

**MINUTES OF THE SPECIAL MEETING OF THE BOARD OF
HIGHER EDUCATION OF THE CITY OF NEW YORK**

HELD

AUGUST 15, 1975

**AT ST. LUKE'S HOSPITAL
34 MORNINGSID DRIVE—BOROUGH OF MANHATTAN**

In the absence of the Chairman, the Vice-Chairman called the meeting to order at 5:05 p.m.

There were present:

Franklin H. Williams, Vice-Chairman

Francesco Cantarella
James P. Murphy

Vinia R. Quinones
Marta Valle

Mr. Jay Hershenson, ex officio

Etta G. Grass, Acting Secretary of the Board

The absence of Ms. Hauser, Mr. FitzPatrick, Mr. Giardino, Mr. Goldin and Mr. Jacobs was excused.

**WAIVER OF NOTICE OF MEETING
OF THE
BOARD OF HIGHER EDUCATION**

We, the undersigned members of the Board of Higher Education, hereby severally waive notice of the time and place of a meeting of members thereof and consent that it be held at St. Luke's Hospital, 34 Morningside Drive, Borough of Manhattan, City of New York, on August 15, 1975 at 5:00 p.m. in the afternoon for the purpose of considering emergency guidelines and procedures for retrenchment and for the transaction of any other such business which may lawfully come before said meeting.

Date: New York, New York
August 15, 1975

s/ Franklin H. Williams
Franklin H. Williams

s/ Francesco Cantarella
Francesco Cantarella

s/ James P. Murphy
James P. Murphy

s/ Vinia R. Quinones
Vinia R. Quinones

s/ Marta Valle
Marta Valle

s/ Jay Hershenson
Jay Hershenson

NO. 1. EMERGENCY GUIDELINES AND PROCEDURES FOR RETRENCHMENT: The Vice-Chairman noted that after several hours of discussion of the Emergency Guidelines and Procedures for Retrenchment and after having heard comments and suggestions from Prof. Evelyn Handler and Prof. Edward Mapp, representing the University Faculty Senate, and Prof. Belle Zeller and Mr. Arnold Cantor, representing the Professional Staff Congress, the Board went into formal session at St. Luke's Hospital.

At this point a statement of Prof. Belle Zeller, President of the Professional Staff Congress, was read into the record. (A copy of this statement is on file in the Office of the Secretary of the Board.)

Upon motions duly made by Mrs. Quinones, seconded by Mr. Murphy, and unanimously carried, the following resolution was adopted:

RESOLVED, That the Board hereby declares that the University is in a state of financial emergency; and it is further

RESOLVED, That the emergency guidelines and procedures hereinafter set forth are hereby adopted by the Board to govern discontinuance of Board appointments for reasons of financial exigency; and it is further

RESOLVED, That the Board hereby delegates to the Presidents of the colleges, or in the case of the University Staff, to the Chancellor, the authority to initiate discontinuances of appointments on the basis of financial exigency, such discontinuances to be effective on the dates provided by the Presidents or Chancellor as the case may be; and it is further

RESOLVED, That all such discontinuances shall be reported to the Board on the Chancellor's Report; and it is further

RESOLVED, That such guidelines and procedures shall be in effect until June 30, 1976:

The present budget crisis requires the University to promulgate guidelines and procedures for the discontinuance of personnel, the maintenance of the educational mission of the University and the protection of the rights of affected personnel.

These procedures and guidelines relate only to the discontinuance on the basis of financial exigency of appointments in effect. They do not cover or apply to the normal processes for appointment, reappointment or non-reappointment of persons whose services are not discontinued in accordance with these guidelines and procedures.

Three basic components are essential in a retrenchment procedure.

1. Plan of retrenchment.
2. Criteria for determining which individuals must be discontinued.
3. A review process to insure protection of the rights of affected individuals.

A Plan of Retrenchment

The President* of each college shall determine after consultation with appropriate faculty and student representatives what programs or activities are to be cut back or terminated in a written retrenchment plan which shall be distributed to department chairpersons and to non-academic officers of the college responsible for recommending the appointment of persons in the HEO, Business Manager and other non-academic series to the President. In submitting his recommendations, the president shall indicate with whom he has consulted.

The plan shall set forth the reasons why reduction of termination of academic or non-academic service is required with respect to each department or function. The reasons must be related to financial exigency and be directed at the needs of the college and department or function. They may include but need not be limited to insufficient student registration, reassessment of programs and priorities, and redistribution of staff, fiscal or physical resources. (A timetable for the accomplishment of retrenchment shall be included in the plan.)

The plan shall clearly identify the department, office or function within which discontinuances will be made.

*References to the President and to the College shall be deemed references to the Chancellor and the University Staff, respectively, in the case of the Central Office.

