

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE OVERSIGHT COMMISSION ON
EDUCATIONAL ACCOUNTABILITY

AGENCY: University System of West Virginia Board of Trustees TITLE NUMBER: 128

AUTHORITY: WV Code 18B-7-1, 18B-1-2, 18B-1-6

AMENDMENT TO AN EXISTING RULE: YES _____ NO x

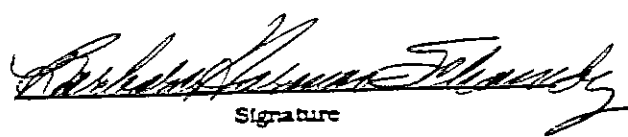
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING FILED PROPOSED: 37

TITLE OF RULE BEING PROPOSED: Classified Employee Layoffs and Reassignments

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A
PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR
FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE OVERSIGHT COMMISSION
ON EDUCATIONAL ACCOUNTABILITY FOR THEIR REVIEW.


Signature

**TITLE 128
LEGISLATIVE RULE
UNIVERSITY SYSTEM OF WEST VIRGINIA
BOARD OF TRUSTEES
SERIES 37**

TITLE: **CLASSIFIED EMPLOYEE LAYOFFS AND REASSIGNMENTS**

SUMMARY: West Virginia Code § 18B details certain rights and responsibilities of classified employees. Series 62 of the University System Rules, *Personnel Administration*, addresses some of the issues in this section of the Code. During the development of Series 62, the Classification Project Oversight Committee decided to omit the issue of layoffs from Series 62. Therefore, Series 37, *Classified Employee Layoffs and Reassignments*, has been developed. Series 37 includes procedures for implementing layoffs and reassignments of full-time classified employees.

**TITLE 128
LEGISLATIVE RULE
UNIVERSITY SYSTEM OF WEST VIRGINIA
BOARD OF TRUSTEES
SERIES 37**

TITLE: CLASSIFIED EMPLOYEE LAYOFFS AND REASSIGNMENTS

SECTION 1. GENERAL

- 1.1 Scope - Procedures for implementing layoffs and reassignments of full-time classified employees.
- 1.2 Authority - W.Va. Code §§ 18B-7-1, 18B-1-2, 18B-1-6
- 1.3 Filing Date -
- 1.4 Effective Date -

SECTION 2. DEFINITIONS

- 2.1 Displacement The act of placing an employee whose job or position has been eliminated into the job or position of another employee with less seniority within the institution.
- 2.2 Equivalent Job Title A job title in the same paygrade and which requires substantially the same level of education and experience and the same type of duties, skills, and responsibilities.
- 2.3 Full-Time Classified Employee Any employee in a classified position created to last a minimum of nine months of a twelve month period and in which such employee is expected to work no less than 1,040 hours during said period. The full-time equivalent (FTE) of such a position must be reported at no less than .53 FTE. The FTE of a full-time classified employee shall not be relevant for any

purposes of this rule except the calculation of seniority. Any employee whose position is funded by an external grant or contract from a federal, state, or local governmental entity, or by a private entity, with such grant or contract awarded for a specific or finite period of time, to the extent of at least 50% of is/her salary, shall not be deemed a full-time classified employee for the purposes of this rule if such was explained at the time the employee accepted the position and documented. Any such employee exempted from the provisions of this rule shall be notified of that status within 60 days of the effective date of this rule. However, any such employee with five or more years of seniority, as defined in this rule, as of the effective date of this rule will be treated as a full-time classified employee entitled to the provisions of this rule regardless of funding source. Any future employee hired, promoted or voluntarily transferred to a position exempted from the provisions of this rule, shall be designated a "full-time classified grant employee" and shall be notified of such at the time of that employment action. If the funding of a full-time classified position is changed in such a way as to remove the incumbent employee's entitlement to the provisions of this rule, that employee shall have the option of exercising the displacement provisions of this rule or remaining in the position.

