

Article 45: Financial Emergency

- 45.01 The Board of Governors and the Association agree that the first duty of the University is to ensure that its academic priorities remain paramount, particularly with regard to the quality of instruction and research, and preservation of academic freedom. Any reduction for budgetary reasons of regular members or of members on LTA appointments (in advance of the normal expiry thereof) shall occur only as a last resort during a state of financial emergency, that is, when substantial and recurring financial deficits threaten the survival of the University as a whole. Such reductions in members shall occur only in extraordinary circumstances, and then only after efforts to alleviate the financial crisis by economies in all other segments of the budget have been undertaken and after all reasonable means of improving the University's revenues have been exhausted.
- 45.02 Members may be laid-off in accordance with this Article if a state of financial emergency has been declared and confirmed pursuant to the procedures contained in this Article.
- Any such layoff shall not be treated, described or recorded as a suspension or as a dismissal for cause or other disciplinary measure.
- 45.03 In the event that the Board of Governors considers that a financial emergency exists, within the meaning of 45.01 and 45.08, it shall give notice of such belief. As of the date of such notice the procedures specified in this Article shall apply, and no new appointments, (excluding the renewal of probationary contracts) may be made to either the academic or administrative staff. No exceptional awards or other discretionary salary increases shall be made and no sabbatical leaves shall be granted.
- 45.04 Within two (2) days of giving notice of its belief that a financial emergency exists, the Board of Governors shall forward to the Association all financial documentation relevant to the alleged state of financial emergency.
- 45.05 Within fifteen (15) days of the notice specified in 45.03 above, the parties shall establish a Financial Commission which will consider the alleged financial emergency and either confirm it or reject it.
- 45.06 The composition of the Financial Commission shall be as follows: One (1) member shall be named by the Board and one (1) by the Association, and these two (2) members shall jointly select a third member from outside the Concordia University community who shall chair the Commission. If the two (2) designated members cannot agree upon a third member, then the third member shall be selected by lot, from a list jointly agreed upon by the Board and the Association.
- 45.07 The onus of proof shall be on the Board of Governors to establish to the satisfaction of the Financial Commission that a state of financial emergency exists within the meaning of 45.08 (i) below.

45.08 The Financial Commission shall invite and consider submissions on the University's financial condition. Inter alia, it shall determine:

- a) whether the University's financial position (as evidenced from the total budget and not just the academic or salary components thereof) constitutes a bona fide budgetary crisis such that deficits projected by generally accepted accounting principles are expected to continue for more than three (3) consecutive financial years;
- b) whether in view of the primacy of academic goals at the University, the reduction of the bargaining unit is a reasonable type of cost saving;
- c) whether all reasonable means of achieving cost saving in other areas of the University budget have been explored and exhausted;
- d) whether all reasonable means of improving the University's revenue position (including borrowing, deficit financing, and the disposal of assets not essential to the academic function) have been explored and exhausted;
- e) whether every effort has been made to secure further assistance from all levels of government.

The Commission shall have access to any and all data and documents which it deems relevant to its study, and shall have the power to call for submissions from any individuals or groups it chooses. The Association, Senate, the Faculty Councils and Student Associations shall have the right to make written and/or oral representations to the Financial Commission.

45.09 The Financial Commission will report to the Board of Governors, with a copy to the Association, within fifty (50) days of its establishment. The report shall immediately be made public. If the Commission finds that a state of financial emergency does not exist, no reductions in the size of the bargaining unit for budgetary reasons may take place. If the Commission finds that a financial emergency does exist, its report shall specify the amount of reduction required, if any, in the total budgetary allocation and including any reduction in the budgetary allocation to salary and benefits for members of the bargaining unit. Any reduction in the budgetary allocation to salary and benefits for the bargaining unit may be made conditional upon further exploration of alternative cost saving measures.

45.10 After receipt of the report of the Financial Commission the parties shall meet and confer with respect to its implications.

