

Putting Square Pegs into Round Holes— Editorial on AB 438



An

BY SUZANNE SPECK

posted September 22, 2021

The Merriam-Webster dictionary defines *parity* as having the quality or state of being equal or equivalent. Equivalent is defined as being virtually identical. Service as an academic or classified employee is far from identical and yet the author and sponsors of Assembly Bill (AB) 438 have preached for parity as they seek to align the layoff processes for academic and classified employees. AB 438 has made its way through the legislative process, has been sent to Governor Gavin Newsom for signature and, if signed, will purportedly provide classified employees with layoff parity, providing the same layoff notice timelines and layoff procedures provided to academic employees. The best way to describe the impracticality of the bill is this—AB 438 attempts to put square pegs into round holes.

There are countless number of differences between academic and classified employment and the rights and privileges provided to each group. Rights and protections related to employee leaves, vacations, holidays, work year, evaluations, probationary period, reemployment, among others are dramatically different, and in some cases non-existent for one group or the other. For example, academic employees work a positive calendar, meaning they only get paid for the days they work, and they do not receive paid vacation. Classified employees, a majority of whom work a 260-day calendar, earn and accrue paid vacation days. In fact, classified employees have a number of layoff rights not afforded to academic employees in the more restrictive academic layoff process, such as a community college district (CCD) must negotiate reducing a classified position from eight hours to six hours whereas the CCD has broad authority to reduce an academic employee in hours worked per day. Does that mean that one group has been treated unfairly? No, it just means that the nature of their employment is different and what is provided to one group is not reasonable for the other based on the nature of their service.

To be clear, I do not, nor would I, advocate for unfair treatment of classified employees; quite the opposite. But if fair was the same, if parity means virtually identical, should we strip classified employees of existing layoff rights and privileges provided to them under the Education Code because they aren't provided to academic employees? For example, should we take away from classified employees, who have served in multiple classifications (e.g., business office assistant, accounting assistant, payroll technician, senior budget analyst), their right to choose which classification to bump into and instead make that decision for them since academic employees can be reassigned by the CCD to any position which their seniority and qualifications entitle them to? That would be similarly impractical.

We implore the Governor to give serious consideration to vetoing AB 438 in recognition of the significant and costly operational and financial impacts it will have on CCDs should it be signed into law and in recognition of the impracticality of providing parity to employee groups that are far from the same.

Why are we so concerned today about layoff rules when nearly every CCD is struggling to fill existing classified vacancies? Despite the one-time state and federal funds districts have received, most have struggled with declining enrollment due to the pandemic, the effects of which has been held off only temporarily through the Student Centered Funding Formula hold harmless or the emergency conditions protections. That means that CCDs are soon to be staring down the barrel of academic and classified layoffs. Keep in mind, that whether a position is filled or vacant, the CCD must still initiate a layoff to eliminate and/or reduce the position.

There will be no shortage of insurmountable obstacles to clear. In particular, and perhaps most importantly, CCDs will need to contemplate their ability to execute an academic and classified layoff simultaneously.

Given the timeline for issuing preliminary notices, notices of defense, discovery, and layoff hearings, will it be necessary to stagger the timeline? If signed into law, AB 438, like existing academic statutes, will require the issuance of classified layoff notices no later than March 15 but there is no prohibition on issuing them earlier. Should you initiate classified layoffs earlier than March 15 in 2022? And, in the case of classified layoffs, in addition to the hearing, you will need to allow time for the bumping that always accompanies a classified layoff. Classified employees with permanent status will still have the right to displace the least senior employees in any classification in which they've held permanency status—which are numerous for many classified employees. A CCD will need to notice the employee whose position is being eliminated or reduced and more classified employees based on their previously held positions—an unintended, but necessary over noticing of classified layoffs. To help illustrate the scope of this operational, and for the employees, emotional impact, in a previous district, I had the misfortune of reducing and/or eliminating 180 classified positions which resulted in more than 240 classified employees receiving a layoff notice.

Will it be possible for the CCD to manage the bumping process between May 7 when the proposed decision of the Administrative Law Judge is likely to be received and issuance of the final notice of layoff before May 15? Based on my experience executing numerous layoffs, I don't believe it can. For that reason, CCDs will need to contemplate to what extent they should take a layoff resolution to the board before March 15 so that layoff notices can be issued, a hearing request submitted to the Office of Administrative Hearing, a hearing held, a decision issued, classified bumping/displacement meetings held, and final notices of layoff sent before May 15.

Like you, we have more questions than answers at this point and any single question is enough to make our heads explode. One thing is certain, the process is sure to generate a lot of business for labor attorneys in the state so CCDs would be wise to increase their budget for legal fees when building their 2022–23 budgets!

In closing, should AB 438 be signed by Governor Newsom, we will be working to identify as many operational impacts as we can in the months ahead, develop helpful resources, and be available to offer operational advice—but we sincerely hope that we won't need to as we make our final plea to the Governor to veto AB 438.