



CALIFORNIA TEACHERS ASSOCIATION
DEPARTMENT OF LEGAL SERVICES

LEGAL ADVISORY MEMORANDUM

DATE: January 27, 2010

SUBJECT: **RIF PROCEDURES & RESOURCES**

Layoff (reduction in force or RIF) season is fast approaching and, in some districts, already upon us. This memorandum is intended as a reminder of the procedures for securing representation for CTA members who are served with layoff notices and of the Legal Department resources related to RIFS.

As a threshold matter, please remember that CTA only represents members in the RIF process. If you have junior teachers or faculty members who will likely be subject to layoff this spring, now is the time to sign them up as members so that CTA can represent them in the RIF process.

I. The RIF Process

Layoffs of certificated, classified and higher education employees are governed by different legal frameworks each of which is described briefly below. For a fuller description of the applicable law and timelines see the CTA Layoff Survival Guide 2010 Edition on the My CTA website and P drive at P:\LEGAL\RIFS\2010 RIFS.

The March 15th Process for Certificated Employees

Layoffs of permanent and probationary certificated employees must be preceded by a notice of potential layoff to each teacher, which must be received by the teacher no later than March 15th, followed by a hearing upon the teacher's request and a final decision on the layoff by the governing board by no later than May 15th. School districts may not non-reelect probationary teachers for economic reasons but must proceed through the March 15th layoff procedure to layoff such teachers. If you believe that a school district is non-reelecting probationary teachers for economic, rather than some other reason, please contact the Legal Department.

Teachers employed in categorical positions must also be laid off through the March 15th procedure so long as the contract or funding for their positions has not been eliminated. Moreover, even if the contract or funding for the position has been

eliminated, categorical teachers are entitled to be transferred to another position or laid off through the March 15th procedure, so long as they were classified as permanent or probationary before being assigned to the categorical position.

Those members subject to the March 15th layoff process should be advised of the process well in advance of that date, warned not to sign off on employer circulated seniority lists without carefully reviewing them, and advised to make sure that all of their credentials and certifications (or, in the case of faculty members, their qualifications to instruct in different faculty service areas) are on file with their employer in advance of the March 15th date. Fliers you can use to advise members of these facts can be found on My CTA and on the P drive at P:\LEGAL\RIFS\2010 RIFS. You may also want to provide members with copies of the chapters in the CTA Layoff Survival Guide 2010 Edition that describe the March 15th process and what members can do to get ready for that process.

The March 15th Process for Community College Academic Employees

Full time tenured or contract faculty members are also entitled to notice of potential layoff by no later than March 15th, followed by a hearing upon the faculty member's request and a final decision on the layoff by the college by no later than May 15th. Part-time faculty members may be released from their positions without proceeding through the March 15th procedure.

The 45 Day Notice Requirement for Classified Employees

Classified employees are entitled to notice at least 45 days in advance of their layoff if their layoff is due to reductions in, or elimination of, the program in which they work or if the special funding for their position has terminated. If special funding for a classified employee's position will terminate at the end of the school year resulting in their layoff, notice of the layoff must be provided by no later than April 29th of that school year.

There is no hearing procedure mandated by statute for classified employee layoffs. If a classified employee receives a layoff notice that he believes is based on inaccurate information about his seniority or competency to perform work in a different class, advise him to make a written request, keeping a copy, for a meeting with a fair administrator with authority to rescind or recommend rescinding the layoff notice. The purpose of this meeting is to correct the district's errors. The member should request CTA representation at the meeting, and advise CTA staff if the request to meet is denied or if the administrator refuses to correct the district's errors.

II. The Procedure for Securing Representation

As usual, the Legal Department will coordinate representation of members subject to the March 15th layoff process (whether certificated employees or faculty members). If you receive information that members in the chapters you service will be subject to layoff, contact the Legal Department in either Burlingame or Santa Fe Springs and speak with any legal associate. The legal associate will need to know the number of members who have been given layoff notices (or the number of notices that the district has indicated it intends to serve) and the date by which members need to request a hearing if known. The associate will then forward that information on to Frankie Medina in the Santa Fe Springs office, who will arrange for a GLS or staff attorney, or CTA staffer, to represent the members subject to layoff and will notify you of the arrangement. If there is a particular attorney with whom you would like assigned, please let us know and the Legal Department will attempt to accommodate your request.

