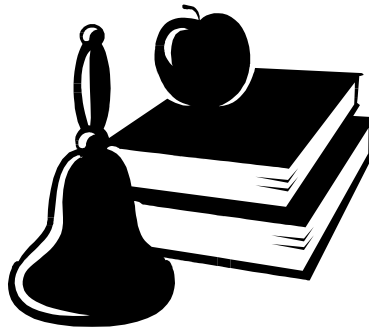
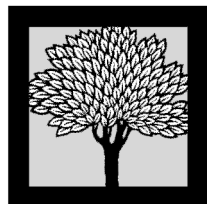


Reduction In Force



Assistance Guide For School Employees



WEA
WASHINGTON
EDUCATION
ASSOCIATION

This publication is intended only as a general guide that provides basic information for school employees who have been laid off. This booklet is not intended to provide legal advice on specific problems. A legal opinion in any particular situation will depend on the facts of your situation. Individuals need to make direct contact with the local UniServ office when they are RIFed. Your UniServ representative is prepared to assist in maintaining important timelines, providing additional advice on your rights, directing you to legal assistance, and helping you to gain as many benefits as possible during this difficult time in your career.

*Produced by the Washington Education Association • For further information, call
or write:*

***WEA • PO Box 9100 • Federal Way, Washington 98063-9100
253-941-6700 • 800-622-3393
www.washingtonea.org***

2008

Table Of Contents

	<u>Page</u>
Section 1: Know Your Legal Rights	1
Arbitration Under the Collective Bargaining Contract	1
Appeal to a Hearing Officer Under State Law	1
Direct Appeal to Court Under State Law	2
Appeal Rights of Provisional Employees	3
Supplemental Contracts.....	4
Actions You Are Responsible For If You are RIFed.....	4
Sample Letter to Superintendent.....	6
Sample Letter for Provisional Employees	7
Section 2: WEA/NEA Membership and Continued Benefits	8
Membership in WEA/NEA.....	8
Qualifications for WEA Lawyer Representation.....	8
Reserve Membership	8
Membership Services	8
WEA Joblink	8
Fringe Benefit Plans	9
WEA Select Medical Plan, Dental Plan, Managed Dental Plan, and Vision Plan	9
District Sponsored Medical Plans and Health Maintenance Organizations (HMO)	9
Disability Insurance.....	10
Term Life Insurance	10
NEA Term Life and AD&D Insurance.....	10
Credit Union Payments	10
Section 3: Unemployment Compensation	11
Section 4: Retirement	12

Section 1: Know Your Legal Rights

School districts must follow both Washington state statutes and your collective bargaining contract to carry out a reduction in force. To challenge your layoff, you may be able to file a grievance, appeal to a hearing officer or institute a court action. The best procedure or combination of procedures will vary according to the facts of each employee's situation.

A consultation with your UniServ representative will help to determine which of the following procedures, if any, are appropriate for your case. WEA lawyers will support the procedures that your local association and the WEA legal department believe will produce the best results.

Arbitration Under the Collective Bargaining Contract

The collective bargaining contract is likely to have specific rules for layoff and recall. Generally, the quickest way of enforcing rights under the contract is filing a grievance and going to arbitration under the grievance procedure in the collective bargaining agreement. The procedures for doing this are described in the contract sections covering layoffs and grievances.

To initiate a grievance, an employee or local association must usually file within a specified number of days after receiving a RIF notice. If the grievance cannot be settled during meetings attended by the employee, the Association, and district administrators, a hearing may be held before an arbitrator chosen by mutual agreement of the Association and the District. The arbitrator will then issue a binding decision. Although arbitration decisions are sometimes appealed to court, the courts rarely overturn an arbitrator's decision.

