to bump another teacher, she still lacked the prerequisite training she needed to receive coaching authorization from the South Dakota High School Athletic Association.

Reasons: The Supreme Court of South Dakota determined that although seniority plays a vital part in any decision of this sort, in this case it is somewhat meaningless. The appellee teacher did not meet the requirements within the school district's reduction-in-force policy by not holding the appropriate certification, or recent experience, to replace a less senior teacher in another position.

Disposition: The Supreme Court of South Dakota reversed the decision of the circuit court when it ruled in favor of the teacher.

2008

Citation: *Bledsoe v. Biggs Unified School Dist.*, 88 Cal.Rptr.3d 13 (Cal.App.3.Dist., 2008).

Key Facts: Mr. Vernon Lane, appellant, was employed by the Biggs Unified School District, respondent, for 9 years as a certificated teacher who taught English and Social Science to seventh and eighth grade students. In March 2007, the respondent Board adopted a resolution that would decrease the number of certificated employees at the end of the 2006-2007 school year along with a resolution setting forth the guidelines that would be used to break any type of tie in seniority of employees. The interim superintendent at the time, Mr. Rick Light, took the

appropriate measures to inform employees whose positions might be affected. The appellant teacher was given a notice that his services would not be needed for the 2007-2008 school year, based on the elimination of specific services that were authorized by the Board's resolution. The appellant requested a hearing that was heard by an administrative law judge in April 2007. The interim superintendent testified he looked at a seniority list of certificated employees and a bumping chart to determine which employees would be laid off. However, Mr. Scott Gates and Mr. Vince Sormano, two teachers who taught for the District's community day school, were not given termination notices despite falling below the appellant on the seniority list. The interim superintendent testified that this decision was made as a result of an earlier ALJ decision in 2004 where both Gates and Sormano were retained in a reduction in force to teach in a community day school and since there had been no break in their service, they should be excluded from termination again. The interim superintendent felt it necessary to point out that Mr. Gates and Mr. Sormano were teaching in the day school because they had received special training and had the experience of dealing with students who had been expelled or who had behavior problems that would not allow them to be served in a regular classroom. The appellant and the Biggs Unified Teachers Association filed for administrative mandamus challenging the layoff but were denied by the trial court. They followed in a timely manner with another appeal of the trial court's determination.

Issue: At issue is whether the school district erred in retaining two teachers with less seniority than the teacher they let go.

Holding: The Court of Appeals of California, Third Appellate District, held that the school district's verification was more than adequate to show a need for the retained teachers'

special training and experience under Ed. Code, §44955, subd. (d)(1), accordingly, providing an exclusion to the bumping rights described in §44955, subd. (b).

Reasons: The Court of Appeals of California, Third Appellate District, determined that although the school District felt the appellant teacher failed to meet the qualifications to hold the position at the Community Day School because he did not have at least one semester of teaching experience in an alternative school within the past 5 years, they disagreed. According to §44955, subdivision (b), the appellant teacher was properly certified and competent to teach within the Community Day School, but that was not the main issue at hand. According to subdivision (d) of the same statute, a school district holds the authority to move away from terminating certificated employees in order of seniority if they can effectively demonstrate the need for less senior personnel to teach a specific course, or provide specific services, when that employee has received special training and experience that is necessary to teach that course, or provide those services, when the more senior employee has not. The superintendent in this case submitted substantial evidence to support this case. The evidence presented revealed that Mr. Gates and Mr. Sormano had both attained the special training and experience needed to teach at the Community Day School whereas the appellant teacher had not.

Disposition: The Court of Appeals of California, Third Appellate District affirmed the judgment of the trial court.

Citation: *Smith v. Jefferson County School Bd. of Com'rs*, 549 F.3d 641 (C.A.6.Tenn., 2008).

Key Facts: The Jefferson County School Board, appellee, employed Ms. Vickie Forgety, Mr. Steve Smith, and Mr. David Kucera, appellants, for the 2002-2003 school year. Ms. Forgety and Mr. Smith were both tenured teachers while Mr. Kucera was non-tenured. At a Board

meeting on June 26, 2003, it was voted to do away with several programs, including the alternative school and the positions of the appellants who worked there, in an effort to save considerable money for the upcoming school year. Later in July, the appellee school Board established a contract with Kingswood, a sectarian school, which would have them provide alternative school services for the public school students for the upcoming 2003-2004 school year. One stipulation in the contract was that none of the Kingswood personnel would be employees of the Jefferson County School Board. Mr. Douglas Moody, Director of Schools for Jefferson County, held no influence in hiring, firing, supervising, or evaluating the Kingswood personnel who provided the alternative school services. After the appellants were notified of their termination, each one found a new position, though only one of which was with the Jefferson County School Board. Appellants Forgety and Smith, as tenured teachers, were placed on a “preferred list” for reemployment. Forgety chose not to accept the initial positions she was later offered by the Board because she felt they were lesser in both status and pay than the position she had previously held at the alternative school. She was later offered, and accepted, a principalship for the 2004-2005 school year. Smith, although offered a history position for the 2003-2004 school year, never responded but accepted a position in Georgia. Kucera drew unemployment for a couple of months and later accepted a position with a Youth Development Center as a case manager. Forgety filed suit on June 24, 2004, followed by Smith and Kucera on November 13, 2003. The appellants agreed to have their cases consolidated and this went into effect on January 18, 2005. The appellants sued the appellee Board and on August 9, 2006 moved for summary judgment pertaining to 42 U.S.C. §1983, the Establishment Clause and Due Process Claims regarding the issue of liability. A couple of weeks later the Board filed for a

cross-motion of summary judgment and the Tennessee Education Association filed for an amicus curiae brief.

Issue: At issue is whether the school Board violated the Establishment Clause when they contracted with a private Christian school to provide alternative school services that had previously been provided by the appellant teachers.

Holding: The United States Court of Appeals for the Sixth Circuit held that there was an issue of material fact as to whether the Establishment Clause had been violated and therefore remanded the case but held the Board did not violate the appellant teachers' procedural and due process rights.

Reasons: The United States Court of Appeals for the Sixth Circuit determined that although the Board argued the teachers so-called injuries in this case were not the result of a specific religious belief, the teachers did meet the requirements that were necessary in order to set up their claim of individual standing. The teachers met the minimum constitutional standards for individual standing by showing they suffered an injury, the injury is a result of the defendant's action against them, and the injury more than likely will be given a favorable decision. When the Board abolished the public alternative school from the system, the teachers did suffer injury as the result of losing their positions and not being transferred to other positions. The injuries they sustained were a direct result of the Board's decision to abolish the alternative school that it previously ran in an effort to contract out for the same services that would be provided by the Kingswood staff. In addition, appellants Forgety and Kucera met all the requirements to also establish standing as municipal taxpayers.

Disposition: The United States Court of Appeals for the Sixth Circuit reversed the district court's ruling therefore providing standing for all appellant teachers to bring suit as individuals,

while also providing standing to bring suit as municipal tax payers for appellants Forgety and Kucera. In reference to whether or not material fact existed showing the Establishment Clause of the United States had been violated, this was remanded to the district court for further action.

Citation: *Washington Teachers' Union, Local #6 v. District of Columbia Public Schools*, 960 A.2d 1123 (D.C., 2008).

Key Facts: On October 22, 2004, and November 10, 2004, the Washington Teachers' Union (WTU), and the American Federation of State, County and Municipal Employees (AFSCME), appellants, filed complaints respectively against the District of Columbia Public Schools (DCPS), District of Columbia Board of Education and superintendent, appellees. The Board's Interim Superintendent was given the undertaking to reduce the 2004 operating budget by \$29.3 million and 557.3 positions in school-based operations and \$1.6 million and 27 positions in non-school-based operations through the abolishment process. In May 2004, approximately 700 teachers and school-based personnel (WTU), and approximately 26 Union represented employees (AFSCME), were informed by the appellee school district that their positions were being eliminated due to a reduction in force that would go into effect on June 30, 2004. The appellants were informed that the reduction in force was taking place in accordance with the Abolishment Act, D.C. Code §1-624.08, and the Board's authority to terminate positions due to a lack of funds. The appellants filed three counts: Count I, the DCPS and the superintendent violated D.C. Code §1-624.08 (d) by eliminating employee positions and denying employees one round of lateral competition in accordance with Chapter 24 of the District of Columbia Personnel Manual. Count II, the Board violated D.C. Code §1-608.01a (b)(2)(L)(i) of the CMPA by not issuing rules and regulations that allow for a reduction of force including the order of separation pertaining to tenure of appointment and length of service and priority for

reemployment consideration. Count III, the Board violated D.C. Code §1-608.01a (b)(2)(L)(i) by acting above its statutory authority when it issued a reduction in force.

Issue: At issue is whether the appellee school system appropriately applied the statutory guidelines governing a reduction in force pertaining to the Abolishment Act and whether the trial court or the District of Columbia Office of Employee Appeals (OEA) had control over the teacher unions' claims.

Holding: The District of Columbia Court of Appeals held that the unions needed first to present their claims to the OEA and that the District of Columbia Abolishment Act did apply to the reduction in force and not the reduction-in-force requirements of the CMPA.

Reasons: The District of Columbia Court of Appeals determined that the claims of the appellants must first be presented to the Office of Employee Appeals (OEA). The United States Congress added the Abolishment Act as a condition of Public Law 105-100 and the District of Columbia Appropriations Act 1998. The Council of the District of Columbia soon after changed the applicable date to cover the fiscal year ending September 30, 2000, and each fiscal year that followed. After a complete examination of the three counts presented in the appellants' claims, the trial court was accurate in its decision when it determined the OEA had jurisdiction over each count and not the trial court. The appellants were responsible for submitting their claims to the OEA because this was the agency specifically established to handle all personnel and employee appeals.

Disposition: The District of Columbia Court of Appeals vacated the trial court's order of dismissal and remanded the case to the trial court for a stay of proceedings and a transfer of the issue to the District of Columbia Office of Employee Appeals (OEA).

2009

Citation: *Martinek v. Belmond-Klemme Community School Dist.*, 760 N.W.2d 454 (Iowa, 2009).

Key Facts: Dr. Cynthia Martinek, appellee, accepted a principalship in 1993 at the elementary school in the Belmond-Klemme Community School District, appellant. On July 21, 2005, the appellee and the appellant's previous superintendent entered into a contract that stated the appellee principal would serve for a 2-year period consisting of 10.5 months (220 days) that would begin on July 26, 2005. Before the end of the first contract year, the appellee was notified that her contract was being considered for possible termination at the end of the 2005-2006 school year, based on a declining student enrollment and budgetary problems. The appellant school district reported that they were facing significant financial issues as a result of significant enrollment decreases over a 6-year window where the district had decreased by approximately 200 students. The superintendent wanted to cut \$500,000 from the overall budget and planned to serve dual positions as the superintendent and the elementary school principal. The appellee principal requested a hearing before an administrative law judge who proposed she should not be terminated from her position. On July 27, 2006, the appellant school district held a private hearing at which time it reviewed the administrative law judge's decision and determined that they would terminate the appellee's contract according to Iowa Code section 279.24 effective June 30, 2006. The appellee appealed this decision to the district court, which found the school district not to have statutory or contractual grounds to make this decision. The appellant school district appealed this decision that was later transferred to the court of appeals, which affirmed the decision of the district court. The appellant school district then petitioned for further review that was granted.

Issue(s): At issue is whether the appellant school district had the authority to terminate the appellee's contract under Iowa Code section 279.24 and whether the terms of the appellee's contract allowed her to be dismissed from her position.

Holding: The Supreme Court of Iowa held that the school district's financial shortfall constituted just cause to terminate the appellee's contract but they had no authority under Iowa Code §279.24 to terminate the contract before the end of the 2-year term that was part of the contract.

Reasons: The Supreme Court of Iowa determined that legislative intent must be used to determine the statutory construction of the law. When a statutory definition of a word has been left out by the legislature, words are given their common everyday meaning within the context they are normally used. In reference to §279.24, the statute used by the appellant school district, the contract of an administrator shall remain intact for the timeframe stated in the contract. The language in §279.24(1) is clear in that a school district has as an option to unilaterally terminate the contract of an administrator at the end of the contract's original term as long as statutory procedures are followed, which, in this, case would require just cause. Legitimate reasons would fall under personnel and budgetary requirements as was determined in *Briggs v. Bd. of Dirs. of Hinton Cmty. Sch. Dist.*, 282 N.W.2d 740, 742 (Iowa 1979). Applying these principles to this situation under §279.24 of the code, the appellant school district's economic situation qualified as just cause to terminate the appellee's contract but they held no authority under §279.24 to terminate the contract before the end of the 2-year term as was established in *Martin v. Waterloo Cmty. Sch. Dist.*, 518 N.W.2d 381, 383 (Iowa 1994).

Disposition: The Supreme Court of Iowa vacated the decision of the appellate court and affirmed the decision of the district court that reversed the school district's decision to terminate the contract of the appellee administrator.

Citation: *Miller v. School Dist. No. 18-0011 of Clay County*, 775 N.W.2d 413 (Neb., 2009).

Key Facts: Ms. Shari Miller, appellee, was employed by the Harvard Public School District, appellant, as a certified art teacher for 23 years where she provided instruction to students in Grades 4 through 12. In 1997, due to a declining enrollment in the art program, the appellee's position was reduced from .75 to .5. As a result, the appellee began to teach classes in another school district on a .5 basis in addition to her .5 position with the appellant. At a meeting held on January 14, 2008, the appellant Board began looking at a possible expansion with the Clay Center School District. Under the agreement that was already in place, the two school systems already shared teachers for industrial technology, social studies, and Spanish, along with paraprofessionals and coaches. The purpose of the expansion would be to share personnel in the art and speech programs. At the time of this meeting, the Clay Center School District employed its own full-time art teacher who submitted her letter of resignation on February 3, 2008, which would go into effect at the end of the school year. On February 13, 2008, the Clay Center superintendent, Mr. Lee Sayer, informed his board of this resignation and made them aware that the appellant school system wanted to share the art position for the upcoming school year. He also informed them that they would need to hire a replacement teacher and that it would need to be kept confidential because the appellant school district was going to reduction in force their current art teacher, the appellee, who was unaware this was going to take place. The position was advertised and filled by a teacher who had previously been teaching in Kansas. Although the

appellee was aware of the advertised position, she did not pursue it nor did Mr. Sayer discuss the position with her because he thought it was unlawful to contact teachers under contract in another school system. The appellant school system's superintendent, Mr. Larry Turnquist, also failed to inform the appellee about the advertised position because he thought this was the responsibility of the hiring district. On February 20, 2008, Mr. Turnquist outlined his plan with the Board as to how the arts program should be eliminated so that they could follow through with the termination of the appellee's contract. He stressed that the appellee and the teachers union would try to intimidate the Board and encouraged the Board to only speak of the Clay Center School District's offer to share their art teacher as the reason for the reduction in force and not budgetary concerns. Superintendent Sayer made Superintendent Turnquist aware that they had hired an art teacher for the upcoming 2008-2009 school year and sent him a proposal dated February 28, 2008, revealing a plan as to how the two school districts would share the art teacher position on a .5 FTE basis. On March 3, 2008, the appellee received written notice of the possible reduction in force and that her position could possibly be eliminated. On March 10, 2008, the appellant Board held a meeting where the art program was unanimously reduced from .5 to 0 and the recommendation was made to contract with the Clay Center School District to share an art teacher. At the advice of a union representative, the appellee was advised not to attend the meeting. Following her contract termination, the appellee requested a hearing before the appellant Board that took place on July 27, 2008, at which time the Board changed its reasons for implementing a reduction in force. The appellee filed a petition in the district court for Clay County alleging the appellant school Board violated the reduction-in-force statutes by not providing evidence for a change in circumstances that necessitated a reduction in force or allowing a probationary employee to take over the position, which the appellee was qualified to

hold. The district court reversed and vacated the decision of the appellant Board which followed by appealing the decision.

Issue: At issue is whether the appellant school district's agreement to share an art teacher with another school district established a reduction in force.

Holding: The Supreme Court of Nebraska held that there was no change in circumstances involving a reduction in force and the school district did not reduce its staff or show a need to reduce.

Reasons: The Supreme Court of Nebraska determined that the appellee teacher maintained a certain degree of job security according to law but her contract could be terminated through a reduction in force in accordance with Neb. Rev. Stat. §79-829. The district court found that after the proposed reduction in force had been implemented, the curriculum in the district was the same, the staffing needs were the same, and the school maintained a .5 FTE art teacher as it had previously. This was clear evidence that a reduction in force had never taken place. The appellant school district simply tried to reduce its costs by eliminating the contract of a tenured teacher with 23 years of experience and replacing her with a probationary teacher from another school district who could be hired at a bargain. Although the statute in question does not specifically define what a reduction in force actually is, it has always been held to mean doing away with the contract of a teacher due to extra staff. Before a reduction in force can take place, it is the school district's responsibility to show evidence that reveals how a change in circumstances has occurred making it necessary for a reduction in force to be implemented, and in this case it was not. The appellee teacher in this case was removed from her position and replaced with a new teacher to fill the position she was qualified to hold. There was no surplus of staff in the art department and it remained the same following the reduction in force. The

appellant school district simply changed the method in which it maintained the services of a .5 art teacher in order to save money. In accordance with Nebraska law, the reduction of personnel costs does not serve as a legal basis for terminating the contract of a tenured teacher but the savings must be attained by the implementation of a reduction in force.

Disposition: The Supreme Court of Nebraska affirmed the judgment of the district court that determined a reduction in force never took place.

2010

Citation: *Hays v. Louisiana State Bd. of Elementary and Secondary Educ.*, 39 So.3d 818 (La.App.1.Cir., 2010).

Key Facts: Ms. Susan Ann Smith Hays, appellant, served as a full-time teacher and tenured administrator at the Northwest Developmental Center (NDC). The NDC was a special school within the Special School District Number (SDD) that was operated by the Louisiana State Board of Elementary and Secondary Education (BESE), appellee. By the beginning of the 2004-2005 school year, the SSD experienced a significant decrease in student enrollment at many schools that forced the district to make reductions in their budget and eliminate certain employee positions. The NDC enrollment of 11 students at the beginning of the 2002 school year had dropped to 2 at the end of the 2004 school year. As a result, the SSD submitted a reduction in force plan to BESE to deal with these issues. The plan called for the elimination of seven principal positions, including that of the appellant. On April 15, 2004, BESE approved the plan in accordance with the Louisiana Department of Education's Personnel and Administrative Manual of Special School District and Board Special Schools. On June 7, 2004, all affected employees of the reduction in force began receiving notices from the SDD along with available

positions that were vacant or were held by employees with less seniority. The appellant was notified on June 10, 2004, that her principal position was being terminated but was offered a teaching position at several schools she could choose from. She chose to remain at NDC as a teacher and took a cut in pay of approximately \$9,500. The appellant made sure it was documented on her Salary Computation Form that although she was accepting a teaching position she was not waiving her claim that she was inappropriately demoted from her previous salary point. On December 7, 2004, the appellant filed a petition in the 19th Judicial District Court where she sought judgment against the appellee school district claiming she had been illegally demoted and she demanded to be paid the difference between her prior salary and her current lower salary. On December 30, 2004, the appellee school district filed its response claiming they followed the law appropriately and denied the appellant's request. On March 10, 2005, the appellant passed away at which time her husband, Mr. Allen Ray Hays, was placed in possession of her litigious rights. On November 6, 2008, the appellant filed for summary judgment and the appellee filed a cross-motion for summary judgment a couple of months later. Both motions were heard on April 27, 2009, at which time the trial court ruled in favor of the appellee school district and applied all costs to the appellant.

Issue: At issue is whether the appellant teacher/principal was entitled to a hearing regarding tenure law when her contract was eliminated due to a reduction in force.

Holding: The Court of Appeals of Louisiana, First Circuit, held that the tenure law was not controlling because the position was eliminated due to a reduction in enrollment and budget cuts. The BESE acted in accordance with La. Rev. Stat. Ann. §17:81.4.

