

**ARTICLE 12**  
**LAYOFF AND RECALL PROCEDURE**

**A. Application of Layoff.**

MSEA recognizes the right of the Employer to lay off or to reduce the hours of employment, including the right to determine the extent, effective date, and length of such layoffs, for lack of funds, reduction in spending authorizations, lack of work, or reasons of administrative efficiency. The Employer recognizes the importance of seniority to MSEA members; however, the Employer shall have the right to determine the positions to be vacated when a reduction is deemed necessary. Bumping, layoff and recall of Bargaining Unit employees shall be exclusively governed by and in accordance with the provisions of this Agreement and this Article.

For purposes of this Article the term class cluster shall apply only in those departments where a class cluster has been approved in advance by the State Personnel Director and the use of the approved class cluster for job changes, layoff, or recall has been agreed upon in secondary agreements.

Layoff and recall shall be in accordance with procedures set forth in this Article with the exception that they shall not apply to:

1. Temporary layoff of twenty (20) or less cumulative work days in a fiscal year except as otherwise provided in the parties' settlement agreement specific to Arbitration Award 54 390 0128 09 (Mittenthal 12-19-10). In such cases, employees will be laid off by inverse seniority within classification and work site/unit and recalled by seniority. The Employer may lay off out of the line of seniority because of function/specialty and/or funding source. However, layoffs within function/specialty and funding source shall be by inverse seniority. Funding source is defined as Restricted, Federal or General Fund for purposes of this Section. Where the Employer determines to temporarily lay off all the Bargaining Unit employees in a work site/unit it may do so provided all Unit employees in the work site/unit are laid off in approximately equal numbers for an equal number of days. The Employer shall, when temporary layoffs are being planned, inform the Union at least 14 calendar days in advance of the temporary layoffs. Employees shall be given written notice of temporary layoff at least seven calendar days prior to the effective date of temporary layoff.

An employee who is temporarily laid off in accordance with the above paragraph shall not be entitled to any leave balance payoffs upon temporary layoff, however, employees who are temporarily laid off shall continue to accrue seniority, leave credits and all benefits as if they were in full pay status.

Temporary layoff will only be used for:

- a. Loss of funding which the Department or Agency does not expect to obtain or make up within the temporary layoff period. Issuance of a Governor's Executive Order or instructions by the State budget director to departments

and agencies to reduce spending in preparation for lapses of spending authorizations necessary to balance the State budget shall be conclusive evidence of loss of funding, but shall not be required. Losses of or reductions in federal funds, restricted State funds, bond sales, or other sources of State revenues shall qualify under this Section; or

2. Seasonal layoff of seasonal employees, however, procedures covering seasonal layoff and recall of seasonal employees shall be a proper subject for secondary negotiations.

Except as provided in this Section, when the Employer determines it is necessary to expire a limited term appointment prior to the scheduled expiration date, an employee so affected shall be given notice not less than seven (7) calendar days prior to the new expiration date.

The expiration of a limited term appointment shall not be considered a layoff for purposes of this Article.

An employee with status acquired in a limited term appointment and separated because of the expiration of that appointment may be reinstated within three (3) years in any vacancy in any Department in the same class as that from which the employee was separated. Such reinstatement may precede employment of any person on a Civil Service employment list and any person with less seniority on a recall list. This Sub-Section shall not apply in the case of a continuing State classified employee who accepted an appointment to a limited term position under the same Appointing Authority at an equal or higher level; in this situation the employee will be returned to their former class, level, and work site.

When the Employer determines there is to be a layoff, employees who are scheduled to be laid off shall be given such written notice not less than fifteen (15) calendar days prior to the effective date of layoff. The Employer will, when layoffs are being planned, inform MSEA as soon as practicable which under normal circumstances is hereby deemed to be not less than thirty (30) calendar days and discuss upon request the potential impact upon Unit employees caused by such layoff. The Employer shall furnish the MSEA Central Association concurrent written notice of the name, seniority, class titles, and current assignment location of employees holding positions scheduled to be vacated. It is recognized that employee choices and ultimate bumping rights preclude the Employer from providing information beyond what is required herein. Whenever the Union has a good faith doubt as to the accuracy of any information provided, it may request and shall promptly receive the right to a conference with the particular Department/Agency for the purpose of receiving sufficient information to explain Employer procedure or correct agreed upon errors. When layoffs and bumping are completed, the Union shall be entitled to receive within thirty (30) calendar days, a completed list identifying those employees who have been bumped or laid off.

