Employment Issues
Reduction in Force Handbook

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General Information

This handbook was originally published by IASB as a supplement to its March 2002 ICN class on reduction in force .

Declining enrollment or budget reductions may force school districts to reduce staff. This document is intended to serve as a guide for school boards implementing reductions in force (RIF).

School district employees can be classified in several different ways. It is important to know each employee's classification because RIF procedures differ based on classification. The most common distinctions are:

- Administrative or non-administrative
- Collective bargaining or non-collective bargaining
- Teacher or support

Get acquainted with how the employees are classified and determine what specific procedures will regulate the RIF. For example, a teacher may be subject to the collective bargaining provisions, board policy and *Iowa Code* provisions, while support employees may not have a collective bargaining agreement (CBA) and are not subject to statutory requirements.

Determine the Number of Positions to be Eliminated

Obviously, it will be difficult to conduct a RIF unless the number of positions to be eliminated is determined. It is important to conduct this analysis first. This decision is usually made after the administrator and the board have thoroughly reviewed the budget and reassessed the district's priorities. The decision to reduce staff is not a mandatory topic of bargaining, so the district has full discretion to determine whether a RIF is appropriate, *unless the district has negotiated a more restrictive standard*. Even though the district has this discretion, it is important to encourage community and staff participation about how the district budget can be aligned to meet the district's goals. If the district fails to involve community and staff in its determination, it is more likely to have claims that a reduction was targeted toward specific employees.

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In order to support a RIF, it may be necessary to provide budget figures including the employee costs associated with those to be laid off. It can also include a history of declines in revenue, the loss of special funding and a decision to operate in a more economically efficient or appropriate manner. A well planned RIF will have this information documented before beginning layoffs.

Determine the Group of Employees to be Laid Off

A RIF can be accomplished in many different ways – by eliminating staff from any of the above-mentioned categories of: teaching, administrative, support, custodial, associate or any combination of positions. Substitutes and other temporary teachers are generally not covered by a CBA or Chapter 279. There are some classifications such as technology coordinator, or at risk coordinator that may have originated after the CBA was established. It would be beneficial to sit down with the association and determine how those positions are classified. Again, the important thing is to appropriately classify each position because it can affect how the layoff is conducted.

Support Employees

Support employees may or may not be covered by a CBA. RIF plans for employees not covered by a CBA are discussed below.

Have a RIF Plan in Place

School district support employees who are not covered by a CBA are generally considered at-will employees who may be discharged at any time for any reason, unless there is another type of contract or board policy in place that limits the employer's rights. However, *it is not advised to lay off employees without a layoff plan.* While the employer is allowed to choose any at-will employee to lay off, even the most senior, doing so opens the district to allegations of employment discrimination or favoritism. Laying off by seniority is a court-approved process that is very difficult to challenge.

Employers have also been able to use employment performance records to determine which employees should be reduced, but it is most successful if the performance records have been consistently maintained over a period of time. A last-minute performance evaluation right before a layoff will certainly raise suspicion.

Preferably, there should be a board policy outlining layoff procedures for non-contract, non-administrative staff. In the absence of such a policy, having a written layoff plan that was developed prior to the actual layoffs is very important. The layoff plan must describe in detail how employees will be targeted for layoff, whether it be by seniority, employee performance or some other objective factor.

In *In re Waterloo Community School District*, 338 N.W.2d 153 (Iowa 1983), the Iowa Supreme Court stated that it is very difficult to determine whether the termination decision is legal or not without a layoff plan, so an adjudicator or the court may find an improper reason where none existed. If the board does not conduct layoffs pursuant to a plan, the board risks having to rehire the administrator and pay back pay.

In rare cases, an employee handbook might create a contract that can only be terminated with just cause, even with employees who are not represented by a union. There is some Iowa Supreme Court precedent for such a claim, although it is very difficult to establish. Even if there is such a handbook, a RIF should be permitted as long as it is conducted pursuant to an established plan.

Follow the Layoff Plan Exactly

It will not be helpful to have a layoff plan if it is ignored or if random exceptions are made. The same allegations of discrimination or favoritism can be made if the plan is not followed. If an exception is absolutely necessary because of the funding source, certain employee qualifications or other similar reason, explain the restriction and eliminate the alternatives in writing. Be ready to be challenged about why it is not possible to conduct the layoff under the plan's requirements and reassign employees to meet the needs of the district. *(Exceptions for certifications may not be allowed in a CBA, however, as noted later in this article.)*

Administrative Employees

School administrative employees will not be covered by a CBA, but they may be covered by board policy and will be covered by *Iowa Code* Chapter 279. Under Chapter 279, "administrator" is defined as:

- School superintendents
- Assistant superintendents

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- Educational directors for grades kindergarten through twelve
- Educational directors of area education agencies under Chapter 273
- Principals
- Assistant principals
- Other certified school supervisors employed for kindergarten through twelve as defined under section 20.4
- Other certified school supervisors employed by area education agencies under Chapter 273.

