COLLECTIVE BARGAINING IN A PERIOD OF RETRENCHMENT

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JOEL M. DOUGLAS, *Editor*

National Center for the Study of
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COLLECTIVE BARGAINING IN A PERIOD OF RETRENCHMENT

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TABLE OF CONTENTS

INTRODUCTION

Retrenchment is not a gratifying topic to build a conference theme upon. However, it is an intrinsic fact of college life and as such must be addressed to put it in proper perspective.

In addition to the complexities of the problem, much misinformation existed as to the legal restraints and case law that impacted on retrenchment. Thus, as a major portion of the conference, these guidelines were focused upon from both a legal and economic vantage point.

Design of the Conference

Three underlying topics provided the continuity for the retrenchment theme: 1) the question of financial exigency, 2) the legal environment in which retrenchment was operative, and 3) case studies of how individual institutions coped with the problem. Larry White and Ann Franke, both Associate Counsels with AAUP presented the legal framework of the AAUP guidelines as they relate to financial exigency and retrenchment. John Gray of Loyola College and Cheryl McBride of APSCUF, also addressed the legal implications of the problem. The financial aspects of retrenchment were explored by Jim Mingle of SREB, who set the tone as a lead off speaker, and by Sig Ginsburg of the University of Cincinnati who suggested ways in which universities could contain costs in this time of economic uncertainty.

Management representatives from large university and college systems shared their experiences from both a general nature as well as individual campus case studies. Included were Keith Groty from Michigan State University, Tom Mannix from the University of California, Bill Lemman from Oregon State, Mel Stewart from Wayne State, Jack Samit from the Minnesota State System, Joyce Villa from SUNY and from the City University of New York, the newly appointed Chancellor, Joseph Murphy. The unions were represented by Marcoantonio Lacatena from the New Jersey State College System, Norm Kopmeyer from Wayne State and the AAUP, Al Willsey of the NEA, Bill Knott from the Macomb C.C.C., Arnold Cantor from the PSC and Tina Head who added a Canadian perspective from the CAUT.

A special feature was a case study describing a recently resolved retrenchment problem at Northern Michigan University. Dave Carlson, Candy Bays and Glenn Stevens shared with us their perceptions from a faculty and administrative viewpoint.

Bob Birnbaum of Teachers College presented his findings concerning the use of neutrals in the bargaining process. The neutrals were then given an opportunity, primarily in the person of Maurice Benewitz, to respond.

Ben Mintz and David Newton compared the current retrenchment problems to those of their earlier experiences in the formative days of collective bargaining at CUNY. Others who shared their experiences included Margaret Chandler, Sam Ranhand, and Ted Lang. As usual, Aaron Levenstein graciously hosted the day-two symposium.

The Program

All but three of the twenty-one speakers presented their papers to us for publication. These papers are contained, in edited form, in this volume. Some editorial liberty was taken with respect to titles, since the original program design provided for collective topics which the speakers then segmented for publication purposes. The entire program is set forth below.

Monday Morning, April 25, 1983

9:30	WELCOME Joel Segall, President, Baruch College, CUNY		
	COLLECTIVE BARGAINING UPDATE 1983 Joel M. Douglas, Director, NCSCBHEP		
10:00	PLENARY SESSION A FINANCIAL EXIGENCY		
	Speakers:	James R. Mingle, Southern Regional Educ. Bd., Former Dir. of National Study on Enrollment Decline and Financial Cutbacks, Ford Foundation	
		Lawrence White, Associate Secretary and Assistant Counsel, AAUP	
		John A. Gray, Associate Professor of Business, Law School of Business and Management, Loyola College	
		C. Keith Groty, Asst. Vice President, Personnel and Employ Relations, Michigan State University	
	Moderator:	Thomas Mannix, Director, Collective Bargaining Services, University of California Systemwide	
12:45	LUNCHEON		
	Topic:	A CHANCELLOR'S PERSPECTIVE ON RETRENCHMENT	
	Speaker:	Joseph S. Murphy, Chancellor, City University of New York	
	Moderator:	Joel M. Douglas	

Monday Afternoon, April 25, 1983

2:30	SMALL GROUP SESSIONS	
	Group A:	PROCEDURAL CRITERIA FOR LAYOFF
	Speakers:	Jack Samit, Director of Labor Relations, Minnesota State University System

	Marcoantonio Lacatena, President Council of N.J. State College Locals, AFT/AFL-CIO
Moderator:	Margaret Chandler, Professor of Business, Columbia University
Group B:	AT THE TABLE: NON-TRADITIONAL APPROACHES
Speakers:	Bill Knott, Chief Negotiator, Macomb County Community College Faculty Organization
	W. T. Lemman, Vice Chancellor for Administration, Oregon State System of Higher Education
Moderator:	Samuel Ranhand, Prof. of Management, Baruch College, CUNY
Group C:	CASE STUDY: THE WAYNE STATE EXPERIENCE
Speakers:	Norm Kopmeyer, Chair, Collective Bargaining Congress, AAUP, President Wayne State Chapter AAUP
	Melbourne G. Stewart, Associate Provost for Faculty Relations, Wayne State University
Moderator:	Theodore H. Lang, Prof. of Education, Baruch College, CUNY
Group D:	FINANCIAL EXIGENCY: THE NORTHERN MICHIGAN UNIVERSITY EXPERIENCE
Speakers:	David Carlson, President, NMU Chapter, AAUP
	Candy Bays, NMU Chapter, AAUP
	Glenn R. Stevens, Associate Provost, Northern Michigan University

Tuesday Morning, April 26, 1983

9:30 PLENARY SESSION B
CAN NEUTRALS HELP BARGAINERS IN TROUBLED TIMES?

Speaker:	Robert Birnbaum, Prof. of Higher Education, Teachers College, Columbia University
Discussants:	Maurice C. Benewitz, Arbitrator
	Joyce Yaple Villa, Asst. Vice Chancellor, Employee Relations, State University of New York

	Moderator:	Bernard Mintz, Exec. Asst. to the President, William Paterson College
11:00	PLENARY SESSION C AVOIDING FINANCIAL EXIGENCY	
	Speakers:	Sigmund C. Ginsburg, Vice President for Finance and Treasurer, University of Cincinnati
		Ann H. Franke, Assoc. Secretary Asst. Counsel, AAUP
		Tina Head, Professional Officer in Collective Bargaining, CAUT
	Moderator:	David Newton, Vice Chancellor Long Island University

Tuesday Afternoon, April 26, 1983

12:45	LUNCHEON SYMPOSIUM	
	Topic:	A UNION PERSPECTIVE ON COOPERATIVE VENTURES IN A PERIOD OF RETRENCHMENT
	Speakers:	Cheryl McBride, Staff Attorney, APSCUF
		Alan D. Willsey, Assoc. Director Instruction and Professional Development, NEA
		Arnold Cantor, Executive Director Professional Staff Congress (AFT/AAUP)
	Moderator:	Aaron Levenstein, Professor Emeritus, Baruch College, CUNY
3.30	SUMMATION Joel M. Douglas	

A Word About the National Center

The National Center is an impartial, nonprofit educational institution serving as a clearinghouse and forum for those engaged in collective bargaining (and the related processes of grievance administration and arbitration) in colleges and universities. Operating on the campus of Baruch College, City University of New York, it addresses its research to scholars and practitioners in the field. Membership consists of institutions and individuals from all regions of the U.S. and Canada. Activities are financed primarily by membership, conference and workshop fees, foundation grants, and income from various services and publications made available to members and the public.

Among the activities are:

- The two-day Annual Spring Conference
- Publication of the proceedings of the Annual Conference, containing texts of all major papers.
- Issuance of an Annual Directory of Faculty Contracts and Bargaining Agents.
- Bibliography of Collective Bargaining in Higher Education.
- The National Center Newsletter, issued five times a year, providing in depth analysis of trends, current developments, major decisions of courts and regulatory bodies, updates of contract negotiations and selection of bargaining agents, reviews and listings of publications in the field.
- Monographs - complete coverage of a major problem or area, sometimes of book length.
- Regional workshops, using a hands-on format to provide training in subjects like negotiating a contract, grievance-processing and arbitration, implementation and administration of contracts.
- Elias Lieberman Higher Education Contract Library maintained by the National Center, containing more than 350 college and university collective bargaining agreements, and important books and relevant research reports.
- BRAIN (Baruch Retrieval of Automated Information for Negotiations), a Contract Data Bank maintained jointly with McGill University, providing for retrieval and analysis of specific clauses.
- Depository of arbitration awards in higher education housed at the National Center and established with the cooperation of the American Arbitration Association.

Acknowledgments

Publishing the Proceedings gives the staff of the National Center a special feeling of accomplishment for it enables us to see the termination of a project that began as a potential conference theme over one year ago and developed into a completed volume. Widely cited and well respected in the literature of academic collective bargaining, the Proceedings of the Annual Conference remains the definitive source for state-of-the-art developments in the field. The publication of these volumes is a long and difficult one, however, the assistance of a loyal and dedicated staff makes it worthwhile.

Brenda Daniels transcribed the speeches for which we received no printed copy. Everyone proofread but mainly this task fell to Lorraine DeBona, Angela DeSouza, Daniel Wiener and Carol Faber. Ruby N. Hill put the complete text for this volume onto our Microcomputer System. She truly performed a yeoman task in making this volume the finished product that it is. As she has done for the past ten volumes, Evan G. Mitchell supervised the entire project.

For any errors or omissions, we apologize. For all of the positive results and the success of the conference, I gratefully acknowledge all of the above.

J. M. D.

II. PERSPECTIVES ON RETRENCHMENT

A. RETRENCHMENT IN STATE GOVERNMENT: ITS CONSEQUENCES FOR HIGHER EDUCATION

JAMES R. MINGLE
Southern Regional Education Board
Atlanta, Georgia

Introduction

The health of public institutions is directly linked to the health of state governments and in 1982 and 1983, it was the decline in financial support from the states that brought turmoil to higher education, not enrollment decline which many expected to be the problem of the 1980s. States appeared far more willing to adopt policies to cushion the effects of enrollment decline than they were to exempt higher education from budget cutbacks.

State appropriations for operating expenses just about tripled in the 1970s; but, after adjustments for inflation, that amounted to a 33 percent increase. Since 1979, however, state appropriations have actually declined in real dollar terms. This decline is magnified when you consider enrollment growth and changes in program mix, more programs in more locations with lower enrollments in the less costly arts and science areas and higher enrollments in the more expensive technical and professional programs. Many states began to run into financial trouble in 1980 and 1981 but most institutions were protected from cutbacks as the states drew down the large reserves accumulated during the years of high inflation. But in 1982, this situation changed dramatically as those reserves disappeared. At the end of FY 1982, these balances stood at 1.5 percent of total state expenditures--substantially below the level that most states viewed as necessary to meet cash-flow requirements and emergencies.

In its latest report (December 1982), The National Governors' Association projected a $2 billion deficit in the states for FY 1983. The revenue drop in the first six months totaled nearly $8 billion, nationally. By December, 1982, only seven states in the nation had not imposed either across-the-board or selective spending cuts during this recession. The recession has obviously affected states in all sections of the country including the South.

How have the states responded to these shortfalls? Eighteen states laid off employees and eight initiated furloughs. Twenty-two reported that they had adopted permanent or temporary revenue-raising measures. Clearly, however, these tax increases were being used to solve crisis situations, not promote new state programs.

The Response by the States

For the most part, states have imposed across-the-board cuts on state agencies including higher education. Frequently, a few state agencies and functions are exempted--the foundations' program of elementary and secondary schools, state prisons, or mental health institutions, for example. Rarely has higher education been exempted. In some states, budget shortfalls have been applied in the same proportion tht budget growth has taken place. This means that higher education, in some cases, has taken a larger than average share of budget cutbacks. Higher education may have also taken a larger than average share because of its ability to raise revenue through increased tuition charges--or because of the existence of institutional reserves.

In short, if you are from a state which has had revenue problems during the past two years and your institution has been asked to share in the solution to those problems, you are the rule, not the exception. If you look at next year's budget, and there is money only for modest salary increases but little else, again, you are the rule, not the exception. In the absence of economic growth, few states are in a position to significantly increase their commitment to higher education. In fact, states are likely to move resources out of higher education and into other areas of state responsibility--including the public schools and public works projects.

Even with a return of some economic growth, I suspect the states are going to be cautious about spending and taxing policies in the near future.

Winners and Losers

How have colleges responded to these sudden and substantial cutbacks in financial support? One way of answering that question is by asking who has been hurt and to what degree.

A. Student and Parents: For the most part, the greatest burden of cutbacks in state support has been borne by students and parents through increased student fees. Ohio is a good example. In 1982-83, state appropriations to higher education were reduced by 15 percent over appropriated levels following smaller reductions in 1980 and 1981. On the average, tuition during this period increased by 50 percent and in some institutions, it doubled. Nationwide, tuition increases averaged about 15 percent in public institutions last fall. Similar increases are expected for 1983-84. Compare this to an inflation rate in 1982 of six percent and a 1983 inflation rate which will probably be even lower.

B. Suppliers and Contractors: The second greatest impact of cutbacks was also one that higher education essentially exported--to suppliers and contractors. The overwhelming number of institutions experiencing financial cutbacks have been able to handle these cuts by reducing the purchase of goods and services. Construction and renovation projects have been postponed; equipment and library purchases foregone; the purchase of supplies and travel drastically reduced. Such cutbacks will likely continue. Budgets passed for 1983-84 show very little increase, if any, for "operations."

C. Non-Teaching and Support Personnel: I have no national estimates of the number of non-teaching personnel let go during this recession but anecdotal reports indicate that there has been some reduction in the size of this component. Given that administrative and support budgets have grown faster than instructural ones in recent years, this is probably an appropriate response.

D. Faculty: While this recession has affected faculty adversely, it has been primarily a shared pain which shows up in foregone salary increases (unless you count all the potential faculty who weren't hired because of hiring freezes). Most institutions have been able to adopt a full employment strategy during this recession. It is for this reason that higher education's experience is not comparable to the private sector of the economy where production workers have borne the brunt of cutbacks. The number of institutions which have dismissed tenured faculty because of financial exigency or program terminations has been extremely small.

It is impossible to get accurate information on the number of faculty dismissals in the past 18 months or so, but based on newspaper reports, I set the number around 100. My source at AAUP could list only seven institutions which had come to his attention where tenured faculty had lost their jobs and two others where he had heard rumors about dismissal. His total came to between 100 - 130. Seventy of these dismissals are found in two institutions--Sonoma State University in California, and the University of Northern Colorado. Even if the numbers are twice or three times as large, they remain extremely small when you consider that there are over 3,000 institutions in the country and 250,000 tenured faculty. Compare this to the steel and auto industry or even the public schools and you see how committed higher education is to full employment. Consider Ohio, again, where institutions have taken three years of successive cuts, including the 1982-83 cut of 15 percent; have not been funded for enrollment growth since 1980 and have not let a single tenured faculty member go involuntarily. Or consider the University of Washington and the University of Minnesota which are eliminating scores of programs and are doing it without involuntary terminations.

In short, colleges have been able to protect their faculty jobs and to export their problems to suppliers and to parents. They have deferred maintenance, postponed equipment replacement and, according to AAUP studies and those of Howard Bowen, have let faculty salaries deteriorate.

Can institutions continue to handle financial problems by raising revenues, drawing down reserves, using up capital stock, and allowing a general deterioration in faculty salaries? I doubt it. The worst of the recession appears to be over but many institutions are severely weakened and now they must face a decade or more of increased competition for students.

A Look Ahead

I do believe that this recession has fundamentally altered the climate for higher education and is changing the way in which institutions are going to operate in the next decade. There is a productivity problem in higher education which will have to be solved on the academic side through course and program consolidation. This is the "smaller is better" movement of institutions like the Universities of Washington, Minnesota and Michigan, Duke, and others. If Berkeley was the model to be emulated in the 1960s, Carnegie-Mellon may be the model for the 1980s. Clark Kerr's comprehensive university has been replaced by Richard Cyert's smaller, more specialized "strategically positioned" institution. As I understand the advice of the strategic planners, it is this: a) find your strength and b) seek a competitive edge in your niche of the market--letting other areas slide into obscurity. The emphasis then is on program development, not institutional development. I recently listened to Clark Kerr list some of the institutions he expected to be the national leaders in the year 2000 and some of those expected to decline. (The winners were all in the Southern rim--the losers, in the Midwest and Northeast.) In one sense, I would question his list, however. I think we are going to have a much more diversified view of quality in the year 2000 because institutions will be smaller and more specialized. Some of the best institutions are likely to be fairly small technical institutions which are known for one or two outstanding programs.

One of the extraordinary changes which the recession has brought is prominence and respectability to the concept of academic management. It is amazing how innovative a notion this is. Twenty years ago a book was written on the management revolution in higher education referring primarily to the growing use of systems analysis and computerization. This revolution did affect institutions dramatically but almost exclusively on the business side of operations while academic planning continued in the old ways--namely, administrators responding as best they could to plans developed by individual faculty and departments.

Academic management does remain a dirty word in many institutions. But, in a growing number, the setting of institutional priorities is taking place either by administrators or what we call, in our study (James R. Mingle and Associates, Challenges of Retrenchment, San Francisco: Jossey-Bass Publishers, 1981), reassessment committees (and George Keller in his excellent book on Academic Strategies called "big decision committees"). We could write with a straight face that institutions were actually "setting priorities" (you almost have to laugh at its simplicity) but it does indicate how revolutionary this idea is to institutions. It's as if college presidents and faculty had never heard of the concept of scarcity before.

