



## LAYOFFS COMING? WHAT ARE THE RULES?

Rumors of layoffs abound. Each week new alarming figures appear in the news. LLNL's press releases deny that layoffs are imminent. Nevertheless, unpublicized preparations are underway.

We have seen a March 29, 1993 memo from LLNL to UC officials stating that we must cut the staff by 300 FTE's within 3 months. It is uncertain if this will be done through layoffs or by other means. Layoffs are certainly on the minds of Lab employees. SPSE has received many inquiries about the policies governing the order of layoff.

### Policy Change Abandoned?

Two years ago, Lab management seriously considered changing the 20 year old order of layoff policy. In a report to the Director, the Work Force Policy Planning Task Force proposed to determine order of layoff by a ranking done just before the layoff. The proposed change would leave any employee vulnerable to layoff regardless of length of service or job performance. It would leave selection for layoff entirely to the whims of managers.

SPSE vigorously opposed this change and mobilized employees to make their individual opposition known. It appears we were successful. Today, the 20 year old policy remains unchanged. However, there has never been a public announcement that the attempts to change the policy are abandoned.

### Inverse Seniority with Exceptions

A modified inverse seniority rule controls the UC/LLNL order of layoff. Key personnel with special skills can be retained regardless of seniority. Though some managers knock the policy, it gives them more control than any other layoff policy in the state civil service or in California's State University system. It is less rigid than most private sector policies for firms where employees had a voice in making the policies.

The policy, from the LLNL Personnel Policies and Procedures manual §K.II, is printed in the box at the upper right. Interpretive comments follow the policy.

On page 4 of this Newsletter, we show the distribution of years of service among 200 and 300 series job class employees. The chart gives some idea of how vulnerability to layoff depends upon years of service. But, until a layoff unit is defined, no definite determinations can be made. ♦

## SPSE Members

If you receive a "pink slip," contact the SPSE office immediately. Phone (510) 449-4846. We have data and legal assistance that may save your job. ♦

### The Policies (from LLNL Policies & Procedures)

**K.II.1: Policy:** A reduction in force may be necessitated by a lack of funds or lack of work. To minimize the effects of a layoff, the Laboratory gives career employees, excluding postdoctoral and term appointees, placed on indefinite layoff, preferential opportunities for reassignment or transfer prior to layoff, the right to be recalled to the department from which laid off, and preference for reemployment in all departments of the Laboratory.

**K.II.3: Order of Layoff:** The order of layoff for career employees in the same classification (defined by the four digits of the title [job class] code) within a unit is in inverse order of University seniority except that the department head may retain employees irrespective of seniority who possess special skills, knowledge, or abilities that are not possessed by other employees in the same classification with greater seniority, and that are necessary to perform the ongoing function of the department. All such exceptions are documented and reviewed by the Human Resources Manager.

For the purposes of this policy, seniority is calculated by fulltime-equivalent months (or hours) of UC service. Employment prior to a break in service is not counted. When employees have the same number of fulltime-equivalent months (or hours), the employee with the most recent date of hire shall be laid off first.

## Interpretations of the Policy

The layoff is within something called a "unit." This term is undefined. UC policy uses the term "department." When LLNL drafted its implementation of the UC policy, the word unit was substituted because not all parts of LLNL are organized into departments. The Director defines the layoff units when a layoff is announced.

While the term unit seems to allow unbridled flexibility, if there is litigation it is likely that courts will hold the Lab to units that have some resemblance to departments. Some unit definitions would clearly be unacceptable, e.g., a layoff unit of all Asian or Afro-American physicists. It is likely that units defined to circumvent the inverse seniority aspects of the order of layoff would not be permitted.