2.4 FTE

Full time equivalency is the percentage of time for which a position is established, with a full-time position working 1,950 hours per year being 1.00 FTE.

2.5 Furlough

A temporary, non-disciplinary, removal from the payroll for a predetermined period of time, imposed after prior approval by the governing board. A furlough is to be distinguished from a

layoff, which is a permanent, non-disciplinary removal from the payroll as determined by an institution.

2.6 Human Resources Office

That office, division, or department designated by the president of an institution to administer the provisions of this rule and other personnel policies.

2.7 Institution

The following are each considered separate institutions for the purpose of this rule only - Bluefield State College, Concord College, Fairmont State College, Glenville State College, Shepherd College, West Liberty State College, West Virginia Institute of Technology, West Virginia State College, Southern West Virginia Community and Technical College, West Virginia Northern Community College, West Virginia University, Potomac State College of West Virginia University, West Virginia University at Parkersburg, Marshall University, West Virginia Graduate College, West Virginia School of Osteopathic Medicine, the offices of each of the chancellors, the central office of the governing boards, the West Virginia Network for Educational Telecomputing, and the Robert C. Byrd Health Sciences Center - Charleston Division.

2.8 Paygrade

The number assigned by the governing boards to a particular job title and referring to the salary schedule set out in W.Va. Code § 18B-9-3.

2.9 President

The administrative head of each institution set out in Sect. 2.6 of this rule.

2.10 Probationary Period

That period of employment set out in W.Va. Code § 18B-9-12.

2.11 Qualified

Meets the required minimum qualifications of a job title as determined by the institutional human resources office.

2.12 Random Selection
Method

Any method of determining by chance how employees of equal seniority should be ranked for displacement or recall purposes. This would include such methods as , computer generation of random numbers, drawing of lots, rolling dice, or selection from a deck of playing cards. Such method shall be that mutually agreed upon by the affected employees with equal seniority and approved by the President of the institution. If the employees cannot agree on a random selection method the President of the institution shall use the drawing of lots to determine rankings.

2.13 Reassignment

The act of placing an employee whose job or position has been eliminated into a vacancy within the institution.

2.14 Seniority

The total number of years of continuous, uninterrupted service as a full-time classified employee in the state institutions of higher education, pro-rated by FTE. Any break in service for an approved leave of any type shall not constitute an interruption in service.

2.15 Vacancy

A full-time regular classified position, as delineated on an existing properly approved expenditure schedule and/or a position with a funded assignment, approved for recruitment, which is not presently filled by an employee.

SECTION 3. REASSIGNMENT

- 3.1 A full-time classified employee facing layoff for reason of lack of funds or work, or abolition of position, or material changes in duties or organization, will first be considered for reassignment to vacant positions within the institution as set out in Section 4 of this rule, and such reassignment may be made at the institution's discretion and upon the authority of the president or president's designee. If the employee refuses such reassignment, to a

position within the same paygrade, he/she relinquishes rights outlined in Sect. 18B-7-1 and will be terminated. If the employee refuses assignment to a lower paygrade and is subsequently laid off, he/she shall retain all recall rights set out in this rule.

If reassignment attempts are unsuccessful, and layoff is imminent, the employee will be given the opportunity, pursuant to the procedures set out in this rule, to displace a less senior employee in the same job title or any other equivalent or lower job title within the institution for which the senior employee is qualified, if such position exists.

If displacement is not possible, or if the employee refuses displacement rights offered by the institution to a lower job title, the employee will be laid off with rights of recall set out in this rule.

Employees displaced by other employees under this rule will be provided the same rights under this rule. Those unable to exercise displacement rights will be provided additional rights outlined in this rule. This rule shall apply only to full-time classified employees as defined in this rule.

