LEGISLATIVE RESEARCH COUNCIL

Report Relative to

DECLINING ENROLLMENTS AND THE REDUCTION OF SCHOOL PERSONNEL

FOR SUMMARY, SEE TEXT IN BOLD FACE TYPE

April 30, 1981
Ordered, That the Legislative Research Council is hereby authorized and directed to make a study and investigation relative to "reduction in force" provisions in school personnel collective bargaining contracts and other arrangements controlling the redeployment of personnel resulting from reduced student population in the public school system. Said Council shall file its factual and statistical report hereunder with the Clerk of the House not later than the last Wednesday of February in the year nineteen hundred and eighty-one.

Adopted:
By the House of Representatives, May 21, 1980
By the Senate, as amended, June 4, 1980
House concurred in amendment, June 9, 1980

(Unnumbered House Order of 1981)

Ordered, That the time be extended to the fourth Wednesday of April in the current year wherein the Legislative Research Council is required to report on its investigations and studies relative to (a) the feasibility of establishing an administrative court system by the Commonwealth (see House, No. 6675 of 1980 and unnumbered House order of February 26, 1981), and (b) the operation of "reduction in force" provisions in school collective bargaining agreements and other arrangements governing the redeployment of affected school employees due to reduced pupil enrollments (see House, No. 6562 of 1980).

Adopted:
By the House of Representatives, March 23, 1981
By the Senate, in concurrence, March 30, 1981
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To the Honorable Senate and House of Representatives:

LADIES AND GENTLEMEN: — In compliance with the legislative directive in House, No. 6562 of 1980, the Legislative Research Council submits herewith a report prepared by the Legislative Research Bureau relative to the dismissal of public school teachers and other personnel due to reduced pupil enrollments.

The Legislative Research Bureau is restricted by statute to "statistical research and fact-finding." Hence, this report contains only factual material without recommendations or legislative proposals by that Bureau. It does not necessarily reflect the opinions of the undersigned members of the Legislative Research Council.

Respectfully submitted,

MEMBERS OF THE LEGISLATIVE RESEARCH COUNCIL

Sen. ANNA P. BUCKLEY of Plymouth, Chairman
Rep. MICHAEL J. LOMBARDI of Cambridge, House Chairman
Sen. JOSEPH B. WALSH of Suffolk
Sen. JOHN F. PARKER of Bristol
Sen. ROBERT A. HALL of Worcester
Rep. WILLIAM P. NAGLE, Jr. of Northampton
Rep. IRIS K. HOLLAND of Longmeadow
Rep. SHERMAN W. SALTMARSH, Jr. of Winchester
Rep. BRUCE N. FREEMAN of Chelmsford
Rep. CHARLES N. DECAS of Wareham
To the Members of the Legislative Research Council:

LADIES AND GENTLEMEN: — House, No. 6562 of 1980 directed the Legislative Research Council to conduct a study of (a) "Reduction in Force" provisions in school personnel collective bargaining contracts, and (b) the redeployment of personnel resulting from reduced student population in the public school system.

The Legislative Research Bureau submits herewith such a report. Its scope and content have been determined by statutory provisions which limit Bureau output to factual reports without recommendations. The preparation of this report was the primary responsibility of Frederick Cronk of the Bureau staff.

Respectfully submitted,

DANIEL M. O'SULLIVAN, Director
Legislative Research Bureau
The Commonwealth of Massachusetts

DECLINING ENROLLMENT AND THE REDUCTION IN SCHOOL PERSONNEL

SUMMARY OF REPORT

In the light of both sharp declines in student population and fiscal constraint, the Legislature directed the Legislative Research Council to undertake a study and investigation relative to "Reduction in Force" (RIF) provisions in school personnel collective bargaining contracts; and the redeployment of school personnel affected by RIF situations. The study order was introduced by Representative Michael J. Lombardi, House Chairman of the Council.

Decreasing Enrollments in Public Schools

From 1950 through 1970, schools and school enrollments experienced consistent growth patterns. From 1971, the peak enrollment year, to 1979, the student population in public elementary and secondary education throughout the nation declined by almost 4.5 million.

In Massachusetts, public school enrollment peaked in the 1973-74 school year. Between 1973-74 and 1978-79, enrollment declined 10.9 percent and the projected decline in the five years between 1979-80 and 1983-84 is another 10.8 percent. Overall, the estimated percentage decline from 1973-74 to 1983-84 will be 21.8 percent.

Fluctuations in the size of the teaching staff in public elementary and secondary schools tend to follow enrollment changes by a few years. Although enrollments peaked in 1971, the total number of classroom teachers continued to rise slightly each year until 1978. The number is expected to decline to 2,084,000 in 1983. In the 80's, reduced staffs will be more prominent on the high school level than in the elementary system.

Effects of Declining Enrollments in Massachusetts

The reduction in births and the subsequent decreased enrollments are forcing consideration of school reorganization plans, redistricting,
staff reduction and potential reductions in school programs. Sagging enrollments have closed 250 schools and reduced the number of Bay State teachers by 4,000 in the last four years, according to some sources. With the impact of Proposition 2 1/2, teacher association leaders estimate that 13,000 of the state’s 70,000 teachers could be terminated if state aid fails to offset the property tax rollbacks mandated by this law. It is estimated that for every three of those teachers fired, a fourth must be laid off to pay unemployment benefits for the first three.

In most states, including Massachusetts, RIF provisions controlling teacher dismissal are not defined by statute but are left to collective bargaining. Of the 173 Massachusetts school officials who responded to a Bureau questionnaire, 142 reported that their contracts with teachers and other professional staff contained RIF clauses. Seniority is by far the more common procedure used to determine teacher layoffs. Other criteria include (1) merit seniority, (2) experience, (3) certification and additional training, (4) performance, (5) evaluation or (6) combinations of these indices. Seniority as a discharge basis is criticized on the grounds that (1) it infringes on the school administrator’s responsibility to maintain a highly qualified teaching force; (2) it tends to erode the gains made by women and minorities through affirmative action policies; and (3) it discriminates against youthful staff who can offer innovations in educational philosophies and teaching techniques.

Nonacademic personnel, e.g., clerks, laborers, truck drivers, etc., employed by the public school systems in the commonwealth’s 39 cities are generally Civil Service employees. Their continued incumbency in the face of potential layoffs is controlled by statutory provisions ordaining seniority within Civil Service as the grounds for dismissal. For nonprofessional employees in the towns’ public school systems, their dismissal is generally regulated by the contract and provisions of Chapter 150E of the General Laws.

To keep the number of dismissed personnel to a minimum, various approaches have been suggested — part-time teaching, leaves, residency requirements, hiring freezes, early retirement incentives and certification in various disciplines. The latter garners strong support among school administrators as it provides them greater flexibility in effectuating transfers of qualified personnel. Hiring moratoriums or freezes generate only limited interest or support since they tend to guarantee
the continued employment of higher-paid staff and foreclose opportunities for younger professionals, women and minorities. Relative to early retirement incentives, such inducements were outlawed by the General Court in 1979.

Recall of teachers and other professionals in the system is generally determined by seniority, as defined in the contract, since only 13 states (excluding Massachusetts) address the recall rights of dismissed employees. Under contract provisions, teachers who are dismissed because of reductions in force are considered on an involuntary leave of absence. During a time span of generally one to two years from the beginning of involuntary leave, they are entitled to any position that becomes available in the bargaining unit, for which they are qualified and certified to teach.

Redeployment of RIF’d Teachers

State agencies and private industry in Massachusetts have undertaken both individual and joint efforts in assisting displaced public employees in making alternative career decisions. Job Matching Centers within the Massachusetts Division of Employment Security are arranging special job placement events throughout the year in cooperation with local Chambers of Commerce and other employer groups. Such events include Job Fair programs which provide opportunities to the unemployed person to meet with groups of employers at one location, thereby maximizing the possibility of job placement.

The Massachusetts Teachers Association, the State Department of Education, and the High Technology Council have joined in the establishment of retraining programs for dismissed educators, particularly in the field of computer science. On June 30, 1980, the first such program in the nation commenced, with a total enrollment of 34 recently laid-off teachers. The 26 week course taught by experts from DATA Inc. of Burlington was designed to meet specific current employment needs of the state’s high technology firms. Of the 34 original entrants in the program, 32 successfully completed the course, and 30 have been placed in entry level computer programming positions, with earnings averaging $18,500 annually.

Funded by a $99,000 federal occupational education grant, a second computer course has been organized in which 34 more ex-teachers are currently being retrained in the South Middlesex Regional Vocational Technical School District.
On March 24, 1981, the Massachusetts Board of Education approved four proposals geared to retrain teachers displaced as the result of declining enrollments and fiscal constraints. Funds to support such programs are disbursed under Public Law 94-482, the Federal Vocational Education Act as amended. The courses are to commence on or about June 15, 1981.
The Commonwealth of Massachusetts

DECLINING ENROLLMENTS AND THE REDUCTION OF SCHOOL PERSONNEL

CHAPTER I.
INTRODUCTION

Origin and Scope of Study

House, No. 6562 of 1980, as amended, directed the Legislative Research Council to investigate and make a study relative to (1) "Reduction in Force" provisions in school personnel collective bargaining contracts; and (2) other arrangements controlling the redeployment of personnel resulting from reduced student population in the public school system. That order introduced by Representative Michael J. Lombardi of Cambridge, House Chairman of the Council, was adopted by the House of Representatives on May 21, 1980 and adopted, as amended, by the Senate on June 4 with concurrence by the House of Representatives in the amendment occurring on June 9, 1980. The study order reflects an interest on the part of the Legislature relative to collective bargaining provisions in school contracts which clarify the rights of school personnel in the wake of sharp declines in student population and fiscal constraint, as well as the current options that exist for affected personnel within and outside of the public school community.

The report traces the historical evolution of collective bargaining in the public sector citing in this regard the controlling Executive Orders which proved to be milestones in granting government employees a voice in the determination of their working conditions. Current national trends in enrollment, as well as state enrollment trends, are examined in respect to their adverse effects on staffing patterns and the management of school functions. The "Reduction in Force" language contained in a random sampling of city and town collective bargaining contracts is reviewed, along with the numerous state's statutes which define procedures used in determining the order in which teachers are dismissed due to enrollment decline or fiscal exigency. The report...
concludes with an analysis of the teacher lay-off problem and the need for programs to aid this increasing number of unemployed professionals in adjusting to alternative careers. In response to this problem, the document cites potential avenues of assistance for displaced school personnel, such as services and benefits furnished by the Department of Employment Security (DES) and insight into current efforts on behalf of the Massachusetts Department of Education and private industry to establish alternative career retraining programs throughout the state. Particular focus is given to an innovative (first in the nation) program formulated on behalf of the Massachusetts Department of Education, the Massachusetts Teachers Association and the Massachusetts high technology industry to train newly laid-off teachers in the field of computer programming. Recently approved career retraining proposals designed to commence on or before June 15, 1981 are also included.

**Historical Development of Collective Bargaining in the Public Sector**

Labor-management disputes over working conditions date back to the early 1700's. In the early 1800's, craft workers in shipyards struck over hours and economic issues. On management's side, weapons such as strike injunctions and "yellow-dog" contracts, in which employees agreed not to become union members, were widely used to discourage organized efforts to gain benefits. In the 1900's, major legislative developments began to significantly shape the present state of labor relations in both the private and public sectors.