Policy allows exceptions to the inverse seniority rule in special cases. This may seem to give license to managers to retain whomever they please. However, in litigation, courts will likely impose a reasonable interpretation requiring that the exceptions are not used to void the inverse seniority aspects of the policy. Labor law experts (from both employee and management sides) estimate that the courts would probably deem unacceptable an exception rate exceeding 20% of those selected for layoff. ♦

## Grievance Report

### HSD Must Reinstate Employee

Franklin Silver, an arbitrator from the American Arbitration Association, has ordered Health Services Department (HSD) to reinstate an employee fired in February 1992. The exact amount of the arbitrator's award compensating the employee for lost pay and benefits is not yet settled, but will be in the vicinity of \$100,000. Silver also ordered that disputed use of sick and disability leave must be approved. He issued his order after hearing two days of testimony and reviewing written arguments from both the Laboratory and SPSE.

### HSD Head Refuses to Allow Sick Leave

The employee was injured in an auto accident. She returned to work promptly, but suffered from lingering effects of her injuries. Around the time of the accident, there were changes in HSD management. The employee testified that the new HSD management harassed her, partly because she defended the privacy of LLNL employees' medical records. Two years later, her own privacy became a major factor in the arbitrator's decision.

Six months after the accident, pain from her injuries became so severe she could not work. Her disability was complicated by the concurrent illness of her dependent mother. Department head, John Spickard, declined to approve her use of sick leave, disability leave, or leave without pay and disputed her use of family sick leave. She was listed as *absent without approval* and was taken off pay status.

### Invasion of Privacy

Her personal physician released her to return to work in February 1992. HSD refused to permit her to return. They insisted she submit to an extensive examination, unrelated to her disability, by a non-Laboratory doctor. Further, they demanded access to all her private medical records. (*Under the Americans with Disabilities Act, both these demands would likely be deemed illegal. However, ADA did not become law until July 1992, four months after the employee's termination.*)

The employee strongly objected to these invasions of her privacy, but agreed to submit to the exam. The Laboratory scheduled the exam then misinformed her as to the day. She missed the appointment.

### Insubordination Charged

Spickard then recommended firing her for insubordination (that is, failing to attend the exam) and for being absent without approval. The Laboratory argued that though they erred in telling her the day of the exam, if they had rescheduled the exam, she would not have attended. They claimed that strenuous objections to the exam, voiced by her attorney, were sufficient to make this conclusion.

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### The Verdict

The arbitrator disagreed. He ruled that the exam should have been rescheduled, that she should have been notified in writing and given a chance to attend.

He further ruled that the second charge: being absent without approval, was based on HSD's unreasonable rejection of proof of disability. Lab policy states that unapproved absence for more than five days is grounds for dismissal, and that satisfactory proof of illness may be required. In this case, letters and disability certificates from three physicians attested to the employee's disability. Her HSD supervisors rejected these. The arbitrator ruled that though satisfactory proof of illness may be required, the Laboratory is obliged to accept reasonable proof and that reasonable proof had been given.

### HSD Criticized

The arbitrator severely criticized HSD supervisors for their unwarranted invasion of the employee's privacy and their intrusive interactions with her personal physician. However, he diminished his award to the employee by about 20% because he felt she shared some responsibility with the supervisors for poor communications. *Employees take note—You must be cooperative and reasonable even when your supervisor is uncooperative and unreasonable.*

SPSE Grievance Committee Chair, Richard White; represented the grievant; Glen Stinson from LLNL's Staff Relations Office, represented the Laboratory. ♦

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## Rankings Available (Update)

The December SPSE Newsletter (#4, 1992) reported that LLNL had finally agreed to obey repeated court orders to make rankings for FY's 1991 and 1992 available to employees. These data were supplied to SPSE in January.

We then requested the ranking data for FY93 (rankings done in the summer of 1992). After some stalling, the data was produced on April 1.

Members of SPSE can inspect the ranking data at the SPSE office. Other employees can obtain copies of the rankings for any Laboratory organizational unit by requesting it pursuant to the California Public Records Act. Such a request can be directed to your Division Leader, Department Head, or Associate Director if it pertains to your own organizational unit. Requests covering employees outside your unit are best directed to the Staff Relations Manager.

