

The State Contract Series

For use in understanding the state employees' contract



Article 18 - Layoff And Inter-Agency Merger – an overview

Attached are components of the lay-off/abolishment fact sheet.

Caution: remember that the most effective way to fight a layoff is **BEFORE** it happens. Making sure there is adequate money for services and that these services are done by people in our bargaining unit are political concerns which require all of us to be involved in lobbying, community outreach and political campaigns.

Management does have the right, under our contract and under state law, to lay people off and to abolish positions. If they decide to do so, however, they must act in conformance with our collective bargaining agreement. Thus, grievances under Article 18 are almost always concerned with the procedural aspects of the layoff, rather than whether or not the layoff can occur. Although we have occasionally been successful in reversing layoffs because management did not do a good job in substantiating the reasons for the layoff, chances of success on this front have been substantially reduced. If management has made errors which we can prove, either in substance or procedure, and the error results in significant harm to an individual, then the grievance may result in reinstatement and/or a monetary award. The Union has prevailed in cases where the

Employer has failed to properly implement the layoff or has eroded the bargaining unit by its actions (see Arbitrations #454, #499, #340, and #478). Likewise, the Employer has prevailed when the Employer has shown that a proper implementation of the layoff was executed, that the redistribution of work was valid or that the abolishment was necessitated by budgetary reductions beyond the state's control (see Arbitrations #340, #476, #485 and #839).

There are four parts to this layoff handout: (1) a handout on the basis of layoff and how to fight the agency rationale, (2) a handout on notice requirements to the employee, (3) two flow charts: one on displacement rights; and the other on recall rights, and finally, (4) a summary of important points to know about layoffs.

Inter-Agency Merger

The union shall be included in discussions of inter-agency mergers. The union will have a role in discussing bargaining unit members continued employment and other effects on their membership.

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Basis for Layoff

The Ohio Revised Code 124.321 specifies three ways that an employee can be laid off: layoff for lack of funds, layoff for lack of work, and layoff as a result of abolishment. The employer has the burden of proof in a layoff (see Arbitrations #311, #280, and #310).

Types of Layoff

Layoff can be for lack of funds. "**Lack of funds**" means that an agency has a projected or current deficiency of funding to maintain current or sustain projected levels of staffing and operations. For employees whose paycheck is paid by warrant of the Auditor of State, the Director of Budget and Management is responsible for determining whether a "lack of funds" exist.

An employee can be laid off for lack of work. "**Lack of work**" means a current or projected temporary decrease in workload, expected to last less than one year, which requires a reduction of current or projected staffing levels. For employees paid by the warrant of Auditor of State, the Director of the Department of Administrative Services determines "lack of work".

There is also layoff due to abolishment. "**Abolishment**" can occur for one only or a combination of the following reasons: a reorganization for the efficient operation of the appointing authority, for reasons of economy or for the lack of work. Appointing authorities have to file a rationale and supporting documentation to the Director of Department of Administrative Services when abolishing positions.

Challenging the Rationale

The following are questions to ask regarding the reasons management gives for layoff or abolishment:

- Did the State accomplish objectives stated in the letter of rationale?
- Do we have proof that work reorganization is not economical or efficient?
- Are there any mandated programs or responsibilities that will not be carried out as a result of the layoff or abolishment? (For example does an institution affected by abolishment or layoffs now fail to meet federal certification requirements?)
- Is the work that was previously done by the bargaining work being contracted out? Is there erosion of the bargaining unit by supervisors or other non-bargaining unit positions?

Documents Related to the Rationale

To evaluate the merits of a layoff or abolishment, a number of documents should be requested pursuant to article 25.08 of the collective bargaining agreement. To evaluate the Employer's position, specific budget information for affected programs -- pre and post -- layoff, the agency rationale, proof that either (or both) the Office of Budget and Management or the Department of Administrative Services have approved the layoff should be requested. Other documents that may be helpful, depending on the basis for layoff or abolishment, are: overtime rosters, attendance sheets, tables of organization, work orders, records of subcontracting (contracts), classification specification, position description and any other documents that the employer uses to support its argument.

Notice Requirements

Notice to the Union: The agency shall submit notice to OCSEA, no later than the time when the agency submits its rationale to DAS. The Union has the ability to discuss layoff prior to the date of paper layoff.

Notice of Layoff/Abolishment to the Individual

The following is a list of information to be included in the notice:

Note: notice must be hand delivered 14 days in advance of layoff, or mailed 17 days in advance of layoff.