SECTION 4. LAYOFFS

- 4.1 Impending layoffs are to be authorized through the president or president's designee regardless of the level or type of position.
- 4.2 The chief institutional human resources officer and the chief institutional affirmative action officer are to be informed of the layoff circumstances and affected employees prior to release of the notifications.
- 4.3 An employee will be given at least two weeks written notice prior to effective date of layoff. Such written notice shall be hand-delivered to the employee at work or mailed by certified mail to the employee's last known address on file with the institution. Each notice of layoff shall contain the following information:
 - 4.3.1 The reason for layoff.
 - 4.3.2 The effective date of layoff.
 - 4.3.3 The employee's seniority for purposes of this rule.

- 4.3.4 A copy of this rule.
- 4.3.5 A statement that the employee is responsible for maintaining a current address with the institution.
- 4.3.6 Effort will be made to reassign affected employee(s) prior to the target date of layoff.
- 4.4 The president or president's designee is charged with the responsibility and authority to reassign the employee(s) affected by impending layoff into vacant positions of the same or equivalent job title within the institution for which their qualifications meet position requirements.

If reassignment to a vacant position in the same or equivalent job title is not possible, an employee may desire and be allowed to be voluntarily assigned to a vacancy in a lower job title for which he/she is qualified in order to avoid layoff, but must have been advised of her/his displacement rights upon layoff.

- 4.5 The institutional office of human resources will evaluate the qualifications of the affected employee(s) against the requirements of vacant position(s) and determine which vacant position(s) within the institution for which the employee(s) meet the minimum qualifications.
- 4.6 The vacant position(s) within the institution into which the employee(s) affected by layoff shall be placed may be exempted from posting requirements and exempted from provisions of W.Va. Code § 18B-7-1 (d).
- 4.7 If reassignment is unacceptable for job-related purposes, as determined by the president or president's designee, the vacant position may be posted for competitive selection.
- 4.8 The affected employee(s) will be notified of the reassignment by the chief human resources officer.

SECTION 5. DISPLACEMENT

- 5.1 In the event layoffs have been determined to be operationally necessary, and attempts at reassignment have been unsuccessful, the incumbent(s) of the affected position(s) will be evaluated by the chief institutional human resources officer or president's designee based upon qualifications in

comparison to position requirements for jobs held by less senior employees in the same or equivalent job title, and for jobs held by less senior employees in lower job titles within the institution. The institution may assign the employee in accordance with needs of the institution and institutional policy. As each job title is reviewed, displacement consideration must be by seniority, beginning with the least senior employee in that classification, as follows:

- 5.2 If the affected incumbent is qualified to perform the position duties of a job held by less senior employees within the same job title, the affected employee will be placed in the position held by the least senior employee in that job title, the least senior employee will be displaced and, in turn, provided displacement rights under this rule.
- 5.3 If there is no less senior employee in the same job title which the affected incumbent is qualified to displace, comparison to equivalent job titles within the institution will occur. If the affected incumbent is qualified to perform the duties of a job held by less senior employees within the equivalent job title, the affected employees will be offered the position held by the least senior employee in that job title. If the employee accepts, the least senior employee will be displaced and, in turn, provided displacement rights under this rule. If the employee refuses to displace the least senior employee, he/she is subject to layoff with all rights of recall set out in this rule.
- 5.4 If the affected incumbent is unqualified to displace a less senior employee in an equivalent job title, comparison to lower job titles within the institution will occur. If the affected incumbent is qualified to perform the position duties of job titles in the next lowest paygrade within the institution held by less senior employees, the affected incumbent will be offered the position held by the least senior employee in that paygrade. If the employee accepts the position, the least senior employee will be displaced and, in turn, provided displacement rights under this rule. If the employee refuses to displace the least senior employee, he/she is subject to layoff with all rights of recall set out in this rule. If the affected incumbent is not qualified for a position in the next lowest paygrade, or the employees in the next lowest paygrade are not less senior to the affected incumbent, then job titles in the next lowest paygrade will be examined in the same way. This will continue until the affected incumbent displaces an employee pursuant to this rule, refuses to displace another employee, or is found to not qualify for displacement rights in a job title in any lower paygrade.