Reasons: The Court of Appeals of Louisiana, First Circuit, determined that the appellant teacher/principal was not removed from her office but the key point to take into account is that

her position was eliminated due to a reduction in enrollment and budget cuts. In no way were the provisions of the teacher tenure statute applicable in this case because there was no willful neglect of duty, incompetency, or dishonesty. To accept the appellant's argument in this case would mean that the reduction in work force statute would have to be completely overlooked as well as the reasons it was put in place.

Disposition: The Court of Appeals of Louisiana, First Circuit affirmed the decision of the trial court who denied the motion for summary judgment by the appellant and granted BESE's motion for summary judgment.

Citation: *Perrea v. Cincinnati Public Schools*, 709 F.Supp.2d 628 (S.D. Ohio. W. Div., 2010).

Key Facts: Mr. Paul Perrea, plaintiff, was an employee of the Cincinnati Public Schools (CPS), defendant, as a science teacher at Hughes Center High School. On May 21, 2008, Ms. Mary Hahn, principal, selected the plaintiff to be "surplussed" from his position, which meant he would lose his current position but remain a salaried employee of the defendant. The plaintiff claimed that this decision was based on his race to balance the race of the staff. The defendant denied this claim. On May 22, 2008, the plaintiff filed a Motion for Temporary Restraining Order and/or Preliminary Injunction and requested that the defendant not surplus him from his position and to stop using racial balancing as a criterion for making employment decisions. In June 2008, another science teacher at Hughes Center High resigned from her position, leading Principal Hahn, in accordance with the collective bargaining agreement, to inform the plaintiff that he could return to his former position. The plaintiff returned to his positions for the 2008-2009 school year and suffered no loss of pay as a result of being on the surplus list for 5 months. Once the defendant returned to his position, he could no longer create irreparable harm against

him, and the Court denied his Motion for TRO. On June 8, 2009, the plaintiff filed a First Amendment complaint consisting of four claims of race discrimination. The plaintiff's fifth claim was that he was surplussed from his position as a form of retaliation for exercising his First Amendment Rights after he requested the defendant to release semester exams administered to ninth graders.

Issue: At issue is whether the Cincinnati Public School system surplussed the plaintiff teacher based on their racial balancing system.

Holding: The United States District Court for the Southern District of Ohio, Western Division, held that the plaintiff teacher suffered no adverse employment action as a matter of law for purposes of Title VII, 42 U.S.C. § 1981, and Ohio Revised Code chapter 4112 claims.

Reason: The United States District Court for the Southern District of Ohio, Western Division, determined that the parties involved had submitted conflicting evidence regarding whether or not the plaintiff would have been surplussed if the staff racial balancing policy did not exist. However, the court stated as a matter of law that the CPS racial balancing provision was a violation of the Equal Protection Clause of the United States Constitution and that they were prohibited from making future employment decisions in an effort to racially balance their staff. The issue here was did this happen and it was determined that it did not. The court found that CPS did not violate the plaintiff's rights pertaining to the Equal Protection Clause because it would have made the same decision regardless of his race because it was made based on experience, training, and individual qualifications as compared to other science teachers at the school.

Disposition: The United States District Court for the Southern District of Ohio, Western Division, found that the Cincinnati Public School system did not violate the plaintiff teacher's rights in accordance with the Equal Protection Clause.

Data Analysis

The purpose of this research was to qualitatively study court cases over the past 27 years resulting from reduction-in-force implementation within school systems across the country. The data represents 147 cases involving 32 states across the country during this time period.

Table 1

Cases

Year	State	Case	Court
1984	New York	<i>Gill v. Dutchess County Bd. of Educ.</i>	N.Y.App.Div.
1984	Massachusetts	<i>Haskell v. School Committee of Framington</i>	Mass.App.
1984	Massachusetts	<i>Hockney v. School Committee of Lynn</i>	C.A.1.Mass.
1984	New Jersey	<i>Old Bridge Bd. of Educ. v. Flora Unit School Dist.</i>	N.J.Super.App.
1984	California	<i>Powers v. Commission on Professional Competence</i>	Cal.App.
1984	Oregon	<i>Ross v. Springfield School Dist.</i>	Or.App.
1984	Minnesota	<i>Schmidt v. Independent School Dist.</i>	Minn.App.
1984	Alabama	<i>Smith v. Alabama State Tenure Com'n.</i>	Ala.Civ.App.
1984	Missouri	<i>St. Louis Teachers Union v. St. Louis Bd. of Educ.</i>	Mo.App.
1984	South Dakota	<i>Sutera v. Sully Buttes Bd. of Educ.</i>	S.D.
1984	Vermont	<i>Work v. Mt. Abraham Union H.S. Bd. of Directors</i>	Vt.
1985	New York	<i>Beeman v. Bd. of Educ. Oyster Bay Public Schools</i>	N.Y.App.
1985	Ohio	<i>Bennett v. Bd. of Educ. Lorain School Dist.</i>	Ohio.App.
1985	Minnesota	<i>Blank v. Independent School Dist.</i>	Minn.App.
1985	Pennsylvania	<i>Bd. of School Dir. of Chester School Dist. v. Ashby</i>	Pa.Cmwltth.App.
1985	Rhode Island	<i>Bochner v. Providence School Committee</i>	R.I.
1985	Massachusetts	<i>Caso v. School Committee of Waltham</i>	Mass.App.
1985	Pennsylvania	<i>Derry Tp. School District v. Finnegan</i>	Pa.Cmwltth.App.
1985	Minnesota	<i>Finley v. Ind. School District</i>	Minn.App.
1985	Rhode Island	<i>Gallison v. Bristol School Committee</i>	R.I.
1985	Oregon	<i>Gonzalez v. Marion County Educ. Service Dist.</i>	Or.App.
1985	Arkansas	<i>Green Forrest Public Schools v. Herrington</i>	Ark.
1985	New Jersey	<i>Jamison v. Morris School Dist. Bd. of Educ.</i>	N.J.Super.App.
1985	Minnesota	<i>Marshall Co. Cent. Educ. Assn. v. Ind. School Dist.</i>	Minn.App.
1985	Massachusetts	<i>Martin v. School Committee of Natick</i>	Mass.

(table continues)

Year	State	Case	Court
1985	Alabama	<i>May v. Alabama State Tenure Commission</i>	Ala.Civ.App.
1985	Pennsylvania	<i>Mongelluzzo v. School Dist. of Bethel Park</i>	Pa.Cmwltl.App.
1985	Pennsylvania	<i>Ringhoffer v. Bethlehem Area Voc. Technical Sch.</i>	Pa.Com.Pl.
1985	Pennsylvania	<i>Rosen v. Montgomery County Intermediate Unit</i>	Pa.Cmwltl.App.
1985	New York	<i>Schimmel v. Bd. of Educ. So. Kortright School Dist.</i>	N.Y.App.Div.
1985	New York	<i>Shearod v. Bd. of Educ. Services of Nassau County</i>	N.Y.App.Div.
1985	Minnesota	<i>State ex rel. Haak v. Bd. of Educ. Indp. School Dist.</i>	Minn.
1986	Minnesota	<i>Beste v. Independent School Dist.</i>	Minn.App.
1986	Minnesota	<i>Bye v. Special Intermediate School Dist.</i>	Minn.App.
1986	Pennsylvania	<i>Daly v. Grove City Area School Dist.</i>	Pa.Com.Pl.
1986	Missouri	<i>Elrod v. Harrisonville Case R-IX School Dist.</i>	Mo.App.
1986	Minnesota	<i>Evans v. Independent School Dist.</i>	Minn.App.
1986	Pennsylvania	<i>Glendale School Dist. v. Feigh</i>	Pa.Cmwltl.App.
1986	New York	<i>Hicksville Teachers v. Hicksville School Bd. of Educ.</i>	N.Y.App.Div.
1986	Pennsylvania	<i>James v. Big Beaver Falls Area School Dist.</i>	Pa.Cmwltl.App.
1986	New York	<i>Moore v. Bd. of Educ. Smithtown School Dist.</i>	N.Y.App.Div.
1986	New Jersey	<i>O'Toole v. Forestal</i>	N.J.Super.App.
1986	California	<i>Poppers v. Tamalpais Union High School Dist.</i>	Cal.App.
1986	Minnesota	<i>Roseville Educ. Assn. v. Ind. School Dist.</i>	Minn.App.
1986	West Virginia	<i>State ex rel. Bd. of Educ. of Kanawha Cty. v. Casey</i>	W.Va.
1986	Minnesota	<i>Strand v. Special School Dist.</i>	Minn.
1986	Illinois	<i>Verdeyen v. Bd. of Educ. Batavia School Dist.</i>	Ill.App.
1986	Alabama	<i>Wooten v. DeKalb County Bd. of Educ.</i>	Ala.Civ.App.
1986	Michigan	<i>Wygant v. Jackson Bd. of Educ</i>	U.S.Mich.
1986	Illinois	<i>Zink v. Board of Educ. of Chrisman</i>	Ill.App.
1987	New Jersey	<i>Bednar v. Westwood Bd. of Education</i>	N.J.Super.App.
1987	Kansas	<i>Hein v. Board of Educ. Unified School Dist.</i>	Kan.App.
1987	Pennsylvania	<i>Jarrett v. Wattsburg Area School Dist.</i>	Pa.
1987	North Dakota	<i>Law v. Mandan Public School Dist.</i>	N.D.
1987	South Dakota	<i>Murphy v. Pierre Independent School Dist.</i>	S.D.
1987	Iowa	<i>Pocahontas Community School Dist. v. Levene</i>	Iowa.App.
1987	Illinois	<i>Proviso Teachers Union v. Proviso H.S. Cook County</i>	Ill.App.
1987	Tennessee	<i>Randal v. Hankins</i>	Tenn.
1987	Alabama	<i>Robertson v. Alabama State Tenure Com'n.</i>	Ala.Civ.App.
1987	Pennsylvania	<i>Rochester Area School Bd. v. Duncan</i>	Pa.Cmwltl.App.
1987	Minnesota	<i>Westgard v. Independent School Dist.</i>	Minn.App.
1988	Kansas	<i>Bauer v. Bd. of Educ. Unified School Dist.</i>	Kan.
1988	Pennsylvania	<i>Gibbons v. New Castle Area School Dist.</i>	Pa.
1988	New Mexico	<i>New Mexico State Bd. of Educ. v. Abeyta</i>	N.M.
1989	Kansas	<i>Butler v. Bd. of Educ. Unified School Dist.</i>	Kan.
1989	Minnesota	<i>In re Independent School Dist. No. 318 Hearing</i>	Minn.App.
1989	Pennsylvania	<i>McKeesport Area School Dist. v. Cicogna</i>	Pa.Cmwltl.App.
1989	Ohio	<i>Phillips v. South Range Local Sch. Dist. Bd. of Educ.</i>	Ohio
1989	North Carolina	<i>Taborn v. Hammonds</i>	N.C.
1989	Pennsylvania	<i>Whitling v. Keystone School Dist.</i>	Pa.Cmwltl.App.
1990	New York	<i>Anderson v. Cortland City School Dist.</i>	N.Y.Sup.
1990	Louisiana	<i>Beason v. Rapides Parish School Bd.</i>	La.App.
1990	Pennsylvania	<i>Dallap v. Sharon City School Dist.</i>	Pa.

(table continues)

Year	State	Case	Court
1990	Minnesota	<i>In re Battaglia</i>	Minn.App.
1990	Alabama	<i>Jackson v. Randolph County Bd. of Educ.</i>	Ala.Civ.App.
1990	Kansas	<i>O'Hair v. Board of Educ. Unified School Dist.</i>	Kan.App.
1990	Indiana	<i>Stewart v. Fort Wayne Community Schools</i>	Ind.
1991	Connecticut	<i>Bd. of Educ. of Town of Thomaston v. State Bd. Labor Rel.</i>	Conn.
1991	New York	<i>Gross v. Bd. of Educ. of Elmsford Union Free School Dist.</i>	N.Y.
1991	Illinois	<i>Hampson v. Bd. of Educ. Thornton Fractional Tp. High Schools</i>	Ill.App.
1991	Minnesota	<i>Matter of Hagen</i>	Minn.App.
1992	West Virginia	<i>Board of Educ. of County of Grant v. Townshend</i>	W.Va.
1992	North Dakota	<i>Kent v. Sawyer Public School Dist.</i>	N.D.
1992	Iowa	<i>Lee v. Giangreco</i>	Iowa
1992	Iowa	<i>Mackey v. Newell-Providence Commn. School Dist.</i>	Iowa.App.
1992	Ohio	<i>State ex rel. Van Dorn v. Mt. Gilead Exempted School Dist.</i>	Ohio.App.
1993	Connecticut	<i>Ballato v. Bd. Of Educ. of Town of Stonington</i>	Conn.App.
1993	Virginia	<i>County School Bd. of York County v. Epperson</i>	Va.
1993	New Jersey	<i>Dennery v. Bd. of Educ. Passaic County Regional H.S. Dist.</i>	N.J.
1993	Alabama	<i>Gray v. Birmingham Bd. of Educ.</i>	Ala.Civ.App.
1993	Pennsylvania	<i>Kaczmarcik v. Carbondale Area School Dist.</i>	Pa.Cmwth.App.
1993	New York	<i>Kransdorf v. Bd. of Educ. Northport Union Free School Dist.</i>	N.Y.
1993	Connecticut	<i>McKee v. Bd. of Educ. of Town of Waterton</i>	Conn.App.
1993	Illinois	<i>Piquard v. Bd. of Educ. of Pekin Commn. H.S. Dist.</i>	Ill.App.
1994	Mississippi	<i>Byrd v. Green County School dist.</i>	Miss.
1994	Pennsylvania	<i>Colonial Educ. Ass'n. v. Colonial School Dist.</i>	Pa.Cmwth.App.
1994	New York	<i>Cooper v. Bd. of Educ. of Shenendehowa Cent. School Dist.</i>	N.Y.App.
1994	Connecticut	<i>Geren v. Bd. of Educ. of Town of Brookfield</i>	Conn.App.
1994	Pennsylvania	<i>Luzerne Intermediate Educ. Ass'n. v. Pittston Area School Dist.</i>	Pa.Cmwth.App.
1994	West Virginia	<i>Summers County Bd. of Educ. v. Allen</i>	W.Va.
1994	Pennsylvania	<i>Walkowski v. Duquesne City School Dist.</i>	Pa.Cmwth.App.
1995	Pennsylvania	<i>Bachak v. Lakeland School Dist.</i>	Pa.Cmwth.App.
1995	Missouri	<i>Boner v. Eminence R-1 School Dist.</i>	C.A.Mo.
1995	Pennsylvania	<i>Bricillo v. Duquesne City School Dist.</i>	Pa.Cmwth.App.
1995	New Jersey	<i>Impey v. Bd. of Educ. of Borough of Shrewsbury</i>	N.J.
1996	Pennsylvania	<i>Battaglia v. Lakeland School Dist.</i>	Pa.Cmwth.App.
1996	Minnesota	<i>Kvernmo v. Independent School Dist.</i>	Minn.App.
1996	Pennsylvania	<i>Newell v. Wilkes-Barre Area Vocational Technical School</i>	Pa.Cmwth.App.
1996	West Virginia	<i>State ex rel. Boner v. Kanawha County Bd. of Educ.</i>	W.Va.
1996	New York	<i>Van Derzee v. Bd. of Educ. of Odessa-Montour School Dist.</i>	N.Y.App.
1997	North Dakota	<i>Borr v. McKenzie County Public School Dist.</i>	N.D.
1997	Minnesota	<i>DeGeorgeo v. Independent School Dist. South Washington Co.</i>	Minn.App.
1997	Arkansas	<i>Junction City School Dist. v. Alphin</i>	Ark.App.
1997	Nebraska	<i>Nickel v. Saline County School Dist.</i>	Neb.
1997	Dist. of Col.	<i>Washington Teachers' Union v. Bd. of Educ. Dist. of Columbia</i>	C.A.D.C.
1998	New Jersey	<i>Vicenzino v. Bedminister Tp. Bd. of Educ.</i>	N.J.Super.App.
1998	Massachusetts	<i>Westport School Community v. Coelho</i>	Mass.App.
1998	West Virginia	<i>Wood County Bd. of Educ. v. Smith</i>	W.Va.

(table continues)

Year	State	Case	Court
1999	New Jersey	<i>Carpenito v. Bd. of Educ. of Borough of Rumson, Monmouth Co.</i>	N.J.Super.App.
2001	Minnesota	<i>Moe v. Independent School Dist.</i>	Minn.App.
2001	Minnesota	<i>State ex rel. Quiring v. Bd. of Educ. of Ind. Sch. Dist.</i>	Minn.App.
2002	Minnesota	<i>Savre v. Independent School Dist.</i>	Minn.App.
2002	Idaho	<i>Willie v. Bd. of Trustees</i>	Idaho
2002	Ohio	<i>Wolfe v. Lawrenceville Cty. Joint Voc. School Dist. Bd. of Educ.</i>	Ohio.App.
2002	California	<i>Zalac v. Governing Bd. of Ferndale Unified Sch. Dist.</i>	Cal.App.
2003	South Dakota	<i>Chilson v. Kimball School Dist.</i>	S.D.
2003	Louisiana	<i>Howard v. West Baton Rouge Parish School Bd.</i>	La.App.
2003	Massachusetts	<i>Lyons v. School Committee of Dedham</i>	Mass.App.
2003	Nebraska	<i>Wilder v. Grant County School Dist.</i>	Neb.
2004	Illinois	<i>Cook v. Bd. of Educ. of Eldorado Comm. Sch. Dist.</i>	Ill.App.
2004	New York	<i>Davis v. School Dist. of City of Niagra Falls</i>	N.Y.App.
2004	Minnesota	<i>Hinckley v. School Bd. of Independent School Dist.</i>	Minn.App.
2005	Ohio	<i>Mink v. Great Oaks Institute of tech. and Career Dev. Bd. of Educ.</i>	Ohio.App.
2006	New Mexico	<i>Aguilera v. Bd. of Educ. of Hatch Valley Schools</i>	N.M.
2006	Minnesota	<i>Craig v. Independent School Dist.</i>	Minn.App.
2006	Kansas	<i>Dees v. Marion-Florence Unified School Dist.</i>	Kan.App.
2006	Ohio	<i>Milliken-Dees v. Salem City Sch. Dist. Bd. of Educ.</i>	Ohio.App.
2006	Montana	<i>Scobey School Dist. v. Radakovich</i>	Mont.
2007	New York	<i>Bane v. Hebrew Acd. of Five Towns and Rockaway</i>	N.Y.App.
2007	South Dakota	<i>Hanson v. Vermillion School Dist.</i>	S.D.
2008	California	<i>Bledsoe v. Biggs Unified School Dist.</i>	Cal.App.
2008	Tennessee	<i>Smith v. Jefferson County School Bd. of Com'rs</i>	C.A.Tenn.
2008	Dist. of Col.	<i>Washington Teachers' Union v. Bd. of Educ. Dist. of Columbia</i>	D.C.
2009	Iowa	<i>Martinek v. Belmond-Klemme Comm. School Dist.</i>	Iowa
2009	Nebraska	<i>Miller v. School Dist. of Clay County</i>	Neb.
2010	Louisiana	<i>Hays v. Louisiana State Bd. of Elem. and Sec. Educ.</i>	La.App.
2010	Ohio	<i>Perrea v. Cincinnati Public Schools</i>	S.D. Ohio.

Table 2 reveals a list of all cases from which other tables in the data analysis process will be derived. Within Table 2 there is a total of 147 cases over a 27-year period from 1984-2010. This 27-year time period produced several categories and subcategories based on the background situation(s) (the reason for the reduction in force) and the claim(s) presented in the cases. The cases are listed chronologically providing the state, whether or not the state participated in collective bargaining, the prevailing party, the background situation(s) that resulted in the

implementation of the reduction in force, and the claim(s) that were filed as a result of the reduction in force.