Follow the Requirements of the Administrator's Contract

Under Chapter 279, school administrators must be under contract with the district. The initial contract will be automatically continued for additional one-year periods after the end of the original contract unless it is modified or terminated by either mutual agreement or pursuant to Chapter 279. The district may not terminate a non-probationary administrator's contract unless for "just cause." Just cause is not defined in the *Code*, but just cause for termination of a tenured teacher's contract has been repeatedly defined in case law as "conduct which, directly or indirectly, significantly and adversely affects what must be the ultimate goal of every school system: high quality education for the district's students." It relates to job performance including leadership and role model effectiveness. It must include the concept that a school district is not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance. On the other hand, just cause cannot include reasons which are arbitrary, unfair or generated out of some petty vendetta *Everett v. Board of Educ*., 334 N.W.2d 320, 321 (Iowa App. 1983). Just cause for termination of a district employee's contract may also turn on budgetary constraints and declining enrollments which force school administrators to choose between otherwise "faultless" teachers. See *Smith v. Board of Educ. of Mediapolis School Dist.,* 334 N.W.2d 150, 152 (Iowa 1983).

Certain administrator contracts may have additional requirements for termination of the contract. If they do not conflict with the *Iowa Code*, the school board must also follow those requirements. If they do conflict with the *Iowa Code*, Chapter 279 will generally govern.

Follow the Procedures Outlined in Chapter 279

If a school board implementing a RIF, decides to terminate an administrator's contract prior to May 1, the school board must follow the procedures outlined in Chapter 279. The Iowa Supreme Court has held that these procedures satisfy due process requirements of the constitution, so they should be followed exactly.

1. First, the board may meet in closed session prior to any formal action and approve the termination by a majority vote. The board shall review the administrator's evaluation, review the reasons for non-renewal and give the administrator an opportunity to respond.
2. A probationary administrator must be notified no later than May 15 that the contract will not be renewed beyond the current year. The notice shall be in writing by letter, personally delivered, or sent by certified mail. The administrator has the right to request a private conference with the school board within ten days after receiving the notice, to discuss the reasons for termination. The school board's decision is final unless the termination is based upon violation of a constitutionally guaranteed right of the administrator.

The following procedures are required for termination of a non-probationary administrator:

1. The school board must approve the termination by a majority vote.
2. On or before May 15, the administrator must be notified in writing by a letter personally delivered or sent by certified mail that the school board has voted to consider termination of the contract. The notification is considered complete when the administrator receives the notification, so the notice should be sent early enough for the administrator to receive it on or before May 15. *(The same will apply for a probationary employee.)*
3. The notice shall state the specific reasons to be used by the school board for considering termination.
4. The notice should also include a statement that the administrator has the right to appeal the contract termination under Chapter 279.24. The appeal procedures will not be discussed here. (See IASB's *Licensed Employee Contract Procedures Manual* for additional information.)

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It is very important that the final decision not have been made prior to the initial termination notice to the employee. The United States Supreme Court has held that constitutional due process requires a hearing ***before*** a termination decision. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 543 (1985). The statutory procedures provide the due process hearing.

Have a Layoff Plan and Follow It

Although the school board does have discretion to decide who shall be terminated in a RIF of administrators, the board must be careful to have a layoff plan in place which includes written, objective criteria for staff reduction. *In re Waterloo Community School District*, 338 N.W.2d 153 (Iowa 1983). The Iowa Supreme Court stated in *Waterloo* that it is difficult to determine whether the termination decision is legal or not without a plan; that an improper or illegal decision might be found where none actually existed. If the board does not conduct layoffs pursuant to a plan, the board risks having to rehire the administrator and pay back pay. Ideally, the plan for laying off administrators will already be part of the school board policies, but if not, the board should prepare a layoff plan specifying the criteria for layoff decisions.

Teachers

The same principles on layoff will apply for teachers. Most teachers are, however, covered by a CBA that specifies the lay off procedures. If the district's teachers are not represented by the association, there will still be Chapter 279 requirements and possibly board policy to follow. Construct the layoff plan after reviewing those sources. When there is a CBA, the layoff plan will have to comply with the layoff procedure clauses of the CBA.

Follow the Requirements of the Teacher's Contract and Chapter 279

Similar to school administrators, *Iowa Code* requires procedures to be followed for terminating a teacher's contract. Again, there must be just cause, but declining enrollment and budgetary constraints have previously satisfied the just cause requirement.

1. The superintendent or the superintendent's designee shall notify the teacher not later than April 30 that the superintendent will recommend in writing to the board at a meeting to be held not later than May 15, that the teacher's continuing contract be terminated at the end of the current school year. Separate rules under Chapter 275 apply if the district is subject to reorganization. Start this process earlier than April 30 to avoid any complications with serving notice.
2. Notification of the recommendation of termination of the teacher's contract must be in writing, personally delivered to the teacher or sent by certified mail in time for the notice to be received by April 30. *Hartman v. Merged Area VI Community College*, 270 N.W. 2d 822 (Iowa 1978).
3. The notification must contain a short statement of the reason for the recommendation for termination and the notification must be given at or before the time the recommendation is given to the board. (Sample termination letters are contained in IASB's *Licensed Employee Contract Procedures Manual*.)
4. The teacher's complete personnel file, including the performance evaluations, must be made available to the teacher as part of the termination proceedings.
5. The teacher may request, in writing, a private hearing with the board within five days of receipt of the written notice of termination recommendation. The private hearing is subject to Chapter 21 and must be held no sooner than 10 days, but no later than 20 days, after the request is made (unless otherwise agreed.) At least five days prior to the hearing, all documentation which may be presented to the board at the hearing by the superintendent, as well as a list of all witnesses, must be furnished to the teacher. The final decision is made on a vote of the school board.
6. The hearing is governed by *Iowa Code* section 279.16, and if the teacher is non-probationary, the teacher may appeal any adverse decision under section 279.17.
7. These procedures may be modified by mutual agreement, and if the teacher files a grievance pursuant to a CBA, there will be an automatic stay of the time lines until the grievance procedures of the CBA are concluded. This is to avoid inconsistent results. *Board Education v. Banke*, 498 N.W.2d 697, (Iowa 1993).

