

**APSCUF'S RESPONSE TO THE STATE SYSTEM'S VERBAL PROPOSAL
REGARDING RETRENCHMENT¹
Submitted to the Pennsylvania State System of Higher Education November 20, 2015**

APSCUF responds to the verbal proposals made by the State System at our September 21, 2015 negotiations session, characterized as a "preliminary list" of areas the State System wants to address in connection with retrenchment, as follows:

1. Proposal to amend Article 7 to provide for mandatory faculty transfers at the discretion of the University President: REJECTED.
2. Proposal to amend Article 11 to expand employment of part-time faculty in lieu of full-time faculty: REJECTED.
3. Proposal to amend Article 18 to reduce the number of sabbatical leaves granted each year: REJECTED.
4. Proposal to amend Article 23 to increase the teaching load for full-time temporary faculty: REJECTED.
5. Proposal to amend delete Article 34 in its entirety: REJECTED.
6. Proposal to amend Article 40 to allow Universities to mandate faculty to work at branch campuses: REJECTED.
7. Proposal to amend Article 41 to allow Universities to mandate faculty to work at the Dixon Center: REJECTED.
8. Proposal to amend Article 42 to allow Universities to mandate faculty to teach distance education courses: REJECTED.

APSCUF counters with the following revised proposal to amend Article 29, and the accompanying proposal to amend Article 34.

Article 29

RETRENCHMENT

- A. 1. a. The STATE SYSTEM shall have the right, subject to the requirements of this Article, to retrench faculty under the three following circumstances: (1) a demonstrably bona fide financial exigency (i.e., an imminent financial crisis that threatens the survival of the institution as a whole and that cannot be alleviated by less drastic means); (2) a demonstrably bona fide formal programmatic change such as permanent discontinuance of a program, permanent elimination of a department of instruction, or permanent elimination of courses; or (3) in the case of FACULTY whose basic responsibilities lie outside the classroom, the permanent elimination of duties or services provided by such faculty.
- b. Whenever the STATE SYSTEM or a UNIVERSITY anticipates a demonstrably bona fide financial exigency that may result in retrenchment, the STATE

¹ APSCUF reserves the right to add to, delete from, alter or amend this proposal. Unless otherwise noted, existing provisions not altered by these proposals would remain unchanged. Each and every proposal is made without precedent or prejudice to existing rights and entitlements, regardless of the character or source of same.

SYSTEM/UNIVERSITY shall promptly notify both State and Local APSCUF. The notice required under this subsection shall be provided electronically, as soon as the STATE SYSTEM/UNIVERSITY anticipates the possibility of retrenchment, but Notice of the possibility of retrenchment will be sent electronically by the respective PASSHE University to the local APSCUF Chapter President with a copy to the State APSCUF President in no event later than August 1 for any retrenchment(s) that may occur effective at the end of the subsequent academic year.

c. Whenever the STATE SYSTEM or a UNIVERSITY anticipates a demonstrably bona fide formal programmatic change and/or the permanent elimination of duties or services provided by FACULTY whose basic responsibilities lie outside the classroom that may result in retrenchment, the STATE SYSTEM/UNIVERSITY shall promptly notify both State and Local APSCUF. The notice required under this subsection shall be provided electronically, as soon as the STATE SYSTEM/UNIVERSITY anticipates the possibility of retrenchment, but in no event later than April 1 for any retrenchment(s) that may occur effective at the end of the subsequent academic year.

d. Simultaneous with the notice required in subsections b. and c., the STATE SYSTEM/UNIVERSITY shall provide both State and Local APSCUF all relevant information necessary to verify the asserted reason for the possible retrenchment. In the case of a possible retrenchment based upon a bona fide financial exigency, the relevant information shall include the underlying data, and not merely summaries of such data.

