

Article 22. RETRENCHMENT

Definition: In this Article "Department" will be used to refer to departments, programs, or other similar administrative units. The Library will be treated as a single unit for purposes of this Article.

Section 1. In a viable, complex, and multifaceted university, it may be necessary to adjust departments and staff. Historically, these adjustments have been accomplished by attrition and by not renewing appointments in specific departments. The provisions of this Article and accompanying procedures do not apply to this historical practice.

The modification of departments generated solely by changes in curricula or in the educational programs or mission of the University is accomplished through usual curricular mechanisms and the provisions of this Article likewise do not apply.

Section 2. The President of the University may declare that a condition of financial exigency exists, or that a condition requiring departmental reductions or eliminations exists, after fulfilling the requirements of [University Standard 580-021-0315](#) and this Article.

- (a) A condition of financial exigency may be declared if the President finds that the University's budget has insufficient funds to do all of the following:
1. maintain all essential programs and services;
 2. finance the full compensation of all tenured faculty;
 3. finance the full compensation of faculty on fixed-term appointment until the end of the period of appointment;
 4. finance the full compensation of all other faculty until the end of an appointment, including the providing of timely notice.
- (b) A condition requiring reduction or elimination of a department may be declared if the President finds that institutional operations within a reduced budget, or failure to reallocate funds, would result in a serious distortion of the academic or other essential programs and services of the University if retrenchment procedures were not implemented.

Recognizing the requirements of University Standard 580-021-0315 for prior consultation with the Board of Trustees, the parties agree that factual disputes regarding the existence of a condition of financial exigency or the existence of a condition requiring reduction or elimination of a program or department shall not be subject to the grievance, contract dispute resolution, or arbitration articles of this Agreement. An allegation that procedures set forth in this Article were not adhered to is a proper subject for a grievance.

Section 3. Before deciding to declare a condition of financial exigency, or to reduce or eliminate a department, the President or designee shall consult with appropriate faculty councils.

- (a) At any time that the President finds that the University's financial condition is such that a declaration of financial exigency or of departmental reduction or elimination may become unavoidable, the President shall promptly notify the Association and the members of the bargaining unit.
- (b) After issuance of such notice of Section 3(a), appropriate representatives of the University shall offer to meet with representatives of the Association for the purpose of presenting and discussing a full description and analysis of the financial condition of the University. If Association representatives fail to accept within a reasonable time an offer to meet, the University shall have no further obligation to consult with the Association or hear their views under the provisions of this Article.
- (c) After the issuance of such notice of Section 3(a), the President or designee shall present a full description and analysis of the financial condition of the University at a regular or special meeting of the Faculty Senate, and to such other faculty councils as the President may deem appropriate.
- (d) When the meetings provided for in Section 3(b) and (c) above are held, a time will be established when comments and recommendations will be due in the President's Office. The time allowed for such consideration will be at least thirty (30) days unless the President finds and states that circumstances require a response in a shorter period of time.

The President will give thoughtful consideration to such comments and recommendations as are submitted by the established time; and will engage in such further discussions, including efforts to reconcile varying points of view, as he may deem useful. The President or designee will, at the Association's request, meet with representatives of the Association to hear and discuss the Association's comments and recommendations.

The parties agree to use their good offices to facilitate Senate consideration, and further agree that the Senate, at its discretion, may hear and consider the views of any person or organization during their deliberations of these matters.

- (e) In reaching a decision whether to declare a condition of financial exigency or a condition requiring departmental reduction or elimination, the President will consider, among other matters, institutional guidelines concerning the mission and educational development of the institution; departmental effectiveness and productivity; enrollment historical, current and projected; the state of development of departments; the balance between academic personnel and other elements of the budget; the dependence of other departments in the University on the department proposed for reduction or elimination; and the availability of similar programs and services elsewhere in the community.

Prior to making a decision on a condition requiring unit reduction or elimination, the President will also consider:

1. The proposal and documentation required by the PSU Faculty Senate in the procedure for "[Elimination of an Academic Unit](#)," approved by on May 4, 2020 (Provost concurred on May 11, 2020); and
 2. PSU-AAUP's response to the proposal; and
 3. The Office of Academic Affairs' (OAA) response to the proposal.
- (f) After fulfilling the requirements of Sections 2 and 3 of this article, the President may declare that a financial exigency exists or that the reduction or elimination of a department is necessary.

Section 4. After a declaration is made, a provisional plan will be announced and an opportunity provided for faculty and the Association to comment on the plan, including suggesting alternatives for amelioration of the financial condition. The provisional plan will include tentative assignments of reductions to departments and the time by which responses are to be submitted. The time allowed for such considerations shall be at least thirty (30) days unless the President finds and states that circumstances require a response in a shorter period of time. During this time the President will receive and consider such comments and recommendations from the Faculty Senate as the Senate chooses to submit.

