

ARTICLE 17
LAYOFF, REDUCTION IN TIME, AND REEMPLOYMENT

A. GENERAL PROVISIONS

1. A layoff is an involuntary separation from employment for an academic year, or a reduction in the percentage of appointment during an academic year, which occurs because of a lack of instructional need due to a lack of work, budgetary considerations, or programmatic change. 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.
 - a. Continuing Appointees - A layoff can occur at any time during a Continuing Appointment.
 - b. Pre-six year Appointees - A layoff can occur prior to the expiration date of the appointment.
2. The University shall not apply the provisions of this Article in an arbitrary, capricious or unreasonable manner.
3. Consistent with this MOU, all layoffs, and reemployment from layoff status, must be made in accordance with the provisions of this Article.
4. Seniority is based on the number of terms of service on pay status in the bargaining unit, in the same department, program, or 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 the earliest hire date in the department, program, or unit.
5. When the University has determined that the NSF staffing cuts are necessary, in accordance with this Article, above, it will consider attrition, retirement, the non-reappointment of pre-six year NSF, and voluntary reductions in NSF staffing within the department, program or unit in order to avoid a layoff.

B. SELECTION AND ORDER OF LAYOFF

1. All provisions of Section B., C., and D. pertain to actions taken within the unit of layoff.
2. The layoff unit shall be the department, program or equivalent unit. The provisions of this section do not nullify or modify the applicable University and campus policies or procedures that exist or may be developed pertaining to disestablishment.
3. When there is no substantial difference in the degree of special skills, knowledge or ability essential to the department, program, or unit as determined by the University, the order of layoff or reduction in time shall be in inverse order of seniority.
4. When a Pre-six year NSF and a Continuing Appointee are teaching the same course in the same department, program or unit, if Alternatives to Layoff (as provided in Section C.1. below) cannot be implemented, the University shall lay off the pre-six year NSF before laying off a Continuing Appointee.

5. If the University reduces an NSF's percentage appointment, the University shall inform the NSF in writing of its anticipated instructional need for the courses being taught by the NSF. The information provided by the University shall include the basis for its determination that the NSF's percentage appointment required a reduction.
6. By mutual agreement between the University and the Union, regardless of seniority, the department, program, or unit may elect to invite all NSFs within a layoff unit to volunteer for layoff or a reduction in time. Where the parties have reached such agreement, the union shall be sent a copy of the invitation at the same time the invitation is transmitted to employees. The union shall also be informed of the identities of volunteers before the layoff occurs.

C. PRE-SIX YEAR APPOINTEES – LAYOFF AND REDUCTION IN TIME

1. Notice/Pay in Lieu of Notice

a. Notice

- 1) NSF with pre-six year appointments shall be given written notice of the effective date of any layoff. Whenever practicable, notice will be given as follows subject to the provisions below:
 - a) Such NSF on quarter or semester appointments or initial one-year appointments will be given at least thirty (30) calendar days advance written notice.
 - b) Such NSF with an appointment of at least one year with four (4) through nine (9) quarters or equivalent of University service at the campus will be given at least sixty (60) calendar days advance written notice.
 - c) Such NSF with an appointment of at least one year with ten (10) or more quarters or equivalent University service at that campus will be given at least ninety (90) calendar days advance written notice.
- 2) When a reduction in time entails the elimination of up to one Instructional Workload Credit or one course if greater than one IWC from the appointment, notice will be provided no later than thirty (30) calendar days prior to the first date of the performance of assigned responsibilities.
- 3) When the University provides written notice to the NSF of the University's layoff intent, the University will transmit a copy of the notice to the Union no later than the next business day.
- 4) Nothing in this Article shall preclude the department chair or unit head from consulting with the affected NSF. If the department chair or unit head chooses not to consult, the University shall upon request, meet within a reasonable period of time with the Union to discuss the effects of a layoff

b. Pay in Lieu of Notice

- 1) The period of notice will not extend past the expiration date of an appointment. Pay in lieu of notice will not be greater than the amount of pay the NSF would have received through the last day of appointment.

- 2) Where advance written notice of layoff is not given, such as in emergency situations, pay in lieu of notice will be provided subject to the above provisions.
- 3) Where advance written notice of reduction in time is not given, thirty (30) calendar days pay in lieu of notice will be provided.

c. Re-employment

Pre-six year NSF who have been subject to layoff shall have one year re-employment rights. Reemployment shall be conducted in accordance with the provisions of Section F. of this Article.