Table 2

Master Table

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
1984	NY	Y	<i>Gill v. Dutchess County Bd. of Educ.</i>	E	Consolidation	Teachers claimed school system failed to follow proper procedures when displacing them to other positions.
1984	MA	Y	<i>Haskell v. School Committee of Framingham</i>	SS	Budgetary Restraints	Teacher claimed school failed to comply with notice and procedural requirements regarding elimination of a position.
1984	MA	Y	<i>Hockney v. School Committee of Lynn</i>	SS	Budgetary Restraints	Teacher claimed she was denied due process, equal protection, and contractual rights according to CBA when she was laid off.
1984	NJ	Y	<i>Old Bridge Bd. of Educ. v. Flora Unit School Dist.</i>	SS	Enrollment Decline	Teacher claimed she received her layoff notice after the date specified in her contract.
1984	CA	Y	<i>Powers v. Commission on Professional Competence</i>	SS	Violating Education Code	Teacher claimed he was dismissed from his position improperly.
1984	OR	Y	<i>Ross v. Springfield School Dist.</i>	SS	Immorality	No claim, teacher challenged his dismissal.
1984	MN	Y	<i>Schmidt v. Independent School Dist.</i>	E	Discontinuance of Position	Teacher claimed School Board did not properly state in the written notice the grounds for his unrequested leave of absence.
1984	AL	N	<i>Smith v. Alabama State Tenure Com'n.</i>	SS	Discontinuance of Position	Teacher claimed that she must be informed, if being transferred to a new position, the location of the new assignment.
1984	MO	N	<i>St. Louis Teachers Union v. St. Louis Bd. of Educ.</i>	SS	Budgetary Restraints/Enrollment Decline	Teachers claimed they were not notified of the non-renewal date prior to the April 15 deadline.
1984	SD	Y	<i>Sutera v. Sully Buttes Bd. of Educ.</i>	E	Reduce Number of Staff	Teacher claimed he was qualified to hold position of a probationary teacher who was retained.
1984	VT	Y	<i>Work v. Mt. Abraham Union H.S. Bd. of Directors</i>	SS	Discontinuance of Position	Teacher claimed he was entitled to be transferred to an open position after his contract was non-renewed.

(table continues)

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
1985	NY	Y	<i>Beeman v. Bd. of Educ. Oyster Bay Public Schools</i>	E	Reduce Number of Staff	Teacher claimed she had seniority over two other teachers who were retained.
1985	OH	Y	<i>Bennett v. Bd. of Educ. Lorain School Dist.</i>	SS	Budgetary Restraints/Enrollment Decline	Employee claimed her contract needed to be enforced.
1985	MN	Y	<i>Blank v. Independent School Dist.</i>	B	Budgetary Restraints/Enrollment Decline	Teachers claimed they could bump less senior teachers based on their qualifications and what they had taught.
1985	PA	Y	<i>Bd. of School Dir. of Chester School Dist. v. Ashby</i>	E	Consolidation	Teacher claimed school system failed to follow statute requiring suspension be made solely upon seniority
1985	RI	Y	<i>Bochner v. Providence School Committee</i>	SS	Enrollment Decline	Teacher claimed the projected decline in enrollment was not substantial in accordance to statute.
1985	MA	Y	<i>Case v. School Committee of Waltham</i>	SS	Budgetary Restraints / Reorganization	Applicant claimed teacher hired for position wasn't qualified.
1985	PA	Y	<i>Derry Tp. School District v. Finnegan</i>	SS	Enrollment Decline	Teacher claimed she should have been retained instead of a temporary professional employee, a principal.
1985	MN	Y	<i>Finley v. Ind. School District</i>	E	Budgetary Restraints	Principal claimed school district failed to comply with procedural requirements to place her on unrequested leave.
1985	RI	Y	<i>Gallison v. Bristol School Committee</i>	SS	Enrollment Decline	Teachers claimed suspensions had to be made on a system-wide seniority basis.
1985	OR	Y	<i>Gonzalez v. Marion County Educ. Service Dist.</i>	SS	Budgetary Restraints	Teacher claimed school system failed to compare his competence and merit to teachers with less seniority that were retained.
1985	AR	N	<i>Green Forrest Public Schools v. Herrington</i>	E	Budgetary Restraints	Teacher claimed policies were applied discriminatorily.
1985	NJ	Y	<i>Jamison v. Morris School Dist. Bd. of Educ.</i>	SS	Budgetary Restraints / Reorganization	Assistant Principal claimed board failed to follow the Open Public Meetings Act.
1985	MN	Y	<i>Marshall Co. Cent. Educ. Assn. v. Ind. School Dist.</i>	E	Lack of Cooperation	Teacher claimed her nonrenewal constituted an unfair labor practice.
1985	MA	Y	<i>Martin v. School Committee of Natick</i>	SS	Enrollment Decline	Teacher claimed his termination violated his constitutional, statutory, and contractual rights.

(table continues)

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
1985	AL	N	<i>May v. Alabama State Tenure Commission</i>	SS	Enrollment Decline	Teacher claimed because she was tenured that an alteration in the system should be made to accommodate her.
1985	PA	Y	<i>Mongelluzzo v. School Dist. of Bethel Park</i>	SS	Enrollment Decline	Teachers claimed there had to be an enrollment decline in their program for them to be dismissed from their position.
1985	PA	Y	<i>Ringhoffer v. Bethlehem Area Voc. Technical School</i>	SS	Enrollment Decline	Teacher claimed the enrollment decline was not substantial.
1985	PA	Y	<i>Rosen v. Montgomery County Intermediate Unit</i>	E	Enrollment Decline	Teachers claimed their dismissal required approval from the Dept. of Educ.
1985	NY	Y	<i>Schimmel v. Bd. of Educ. So. Kortright School Dist.</i>	SS	Abolished Program	Teacher claimed he was entitled to a part-time position.
1985	NY	Y	<i>Shearod v. Bd. of Educ. Services of Nassau County</i>	SS	Abolished Program	Teacher claimed she should have been given new position based on seniority.
1985	MN	Y	<i>State ex rel. Haak v. Bd. of Educ. Indp. School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Administrators claimed they should have been appointed to newly created positions.
1986	MN	Y	<i>Beste v. Independent School Dist.</i>	E	Discontinuance of Position	Teacher claimed the board failed to establish the reason his position was discontinued.
1986	MN	Y	<i>Bye v. Special Intermediate School Dist.</i>	B	Budgetary Restraints / Enrollment Decline	Teachers claim the school district wrongly relied on financial limitations and decreasing enrollment to justify their ULA.
1986	PA	Y	<i>Daly v. Grove City Area School Dist.</i>	SS	Enrollment Decline	Teacher claimed her time as a substitute should have been included towards her seniority.
1986	MO	N	<i>Elrod v. Harrisonville Case R-IX School Dist.</i>	SS	Budgetary Restraints	Assistant principal claimed him being placed on ULA as an assistant principal and being given a teaching position was a breach of contract.
1986	MN	Y	<i>Evans v. Independent School Dist.</i>	SS	Discontinuance of Position	Teachers claimed being bumped from their positions by administrative coordinators did not meet statutory requirements.

(table continues)

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
1986	PA	Y	<i>Glendale School Dist. v. Feigh</i>	SS	Budgetary Restraints	Board claimed suspension of teacher was appropriate since the program had been eliminated.
1986	NY	Y	<i>Hicksville Teachers v. Hicksville School Bd. of Educ.</i>	B	Budgetary Restraints	Teachers claimed their academic tenure tract was different from tenure given to other teachers.
1986	PA	Y	<i>James v. Big Beaver Falls Area School Dist.</i>	SS	Enrollment Decline	Teacher claimed school district improperly determined another teacher's seniority.
1986	NY	Y	<i>Moore v. Bd. of Educ. Smithtown School Dist.</i>	SS	Enrollment Decline / Discontinuance of Position	Teacher claimed her time teaching in one area should have been applied towards her seniority credit in another area.
1986	NJ	Y	<i>O'Toole v. Forestal</i>	SS	Budgetary Restraints	Teacher claimed her tenure and seniority rights were not limited to the institution where she was employed.
1986	CA	Y	<i>Poppers v. Tamalpais Union High School Dist.</i>	E	Abolished Program	Teacher claimed he was entitled to a position based on his seniority.
1986	MN	Y	<i>Roseville Educ. Assn. v. Ind. School District</i>	B	Discontinuance of Position, Enrollment Decline, Budgetary Restraints	Teachers claimed their placement on leave was arbitrary and denied them their due process rights.
1986	WV	N	<i>State ex rel. Bd. of Educ. of Kanawha County v. Casey</i>	E	Consolidation	Principal claimed he should have been given another principal position based on seniority.
1986	MN	Y	<i>Strand v. Special School Dist.</i>	B	Enrollment Decline / Budgetary Restraints	Teachers claimed their terminations were improper based on seniority.
1986	IL	Y	<i>Verdeyen v. Bd. of Educ. Batavia School Dist.</i>	SS	Budgetary Restraints	Teacher claimed her seniority rights were violated.
1986	AL	N	<i>Wooten v. DeKalb County Bd. of Educ.</i>	SS	Enrollment Decline / Abolished Program	Teacher claimed the abolition of his supervisor position and transfer to a teaching position was invalid.
1986	MI	Y	<i>Wygant v. Jackson Bd. of Educ.</i>	E	Budgetary Restraints	Teachers claimed the policy of laying off non-minority teachers violated the Equal Protection Clause.
1986	IL	Y	<i>Zink v. Board of Educ. of Chrisman</i>	SS	Discontinuance of Program	Teacher claimed she should be appointed to full-time position based on seniority.
1987	NJ	Y	<i>Bednar v. Westwood Bd. of Education</i>	E	Enrollment Decline	Teacher claimed a reduction in hours violated his tenure and seniority rights
1987	KS	Y	<i>Hein v. Board of Educ. Unified School Dist.</i>	E	Budgetary Restraints	Board claimed teacher being dismissed wasn't qualified to teach new position.

(table continues)

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
1987	PA	Y	<i>Jarrett v. Wattsburg Area School Dist.</i>	SS	Curriculum Adjustments	Board claimed teacher held less seniority based on hire date.
1987	ND	Y	<i>Law v. Mandan Public School Dist.</i>	SS	Enrollment Decline, Elimination of Position, Budgetary Restraints	Teacher claimed dismissal was a breach of contract and was done based on insufficient reasons.
1987	SD	Y	<i>Murphy v. Pierre Independent School Dist.</i>	SS	Enrollment Decline	Teacher claimed her nonrenewal was a breach of contract.
1987	IA	Y	<i>Pocahontas Community School Dist. v. Levene</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed no just cause was shown for the elimination of her contract.
1987	IL	Y	<i>Proviso Teachers Union v. Proviso H.S. Cook County</i>	SS	Enrollment Decline	Teacher claimed school board breached the collective bargaining agreement when it retained a teacher with equal seniority.
1987	TN	Y	<i>Randall v. Hankins</i>	SS	Abolished Program	Teacher claimed the correct rehiring procedures were not followed.
1987	AL	N	<i>Robertson v. Alabama State Tenure Com'n.</i>	SS	Enrollment Decline	Teacher claimed he was entitled to a hearing based on his reassignment because it qualified as a transfer.
1987	PA	Y	<i>Rochester Area School Bd. v. Duncan</i>	SS	Enrollment Decline	School board claimed seniority was properly determined by time served in military as the starting point.
1987	MN	Y	<i>Westgard v. Independent School Dist.</i>	E	Budgetary Restraints	Teacher claimed he should have been allowed to bump a less senior teacher based on his seniority,
1988	KS	Y	<i>Bauer v. Bd. of Educ. Unified School Dist.</i>	E	Enrollment Decline	Teacher claimed his termination was improper because he held the required certifications necessary for the position.
1988	PA	Y	<i>Gibbons v. New Castle Area School Dist.</i>	SS	School Closure	Principal claimed when transferred to new school he should have been given principalship based on his seniority.
1988	NM	N	<i>New Mexico State Bd. of Educ. v. Abeyta</i>	SS	Budgetary Restraints, Enrollment Decline	Teacher claimed a realignment of staff should have been performed for her to keep a position.
1989	KS	Y	<i>Butler v. Bd. of Educ. Unified School Dist.</i>	SS	Enrollment Decline	Teacher claimed he should have been given additional time to expand his certification.
1989	MN	Y	<i>In re Independent School Dist. No. 318 Hearing</i>	SS	Budgetary Restraints	Teacher claimed school was responsible for creating her a new position

(table continues)

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
1989	PA	Y	<i>McKeesport Area School Dist. v. Cicogna</i>	E	Enrollment Decline	Teacher claimed she was told to delete an area of her certification resulting in her being furloughed for a less senior teacher.
1989	OH	Y	<i>Phillips v. South Range Local School Dist. Bd. of Educ.</i>	E	Enrollment Decline	Teacher claimed her contract suspension was not based on a decline in enrollment.
1989	NC	N	<i>Taborn v. Hammonds</i>	SS	Budgetary Restraints	The board claimed they followed the reduction-in-force policy appropriately.
1989	PA	Y	<i>Whitling v. Keystone School Dist.</i>	SS	Enrollment Decline	Teacher claimed his suspension violated statute because his anticipated certification would have given him more seniority.
1990	NY	Y	<i>Anderson v. Cortland City School Dist.</i>	SS	Reorganization	Teaching assistants claimed they should have been offered employment in similar positions.
1990	LA	N	<i>Beason v. Rapides Parish School Bd.</i>	SS	Discontinuance of Position	Supervisors claimed they were improperly classified causing their demotion in rank and salary.
1990	PA	Y	<i>Dallap v. Sharon City School Dist.</i>	E	Enrollment Decline	Teachers claimed they should not have been displaced based on seniority.
1990	MN	Y	<i>In re Battaglia</i>	E	Budgetary Restraints / Enrollment Decline	Teachers claimed being placed on unrequested leave of absence violated the state's teacher's agreement pertaining to statute and contract.
1990	AL	N	<i>Jackson v. Randolph County Bd. of Educ.</i>	SS	Budgetary Restraints	Teacher claimed board failed to follow established procedures regarding recall rights.
1990	KS	Y	<i>O'Hair v. Board of Educ. Unified School District</i>	SS	Budgetary Restraints	Board claimed they followed proper policy and procedures when a tenured teacher was nonrenewed.
1990	IN	Y	<i>Stewart v. Fort Wayne Community Schools Bd. of Educ. of Town of Thomaston v. State Bd. Labor Rel.</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed she should have been retained and not discharged from her position.
1991	CT	Y	<i>Bd. of Educ. of Town of Thomaston v. State Bd. Labor Rel.</i>	E	Discontinuance of Position	School board claimed the elimination of position after arbitrator's decision did not constitute an unfair labor practice.
1991	NY	Y	<i>Gross v. Bd. of Educ. of Elmsford Union Free School Dist.</i>	SS	Budgetary Restraints	Teacher claimed she was wrongfully discharged from her position.

(table continues)

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
1991	IL	Y	<i>Hampson v. Bd. of Educ. Thornton Fractional Tp. High Schools</i>	SS	Budgetary Restraints	Teacher claimed her tenure rights were violated when she was let go as a non-tenured employee.
1991	MN	Y	<i>Matter of Hagen</i>	SS	Discontinuance of Position, Enrollment Decline, Budgetary Restraints	Teacher claimed staff assignments should have been realigned to save his position.
1992	WV	N	<i>Board of Educ. of County of Grant v. Townshend</i>	E	Reorganization / Budgetary Restraints	Principal claimed her transfer to a teaching position was a violation of the state statute.
1992	ND	Y	<i>Kent v. Sawyer Public School Dist.</i>	SS	Budgetary Restraints / Enrollment Decline	Teacher claimed that the school district failed to follow its reduction-in-force policy when nonrenewing her contract and didn't rehire her based on sex discrimination.
1992	IA	Y	<i>Lee v. Giangreco</i>	E	Enrollment Decline	Teacher claimed deprivation of procedural and substantive due process and gender based discrimination.
1992	IA	Y	<i>Mackey v. Newell-Providence Community School Dist.</i>	SS	Enrollment Decline	Teacher claimed the board failed to follow its own policy for contract termination and the collective bargaining agreement.
1992	OH	Y	<i>State ex rel. Van Dorn v. Mt. Gilead Exempted School Dist.</i>	SS	Enrollment Decline	Teacher claimed she was entitled to a multi-year contract based on the collective bargaining agreement and a reduction in force could not change this.
1993	CT	Y	<i>Ballato v. Bd. of Educ. of Town of Stonington</i>	SS	Budgetary Restraints	Teachers claimed their positions were improperly eliminated under state statute and the seniority list used was invalid.
1993	VA	N	<i>County School Bd. of York County v. Epperson</i>	SS	Reorganization	Teachers claimed the school board failed to follow applicable rules, policies, and procedures.
1993	NJ	Y	<i>Dennery v. Bd. of Educ. Passaic County Regional H.S. Dist.</i>	SS	Reorganization	The school board claimed tenure could not be transferred from one position to the next.
1993	AL	N	<i>Gray v. Birmingham Bd. of Educ.</i>	SS	Budgetary Restraints	Teachers claimed they were terminated based on a policy that wasn't legally binding.
1993	PA	Y	<i>Kaczmarcik v. Carbondale Area School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Vice-principal claimed the elimination of his position and demotion to teacher was arbitrary and discriminatory.

(table continues)

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
1993	NY	Y	<i>Kransdorf v. Bd. of Educ. Nortport Union Free School Dist.</i>	E	Discontinuance of Position	Teacher claimed time spent as a full-time substitute teacher should be used in computing her seniority.
1993	CT	Y	<i>McKee v. Board Of Educ. of Town of Waterton</i>	E	Discontinuance of Position	Board of education claimed the trial court unallowably substituted its judgment in place of theirs.
1993	IL	Y	<i>Piquard v. Bd. of Educ. of Pekin Community H.S. Dist.</i>	SS	Discontinuance of Position	Teacher claimed she was improperly dismissed based on her seniority.
1994	MS	N	<i>Byrd v. Green County School Dist.</i>	E	Budgetary Restraints	Teacher claimed school district failed to follow state statute for nonrenewing his contract.
1994	PA	Y	<i>Colonial Educ. Ass'n. v. Colonial School Dist.</i>	E	Enrollment Decline	Education Association claimed the decline in student enrollment over an eighteen year period was not appropriate to determine the teacher's suspension.
1994	NY	Y	<i>Cooper v. Board of Educ. of Shenendehowa Cent. School Dist.</i>	SS	Enrollment Decline	Teachers claimed the creation of new programs constituted a takeover of the programs they taught and were discontinued.
1994	CT	Y	<i>Geren v. Board of Educ. of Town of Brookfield</i>	SS	Termination of Contract	Teacher claimed his contract was breached.
1994	PA	Y	<i>Luzerene Intermediate Educ. Ass'n. v. Pittston Area School Dist.</i>	B	Enrollment Decline / Budgetary Restraints	Teachers association claimed the school district was required to fill all transferred positions with their teachers and that they should receive seniority credit for all their time served.
1994	WV	N	<i>Summers County Bd. of Educ. v. Allen</i>	B	Enrollment Decline / Budgetary Restraints	Administrators claimed school board failed to follow reduction-in-force procedures.
1994	PA	Y	<i>Walkowski v. Duquesne City School Dist.</i>	SS	Enrollment Decline	Teacher claimed there was not a decline in enrollment when she was furloughed.
1995	PA	Y	<i>Bachak v. Lakeland School Dist.</i>	E	Enrollment Decline	Teacher claimed student enrollment didn't decline over a reasonable period of time.
1995	MO	N	<i>Bonner v. Eminence R-1 School Dist.</i>	SS	Budgetary Restraints	Teacher claimed his placement on involuntary leave violated of his due process rights.
1995	PA	Y	<i>Bricillo v. Duquesne City School Dist.</i>	SS	School Consolidation / Discontinuance of Program	Teachers claimed there was not a consolidation of schools and certain programs were inappropriately eliminated.

