

ARTICLE 17
LAYOFF, REDUCTION IN TIME AND REEMPLOYMENT

A. GENERAL PROVISIONS

1. Consistent with this MOU, all layoffs and reductions in time, and reemployment from layoff status, must be made in accordance with the provisions of this Article.
2. This Article does not apply to Summer Session appointments.
3. Consistent with this MOU, the University has the sole discretion to determine when a layoff or reduction in time is necessary, and to determine the function(s) and the title code(s) on a particular campus within which the staffing level(s) are to be reduced.
4. The provisions of this Article do not nullify or modify the applicable University and campus policies or procedures that exist or may be developed pertaining to disestablishment.
5. The provisions of this Article pertain to actions taken within a layoff unit.
6. The University shall not apply the provisions of this Article in an arbitrary, capricious or unreasonable manner.
7. For purposes of Article 7a and 7b and this Article only, layoff periods of less than one quarter or semester count towards eligibility for Continuing Appointment status and seniority.

B. DEFINITIONS

1. Layoff
 - a. A layoff is an involuntary separation from employment in a layoff unit, due to a programmatic change, budgetary considerations, or a lack of work for the NSF.
 - b. Pre-Six Appointees are considered to be separated from employment at the expiration of their appointment. Such separation does not constitute a layoff.
2. Reduction in Time: A reduction in time occurs when an NSF's appointment in a layoff unit is involuntarily reduced due to a programmatic change, budgetary considerations, or a lack of work for the NSF.
3. Layoff Unit

The layoff unit shall be the department, program or equivalent unit.

4. Seniority

- a. Seniority is based on the number of terms of service (quarters or semesters) on pay status in the bargaining unit, in the same layoff unit. If two or more NSF have the same number of terms of service, the number of terms at 50% or greater shall be used to determine which NSF has greater seniority. If two or more NSF have the same number of terms of service and the number of terms at 50% or greater, the tie breaker shall be earliest hire date in the department, program, or unit.
- b. When a pre-six NSF and a Continuing Appointee are teaching the same course in the same layoff unit the University shall lay off or reduce the appointment percentage of the pre-six NSF before laying off or reducing the appointment percentage of a Continuing Appointee.
- c. NSF who hold Continuing Appointments shall have seniority over NSF who have achieved Continuing status but who have not yet begun a Continuing Appointment. NSF who achieved Continuing Appointee status but who have not yet begun a Continuing Appointment shall have seniority over Pre-six year NSF.

C. CONSIDERATIONS PRIOR TO LAYOFF OR REDUCTION IN TIME

1. When the University has determined that NSF staffing cuts are necessary, it will consider attrition, retirement, the non-reappointment of pre-six year NSF, and voluntary reduction in NSF staffing within the layoff unit in order to avoid a layoff or reduction in time.
2. At its sole discretion, the University may accept any NSF's written request to volunteer for layoff or reduction in time. However, the University shall not solicit volunteers for layoff or reduction in time. The University will transmit a copy to the Union of the acceptance, if any, of the NSF's request no later than the next business day.

D. IMPLEMENTATION OF LAYOFF AND REDUCTION IN TIME

1. When there is no substantial difference in the degree of special skills, knowledge, or ability essential to the layoff unit as determined by the University, the order of layoff or reduction in time shall be in inverse order of seniority.
2. In addition to the reasons set forth in B.1. and B.2. above, the University may lay off or reduce the appointment percentage of a Continuing Appointee as a result of assigning the course(s) taught by the Continuing Appointee to Senate Faculty or to graduate academic student employee. Nevertheless, the University may not lay off or reduce the appointment of a Continuing Appointee in order to assign the course(s) taught by the

Continuing Appointee to a graduate academic student employee who is studying in a different department and unrelated discipline, unless such assignment is in accordance with the department's or division's academic plan for the pedagogical training of its graduate students.

3. When a Continuing Appointee has received a notice of layoff or reduction in time, and the Continuing Appointee or the Union on behalf of the Continuing Appointee alleges that s/he is equally qualified to perform the work being done by one or more less senior NSF(s) in the same layoff unit, the University shall evaluate the qualifications of the less senior NSF(s) named by the Continuing Appointee. If the University determines that the more senior Continuing Appointee's qualification are substantially equal to those of the less senior NSF, the University shall lay off or reduce in time the less senior NSF.