Appeal to a Hearing Officer Under State Law

Teachers and other certificated employees with continuing contracts have the right to challenge a non-renewal or layoff under RCW 28A.405.210. This statute provides that no certificated employee may be non-renewed unless he or she receives written notice of the probable cause for non-renewal on or before May 15th. However, if the State Legislature has not passed an appropriations act by May 15th, then the notice may be delayed until June 1st.

The determination must be made by the Superintendent, and the notice must specify the cause or causes for non-renewal. This notice must be served upon the employee personally, or by certified or registered mail or by leaving a copy of the notice at the employee's regular residence with some person of suitable age who is also a resident at that location.

To challenge a determination of probable cause of non-renewal, the employee must commence an appeal within ten (10) calendar days of receipt of the notice of probable cause. To commence an appeal the employee need only file a written request for a hearing with the president, chair, or secretary of the board of directors of the District. (The school district superintendent acts as “secretary” of the board of directors.) The employee may choose either an open or closed hearing.

The hearing officer will be an attorney or arbitrator chosen by mutual agreement of the employee's representative and the district. If no agreement can be reached, a court will appoint a hearing officer.

The hearing officer presides at the hearing, hears evidence, makes rulings as to the admissibility of evidence and after the close of the hearing transmits a decision to the district and the employee. An employee who receives an unsatisfactory determination from the hearing officer may appeal to court.

Often, hearings are delayed until after the start of the school year, when the District absolutely and finally decides which employees will actually be RIFed. Some districts send RIF notices in the spring to more employees than necessary. Because the District may be uncertain of its finances or staff needs until the beginning of the next school year, the District may try to keep its options open by meeting the May 15th deadline for more employees than are eventually laid off.

A certificated employee who receives a non-renewal notice due to enrollment decline or loss of revenue may request that the selection of a hearing officer be postponed until after July 25th.

Direct Appeal to Court Under State Law

Instead of requesting a hearing before a hearing officer, a continuing contract employee who receives a notice of probable cause based upon lack of sufficient funds or loss of levy election may appeal directly to court. Under RCW 28A.405.380, such a direct appeal is commenced by filing a notice of appeal with the court and serving a copy on the secretary of the school board within ten (10) calendar days after the employee receives the RIF notice.

Classified employees must usually depend on the collective bargaining agreement for protection during layoff. However, a classified employee may occasionally need to enforce the contract in court if an arbitration clause is not available. Contact your UniServ representative for further information.

Appeal Rights of Provisional Employees

State law greatly restricts the appeal rights of certificated employees on provisional contracts. Although some provisional employees have limited rights to file a grievance under the collective bargaining contract, the only appeal rights under state statutes are provided by RCW 28A.405.220.

The statute provides that no provisional employee may be non-renewed unless the employee receives a notice of non-renewal by May 15th. If the State Legislature has not passed an appropriations act by May 15th, then the notice may be delayed until June 1st.

The notice must be served upon the employee personally, or by certified or registered mail or by leaving a copy of the notice at the employee's regular residence with some person of suitable age who is also a resident at that location.

The employee will be given an opportunity for an informal meeting with the district superintendent if the employee files a request for such a meeting within ten (10) calendar days after receiving the non-renewal notice. The meeting must be held within ten days after the superintendent's receipt of such a request, and the provisional employee must be given notice of the date, time, and place of this meeting at least three days before the scheduled date. At the meeting, the employee has the opportunity to refute any facts upon which the non-renewal was based and to argue for reconsideration of the non-renewal decision.

Within ten days following the meeting, the superintendent must either reinstate the employee or submit to the district board of directors a written report stating the reasons for the recommendation of nonrenewal. The board of directors must consider the superintendent's report at the next scheduled meeting of the Board of Directors. A copy of the superintendent's report must be delivered to the employee at least three days prior to the board meeting. The board must consider any written communication which the provisional employee files with the superintendent prior to the board meeting.

The board of directors must give the provisional employee written notice of its decision within ten days after the meeting at which the superintendent's recommendation was considered. The decision of the board of directors is not subject to appeal.