(table continues)

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
1995	NJ	Y	<i>Impey v. Board of Educ. of Borough of Shrewsbury</i>	SS	Budgetary Restraints	Teacher claimed her tenure, seniority, and re-employment rights were violated.
1996	PA	Y	<i>Battaglia v. Lakeland School Dist.</i>	B	Enrollment Decline	Teacher claimed enrollment increased during one year and the actual decline wasn't substantial. The use of a ten year period to determine a decline was unreasonable.
1996	MN	Y	<i>Kvernmo v. Independent School Dist.</i>	SS	Reorganization	Teacher claimed school district was required to rearrange teaching assignments in order to keep her full-time.
1996	PA	Y	<i>Newell v. Wilkes-Barre Area Vocational Technical School</i>	SS	Enrollment Decline	Teacher claimed his suspension was improper in that there had been an increase in student enrollment at the time of his suspension and that computation of the enrollment decline was based on an unreasonable amount of time.
1996	WV	N	<i>State ex rel. Boner v. Kanawha County Bd. of Educ.</i>	E	Discontinuance of Position	Teachers claimed their positions could not be contracted out for services they had previously provided.
1996	NY	Y	<i>Van Derzee v. Bd. of Educ. of Odessa-Montour School Dist.</i>	SS	Discontinuance of Position	Teacher claimed her part-time position could not be abolished in place of another position because of her length of time in the system.
1997	ND	Y	<i>Borr v. McKenzie County Public School Dist.</i>	SS	Enrollment Decline	Teacher claimed the school district wrongfully failed to renew his continuing teaching contract.
1997	MN	Y	<i>DeGeorgeo v. Independent School Dist. South Washington Co.</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed she should have been allowed to bump a less senior teacher.
1997	AR	N	<i>Junction City School Dist. v. Alphin</i>	E	Budgetary Restraints	Teacher claimed school district failed to follow reduction-in-force policy.
1997	NE	Y	<i>Nickel v. Saline County School Dist.</i>	SS	Enrollment Decline	Teacher claimed a non-tenured teacher was retained to perform services that she was certified to perform.
1997	DC	Y	<i>Washington Teachers' Union v. Bd. of Educ. Dist. of Columbia</i>	SS	Budgetary Restraints / Discontinuance of Position	Teachers claimed reduction in force violated the collective bargaining agreement and the Contract Clause.
1998	NJ	Y	<i>Vicenzino v. Bedminster Tp. Bd. of Educ.</i>	E	Discontinuance of Position	Teacher claimed her dismissal was a violation of tenure, seniority, and re-employment rights.

(table continues)

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
1998	MA	Y	<i>Westport School Community v. Coelho</i>	SS	Enrollment Decline / Budgetary Restraints	Teachers claimed their dismissal was in violation of the collective bargaining agreement.
1998	WV	N	<i>Wood County Bd. of Educ. v. Smith</i>	SS	Discontinuance of Position	The appellants claim that the elimination of half-day positions didn't constitute a reduction in force or that the drivers who lost their positions could use their seniority to take positions that were not eliminated.
1999	NJ	Y	<i>Carpenito v. Bd. of Educ. of Borough of Rumson, Monmouth Co.</i>	SS	Enrollment Decline / Abolishment of Position	Teacher claimed he had seniority rights to a former teaching position that had been abolished but reinstated years later.
2001	MN	Y	<i>Moe v. Independent School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed she was not allowed to bump two less senior teachers from their positions and this went against the law.
2001	MN	Y	<i>State ex rel. Quiring v. Bd. of Educ. of Independent School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Principal claimed her position was not eliminated and the reorganization of positions was arbitrary and capricious.
2002	MN	Y	<i>Savre v. Independent School Dist.</i>	SS	Budgetary Restraints	Teacher claimed the school district's failure to provide written evaluations was an error of law.
2002	ID	Y	<i>Willie v. Board of Trustees</i>	SS	Curriculum Adjustments	Teacher claimed school system was in breach of his employment contract.
2002	OH	Y	<i>Wolfe v. Lawrence Cty. Joint Vocational School Dist. Bd. of Educ.</i>	SS	Enrollment Decline	Teacher claimed a decline in student enrollment was not a basis for a reduction in force under the collective bargaining agreement.
2002	CA	Y	<i>Zalac v. Governing Bd. of Ferndale Unified School Dist.</i>	SS	Discontinuance of Position / Budgetary Restraints	Teacher claimed she was improperly classified as a Temporary employee because the program under which she was hired was not categorically funded and the Board failed to follow the appropriate procedures in laying her off.
2003	SD	Y	<i>Chilson v. Kimball School Dist.</i>	SS	Budgetary Restraints	Teacher claimed other teachers with less seniority were not terminated before him.
2003	LA	N	<i>Howard v. West Baton Rouge Parish School Bd.</i>	SS	Discontinuance of Position	Teacher claimed he could not be terminated due to a reduction in force until after he had been reinstated to his position.
2003	MA	Y	<i>Lyons v. School Committee of Dedham</i>	SS	Budgetary Restraints	Teachers claimed they should be allowed to bump teachers with less seniority.

(table continues)

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
2003	NE	Y	<i>Wilder v. Grant County School Dist.</i>	E	Enrollment Decline / Budgetary Restraints	Teacher claimed school district failed to follow state statute for its reduction-in-force policy.
2004	IL	Y	<i>Cook v. Board of Educ. of Eldorado Community School Dist.</i>	E	Discontinuance of Position	Teacher alleged breach of contract and violation of the educational support personnel layoff statute.
2004	NY	Y	<i>Davis v. School Dist. of City of Niagra Falls</i>	SS	Budgetary Restraints	Teacher claimed school system discriminated against him based on his age.
2004	MN	Y	<i>Hinckley v. School Bd. of Independent School Dist.</i>	SS	Budgetary Restraints	Principal claimed her placement on unrequested leave of absence was done by an erroneous theory of law.
2005	OH	Y	<i>Mink v. Great Oaks Institute of Tech. and Career Dev. Bd. of Educ.</i>	SS	Enrollment Decline	Teacher claimed his contract was suspended improperly due to a reduction in force.
2006	NM	N	<i>Aguilera v. Board of Educ. of Hatch Valley Schools</i>	E	Budgetary Restraints	Teacher claimed her discharge wasn't authorized by the district's reduction-in-force policy.
2006	MN	Y	<i>Craig v. Independent School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed school district proceeded under an erroneous theory of law when it failed to realign teaching positions and produce evidence to support its decision.
2006	KS	Y	<i>Dees v. Marion-Florence Unified School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	School counselor claimed her due process rights were violated by hearing officer's 2-month delay in issuing a decision.
2006	OH	Y	<i>Milliken-Dees v. Salem City School Dist. Bd. of Educ.</i>	E	Budgetary Restraints	Board claims their explanation for nonrenewing appellees limited teaching contracts was sufficient.
2006	MT	Y	<i>Scobey School Dist. v. Radakovich</i>	SS	Budgetary Restraints / Reorganization	School district claimed the dismissal of a tenured teacher was not a violation of state statute or the collective bargaining agreement.
2007	NY	Y	<i>Bane v. Hebrew Academy of Five Towns and Rockaway</i>	E	Budgetary Restraints	School claimed teacher forfeited her tenure rights when she accepted what was considered an administrative position.
2007	SD	Y	<i>Hanson v. Vermillion School Dist.</i>	SS	Budgetary Restraints	Teacher claimed she was both qualified and certified to bump a teacher with less seniority.

(table continues)

Year	State	CB	Case	PP	Background situation(s) for reduction in force	Claim(s)
2008	CA	Y	<i>Bledsoe v. Biggs Unified School Dist.</i>	SS	Budgetary Restraints	Teacher and Association claim the district failed to determine if the teacher held the special training and experience needed to teach in a community day school.
2008	TN	Y	<i>Smith v. Jefferson County School Bd. of Com'rs.</i>	E	Budgetary Restraints	Appellants claimed their positions could not be contracted out to a private Christian School without violating the Establishment Clause.
2008	DC	Y	<i>Washington Teachers' Union v. Bd. of Educ. Dist. of Columbia</i>	SS	Enrollment Decline / Budgetary Restraints	Teachers' Union claimed the school district did away with jobs and terminated teachers improperly when they implemented a reduction in force.
2009	IA	Y	<i>Martinek v. Belmond-Klemme Community School Dist.</i>	E	Enrollment Decline / Financial Hardship	Principal claimed the board didn't have the authority to terminate her contract according to state statute.
2009	NE	Y	<i>Miller v. School Dist. of Clay County</i>	E	Reorganization	Teacher claimed her termination violated the reduction-in-force statutes.
2010	LA	N	<i>Hays v. Louisiana State Bd. of Elem. and Sec. Educ.</i>	SS	Enrollment Decline / Budget Restraints	Teacher's (husband) claimed tenure rights should not have been forfeited under a reduction in force.
2010	OH	Y	<i>Perrea v. Cincinnati Public School</i>	SS	Surplussed From Position	Teacher claimed he was surplussed from his position based on his race so to balance the racial makeup of the staff.

Table 3 reveals the states that were involved in reduction-in-force litigation over the 27-year period of cases analyzed in this study. Of the 147 cases, there was a representation of 32 different states. The number of cases within a state ranged from 1 in Idaho, Indiana, Michigan, Mississippi, Montana, North Carolina, Vermont, and Virginia, to as many as 21 and 22 in Minnesota and Pennsylvania, respectively. Of the 32 states, 23 states had established collective bargaining agreements and 9 states followed state statutes only. Of the 23 states where collective bargaining was involved, there were a total of 123 cases. In those cases the school system was granted summary judgment 83 times, the employee was granted summary judgment 33 times, and both parties were granted summary judgment 7 times. Of the 9 states that only followed guidelines set forth in their state's statutes, there were a total of 24 cases. In those cases, the school system was granted summary judgment 16 times, the employee was granted summary judgment 7 times, and both parties were granted summary judgment 1 time.

Table 3

State Breakdown

Year	State	Collective bargaining	Case	Prevailing party	Background situation(s) for reduction in force
1984	AL	No	<i>Smith v. Alabama State Tenure Com'n.</i>	School System	Discontinuance of Position
1985	AL	No	<i>May v. Alabama State Tenure Commission</i>	School System	Enrollment Decline
1986	AL	No	<i>Wooten v. DeKalb County Bd. of Educ.</i>	School System	Enrollment Decline / Abolished Program
1987	AL	No	<i>Robertson v. Alabama State Tenure Com'n.</i>	School System	Enrollment Decline
1990	AL	No	<i>Jackson v. Randolph County Bd. of Educ.</i>	School System	Budgetary Restraints
1993	AL	No	<i>Gray v. Birmingham Bd. of Educ.</i>	School System	Budgetary Restraints
1985	AR	No	<i>Green Forrest Public Schools v. Herrington</i>	Employee	Budgetary Restraints
1997	AR	No	<i>Junction City School Dist. v. Alphin</i>	Employee	Budgetary Restraints
1984	CA	Yes	<i>Powers v. Commission on Professional Competence</i>	School System	Violating Education Code
1986	CA	Yes	<i>Poppers v. Tamalpais Union High School Dist.</i>	Employee	Abolished Program
2002	CA	Yes	<i>Zalac v. Governing Bd. of Ferndale Unified School Dist.</i>	School System	Discontinuance of Position / Budgetary Restraints
2008	CA	Yes	<i>Bledsoe v. Biggs Unified School Dist.</i>	School System	Budgetary Restraints
1991	CT	Yes	<i>Bd. of Educ. of Town of Thomaston v. State Bd. Labor Rel.</i>	Employee	Discontinuance of Position
1993	CT	Yes	<i>Ballato v. Bd. of Educ. of Town of Stonington</i>	School System	Budgetary Restraints
1993	CT	Yes	<i>McKee v. Board Of Educ. of Town of Waterton</i>	Employee	Discontinuance of Position

(table continues)

Year	State	Collective bargaining	Case	Prevailing party	Background situation(s) for reduction in force
1994	CT	Yes	<i>Geran v. Board of Educ. of Town of Brookfield</i>	School System	Termination of Contract
1997	DC	Yes	<i>Washington Teachers' Union v. Bd. of Educ. Dist. of Columbia</i>	School System	Budgetary Restraints / Discontinuance of Position
2008	DC	Yes	<i>Washington Teachers' Union v. Bd. of Educ. Dist. of Columbia</i>	School System	Enrollment Decline / Budgetary Restraints
1987	IA	Yes	<i>Pocahontas Community School Dist. v. Levene</i>	School System	Enrollment Decline / Budgetary Restraints
1992	IA	Yes	<i>Lee v. Giangreco</i>	Employee	Enrollment Decline
1992	IA	Yes	<i>Mackey v. Newell-Providence Community School Dist.</i>	School System	Enrollment Decline
2009	IA	Yes	<i>Martinek v. Belmond-Klemme Community School Dist.</i>	Employee	Enrollment Decline / Financial Hardship
2002	ID	Yes	<i>Willie v. Board of Trustees</i>	School System	Curriculum Adjustments
1986	IL	Yes	<i>Verdeyen v. Bd. of Educ. Batavia School Dist.</i>	School System	Budgetary Restraints
1986	IL	Yes	<i>Zink v. Board of Educ. of Chrisman</i>	School System	Discontinuance of Program
1987	IL	Yes	<i>Proviso Teachers Union v. Proviso H.S. Cook County</i>	School System	Enrollment Decline
1991	IL	Yes	<i>Hampson v. Bd. of Educ. Thornton Fractional Tp. High Schools</i>	School System	Budgetary Restraints
1993	IL	Yes	<i>Piquard v. Bd. of Educ. of Pekin Community H.S. Dist.</i>	School System	Discontinuance of Position
2004	IL	Yes	<i>Cook v. Board of Educ. of Eldorado Community School Dist.</i>	Employee	Discontinuance of Position
1990	IN	Yes	<i>Stewart v. Fort Wayne Community Schools</i>	School System	Enrollment Decline / Budgetary Restraints
1987	KS	Yes	<i>Hein v. Board of Educ. Unified School Dist.</i>	Employee	Budgetary Restraints
1988	KS	Yes	<i>Bauer v. Bd. of Educ. Unified School Dist.</i>	Employee	Enrollment Decline

(table continues)

Year	State	Collective bargaining	Case	Prevailing party	Background situation(s) for reduction in force
1989	KS	Yes	<i>Butler v. Bd. of Educ. Unified School Dist.</i>	School System	Enrollment Decline
1990	KS	Yes	<i>O'Hair v. Board of Educ. Unified School District</i>	School System	Budgetary Restraints
2006	KS	Yes	<i>Dees v. Marion-Florence Unified School Dist.</i>	School System	Enrollment Decline / Budgetary Restraints
1990	LA	No	<i>Beason v. Rapides Parish School Bd.</i>	School System	Discontinuance of Position
2003	LA	No	<i>Howard v. West Baton Rouge Parish School Bd.</i>	School System	Discontinuance of Position
2010	LA	No	<i>Hays v. Louisiana State Bd. of Elem. and Sec. Educ.</i>	School System	Enrollment Decline / Budget Restraints
1984	MA	Yes	<i>Haskell v. School Committee of Framingham</i>	School System	Budgetary Restraints
1984	MA	Yes	<i>Hockney v. School Committee of Lynn</i>	School System	Budgetary Restraints
1985	MA	Yes	<i>Caso v. School Committee of Waltham</i>	School System	Budgetary Restraints / Reorganization
1985	MA	Yes	<i>Martin v. School Committee of Natick</i>	School System	Enrollment Decline
1998	MA	Yes	<i>Westport School Community v. Coelho</i>	School System	Enrollment Decline / Budgetary Restraints
2003	MA	Yes	<i>Lyons v. School Committee of Dedham</i>	School System	Budgetary Restraints
1986	MI	Yes	<i>Wygant v. Jackson Bd. of Educ.</i>	Employee	Budgetary Restraints
1984	MN	Yes	<i>Schmidt v. Independent School Dist.</i>	Employee	Discontinuance of Position
1985	MN	Yes	<i>Blank v. Independent School Dist.</i>	Both	Budgetary Restraints/Enrollment Decline
1985	MN	Yes	<i>Finley v. Ind. School District</i>	Employee	Budgetary Restraints
1985	MN	Yes	<i>Marshall Co. Cent. Educ. Assn. v. Ind. School Dist.</i>	Employee	Lack of Cooperation
1985	MN	Yes	<i>State ex rel. Haak v. Bd. of Educ. Indp. School Dist.</i>	School System	Enrollment Decline / Budgetary Restraints
1986	MN	Yes	<i>Beste v. Independent School Dist.</i>	Employee	Discontinuance of Position

(table continues)

Year	State	Collective bargaining	Case	Prevailing party	Background situation(s) for reduction in force
1986	MN	Yes	<i>Bye v. Special Intermediate School Dist.</i>	Both	Budgetary Restraints / Enrollment Decline
1986	MN	Yes	<i>Evans v. Independent School Dist.</i>	School System	Discontinuance of Position
1986	MN	Yes	<i>Roseville Educ. Assn. v. Ind. School District</i>	Both	Discontinuance of Position, Enrollment Decline, Budgetary Restraints
1986	MN	Yes	<i>Strand v. Special School Dist.</i>	Both	Enrollment Decline / Budgetary Restraints
1987	MN	Yes	<i>Westgard v. Independent School Dist.</i>	Employee	Budgetary Restraints
1989	MN	Yes	<i>In re Independent School Dist. No. 318 Hearing</i>	School System	Budgetary Restraints
1990	MN	Yes	<i>In re Battaglia</i>	Employee	Budgetary Restraints / Enrollment Decline
1991	MN	Yes	<i>Matter of Hagen</i>	School System	Discontinuance of Position, Enrollment Decline, Budgetary Restraints
1996	MN	Yes	<i>Kvernmo v. Independent School Dist.</i>	School System	Reorganization
1997	MN	Yes	<i>DeGeorgeo v. Independent School Dist. South Washington Co.</i>	School System	Enrollment Decline / Budgetary Restraints
2001	MN	Yes	<i>Moe v. Independent School Dist.</i>	School System	Enrollment Decline / Budgetary Restraints
2001	MN	Yes	<i>State ex rel. Quiring v. Bd. of Educ. of Independent School Dist.</i>	School System	Enrollment Decline / Budgetary Restraints
2002	MN	Yes	<i>Savre v. Independent School Dist.</i>	School System	Budgetary Restraints
2004	MN	Yes	<i>Hinckley v. School Bd. of Independent School Dist.</i>	School System	Budgetary Restraints
2006	MN	Yes	<i>Craig v. Independent School Dist.</i>	School System	Enrollment Decline / Budgetary Restraints
1984	MO	No	<i>St. Louis Teachers Union v. St. Louis Bd. of Educ.</i>	School System	Budgetary Restraints/Enrollment Decline
1986	MO	No	<i>Elrod v. Harrisonville Case R-IX School Dist.</i>	School System	Budgetary Restraints
1995	MO	No	<i>Bonner v. Eminence R-1 School Dist.</i>	School System	Budgetary Restraints
1994	MS	No	<i>Byrd v. Green County School Dist.</i>	Employee	Budgetary Restraints

(table continues)

Year	State	Collective bargaining	Case	Prevailing party	Background situation(s) for reduction in force
2006	MT	Yes	<i>Scobey School Dist. v. Radakovich</i>	School System	Budgetary Restraints / Reorganization
1989	NC	No	<i>Taborn v. Hammonds</i>	School System	Budgetary Restraints
1987	ND	Yes	<i>Law v. Mandan Public School Dist.</i>	School System	Enrollment Decline, Elimination of Position, Budgetary Restraints
1992	ND	Yes	<i>Kent v. Sawyer Public School Dist.</i>	School System	Budgetary Restraints / Enrollment Decline
1997	ND	Yes	<i>Borr v. McKenzie County Public School Dist.</i>	School System	Enrollment Decline
1997	NE	Yes	<i>Nickel v. Saline County School Dist.</i>	School System	Enrollment Decline
2003	NE	Yes	<i>Wilder v. Grant County School Dist.</i>	Employee	Enrollment Decline / Budgetary Restraints
2009	NE	Yes	<i>Miller v. School Dist. of Clay County</i>	Employee	Reorganization
1984	NJ	Yes	<i>Old Bridge Bd. of Educ. v. Flora Unit School Dist.</i>	School System	Enrollment Decline
1985	NJ	Yes	<i>Jamison v. Morris School Dist. Bd. of Educ.</i>	School System	Budgetary Restraints / Reorganization
1986	NJ	Yes	<i>O'Toole v. Forestal</i>	School System	Budgetary Restraints
1987	NJ	Yes	<i>Bednar v. Westwood Bd. of Education</i>	Employee	Enrollment Decline
1993	NJ	Yes	<i>Dennery v. Bd. of Educ. Passaic County Regional H.S. Dist.</i>	School System	Reorganization
1995	NJ	Yes	<i>Impey v. Board of Educ. of Borough of Shrewsbury</i>	School System	Budgetary Restraints
1998	NJ	Yes	<i>Vicenzino v. Bedminster Tp. Bd. of Educ.</i>	Employee	Discontinuance of Position
1999	NJ	Yes	<i>Carpenito v. Bd. of Educ. of Borough of Rumson, Monmouth Co.</i>	School System	Enrollment Decline / Abolishment of Position
1988	NM	No	<i>New Mexico State Bd. of Educ. v. Abeyta</i>	School System	Budgetary Restraints, Enrollment Decline
2006	NM	No	<i>Aguilera v. Board of Educ. of Hatch Valley Schools</i>	Employee	Budgetary Restraints
1984	NY	Yes	<i>Gill v. Dutchess County Bd. of Educ.</i>	Employee	Consolidation