One of the best examples of an institution which has used program priorities and a reasonably coherent and rational planning process during a retrenchment is the University of Minnesota. (SREB recently published a case study of the Minnesota experience.) The University cut about $25 million from its budget by closing out a number of programs including the library science school, some interdisciplinary and education programs and reducing enrollments in such programs as nursing and dentistry. The planning process was decentralized, open, and participatory. It was the schools and colleges which told central administration--"this is what we consider of highest and lowest priority." But it was central administration which determined how much the various schools would share in the retrenchment. These cuts ranged from 11 percent to less than one-half of a percent of a college's annual budget.

One of the encouraging signs coming out of this recession is the seriousness with which a few institutions are approaching the issue of long-term reallocation. The experience of the University of Michigan, over the past few years, has caused that institution to do careful long-term financial projections for the first time in its history. They now have an imaginative plan to make up for both cutbacks in state support and to create some venture capital for new program development. It is being done through a program review and reallocation scheme which they are calling a "variable shared reduction" (a clever way of portraying priority setting and shared pain). This reallocation sets specific targets for base reductions in all units for each of the next five years. In addition, a few schools have been singled out for extensive review which implies more substantial cutbacks.

Summary and Conclusions

What are the implications of these changes for governance arrangements? First, central administrations are being strengthened and departmental schools and colleges are losing power. (The individual faculty member who can marshall outside support will still have a lot to say about future institutional directions but maybe not as much as he or she had in an earlier period). On the other hand, administrations remain dependent on faculty to tell them what the academic growth fields of tomorrow are going to be and they are being forced to come out of the closet with their budget plans.

I think administrators are going to get this advice selectively from individual faculty or from these small "big decision committees." As for organized faculty groups--either faculty senates or collective bargaining units--I see them essentially excluded, almost by definition from this academic management team. They are viewed, for better or worse, as a constraint of one degree or another on the exercise of management judgment.

Let me add caution at this point. It is important to remember that the cases discussed this morning are not typical by atypical. Many institutions remain essentially paralyzed by their financial problems--with not enough flexibility or leadership to extract themselves. Tradition and policy bind them to a path which prohibits major changes especially those involving faculty terminations. Faculties hold a veto power over major changes proposed by administrations and because of their own diffuse organization are unable to mount their own new initiatives especially if those involve integration and consolidation.

Presidents and deans often express a curious impotence in these circumstances. I recently visited a small private college and heard a member of the Board of Trustees ask the president: "Tell me, why can't you do something about curriculum and workload? We have faculty teaching very small classes, departments constantly adding requirements to protect turf." His response? "Well, I know it's a problem but that curriculum belongs to the faculty."

Or consider a public university where tenure rates approach 100 percent and when budget shortfalls occur, retrenchment quotas are assigned according to the happenstance of turnover. Workloads in growing programs skyrocket while others drop to nothing. Deans scramble to find work for under-utilized faculty and try to temper the hostility of the young against the old.

The traditions of tenure and job security have been important foundations in the American colleges and universities but these are obviously a major part of the problem in a period of retrenchment.

What about state policy? The central question is this: Are states going to attempt to manage the contraction of the next decade or are they going to let the market operate? The answer will vary from state to state but if the experience of this past recession is any indication of how they are likely to handle enrollment decline, I suspect most states will do only what the political climate absolutely demands in the way of central planning. If Ohio can go through what they have gone through in the past three years and still not have an agency with the power to eliminate programs or close institutions, I doubt that they ever will. This is a state with six state supported medical schools producing 1,000 doctors a year (more than twice the number of residencies in the state). The Regents and the Governor have proposed some alternatives for cutting back including across-the-board enrollment reductions or closing of the three most recently established schools. But the legislature is unlikely to accept the latter.

States are, in several ways, allowing or encouraging reductions in access as one solution to their financial problems. Few states are imposing enrollment limitations on campuses but they are imposing funding limitations which are forcing institutions to set enrollment limits. States are also backing away from universal access through renewed concern about quality. States are encouraging or forcing increases in high school requirements and college admission standards. At the same time, states are reducing their support for remedial education and in some cases, mandating that higher education get out of this business entirely. In states with traditionally high college going rates and "populist" traditions, these reductions in access will be resisted. But others (for example, southern states) where support for higher education is weaker and citizens' interest is not high, may see further reductions in participation rates.

B. A CHANCELLOR'S PERSPECTIVE ON RETRENCHMENT

JOSEPH S. MURPHY
Chancellor, City University of New York

I'm pleased to have a chance to talk about retrenchment. I'm fascinated by the euphemism "retrenchment." We have several other similar kinds of euphemisms developed in recent months here in New York. I came across one for cutting the budget. It's called "de-enrichment." Retrenchment now has become commonplace and, in fact, there is a euphemism for retrenchment; it's called de-recruitment. I can tell you one thing about retrenchment. It's a little bit like the two fellows who went hiking in the woods in the mountains and came across a bear that had just come out of hibernation and one fellow swiftly took his running shoes out of his knapsack - flipped off his boots and jammed into his running shoes. His friend said, "Why are you putting your running shoes on? It's hopeless. The bear can outrun us." To which he replied, "I wasn't thinking of outrunning the bear." That tells us a little about what retrenchment is when it hits our faculties.

Recently, the AAUP called upon us in a process of negotiating--we're trying to negotiate ourselves off the censure list -- and among other things, they asked if we would consider extending the time when it would be appropriate to inform people that they would, in fact, not be reappointed. My one experience with retrenchment, some years ago, made it clear that when the time came to sit around a table to decide who was to go and who was to stay, all vestiges of civility and humanity disappeared and we resembled a bit the mountain climber who put on his Keds and abandoned his compatriots.

I understand that in this room most of us here represent or are a part of public institutions. I notice that there is at least one private institution represented, perhaps more than one, but John Joseph Meng from Boston University proves the principle that if the president of a private institution is genuinely committed to unionization, he can bring it about. I am unabashedly pro-union and probably, therefore, not a fit person to speak to a group that purports to be impartial. During the course of our recent budget experience here in New York, it was proven, once again, that when you are not a non-profit institution, the institution and the union are natural allies since they face a common task, which is to join together in unity in order to acquire more resources for the health and welfare of their own institutions. I want to, for that reason particularly, acknowledge Belle Zeller who is, after all, the founder of us all in that regard, and Irwin Polishook with whom I have worked closely and for whom I have respect and admiration. If my acknowledgement implies that we have a honeymoon contract, I can assure you that's not the case but, since my own salary is dependent on Irwin Polishook's success at the table, fortunately he has been successful.

I would like to talk about only one issue that bothers me. And since I can speak about what bothers me autobiographically, no one can quarrel with me about what bothers me, and then I will respond to whatever questions you want to raise. One of the issues I think we're facing now, which has a relationship to the problem of retrenchment, is the degree to which our institutions will be forced to change as a consequence of demands made upon us from outside. Recently we've seen the way in which large corporations and large business entities have come to the university, with all the enthusiasm and vigor that the private sector shows when it has an opportunity to feed at the public trough, to tell us what kinds of training and education they think we ought to be giving in order to produce people for their labor markets. They have a tendency to define, in the narrowest possible ways, what they hope that kind of training to be and, indeed, have a clear interest in seeing to it that we do little other than what they require of us.

Pushed from the other end, there are students who now are suffering, for the first time in generations, the problem of downward social mobility--a problem that hasn't been seen in this country for the past fifty years--who also look to the university and the college as the place to teach them the skills necessary to enter the labor market. The result of those two forces--the labor market and students' career needs--is an attack, not just on education as such, but on the centrality of what college and university education is supposed to be about, namely, the liberal arts. There is an increasing tendency for presidents, deans, chancellors, and others to make their plans regarding how their meager resources will distributed, by doing so on the basis of which classroom 18, 20, 25-year-old people decide to walk into. In short, we're looking more and more like proprietary institutions that offer courses that respond to student demands, corporate demands, and the demands of the job market, and less and less like educational institutions with an obligation to pursue a serious task--which is the transmission of knowledge of western culture. I refer to the really serious kind of education that will enable our students to know something about historical and social forces that operate on their daily lives. It is my own impression that this attack on the liberal arts, which is not direct or head-on since clearly anyone who discusses the issue gives obeisance to it, nevertheless it is an attack that has political consequences and political significance.

Another phenomenon that we've seen that I think supports this theory, is the use of our higher educational institutions to reinforce something we have not seen in America in half a century, which is the reestablishment, in a rigorous way, of class lines and class boundaries. The emphasis in the community colleges on producing people who will enter a very narrowly defined labor market, and be able to perform skills that are purchasable by corporations means, in effect, that these individuals will not understand that their labor is for sale and can be sold to the highest bidder. Because there won't be a highest bidder if they don't have the kind of education that allows for upward economic occupational and social mobility. It's also my own sense that what we're facing now is a great and tragic danger, namely, that our public institutions--particularly our urban public institutions and especially our community colleges who have long served the children of immigrants, the children of working class and lower-middle class people--will, in fact, be places for producing people for the labor market who have little understanding of how to be effective political citizens and that, indeed, our elitist institutions will train the children of the privileged and wealthy to take over their role in ruling.

It is interesting to note that the attack on the liberal arts is in the larger institutions rather than in the community colleges. The liberal arts are clearly safe in the Ivy League and other prestigious and expensive private colleges. They are safe because those people know that their children, in order to place well in the social structure, must know the liberal arts. By liberal arts, I don't mean simply the sciences and I don't mean simply a traditional kind of Columbia C.C. I mean also that our students, wherever they are, are not getting enough of precisely those thinkers they should be reading. I mean Plato and Aristotle, Aquinas and Des Cartes; I mean Shakespeare and Marx, Darwin, Einstein, and Freud. I mean all those theories people must know if they are to comprehend what happens to them--what the limits and possibilities of their lives are--if they are to know something about the structure of the society in which they live, and that is not an unnecessary structure. Anything that deprives them of the opportunity to understand, in critical terms, that the status quo is changeable and that the conditions of their lives are changeable; anything that deprives them of that is a form of enslavement. This tendency among us now in higher education to believe that somehow we are going to make decisions on who should go and who shouldn't, who should be retrenched and who should remain; this tendency to want to do it strictly on the basis of enrollment or course demands, plays into the hands of precisely those who have a vested interest in depriving large numbers of people an understanding of their potential political power. And that, you see, is what's been bothering me.

III. LEGAL ASPECTS OF RETRENCHMENT

A. AN ANALYSIS OF THE AAUP'S RECOMMENDED INSTITUTIONAL REGULATION ON FINANCIAL EXIGENCY

LAWRENCE WHITE
Associate Secretary and Asst. Counsel
American Association of University Professors

Introduction

Our text for this morning, as the minister might say, is Regulation 4(c) of the Recommended Institutional Regulations promulgated by the American Association of University Professors in 1976.[1] Regulation 4(c) (which actually consists of thirteen lettered and numbered paragraphs of text) represents the AAUP's attempt to come to terms with one of the most intractable policy issues confronting higher education today -- what to do when a college or university invokes financial exigency as a justification for terminating tenured members of the faculty. To my knowledge, Regulation 4(c) is the only systematic attempt by a higher education organization to distill practical rules of conduct for use by faculty members and administrators at financially troubled institutions. Some malign the AAUP's approach; others embrace it; but most commentators agree that Regulation 4(c) is the logical point of departure in any discussion of financial exigency.

Let me begin with a few general remarks. "Financial exigency,"as I will be using that terms this morning and as it is used in Regulation 4(c), has a narrow meaning. The terms refers to a certain level on intensity of fiscal distress at an institution of higher education. A financial exigency exists when the only practical way to pull an institution back from the brink of financial crisis is to terminate the appointments of tenured professors. The term "financial exigency" does not describe other forms of faculty reorganization and reduction inspired by the decision to discontinue discrete programs or departments within an institution. The AAUP has separate standards for program discontinuance. They are contained in Regulation 4(d) of the Recommended Institutional Regulations, a provision with a history and meaning of its own. I will limit myself this morning to a discussion of financial exigency in its narrow sense -- in the sense that the term is used in Regulation 4(c). We will be talking about the termination of faculty members for financial reasons, rather than educational or programmatic reasons.

The AAUP has always stood for certain broad principles in this area, and Regulation 4(c) must be read with these principles firmly in mind. First and foremost, the Association believes that academic freedom -- the free search for truth and its free exposition -- is the bulwark of American higher education, and is threatened whenever tenure is threatened. Second, we believe that the best way to deal with the specter of financial exigency is to develop neutral procedures and to have them in place before a financial crisis arises. And third, because financial exigency unavoidably affects an institution's academic mission, we believe that faculty representatives must be consulted at every stage and must play a meaningful role in the decisions that are made.

Our Recommended Institutional Regulation on financial exigency is designed to further these objectives. In my remarks this morning, I want to begin with a brief discussion of Regulation 4(c)'s evolution. I will then focus on the text of the regulation itself, and go over in some detail the substantive and procedural requirements it imposes. Finally, I will consider how the AAUP standards have fared in the courts, at institutions, and as the subject of collective bargaining. Tomorrow, my colleague at the AAUP, Ann Franke, will discuss ways to prevent financial exigencies from occurring and will offer some conclusions about the AAUP's approach to the subject of financial exigency.

A Very Brief History of the AAUP Standards on Financial Exigency

It was almost sixty years ago that the AAUP made its first official reference to financial exigency. The occasion was a conference of faculty members and administrators called by the American Council on Education in 1925 which resulted in a joint statement by the AAUP and the Association of American Colleges (AAC) on academic freedom and tenure. The 1925 Conference Statement permitted termination of tenured appointments "because of financial exigencies" -- a term that was not defined -- but only "as a last resort" and after exhaustion of "every effort...to meet the need in other ways and to find for the teacher other employment in the institution."[2]

The 1940 Statement of Principles on Academic Freedom and Tenure, also coauthored by the AAUP and the AAC, has long been recognized as the higher education community's most important expression of policy on matters relating to academic freedom. It contains two references to financial exigency (which is once again left defined). The first is as one of three enumerated exceptions to the rule of permanent tenure: under the 1940 Statement, permanent appointments may be terminated for cause, upon retirement for age, or "under extraordinary circumstances because of financial exigencies." The second reference is an important gloss contained in the very last sentence of the Statement: "Termination of a continuous appointment because of financial exigency should be demonstrably bona fide." This sentence, which is really the seed from which all subsequent AAUP standards on financial exigency have come, was added to the 1940 Statement with the support of Henry Wriston, then the President of Brown University, who led the AAC delegation that joined with AAUP in formulating the document. In an address to the Association of American Colleges in 1939, President Wriston explained -- to an audience of presumably skeptical college presidents -- why it was necessary to limit their ability to terminate tenured positions on financial exigency grounds:

> The plain fact is that dismissals directly due to financial emergency are really very rare. Speaking now as an administrative officer, it is much easier for me to say "no" to a man by pleading the exigencies of a budget than by denying a request on its merits. The displacement of a teacher on continuous appointment should not be merely an "economy move" but should be done only because of a genuine emergency involving serious general retrenchment.... (P)urity of purpose is no defense in the public eye, unless the purity is demonstrable. The provision is a protection to the administrative officer because it reminds him to establish the record so clearly that the exigency is as obvious to the public as it is to him.[3]

President Wriston was quite right in his initial factual premise: for many years after the 1940 Statement first appeared, financial exigencies were rare and faculty layoffs relatively uncommon. Although the AAUP has kept no statistics on the loss of tenured faculty postions, one can glean from our published reports that financial exigency was not invoked very often.[4] In 1955, when two eminent scholars polled administrators at 352 colleges and universities to determine whether the financial exigency provisions in the 1940 Statement had ever been invoked, only 29 institutions admitted to having detailed regulations that authorized the termination of tenured positions for financial reasons. "The questionnaire replies do not indicate that termination of tenure because of financial exigencies is or has been a significant problem," the pollsters observed, and concluded:

> (There are) many other less drastic means of meeting a financial crisis than the extreme measure of dismissing a teacher with tenure.... It is thus difficult to conceive of situations which would require dismissal of teachers with tenure because of financial exigencies.[5]

This may well have been true during the 1950s and '60s, a period of unparalleled growth in American higher education when student enrollments tripled and there were more faculty positions than candidates to fill them. But in the early 1970s, the boom slowed, with dramatic repercussions for institutions and their faculties.[6] As one would predict, many colleges and universities faced with steady-state or declining incomes sought to balance their budgets by attacking fixed costs -- and the largest fixed cost was almost always the payroll. In 1972, Jordan Kurland, staff director of the AAUP's Committee A on Academic Freedom and Tenure, sounded the alarm at the Annual Meeting of the Association of American Colleges:

> (Our) office...replies to requests for advice and assistance, on all kinds of problems bearing upon faculty members individually and collectively....We receive literally thousands of these requests each year....Over the past eighteen months or so, the largest single category of inquiries brought to AAUP concerns financial austerity and resulting retrenchment in academic programs. The problems in this area present difficulties in arriving at short-term and long-term judgments, and engender sheer human anguish, to a degree which makes such problems of the recent past as boycotts and sit-ins seem superficial by comparison.[7]

Committee A's "Recommended Institutional Regulations", which included provisions on financial exigency in its first published form in 1968 and again when it was revised in 1972, was revised again in 1976 to include much more detailed financial exigency language. Regulation 4(c) of the 1976 edition is the Association's most comprehensive policy statement on the subject.[8] Professor Ralph Brown, a member of the Yale Law School faculty and a former President of AAUP and then Chairman of Committee A, prepared a careful annotation of the new financial exigency provisions that appeared in the AAUP Bulletin in 1976 along with the amended text of Regulation 4(c).[9] This provocative piece by Professor Brown is still, in my judgment, the most useful introduction to the subject ever published, and I commend it to all. Those who read it will see that Professor Brown's views have colored by own and those of many other contemporary commentators on financial exigency.

