EduRisk™
By United Educators

Planning and Implementing Layoffs and Other Cost-Saving Measures

Roundtable Transcript (Recorded in October 2009)

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Guests:

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Tom D'Antonio, Ward Norris Heller & Reidy
Bob Walton, CEO at the Claremont University Consortium

OPERATOR: Good day, ladies and gentlemen, and welcome to the United Educators Insurance Retention Group (UE) conference call on Planning and Implementing Layoffs and Other Cost-Saving Measures. At this time, all participants are in a listen-only mode. Later, we will conduct a question-and-answer session, and instructions will follow at that time. If anyone should require operator assistance during the conference, please press star then zero on your touch-tone telephone. As a reminder, this conference call is being recorded. I'd now like to introduce your host for today's presentation, Hillary Pettegrew.

HILLARY: Good afternoon and welcome to the UE telephone roundtable. I'm Hillary Pettegrew, risk counsel at UE and I'll be the moderator for today's program. Our two speakers will be discussing effective strategies for reducing costs with a primary emphasis on conducting layoffs. For today's purposes we'll be using the terms "layoff" and "reduction in force" or "RIF" interchangeably. I'm very pleased to introduce today's speakers, Tom D'Antonio and Bob Walton. Tom is a UE select counsel for New York and a founding partner of the law firm Ward Norris Heller & Reidy in Rochester. Hello, Tom. Thanks for joining us today.

TOM: Thanks, Hillary. I'm pleased to be with you all.

HILLARY: Bob Walton is chief executive officer for the Claremont University Consortium (CUC), and he previously served as vice president for finance and business at the College of Wooster in Ohio. Hello, Bob, and thank you for participating in the roundtable.

BOB: Thank you, Hillary. It's nice to be included in today's discussion.

HILLARY: Before we get started, I'd like to quickly take care of a few housekeeping matters. Recently, we sent those registered for today's program some reference materials on layoffs and related issues. If you did not receive them, please contact us at **risk@ue.org**. At the end of the program, we do ask that you please fill out the evaluation form. We value your feedback and use it to improve future roundtables. We're taping today's program as we do all roundtables and the mp3 file will be available shortly on our website, **UE.org**. And finally, I just want to remind everyone that our roundtables are not designed to provide legal advice.

Today's discussion will center around 10 lessons learned, which are based on an article that my colleague, Frank Vinik, wrote during a previous economic downturn following interviews he did with a number of business officers, HR directors, and attorneys at colleges and universities. That included one of today's speakers, Bob Walton. These candid interviews focused on how institutions handled laying off employees, including things that worked and some that did not. Today Tom and Bob will discuss how those lessons are equally applicable in today's economic environment. The 10 lessons learned are listed on page 4 of your reference materials.

Today, I'll be asking the speakers questions for about 15 minutes and then they will take questions from you, the members of our audience. You can ask questions by email or by calling in. At any time during the program, you can email a question to **risk@ue.org**. We'll give you instructions later on how to call in with questions for Tom or Bob. Tom, the overall subject today is conducting layoffs and alternative cost-saving measures. Are there any underlying themes that institutions should keep in mind?

TOM: Hillary, I think there are two that I'd suggest that institutions keep in mind if they're considering layoffs. The first is that job eliminations can be quite traumatizing for the entire organization. And so all of the employees, those who are ultimately the subject of the layoffs and those who remain at the organization, are going to want to know that the organization looked at all less drastic alternatives and that they pursued the layoffs as a last measure. You also don't want that anxiety to turn into animosity. So being able to articulate your viewpoint and making sure that you clearly try to keep the focus of the employee anxiety in mind is important. Secondly, I don't think that an institution can plan too carefully in advance of layoffs. You've got legal issues, you've got morale issues, and you've got public relations issues, all of which need to be considered carefully and dealt with appropriately.

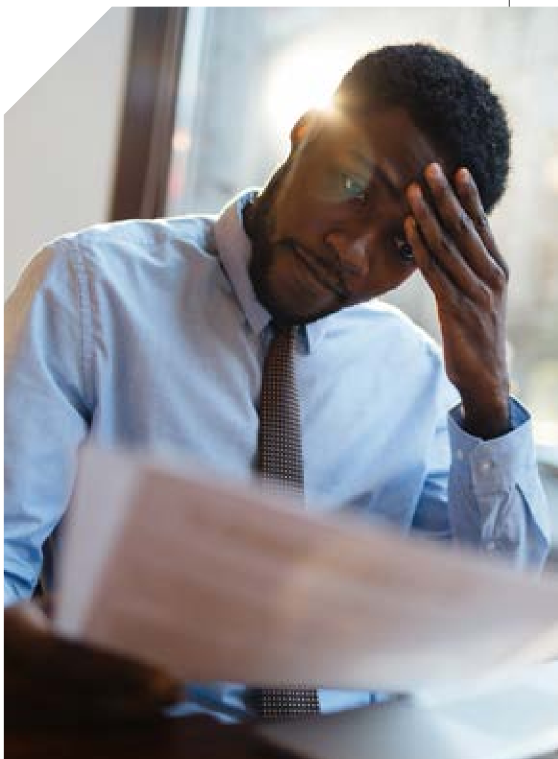
BOB: Clearly, from my perspective, the financial challenges that we have today are likely to be certainly intermediate, perhaps long term. So I think that many listeners and many of the educational institutions that I talked to are going to be dealing with some of these issues. For those who are endowment-driven places, which have traditionally received a lot of revenue from endowment draws, clearly when we look at 2009 where even a Harvard, a strong organization like Harvard saw that their endowment was down 27 percent, clearly those institutions are facing pressure. The publics clearly are also facing pressure as local and state funding is reduced, and at the same time, we're seeing a tremendous uptick as the economy is worse and in terms of people going back to school. So there's even more demand. And clearly, for the private institutions like my own, tuition increases have limits and many parents have themselves lost jobs or depleted their savings, and students need more aid. So I think this is going to be with us for a while.