2. The STATE SYSTEM/UNIVERSITIES shall meet and discuss with State and Local APSCUF or its designee regarding the stated basis for the retrenchment, and the parties will jointly explore and seek agreement on alternative measures, including cost-savings and/or revenue generation measures, to avoid or minimize the retrenchment, changes in finances, program curtailment, elimination of courses, or the elimination of duties or services provided by FACULTY whose basic responsibilities lie outside the classroom, which may lead to retrenchment, and thereby impact wages, hours and terms and conditions of employment, as required by Section 702 of Act 195. In connection with such duty to meet and discuss, accurate information, statistics or financial data related to any such proposed change shall be made available to both State and Local APSCUF as well as to the affected University and the STATE SYSTEM, so that all parties are prepared to engage in a discussion of the relevant issues. This shall not be construed to require the STATE SYSTEM/UNIVERSITIES to compile such material in the form requested which is not already compiled in that form, unless mutually agreeable.

3. APSCUF may contest the existence of the stated basis for the retrenchment through the grievance and arbitration procedure; provided, however, that any such grievance shall be filed directly with the Office of the Chancellor and, if not resolved within 30 days after filing, shall proceed immediately to expedited arbitration, following the Expedited Arbitration Rules of the American Arbitration Association. During the 30-day review period, the STATE SYSTEM will provide APSCUF with any additional requested information relevant to determining the existence of the stated basis for the

retrenchment. If it is determined through the process set forth in this Section that retrenchment is necessary due to the stated basis for retrenchment, retrenchment shall be carried out subject to the remaining provisions of this Article. No retrenchment shall occur while the grievance and arbitration process is pending.

4. Retrenchment shall not be used to evade the disciplinary provisions of this Agreement, nor shall retrenchment be carried out in an arbitrary, capricious or unreasonable manner.

B. ~~Retrenchment for the reasons identified in Section A.1. of this Article because of changes in finances, program curtailment, elimination of courses or the elimination of duties or services provided by FACULTY whose basic responsibilities lie outside the classroom shall be applied as hereinafter set forth.~~

1. If and when retrenchment is to occur, the STATE SYSTEM/UNIVERSITIES shall ~~make every effort, to the extent practicable, make plans~~ to permit the process of attrition ~~(including attrition in other departments)~~ to be utilized to effect the required reduction of FACULTY.

2. ~~When in the opinion of the STATE SYSTEM/UNIVERSITIES retrenchment becomes necessary and it cannot be accomplished totally by attrition, the STATE SYSTEM/UNIVERSITIES shall incorporate into the regular workload of any potential retrenchee any continuing education courses which the FACULTY MEMBER is qualified to teach, and which is then being taught by an individual outside the APSCUF bargaining units or by a less senior member of the APSCUF bargaining unit.~~

3. ~~When retrenchment cannot be averted through application of subsections B.1. and B.2., above, or Section D. below, APSCUF and the affected FACULTY MEMBERS shall be notified prior to implementation, in accordance with the schedule set forth in Section F. of this Article, and retrenchment shall be made as circumstances require, provided that the following order shall be utilized to the extent feasible in the department where retrenchment is occurring.~~

- a. temporary, part-time
- b. temporary, full-time
- c. regular, part-time
- d. regular, full-time

C. 1. With respect to the application of Section B.~~23~~, above, retrenchment shall be made in inverse order of length of service from the most recent date of employment at the University ("seniority"), within a department, provided the remaining ACADEMIC FACULTY MEMBERS have the necessary qualifications to teach the remaining courses or perform the remaining duties. ACADEMIC FACULTY MEMBERS shall be responsible for keeping their Academic Dean informed of all their qualifications.

2. With respect to the application of Section B.~~23~~, above, retrenchment shall be made within the affected administrative unit in inverse order of length of service from the

most recent date of employment at the University ("seniority"), provided the remaining ADMINISTRATIVE FACULTY MEMBERS have the necessary qualifications to perform the remaining duties. ADMINISTRATIVE FACULTY MEMBERS shall be responsible for keeping their appropriate management supervisor informed of all their qualifications.

