



# Communiqué

To: Board members, superintendents, treasurers, business officials and OCSBA members  
From: Richard J. Dickinson, general counsel  
Re: **Budget bill changes: Reductions-in-force, transportation services**  
Date: July 26, 2005

Buried among the 3,418 pages of the recently enacted budget bill (Amended Substitute House Bill No. 66) are modifications and additions to some permanent education laws. This *Communiqué* will briefly describe three such laws. Their effective date is September 29, 2005.

## **Reductions-in-force (RIF)**

The budget bill amends the RIF statute that applies to teachers (Ohio Revised Code (RC) 3319.17), most significantly adding “financial reasons” as one of the circumstances that can justify a reduction-in-force. The bill also enacts a new statute (RC 3319.172) which for the first time gives school districts other than city districts the authority to conduct reductions-in-force of nonteaching employees.

In addition to adding “financial reasons” to the teacher reduction-in-force statute, the budget bill adds the authority to suspend contracts in part, meaning that a full-time employee can be reduced to part-time status or a part-time employee reduced in hours through the reduction-in-force process.

The amendments also add a provision that states that no teacher on a continuing contract will lose recall rights by declining a recall to a position providing fewer hours of work than the employee had been working.

The final significant amendment to the teacher RIF statute states:

“(D) Notwithstanding any provision to the contrary in Chapter 4117 of the Revised Code, the requirements of this section prevail over any conflicting provisions of agreements between employee organizations and public employers entered into after the effective date of this section.”

The intent of this language seems clear. Collective bargaining agreements entered into *prior* to the effective date of Am. Sub. H.B. 66, September 29, 2005, will continue to prevail over the language of the statute. The provisions of the law will prevail over conflicting provisions of collective bargaining agreements entered into *after* September 29, 2005.

This language means that boards of education who are either currently negotiating or will soon be negotiating collective bargaining agreements should carefully consider the impact of entering into an agreement prior to the date the law takes effect. The beneficial aspects of the amendment, such as being able to conduct a RIF based on financial reasons and exercising the authority to suspend contracts in part, can be utilized as soon as the budget bill becomes law, if a collective bargaining agreement with conflicting provisions is not in place on that date. On the other hand, if a collective bargaining agreement with provisions that conflict with the new law is in effect, the collective bargaining agreement will prevail for the duration of the agreement.

## **Reductions-in-force for nonteaching employees**

Newly enacted RC 3319.172 for the first time gives school districts not subject to civil service laws the authority to conduct a reduction-in-force of nonteaching employees. The reasons for a RIF are the same reasons specified for teacher reductions-in-force in RC 3319.17(B). Those reasons are: return to duty after leaves of absence, suspension of schools, territorial changes affecting the school district or service center and financial reasons. There are several additional reasons for educational service centers based on a reduction in the number of pupils to be served under inter-district contracts.

The procedural steps for a reduction-in-force involving nonteaching employees also mirrors that provided for teachers. The reductions must be made in accordance with the recommendation of the superintendent who must give preference to employees under continuing contracts and to those with greater seniority. Boards will be able to suspend contracts in part for nonteachers under the newly amended law, and nonteachers will have the same rights of restoration as do teachers, including the right to reject an offer of lesser hours of employment without losing their position on the recall list.

The new statute that applies to RIFs of nonteaching employees contains the identical language as the teacher RIF statute regarding the precedence of collective bargaining agreements entered into prior to the effective date of the statute, September 29, 2005, and the precedence of the statute over collective bargaining agreements entered into after September 29, 2005. (See the discussion regarding this language in the teachers' RIF statute above.)

## **Contracting out of transportation services**

The budget bill also enacts a new statute, RC 3319.0810, which gives explicit authority to school districts to terminate any of its transportation staff positions for reasons of economy and efficiency if the board enters into a contract with an independent contractor to provide transportation services for students. The statute, which applies to school districts where civil service laws are not applicable, sets conditions for entering into such contracts, which include:

1. any collective bargaining agreement between the union and board must have expired or will expire within 60 days, or the agreement must contain provisions permitting the termination of positions for reasons of economy and efficiency and the board has complied with those provisions,
2. the board must permit any employee whose position is terminated to fill any vacancy in the district for which the employee is qualified,
3. unless a collective bargaining agreement provides otherwise, the board must permit any employee terminated under this section to fill the employee's former position if the board reinstates it within one year,
4. the board must permit any employee whose position is terminated under this section to appeal the board's decision to terminate the employee, not to hire the employee for another position or not to rehire the employee for the same position if it is reinstated within one year,
5. the contract entered into by the board and the independent contractor must contain a stipulation requiring the contractor to consider hiring any employees whose positions are terminated for similar positions with the contractor,
6. the contract between the board and the independent contractor must contain a stipulation requiring the contractor to recognize any union that represented the employees, provided the majority of the employees agree to such representation and that such representation is not prohibited by federal law or the union's own governing instruments.

The failure of the board to comply with any of these conditions will void the terminations and the board will be required to reinstate the employees who were terminated. The statute also gives any aggrieved employee the right to sue the board for reinstatement in the court of common pleas.

As with all newly enacted statutes, questions of interpretation will arise. Because these laws are new and not yet subject to interpretation by the courts or administrative agencies, boards and their administrations are urged to contact legal counsel for advice prior to implementing any of these statutory enactments.

*The information in this Communiqué is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.*