(table continues)

Year	State	Collective bargaining	Case	Prevailing party	Background situation(s) for reduction in force
1985	NY	Yes	<i>Beeman v. Bd. of Educ. Oyster Bay Public Schools</i>	Employee	Reduce Number of Staff
1985	NY	Yes	<i>Schimmel v. Bd. of Educ. So. Kortright School Dist.</i>	School System	Abolished Program
1985	NY	Yes	<i>Shearod v. Bd. of Educ. Services of Nassau County</i>	School System	Abolished Program
1986	NY	Yes	<i>Hicksville Teachers v. Hicksville School Bd. of Educ.</i>	Both	Budgetary Restraints
1986	NY	Yes	<i>Moore v. Bd. of Educ. Smithtown School Dist.</i>	School System	Enrollment Decline / Discontinuance of Position
1990	NY	Yes	<i>Anderson v. Cortland City School Dist.</i>	School System	Reorganization
1991	NY	Yes	<i>Gross v. Bd. of Educ. of Elmsford Union Free School Dist.</i>	School System	Budgetary Restraints
1993	NY	Yes	<i>Kransdorf v. Bd. of Educ. Nortport Union Free School Dist.</i>	Employee	Discontinuance of Position
1994	NY	Yes	<i>Cooper v. Board of Educ. of Shenendehowa Cent. School Dist.</i>	School System	Enrollment Decline
1996	NY	Yes	<i>Van Derzee v. Bd. of Educ. of Odessa-Montour School Dist.</i>	School System	Discontinuance of Position
2004	NY	Yes	<i>Davis v. School Dist. of City of Niagara Falls</i>	School System	Budgetary Restraints
2007	NY	Yes	<i>Bane v. Hebrew Academy of Five Towns and Rockaway</i>	Employee	Budgetary Restraints
1985	OH	Yes	<i>Bennett v. Bd. of Educ. Lorain School Dist.</i>	School System	Budgetary Restraints/Enrollment Decline
1989	OH	Yes	<i>Phillips v. South Range Local School Dist. Bd. of Educ.</i>	Employee	Enrollment Decline
1992	OH	Yes	<i>State ex rel. Van Dorn v. Mt. Gilead Exempted School Dist.</i>	School System	Enrollment Decline
2002	OH	Yes	<i>Wolfe v. Lawrence County Joint Vocational School Dist. Bd. of Edn.</i>	School System	Enrollment Decline

(table continues)

Year	State	Collective bargaining	Case	Prevailing party	Background situation(s) for reduction in force
2005	OH	Yes	<i>Mink v. Great Oaks Institute of Tech. and Career Dev. Bd. of Edn.</i>	School System	Enrollment Decline
2006	OH	Yes	<i>Milliken-Dees v. Salem City School Dist. Bd. of Educ.</i>	Employee	Budgetary Restraints
2010	OH	Yes	<i>Perrea v. Cincinnati Public School</i>	School System	Surplussed From Position
1984	OR	Yes	<i>Ross v. Springfield School Dist.</i>	School System	Immorality
1985	OR	Yes	<i>Gonzalez v. Marion County Educ. Service Dist.</i>	School System	Budgetary Restraints
1985	PA	Yes	<i>Bd. of School Dir. Of Chester School Dist. v. Ashby</i>	Employee	Consolidation
1985	PA	Yes	<i>Derry Tp. School District v. Finnegan</i>	School System	Enrollment Decline
1985	PA	Yes	<i>Mongelluzzo v. School Dist. of Bethel Park</i>	School System	Enrollment Decline
1985	PA	Yes	<i>Ringhoffer v. Bethlehem Area Voc. Technical School</i>	School System	Enrollment Decline
1985	PA	Yes	<i>Rosen v. Montgomery County Intermediate Unit</i>	Employee	Enrollment Decline
1986	PA	Yes	<i>Daly v. Grove City Area School Dist.</i>	School System	Enrollment Decline
1986	PA	Yes	<i>Glendale School Dist. v. Feigh</i>	School System	Budgetary Restraints
1986	PA	Yes	<i>James v. Big Beaver Falls Area School Dist.</i>	School System	Enrollment Decline
1987	PA	Yes	<i>Jarrett v. Wattsburg Area School Dist.</i>	School System	Curriculum Adjustments
1987	PA	Yes	<i>Rochester Area School Bd. v. Duncan</i>	School System	Enrollment Decline
1988	PA	Yes	<i>Gibbons v. New Castle Area School Dist.</i>	School System	School Closure
1989	PA	Yes	<i>McKeesport Area School Dist. v. Cicogna</i>	Employee	Enrollment Decline

(table continues)

Year	State	Collective bargaining	Case	Prevailing party	Background situation(s) for reduction in force
1989	PA	Yes	<i>Whitling v. Keystone School Dist.</i>	School System	Enrollment Decline
1990	PA	Yes	<i>Dallap v. Sharon City School Dist.</i>	Employee	Enrollment Decline
1993	PA	Yes	<i>Kaczmarcik v. Carbondale Area School Dist.</i>	School System	Enrollment Decline / Budgetary Restraints
1994	PA	Yes	<i>Colonial Educ. Ass'n. v. Colonial School Dist.</i>	Employee	Enrollment Decline
1994	PA	Yes	<i>Luzerene Intermediate Educ. Ass'n. v. Pittston Area School Dist.</i>	Both	Enrollment Decline / Budgetary Restraints
1994	PA	Yes	<i>Walkowski v. Duquesne City School Dist.</i>	School System	Enrollment Decline
1995	PA	Yes	<i>Bachak v. Lakeland School Dist.</i>	Employee	Enrollment Decline
1995	PA	Yes	<i>Bricillo v. Duquesne City School Dist.</i>	School System	School Consolidation / Discontinuance of Program
1996	PA	Yes	<i>Battaglia v. Lakeland School Dist.</i>	Both	Enrollment Decline
1996	PA	Yes	<i>Newell v. Wilkes-Barre Area Vocational Technical School</i>	School System	Enrollment Decline
1985	RI	Yes	<i>Bochner v. Providence School Committee</i>	School System	Enrollment Decline
1985	RI	Yes	<i>Gallison v. Bristol School Committee</i>	School System	Enrollment Decline
1984	SD	Yes	<i>Sutera v. Sully Buttes Bd. of Educ.</i>	Employee	Reduce Number of Staff
1987	SD	Yes	<i>Murphy v. Pierre Independent School Dist.</i>	School System	Enrollment Decline
2003	SD	Yes	<i>Chilson v. Kimball School Dist.</i>	School System	Budgetary Restraints
2007	SD	Yes	<i>Hanson v. Vermillion School Dist.</i>	School System	Budgetary Restraints
1987	TN	Yes	<i>Randall v. Hankins</i>	School System	Abolished Program
2008	TN	Yes	<i>Smith v. Jefferson County School Bd. of Com'rs</i>	Employee	Budgetary Restraints

(table continues)

Year	State	Collective bargaining	Case	Prevailing party	Background situation(s) for reduction in force
1993	VA	No	<i>County School Bd. of York County v. Epperson</i>	School System	Reorganization
1984	VT	Yes	<i>Work v. Mt. Abraham Union H.S. Bd. of Directors</i>	School System	Discontinuance of Position
1986	WV	No	<i>State ex rel. Bd. of Educ. of Kanawha County v. Casey</i>	Employee	Consolidation
1992	WV	No	<i>Board of Educ. of County of Grant v. Townshend</i>	Employee	Reorganization / Budgetary Restraints
1994	WV	No	<i>Summers County Bd. of Educ. v. Allen</i>	Both	Enrollment Decline / Budgetary Restraints
1996	WV	No	<i>State ex rel. Boner v. Kanawha County Bd. of Educ.</i>	Employee	Discontinuance of Position
1998	WV	No	<i>Wood County Bd. of Educ. v. Smith</i>	School System	Discontinuance of Position

Table 4 reveals that of the 147 cases dealing with reduction-in-force implementation, enrollment decline was stated as a reason for the reduction in force in 65 cases. Of these 65 cases, enrollment decline was the main reason that led to the reduction in force in 35 cases, and part of the reason in 30 cases. The majority of these cases, 56, dealt with teachers filing claims against the school system in which they were employed. The remaining cases consisted of 3 cases filed on behalf of a union or teacher representative, 5 cases dealt with an administrator's claim, and 1 case dealt with a school counselor. Within these 65 cases involving an enrollment decline as the reason, or part of the reason for the reduction, 13 cases dealt with the issue of violating constitutional, statutory, or contract rights; 12 cases involved the issue of seniority/tenure; 8 cases involved enrollment decline as to why there was not any or the timeframe was unrealistic; 6 cases involved a breach of contract; 5 cases involved realignment/newly created positions; 4 cases involved a breach of the collective bargaining agreement; 3 cases involved the failure to follow a reduction-in-force policy; 3 cases dealt with improper notification/hearing; 3 cases involved invalid information; and 3 cases dealt with the issue of certification/qualification. Out of these 65 cases, the employee was granted summary judgment in 12 cases and in an additional 7 cases where summary judgment was granted to both the employee and school system. Of these 19 cases, summary judgment was granted to the employee in 6 cases where their constitutional, statutory, or contractual rights had been violated, 5 cases involving the violation of seniority/tenure rights, 4 cases involving an insignificant enrollment decline and/or an unreasonable timeframe in which the enrollment decline was determined, 2 cases involving certification/qualification, 1 case involving invalid information, and 1 case where the reduction-in-force policy was not followed appropriately.

A guiding principle for school administrators to follow that can be derived from this information is that a substantial decrease in overall enrollment is sufficient to make reductions in any program. Some cases that exemplify this are *Mongelluzzo v. School Dist. of Bethel Park* (1985); *State ex rel. Van Dorn v. Mt. Gilead Exempted School Dist.* (1992); *Mink v. Great Oaks Institute of Tech. and Career Dev. Bd. of Educ.* (2005). An example is offered in *State ex rel. Van Dorn v. Mt. Gilead Exempted School Dist.* (1992) in which the school district became aware of a decline in the student enrollment of the home economics program from 21 students in the 1988-1989 school year to only 6 students in the 1989-1990 school year. The trial court granted summary judgment in this case to the school system based on the decline in enrollment was significant enough to implement a reduction in force. Another guiding principle for school administrators pertaining to these cases would be that when a reduction in staff is implemented based on an enrollment decline, the decline needs to be evident the year the reduction is put in place. Some cases that exemplify this are *Bachak v. Lakeland School Dist.* (1995); *Bye v. Special Intermediate School Dist.* (1986); *Colonial Educ. Ass'n. v. Colonial School Dist.* (1994); *Phillips v. South Range Local School Dist. Bd. of Educ.* (1989); *Miller v. School Dist. of Clay County* (2009). An example is offered in *Phillips v. South Range Local School Dist. Bd. of Educ.* (1989) in which the Supreme Court of Ohio reversed the summary judgment that had previously been granted to the school system and awarded it to the employee on the grounds that there was no decline in the enrollment the year the teacher was suspended from her contract, in fact, there was a slight increase that had taken place over the previous 2-year period.

Table 4

Enrollment Decline

Year	State	CB	Case	Prevailing party	Background situation(s) for reduction in force	Claim(s)
1984	MO	N	<i>St. Louis Teachers Union v. St. Louis Bd. of Educ.</i>	SS	Budgetary Restraints/Enrollment Decline	Teachers claimed they were not notified of the non-renewal date prior to the April 15 deadline.
1984	NJ	Y	<i>Old Bridge Bd. of Educ. v. Flora Unit School Dist.</i>	SS	Enrollment Decline	Teacher claimed she received her layoff notice after the date specified in her contract.
1985	OH	Y	<i>Bennett v. Bd. of Educ. Lorain School Dist.</i>	SS	Budgetary Restraints/Enrollment Decline	Employee claimed her contract needed to be enforced.
1985	MN	Y	<i>Blank v. Independent School Dist.</i>	B	Budgetary Restraints/Enrollment Decline	Teachers claimed they could bump less senior teachers based on their qualifications and what they had taught.
1985	RI	Y	<i>Bochner v. Providence School Committee</i>	SS	Enrollment Decline	Teacher claimed the projected decline in enrollment was not substantial in accordance to statute.
1985	PA	Y	<i>Derry Tp. School District v. Finnegan</i>	SS	Enrollment Decline	Teacher claimed she should have been retained instead of a temporary professional employee, a principal.
1985	RI	Y	<i>Gallison v. Bristol School Committee</i>	SS	Enrollment Decline	Teachers claimed suspensions had to be made on a system-wide seniority basis.
1985	MA	Y	<i>Martin v. School Committee of Natick</i>	SS	Enrollment Decline	Teacher claimed his termination violated his constitutional, statutory, and contractual rights.
1985	AL	N	<i>May v. Alabama State Tenure Commission</i>	SS	Enrollment Decline	Teacher claimed because she was tenured that an alteration in the system should be made to accommodate her.
1985	PA	Y	<i>Mongelluzzo v. School Dist. of Bethel Park</i>	SS	Enrollment Decline	Teachers claimed there had to be an enrollment decline in their program for them to be dismissed from their position.
1985	PA	Y	<i>Ringhoffer v. Bethlehem Area Voc. Technical School</i>	SS	Enrollment Decline	Teacher claimed the enrollment decline was not substantial.

(table continues)

Year	State	CB	Case	Prevailing party	Background situation(s) for reduction in force	Claim(s)
1985	PA	Y	<i>Rosen v. Montgomery County Intermediate Unit</i>	E	Enrollment Decline	Teachers claimed their dismissal required approval from the Dept. of Educ.
1985	MN	Y	<i>State ex rel. Haak v. Bd. of Educ. Indp. School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Administrators claimed they should have been appointed to newly created positions.
1986	MN	Y	<i>Bye v. Special Intermediate School Dist.</i>	B	Budgetary Restraints / Enrollment Decline	Teachers claim the school district wrongly relied on financial limitations and decreasing enrollment to justify their ULA.
1986	MN	Y	<i>Roseville Educ. Assn. v. Ind. School District</i>	B	Discontinuance of Position, Enrollment Decline, Budgetary Restraints	Teachers claimed their placement on leave was arbitrary and denied them their due process rights.
1986	PA	Y	<i>Daly v. Grove City Area School Dist.</i>	SS	Enrollment Decline	Teacher claimed her time as a substitute should have been included towards her seniority.
1986	PA	Y	<i>James v. Big Beaver Falls Area School Dist.</i>	SS	Enrollment Decline	Teacher claimed school district improperly determined another teacher's seniority.
1986	AL	N	<i>Wooten v. DeKalb County Bd. of Educ.</i>	SS	Enrollment Decline / Abolished Program	Teacher claimed the abolition of his supervisor position and transfer to a teaching position was invalid.
1986	MN	Y	<i>Strand v. Special School Dist.</i>	B	Enrollment Decline / Budgetary Restraints	Teachers claimed their terminations were improper based on seniority.
1986	NY	Y	<i>Moore v. Bd. of Educ. Smithtown School Dist.</i>	SS	Enrollment Decline / Discontinuance of Position	Teacher claimed her time teaching in one area should have been applied towards her seniority credit in another area.
1987	SD	Y	<i>Murphy v. Pierre Independent School Dist.</i>	SS	Enrollment Decline	Teacher claimed her nonrenewal was a breach of contract.
1987	IL	Y	<i>Proviso Teachers Union v. Proviso H.S. Cook County</i>	SS	Enrollment Decline	Teacher claimed school board breached the collective bargaining agreement when it retained a teacher with equal seniority.
1987	AL	N	<i>Robertson v. Alabama State Tenure Com'n.</i>	SS	Enrollment Decline	Teacher claimed he was entitled to a hearing based on his reassignment because it qualified as a transfer.

(table continues)

Year	State	CB	Case	Prevailing party	Background situation(s) for reduction in force	Claim(s)
1987	PA	Y	<i>Rochester Area School Bd. v. Duncan</i>	SS	Enrollment Decline	School board claimed seniority was properly determined by time served in military as the starting point.
1987	NJ	Y	<i>Bednar v. Westwood Bd. of Education</i>	E	Enrollment Decline	Teacher claimed a reduction in hours violated his tenure and seniority rights
1987	IA	Y	<i>Pocahontas Community School Dist. v. Levene</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed no just cause was shown for the elimination of her contract.
1987	ND	Y	<i>Law v. Mandan Public School Dist.</i>	SS	Enrollment Decline, Elimination of Position, Budgetary Restraints	Teacher claimed dismissal was a breach of contract and was done based on insufficient reasons.
1988	NM	N	<i>New Mexico State Bd. of Educ. v. Abeyta</i>	SS	Budgetary Restraints, Enrollment Decline	Teacher claimed a realignment of staff should have been performed for her to keep a position.
1988	KS	Y	<i>Bauer v. Bd. of Educ. Unified School Dist.</i>	E	Enrollment Decline	Teacher claimed his termination was improper because he held the required certifications necessary for the position.
1989	KS	Y	<i>Butler v. Bd. of Educ. Unified School Dist.</i>	SS	Enrollment Decline	Teacher claimed he should have been given additional time to expand his certification.
1989	PA	Y	<i>McKeesport Area School Dist. v. Cicogna</i>	E	Enrollment Decline	Teacher claimed she was told to delete an area of her certification resulting in her being furloughed for a less senior teacher.
1989	OH	Y	<i>Phillips v. South Range Local School Dist. Bd. of Educ.</i>	E	Enrollment Decline	Teacher claimed her contract suspension was not based on a decline in enrollment.
1989	PA	Y	<i>Whitling v. Keystone School Dist.</i>	SS	Enrollment Decline	Teacher claimed his suspension violated statute because his anticipated certification would have given him more seniority.
1990	MN	Y	<i>In re Battaglia</i>	E	Budgetary Restraints / Enrollment Decline	Teachers claimed being placed on unrequested leave of absence violated the state's teacher's agreement pertaining to statute and contract.
1990	PA	Y	<i>Dallap v. Sharon City School Dist.</i>	E	Enrollment Decline	Teachers claimed they should not have been displaced based on seniority.
1990	IN	Y	<i>Stewart v. Fort Wayne Community Schools</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed she should have been retained and not discharged from her position.

(table continues)

Year	State	CB	Case	Prevailing party	Background situation(s) for reduction in force	Claim(s)
1991	MN	Y	<i>Matter of Hagen</i>	SS	Discontinuance of Position, Enrollment Decline, Budgetary Restraints	Teacher claimed staff assignments should have been realigned to save his position.
1992	ND	Y	<i>Kent v. Sawyer Public School Dist.</i>	SS	Budgetary Restraints / Enrollment Decline	Teacher claimed that the school district failed to follow its reduction-in-force policy when nonrenewing her contract and didn't rehire her based on sex discrimination.
1992	IA	Y	<i>Lee v. Giangreco</i>	E	Enrollment Decline	Teacher claimed deprivation of procedural and substantive due process and gender based discrimination.
1992	IA	Y	<i>Mackey v. Newell-Providence Community School Dist.</i>	SS	Enrollment Decline	Teacher claimed the board failed to follow its own policy for contract termination and the collective bargaining agreement.
1992	OH	Y	<i>State ex rel. Van Dorn v. Mt. Gilead Exempted School Dist.</i>	SS	Enrollment Decline	Teacher claimed she was entitled to a multi-year contract based on the collective bargaining agreement and a reduction in force could not change this.
1993	PA	Y	<i>Kaczmarcik v. Carbondale Area School Dist..</i>	SS	Enrollment Decline / Budgetary Restraints	Vice-principal claimed the elimination of his position and demotion to teacher was arbitrary and discriminatory.
1994	PA	Y	<i>Colonial Educ. Ass'n. v. Colonial School Dist.</i>	E	Enrollment Decline	Education Association claimed the decline in student enrollment over an eighteen year period was not appropriate to determine the teacher's suspension.
1994	NY	Y	<i>Cooper v. Board of Educ. of Shenendehowa Cent. School Dist.</i>	SS	Enrollment Decline	Teachers claimed the creation of new programs constituted a takeover of the programs they taught and were discontinued.
1994	PA	Y	<i>Walkowski v. Duquesne City School Dist.</i>	SS	Enrollment Decline	Teacher claimed there was not a decline in enrollment when she was furloughed.
1994	PA	Y	<i>Luzerene Intermediate Educ. Ass'n. v. Pittston Area School Dist.</i>	B	Enrollment Decline / Budgetary Restraints	Teachers association claimed the school district was required to fill all transferred positions with their teachers and that they should receive seniority credit for all their time served.