Who is a provisional employee?

Washington law, not the school district, defines who is a provisional employee. The general rule is that employees in their first two years with the district are provisional. However, an employee who has previously completed at least two years of certificated employment in another school district in this state will be provisional for only one year in the new district.

A "year" under the statute does not necessarily refer to a school year, but to a 12-month period of time. Thus, if you begin employment in December of one school year, the first year of employment will be finished in December of the next school year.

If you have any doubts about whether you are a provisional employee, you should file a notice of appeal under the statute for continuing contract employees.

Supplemental Contracts

Supplemental contracts are not subject to protections of the continuing contract law. RCW 28A.405.240. Statutory appeals do not cover the loss of supplemental contracts for work outside the normal school day or the school year for students.

Actions you are responsible for if you are RIFed

1. **Contact your UniServ representative immediately upon receipt of a RIF notice and file the appeal notice within calendar 10 days.**

Do not assume that the local association or the UniServ has an accurate list of those who have been RIFed. Remember there are legal time limits that you must meet or you will forfeit your right to challenge being RIFed.

2. **Keep the UniServ office informed of your address and telephone number.**

Recall notices issued by the school district may require you to reply by a certain deadline. You may lose your right to recall if you fail to respond promptly. When you leave town for an extended period of time or when your address changes, consult with the UniServ office so that you will not miss important deadlines.

3. **Notify the UniServ office if you accept a position with a different school district.**

It is important that the UniServ office maintains an accurate list of those who are still seeking employment.

4. **Remember you may sign only one teaching contract.**

If you accept a position with a different school district and a position subsequently becomes available in your current school district, you may not accept the position in the current school district unless you are released by the other school district. It is usually prudent to accept an available position and not wait the entire summer to see if you are recalled by the

school district. You must be aware, however, that if you accept a new position, you may be unable to accept your former position if it becomes available.

5. **If you are receiving unemployment benefits and accept employment with a school district for the subsequent school year, you must notify the Unemployment Compensation Division immediately.**

Teachers and some other school employees may not receive unemployment compensation during the summer vacation if they have a “reasonable assurance” that they will be employed in a similar position during the subsequent school year. When you are RIFed, you are eligible for unemployment because you no longer have such a reasonable assurance of continued employment. However, once you gain employment for the subsequent school year, you may no longer be eligible to collect unemployment benefits.

SAMPLE LETTER TO SUPERINTENDENT
(Certificated Continuing Contract Employees Only)

Date

_____, Superintendent
_____ School District
Street Address or PO Box
_____ WA 98xxx

Dear _____:

Pursuant to 28A.405.210, I request a hearing to determine if there is a sufficient cause to nonrenew my teaching contract. I am willing to stipulate that the selection of a hearing officer be postponed until ten days following July 15, 2008, in accordance with this statute.

Please forward copies of any correspondence regarding the nonrenewal to:

_____ UniServ Council
Street Address or PO Box
_____ WA 9xxxx

and

Washington Education Association
Office of General Counsel
PO Box 9100
Federal Way WA 98063-9100

Sincerely,

SAMPLE LETTER FOR PROVISIONAL EMPLOYEES

(Date)

Mr./Ms. _____, Superintendent
_____ School District No. ____
(Address)
(City) WA 98____

Dear _____:

Pursuant to RCW 28A.405.220, I request that you reconsider your decision not to renew my contract. I also request an opportunity to meet with you within ten days after you receive this letter. Please notify me at least three days in advance of the date, time, and place of the meeting.

Sincerely,

(Member's signature)

Section 2: WEA/NEA Membership and Continued Benefits

Membership in WEA/NEA

For employees terminated at the end of the school year, membership in WEA/NEA is effective through August 31st. After that date, you may continue your membership as described below. For more information, contact WEA Membership Department at 1-800-622-3393, x-7105 or via email at member.records@washingtonea.org.