By the early 1900's, a variety of federal and municipal employees had organized in hopes of furthering their common interest. In reaction to vigorous lobbying efforts, particularly by federal postal clerks, President Theodore Roosevelt issued a series of "gag" rules from 1902 to 1906 forbidding federal employees from seeking wage and hour legislation, except through channels within the organization by which they were employed. Postal clerks were especially criticized for having gone over the Postmaster General in their attempts to persuade Congress to pass legislation in their favor. In 1913, however, the Lloyd-LaFollette Act abolished the "gag" rules, granting federal employees the right to organize and to lobby for their own benefit, but not to strike or belong to an organization that supported the right to strike.
After 1935, private sector employees gained significant advances in collective bargaining via the National Labor Relations Act (Wagner Act). That statute granted workers the right to organize or refrain from such activity; imposed an obligation on employers to engage in collective bargaining with employees if a majority of them evidenced such a desire; established the National Labor Relations Board whose duties included certification of union representatives; and prohibited certain practices which had previously hindered the growth of collective bargaining. The statute, however, did not apply to local, state and federal employees.

Executive Order 10988 issued in 1962 by President John F. Kennedy proved to be a milestone in granting government employees a voice in the determination of working conditions. The order clearly recognized the right of federal employees to join, or refrain from joining, any employee organization and to negotiate with management representatives of their respective agencies, although it was restrictive in the scope of bargaining it allowed. The specific provisions of Executive Order 10988 and Executive Order 11491 issued by President Richard M. Nixon in 1969 were not the most important consideration; the significance of the orders was that they eliminated resistance and actually encouraged the development of public sector collective bargaining at all government levels.

To a certain extent, the development of public sector bargaining followed the same patterns as bargaining in the private sector. There are, however, significant differences especially with respect to the philosophical objections raised to collective bargaining as a viable means of determining public employee terms and conditions of employment. In the private sector, collective bargaining was challenged on constitutional grounds, opponents charging it violated the due process clause of the Fifth Amendment by restraining freedom of contract and an employer’s right to hire and discharge employees. In the case of government employees, the arguments against collective bargaining took a different tack. In essence, the case against collective bargaining was grounded on political theory — more precisely, the concern of state sovereignty. To grant public employees the right to organize and, if necessary, to strike, the sovereignty argument went, would be inappropriate because their use “would represent a deroga-
tion of sovereignty and an attack on the authority of the state."¹ Opponents argued that the government, and the government alone, "must possess the right of final determination in all its employment relations."²

Sovereignty notwithstanding, there always has been a gap between government claims in theory and employment relations in practice. Thus, government employees have long lobbied for legislation beneficial to their interest, engaged in negotiations akin to bargaining, and on occasion, have resorted to strike action. At the same time, the right of public employees to do all these things has been "seriously challenged as running counter to the nature of the state."³

Collective Bargaining in Massachusetts

Through the years, public employees in Massachusetts have acquired the right to organize and bargain with their employers in much the same fashion as employees in private business. Like most employees in the public sector, they do not possess the ultimate powers of employees in the private sector because by law, state, county and municipal employees are prohibited from engaging in strikes. While private sector employees may use the strike — or threat to strike — to gain concessions from employers, public employees must rely on an effective impasse procedure to break deadlocks in bargaining.

The current rights of Massachusetts employees have evolved from a series of legislative actions dating from 1958. In 1969, a special commission chaired by Senator George G. Mendonca was appointed to study collective bargaining in Massachusetts. The recommendations of the Mendonca Commission ultimately resulted in the passage of legislation, Chapter 1078 of 1973, which inserted Chapter 150E in the Massachusetts General Laws. The new law repealed previous state and municipal collective bargaining laws and established the present comprehensive collective bargaining law for public employees.

Collective Bargaining in Education

Collective bargaining is concerned with mediating differences between employers and employees. It is more than a procedure for giving teachers a chance to be consulted on school affairs. Collective bargain-

² Ibid.
³ Ibid.
ing reduces and, in some areas, eliminates the decision-making power normally assigned to administrators and boards of education. This is the principal reason why collective bargaining is so often resisted by boards of education and administrators.1

The difference between the traditional approach to school personnel administration and the impact of collective bargaining is marked. With the traditional approach, the school board could act unilaterally without consultation with its employees, allow only one-way communication, always have the last word, lack good faith, ignore differences between policy and practice, and retain a power relationship that is unilateral, paternalistic and authoritarian. Under collective bargaining, however, the board is required to consult with employees, communication is two-way, impasse procedures are provided, good faith bargaining is mandated, constant dialogue requires the board to discuss divergencies between policy and practice, and the power relationship is bilateral, cooperative and democratic. Thus, collective bargaining increases the power of teachers and other educational specialists in the administration of a school system.

**Distinguishing Dismissal for Cause from Reduction in Force**

Reduction in Force (RIF) is a relatively new addition to the vocabulary of teachers and school personnel, having first achieved common usage in the 1970’s. The term, more commonly associated with lay-off in labor terms, refers to a cutback of jobs for teachers.

Apart from the power of a school committee to dismiss a tenured teacher under certain circumstances, such as when there is a reduction in pupil enrollment, the Massachusetts General laws sets five circumstances under which a teacher may be dismissed: (1) inefficiency, (2) incapacity, (3) conduct unbecoming a teacher, (4) insubordination or (5) other good cause.2

No cases have been decided by the Supreme Judicial Court defining inefficiency, incapacity or insubordination of a teacher. However, a *MacKenzie v. School Committee of Ipswich*,3 where the issue involved a profane remark made by a teacher to the superintendent of schools at a school committee meeting, the Supreme Judicial Court held that the remark directed to the superintendent constituted “conduct unbecom-

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2. G.L.c. 71, s. 42.
ing a teacher.” The condition of “other good cause” is derived from the catchall provision in Chapter 71, section 42 which grants local school committees discretionary authority to eliminate positions and staff. In a 1936 decision, the court defined the meaning of “other good cause” as follows:

“GOOD CAUSE” for dismissal in a statute of this kind is by no means limited to some form of inefficiency or of misconduct on the part of the person dismissed. Such matters are amply covered by the words which precede “good cause.” Good cause includes any ground which is put forward by the committee in good faith and which is not arbitrary, irrational, unreasonable, or irrelevant to the committee’s task of building up and maintaining an efficient school system.¹

In a later case, Nutter v. School Committee of Lowell, four tenured guidance counselors brought an action challenging the school committee’s decision to eliminate their positions. Ruling against the plaintiff counselors, the Massachusetts Court of Appeals held under the Rinaldo formulation that “good cause” as used in the statute included good faith, reasons of economy, reorganization or educational policy.² Citing Nutter, the same court subsequently held that a school committee possessed the power under the “good cause” provision to abolish a physical education teacher’s position on the basis of economy.³

When a school committee seeks to terminate employment for one of the above-mentioned statutory reasons, it must follow specific procedures to safeguard constitutional and statutory rights. Discharge because of necessary reduction in force, on the other hand, is brought about not by the teacher’s personal failure but by external factors, such as reduced enrollment, financial exigencies, low faculty turnover and changes in student course and program preferences. The procedural due process requirements for a RIF are much less demanding than for a “statutory” dismissal because no charge has been made against the teacher. However, board regulations or collective bargaining contracts may require a high level of procedural safeguards before an employee is laid off.⁴

CHAPTER II.
DECREASING STUDENT ENROLLMENT
AND TEACHER DEMAND

National Enrollment Trends in Elementary and Secondary Schools

From 1950 through 1970, schools and school enrollment experienced consistent growth patterns. The percentage of youth attending schools reflected a steady increase; the length of the school year had been extended; and the number of years the average person attended school had grown consistently. In 1959, the expansion was especially acute, as the post-war baby boom reached the schools.¹

Table 1.
Regular Elementary/Secondary Day School Enrollment,
by Grade Level and Control of School: Fall 1971 to Fall 1989
(In Thousands)

<table>
<thead>
<tr>
<th>Fall of Year</th>
<th>K-12</th>
<th>Total¹</th>
<th>9-12</th>
<th>K-12</th>
<th>Public K-8</th>
<th>9-12</th>
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<tbody>
<tr>
<td>1971</td>
<td>51,181</td>
<td>36,065</td>
<td>15,116</td>
<td>46,081</td>
<td>32,265</td>
<td>13,816</td>
</tr>
<tr>
<td>1972</td>
<td>50,744</td>
<td>35,531</td>
<td>15,213</td>
<td>45,744</td>
<td>31,831</td>
<td>13,913</td>
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<tr>
<td>1973</td>
<td>50,329</td>
<td>34,953</td>
<td>15,377</td>
<td>45,429</td>
<td>31,353</td>
<td>14,077</td>
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<tr>
<td>1974</td>
<td>50,053</td>
<td>34,521</td>
<td>15,532</td>
<td>45,053</td>
<td>30,921</td>
<td>14,132</td>
</tr>
<tr>
<td>1975</td>
<td>49,781</td>
<td>34,087</td>
<td>15,704</td>
<td>44,791</td>
<td>30,487</td>
<td>14,304</td>
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<tr>
<td>1976</td>
<td>49,316</td>
<td>33,606</td>
<td>15,710</td>
<td>44,316</td>
<td>30,006</td>
<td>14,310</td>
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<tr>
<td>1977</td>
<td>48,577</td>
<td>32,936</td>
<td>15,640</td>
<td>43,577</td>
<td>29,336</td>
<td>14,240</td>
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<tr>
<td>1978</td>
<td>47,611</td>
<td>32,055</td>
<td>15,556</td>
<td>42,611</td>
<td>28,455</td>
<td>14,156</td>
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<tr>
<td>1979</td>
<td>46,657</td>
<td>31,422</td>
<td>15,235</td>
<td>41,557</td>
<td>27,822</td>
<td>13,735</td>
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<td>1980</td>
<td>45,796</td>
<td>30,989</td>
<td>14,807</td>
<td>40,696</td>
<td>27,389</td>
<td>13,307</td>
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<td>1981</td>
<td>44,958</td>
<td>30,637</td>
<td>14,321</td>
<td>39,858</td>
<td>27,037</td>
<td>12,821</td>
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<td>1982</td>
<td>44,111</td>
<td>30,395</td>
<td>13,716</td>
<td>39,111</td>
<td>26,795</td>
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<td>1983</td>
<td>43,766</td>
<td>30,301</td>
<td>13,465</td>
<td>38,666</td>
<td>26,601</td>
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<td>1984</td>
<td>43,591</td>
<td>30,128</td>
<td>13,463</td>
<td>38,491</td>
<td>26,428</td>
<td>12,063</td>
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<td>1985</td>
<td>43,748</td>
<td>30,248</td>
<td>13,500</td>
<td>38,548</td>
<td>26,448</td>
<td>12,100</td>
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<td>1986</td>
<td>44,080</td>
<td>30,651</td>
<td>13,429</td>
<td>38,780</td>
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<td>11,929</td>
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<td>1987</td>
<td>44,473</td>
<td>31,395</td>
<td>13,078</td>
<td>39,073</td>
<td>27,495</td>
<td>11,570</td>
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<td>1988</td>
<td>44,074</td>
<td>32,259</td>
<td>12,715</td>
<td>39,374</td>
<td>28,259</td>
<td>11,115</td>
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<td>1989</td>
<td>45,393</td>
<td>33,093</td>
<td>12,300</td>
<td>39,793</td>
<td>28,993</td>
<td>10,800</td>
</tr>
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</table>

¹ Includes enrollments in private and parochial schools.


Three full decades after 1950 conditions are quite different. From 1971, the peak enrollment year, to 1979, the student population in elementary and secondary education declined by almost 4.5 million.

Between 1979 and 1984, the lowest enrollment year projected, the number of students is expected to decline by another three million. Thus, from the highest enrollment year to the lowest year, a 15 percent reduction in enrollment is anticipated.