(table continues)

Year	State	CB	Case	Prevailing party	Background situation(s) for reduction in force	Claim(s)
1994	WV	N	<i>Summers County Bd. of Educ. v. Allen</i>	B	Enrollment Decline / Budgetary Restraints	Administrators claimed school board failed to follow reduction-in-force procedures.
1995	PA	Y	<i>Bachak v. Lakeland School Dist..</i>	E	Enrollment Decline	Teacher claimed student enrollment didn't decline over a reasonable period of time.
1996	PA	Y	<i>Battaglia v. Lakeland School Dist.</i>	B	Enrollment Decline	Teacher claimed enrollment increased during one year and the actual decline wasn't substantial. The use of a ten year period to determine a decline was unreasonable.
1996	PA	Y	<i>Newell v. Wilkes-Barre Area Vocational Technical School</i>	SS	Enrollment Decline	Teacher claimed his suspension was improper in that there had been an increase in student enrollment at the time of his suspension and that computation of the enrollment decline was based on an unreasonable amount of time.
1997	ND	Y	<i>Borr v. McKenzie County Public School Dist.</i>	SS	Enrollment Decline	Teacher claimed the school district wrongfully failed to renew his continuing teaching contract.
1997	NE	Y	<i>Nickel v. Saline County School Dist.</i>	SS	Enrollment Decline	Teacher claimed a non-tenured teacher was retained to perform services that she was certified to perform.
1997	MN	Y	<i>DeGeorgeo v. Independent School Dist. South Washington Co.</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed she should have been allowed to bump a less senior teacher.
1998	MA	Y	<i>Westport School Community v. Coelho</i>	SS	Enrollment Decline / Budgetary Restraints	Teachers claimed their dismissal was in violation of the collective bargaining agreement.
1999	NJ	Y	<i>Carpenito v. Bd. of Educ. of Borough of Rumson, Monmouth Co.</i>	SS	Enrollment Decline / Abolishment of Position	Teacher claimed he had seniority rights to a former teaching position that had been abolished but reinstated years later.
2001	MN	Y	<i>Moe v. Independent School Dist..</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed she was not allowed to bump two less senior teachers from their positions and this went against the law.

(table continues)

Year	State	CB	Case	Prevailing party	Background situation(s) for reduction in force	Claim(s)
2001	MN	Y	<i>State ex rel. Quiring v. Bd. of Educ. of Independent School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Principal claimed her position was not eliminated and the reorganization of positions was arbitrary and capricious.
2002	OH	Y	<i>Wolfe v. Lawrence County Joint Vocational School Dist. Bd. of Edn.</i>	SS	Enrollment Decline	Teacher claimed a decline in student enrollment was not a basis for a reduction in force under the collective bargaining agreement.
2003	NE	Y	<i>Wilder v. Grant County School Dist.</i>	E	Enrollment Decline / Budgetary Restraints	Teacher claimed school district failed to follow state statute for its reduction-in-force policy.
2005	OH	Y	<i>Mink v. Great Oaks Institute of Tech. and Career Dev. Bd. of Edn.</i>	SS	Enrollment Decline	Teacher claimed his contract was suspended improperly due to a reduction in force.
2006	MN	Y	<i>Craig v. Independent School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed school district proceeded under an erroneous theory of law when it failed to realign teaching positions and produce evidence to support its decision.
2006	KS	Y	<i>Dees v. Marion-Florence Unified School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	School counselor claimed her due process rights were violated by hearing officer's 2-month delay in issuing a decision.
2008	DC	Y	<i>Washington Teachers' Union v. Bd. of Educ. Dist. of Columbia</i>	SS	Enrollment Decline / Budgetary Restraints	Teachers' Union claimed the school district did away with jobs and terminated teachers improperly when they implemented a reduction in force.
2009	IA	Y	<i>Martinek v. Belmond-Klemme Community School Dist.</i>	E	Enrollment Decline / Financial Hardship	Principal claimed the board didn't have the authority to terminate her contract according to state statute.
2010	LA	N	<i>Hays v. Louisiana State Bd. of Elem. and Sec. Educ.</i>	SS	Enrollment Decline / Budget Restraints	Teacher's (husband) claimed tenure rights should not have been forfeited under a reduction in force.

Table 5 reveals that of the 147 cases dealing with reduction-in-force implementation, budgetary restraints were stated as a reason for the reduction in force in 69 cases. Of these 69 cases, budgetary restraints were the main reason that led to the reduction in force in 36 cases, and part of the reason in 33 cases. The majority of these cases, 55, dealt with teachers filing claims against the school system in which they were employed. The remaining cases consisted of 3 cases filed on behalf of a union or teacher representative, 10 cases dealing with an administrator's claim, and 1 case dealing with a school counselor. Within these 69 cases involving budgetary restraints as the reason, or part of the reason for the reduction in force, 20 cases dealt with the issue of violating constitutional, statutory, or contract rights; 16 cases involved seniority/tenure; 11 cases involved the failure to follow a reduction-in-force policy; 6 cases dealt with the elimination, realignment, or creation of a new position; 5 cases dealt with certification/qualification; 4 cases involved breach of contract; 3 cases involved a breach of the collective bargaining agreement; 2 cases involved improper notification/hearing; 1 case involved invalid information; and 1 case involved budgetary restraints being nonexistent. Out of these 69 cases, the employee was granted summary judgment in 15 cases and in an additional 7 cases where summary judgment was granted to both the employee and school system. Of these 22 cases, summary judgment was granted to the employee in 9 cases where constitutional, statutory, or contractual rights had been violated; 6 cases involving the violation of seniority/tenure rights; 4 cases for not appropriately following the reduction-in-force policy; 1 case where budgetary restraints were found to be non-evident; 1 case for invalid information; and 1 case regarding certification/qualification.

A guiding principle for school administrators to follow that can be derived from this information is that when it comes to a lack of funds or financial hardship, a school board/school

system has much flexibility and freedom in implementing a reduction in force. Some cases that exemplify this are *Gross v. Bd. of Educ. of Elmsford Union Free School Dist.* (1991); *Jamison v. Morris School Dist. Bd. of Educ.* (1985); *St. Louis Teachers Union v. St. Louis Bd. of Educ.* (1984); *Westport School Community v. Coelho* (1998). An example is offered in *Jamison v. Morris School Dist. Bd. of Educ.* (1985) in which the employee claimed the school system violated the Open Public Meetings Act and that she was entitled to tenure and the appropriate back pay. Although the employee was originally awarded her tenure and back pay, it was later overturned since the school system had properly implemented its reduction-in-force policy under reasons of the economy, which was in their right to do so.

Table 5

Budgetary Restraints

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
1984	MA	Y	<i>Haskell v. School Committee of Framingham</i>	SS	Budgetary Restraints	Teacher claimed school failed to comply with notice and procedural requirements regarding elimination of a position.
1984	MA	Y	<i>Hockney v. School Committee of Lynn</i>	SS	Budgetary Restraints	Teacher claimed she was denied due process, equal protection, and contractual rights according to CBA when she was laid off.
1984	MO	N	<i>St. Louis Teachers Union v. St. Louis Bd. of Educ.</i>	SS	Budgetary Restraints / Enrollment Decline	Teachers claimed they were not notified of the non-renewal date prior to the April 15 deadline.
1985	MN	Y	<i>Finley v. Ind. School District</i>	E	Budgetary Restraints	Principal claimed school district failed to comply with procedural requirements to place her on unrequested leave.
1985	OR	Y	<i>Gonzalez v. Marion County Educ. Service Dist.</i>	SS	Budgetary Restraints	Teacher claimed school system failed to compare his competence and merit to teachers with less seniority that were retained.
1985	AR	N	<i>Green Forrest Public Schools v. Herrington</i>	E	Budgetary Restraints	Teacher claimed policies were applied discriminatorily.
1985	MA	Y	<i>Caso v. School Committee of Waltham</i>	SS	Budgetary Restraints / Reorganization	Applicant claimed teacher hired for position wasn't qualified.
1985	NJ	Y	<i>Jamison v. Morris School Dist. Bd. of Educ.</i>	SS	Budgetary Restraints / Reorganization	Assistant Principal claimed board failed to follow the Open Public Meetings Act.
1985	OH	Y	<i>Bennett v. Bd. of Educ. Lorain School Dist.</i>	SS	Budgetary Restraints / Enrollment Decline	Employee claimed her contract needed to be enforced.
1985	MN	Y	<i>Blank v. Independent School Dist.</i>	B	Budgetary Restraints / Enrollment Decline	Teachers claimed they could bump less senior teachers based on their qualifications and what they had taught.

(table continues)

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
1985	MN	Y	<i>State ex rel. Haak v. Bd. of Educ. Indp. School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Administrators claimed they should have been appointed to newly created positions.
1986	MO	N	<i>Elrod v. Harrisonville Case R-IX School Dist.</i>	SS	Budgetary Restraints	Assistant principal claimed him being placed on ULA as an assistant principal and being given a teaching position was a breach of contract.
1986	PA	Y	<i>Glendale School Dist. v. Feigh</i>	SS	Budgetary Restraints	Board claimed suspension of teacher was appropriate since the program had been eliminated.
1986	NY	Y	<i>Hicksville Teachers v. Hicksville School Bd. of Educ.</i>	B	Budgetary Restraints	Teachers claimed their academic tenure tract was different from tenure given to other teachers.
1986	NJ	Y	<i>O'Toole v. Forestal</i>	SS	Budgetary Restraints	Teacher claimed her tenure and seniority rights were not limited to the institution where she was employed.
1986	IL	Y	<i>Verdeyen v. Bd. of Educ. Batavia School Dist.</i>	SS	Budgetary Restraints	Teacher claimed her seniority rights were violated.
1986	MI	Y	<i>Wygant v. Jackson Bd. of Educ.</i>	E	Budgetary Restraints	Teachers claimed the policy of laying off non-minority teachers violated the Equal Protection Clause.
1986	MN	Y	<i>Bye v. Special Intermediate School Dist.</i>	B	Budgetary Restraints / Enrollment Decline	Teachers claim the school district wrongly relied on financial limitations and decreasing enrollment to justify their ULA.
1986	MN	Y	<i>Roseville Educ. Assn. v. Ind. School District</i>	B	Discontinuance of Position, Enrollment Decline, Budgetary Restraints	Teachers claimed their placement on leave was arbitrary and denied them their due process rights.
1986	MN	Y	<i>Strand v. Special School Dist.</i>	B	Enrollment Decline / Budgetary Restraints	Teachers claimed their terminations were improper based on seniority.
1987	MN	Y	<i>Westgard v. Independent School Dist.</i>	E	Budgetary Restraints	Teacher claimed he should have been allowed to bump a less senior teacher based on his seniority,
1987	KS	Y	<i>Hein v. Board of Educ. Unified School Dist.</i>	E	Budgetary Restraints	Board claimed teacher being dismissed wasn't qualified to teach new position.

(table of contents)

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
1987	IA	Y	<i>Pocahontas Community School Dist. v. Levene</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed no just cause was shown for the elimination of her contract.
1987	ND	Y	<i>Law v. Mandan Public School Dist.</i>	SS	Enrollment Decline, Elimination of Position, Budgetary Restraints	Teacher claimed is dismissal was a breach of contract and was done based on insufficient reasons.
1988	NM	N	<i>New Mexico State Bd. of Educ. v. Abeyta</i>	SS	Budgetary Restraints / Enrollment Decline	Teacher claimed a realignment of staff should have been performed for her to keep a position.
1989	MN	Y	<i>In re Independent School Dist. No. 318 Hearing</i>	SS	Budgetary Restraints	Teacher claimed school was responsible for creating her a new position
1989	NC	N	<i>Taborn v. Hammonds</i>	SS	Budgetary Restraints	The board claimed they followed their reduction-in-force policy appropriately.
1990	AL	N	<i>Jackson v. Randolph County Bd. of Educ.</i>	SS	Budgetary Restraints	Teacher claimed board failed to follow established procedures regarding recall rights.
1990	KS	Y	<i>O'Hair v. Board of Educ. Unified School District</i>	SS	Budgetary Restraints	Board claimed they followed proper policy and procedures when a tenured teacher was nonrenewed.
1990	MN	Y	<i>In re Battaglia</i>	E	Budgetary Restraints / Enrollment Decline	Teachers claimed being placed on unrequested leave of absence violated the state's teacher's agreement pertaining to statute and contract.
1990	IN	Y	<i>Stewart v. Fort Wayne Community Schools</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed she should have been retained and not discharged from her position.
1991	NY	Y	<i>Gross v. Bd. of Educ. of Elmsford Union Free School Dist.</i>	SS	Budgetary Restraints	Teacher claimed she was wrongfully discharged from her position.
1991	IL	Y	<i>Hampson v. Bd. of Educ. Thornton Fractional Tp. High Schools</i>	SS	Budgetary Restraints	Teacher claimed her tenure rights were violated when she was let go as a non-tenured employee.

(table continues)

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
1991	MN	Y	<i>Matter of Hagen</i>	SS	Discontinuance of Position, Enrollment Decline, Budgetary Restraints	Teacher claimed staff assignments should have been realigned to save his position.
1992	ND	Y	<i>Kent v. Sawyer Public School Dist.</i>	SS	Budgetary Restraints / Enrollment Decline	Teacher claimed that the school district failed to follow its reduction in force policy when nonrenewing her contract and didn't rehire her based on sex discrimination.
1992	WV	N	<i>Board of Educ. of County of Grant v. Townshend</i>	E	Reorganization / Budgetary Restraints	Principal claimed her transfer to a teaching position was a violation of the state statute.
1993	CT	Y	<i>Ballato v. Bd. of Educ. of Town of Stonington</i>	SS	Budgetary Restraints	Teachers claimed their positions were improperly eliminated under state statute and the seniority list used was invalid.
1993	AL	N	<i>Gray v. Birmingham Bd. of Educ.</i>	SS	Budgetary Restraints	Teachers claimed they were terminated based on a policy that wasn't legally binding.
1993	PA	Y	<i>Kaczmarcik v. Carbondale Area School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Vice-principal claimed the elimination of his position and demotion to teacher was arbitrary and discriminatory.
1994	MS	N	<i>Byrd v. Green County School Dist.</i>	E	Budgetary Restraints	Teacher claimed school district failed to follow state statute for nonrenewing his contract.
1994	PA	Y	<i>Luzerene Ass'n. v. Pittston Area School Dist.</i>	B	Enrollment Decline / Budgetary Restraints	Teachers association claimed the school district was required to fill all transferred positions with their teachers and that they should receive seniority credit for all their time served.
1994	WV	N	<i>Summers County Bd. of Educ. v. Allen</i>	B	Enrollment Decline / Budgetary Restraints	Administrators claimed school board failed to follow reduction-in-force procedures.
1995	MO	N	<i>Bonner v. Eminence R-1 School Dist.</i>	SS	Budgetary Restraints	Teacher claimed his placement on involuntary leave violated of his due process rights.
1995	NJ	Y	<i>Impey v. Board of Educ. of Borough of Shrewsbury</i>	SS	Budgetary Restraints	Teacher claimed her tenure, seniority, and re-employment rights were violated.
1997	AR	N	<i>Junction City School Dist. v. Alphin</i>	E	Budgetary Restraints	Teacher claimed school district failed to follow reduction-in-force policy.

(table continues)

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
1997	DC	Y	<i>Washington Teachers' Union v. Bd. of Educ. Dist. of Columbia</i>	SS	Budgetary Restraints / Discontinuance of Position	Teachers claimed reduction in force violated the collective bargaining agreement and the Contract Clause.
1997	MN	Y	<i>DeGeorgeo v. Independent School Dist. South Washington Co.</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed she should have been allowed to bump a less senior teacher.
1998	MA	Y	<i>Westport School Community v. Coelho</i>	SS	Enrollment Decline / Budgetary Restraints	Teachers claimed their dismissal was in violation of the collective bargaining agreement.
2001	MN	Y	<i>Moe v. Independent School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed she was not allowed to bump two less senior teachers from their positions and this went against the law.
2001	MN	Y	<i>State ex rel. Quiring v. Bd. of Educ. of Independent School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Principal claimed her position was not eliminated and the reorganization of positions was arbitrary and capricious.
2002	MN	Y	<i>Savre v. Independent School Dist.</i>	SS	Budgetary Restraints	Teacher claimed the school district's failure to provide written evaluations was an error of law.
2002	CA	Y	<i>Zalac v. Governing Bd. of Ferndale Unified School Dist.</i>	SS	Discontinuance of Position / Budgetary Restraints	Teacher claimed she was improperly classified as a Temporary employee because the program under which she was hired was not categorically funded and the Board failed to follow the appropriate procedures in laying her off.
2003	SD	Y	<i>Chilson v. Kimball School Dist.</i>	SS	Budgetary Restraints	Teacher claimed other teachers with less seniority were not terminated before him.
2003	MA	Y	<i>Lyons v. School Committee of Dedham</i>	SS	Budgetary Restraints	Teachers claimed they should be allowed to bump teachers with less seniority.
2003	NE	Y	<i>Wilder v. Grant County School Dist.</i>	E	Enrollment Decline / Budgetary Restraints	Teacher claimed school district failed to follow state statute for its reduction-in-force policy.

(table continues)

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
2004	NY	Y	<i>Davis v. School Dist. of City of Niagra Falls</i>	SS	Budgetary Restraints	Teacher claimed school system discriminated against him based on his age.
2004	MN	Y	<i>Hinckley v. School Bd. of Independent School Dist.</i>	SS	Budgetary Restraints	Principal claimed her placement on unrequested leave of absence was done by an erroneous theory of law.
2006	OH	Y	<i>Milliken-Dees v. Salem City School Dist. Bd. of Educ.</i>	E	Budgetary Restraints	Board claims their explanation for nonrenewing appellees limited teaching contracts was sufficient.
2006	NM	N	<i>Aguilera v. Board of Educ. of Hatch Valley Schools</i>	E	Budgetary Restraints	Teacher claimed her discharge wasn't authorized by the district's reduction-in-force policy.
2006	MT	Y	<i>Scobey School Dist. v. Radakovich</i>	SS	Budgetary Restraints / Reorganization	School district claimed the dismissal of a tenured teacher was not a violation of state statute or the collective bargaining agreement.
2006	MN	Y	<i>Craig v. Independent School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher claimed school district proceeded under an erroneous theory of law when it failed to realign teaching positions and produce evidence to support its decision.
2006	KS	Y	<i>Dees v. Marion-Florence Unified School Dist.</i>	SS	Enrollment Decline / Budgetary Restraints	School counselor claimed her due process rights were violated by hearing officer's 2-month delay in issuing a decision.
2007	NY	Y	<i>Bane v. Hebrew Academy of Five Towns and Rockaway</i>	E	Budgetary Restraints	School claimed teacher forfeited her tenure rights when she accepted what was considered an administrative position.
2007	SD	Y	<i>Hanson v. Vermillion School Dist.</i>	SS	Budgetary Restraints	Teacher claimed she was both qualified and certified to bump a teacher with less seniority.
2008	CA	Y	<i>Bledsoe v. Biggs Unified School Dist.</i>	SS	Budgetary Restraints	Teacher and Association claim the district failed to determine if the teacher held the special training and experience needed to teach in a community day school.
2008	TN	Y	<i>Smith v. Jefferson County School Bd. of Com'rs</i>	E	Budgetary Restraints	Appellants claimed their positions could not be contracted out to a private Christian School without violating the Establishment Clause.