HILLARY: Thanks for those thoughts. Our first lesson learned is to exhaust cost-saving alternatives. Bob, can you start us off here?

BOB: One of the things that I think is a little challenging in our environment when it comes to layoffs is that many college employees essentially assume that they have lifetime employment, that is certainly not a contractual obligation, but in many cases people feel as though they're in their job for life. If layoffs are going to be used as a method to deal with the financial issues, we want to make sure to show other alternatives considered, and even if those are rejected, we need to go through a process of transparency here. You have the obvious low hanging fruit. Most organizations that I've been associated with, and certainly here, you trim things like supplies and travel and professional development, but it really goes beyond that. I think that one of the things that every institution should really do is consider the process that they go through of including others in the organization and trying to build a candidate list or an inventory of options that may precede any decision to cut staff, so that people can buy in that a legitimate process was taken on. At Wooster, for example, a private liberal arts college in the Midwest, we actually developed a spreadsheet, getting ideas from faculty, from students, and from staff that included over 100 candidates for our inventory. Even though it was a time-consuming process, it was very helpful in terms of bringing the culture along.

HILLARY: Among the more common cost-saving measures that I've been hearing about in this downturn include things like hiring and salary freezes, leaving vacant positions unfilled, suspending contributions to retirement plans, and furloughs. That's certainly just a partial list. But Tom, do any of those items tend to raise red flags for you as an attorney?

TOM: Yes, Hillary, two of them do: the suspending the retirement contributions and furloughs. With regard to the suspension of contributions to a retirement plan or, frankly, any change to a retirement plan, those typically trigger analysis under the Employee Retirement Income Security Act known to most folks as ERISA. That's a very complicated statute, and frankly, you need to ensure that when you make any change to an ERISA governed plan, you do it in accordance with the provisions of the plan or you can face pretty serious penalties. With regard to furloughs, which, you know, essentially is a requirement that your employees take a period of time off without pay, the issue that comes up there most frequently is that they bump up against potential violations of the wage and hour laws. There are both federal and state wage and hour laws to consider. Under the federal law, which is really the one that I'll focus on today, you can furlough hourly employees relatively easily because those employees get paid just for the time that they work. It's more complicated when you furlough a salaried employee, or as we've historically called them exempt employees, because those employees, you may require to pay the employee for the entire week when they work any portion of a week. With regard to publics and privates, there are some differences under the law.



The publics actually have a little bit more latitude in terms of furloughing their employees for less than a full work week. But I will tell you that the advice I give here is, if you're going to look at furloughs, look at three things. One, try to do it during a full work week. Don't look at partial weeks if you can possibly avoid it. Two, focus very carefully on state wage and hour laws, which may impose additional restrictions in this area. And three, a practical, not necessarily a legal consideration, furloughs mean that employees will not be at their job for a period of time. That can create bottlenecks that create more problems for the institution than the short-term money that you save during the furlough period will benefit you. So you've got to carefully plan the furloughs so that you don't create impediments to the functioning of the institution.

HILLARY: Thanks for those cautionary points, Tom. Bob, what about early retirement programs or incentives? In your experience, are those an effective device for saving costs and possibly avoiding layoffs?

BOB: Well, they certainly were here at the CUC. We developed a program that we call the VERP, Voluntary Early Retirement Program. By introducing that essentially, preceding the reduction in force that we did over the summer, we were able to reduce by almost half the number of people that we ultimately laid off. So if I were to ask myself a question, it would be, "How did this work?" In our case, we worked with a counsel and developed a fairly generous benefit program where we offered qualified employees who met a certain criteria of agent tenure a full year salary plus a one-time allowance under this contract for a health benefit payment under COBRA or a private plan of their choosing. At the same time, from a financial perspective, that reduced our costs for that employee immediately in terms of matching taxes and contributions to their retirement account. The general caution about these plans is that, they're very hard to predict who is going to take up the offer. In our case, when we did our initial budgeting for this, we targeted 20 positions that we felt we could fund under our program that I just described. We had 31 applications and we had to really step back and really evaluate that. In our case, we were able to fund all 31, but it might not be the case for every institution and you have to think about how you're going to go through that selection process.

On the flip side, you can also have too few acceptances, which can be difficult if you had a certain anticipation of how many you would need to be able to meet your financial targets for the multiyear modeling. These programs typically don't save you a lot of money on the front end, but they can be very beneficial in the second and outlying years. Perhaps one of the things we felt best about this program is if the economy were to continue to be weak or to even weaken further, once you have a voluntary early retirement program, if we needed to, we could simply extend leaving those positions empty in the second year either a part of the year or the full year, even though that would be challenging to the performance of services. But it allowed us a second year of cost containment without having to go through another layoff period. So that was a secondary benefit that I don't think we'll have to take advantage of here at the CUC. And I would say that the staff perceive this as a positive in the sense that we took the very high road, we were generous. In our particular case, it would have certainly cost us less to lay those people off under the layoff plan that we put together, but as a result of that our staff were able to really recover and snap back pretty quickly after the VERP and the reduction in force were over, so I think it was worth it.

HILLARY: Thanks, Bob. Lesson number two is be honest and follow the rules. Tom, that seems quite obvious. So why is it worthy of emphasis?