45.11 After submitting its report the Commission shall examine for a further sixty (60) days the following:

- a) whether enrollment projections are consistent with the proposed reduction of the bargaining unit;

- b) whether all means of reducing the bargaining unit, including voluntary early retirement, voluntary resignation, and/or voluntary transfer to reduced time status have been exhausted;
- c) whether possibilities of redeployment, or retraining for redeployment within the academic unit or in another academic unit or program have been exhausted;
- d) reactions to its report from the University community which shall be submitted within thirty (30) days of the publication of the Commission's report;
- e) whatever other matters it considers relevant.

For the purpose of this Article, "academic unit" shall include all units in which one (1) or more regular members hold an appointment.

No later than the end of this sixty (60) day period the Commission shall submit to the Board of Governors, with a copy to the Association, and make public, a final report.

The Commission shall remain seized of its jurisdiction and shall monitor that its proposed cost saving measures are being carried out.

- 45.12 Pursuant to the reports of the Financial Commission, should the financial emergency be of such gravity that action must include the laying-off of bargaining unit members, then the Board of Governors may reduce the budgetary allocation for salaries and benefits of members, however, such reduction shall not exceed the amount of reduction specified by the Commission. An Extraordinary Academic Committee shall then be established.

The Extraordinary Academic Committee (EAC) shall be composed of two (2) persons appointed by the Board, two (2) persons elected by members of the Association, and a chair from outside the Concordia University community, jointly selected by the four (4) persons identified above.

- 45.13 The EAC shall, in the light of the Senate's established academic priorities and the report of the Financial Commission, first determine the reduction required in the budgetary allocation for salaries and benefits of members of the bargaining unit for each Faculty and for the Library.

The percentage reduction in the budgetary allocation for salaries and benefit of members in each Faculty and in the Library shall not be more than 1.35 (one and thirty-five hundredths) times the percentage reduction of the total bargaining unit salary and benefits budgetary allocation. For the purpose of this provision, the following vacant positions will be treated as though they were occupied by persons whose salaries are as stated below:

- a) probationary positions which were duly authorized at least twelve (12) months prior to the date specified in 45.03 (and were subsequently advertised). The salary for each position shall be calculated as the floor salary of the rank authorized for the position;

- b) positions of probationary or tenured members who terminate their employment with the University within twelve (12) months before the date specified in 45.03, provided the continuation of such positions has been duly authorized prior to the date specified in 45.03, for bona fide reasons related to program needs and student enrollment patterns. The salary for each such position shall be calculated as the floor salary of the rank authorized for the position.

It is the responsibility of the Employer to establish to the satisfaction of the EAC that all such vacant positions satisfy the conditions of (i) or (ii) above.

45.14

- a) The EAC shall inform the members of each Faculty and the Library of the reductions required in each Faculty and the Library.
- b) Within the fifteen (15) days following receipt of this information those members who are fifty-five (55) years of age and over, and who exercise the option of early retirement at this stage, shall receive a payment equivalent to six (6) months of the current nominal salary.
- c) Within each Faculty the Dean shall convene a committee of all academic unit heads. In the case of the Library, the Dean shall convene a committee of Area Heads, Department Heads and Unit Heads. These committees shall have twenty-five (25) days from the receipt of the information from the EAC to propose a plan for reducing the budgetary allocation for that area to the amount determined by the EAC without requiring lay-off and/or compulsory early retirement of members. This plan shall be submitted to the probationary and tenured members of the area for approval by secret ballot vote within five (5) days. If the plan is approved by a two-thirds majority, it shall be binding on the EAC.

45.15 If no approved plan as per 45.14 c) is provided to achieve the required reduction in the ongoing budgetary allocation, the EAC shall develop such a plan using the following procedures:

- a) the total amount of the reduction shall be apportioned on an equal basis in each academic unit, and shall be determined as an equal percentage of the portion of the unit budget allocated to salaries and benefits of members of the bargaining unit;
- b) the reduction shall be achieved by applying, in order, the steps listed in 45.16.

