

“I Am Sorry But We Have to Let You Go”: What to Do When You Are Laid Off

Lee Norris, Barbara Petersen, Bernhard Rohrbacher
APC Labor Relations Team
Contact for Questions: brohrbacher@apc1002.org

Last Modified April 29, 2013

This handout discusses the contractual layoff procedure for temporary, probationary, and permanent Unit 4 employees. We suggest that you first read section I, “Layoffs Generally,” and then proceed to section II, “Temporary Employees,” section III, “Probationary Employees,” or section IV, “Permanent Employees,” depending on whether you are temporary, probationary, or permanent. For information about “Unemployment Insurance Benefits,” please see our separate handout by that name.

I. Layoffs Generally

A. Management Generally Does Not Have to Bargain with APC About the Decision to Layoff Unit 4 Employees; However, It *Must* Bargain with APC About the Impact of that Decision on Unit 4 Employees.

See our separate handout entitled “‘Let’s Talk About This’: An Introduction to Collective Bargaining.”

B. The Decision to Lay off Unit 4 Employees Generally Cannot Be Challenged in a Grievance; However, a Violation of the Layoff Procedures *Can* Be Challenged in a Grievance.

“When the President determines that a layoff is necessary on a campus because of a lack of work or lack of funds, the following procedures shall apply.” (Article 33.1)

C. Management *Cannot* Layoff Unit 4 Employees and, at the Same Time, Rely More Heavily on Student Assistants and Administrators to Perform Unit 4 Work.

“When the CSU determines that there is a need for implementation of any procedures in Article 33, Layoff, the number of student assistant hours and the number of administrators shall not be increased for the purpose of performing bargaining unit work.” (Article 33.6)

II. Temporary Employees

A. Non-Renewal of a Temporary Appointment Is *Not* a Layoff.

1. Article 13.6

“Temporary appointments shall specify in writing the expiration date of the appointment Temporary appointments automatically expire at the end of the period stated and do not establish consideration for subsequent appointments or any further appointment rights except as provided for in this Article.”

2. Article 33.7

“Non-reappointment of a[] temporary employee does not constitute a layoff.”

B. Temporary Employees Are (Almost) the First to Be Laid Off Within Their Classification.

1. Article 33.7 states that intermittent employees have to be laid-off First, and that temporary employees are next, . . .

“Layoff shall be within classifications determined by the President. Ten (10/12) month, eleven (11/12) month, twelve (12) month and academic year positions with the same class title shall, for the purposes of layoff, be considered a single class. The order of layoff shall be: [¶] A. first, intermittent employees; [¶] B. second, temporary employees”

2. . . . but Article 33.7 also states that intermittent employees can be excluded altogether from a layoff at the discretion of the President.

“Intermittent employees who perform work on an irregular basis may be excluded from layoff at the discretion of the President.”

C. The Order of Layoff for Temporary Employees in the Same Classification Requires Consideration of “Specialized Skills and Competency” and “Documentable Meritorious Service” of Each Such Employee.

“The President shall establish the order of layoff for temporary and probationary employees in a classification by considering only the following factors: [¶] A. specialized skills and competency of the employee in relation to program need; and [¶] B. documentable meritorious service of the employee.” (Article 33.8)

D. Temporary Employees Are Entitled to Written Thirty-Days Layoff Notice . . .

1. Article 33.22

“Except as provided in Article 13, Appointment, a temporary or probationary employee who is to be laid off shall receive notice of such layoff from the President no later than thirty (30) days before the effective date of layoff.”

2. Article 33.24

“All notices of layoff shall be in writing and mailed by certified mail, return receipt requested, to the employee's last known mailing address.”

E. . . . but “Early Separation” Upon Ten-Days Notice Is Also *Not* a Layoff.

“Temporary appointments shall specify in writing . . . that the appointment may expire prior to that date. Such an early separation shall normally require a ten (10) day notification.” (Article 13.6)

F. Note: After Four Consecutive Years as a Temporary Employee with a Timebase of 50% or More, You *Must* Be Granted Permanency and Will Then Enjoy the Greater Layoff Protections of a Permanent Employee.

See Articles 13.7 and 13.8 for details.

III. Probationary Employees

A. “Rejection” During Probation Is *Not* a Layoff.

“A probationary employee may be separated from service at any time by the President upon written notice of rejection during probation. The employee should normally be given not less than three (3) weeks notice of rejection during probation.” (Article 14.16.A)

B. Probationary Employees Can Be Laid Off Only if No Student Assistants Performing the Same or Comparable Work or Temporary Employees Having the Same Classification Remain.