Affirmative Action

The Board of Higher Education adopted a policy of affirmative action on November 22, 1971, Calendar No. 9. The Board affirms its adherence to the policy and stresses the importance of following affirmative action principles in implementing these procedures and guidelines. Accordingly it is required that,

1. Each President shall assure that before any decision is made hereunder to discontinue an appointment, he or she shall fully consult with the affirmative action officer and take the view of such officer into account in making such decisions.
2. Each President shall inform the Chancellor of all discontinuance decisions and of the impact of these decisions upon the affirmative action plan of the college. The Chancellor shall review the impact of such decisions and if he shall determine that such action is contrary to the principles of law relating to affirmative action, he shall advise the President of his decision and of the action the President must take to correct such adverse impact.

Civil Service Personnel

The discontinuance of the University's non-instructional Civil Service employees is controlled by the Civil Service Commission, whose regulations concerning layoffs are explicitly outlined in the memorandum from the New York City Department of Personnel entitled "Information for Employees Being Separated from City Service," and dated June 1975. It is sufficient for purposes of this memorandum to note that with regard to such employees, the University as a whole is considered to be a single agency and, therefore, a single retrenchment unit. The criteria and review process are established in Civil Service law and regulations.

Instructional Staff Personnel - General Principles

There may be more than a single variable which precipitates campus retrenchment decisions. A budget reduction per se may force retrenchment, but more likely it will be the need for a campus to reallocate its resources in order to provide the optimal level of service within a given budget that will bring about personnel changes. Financial exigencies notwithstanding, a reduction in the number of instructional staff personnel may be warranted by abolition of programs, insufficient student registration, redistribution of staff, reassessment of programs and priorities or other campus decisions affecting allocation of its fiscal, personnel or physical resources. Retrenchment takes place at the department or program level, and the actual cutback in positions proceeds from program and workload decisions. The determination of the retrenchment unit is essential to the retrenchment process.

Pursuant to the BHE Bylaws, the basic unit for retrenchment purposes within the University is the academic department of the college. Where a college has a divisional or program organization, the division or program may become the appropriate unit. For certain employees, e.g., HEOs, Business Managers, etc., the appropriate unit may be an administrative department, office, or functional unit rather than an academic department or division. Each college must identify its units of retrenchment for both its instructional and non-instructional staff.

Once the unit or function to be retrenched is identified, and personnel must be separated from service, the following general principles for discontinuance of individual employees should obtain:

In making decisions as to which member or members of a department should be separated from service, individual tenure status assumes primacy according to the State Education Law and BHE Bylaws. Within a given department, any staff member with tenure, regardless of other academic considerations, must be retained over a person who does not have tenure. If, however, retrenchment results from the determination to abolish or reduce a particular department, the actual cutback in positions may involve tenured members of the staff. In such instances, a tenured employee may be discontinued while a non-tenured employee in a different department may be retained.

For non-tenured personnel, there is a need to distinguish between persons with equal rights for retrenchment purposes. Employees who may be affected by retrenchment may have received prior notice of appointment or reappointment. These individual appointments are being rescinded or shortened for reasons other than any act of negligence or unprofessional conduct. The committee or persons responsible for deciding between or among employees holding the same or similar positions should be prepared to justify such recommendations or decisions.

Criteria to be Applied

Retrenchment among employees holding the same or similar positions where department retrenchment occurs, should take place as follows within the retrenchment unit:

1. Adjunct Staff

- a. Employees with initial appointments who have not yet started to work.
- b. Employees scheduled to teach class sections which have been withdrawn, for which full-time employees have been rescheduled, for which there is insufficient registration or for which the determination has been made that the course is not necessary for the fulfillment of any undergraduate degree program.
- c. Employees who additionally have full-time employment outside the University in the inverse order of length of service.
- d. Employees who additionally have full-time employment within the University in the inverse order of length of service.
- e. Other employees who are not CUNY doctoral candidates in the inverse order of length of service.
- f. Employees who are CUNY doctoral candidates in good standing and receiving no other financial support in inverse order of length of service.

The foregoing notwithstanding, adjunct employees teaching courses deemed by the department to be educationally essential so as to merit continuance and for which no other person is available to teach may be retained over full-time personnel or other adjuncts with greater length of service.