TOM: Because, Hillary, I think, unfortunately, a lot of employers have trouble following that pretty simple piece of advice. And the reasons for that actually are understandable. Many employers have great pride. They don't want to necessarily level with the employees about why they're going through the process of downsizing, or they want to micromanage a message and avoid dealing with what are some fairly difficult issues and difficult choices. That being said, an employer doesn't have to lay out all of the reasons and, certainly in detail, the thought process that went into the decision to effectuate layoffs. However, the message here is, what you do tell the employees, be candid about. And, frankly, if there are things that employees ask about that you don't want to tell them, say this, "That's not really part of the calculus, if you will."

Following the rules, that basically means figuring out what rules do apply, what documents, agreements, and handbook provisions govern your process here both in terms of the process you undertake as well as any restrictions on what you can do as a result of that process. And if nothing specific in your processes and handbook provisions addresses layoffs, look to things like emergency measures that might give you some guidance here. One of the things that you cannot do, it seems to me, is to go into this process, into the decision-making process without some sense as to what rules you're going to use to govern your conduct. And a failure to follow existing rules is a huge red flag in litigation.

HILLARY: Thanks, Tom. Bob, what selection criteria for layoff did you use at Wooster and CUC?

BOB: Hillary, at both institutions, when we got to the point where we needed to do a reduction in force, we truly focused solely on eliminating positions. We weren't evaluating people's performance, we didn't go into any personnel files and look at any documents. So we made the assumptions correctly that these were permanent, structural, re-engineered position eliminations. And in our case, most of them were one of a kind. What I mean by that is these were not, with a few exceptions, positions that have large numbers of staff and the same job classification, which is a little more challenging when you have to pick among those.

TOM: Actually, I agree with what Bob said. I think that focusing on positions and disregarding performance is much preferred. The problem may come in the last point that Bob made, which is when you have several positions in the same job classification, how does an employer pick and choose? There, I've seen employers who do use performance to try to differentiate. That is not to say that the layoff is necessarily performance-based because it's not, but if you have, for example, five maintenance engineers and you need to lay off one, oftentimes, the tiebreaker in making the decision of which one to lay off will be the individual's performance relative to his or her peers.

There are some significant risks if you have real concerns about the quality of your documentation and the quality of the manager who's creating that documentation. You have always the potential when you use performance as a criterion in the decision-making process the concern that the manager uses the so-called thorn in the side employee is the one who gets dismissed. And so ultimately take away from any direct manager the decision-making authority. Let the management of the institution, the senior administration be the entity that reviews and ultimately decides which employees to lay off.

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— Bob Walton

HILLARY: That's helpful advice. Tom, many employment attorneys worry about disparate impact when selecting employees for layoff. Can you briefly explain what that means?

TOM: Disparate impact is basically you have facially neutral criteria that's used in the decision-making process, but it has a greater, more substantial or so-called disparate impact on a particular group. In the reduction-in-force context, that group is usually, not always, but usually older workers. I'll give you a good example. You have 15 people in the department, and three of them are selected to be laid off and they happen to be the three highest paid workers. Now, there's nothing necessarily wrong with trying to trim your costs, but your highest paid workers also often tend to be your oldest workers. So you create at least a potential additional issue in any challenge that might be made to that RIF when you have a demonstration of disparate impact. That is not all that's required if those workers sue, but it's certainly a big leg up for them in the litigation. And my advice there is try to use experienced counsel and/or HR people in the review process to at least spot where you can potentially have disparate impact issues so you can walk into the process with your eyes open, knowing what it is that you need to do.

HILLARY: Thank you for that explanation. Our third lesson is to use a team approach to layoffs. Tom, who should be on this team and what should it do?

TOM: Well, let's first talk about who should be on the team. There's no hard and fast group, but here are people that I would suggest and have suggested to be part of the team. First, there need to be people on the business side. Second, if you have counsel, I would certainly urge you to involve counsel in the process, the human resources representative to deal with, obviously, the human resources issues that come up. Some others to think about, a communication specialist. You're going to need someone to help you craft your message, and that person should be involved literally from the ground floor all the way up. And last, you might want to think about someone from risk management. Those skills are important when you are considering the downside risks of a RIF. The team, what should it do? It should collectively look at the RIF, look at how it's about to be carried out and deal with it in the process. It should be a collective approach, a team approach. You've got to look at both the financial implications of reducing your staff as well as the legal implications of doing that.

I do not recommend necessarily making a faculty member a member of the team, but you need to get faculty input because, again, faculty have this strange view at many institutions that they actually have something to do with managing and running the institution. And if they are feeling like they've been left out of the loop and if they feel like this process has been dropped down on your staff, even if they themselves aren't directly affected by it, down the road, I think, you wind up dealing with faculty members who second-guess the institution and they will allege mismanagement and all kinds of issues that you don't really need to deal with. That's baggage that you can avoid by getting the faculty to at least be aware of what's going on and understand the reasons for it. Last but not least, if you have unions on the campus, obviously you need to consider union participation, because getting union buy in or at least getting them to tolerate what's going to happen is important in avoiding problems down the road.

HILLARY: More good points. Lesson number four is, document your financial condition. Having been through the layoff process a number of different times, Bob, can you explain how you handled documentation?

BOB: At both Wooster and the CUC we developed a one-page summary that we used for both the public and we distributed to the media. My advice would be, as we learned through practice, it's best to keep the message fairly terse and short, keep it simple, but accurate. The reality is there are a couple of key things that people want to know and usually not a lot of detail. The detail doesn't really add to the clarity of the message in many cases. I would also recommend that you identify, as Tom noted, one central campus administrator who consistently can explain the financial problems to the campus, to the press, to the public, and even, in the case of litigation, to the jury in terms of what the public institutional voice had to say about the incident. I typically recommend this not be the top officer of the institution, not the president. You want to have someone who can frankly have plausible deniability about a question that comes in from the side that no one anticipated. As you move up in rank, it's certainly harder to basically say, "I'll get back to you on that." And then finally, we found that it was very helpful to keep a private file that's not meant for public consumption, that is all of your background documentation, rationale, and notes, which you can pull out later to help refresh your mind as to what went into some of the logic of what you did, because in some cases you do have to go back and do an autopsy on that.