The Legal Department will only process representation requests from primary contact staff to avoid duplicate or conflicting representation assignments. If you are a Chapter President, please contact your primary contact staff and ask them to contact the Legal Department to arrange for representation of members in your chapter subject to the March 15th layoff process. **As the timeline for requesting hearings is very short, primary contact staff should notify the Legal Department immediately of all RIF notices received by members in the chapters they service and the date by which those members need to request a hearing.** For your convenience, you may want to track the information regarding the layoff notices received by each chapter on the worksheet located at P:\LEGAL\RIFS\2010 RIFS\2010 FORMS.DOC.

Once an attorney or RIF hearing specialist is assigned, the primary contact staff should call the attorney or staff representative assigned to the case, provide the information that you have, and arrange to deliver copies of the layoff notices that have been served. Talk with the representative as to whether or not they would like you to hold a preliminary meeting with the members to explain the layoff process and provide them with the CTA model documents IMPORTANT INSTRUCTIONS FOR MEMBERS SERVED WITH RIF (LAYOFF) NOTICES, REQUEST FOR HEARING and NOTICE OF DEFENSE, which are attached and are also available on the P drive at P:\LEGAL\RIFS\2010 RIFS\2010 FORMS. These documents explain the layoff process and provide members with the forms they need to request a hearing and serve their notice of defense. The representative assigned to handle the RIFS in your chapter may want to use the CTA forms or their own model forms, but it is important that members be provided with whatever form you decide upon quickly as the timelines for requesting a hearing and serving a notice of defense are very short. Requests for Hearing must be delivered to the district on or before the date specified in the layoff notice usually within seven (7) days of the member's receipt of the layoff notice. Notices of Defense must be delivered within five (5) days after the district serves the teacher with an Accusation. **Failure to file these documents on time may waive a member's right to a hearing.**

In addition, talk with the assigned representative about whether he or she wants the noticed members to complete CTA's standard data form (attached and available on the P drive at P:\LEGAL\RIFS\2010 RIFS\2010 FORMS) or an alternative form and about how CTA staff can assist the attorney by processing the information necessary to represent the members in the RIF hearing. Many chapters have been able to significantly reduce their RIF legal bills by having staff handle the significant data compilation tasks associated with RIF representation rather than paying an attorney to do such non-legal work. Remember that CTA pays for the first \$5,000 of the costs of representation and splits the costs of representation with the local chapter above that amount.

To gather the information necessary to defend against the layoffs, the assigned advocate will likely want to serve requests for information in advance of the March 15th process, and/or will serve a Request for Discovery once that process has begun. The information gathering process is vital to the defense in a RIF hearing so please assist as needed with any such information or discovery requests. If you are asked to collect documents from the district, label the documents that you receive with numbers to indicate the particular discovery request(s) to which they relate. Ask the district about each item requested in discovery and be sure the district has given you every document it has. Make a list of every request as to which the district denies having any documents.

The attorney or other representative may also ask you to distribute information to the noticed members and secure their consent to being represented by CTA. (Sample forms for this purpose are also attached and are available on the P drive at P:\LEGAL\RIFS\2010 RIFS\2010 FORMS.) Note that one model form is for members to consent to group representation by an attorney and the other model form is for members to consent to group representation by a non-attorney representative. Please be sure to use the appropriate form. You should inform members that representation will be provided by one attorney or representative to all members who received notices in the chapter. It is not possible for CTA to provide separate representation for each member who receives a layoff notice. Members therefore must be informed of the group nature of the representation CTA will provide and the fact that the CTA advocate will not be able to advance positions of members that conflict with one another. In order for GLS or CTA staff attorneys to represent members in the RIF process, members must consent to such group representation. Members who do not consent are, of course, free to obtain their own attorney with their own resources.

The actual hearing on the RIF notices will occur sometime between March 15th and May 7th with the final decision on the layoff to follow by no later than May 15th. The date for the actual hearing is set by the Office of Administrative Hearings. If there are particular dates on which you would like the hearing to proceed, discuss them with your representative, so he or she can try to have the hearing scheduled for a convenient time period.

CONCLUSION

Thanks in advance for all of your assistance with this year's RIF process. If you have any questions, please contact the Legal Department and a legal associate will assist you or direct your call to the appropriate person. In the meantime, remember you can access all of the Legal Department's forms, fliers and resources on the P drive at P:\LEGAL\RIFS\2010 RIFS.

AO/lza
Attachments

cc: GLS Attorneys & Legal Department Staff