What Regulation 4(c) Requires

Regulation 4(c) serves four functions. First, it offers a general definition of financial exigency. Second, it assigns faculty members certain responsibilities with respect to the declaration of a financial exigency and the implementation of remedial measures. Third, it establishes hearing procedures for faculty members who wish to contest the termination of their appointments when a financial exigency is declared. And finally, it contains objective criteria that a college or university must satisfy in order to show that the financial exigency is "demonstrably bona fide" as required by the 1940 Statement. I will focus on each of these aspects in turn.

The Definition of Financial Exigency

Regulation 4(c) (1) defines the term "financial exigency" as "an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means." This definition, I think we can agree, is exceedingly restrictive, as befits an exception to the rule of academic tenure. An institution may not declare a financial exigency unless four conditions are satisfied:

(1) The institution faces a financial crisis;

(2) The crisis threatens the survival, not of a department or program, but of the institution as a whole;

(3) The crisis is imminent; and

(4) The only practical way to avert the crisis is by terminating tenured appointments.

The Association spent an extraordinary amount of time and effort developing this definition in the early 1970s, and we are still not wholly satisfied with it. Unlike the other provisions in Regulation 4(c), which are drafted to serve as actual operating regulations for institutions that wish to adopt them, we have never expected that our definition of financial exigency would become a working definition. It is more an expression of policy. It is more an indication of the intensity that a financial exigency must reach before faculty terminations are justified than it is a technical definition that is suitable for all institutions under all circumstances.

Should the definition be longer, more objective, more operational? Some years before Regulation 4(c) was promulgated in 1976, a special AAUP committee on financial exigency addressed these questions. The committee considered a "balance sheet" approach that would have defined financial exigency formulaically using variables such as enrollment and budget data. The other approach eventually prevailed -- in large measure, I suspect, because the members of the special committee despaired of ever finding a formula that was both sufficiently universal to cover all colleges and universities and sufficiently objective to withstand manipulation.[10]

I should mention briefly one specific feature of our definition that frequently draws fire. We insist that a financial exigency exists only if the survival of the whole institution is threatened. It is not enough, under our definition, for an institution to show that one department or one program is imperiled. If, for educational reasons, the institution concludes that a particular program is no longer making an important contribution that is one thing; Regulation 4(d) of our Recommended Institutional Regulations provides a procedure for retrenching under those circumstances. But if the ostensible reason for discontinuing a program is financial rather than educational, then our Recommended Institutional Regulations stubbornly draw the line. The only terminations that can be justified on financial grounds are those necessary to save the institution as a whole from the effects of an imminent crisis. We feel -- and I think our experience shows -- that any departure from this rule invites the kind of abuse that President Wriston of Brown University described in 1939. If we allow financial exigency to be invoked easily, it will be invoked constantly.

The Faculty's Role

Regulation 4(c)'s most creative contribution may be its recognition that an institution copes with a financial exigency in discrete stages, and that the role of the faculty is different at each stage. Essentially, Regulation 4(c) identifies three stages of decision-making whenever a financial exigency is declared, and for each stage ascribes certain responsibilities to administrators and faculty members.

The first decision confronting the institution is whether a state of financial exigency actually exists and is sufficiently grave to warrant the termination of tenured faculty appointments. Regulation 4(c) takes an interesting and eminently sensible approach. The note following Regulation 4(c) (1) makes it clear that the decision to declare a financial exigency rests with the institution's board of trustees; but the note also suggests that a faculty body should participate in that decision, and specifically makes reference to the following passage from the AAUP's 1972 <u>Statement on the Role of the Faculty in Budgetary and Salary Matters</u>:

> Circumstances of financial exigency obviously pose special problems. At institutions experiencing major threats to their continued financial support, the faculty should be informed as early and specifically as possible of significant impending financial difficulties. The faculty...should participate at the department, college or professional school, and institutionwide levels, in key decisions as to the future of the institution and of specific academic programs within the institution.[11]

Collegiality, the AAUP believes, is never more important than in the initial stages of a financial crisis. One of the Association's most significant contributions to the law of financial exigency is its repeated insistence that a duly authorized faculty committee be informed immediately of any threat to the institution's financial health and be given the opportunity to participate in the development and implementation of austerity plans. As Professor Brown observes, "if faculty representatives are fully involved in the decisions that attend money crises, the decisions are more likely to be accepted by the faculty"[12] -- a sentiment that is one of the most common refrains in the literature on financial exigency.[13]

Once an exigency is declared, the institution moves to the second decision-making stage. It must identify particular areas in the overall academic program that are likely candidates for retrenchment, and it must develop objective criteria for identifying particular faculty members in those areas whose positions are to be terminated. Unlike the decision to declare a financial exigency, which is primarily financial, the identification of programs and faculty positions involves considerations of educational policy. It is at this stage, according to Regulation 4(c), that the faculty's role changes from consultant to primary decision-maker. According to the note following Regulation 4(c) (1), these decisions should be "the primary responsibility of the faculty or of an appropriate faculty body."[14]

Under the AAUP approach, the faculty is responsible for developing objective criteria for translating a financial exigency into specific program cuts. Four objective criteria are suggested in Regulation 4(c), although nothing prohibits the faculty from using other criteria as well. The four that are identified are not entirely free of controversy. They are:

A. Length of Service. This criterion rests on two premises: that seniority can be determined without subjective judgments; and that it is the decent and moral thing to do to recognize long years of academic service by preferring a senior faculty member over a junior colleague.[15]

The use of seniority is a recurring source of friction in many financial exigency situations. We see many cases that resemble this hypothetical example: The faculty determines that one position in the Department of Music should be terminated. There are only two faculty members in that department, both tenured -- one a vigorous young professor, the other a senior faculty member whose teaching and scholarship, while adequate, are no match for the younger colleague's. Seniority dictates that the older faculty member be reinstated; but administrations are frequently persuaded that it is better for the institution to keep its younger teachers. As I said, many of the AAUP's financial exigency cases fit this mold.

B. Age. Age and seniority are frequently equivalent. When they are not, difficult problems can arise. Who gets the teaching slot -- the 35-year old full professor who has been at the institution for seven years, ever since receiving the Ph.D., or the 40-year old full professor who has been at the institution for only five years? The age criterion suggests one answer, the seniority criterion another. Complicating matters is the Age Discrimination in Employment Act, a federal statute that restricts, to some degree, an institution's reliance on age as an employment factor.

In a major case decided just last month, a federal appeals court in St. Louis substantially broadened the applicability of the Age Discrimination in Employment Act in higher education cases. The court ruled that the Act was violated when a college administration attempted to reduce the size of the faculty by reserving some teaching positions for non-tenured faculty members and requiring tenured professors to compete with each other for the remaining positions. The decision makes it clear that it is against the law for an institution faced with a financial exigency to single out older faculty members as special targets of retrenchment plans.[16]

C. Affirmative Action. The AAUP is very sensitive to the fact that women and minorities comprise a large proportion of the junior faculty at most institutions, and are therefore especially vulnerable to layoffs based on age or seniority. Regulation 4(c) recognizes that affirmative action goals are a matter of legitimate educational policy, the implication being that faculty members would be acting appropriately by implementing an affirmative-action exception to other criteria. This is a complicated area of the law -- too complicated in fact to treat here.[17] It has not yet arisen in any significant way at an American institution of higher education, so the AAUP has not been forced to confront these difficult questions. Whether this will continue to be true, as the number of financially exigent institutions grows and the number of affected faculty members increases, only time will tell.

D. Tenure Status. Regulation 4(c) (3) provides that "(t)he appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result." The permissive "may" in Regulation 4(c) (1) ("(t)hese criteria <u>may</u> appropriately include considerations of age and length of service") is replaced here by the imperative "will," suggesting that the administration must use tenure status in determining positions to be preserved. But the AAUP permits tenured faculty members to be terminated "in extraordinary circumstances" determined by reference to the needs of the academic program (a determination that should obviously be made by faculty members in the first instance). In this important respect, AAUP standards differ from those of other educational organizations that insist on rigid adherence to the priority for tenured faculty members.[18]

All four of the criteria specified in paragraph 4(c) -- seniority, age, affirmative action, and tenure status -- share an important characteristic. They are objective. They do not require the exercise of judgment or the making of subjective evaluations. The neutrality of these criteria is their biggest advantage, and the reason why the AAUP prefers them, when appointments must be terminated because of financial exigency, to other criteria we sometimes see -- relative value to department, and so forth. The more subjective the criterion, the more it lends itself to potential abuse and the more controversy it generates when it is applied to individual faculty members. Neutral criteria have the advantage of depersonalizing, to some extent, the highly-charged debate that inevitably occurs in a retrenchment situation.

The last stage of a financial exigency, and the most painful, is the identification of specific faculty members for termination. This responsibility, according to the note following Regulation 4(c) (1), "should be committed to a person or group designated or approved by the faculty." The note does not require that the task be performed by the faculty itself; indeed, Profesor Brown suggests that it would be deeply divisive for faculty members to single out their peers for termination.[19]

Hearing Procedures for Affected Faculty Members

So far, we have defined financial exigency and seen how the faculty and administration apportion responsibility for identifying professors who must lose their jobs to keep the institution solvent. We turn now to an examination of the rights of those professors.

Regulation 4(c) (2) provides that any professor who receives notice of termination may request "a full hearing before a faculty committee." The regulation then provides detailed guidance with respect to the nature of that hearing.

A. When? The hearing must take place after receipt of notice and before termination.

B. What kind of hearing? The hearing "need not conform in all respects" with the full-blown evidentiary hearing required when a faculty member is dismissed for cause. But it must provide "the essentials of an on-the-record adjudicative hearing" -- meaning at a minimum, an unbiased tribunal, the opportunity to be represented by counsel, the right to call witnesses and to cross-examine adverse witnesses, the right to introduce documentary evidence, verbatim record of proceedings, and a written decision containing reasons and based solely on the hearing record.

C. On what subjects? Regulation 4(c) (2) is most specific. The affected faculty member may contest the existence and extent of a bona fide financial exigency. (If he or she does so, then the administration bears the burden of proving that a state of exigency exists and is grave enough to warrant the termination of faculty appointments.) Or the faculty member may challenge the criteria by which particular programs or departments were selected for reductions (with an important procedural caveat -- "the recommendations of a faculty body on these matters will be considered presumptively valid"). Or the faculty member may contend that the criteria were misapplied in the individual case; here, presumably, by negative inference, he or she bears the burden of persuasion.

D. In what forum? The hearing must be conducted by "a faculty committee." Presumably (although Regulation 4(c) (2) does not so state), it will not be the same committee that initially participated in the decision to declare a financial exigency and developed criteria for implementing retrenchment plans.

E. With what rights of appeal? Regulation 4(f) of the Recommended Institutional Regulations provides for final institutional review by the institution's governing board.

Before we leave this subject, you should note that the AAUP standards, if adopted in full, would require separate, parallel hearing procedures, one for disciplinary proceedings and one for financial exigency terminations. Different rules of procedure would apply. This may look unduly complicated, and indeed early critics of the AAUP approach wondered why separate hearing procedures were necessary when most institutions already had a general-purpose procedure for handling terminations.[20] But on balance, I am convinced that it makes good sense to have a separate procedure for financial exigencies. The issues are usually very different. In contrast to a hearing on the individual fitness of a faculty member, where the faculty member's own conduct is at issue, a financial exigency hearing puts the institution on trial. Evidentiary and proof issues are entirely different. The burden of proof may be shifted. Having separate procedures emphasizes the distinctive nature of a financial exigency hearing, and guards against the perception that terminations on financial exigency grounds are merely a variation of terminations for cause and therefore can be handled by the same hearing apparatus.

Demonstrating the "Bona Fides" of a Financial Exigency

Under the 1940 Statement, a financial exigency must be "demonstrably bona fide" before it may be invoked as a reason for terminating tenured appointments. To give substance to this standard, Regulation 4(c) requires the institution to comply with certain procedures during and after a financial exigency. Failure to honor these procedures gives rise to an inference that the exigency, instead of being bona fide, was a pretext for dishonoring the tenure commitment.

A. Restrictions on new hiring. Regulation 4(c) (3) imposes a logical prohibition on new hiring during a financial exigency. Regulation 4(c) (6) refines this by conditionally prohibiting an institution from hiring a replacement for any faculty member whose appointment is terminated on financial exigency grounds. You would be surprised how blatantly some administrations have ignored these restraints. One celebrated example involved the president of an independent college in New Jersey who dismissed twelve tenured faculty members because the college allegedly was financially exigent, yet paid them a required additional year of salary while not allowing them to teach that year and at the same time turned around and hired eleven replacements immediately to teach pretty much the same courses! Needless to say, were were not convinced that the college faced an "imminent financial crisis." Neither did the judge to whom the matter was subsequently submitted, who ordered the twelve original faculty members reinstated.[21]

B. Intrainstitutional placement. Before a tenured faculty member's appointment may be terminated, Regulation 4(c) (4) requires the institution to "make every effort to place the faculty member concerned in another suitable position within the institution." This provision is the lineal descendant of a sentence that first appeared in the 1925 Conference Report, and is thus one of the most venerable requirements in Regulation 4(c). Like the prohibition against new hiring, this provision is eminently sensible; if there is a position elsewhere in the institution for which a soon-to-be-terminated faculty member is qualified, then offering the transfer is an indication of good faith and from that individual's perspective, it is usually preferable to a layoff.

C. Notice. Under Regulation 4(c) (5), a tenured faculty member is entitled to one full year's notice before his or her appointment is actually terminated. Notice requirements serve an important deterrent function. They force institutions to engage in some form of advance planning, since institutions that have adopted our notice standard know there will be a one-year lag between the decision to terminate and an actual reduction in payroll.

The AAUP views the notice requirement as a material and very important part of the relationship between professor and institution, and we almost always react vigorously when our notice standards are breached. And they are breached sometimes, particularly when a financial crisis strikes an institution so suddenly and so hard that it cannot afford to wait a year to react. We are sometimes put in the difficult position of being told by a college president, we can lay off five faculty members now or twenty next year if you insist on a full year's notice. Our position has always been, and I think it must be, to insist on a full year's notice, even if the threatened result is additional layoffs. As Committee A observed in 1975, "an institution is in a better position to absorb an extra year of faculty service than is the faculty member in a position to absorb a year of forced unemployment or underemployment that might have been avoided by adequate notice."[22] We simply feel too uncomfortable making a "financial exigency" exception to the notice rule that in time might swallow up that rule.

In particular, we object to language included in many institutional regulations pledging to make "every effort" or "all reasonable efforts" to comply with notice requirements in the event of financial exigency. Our view is that it is at least as crucial to comply with notice requirements during times of financial exigency as at other times. As Jordan Kurland of our staff observed more than a decade ago, "To stint on due notice at a time when it is sorely needed by the recipient not only inflicts injury on him; it serves to dampen the spirits of those who remain....(S)hort cuts in this area tend to be remembered long after the money saved is spent."[23] In sum, our notice standards are important, and we want administrators to understand that before financial troubles brew, so they can plan accordingly.

D. Recall rights. Finally, Regulation 4(c) (6) gives a faculty member whose appointment is terminated on financial exigency grounds the right of first refusal if, within three years, the institution decides to fill the vacant position. As Professor Brown suggests in his commentary, we view the three-year limit as a minimum, not a fixed requirement; in some collective bargaining agreements, faculties have negotiated recall provisions of indefinite duration.[24]

With that, we come to the end of our excursion through Regulation 4(c). Let me summarize before we move on.

A financial exigency is an evolutionary process, at each stage of which the focus grows narrower. In its early stages, it involves the institution as a whole. Does a state of financial exigency exist? This question is answered by reference to the institution's assets, enrollment, and budget. At the next stage, the focus shifts to departments and programs within the institution. What programs are not paying their way? What departments are overstaffed or overfunded? In the final and most difficult stage of an exigency, decisions center on individual men and women. Who in this department goes? Who should be spared?

Regulation 4(c) reflects the same involuted structure. It begins with 58 words of general definitional language. As it reaches succeeding stages of the exigency, it grows more expansive and more specific. The text describing the process for identifying individual faculty members for termination is almost four times as long (223 words) as the definitional section; and the last portion of the paragraph, dealing with the rights of individuals who receive notices of termination, is longer still (335 words).

This reflects, to some extent, the fact that it is a tricky business to define a term like financial exigency; if the AAUP's definition is not wholly satisfactory for its brevity, we know of no definition that is more satisfactory. But it also reflects the fact that the AAUP has more experience with rules of procedure, and perhaps more faith in them as well. In 1934, when the Great Depression was exacting a painful toll on the members of the teaching profession, the members of Committee A stated in their annual report that "(t)he observance of proper procedure in the relations between administrations and teachers remains one of the most important safeguards of our professional liberties."[25] Their words are particularly pertinent today, when the same economic threats to the profession are again on our minds.

Application of AAUP Standards

So far, we have focused on Regulation 4(c), the AAUP's model institutional regulation on financial exigency. We move now from the world of theory to the world of practical affairs. How widely have AAUP financial exigency standards been accepted and applied?

The results so far, I think, are somewhat mixed. We have succeeded to some extent in waging the battle against retrenchment on our own ground. Largely because of our work, many in the higher education community realize that the declaration of a financial exigency should be an extraordinary event calling for special procedures, unusual protections, and heightened sensitivities. Today, it is not easy to lay off tenured faculty members. But at the same time, we are somewhat chagrined that many institutions have still not adopted financial exigency regulations in the seven years since the current Regulation 4(c) first appeared, and that all too many of the new provisions that have been adopted are inconsistent in whole or in substantial part with AAUP standards.

We are also very disturbed by the imaginative lengths to which some institutions have gone to avoid the practical limitations imposed by the AAUP's financial exigency standards. The biggest offenders are also, by happenstance, the nation's largest higher education systems -- the State University of New York and the California State University System. In both instances, institutions faced cuts in state appropriations reacted by identifying "programs" for retrenchment that were in some cases no larger than a single faculty member. At SUNY in 1975, they were called "retrenchment units," and at Sonoma State University in California in 1982, they were called "teaching service areas"; the practical effect was to permit university administrators to identify specific faculty members for termination under the guise of using objective programmatic criteria -- a grave threat, in our view, to academic freedom on those campuses.