D. CONTINUING APPOINTEES – LAYOFF AND REDUCTION IN TIME

The provisions of this section apply only to NSF who have been appointed as Continuing Appointees. In addition to the reasons for a layoff set forth in Section A., the parties acknowledge that the University may layoff a Continuing Appointee as a result of assigning the course(s) taught by the Continuing Appointee to Senate Faculty or to a graduate academic student employee. Nevertheless, the University may not layoff 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.

1. Alternatives to Layoff

- a. When a Continuing Appointee has received a layoff notice, 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 qualifications are substantially equal to those of the less senior NSF, the University shall lay off the less senior NSF.

2. Notice and Pay in Lieu of Notice

- a. NSF with Continuing Appointments shall be given written notice of the effective date of any layoff including a reduction in time as soon as practicable after the decision is made. When notice is not provided in accordance with this section, the University will provide pay in lieu of notice. Pay in lieu of notice will not extend past the notice period provided.
 - 1) Continuing Appointees will be given at least twelve (12) months written notice of full separation from employment resulting from layoff.
 - 2) When a reduction in time entails the elimination of up to one Instructional Workload Credit or one course if greater than one IWC from the appointment, notice will be provided no later than thirty (30) calendar days prior to the first date of the performance of assigned responsibilities.
 - 3) Continuing Appointees will 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, whichever is greater.

- b. When the University provides written notice to the NSF of the University's layoff intent, the University will transmit a copy of the notice to the Union no later than the next business day.
- c. Nothing in this Article shall preclude the department chair or unit head from consulting with the affected NSF. If the department chair or unit head chooses not to consult, the University shall, upon request, meet within a reasonable period of time with the UNION to discuss the effects of a layoff.

E. SUMMER SESSION

NSF on summer session appointments will be given at least seven (7) calendar days advance written notice of layoff, or pay in lieu of notice

F. REEMPLOYMENT

1. Whenever the University has need for an NSF in an area in which the NSF is qualified to teach in the same department, program, or unit, and in the same title group—from which an NSF has been laid off, the University shall reemploy or increase the time of a laid off NSF provided the University determines that the NSF on layoff status and is available to begin work within a reasonable amount of time, and
2. If there is departmental need for courses, the University shall reemploy or increase the time of a laid off NSF provided the University determines that the NSF on layoff status is qualified and is available to begin work within a reasonable amount of time, and
 - a. The pre-six year NSF has not been laid off for more than a period equivalent to the duration of the NSF's appointment prior to the layoff; or
 - b. The Continuing Appointee has not been laid off for more than two years.
3. If more than one qualified person is on layoff 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.
4. In the event the University decides to offer temporary reemployment opportunities of no more than one quarter or semester in the same department, program or unit and title group; area in which the NSF has taught or performed work from which an NSF has been either laid off or has had his/her percentage of appointment reduced, the temporary reemployment does 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 status. Should instructional need exist beyond this temporary period, the NSF's reemployment status previous to the layoff will be reinstated.
5. **Termination of the Right to Reemployment**

- a. The right to reemployment terminates if an NSF:
 - 1) 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 home address. or
 - 2) accepts another appointment in the bargaining unit at the same or higher percentage of time at the University.
- 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 rehire 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.
- c. For purposes of Article 7a NSF Appointment, and 7b Process for Continuing Appointment, and this Article only, layoff periods of less than one quarter or semester count towards University service and seniority.
- d. In the event the NSF is unable to resume employment because of other employment commitments made in response to the layoff, the right to re-employment does not terminate, and the NSF shall remain eligible for reappointment to the next available courses/work for which s/he is qualified. Upon the University's request, the NSF shall provide documentary evidence of such other employment commitments. The right to reemployment does not terminate if the two offers (referred to in 4.a.2 above) are for courses/work within the same academic year.

G. 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.

H. BENEFIT COVERAGE

An NSF on layoff 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. Time on layoff of more than one-half of the working days of a month does not count towards University service for benefit purposes.

I. 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, the arbitrator shall not have the authority to substitute her/his judgment for that of the University regarding the necessity for the layoff, or the functions/programs or titles affected by the

layoff. 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.1.b), 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.