

## TENTATIVE AGREEMENT

UC/AFT IX Negotiations  
Article 17 – Layoff, Reduction in Time  
and Reemployment UC Proposal #6  
January 26, 2021  
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For UC-AFT



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11/18/2021

For the University



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11-18-21

### ARTICLE 17

### LAYOFF, REDUCTION IN TIME AND REEMPLOYMENT

**ALL CITATIONS TO SECTIONS HAVE NOT BEEN UPDATED AND WILL BE UPDATED AFTER THE ARTICLE IS FINALIZED**

#### A. GENERAL PROVISIONS

1. ~~Consistent with this MOU, a~~ 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~~ **Agreement**, 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, **as defined in Section B.3., below.**
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.
8. **If an NSF rejects any part or the entirety of an appointment offered by the University, the part or entirety rejected is not a layoff or reduction in time.**

#### 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~~ **automatically** from employment at the expiration of their appointment. Such separation does not constitute a layoff.
  - c. **With the exception of dismissals pursuant to Article 30-Discipline and Dismissal, a rescission, reduction in time, or involuntary separation of employment after the issuance of an appointment letter to the NSF, acceptance of the appointment, and before the ending date of the appointment defined therein is considered a layoff or reduction in time and is subject to the provisions of this article.**
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~~ **on total quarters or semesters 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.~~ **When NSF have the same total quarters or semesters of service on pay status in the bargaining and layoff unit, the following methods will be used to assign rankings until unique rankings are achieved:**
      - i. **earliest date of first hire in the bargaining unit in the department, program, or unit;**
      - ii. **earliest date of first hire in the bargaining unit on the campus;**
      - iii. **earliest date of first hire within the University, regardless of department, campus, job title, or bargaining unit, excluding employment as a student.**

iv. **earliest date of birth using month and date in the calendar year (e.g. the birthdate of March 6<sup>th</sup> would serve as a final tiebreaker than the birthdate of May 20<sup>th</sup>.)**

- 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. **In response to the University's determination that a layoff or reduction in time is needed, NSF may volunteer for layoff or reduction in time. This would not constitute a rejection of an appointment pursuant to Section A.8.** 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~~ **within five** business days.

#### **D. ~~IMPLEMENTATION OF~~ SELECTION FOR 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. NOTICE OF LAYOFF OR AND REDUCTION IN TIME – PRE SIX APPOINTEES**

1. Written Notice of Layoff or Reduction in Time
  - a. NSF ~~with pre six year appointments~~ shall be given **advance** written notice of the effective date of any layoff or reduction in time **in accordance with the chart in Section K below.**
  - b. 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:~~
  - c. 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~~ **within five (5) business days.**
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 **within the timelines provided for in the chart in Section K below, thirty (30) calendar days** pay in lieu of notice, **or a combination of timely notice and pay in lieu of notice,** will be provided, **as set forth in the chart.**
  - b. Pay in lieu of notice shall never exceed the pay the NSF would have received absent the layoff or reduction in time.

3. Reduction in Time that Impacts Health and Welfare Benefits

- a. Whenever possible, ~~Continuing Appointees~~ **NSF** 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.

~~4. Layoff and Reduction in Time Notification and Pay in Lieu Schedule~~

[CHART MOVED TO NEW SECTION K]

~~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.~~

~~F. LAYOFF AND REDUCTION IN TIME – CONTINUING APPOINTEES~~

~~1. Layoff~~

~~a. Written Notice~~

~~1) Continuing Appointees shall be given at least twelve (12) months ninety (90) calendar days 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.~~

~~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.~~

## F. 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.

## G. REEMPLOYMENT

1. Duration
  - a. For the duration of reemployment rights, refer to the chart in Section K below.
  - b. NSF retain reemployment rights for the remainder of the reemployment period if they turn down or do not respond within fourteen (14) calendar days to a first written offer of reemployment at the same or higher percentage of time sent to the NSF's last known personal email and postal address on file.
  - ~~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. [MOVED TO CHART IN NEW SECTION K BELOW]~~
  - ~~b. Continuing Appointee: Continuing Appointees have reemployment rights for two years from the effective date of the layoff or reduction in time. [MOVED TO CHART IN NEW SECTION K BELOW]~~
  - ~~c. Senior Continuing Lecturer: Senior Continuing Lecturers have reemployment rights for three years from the effective date of the layoff or reduction in time. [MOVED TO CHART IN NEW SECTION K BELOW]~~
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 **off**;
- 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 **personal email and postal addresses on file**. **The second written offer of reemployment must be separate from the first offer per Section G.1.c.** 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.