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
2008	DC	Y	<i>Washington Teachers' Union v. Bd. of Educ. Dist. of Columbia</i>	SS	Enrollment Decline / Budgetary Restraints	Teachers' Union claimed the school district did away with jobs and terminated teachers improperly when they implemented a reduction in force.
2009	IA	Y	<i>Martinek v. Belmond-Klemme Community School Dist.</i>	E	Enrollment Decline / Financial Hardship	Principal claimed the board didn't have the authority to terminate her contract according to state statute.
2010	LA	N	<i>Hays v. Louisiana State Bd. of Elem. and Sec. Educ.</i>	SS	Enrollment Decline / Budgetary Restraints	Teacher's (husband) claimed tenure rights should not have been forfeited under a reduction in force.

Table 6 reveals that of the 147 cases dealing with reduction-in-force implementation, consolidation/reorganization was stated as a reason for the reduction in force in 13 cases. Of these 13 cases, consolidation/reorganization were the main reasons that led to the reduction in force in 8 cases, and part of the reason in 5 cases. The majority of these cases, 10, dealt with teachers filing claims against the school system in which they were employed. The remaining cases consisted of 3 cases involving claims filed by administrators. Within these 13 cases involving consolidation/reorganization as the reason, or part of the reason for the reduction in force, 5 cases dealt with the issue of violating constitutional, statutory, or contract rights; 2 cases involved seniority/tenure; 2 cases involved the realignment of positions; 2 cases involved the failure to appropriately follow the reduction-in-force policy; 1 case dealt with certification/qualification; and 1 case involved a consolidation that never happened. Out of these 13 cases, the employee was granted summary judgment in 5 cases. Of these 5 cases, summary judgment was granted to the employee in 3 cases where constitutional, statutory, or contractual rights had been violated; 1 case involved the violation of seniority/tenure rights; and 1 case involved realignment of positions.

A guiding principle for school administrators to follow that can be derived from this information is that although the consolidation or reorganization of course assignments or schools should be done in a way that protects the seniority rights of teachers, it should be done in a way that is reasonable and practical. Some cases that exemplify this are *Hinckley v. School Bd. of Independent School Dist.* (2004); *Scobey School Dist. v. Radakovich* (2006); *Westgard v. Independent School Dist.* (1987); *Dallap v. Sharon City School Dist.* (1990); *Strand v. Special School Dist.* (1986). An example is offered in *Dallap v. Sharon City School Dist.* (1990) in which several teachers were suspended from their teaching positions that would take place at the

conclusion of the 1981-1982 school year. An issue that presented itself in this case was the amount of flexibility the school board was provided in how it determines what moves need to be made that serve the school best. It was determined that in situations where more than one realignment was a possibility, the school district should take into account the impact of the reorganization on the program and determine which plan would be the most sound and beneficial while providing the more senior teachers with positions they were certified to teach over teachers with less seniority.

Table 6

Consolidation/Reorganization

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
1984	NY	Y	<i>Gill v. Dutchess County Bd. of Educ.</i>	E	Consolidation	Teachers claimed school system failed to follow proper procedures when displacing them to other positions.
1985	MA	Y	<i>Caso v. School Committee of Waltham</i>	SS	Budgetary Restraints / Reorganization	Applicant claimed teacher hired for position wasn't qualified.
1985	NJ	Y	<i>Jamison v. Morris School Dist. Bd. of Educ.</i>	SS	Budgetary Restraints / Reorganization	Assistant Principal claimed board failed to follow the Open Public Meetings Act.
1985	PA	Y	<i>Bd. of School Dir. Of Chester School Dist. v. Ashby</i>	E	Consolidation	Teacher claimed school system failed to follow statute requiring suspension be made solely upon seniority
1986	WV	N	<i>State ex rel. Bd. of Educ. of Kanawha County v. Casey</i>	E	Consolidation	Principal claimed he should have been given another principal position based on seniority.
1990	NY	Y	<i>Anderson v. Cortland City School Dist.</i>	SS	Reorganization	Teaching assistants claimed they should have been offered employment in similar positions.
1992	WV	N	<i>Board of Educ. of County of Grant v. Townshend</i>	E	Reorganization / Budgetary Restraints	Principal claimed her transfer to a teaching position was a violation of the state statute.
1993	VA	N	<i>County School Bd. of York County v. Epperson</i>	SS	Reorganization	Teachers claimed the school board failed to follow applicable rules, policies, and procedures.
1993	NJ	Y	<i>Dennery v. Bd. of Educ. Passaic County Regional H.S. Dist.</i>	SS	Reorganization	The school board claimed tenure could not be transferred from one position to the next.
1995	PA	Y	<i>Bricillo v. Duquesne City School Dist.</i>	SS	School Consolidation / Discontinuance of Program	Teachers claimed there was not a consolidation of schools and certain programs were inappropriately eliminated.
1996	MN	Y	<i>Kvernmo v. Independent School Dist.</i>	SS	Reorganization	Teacher claimed school district was required to rearrange teaching assignments in order to keep her full-time.

(table continues)

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
2006	MT	Y	<i>Scobey School Dist. v. Radakovich</i>	SS	Budgetary Restraints / Reorganization	School district claimed the dismissal of a tenured teacher was not a violation of state statute or the collective bargaining agreement.
2009	NE	Y	<i>Miller v. School Dist. of Clay County</i>	E	Reorganization	Teacher claimed her termination violated the reduction-in-force statutes.

Table 7 reveals that of the 147 cases dealing with reduction-in-force implementation, discontinuance of position, reduction in the number of staff, abolished program, and/or school closure was stated as a reason for the reduction in force in 32 cases. Of these 32 cases, discontinuance of position, reduction in the number of staff, abolished program, and/or school closure were the main reason that led to the reduction in force in 24 cases, and part of the reason in 8 cases. The majority of these cases, 30, dealt with teachers filing claims against the school system in which they were employed. The remaining cases consisted of 2 cases involving claims filed by administrators. Within these 32 cases involving discontinuance of position, reduction in the number of staff, abolished program, and/or school closure as the reason, or part of the reason for the reduction in force; 9 cases dealt with seniority/tenure; 5 cases involved the discontinuance of a position; 4 cases involved certification/qualification; 3 cases dealt with the issue of violating constitutional, statutory, or contract rights; 3 cases involved realignment/new position; 2 cases involved improper notification; 2 cases involved breach of contract; 2 cases involved the failure to follow the reduction-in-force policy; 1 case was a result of invalid information; and 1 case involved the breach of the collective bargaining agreement. Out of the 32 cases, the employee was granted summary judgment in 11 cases and in an additional case where summary judgment was granted to both the employee and school system. Of these 12 cases, summary judgment was granted to the employee in 3 cases involving the violation of seniority/tenure rights; 3 cases where a position was discontinued inappropriately; 3 cases where constitutional, statutory, or contractual rights had been violated; 1 case where there was improper notification; 1 case regarding a breach of contract; and 1 case regarding certification/qualification.

A guiding principle for school administrators to follow that can be derived from this information is that when a position or program is abolished, the seniority status of those

employees affected is determined without including prior service in an independent tenure area. This can be exemplified through *Moore v. Bd. of Educ. Smithtown School Dist.* (1986). An example is offered in this case in which the teacher was terminated from her reading position because her prior position in the school system as a communication skills teacher did not count toward her seniority as a reading teacher because this former position was in a different tenure area. It was also determined that at the time the teacher was teaching communication skills classes, she was not certified in the area of reading and only attained that certification later.

Table 7

Discontinuance of Position

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
1984	MN	Y	<i>Schmidt v. Independent School Dist.</i>	E	Discontinuance of Position	Teacher claimed School Board did not properly state in the written notice the grounds for his unrequested leave of absence.
1984	AL	N	<i>Smith v. Alabama State Tenure Com'n.</i>	SS	Discontinuance of Position	Teacher claimed that she must be informed, if being transferred to a new position, the location of the new assignment.
1984	VT	Y	<i>Work v. Mt. Abraham Union H.S. Bd. of Directors</i>	SS	Discontinuance of Position	Teacher claimed he was entitled to be transferred to an open position after his contract was non-renewed.
1984	SD	Y	<i>Sutera v. Sully Buttes Bd. of Educ.</i>	E	Reduce Number of Staff	Teacher claimed he was qualified to hold position of a probationary teacher who was retained.
1985	NY	Y	<i>Schimmel v. Bd. of Educ. So. Kortright School Dist.</i>	SS	Abolished Program	Teacher claimed he was entitled to a part-time position.
1985	NY	Y	<i>Shearod v. Bd. of Educ. Services of Nassau County</i>	SS	Abolished Program	Teacher claimed she should have been given new position based on seniority.
1985	NY	Y	<i>Beeman v. Bd. of Educ. Oyster Bay Public Schools</i>	E	Reduce Number of Staff	Teacher claimed she had seniority over two other teachers who were retained.
1986	CA	Y	<i>Poppers v. Tamalpais Union High School Dist.</i>	E	Abolished Program	Teacher claimed he was entitled to a position based on his seniority.
1986	MN	Y	<i>Beste v. Independent School Dist.</i>	E	Discontinuance of Position	Teacher claimed the board failed to establish the reason his position was discontinued.
1986	MN	Y	<i>Evans v. Independent School Dist.</i>	SS	Discontinuance of Position	Teachers claimed being bumped from their positions by administrative coordinators did not meet statutory requirements.

(table continues)

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
1986	MN	Y	<i>Roseville Educ. Assn. v. Ind. School Dist.</i>	B	Discontinuance of Position, Enrollment Decline, Budgetary Restraints	Teachers claimed their placement on leave was arbitrary and denied them their due process rights.
1986	IL	Y	<i>Zink v. Board of Educ. of Chrisman</i>	SS	Discontinuance of Program	Teacher claimed she should be appointed to full-time position based on seniority.
1986	AL	N	<i>Wooten v. DeKalb County Bd. of Educ.</i>	SS	Enrollment Decline / Abolished Program	Teacher claimed the abolition of his supervisor position and transfer to a teaching position was invalid.
1986	NY	Y	<i>Moore v. Bd. of Educ. Smithtown School Dist.</i>	SS	Enrollment Decline / Discontinuance of Position	Teacher claimed her time teaching in one area should have been applied towards her seniority credit in another area.
1987	TN	Y	<i>Randall v. Hankins</i>	SS	Abolished Program	Teacher claimed the correct rehiring procedures were not followed.
1987	ND	Y	<i>Law v. Mandan Public School Dist.</i>	SS	Enrollment Decline / Elimination of Position / Budgetary Restraints	Teacher claimed is dismissal was a breach of contract and was done based on insufficient reasons.
1988	PA	Y	<i>Gibbons v. New Castle Area School Dist.</i>	SS	School Closure	Principal claimed when transferred to new school he should have been given principalship based on his seniority.
1990	LA	N	<i>Beason v. Rapides Parish School Bd.</i>	SS	Discontinuance of Position	Supervisors claimed they were improperly classified causing their demotion in rank and salary.
1991	CT	Y	<i>Bd. of Educ. of Town of Thomaston v. State Bd. Labor Rel.</i>	E	Discontinuance of Position	School board claimed the elimination of position after arbitrator's decision did not constitute an unfair labor practice.
1991	MN	Y	<i>Matter of Hagen</i>	SS	Discontinuance of Position / Enrollment Decline / Budgetary Restraints	Teacher claimed staff assignments should have been realigned to save his position.
1993	NY	Y	<i>Kransdorf v. Bd. of Educ. Nortport Union Free School Dist.</i>	E	Discontinuance of Position	Teacher claimed time spent as a full-time substitute teacher should be used in computing her seniority.

(table continues)

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
1993	CT	Y	<i>McKee v. Board Of Educ. of Town of Waterton</i>	E	Discontinuance of Position	Board of education claimed the trial court unallowably substituted its judgment in place of theirs.
1993	IL	Y	<i>Piquard v. Bd. of Educ. of Pekin Community H.S. Dist.</i>	SS	Discontinuance of Position	Teacher claimed she was improperly dismissed based on her seniority.
1996	WV	N	<i>State ex rel. Boner v. Kanawha County Bd. of Educ.</i>	E	Discontinuance of Position	Teachers claimed their positions could not be contracted out for services they had previously provided.
1996	NY	Y	<i>Van Derzee v. Bd. of Educ. of Odessa-Montour School Dist.</i>	SS	Discontinuance of Position	Teacher claimed her part-time position could not be abolished in place of another position because of her length of time in the system.
1997	DC	Y	<i>Washington Teachers' Union v. Bd. of Educ. Dist. of Columbia</i>	SS	Budgetary Restraints / Discontinuance of Position	Teachers claimed reduction in force violated the collective bargaining agreement and the Contract Clause.
1998	NJ	Y	<i>Vicenzino v. Bedminster Tp. Bd. of Educ.</i>	E	Discontinuance of Position	Teacher claimed her dismissal was a violation of tenure, seniority, and re-employment rights.
1998	WV	N	<i>Wood County Bd. of Educ. v. Smith</i>	SS	Discontinuance of Position	The appellants claim that the elimination of half-day positions didn't constitute a reduction in force or that the drivers who lost their positions could use their seniority to take positions that were not eliminated.
1999	NJ	Y	<i>Carpenito v. Bd. of Educ. of Borough of Rumson, Monmouth Co.</i>	SS	Enrollment Decline / Abolishment of Position	Teacher claimed he had seniority rights to a former teaching position that had been abolished but reinstated years later.
2002	CA	Y	<i>Zalac v. Governing Bd. of Ferndale Unified School Dist.</i>	SS	Discontinuance of Position / Budgetary Restraints	Teacher claimed she was improperly classified as a Temporary employee because the program under which she was hired was not categorically funded and the Board failed to follow the appropriate procedures in laying her off.

(table continues)

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
2003	LA	N	<i>Howard v. West Baton Rouge Parish School Bd.</i>	SS	Discontinuance of Position	Teacher claimed he could not be terminated due to a reduction in force until after he had been reinstated to his position.
2004	IL	Y	<i>Cook v. Board of Educ. of Eldorado Community School Dist.</i>	E	Discontinuance of Position	Teacher alleged breach of contract and violation of the educational support personnel layoff statute.

Table 8 reveals that of the 147 cases dealing with reduction-in-force implementation, curricular changes was stated as a reason for the reduction in force in 2 cases. Both cases dealt with teachers filing claims against the school system in which they were employed. Within these 2 cases involving curricular changes, 1 case involved seniority/tenure, and 1 case involved a breach of contract. Out of these 2 cases, the employee was awarded summary judgment in none.

A guiding principle for school administrators to follow that can be derived from this information is that the effective date of an employee's termination is when the contract is over and not at the time the notification of termination is received. A case that exemplifies this is *Jarrett v. Wattsburg Area School Dist.* (1987) in which the employee that held the highest seniority, along with the proper guidance counselor certification at the time of the actual contract suspension, was the employee who was retained for the counseling position for the upcoming 1983-1984 school year.

Table 8

Curricular Changes

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
1987	PA	Y	<i>Jarrett v. Wattsburg Area School Dist.</i>	SS	Curriculum Adjustments	Board claimed teacher held less seniority based on hire date.
2002	ID	Y	<i>Willie v. Board of Trustees</i>	SS	Curriculum Adjustments	Teacher claimed school system was in breach of his employment contract.

Table 9 reveals that of the 147 cases dealing with reduction-in-force implementation, other good or just cause was stated as a reason for the reduction in force in 5 cases. These cases

involved issues of immorality, violation of education code, lack of cooperation, termination of contract, and surplused from position. All 5 cases dealt with teachers filing claims against the school system in which they were employed. Within these 5 cases involving other good or just cause as the reason, 3 cases involved a breach of contract and 2 cases dealt with the issue of violating constitutional, statutory, or contract rights. Of these 5 cases, summary judgment was granted to the employee in 1 case where constitutional, statutory, or contractual rights had been violated.

Table 9

Other Good or Just Cause

Year	State	CB	Case	Prevailing party	Background Situation(s) for reduction in force	Claim(s)
1984	OR	Y	<i>Ross v. Springfield School Dist.</i>	SS	Immorality	Teacher challenged his dismissal.
1984	CA	Y	<i>Powers v. Commission on Professional Competence</i>	SS	Violating Education Code	Teacher claimed he was dismissed from his position improperly.
1985	MN	Y	<i>Marshall Co. Cent. Educ. Assn. v. Ind. School Dist.</i>	E	Lack of Cooperation	Teacher claimed her nonrenewal constituted an unfair labor practice.
1994	CT	Y	<i>Geren v. Board of Educ. of Town of Brookfield</i>	SS	Termination of Contract	Teacher claimed his contract was breached.
2010	OH	Y	<i>Perrea v. Cincinnati Public School</i>	SS	Surplused from Position	Teacher claimed he was surplused from his position based on his race so to balance the racial makeup of the staff.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Introduction

The purpose of the research was to examine how the courts have addressed litigation resulting from the implementation of reduction-in-force policies in public school systems across the country. The period of time between 1984 and 2010 was chosen in order to provide an adequate number of cases to review for comparison and common trends. This timeframe of 27 years provided the researcher with 147 cases that took place across 32 states. This chapter includes a summary of the research as it relates to the research questions, conclusions that came about based upon the analysis of the court cases, and recommendations to be used for future studies pertaining to reduction in force in the public school setting.

Summary

The following research questions guided the data collection and analysis for this study.

1. What were the issues in court cases about reduction in force occurring from 1984 through 2010?

According to the research in this study, the issues of enrollment decline, fiscal or budgetary restraints, consolidation or reorganization of school districts, reduction in the number of teaching positions, curricular changes, and other good or just cause are what tend to lead to the implementation of reduction-in-force policies in public school systems across the country. These issues have resulted in claims including failure to follow reduction-in-force policy and

procedures; failure to abide by collective bargaining agreement; realignment/new position; violation of constitutional, statutory, and contract rights; discontinuance of position; certification/qualification; breach of contract; seniority/tenure; invalid information; and improper notification/hearing. The court decisions in this study have established 48 guidelines to help school administrators deal with these issues as they arise in their school systems.

2. What were the outcomes in court cases about reduction in force occurring from 1984 through 2010?

Of the 147 cases utilized in this study, 99 cases resulted in summary judgment being awarded to the school system, 40 cases resulted in summary judgment being awarded to the employee, and 8 cases resulted in summary judgment being awarded to both. Of the 99 cases where summary judgment was awarded to the school system, 83 of those judgments came from states with collective bargaining agreements. Of the 40 cases where summary judgment was awarded to the employee, 33 of those cases came from states with collective bargaining agreements.

Of the 147 cases dealing with reduction-in-force implementation, enrollment decline was stated as a reason for the reduction in force in 65 cases. Of these 65 cases, enrollment decline was the main reason that led to the reduction in force in 35 cases, and part of the reason in 30 cases. The majority of these cases, 56, dealt with teachers filing claims against the school system in which they were employed. The remaining cases consisted of 3 cases filed on behalf of a union or teacher representative, 5 cases dealing with an administrator's claim, and 1 case dealing with a school counselor. Within these 65 cases, 13 cases dealt with the issue of violating constitutional, statutory, or contract rights; 12 cases involved the issue of seniority/tenure; 8 cases involved enrollment decline as to there was not any or the timeframe was unrealistic; 6

cases involved a breach of contract; 5 cases involved realignment/newly created positions; 4 cases involved a breach of the collective bargaining agreement; 3 cases involved the failure to follow a reduction-in-force policy; 3 cases dealt with improper notification/hearing; 3 cases involved invalid information; and 3 cases dealt with the issue of certification/qualification. Out of these 65 cases, the employee was granted summary judgment in 12 cases and in an additional 7 cases where summary judgment was granted to both the employee and school system. Of these 19 cases, summary judgment was granted to the employee in 6 cases where their constitutional, statutory, or contractual rights had been violated; 5 cases involving the violation of seniority/tenure rights; 4 cases involving an insignificant enrollment decline and/or an unreasonable timeframe in which the enrollment decline was determined; 2 cases involving certification/qualification; 1 case involving invalid information; and 1 case where the reduction-in-force policy was not followed appropriately.