45.16 The EAC shall make recommendations based on applying to each unit in order, the following steps:

- a) the eligibility requirement of ten (10) years service for early retirement and pension (Article 4204 and Article 42.07) shall be waived and members fifty-five (55) and over shall be invited to take early retirement.
- b) no LTA appointments shall be made or renewed for the following academic year;

- c) no probationary appointments shall be made or renewed for the following academic year;
- d) untenured members shall be laid off in reverse order of seniority as determined by the date at which the current period of full-time service at Concordia or at one of its founding institutions began;
- e) tenured members shall be laid off in reverse order of seniority as determined by the date at which the current period of full-time service at Concordia or at one of its founding institutions began.

45.17 Within sixty (60) days of its establishment the EAC shall submit its decisions to the Board of Governors with a copy to the Association. Copies of the recommendation for each academic unit will be sent to the appropriate Dean.

45.18 The President shall write to each member selected for lay-off, specifying that the lay-off is solely for reasons of financial emergency pursuant to the provisions of this Article.

45.19 Notice of lay-off shall be given as far in advance as possible but shall not be less than twelve (12) months. Lay-offs shall take effect on June 1, September 1 or January 1.

45.20

- a) Tenured members who are laid off shall be eligible for a payment equivalent to a maximum of six (6) months of their current nominal salary plus the equivalent of one (1) month current nominal salary for every year of service to a maximum of twelve (12) years of service. This amount shall be paid at the time the lay-off takes effect if it does not exceed twelve (12) months salary; otherwise, an amount equivalent to twelve (12) months salary shall be paid at the time the lay-off takes effect. The balance remaining shall be paid at the end of the first year of lay-off provided the member has not been recalled or obtained equivalent employment.
- b) Any courses which are not assigned to those faculty members who are not laid off shall be offered, in the first instance, to tenured members who are laid off, at the prevailing part-time rate, without jeopardy to the terms of lay-off and recall. Such teaching shall be offered in a fair and equitable manner taking into account the member's qualifications. Laid off tenured librarian members shall have a similar entitlement, on a part-time basis, to those professional duties and responsibilities which are not assigned to continuing members.

45.21 Laid off tenured members shall have the right of first refusal, in seniority order, for reappointment to a position in their former academic unit if it is re-established within five (5) years unless the Employer can demonstrate that the position cannot be filled in this way.

Furthermore, laid off tenured members shall be considered for recall to positions in other academic units for which they are qualified once all the tenured members of these other academic units have been recalled, unless the Employer can demonstrate that the position cannot be filled in this way. A notice of available positions shall be sent to

those eligible for recall and the member must apply in order to be considered for the position.

45.22 Members recalled pursuant to 45.21 shall have twenty (20) days from receipt to accept the recall offer and up to a further twelve (12) months to take up the post.

Members are responsible for keeping the University informed of their current address.

45.23 Members who are laid off shall normally enjoy full access to scholarly facilities, including office and laboratory space, and library and computer services until equivalent alternative employment is secured or their recall rights expire, whichever first occurs. They shall remain eligible for tuition waivers under this agreement for the same period.

45.24 The costs of the Financial Commission and the EAC established under this Article shall be borne by the Board.

45.25 The right to grieve on this Article does not include the right to challenge the validity of the financial emergency.

45.26 For the purpose of this Article an untenured member who has completed at least ten (10) years of service at the time this collective agreement takes effect shall have the same options as a tenured member.

45.27 A member who is recalled may, at her or his option, make retroactive payments into the pension plan for all or part of the time of the lay-off, and the Employer shall make matching contributions according to the terms of the pension plan as if the member had been on leave without pay.*

* It is understood that the exercise of this clause depends on its compatibility with the University pension plan and government regulations in such matters.