#### **H. 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.

#### **I. 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.

#### **J. 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~~ **the arbitrator's** 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~~ **Agreement**, 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~~ Agreement.

**K. ~~SCHEDULE OF LAYOFF AND REDUCTION IN TIME NOTIFICATION, PAY IN LIEU OF NOTICE, AND REEMPLOYMENT RIGHTS~~**

1. Pre-Six NSF Schedule Chart:

	<u>Appointment type and duration</u>	<u>Action</u>	<u>Advance Written Layoff Notice</u>	<u>Reduction in Time Notice</u>	<u>Pay in Lieu of Notice</u>	<u>Reemployment Rights</u>
a.	<u>All pre-six NSF</u>	<u>Either layoff or reduction in time of one IWC or less, or one course if valued at greater than one IWC</u>	<u>Thirty (30) calendar days</u>	<u>Thirty (30) calendar days</u>	<u>Thirty (30) calendar days</u>	<u>For the remaining duration of the appointment prior to the layoff or reduction in time</u>
b.	<u>Pre-six NSF on quarter 1/9 or semester 1/10 appointments, or the first year of an initial 9/12 academic year appointment</u>	<u>Either Layoff or reduction in time of multiple courses that combined exceed one IWC</u>	<u>Thirty (30) calendar days</u>	<u>Thirty (30) calendar days</u>	<u>Thirty (30) calendar days</u>	<u>For the remaining duration of the appointment prior to the layoff or reduction in time</u>
c.	<u>Pre-six NSF with 9/12 academic year appointments, with four (4) through nine (9) full or partial quarters or three (3) through six (6) full or partial semesters of University service in the layoff unit</u>	<u>Either Layoff or reduction in time of multiple courses that combined exceed one IWC</u>	<u>Sixty (60) calendar days</u>	<u>Sixty (60) calendar days</u>	<u>Thirty (30) calendar days</u>	<u>For the remaining duration of the appointment prior to the layoff or reduction in time</u>

<u>d.</u>	<u>Pre-six NSF with 9/12 academic year appointments, with ten (10) full or partial quarters or seven (7) full or partial semesters of University service in the layoff unit</u>	<u>Either Layoff or reduction in time of multiple courses that combined exceed one IWC</u>	<u>Ninety (90) calendar days</u>	<u>Ninety (90) calendar days</u>	<u>Thirty (30) calendar days</u>	<u>For the remaining duration of the appointment prior to the layoff or reduction in time</u>
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**1. Continuing NSF Schedule Chart**

	<u>Appointment type</u>	<u>Action</u>	<u>Advance Written Layoff Notice</u>	<u>Reduction in Time Notice</u>	<u>Pay in Lieu of Notice</u>	<u>Reemployment Rights</u>
<u>a.</u>	<u>Continuing NSF</u>	<u>Reduction in time of one IWC or less, or one course if valued at more than one IWC</u>	<u>n/a</u>	<u>Thirty (30) calendar days</u>	<u>Thirty (30) calendar days</u>	<u>Two (2) years from the effective date of the reduction in time</u>
<u>b.</u>	<u>Continuing NSF</u>	<u>Reduction in time of multiple courses that combined exceed one IWC</u>	<u>n/a</u>	<u>Sixty (60) calendar days</u>	<u>Sixty (60) calendar days</u>	<u>Two (2) years from the effective date of the reduction in time</u>
<u>c.</u>	<u>Continuing NSF</u>	<u>Layoff</u>	<u>Twelve (12) months</u>	<u>n/a</u>	<u>Twelve (12) months</u>	<u>Two (2) years from the effective date of the reduction in time</u>
<u>d.</u>	<u>Senior Continuing NSF</u>	<u>Reduction in time of one IWC or less, or one course if</u>	<u>n/a</u>	<u>Thirty (30) calendar</u>	<u>Thirty (30) calendar days</u>	<u>Three (3) years from the effective date of the reduction in time</u>

		<u>valued at more than one IWC</u>		<u>days</u>		
<u>e.</u>	<u>Senior Continuing NSF</u>	<u>Reduction in time of multiple courses that combined exceed one IWC</u>	<u>n/a</u>	<u>Sixty (60) calendar days</u>	<u>Sixty (60) calendar days</u>	<u>Three (3) years from the effective date of the reduction in time</u>
<u>f.</u>	<u>Senior Continuing NSF</u>	<u>Layoff</u>	<u>Twelve (12) months</u>	<u>n/a</u>	<u>Twelve (12) months</u>	<u>Three (3) years from the effective date of the reduction in time</u>