There are other disturbing portents as well. One that is causing us particular concern is the rise in the number of financial exigencies in state higher education systems. In the last couple of years, we have witnessed a sudden surge of financial emergency situations at public institutions. The cause is simple enough to understand. Almost every state has a constitutional or statutory provision that requires a balanced budget at the end of the fiscal year. (According to the National

Conference of State Legislatures, every state but Vermont has such a provision in its constitution or code). If state revenues are unexpectedly lower than projected, then the balance must be achieved by cutting expenditures. We are now witnessing the effects of an extended national economic recession, a resulting drop in state revenues, and the perceived necessity for making cuts across the board, including higher education expenditures, to preserve balanced budgets.

To an extent greater than in the financial exigencies of years past, the situations on these campuses are tremendously volatile and confused. Crises can arise and abate overnight. Faculty members, even administrators, cannot keep up with rapidly shifting circumstances. Recent events in West Virginia provide a good example, events in which the AAUP was deeply involved and played an important role. State officials did not know until November of 1982 that revenue shortfalls would be significant enough to merit budget cuts. Governor Rockefeller responded that month by ordering a relatively modest three percent reduction in state spending. Between November 18 and December 31, the state's tax commissioner again adjusted his revenue projections downward, forcing the Governor to increase hid budget cut to ten percent of expenditures. Faculty members knew little until the West Virginia Board of Regents announced on January 13 that a $16 million cut in higher education expenditures was to be achieved by mandatory payless furloughs of seven to ten days, beginning in March. But in February, the tax commissioner adjusted his projection upward, and the payless furlough plan was rescinded. The situation literally changed from day to day. Obviously, faculty morale suffers under such circumstances and long-range educational planning becomes more difficult.

It is certainly no disparagement to say that the AAUP standards were not drafted with this new generation of large-scale financial emergencies in mind. By its very nature, our recommended institutional regulation on financial exigency presupposes an aura of deliberative calm and enough advance notice of an emergency to explore and exhaust the alternatives to faculty layoffs. For example, Regulation 4(c) envisages a deliberative role for a duly constituted faculty committee prior to the declaration of an exigency, a careful review of alternatives to layoff, placement of at-risk faculty members in other suitable positions, and (under appropriate circumstances) the implementation of training programs to prepare faculty members for service elsewhere in the institution. These steps take time. They are not always suited to an emergency that is invisible one day and bursts upon an institution the next.

We are also disturbed by the relatively hostile reception given to our standards by state legislatures and courts. In New Jersey, Washington, and several other states, financial exigency bills and regulations have been enacted in the last few years that bear startingly little resemblance to the AAUP's recommended institutional regulations.[26] When faculty members have challenged terminations in court, they have not, in general, been successful in arguing that institutional regulations do not comport with AAUP standards.[27] In particular, courts have been extremely reluctant to adopt the AAUP's definition of a financial exigency, and have given great deference to institutional determinations that a state of financial exigency exists.[28] The AAUP's procedural standards have fared somewhat better; several courts have recognized that faculty members cannot be terminated without receiving the minimal procedural protections guaranteed by

Regulation 4(c) (2) of the AAUP Recommended Institutional Regulations.[29]

The current version of Regulation 4(c) is only seven years old. It has already had an influence on the debate over financial exigency, and I suspect that it will grow in importance as more institutions face up to the task of drafting regulations on this subject. On collective bargaining campuses, financial exigency and program discontinuance provisions are higher education's equivalent of the job security provisions that many industrial unions demand. In an age of fiscal austerity, when salary increases and fringe benefits are difficult to negotiate, job security has become the principal demand of many unions, and we are seeing the same trend in higher education. In some instances, the negotiating process has yielded good and workable language modeled closely on Regulation 4(c). My colleague Ann Franke will have more to say on this subject tomorrow. for now, let me simply observe that college and university faculty members -- both those engaged in collective bargaining and those who are not unionized -- are realizing how important it can be to have exigency guidelines in place before an emergency strikes. We can say with some satistaction that the AAUP's recommended institutional regulation is a model to which faculty members frequently turn.

Financial exigency is a gloomy business, and one can easily despair when one studies the subject at any length. Some months ago, when the recession was at its worst and state universities were being battered by budget cutbacks, I wrote a despondent memorandum suggesting that the new macro-exigencies were simply too much for our recommended institutional regulation to cope with. In due course, Professor Walter Metzger of Columbia University, a longtime member of our Association and a thoughtful analyst of financial exigency matters, received a copy of my memorandum. After he read it, he sent me a long letter taking me to task for exhibiting excessive pessimism. His message, colloquially phrased, was this: Sure, times are tough and faculty members are losing their jobs. But how many more would ave been laid off if it had not been for AAUP standards? The closing paragraph of Professor Metzger's letter is an excellent summary of what AAUP policy is and should always be:

> I find it hard to be measured when I contemplate yet another sign that we have lost confidence in our rules.,..A gloomy prognosis will always strike me as premature when it appears that we have not really tried to hold the line we have committed ourselves to defend, always unconvincing when it appears that we do not know precisely where that line was drawn, always dangerous when the consequence of abandoning that line is to place tenure in mortal jeopardy.

FOOTNOTES

A. The views and opinions contained herein are those of the author, and do not necessarily reflect the policies of the American Association of University Professors.

1. The full text of Regulation 4(c) is reproduced at the end of these remarks.

2. "Report of the Conference on Academic Freedom and Tenure," 11 AAUP Bull. 99, 101 (1925).

3. H.M. Wriston, "Academic Freedom and Tenure," 25 AAC Bull. 110, 122 (1939).

4. One quite interesting exception occurred in 1940 at Adelphi College in New York where five faculty members were dismissed ostensibly because the college could not balance its instructional budget. The Association formally censured the Adelphi administration in 1941. "Adelphi College," 27 AAUP Bull. 494 (1941). The college remained on the censure list until 1952, when it adopted a "Faculty Personnel Plan" incorporating the 1940 Statement. See 53 AAUP Bull. 278 (1967).

5. C. Byse & L. Joughin, Tenure in American Higher Education (1959) 6, 49, 50-51.

6. See E. Cheit, New Depression in Higher Education: A Study of the Financial Condition at 41 Colleges and Universities (1971). Other useful materials are cited in Note, "Financial Exigency as Cause for Termination of Tenured Faculty Members in Private Post Secondary Educational Institutions," 62 Iowa L. Rev. 481, 482 n.9 (1976).

7. J. Kurland, "Reducing Faculty Positions: Considerations of Sound Academic Practice," 53 Liberal Education 304 (1972).

8. The "Recommended Institutional Regulations" were further revised and reissued in 1982, but regulation 4(c) was not affected.

9. R. Brown, "Financial Exigency," 62 AAUP Bull. 5 (1976) (referrd to hereinafter as "Financial Exigency").

10. Our files, for example, contain this warning from the director of finance at the University of Rochester:

    > The amount of manipulation possible in the current funds statement is limited by little more than the imagination of college financial officers and the permissiveness of their auditors. To say that the current funds' purported "surplus" or "deficit" is indicative of the institution's financial health is to diagnose the patient's ills by no more than his thermometer reading. We need to look at the total picture.

11. 58 AAUP Bull. 170, 171 (1972).

12. "Financial Exigency" 7.

13. See, e.g., J. Kurland, "Reducing Faculty Positions: Considerations of Sound Academic Practice," 53 Liberal Education 304, 305-6 (1972); W.T. Furniss, "Retrenchment, Layoff, and Termination," 55 Educ. Record 159, 160 (1974).

14. The note goes on to cite the 1966 Statement on Government of Colleges and Universities, which goes somewhat farther than the note itself:

> (In) such fundamental areas as curriculum, subject matter and methods of instruction, research, (and) faculty status...the power of review or final decision lodged in the governing board or delegated by it to the president should be exercised adversely only in exceptional circumstances, and for reasons communicated to the faculty.

52 AAUP Bull. 375, 379 (1966).

15. These arguments are developed in more detail in "Financial Exigency" 11-12.

16. Leftwich v. Harris-Stowe State College, No. 82-1676 (8th Cir. March 15, 1983).

17. For further elucidation, see the cases and articles described in "Financial Exigency" 12 n.34.

18. "Financial Exigency" 10 n.24 and accompanying text.

19. Id. 8.

20. See W.T. Furniss, "Retrenchment, Layoff, and Termination," 55 Educational Record 159 (1974).

21. AAUP v. Bloomfield College, 322 A.2d 846 (N.J. Super. 1974), aff'd, 346 A.2d 617 (App. Div. 1975).

22. "Academic Freedom and Tenure: 1975 Reports on Cases of Late Notice," 62 AAUP Bull. 95, 96 (1976).

23. J. Kurland, "Reducing Faculty Positions: Considerations of Sound Academic Practice," 58 Liberal Education 304, 309 (1972).

24. "Financial Exigency" 15.

25. "Academic Freedom and Tenure: Report of Committee A," 21 AAUP Bull. 148, 150 (1935).

26 Cf. Washington Education Ass'n v. State of Washington, 652 P.2d 1347 (Wash. 1982) (en banc); Council of New Jersey State College Locals, NJSFT-AFT/AFL-CIO v. State Board of Higher Education, 91 N.J. 18 (1982).

27. For a useful introduction to the burgeoning case law on financial exigency, see S. Stroup, N. Van Gieson & P. Zirkel, Deficits, Declines, and Dismissals: Faculty Tenure and Fiscal Exigency (ERIC Clearinghouse on Teacher Education 1982). See also Note, "The Dismissal of Tenured Faculty for Reasons of Financial Exigency," 51 Ind. L.J. 417 (1976).

28. See Krotkoff v. Goucher College, 585 F.2d 675 (4th Cir. 1978); Scheuer v. Creighton Univ., 260 N.W. 2d 595 (Neb. 1977). But see AAUP v. Bloomfield College, 346 A.2d 615 (N.J. App. 1975).

29. See Johnson v. Board of Regents of the University of Wisconsin System, 377 F. Supp. 227 (D. Wis. 1974), aff'd, 510 F. 2d 975 (7th Cir. 1975).

Termination of Faculty Appointments Because of Financial Exigency, Discontinuance of a Program or Department, or Medical Reasons*

(1975 REVISION)

Committee A's Recommended Institutional Regulations on Academic Freedom and Tenure (AAUP Bulletin, *Vol. 58, No. 4, Winter, 1972, pp. 428-433) include, as Regulation 4, procedures for termination of an appointment by the institution when the intended action is not a dismissal for cause but is based rather on factors beyond the affected individual's direct control.*

It was recognized in the 1940 Statement of Principles on Academic Freedom and Tenure *that, in addition to a dismissal for cause, an appointment can be terminated because of a demonstrably* bona fide *financial exigency. Since their first publication in 1968, the* Recommended Institutional Regulations *have recognized that an appointment can also be terminated because of a* bona fide *discontinuance of a program or department that is not mandated by financial exigency; and because of medical reasons. With the pronounced recent increase in cases of termination of appointment because of financial exigency, Committee A has formulated a revised Regulation 4. It is designed to provide more specific procedural guidance in cases resulting from an assertion of financial exigency and to distinguish between those cases and cases of formal programmatic or departmental discontinuance not mandated by financial exigency.*

An earlier version of the Regulation that follows was approved for publication respectively by Committee A and by the Council on October 31, and November 1, 1974. Committee A, after examining all comments on that version which were submitted to the Association, formulated this revised Regulation. It was approved for publication by Committee A on October 30, and by the Council on October 31, 1975. Further comments will be welcome from Association members, chapters, conferences, and other interested persons. Committee A and the Council anticipate acting at their meetings in June, 1976, to approve the text that will be included in the Recommended Institutional Regulations.

Revision of Regulation 4, Recommended Institutional Regulations on Academic Freedom and Tenure

4. *Termination of Appointments by the Institution*

(a) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may be effected by the institution only for adequate cause.

(b) If termination takes the form of a dismissal for cause, it will be pursuant to the procedure specified in Regulation 5.

Financial Exigency

(c) (1) Termination of an appointment with continuous tenure, or of a probationary or special appointment before the end of the specified term, may occur under extraordinary circumstances because of a demonstrably *bona fide* financial exigency, i.e., an imminent financial crisis which threatens the survival of the institution as a whole and which cannot be alleviated by less drastic means.

[NOTE: Each institution in adopting regulations on financial exigency will need to decide how to share and allocate the hard judgments and decisions that are necessary in such a crisis.

As a first step, there should be a faculty body which participates in the decision that a condition of financial exigency exists or is imminent,[1] and that all feasible alternatives to termination of appointments have been pursued.

Judgments determining where within the overall academic program termination of appointments may occur involve considerations of educational policy, including affirmative action, as well as of faculty status, and should therefore be the primary responsibility of the faculty or of an appropriate faculty body.[2] The faculty or an appropriate faculty body should also exercise primary responsibility in determining the criteria for identifying the individuals whose appointments are to be terminated. These criteria may appropriately include considerations of age and length of service.

The responsibility for identifying individuals whose appointments are to be terminated should be committed to a person or group designated or approved by the faculty. The allocation of this responsibility may vary according to the size and character of the institution, the extent of the terminations to be made, or other considerations of fairness in judgment. The case of a faculty member given notice of proposed termination of appointment will be governed by the following procedure.]

(2) If the administration issues notice to a particular faculty member of an intention to terminate the appointment because of financial exigency, the faculty member will have the right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5, but the essentials of an on-the-record adjudicative hearing will be observed. The issues in this hearing may include:

(i) The existence and extent of the condition of financial exigency. The burden will rest on the administration to prove the existence and extent of the condition. The findings of a faculty committee in a previous proceeding involving the same issue may be introduced.

(ii) The validity of the educational judgments and the criteria for identification for termination; but the recommendations of a faculty body on these matters will be considered presumptively valid.

(iii) Whether the criteria are being properly applied in the individual case.

(3) If the institution, because of financial exigency, terminates appointments, it will not at the same time make new appointments except in extraordinary circumstances where a serious distortion in the academic program would otherwise result. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result.

(4) Before terminating an appointment because of financial exigency, the institution, with faculty participation, will make every effort to place the faculty member concerned in another suitable position within the institution.

(5) In all cases of termination of appointment because of financial exigency, the faculty member concerned will be given notice or severance salary not less than as prescribed in Regulation 8.

(6) In all cases of termination of appointment because of financial exigency, the place of the faculty member concerned will not be filled by a replacement within a period of three years, unless the released faculty member has been offered reinstatement and a reasonable time in which to accept or decline it.

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[1] See "The Role of the Faculty in Budgetary and Salary Matters" (*AAUP Bulletin*, 58, Summer, 1972, pp. 170-72), and especially the following passages:

> The faculty should participate both in the preparation of the total institutional budget, and (within the framework of the total budget) in decisions relevant to the further apportioning of its specific fiscal divisions (salaries, academic programs, tuition, physical plants and grounds, etc.). The soundness of resulting decisions should be enhanced if an elected representative committee of the faculty participates in deciding on the overall allocation of institutional resources and the proportion to be devoted directly to the academic program. This committee should be given access to all information that it requires to perform its task effectively, and it should have the opportunity to confer periodically with representatives of the administration and governing board. . . .
>
> Circumstances of financial exigency obviously pose special problems. At institutions experiencing major threats to their continued financial support, the faculty should be informed as early and specifically as possible of significant impending financial difficulties. The faculty—with substantial representation from its nontenured as well as its tenured members, since it is the former who are likely to bear the brunt of the reduction—should participate at the department, college or professional school, and institutionwide levels, in key decisions as to the future of the institution and of specific academic programs within the institution. The faculty, employing accepted standards of due process, should assume primary responsibility for determining the status of individual faculty members.

[2] See "Statement on Government of Colleges and Universities" (*AAUP Bulletin*, 52, Winter, 1966, pp. 375-79), and especially the following passage:

> Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy.

Discontinuance of Program or Department Not Mandated by Financial Exigency[3]

(d) Termination of an appointment with continuous tenure, or of a probationary or specified appointment before the end of the specified term, may occur as a result of *bona fide* formal discontinuance of a program or department of instruction. The following standards and procedures will apply.

(1) The decision to discontinue formally a program or department of instruction will be based essentially upon educational considerations, as determined primarily by the faculty as a whole or an appropriate committee thereof.

[NOTE: "Educational considerations" do not include cyclical or temporary variations in enrollment. They must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by the discontinuance.]

(2) Before the administration issues notice to a faculty member of its intention to terminate an appointment because of formal discontinuance of a program or department of instruction, the institution will make every effort to place the faculty member concerned in another suitable position. If placement in another position would be facilitated by a reasonable period of training, financial and other support for such training will be proffered. If no position is available within the institution, with or without retraining, the faculty member's appointment then may be terminated, but only with provision for severance salary equitably adjusted to the faculty member's length of past and potential service.

[NOTE: When an institution proposes to discontinue a program or department of instruction, it should plan to bear the costs of relocating, training, or otherwise compensating faculty members adversely affected.]

(3) A faculty member may appeal a proposed relocation or termination resulting from a discontinuance and has a right to a full hearing before a faculty committee. The hearing need not conform in all respects with a proceeding conducted pursuant to Regulation 5 but the essentials of an on-the-record adjudicative hearing will be observed. The issues in such a hearing may include the institution's failure to satisfy any of the conditions specified in this section. In such a hearing a faculty determination that a program or department is to be discontinued will be considered presumptively valid, but the burden of proof on other issues will rest on the administration.