- 5.5 In the event of simultaneous multiple position eliminations resulting in several employees having displacement rights over the same position, those rights must be exercised in order of seniority, with the most senior affected employee having first priority to displace. In all cases of identical seniority ratings, the priority shall be determined by a random selection method.

SECTION 6. INSTITUTIONAL ASSISTANCE

- 6.1 If attempts at reassignment have been unsuccessful, and there are no circumstances under which the affected employee can exercise displacement rights, and the employee desires, the institution will request consideration by other West Virginia institutions of higher education. This cannot delay the layoff procedures provided or required by W.Va. Code § 18B-7-1 and this rule.
- 6.2 If suitable employment cannot be found for the affected employee, the employee shall be offered retraining opportunities during the remainder of the existing appointment, to the extent possible and reasonable, as determined by the institution.
- 6.3 When layoff becomes effective, a letter from appropriate administrative levels will be written that expressly states that separation from employment is not the result of the individual's performance. A copy of the letter must be kept on file.
- 6.4 Employees who have been given notice of layoff will be granted, upon request, early release from employment.
- 6.5 The institution will provide access or referral to career counseling information about employment opportunities, maintenance of letters of reference, and help in preparing a resume, to the extent possible and reasonable, as determined by the institution.

SECTION 7. BENEFITS FOR LAID OFF EMPLOYEES

- 7.1 Employees laid off under this rule, for the purposes of benefits, shall be deemed as terminated for purposes not involving misconduct on the part of the employee and shall be treated as such under all applicable state and federal laws, rules and regulations.

- 7.2 An individual may ordinarily choose to take accumulated annual leave during a layoff or furlough period rather than retain it until the layoffs or furlough is over. If approved by the governing board, annual leave may not be used during a furlough period.

SECTION 8. RECALL

- 8.1 At any time that a layoff is necessary, the human resource office of the institution will prepare a list of employees laid off. The names of all laid off employees will appear on a second list in descending order of seniority. In cases of identical seniority ratings, the priority shall be determined by a random selection method.
- 8.2 An employee's name shall remain on the appropriate lists beginning from the date he/she was first laid off or displaced from her/his original job title. It is the responsibility of the employee to renew the listing with the institution's human resources office yearly. During this period, the institution may not hire, transfer, or promote into any affected job title until all qualified persons on the layoff lists are reinstated or have declined the position when it is offered. Failure of an employee to annually renew her/his listing shall cause her/him to be stricken from the recall list and terminate her/his rights under this rule.
- 8.3 Employees who are not serving original probationary periods required by W.Va. Code § 18B-9-12 at the time of layoff are not required to serve such probationary periods upon reinstatement. Employees who are serving one of the above original probationary periods at the time of layoff must serve a new such probationary period upon reinstatement.
- 8.4 Each employee recalled from layoff shall be notified of the offer of reinstatement or reemployment by certified letter. The notice of reinstatement shall contain a statement that a refusal of reinstatement, except for compelling reasons, shall result in removal of such employee's name from the recall list.
- 8.5 Each recalled employee shall be allowed five work days from the date of receipt of the letter to accept the offer of employment, or explain compelling reasons why they cannot, and such time limit shall be explained to the employee in the notification of recall letter.

- 8.6 For purposes of recall, the employee shall be responsible for keeping a current address and telephone number on file with the institutional office of human resources and with her/his department, and maintain an up-to-date application and/or resume on a yearly basis.

SECTION 9. SALARY

- 9.1 Those employees reassigned to a vacancy, or displacing another employee, pursuant to the provisions of this rule, shall have their salary in the new position determined pursuant to the provisions of Series 62 of the University System Rules.
- 9.2 Persons recalled for employment pursuant to this rule shall have their salary determined as follows: If the new position would have been considered a transfer from the employee's previous position, the base salary shall be the same as at the time of layoff. If the new position would have been considered demotion from the employee's previous position, a five percent reduction per paygrade, pursuant to Series 62, shall be applied to that base salary.

