

1. **HOW IS SENIORITY CALCULATED?**

QUESTION: Fourteen months ago, I was hired as a classified paraprofessional and assigned to a position working four hours per day. I have just received a layoff notice. Do I have the right to bump another paraprofessional hired eight months ago and assigned to a position working six hours per day?

ANSWER: It depends. Unless the collective bargaining agreement provides otherwise, seniority, or length of service, is calculated by hours and includes all hours, except for overtime, in paid status in the classification plus higher-paid classifications. Thus, part-time workers hired before full-time workers (or before part-time workers assigned to greater hours) will eventually lose preferential seniority rights to later-hired workers assigned to more hours.

However, the Education Code allows chapters to negotiate for hire-date seniority. (See Education Code sections 45308: "Nothing in this section shall preclude the governing board of a school district from entering into an agreement with the exclusive representative of the classified employees that defines "length of service" to mean the hire date." For community colleges, see Education Code section 88127.) "Hire date" means the date one was hired into the particular classification or higher-paid classification, not the date one first went to work for the employer. With hire-date seniority, a part-time worker who is not demoted does not lose preferential seniority rights to later-hired full-time workers. In the example given above, the answer is yes if the chapter has negotiated hire-date seniority, and is probably no if the chapter operates under hours-in-paid-status seniority.

2. **CAN I BUMP INTO A LOWER-PAID CLASSIFICATION IN WHICH I PREVIOUSLY WORKED?**

QUESTION: After being employed in the classified service of my employer for 8 years as a clerk-typist, I was promoted to custodian and have served in that classification for 2 years. I am the junior worker in the custodian classification and have received a notice of layoff. Do I have the right to bump a clerk-typist who has been employed only in the clerk-typist classification for 9 years?

ANSWER: Yes. While working in a higher-paid classification, you continue to earn seniority in any lower-paid classification in which you previously worked. Thus, you have 10 years of total clerk-typist seniority although you only worked in that classification for 8 years. The Education Code prohibits your employer from placing you in involuntary layoff status while retaining in a classification in which you have been employed another worker with less total seniority for that classification. (See Education Code sections 45308 and 88127: "Whenever a classified employee is laid off the order of layoff within the class shall be determined by length of service. The employee who has been employed the shortest time in the class, plus higher classes, shall be laid off first.")

3. **CAN I BUMP INTO A HIGHER-PAID CLASSIFICATION IN WHICH I PREVIOUSLY WORKED?**

QUESTION: After being employed as a maintenance worker for two years, I applied for and was assigned to a lower-paid paraprofessional position with the same employer. If I am laid off from the paraprofessional classification, do I have the right to bump a maintenance worker who has only one year of total seniority?

ANSWER: Yes. However, seniority earned in lower-paid classifications is not included when calculating total seniority in another classification. Again, if you have not chosen to be laid off, the employer cannot lay you off while retaining any worker with less seniority in a classification in which you have worked. (See Education Code sections 45308 and 88127: "The employee who has been employed the shortest time in the class, *plus higher classes*, shall be laid off first.")

4. **DOES MY SENIORITY IN MY PRESENT CLASSIFICATION COUNT FOR BUMPING INTO A LATERAL CLASSIFICATION?**

QUESTION: After being employed as a food service worker for one year, I applied for and was assigned to a typist-clerk position with the same employer. Both positions are paid the same hourly rate. I have worked as a typist-clerk for five years. If I am laid off from the typist-clerk classification, do I have the right to bump a food service worker who has two years of seniority in that classification?

ANSWER: As with seniority earned in lower-paid classifications, the Education Code does not provide that seniority earned in lateral, or equally-paid, classifications shall be included when calculating total seniority in another classification. However, chapters should attempt to negotiate the use of lateral seniority for bumping.

