

MEMORANDUM

TO: APSCUF Local Chapter Presidents

FROM: Mary Rita DuVall-Quinn, MEd
Head of Contract Department
State APSCUF



RE: Retrenchment

DATE: September 23, 2009

In an effort to be proactive, the STATE APSCUF contract department over the last several months has been reviewing Article 29 Retrenchment of your collective bargaining agreement which governs your legal rights under this process if initiated by the State System of Higher Education due to current financial considerations. In addition to this, the contract staff has evaluated all former arbitration awards that addressed past violations of the agreed upon retrenchment language. In analyzing the prior arbitration awards that dealt with retrenchment several consistencies can be identified in how the arbitrator ruled.

For your benefit, the following are some highlighted areas of the contract and prior arbitrations rulings that STATE APSCUF would like you to monitor due to prior violations of retrenchment language in your collective bargaining agreement:

- The State System/Universities are required to meet and discuss with APSCUF or its designee regarding any changes, included those involving curriculum and programs which will lead to retrenchment, and thereby impact wages, hours and terms and conditions of employment.
- Meet and Discuss should occur before retrenchment occurs to afford APSUF the opportunity to develop other alternative solutions. Both parties should determine and mutually agree to a date and location.
- Notification requirements/dates to the faculty and to APSCUF must be followed as outlined in Article 29.B.2 and 29.F.1
 - First-year probationary non-tenured faculty member - March 1;
 - Second-year probationary non-tenured faculty member - December 15;
 - Probationary non-tenured faculty members beyond the second year - December 1
 - Tenured FACULTY MEMBRS – October 30
- 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 beginning with temporary part-time, temporary full-time, regular part-time and regular fulltime. Please refer to Article 29.C for further clarifications.



- Retrenchment is to occur by inverse order of length of service as long as the remaining faculty can teach the courses and perform the assigned duties. If there is a junior faculty member that performs duties those more senior than him/her cannot, the more senior member will be retrenched first. However, the more senior faculty need only to be able to perform the duties and be qualified not more qualified than the less senior. Arbitrator's rulings were consistent in this matter.
- In determining relative seniority, factors such as leaves and sabbaticals are to be factored into consideration.
- Non-renewal of faculty should be based on performance and not on financial difficulties. If seniority or financial difficulties are taken into account for a non-renewal than arbitrators have ruled consistently that this is retrenchment and faculty should be given full retrenchment rights.
- According to previous APSCUF arbitration awards won, the University must make a significant effort to place the faculty member in another position with the bargaining unit to avoid retrenchment.
- After a faculty member has been retrenched, the PASSHE must make a "reasonable effort" to place the retrenched faculty member within the State System. Such a "reasonable effort" includes but is not limited to keeping faculty members abreast to job vacancies or the creation of a new bargaining unit position. However, there are no set standards defining "reasonable effort". A compelling case must be made and Arbitrators have differed in whose favor they rule.
- The retrenched faculty member must not be put through the normal search and screen hiring process. Retrenched faculty must be given priority in the selection process. The retrenched faculty member must possess only the published minimum requirements for the position and not necessarily the most qualified. Additional qualifications to the position cannot be added to the posting requirement to exclude the retrenched faculty member from consideration.
- A retrenched faculty member does not have full rights to vacancies. In order to fill the vacancy, the faculty member must possess the skills /qualifications needed.
- Once a retrenched faculty member accepts another position within the PASSSHE he/she gives up their preferential hiring rights. Arbitrators ruled consistently on this issue.
- Whatever Agreement is in effect between APSCUF and PASSHE at the time of the faculty retrenchment is the governing document even if a new Agreement is set into place. The old agreement must still be referred to in regards to the rights of those who were retrenched under the old document.
- After three years, the retrenched faculty member has no more furlough rights including preferential hiring.
- Overburdening and "borrowing" faculty members from other departments cannot be a tactic used to circumvent a retrenched faculty member from utilizing his preferential hiring rights.

STATE APSCUF encourages you and all faculty members to review their collective bargaining agreement and the above arbitration rulings and be aware of any possible violations and report them to our state office immediately. Hopefully, any such actions will not be necessary and our faculty can continue to provide the same excellent quality education they currently provide to students.