An increase in enrollment after 1984 is expected as larger groups of young children enter elementary school. The increased size in the elementary school age population is assumed because of the growing number of women of child bearing age. Even if the birth rate falls below its current low level, some growth in the number of births is still projected because of the absolute numbers of women of child bearing age. Any growth in births for the next few years will produce an increase in enrollment in the 1980's. This growth of school population, however, is expected to be gradual and to fall short of previous enrollment highs throughout the decade.

<table>
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<tr>
<th>Birth Year</th>
<th>Year Entering School</th>
<th>Live Births</th>
<th>Birth Rate</th>
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<td>1976</td>
<td>1982</td>
<td>3,165,000</td>
<td>14.7</td>
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<tr>
<td>1977</td>
<td>1983</td>
<td>3,386,550</td>
<td>15.3</td>
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<tr>
<td>1978</td>
<td>1984</td>
<td>3,412,000</td>
<td>15.6</td>
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<tr>
<td>1979</td>
<td>1985</td>
<td>3,575,000</td>
<td>16.2</td>
</tr>
<tr>
<td>1980</td>
<td>1986</td>
<td>3,733,000</td>
<td>17.0</td>
</tr>
<tr>
<td>1981</td>
<td>1987</td>
<td>3,839,000</td>
<td>17.2</td>
</tr>
<tr>
<td>1982</td>
<td>1988</td>
<td>3,904,000</td>
<td>17.2</td>
</tr>
<tr>
<td>1983</td>
<td>1989</td>
<td>3,951,000</td>
<td>17.2</td>
</tr>
<tr>
<td>1984</td>
<td>1990</td>
<td>3,985,000</td>
<td>17.2</td>
</tr>
<tr>
<td>1985</td>
<td>1991</td>
<td>4,007,000</td>
<td>17.1</td>
</tr>
</tbody>
</table>


Ibid.
Enrollment Decline in Massachusetts

The Commonwealth of Massachusetts Department of Education data indicates that public school enrollment throughout the state peaked in the 1973-74 school year. There are two sources of statewide public enrollment information. "School-Attending Children" reports submitted by each city and town document how many students attend public schools both within and outside of their local systems. These data are used by the Bureau of Data Collection and Reporting within the Massachusetts Department of Education to project future enrollments.

"Individual School Reports" (ISR) submitted by each school system by October 1 of the school year indicate enrollments regardless of place of residence. Statewide ISR totals for 1969-70 through 1979-80 school years are included in the following table:

<table>
<thead>
<tr>
<th>School Year</th>
<th>Total Enrollment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1970</td>
<td>1,143,587</td>
</tr>
<tr>
<td>1971</td>
<td>1,171,929</td>
</tr>
<tr>
<td>1972</td>
<td>1,191,690</td>
</tr>
<tr>
<td>1973</td>
<td>1,197,005</td>
</tr>
<tr>
<td>1974</td>
<td>1,206,182</td>
</tr>
<tr>
<td>1975</td>
<td>1,197,785</td>
</tr>
<tr>
<td>1976</td>
<td>1,188,387</td>
</tr>
<tr>
<td>1977</td>
<td>Incomplete</td>
</tr>
<tr>
<td>1978</td>
<td>1,115,280</td>
</tr>
<tr>
<td>1979</td>
<td>1,075,979</td>
</tr>
<tr>
<td>1980</td>
<td>1,040,689</td>
</tr>
</tbody>
</table>

Source: Massachusetts Department of Education, Bureau of Data Collection and Reporting.

In the six years between 1973-74 (the peak year) and 1978-79 enrollment fell 10.9 percent. The projected decline in the five years between 1979-80 and 1983-84 is another 10.8 percent. Overall, the estimated percentage decline from 1973-74 to 1983-84 is 21.7 percent.
Most of the drop in enrollments have occurred in elementary schools (grades K-6). The percentage decline from 1973-74 peak enrollment year for elementary schools to the 1978-79 enrollment year was 15.9 percent. Enrollment projected for grade levels in public schools throughout Massachusetts for 1979-80 through 1983-84 indicate that the greatest decline will continue to occur in the K-6 range where a loss of 68,910 pupils (13.5%) is estimated. The predicted decline from 1973-74 to 1983-84 is expected to be 24.4 percent. A slower rate of decline is expected for middle schools (grades 7-8). The percentage drop in middle school enrollment between its peak year of 1973-74 to 1978-79 was 9.3 percent. The projected decline from 1979-80 to 1983-84 is expected to be 7 percent, reflecting a loss of 11,885 students.

On the other hand, the percentage drop in high school (grades 9-12) enrollment from 1973-74 to 1978-79 was 1.3 percent. In fact, high school enrollment did not peak until 1975-76. But high school enrollment is projected to decline 11.3 percent between 1973-74 and 1983-84 with most of the decline occurring between 1979-80 and 1983-84 (9.2%) or 32,224 students.

Within this time frame, the Southeast region of the state will experience the lowest overall decline of 3.6 percent while other areas will experience a reduction in the 10.8 percentage range. The Greater Boston public school system is projected to suffer the highest decline, 15.7 percent.¹

Enrollment Decline and Staffing Patterns

Fluctuations in the size of the teaching staff in public elementary and secondary schools tend to follow enrollment changes by a few years. Although the national enrollment peaked in 1971, the total number of classroom teachers continued to rise slightly each year until 1978. The number is expected to decline to 2,084,000 in 1983 and then rise slightly to 2,194,000 in 1988. The progression of the growth and decline of staffing patterns throughout the nation since 1970, as well as projections through 1988 are summarized in the following table:

¹ Massachusetts Department of Education, Bureau of Data Collection and Reporting.
Table 4.
Classroom Teachers in Public Elementary/Secondary Day Schools
By Level and Control of School: Fall 1970 to Fall 1988
(In Thousands)

<table>
<thead>
<tr>
<th></th>
<th>All School Teachers</th>
<th>Public School Teachers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>K-12</td>
<td>Elementary</td>
</tr>
<tr>
<td>Year</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td>2,288</td>
<td>1,281</td>
</tr>
<tr>
<td>1971</td>
<td>2,293</td>
<td>1,262</td>
</tr>
<tr>
<td>1972</td>
<td>2,332</td>
<td>1,291</td>
</tr>
<tr>
<td>1973</td>
<td>2,371</td>
<td>1,305</td>
</tr>
<tr>
<td>1974</td>
<td>2,404</td>
<td>1,324</td>
</tr>
<tr>
<td>1975</td>
<td>2,444</td>
<td>1,344</td>
</tr>
<tr>
<td>1976</td>
<td>2,449</td>
<td>1,341</td>
</tr>
<tr>
<td>1977</td>
<td>2,470</td>
<td>1,359</td>
</tr>
<tr>
<td>1978</td>
<td>2,460</td>
<td>1,352</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1,326</td>
<td>1,112</td>
</tr>
<tr>
<td>1979</td>
<td>2,437</td>
<td>1,324</td>
</tr>
<tr>
<td>1980</td>
<td>2,413</td>
<td>1,321</td>
</tr>
<tr>
<td>1981</td>
<td>2,386</td>
<td>1,311</td>
</tr>
<tr>
<td>1982</td>
<td>2,357</td>
<td>1,327</td>
</tr>
<tr>
<td>1983</td>
<td>2,360</td>
<td>1,347</td>
</tr>
<tr>
<td>1984</td>
<td>2,370</td>
<td>1,375</td>
</tr>
<tr>
<td>1985</td>
<td>2,393</td>
<td>1,418</td>
</tr>
<tr>
<td>1986</td>
<td>2,426</td>
<td>1,469</td>
</tr>
<tr>
<td>1987</td>
<td>2,463</td>
<td>1,529</td>
</tr>
<tr>
<td>1988</td>
<td>2,501</td>
<td></td>
</tr>
</tbody>
</table>


Given that total enrollment is expected to decline through 1984, the number of classroom teachers is expected to decline also. The most substantial decrease is expected among public secondary school teachers because enrollment at this level is projected to continue to decline throughout the decade. Between 1979 and 1988, a 14 percent reduction in public secondary school classroom staff is expected. This decline is expected during the same period in which the number of elementary school staff is projected to rise in response to increasing enrollments at this level.¹

Impact of Proposition 2½

The issue of enrollment decline is one which has been increasingly commanding more attention from school administrators in some urban and suburban sections of Massachusetts. The reduction in births and the subsequent decreased enrollment are forcing consideration of school reorganization plans, redistricting, staff reduction, and even potential reductions in school programs. William F. Keough, Jr., a former superintendent who writes extensively on decline, notes:

In growth, the passage of time tends to bend errors of judgment in resource allocation; in decline, time compounds them. Growth encourages and provides for multiple priorities, decline necessitates focus on only a few. In varied ways and for multiple reasons, decline management will challenge the most able leader/administrator. ¹

Compounding the problem of a steadily declining enrollment pattern in public schools will be the July, 1981 implementation of Proposition 2½, the property tax-cutting measure approved by the voters in the Commonwealth last November by a 3-2 margin (Acts of 1980, c. 580). Briefly summarized, that measure (1) reduced property taxes 15 percent a year until taxes are no higher than 2½ of the total value of property in the city or town; (2) reduced auto excise taxes from $66 to $25 per $1000; (3) repealed the fiscal autonomy of school committees; (4) repealed the final and binding arbitration law that applies to police and firefighters; and (5) authorized a personal income tax deduction of 50 percent for rental payments incurred for the taxpayer’s principal residence; and (6) placed a four percent “cap” on the assessments levied on cities and towns for the costs of regional and district entities.

According to recently published statistics by the State Department of Revenue, Massachusetts cities and towns stand to lose $557 million in revenue from Proposition 2½’s first year cuts in property and auto excise taxes. A survey, conducted by the Associated Press in conjunc-

tion with newspaper members of the news cooperative across the Commonwealth, revealed that municipal officials are planning severe steps to compensate for this loss in revenue. These plans include:

(a) Cuts of nearly $225 million in local school budgets. The reductions, if carried out, would spell the death of numerous programs.

(b) Closing 306 schools. While officials say 66 of the closings would be due to declining enrollments, most indicated the process was accelerated by 2½. According to these sources, sagging enrollments have closed 250 schools and reduced the number of teachers by 4,000 in the past four years. The reduction in staff would push the state's average classroom size of 25 students up past the 30-pupil mark.

(c) Termination notices for more than 9,100 teachers and principals, and another 1,500 teachers aides, cafeteria workers and maintenance personnel.¹

Education will likely suffer the sharpest cuts. School boards, which for years were free to spend because of fiscal autonomy, must now submit reduced budgets for the scrutiny of municipal officials and local legislative bodies. The Proposition 2½ impact will be more pronounced in older cities because of past spending and taxing policies. Quincy plans to cut $8 million from its school budget, eliminate 230 teaching jobs and close five schools. Cambridge anticipates $6 million in cuts and 230 layoffs; Springfield will lay off 300 teachers and close four schools.

Smaller, more frugal towns will also experience serious consequences. Granby faces the loss of 26, or one quarter, of its teaching staff. Athol’s tax rate was reduced last year because state aid provided all the money the school system needed. Now the town is appealing for special legislative relief so it can raise taxes past Proposition 2½’s ceiling.

In commenting on these potential reductions, State Education Commissioner Gregory Anrig states:

There’s no way we can take these kinds of cuts in the public school program and claim the youngsters are getting the same quality of education. I’m extremely troubled by the depths of cuts in personnel. People with nine years in the

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¹ Boston Herald American, March 29, 1981.
profession find they are going to be laid off. They aren’t losing their jobs, they’re losing their profession.

