

1 UNIVERSITY COUNTER-PROPOSAL

2 7-29-13

3 Article 25

4 **Termination of Tenure Track Faculty Not for without Cause for Financial**
5 **Circumstances or Reorganization**

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8 **PreambleGeneral.** Termination not for cause is defined as any termination other than for
9 cause as set forth in OAR 580-021-0320. Faculty with indefinite tenure may be
10 terminated only for cause (pursuant to the provisions of Article 18, Discipline and
11 Termination), or in cases of financial exigency or department or program reductions or
12 eliminations for educational reasons. A termination of a bargaining unit faculty member
13 without cause under this Article may occur as a result of financial exigency; reallocation
14 of resources; reorganization of degree or curriculum offerings or requirements;
15 reorganization of academic or administrative structures, programs, or functions; or
16 curtailment or abolition of one or more programs or functions. This Article is effective
17 July 1, 2014.

18 The University will give the Union at least 30 days' notice prior to the effective date of a
19 termination under this Article. The notice will include an explanation of the reason for
20 the termination and the bargaining unit faculty members to be terminated. Upon the
21 request of either party, the Union and the University will meet and discuss the specifics
22 of the proposed terminations.

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24 The University will determine which bargaining unit faculty members will be terminated
25 based on the following considerations:

26 (a) The University will retain bargaining unit faculty members who have the
27 best skills and abilities to accomplish future work. In making such judgment, the
28 University may consider all appropriate factors, including but not limited to:
29 capacity to meet the needs of the University in the future; performance evaluation
30 history; academic training; professional reputation; teaching effectiveness,
31 research record or quality of scholarly or creative activity; and service to the
32 profession, the University and the community.

33 (b) In identifying bargaining unit members for termination, the University will
34 consider its commitment to maintain diversity and its legal obligations regarding
35 affirmative action.

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38 The provisions of this Article do not apply to bargaining unit faculty members who have
39 received notice of non-reappointment. Nothing in this Article affects the terms and

1 conditions of employment of bargaining unit faculty members (a) on a visiting
2 appointment at the University, (b) whose positions are funding contingent, or (c) who are
3 appointed for less than one academic year.
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5 **Financial Exigency and Reductions or Eliminations for Financial Reasons**
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7 ~~Section 1. Before the appointment of any tenured or tenure track faculty member can be~~
8 ~~terminated for f~~Financial exigency for purposes of terminating the employment of
9 bargaining unit faculty members under this Article may be declared by the Board of
10 Trustees of the University of Oregon, upon a demonstrably bona fide determination by
11 the Board must be made by the president that a financial exigency does exist, i.e. that a
12 severe financial crisis threatens the academic mission of the university as a whole and
13 cannot be alleviated by less drastic means~~serious financial emergency exists. Such a~~
14 declaration and determination must be made in public session as required by the Oregon
15 Public Meetings law, pursuant to University procedures providing for faculty and other
16 appropriate input.
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19 ~~Section 2. For purposes of terminating the employment of bargaining unit faculty~~
20 ~~members under this Article, program or department reductions or eliminations may be~~
21 ~~made by the President upon his or her determination, pursuant to University procedures~~
22 ~~providing for faculty or other appropriate input, that such reductions or eliminations are~~
23 ~~consistent with the University's goals and needs. If available information leads the~~
24 ~~president to believe that a bona fide financial exigency may exist or may be imminent,~~
25 ~~the president shall immediately notify the Union and the University Senate. The Union~~
26 ~~and an appropriate body constituted by the University Senate charged with evaluating the~~
27 ~~bona fides of such a notification shall have access to all information necessary to evaluate~~
28 ~~the university's financial situation, including the following:~~
29

- 30 (a) ~~at least five years of audited financial statements;~~
31 (b) ~~budgets for the current and the following year;~~
32 (c) ~~detailed cash flow estimates for future years;~~
33

34 ~~In order to make informed proposals about the financial impact of program closures, the~~
35 ~~Union and the designated Senate body shall have access to detailed program, department,~~
36 ~~and administrative unit budgets.~~
37

38 ~~The University Administration also will promptly inform, in writing, faculty members in~~
39 ~~a program being considered for discontinuance because of a financial exigency. NTTF~~
40 ~~and TT faculty members will be invited to participate in the deliberations of the Senate~~
41 ~~body.~~
42

1 **Section 3.** The determination of a financial exigency or that program or department
2 reductions or eliminations should be made is not grievable. Whether the financial
3 exigency or program or department reductions or eliminations is a "but for" cause of a
4 personnel action is grievable.

5 ~~The Senate body shall issue a written report within a reasonable amount of time, but in no~~
6 ~~case less than 90 days from the notification required in Section 2.~~
7

8 ~~Should the President decide to proceed to issue a declaration of financial exigency,~~
9 ~~notification will be provided to affected faculty members.~~

10
11 ~~Such faculty members shall be provided the opportunity to participate in an on-the-record~~
12 ~~hearing before an adjudicative body appointed by the University Senate. The issues in~~
13 ~~this hearing may include:~~
14

15 ~~(a) The existence and extent of the condition of financial exigency. The burden for~~
16 ~~proving the existence and extent of the condition shall rest with the University~~
17 ~~Administration. The findings of the Senate committee in the previous proceeding may be~~
18 ~~introduced.~~

19 ~~(b) The validity of the educational judgments and the criteria for identification of faculty~~
20 ~~members for termination. On this issue, the recommendations of the Senate committee in~~
21 ~~the previous proceeding will be considered presumptively valid.~~