The law requires that a response be given to you within 10 days. There may be a charge of 10 cents per page for copying. There should be no onus upon you for exercising your right as a citizen of California to receive copies of these public records. ♦

## “Displaced” Told to Find Jobs

Many LLNL employees have been given the full-time job assignment to “find work.” We estimate that between 100 and 300 scientific, engineering, and technical staff members are assigned to find a job at LLNL or, in some cases, outside the Lab.

A report developed in the Recruiting and Employment Division (RED, Human Resources Dept.), dated April 13, defines a “displaced employee” to be one whose “*position has been eliminated due to budget reductions, reorganization, etc. and the home department has exhausted every avenue of placement with its own organization...*”

The report from RED’s Job Placement Focus Group to division leader Art Wong recommends:

*“After a department has exhausted its efforts to find placement for a displaced employee...management would inform the employee that he/she has been given a new full time assignment (i.e. working in a job placement program); this would be documented as an assignment in a memorandum placed in the employee’s file...and considered in the employee’s performance assessment. The employee would be accountable for dedicating full time efforts to find a job while in the program...our resources would accommodate a 3-month maximum program for each employee...except with special justification only one term in the program for each job the employee loses is recommended.”*

A management spokesperson told the *Tri-Valley Herald* that the RED report is not policy, but rather has the status of recommendations. However, we now know of many employees who have received memos of the type described in the RED report. At least one person has already received an “unsatisfactory” appraisal based solely upon his “performance” in finding a job.

The report says: “*An unassigned employee is a drain on the Laboratory’s resources and should be required to accept a new assignment that matches his/her skills and does not change the employee’s classification or salary. Rejection of such an offer should be subject to disciplinary action or termination.*”

In answer to the question, “*What is the long-term status of displaced employees who do not find positions?*”, the report states: “*It is difficult to address, as employees who have made major contributions and worked for many years at LLNL may be displaced. However, without an assignment, they are a burden to the Laboratory overhead, are not contributing to the mission or accomplishments in either program or support areas, and are enjoying full salary and benefits without making contributions. It is unlikely that every employee will be successful in locating an internal or external position. Therefore, it*

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*is recommended that a model be developed to address long-term displaced employees.”*

The report asks: “*Should poor performers be eligible for assistance in a job placement program?*” and answers: “*No...We do not have the resources to expend on poor performers.*” ♦

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## SPSE Comments on “Displaced” Employees