John Sullivan, Associate Executive Director of the Massachusetts Teachers Association, gives the highest public estimate of the teacher job losses—up to 13,000 of the state’s 70,000 teachers if state aid fails to offset the property tax rollbacks mandated by Proposition 2½. Sullivan arrived at the higher figure by calculating that for every three teachers fired, a fourth must be laid off to pay unemployment benefits for the first three.

According to sources within the Massachusetts Federation of Teachers (MFT), the impact of Proposition 2½ is expected to reduce its total membership of 15,000 by 10-15 percent.

The American Federation of State, County and Municipal Employees (AFSCME) has not yet determined the possible number of school personnel within their membership that may be affected as a result of the implementation of this tax-cutting measure. School personnel included within the membership of AFSCME consists of custodians, cafeteria workers, school bus monitors, teachers’ aides, bus drivers, clerical workers and maintenance employees. Although the direct effects of Proposition 2½ cannot be estimated by union officials at the time of this report, they are nonetheless insisting that Chapter 150E of the Massachusetts General Laws be adhered to by local officials before any of their members are dismissed from their jobs.

**Financing Public Schools**

State aid for local public elementary and secondary education is based on a complex formula which was enacted as part of Chapter 367 of the Acts of 1978, the general appropriations act for fiscal 1979. This act replaced the so-called NESDEC state aid formula of 1965 in an attempt to provide an equalized education aid program for the Commonwealth’s cities and towns. Under the NESDEC formula, state aid in Massachusetts did not depend directly on average daily attendance or enrollment; consequently, local districts did not experience sudden decreases in state aid as their student census fell. Therefore, declining enrollments had little bearing on the amount of state aid received by a city, town or a school district. In contrast to the NESDEC formula, state aid to local education under Chapter 70 of the General Laws is allocated on the basis of the number of students in each field of
program within the regular, special, bilingual or vocational schools, and the average per pupil cost statewide of each kind of program. As enrollment declines, state funding decreases proportionately. However, the maintenance cost of the district's physical plant remains constant, until enrollment declines enough to permit school building closings. In the short run, as pupil enrollment decreases, the relative per pupil cost of plant maintenance increases in the face of absolute decreases in state aid.

Certain indirect costs such as utilities, plant operation, maintenance and pupil transportation are especially difficult to reduce in the short run. The cost of heating a half empty building is the same as heating a full one. The constant rate of repayment of long-term loans for school construction is unaffected by changing enrollments. Transportation expenditures depend largely upon the geographic characteristics of a school district rather than on the total number of students served. These indirect costs are also subject to general rates of inflation and increasing energy cost.¹

In 1979, the Massachusetts public school system employed 120,717 people. This figure represents personnel providing instructional services, administrative duties, service operations and maintenance functions. The total cost of public school education in 1979 to the state's cities, towns and regional school districts totaled $2,924,127,986; that cost was underwritten by local revenues of $1,908,303,454, state aid of $877,979,862 and federal aid of $137,844,670.² The direct cost of instructional services, primarily staff salaries, accounts for about 80 percent of school budgets statewide.

Under the former NESDEC formula staff allocations have been typically made by subject area across grades rather than simply by grade. Under the current formula in Chapter 70, personnel cuts will be more difficult to make since staff needs depend on enrollments in specific subject areas as well as the total number of students served. Even when personnel cuts are possible, tenure and seniority provisions in teachers' contracts often require that the more experienced and costly staff be maintained.

The pressing financial problem posed by declining enrollments in Massachusetts is limited funding. Inflation makes it unlikely that current levels of school spending can continue to provide current levels

² Massachusetts Department of Education, Bureau of Data and Collection.
of educational services. Furthermore, local taxpayers have voted not to continue to support higher school budgets to educate fewer pupils. Careful decisions must be made in allocating available resources. Can the school system afford to keep all school buildings open, employ all current staff, and still provide high quality education to the students? In most districts the answer will be no, some services will have to be reduced to maintain others. These allocation decisions are difficult, but are nonetheless central to the challenges presented by declining school enrollments and financial constraint.

Public School Personnel

When student enrollments decline within a system, the ratio of students per teacher declines as well. For school systems that have had large classes in the past, this change may be an educational blessing. At the same time, some districts that have traditionally maintained low pupil-teacher ratios may consider this decrease in the number of pupils per staff member an unnecessary expense. If a local district is to establish and maintain a constant pupil-teacher ratio as enrollments decrease, it must reduce the number of staff it employs.

Collective bargaining agreements regulate staff reductions in most districts. In others, the school administration alone decides how staff reductions are made. Whatever the procedure, administrators agree that reduction in force is a bitter, painful process.

The state law governing teacher tenure in Massachusetts requires that non-tenured staff be dismissed before tenured staff. Beyond that, it is likely that seniority will be the sole criterion used by a local school system to determine the order of staff layoffs. As younger staff with less seniority are laid off first, the average age of the faculty will increase. The remaining staff will therefore be generally older and further from their initial professional training. In some cases, this may mean that students will no longer benefit from the influence of new teaching methods and philosophies. In addition, staffing gains by women and minorities achieved through affirmative action programs are often eroded by “last hired, first fired” practices. Because legal precedents regarding reduction in force are only now being established, many school departments anticipate arduous court cases challenging their reduction decisions.¹

¹ Johnson, supra, p. 10.
Public School Facilities

The fifties and sixties were decades of rapid school construction in Massachusetts. As public school enrollments increased dramatically after World War II, local school systems planned and built new schools to serve unprecedented numbers of students. Framingham, one suburban district that grew rapidly, built thirteen schools in fifteen years to meet the demands of its expanding population.

When enrollments decline, in some circumstances extra space becomes available. In schools where storage closets once served as tutoring stations, there are now empty classrooms available for conventional usage. Or extra space can accommodate both curricular innovation and the newly developed and expanded occupational and special education programs. On the other hand, lower enrollments may result in the unproductive use of space and increasing maintenance cost will make seriously underutilized buildings candidates for closings.

Because enrollment declines occur unevenly within districts, locations of newer facilities may not coincide with the remaining concentrations of students; hence, identifying which schools to close is not an easy task. In fact, declines frequently occur in neighborhoods with new buildings. Moreover, community allegiance to older buildings and parental pressure to maintain neighborhood schools make closing schools difficult and intensely controversial.¹

Program Curtailment

Programs are also affected by enrollment decline. Changes in the content of the educational program as well as changes in the structure of the programs have been contributing factors in affecting school board decisions in laying off school personnel. In small districts where there is little staffing flexibility, the dropping of some traditional courses of study will become necessary due to the fact that they no longer attract enough students to justify the expense. Elementary school specialists in art, music and physical education are usually the first to be dismissed; upon dismissal, their programs dissolve. As junior and senior high school enrollments begin to drop in the next five years, there will be pressure to eliminate small expensive programs such as computer programming and advanced elective courses.

Reduced student participation may affect extra-curricular activities as well. ¹intramural sports, special interest clubs, and musical organiza-

¹. Ibid.
Perspective in Labor Relations

Declining enrollments have had a decided impact on labor relations and collective bargaining within the public education sector. Because of declining enrollment, the emphasis in bargaining is less on dollars and more on jobs and job security. The thrust of organized efforts has been for tenure, improved working conditions (specifically class size gains), and a greater voice in determining curriculum. Unions, by nature, are political organizations requiring membership, and, in times of economic distress, may be more concerned about job security than increasing salaries.

Because of teacher anxiety over job security, states and localities are under pressure to adopt policies which provide for reductions in force (RIF) by strict seniority. Teacher unions and associations strive to curb the power of school administrators to make staff adjustments according to merit or need. Job preservation is an overriding concern. As the Illinois Education Association argues, “all possible cuts in noninstructional personnel, administrative staff, extracurricular programs, transportation, materials and other nonessential expenditures should be made prior to reducing the teacher force.”

Although teacher tenure provides job security, most statutes stipulate that teachers may be dismissed when programs are curtailed, enrollments decline, or when a financial exigency exists. However, tenure laws generally do not address a very important issue to teachers: if layoffs are to occur, in what order will teachers be affected, and what will be the order of recall? Often issues, such as the aforementioned, are addressed in reduction in force provisions in collective bargaining.

contracts. (The RIF provisions of the Quincy School Department contract appear as Appendix A of this report.)

Teachers may be "RIF'd" only under specific circumstances, when their positions are eliminated as a result of one of the following situations:

1. A substantial reduction in the funds available to the board, provided that such reduction cannot be avoided by the exercise of the board's taxing or other fiscal powers.
2. A substantial reduction in pupil enrollment.
3. The discontinuance of a particular type of teaching service, provided that such discontinuance is not for arbitrary or discriminatory reasons.
4. A bona fide consolidation of schools with one or more other school districts.¹

Notice to Affected Personnel

Negotiated layoff procedures generally provide that the first notice of the intent to terminate employees goes to the bargaining representative. The organization may then request that negotiations be undertaken regarding the implementation and impact of the proposed layoffs. It may also have the negotiated right to discuss the justification for the action and possible alternatives thereto. Typically, the notice must contain the reasons for the proposed layoff and all relevant information and data must be made available to the employee organization.²

One of the major problems in the area of notice to affected personnel results from the absence of a definite school committee decision on personnel when the board must provide teachers with notices of non-renewal or dismissal in respect to the following school year (G.L. c. 71, s. 41). In Massachusetts, where the tenure statutes authorize dismissal due to economic constraint, boards have often taken the step of sending dismissal or nonrenewal notices to all teachers in the district, or large numbers of them, and then rescinding the notices after the financial situation becomes more clear. The problems caused by such a procedure are obvious. Teachers suffer the uncertainty of not knowing their status for the following year, and school systems may lose some of their most qualified personnel who decide the wait is too traumatic.

Tenured Over Nontenured

The Massachusetts teacher dismissal law specifically permits a school committee to reduce its teaching staff when there is a decrease in overall enrollment (G.L. c. 71, s. 42). However, the school committee is not permitted to dismiss a tenured teacher if it allows a nontenured teacher, whose position the tenured teacher is qualified to fill, to remain in the school system.

Compounding the problem of decreasing enrollments will be the impact of Proposition 2½ on school budgets throughout the Commonwealth. These factors combined will result in the termination of tenured school professional employees on a scale not previously anticipated. To assist school committees in making critical decisions in respect to reductions in force at the administrative level, legal counsel for the Massachusetts Association of School Committees recently prepared an article which discusses the relevant statutes and court decisions, the impact of the obligation to bargain collectively and possible effects of collective bargaining agreements as they apply to the termination or reassignment of tenured academic administrators and teachers.

Seniority

School committees in Massachusetts have adopted a wide variety of alternative “Reduction in Force” provisions, although seniority appears to be the preferred approach for the dismissal of personnel.

Seniority is typically defined as “length of service in the particular school system.” This measure of length of service may exclude unpaid leaves of absence as in the Town of Sudbury,1 include all authorized leaves as in the Town of Granby,2 or include a limited amount of leave as in the City of Attleboro.3 Seniority is the sole criterion used by the Town of Lee in determining staff layoffs: “...(E)mployees shall be laid off in the inverse order of their initial employment.”4 In Attleboro, seniority is the determining criterion only if “...the qualifications and

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quality of performance of employees are substantially equal.”¹ In the Town of North Reading, seniority prevails unless “...professional training, competency, proven performance, and the needs of the system are such that a junior employee's qualifications are clearly superior to those of a senior employee.”²

Many local districts have already anticipated having to decide between teachers with equal seniority. In the Town of Randolph, stalemates relative to teachers with identical seniority are settled by giving preference to “...the teacher who has the highest level of training.”³ When teachers have equal seniority in the City of Haverhill, consideration is “...given to education, skills and efficiency on the job.”⁴ In Hudson, a town, teachers with equal seniority draw lots to determine the order of staff layoffs.⁵

**Seniority Merit Basis**

While many systems use the length of service to determine layoffs, others specify measures of teacher performance. The Town of Somerset contract states that “...in making reductions in staff, merit and ability in all cases shall govern.... The determination of relative merit and ability shall be the prerogative of the Superintendent and the School Committee and an arbitrator may not substitute in his judgment for theirs, unless he finds their judgment to have been unreasonably exercised.”⁶ In the Town of Bridgewater, the teachers to be dismissed are identified on “...the basis of their professional competency and performance as evidenced by evaluation reports on file.” This ranking “...shall be performed by the Superintendent after reviewing with the teachers affected their evaluation reports.”⁷ In both Somerset and Bridgewater, if the performance and merit ratings of two teachers are “substantially equal,” seniority governs.