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— Bob Walton

HILLARY: Bob, let's stay with you for the fifth lesson, which is to develop a comprehensive communications plan. Can you give us some examples of how you did that?

BOB: Well, at the CUC, which I think is probably typical of what many institutions would face, it's just important from the very moment you start thinking about some kind of a financial strategy to control the message. The reality is that our organizations are very efficient, whether it's the rumor mill or other methods of getting out both information and misinformation. If you don't tell the story, others are going to tell it for you. We think it's really important and felt it was very important here to control that message. Part of what we did was to get out as early as we have any information to share, even if it wasn't a total story to begin briefing our employees about our cost-cutting measures, about what we considered to be the financial constraints that we were under. We even mentioned in a very early meeting of all of our staff, about six months before we ever had to do any formal announcements, that we may have to consider a reduction in force. And, essentially, by being out early and often, we were in a sense ahead of the rumor mill, which allowed the employees to have better information and keep the anger at the lowest possible level. Now, at the CUC, we have the advantage that we can call a meeting and all of our employees will show up because they're essentially assigned to go to a meeting, it's like going to a conference. In some academic institutions you can't do that. It's more of an opt-in kind of situation. I understand that. But I would, again, recommend that there be, you know, carefully timed and frequent opportunities to share information so that it doesn't come as a shock and you can gradually build your story.

One of the things that we found is a very effective technique is we would always end with a Q&A session, which can be a little bit scary for some institutions as they think about where they are in their decision-making process. But what we typically did was to begin each of our Q&As by asking ourselves questions. In one case, I actually did violate my own rule and led the Q&A. And before I would even open it up to the staff, I knew that there were two or three key questions that people wanted to ask, like, for example, "If we have a reduction in force, is it going to happen once or could it happen again?" And so rather than take the chance that that would be asked in an awkward way or maybe getting asked altogether, I asked the question of myself and actually began the session with two or three very sensitive questions that might have been awkward for someone to ask. What we found is that really helped us control the message a little better. By the time we actually did our reduction in force and had the staff meeting after we did our voluntary retirement program, we then did our reduction in force, I can tell you that that final meeting when everyone was there and we kind of summarized what had just happened, frankly, the staff were so tired of hearing about it, they were relieved and ready to move on. It really was, I think, due to the fact that we handled the communication so consistently for a long period of time leading up to that date.

HILLARY: Those are helpful suggestions. Tom, lesson six is that institutions should consult an attorney who has experience with reductions in force. Why is this important?

TOM: It's important because there are, as we mentioned before, there are a number of, for example, statutory restrictions, limitations, provisions that you'll bump up against. ERISA is one example, but you have statutes like the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, and, in certain instances, even the so-called WARN Act, which is the Worker Adjustment and Retraining Notification Act. All of those impose restrictions on the institution and obligations on the institution. I think the institution needs experienced counsel to guide it with respect to how it navigates this area. Because the last thing you want to do is effectuate a reduction in force but do it in a way that either violates the law or leaves you with some exposure in litigation, then you wind up paying not only for the litigation, but potentially the damages in connection with that litigation. I think it's more or less like the old FRAM oil filter analogy, you can either pay a little bit now or pay potentially a lot more down the road.

HILLARY: Let me ask you here about waivers or releases, because there's some disagreement on that topic. Bob, did you use them in your layoffs at either Wooster or CUC?

BOB: Yes, we use them at both unflinchingly. And I would say that I felt strongly in particular that when we put together our separation packages, they were beyond anything that would have been required of us. They were quite generous. We felt that we could very unashamedly and assertively provide waivers in order to balance out some of the generous nature of the packages that we were giving. In our case, most of the staff who were laid off as part of our reduction in force were over 40, and that's partly a reflection. If you look at the average, if you look at the demographics of our organization, we tend to have an older workforce here. It wasn't because we were picking on people over 40, but we did, because of the things Tom said earlier, have some concerns about an accusation of age discrimination. So even though I think we acknowledge that you may, in some cases, introduce some additional risk by encouraging staff to seek counsel and review these releases, we decided it was worth it. In fact, I think some of our middle managers who had to do the face-to-face meetings, by simply being able to tell them, "Here's the package. Here's a waiver that you need to sign. Please review this with counsel. We encourage you to do that." In a way, it made it more empathetic for them to feel like they were not in any way doing anything to harm that employee. And ultimately, everyone signed these waivers in both cases.

TOM: By the way, I agree with that, and that's typically the advice that I give to the clients that are going through the process here. I think that securing a waiver at the time that the employee is informed of the separation during the reduction in force is the right thing to do. Hillary, you're right, there is some debate about this, and it really centers around two different but potentially related issues. The first is that there is a school of thought that when you present any sort of a legal document to an employee, and particularly when you invite the employee to go and talk to a lawyer, that the employee will go ahead and do that, and the releases in the context of reductions in force typically actually have language that gives the employee the right to revoke within a defined period of time, and it says right on the release that the employee can and should consult with counsel. There is, again, the school of thought that you drive them into the arms, if you will, of the lawyers. And secondly, there are more fundamental concerns, not necessarily legally based. Some employers feel that presenting an employee who's being separated as part of a reduction in force with a release is kind of antithetical to the culture of the institution, that if you're trying to build some degree of goodwill and show that you are being above board and really this is your last resort, to then hand the employee a release might run contrary to that message, at least, as that school of thought goes.

HILLARY: Thanks for making that counterargument. Lesson seven is that you should try to cut only once. Tom, why wouldn't all institutions do that?