- D. 1. Before ~~issuing a notice of retrenchment to retrenching~~-an ACADEMIC FACULTY MEMBER pursuant to Section F.1. of this Article, the University shall make ~~a reasonable~~every effort to place him/her in another position within the APSCUF bargaining units, ~~including through inter-departmental transfer pursuant to Article 7, Section B.6. and inter-University transfer pursuant to Article 34.~~ When an ACADEMIC FACULTY MEMBER has been a member of more than one (1) department and he/she is retrenched from his/her current department, he/she shall have the right to return to a previous department as follows:

Comment [AR1]: Housekeeping clarification of existing intent.

- a. If he/she left the previous department less than five (5) years prior to his/her retrenchment from his/her current department, he/she shall have the right to return, if qualified; and
- b. If he/she left five (5) or more years prior to his/her retrenchment, he/she shall have a right to return, if qualified, but only with the approval of the department or the President.

2. Before ~~issuing a notice of retrenchment to retrenching~~-an ADMINISTRATIVE FACULTY MEMBER pursuant to Section F.1. of this Article, the University shall make ~~a reasonable~~every effort to place him/her in another position within the APSCUF bargaining units, ~~including through inter-departmental transfer pursuant to Article 7, Section B.6. and inter-University transfer pursuant to Article 34.~~ When an ADMINISTRATIVE FACULTY MEMBER has occupied a position in more than one administrative unit, he/she shall have the right to return to a previous administrative unit and displace an ADMINISTRATIVE FACULTY MEMBER with less seniority.

Comment [AR2]: Housekeeping clarification of existing intent.

3. A FACULTY MEMBER who has received a letter of retrenchment shall have the opportunity to apply for vacancies with the same hiring rights as stated in the preferential hiring rights and preferred rehiring provisions of Sections G. and J. of this Article.

E. The FACULTY MEMBERS in the department, program or administrative unit where retrenchment notices have been issued shall be given the opportunity to reach voluntary agreement among themselves as to the order of retrenchment, if the FACULTY MEMBERS who remain in the department, program or administrative unit have the qualifications to teach the remaining courses or perform the remaining duties. Where such voluntary agreements are made, the date of the original notice of retrenchment to the FACULTY MEMBERS in the department, program or administrative unit shall be considered the date of notice to the FACULTY MEMBER who has voluntarily agreed to be retrenched. The opportunity to reach voluntary agreement shall end sixty (60) days after notice is given. Those who are retrenched by voluntary agreement in accordance with the foregoing shall have the same rights as if involuntarily retrenched.

- F. 1. The FACULTY MEMBERS to be retrenched shall be given notice in accordance with the following:
- a. First-year probationary non-tenured FACULTY MEMBER – sent by certified mail or hand delivered on or before March 1;
 - b. Second-year probationary non-tenured FACULTY MEMBER – sent by certified mail or hand delivered on or before December 15;
 - a. Probationary non-tenured FACULTY MEMBERS beyond the second year – sent by certified mail or hand delivered on or before December 1;
 - d. Tenured FACULTY MEMBERS – sent by certified mail or hand delivered on or before October 30.

A retrenchment shall not be considered a non-renewal and a FACULTY MEMBER so retrenched shall not be permitted to grieve that action as if it were a non-renewal. If a FACULTY MEMBER had been scheduled for a sabbatical leave, he/she shall not be deprived of his/her sabbatical leave because he/she is subject to being retrenched.