Termination for Medical Reasons

(e) Termination of an appointment with tenure, or of a probationary or special appointment before the end of the period of appointment, for medical reasons, will be based upon clear and convincing medical evidence that the faculty member cannot continue to fulfill the terms and conditions of the appointment. The decision to terminate will be reached only after there has been appropriate consultation and after the faculty member concerned, or someone representing the faculty member, has been informed of the basis of the proposed action and has been afforded an opportunity to present the faculty member's position and to respond to the evidence. If the faculty member so requests, the evidence will be reviewed by the Faculty Committee on Academic Freedom and Tenure [or whatever title it may have] before a final decision is made by the governing board on the recommendation of the administration. The faculty member will be given severance salary not less than as prescribed in Regulation 8.

Review

(f) In cases of termination of appointment, the governing board will be available for ultimate review.

[3] When discontinuance of a program or department is mandated by financial exigency of the institution, the standards of section 4(c) above will apply.

B. FINANCIAL EXIGENCY AND CONTRACT LAW

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Introduction

Because the quality of a college is directly dependent on the quality of its faculty, there is no single more important topic for the future of higher education in the 1980's and 1990's than that being addressed by this conference, the topic of financial exigency.

The fact that nearly all institutions of higher education are preoccupied today with issues of financial exigency is due to our current hard economic times, the worst faced by our nation and the higher education community since the Great Depression, which saw national statutory recognition of the union movement under the Wagner Act. During hard economic times, a conflict inescapably arises between, on the one hand, an academic institution's need for flexibility in faculty staffing and faculty compensation if it is to maintain a comprehensive, relevant, liberal curriculum and high quality teaching and research and, on the other hand, the need of tenured faculty for job security. Different individual institutions, of course, face different degrees of financial stress. For some institutions, it is a matter of survival and of avoiding bankruptcy. For others, it is a matter of living with operating deficits and budget cuts for a period of years. A number of institutions find themselves in a nondeficit but precarious operating budget situation. Arguably, sound management requires that the latter institutions be managed in such a way that they not become an educational "Chrysler." In order to maintain a nondeficit posture and to enhance educational and financial vitality, these institutions may initiate a process of dropping some programs that are underenrolled with a corresponding dismissal of program faculty, including tenured faculty, and simultaneously of initiating new academic programs with the appointment of qualified faculty. As Professor Brown, professor of law at Yale University, said in the March-April 1982 issue of Academe:

> We in the AAUP...are the guardians of the flame of academic integrity. Our own epistles must teach the right way. What do they now teach us? Very little. We have strong doctrines about faculty responsibility and participation. We have finally honed procedural rules about the declaration and administration of a situation of exigency when termination of appointments becomes permissible. Michigan State, and the brush-fires flaring elsewhere, force us to think about *averting* financial exigency more than we have done before.[1]

The issue is job security, however, not in the classic academic freedom sense of protecting colleagues against dismissal because of the novelty of their research or because of how controversial their ideas are. Rather it is job security in the "impersonal" sense of whether or not there will be positions at all, especially for certain disciplines. The issue is the "marketplace of ideas." In the political arena, no idea was to be disallowed because it was inherently dangerous. Likewise, in the world of the academy, any and every idea can be inquired into, researched, and presented for analysis and criticism. But in hard economic times, the "marketplace of ideas" has come to mean for some that academic institutions should be prepared to offer only what society has decided to buy. It is said that qualified, competent persons will not be attracted to the academy without a reasonable expectation of life-long job security or rather will be attracted only to those disciplines that can assure such job security. The issue, then, is not dismissal on personal grounds or academic freedom grounds, but termination on the basis of "impersonal" economic grounds. More specifically, at each institution, the financial realities entail the questions of who will decide this balance, this flexibility? How much is needed? Where do we draw the line? On what basis? What criteria? Who will benefit from it? Who will be hurt by it? By what provisions can harsh blows be softened?

These are the tough questions that demand great energy, great commitment, great patience, political acumen, and wisdom on the part of all involved in answering them at particular institutions. These questions are finally not matters of law, but of the best educational and financial judgment that can be brought to bear on them. My assignment this morning is not to answer these questions nor to give legal advice, but the much easier one of explaining the current legal environment on questions of financial exigency. The way that I have chosen to communicate an accurate understanding of the current law is to contrast recent court decisions with established AAUP policies and standards.[2] At key points, the courts have decided not to imply AAUP standards into contract agreements between the faculty and its institution, while at the same time implying other AAUP standards.

AAUP Standards and the Courts

Since its founding in 1915, the AAUP has been the single most effective national faculty organization for protecting and enhancing academic freedom and tenure. And one of the AAUP's consistently most effective strategies has been to file amicus curiae briefs in litigation between faculty and their institutions. The courts have recognized this special history and expertise of the AAUP and have often relied upon AAUP policies and standards, but not in an automatic nor indiscriminate way. For example, in Kratkoff v. Goucher College (1978),[3] the federal Circuit Court of Appeals for the Fourth Circuit implied into the contract between the faculty and Goucher College the right of the college to terminate tenured faculty members for reasons of financial exigency on the basis of the 1940 AAUP Statement on Principles of Academic Freedom and Tenure as evidence of the reasonable contractual expectations of the national academic community. At the same time, the Fourth Circuit rejected the AAUP's definition of financial exigency, as defined in its 1976 Recommended Institutional Regulations (RIR).

While there are significant legal differences between public and independent institutions of higher education, financial exigency issues are primarily a matter of contract law at both public and independent institutions. Having made this initial point, I must immediately add the caveat that there is no national "law of the land" on these legal issues. The legal issues are matters of state-level jurisdiction and not matters of federal jurisdiction. Under the common law of contract and state statutes, court decisions are controlling only within their own jurisdictions and influence courts outside their jurisdiction only on the basis of their persuasiveness. However, there has been a sufficient number of decisions in enough jurisdictions to indicate that there is an evolving law about financial exigency issues. The common law of contract is fairly uniform throughout the fifty states and one can reasonably expect courts of one jurisdiction to be receptive to the holdings and reasoning of courts of other jurisdictions, especially whenever they must decide a case of first impression.

For one thing, courts universally have accepted the distinction between personal dismissals and impersonal terminations of tenured faculty. Personal dismissals include those based on professional incompetence, moral turpitude, and medical disability. Impersonal terminations include those based on financial exigency and discontinuance of a program or department for educational reasons. The courts understand tenure primarily as an indispensible safeguard for academic freedom and not as guarantee of life-long job security regardless of the financial needs of the institution.

> Dismissals based on financial exigency, unlike those for cause or disability, are impersonal; they re unrelated to the views of the dismissed teachers. A professor whose appointment is terminated because of financial exigency will not be replaced by another with more conventional views or better connections. Hence, bona fide dismissals based on financial exigency do not threaten the values protected by tenure (Kratkoff v. Goucher College, 1978).[4]

However, in order to assure that terminations of tenured faculty for financial reasons are genuinely "impersonal," the courts also universally insist that the terminations be bona fide.

> The obvious danger remains that "financial exigency" can become too easy an excuse for dismissing a teacher who is merely unpopular or controversial or misunderstood--a way for the university to rid itself of an unwanted teacher but without according to him his important procedural rights (Browzin v. Catholic Univ., 1975).[5]

Financial Exigency

The courts are sensitive to the danger that an "impersonal" termination for economic reasons may be a subterfuge for an improper "personal" dismissal. The courts accordingly insist on "subjective" good faith in the sense that there be no evidence of any anti-tenure animus, and on "objective" good faith in the sense that there be objective criteria uniformly applied and that the tenured faculty laid-off be given the right of first refusal within a reasonable period of time if the position were to become available again.

The single most important point is that the courts will enforce whatever the agreement is between the parties. So look to your agreement and to the policies and practices of your particular institution. Formal agreements are generally of two kinds: either a collective bargaining agreement or written individual contracts betwen the college and the faculty members. These contracts incorporate by specific reference or by implication the provisions of the faculty manual and other college policies and procedures that affect the faculty. If your particular agreement includes a financial exigency provision and if it also incorporates the AAUP's 1976 Recommended Institutional Regulations' (RIR) "survival" definition of financial exigency, then the courts probably will not allow termination of tenured faculty unless there is an imminent financial crisis threatening the survival of the institution as a whole that cannot be alleviated by less drastic means. The court may indeed force the institution "as a whole" to face near bankruptcy before it will allow the termination of any tenured faculty member, regardless of the need for programmatic change.[6] The implications of this posture can be severe. Whether an imminent financial crisis of this order of magnitude actually exists is a matter normally to be decided by the institution's governing authority and such a determination is subject to limited judicial review. So long as the governing authority of the institution has acted in good faith and in the best interests of the institution as they see it, has not acted arbitrarily or capriciously, has provided whatever due process is required either constitutionally or contractually, has not acted in an impermissible discriminatory way, and not violated any contract provisions, the courts will normally sustain the college's determination that a situation of financial exigency exists.

> Where there is a showing that the administrative body, in processing its judgment, acts from honest convictions, based upon facts which it believes for the best interest of the School, and there is no showing that the acts are arbitrary or generated by ill will, fraud, collusion, or other such motives it is not the province of the court to interfere and substitute its judgment for that of the administrative body (Levitt v. Board of Trustees of the Neb. State College, 1974).[7]

A financial crisis exists validly when the institution's governing authority declares it does, provided that the declaration is not arbitrary or capricious or a pretext for impermissible motivations.

If, however, your agreement has a financial exigency provision, but fails to define it, or if your agreement has no such provision, then it is likely that the court will define its meaning in terms of an "operating budget" standard rather than the AAUP "survival" standard. An analysis of the definitions established in a number of court decisions indicates that they will focus on the ability of the college to meet current expenses out of current income and will reject any suggestion that capital assets must be involved to resolve cash flow problems.[8] Absent an express adoption of the AAUP's "survival" definition as part of the contract, the courts have been emphasizing operational funds and not capital assets. Further, absent an express financial exigency provision and an express adoption of the AAUP definition in your contract, there is precedent in the sense explained above for the court to accept financial exigency in one division of the institution as a sufficient basis for terminating tenured faculty under the agreement.[9] A federal district court (Jiminez v. Almodovar, 1981) has recently held that a change in academic program based on low enrollments was sufficient under the contract to terminate tenured faculty.[10] The point is that the courts will enforce whatever is the contractual agreement between the parties and in the absence of express provisions will imply contract terms, some of which at key points are quite different from those recommended by the AAUP.

Consider, for example, the following. Absent express contract provisions or a particular practice at an institution, the courts in recent decisions have implied:

*financial exigency is grounds for termination of tenured faculty[11]

*financial exigency is to be determined on the basis of the annual operating budget and not on the basis of the possible disposition of long-term assets; the disposition of long-term assets is a matter for the business judgment of the institution's board of trustees[12]

*financial exigency in a subdivision of the institution is sufficient grounds for termination of tenured faculty[13]

*there is no preference over other tenured faculty members on the basis of seniority of service[14]

*there is no right to institution funded retraining for an available position in another discipline[15]

*a change in academic program due to low enrollment is sufficient to terminate tenured faculty.[16]

Now let's compare these decisions with the policies of the AAUP (see Table One). There are two significant differences with AAUP policies with regard to defining financial exigency. The first is the difference between the AAUP's "survival" definition and the courts' "operating budget" definition. The second is the difference between the AAUP's insistence on a crisis threatening the institution "as a whole" and the willingness of one court to accept financial exigency in a subdivision of the institution.

Is <u>Jiminez</u> Controlling?

With regard to program discontinuance, AAUP policy allows termination of tenured faculty when a program or department is discontinued for educational reasons, however, without consideration of enrollment cycles (1976 RIR 4(d)). The AAUP insists that any reduction or discontinuance of a program or department based on low enrollments must meet the same standards as terminations based on financial exigency. In contrast, the federal district court in <u>Jiminez</u>[17] recently held that an institution has an implied contract right to make unavoidable terminations of tenured faculty when it changes an academic program because of low enrollments. Low enrollments is less than an annual operating budget deficit for the institution as a whole, and far less that an imminent financial crisis threatening the institution as a whole than cannot be alleviated by less drastic alternatives.

While the issue that the court decided in <u>Jiminez</u> was one of constitutional due process (viz.,whether the plaintiff as a tenured faculty member has been deprived of his property and liberty without due process of law) and not one based on breach of contract, to decide the constitutional issue, the court first had to determine what property rights the plaintiff had as a

TABLE ONE

COMPARISON WITH THE AAUP'S 1976 RECOMMENDED INSTITUTIONAL REGULATIONS

A.

	AAUP 1976 RIR'S		COURT DECISIONS
1.	Survival Standard	v.	Operating Budget Standard
2.	Threatening the Institution as a Whole	v.	A Subdivision of the Institution

B.

	AAUP	COURT DECISIONS
1.	Termination of Tenured Faculty because of discontinuance of entire program or department based on educational reasons without consideration of enrollment cycles (1976 RIR's 4(d)).	A change in academic program based on low enrollments is sufficient to terminate tenured faculty. (This is less than financial exigency as defined by AAUP and less than the operating deficit test.)
2.	Termination of Tenured Faculty because of program reduction must comply with financial exigency standards (1976 RIR 4(c)).	

A. There are two significant differences in defining what is a financially exigent situation.

B. With regard to situations that are less than financially exigent.

tenured faculty member. Since property rights are in these situations matters of state law, the court answered this question by looking first to the letter of employment between the institution and the plaintiff, to the practices of the university, and to any relevant state statutes. Finding few express provisions in these sources, the court then implied the necessary contract terms.

> American courts and secondary authorities uniformly recognize that, unless otherwise provided in the agreement of the parties, or in the regulations of the institution (emphasis added), or in a statute, an institution of higher education has an implied contractual right to make an unavoidable termination of right to the employment of a tenured member of the faculty when his position is being eliminated as part of a change in academic program.[18]

Absent express contract provisions to the contrary, the property right of the tenured faculty member to continuous employment was limited by the institution's right to make unavoidable terminations based on a change in academic program. The court then addressed the constitutional due process issue and the issue of whether the university had violated any of its own internal regulations. Those regulations afforded the plaintiff a hearing by faculty committee, but he chose not to take advantage of it. The President of his college found and offered several alternative positions, which the plaintiff turned down. The court held that neither his property nor his liberty interests had been deprived without due process of law.

However, the Jiminez court did not imply one major AAUP policy into the contract between the faculty and the university, viz., whether or not termination of tenured faculty by program reduction or discontinuance of a department because of low program enrollment must meet the AAUP's 1976 RIR 4(c) standards of financial exigency as defined by the AAUP. AAUP policy allows for termination of tenured faculty based on discontinuance of a program for educational reasons but not for financial reasons. The situation in Jiminez illustrates the reality at most institutions. In reality, the only time the existence or scope of an academic program is called into question is when that program costs too much. Low enrollments mean reduced revenues. Institutions rarely, if ever, decide to discontinue academic programs that are paying their way or generating an excess of revenues over expenditures. Low enrollments challenge the commitment of the institution to its current educational mission. The institution must decide whether the educational benefits from the program outweigh its financial cost. Here is the substantive educational issue: how to balance fiscal responsibility and educational mission. The University of Puerto Rico arguably discontinued an entire program for educational reasons in the sense that it decided that the educational benefits did not outweigh the program's financial cost. The issue might have been decided on the basis of educational reasons, but the decision was triggered by financial reasons (low enrollments). In my judgment, this was a 4(c) and not a 4(d) discontinuance. The key legal question is whether courts in the future will allow an institution to dismiss tenured faculty in order to avoid financial exigency and to avoid operating deficits by following the admittedly ambiguous Jiminez rubric of a "change in academic program."

Summary

To return to my principal point, the courts will enforce whatever is the agreement between the parties. In the absence of express provisions, the courts have not and probably will not imply the AAUP's definition of financial exigency. They probably will not require an invasion or depletion of an institution's capital assets and endowment, but require only a serious threat of a deficit in the operating budget. They might not even insist that the institution as a whole must be facing financial exigency or a serious operating deficit. What they will insist on is that the institution have procedures that assure that the terminations are _bona fide_ in the sense described above.

So look to the express provisions of your agreements because they will be controlling in any dispute over faculty rights, but when looking to your agreements, do not forget that what is at stake is more than the job security interest of tenured faculty. What is at stake is the ability of the university to continue to offer a quality education based on solid fiscal responsibility. Insist on the right of first refusal, the right to a hearing, and rights to alternative suitable positions and to institutionally funded retraining, but do not forget the wise words of Professor Brown of Yale Law School: "...we must think about averting financial exigency more than we have ever done before."

FOOTNOTES

1. Ralph Brown, "Postscript," _Academe_, March-April, 1982, p. 45.

2. For a systematic analysis of the cases on which my comments in this paper are based, See J. Gray, "Legal Restraints on Faculty Cutbacks" in _Challenges of Retrenchment: Strategies for Consolidating Programs, Cutting Costs, and Reallocating Resources_, edited by J. R. Mingle, San Francisco: Jossey-Bass, 1981, pp. 171-193.

3. 585 F.2d 675 (4th Cir. 1978).

4. _Id_.

5. 527 F.2d 843 (D.C. Cir. 1975).

6. The AAUP definition of financial exigency as imminent bankruptcy may be suitable for independent institutions but is not appropriate for state institutions whose financial survival is backed by the authority of the state to levy taxes.

7. 367 F.Supp. 945, 950 (D. Neb. 1974).

8. _AAUP v. Bloomfield College_, 136 N.J. Super. 442, 346 A.2d 615 (App. Div. 1975); _Kratkoff v. Goucher College_, 585 F.2d 675 (4th Cir. 1978).

9. _Scheuer v. Creighton University_, 199 Neb. 618, 260 N.W. 2d 595 (1977).

10. 650 F.2d 363 (1st Cir. 1981).