TOM: Well, Hillary, that's a good question. I think the primary reason is because it's a very painful thing to cut, and so there's a natural tendency on the part of an employer to want to minimize the depth of that cut and hope that things will go well. You need to balance against that, the fact that these are, as I mentioned before, quite anxiety-provoking developments in the life of an institution. And so if you do it once, it's traumatic; if you do it twice, it can be devastating. And the multiple rounds of cuts kind of send the message that the ship is really sinking here and that will have ramifications far beyond the individuals who are directly affected by the RIF. You potentially risk losing your most talented folks. Having said all of that, although I do think you need to cut only once, and therefore, perhaps cut a little bit more deeply than you think you might need to with the recognition that you can always bring people back down the road if things turn to the good, you can never and should never promise that there'll be no future layoffs because you don't have a crystal ball and that promise will, believe me, come back to haunt you if you ultimately have to go through multiple rounds of cuts.

HILLARY: Excellent point. Our eighth lesson is actually related to those last few points, and it's that you should use the RIF as an opportunity to restructure. Bob, could you expand on that a little bit?

"...I do think you need to cut only once, and therefore, perhaps cut a little bit more deeply than you think you might need to with the recognition that you can always bring people back down the road if things turn to the good..."

— Tom D'Antonio

BOB: Well, in my case, both at the CUC and at my prior institution, we always took sort of the, not the most extreme, pessimistic scenario, but what we would call a lively pessimistic scenario. And we did view the reduction in force as structural. So I actually believe this is where you can have a positive side to this kind of an endeavor where you really should, in fact, I think, view the elimination of these positions as permanent and really not view it as simply, "How can we do workarounds to the positions that are gone?" or, "How can we simply parse out the duties of a person that might have been eliminated?" But actually make some structural changes that, one, reduce the risk of a future RIF, because I think if you can demonstrate to employees that you're being sensible about how you restructure the organization given the smaller staffing pattern, people have more confidence that it wasn't just a financial technique but actually something that was thoughtfully done. In the case of the CUC as an example, we started out before our voluntary early retirement program and our RIF with about 350 employees, and then between those two programs over this past summer we eliminated about 50 positions. So a fairly deep cut. I very much agree with what Tom said. I'm going to show my Texas origins here and say, you know, there's an old Texas expression, "If you're going to cut a dog's tail off, don't do it an inch at a time." And we certainly cut as deeply as we could. As hard as that may be at the time, I think it has benefit.

And part of the benefit is that we also tried to cook into our financial modeling the fact that two things have to also happen in addition to eliminating the position. One is that we had to actually spend money on retraining and some technology related to the restructuring. So even though it may appear to be contradictory at the time that we were eliminating positions, we actually did spend some additional money on the staff who remained behind to prepare them to do these duties and responsibilities, which perhaps they had not prior to that point done. Secondly, we also had a senior management team to work with our constituencies to help them understand that as a result of the reduction in force, it wasn't going to be going back to business as usual. There will be changes in some of the services and tasks that those employees have performed, and so we had to make sure we balanced out an understanding on the part of our users that they too had to share in the results of this reduction in force.

HILLARY: Those are a couple of, I think, very useful examples that other institutions might be able to follow. Tom, lesson number nine is that you should coach supervisors on how to conduct termination meetings. Could you elaborate briefly on that?

TOM: Sure. One of the things that often breaks down is you choreograph the message from the institution, the senior members of the administration, the public relations group all know what that message is going to be, but the message that the employees as the subject of the reduction in force hears most clearly is the message that's delivered at the time that the employee is let go. That message we have routinely recommended come from the employee's immediate supervisor. That being said, those supervisors have never been through or often have never been through a process like this before, so they need some coaching on what to say and what not to say. There shouldn't be a formal script per se because you don't want the supervisors to be reading from it in the meeting, but the supervisors should understand what the rationale was, and there'll be questions that the employee will certainly have and there should be some thought given to, "Here are the most likely questions and here are some suggested responses." You have these meetings, I advise that they be one-on-one because you don't want to have the employee's dignity shredded by being one of six people who are called into a room and let go at the same time. The only caveat there is that oftentimes there'll be the need to have an HR person in the room as well to document what was said. But without appropriate coaching on the part of the institution to the supervisor, you run the risk of a supervisor at that one-on-one meeting say something like, "Well, this really wasn't my decision," or, "I certainly would have done this differently." That creates a lot of problems for the employer down the road.

BOB: Hillary, if I can jump in, I think Tom has hit a bull's eye here. Maybe I could just, for purposes of illustration, use as an example what we actually did this past summer here at the CUC. In our case, we had a fairly aggressive reduction, as we talked about earlier. We did organize a very formal and in a very formal way a training plan for our middle management layer, and one of the things I think people need to remember is that the middle managers who actually have to do a lot of the face-to-face interaction, both with the staff who are being eliminated and the staff who are not being eliminated after the fact, are under a tremendous amount of stress and anxiety. It's not something that they probably do very often. We had a full afternoon, about a four-hour training session, for all the supervisors who are involved as a group. We did bring in, as Tom indicated earlier, an assortment of experts. We had all participating simultaneously our attorney for human resources, we had a psychologist, we had an outplacement, basically an employee assistance program that we subscribe to and those folks participated, and we had an outplacement service that we hired to assist those employees who were losing their positions so that the supervisors would go into these meetings with a lot of confidence that they knew exactly who the people were that these employees would be interacting with.