5. **CAN I BUMP INTO CLASSIFICATIONS WHERE I HAVE NOT PREVIOUSLY WORKED?**

QUESTION: I have been employed as a bus driver for 10 years. I am fully qualified as a custodian but have never been employed by this employer in that classification. Custodians are paid less than bus drivers. If I am laid off from the bus driver classification, do I have the right to bump a custodian whose total time with the employer is only two months?

ANSWER: No. While CSEA supports the principle of "last hired, first fired," the Education Code defines seniority, for purposes of layoff, as length of service in a classification plus higher-paid classifications, not as length of service with the employer. NOTE: Laid-off workers who are qualified in classifications where they have not been employed are entitled to reemployment in those other classifications in preference to new applicants, provided the employer is aware of those qualifications. (See Education Code section 45298 and 88117: "Persons laid off because of lack of work or lack of funds are eligible to reemployment for a period of 39-months *and shall be reemployed in preference to new applicants.*")

6. **CAN I BUMP INTO POSITIONS WITH MORE HOURS OR WITH A LONGER WORKYEAR?**

QUESTION: The employer has abolished my six-hour, ten-month position. Do I have the right to bump a worker with an eight-hour, twelve-month position in the same classification?

ANSWER: Yes, if you have greater total seniority in the classification than the person holding the other position. See the answer to Question 10 for various types of bumping systems the chapter may wish to negotiate to cover this situation. (See Education Code sections 45308 and 88127: "The employee who has been employed the shortest time in the class, *plus higher classes*, shall be laid off first.")

7. **CAN I BUMP INTO A CLASSIFICATION WHERE I ONLY WORKED IN PROBATIONARY STATUS?**

QUESTION: I was initially employed as an account clerk. After 5 months, before completing the probationary period in that classification, I was promoted to lead groundskeeper. I am now being laid off from the lead groundskeeper classification. My length of service as a lead groundskeeper when added to my length of service as a probationary account clerk is greater than that of an account clerk who has completed the probationary period. Do I have the right to bump that account clerk?

ANSWER: Yes. All length of service in a classification and higher-paid classifications counts toward seniority. (See Education Code sections 45308 and 88127: "The employee who has been employed the shortest time in the class, *plus higher classes*, shall be laid off first.")

8. **DO I EARN SENIORITY IN ANOTHER CLASSIFICATION WHEN TEMPORARILY ASSIGNED TO ADDITIONAL HOURS FOR DIFFERENT DUTIES?**

QUESTION: The hours of my library clerk position are 1:00 p.m. to 5:00 p.m. Two years ago, when an paraprofessional with hours of 8:00 a.m. to 12:00 noon was absent, my employer asked if I wanted to pick up an additional four hours performing the work of that paraprofessional. I accepted and performed the duties of both positions for one week. I have worked 12 years as a library clerk and am now being laid off. I only worked that one week performing paraprofessional duties, duties of a lower-paid classification. Do I have the right to bump a worker employed for ten years as a paraprofessional?

ANSWER: Not in this case. You were not actually assigned by the governing board to a classified paraprofessional position. You remained in the library clerk position but were given additional duties. The extra hours count toward seniority but only in the library clerk classification.

9. **DO I EARN SENIORITY IN ANOTHER CLASSIFICATION WHEN TEMPORARILY ASSIGNED TO OUT-OF-CLASS WORK IN PLACE OF MY REGULAR DUTIES?**

QUESTION: I am employed full time as an electrician, a classification that is paid more than the painter classification. Five years ago, due to a lack of electrical work and a temporary increase in painting work, my employer required me to work out-of-class for three months of painting, the only painting work I performed for this employer. I received out-of-class pay in addition to the regular pay of my position as an electrician. I am being laid off as an electrician. Do I have the right to bump a painter with less seniority as a painter than I have as an electrician?

ANSWER: Not under the Education Code. Again, you do not earn seniority in a classification unless you have been employed in the classification. Only then can you add seniority earned in higher-paid classifications. At all times, you were employed in the electrician classification. You were assigned to out-of-class duties but were not assigned to a position in the painter classification.