Of the 147 cases dealing with reduction-in-force implementation, budgetary restraints were stated as a reason for the reduction-in-force in 69 cases. Of these 69 cases, budgetary restraints were the main reason that led to the reduction in force in 36 cases, and part of the reason in 33 cases. The majority of these cases, 55, dealt with teachers filing claims against the school system in which they were employed. The remaining cases consisted of 3 cases filed on behalf of a union or teacher representative, 10 cases dealing with an administrator's claim, and 1 case dealing with a school counselor. Within these 69 cases involving budgetary restraints as the reason, or part of the reason for the reduction in force; 20 cases dealt with the issue of violating constitutional, statutory, or contract rights; 16 cases involved seniority/tenure; 11 cases involved the failure to follow a reduction-in-force policy; 6 cases dealt with the elimination, realignment, or creation of a new position; 5 cases dealt with certification/qualification; 4 cases involved

breach of contract; 3 cases involved a breach of the collective bargaining agreement; 2 cases involved improper notification/hearing; 1 case involved invalid information; and 1 case involved budgetary restraints being nonexistent. Out of these 69 cases, the employee was granted summary judgment in 15 cases and in an additional 7 cases where summary judgment was granted to both the employee and school system. Of these 22 cases, summary judgment was granted to the employee in 9 cases where constitutional, statutory, or contractual rights had been violated; 6 cases involving the violation of seniority/tenure rights; 4 cases for not appropriately following the reduction-in-force policy; 1 case where budgetary restraints were found to be non-evident; 1 case for invalid information; and 1 case regarding certification/qualification.

Of the 147 cases dealing with reduction-in-force implementation, consolidation/reorganization was stated as a reason for the reduction in force in 13 cases. Of these 13 cases, consolidation/reorganization were the main reasons that led to the reduction in force in 8 cases, and part of the reason in 5 cases. The majority of these cases, 10, dealt with teachers filing claims against the school system in which they were employed. The remaining cases consisted of 3 cases involving claims filed by administrators. Within these 13 cases involving consolidation/reorganization as the reason, or part of the reason for the reduction in force, 5 cases dealt with the issue of violating constitutional, statutory, or contract rights; 2 cases involved seniority/tenure; 2 cases involved the realignment of positions; 2 cases involved the failure to appropriately follow the reduction-in-force policy; 1 case dealt with certification/qualification; and 1 case involved a consolidation that never happened. Out of these 13 cases, the employee was granted summary judgment in 5 cases. Of these 5 cases, summary judgment was granted to the employee in 3 cases where constitutional, statutory, or contractual rights had been violated; 1 case involved the violation of seniority/tenure rights; and 1 case involved realignment of positions.

Of the 147 cases dealing with reduction-in-force implementation, discontinuance of position, reduction in the number of staff, abolished program, and/or school closure was stated as a reason for the reduction in force in 32 cases. Of these 32 cases, discontinuance of position, reduction in the number of staff, abolished program, and/or school closure were the main reasons that led to the reduction in force in 24 cases, and part of the reason in 8 cases. The majority of these cases, 30, dealt with teachers filing claims against the school system in which they were employed. The remaining cases consisted of 2 cases involving claims filed by administrators. Within these 32 cases involving discontinuance of position, reduction in the number of staff, abolished program, and/or school closure as the reason, or part of the reason for the RIF, 9 cases dealt with seniority/tenure; 5 cases involved the discontinuance of a position; 4 cases involved certification/qualification; 3 cases dealt with the issue of violating constitutional, statutory, or contract rights; 3 cases involved realignment/new position; 2 cases involved improper notification; 2 cases involved breach of contract; 2 cases involved the failure to follow the reduction-in-force policy; 1 case was a result of invalid information; and 1 case involved the breach of the collective bargaining agreement. Out of the 32 cases, the employee was granted summary judgment in 11 cases and in an additional case where summary judgment was granted to both the employee and school system. Of these 12 cases, summary judgment was granted to the employee in 3 cases involving the violation of seniority/tenure rights; 3 cases where a position was discontinued inappropriately; 3 cases where constitutional, statutory, or contractual rights had been violated; 1 case where there was improper notification; 1 case regarding a breach of contract; and 1 case regarding certification/qualification.

Of the 147 cases dealing with reduction-in-force implementation, curricular changes were stated as a reason for the reduction in force in 2 cases. Both cases dealt with teachers filing

claims against the school system in which they were employed. Within these 2 cases involving curricular changes, 1 case involved seniority/tenure, and 1 case involved a breach of contract. Out of these 2 cases, the employee was awarded summary judgment in none.

Of the 147 cases dealing with reduction-in-force implementation, other good or just cause was stated as a reason for the reduction in force in 5 cases. These cases involved issues of immorality, violation of education code, lack of cooperation, termination of contract, and surplussed from position. All 5 cases dealt with teachers filing claims against the school system in which they were employed. Within these 5 cases involving other good or just cause as the reason, 3 cases involved a breach of contract and 2 cases dealt with the issue of violating constitutional, statutory, or contract rights. Of these 5 cases, summary judgment was granted to the employee in 1 case where constitutional, statutory, or contractual rights had been violated.

3. What were the trends that have developed in regard to reduction-in-force rulings from 1984 through 2010?

According to this study, one trend is that school systems were granted summary judgment in 99 of the 147 cases. It seems that as long as school systems are following their reduction-in-force policies; abiding by collective bargaining agreements that have been established; and not acting in a manner that is considered to be arbitrary, fraudulent, unreasonable, not supported by evidence, or based upon an erroneous theory of law, the courts have granted judgment in favor of the school system. When this is not the case, we see a trend where employees were granted summary judgment in 40 out of 147 cases.

In the 10-year period following the first case, *Gill v. Dutchess County Bd. of Educ.* (1984), there were 94 cases involving litigation regarding the implementation of reduction-in-force policy, ending with *Piquard v. Bd. of Educ.* (1993). School systems were granted summary

judgment in 63 of the 94 cases. Employees were granted summary judgment in 26 of the 94 cases. Both parties were granted summary judgment in some form in 5 of the 94 cases. In the 26 cases where the employee was granted summary judgment, the majority of the cases, 9, dealt with the school system in some way being found in violation of the employees' constitutional, statutory, or contract rights. In 7 of the 26 cases, the issue dealt with seniority and tenure.

The next 10 years (1994-2003), beginning with *Byrd v. Green County* and ending with *Wilder v. Grant County*, saw the cases involving reduction in force drop significantly to only 35. School systems were granted summary judgment in 25 of the 35 cases. Employees were granted summary judgment in 7 of the 35 cases. Both parties were granted summary judgment in some form in 3 of the 35 cases. In the 7 cases where the employee was granted summary judgment, 2 cases were the result of the school system in some way being found in violation of the employee's constitutional, statutory, or contract rights; 2 cases were the result of invalid information being provided for the purpose of the reduction in force; 1 case involved seniority/tenure; 1 case involved breach of contract; and 1 case involved the school system's failure to follow their reduction-in-force policy.

The last 7 years of this study (2004-2010), beginning with *Cook v. Bd. of Educ.* and ending with *Perrea v. Cincinnati Public Schools*, saw the cases involving reduction in force drop even more to only 18. School systems were granted summary judgment in 11 of the 18 cases. Employees were granted summary judgment in 7 of the 18 cases. In these 7 cases, the majority of cases, 4, dealt with the school system in some way being found in violation of the employees' constitutional, statutory, or contract rights.

4. What legal principles for school administrators may be discerned from court cases about reduction in force from 1984 through 2010?

As reduction-in-force policies are implemented in school systems across the country, these are some guiding principles for administrators to be aware of that could help in avoiding litigation. It is important to note that since reduction-in-force policies are controlled by state statutes and collective bargaining agreements, these guiding principles might not be applicable across all states.

Guiding Principles

1. Given the same certification, suspension is to be made on seniority, not experience (*Bednar v. Westwood Bd. of Educ.*, 1987; *Shearod v. Bd. of Educ. Services of Nassau County*, 1985; *Bd. of School Dir. of Chester School Dist. v. Ashby*, 1985; *Walkowski v. Duquesne City School Dist.*, 1994).

2. The effective date of an employee's termination is when the contract is over, not at notification of termination (*Jarrett v. Wattsburg Area School Dist.*, 1987; *Nickel v. Saline County School Dist.*, 1997).

3. A teacher cannot be retained for a position they were not hired for even if they taught the position sometime in the past (*Law v. Mandan Public School Dist.*, 1987).

4. A non-tenured teacher has no rights under reduction in force (*Murphy v. Pierre Independent School Dist.*, 1987; *Van Derzee v. Bd. of Educ. of Odessa-Montour School Dist.*, 1996).

5. A teacher with less seniority shall be dismissed first, unless an alternative method has been determined in a collective bargaining agreement (*Gill v. Dutchess County Bd. of Educ.*,

1984; *Proviso Teachers Union v. Proviso H.S. Cook County*, 1987; *Verdeyen v. Bd. of Educ. Batavia School Dist.*, 1986).

6. Teachers are not mandated to a peremptory order of reinstatement just because they have tenure (*Randall v. Hankins*, 1987).

7. A change in a teacher's course assignments at the same school and in the same grade is not considered a "transfer" of position (*Robertson v. Alabama State Tenure Com'n.*, 1987).

8. The same starting point must be used for all employees when determining seniority (*Rochester Area School Bd. v. Duncan*, 1987).

9. Realignment of course assignments should be made to protect a teacher's seniority but should be done in a way that is reasonable and practical (*Dallap v. Sharon City School Dist.*, 1990; *Hinckley v. School Bd. of Independent School Dist.*, 2004; *Scobey School Dist. v. Radakovich*, 2006; *Strand v. Special School Dist.*, 1986; *Westgard v. Independent School Dist.*, 1987).

10. Just because a teacher is certified does not mean he or she is qualified for a position (*Bauer v. Bd. of Educ. Unified School Dist.* 1988; *Bledsoe v. Biggs Unified School Dist.*, 2008; *Dees v. Marion-Florence Unified School Dist.*, 2006; *May v. Alabama State Tenure Commission*, 1985; *Nickel v. Saline County School Dist.*, 1997; *O'Hair v. Board of Educ. Unified School Dist.*, 1990; *Poppers v. Tamalpais Union High School Dist.*, 1986; *Schimmel v. Bd. of Educ. So. Kortright School Dist.*, 1985; *Sutera v. Sully Buttes Bd. of Educ.*, 1984; *Zink v. Board of Educ. of Chrisman*, 1986).

11. Decisions made during a reduction in force should be fair and equitable to the employee and the school while having minimum disruption on the students (*Butler v. Bd. of Educ. Unified School Dist.* 1989; *Carpenito v. Bd. of Educ. of Borough of Rumson, Monmouth*

Co., 1999; *Green Forrest Public Schools v. Herrington*, 1985; *In re Independent School Dist. No. 318 Hearing*, 1989; *Matter of Hagen*, 1991; *Moe v. Independent School Dist.*, 2001).

12. A reduction in staff based on a decline in enrollment must show a decline the year the reduction is implemented (*Bachak v. Lakeland School Dist.*, 1995; *Bye v. Special Intermediate School Dist.*, 1986; *Colonial Educ. Ass'n. v. Colonial School Dist.*, 1994; *Miller v. School Dist. of Clay County*, 2009; *Phillips v. South Range Local School Dist. Bd. of Educ.*, 1989).

13. Special education teachers do not receive greater protection than other teachers during a RIF (*Taborn v. Hammonds*, 1989).

14. Qualifications required of teachers are significantly different from those of teaching assistants (*Anderson v. Cortland City School Dist.*, 1990).

15. A joint seniority list cannot be used between two districts to assign positions unless agreed upon by both districts (*In re Battaglia*, 1990; *Blank v. Independent School Dist.*, 1985).

16. Nothing shall limit a board's ability to reduce the number of employees pertaining to lack of funds, enrollment decline, and lack of work (*Gross v. Bd. of Educ. of Elmsford Union Free School Dist.*, 1991; *Jamison v. Morris School Dist. Bd. of Educ.*, 1985; *St. Louis Teachers Union v. St. Louis Bd. of Educ.*, 1984; *Westport School Community v. Coelho*, 1998).

17. An administrative hearing in (Illinois) is not necessary when a teacher is dismissed for economic reasons (*Hampson v. Bd. of Educ. Thornton Fractional Tp. High Schools*, 1991).

18. Mandatory language in statute must be followed (*Board of Educ. of County of Grant v. Townshend*, 1992; *Martinek v. Belmont-Klemme Community School Dist.*, 2009; *McKee v. Board of Educ. of Town of Waterton*, 1993).

19. Notification of new assignment location is not required (*Smith v. Alabama State Tenure Com'n.*, 1984).

20. The cause of the reduction in student enrollment is irrelevant as long as there has been a decrease (*Bennett v. Bd. of Educ. Lorain School Dist.*, 1985).

21. Regulations at the time a decision is made are what should be followed, not regulations that existed before or later amended (*Board of Educ. of County of Grant v. Townshend*, 1992; *Caso v. School Committee of Waltham*, 1985; *Law v. Mandan Public School Dist.*, 1987).

22. Temporary professional employees do not have the same rights as professional employees (*Derry Tp. School District v. Finnegan*, 1985).

23. A substantial decrease in overall enrollment is sufficient to make reductions in any program (*Mink v. Great Oaks Institute of Tech. and Career Dev. Bd. of Educ.*, 2005; *Mongelluzzo v. School Dist. of Bethel Park*, 1985; *State ex rel. Van Dorn v. Mt. Gilead Exempted School Dist.*, 1992).

24. Administrators must follow the requirements of the code that was listed as being used for the dismissal. Different codes have different requirements (*Rosen v. Montgomery County Intermediate Unit*, 1985).

25. Failure to provide a hearing officer in an unrequested leave of absence procedure is a denial of due process (*Beste v. Independent School Dist.*, 1986).

26. Seniority is determined according to permanent teaching time, not time spent as a substitute (*Daly v. Grove City Area School Dist.*, 1986).

27. Seniority credit is given to time spent in the military under the Veterans' Preference Act (*James v. Big Beaver Falls Area School Dist.*, 1986).

28. When a position is abolished, seniority status is computed without including prior service in an independent tenure area (*Moore v. Bd. of Educ. Smithtown School Dist.*, 1986).

29. Tenure and seniority rights are considered abandoned when a position is offered after a reduction in force and refused (*O'Toole v. Forestal*, 1986).

30. Tenure rights acquired at one state operated school cannot be asserted at another state operated school (*O'Toole v. Forestal*, 1986).

31. There is a timeframe that must be followed when submitting a request for a hearing (*Roseville Educ. Assn. v. Ind. School Dist.*, 1986).

32. The local school board retains the power to place a teacher in a position they are qualified to fill (*Proviso Teachers Union v. Proviso H.S. Cook County*, 1987).

33. A teacher cannot displace other teachers on the basis of certifications they are working on but do not hold at the time they are dismissed (*Rochester Area School Bd. v. Duncan*, 1987; *Whitling v. Keystone School Dist.*, 1989).

34. A school district must have a reduction-in-force policy to follow (*Lee v. Giangreco*, 1992).

35. Elimination and consolidation of positions are appropriate if done in good faith (*Ballato v. Bd. of Educ. of Town of Stonington*, 1993).

36. An overlap in duties does not make two positions (teaching and administrative) the same for tenure purposes (*Davis v. School Dist. of City of Niagra Falls*, 2004; *Dennery v. Bd. of Educ. Passaic County Regional H.S. Dist.*, 1993).

37. A teacher loses seniority rights when he or she severs service with a school district, not when their service is interrupted by part-time service within the district (*Kransdorf v. Bd. of Educ. Nortport Union Free School Dist.*, 1993).

38. A school system must follow guidelines set forth in the collective bargaining agreement (*McKee v. Board of Educ. of Town of Waterton*, 1993).

39. Transferred teachers do not have to be accepted when the receiving district already has qualified personnel for the positions (*Luzerene Intermediate Educ. Ass'n. v. Pittston Area School Dist.*, 1994).

40. Reductions are first to be made at the central office level, then assistant principals, then principals (*Summers County Bd. of Educ. v. Allen*, 1994).

41. A teacher must be able to point to an existing position currently occupied by a less senior teacher than the senior teacher is licensed to fill (*DeGeorgeo v. Independent School Dist. South Washington Co.*, 1997).

42. The reduction-in-force policy that is in place is the one that has to be followed (*Junction City School Dist. v. Alphin*, 1997; *Martinek v. Belmont-Klemme Community School Dist.*, 2009).

43. Seniority is determined by length of service within a specific job classification, not length of time at a specific school (*Wood County Bd. of Educ. v. Smith*, 1998).

44. Seniority rights do not apply to supervision positions because a teacher cannot be licensed to supervise (*Moe v. Independent School Dist.*, 2001).

45. Teachers with a continuing contract who are placed on unrequested leaves of absence are to be reinstated to positions they are qualified for in inverse order (*State ex rel. Quiring v. Bd. of Educ. of Independent School Dist.*, 2001).

46. A properly written notification does not take the place of an inadequate reduction-in-force policy (*Wilder v. Grant County School Dist.*, 2003).

47. An employee's termination from a position and discharge from a position are completely separate and fall under different guidelines (*Aguilera v. Board of Educ. of Hatch Valley Schools*, 2006).

48. A teacher's seniority rights do not override a district's power to shape their curriculum or their flexibility to run schools effectively (*Craig v. Independent School Dist.*, 2006).

Discussion

A key component of this study was the comparison that can be made between reduction-in-force cases that took place in states with collective bargaining agreements and the reduction-in-force cases that took place in those states without. Of the 147 cases that were reviewed in this study, there was a representation of 32 different states. The number of cases within a state ranged from 1 in Idaho, Indiana, Michigan, Mississippi, Montana, North Carolina, Vermont, and Virginia, to as many as 21 and 22 in Minnesota and Pennsylvania, respectively. Of the 32 states, 23 states had established collective bargaining agreements and 9 states followed state statutes only. Of the 23 states where collective bargaining was involved, there were a total of 123 cases. In those cases the school system was granted summary judgment 83 times, the employee was granted summary judgment 33 times, and both parties were granted summary judgment 7 times. Of the 9 states that only followed guidelines set forth in their state's statutes, there were a total of 24 cases. In those cases, the school system was granted summary judgment 16 times, the employee was granted summary judgment 7 times, and both parties were granted summary judgment 1 time.

There were a couple of unexpected outcomes once the analysis was complete. For example, within the collective bargaining states, I expected there to be many more cases brought by unions and teacher associations on behalf of employees, this was not the case. I was also surprised that over a period of 27 years there were still 18 states that did not have any

representation in this study, including my home state of Georgia. With the current condition of the nation's economy, a reasonable prediction would be that the number of reduction-in-force cases is going to grow over the next several years, and there will be states that have cases that were not represented in this study.

Conclusions

School administrators face a difficult challenge when it comes to implementing reduction-in-force procedures within their school systems. The reduction-in-force process takes place in school systems across the country annually. Many of these never make it to litigation, but as we can see from this study, 147 cases arose over a 27-year period from 1984-2010. Although the school system prevailed in these cases approximately 73% of the time, any amount of time and money lost in litigation could have been more appropriately used in meeting the educational needs of students.

The cases in this study identified issues that school administrators need to be aware of when developing and implementing reduction-in-force policies within their school system. Hopefully, this study shed some light on these issues, which will help school administrators be more effective in this area of leadership. Being aware, in addition to having a good understanding and knowledge of the litigious issues and how courts have ruled, can benefit school administrators as they attempt to avoid litigation.

Recommendations for Further Study

Based upon the findings and conclusions of this study, the researcher makes the following recommendations:

1. Research should be continued on cases following 2010 to review the decisions that have been made regarding reduction-in-force implementation and what impact these decisions have on current litigation.

2. A study should be conducted pertaining to reduction-in-force implementation in public schools in only states that have collective bargaining.

3. A study should be done to examine reduction-in-force policies that put more weight on employee performance as opposed to tenure and seniority.

4. A study should be performed regarding the implementation of a reduction in force and how an employee's qualifications, not just certification, are used in determining who gets to stay employed.

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