## **B. Voluntary Layoffs.**

When the Employer elects to reduce the work force, employees within the affected classifications may request, in writing, preferential layoff out-of-line seniority. Said requests shall be granted in seniority order. If granted, the Employer shall not contest the employee's eligibility for unemployment compensation. Nothing in this Section shall be construed to constitute a waiver of such employee's recall rights. The fifteen (15) calendar day notice requirement in Section A above shall be waived for employees requesting preferential layoff. Such employees shall not accrue seniority while on layoff.

## **C. General Layoff Procedures.**

1. Layoff shall be statewide within a Department or by geographic and/or organizational layoff units as provided in departmental plans on file with the Department of Civil Service on November 24, 1980, unless subsequently modified in secondary negotiations. Layoff units shall be defined in secondary negotiations upon request of either party.
2. Within a layoff unit, except where the use of approved class clusters have been established by secondary negotiations, layoff shall be by Civil Service classification and level within a series by inverse seniority. Positions in a class series which contain automatic level changes shall be considered to be at the same class and level. Where the use of approved class clusters have been established through secondary negotiations layoff shall be by inverse seniority within the layoff unit and the approved class cluster.
3. No permanent employee shall be laid off until all limited-term and temporary non-career appointments in the same classification (and approved class cluster, if negotiated in secondary negotiations) and lay-off unit are terminated.
4. Seniority for purposes of layoff, bumping and recall shall be as defined in Article 11, Section A.
5. Excluded employees and eligible employees, as defined by the Civil Service Rules and Regulations, who are not exclusively represented shall be permitted to bump back into these Bargaining Units under procedures outlined hereinafter.
6. Seniority of excluded employees and eligible employees who are not exclusively represented for purposes of bumping into the Labor and Trades and/or the Safety and Regulatory Units shall be computed as follows:
  - a. All persons employed on November 24, 1980, shall retain full seniority based on their continuous service prior to that date.
  - b. All persons who moved from the rank and file to an excluded or eligible non-exclusively represented position prior to November 24, 1980, shall retain all continuous service hours for purposes of seniority earned up to November 24, 1980, plus up to an additional 1,040 hours.

c. All persons who moved from the rank and file to an excluded or eligible non-exclusively represented position after the effective date of the Agreement shall retain all continuous service hours for purposes of seniority earned up to the effective date of such appointment and thereafter up to 1,040 hours earned in such excluded or eligible non-exclusively represented position.

7. The Employer may lay off and recall out-of-line seniority because of:

- a. Gender;
- b. Manual communication skill;
- c. Bilingual skill;
- d. Department of Civil Service approved sub-class code (selective certification);

The exceptions listed in a. through d. shall only be made where there is a valid occupational requirement and no alternative exists for preferring the less senior employee.

The Employer shall give notice of such intent to MSEA and in accordance with Civil Service Rules and Regulations, upon request shall meet and confer with MSEA about the impact of such determination.

#### **D. Bumping.**

The employee scheduled for layoff may elect either to accept layoff or bump to the least senior position in the layoff unit for which the employee is qualified, as provided in this Section. An employee scheduled for layoff who fails or is unable, in accordance with Article 11, Section A., to exercise the option to bump to the least senior position shall be laid off.

For purposes of this Article, the least senior position is defined as:

1. A vacant position which the Employer intends to fill; or, in the absence of such vacancy,
2. The position occupied by the least senior employee as defined in Article 11, Section A. above.

