

## Layoffs Then and Now

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On Tuesday May 14 the Lab Public Affairs Office published a message to all employees on the jury verdict reached the previous Friday in the lawsuit stemming from the 2008 layoffs. In short, the message transformed the LLNS defeat into a declaration of victory: even though the jury found in favor of the plaintiffs --- the laid-off employees who were suing the Lab for wrongful termination --- these plaintiffs did not get everything they asked for, LLNS did no wrong, and besides, DOE made them do it. LLNS made it clear that an appeal will be filed and the legal battle is still on.

What the LLNS message lacks, among other things, is context. It has been five years now since “Black Wednesday and Thursday”, people have come and gone since then, and now we are entering another critical period in the Lab’s history when involuntary layoffs may strike again. (Although Director Albright gave assurances that LLNS did not anticipate a site-wide layoff following the voluntary separation period, he was careful to leave open the possibility of quiet layoffs at the division or group level—a right that management asserted by fiat in the newly minted Personnel Policies and Procedures Manual.

(<http://www.upte.org/spse/Parney20130301finalns.pdf>) So, we feel it is worthwhile to provide the missing context, and briefly review the events that led to this jury verdict in the largest age-discrimination lawsuit in the entire history of the DOE labs.

We begin the story just before the transition from UC to LLNS management in October 2007. At that time transitioning employees were required to decide between TCP-1 and TCP-2, that is, what to do with their UC pension funds. Lab management told employees at the time that there were “no plans” for layoffs, obfuscating the fact that one of the performance goals in the new management contract between DOE and LLNS was for LLNS to reduce the size of the Lab workforce by 2-5% in the first year of the contract<sup>1</sup>. This was only the first in a long list of unconscionable actions, obfuscations, and faulty decision making taken by LLNS management with respect to the 2008 layoffs. A number of people told us at SPSE-UPTE that, had they known there were to be layoffs so soon after the transition they may have made a different choice between TCP-1 and TCP-2.

The layoff itself was done in three phases. Phase I targeted flex-term employees, and was carried out --- in our view --- in violation of federal law. Sections 3161 and 3163 of the National Defense Authorization Act of 1993 establishes the terms under which layoffs at the NNSA labs

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<sup>1</sup> Yes, this goal is stated in the contract, but you really have to look hard to find it, near the end of a Table in an appendix [Prime Contract, Part III, Section J, Appendix F, Attachment 1 (FY2008 Performance Evaluation Plan, LLNL Performance Objectives), page 37.]

are to be done, requiring LLNS to establish mitigation measures (preferential rehire, re-training, re-placement, etc.) for *all* employees, and sufficient notification to try to lessen the economic impact of layoffs on the surrounding communities. In other words, federal law does not recognize the distinction the Lab makes between flex-term and career indefinite employees.<sup>2</sup> None of the mitigation or advance warning measures required by federal and state law were taken in the case of flex-term employees. They were simply cut loose with no advance warning and given two weeks of pay in lieu of notice.<sup>3</sup>

Phase II was the voluntary separation program for career indefinite employees. Several actions taken by LLNS in constructing this program, and the involuntary layoff of career indefinite employees that followed in Phase III, were what led to the lawsuit. The first of these was the large number of exclusions. Basically, anyone who charged time to a NIF account was excluded from both the voluntary separation and the involuntary layoff. This exclusion encompassed nearly 40% of the workforce, which meant that only about 60% of employees would have to bear the entire burden of the layoff. Then, LLNS was unable (or unwilling) to get DOE approval for the same incentive deal that LANL got the year before to make volunteering for separation a more attractive option than risking an involuntary layoff. So, it should have been no surprise that LANS got enough people to volunteer. Conversely with its comparatively meager offer, LLNS fell short of its target for takers.