Here again, it is very important that the final decision not have been made prior to the initial termination notice to the employee. The United States Supreme Court has held that constitutional due process requires

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a hearing ***before*** a termination decision. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 543 (1985). The statutory procedures provide the hearing.

Have a Layoff Plan and Follow It

For the same reasons stated above, if the teachers in the district are not covered by a CBA, there should still be a layoff plan. In *Lee v. Giangreco,* the Iowa School for the Deaf was ordered to pay backpay and future lost wages to a teacher who had been terminated as part of stated layoff, where no layoff plan had been in place. The jury in this case did not believe the superintendent's reason for selecting the teacher for layoff. Although teacher terminations are not governed by the same laws as the Iowa School for the Deaf was, the same principles apply. The *Lee* court cited an Iowa administrator termination case in support of the decision.

The *Lee* case also shows the risks of failing to formulate and implement a layoff plan. In *Lee*, the teacher was the only female industrial arts teacher and, at the time, the only drafting teacher. She was certified to teach science, math, social studies and language arts in grades seven through twelve. She had received favorable evaluations. The student enrollment had declined by 300 students and a layoff was necessary. There were two other industrial arts teachers with similar seniority, but the superintendent claimed that they needed to be retained because they had additional credentials in driver's education and physical education that made them more versatile staff members. No mention was made, however, of Lee's credentials in math, science, social studies and language arts. In addition, the superintendent told the teacher that the district only needed one drafting teacher. The teacher testified that in fact, she had been the only drafting teacher and that the other teachers with similar seniority did not have the additional certifications as alleged by the superintendent. If there had been a layoff plan in place and the superintendent had followed it, the teacher's challenge to her layoff would not have been successful.

Determine How Employees are Affected by a CBA

With a layoff plan in place and the determination made as to whether the employees to be laid off are support, administrative or teaching staff, any CBA must be taken into consideration before the RIF is started. Since management employees and certain other administrative employees are specifically excluded from collective bargaining under Chapter 20, there will be no CBA to consider when making administrative reductions. Support staff and teachers may however, be represented by a union or association, so be sure to review those contracts before proceeding with a RIF.

The reduction in force articles of collective bargaining agreements tend to have the same elements:

1. Notice requirement
2. Specification of the layoff unit, often called "classification" or "pool" in education
3. Order of reduction
4. Permissible exceptions
5. Method of calculating seniority or determining reduction order
6. Permissible bumping rights (whether a reduced employee will be allowed to displace another employee)
7. Recall order and procedures

Notice Requirement

Most CBAs require that employees be notified of a reduction within a certain time frame and by a specific means. For example, notice of a layoff might be required by March 30. If the CBA requires notification earlier than that required by state law, the CBA notice requirement governs. Under state law, a teacher or administrator contract will be automatically renewed for the following school year unless terminated by April 30. A failure to provide adequate notice will likely result in having to continue the contract for another year.

At least one Iowa CBA requires notice to occur "not later than the last day of school." In this case, the statute's requirement of April 30 would govern unless that last day of school occurs before April 30, which is not likely because of the statutory school year requirements.

It would seem to be a simple statement that an employee is not entitled to recall unless the employee has been laid off. Factual situations can make that rule more complex than it seems. In one case, an employee's assignment was changed from guidance counselor with junior high science to secondary science. As a result, the grievant lost a $500/year stipend paid to guidance counselors. The employee filed a grievance claiming that the district had not given written notice of the realignment prior to March 15th. The CBA required that the administration provide written notice with specific reasons for "reduction or realignment of staff." The arbitrator agreed with the district that the notice requirement applied only in

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reduction cases and where there was realignment connected with reduction. The past practice supported the finding. Since there had been no reduction of staff when this employee was reassigned, the notice by March 15th was not required.

Specification of Layoff Unit

Many CBAs will specify groupings for determining order of layoff. The following is a sample of this type of clause:

> "Classifications for staff reduction shall be K-6 elementary classroom teachers; 7-12 within curricular areas (such as social studies, math, science); K-12 in the areas of music, art, counselors, and physical education; and special programs (Title I special education)."

Under this clause, the employer must divide the school district into these groups first. The order of reduction must be implemented separately within each group. The more specific and narrow the categories, will make the RIF easier to administer. For example, if the employer determines that positions for three elementary teachers, one special program teacher, two K-12 counselors and one 7-12 social studies teachers should be reduced, the layoff order can only be made by comparing all the teachers within each group. In this scenario, the elementary teachers must not be placed in the same group as the K-12 counselors, even if the counselors or teachers are qualified to perform the duties of the other group.