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| √Reason for layoff or displacement | √Statement advising the employee of the right to reinstatement or reemployment |
| √Effective date of layoff or displacement | √Statement that employee is responsible for maintaining current address |
| √Accumulated seniority | √Statement that the employee may have option to convert accrued unused leave, if such opportunity exists |
| √Appeal rights | √For employees of state agencies, boards or commissions, a statement that s/he has an option to select the counties within the layoff district where the employee desires to be on the recall/reemployment list |
| √Statement advising employee that s/he may have the right to displace another employee and that employee must exercise bumping rights within 5 days. | |

Notice of Paper Layoff

Where the state shall conduct a "paper layoff" as required by Article 18.03, the following notice requirements shall be met:

- The agency establishes a time period during which employees will be assigned their displacement option, before formal notice is given to affected employees. No specific time period is identified by the contract. The union will be notified in advance of this time period.
- Potentially affected employees will have five working days to complete and return order of displacement forms on which they can identify their desire or refusal to exercise displacement options.

Notice of Recall or Reemployment

The notice must contain:

- Statement that refusal of recall shall result in removal from agency recall list
- Statement that refusal of reemployment shall result in removal from jurisdictional recall list

Important Points to Know About Layoff and Abolishment

- An employee will receive an Order of Displacement Form to fill out and has 5 days from the date of notice to indicate acceptance or refusal of displacement options and return the form.
- Posted vacancies in the affected geographic jurisdiction can be filled by an employee who has been laid off or had his/her position abolished.
- Article 18.04 provides that an affected employee can bump a least senior employee in the same classification, then other classifications in an equal pay range and then other classifications in lower pay ranges in their job grouping as identified by Appendix I provided that the affected employee is qualified to perform the duties. If there is no opportunity for bumping under Article 18.04, an affected employee can bump a least senior employee using the same order of classifications used in Article 18.04 in the geographic area as defined by Appendix J. Employees shall bump into vacant positions if they are available before displacing a person provided that the affected employee is qualified to perform the duties. Employees have the right to bump an employee or bump into a vacancy in their service appointment type in their first two priority locations in the geographic area provided they have more seniority. (See Arbitration #529 for the standard which defines “qualified to perform the duties”.)
- Those who have the ability to displace another employee under Article 18.04 cannot displace someone under Article 18.05.
- If an employee is unable to fill a vacancy or displace through the processes outlined in Article 18.04 or Article 18.05, then the employee can bump another classification which he/she previously held if an employee is qualified to perform those duties and has held that position within the last 5 years within the affected agency
- Management must give notice to the employee affected (not the union) 14 days in advance if hand delivered; 17 days in advance if sent through the mail.
- Recall rights are for 24 months.
- Recall rights are based on state seniority.
- Re-employment means appointment to another agency. Re-employment rights are for 24 months.
- Refusal of re-employment results in removal of the name of employee from the jurisdictional recall list.
- Employee is responsible for maintaining a current address with his/her appointing authority.
- Basis for recall rights in terms of position is determined from position first displaced from.
- Accepting or declining a position, when recalled, must be in writing before the next person can be recalled.
- The union and the agency may agree, in writing, to place an employee to be laid off in an existing vacancy which may not be otherwise available through employee's displacement rights.
- The union and the agency may agree, per Article 18.17, to alter the bumping procedure in a particular layoff situation.

LAYOFF FLOW-CHART

COMMENTS



Layoffs can occur for two reasons: through lack of work (defined as being expected to last less than a year) and/or through lack of funds (which has no time limits).

Job abolishments can occur as a result of reorganization for one or more reasons: through lack of work (see above), efficiency of operations, or economy (e.g., privatizing a service) and/or efficiency.



Temporary, intermittent, seasonal, and part-time employees in "non-laid off" designated classifications that were not eliminated can continue to be employed.



Employees who are on sick leave, military leave, leave without pay, or disability will not have their date of layoff extended by the leave. Employees on disability will receive pay until their disability leave ends. (OAC 123:1-41-21).

PROCESS

Decision & Rationale

In the first step, management makes a decision to proceed and must provide a *rationale* that the layoffs/abolishments will occur due to lack of work, economy or efficiency. (Ohio Revised Code 124:321; Ohio Administrative Code 123:1-47 & 1-41-02). Management must file documents on the rationale with DAS. No later than Management's submission of rationale to DAS, the Union shall be provided an opportunity to discuss layoff.



Early Retirement Consideration

An early retirement incentive plan must be established: if within a six-month period in either a state institution or an "employee unit" the number of people to be laid off is 50 or more, or the number laid off exceeds 10% of the employee population at the institution or "employee unit."