This may create unfairness when the out-of-class assignment is long term. In order to correct this, the chapter may wish to negotiate language providing that an out-of-class assignment to a substantial portion of the duties of another classification is considered a temporary reclassification, with seniority credit in the other classification, where the assignment exceeds a period of time chosen by the chapter.

10. **CAN DIFFERENT CHAPTERS NEGOTIATE DIFFERENT BUMPING SYSTEMS?**

QUESTION: I have been employed for 15 years as a custodian and work at a school within walking distance of my home. Another custodian at the same school has 10 years of seniority while the custodian with the least seniority in the classification works at a school 20 miles away. Can I bump any junior custodian or only the most junior custodian?

ANSWER: The Education Code does not address this question. On the one hand, a senior worker should not have to take a less desirable job while a junior worker retains the preferred job. On the other hand, a contract permitting a bump of any junior worker will cause more disruption during layoffs than one limiting the bump to the least senior worker. Another system is to abolish and rebid all jobs in a classification where a layoff occurs, or all jobs held by persons with less seniority than the seniority of the senior person whose position is abolished. Chapters can negotiate the version the unit prefers. Regardless of which bumping system is adopted, the worker actually laid off must be the least senior worker.

11. **WHAT HAPPENS TO SENIORITY EARNED IN A CLASSIFICATION THAT IS ELIMINATED?**

QUESTION: I was initially employed and worked for five years as a payroll clerk. Two years ago, that classification was eliminated and the duties were included, along with some additional duties, in a new higher-paid classification titled payroll technician. I have not been employed *in* any classification paid more than that of payroll technician, but another payroll technician, employed for five months in that classification, was previously employed for four years in the higher-paid classification of bus dispatcher. Do I have a right to bump that other payroll technician?

ANSWER: You do not lose seniority while employed but you can lose the right to exercise it effectively. Your five years as a payroll clerk count toward calculating seniority in lower-paid classifications but, in the absence of contract language to the contrary, the employer has an argument, even if the payroll technician was paid the same as the former payroll clerk, that hours earned as a payroll clerk are lost for purposes of calculating seniority in the replacement classification.

Chapters should exercise care when negotiating new classifications, or negotiating the effects of abolishing a classification, so that the agreement states the appropriate allocation of seniority earned in any classification that *is* eliminated. In the example given above, you do not have a right to bump the other payroll technician unless negotiations expressly allocated your seniority as a payroll clerk to the new classification.

12. **ARE BUMPING RIGHTS LIMITED TO BARGAINING UNIT WORKERS?**

QUESTION: Bus drivers working for my employer are represented by the Teamsters. After working as a bus driver for three years, I applied for a data processing programmer's job with the same employer. I dropped my Teamster membership and joined CSEA since CSEA represents the data processing workers. I am about to be laid off. Can I bump a Teamster worker employed as a bus driver for two years?

ANSWER: Yes. The Education Code's protections against layoff apply to the entire classified service, including management. Not only can you bump the junior bus driver in this case, but you could be bumped by a laid off director of data processing if she had previously worked as a programmer and her seniority as a programmer, including seniority in the higher-paid classification of director, exceeded yours.

13. **DO I HAVE A RIGHT TO BUMP MORE THAN ONE POSITION TO RETAIN MY HOURS?**

QUESTION: I am employed as a paraprofessional for eight hours per day. All junior paraprofessionals are employed for less than eight hours per day. If my job is abolished, can I bump a four-hour morning para and a four-hour afternoon para?

ANSWER: Yes, provided this is negotiated as part of the effects of layoff and the hours of the two positions do not overlap. Nothing prohibits an employer from hiring the same worker for two separate positions. In these circumstances, chapters should avoid limiting bumping rights so that only the most junior worker in the classification can be bumped.