¹. Attleboro, supra, p. 37.
Many bargaining agreements within school systems specify that teachers must satisfy a combination of criteria to avoid dismissal. These criteria may be clearly specified, as in the Town of Salisbury where "...(a) needs of the school system at the time, (b) history of satisfactory performance, and (c) seniority" are used in making staff cuts.\textsuperscript{1} In Granby, the relevant criteria include length of service, ability, certification and qualifications. As in many other contracts, the Granby contract provides that if "...all factors that constitute ability, certification and qualifications are relatively equal, length of continuous service shall prevail."\textsuperscript{2}

Other districts where multiple measures are used do not specify all the factors relevant to the final decision. For example, the Town of Concord contract lists the following criteria: "...seniority, number of merit awards, professional training, competency, proven performance, prior evaluations, the needs of the school system and other relevant factors. These factors are not to be construed as an absolute listing of priorities but are identified for the purpose of assuring the parties hereto that an integrated judgment will be made with respect to reductions in order to optimize the educational strength of the staff."\textsuperscript{3}

**Bumping**

Teachers whose positions are eliminated and who are laid off may displace ("bump") teachers in another area. In Randolph, an employee whose position is eliminated may "...replace an employee with the lowest seniority anywhere within the school system in an area in which the laid-off employee is qualified or obtains said qualifications by June 1 of the year of the notification of the layoff." "Qualification" as used here is defined as: "Secondary — Secondary certification in subject area with a minimum of 30 hours in the subject field. Elementary — Elementary certification with a minimum of 24 hours in elementary education."\textsuperscript{4} These requirements substantially exceed the 18 hours of preparation required by the state for certification.

The City of Everett and the Town of Wakefield, however, limit the rights of one tenured teacher to bump another who has less seniority.

\begin{itemize}
\item \textsuperscript{1} Agreement between the Salisbury School Committee and the Salisbury Teachers Association. September 1, 1980 — August 31, 1982, p. 23.
\item \textsuperscript{2} Granby, \textit{supra.} p. 38.
\item \textsuperscript{4} Randolph, \textit{supra.} pp. 56-57.
\end{itemize}
In Everett, the teacher must be "certified in the subject area to be taught and have at least two years of teaching experience in the area."\(^1\) In Wakefield, "(T)eachers will not cross departmental lines unless they are qualified and there is an opening in a department."\(^2\) "(T)eachers may not take the position of a teacher in a department with full staff of teachers even if they are qualified for that department and have more seniority than teachers in that department."\(^3\)

**Appeal Procedures**

Some contracts specify the procedures to be used in reviewing and appealing any "Reduction in Force" decisions. In Haverhill, the proposed layoff list of tenured staff is delivered to the teachers' association president prior to notification of affected employees. Upon request of the association president, a subcommittee consisting of two (2) members of the school committee, the superintendent of schools, a member of the administrative staff and two (2) representatives of the association shall arrange for a review of the effects of such layoff. If the association is not satisfied, it may request a hearing with the school committee.\(^4\)

In school systems where contract disputes are subject to arbitration, decisions regarding staff reduction may be submitted to an arbitrator. The Somerset contract, however, states that "...an arbitrator may not substitute his judgment for theirs (the Superintendent and School Committee) unless he finds their judgment to be unreasonably exercised." Salisbury and Attleboro specify that a grievance regarding reduction in force cannot be submitted to formal arbitration.

**Certification and Transfers**

Appropriate certification, as specified by the Massachusetts Department of Education, is often used as the measure of "qualification" where a teacher whose job has been eliminated is being considered for transfer to another position. This process may bring complications because teachers certified before 1956 are technically qualified to teach any subject in grades K-12. In addition, teachers of specialized subjects

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(art, music, physical education, business, industrial arts, home economics) are currently certified for grades K-12.

The Bureau of Teacher Certification of the Massachusetts Department of Education has recently noted an increased demand for additional certification. This suggests that teachers are anticipating an increase in the number of transfers and a consequent "bumping" of less senior staff. While some contracts specify experience within a subject area or grade level as a prerequisite for transfer, others impose no such condition. This may create unanticipated difficulty as teachers claim the right to teach in areas for which they are certified, but within which they have had no previous experience.

**Evaluation of Education Personnel**

In November 1979, the State Board of Education appointed a Study Committee on Evaluation of Educational Personnel. Its purpose was to advise the Board, local school officials and the general public on ways to improve the performance and evaluation of educational personnel in Massachusetts. The committee concluded that most formal evaluation systems utilized by Massachusetts school systems lacked comprehensiveness, and that more and better training was needed for those charged with the responsibility for evaluating educational personnel. However, in the course of its study assignment, the committee found strong opposition to the imposition of a state-established evaluation process. Only one organization (the Massachusetts League of Women Voters) testified in favor of such legislation. Committee findings also suggested that the impact of reduction in force due to declining enrollments and budget constraints had created an atmosphere of tension and suspicion over evaluation policies. Employee organizations generally favored reductions in force by seniority; employer organizations generally favored the inclusion of some judgment based on performance. This very real concern permeated the hearings and deliberations of the Study Committee, since the committee was a representative group. It was the committee's conclusion that provisions for "reductions in force" could only be resolved through collective bargaining decisions in each school district and should not be a matter for the Study Committee. Separate from this conclusion, however, was the unanimous position of the Study Committee that evalua-
tion of educational personnel was so important to the quality of educational performance and to public confidence in the Commonwealth's schools that each school district should have a comprehensive policy for the evaluation of all educational personnel on a regular and continuing basis.

**Affirmative Action and Layoffs**

Within the past decade, school systems across the state have made advances in affirmative action staffing — the hiring of greater numbers of women and minorities for both teaching and administrative positions. Employment rights based on affirmative action principles are relatively new to collective bargaining. The success of such a process depends largely upon the goodwill of the local teachers' associations. Past discrimination is an undisputed fact, but efforts have been made to redress this inequity. However, the possibility still exists that layoffs by strict seniority might erode the legitimate gains of women and minorities.

As Massachusetts cities and towns, under pressure from Proposition 2½, begin drawing up layoff lists for July, there has been much concern relative to what can legally be done to shield minorities from the budget axe. The problem was outlined for Governor Edward J. King on March 10, 1981, by his Local Government Advisory Committee. The panel reported "conflicting signals" from the state on whether to follow affirmative action rules or the Civil Service Law, which requires a "last hired, first fired" approach. In response to this testimony, the Governor promised to set up a task force consisting of community officials and union officials to study the situation and report its findings to the Massachusetts Commission Against Discrimination.

The National Education Association (NEA) has strongly urged all local affiliates to adopt affirmative retention language in their negotiated agreements:

(Such agreements) provide that the order of layoff will be determined by seniority except where minorities or women who are underrepresented at a particular employment level would be disproportionately affected. This provision requires that the proportional employment of an underrepresented group, i.e., minorities, women or both, be, as nearly as possible, no less at any level after a layoff than it was
before. Thus, if minority individuals comprise 5% of all classroom teachers in a district in a state where minority individuals have 8% of the valid teaching certificates, minority teachers are underrepresented as a group and the affirmative retention clause would require that, after any layoff, no less than 5% of classroom teachers would still be minority individuals.

This arrangement can be visualized most easily as one involving multiple seniority lists for each professional level: one for each underrepresented group and one for all other individuals.¹

Raymond E. Schultz, a professor at the University of Arizona who holds a PhD in Educational Administration and publishes widely in professional journals, has prepared the most comprehensive discussion of policy issues relative to retrenchment in the case of women and minorities.² Schultz concludes that strict length-of-service criteria for staff reductions would offer the least financial relief to an institution, hurt women and minorities, and deprive institutions of creative new and young faculty. In what he terms a “sane approach to staff reductions,” Schultz recommends that an institution keep up to date on enrollment and programs and calculate trends; pinpoint programs and courses where overstaffing and understaffing exist or seem likely to occur; reduce nonsalary expenditures, make available such voluntary cost reductions as leaves and early retirements; consider the termination of nontenured, part time and tenured faculty according to the needs of the institutions and the requirements of equal employment as well as seniority; and place terminated faculty on furlough rather than layoff.

Order of Recall

The majority of state statutes, including Massachusetts, do not address the recall rights of employees who have been RIF’d. Most of those that do indicate that recall is to be accomplished in order of seniority. Some also specify that a preference list with the names of RIF’d personnel be established for subsequent vacancies.

In the absence of specific statutory direction, an Illinois appellate court inferred legislative intent that tenured teachers be given preferential recall rights over nontenured teachers, but that nontenured teachers not be accorded any seniority preference over other applicants.\(^1\) There have also been cases dealing with limitations on the right of an employee to be recalled. For instance, a school board will not be required to reoffer a position to a RIF'd teacher who has rejected an earlier offer of reemployment.\(^2\)

Recall provisions exist in the majority of teacher collective bargaining contracts throughout the Commonwealth. Under such provisions, teachers who are dismissed because of reductions in force are considered on an involuntary leave of absence. During a time span of generally one to two years from the beginning of involuntary leave, they are entitled to any position that becomes available in the bargaining unit, for which they are qualified and certified to teach. Recall is generally in the reverse order of layoff. Many contracts stipulate that for the duration of the recall period, teachers affected by reduction in force are entitled to participate in all group health and insurance plans provided said teachers contribute 100 percent of the premiums. An example of recently negotiated recall language appears in the following agreement between the Town of Dedham Public Schools and the Dedham Educators' Association:\(^3\)

**Recall**

1. Recall rights exist for two years following August 31 of the year in which the teacher was laid off.

2. Teachers with recall rights will be recalled to vacancies in the respective disciplines from which they were laid off in the reverse order of their layoff, provided that the School Committee shall have sole discretion to determine the order or recall of teachers who were laid off at the same time with equal seniority.

3. Teachers who have been laid off and who have recall rights shall be entitled only to the following benefits under this Agreement: (a) Membership in any group health or life

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insurance coverage in existence at the time of the effective date of the layoff, provided, however, that the teacher pays the entire cost of such insurance pursuant to the requirements of the insurance carrier, and there shall be no contribution by the Committee or the Town for such teacher's insurance.

4. Teachers with recall rights shall be deemed to be on leave of absence from the Dedham Public Schools for the duration of the recall period. A teacher may elect to have his/her layoff treated as a dismissal in which case said teacher shall be afforded his/her full statutory rights under Chapter 71, sections 41 and 42 of the General Laws of the Commonwealth of Massachusetts.

However, if said teacher is dismissed, he/she shall have no recall rights. If a teacher elects to treat the layoff as a leave of absence, he/she shall waive his/her statutory rights under Chapter 71, sections 41 and 42 of the General Laws of the Commonwealth of Massachusetts, in writing, not later than the date on which the vote to dismiss is to be taken.