1. Article 33.5

“Student assistants performing work that is the same as, or comparable to, the work performed by a probationary or permanent employee in a classification within an organizational unit undergoing layoff shall be separated prior to laying off any probationary or permanent employee in the classification within the organizational unit undergoing layoff.”

2. Article 33.7

“Layoff shall be within classifications determined by the President. Ten (10/12) month, eleven (11/12) month, twelve (12) month and academic year positions with the same class title shall, for the purposes of layoff, be considered a single class. The order of layoff shall be: . . . [¶] B. second, temporary employees; [¶] C. third, probationary employees”

C. The Order of Layoff for Probationary Employees in the Same Classification Requires Consideration of “Specialized Skills and Competency” and “Documentable Meritorious Service” of Each Such Employee.

See section II.C above.

D. Probationary Employees Are Entitled to Written Thirty-Days Layoff Notice but Rejection During Probation on Three-Weeks Notice Is *Not* a Layoff.

See sections II.D. and III.A above.

E. Note: After One Year as a Probationary Employee, You *Should* Be Granted Permanency and Will Then Enjoy the Greater Layoff Protections of a Permanent Employee.

See article 14.3 and 14.17 for details.

Note: Laid-off *probationary* employees who previously served as *permanent* employees have “bumping” rights into any filled position in the classification(s) in which they previously served as permanent employees and for which they are still qualified. See section IV.E.2 below.

IV. Permanent Employees

A. Permanent Employees Can Be Laid Off Only if No Student Assistants Performing the Same or Comparable Work or Temporary or Probationary Employees Having the Same Classification Remain.

1. Article 33.5

See section III.B.1 above

2. Article 33.7

“Layoff shall be within classifications determined by the President. Ten (10/12) month, eleven (11/12) month, twelve (12) month and academic year positions with the same class title shall, for the purposes of layoff, be considered a single class. The order of

layoff shall be: . . . [¶] B. second, temporary employees; [¶] C. third, probationary employees; [¶] D. last, permanent employees.”

B. Permanent Employees Generally Must Be Laid Off in Reverse Order of Seniority; Ties in Seniority Are Broken by the President.

1. Article 33.9

“The order of layoff for permanent employees in a classification shall be in reverse order of seniority.”

2. Article 33.10

“A permanent employee who possesses documentable specialized skills that are needed for the program, not possessed by other employees in classification(s) undergoing layoff, may be excluded by the President from the layoff list.”

3. Articles 33.20 & 33.21

“A tie exists when two (2) or more permanent employees in a classification undergoing layoff have the same number of seniority points. [¶] The President shall break ties in establishing the layoff order of permanent employees by considering documentable specialized skills and the competencies of the employee.”

C. Seniority Is Based on Length of Service in the Current Classification or in Any Classification of Equal or Higher Rank, Regardless of Whether Such Service Was in a Temporary, Probationary, or Permanent Position.

1. “Length of service” is measured in seniority points: Full-time employees receive one seniority point and half-time employees receive half of one seniority point for each “qualifying month of employment.”

“Full-time permanent ten (10/12) month employees, eleven (11/12) month employees, twelve (12) month employees, and academic year employees shall earn one (1) seniority point of service credit in a given class for each qualifying month of employment. Part-time employees holding permanent status shall earn seniority points proportional to the time base served. In no case shall a permanent employee earn more than twelve (12) seniority points per year.” (Article 33.12)

2. “Qualifying month[s] of employment” are defined as all continuous months of service in the current classification or in any classification of equal or higher rank, regardless of whether such service was in a temporary, probationary, or permanent position.

“For the purpose of computing permanent employee seniority credit, length of service includes continuous time served on the campus as a temporary, probationary or permanent employee and is counted from the date of appointment to the current class held, consistent with provision 33.13 below plus any service in classes of equal or higher rank on the campus which has not been interrupted by a permanent separation. The term "class of equal rank" as used in this Article shall mean a class of not more than one-half (1/2) step (approximately two and one-half (2-1/2) percent) . . . below the maximum salary of the employee's current class.” (Article 33.13)

Note: Temporary and probationary employees do not earn seniority points—only permanent employees do. However, once temporary and probationary employees become permanent, any continuous prior service as a temporary or probationary employee in a classification of equal or higher rank is credited towards their seniority.