11. _Kratkoff v. Goucher College_, 585 F.2d 675 (4th Cir. 1978).

12. _Id_.

13. _Scheuer v. Creighton University_, 199 Neb. 618.

14. Kratkoff v. Goucher College, 585 F.2d 675 (4th Cir. 1978).

15. Id.

16. Jiminez v. Almodovar, 650 F.2d 363 (1st Cir. 1981).

17. Id.

18. Id., 368.

IV. AVOIDING FINANCIAL EXIGENCY

A. AVOIDING FINANCIAL EXIGENCY

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During the next ten years, most higher educational institutions will travel that long, dark, dangerous road which ends in a crash called financial exigency. A few institutions will be on the road a short period, many will travel a long time, some will narrowly avert the crash at the last moment, and a few will indeed crash into financial exigency. Certainly some institutions will go bankrupt and disappear, others will merge with stronger institutions or significantly change their nature, from independent to public (though few, if any, states will be able to take on additional campuses) or from four-year to two-year institutions or vice versa, or from liberal arts to technical or career oriented.

As one who has had responsibilities covering finances, planning, human resources and collective bargaining, I believe that financial exigency can be avoided, but it will take understanding, courage and determination, cooperation and planning.

Understanding the Higher Education Environment

First, there will need to be a clear-eyed and non-nostalgic understanding of the realities of the environment of higher education for the next decade for all except a very few institutions. That environment, in brief, is highlighted by:

- Declining enrollments due to the changing demographic character of most states and regions.

- Declining federal support in most areas of research and in student financial aid in terms of non-inflated dollars or absolute dollars, inadequate federal/state financial aid programs which limit access to higher education and place greater financial strain on institutional and personal resources.

- Inability of state government to make up for the decline of federal support and, for public institutions in most states, inadequate state funding due to economic problems faced by the states and perceived higher priorities for state funding.

- Increased competition for students between and among public and independent institutions, two-year and four-year institutions, company training programs and higher education courses and programs, and proprietary institutions and higher education.

- Increased competition among institutions and within institutions for funding from government, business and industry, foundations and private sources.

- Increased costs to meet: long delayed, deferred maintenance needs; upgrade, replace and refurbish existing buildings and facilities; upgrade and replace instructional, research and administrative equipment; preserve and replace deteriorating library books; provide adequate computer equipment for instruction and research.

- Increased concern about the mission of the institution and what constitutes an educated person - career education vs. liberal arts/humanities.

- Competition for scarce resources among colleges and departments within an institution and between the professional schools and career oriented programs and liberal arts.

- Increased tension between academic and non-academic areas and concern that some less than vital academic programs and services at the institution are being preserved at the expense of support services. Alternatively, the academic core is being destroyed because of overemphasis on the support services and the infrastructure of the university.

- The probability of continuing inflation in higher education, somewhat higher than the general economy because of education's high labor intensity and little likelihood of employing machinery and technology to increase productivity.

- Continuing need and costs for higher education in making up for the deficiencies or gaps in the education offered by many high schools.

- Increased concern about human rights, political or social issues involved in a university's investment policies which may have an impact on returns received from investments.

- Increased competition among institutions for outstanding faculty and administrators with less opportunity for mobility for those who are less than very good or outstanding.

- Increased difficulty in recruiting and retaining outstanding faculty in specific areas where industry offers considerably more compensation and modern equipment and research support, e.g., engineering, computer science, physical sciences (this has an impact on the quality of education and on our economic strength as a nation).

- Increases in the share of tuition costs being paid for by employer tuition refund programs.

- Increased emphasis by states and disciplines for practitioners to earn continuing education units.

- Increased concern about marketing, planning for the future, fund raising, innovation, good management, and the ability to make tough decisions.

- Increased number of public two- and four-year institutions and medical schools as well as too many independent institutions. In addition, there is considerable duplication of programs. Thus, some institutions and programs should be closed, but particularly for public institutions, there are significant political forces preventing such cost effective actions.

- The increasing financial burden of accountability, environmental and social legislation and regulation.

- Financial pressures causing boards of trustees to be more concerned about all of the above and in public institutions, increased concern by governmental agencies and the legislature.

- Increasing concern about morale, productivity and a good working and educational atmosphere on campus as a result of faculty and staff recognizing that because of the factors mentioned above, advancement and salary increase opportunities at the institution and mobility outside of the institution are less bright than in the past, job security is less certain, and funding to enrich, enlarge or create new programs, services or systems, or to provide even the basics, can be a serious question.

I have briefly indicated some of the financial factors at work, but there are other overall factors affecting the environment in which higher education will live over the next decade and beyond. These are: regional, national and international economic volatility; uncertainty of long-range or even short-range political and governmental commitment to various educational policies and support; changing values and life styles in American society with questions raised about the economic value of higher education; more frequent career changes and greater dissatisfaction with jobs; an emphasis on personal fulfillment; greater emphasis on career education (or what some would call hire education vs. higher education) and different forms and methods of education; a legal as well as moral requirement for providing access and support for minority students to enter and remain in college, and for continued emphasis on affirmative action in hiring and promotion and in using minority vendors. We should also recognize that a shortage of qualified high school teachers in mathematics and the sciences and the relative lack of emphasis on the sciences, mathematics and languages in our high schools as carried forward in our colleges has a significant impact on American economic development, productivity and creativity in world economic competition with negative effects on funds available to colleges as well as on increased unemployment, underemployment and welfare.

In addition, there is a need to understand factors at work within each institution. These may include: lack of adequate concern for effectiveness, efficiency, economy, organization, motivation, student satisfaction, sense of mission, planning, marketing; poor communications, morale and sense of community; we vs. they attitude between faculty and administration. There may be inadequate understanding that most institutions spent 70% and more of their income on salaries and benefits because of the labor intensive nature of the educational enterprise (and in academic areas the percentage of labor costs can be close to 90% of all costs) and thus, savings must primarily come in the personnel area. Further, since academic programs and services receive the most funds, which is as it should be, one should expect that most of the savings would be in that area (this assumes that in order to protect and support the primary academic mission of the institution, non-academic areas have previously received larger percentage reductions than the academic areas).

Financial Exigency Warning Signs[1]

The following warning signs indicate that an institution is traveling the financial exigency road. A few indicate the institution is on the road, the more signs, the higher the speed of travel and the greater likelihood of a crash.

I. **Decreases in:**

1. Enrollment overall and in a number of programs (or increased enrollment in high cost areas).

2. Applications, those admited, conversion rate of those who applied, those meeting present academic standards or who rank in the top half or quarter of their high school class.

3. Reserves (resulting, at times, in negative fund balances).

4. Dormitory occupancy and applications for rooms.

5. Amount of unrestricted, current and quasi-endowment funds.

6. Financial support from corporations, foundations, individuals, alumni, governmental sources or ability of such support to keep pace with needs and inflation or to make up for decreased income in other areas.

7. Grants, contracts, research projects and funding or ability of such funding and overhead to keep pace with increased costs and to maintain the reputation of the institution.

8. Value of endowment funds per full-time equivalent student and in percentage contribution of endowment income with regard to the institution's budget.

9. Teaching loads, average number of students per section, student/faculty ratio.

10. Ability to provide funding for normal operations and purchases - e.g., energy and utility costs, normal maintenance and major deferred maintenance, supplies and equipment, instructional equipment, library materials and computers.

11. Ability to compete, to attract and retain students because of lack of adequate funds for promotional efforts, financial aid, student services and facilities, new programs, approaches or equipment that appeal to potential students.

12. Ability to significantly reduce size of staff, scope of programs and services, cost of operations.

13. Ability of auxiliary enterprises to break even in current operations or to provide reserves for plant improvements, refurbishments, etc.

II. **Increases in:**

1. Cash flow problems and difficulty in meeting future obligations.

2. Difficulty in meeting debt service and interest charges.

3. Percentage of receivables in relation to total charges and increasing amount of total receivables.

4. Amount of payables and defaults on loans.

5. Reliance on and use of interfund borrowing from current funds for plant expenditures and to meet working capital requirements for unrestricted current funds.

6. Number of courses, sections, small courses, in relation to number of full-time students.

7. Dependence on tuition and fees income or state subsidy and on increasing tuition and fee charges so that the institution is approaching or has passed the point where the "competitive" position of the institution is endangered.

8. Academic and non-academic facilities, equipment and systems showing signs of age, lack of repair and maintenance, being outmoded - with lack of operating funds or reserves to correct the problem.

9. Number of faculty and percentage of tenured faculty (although new or expanded programs may have caused some of the increase).

10. Number of administrators and support staff in relation to number of faculty and students and increases in overall administrative costs (although governmental requirements, special programs and services and inflation may have caused some of the increase).

11. Rate of turnover of faculty and staff, particularly among the best people, and difficulty in recruiting high quality faculty and staff.

12. Underfunding of the physical plant and administrative infrastructure of the institution - water pipes, sewers, heating, ventilating, air conditioning, basic administrative systems, etc., with no reserves to make necessary improvements and changes.

13. Unfavorable trends or changes in various ratios, e.g., ratio of current unrestricted to current restricted funds with the former decreasing as a percentage of the total and perhaps in absolute terms; ratio of financial viability; ratio of plant equity to plant debt; ratio of expendable fund balances to total expenditures; ratio of capital fund balances to total expenditures.

Courage, Determination and Cooperation

Once there is understanding, there must be the courage and determination to meet the problem sooner than later, to use a scalpel rather than a hatchet, to act quickly and resolutely rather than waiting until the last moment, which can indeed be the last moment. More money from public or private sources, foundations, companies, wealthy alumni, unanticipated bequests, may happen, but it is unlikely. Thus, each institution must take stock of itself, its past and present, where it wants to go and how to get there. This must be done realistically and conservatively with determination to take the very difficult actions necessary.

In order to be successful, there must be a new or better climate of trust and cooperation. There will have to be the sense of community, of individuals banding together to meet a real crisis than can indeed be fatal. Fundamental is recognizing that this is not a question of being overly pessimistic, or crying wolf, but that many institutions are at risk, if not for their actual existence, at least for any real sense of quality and mission. Once it has been established that there is a clear and present danger to the heart and soul of the institution, efforts must be made to build a community of interest in taking action. (In fact, until one is about to take that last turn in the road that leads to a crash, it may not be all that clear that the danger is overwhelming and we in academic life have a great capacity to engage in wishful thinking).

Critical to success in avoiding financial exigency is a sense of cooperation, without which the institution may indeed survive, but be so torn apart that one may wonder whether it was worth saving. Administration, faculty, board, students, alumni (and at times, state agencies) must pull together as a team to meet the crisis. The usual and normal vested interests, casting stones and blame, we vs. they feelings, the litany of past or present errors must be put aside to face the present and future danger. This can be done by true sharing of ideas, facts and figures. The Financial Exigency Planning Task Force with committees and involvement of various constituencies - trustees, faculty, students, staff, administration, alumni - will be necessary, with full sharing of ideas and information. There will need to be a willingness to question how we do things and why, what paths we're on and why, to "dare to dream things that never were and to say,'why not?'". An institution might indeed have to open up all its books and look at its weaknesses and dirty linen, as well as its strengths and aspirations. Everything will need to be questioned and the usual turf prerogatives will have to go by the wayside. Trustees and non-academic administrators will have to be free to ask tougher questions of academic leaders and faculty as to practices, procedures and philosophy and at the same time, be prepared to answer tough questions from faculty and students.

Administrators and trustees, like everyone else, also get trapped by the past and by tradition and they too will have to focus on unconventional means, if necessary, to meet the crisis. At a time of crisis, we must respond fully and accurately and anticipate what individuals want to know and provide it. Certainly "waste," errors, wrong expenditures, poor financial and program investments will come to light and though these are important in understanding the financial plight an institution faces, the most important stage lies ahead. Namely, we know the facts (or most of them - we may not have time to get all the facts or array all the alternatives), and we have developed the probabilities and possibilities in regard to the future. Now, the point is, how do we position ourselves to stave off or avoid exigency and go through a transition phase to a better tomorrow? That kind of thinking will take intellectual and moral honesty, creativity and a sense of dedication to the institution rather than to one's own constituency or position. Out of this approach can come significantly different missions, programs, services, managerial style, organizational and governance arrangements and communications.

In discussing and reaching decisions, and in implementation, although all constituencies are important, those whose involvement, ability and dedication are most critical to success are: The board of trustees and their various committees, particularly the executive and planning committees, the president and vice presidents, the deans, the faculty senate, the leaders of the employee groups or unions, particularly the leadership of the faculty. There will be extreme pressures for union leaders and faculty senate leaders to uphold usual positions and methods of doing things. Success in avoiding financial exigency may very well depend on their ability to withstand the pressure, to think of the institution as a whole and for the future, and to think the unthinkable in regard to past and traditional practices. Contracts, personnel plans and agreements may have to be re-opened and/or changed in order to bring about immediate, short and long term reduced costs.

Involvement must extend beyond the leaders. All those affected should be fully informed and have an opportunity to express their views before decisive action is taken. Ultimately, the responsibility and authority for final decision making is in the hands of the board of trustees, acting upon the recommendations of the president, but true and lasting success in dealing with the problem will depend upon openness and full discussion.

Planning

As a specific guide for actions that may have to be considered, I offer a checklist of 50 ways to avoid the crash of financial exigency by increasing income and decreasing expenses.

Some of the ideas listed below will not be appropriate to particular institutions or have already been tried; others will need significant modifications. They are offered as a stimulus to thinking about specific actions that might be considered. All of them are difficult to plan and implement and perhaps, if you are wise and lucky, only a few will be necessary. But if exigency is to be avoided, these and other ideas must be considered in a careful, rational, planned way, rather than facing the great upheaval of reacting at the last possible minute and thereby increasing one's chances for failure. In essence, the list suggests that in addition to the critically important evaluation and decision making criteria of the primacy of academic programs and services essential to them; selective excellence in academic programs with choices to be made considering quality, centrality to academic missions, need and cost; current and future potential in academic and support programs; quality and scope of service to the community, region and nation, there are other important criteria. These include; cost effectiveness, a marketing, public relations and service orientation; creativity, innovation and a concern for competition; careful evaluation of existing philosophies, policies, programs and practices in regard to present and future needs and changing times and environment. These considerations are more business and management terms than the usual academic terms, but they are very necessary.

In considering actions to be taken, it must be clearly understood that it takes many years to build a solid reputation for academic quality, and concern for students and staff, perhaps as long as a generation. That reputation can be downgraded sharply or destroyed within less than a decade. Thus, any actions taken must emphasize the need to protect and, in fact, if possible, advance the academic core and future of the institution.

In implementing actions decided upon there should be, in addition to the academic concerns mentioned above, considerable attention and concern about: the great difficulties involved in successful implementation; the impact on morale and people's lives; the need to, in some cases, modify or eliminate traditional approaches; the fact that some actions won't bear fruit for several years; the need to consider incentives and disincentives for those who are willing or unwilling to cooperate in meeting the crisis. Furthermore, in planning and implementation and in functioning once financial exigency has been avoided, there will have to be considerable emphasis and constant vigilance in regard to: sound management planning, organization, style, systems, practices and procedures; leadership; communications; building a greater sense of trust, community and involvement among all constituencies and particularly between faculty and administration. A sensitive and united approach to financial exigency planning and implementation can dramatically improve the sense of community and trust on campus, and for those campuses with collective bargaining, it can help change the traditional adversarial tone and manner to more of a collegial approach.

50 Ways to Battle and Avoid Financial Exigency[2]

I. Increasing Income

1. Increase fund raising results through creative approaches and new gift-giving vehicles and through emphasis on effectiveness and efficiency. Make a concerted effort to improve alumni relations and increase contact with alumni as a means to maintain or increase enrollment and fund raising. Use alumni contacts for enrollment and foundation, business and general fund raising from those not previously associated with the institution.

2. Improve public relations and increase media attention in regard to academic quality, research capability, public service, human relations, student services, and a "good-place-to-enroll" image of the university to improve enrollment, reputation, research grants and fund raising.

3. Improve recruitment of students, admissions procedures, and marketing of the university. Consider various payment plans that make it more convenient for students to pay their bills, e.g. use of credit cards, deferred payment plans, various loan arrangements, pre-payment of four years of tuition without any increase in tuition. Emphasize retention of students.

4. Review scholarship, loan and work study opportunities, policies and programs to encourage increased enrollment or to maintain enrollment and retention, attempt to get additional funding for scholarships and loans.

5. Increase the number of programs/courses/services geared to needs of business, industry, government, and other groups to increase enrollment and income.

6. Increase research geared to needs of business, industry, government, and other institutions, thus increasing direct income and overhead. Consider establishing joint research ventures with business, industry and other institutions. Provide encouragement and incentives to individuals and units to develop research, grant, contract funding proposals to the government, business and industry, foundations and other sources.

7. Seek ways to obtain instructional and administrative equipment, supplies, books and materials from various vendors either as a means for such companies to make contributions, enhance their own reputations, use the institution as a pilot demonstration, or in some form of barter arrangement for university services and research.

8. Attempt to predict receptivity to or need for approaches, methods, services, degrees, courses, programs and majors not presently given at the institution or nearby institutions, and develop and market these ahead of other institutions. This requires some insights and investments in regard to the future needs of the area, region or nation and positioning the institution to be at the forefront of meeting these needs.

9. Increase programs, courses, services and methods of education geared to the adult, non-traditional and continuing education markets. Focus on time, place, type and method of instruction and special services and incentives in order to attract new students.

10. Emphasize television and cable television, cassette, computer instruction and other applications of technology in order to tap new markets; improve quality and productivity, enhance the image of the institution.

11. Consider various marketing approaches and incentives to increase full- and part-time enrollment as well as enrollment in evening, summer school, and continuing education programs, e.g., no-need scholarships, based on outstanding previous academic performance, partial tuition reductions if one takes "x" credits during summer school or brings in a friend of family member, partial reductions if two or more members of the immediate family attend.