5. When a vacancy occurs to which a teacher is entitled to be recalled as set forth above, the appropriate teachers on the recall list will be notified by certified mail at their last recorded address. Failure to accept certified mail shall not be deemed sufficient reason for failing to meet the necessary response date. Failure to respond to the Superintendent of Schools with a letter of acceptance of the offered position within thirty (30) calendar days shall be considered a rejection of such offer, and the teacher shall be dropped from the recall list. It shall be the responsibility of the personnel on recall lists to inform the Office of the Superintendent of Schools, in writing, of changes of address.

6. Teachers with recall rights shall have priority in filling vacancies as hereinbefore set forth. No new personnel shall be hired to fill such vacancies until all appropriate teachers on the recall list have been offered the vacancy pursuant to the provisions of this paragraph.

7. Upon recall, teachers shall be credited with whatever benefits they had accumulated at the time of layoff.
Legislative Research Bureau Survey

Many state laws are silent or vague as to the procedures for implementing a reduction in force. Thus, the collective bargaining agreement can provide specific guidelines as to such developments, thereby preventing a great deal of unnecessary dispute and litigation regarding the justification for the action. Traumatic as a RIF might be to those affected, the situation can be rendered more acceptable if the circumstances which would permit imposition have been spelled out in advance.

Reduction in force clauses in local contracts specify the manner in which staff reductions will be made. For example, they may specify what criteria will be used to determine the order of layoffs, how much discretion the administration may exercise in making decisions, whether seniority will be used as a criteria in the final judgment, and, finally, how a decision will be made between two teachers, judged to be equally worthy by established measures.\(^\text{1}\)

To assemble data relative to “Reduction in Force” provisions in current collective bargaining contracts for school personnel, the Legislative Research Bureau sent a questionnaire to the 285 individual school boards throughout the Commonwealth. Replies were received from districts including 34 regional and vocational school districts, as indicated below.

**Question I.** Are “Reduction in Force” provisions presently included in your 1980-82 collective bargaining contracts?

- 142 — Yes
- 31 — No

**Question II.** What is the definition of Seniority in years of service?

- 122 — Years of service in the system (a).
- 5 — In a department (b).
- 4 — Total teaching experience (c).
- 1 — On a grade level (d).
- 1 — In the unit (e).
- 11 — (a) and (b).
- 6 — (a), (b) and (d).

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\(^{1}\) Johnson, *supra*, p. 40.
Question III. Are teachers given the opportunity to "bump" other teachers in other teaching areas if the teacher who has been laid off is "qualified" to teach in another area?

127 — Yes, provided teacher is certified in another area and has senior status.

46 — Not specified in contract.

Question IV. Do "bumping" rights extend across grade levels, e.g., can a secondary teacher "bump" an elementary teacher and vice versa?

76 — Yes.

74 — No.

22 — Not specified in contract.

1 — Currently being negotiated.

Lastly, the number of positions which have been eliminated over the past four school years, and the number of staff affected during these years due to declining enrollments, is presented in the following table.

Teachers in Title I Federal Programs

In addition to regular teaching staffs, school committees throughout the state employ teachers for special supplemental programs funded under Title I of the Federal Elementary and Secondary Education Act as amended. These Title I programs are provided to aid economically and socially disadvantaged children.

Until recently, Title I teachers had been recognized as having seniority only among themselves, rather than having systemwide seniority. In 1978, the State Appeals Court ruled that federal programs teachers were eligible for tenure under applicable statutes since conditions of employment and functions as teachers were analogous to those performed by regular teachers.\footnote{Brophy v. School Committee of Worcester, 383 N.E. 2d 521 (1978 Mass. App. Ct. Adv. Sh, 1192).} Unless specifically excluded, Title I teachers are usually considered part of the bargaining unit.
Table 5.
Number of Eliminated Positions, Nontenured — Nonreappointed; and Tenured RIF'D Teachers for School Years 1976-1980

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Number of Eliminated Positions, Nontenured — Nonreappointed; and Tenured RIF'D Teachers for School Years 1976-1980

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Note: The table continues on the next page.


The following regional school systems did not report any elimination of positions involving tenured and nontenured teacher personnel for school years 1976-1980: Amherst-Pelham, Athol-Royalston, Blackstone Valley, Bridgewater-Raynham, Bristol County Agricultural, Cape Cod, Central Berkshire, Dighton-Rehoboth, Greater Fall River, Franklin County, Gateway, Greater Lowell, South Shore Vocational, Minuteman Regional, Lincoln-Sudbury, Gill-Montague, Mt. Greylock, Nashoba Valley, Norfolk County Agricultural, Northern Berkshire, North Shore, Old Colony, Quinobin, Tri-County, South Middlesex, Whittier and Southern Worcester County.

Source: Replies to Legislative Research Bureau questionnaire.

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3. The following regional school systems did not report any elimination of positions involving tenured and nontenured teacher personnel for school years 1976-1980: Amherst-Pelham, Athol-Royalston, Blackstone Valley, Bridgewater-Raynham, Bristol County Agricultural, Cape Cod, Central Berkshire, Dighton-Rehoboth, Greater Fall River, Franklin County, Gateway, Greater Lowell, South Shore Vocational, Minuteman Regional, Lincoln-Sudbury, Gill-Montague, Mt. Greylock, Nashoba Valley, Norfolk County Agricultural, Northern Berkshire, North Shore, Old Colony, Quinobin, Tri-County, South Middlesex, Whittier and Southern Worcester County.

Source: Replies to Legislative Research Bureau questionnaire.
Civil Service Personnel

All janitors, clerks, maintenance personnel and other "support people" employed by the public school systems in the state's 39 cities are civil service employees. In towns, they are covered under Civil Service if the town, through either special legislation or acceptance of General Laws, has so voted.

In RIF situations, the order for release among civil service employees is based strictly upon seniority, except in the case of disabled veterans. As prescribed by law, a disabled veteran shall be retained in employment in preference to all other persons, including veterans (G.L. c. 31, s. 26). As defined under statute, seniority means the employee's ranking based on length of service within civil service positions (G.L. c. 31, s. 33).

If permanent employees in positions having the same title in a departmental unit are separated from such positions because of lack of work, lack of money or abolition of positions, they are terminated on the basis of seniority in such unit. Such employees are reinstated in the same unit and in the same position or positions similar to those formerly held by them according to seniority (G.L. c. 31, s. 39).

Although reasons of economy constitute "just cause" for the removal of civil service personnel, specified guidelines for removal under Chapter 31, section 41 of the Massachusetts General Laws must be adhered to. Before such action is taken, an employee shall be informed in writing by the appointing authority of (1) the action contemplated, (2) the specific reason or reasons for such action and (3) his/her right to a full hearing before the appointing authority or a hearing officer designated by the appointing authority. A decision adverse to the employee's interest may be appealed to the Civil Service Commission (G.L. c. 31, s. 43).

In the wake of projected revenue shortfalls due to the implementation of Proposition 2 1/2, the Town of Belmont dismissed five permanent fire fighters who subsequently appealed that action to the Civil Service Commission. At the time of their layoff, the town had over $500,000 in reserve funds and over $1,000,000 in certified available free cash. Although meeting shortfalls in revenue is a legitimate and proper use of reserve fund monies, the town desired to plan ahead for the impact of Proposition 2 1/2 during the ensuing fiscal year, fiscal 1982, and intended to utilize expended monies from the reserve funds and
available free cash for that purpose. The avowed purpose of the town in making cuts in expenditures, by layoffs or otherwise, effective February 1, 1981, was to avoid the necessity of further layoffs in fiscal 1982.

According to the Civil Service Commission, the town must show "lack of money" in order for its action to be sustained. In the Commission's opinion, rather than suffering from any "lack of money," the town had ample money, but simply chose not to expend it. Therefore, the layoff of the five appellants for "lack of money" could not be sustained. A desire to conserve funds, no matter how well intentioned, cannot be metamorphosed into the lack of funds.

The Commission concluded that a shortfall of funds does not constitute "just cause" for the layoff of the appellants with respect to fiscal 1981 and ordered that the appellants be restored to their positions without loss of compensation or other rights. Money received by the appellants in mitigation may be deducted by the appointing authority from any back pay given, and if the parties were unable to agree on the amount of back pay to be given, either party could request a hearing on this issue.

CHAPTER V.
Alternative Methods of Reducing Staff

Nontenured Staff

Until recently, teachers who received initial contracts could be reasonably certain that if they performed their duties responsibly those contracts would be renewed. Staff with three years of successful experience could usually anticipate tenure, a seeming guarantee of lifelong employment in the public schools. As enrollments decline, both of these expectations have become increasingly less certain.

Many school districts are now granting one year or provisional contracts to new staff members because permanent staff positions are no longer available. Upon being hired, teachers are informed that they should not expect their contracts to be renewed and that they are only holding the position of a teacher on leave. In March, provisional teachers are routinely informed that they will not be rehired for the next school year. Later, as enrollments for the next school year are
verified and staff needs are firmly established, some of these same teachers are once again offered provisional contracts.1

Just as an initial contract carries no promises of employment beyond one year, the award of tenure does not guarantee a teacher’s position indefinitely. As school enrollments drop and voters approve tax cut measures, school districts will reduce the number of tenured staff. Ideally, staff reductions will be achieved through normal employee attrition (deaths, retirements, transfers, etc.), thus avoiding the personal disruptions that accompany layoffs. In districts that have traditionally experienced high rates of staff turnover, attrition has generally met the need for staff reductions. In smaller districts where such turnover is slight, alternatives to layoffs may be considered.

Part-Time Teaching

For many years a number of Massachusetts school districts have hired part-time teachers to staff partial programs. For example, a Russian teacher may be hired to teach two-fifths time. There are also tenured staff members in departments such as English and Social Studies who, because of educational or parenting responsibilities, prefer to work part-time. As full-time teachers choose to teach partial programs, they reduce the total full-time equivalent staff size (although not necessarily the total number of staff). Since the courts have interpreted the tenure law to mean that part-time staff are eligible for tenure, school departments cannot look to nontenured, part-time teachers to reduce their long-term commitments to tenured staff. However, they may discover that part-time teaching options reduce the need to layoff staff.2

Leaves

Personnel directors disagree about the advisability of liberal leave-granting policies during periods of declining enrollments. Some believe that the opportunity to begin study on new work while maintaining job security ultimately increases natural attrition as staff on leave choose not to return. Others contend that leaves should be granted only to improve the quality of the program, for a high rate of return from leaves is difficult to manage.3

2. Johnson, supra, p. 36.
3. Ibid., p. 37.
Multiple Certification

School administrators generally agree that in hiring staff they first look for strong preparation in a teacher’s main area of responsibility. But they also encourage teachers from specialized and potentially shrinking program areas, e.g. foreign languages, to secure certification in a second or third area. Administrative personnel appreciate the flexibility that multiple certification provides when it allows a good staff member to be transferred rather than laid off.¹

Residency Requirements

Although residency requirements for teachers and administrative staff are not a common practice among local school districts in Massachusetts, the future potential of such requirements exist. Residency requirements for public employees have been sustained by the U.S. Supreme Court.² According to the National Institute of Education, a residency provision has dual objectives. Those teachers who do not move back into the city or town are removed from the payroll, thereby reducing staff. Additionally, it is hoped that if families move back into the city as a result of the residency requirements, the tax base and community support for school systems will be improved.