E. LAYOFF AND REDUCTION IN TIME- PRE-SIX APPOINTEES

1. Written Notice of Layoff or Reduction in Time

NSF with pre-six year appointments shall be given written notice of the effective date of any layoff or reduction in time. The notice shall identify whether the layoff or reduction in time is due to a programmatic change, budgetary considerations, or a lack of work for the NSF. Notice will be given subject to the provisions below:

- a. NSF on quarter or semester appointments or initial one-year appointments shall be given at least thirty (30) calendar days advance written notice.
- b. NSF with an appointment of at least one year with four (4) through nine (9) quarters or three (3) through six (6) semesters of University service in the layoff unit shall be given at least sixty (60) calendar days advance written notice.
- c. NSF with an appointment of at least one year with ten (10) or more quarters or seven (7) semesters or more of University service in the layoff unit shall be given at least ninety (90) calendar days advance written notice.
- d. Notwithstanding the foregoing, any pre-six NSF whose appointment is reduced by up to one (1) IWC (or one course if valued at greater than one IWC) shall be entitled to only thirty (30) calendar days advance written notice.
- e. When the University provides written notice to the NSF, the University shall transmit a copy of the notice to the Union no later than the next business day.

2. Pay in Lieu of Notice for Layoff or Reduction in Time

- a. Where advance written notice of layoff or reduction in time is not given thirty (30) calendar days pay in lieu of notice will be provided.
- b. Pay in lieu of notice shall never exceed the pay the NSF would have received absent the layoff or reduction in time.

F. LAYOFF AND REDUCTION IN TIME – CONTINUING APPOINTEES

1. Layoff

a. Written Notice

- 1) Continuing Appointees shall be given at least twelve (12) months written notice of layoff. The notice shall identify whether the layoff is based on programmatic change, budgetary considerations, or a lack of work for the NSF.
- 2) When the University provides written notice to the NSF, the University shall transmit a copy of the notice to the Union no later than the next business day.

b. Pay in Lieu of Notice for Layoff

- 1) Where advance notice is not given, pay in lieu of notice will be provided.
- 2) Pay in lieu of notice will not result in the NSF receiving greater pay than would have been received absent the layoff.

2. Reduction in Time That Does Not Exceed One “Instructional Workload Credit” (IWC) or One Course

a. Written Notice

- 1) Continuing Appointees shall be given at least thirty (30) calendar days written notice of reduction in time when the reduction does not exceed one IWC or one course (if course is valued greater than one IWC). The notice shall identify whether the reduction in time is based on programmatic change, budgetary considerations or lack of work for NSF.
- 2) When the University provides advance written notice to the NSF, the University shall transmit a copy to the Union no later than the next business day.

b. Pay In Lieu of Notice

- 1) Where advance notice is not given, pay in lieu of notice shall be provided.

- 2) Pay in lieu of notice shall not exceed the pay the NSF would have received absent the reduction in time.
3. Reduction in Time that Exceeds One Instructional Workload Credit (IWC) or One Course
 - a. Written Notice
 - 1) Continuing Appointees shall be given at least sixty (60) calendar days written notice of reduction in time when the reduction in time exceeds one IWC or one course (if the course is valued at greater than one (1) IWC). The notice shall identify whether the reduction in time is based on programmatic change, budgetary considerations, or lack of work for NSF.
 - 2) When the University provides written notice to the NSF, the University shall transmit a copy of the notice to the Union no later than the next business day.
 - b. Pay In Lieu of Notice
 - 1) Where advance written notice is not given, pay in lieu of notice shall be provided.
 - 2) Pay in lieu of notice shall not exceed the pay the NSF would have received absent the reduction in time.
4. Reduction in Time that Impacts Health and Welfare Benefits
 - a. Whenever possible, Continuing Appointees shall be given additional advance notice when the reduction in time can reasonably be expected to affect their eligibility for health and welfare benefits. The notice shall identify whether the reduction in time is based on programmatic change, budgetary considerations, or lack of work for NSF.
 - b. When the University provides written notice to the NSF, the University shall transmit a copy of the notice to the Union no later than the next business day.