Classifications Identification

The appointing authority decides what classifications and number of employees in each classification will be laid off (ORC 124:322; OAC 123:1-41-06)



Management must notify each employee prior to the layoff. This notice must be given at least 14 calendar days in advance if the notice is hand-delivered, or 17 calendar days if the notice is delivered by certified mail. These layoffs can be conducted without formal notice or negotiations with the union. (OAC 123:1-41-10)

ARTICLE 18.03 REQUIRES THE AGENCY TO CONDUCT A "PAPER LAYOFF" EXCEPT WHERE A FUNDING SOURCE REQUIRES AN IMMEDIATE REDUCTION IN POSITIONS. POTENTIALLY AFFECTED EMPLOYEES WILL BE GIVEN FIVE WORKING DAYS TO COMPLETE A FORM THAT WILL INDICATE THEIR ORDER OF DISPLACEMENT OR GEOGRAPHIC DISPLACEMENT PRIORITY (18.05) WHERE APPLICABLE. THE UNION WILL MONITOR THE DISPLACEMENT PROCESS THROUGH CONTRACTUALLY REQUIRED STEWARD OVERSIGHT. ONCE THE "PAPER LAYOFF" IS COMPLETED, EMPLOYEES WILL RECEIVE NOTICE AS REFERENCED ABOVE.

COMMENTS



Supervisors can bump into a bargaining unit following the ORC and the OAC. Once in the bargaining unit they follow bargaining unit rules. As with other bargaining unit employees, seniority and qualifications to perform duties matter, not retention points. (Arbitration #336)



An employee cannot displace another when special minimum qualifications such as bona fide occupational qualifications exist unless the person meets these minimum qualifications for the position or classification. (ORC 124.324(D))



FEDERAL STATUTORY GUIDELINES THAT FURTHER DEFINE DISPLACEMENT AND RECALL RIGHTS CAN SUPERCEDE STRICT SENIORITY (Arbitration #390).



Limits to bumping: There shall be no inter-unit bumping except in those cases allowed by current administrative rules or where a class series overlaps more than one unit (Contract Art. 18.05 & 18.08)



The agency and the union may agree, per Article 18.17, to alter the bumping procedure in a particular layoff situation.

PROCESS

ABOLISHMENT OR LAYOFF OCCURS

Employee has option to fill existing vacancies in classification in such vacancies the employer chooses to fill

Employee can fill vacancy in equal pay or lower pay in classification groupings in Appendix I of contract. (OAC 123:1-41-05)

Employee can use bumping rights as outlined in Contract Art. 18.04

Use Appendix I options:

- A. Bump the person with the least state seniority in the same classification
- B. Bump the person with the least state seniority in a classification in the same or equal pay range
- C. Bump the person with the least state seniority in the next lower classification in the classification series where you were displaced
- D. Bump the person with the least state seniority described in C. above in descending order by pay range and lease senior employee
- E. If the employee is not qualified to displace the least senior employee, they can displace the next least senior employee.

If employee has the opportunity to bump under Appendix I options, he or she must take it unless the position is a lower appointment type. If employee does not have bumping opportunities under 18.04, they can bump into job groupings in the larger geographic area. (Appendix J)

Employee can use bumping rights as outlined in Contract Art. 18.05

- Bump the person with the least state seniority in the same classification
- Bump the person with the least state seniority in a classification in the same or equal pay range
- Bump the person with the least state seniority in the next lower classification in the classification series where you were displaced
- Bump the person with the least state seniority described in C. above in descending order by pay range and lease senior employee
- Employees shall first displace into available vacancies in the classification order described above
- If the employee is not qualified to displace the least senior employee, they can displace the next least senior employee.

Employees shall prioritize work locations as reflected in Appendix J (Geographic Areas). For the first two priority locations, using the same order of displacement in section 18.04, full-time employees shall displace full-time employees and then if no such position is available, other lesser appointment types. Other than full-time employees who cannot displace in their appointment type may displace a full-time and then other lesser appointment type providing they have enough seniority. Providing they have more seniority, employees will have a right to remain in their appointment type in the first two priority locations, thereafter they must displace the least senior employee regardless of appointment type.

