

## SEPTEMBER/OCTOBER 2020 REGIONAL UNIT PRESIDENT ZOOM MEETINGS

### TOPICS/NOTES

#### 1. State Aid

- a. The fiscal picture will certainly dominate the rest of this school year. Perhaps a bit of background information will provide some context to the current situation.
  - Overall school aid was held flat in the 2020-21 state budget. The final education (May 2020) budget was originally decreased by \$1.1 billion, however, the state used the federal CARES ACT to offset that decrease. That strategy held funding flat as compared to the 2019-20 budget.
  - On August 13, 2020, the Division of the Budget released the FY 2021 First Quarterly Update indicating a current year deficit of \$14.5 billion and a projected \$16.2 billion gap due primarily to the COVID-19 crisis. In order to offset the losses from revenue, the state indicated that it reduced spending and was holding back 20% of payments to localities, including school districts.
  - A 20% across the board reduction impacts all of the state aid formulas, not just Foundation Aid and disproportionately impacts high poverty / low wealth communities. The impact per pupil on the poorest 10% of school districts is almost ten times greater than on the wealthiest 10% of school districts.
  - Clearly school districts across the state are upset with the current situation and have been making their voices known. SAANYS has been actively involved with advocacy efforts at both the state and federal levels. Any reduction at a time when schools are spending so much more on COVID-19 related expenses is untenable.
- b. On September 17, 2020, the Division of the Budget (DOB) announced that it would not withhold state aid to local districts at the end of September. The Governor continues to hold the federal government responsible for its incompetence and advocates that it is their responsibility to make state and local government whole.

#### 2. Layoffs vs Furloughs

- a. Layoffs:
  - i. Permanent – position is abolished; may or may not be reinstated in the future;
  - ii. Employees have certain recall rights.
- b. Furloughs:
  - i. Temporary suspension of employment for a defined period;
  - ii. Return date specified.
- c. Employers can choose to deal with reductions of staff either way; furloughs are preferred, and units may want to advocate for that method.
- d. Note – principals are “safest,” given the one principal per building/campus regulation absent a waiver from the commissioner.

### 3. Layoff and Recall Processes

#### a. Ed Law:

##### i. Layoffs are by seniority in tenure area:

1. Time in tenure area, probationary and tenured, determines seniority (not time in the district);
2. Unpaid leaves do not count toward seniority time;
3. Administrators have no ability to “retreat” to previous tenure areas;
4. Tenure areas for the same title can vary over time based on superintendent and BOD changing preferences, unless contained in contracts (e.g., principal, elementary or secondary principal; administrator...);

##### ii. Recalls are from Preferred Eligibility Lists (PEL):

1. Placement on a PEL is for 7 years;
2. Districts are obligated to notify employees of the lists of vacancies in the tenure area, but are not always good about this; reorganization may produce different titles that are still within the scope of a PEL. Employees need to carefully monitor future openings that may apply;
3. Recall is not necessarily in the same order as layoffs since total time employed in the district, in any title, must be used to determine recall order from a PEL;
4. Employees on a PEL may take other positions in the district or other districts without forfeiting PEL rights;
5. Employees may decline recall offers and remain on a PEL for the full 7 years.

#### b. Civil Service Law:

##### i. There are general state provisions but there may also be local (county) provisions that are similar or different – units and impacted members should seek to obtain the local civil service regulations.

##### ii. Layoffs are by seniority in “department” according to the applicable civil service class; last in, first out.

1. Time toward seniority runs from the first applicable permanent appointment following a probationary appointment to the time of the layoff.
  - a. All time counts, even if there were changes to titles with new probationary periods between subsequent permanent appointments;
  - b. Leaves up to 1 year do not constitute a break in service;
  - c. Employees may have rights to “retreat” to a lower title considered to be in a “line of promotion” to the current title. This could include “bumping” other employees, but the rules are complicated.