Hiring Freezes

Another alternative to layoffs is a hiring freeze. Reducing faculty ranks through attrition is most often preferable to dismissing staff but such a route is not without problems for prospective employees and schools as well. First, schools do not save money by a moratorium on hiring, at least in the short run; senior faculty and staff command higher salaries and benefits than the newly hired. With depressed economic conditions, senior faculty and staff are also likely to put off retirement as long as possible. Thus, in the immediate future, hiring freezes are more likely to maintain costs than to cut them. While hiring freezes in lieu of layoffs may preserve the jobs of newly hired women and minorities, they are, ironically, the ones most likely to be frozen out of hiring.³

¹ ibid., p. 37
Early Retirement Incentive Plans

In reports on alternatives to layoffs, early retirement is frequently mentioned as a technique for school districts to use. Under Massachusetts General Laws Chapter 32, section 5, teachers who reach age fifty-five are allowed to retire voluntarily. In school systems where the teaching staff is largely tenured and at the top of the salary schedule, incentives for early retirements may increase staff attrition. Many school districts throughout the state have negotiated such incentives in their current contracts. A recent example of early retirement language appears in the agreement between the Hingham Public Schools and the Hingham Teachers' Association:

1. A teacher who has completed at least (20) years of service as a teacher in the Hingham Public Schools and who has given the Committee proper notice by August 1 of 1980 or August 1 of any succeeding year of this contract that he/she will retire early, at the end of the school year next following notification, will be eligible for early retirement incentive in the forthcoming school year. For purposes of this section, the term, “early retirement” shall mean retirement at the end of the school year next following attainment by the teacher of age 55, 56, 57, 58, 59, 60, 61, 62, 63, or 64. In order to be eligible for early retirement incentive, a teacher must furnish evidence from the Teacher's Retirement Board that he/she will be eligible for retirement. Notice of intention to retire is final and irrevocable and teachers electing early retirement incentive must leave the employ of the Hingham Public Schools effective on the date specified in the written notice.

2. The amount of early retirement incentive shall be a percentage of the teacher's base annual salary and shall be based upon the age of the teacher at which he/she will be retiring, as follows:
The early retirement incentive shall be added to the teacher's base annual salary in the teacher's last year of teaching in the Hingham Public Schools and paid to the teacher in installments pursuant to Section 36.10 of the Agreement.¹

Currently pending before the Committee on Public Service is a bill proposed by the Massachusetts Teacher's Association (MTA) to provide for a change in the retirement laws to allow monies received under early retirement incentive and sick leave buy back provisions contained in collective bargaining contracts to be considered as regular compensation for retirement purposes. In 1979, the Legislature clarified the definition of “regular compensation” through the enactment of Chapter 681.

“Regular compensation,” during any period subsequent to December thirty-first, nineteen hundred and forty-five, shall mean the salary, wages or other compensation in whatever form, lawfully determined for the individual service of the employee by the employing authority, not including bonus, overtime, severance pay for any and all unused sick leave, early retirement incentives or any other payments made as a result of giving notice of retirement.

In passing this amendment, the General Court sought to prevent school committees from shifting the burden of payment of sick leave

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bonuses to the Commonwealth. An appeal filed by the Massachusetts Teachers’ Association with the State Supreme Judicial Court challenging the Legislature’s action in excluding funds received from sick leave buy back provisions from the statutory definition of “regular compensation” is awaiting a decision.

Retirement Benefits Available to RIF’d Personnel

The passage of Proposition 2 1/2 has prompted innumerable inquiries relative to the retirement benefits of members of the Teachers’ Retirement System who are RIF’d. According to Daniel J. Kelly, Executive Secretary of the Teachers Retirement Board, the following guidelines apply:

1. In the event that a member with six (6) years of full-time creditable service is RIF’d, he or she may leave their retirement contributions on deposit until attaining age 55 and at that time apply for a superannuation retirement allowance based upon the regular formula (years of service x age factor x three-year average salary). In other words, vesting occurs in the RIF situation after six (6) years and not the usual ten (10) years. (Obviously, this may not be a particularly wise investment of monies for members in the younger age brackets.)

2. A member who is involuntarily terminated (RIF’d) who has accrued at least twenty (20) years of full-time creditable service and is under age 55 is eligible to receive a termination retirement allowance pursuant to G.L. c. 32, s. 10 (2), equivalent to one-third of a highest five-year average salary, plus an annuity (yearly for life) based on contributions.

3. Alternately, as per usual, a member who has accrued at least twenty (20) years of full-time creditable service may retire at any time even if under age 55. The retirement allowance would, of course, be calculated under the regular formula (years of service x age factor x three-year average salary). In the case of a teacher who is RIF’d with substantially more than 20 years of service, it may be beneficial to retire using the regular formula under superannuation rather than

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1. The Commonwealth assumes the cost of teacher’s pensions, not local governments (G.L. c. 32, s. 1).
under the special formula available to persons with at least 20 years of service who are involuntarily terminated. The Board normally calculates these retirements utilizing both formulas in order that the member may retire under the most advantageous circumstances.

**Educare**

Other alternatives that districts might consider when faced with declining enrollments and teacher oversupply are (a) expanding the functions of schools and (b) broadening the population that they serve. For example, the American Federation of Teachers has proposed a program called Educare which contains three major components. The first, universal early childhood education, calls for the public schools to become involved in the care and education of children below the age of six. The second, lifelong education, would expand the public school system to include extensive adult education and retraining opportunities. Under the lifelong education feature, adults wishing to return to school for retraining and job upgrading, and those who enjoy learning, would be offered a variety of educational opportunities heretofore available to only veterans covered by the G.I. Bill of Rights. The third aspect of Educare calls for more thorough teacher training, which would include practical aspects of child training.

The primary argument in support of the program is that it would help to prevent widespread layoffs and unemployment among teachers. However, the potential problems with the proposed program include (1) the increased cost that may require additional funding and (2) the complications flowing from assigning to public schools the primary responsibility for early childhood and day care programs, instead of to other social agencies.

**CHAPTER VI.**

State Tenure Laws and Reduction In Force

As the phenomenon of declining enrollment has become more pronounced, and fiscal constraint becomes more of a burden to local school districts throughout the country, state governments have faced mounting pressure in dealing with their consequences. Most states have legislation concerning dismissal in the event of decreased enroll-
ment or financial difficulties in their tenure or continuing contract laws. Following is a brief description of the language of 18 state statutes which defines the procedures used to determine the order in which teachers are dismissed. The following information was compiled and forwarded to this Bureau by the Education Commission of the States.

California. The services of no permanent employee may be terminated while any probationary employee or any other employee with less seniority is retained to render a service which said permanent employee is certificated to render.

Colorado. Contract of nontenured teachers in the field shall be cancelled first.

Connecticut. The statute in Connecticut merely provides that a teacher may be dismissed provided that no other position exists for which the teacher is qualified.

Hawaii. Dismissal due to decrease in the number of pupils or for causes over which the department has no control shall begin with those teachers with the least number of years of service and the teachers so dismissed shall be placed on a preferred eligibility list and shall have the right to be restored to duty in the order of length of service whenever vacancies occur in which the teacher is qualified.

Kentucky. Seniority rights "within each teaching field affected."

Michigan. The statute contains no mention of the order of dismissal, but does provide that dismissed teachers shall have the "right to first vacancy qualified to fill."

Minnesota. The statute makes no mention of the order of dismissal but provides "first right to position for which they are qualified."

Missouri. The Missouri statute provides that no permanent teacher shall be dismissed while probationary teachers are retained, making no mention of the field of teaching. However, after all probationary teachers have been dismissed, permanent teachers are to be retained on the basis of merit within their field of specialization. However, the law provides a special section for St. Louis. This section makes no mention of the qualifications and merely provides that teachers shall, "be dismissed in reverse order of employment."

New Jersey. A number of court cases and commissioners' rulings have established the fact that tenured teachers shall be given preference.
North Carolina. The law makes no provision for the order of dismissal but does provide that the "teacher shall have priority for openings for which qualified for three successive years."

Ohio. Seniority rights must be observed.

Pennsylvania. The statute provides for a combination of seniority rights and rating cards. The first provides that where two teachers have the same rating, seniority rights shall prevail. This is complicated by the fact that seniority rights are one of the factors on the rating cards.

Rhode Island. Dismissal is based on seniority rights except "in technical subjects where no replacements are qualified."

Tennessee. The statute in Tennessee makes no provision for the order of dismissal but does provide that dismissed teachers shall be placed on a preferred list for employment for positions for which they are qualified.

Texas. Among the causes for dismissal listed is necessary reduction of personnel by the school district. Such reduction shall be made in the reverse order of seniority in the specific teaching fields.

Virginia. The statute provides no order of dismissal but schools may reduce numbers of teachers both tenured and nontenured because of decreased enrollment or abolition of particular subjects.

West Virginia. In West Virginia, a teacher who is dismissed because of declining enrollments shall be placed upon a preferred list in the order of their length of service with the school district and no teacher shall be employed by the board until each qualified teacher on the preferred list, in order, shall have been offered the opportunity for reemployment. This form of dismissal is considered to be merely a suspension of the contract, not a termination thereof.

Wisconsin. No provisions are made for school districts in a city or a county with a population of less than 500,000. However, in the case of a county with a population of 500,000 or more, the school system may lay off the necessary number of teachers but only in the inverse order of the appointment of such teachers.

Further analysis of RIF statutory provisions which specify the reasons for RIF, order for release, and order for recall is detailed in the following table.
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**Total** 21 7 6 8 5 9 15 5 11 2 5 8 2

1. System Reorganization.
2. Added by Massachusetts Legislative Research Bureau.

A majority of states (41) have some form of statutory RIF provisions, with much diversity existing among the several states. Declining enrollment represents the more common reason for dismissal, either as the single reason (Alas.) or alternatively with other grounds. Twenty-one states have such a provision (Alas., Ariz., Calif., Del., Ga., Hi., Ky., Mass., Minn., Mo., Nev., N.J., N.Y., N.C., Ore., Pa., R.I., Tenn., Vt., Wis., and Wyo.). Fifteen states include the catchall category of other "good" or "just" cause in their statutory definition (Ark., Colo., Conn., Hi., Mass., Mich., Neb., N.J., N.M., Ohio, Tenn., Va., Vt., Wash., and Wyo.). Nine states include the discretion of the board in their statute (Ala., Ida., Ill., Ind., La., Me., Mont., N.D., and W.Va.).

The order of dismissal is statutorily specified in 17 states. Some states (5) specify that nontenured employees are to be RIF'd before tenured employees (Colo., Hi., Ill., Mass., and Mo.). Statutes in 11 states prescribe that dismissal must be accomplished in inverse order, based on strict seniority (Calif., Ky., Minn., Mo., N.J., N.M., N.Y., Penn., R.I., Tex., and Wisc.). The Louisiana statute, however, specifically states that seniority is irrelevant. Oregon's statute does not specifically provide for an order of layoff, but has a seniority merit formula which mandates the transfer of employees scheduled for layoff.

The laws of 15 jurisdictions establish an order for reemployment of teachers suspended for RIF reasons. Five states have mandated that laid-off teachers must have their names placed on a "preference list" for subsequent vacancies (Hi., N.Y., N.C., Tenn., and W.Va.). In addition or alternatively, eight states indicate that restoration should be in inverse order, on the basis of seniority (Ariz., Hi., Ky., Mo., Penn., R.I., W.Va., and Wisc.). Michigan and Minnesota have neither a requirement for a preference list nor for inverse order, but do provide that the teacher be reinstated for the first vacancy for which he or she is qualified.

CHAPTER VII.
Redeployment of RIF'd Personnel

Massachusetts Division of Employment Security

The Massachusetts Division of Employment Security (DES) is committed to make every effort to provide support and assistance to local communities in dealing with the human relations aspect of Proposition 2½.
The Division has created an Outplacement Assistance Program designed to (1) aid municipal workers who may find it necessary to seek new employment in the private sector and (2) assist municipalities in dealing with requirements of the unemployment insurance law.

DES Job Matching Centers have arranged special job placement events throughout the year usually in cooperation with local Chambers of Commerce or other employer groups. Such events include Job Fair programs which provide opportunities to the unemployed person to meet with groups of employers at one location, which maximizes the possibilities of job placement.