Support staff might have the following clause:

> "The board shall first determine the classification or classifications of employees subject to the reduction. For purposes of staff reduction, the classifications of employees are: Associate I – regular program, Associate I – special education, Associate II, Secretary I, Secretary II and Secretary III."

Under this provision, if there is an Associate I – special education employee with more seniority than an Associate II, it is possible that the Associate II would be laid off, but not the less senior Associate I – special education employee, because the contract requires the two groups to be considered separately. *(But consider potential bumping rights, addressed below.)*

School districts must be sure to follow the layoff unit requirements exactly. A failure to do so can lead to a grievance arbitration decision reinstating the teacher and requiring back pay. In *East Buchanan Community School District*, IASB No. 85-104-352, (Feuille 1985) the district had grouped art, music and physical education teachers into two separate pools for K-6 and 7-12 instead of on a K-12 basis. The CBA provided:

> "Seniority" shall be defined for the purpose of this agreement within the following grade, curricular or subject area:
>
> 1. Elementary classroom teachers, grades K through 6.
> 2. In grades 7 through 12, the following curricular or subject areas shall be applied:
>   a. Art
>   b. Audiovisual Media
>   c. Business Education
>   d. English
>   e. Foreign Language
>   f. Guidance
>   g. Home Economics
>   h. Industrial Arts
>   i. Library Science
>   j. Mathematics
>   k. Music
>   l. Nurse
>   m. Physical Education
>   n. Remedial Programs
>   o. Safety and Driver Education
>   p. Science
>   q. Social Studies
>   r. Speech

The association had argued that all K-12 art, music and physical education teachers must be grouped together, but the arbitrator found that the specific listing of art, music and physical education teachers in the 7-12 subject areas meant that they must be grouped separately from the K-6 art, music and physical education teachers.

In *Garnavillo Community School District*, IASB No. 81-005-207 (Miller 1981), on the other hand, the CBA required that "layoffs be made system-wide based upon seniority within the district or performance." The district reduced a teacher with 20 years seniority in the junior high reading program and did not allow the teacher to bump. The school district argued that to follow the CBA would require the district to reduce the only special education teacher on staff. The arbitrator, noting no exception to the district-wide pool, and noting Iowa law did not "mandate that the school district employ and maintain special education

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employees," held that the "most senior teacher in the school district should not be reduced in order to retain a special education teacher with the least seniority of all teachers in the school district" by using a smaller-than-district pool for layoff.

In a similar decision, issued by the Iowa Supreme Court, *Ar-We-Va v. Long*, 292 N.W.2d, 402 (Iowa 1980), the court held that the district "violated the relevant provision of the master contract in not evaluating teachers Long and Henkenius in relation to those other teachers whose positions Long and Henkenius were certified to fill." In that case the board reduced two elementary teachers and the teachers appealed the reduction. The following contract language applied,

> "When, in the sole, exclusive and final judgment of the Board of Education, decline in enrollment, reduction of program or any other reason requires reduction in staff among teachers, the Administration shall attempt to accomplish same by attrition. Attrition is defined to mean death, retirement or teachers leaving the system. In the event necessary reduction in staff cannot be adequately accomplished by attrition given the necessity to hire and or maintain the most competent and qualified staff available in the interest of perpetuating the highest quality education program possible, the administration shall base its decision as to resulting contract renewals on the relative skill, ability, competence and qualifications of available teachers to do the available work. If a choice must be made between two or more teachers of equal skill, ability, competence and qualification to do the available work, contract renewals will be given to the teachers with the greater full-time continuous length of service in the district."

The court believed that it required the district to compare these two teachers to all teachers in grades kindergarten through nine for the school board to have complied with the terms of the master contract.

Norway Community School District, IASB 84-089-328 (Yarowsky 1984) is an odd case where the association took a position for retaining a teacher with less seniority. The district reduced a third grade, probationary teacher because of declining enrollment. After the termination, it was determined it was necessary to add an upper elementary class. Four teachers applied, including the reduced teacher and a junior high teacher with four years seniority. The junior high teacher was awarded the contract and the association filed a grievance.

The CBA required separate K-6 and 7-12 reduction pools. The association argued that the CBA did not authorize bumping between pools. The arbitrator simply held that the association's interpretation would result in a less senior teacher being retained instead of the more senior teacher, which would violate the seniority provisions of the CBA. The layoff pool's argument seemed to be ignored in favor of traditional private sector seniority.

On the other hand, at least one arbitrator has held that recall from layoff must be accomplished using the same seniority pools that are used for layoff. In *Knoxville Community School District*, IASB 85-105-353 (Doyle 1985), the recall provision required that teachers be recalled in reverse order of layoff. There was no limitation in the CBA as to application of the layoff pools, so the arbitrator held that since the pools applied to several paragraphs in the reduction article they applied to all paragraphs in the article, including recall.

Order of Reduction

Most grievances are likely to originate in this facet of a RIF. Most union agreements include a specific method of determining the order employees may be laid off, and many times that order is by seniority. For example:

> "In each classification where reduction is to be affected, the person or persons to be terminated shall be selected by seniority. The employee(s) with the least seniority shall be the first to be terminated."