3. During certain types of leaves from Unit 4 employment, permanent employees keep earning Unit 4 seniority credit.

“All time spent in family care, military, disability, loan of an employee to another governmental agency or leave with pay status shall count toward the accumulation of seniority points.” (Article 33.18)

For additional help with calculating your seniority points, please refer to our separate publication entitled “Seniority Points: The Job You Save May Be Your Own!”

4. During other types of leave from Unit 4 employment, permanent employees do not keep earning Unit 4 seniority credit; however, such leaves also do not constitute a break in service that would extinguish Unit 4 seniority.

a. Article 33.18

“All other time spent in leave without pay status, as well as periods of suspension without pay, shall not count toward the accumulation of seniority points; however, such time shall not constitute a break in continuous service.”

b. Article 33.15

“Service in another bargaining unit does not count for seniority purposes in Unit 4, but it [also] does not count as a break in continuous service for the purposes of retaining previously earned Unit 4 seniority.”

c. Article 33.14

“[A] Unit 4 employee may be temporarily reassigned to serve in either an MPP or non-represented classification for up to twenty-four (24) months without the employee having a break in in continuous service or losing prior earned seniority points.”

5. Permanent separation from union-represented CSU employment or “temporary reappointments” to an MPP or non-represented CSU classification for more than twenty-four months constitutes a break in service that extinguishes Unit 4 seniority, even if the employee later applies for and is hired into a Unit 4 position as an outside applicant.

“After twenty-four (24) months [of “temporary reassignment: to an MMP or non-represented classification] there will be a break in continuous service for the purposes of retaining Unit 4 seniority.” (Article 33.14)

D. Permanent Employees Are Entitled to Written Forty-Five-Days Layoff Notice.

1. Article 33.23

“A permanent employee who is to be laid off shall receive notice of such layoff from the President no later than forty-five (45) days prior to the effective date of layoff.”

2. Article 33.24

“All notices of layoff shall be in writing and mailed by certified mail, return receipt requested, to the employee's last known mailing address.”

E. Laid-Off Permanent Employees Have “Transfer” and “Bumping” Rights.

1. For seven days after receiving a layoff notice, permanent employees have transfer rights into any vacancy for which they are qualified.

a. Article 33.25

“A permanent employee who has received a notice of layoff may exercise his/her right to elect transfer to any vacancy on the campus in the bargaining unit for which he/she is currently qualified. Such qualifications shall be determined in the normal manner. When two (2) or more such permanent employees elect transfer to the same vacancy in accordance with this provision, the employee to be transferred shall be selected on the basis of any of the following factors: [¶] A. specialized skills and competencies of the employee; and [¶] B. documented meritorious service of the employee.”

b. Article 33.27

“In order to elect the options in provisions 33.25 . . . above, an employee must notify the campus Human Resources Office in writing not later than seven (7) days after receiving the notice of layoff.”

2. **For seven days after receiving a layoff notice, permanent employees have “bumping” rights into any filled position in a classification in which they previously served as a permanent employee and for which they are still qualified.**

a. Article 33.26

“A permanent or probationary employee who has received a notice of layoff may elect to be transferred or demoted to any classification in which he/she has served as a permanent employee during the period preceding the layoff, provided . . . there has been no break in service[] and the employee is currently qualified for the position.”

b. Article 33.27

“In order to elect the options in provisions . . . 33.26 above, an employee must notify the campus Human Resources Office in writing not later than seven (7) days after receiving the notice of layoff.”

c. Article 33.28

“An employee replaced by the demotion or transfer of an employee who has received a notice of layoff shall have the same [transfer and bumping] rights as outlined in provisions 33.25 and 33.26 above of this Article.”

F. Laid-Off Permanent Employees Have “Reemployment” Rights for Five Years.

a. Article 38.30

“The name of a laid off permanent employee shall be entered on a reemployment list by class in order of seniority. A name may remain on a reemployment list for five (5) years. It is the obligation of the laid off person to notify the campus of address change.”

b. Article 38.31

“Position vacancies in a class for which there are names of qualified individuals on the reemployment list shall not be filled without first making an offer of reemployment to those on the list. If any individual on the reemployment list declines two (2) such offers, he/she waives his/her reemployment rights. An individual on a reemployment list may request inactive status for up to one (1) year.”

SENIORITY POINTS:

The Job You Save May Be Your Own!