G MEET AND DISCUSS / CONSULT

1. Within fifteen (15) calendar days of the date of the issuance of the layoff notice, the Union may request to meet with the University to discuss the effect of the layoff or reduction in time.
2. However, nothing in this Article shall preclude the department chair or unit head from consulting with the affected NSF.

H. REEMPLOYMENT

1. Duration

- a. Pre-six year NSF: Pre-six year-NSF have reemployment rights for the remaining duration of the NSF's appointment prior to the layoff or reduction in time.
- b. Continuing Appointee: Continuing Appointees have reemployment rights for two years from the effective date of the layoff or reduction in time.

2. Order of Reemployment

If more than one qualified NSF is on layoff or reduced time status from the same department, program or unit, the order of reemployment shall be on the basis of special skills, knowledge or ability essential to the department or unit. When there is no substantial difference in the degree of special skills, knowledge and ability essential to the department or unit as determined by the University, the order of reemployment shall be in inverse order of layoff or reduction in time, according to the definition of seniority as set forth in B.4. above.

3. Temporary Reemployment

In the event the University decides to offer temporary reemployment opportunities of no more than one quarter or semester in the same layoff unit and title group, the temporary reemployment shall not constitute a recall for reemployment purposes. Further, an NSF's acceptance of temporary reemployment of no more than one quarter or semester will not nullify said NSF's layoff or reduced time status. Should instructional need exist beyond this temporary period, the NSF's reemployment status previous to the layoff or reduction in time shall be reinstated.

4. Termination of the Right to Reemployment

- a. The right to reemployment terminates if an NSF:
 - 1) accepts an appointment at the same or higher percentage of time in the same title and layoff unit from which the NSF was reduced in time or laid;
 - 2) refuses or fails to respond within fourteen (14) days to a second written offer of reemployment at the same or higher percentage of time sent to the NSF's last known address;. However, the right to reemployment does not terminate if the two offers are for courses/work within the same academic year or if the NSF is unable to resume employment because

of other employment commitments made in response to the layoff.

- b. If the University is attempting to employ an NSF on an urgent basis and if a laid-off or reduced in time NSF who has reemployment rights cannot be reached and/or does not respond within seven (7) calendar days, the University may fill the position. In this instance or when failure to respond was due to extraordinary circumstances, a laid off or reduced in time NSF will not have waived any future reemployment rights.

I. PLACEMENT ASSISTANCE

To the extent available at each department or campus, the University will, upon request, provide assistance in seeking placement to any NSF who has been laid off.

J. BENEFIT COVERAGE

An NSF on reduced time may continue, if previously enrolled, in certain group insurance programs for the length of time provided by the University's Group Insurance Regulations, subject to the payment of full premiums by the NSF. A reduced time appointment of more than one-half of the working days of a month does not count towards University service for benefit purposes unless the reduced time appointment continues to qualify the NSF for such benefits.

K. GRIEVANCE AND ARBITRATION

1. A grievance alleging a violation of this article must be filed within thirty (30) calendar days of the transmission of notice to the Union. With respect to grievances based on alleged violations that would not be apparent when the written notice is issued, such grievances must be filed within thirty calendar (30) days of the date on which the NSF/Union knew or should have known of the alleged violation, whichever is earlier.
2. In any arbitration involving layoff or reduction in time, the arbitrator shall not have the authority to substitute her/his judgment for that of the University regarding the necessity for the layoff or reduction in time, or the functions/programs or titles affected by the layoff or reduction in time. Consistent with the provisions of this MOU, the Arbitrator shall defer to the University's judgment regarding an NSF's academic qualifications unless the Union demonstrates that there was no reasonable basis for the University's decision.
3. If the arbitrator determines that the University failed to consider the qualifications of a Continuing Appointee relative to a less senior NSF identified by the Continuing Appointee or the Union (pursuant to Section D.3., the arbitrator's remedial authority shall be limited to ordering such

consideration. Upon the request of either party, the arbitrator may retain jurisdiction to ensure that the procedural flaws have been addressed.

4. When the Union has alleged that the University's stated reason(s) for a decision to lay off is pretextual or factually incorrect, the arbitrator will consider all the evidence submitted by the parties and may reverse a University decision when s/he determines that the decision is contrary to the weight of all the evidence.
5. Allegations of procedural violations of this Article shall be subject to the Grievance and Arbitration provisions of this MOU.