In this example, the employer must layoff the person with the least seniority in the layoff unit, or pool, targeted for lay off, in order of seniority. No exceptions are allowed for qualifications, funding source or program.

Another common layoff clause might be like the following:

> "Layoffs – When a position is to be eliminated and when more than one employee is teaching in the specific area and classification category which is being reduced, then the employee to be laid off will be determined by the following procedures:

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1. First – Those employees with emergency or temporary certification.
2. Next – Fully certified but employed on a part-time basis.
3. Seniority and classroom evaluations by the building principal will be used next. When seniority is not the deciding factor, written statements explaining the reasons will be given to the employee. Maintenance of existing programs would be a secondary consideration and could be the determining factor in which staff member will be laid off.
4. When the above conditions have not determined who is to be laid off, it shall be done by drawing lots."

Note: *A temporary certification no longer exists. Before using temporary certification as a factor in determining RIF the terms may need clarification.*

The following clause would seem to give the employer great discretion in conducting layoffs:

> "In the event necessary reduction in staff cannot be adequately accomplished by attrition, the Board of Education, given the necessity to hire and/or maintain the most competent qualified staff available and in the interest of perpetuating the highest quality education program possible, shall have exclusive and final judgment on the reduction. The decision shall be based on ability, competence, qualifications and seniority of available employees."

There are some limitations to the employer's discretion in the above clause. It does require the employer to first attempt to meet reduction goals through attrition, and the failure to do so could result in a successful grievance. See *Dallas Center-Grimes Community School District*, IASB No. 85-100-348 (Miller 1985).

Permissible Exceptions

Many contracts allow seniority or performance considerations *(see next section)* to be ignored if reduction of the least senior employee would be detrimental to the district's ability to provide educational services. For example, in the reduction provision above, the employer was allowed the "exclusive and final judgment" to reduce employees based on qualifications. If an employee targeted for reduction is the only teacher certified to teach math, for example, the district would be allowed to skip that teacher and go to the next teacher on the list. Here, it is extremely important that the CBA language be reviewed carefully. The CBA provisions may not allow a district to make an exception. Following are some examples of grievance arbitration decisions on layoffs.

Case #1
Three teachers were reduced. The district retained teachers of equal and lower seniority who could fill supplemental duties such as head football coach. Previous arbitration decisions stated that "qualifications" means more than basic certification, but also means such things as extracurricular activities and coaching. Grievants were not qualified to assume the coaching duties, so the exception to seniority was not a violation of the CBA. *Des Moines Community School District*, IASB No. 81-008-217 (Jacobs 1981).

Case #2
The CBA provided that teachers were to be compared on the basis of skill, ability, competence and qualifications, with ties broken by seniority. One of three physical education teachers was reduced when the district interpreted "qualification" to include certification, approvals, teaching experience and extracurricular assignments." The reduced teacher was not the least senior, but her skill, ability and competence were equal to the other two. The arbitrator ruled that the term "qualification" was intended to mean "certification" only, and that previous extracurricular assignments were not a valid consideration. *Lynnville-Sully Community School District*, IASB No. 81-009-239 (Pegnetter 1982).

Case #3
The CBA provided an exception to seniority for reduction if retention of the less senior employee was essential to the continuation of a school program. The less senior teacher was retained as essential to the "School Within a School" program. The arbitrator found that the evidence supported the district's position that the teacher with less seniority was essential to the success of the "School Within a School" program. The arbitrator seemed to be swayed by the fact that the more senior teacher had turned down an opportunity to participate in the program at its inception. *Dubuque Community School District*, (Benz 1994).

Case #4
The CBA required seniority to be the determining factor under ordinary circumstances. The district

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argued that a less senior employee must be retained for the Learning Resource Center because the special teacher-student relationship required continuity for success to motivate and stimulate the children to achieve their maximum potential. The arbitrator stated that the CBA required all future exceptions to seniority be made only if the district can show by "clear, convincing and substantial evidence that a particular teacher is essential to continue a teaching program and that the more senior teacher lacks the essential qualifications." *Dubuque Community School District*, IASB No. 79-008-121 (Yarowsky 1979).

Case #5
The district argued that the CBA did not cover part-time Title I teachers because they were not classroom teachers and because of the past practice of excluding them from the CBA. The arbitrator ruled that they were not covered by the CBA only because of the past practice. There was no reference to the part-time position within the CBA or in the salary schedule. Full-time Title I teachers were covered. *Newton Community School District*, IASB No. 80-004-137 (Doering 1979).

Case #6
In connection with a RIF, the district consolidated guidance and coaching job duties into a new position. The more senior teacher was not qualified to perform all the duties of the newly consolidated position. The arbitrator ruled that it is within management discretion to determine how to combine teaching assignments in a reduction and how to set qualifications. Any limitation on the management right to assign must be based upon express contract language and not lightly inferred. The district's decision was not arbitrary, capricious or unreasonable. *Pomeroy-Palmer Community School District*, (Hoh 1998).

Case #7
An area education agency decided to use seniority as the determinative factor in a staff reduction, rather than qualifications. The least senior teacher who was laid off possessed an advance degree. The arbitrator found that the CBA required consideration of performance, seniority and other factors. It did not require management to retain the most qualified person in all instances, nor did it require management to consider the level of education attainment. Great latitude was left to management, and the manner in which the decision was made was reasonable. The arbitrator found that it would probably have found a violation of the CBA if the less senior employee had been retained and a more senior employee laid off. *Heartland Area Education Agency 11*, (Eisler 1997).