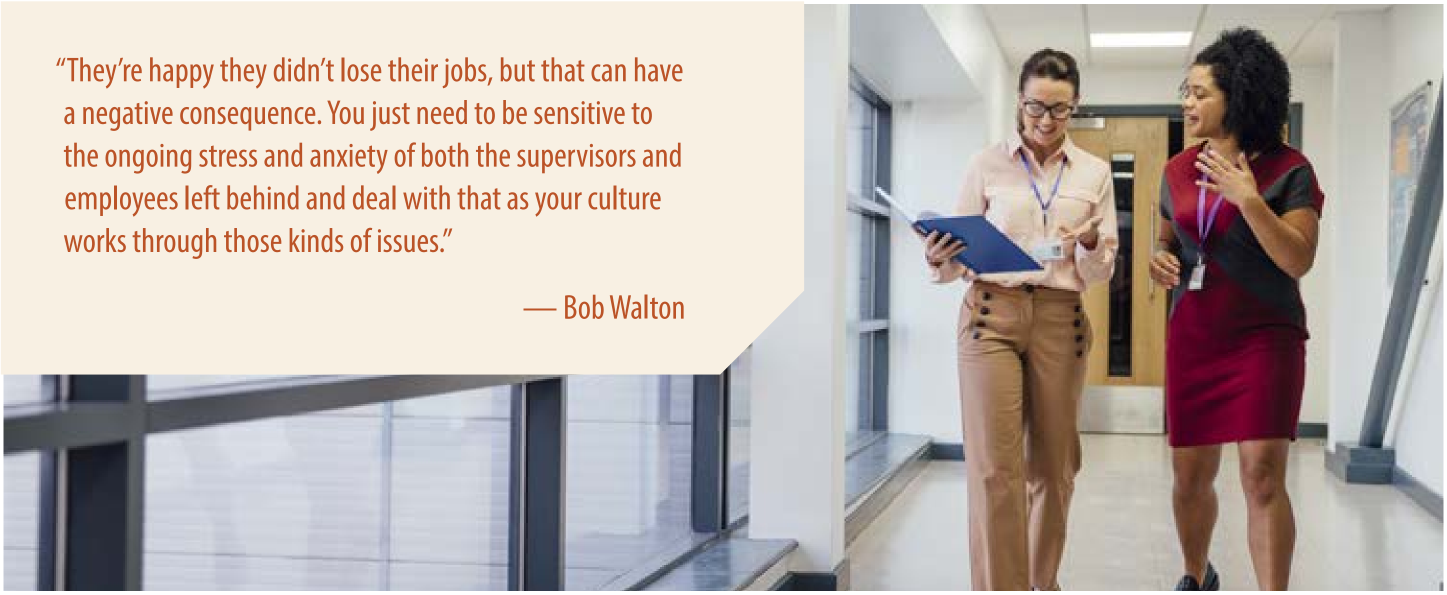
Again, supporting Tom's point, we did have some scripts that we insisted that everyone practice and use in terms of how the meeting was conducted in our case. We believed that these meetings should be kept very short and, like Tom indicated, one-on-one. After the incident was over and we had done the face-to-face meetings with the employees, very quickly after that, the next day we all got back together again. Who is we? All these middle managers and the senior management. And we had a debriefing where we could allow these supervisors and middle managers to sort of talk through their experience because they were all keenly aware that they were not going to feed the rumor mill by talking to staff in their areas or others. We needed to give them essentially a vehicle that they could use to essentially pour out some of the stories that they needed to tell about what had happened during their face-to-face meetings and we did that as a group, and that was actually very therapeutic and helpful for those employees, I think, in sort of absorbing all of that.

HILLARY: Thanks. It does sound like that was an extremely helpful process at CUC. Finally, Bob, our 10th lesson is that you should care for those terminated employees and those who survived the layoff. Could you elaborate on that?

BOB: I would say that just, again, using our summer incident as an example, the two biggest concerns our terminated employees had were the obvious ones, and that is, "How am I going to find another job?" and, in some cases was the health care benefits and how that would be transitioned or structured or whether they would have health care. So, one of the things that I've done before in private industry and then have carried over into both the reductions that I did in higher ed that I think is very important is that we did hire these outplacement service agencies who came in and really worked with these employees. We put them with these agencies immediately and they worked with them on preparing the resume, interviewing skills depending on the nature of the person, even down to things like appropriate dress and how to do the telephone communications with prospective employers. It is expensive. It can cost as much as $3,000 to $5,000 per person, but again, we believe that taking the high road approach as a one-time cost of the separation was the right thing to do. We certainly had comprehensive information available on COBRA and its little details, like we wanted to make sure that people wouldn't be compromised in the aftermath of being told their position was eliminated where they're somewhat in shock in some cases. We even had taxi vouchers available if they felt uncomfortable driving themselves home.

"They're happy they didn't lose their jobs, but that can have a negative consequence. You just need to be sensitive to the ongoing stress and anxiety of both the supervisors and employees left behind and deal with that as your culture works through those kinds of issues."

— Bob Walton



So I think it's really important that you do it humanely. Keep the meetings brief. We did actually encourage our employees to leave immediately after the meeting. There was some talk about having people stay for a period of time. That has never been something that I have supported or seen work very effectively. And each culture is a little different, so you'll have to obviously cook that into your local culture. I think the other thing that perhaps is not often stated is that some of the employees who work with these individuals have what I call survivor's guilt. We need to be able to recognize that there may be a little bit of tension in the office after these events because people really do have survivor's guilt. They're happy they didn't lose their jobs, but that can have a negative consequence. You just need to be sensitive to the ongoing stress and anxiety of both the supervisors and employees left behind and deal with that as your culture works through those kinds of issues.

HILLARY: Thank you both very much. Tom and Bob will soon start taking questions from the audience. As I mentioned, there are two ways to ask a question. One is to send an email to **risk@ue.org**. And the second is to call in by phone. If you'd like to call in, please press *1 on your touch-tone phone and you'll be put in line to ask a question. After doing that, if you decide for any reason that you don't want to ask your question, just press the pound key and that will take you out of the queue. We'll respond to as many questions as we can, but we might not be able to answer all of them. Before we go to that, I'd just like to ask each of our speakers to sum up one key message that they'd like listeners to take away from this program. Tom, can we start with you?

