

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 lack of work, budgetary considerations or programmatic change that results in a lack of work. 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 full-time equivalent number of months of service in the bargaining unit, in the department, on pay status. For purposes of this Article, full-time equivalent months of service will be calculated on the basis of an appointment at 50% or more.

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.

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

1. Alternatives to Layoff

When the University has determined that 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.

2. 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 single course is cancelled due to lack of enrollment, advance notice of layoff or reduction in time shall be provided as soon as practicable, but no later than thirty (30) calendar days prior to the date of the first scheduled class meeting.
- 3) When the University notifies the NSF of the University's layoff intent, the University will mail notice to the UC-AFT of the effective date of any layoff and the identity of the affected NSF as soon as practicable.
- 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 UC-AFT 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 – RESPONSIBILITY FOR 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 the University has determined that NSF staffing cuts are necessary, in accordance with this article it will consider attrition, retirement, the non-reappointment or layoff of pre-six year NSF, and voluntary reductions in NSF staffing within the department that may make layoffs unnecessary.
- b. When a Continuing Appointee has received a layoff notice, and the Continuing Appointee or the AFT 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 single course is cancelled due to lack of enrollment, or a Continuing Appointee's initial appointment percentage is reduced by a single course for any reason in accordance with Article 7c., Section B.2.b., written notice of layoff or reduction in time shall be provided as soon as practicable, but no later than thirty (30) calendar days prior to the date of the first scheduled class meeting.
 - 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 (1) course.
- b. When the University notifies the NSF of the University's layoff intent, the University will mail notice to the UC-AFT of the effective date of any layoff and the identity of the affected NSF.

- 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 UC-AFT 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. Pursuant to the provisions of Article 23, Summer Session, no other provisions of the Layoff Article apply to NSF appointed to Summer Session.

F. REEMPLOYMENT

1. Whenever the University decides to fill a vacancy at the campus in the same department, program or unit and title code 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 is qualified for the position 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.
2. 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.
3. 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 code 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.
4. Termination of the Right to Reemployment
 - a. The right to reemployment terminates if an NSF:
 - 1) does not respond affirmatively within fourteen (14) calendar days to University inquiries concerning the desire of the NSF to return to work, provided that such response is feasible. The fourteen (14) calendar day response period shall begin immediately upon personal notice or seven (7) calendar days from the date written notice is postmarked. If the University is attempting to fill a vacancy on an urgent basis and if a laid-off or reduced in time NSF 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;

- 2) refuses a second offer of reemployment at the same or higher percentage of time; or
 - 3) accepts another appointment in the unit at the same or higher percentage of time at the University.
 - 4) 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.
- b. 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 position for which s/he is qualified.

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 date on which the NSF received the written notice of layoff or within thirty (30) days of the date on which the NSF knew or should have known of the alleged violation if evidence of same is not apparent when the written notice of layoff is received.
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 AFT 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 AFT (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 AFT 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.

