

## **DEVELOPING A REDUCTION IN FORCE PROCEDURE**

### **South Wisconsin District LCMS, 2004**

**Disclaimer:** The following guidelines are intended to provide general recommendations for preparing a Reduction in Force (RIF) procedure. They are not to be regarded as either authoritative or prescriptive. Guidelines allow for local discretion on the part of administrators and governing bodies.

#### **INTRODUCTION**

School enrollment in individual congregations may go through periods of dramatic growth and disappointing decline. In the same way, congregational membership, attendance, and contribution patterns may experience swings. While it is unwise to add or reduce permanent staff too hastily in response to temporary enrollment aberrations, long-term enrollment trends sometimes do mandate these actions.

During an extended period of declining numbers and resources, wise and prudent stewardship of congregational resources may require staff reduction by one or more workers (teachers, assistant pastor, DCE, etc.). Staff reduction is excruciatingly painful for the affected workers, the administrator, co-workers, and the congregation or association. Natural attrition through retirement, accepting a call to another congregation, or voluntary resignation are the least painful means of reducing staff. Unfortunately, these options are not always available at the time or in the positions where reduction in force is required. It is essential that the congregation or association formulate, adopt, and follow a reduction in force procedure that respects the Doctrine of the Call, meets legal requirements, cares for the affected workers, and is consistent with employment policies. It is wise to develop the procedure in advance of the need to implement it.

#### **LCMS DOCTRINE AND PRACTICE**

A primary need when developing a reduction in force (RIF) procedure is to be consistent with The Lutheran Church-Missouri Synod (LCMS) doctrine and practice. The LCMS Commission on Theology and Church Relations (CTCR) recently issued a report entitled *The Divine Call* (available from Concordia Publishing House), which addressed the issue of whether or not the Divine Call of a pastor must always be permanent (open ended). We may also apply the principles stated below to the Divine Call of Commissioned Ministers (Teachers). The authors of the report stated,

*Neither the Scriptures nor the Confessions explicitly address the details of the call process, including this issue. (Whether or not the Divine Call may be "open ended") They exhibit less concern about the tenure of a particular call than they do about the pure proclamation of the Gospel and the right administration of the sacraments. It may well be the case that the length of service, like location and salary, is also an issue that is entrusted to the church to administer "by human right" (de jure humano).  
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Recognizing that extraordinary conditions may exist or arise in congregations or other calling entities of the Church (such as schools), the CTCR report added the following thoughts,

*The normal practice within the history of Lutheranism has been to treat the call of the local pastor (pastor loci) as open-ended. (Page 38)*

*The call to proclaim Law and Gospel does not take place in a vacuum. It occurs within specific contexts and situations. According to the second principle (recognition of congregation's needs) we may conclude that, in addition to regular Word and sacrament ministry within congregations, the church's need for particular gifts or specialized skills at times is best met by something less than an open-ended call. ( Page 39)*

While some might interpret the guidance of the CTCR document narrowly to apply only to conditions stated in the original Call documents extended from a calling entity to a worker, some of the principles stated above recognize the reality that local conditions sometimes require that exceptions may be made to general practice. The Council of Presidents and the Synod itself provided guidance specific to schools or institutions of higher education facing the

painful reality of staff reduction. The LCMS Council of Presidents' document, *Rubrics Governing Call and Placement Procedures for Ministers of Religion Commissioned*<sup>1</sup>, states the following:

*A Call may be issued for a limited period of time, although every Call is extended with the intention, given the continuing need, of an ongoing relationship between the calling entity and the one who is called. (Page 4)*

*A Call ordinarily is continuing, but the worker or the call entity may terminate it. (Page 5)*

***A calling entity may terminate a call, under the provisions of the entity's constitution and bylaw or policies, in a spirit of Christian love and concern for the worker.*** (See Appendix B of this document for guidance relating to the laws of the State of Wisconsin). LCMS Bylaw 6.44 speaks of the termination of faculty positions at Synodical colleges, universities, and seminaries. See also the guidance provided by the Synod's Commission on Theology and Church Relations in its report to the 58<sup>th</sup> Regular Convention of the Synod (1992), p.5 [Convention Workbook, p. 67] (Appendix C). The pertinent section from the LCMS handbook states the following:

#### ***6.44 Termination of Position***

***a. Positions of initial-level appointment, as well as continuing-level appointment faculty, may be terminated by the Board of Regents under certain institutional conditions that do not reflect on the competency or faithfulness of the individual faculty member whose position is terminated.***

*The conditions are the following:*

- 1. Discontinuance of an entire program (e.g., social work, business)***
- 2. Discontinuance of an entire division or department (e.g., modern foreign language) of a college, university, or seminary.***
- 3. Reduction of the size of staff in order to maintain financial viability in compliance concerning fiscal viability.***

Appendix A contains a more complete listing of guidance from the *2001 Handbook* of The Lutheran Church-Missouri Synod.

## **STATUTORY GUIDANCE**

There are Wisconsin statutes that must be considered in a RIF procedure. While they do not always speak directly to a RIF situation, they do pertain to discrimination in employment practices. While parochial schools are given some leeway, they do not receive a complete "pass." See Appendix B for more information.

## **CONTRACTUAL CONSIDERATIONS**

Contract law applies to the employment agreements used by Lutheran congregations. The foundational premise involved is that the parties to the agreement must do what they promised to do. Most Lutheran congregations use the Synodically approved Call documents for ordained and commissioned ministers. Both LCMS doctrine and practice related to the divine Call and contractual commitments included in the Call documents are important considerations when developing or implementing a RIF procedure involving called workers. Lutheran schools also use some form of contract documents to employ teachers who are not Synodically certified Commissioned Ministers in the LCMS. These documents may or may not be renewable from year to year, and refer to or imply tenure. When developing and later implementing a RIF procedure, a careful review of existing call or contract documents is a necessary first step to determine what included provisions may impact the RIF procedure.

The Constitution and By-Laws of a congregation or association have sections that pertain to the Calling, employment or dismissal of church workers. These sections are implicitly part of any employment agreement.

Even though the official LCMS Call documents no longer include the language of *tenured* or *non-tenured*, some Lutheran congregations continue to employ personnel policies that define how called workers move from *non-tenured* to *tenured* calls. These agreements are usually introduced in addenda to the Call documents, and articulated in personnel policies. While Lutheran schools are not subject to the statutory system of tenure that is in place for

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<sup>1</sup> A copy of this document has been provided previously to all elementary and high school administrators. Additional copies of the *Rubrics...* are available from the South Wisconsin District Office.

public schools, if call, contracts or congregational policies define a system of tenure, teachers have whatever contractual rights are promised. Congregations that have created a system of tenure through contract or through written policy must carefully review the tenure provisions to make sure they do not conflict with the RIF procedure.<sup>2</sup>

### **CRITERIA THAT MAY BE CONSIDERED IN A REDUCTION IN FORCE PROCEDURE**

In establishing criteria for a RIF procedure, consider the impact the following items should have on the procedure. They are not listed in any particular order.

1. The specific position(s), program(s), or area(s) of ministry subject to reduction.
2. Length of service to the congregation; i.e., preference given to workers with longer but not shorter service.
3. Roster status, certification, and endorsements as reflected in calling and hiring process.
4. Overall ministry needs.
5. Individual talents and abilities.
6. Tenure or lack of tenure where and if those terms are part of employment agreements or congregational policy.
7. Contribution to the congregation/school program.

Note: If evaluation is to be used to determine relative abilities and contributions, criteria, format and procedure, that evaluation should be shared with staff members before they are used. A record of several such evaluations provides more useful information than a single evaluation. It is unwise to confuse the process of termination for incapacity or incompetence with reduction in force.

### **ILLEGAL PRACTICES TO BE AVOIDED**

1. Discrimination on the basis of race, ethnicity, or gender (**Lutheran schools may give preferential treatment in hiring or retention to members of the congregation and to Ordained and Commissioned Ministers in keeping with their calling or employment policies**).
2. Negative discrimination on the basis of age or seniority, i.e., terminating more senior staff members to replace them with less experienced people at lower salaries or just because they receive the highest compensation and, therefore, would represent the greatest savings.
3. Targeting an individual for reduction on the basis of grudge, spite, jealousy, or other personal considerations.