One of the articles in our contract that we all hope we never need to use is Article 33, the procedures governing layoffs in Unit 4. While there's very little that APC—or any of the CSU unions—can do to prevent the CSU from deciding layoffs are necessary, we can and **will** do everything possible to ensure that all available alternatives are considered by the University before layoffs are implemented. We also can ensure that the appropriate process is followed and that employees who should not be laid off are not.

Therefore, in preparation for the **possibility** of layoffs, it's extremely important that each Unit 4 employee's seniority points are verified for accuracy. Experience has shown that, in many instances, the University's calculations are inaccurate. In such cases, employees' efforts, along with the assistance and support of APC, have sometimes resulted in the affected employees' jobs being saved. APC will do everything possible to assist Unit 4 employees in this regard, **but your personal involvement is crucial.**

APC has obtained recent calculations by the CSU of Unit 4 employees' seniority points, and we have prepared this publication to assist you in understanding how seniority points are calculated, in determining your own seniority points, and in verifying the CSU's calculations.

On the inside, you'll find excerpts from Article 33 addressing the calculation of seniority points. We hope you'll find the accompanying notes helpful in understanding the procedure. Once you've reviewed the calculation process, you'll have enough information to calculate your own seniority points using the form on the back page. **Please read the material inside before calculating your points; you will find this extremely helpful.**

The following information about your seniority points has been provided to APC by the CSU:

Employee name: _____ Classification: _____

As of _____, your status is Permanent Probationary Temporary

and you have seniority points in the above classification.

(Data for probationary employees indicates seniority points that will be earned should they attain permanent status during their current employment.)

.....
If all of the information reported above is correct, you don't need to do anything. However, if you believe that (1) your classification and/or (2) your seniority points in that classification (as of the date indicated) are incorrect, please give a copy of your completed form (on the back page) to

_____ (your APC campus steward)

no later than _____. Your steward will review your calculations with you, and then will address all Unit 4 discrepancies with Human Resources on behalf of the affected employees.

Please retain the original calculation form for your own files!

Turn the Page to Learn How to Calculate Your Seniority Points 



SENIORITY POINT CALCULATOR

Seniority Point Calculation for (name): _____

FIRST Have you worked in more than one Unit 4 classification at your **current** campus? If so, copy this page before completing the form, and use a copy for each additional classification. We strongly urge that you begin by calculating your points for your **highest** classification, and then work backward through any other classifications in which you have worked or are now working at your current campus.

A. Calculate Your Qualifying Months In This Classification:

1. Classification: _____
2. Date You Began Employment in This Classification at Your **Current** Campus: ____/____/____
 NOTE: Although not explicitly stated in the contract, seniority points may not be carried from one CSU campus to another, even if an employee held permanency in the same classification at both campuses.
3. Last Month Included In This Calculation: ____/____
4. Months for Which You Did *Not* Earn Seniority Points in This Classification:
 NOTE: These could include the first and/or last month(s) in the classification and/or months during which you were on a leave that does not qualify for seniority points (see Article 33.15).

MONTH(S)	/ YEAR	REASON
_____	/ _____	_____
_____	/ _____	_____
_____	/ _____	_____
_____	/ _____	_____
_____	/ _____	_____
5. Total Months Employed in This Classification: _____
6. (Subtract) Total Non-Qualifying Months (see #4): - _____
7. (Equals) TOTAL Qualifying Months in This Classification: = _____

B. Calculate Your Points Earned While In This Classification:

Now calculate your seniority points earned **while employed in this classification** at your current campus.

8. Total Number of **qualifying** months worked **full time**: _____ x 1.0 = _____ Points
9. Total Number of **qualifying** months worked **half time**: _____ x 0.5 = _____ Points
10. Total Number of **qualifying** months worked **quarter time**: _____ x 0.25 = _____ Points
11. Total Number of **qualifying** months worked _____ time: _____ x _____ = _____ Points
12. (Add 8, 9, 10, and 11) TOTAL Seniority Points Earned While in This Classification: _____ Total Points

C. Determine Your Total Points For This Classification:

Finally, supplement your points earned while employed in **this** classification with points earned while employed in **other equal or higher** classifications at your current campus.

13. Total Points in **Other Equal or Higher Classification(s)**: _____ + _____
 NOTE: This number is the sum of points included in #12 on **other** copies of this form.
14. (Add 12 and 13) TOTAL Seniority Points in This Classification at Current Campus: =