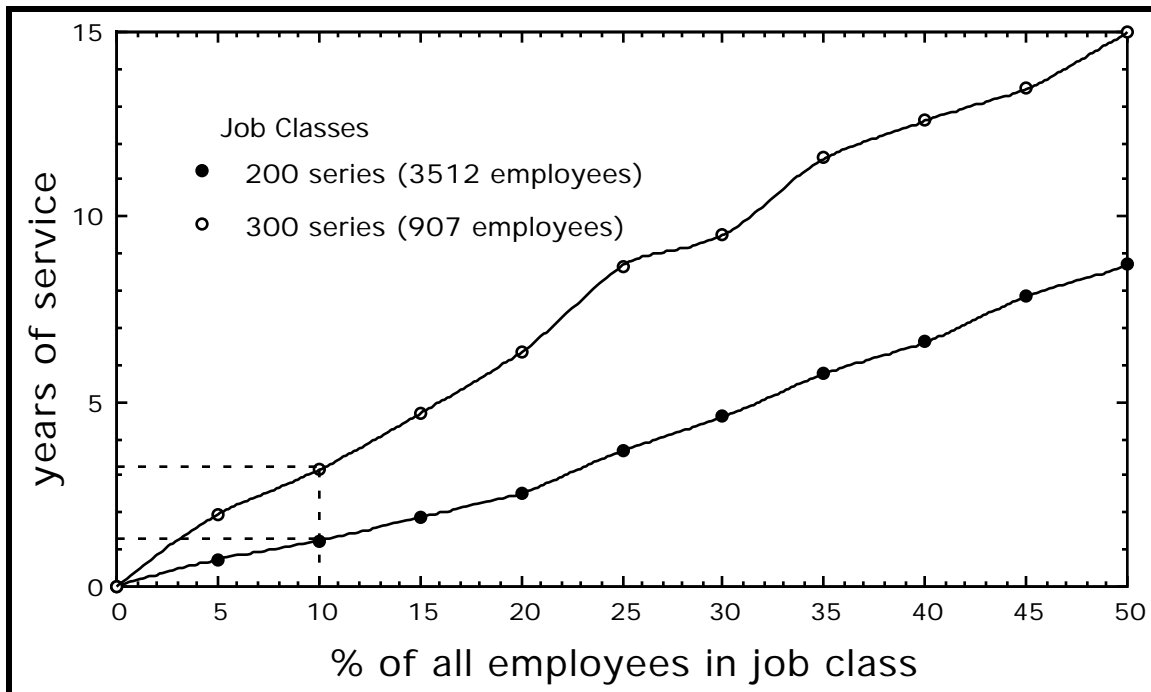
RED’s recommendations acknowledge real problems facing LLNL. But, their “solution” fails to grasp reality. Reality is that there are several hundred LLNL employees looking for positions and there may be as few as 10 jobs available. (See, for example, any recent issue of the Current Employment Opportunities bulletin.) We are concerned that the creation of a class of “displaced employees” is a ruse to avoid the requirements of LLNL’s layoff policy. (See articles, page 1.) HSD’s recommendations subvert existing UC/LLNL policies, they invite abuse, and they ignore well established state law.

We believe that any employee fired for alleged poor performance, based solely upon his/her inability to locate a job within the Laboratory, will prevail in a grievance hearing **provided** the hearing is before a professional arbitrator who understands California labor law and **provided** the employee has experienced representation in the hearing. The “provideds” are important. They are available to any career LLNL employee, but at some expense.

Some employees believe that the assignment to “find a job” is inappropriate. There may be grounds for a grievance simply because the assignment is given. This is an uncertain area in labor law. We do not recommend that anyone test it at this time. Persons assigned to find work should take the assignment seriously, do their best to relocate, and carefully document their efforts.

Anyone who refuses an assignment or fails to try to execute it, risks being found insubordinate. The usual rule regarding insubordination is that the employee is to carry out the assignment and grieve later. Most arbitrators will recognize exceptions to this rule only if the assignment endangers health or safety, violates law, or seriously and irreparably invades the employee’s privacy.

We will do our best to prevent management from intermingling job performance issues and layoff procedures. There are already policies for improving low-performers and for firing those who cannot or will not perform. It is the responsibility of managers to use these policies to maintain a competent workforce. Insofar as they have not done so, they have failed as managers. Treating the “displaced” as sub-standard performers is an unacceptable sham. ♦



The plot at the left shows the number of years of service versus the number of employees with that many years or less in the UC system. The data include Lab Associates and Indeterminates as well as career employees, but the figures are close enough to give a picture of individual vulnerability to an inverse seniority layoff. For example, a layoff of 10% [350 200 series employees, and/or 90 300 series] affects those 200's with <1.25 yrs. service and those 300's with <3.2 yrs (dashed lines at left). The data are for 1-Mar-93.

## SPSE

P.O. Box 1066  
Livermore, CA 94551

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*The SPSE Executive Board meets during noontime on the first and third Tuesdays of each month at varying locations on the Lab site. Members are urged to participate in the discussions. Call Cheryl Remillard, our office manager, at 449-4846 for the scheduled location. Office hours are Monday, Noon to 4:00 pm; and Tuesday thru Friday, 8:00 am to Noon.*