### **AN ORDERLY PROCESS IS PREFERRABLE TO A TRAUMATIC EVENT**

A well-planned, predetermined, written process that has been developed with the guidance of legal counsel and publicized in advance of needs helps to make RIF an orderly process rather than a traumatic event. The process should include, but may not necessarily be limited to, steps such as the following:

1. On the basis of reasonable cause (declining numbers, budget constraints, program changes) the appropriate Board presents a recommendation to the congregation's or association's governing body that a reduction in staff is needed. If the governing body officially adopts the recommendation, the decision is communicated to the staff.
2. Considering recommendations by the administrator and in consultation with other affected boards, the responsible Board identifies the area/program for reduction.
3. Once the decision has been made, The administrator employs the criteria set forth in the RIF procedure to recommend to the Board the individual staff member(s) whose position(s) will be eliminated.
4. If the recommendation is likely to result in the termination of a called worker's position, consider including the following steps in the RIF procedure:
  - a. Notify the worker(s) likely to be affected immediately, in person and in writing.

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<sup>2</sup> This should be made clear when initial Calls or contracts are offered to workers. Most workers are going to assume tenure unless otherwise indicated.

- b. Discuss alternatives to termination, such as early retirement, reassignment, resignation, or placing name(s) on the Synodical call list. To the extent possible, make reassignments affecting other workers by mutual consent, but the best interests of the ministry of the calling body are the overriding concerns in the decision process. Final decisions regarding reassignments are made by the Board after hearing recommendations of the administrator.
5. The Board, considering the recommendation of the administrator, is responsible to make the final recommendation as to which staff member(s) is to be terminated. In the case of a called worker, this recommendation must be presented to and adopted by the governing body (e.g., Voters) at a legally convened meeting.
  6. Christian care and concern for the affected worker(s) and their families requires that the calling body negotiate a generous severance package including salary and continuing health insurance coverage after the date of termination of employment. To prevent later misunderstanding and repercussions, it is wise to offer the severance package in return for the affected worker's signature on a written release prepared by legal counsel.
  7. Present a notice of termination to the affected worker no less than sixty days prior to the end of the employment. Recognize that even a sixty day notice will probably be insufficient for a called teacher to find a new position.
  8. A staff member terminated through the RIF procedure is entitled to whatever months of pay may have been earned through service during a school year and unused vacation and sick pay. This is not the severance package. The severance package should include Concordia Plans coverage for at least 6 months beyond the last quarter of employment and no less than 90 pays of full pay after the end of employment.
  9. The administrator and board express their Christian concern by their good faith effort to help a worker terminated because of a reduction in force to secure a new position.
  10. Employing entities MAY consider adding recall privileges to the procedure if that is in the best interest of the ministry.

### **ARE WE A BUSINESS OR A CHURCH?**

We have all heard this question in our congregations. Our congregations must be both, not either one or the others. The day of the congregation getting a pass for poor business practices is over. Even as they identify rightfully as *the church*, congregations and associations are also non-profit corporations. They need to behave responsibly in both segments of their identity. Just as they consult with ministers about church matters, leaders need to consult an attorney to prevent legal issues from arising instead of waiting to engage an attorney to respond to lawsuits.

### **REFERENCES**

*The Divine Call* A Report of the Commission on Theology and Church Relations of The Lutheran Church-Missouri Synod. St. Louis, MO: February, 2003.

Council of Presidents of The Lutheran Church-Missouri Synod, *Rubrics Governing Call and Placement Procedures for Ministers of Religion-Commissioned*, November, 2003.

*The Handbook of The Lutheran Church-Missouri Synod, 2001 Edition*. St. Louis, MO: 2001.

*Convention Workbook* of the 58<sup>th</sup> Convention of The Lutheran Church-Missouri Synod. St. Louis, MO: 1992.

*Developing a Reduction in Force Policy*, Nebraska District LCMS. Seward, NE: 2004.

*WCRIS Legal Handbook – 2002 Edition*, Wisconsin Council of Religious and Independent Schools. Madison, WI: 2002.