2. A retrenched FACULTY MEMBER shall be entitled to such unemployment compensation benefits as authorized by law.

- G. 1. A FACULTY MEMBER retrenched from his/her University shall within a period of time equal to his/her length of service at that University, or three (3) years from his/her date of retrenchment ("furlough period"), whichever is less, be given preference with respect to a FACULTY vacancy which is covered by this Collective Bargaining Agreement for which he/she applies at another University, if deemed qualified by the receiving department. His/her name then shall be forwarded to the President of the receiving University who shall consider whether or not he/she is qualified. If the President of the receiving University determines such FACULTY MEMBER to be qualified, he/she shall be appointed. The FACULTY MEMBER shall be considered for appointment by the President of the receiving University before, and independent of, all other applicants; provided, however, that where there are FACULTY MEMBERS on a preferred rehiring list at the receiving University, the rehiring rights of those ~~faculty members~~ FACULTY MEMBERS shall take priority over the preferential hiring rights of retrenched FACULTY MEMBERS from another University. Notice concerning vacancies at a particular University shall be posted at that University and a copy of such notice shall be sent by electronic mail to APSCUF headquarters in Harrisburg, to the Office of the Chancellor, and to each retrenched FACULTY MEMBER. Retrenched FACULTY MEMBERS must indicate their interest in any such vacancy for which they feel they are qualified by sending a letter of application, together with other appropriate documentation, to the President of the University where the vacancy exists within thirty (30) calendar days after the date the notice of the vacancy is posted (referred to in this subsection as the "Notice Period"); provided that, if there are fewer than ten (10) days

between the date when the FACULTY MEMBER first receives his or her notice of retrenchment in the academic year, pursuant to Section F.1. of this Article, and the end of the Notice Period, the Notice Period shall be extended for ten (10) additional days for any faculty member receiving a retrenchment notice within the extended notice period. Under no circumstances shall the Notice Period extend beyond 40 days from the original date of the posting. If more than one (1) retrenched FACULTY MEMBER applies to fill a vacancy at another University during this Notice Period, they shall be given the preferential consideration specified above, in order of seniority; provided, however, that the process of considering all such retrenchee applicants shall not exceed thirty (30) calendar days from the end of the Notice Period. Letters of application which are received after the end of the Notice Period shall receive no preferential rights with respect to the vacancy but shall be considered along with and in the same fashion as all other applicants for the vacancy.

Preferential hiring rights at another University do not extend to: (a) temporary part-time faculty vacancies that are less than fifty percent (50%) (6 workload hours per semester) of a regular full-time equivalent (FTE); (b) summer employment; or (c) winter session. A retrenched FACULTY MEMBER shall have preferred rehiring rights to such positions at the University from which the FACULTY MEMBER was retrenched.

A retrenched FACULTY MEMBER appointed at another University in accordance with the foregoing shall be appointed at the same step and of his or her rank held at the time of retrenchment ~~or at any step of the rank immediately below~~; however, retrenched FACULTY MEMBERS appointed to positions funded with grant monies may be appointed at the rank stated in the notice of vacancy at whatever step the President deems appropriate.

2. When a retrenched FACULTY MEMBER applies for consideration for a vacancy at another University in accordance with Section G.1. above, the normal search and screen process shall not apply to retrenched applicants.

H. Any retrenched FACULTY MEMBER who receives an appointment at another University shall have seniority at that other University beginning with the date of that appointment. Retrenched FACULTY preferentially hired on or after July 1, 1985 shall have seniority over all other new hires with the same date of appointment. If appointed within his/her furlough period, he/she shall retain accumulated sick leave and sabbatical leave credits and he/she shall not be considered a new employee for purposes of fringe benefits provided for FACULTY MEMBERS covered by this Agreement. If at the time of retrenchment, he/she had been a participant in the State Employees' Retirement Plan and thereafter withdrew his/her contributions, he/she shall have the right to repurchase his/her past service in accordance with the State Employees' Retirement Board regulations.

I. 1. A retrenched FACULTY MEMBER who receives an appointment at another University within his/her furlough period shall, if he/she did not have tenure at the University from which he/she was retrenched, be required to comply fully with the provisions of Article 15, TENURE, at the receiving University as a new FACULTY MEMBER. If he/she had tenure at the University from which he/she was retrenched,

then he/she will be granted tenure at the receiving University.

2. A retrenched tenured FACULTY MEMBER who receives an appointment at another University within his/her furlough period will be evaluated, irrespective of his/her evaluation cycle at the University from which retrenched, in his/her third year of employment at the receiving University and thereafter will be evaluated pursuant to Article 12, PERFORMANCE REVIEW AND EVALUATION.