Employee displaces to position previously held if he or she is qualified to perform duties and has held this position within the last five years (Section 18.06)

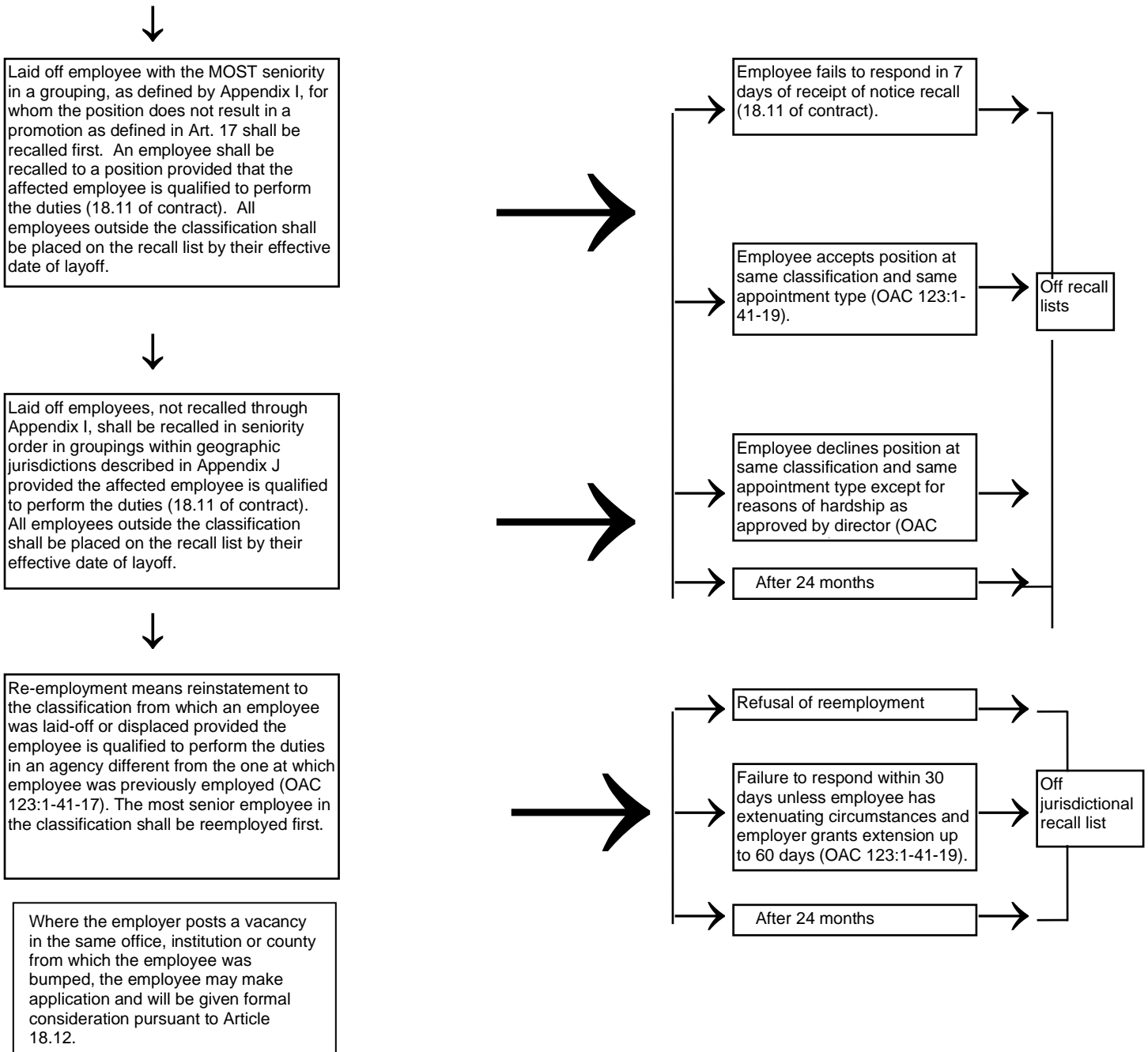
Employee can continue to bump into the next previously held position if qualified to perform duties and has held this position within the last five years. (Section 18.06)

Employee may bump into Seasonal, Intermittent, Temporary positions following Section 18.07

The Union and the State can agree to move a laid off employee to vacancy in another classification outside their job grouping. Such agreements will be made on a case-by-case basis. This may occur before or after the bumping process begins. This placement shall not result in the promotion of the affected employee. (Article 18.14)

Recall and Re-Employment Rights

Agency makes a decision to fill a vacancy or to recall employees in a laid-off class.



References

- Article 17, 18, 25.08
- Arbitration 280, 310, 311, 336, 340, 390, 454, 476, 478, 485, 499, 529, 839
- ORC 124-321; 124-322; 124-324
- OAC 123:1-47; 123:1-41-02; 123:1-41-05; 123:1-41-06; 123:1-41-10; 123:1-41-12; 123:1-41-17; 123:1-41-19
- Appendix I, J
- Amended House Bill 706
- Senate Bill 99