These cases demonstrate that the interpretation of CBA language can vary. RIF plans must be approached thoughtfully and with care. If the district has done a RIF in previous years, it can also be helpful to review the "past practice" of the district.

Method of Calculating Seniority or Determining Reduction Order

A dispute may arise from the method a district uses to calculate seniority. For example, should all the time a teacher spent as an administrator be included for calculating length of service? The arbitrator in *Charles City Community School District*, IASB No. 82-060-254 (Miller 1981) held it should not. In another case, an employee taught for 17 years before becoming a supervisor. While he was a member of management, a teacher bargaining unit was certified by PERB. The employee then returned to teaching. The arbitrator held that the 17 years of teaching before there was a union contract could not be included in the calculation of seniority. *Des Moines Community School District*, IASB No. 81-008-216 (Gilroy 1981).

In another case, a teacher was on probation because of poor evaluations. The CBA required that staff members on probation would be reduced prior to full-time teachers not on probation. The grievant was reduced, even though he had more seniority than other teachers who were retained. He had not challenged the performance evaluations that led to his probation. The arbitrator held that there was no violation of the CBA. *Benton Community School District*, IASB No. 81-11-227 (Kapsch 1981).

While many CBAs might require seniority, qualification, performance etc. to be considered in determining order for reduction, the following provision is a very detailed formula for determining order:

> "Reduction of staff shall be made by figuring the total number of points determined by the criteria as hereinafter set out. After this has been done, the reduction in the areas as provided in paragraph A of this Article will be made by laying off the teacher with the fewest number of points in the area as set out in paragraph A of the Article (which designates layoff units/pools). If more than one teacher is to be laid off in that area, then the next teacher with the fewest number of points will be laid off. The criteria to be used will be as follows:

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Experience – total 20 points
(Points assigned for years of service, detailed wording not printed here)
Training – total 30 points
(Points awarded for advance degrees and graduate level credits, detailed wording not printed here)
Evaluation – total 36 points
(Points awarded for teaching ability, based on twelve criteria from a 2-page table, not printed here)"

This type of provision seems to make it fairly objective and easy to determine whether the district has properly determined the reduction order. It could be somewhat restrictive of management discretion or subject to manipulation. A decision under this provision may also be difficult to challenge because of the complexity of the formula. It is clearly more complicated than most school agreements in Iowa.

Permissible Bumping Rights (whether a reduced employee will be allowed to displace another employee)

Some CBAs allow employees who are reduced to bump other less senior employees. For example, a CBA might have the following provision:

"Bumping: Any employee having received notice of a layoff may bump another employee if:

- The employee having received notice of a layoff is qualified for another position.
- The employee having received notice of layoff has more seniority in the district than the person he/she wishes to bump.
- The employee qualifies for the position ahead of the person presently in that position on the basis of the procedures used for layoff.
- Notification of intent to "bump" another employee must be given to the board within five school days after receiving the notice that the superintendent is recommending that the employee's position be reduced under this article. No "bumping" may be initiated after March 14th of the present school year.
- Employees may bump only within their categories of classification. Those categories are:
    - K-3 teacher
    - 4-6 teacher
    - 7-12 teacher
    - Title I teacher"

One question that comes up in a bumping case is whether teaching assignments must be arranged so that the least senior employee will be bumped into a layoff. The answer will depend totally upon the CBA language. In *New Hampton Community School District*, IASB No. 81-007-212 (Spellman 1981), the reduced teacher was certified in several areas other than the teaching assignment and the CBA required that the teacher "shall then have the opportunity to enter any position for which he/she is certified or qualified based on replacement of the least senior teacher in that level." The grievant made inquiries but did not formally start the bumping process. The issue of whether the teacher would have been allowed to bump was not answered because the teacher did not trigger bumping rights. However, it is likely that the teacher would have had the right to bump the least senior employee in the other teaching area the reduced teacher was qualified for. If the reduction was under a provision like the sample provision above, however, the bumping could only occur within the layoff unit or classification pool.

Recall Order and Procedures

The final part of most reduction provisions requires the district to recall employees who are on layoff for a certain period after a layoff occurs. Consider the following examples:

Example 1

In the event employment in a bargaining unit position becomes available, the position will be offered to the employee who has been involuntarily transferred from the job classification of the opening, provided the employee is qualified to perform the duties of the open position. If there is more than one such involuntarily transferred employee, the position will be offered in order of seniority as held in the original classification. If there is more than one such opening, the affected employee shall have a choice of the openings. Acceptance of the offer shall be decided within two (2) days. The offer shall be tendered prior to any involuntary transfer, action on any requests for voluntary transfer, recalls or solicitation of applications for the opening."

* * *

"Re-employment under these recall provisions shall be in reverse order of termination, and shall be to the division (regular program or

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special education) from which the person being recalled was reduced."

In the above example, before the district can recall an employee from layoff, the vacant positions must be offered to any qualified teacher who was involuntarily reassigned to another position.