12. Institute differential tuition pricing to cover additional costs in certain colleges or programs. Reduce the number of credits covered by the flat tuition rate.

13. Review present fees to determine whether they should be raised to cover direct and indirect costs and consider instituting new fees - areas that should be looked at include: transcripts, laboratory supplies, student activities, filing student aid applications, loans, late payments, graduation, special fees.

14. Attempt to increase state subsidy or at least change subsidy formulas to recognize fixed costs even with declining enrollments.

15. Review investment, financing and money management policies, strategies and techniques to bring about changes that meet the institution's needs, short-term and long-term. Explore use of investment vehicles that may not have been used by the institution - options, futures stock lending, real estate, venture capital, investment in businesses, foreign investments and various money management techniques. Consider financing through loans, bonds, bond anticipation notes, certificates of participation, etc. Emphasize ways in which the tax laws provide incentives to business and lending institutions to provide funding or equipment to higher education institutions. Change investment portfolio, sacrificing growth to some extent, but gaining greater income. This might allow reducing general funds support to areas that get increased income from the investment policy change.

16. Use total funds approach to budgeting, thereby reducing general funds expenditures by using other funds available to units. In such an approach, consider the expendable portions of endowment funds as well as the interest earned on the endowment, existing quasi-endowment, restricted and gift funds and the interest they earn.

17. Review possibilities for increasing revenue generating activities - providing space, specific services or skills (computer services, printing, consulting, research, technical assistance, etc.). Institutions should recognize the possibility of complaints from community suppliers of such services and the impact on the university's reputation and also be aware of unrelated business income tax implications.

18. Form private practice corporations similar to those in a medical center to generate additional income for faculty and the university. This may apply to areas such as engineering, law, architecture, management, chemistry or physics.

19. Review patent policy of the university to maximize possible returns to faculty members and the university as a result of research performed.

20. Sell university land, fine arts, properties and other assets or rent/lease land and properties that are not needed.

II. Decreasing Expenses

1. Reduce the number of positions through freezing vacancies, instituting early retirement programs, eliminating positions. Combining units, job enrichment and enlargement.

2. Moderate salary increases, or if necessary freeze salaries for a year to two or reduce salaries, or substitute pick-up of retirement costs which give employees more take home pay as compared with the same percentage

salary increase.

3. Evaluate fringe benefit costs, and reduce benefits or have employees bear a greater share of the cost.

4. Increase student employment as a lower cost substitute for full- or part-time enployees and as a means of generating income for students, thus helping enrollment and retention.

5. Where possible, employ part-time employees or 9 or 10 month employees rather than full-time employees to reduce salary and fringe benefit costs. Emphasize flex time approaches and job sharing in order to reduce personnel costs; encourage leave without pay.

6. Reduce, phase out and eliminate expenditures for non-academic units, functions, services and activities that are not essential to support the basic academic missions of the institution. The above actions and merging separate units will reduce managerial, staffing and support costs and will also reduce space needs and costs.

7. Emphasize use of new instructional and administrative equipment, technology, techniques and systems in order to reduce personnel and other costs, increase productivity and improve service.

8. Review university organization and hierarchy to determine if some units or positions can be eliminated or consolidated, thereby reducing the number of positions at all levels, including middle, upper and top administration. There may be too many high ranking individuals and too few staff.

9. Increase productivity by: reducing paperwork and red tape; encouraging delegation, job enrichment and enlargement; combining units; reducing hierarchy; rewarding merit, thus reducing the need for overtime, part-time staff and allowing the elimination of positions. Review time spent on various functions to determine if these functions can be eliminated or reduced, or procedures and policies improved leading to reduced work effort, thereby eliminating staff, reducing the number of full- and part-time staff or freeing staff to take on other duties.

10. Reduce the number and level of services and activities provided.

11. Set higher performance standards in regard to salary increases, renewal of administrative and academic contracts, implement effective performance evaluation systems and goal setting for all staff, including tenured staff. Award salary increases predominantly on merit based upon the performance evaluation.

12. Reduce the number of courses and sections and the number of small classes, thereby eliminating some overload and adjunct faculty costs and possibly the need for some full-time positions. Reduce/eliminate duplication of courses, i.e., similar courses given in two or more colleges or departments.

13. Increase the number of courses taught by each faculty member and number of student credit hours generated through more courses taught per year, larger classes; evening, overload or summer school courses regarded as part of a larger base load - thereby eliminating part-time and full-time positions.

14. Develop ways to insure that while academic freedom is maintained, that tenure does not become solely job security and thus can, in a few cases, be used to protect outright incompetence or less than satisfactory effort. Develop ways to evaluate tenured faculty (as well as all faculty and administrators) and to take action, in a timely manner, with careful protection to the individual, in those cases where action is necessary - counseling, retraining, salary freeze, probation, leave of absence, dismissal. Review impact on tenured faculty in the event of program reduction, phase out or discontinuation in order to develop means for retraining, placement elsewhere at the institution, early retirement or a generous system of severance pay and continuation of benefits for a period of time. Develop a system of non-tenure track positions in addition to the existing tenure system.

15. Tighten standards for granting tenure, promotion and renewal of contracts; consider program and financial implications and projections in addition to individual merit, as important aspects of the decisions to be reached; consider caps on number of tenured positions and various levels of full-time positions.

16. Reduce expenditures and combine, phase out or eliminate academic majors, programs, units, services and activities that are not:

    a. central to the mission of the institution;
    b. of major importance to the institution: and
    c. of high quality and/or low cost (and where there is little likelihood that the institution could afford to raise the quality of generate income to offset costs).

    In essence, spend resources only on those areas that are of great importance; do not spread resources too far. Bolster and support the good, potentially good, and required rather than bringing everything to a level of mediocrity. Prune, and use a scalpel now rather than having to swing a hatchet later. The above actions and merging departments and units will reduce managerial, staffing and support costs, space needs and costs and add to the teaching time available.

17. Cross train faculty so that those who have fewer students or courses because of enrollment trends can teach in other areas where there is ample enrollment. This would reduce the need for new full-time faculty or for adjunct faculty.

18. Change the academic calendar if this would help enrollment, energy or administrative costs, and not be a detriment to fulfilling the cademic mission.

19. Emphasize inter-library loans, use of technology, and other means of cost savings in order to reduce library expenditures.

20. Reduce costs for intercollegiate athletics.

21. Emphasize competitive bidding for goods and services. Explore with other institutions (educational and non-educational) joint buying of goods and services in order to lower costs; explore with other educational institutions sharing of library, transportation, maintenance and instructional equipment, classroom, laboratory and other facilities, perhaps sharing the costs of faculty or specialized administrators (e.g., risk manager, purchasing officer) in particular specialties where neither school needs a full-time appointee or arrange to minimize duplicating each other's programs, thus reducing expense.

22. Contract out certain support services, e.g., food service, bookstore, maintenance, cleaning, security. Alternatively, if currently contracting out, explore advantages/disadvantages of performing the services yourself.

23. Reduce or eliminate external consultants, expert assistance and outside services; use faculty, if possible, or build internal staffs if this is cost effective and meets the needs, e.g., legal services.

24. Emphasize economy, planning, efficiency, and care in use of supplies, paper, telephone, duplicating, mail, advertising, printing, and reduce expenditures in these areas.

25. Emphasize energy and utility cost savings throughout the institution through conservation, controls and new technology, including not only major items such as heating or cooling buildings or upgrading or converting boilers for multiple fuel use, but also smaller items such as shutting off lights, reducing use of elevators, and reducing the number of fans or heaters.

26. Computerize more systems, thereby reducing the number of staff necessary.

27. Reduce new construction and operating costs associated with new space by utilizing existing space more hours per week, weeks per year, and if necessary, renting space off-campus or using high schools, libraries, etc., for classroom space.

28. Close campus or individual buildings at certain times in order to save utility and maintenance costs; vacations should be taken at the time buildings are closed.

29. Coordinate and reduce advertising, publication and printing expense; convince advertisers to pay for certain publications; introduce advertising in alumni and other publications.

30. Encourage implementation of an effective suggestion system to focus on decreasing expenses, increasing income, and increasing productivity.

Conclusion

Higher education faces what will probably be the toughest years we have had or will have as individuals and as institutions. The task is indeed formidable and perhaps overwhelming - to work together as colleagues on extremely complex problems in order to get off the financial exigency road as quickly as possible and strengthen our institutions now and for the future, thus enabling us to turn onto another road. That road is the one we all wanted to ride on when we became involved in the field of higher education - to improve ourselves, our institutions and the field of higher education so that we can offer the highest quality, lifelong educational experience, research and public service, to our students, alumni, community, professional disciplines, region and nation. I am convinced that with understanding, determination, courage, cooperation and planning, we can indeed avoid financial exigency and enter into a new and better era for higher education.

FOOTNOTES

(1) This listing is based on material in Managing the Higher Education Enterprise, by Nathaniel H. Karol and Sigmund G. Ginsburg, Ronald Press, New York, 1980, pp. 226-227.

(2) Some of the ideas listed here are based on or are modifications or extensions of some ideas listed in: 1) Budget Task Force Report, University of Cincinnati, January, 1982 (this special Task Force consisted of representatives of the faculty senate, faculty and staff unions, administration, deans, students, staff and other groups). 2) Managing the Higher Education Enterprise, op.cit., various chapters. 3) "120 Ways to Increase Income and Decrease Expenses," by Sigmund G. Ginsburg, NACUBO Business Officer, December, 1982.

B. PLANNING TO AVOID FINANCIAL EXIGENCY

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Preventive medicine is actually a good metaphor. A person who is healthy goes to the doctor not for immediate care, but to preserve the good health one already enjoys. The doctor offers warnings about smoking, overwork, and diet. These small adjustments in life today can improve the quality of life when one is much older. And, so it is with an institution's financial health. It may not be a profound thought, but it's certainly true in hard times: the best way to deal with financial exigency is to prevent it from happening in the first place.[1] And like our hypothetical medical patient, the healthier the institution is when it starts planning for financial hard times, the better the chances are that hard times will never arrive.

Averting Financial Exigency

The question we begin with is simple enough to state. Let us assume that, after a decade or more of steady budgetary growth, the institution at which we all teach must contend with an unexpected reduction in revenues. The reduction could be caused by one or more of several factors: declining enrollment, reductions in federal and state aid to higher education, an unanticipated drop in income due to the poor performance of stocks or bonds or other institutional investments. The institution wishes to live within its means by reducing expenditures in real-dollar terms. How is that to be achieved without abrogating contractual commitments to the tenured members of the faculty?

The operating budget of a typical four-year institution can be broken down into two components: personnel costs and other operating expenses. Personnel costs, which include salaries and fringe benefits, make up almost 60 percent of the budget. The largest single item in the budget is usually faculty salaries, which at the typical institution consume approximately 25 percent of the budget.[2] If savings must be achieved, then, the faculty payroll is an obvious target.

Institutions can use three techniques to keep the faculty payroll under control. The first is to engage in long-term planning, designed to ensure that departments and programs within the institution can adapt to changes in enrollment and educational mission. The other two are designed to increase the rate of turnover in faculty positions by giving faculty members a financial incentive to identify themselves as candidates for retirement or replacement. One is the implementation of voluntary incentive programs to encourage early retirement, and the other is the development of career-change options. I want to discuss each of these techniques in some detail, starting with long-term planning.

Planning to Avoid Financial Crises

One of the AAUP's most thoughtful students of financial exigency, Professor Ralph Brown of the Yale Law School, observed at the Hard Times Conference that while everybody enjoys planning for growth, nobody wants to plan for hard times.[3] Yet plan we must; there is no doubt that thoughtful advance planning is a tested way to prevent forced faculty terminations, and that the absence of intelligent planning can make an institution vulnerable to what Professor Brown has called "panicky decision making" at the first sign of financial stringency.[4]

Planning has traditionally had two components -- what we might call a budgetary component and an academic component. Budgetary planning is what the term implies: an informed attempt to project revenues and expenses for the institution as a whole and for individually budgeted programs.[5] Most colleges and universities have administrators who are responsible on a full-time basis for budget planning. As a matter of policy, the AAUP urges institutions to include faculty members in the process by which budgets are prepared and reviewed. The Association's 1972 <u>Statement on the Role of the Faculty in Budgetary and Salary Matters</u> provides that:

> The faculty should participate...in the preparation of the total institutional budget ....(A)n elected representative committee of the faculty (should participate) in deciding on the overall allocation of institutional resources and the proportion to be devoted directly to the academic program. This committee should be given access to all information that it requires to perform its task effectively, and it should have the opportunity to confer periodically with representatives of the administration and governing boards....[6]

Academic planning, by contrast, is the responsibility of the faculty.[7] Decisions about the size and deployment of the faculty, the expansion or contraction of existing programs, the curriculum, methods of instruction, resources dedicated to research, and all matters of faculty status such as appointments, reappointments, promotions, and the granting of tenure should be entrusted in the first instance to the faculty. Under the <u>Statement on Government of Colleges and Universities</u>, formulated jointly by the AAUP, the American Council on Education, and the Association of Governing Boards of Universities and Colleges in 1966, faculty decisions on matters of academic policy are subject to substantial institutional deference, and should be disapproved only "in rare instance and for compelling reasons."[8] The <u>Statement on Government</u> suggests that the appropriate vehicle for long-range academic planning should be a committee composed of faculty members and elected by faculty members.

To some extent, the traditional distinction between budget planning and academic planning is blurring today. Academic decisions almost always have budgetary implications, and vice versa -- it is getting harder and harder to find a budget decision that does not have implications for the academic program. As budget planning and academic planning converge, it may no longer suffice to say that one is primarily the administration's responsibility while the other belongs to the faculty. If shared governance is to mean anything, then long-term planning is an obvious area for cooperative effort.

We must note that very few faculties have insisted on the right to set long-range policy through a committee constituted for that purpose. When George Keller, an educational consultant, surveyed forty campuses, he found that only four of them had faculty committees charged with the task of making long-term policy recommendations. "(F)aculty often absent themselves from sitting on committees that entail difficult financial adjustments or cutbacks," he concluded. "Faculty academic or financial committees are becoming somnolent instead of more active. Abdication is at least as serious a problem as exclusion."[9]

The answer, we think, is that there is a constructive role for faculty policy committees to play in good times as well as a painful role to be played in hard times; if healthy institutions make an effort to put these committees in place now, then we believe they can play an important role in averting financial difficulties before problems arise.

Early Retirement

We turn now to two remedies for financial problems designed to give faculty members an incentive for identifying themselves as candidates for retirement or replacement. Early retirement plans provide immediate financial incentives for inducing professors near the normal retirement age to retire earlier than planned or to phase into retirement. Career-change programs involve cash grants, counselling, training, and placement programs to encourage junior faculty members to leave the teaching profession altogether. In each case, the institution essentially buys out or "front-ends" an enduring financial obligation, converting a stream of salary payments into a discounted lump sum. Although the programs typically save no money for a year or two after implementation, and can even increase the institution's payroll in the short term, they can result in very substantial budgetary savings over a four- or five-year period. Each program is targeted at a particular category of professor -- an early retirement plan at senior professors in their late 50s and early 60s, and a career-change program at young faculty members in their 30s and early 40s. Each has been successfully used by hard-pressed institutions, although in each case one must be sensitive to potential problems and abuses.

We start with early retirement plans. For those of you who are interested in the many different configurations early retirement plans can take, you should look at Professor Carl Patton's report on page 1a of the "Hard Times" issue of Academe. The notion behind an early retirement plan is simple enough to understand. An institution may "buy out" a professor's employment contract for less than the total sum of the professor's annual salary expected until retirement. The institution will save quite a bit of money because the "buy out" will ultimately be smaller than the salary that otherwise would have been paid over the period. Let's assume that a 60-year old professor earns $30,000 a year and has ten years to go before reaching the institution's normal retirement age of 70. The professor can expect to earn $300,000 over that ten-year period (a bit more, probably, with typical salary increases, but $300,000 is close enough). If the professor elects to retire early, at 60 instead of 70, he or she may be eligible to receive, let us say, a lump-sum payment of $75,000, instead of $30,000 in salary. The institution would be $45,000 down after year one (compared to where it would have been if it had not adopted an early retirement plan). But it would be only $15,000 down after year two, since it has saved the $30,000 in salary it would otherwise have been obligated to pay to the now retired professor. It would be $15,000 up after year three; $45,000 up after year four; and so on. By the end of year 10, the institution would have saved $225,000, although no savings would appear until the second or third year after the professor's retirement.

Professor Patton describes many variations on this general theme. One extremely attractive early retirement option involves the acceleration of full-value retirement benefits, usually by supplementing the benefits provided by the third-party operator of a university plan until the professor reaches normal retirement age. Another popular variation is phased retirement. In its most common form, a phased retirement plan allows a full-time faculty member to retire gradually over a four- or five-year period by reducing to three-quarters time in year two, half-time in year three, and so forth, with a corresponding reduction in salary. At some institutions, retirement benefits are phased in over the same time period, so that a professor teaching on a half-time basis will actually receive more than half of the equivalent of a full year's pay.

Perquisites and fringe benefits can be very important, particularly to senior faculty who wish to retain office space or laboratory assistance or eligibility for subsidized health care benefits. For that reason, early retirement plans often involve a commitment on the institution's part to continue a professor's perks and fringes -- for example, by continuing to provide health insurance and making employer contributions to TIAA-CREF pension plans.

Many institutions today are adopting early retirement options, and there is a surprising level of interest in early retirement plans in the senior ranks of the teaching profession. A survey conducted in 1978 by Professor Patton showed that four out of every ten professors aged 50 to 62 would retire early if assured of payments equal to their full pension benefits. Six out of ten would take advantage of a phased retirement program. Of those who did elect to retire early, Professor Patton found that 97 percent were either satisfied or very satisfied with their decision to take advantage of early retirement; 83 percent were professionally active since retiring; and 88 percent reported no perceptible change in their standard of living. For many professors, perhaps more than we may have imagined, early retirement can be an attractive option.