Within seven (7) calendar days of receipt of notification of layoff, the employee scheduled for layoff shall notify the Employer of his/her decision to either accept layoff or bump into the least senior position in the layoff unit in the next lowest level and successively lower levels thereafter, within his/her current approved class series/class cluster. Positions in a class series which contain automatic level changes shall be considered to be the same class level. Alternatively, if it would result in a higher rate of pay, an employee may bump into the least senior position in the layoff unit in a former class series/approved class cluster at and below any level at which the employee had satisfactorily completed his or her probationary period. This alternative shall not apply to employees who were demoted from the higher

paying class for disciplinary reasons or who transferred from the higher class in less than satisfactory employment status.

If an employee notifies the Departmental/Agency Employer of the decision to bump and later chooses to accept layoff, the Departmental/Agency Employer shall not be required to recompute the bumping chain. Employees scheduled for layoff while on leave of absence shall within seven (7) calendar days of notification, inform the Departmental Employer in writing of his/her decision to accept layoff or exercise bumping rights in accordance with this Section. The temporarily vacant position resulting from the bump may be temporarily filled by the Employer by limited term recall, reassignment or any other manner provided by this Agreement until the bumping employee returns from leave.

An employee seeking to bump into another position must meet all requirements in accordance with Articles 11 and 12.

As a result of bumping downward, an employee shall not earn more than the maximum rate of the lower class bumped into or more than the rate previously earned in a higher class from which the employee bumped. When an employee bumps downward he/she shall be paid at that step in the lower level pay range which credits the service in the higher level range(s) to the step at which the employee was paid when promoted from a lower level.

Except as specified in Sections C.5. and C.6. of this Article, employees outside these Bargaining Units shall have no bumping rights to positions within these Units. Bargaining Unit members have no bumping rights arising out of this Agreement to positions outside these Units.

The issue of the use of an approved class cluster(s) for bumping purposes shall be a proper subject for secondary negotiations at the request of either party.

Bumping between employment types (e.g., full-time, part-time, etc.) shall be in accordance with current departmental practice unless negotiated otherwise in secondary negotiations.

Bargaining Unit members shall not receive travel expense or moving expense reimbursement in connection with bumping or equivalent reassignment.

#### **E. Recall Lists.**

1. Definitions: For purposes of this Article the following definitions apply:
  - a. The **Primary Class** is the class and any other class(es) in the approved class cluster from which an employee is initially laid off or bumped.
  - b. The **Secondary Class** is a class and level and any other class(es) in the approved class cluster in the Bargaining Units, other than the primary class, in which the employee has satisfactorily completed a probationary period, and any lower level class in that class series or approved class cluster.

- c. A **Departmental Recall List** is a list by class and level, and by county or Agency/Facility of each employee who has been laid off or bumped from a position in the Department and for which he/she is both eligible under a. and b. above and has requested recall to such class, level and county or Agency/Facility.
  - d. A **Statewide Interdepartmental Recall List** is a list by class and level and county of each employee who has been laid off or bumped from a position in the State classified service, and for which he/she is both eligible under both a. and b. above and has requested recall to such class, level and county.
2. **Construction of Lists:** Each employee who is laid off from State employment who bumps or who refuses reassignment to another county, or who is eligible to return from a medical layoff in accordance with Article 16, Section C(2), shall have the right, upon written request to his/her Appointing Authority within seven (7) days subsequent to being laid off, to have his/her name placed on the Departmental Recall List for the primary and any secondary classes for which he/she is eligible, for any county or Agency/Facility in the Department at which he/she will accept recall.

Also, such employee upon written request to his/her Appointing Authority as provided above, shall have the right to have his/her name placed on the Statewide Interdepartmental Recall List for the primary and any secondary class for which he/she is eligible, for each county to which recall would be accepted. The Departmental Employer will provide to employees eligible for recall a form which shall be utilized to indicate recall availability.

An employee may delete his/her name from any recall list without penalty at any time prior to being recalled, by giving written notice of such request to his/her Appointing Authority. Similarly, without penalty, an employee may also delete a county or Agency/Facility to which he/she has requested recall.