SECTION 10. EFFECT

- 10.1 The provisions of this rule supersede all institutional rules, policies, practices, or procedures relating to layoffs, displacements, recalls, and other matters that are the subject of this rule. Each institution shall adopt, and file with the chancellor, within 60 days of the effective date of this rule, new institutional rules intended to effectuate the provisions of this rule.

FISCAL NOTE FOR PROPOSED RULES

Rule Title: 128:37 Classified Employee Layoffs and Reassignments

Type of Rule Legislative Interpretive Procedural

Agency University System of West Virginia Board of Trustees

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services					
Current Expense	N/A	N/A	N/A	N/A	N/A
Repairs and Alterations					
Equipment					
Other					

2. Explanation of above estimates

N/A

3. Objectives of these rules

To define the procedures attendant with WV CODE § 18B-7-1

4. Explanation of Overall Economic Impact of Proposed Rule

A. Economic Impact on State Government

N/A

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.

N/A

C. Economic Impact on Citizens/Public at Large

N/A

Date:

Oct 23 1995

Carl Murray

Signature of Agency Head or Authorized Representative

SERIES 37

COMMENTS

SECTION

2.2 Should definition of "Equivalent Job Title" be changed?

Many parts of this rule restricts a person's reassignment or bumping to an "equivalent job title". Some staff thought this should be changed because they believe a person should be able to be reassigned to a job title in a higher paygrade or even to bump up to a higher paygrade. Once explained to them, staff were accepting of this definition because they realized that it gave more latitude to employees to be transferred or reassigned to any other job title in the same paygrade rather than being restricted to the same exact job title. Thus no change was made.

2.3 Should any distinction be made between employees paid by soft money and those paid from regular sources?

There were the same and continued varied arguments regarding whether a distinction should be made between those hired under soft money and those under other sources of funding. Staff themselves were divided on this issue because some believe that those hired on research grants and such should not be allowed to bump employees in a general revenue appropriation slot. Others believed that no distinction should be made between the two. Some recommended that 5 years of service should allow soft money employees to bump.

The proposed rule was changed to exempt employees from the rule if 50% of their salary comes from external sources. Those with five years seniority were grandfathered in.

Should it be clarified that soft money is only that from other agencies or the federal government or private contracts and does not include those in auxiliary services?

Many staff had an misunderstanding as to what this language is supposed to mean regarding external sources.

It was the intent of the drafters of this rule that employees only on federal, state, or other governmental agency grants, or from private entities, for a finite period of time, were to be exempted from the provisions of this rule. However, many staff mistakenly believed that employees paid out of auxiliary services such as housing or student union would be prohibited from the rights in this rule. The rule was changed to clarify this point.

Should requirement be put in that each institution notify all employees as to their status under this provision or any change in it?

The rule was changed to include language requiring that each institution notify all employees that might be exempted under this definition a set period of time after this rule becomes effective and in the future to notify all employees that move into such an exempt position when they do so.

Should the requirement of "documented" be amplified?

It was decided that the definition stay the same and that no specific definition be made of the word "documented" so that the maximum flexibility in this definition can be maintained.

2.5 Should a maximum length on furloughs be established?

There was some concern that a limit should be placed on the length of a furlough established on a campus. The rule was changed to require prior approval of the Board for a furlough but leaving open the question of length of a furlough because unknown circumstances could require different length.