Example: Retrenched FACULTY MEMBER who has been granted tenure by the University from which retrenched is appointed with tenure at the receiving University effective fall 2015. This FACULTY MEMBER will be evaluated in accordance with Article 12 during academic year 2017-2018. The next fifth year evaluation will be conducted in academic year 2022-2023.

J. A FACULTY MEMBER who receives a notice of retrenchment from a University shall be placed on a preferred rehiring list. Each University shall have a separate rehiring list. The least senior FACULTY MEMBER shall be the first name placed on such list. He/she shall be retained on the preferred rehiring list for a period equal to his/her furlough period. Upon separation from the University, the STATE SYSTEM shall provide ~~reimbursement of COBRA premiums paid by the~~ retrenched FACULTY MEMBER ~~benefits under for~~ the Faculty Health & Welfare Plan and the State System Group Health Plan, less the applicable active employee premium contribution, ~~for the duration of the furlough period or until permanent employment begins, whichever comes first. If the retrenched FACULTY MEMBER has not obtained permanent employment by the conclusion of the furlough period, he/she shall have access to continuing coverage, at his/her expense, pursuant to COBRA a period of six (6) months or until permanent employment begins, whichever comes first.~~ In addition, the STATE SYSTEM shall continue group life insurance coverage for a retrenched FACULTY MEMBER for ~~the duration of the furlough period a period of six (6) months~~ or until permanent employment begins, whichever comes first, if the group life insurance vendor agrees to make this coverage available for retrenched FACULTY MEMBERS at group rates; if the group life insurance vendor does not agree to this extension of coverage, the STATE SYSTEM shall not be required to provide this additional benefit to retrenched FACULTY MEMBERS. At the University where retrenchment is occurring, no new FACULTY MEMBER will be hired to fill a vacancy for which a retrenched FACULTY MEMBER on the preferred rehiring list is qualified, as determined by the President of the University in his/her sole discretion, unless the vacancy first is offered in writing to all such qualified FACULTY MEMBERS on that list, for recall in reverse order of placement. Such offer (which shall be made by registered mail to the last known address of the FACULTY MEMBER and to APSCUF) to qualified FACULTY MEMBERS shall remain open for a period of fifteen (15) calendar days. During the period that a FACULTY MEMBER is on a preferred rehiring list, he/she shall keep the University from which he/she was retrenched and the Chancellor informed of any permanent or temporary change in his/her address. In the event a FACULTY MEMBER rejects in writing an offered position in accordance with the foregoing, or in the event he/she does not respond in writing within said fifteen (15) calendar day period, his/her name shall be passed over, but he/she shall remain on the preferred rehiring list. If a FACULTY MEMBER either rejects in writing two (2) offered full-time positions of one (1) year or more or fails to respond in writing within the above stated time limits to two (2) offered full-time positions of one (1) year or more, his/her name shall be removed from the preferred rehiring

list and all preference rights under this Article shall cease. Part-time FACULTY MEMBERS shall have recall rights only with respect to part-time positions but shall be considered for full-time positions in accordance with Article 11, APPOINTMENT OF FACULTY.

K. In the event a FACULTY MEMBER is recalled in accordance with the provisions of Section J. above, he/she shall receive the same rank and step which he/she had when he/she was retrenched. In addition, he/she shall retain all sick leave accumulations, credits for tenure or tenure status and credits for sabbatical leave, and shall be entitled to repurchase past service credits for retirement in accordance with COMMONWEALTH regulations. Furthermore, he/she shall not be considered a new employee for purposes of fringe benefits provided for FACULTY MEMBERS covered by this Agreement.