TOM: Sure. The message that I would pass along is to first consider whether or not you really need to downsize. Have you looked at all your alternative cost-saving measures and have you decided that even after vigorously pursuing them you need to cut? If you do and you must then do layoffs, do it carefully, ensure that you follow a process that is not only spelled out but transparent, document your decision-making appropriately, be honest in your communications, and be direct in the process.

HILLARY: Bob, do you have a thought to leave the audience with?

BOB: I guess from a practical standpoint, I would just suggest two things. One is that it is simply not possible to too thoroughly prepare for these. They're hard to execute. And secondly, because of that preparation, be sure to factor in a lot of time of what I call management distraction. It's not going to be business as usual when you're in this kind of an environment. It does take a lot of time and effort to get this done properly. Set aside time for people to do it properly.

HILLARY: Operator, I understand we have one question awaiting on the phone line. Can you put that question in, please?

OPERATOR: Our first question or comment is from Marymount University. Your line is open.

PEGGY: Hi, good afternoon. This is Peggy Axelrod at Marymount University. My question was regarding lesson number four where you document your financial condition. You mentioned that there are some key items or values, ratios or whatever that the public most often wanted to know about. Can you give me an example of some of those, please?

BOB: In my case, I think that the key things that in our case both the media and the public typically want to know is, they want to know what is the targeted savings you're trying to achieve, some kind of metric as to how deep are you cutting. That can be done in percentage terms, which is the most typically done because dollar terms don't tend to translate into people's understanding very well. They obviously want to know, "How many positions?" And I think that that can be a little tricky depending upon the nature of… In our case, for example, we had a voluntary early retirement program and a reduction in force and so we had to make sure we were clear on the number of positions, because, believe it or not, people do go out and try and determine who all these people are. And then, thirdly, they want to get some sense as to what the remaining organizational size is and whether you're committed to maintaining that size. That was my experience.

HILLARY: I would just like to point out that if anyone in the audience would like to ask a confidential question, you can certainly feel free to do that by email, and we'll respect your institution's privacy. In the meantime, we do have a question received earlier relating to any special concerns about laying off faculty. Of course, the 10 lessons that we've been discussing would apply to any layoffs. But Tom, do you have any additional thoughts about special considerations that institutions might want to take into account if they do need to lay off faculty?

TOM: There are several. First of all, I haven't seen a lot of faculty layoffs even though this has been a fairly severe economic downturn, but they're governed by an additional set of rules typically. Most institutions have adopted the AAUP guidelines, which look at faculty layoffs for financial exigency, and that is not just a general economic malaise but it requires showing as follows. I think the standard is the termination of an employment with continuous tenure or of a probationary or special appointment before the end of a specified term may occur under extraordinary circumstances because of a demonstrably bona fide financial exigency, which is an imminent financial crisis that threatens the survival of the institution as a whole and cannot be alleviated by less drastic means. Obviously, that's not a showing that you consider or need to make when you look at staff reductions. So that's a gloss. And frankly, while not every institution has adopted the AAUP standards for faculty layoffs, it's a standard that, as I say, governs in a lot of institutions and even in institutions that don't have any provision directly addressing faculty layoffs, you run the risk that a court will recognize the AAUP standard as kind of an industry standard. And that I think is the key distinction. There are also authorizations to lay off faculty for things like closing a particular program. There's not generally been a lot of litigation from faculty that have resulted when that occurs. That's typically student-focused claims.

"While not every institution has adopted the AAUP standards for faculty layoffs, it's a standard that, as I say, governs in a lot of institutions and even in institutions that don't have any provision directly addressing faculty layoffs, you run the risk that a court will recognize the AAUP standard as kind of an industry standard."

— Tom D'Antonio

HILLARY: OK, thank you very much. And I'll just repeat once more the email address if anybody would like to ask a confidential question, is **risk@ue.org**. And we have gotten another question. Bob, let me throw this to you first. If given the choice between layoffs, which concentrate the pain, versus an across-the-board compensation cut, which spreads the pain among more employees but avoids job losses, do you see a preference between those two?

BOB: In the hypothetical, it's a little hard to answer, but I'll try not to dodge the question. I guess my experience has been that every organization that has had a decade or more of consistent financial positive performance has probably built into the structure certain inefficiencies or things that are not strategically important. And so even though we don't want to hit this note too hard, while it's always hard to do downsizing, these can be strategically important in terms of right-sizing an organization that may have grown in some areas to be nonstrategic in terms of what services are provided.

I actually would say that when you have a severe financial situation like we're in today, that you can't really gain the kinds of dollars that I have tried to gain in both of the incidents that I've participated and by doing across-the-board compensation, either limiting growth or cutting. And I have to say candidly, that I think that in both of my situations we actually as an organization came out stronger after we had the reduction in forces in terms of allowing us to really do some restructuring in ways that we would not have been able to do in better times. But I don't want to take away the sort of the social side of this. In the case of the CUC, at the same time that we announced our reduction in force of staff, we also announced that our managers would take a pay cut. It was the senior management team that actually had to take a pay cut, not the line staff, and I think that was a very important message that tended to balance in terms of the employees' sense of fairness how the overall reduction in force was handled.

"It was the senior management team that actually had to take a pay cut, not the line staff, and I think that was a very important message that tended to balance in terms of the employees' sense of fairness how the overall reduction in force was handled."