14. **IF MY COLLECTIVE BARGAINING AGREEMENT PROVIDES FOR HIRE SENIORITY. CAN I EVER LOSE SENIORITY RIGHTS OVER WORKERS HIRED AFTER I WAS?**

QUESTION: I was hired as a typist-clerk on February 1, 1980. On September 1, 1982, I was promoted to bus driver. On March 1, 1984, I applied for and was given a night custodian position so I could attend school during the day. The rate of pay for night custodian is less than bus driver but higher than typist-clerk. After I completed my schooling, I was again promoted to bus driver on March 1, 1989 and am still employed in that classification. My contract calls for hire-date seniority. Do I have seniority over another bus driver employed as a driver on September 4, 1986 who has worked as a bus driver since being hired?

ANSWER: No. Again, "hire date" means the date one was hired into the particular classification or higher-paid classification, not the date one first went to work for the employer. Thus, your hire date of February 1, 1980 is only a seniority date for the typist-clerk classification. Moreover, seniority in lower-paid classifications is not included when calculating total seniority in a higher-paid classification. Your bus driver hire date was initially September 1, 1982 but you were subsequently employed for five years in a lower-paid classification. Your initial bus driver seniority date must be adjusted to September 1, 1987 to exclude seniority earned in a lower-paid classification.

15. **DO I HAVE THE RIGHT TO BUMP A LESS SENIOR EMPLOYEE IN ORDER TO RETAIN MY HOURS OR MUST I ACCEPT A POSITION WITH FEWER HOURS?**

QUESTION: I am employed as a classroom paraprofessional for eight hours per day. The employer has notified me that it is eliminating the classroom paraprofessional position, which I hold. The district has offered me a vacant six-hour position. If my job is abolished, can I bump an eight-hour classroom paraprofessional with less seniority than me at a different site?

ANSWER: Yes. A worker can bump someone with less seniority in order to retain maximum hours.

16. **IS IT PROPER TO SEND A LAYOFF NOTICE TO THE WORKER WHOSE POSITION IS BEING AFFECTED BY THE LAYOFF?**

QUESTION: I am the only typist-clerk at my site. I have the most seniority in that classification in the district. I received a layoff notice indicating the employer is eliminating the typist-clerk position at my site. Was the layoff notice correctly sent to me rather than to the most junior typist-clerk in the district?

ANSWER: Yes. You may get a notice, but you must also have the opportunity to bump so as to maintain the hours and months of your current assignment over someone with less seniority. A layoff should not become a unilateral reduction in hours. In similar fashion, if you hold two separate jobs, and you are notified of layoff from both, you can exercise seniority to bump less senior workers in those classifications.

The notice must contain information about your displacement and reemployment rights. As indicated in the answer to question #10, the Education Code does not address whether you can bump any junior typist-clerk or only the most junior one. However, this is negotiable. See also the answers to #13 and #15, above. (See Education Code sections 45117 and 88017.)

17. **CAN A LAID OFF WORKER BE DENIED UNEMPLOYMENT INSURANCE BENEFITS WHEN THE WORKER REFUSES TO EXERCISE BUMPING RIGHTS?**

QUESTION: I accept layoff rather than displace a more junior worker. Does my refusal to exercise my seniority make me ineligible for UI benefits?

ANSWER: No. Unemployment Insurance Appeals Code section 1256 states in pertinent part: "An individual shall be deemed to have left his or her most recent work with good cause if he or she elects to be laid off in place of an employee with less seniority pursuant to a provision in a collective bargaining agreement that provides that an employee with more seniority when the employer has decided to lay off employees." In Stanford v. California Unemployment Insurance Appeals Board (1983) Cal.App.3d 98, the court applied the statute holding that an employee who declined to exercise seniority to avoid layoff nevertheless left employment with good cause and was entitled to UI benefits. Thereafter, whether the worker can reject reemployment offers and continue unemployment benefits will depend on the language of the collective bargaining agreement.