L. If a program at one (1) University is moved to another University, whether or not a similar program existed at that other University, FACULTY MEMBERS who receive appointments at the other University with respect to that program will be considered as having been transferred and not retrenched. As such, the FACULTY MEMBERS affected shall be entitled to all rights and privileges of transferred employees, including transportation and moving expenses, subject to STATE SYSTEM/UNIVERSITIES rules and regulations pertaining thereto. Such transferred employees shall not be reduced in rank or step.

M. The University shall, on or before November 1 of each year, provide the local APSCUF President and state level APSCUF with a seniority list for each University. In addition, a copy of such list shall be sent to the department chairperson for posting in each department. All such lists shall reflect each FACULTY MEMBER'S most recent date of appointment at the University (first day on the payroll) and within his/her current department.

Positions on such list shall be considered final unless a question is raised with respect thereto by an individual FACULTY MEMBER within a period of sixty (60) days from the date of delivery of the list to APSCUF. The seniority list shall be compiled according to the seniority agreement between the STATE SYSTEM and APSCUF.

N. 1. Nothing contained within this Article shall be construed as requiring a University to retain more ACADEMIC FACULTY MEMBERS in a department or program or more ADMINISTRATIVE FACULTY MEMBERS in an administrative department or unit than the President deems to be needed in that department or unit.

2. Nothing contained in this Article shall prohibit ADMINISTRATIVE FACULTY MEMBERS from assuming full-time teaching positions in accordance with Article 7, PERFORMANCE OF BARGAINING UNIT WORK, of this Agreement.

O. All preference rights under this Article shall cease upon acceptance by a FACULTY MEMBER of a regular full-time position under the provisions of Sections D. or G. or J. of this Article.

P. The parties shall meet and discuss during the term of the Agreement aspects of this Article that are of mutual interest.

Q. The parties agree that any grievances relating to retrenchment issues will be handled in an expeditious fashion in the steps of the grievance procedure. The parties also agree that if APSCUF requests that any such grievances be submitted to arbitration, the parties will make a good faith effort to schedule the arbitration hearings during the academic year in which the notices of retrenchment are issued.

R. If an arbitrator should find that the meet and discuss requirements of this Article have been violated by management, the arbitrator's remedy shall be limited to ordering additional meet and discuss between the parties, and the arbitrator may not insert himself/herself into that process provided, however, that the arbitrator may direct that retrenchment be delayed until the meet and discuss obligation is satisfied. If an arbitrator should find that a FACULTY MEMBER was improperly retrenched, the arbitrator's remedy shall be limited to determining whether or not reinstatement is appropriate and whether or not full or partial back pay, seniority and fringe benefits should be awarded.

S. In the event that any retrenched FACULTY MEMBER accepts a position at another University within the STATE SYSTEM, the STATE SYSTEM will reimburse the FACULTY MEMBER'S transportation and moving costs associated with relocation to a new home near the new place of employment. In the event that such faculty member or his/her family member is eligible for tuition waiver benefits, such benefits shall be paid by the retrenching University during the summer between the effective date of the retrenchment and commencement of employment at another University.

T. PASSHE shall establish a retraining fund, separate from the Professional Development Fund, to pay the cost of education and training necessary to enable a retrenched FACULTY MEMBER to qualify for an available position at the University from which he/she was retrenched or at another University within the STATE SYSTEM. Access to such funds shall be on a first-come, first-served basis, and shall be administered by the Professional Development Council. PASSHE shall contribute \$100,000 annually to the retraining fund.

U. A retrenched FACULTY MEMBER who is not offered alternative employment within the STATE SYSTEM pursuant to this Article by the start of the next academic semester following retrenchment shall be paid severance pay as follows:

<u>Length of Service</u>	<u>Amount</u>
<u>First year probationary non-tenured FACULTY MEMBERS</u>	<u>3 months salary</u>
<u>Second year probationary non-tenured FACULTY MEMBERS</u>	<u>6 months salary</u>
<u>Probationary non-tenured FACULTY MEMBERS beyond the second year and tenured FACULTY MEMBERS</u>	<u>1 year's salary</u>

Severance pay shall be prorated for part-time FACULTY.