DES sources have determined that 338 municipal employees have recently filed for unemployment compensation. Categorization of the types of positions held by these employees could not be supplied by the agency. The agency was also unable to substantiate whether or not claims were paid on a "contribution basis" or a "claims paid basis" as authorized in the statute permitting unemployment compensation benefits to public employees.

**Employment in Private Schools**

Interest in nonpublic education appears to be growing, particularly the interest in Protestant elementary and secondary schools collectively known as "Christian academies" or "fundamentalist schools." For a broad range of reasons, including parents' desire for a nonsecular, religiously oriented school setting and to some extent their negative reaction to real or fancied shortcomings in the public schools (court ordered busing, new approaches to sex education and neglect of moral development), Christian academies are increasing in number and enrollments. According to the National Association of Independent Schools, a 14 percent increase in enrollment occurred over the 1965-1975 period. The most dramatic enrollment gains occurred in schools sponsored by evangelical churches (Christian academies) and in the traditional/conservative Jewish day schools.1

Growth in enrollment of these fundamental schools is a continuing fact, and educational planners predict that more church related schools will be formed in the next few years. Despite sharply rising cost of facilities, instruction, materials and operations, the socio-religious motivations for such schooling likely will persist and solidify, according to some authorities.2

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2. Ibid., p. 23.
In Massachusetts, 1,154,731 children attend elementary and secondary schools. Of this number, 1,040,689 children attend public schools and the remaining 114,042 are enrolled in private schools (approximately 10%). In the 1979-80 academic year, 105,283 students attended parochial schools in the four dioceses of Massachusetts (Boston, Fall River, Worcester and Springfield). The Boston Archdiocese was responsible for the education of approximately 70 percent of the total number of children attending parochial schools in the state.

Parochial school construction in Massachusetts ceased in the early 1970's and enrollments in these schools has generally stabilized throughout the state over the last five years. Although the possibilities of employment within this system are extremely limited, the four dioceses are encouraging applications for employment from former public school teachers.

Although continued growth in the nonpublic sector of education may act as a catalyst in the absorption of displaced public school personnel, much cynicism has been voiced by the Massachusetts Association of School Superintendents relative to the private takeover of closed public schools in Massachusetts. Dr. Robert L. Sperber, Superintendent of Schools in Brookline and spokesman for the Association, contends that if advocates of private education purchase public schools which have been forced to close due to fiscal constraints, then the possibility of a two-level educational environment will evolve. With such a development, Dr. Sperber maintains that the poor and handicapped would attend public schools, while the financially able would be enrolled in private systems, thereby creating an extremely negative educational environment.

State-Federal Programs

Acknowledging that demographic shifts and other changes have resulted in the discharge of teachers and that layoffs would eventually lead to a loss in human resources in the labor market, officials in public education and industry have taken steps to retrain unemployed teachers for jobs in the high technology industry. On March 24, 1981, the Massachusetts Board of Education approved four proposals geared to retrain teachers displaced as the result of declining enrollments and fiscal constraints. These programs are to commence on or about June 15, 1981.
Two of these proposals were submitted by the Middlesex Community College in Bedford. One is designed to train 20 unemployed teachers as technical writers, while the other proposal is designed to reemploy a certain number of RIF'd teachers as drafters and printed circuit board designers. The remaining two proposals which recently met approval by the Board of Education were submitted by the Shawsheen Valley Regional Vocational School in Billerica, and the Oxford Public School system. The Shawsheen Valley Regional Vocational School proposal will retrain 16 teachers as computer programmers and 24 more as word processors. The Oxford Public School system's proposal will retrain 16 teachers as junior computer programmers.

Funds for the support of these programs are allocated under Public Law #94-482, the Federal Vocational Education Act as amended. Under this financing mechanism, the Federal Government assumes the financial burden of the pilot program for up to a period of two years; thereafter, the financial burden shifts to the state. Current policy relative to the retraining of teachers stipulates that no tuition be charged the participants, but if future need for such programs expands beyond the ability of the state to maintain efforts, then a waiver to permit nominal tuition charges may be granted. Trainees in approved programs are eligible for unemployment compensation under the provisions of G.L. 151A, s. 30, which provides that "... the total benefits which such individual may receive shall be extended by eighteen times his benefit rate, ..."

**The Massachusetts High Technology Pilot Program**

On March 28, 1980, a $79,000 federal grant to retrain unemployed teachers for the Massachusetts high technology industry was announced by Dr. William H. Hebert, Executive Director of the Massachusetts Teachers Association (MTA), Dr. Gregory R. Anrig, Massachusetts Commissioner of Education, and Howard P. Foley, President of the Massachusetts High Technology Council. The grant money was assigned to the South Middlesex Regional Vocational Technical School in Framingham to be used to establish the High Technology Institute for Education Personnel.

The teacher retraining program, the first of its kind in the country, is a joint effort of the MTA, the Massachusetts Board of Education and the High Technology Council. The purpose of the program is to train
newly laid-off teachers in the field of computer programming. "I fully expect this," said Dr. Hebert, "to be the beginning of other cooperative training programs which will be developed to use the skills of teachers no longer needed because of the decline in student population -- teachers whose talents can certainly be transferred to growth industries such as high technology."

The 26-week pilot program commenced on June 30, 1980 with a total enrollment of 34 recently laid-off teachers. The course, taught by experts from DATA Inc. of Burlington, was designed to meet specific current employment needs of the state's high technology firms. Of the 34 original entrants into the program, 32 successfully completed the course, and 30 have been placed in entry level computer programming positions, with earnings averaging $18,500, in comparison to their average annual teacher income of $13,000.

Funded by a $99,000 federal occupational education grant, a second computer course has been organized in which 34 more ex-teachers are currently being retrained in the South Middlesex Regional Vocational Technical School District.

**Future Need for Teachers**

Shrinking public elementary and secondary student enrollments will likely have a profound impact upon education in the years to come. Declining enrollments have already caused serious concern among many colleges where students in public education programs are being told that future employment opportunities in the local public education sector are limited. Faced with jobless prospects upon graduation, many such students are attempting to alter their degree programs so as to insure greater success in the labor market. Many colleges which specialize in preparing candidates for the teaching and applied professions report fewer admission applications for the 1981 year than during the same period last year.

While the need for teachers in the traditional curriculum programs is decreasing, many school systems are anticipating the need for teachers in more specialized areas such as computer and business machine operation. As the public secondary programs strive to keep pace with college entrance requirements in these areas, the need for more advanced equipment required for "on hand" training and experience may increase.
Advances in other areas of industrial technology, already occurring at a more rapid pace in this decade than the last, will require administrators in vocational education to add nontraditional skills to their curriculum in the area of auto mechanics, communications and electronics.

While it is extremely difficult to determine the number of teachers needed in the next decade, they may well represent the changing character of education.
APPENDIX A

REDUCTION IN FORCE PROVISIONS OF QUINCY SCHOOL PERSONNEL COLLECTIVE BARGAINING AGREEMENT

Subject to the provisions of this agreement, the Committee retains the right to determine the number of teaching positions and other professional positions which are needed in the school system and also retains the right to determine employees to be laid off.

1. A teacher on tenure shall not be laid off if there is a nontenured teacher whose position the teacher on tenure is qualified to fill.

2. Upon determination by the School Committee that there shall be layoffs in any discipline, as set forth below, the following procedures shall apply to tenured teachers only.

Within the following disciplines, layoffs shall be determined by seniority.

In determining the order of teachers to be laid off, teachers shall be laid off by discipline. For the purposes of this Article, discipline shall be:

a. Pre-school thru Grade 6
b. English — Secondary (7-12)
c. General Science — Secondary (7-12)
   Biology — Secondary Certification
   Chemistry — Secondary Certification
   Physics — Secondary Certification
   Earth Science — Secondary Certification
d. General Math — Secondary
   Algebra — Secondary Certification in Match and teacher must have a minimum of 6 college credits in Algebra or equivalent college concentration.
   Geometry — Secondary certification in Math and teacher must have a minimum of 6 college credits in Geometry or equivalent college concentration.
Algebra II — Secondary certification in Math and teacher must have a minimum of 6 college credits in Algebra (which may include a survey course in Calculus) or equivalent college concentration.

Trigonometry — Secondary certification in Math and a minimum of 6 college credits in Trigonometry, Calculus, and/or analytical Geometry or equivalent college concentration. Three of these 6 credits must be in Trigonometry.

Calculus — Secondary certification in Math and a minimum of 6 credits in college calculus or equivalent college concentration.

e. Social Studies — Secondary (7-12)
g. Business Education — Secondary (7-12)
h. Art — K-Post Graduate
i. Instrumental Music — K-Post Graduate
j. Vocal Music — K-Post Graduate
k. Physical Education — K-Post Graduate
l. Home Economics — K-Post Graduate
m. Industrial Arts — K-Post Graduate
n. Reading — K-6
o. Reading — Secondary
p. Library Services — K-12
q. Teacher of Children with Special Needs — Mild K-12
r. Teacher of Children with Special Needs — Moderate K-12
s. Teacher of Children with Special Needs — Severe K-12
t. Teacher of Children with Special Needs — Generic K-12
u. Teacher of Young Child with Special Needs — Preschool Ages 3-5
v. Guidance Counselor — Elementary
w. Guidance Counselor — Secondary
x. Guidance Counselor — Pre '70 certification
y. School Adjustment Counselor — K-12
z. Career Education — K-12
za. Speech & Hearing Therapist — K-12
zb. Vocational Technical — by state certification
zc. Quincy Junior College — by College department

Seniority is defined as the length of continuous service from date of initial contract in the Quincy Public Schools. Authorized leaves of absence up to eight weeks, or sabbatical leaves, shall be considered time worked for purposes of seniority and lay-off. Authorized leaves of absence without pay shall be considered as continuous service but will not be considered as time worked for seniority and lay-off. In cases involving members who have identical seniority, preference for retention or recall shall be given to the member who has achieved the highest level of training, including degrees, courses (in-service and others) and for Voc-Tech teachers previous related work experience. Members who are to be affected by a reduction in staff shall be notified in writing no later than May 30th of the school year preceding the year in which the reduction will take effect.

The following sections a, b, c shall apply to teachers who have dual certification and bumping rights as set out below.

a. In the event a teacher has a certification in another discipline and has taught in the other discipline or certified area for one year or more in Quincy in the past five years, the laid-off teacher shall have the option of bumping the junior teacher in that discipline.

b. The dual certified teacher may also prove competence by passing the Graduate Level Examination within five years in the discipline in which he has certification but lacks one year of experience in the last five years of teaching.

c. If there is no graduate record examination in that discipline, the teacher may prove competence by passing a graduate level examination developed and administered by a graduate level board of three college professors (one chosen by the teacher involved, one by administration, one mutually agreed upon); or a teacher may prove competence by suc-
cessful completion of a minimum of two graduate courses in the area of specialization. Courses must be completed with a grade of "B" or better. These options, a, b, c, must be successfully completed prior to the May 30th notification deadline in order to be valid for the next school year.

Laid-off members may continue group Health and Life insurance coverage during the recall period of 18 months as provided by the Committee to members of the bargaining unit by reimbursing the Committee for full premium cost. Failure to forward premium payments to the Committee or refusal to return to employment upon recall will terminate this option.

Teachers who are on lay-off because of reduction in force shall be on a recall list for the first eighteen months of lay-off and shall have preference over new applicants for any new position or full time vacancy that the Committee is going to fill. The failure of a teacher to accept the assignment within fifteen school days of notification thereof shall automatically remove that teacher from the recall list.