22 ~~(c) Whether the criteria are being properly applied in the individual case.~~
23

24 **Section 4.** Before proceeding to then terminate terminating a tenure-track or career NTTF
25 bargaining unit faculty member because of financial exigency pursuant to a determination
26 made under Sections 1 or 2, the University Administration, with faculty participation,
27 will make every a reasonable, good faith effort to place the bargaining unit faculty
28 member concerned in another suitable position within the university. If placement in
29 another position would be facilitated by a reasonable period of training, financial and
30 other support for such training should be provided. A bargaining unit faculty member's
31 refusal of such offer of reassignment will not affect his or her reemployment rights under
32 this Article.
33

34 **Section 5.** Faculty Bargaining unit faculty members should be informed of a termination
35 under this Article as soon as practicable. Unless the determination made under sections 1
36 or 2 requires otherwise, tenured bargaining unit faculty members will be provided at least
37 one year's notice; and tenure-track and career NTTF bargaining unit faculty members
38 being terminated for financial exigency shall be given advance notice of at least one
39 hundred and eighty (180) days notice or the duration remaining of their appointment,
40 whichever is shorter. Bargaining unit faculty members scheduled for termination will
41 receive written notice to their university email address. The notice will include the
42 effective date of termination; the reason for the termination; and a statement of recall
43 rights.

1
2 **Section 6.** If a tenure track bargaining unit faculty member's appointment is terminated
3 ~~because of financial exigency under sections 1 or 2~~, the University Administration will
4 not at the same time make any new faculty appointments in that unit, except in
5 ~~extraordinary circumstances where a serious distortion in the academic program would~~
6 otherwise result. It is the bargaining unit faculty member's responsibility to keep the
7 university advised of his or her current email address for receipt of such offers. If a
8 bargaining unit faculty member refuses an offer of reemployment under this Section, his
9 or her right to reemployment is extinguished.

10
11 **Section 7.** If a ~~tenured track~~ bargaining unit faculty member's appointment is terminated
12 ~~because of financial exigency under sections 1 or 2~~, the place of the faculty member
13 concerned will not be filled by a replacement within a period of three years, unless the
14 released faculty member has been offered reinstatement and at least thirty days in which
15 to accept or decline it. It is the bargaining unit faculty member's responsibility to keep
16 the university advised of his or her current email address for receipt of such offers. If a
17 bargaining unit faculty member refuses an offer of reemployment under this Section, his
18 or her right to reemployment is extinguished.

19 20 **Educational Reasons**

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22 **Section 8.** Before the appointment of any tenured or tenure track bargaining unit faculty
23 member can be terminated for educational reasons, a determination must be made by the
24 president that demonstrably bona fide educational need for a formal discontinuance of a
25 program or department of instruction does exist.

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27 This determination must be made pursuant to university procedures providing for faculty
28 and other appropriate input and must be based on educational considerations that reflect
29 long-range judgments that about the educational mission of the university as a whole will
30 be enhanced by the discontinuance. Legitimate educational considerations allowing
31 termination do not include cyclical or temporary variations in enrollment. The
32 determination is not grievable. Whether the determination is a "but for" cause of a
33 personnel action is grievable.

34
35 **Section 9.** Upon determining that a bona fide justification for formal discontinuance of a
36 program or department of instruction does exist and requires termination of employment
37 under section 8, the president shall immediately notify the Faculty-Union and the
38 University Senate. ~~The Faculty Union and an appropriate body constituted by the~~
39 ~~University Senate charged with evaluating the bona fides of such a declaration shall have~~
40 ~~access to all information necessary to evaluate the University's assertion. NTFF and TF~~
41 ~~faculty members will be invited to participate in the deliberations of the Senate body.~~
42

1 **Section 10.** At the same time that the Administration notifies the Faculty Union and the
2 University Senate of a bona fide justification for discontinuance, the University
3 Administration also will promptly inform, in writing, faculty members in a program or
4 department of instruction being considered for discontinuance.
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6 **Section 11.** Such faculty members shall be provided the opportunity to participate in an
7 on-the-record hearing before the body described in Section 9. The issues in this hearing
8 may include:
9

10 (a) The University Administration's adherence to the standards and procedures set
11 forth above. The burden for proving this shall rest with the University
12 Administration.

13 (b) The validity of the determination that a program or department is to be
14 discontinued. On this issue, the findings of the Senate body will thereafter be
15 considered presumptively valid.

16 (c) Whether the proper procedures are being applied correctly in individual cases.
17

18 The Senate body shall issue a written assessment on the discontinuance of a program or
19 department of instruction within a reasonable amount of time, but in no case less than 90
20 days from the notification required in Section 9. If, after receipt of this assessment, the
21 University Administration decides to proceed with the proposal for discontinuance, it
22 shall issue notices of intention to terminate to affected faculty members.
23

24 **Section 1210.** Before terminating a bargaining unit faculty member because of
25 discontinuance of a program or department of instruction for educational reasons under
26 Section 8, the University Administration, with faculty participation, will make every a
27 reasonable, good faith effort to place the bargaining unit faculty member concerned in
28 another suitable position within the university. If placement in another position would be
29 facilitated by a reasonable period of training, financial and other support for such training
30 should be provided.
31

32 **Section 1311.** Faculty Bargaining unit faculty members being terminated for reasons of
33 discontinuance of a program or department of instruction under Section 8 shall be given
34 advance notice of at least one hundred and eighty (180) days or the duration remaining of
35 their appointment, whichever is shorter notice.