2. Instructional Staff - Lecturer, Instructor and all Tenure-Bearing Titles

- a. Instructional Staff, non-tenured or non-certificated in the following titles - College Laboratory Technician series, Registrar series, Lecturer, Instructor, Assistant, Associate and Full Professor, and titles at Hunter College campus schools who have received notice of initial appointment but who have not yet started to work shall be the first category of full-time Instructional Staff Employees to be discontinued.
- b. Instructional Staff, non-tenured and non-certificated in the following titles - College Laboratory Technician series, Registrar series, Lecturer, Instructor, Assistant, Associate and Full Professor, and titles at the Hunter College campus schools, who have been reappointed, shall be discontinued before any tenured or certificated employee. The discontinuance shall be in inverse order of length of continuous service in the University in any of the titles identified in this paragraph, except for special educational reasons.*

*The term "special educational reasons" as used throughout these guidelines means a reason which is non-discriminatory against a person and is related to the needs of the department or college.

c. Full-time Instructional Staff members holding Certificates of Continuous Employment shall be discontinued in accordance with Article 6.9(f) of the Bylaws before any employee holding statutory tenure.

d. Tenured members of the full-time Instructional Staff shall be discontinued in accordance with Section 6206 (9) of the Education Law and Article 6.9 of the Bylaws:

(1) Education Law Section 6206(9) provides that when the position of a tenured person in a department is to be discontinued:

“[S]uch position shall be that of the person last appointed to such department, save that, for special educational reasons which are not discriminatory against a particular person or persons, the Board may continue the services of a person or persons whose position or positions would otherwise be abolished or discontinued, and abolish or discontinue the position or positions of the person or persons next most recently appointed to such department.” (Emphasis supplied.)

Section 6.9(b) of the Bylaws implements that provision of the law.

Under this provision, the tenured person last appointed to the department would be the first to be discontinued. Note that under this provision of law: (1) previous service in another department prior to transfer is disregarded and (2) the date to be considered is date of appointment not date of tenure.

EXAMPLE:

English Department - Brooklyn College

Name	Title	Date of Appointment	Date of Tenure	Place of Tenure
A. John Doe	Asst. Prof.	Sept. 1959 (Queens) Sept. 1968 (Brooklyn)	Sept. 1965	Queens
B. Jay Smith	Prof.	Sept. 1963 (Brooklyn)	Sept. 1968	Brooklyn
C. Joe Jones	Assoc. Prof.	Sept. 1964 (Brooklyn)	Sept. 1967	Brooklyn
D. Richard Roe	Assoc. Prof.	Sept. 1969 (Brooklyn)	Sept. 1974	Brooklyn

In the event of retrenchment, these persons would be retrenched in the following order:

1. Richard Roe
2. John Doe
3. Joe Jones
4. Jay Smith

(2) Pursuant to paragraph 6.9(c) of the Bylaws, the Board must attempt to place a discontinued tenured person in a position in the college he or she can efficiently and capably fulfill. Administrative arrangements will be made for the implementation of that obligation as well as those identified in paragraphs d and f.

(3) Where a department must abolish the positions of certificated or tenured staff, each discontinued tenured or certificated person shall be required to file a form setting forth his/her status under the Bylaw. Such forms shall be available in the Office of the President or Dean of the College.

(4) Where it is determined that a person with a shorter period of service in the department shall be retained while the person with the next longer period of service shall be discontinued, as is possible under the second sentence of paragraph b, special precautions must be taken to justify the action. Such action should not be proposed until the President of the College has been consulted.

3. Instructional Staff - HEO and Business Manager Series

a. Full-time Instructional Staff employees in the non-excluded HEO and Business Manager series titles holding the same or similar positions, with initial appointments but who have not yet started to work, shall be the first to be discontinued.

b. Employees in the non-excluded HEO and Business Manager series titles holding the same or similar positions shall be discontinued in the inverse order of length of continuous service in the University in the titles specified in this paragraph before those completing their first year of reappointment service, who in turn shall be discontinued before those employees holding multiple year appointments.

4. Instructional Staff - in Non-Tenured Titles of Research Assistant, Research Associate, College Physician, Early Childhood Teachers and Assistant Teachers

Those who have not yet started to work shall be discontinued first. All others shall be discontinued in the inverse order of length of continuous service in the University in the titles specified in this paragraph.

5. Instructional Staff - Visiting Assistant Professor, Associate Professor and Professor

Shall be discontinued in accordance with special educational reasons.

6. Distinguished Professors

Shall be discontinued in accordance with the provisions governing Instructional Staff in tenure-bearing titles or visiting titles depending upon the nature of the appointment.

7. Persons in Excluded Titles and Functions, including Deans, Administrators, Vice Chancellors and Presidents

a. The discontinuance of persons in supplemented positions, who also hold tenure or certificate bearing titles, shall be determined by their status in their academic department. The discontinuance or retention of such persons shall be in accordance with 2 above.

b. For persons in HEO or Business Manager series titles, the college should determine discontinuance on the basis of managerial or functional needs without regard to date of initial appointment or length of service.

8. Graduate Fellows A and B

Graduate Fellows represents a category for which the University has special educational concerns. The title is required to attract quality graduate students and to provide training for the fellows. Therefore, the discontinuance of Graduate Fellows is to be made on a college-wide basis with preference for retention of CUNY doctoral candidates. If additional fellowships remain available on a college-wide basis, CUNY master's candidates are to be given second preference. Only after all CUNY doctoral and master's degree candidates have been retained, may a college employ a Graduate Fellow who is studying at another university.