The Association, and the members in the department assessed a budget reduction in the provisional plan, may make recommendations within the time allotted concerning the manner in which the tentative reductions are to be accomplished. Forms of budget curtailment which may be proposed and considered include, but are not limited to, voluntary leaves of absence, shared appointments, temporary salary reductions, temporary reductions in FTE, layoffs for fixed period, and indefinite layoffs.

If the final plan being considered by the President will result in the layoff of more members than recommended by the department, the President or designee shall meet with members of the department (or representatives thereof) for further discussion of departmental recommendations.

Following completion of the procedures outlined above, the President will announce a final plan and will notify departments to be affected of the amounts and nature of reductions to be applied.

Section 5. Prior to the effective date of layoff of any member on continuing appointment, a good faith effort shall be made by the Administration to place that member in another instructional or non-instructional position within the University. If this effort fails the

Administration shall make reasonable efforts to assist the member in finding suitable employment elsewhere.

(a) If the President's final plan (Section 4) includes layoff of instructional and/or research faculty, the order of layoff within a department shall be as specified in Subsections (b) and (c) below. If the President's final plan (Section 4) includes layoff of academic professionals, the order shall be as specified in (c) below. However, this order shall be modified to ensure:

1. the ability of the remaining faculty and academic professionals to meet adequately the needs of the department, including the need for various areas of specialization, and
2. compliance with the University's Affirmative Action Program and Goals.

(b) Order of layoffs for instructional and research faculty within a department:

1. fixed-term faculty
2. non-tenure track faculty prior to continuous appointment
3. non-tenure track faculty on continuous appointment
4. faculty on annual tenure
5. faculty on indefinite tenure.

(c) Within each of the categories above in Subsection (b)1-5 for instructional and research faculty, layoffs shall be made in inverse order to the length of continuous service at the University. Within an academic professional position within a department, layoffs shall be made in inverse order to the length of continuous service at the University. ("Length of service" shall include time spent on sabbatical leaves.)

The President's decisions affecting order of layoff shall be based on departmental recommendations made in accordance with existing departmental procedures. These recommendations shall be submitted in a timely manner through the appropriate dean or vice president; but if no timely recommendations are received from the department, the President may receive recommendations from the appropriate dean or vice president.

(d) Although a member may be laid off, no member of the bargaining unit shall be terminated as a result of financial exigency or departmental reduction or elimination except as provided in Subsection (h) below. Members who have been laid off shall retain all the benefits and privileges of a member on official leave without pay, if any, except that the University's obligation to recall from layoff is specifically limited to the conditions set forth below.

- (e) A department in which a layoff is in effect pursuant to this Article may not (a) hire new tenure-related faculty until all tenure-related faculty eligible for recall in that department have been offered recall; (b) hire new non-tenure track instructional faculty eligible for continuous appointment until all tenure-related faculty and non-tenure track instructional faculty members on or eligible for continuous appointment have been offered recall; or (c) hire for an academic professional position until all persons who had been in that position have been offered recall. However, the restrictions of this paragraph do not apply if the failure to hire new employees would seriously impair the ability of a department to meet its needs as determined in Section 5(a)1 above at the time layoff decisions were made, or if the President finds and declares after receiving and considering a departmental recommendation reviewed by the appropriate dean and vice president that failure to do so would seriously impair the department's ability to meet adequately its current needs, including the needs for various areas of specialization.
- (f) A member recalled from layoff shall be offered reemployment at the same rank and at a salary rate not less than that which the member was receiving at the time of layoff.
- (g) Any offers of reinstatement within a department shall be made in inverse order to the order of layoff. The member will have thirty (30) days from the date the offer is sent in which to accept the offer. If no acceptance is received in writing within the thirty- (30) day period, the member will be deemed to have declined the offer and the University will thereafter have no further obligation to the member. It is the responsibility of the member to keep the University apprised of a current mailing address.
- (h) Faculty on indefinite tenure who have not been reemployed as of June 15 of the year following five (5) full academic years after layoff shall be deemed to have been given timely notice and their employment will have been terminated as of the June 15 date. Non-tenure track instructional faculty on continuous appointment who have not been reemployed as of June 15 of the year following three (3) full academic years after layoff shall be deemed to have been given timely notice and their employment will have terminated as of the June 15 date. Faculty on annual tenure and non-tenure track instructional faculty still in the probationary period who have not been reemployed as of June 15 of the year following two (2) full academic years after layoff shall be deemed to have been given timely notice and their employment to have been terminated as of the June 15 date. The employment of faculty on fixed-term appointments who have not been reemployed as of the date of the end of their term of appointment shall be deemed to have been terminated on that date. The employment of an academic professional who has not been reemployed as of one year following the notice of layoff shall be deemed to have been terminated on that date.
- (i) In cases of layoff resulting from financial exigency the Administration shall make every effort to provide timely notice to affected members of the bargaining unit.