2.7 Should a recognition of multi-campus locations such as at SWVCC be made?

Some staff wanted the multi-campus institutions to be considered as one institution for the purposes of this rule. For instance, WVU, WVU at Parkersburg, Potomac State and the Robert C. Byrd Health Sciences Center in

Charleston would all be considered one institution for purposes of reassignment and bumping if we combined the multi-campus institutions into one institution. The impression was that staff would like all campuses of an institution to be considered as one institution when it was in staff favor but not to consider it as one institution when it was not in staff's favor. For instance, staff did not wish to be reassigned under this rule to a different campus than their home campus unless they agreed to such. However, they would like the right to be recalled at any branch of their campus or to bump at any branch of their campus. It was determined that the present configuration of the definition was the most efficient mechanism without complicating the whole reassignment/displacement process.

Should "institution" encompass all of WVU branches?

This was the same question as above. It was determined that the present definition of institution stand. This is important because the definition of institution throughout the rules states that reassignment or displacement may only happen within the institution.

2.11 Should "demonstrated performance" be explained further?

There was some concern here about how it would be determined how a person demonstrated the ability to perform the duties and responsibilities. After much discussion there was general agreement that the best way to deal with this question was to merely strike all the language between "title" and "as" a more minimalist definition.

Should a trial period be allowed to prove competence?

There was suggestions from some areas that a trial period be allowed to prove competence. There was general agreement that this process would be unwieldy and that there should be nothing done in that area.

2.12 Should an alternative to "random selection" be included?

There were many comments by staff that they thought relying upon a random selection method to determine identical seniority was crass or unfeeling. However, the code itself says that a random selection method selected by the employees and approved by the institution will be used as a tie breaker. The only suggestion we received as to how we can break ties otherwise is a suggestion that tests be given. However, there was general dissatisfaction from other parties that any kind of testing would be unfair. The language was changed to allow the affected employees to choose but to require choosing of lots if they could not.

Should laid-off employees with equal seniority be rotated in a job?

There was no general interest in this issue.

2.14 Should "continuous, uninterrupted" be removed?

The issue here was whether requiring continuous, uninterrupted service has a disparate impact upon female employees who take some time off for child bearing or child raising. It was the general consensus that we leave the definition as it is, but add language that says that any break in service for any approved leave would not constitute a break in service for this definition.

3.1 Should it be clarified that a person loses recall rights only if they refuse reassignment to an equal paygrade?

Many staff were confused about this section and mistakenly believed that a person can lose recall rights if they refuse any reassignment. Many of the comments surrounded the fact that employees believe that they could be forcibly reassigned to a much lower paygrade at a much lower salary and then if they refused to take that they would lose their recall right. The intent of the language though was to state that a person could only lose their recall rights if they refuse a reassignment to

a job in the same paygrade that they were already in. They may accept reassignment in a lower paygrade, but only if they voluntarily wish so and if they do not wish to voluntarily go to a lower paygrade they would be laid off with full recall rights. With that explanation staff were generally happy with this section. Language clarifying this intent was added.

Does there need to be some time limit between time you will be laid-off to when you are reassigned?

Some staff believed that there needed to be some six month notice or something to keep an institution from indicating you will be laid off and then taking their time reassigning you so that they could reassign you to a lower pay grade. However, with the explanation above this is not a problem and could not be done by an institution.

Does there need to be clarification of "equivalent or lower job title?"

There was some question about whether clarification of the phrase equivalent or lower job title needed to be made and the rule was changed to clarify such.

Should probationary employees be treated any differently?

There was a question about whether probationary employees should be treated any differently. General consensus was that they should not be. No change was made.

Should casual, temporary, and part-time employees be let go before any full-time employees?

Some staff believed that all casual, temporary, and part-time employees should be let go before any full-time employee. This was more of a policy question for the Boards as to whether the main issue is maintaining employment for full-time employees or dealing with an operational problem on campus. The Board could certainly have gone in this direction, however, letting all casual, temporary and part-time employees go before full-time

employees may not necessarily solve the individual problem that an institution has. Thus, no change was made.

Can an employee bump up?

Employees believed that they should be able to bump up a pay grade or more if they are going to be laid off. This change was not made since the statute does not allow it. Nor would it be appropriate to award employees with a pay grade increase and promotion because their position is being eliminated.