Implementation and Due Process Procedures

1. The President, in accordance with the Retrenchment Plan and the criteria for discontinuance of appointments set forth above, shall a) determine the number of positions to be abolished in each retrenchment unit and b) after such consultation with departmental or faculty committees, or other persons as he or she deems appropriate, identify the persons whose appointments are to be discontinued.
2. If an entire function, office or department is to be abolished, or if the number of positions to be abolished is exactly equal to the number of non-tenured or non-certificated personnel in the unit, the President shall notify the affected persons of the discontinuance of their appointments, on the basis of financial exigency, without further justification.
3. If paragraph 2 is not applicable, the President shall notify each person whose appointment is to be discontinued of such discontinuance and the justification therefor, which shall be either length of service or a special educational reason.
4. Notification of discontinuance of appointment shall be by certified mail. Discontinuance of appointment shall be effective on the date of notification or such later date as specified in the letter.

Review and Appeals Procedure

1. Upon request, each person who has been discontinued may request a review of the decision within twenty calendar days of the certified mailing of a letter of notification. Such request shall be filed with the Office of the President of the College.
2. A special retrenchment review committee or committees shall be established by the President to consider all retrenchment appeals submitted. Each such committee shall be composed of no less than three members of the Instructional Staff of the college, of which the majority shall be tenured. No member of a department P & B Committee or other person who has formally participated in the recommendation of the discontinuance of an individual to the President shall participate in the consideration of or decision on the appeal of such person.

In the Central Office, the Staff Review Committee shall be the special retrenchment review committee, except that no Vice Chancellor shall participate in the consideration of or decision on the appeal of a person within the area of his or her jurisdiction.

The committee shall have the duty to review all relevant records and may conduct such investigation as it deems appropriate. It shall not have the authority to substitute the name of a different person for the appellant.

3. On appeal the affected individual has the burden of establishing:
 - a. Where the determination was made on the basis of length of service, that the P & B Committee or party making the decision did not correctly compute the length of service in accordance with these guidelines.
 - b. Where the determination was made on the basis of special educational reasons, that the reason given was a pretext for action based on constitutionally prohibited grounds.

No other issues may be raised by the appellant or considered by such committee on such review. In considering the appeal, the committee shall be prohibited from considering the need for retrenchment in the University, the College, the department, division or other retrenchment unit.

4. Persons whose appointments have been discontinued pursuant to these guidelines and procedures may request to meet with the committee, present relevant evidence and be represented by counsel or a representative of the certified union if the person is a member of the collective bargaining unit. In hearing such appeals, the committee may limit the oral presentation to not more than one-half hour.

5. The committee shall make a report and recommendations to the President who shall make his or her decision and notify the appellant by certified mail.

Some General Notes and Comments

1. It is permissible to abolish an annual position while retaining adjunct positions. The allocation of resources is a matter of academic and financial concern. However, the abolition of the position of a tenured or certificated employee and the retention of adjunct personnel should be undertaken for only the most compelling educational reasons.

2. Persons being discontinued may be entitled to a range of benefits. The colleges and the Central Office will provide such information and be prepared to assist discontinued personnel in understanding their rights.

3. There are no priorities for veterans, volunteer firemen or physically handicapped personnel on the Instructional Staff. Such provisions as they exist apply to personnel in classified civil service positions.

4. Retrenchment procedures are not contained in the University's collective bargaining agreements. Recognizing, however, that affected employees are understandably concerned, union representatives may be permitted to attend any appeals, hearing and to assist employees in the processing of appeals if requested by the employee.

5. Persons whose services are discontinued pursuant to these guidelines and procedures cease to be employees of the Board as of the date of discontinuance. Notices of non-reappointment for future periods should not be sent to such persons. Notwithstanding the foregoing, a person discontinued pursuant to these guidelines and procedures may be appointed for a future period pursuant to the normal appointment procedures.

EXPLANATION: As a result of the fiscal crisis in the City of New York, the City University budget has been drastically reduced. The adopted budget for fiscal 1975-76 for City University in the amount of \$597.9 million is \$64.7 million less than the amount certified by the City to the State, and further budget reductions may be imposed upon the University. On July 28, 1975, the Board adopted a policy relating to 1975-76 academic programs within the limitations of the reduced operating budget. These reductions require the discontinuance of appointments of some persons presently on the staff. The guidelines and procedures are adopted to provide for a fair and orderly reduction in staff, while maintaining the educational goals of the University.

Upon motions duly made, seconded and carried, the meeting was adjourned at 5:12 p.m.

**ETTA G. GRASS
Acting Secretary of the Board**