Another unconscionable action was circumventing Lab policy in defining layoff units. General layoff units were set by the Director, as required by law and policy: that is, the Director decided how many electrical engineers, for example, were to be laid off Lab-wide, up to some cap. But then lower-level managers were given authority that was all too easily abused to “slice and dice” the larger layoff units into smaller arbitrary “business units”, and then administratively move people between different “business units” as a way to circumvent the seniority rules governing how layoffs are to be conducted.<sup>4</sup> At the time of the voluntary separation program, an employee could find out what “business unit” he or she was in, and the seniority order in that particular unit for his or her job classification, as well as what the overall cap was for his/her job classification. The employee could only find this out, though, if he or she asked;

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<sup>2</sup> UC policy also did not have this distinction; the flex-term employment category was invented by LLNL’s Staff Relations Division in the early 1990s. It has been and still is routinely misused to allow managers to hire at-will employees into what are really career indefinite jobs.

<sup>3</sup> Nineteen flex-term employees in the SPSE-UPTE Skilled Trades bargaining unit were let go at that time also, without LLNS first bargaining the terms of their layoff with the union, as was required under federal labor law. An Unfair Labor Practice charge filed by SPSE-UPTE was later settled, with these 19 employees getting some separation pay, the only laid-off flex-term employees to get this.

<sup>4</sup> The layoff rules are that within a particular three-digit job classification, layoff is to be done in order of inverse seniority. This rule applied to all employees except for what were then the 200-series employees (scientists and engineers). For 200-series employees, pre-defined Skills, Knowledge, and Abilities (SKAs) were used to define layoff units, with inverse seniority applied within each SKA layoff unit.

management never supplied this information to employees automatically, and never let employees know they could get it if they asked for it. Thus, many employees were unnecessarily in the dark about their chances to be selected for involuntary layoff at the time they were making a decision about voluntary separation.

The information about business units, though, was not necessarily helpful to those employees who by chance obtained it, because the next unconscionable action that LLNS took was to allow lower-level managers to change many of the business units after the voluntary separation program was concluded and before the involuntary layoffs, and then refuse to supply this information to employees even when they asked. It was in this way that many older employees with a lot of seniority were arbitrarily placed in business units in which there were no other employees with the same job classification. This is one reason there was such a large fraction of experienced, older employees laid off in 2008, leading directly to the lawsuit.

Finally, LLNS compounded this long series of outrages with a final outrage: instead of treating employees who were selected for layoff with dignity and respect, as the loyal and dedicated employees they were, on that “Black Wednesday and Thursday” in May 2008 several hundred employees were summarily dismissed, given one-hour to pack up their belongings while being watched, had their badges confiscated, and then were “perp-walked” out the gate like common criminals.<sup>5</sup>

The way the layoff in 2008 was conducted from start to finish was inexcusable. The morale crash at the Lab was deep and profound, a crash from which the Lab has yet to fully recover.

We wonder if LLNS management learned anything from the 2008 experience that will make the next layoff different. Their sanguine commentary on the layoff lawsuit is not encouraging.

Having said this, however, we do commend the new Director for some recent decisions. The SPSE-UPTE Skilled Trades bargaining unit voted overwhelmingly to be included in the temporary 10% pay reduction program in lieu of layoffs. We commend the Director for his decision to apply this program to everyone equally, including himself, as a way to deal with the sequestration without having to do layoffs. We also commend him for his decision to structure the Voluntary Separation Program so that there are no exclusions and no caps for career indefinite employees. If he finds it necessary, later, to proceed with involuntary layoffs, we hope that he will heed the lessons from the 2008 layoff and the verdict in the lawsuit, and not repeat the unconscionable actions and faulty decisions that were made then.

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<sup>5</sup> There were rumors at the time --- impossible for us to confirm --- that LLNS conducted the dismissals in this way because they wanted to prevent acts of sabotage (destruction of government property, for example) by disgruntled laid-off employees. We even heard that some senior managers had justified their actions by claiming that SPSE-UPTE was advocating acts of sabotage. This damnable lie says a lot about the attitude some senior managers had towards employees and the union that represents and advocates for them.

Finally, we urge that he forgo appeals in the layoff lawsuit, and work to achieve a fair settlement of the claims of the remaining plaintiffs. Such an action would go a long way, at long last, to promote the healing process at the Lab, and close the book on the “Black Wednesday and Thursday” trauma.

**For nearly four decades we in SPSE have worked to make our Laboratory a better place to work by helping fellow employees and demanding fairness and transparency from Lab management. Our effort has never before been more important, and if you share this belief please go to <http://spse.org> and click on “Join Us.”**