Do we need definitions of "displacement and re-assignment?" Should reassignment be reserved to vacant positions in an employees' specific job classification?

Definitions of these were added. As to whether reassignment should be reserved for vacant positions in an employee's specific job classification, there was general consensus that this should not be so and that the widest range of opportunities for employees should be open on reassignment to forestall layoff. Thus, no change was made.

4.1 Should a campus-wide master plan be formulated for every layoff?

It was determined that no campus-wide master plan is required for every layoff since some layoffs are just going to involve one individual person.

4.2 Should the President, Department of Human Resources, and President of Staff Council all have review and approval of every layoff?

It was determined that such a proposal would be too unwieldy and would not allow a layoff to properly proceed.

Prior to approval of a layoff plan should a meeting be required with all potentially effected employees?

It was determined that though we are sure that

institutions would act in a responsible manner there is no need to place such a requirement in the rule.

Should persons with least seniority always be laid off first?

There is no requirement in this rule that specifically requires the person with least seniority in any job title always be the one laid off first. However, the practical reality is that is what would happen. This is because, if, for instance, there were six secretaries in one unit, anyone laid off would then be able to bump the one that was least senior. Thus the institution would most logically lay off the least senior one to begin with. However, we would not want to say this specifically in rule because there are two different kinds of lay off situations. One is where a particular position is going to be eliminated because there is no work or there is no need for that position anymore or lack of funds for that position. In that kind of situation we do not want to say that the person with least seniority in that job title on the entire campus would be laid off because it was the particular position that we are interested in and not exactly money per se. However, if there were, for instance, six secretaries in one department and the department was having its funding cut by half, obviously the institution is laying off people for lack of funds and would then be well advised to lay off the three with least seniority first because that would be the practical reality of a lay off any way.

4.3 Should two-week notice be extended to 30 days or 60 days?

Staff believed that they should be given the same notice that a faculty member be given if they were going to be laid off or their contract not renewed. Various requests run from 30 days to 60 days to a year's notice. No change was made here because if each person was given 30 to 60 days notice, the effect of multiple displacements might take a year or more to take place.

4.4 Should this section be clarified to emphasize that persons lose recall rights only if they refuse reassignment to an equal paygrade?

The section was clarified to emphasize that a person loses recall rights only if they refuse reassignment to equal paygrade.

- 4.5 Should it be emphasized that persons are evaluated as to whether they meet the "minimum" qualifications of positions?

This change was made.

- 4.7 Should "hiring authority" be changed to "immediate supervisor"?

There was much discussion here and it was the general consensus that the best way to deal with this was to just strike the first sentence of the proposed rule because it was really not necessary. That resolved the questions.

Should the authority to determine job relatedness be removed?

There was some comment that the authority to determine job relatedness be removed. However, most people agreed that there has to be some kind of determination in that area.

- 5.1 Should the chief institutional human resources officer be the only one to evaluate?

It was suggested that only the Institutional Human Resources Office be the one to evaluate. However, it was determined that the president might have to appoint a designee and thus the rule was not changed.

Is the second sentence necessary?

There were many questions about the second sentence from staff and some were opposed to it. In that no one could understand what it meant, or that it had any purpose, there was general consensus that the second sentence be removed.

Should there be institutional policies?

Some staff question whether there should be institutional

policies regarding this rule and that this rule should state every point needed to do a layoff. However, most agreed that there has to be institutional policies as long as they are not inconsistent with this rule.

Should layoffs only be allowed after all other alternatives exhausted?

This is a policy question about whether the Board would order that no broad based layoffs for financial exigency be taken unless other alternatives are exhausted. Since future circumstances cannot be predicted it was felt that these policy choices could not be made in this rule.

Should persons to be laid off be placed in temporarily vacant positions?