An employee may reactivate his/her name on appropriate recall lists and/or elect additional locations during their period of eligibility for recall by providing written notice to the Appointing Authority. Such additions shall, as soon as practicable, be included on recall lists prepared after the date of receipt. Provided, however, that an employee removed from a recall list in accordance with Section G. may not elect to be returned to the same list.

#### **F. Recall from Layoff.**

The provisions of this Section shall be applied subject to the exceptions listed in Section C.7. of this Article. Notice of recall shall be sent to the employee at his/her last known address by registered or certified mail.

When the Employer intends to fill a vacancy, the Employer may reassign employees in accordance with Article 13, within the county or Agency/Facility and within the class/approved class cluster and level of the vacancy, otherwise when the Employer intends to fill a vacancy, the Employer shall recall the most senior employee who is

on the Departmental Recall List for such class and level and who has designated that county or Agency/Facility.

If no employee is on such Departmental Recall List, the Employer shall recall one of the three (3) most senior employees from the Statewide Interdepartmental Recall List for the class and level who have designated the county in which the vacancy exists as one to which he/she will accept recall. In the event there are less than three (3) names the Employer shall recall from the remaining available name(s) on the list.

The employee's right to recall shall exist for a period of up to three (3) years from the date of layoff. Prior to that time employees may renew their recall rights for another three (3) years by giving written notice to the Employer.

#### **G. Removal of Names From Recall Lists.**

If an employee fails to respond within ten (10) calendar days from the mailing date of the recall notice his/her name shall be removed from recall lists. An employee who fails to respond to a recall notice and who is subsequently removed from recall lists may, within thirty (30) calendar days of such removal, request reinstatement on all appropriate recall lists. The request must be in writing and include supporting documentation. After establishment of valid reasons for failure to respond, the unit employee shall be reinstated on all appropriate recall lists, but shall have only future recall rights. In addition, his/her name shall be removed from recall lists as provided below:

1. An employee who refuses or accepts recall to employment in his/her primary class in his/her original county shall be removed from all recall lists.
2. An employee who refuses or accepts recall to employment in his/her primary class in a county other than his/her original county shall be removed from all recall lists except for his/her original county.
3. An employee who refuses or accepts recall to employment in a secondary class in his/her original county shall be removed from all recall lists for that class and all other secondary classes at that level and below.
4. An employee who refuses or accepts recall to employment in a secondary class in a county other than his/her original county shall be removed from all recall lists for that class and all other secondary classes at that level and below except at his/her original county.
5. The parties agree that the recall rights, seniority and benefit credit of employees who are separated or who resign from State employment are forfeited as a result of such separation or resignation, except that an employee who resigns during the first six (6) months of employment in a secondary class or in a class referred to from the placement project, or is separated by the Employer during the first six (6) months of employment in such class based on the inability to satisfactorily perform required job responsibilities, shall retain all recall rights, and if recalled, shall retain seniority and benefit credit.

#### **H. Limited Term Recall.**

In accordance with the provisions of this Article, employees shall designate agreement to be recalled by county or Agency/Facility on a limited term basis when laid off. Limited term recall shall also be on the basis of seniority. An employee who fails to accept limited term recall to a county or Agency/Facility previously designated shall be removed from that list. Removal from a limited term list shall be in accordance with the provisions of Section G. of this Article and shall not affect the employee's place on a permanent recall list. An employee whose limited term recall expires shall have no bumping rights except in the case of a continuing State classified employee who accepted limited term recall under the same Appointing Authority; under this situation the employee shall be returned to the previous class/level and work site at the time of limited term recall.

#### **I. Layoff and Recall Information to MSEA.**

The Departmental Employer agrees to provide to MSEA copies of seniority lists and employment histories, which the Employer uses to complete the layoff process.

The Departmental Employer shall provide to MSEA copies of recall forms completed by employees.

The Departmental Employer agrees to provide to MSEA, upon request, copies of Departmental and/or Statewide Interdepartmental Recall List(s) which were used to recall Bargaining Unit employees.