Qualifications for WEA Lawyer Representation in RIF Proceedings

If legal services are required in the fiscal year following the RIF (after Sept. 1), all RIFed active WEA/NEA members, who are not employed in another district, must maintain their NEA Active membership in order to qualify for continued WEA/NEA legal services funding.

This is a special membership category maintained by the WEA Membership Department. Eligibility is coordinated by the WEA Legal Services Department.

WEA Reserve Membership

Reserve membership is available to employees who have been active members and who lose their jobs due to reduction in force.

Membership Services for Reserve Members

The following services will be provided to Reserve WEA members:

- WEA publications (*WEA Action*)
- WEA Member Benefit Discounts
- NEA Publications and benefits

WEA Joblink

The Joblink is a year-round internet service providing a listing of job openings in Washington state public schools for teachers, administrators, classified staff and higher education employees. Job openings are posted on-line weekly, usually by Friday morning. The WEA Joblink is accessible at no charge at <http://www.washingtonea.org/joblink>.

Fringe Benefit Plans

Continuing health care coverage during a period of unemployment is important. If you have a working spouse, you might be able to obtain coverage under his/her group program. If not, then you should contact your district payroll office and/or health care carrier for information on continuing your coverage after your district coverage ends.

RIFed teachers will probably have their district-paid health care and dental coverage continued through September 30. Other (non-certificated) employees may have health care coverage continue through September 30, but in some cases, this will require employee payment of premiums for August and September. Make these arrangements with your payroll office. **The federal law, COBRA, requires that RIFed employees be allowed to self-pay for health care benefits for 18 months or until re-employed (whichever is less), provided the employee is not eligible for Medicare. The school district is required to send you a notice of your COBRA rights.**

WEA Select Medical Plan (Premera Blue Cross), Dental Plan (Washington Dental Service), Managed Dental Plan (Washington Dental Service and Willamette Dental of Washington), and Vision Plan (Premera Blue Cross and VSP)

If your district qualifies for COBRA continuation (more than 20 employees), you are eligible to self-pay for coverage for a period of up to 18 months. Your monthly premiums must be paid through the district payroll office on the same basis as a leave of absence.

If your school district's size (fewer than 20 employees) does not require COBRA continuation, arrangements have been made for participants in the WEA Medical, Dental, Managed Dental, and Vision Plans to self-pay for continued coverage under the group plan for up to 12 months. Monthly premiums would be paid through the district payroll office on a similar basis as a leave of absence.

District Sponsored (Non-WEA) Medical Plans and Health Maintenance Organizations (HMO), Dental, and Vision Plans

Continuation of medical coverage with district-sponsored plans (e.g., county medical bureaus, HMO's, etc.) will vary from district to district. If your district qualifies for COBRA, the same timeframe described above will apply. The district sponsored plan may or may not have specific reduction in force language or provisions for districts with less than 20 employees. Contact your school district payroll office, carrier, or HMO directly for information on continued coverage.

Disability Insurance

The WEA Select Voluntary Disability Plan and the WEA Select Group Long-Term Disability Plan may not be continued after termination of employment. Most disability plans do not allow for continuation of coverage after your employment has ceased.

Term Life Insurance

Term life insurance plans often allow you to convert your employer sponsored group or voluntary life plan by purchasing an individual plan within 30 days after district coverage terminates. Benefits and rates are typically different than the group plan. Availability of this coverage will vary from district to district.

NEA Term Life and AD&D Insurance

Members covered under NEA sponsored insurance plans may continue coverage as long as NEA membership is maintained.

Credit Union Payments

Many credit unions will allow continuation of loan payments or savings deposits after termination of employment. If you are unable to make full monthly payments on outstanding loans, contact the credit union immediately to make arrangements for extending payments. Failure to continue loan payments without contacting the credit union could lead to severe financial penalties.