##### iii. Recalls are from Preferred Lists (PL):

1. Employees are on a PL for 4 years;

2. Recall order can change with subsequent layoffs of more senior employees.
4. COVID-19 related accommodations and leaves
- a. Federal provisions – Americans With Disabilities Act (ADA) may apply:
    - i. Work accommodations possible for those with disabilities;
    - ii. Medically documented serious health conditions adding risk to COVID-19 may qualify;
    - iii. These rights do not apply when the disabled individual is a household member;
    - iv. Employers must consider accommodations if requested but are not always obligated to provide them. They are not obligated to automatically provide what is requested.
      1. “Reasonable” accommodations must be considered;
      2. Employees must be able to perform the essential job functions with or without an accommodation;
      3. Employers may decline accommodations if it would cause “undue hardship” for the employer to fulfill its basic function and mission.
  - b. NYS provisions:
    - i. Guidance and Executive Orders have provided some additional rights to remote work. New guidelines apply for the newly created Zones (Yellow, Orange, Red) based on outbreak levels.
    - ii. School districts have been allowed to designate which employees are essential for on-site work.
    - iii. NYS still encourages employers to maximize remote work to the greatest extent possible.
    - iv. SED guidance (click below to visit the link)  
<http://www.nysed.gov/common/nysed/files/programs/reopening-schools/nys-p12-school-reopening-guidance.pdf> says that accommodations for students and staff who have underlying risk factors, or who live with someone with risk factors, must be addressed in reopening plans. Being uncomfortable or nervous about returning to the work site is not covered unless the district chooses to do so. Members should carefully review the district reopening plan when seeking accommodations due to the needs of a household member.
  - c. Other:
    - i. In the Family and Medical Leave Act (FMLA) unpaid leave provisions may apply for employees needing to be at home with family members for a variety of reasons.
    - ii. Contractual leave provisions may also apply for medical conditions of employees or their family members and other issues (e.g., school aged children not allowed to attend school in person).

## 5. Things for units to consider

- a. Getting current applicable seniority lists for unit members now (tenure areas and/or civil service departments);
  - i. Formally request these from the districts;
  - ii. Information should include date of entry on the applicable lists, date of hire in the district, information on any unpaid leaves;
  - iii. Unit leaders should ask members to review the information and verify accuracy;
  - iv. Contact SAANYS regarding problems.
- b. Not accepting responsibility to recommend any cuts within the unit should the district determine such cuts are possible;
  - i. You should avoid placing relative value on members and their titles;
  - ii. Your role is to advocate for the importance of all members and their titles;
  - iii. The district had, at one point, decided that all titles were important to the mission of the district; the district should make the priority decisions if cuts are necessary.
- c. Having advocacy discussions with the superintendent now in preparation for potential staff reductions in the district;
  - i. The value of all titles in the unit;
  - ii. The value of furloughs rather than layoffs if reductions are needed;
  - iii. Contract considerations for members who are furloughed or laid off, especially health insurance (continue current provisions rather than COBRA);
  - iv. Consideration of giving unemployed members the “right of first refusal” for any vacancy to be filled where they have the required qualifications;
  - v. A minimum notice period for any furloughs or layoffs (30 or 60 days or more);
  - vi. Memorializing any agreements on these in an MOA so it is in writing.
- d. Be ready for work reassignments with staffing reductions;
  - i. Transfer of work done by members of the unit to employees outside of the unit can be addressed through an Improper Practice charge at PERB;
  - ii. Addition of work to unit members currently done by others can be addressed through Impact Bargaining;
  - iii. Both issues impact the unit and its members and need careful analysis and consideration of action;
  - iv. At the very least, if a unit understands the need for the changes and is willing to accept them, it should be handled through an MOA to limit the scope and duration and to protect the unit and its members’ rights for the future;
  - v. Time frames for proceeding apply (four months to initiate an Improper Practice charge) as soon as practicable during the year for Impact Bargaining after thorough analysis and quantifying of the impact on workload;
  - vi. Contact SAANYS for guidance and assistance as soon as either situation is evident.
- e. Consideration of cost cutting options, if asked to help mitigate budget shortfalls;

- i. Salary – deferred compensation better than absolute cuts to avoid the long-term consequences of absolute salary reductions;
- ii. Work year – voluntary furloughs with corresponding salary reductions (trade your time for money); could be shorter work year, work week, or workday;
- iii. Any contract concessions should be with corresponding assurances of no layoffs or limitations on layoffs;
- iv. The district’s budget issues may be too great for concessions from smaller units to have much impact or to avoid layoffs in the unit; avoid symbolic concessions.

6. Other topics discussed

a. NYSED Snow Day Pilot:

- i. Possible for 2020-21 to flip to remote instruction on days that weather endangers travel;
- ii. Be sure to clarify expectations regarding administrators working remotely whether there are contractual provisions or not.

b. Social media:

- i. Avoid expressing personal views on social media that are contrary to government guidelines and/or district plans and your responsibilities in implementing those plans;
- ii. Districts take dim views of such activity as they see administrators as both district and community leaders; some seek disciplinary action.

c. District reopening plans:

- i. Must be posted on the district website;
- ii. Must include provisions for employees who have household members who are at risk; review the plan regarding any request for accommodations due to issues related to household members;
- iii. May be dependent on specific staffing for implementation; administrators should clearly communicate when lack of staff impedes faithful implementation.

d. NYS Dashboard:

- i. A “work in progress” with many issues;
- ii. Errors being reported regarding assignment of students to buildings and districts;
- iii. Errors cannot be corrected once entered;
- iv. Some counties do not always seem to be communicating with each other; this is particularly problematic when districts cover multiple counties or when staff members live in multiple counties.

7. Conclusion

Please do not hesitate to contact SAANYs if you need assistance or further information.