Example 2

"In the event that seniority is the sole determining factor given to the employee or employees subject to staff reduction, and in the event that a similar opening shall arise prior to September 1 of the year in which discharge occurred, the employee that was discharged due to staff reduction shall be re-employed."

Example 3

"Any employee laid off pursuant to this policy shall have recall rights for two years from the date of the termination notice.

- Title I teachers shall have recall rights only for Title I positions.
- When more than one laid off employee is eligible for the recall, the position shall be offered to the employee that had the most seniority at the time of being laid off.
- Any laid off employee shall be responsible for having on file in the superintendent's office the employee's current address. The employee must respond within 14 days of receipt of recall notice in order to be considered for the position. The board shall annually provide the association with a current list of those employees who have retained such rights provided by this section.
- Any employee recalled under this provision shall return at the salary level to which the employee was entitled at the end of the school year in which notified of the reduction. Sick leave accumulation shall be restored to the employee when he/she returns to a position in the district.
- Any employee who refuses a position offered that is equal to or better than his/her previous position shall forfeit all further rights to recall under this article."

Example 4

"Re-employment: Any teacher terminated pursuant to this policy shall have recall rights to any open position for which he/she is or may become certified, for two (2) calendar years beginning July 1 after the effective date of his/her contract termination, and shall be recalled to available positions in such professional categories in reverse order of termination. During said one-year period, a teacher will receive one notification per vacancy within level or curriculum areas sent by certified mail (with return receipts). A teacher not replying within fifteen (15) calendar days from date of mailing will not be considered for further re-employment under this policy. However, if notification is undeliverable, the teacher will have waived re-employment rights for said vacancy only. A teacher, under contract to another employer when the vacancy notification is received, must inform the central office of his/her contractual status and whether he/she wishes to continue his/her employment rights under this policy. Also during said period, it is the responsibility of the teacher desiring re-employment to apprise the administration of his/her qualifications in other professional categories."

This is another aspect that seems difficult to implement and prone to grievance. The practical effect of some arbitration decisions is that an employer's right to hire qualified employees may be restricted. For example, in *Maquoketa Community School District*, IASB 83-088-297 (Grenig 1983), two teachers were offered recall positions on condition that they gain additional hours so as not to endanger the junior high school's NCA approval. The association claimed that the CBA only required DPI certification. Only the term "certification" was on the current contract, although a previous contract used the term "DPI certification." An arbitrator found that the change meant nothing, because "certification" as used in public education ordinarily refers to licensing by appropriate state agencies. The NCA does not "certify" teachers to teach in Iowa, so the arbitrator held that "certification" referred only to Iowa DPI. The arbitrator also found that there was insufficient evidence of a past practice to include NCA approval.

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Another arbitrator found the opposite in *Ottumwa Community School District*, IASB No. 83-015-288 (Miller 1983). In that case, six teachers had been reduced when a junior high teacher resigned. After two transfers the district had a vacancy for a seventh grade math/science teacher. The district decided not to recall any teachers because none met the NCA requirements for the assignment. Although the recall provision only referred to DPI certification, the contract provided in another article that the district had the right to make building assignments based upon NCA requirements. The arbitrator held that the CBA, as a whole, allowed the district to consider NCA requirements in implementing a recall provision.

In *Cedar Rapids Community School District*, IASB No. 82-063-256 (Gilroy 1982), the arbitrator held that the CBA required the district to deny a voluntary transfer to a current employee who did not have a speech endorsement as needed by the district, even though the union argued that the CBA required that current staff members take precedence over people on recall. The teacher on recall did have the speech endorsement and the arbitrator held that the district was required to recall that teacher under the language of the CBA.

An arbitrator may require recall even where a CBA seems to allow some discretion. For example, the recall provision provided that any employee terminated pursuant to need for cutting of staff positions will automatically ***be considered*** for recall for a period of two years if such desire is made known to the superintendent. After weighting of applicants for vacancies, and finding all things equal as to competency and potential effectiveness, persons shall be recalled in reverse order of their termination. The district took applications for a late physical education opening and considered two qualified teachers on the recall list. The district did not recall either teacher but instead hired a new teacher, arguing that the CBA only required that the district "consider" teachers on recall. There was an overwhelming amount of testimony on the intent of the language, but the arbitrator finally held that the association's argument prevailed, and that employees on recall should be returned to work before hiring new employees. *Tripoli Community School District*, 82-14-237 (Murphy 1981).

Some recall provisions provide that a teacher has the right to become certified for other classifications, besides the one in which they are laid off, in order to be eligible for recall. In *Pleasant Valley Community School District*, IASB No. 84-007-316, the employee on recall had English certification but not speech certification. The district added speech responsibilities to an English/drama position which subsequently became vacant. The teacher on recall was not hired for the position because she did not have the speech certification. The arbitrator held that if the teacher on recall had been able to obtain a temporary certificate at the time the position was being filled, the district would have had to recall her. She did not even attempt to obtain certification.

In *Sioux City Community School District*, IASB No. 82-057-251 (Dilts 1981), a teacher who was laid off wanted to transfer to an existing position, but he was not qualified because he did not have the required coaching endorsement. The teacher then decided to return to college to obtain the coaching endorsement to qualify for the position, but the position was filled by recall of another teacher who qualified for the entire job. Using the recall provision, the association argued that the grievant was led to believe that he could have the job so he invested in summer school classes and waived unemployment benefits. The arbitrator held that the district did not make a clear promise to place the grievant in the position.