Section 3: Unemployment Compensation

If you are laid off, you should immediately apply for unemployment compensation with the nearest office of the Washington State Employment Security Department. The Employment Security Department will determine your eligibility as well as the duration and amount of any weekly benefit payments. **Be sure to take the RIF notification letter that you received from your district when you file your claim.**

To be eligible for benefits, you must be involuntarily unemployed—through no fault of your own. Never assume that you are ineligible—check with your Employment Security office.

Even if your paychecks continue through the summer, you will probably be eligible for unemployment benefits shortly after you have finished your duties for the school year. There is a one week waiting period after the end of work before your compensation payments begin. If your claim is allowed, the weekly compensation payments begin two or three weeks after application.

Consult the telephone directory for the job service center nearest you. The listing will be under:

Washington State: Employment Security Department, Unemployment Compensation Division

The local job service centers are also listed on the Department's web site at:

<http://fortress.wa.gov/esd/portal/>

If your claim is denied or challenged, you may appeal and get a hearing. You must file within ten (10) days of denial or challenge. If you receive a denial notice, get in touch with your UniServ representative immediately.

Section 4: Retirement

Upon termination of employment, you become inactive in your retirement system: TRS, PERS or SERS*. You may apply for a refund of your contributions to the system or you may elect to rollover your contributions to another qualified retirement plan, like an IRA. In making a decision regarding withdrawal of your contribution, read carefully the pamphlets on TRS, SERS or PERS published by:

Washington State Department of Retirement Systems
P.O. Box 48380
Olympia WA 98504-8380
(360) 664-7000 or toll free (outside the Olympia area) 800-547-6657
TDD Line (for the hearing impaired)
(360) 586-5450 or toll free (outside the Olympia area) 800-377-8895
Web Site: <http://www.drs.wa.gov>

Some general information related to withdrawal of your funds should be considered.

1. You may withdraw your accumulated contributions only if you have terminated all active TRS, SERS or PERS membership service in Washington State. You may elect to transfer or rollover your contributions to another qualified retirement plan such as an IRA. Members who request a refund and contract to resume Washington public school employment before a refund payment is made, are not eligible for the refund payment.
2. In Plan 1 or Plan 2 under PERS, SERS, or TRS, you have a vested right to a retirement allowance if you have five or more years of covered service. To continue to be eligible for a retirement allowance, however, you must not withdraw your contributions. Your funds continue to receive interest annually, and you retain your membership and service credit until you reach a qualifying age.

In Plan 3, you have a vested right to a retirement allowance if you meet one of the following three conditions: (1) You have completed 10 service credit years; (2) you have completed 5 service credit years, with one of those years occurring after you attain age 54; or (3) you completed 5 service years under Plan 2 and you subsequently transferred to Plan 3. Under Plan 3, you continue to be eligible for the defined benefit portion of the retirement allowance, even if you take payment of the defined contribution funds.

* The information in this section applies to participants in the Teachers' Retirement System (TRS) (for certificated school district and certain higher education faculty), the Public Employees Retirement System (PERS) (for classified employees of school districts and state institutions of higher education), and the School Employees' Retirement System (SERS) (for classified employees and appointive or elective officials of school districts and educational service districts. Higher education faculty covered under TIAA/CREF should contact their employer's business office for information.

Do keep the Department of Retirement Systems informed of your current address, beneficiary and any name changes if you are still eligible for a retirement allowance.

3. If you terminate, withdraw your contributions and later wish to restore credit after you have re-entered service, your first and last payments are **critical**. They **must** be made on or before the dates due or the restoration cannot be completed and the service is lost. No partial restorations are possible.
4. If you are placed on the district's substitute teacher list, you may be able to receive additional service credit for days worked. If you leave your contributions with DRS, you have the option to establish credit for time worked as a substitute. If you withdraw your contributions, you would need to reestablish membership in TRS before you could qualify for additional service credit. Please contact the Department for more information about the requirements for reestablishing membership.