— Bob Walton

TOM: If I could just jump in for a second on that one. You know, anecdotally, the information that I see is that the employees tend to prefer when there is a modest reduction in salary as opposed to elimination of positions. That having been said, the devil is obviously in the details there, and when you have a significant enough reduction in salary, institutions run the risk, frankly, of losing some of their best people because those with the most options, usually your most talented employees, tend to exercise those options when they are faced with a salary cut and still having to satisfy the financial obligations that they have.

HILLARY: That's a good point. We have another question that's essentially a two-parter. The first part is really for Bob, because it relates to the voluntary early retirement program at CUC. Bob, the individual would like to know, was the program offered to age-eligible employees in particular departments or was it across the entire organization? And then the second part is that the person would like comments from both you and Tom regarding any concerns generally in structuring an early retirement incentive or program.

BOB: Oh, I'll jump in here first. We did offer it to the entire workforce at the CUC that met the requirements. In our case, it was, you had to be over 50 years of age and have a minimum of 10 years of continuous service. And as I indicated earlier, we had a lot of people take us up on that. And Tom can go into the construction details, but I'd say that the one thing that we had to deal with that was a little tricky but not intellectually complicated is more in the execution and you have to do it carefully, is that we had essentially a first come, first served process for application. The applications were due at our human resources office on a certain date at a certain time, and because we were trying to be very agnostic about this process, we essentially time-stamped and date-stamped every application as it came in, and so people literally queued to make sure that they would be in that top, you know, whatever the bright point was going to be. And that was one of the reasons that we ended up funding more than we had planned. We didn't want this to work against us and having people then be very unsatisfied with the program that was meant to be a proactive program because they were cut out of the process.

HILLARY: That's a good point. Tom, do you have anything general to add on the structure of early retirement offers?

TOM: Well, I think that Bob actually hit the nail on the head. The way that an employer avoids significant concerns about take-up rates is by structuring the voluntary early retirement program so that there is a first-come, first-served option process. The problem comes, and this is not a legal problem, this is a practical problem, if the people that ultimately opt for your early retirement are among your most valuable people, people who you want to keep, then you can cause a lot of short-term dislocation at your institution. And you certainly can't...well, you can but it creates both some potential legal issues and it creates also some practical problems if you begin to try to except out of the available pool those groups of employees that you want to keep. So that's one of the risks you have in an early retirement program. The best way to do it, obviously, is to have it open to all and have it be unlimited in terms of the numbers of people that you will take if they apply.

HILLARY: Thanks. For those of you who need to hang up now, we do thank you for participating and, again, I ask that you please return your evaluation forms. We invite anyone who doesn't need to leave the call right now to stay on the line and we'll see if we can take a few additional questions. Bob, you did talk fairly extensively about early retirement as an effective cost-saving measure at CUC. Have you seen at other places you've worked alternative cost-saving measures that you felt worked particularly well?

BOB: It really depends, Hillary, a little bit on the nature of the institution. So most of my experience has been in private institutions, and so I'll have to kind of limit my remarks there. But let me give you a couple of categories of where I've seen some of the better executions of my peer institutions. Going back to one of the earlier questions about faculty, what I'm saying is that there's not a lot of positions being eliminated. But one of the techniques that has been very popular is, in the case where you have leaves where a faculty member goes on sabbatical, traditionally, there are leave replacements, and I'm finding that a lot of institutions are sort of bolting down a little harder and not hiring leave replacements, which puts a lot of pressure and additional workload on the faculty who remain back in that department. So that's one way that many institutions are saving money that doesn't get into the structural nature of the staffing.

Another technique that's being used on the faculty side is having to do with simply not hiring as many adjuncts, and that, of course, is a little easier than dealing with permanent tenured employees because adjuncts typically are hired on a semester-by-semester or academic year basis. A couple of other areas, you know, clearly, many of us probably spend too much money on professional services. I certainly don't want to put Tom out of work, but there is a tendency in higher ed in my experience to assume that everything you do should be filtered through your law firm, your contracted law firm, and we're finding that some people are trying to take on a little more risk, frankly, in terms of just using sound judgment before they immediately pick up the phone and start a billable event.

A couple of other examples are to really try and think more clearly about capturing dollars that tend to be spent less strategically. What do I mean by that? A lot of funding in some departments and some institutions for items that are not budgeted comes from left salary money and that we're seeing a big uptick in institutions that go out and aggressively capture and suck back into a central fund any left salary money, which traditionally in many institutions is used to pay for things that are not related to compensation. So that's another technique. Basically, the theme that I'm hearing from all of my peer institutions is to focus on any spending that's not strategic, and a lot of spending that we use is not strategic.

HILLARY: Thanks. It makes sense. Tom, let's finish up with you if we can. Can you name what you consider the single most common mistake that you see employers make when they're conducting layoffs?

TOM: There's a list. Let me think. Yeah, I think the most common one that I see and, frankly, the one that leads to the most after-the-fact challenges, is the employer that doesn't develop in advance the plan. What is it we're trying to achieve? How are we going to achieve it? What's the method that we're going to use? Agree upon it in advance, determine the criteria that you're going to use and the methodology you're going to use in advance. Obviously, we said before, look back to your institutional publications, be they handbooks or union contracts, collective bargaining agreements, things like that, to ensure that you follow all the procedures that are necessary in those publications. But beyond that, know what you're going to do before you start to do it and then don't change it. I see a lot of times when employers will modify the process because they're looking at a potential outcome, they don't really like it so they're going to try to micromanage the outcome. Understand the risks when you go in, be prepared to accept them when you go into the layoff process, and don't try to then tweak it to avoid some of the downside risks because ultimately, I think, you open the whole process up to a broader challenge.

HILLARY: OK, thank you very much. Unfortunately, we're just about out of time, so I'd just like to ask once more that you please complete the evaluation form. We do review all of them and use the feedback to improve our roundtable series. That concludes today's program and you may now disconnect.