Generally, an arbitrator will rule that an employee's right to recall is determined in relation to only the other individuals on the recall list. In an unusual case, three less senior employees who had been targeted for reduction were not properly notified, so they were not laid off. Three more senior employees who were laid off did not get recalled, so they filed a grievance alleging a violation of the CBA in not recalling them. They argued they should have been recalled because less senior employees (those who did not receive proper notification) were not laid off. The arbitrator dismissed the argument, holding that the grievants' recall rights could only be determined by the seniority of the people on the recall list, not by current employees. *Sioux City Community School District*, IASB No. 81-002-199 (Madden 1981). Because of the unusual facts of this case, this type of question is unlikely to be repeated.

In the past, the fact that there was a statutory procedure and a separate collective bargaining procedure made it possible that an arbitrator could order the district to rehire an employee when the Iowa Supreme Court said it was not required. The Iowa Supreme Court has removed that possibility to stating that statutory procedures are stayed pending a contract grievance. *Board of Directors v. Banke*, 498 N.W.2d 697 (Iowa 1993). Perhaps the potential for inconsistent results was the reason the Algona teachers' CBA allowed recall only if the reduced teacher resigned prior to a hearing by the school board on the termination

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recommendation. An arbitrator upheld the provision and practice associated with it in *Algona Community School District*, IASB No. 81-11-231 (Martin 1981).

Miscellaneous

School districts with teachers represented by an association are not allowed to modify teaching contracts during the school year unless the CBA allows it. One school district had negotiated provisions into individual teaching contracts that made the teaching contract for Title I null and void if there were insufficient funds for the position. There was nothing in the CBA covering the contingency. The district received less federal Title I funds than anticipated, so the teacher's contract was unilaterally modified by the district to reduce her salary and number of teaching days. The arbitrator found that the district violated the master CBA with the association because there was no provision granting the district the unilateral right to reduce any employee's hours and wages. The arbitrator held that the district must negotiate this right with the association. *Le Mars Community School District*, IASB No. 78-008-25 (Kapsch 1978).

In *West Des Moines Community School District*, IASB 82-001-234 (Nathan 1981), under the unique facts of the case the district was allowed to reduce the hours of all food service employees without regard to seniority. Because of federal cutbacks, the district chose to reduce hours of all employees instead of conducting a layoff because the food service required a basic number of individuals for serving during the food-serving period. The union filed a grievance claiming that the reduction in hours was a partial layoff to which seniority provisions applied. The union had just tried to negotiate language that specified that reduction in hours would have triggered the seniority clause, but without success. On the other hand, there was no specific provision allowing for reduction of hours in the CBA. The arbitrator noted that the general rule was to apply reduction in staff procedures to partial reductions, a reduced work week or a reduction in hours unless there is contract language otherwise bearing on the subject or a bargaining history which clearly demonstrates the parties intended to restrict seniority rights under these circumstances. However, there is an exception for temporary or emergency situations or where adherence to seniority would be impractical. The arbitrator was convinced that the staffing needs during meal periods gave rise to an implied exception to seniority in this case.

Conclusion

This handbook is intended to guide districts in developing layoff plans. The cases provide some general guidance about how arbitrators have ruled on RIF provisions. Remember that your district's collective bargaining language or board policy can be very specific and therefore necessitate a different result. Consult your local attorney and read the language carefully. If the language is not clear, review the past practice of the district to find out how the language may have been construed in past years. If your district keeps bargaining history notes, review those notes to determine the intent of the parties at the time of negotiation.

Once a layoff plan has been constructed, go to the association and discuss whether the district's understanding of the provisions are consistent with those of the association. This step may help in avoiding grievances that will delay the process. Making the wrong choices in a RIF may require the district to do the layoff over. It is likely that by the time mistakes have been realized, the timelines for implementing the RIF will have lapsed. Therefore, if a RIF is necessary for the district to be within its budget, get assistance and use care in correctly developing the plan.

Finally, remember that a RIF can be devastating to an employee. Use compassion and try to provide the employee with as much notice as possible. Districts may also decide to put together a "care package" that lists all the available resources an employee might need while seeking other employment. This could include information about insurance benefits, unemployment and vacancies in other districts. Be clear to the employee that this is not personal and that the district will do what it can to help the employee find other employment.

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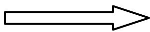
Sample Layoff Article

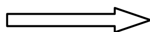
Article VII Layoffs

Authority to decide whether a RIF is necessary

The decision to reduce staff is within the sole discretion of the board.

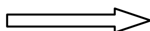


Layoffs will be done using the following categories:
K-3, 3-6, 7-8, 9-12, Specialties and Special Education.



Layoff Unit or Pool

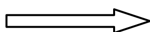
The order of layoff will be accomplished by attrition.
If attrition will not allow the district to meet its goals, the order of layoff will be based on:
conditional or emergency certification
part-time staff
program needs of the district
seniority



Order of Layoff

Bumping Rights

Bumping may take place if an affected employee holds the certification of an area where there is a less senior employee.



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