Some suggested that persons about to be laid off should be placed in another person's temporarily vacant position such as a position of a person on medical leave or national guard leave. This is not feasible under personnel practice and state practices and thus cannot be done.

5.2 - 5.4 Do some terms used throughout here need to be made more consistent?

No changes were needed.

Should it be stated who determines who is qualified?

The Chief Human Resources Officer or President's designee determines the qualified individuals.

Should employees only be forced to displace in same job titles?

There were questions about whether bumping should be restricted to the same job titles. Such an approach would be contrary to statute.

5.5 Is this unfair to senior employees?

After explanation, this language is not unfair to senior employees in that they will be let go in reverse seniority. However, it was recognized that we did need tie breaking language here and it was added.

6.1 Should list of possible layoffs and those on recall be circulated to other institutions?

There seemed to be no reason to require this, though institutions will be encouraged to make their openings as available to the public as possible.

6.2 Should retraining be more definite and extend beyond employment?

It was determined that the language stay the same here.

Should employees be given time off with pay to look for work?

It would be contrary to law to give employees time off with pay to look for work.

6.3 Does "appropriate administrative level" need to be defined?

No further definition was needed here.

6.4 Is this section needed?

Employees had a number of questions about this section and its meaning. It was determined to be useful.

6.5 Is further direction needed here?

Some persons believed that further direction was needed here and more rights for employees. It was determined that the present language be used and is adequate.

- 7.2 Does this need to be clarified to indicate that you hold leave during a financial exigency furlough but can use it during a layoff?

The language was clarified.

Should financial exigency be allowed only if approved by LOCEA?

It was determined that the Board should not restrict themselves to declaring financial exigency only if approved by the LOCEA.

- 8.1 Should other methods than random method be allowed?

The definition at 2.12 was changed.

Should "title" be changed to "class"?

Changes that were generally agreed to in this matter are included in the rule.

- 8.4 Should employees be allowed to refuse reinstatement but remain on recall list?

It was generally agreed that employees refusing to return to work should be removed from the recall list so that other employees would have their chance for recall.

Should "compelling reasons" be defined"?

There was general agreement that compelling reasons should not be further defined but should be left broad enough to be applied.

Should language be changed to restrict recall to one year?

Some suggested that recall should be restricted to one year, however, the statute does not restrict it.

Should recall be restricted to the same job previously qualified for?

It was believed restricting recall to the same job previously qualified for would be disadvantageous for the employee and thus no change was made.

8.5 Should "calendar days be changed to "work days"?"

It was agreed that the calendar days should be changed to work days.

Should employee be given 10 work days to return to work?

Changes in the rule eliminated this concern.

8.6 Should "extenuating circumstances" be further defined?

It was determined that this section was not really needed and it was removed.

8.8 Should section be added saying refusal of reinstatement will result in removal from recall list?

This section was not really needed since there are already provisions in 8.4 to this effect.

9.2 Should recalled employees be able to keep their old salaries even if recalled at lower paygrade?

It was determined that the old base salary should be retained.

Should recalled employees receive any legislatively mandated pay raise given in their absence?

There was a general consensus that this was not needed since the Legislature in any legislative mandated pay raise will state in the legislation itself who will receive it.

Should decreases in pay be limited to 10%?

It was determined not to make any change here because our classification program would be violated if persons were being paid outside of their paygrade.

DEPARTMENT OF EDUCATION AND THE ARTS

Office of the Secretary

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Gaston Caperton
Governor

Barbara Harmon-Schamberger
Cabinet Secretary

November 17, 1995

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Secretary Hechler,

I hereby grant consent as required pursuant to WV Code §5F-2-2 for the adoption of the following legislative rule of the University System of West Virginia Board of Trustees:

Title 128, Series 37: Classified Employee Layoffs and Reassignments

A copy of the rule is attached.

Sincerely,



Barbara Harmon-Schamberger
Secretary

BHS:mc

Attachment

cc: Dr. Charles Manning
Dr. John Thralls

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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