But there can be problems as well. An early retirement plan must obviously be voluntary and noncoercive. It works best when it is established at a financially healthy institution and is available to any faculty member who wishes to take advantage of it. It may not work satisfactorily if it is a transparent effort to cope with a looming financial crisis, or if it is applied selectively to a small number of faculty members.

Recently, at a small liberal arts college in Pennsylvania, eleven professors were invited to participate in what the college's president called a "One-Time Severance Benefit Program for Selected Tenured Faculty." Under the program, specific faculty members in programs scheduled for a reduction in personnel were invited to retire and were urged in a letter from the president and dean to "give this proposal serious and prompt consideration." Needless to say, many of the faculty members did not want to retire and resented the implicit threat in the letter that they would be retrenched if they elected not to participate.

Fortunately, matters never reached a head at that college; the president unexpectedly resigned and the selective early retirement plan was never implemented. But the events at this college illustrate what can go wrong with an early retirement plan. If such a plan becomes a way of pressuring reluctant faculty members into retiring, it threatens academic freedom and has a debilitating effect on faculty morale.

Another criticism of early retirement plans is their perceived tendency to select the wrong people for displacement. Early retirement options are most attractive to professors who are readily reemployable and these may be the very faculty members whom an institution is most reluctant to lose. By allowing attrition through self-selection, the fear is that the wrong people will elect to retire, leaving the institution only with people who cannot find positions elsewhere. This seems a bit far-fetched to me, given the relatively small number of professors who have chosen to take advantage of early retirement options. It is also inconsistent with the results of Professor Patton's research; he found in 1979 that most professors electing early retirement options did so for personal reasons unrelated to their ability to find positions at other institutions.[10]

Career-Change Programs

We turn now to the third technique for averting financial exigency. Career-change programs provide a means for encouraging younger faculty members to retrain for other positions or to leave academe altogether. Like early retirement, the theory behind career-change programs is that by making a modest investment now the institution can save substantial sums in salaries for the "out" years of what would otherwise be a long-term employment contract.

The traditional career-change program involves the supplementation of a faculty member's salary for one of two terminal years with a grant intended to cover the cost of graduate school tuition or some other form of retraining assistance. Typically, a biology professor could use the grant to retrain as a computer scientist, and could then either be moved to a vacant position in the department of computer sciences or could accept a job with another employer.

Some universities have combined the grant program with a very successful temporary out-placement program, in which faculty members are assigned for a semester or academic year to corporations or government agencies. Approximately half of the faculty members placed elect to leave the university permanently when their internships are over.[11]

At other universities, career-change programs have become part of broader career development programs. These programs often include job placement assistance, skills development workshops, seminars with private and government employers, and other forms of counselling and assistance.

Career-change programs have a good deal of potential. Professor Patton estimates that almost one-third of today's faculty members have given serious thought to leaving academe -- a figure that should not surprise us, given the pressurized and highly competitive nature of the first years of college teaching and the comparative financial attractiveness of other career options.

The Role of Collective Bargaining

I want to comment very briefly on the role collective bargaining can play in averting financial exigency. Yesterday, when we discussed financial exigency at our first plenary session, my colleague Larry White mentioned that we are witnessing in academic collective bargaining the same concern with job security provisions that we have already seen in other unionized sectors of our nation's economy. As states trim their expenditures in the face of recession and high unemployment, it becomes increasingly difficult for public-sector unions to negotiate over salaries and fringe benefits. Instead, unions are insisting on measures to preserve existing jobs from the ravages of recession. Financial exigency and program discontinuance provisions, which were not high on the list of negotiating priorities when times were good, are the teaching profession's equivalent of job security guarantees, and are today the subject of spirited negotiations on many campuses.

Collective bargaining provisions have concentrated primarily on the procedures to be followed in the event that an institution's governing board declares a financial exigency. Almost always, the agreements do not define the term "financial exigency" and give the governing board open-ended discretion in deciding whether a state of exigency exists. They do, however, provide for consultation with faculty representatives, and some of the better contracts include significant and effective embellishments. The agreement in force at the University of Cincinnati, for example, contains a very useful exchange-of-information provision:

> Should the Administration anticipate a financial exigency..., the data upon which this anticipation is based, including the amount of savings which it deems is necessary to effect, shall be presented to the (union). It shall also provide such additional data which may be available and which the (union) may request....

Implementation of financial exigency plans is delegated to a "Financial Exigency Committee" consisting of seven people appointed by the administration and seven faculty members appointed by the union. As is true of many other collective bargaining agreements, the University of Cincinnati contract goes on to describe, in considerable detail, the criteria for identifying faculty members who are to be terminated and the appellate rights of faculty members who wish to challenge their terminations.

Collective bargaining agreements have not been as imaginative when it comes to developing strategies for avoiding financial exigencies. Several AAUP chapters have negotiated early retirement provisions. They range from a single sentence in the contract at Cuyahoga Community College ("Early retirement incentives shall be explored by a joint committee of the college and the (union)") to two carefully crafted pages of single-spaced text in the Fairleigh Dickinson and Hofstra University contracts. Most of the contracts containing early retirement language allow faculty members to retire five to seven years before the normal retirement age and to receive a fraction of their last year's salary each year until they reach normal retirement age. At a few institutions, faculty members are allowed to convert their annual payments into a discounted lump sum using a formula contained in the collective bargaining agreement.[12] Other institutions allow faculty members to elect a gradual retirement option (Oakland University), and to retain perquisites after retirement, such as library privileges, office space, and access to secretarial services (Ashland College).

Contract provisions on career-change programs and other retraining incentives can be a fertile area for bargaining. For example, in a provision titled "Professional Development Fellowships," the Bard College administration has agreed to make a $2,000 grant to any faculty member who receives a semester-long placement with a corporation or government agency. At the bargaining table, serious consideration should also be given to altering the typical management rights language which leaves all financial authority in administration hands. Faculty are accepting a greater role in budgetary matters, acquainting themselves with the intricacies of the typical formidable institution budget. These activities should be part of an express and significant faculty role in the budget process. For only when they are acknowledged as real partners in financial planning will faculty fully accept measures undertaken in response to financial exigency.

The Future

I would like to conclude with some general observations and some educated guesses about the immediate future. It has been a dozen years now since words like "retrenchment" and "financial exigency" became a common part of our vocabulary. We all feel the impulse, I think, to try to put the events of the last dozen years in perspective. We wonder whether the worst is behind us or whether the real crisis is still to come.

Most colleges and universities have tightened their belts considerably since 1970 -- more than they would have imagined possible, in some instances. They have done so by paring noninstructional budgets, by allowing attrition to reduce the size of their faculties, and most significantly by limiting salary increases for faculty members in order to keep their personnel budgets from rising as fast as the cost of living. But relatively few of them have been forced to terminate tenured appointments. Financial constraints are real, but they do not yet rise to the level of a financial exigency at most institutions. Many colleges and universities have taken some tentative steps to plan for worse times ahead, but most have not yet engaged in large-scale planning to avert the possibility of faculty layoffs down the road.

How likely is it that times will get worse before they get better? There are mixed signs. On the plus side, two of the deadliest enemies of balanced institutional budgets are in hibernation right now -- double-digit inflation, and uncontrollable increases in the cost of heating oil and other energy sources. Colleges and universities, like any other providers of services, are sensitive to changes in the national economy, and if a prolonged period of stagflation is slowly ending there may be reason for optimism over the relatively short term.

On the negative side, will there continue to be a strong market for the service that colleges and universities provide? The traditional consumers of that service are the nation's men and women aged 18 to 21. Between 1979 and 1994, the number of 18-year olds in our population will drop by 26 percent, from 4.3 million to 3.2 million.[13] In other words, the pool from which college students traditionally come is getting much smaller. On the other hand, it is not easy to tell how dramatic the effect of the population drop will be on actual enrollment. In the last four years, the college-age population has declined by a relatively modest two or three percent. This may reflect the fact that colleges are enrolling more adults and more foreign students. We were surprised to learn recently that the average student at an American community college today is 36 years old.[14] Even though the 18-year old population is declining, the number of college-eligible persons may actually be increasing as more adults and more foreign students take advantage of higher education programs. The relatively small enrollment declines so far may also reflect fairly dramatic increases in the high school graduation rate and decreases in the number of college matriculants who drop out before graduation.

The encouraging news is that we are not far from the time when the 18-year old population will start to increase again. Demographers predict that by 1994 -- only eleven years from now -- the grandchildren of the post-war "baby boom" generation will begin to reach college age. College enrollment in the mid-1990s is expected to increase rather rapidly, although we still do not know how long the recovery will last or how pronounced it will be. At just about the same time, a very large percentage of the nation's higher education faculty will be reaching retirement age. Many faculty members began their teaching careers in the 1950s and early 1960s, a period of unparalleled expansion in higher education. They will be completing thirty-five or forty years of service by the middle part of the next decade. Professor Patton has estimated that approximately a quarter of all professors teaching today were born before 1925. These men and women will be retiring just when enrollments will begin to rise again.

We can predict, then, that the next ten to fifteen years will be difficult for higher education, but that times may be somewhat better by the mid-1990s. Our immediate task is to plan intelligently for the next dozen years. And make no mistake about it: these are going to be difficult years. The Office of Population Research at Princeton University has generated some projections showing the effect of enrollment declines on the market for full-time college and university teachers. According to the Princeton demographers, the nation will need 26,000 fewer professors in 1986 than it has today, and 45,000 fewer in 1996 than it will need in 1986. Ordinary attrition, particularly in the form of retirement, will take care of the shortfall between 1986 and 1996. But between now and 1986, the number of positions lost due to enrollment declines will come perilously close to exceeding the number gained through attrition. If we have a major crisis requiring the large-scale termination of full-time positions, it is likely to be before this year's freshman class graduates from college.

We must be vigilant. We must not lose any more time before putting contingency plans in place. But we must also bear in mind that we may be close to the end of the period of greatest danger. With some luck, and with the help of demographic factors for which none of us can take the credit, higher education may survive the financial battering of the last decade without massive aggregate loss of full-time faculty positions.

FOOTNOTES

A. The views expressed herein are those of the author and do not necessarily reflect the policies of the American Association of University Professors.

1. I am not, in fact, the first to analogize financial planning to preventive medicine. The AAUP's 1975 _Primer on Collective Bargaining for College and University Faculty_ observed that financial exigency "is an area where 'preventive medicine' is invaluable. It is much easier to negotiate financial exigency procedures _before_ an exigency occurs, and a faculty bargaining agent is well-advised to address this issue thoroughly in negotiations, whatever the current financial state of their institution." (Page 87; emphasis in the original.)

2. All figures are from H. Bowen, _The Costs of Higher Education_ (1980) 7.

3. R. Brown, "Hard Times: Report on the Conference," 69 _Academe_ 4, 5 (1983).

4. _Id_.

5. Budgetary planning "is really an institution-wide effort, involving complex evaluations of on- and off-campus constituencies, potential funding sources, national and local economies, and other data." P. Strohm, "Faculty Roles Today and Tomorrow," 69 _Academe_ 10, 11 (1983).

6. _AAUP Policy Documents and Reports_ 45 (3d ed. 1977).

7. "I feel no hesitation in declaring such planning to be primarily a responsibility of the faculty of an institution. In the case of such planning, members of a faculty should not be satisfied merely to be consulted in a diffuse and inconclusive way." P. Strohm, "Faculty Roles Today and Tomorrow," 69 _Academe_ 10, 11 (1983).

8. _AAUP Policy Documents and Reports_ 43 (3d ed. 1977).

9. G. Keller, "Commentary: The Courage to Plan," 69 _Academe_ 16 (1983). _See_ P. Strohm, "Faculty Roles Today and Tomorrow," _id_. 10, 11.

10. C. Patton, _Academia in Transition: Mid-Career Change or Early Retirement_ (1979).

11. C. Patton, "Voluntary Alternatives to Forced Termination." 69 _Academe_ 1a, 5a (1983).

12. Under the Hofstra contract, a professor who earns $30,000, who is 60 years old, and who has been at Hofstra for fifteen years may retire early and receive either: 100 percent of his salary annually for five years, in equal monthly installments; or a lump sum equal to 80 percent of the sum that would otherwise be paid in the years before normal retirement -- in our example, 80 percent of $150,000, or $120,000.

13. D. Breneman, "The Coming Enrollment Crisis: Focusing on the figures," 15 _Change_ 14, 15 (March 1983).

14. H. Hodgkinson, "Guess Who's Coming to College: A Demographic Portrait of Students in the 1990s," to be published in the March-April edition of _Academe_.

V. UNION-MANAGEMENT COOPERATION

A. A UNION PERSPECTIVE ON COOPERATIVE VENTURES IN A PERIOD OF RETRENCHMENT I

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Introduction

Gathered here today and within the reader audience are many of the people that can make things happen in higher education collective bargaining. Whether management "hired guns" or union "outside agitators," we are the ones that have effective recommendations on issues that are very important to collective bargaining and, more significantly, very important to higher education.

I have a minority opinion. Knowing this, I can't help feeling nervous. I think we're facing some problems and I think we're not adequately addressing them, and I am afraid that we have not addressed them in any forum. I intend to address them now, and hopefully, incite you to action--or at least thought.

While I have my own agenda of saying important things to you, I also want to make sure that I complete my assignment. Working together as we do in a world that is all too often surrounded by the four walls of an agreement and reduced to language that is clean and unambiguous on its face, I very carefully reviewed my copy of the program when it arrived so I could carry out my assignment and provide no basis for action either on procedural due process grounds or on substantive due process grounds.

To refresh your minds, the program provided me with four questions and an assumption. Following herewith, as we often say, is reasonable evidence that my assignment is being completed in good faith. I hereby state my willingness to assume that we are in a recessionary economy. That completes step number one.

The remainder of my assignment concerns four questions that I have to answer. Following herewith again is that portion of my assignment:

I was asked:

> ...What approaches can faculty unions embark upon to lessen the impact of faculty retrenchment?

My answer is:

> Get more money!

I was asked:

> Will industrial labor relations models work in academe?

My answer is:

> No.

I was asked:

> Should job security remain a major union

priority?

My answer is:

Yes.

I was asked:

To what extent should unions cooperate with management in order to assist the institution in meeting its financial problems?

My answer is:

To whatever extent necessary in order to get more money because the industrial model doesn't work and job security remains a major priority.

That would seem to complete my assignment, yet when I review my remarks, about all I do is point out the difficulty of accomplishing complex intellectual objectives utilizing written contract language. That is not news to us. I want to say more, and now that I've answered these questions, I can say some things that I think need to be said. Most of us have participated in some sort of activity that could be described as rearranging the deck chairs on the Titantic. We might not want to admit it in this environment, but we have all had our Titantics, and some of them have been ratified by the Trustees or even by union memberships. Frankly, I believe that the Titantic model applies to higher education today. We are sailing into troubled waters and unless appropriate action is taken, we stand a good chance of sinking the ship. To be sure, we will have some survivors, but not enough to justify the lavish expenditures that have gone to installing the mahogany railings on our institutions of higher education; therefore, a subtitle for this paper might be entitled "We Also Must Save the Ship".

My initial thoughts suggested that perhaps such activities as defining exigency or identifying the four phases of retrenchment could be compared to the deck chairs. Upon reflection, I think not. We need to define exigency and to establish procedures for its application. We don't really need deck chairs. But what we are doing in this conference is patching up lifeboats and making sure that we have as many survivors as possible. It is important to maximize the number of survivors and this conference will make a significant contribution to that effort. Let me say that unless we also focus our attention on the ship itself and do all that we can to avoid ice flows and even learn how to patch the hull after we hit a few, American higher education as we know it will not survive. We will all be submitting our resumes to Hamburger University and hoping that McDonalds will employ us.

The major impact of retrenchment on the academic institution of higher education will be to seriously harm its academic integrity and the quality of its intellectual life. This must be prevented at all costs. Before I move on to discuss why I say this, and what I think can be done, let me share an important assumption. A faculty union has a significant responsibility for, and must play a leadership role in, developing, maintaining and improving the quality of the college and university environment.

This is a belief that I have always held and I look forward to demonstrating that belief in the California State University.

Collective bargaining is simply a means to an end. It is not an end itself other than our own job security. We must use collective bargaining as a vehicle to improve the quality of the academic environment in which faculty must function and, in that fashion, improve the quality of the academic institution itself. If you don't buy my assumption, the rest of what I have to say might not make sense.

Now to the assumption relevant to my assignment here today. To be sure, we are in a recessionary economy. My own paycheck tells me that. What I know about salary agreements only confirms what I already know. But, for consideration of how to save the ship, it is not enough to simply assume a recessionary economy. It is necessary, but not sufficient. We also have to acknowledge several other aspects of our economy as well.

The Conditions We Face

Very significant to our consideration on how to get out of this mess is to recognize that the recession, or whatever the politicians and economists want to call it, of the past few years is not the only issue that forces us to confront retrenchments. At the initial National Center Conference in 1972, speakers talked about the end of the period of growth and the beginning of something called "steady state." Other speakers even indicated that problems at the crisis level were imminent.

The primary problems referred to in 1972 and still of concern to us here today when we think of a recessionary economy are resource problems, or rather the lack of resources. Resources are not simply a function of the economy. They are also a function of enrollment. The AAUP publication, Academe entitled "Hard Times" and appropriately done in black banner talked about the cyclical nature of enrollments and urged us all to plan carefully for the 1990's where the cyclical decline would lead to "renewed high levels of demand."

The most recent Chronicle of Higher Education chart on this issue showed that we would see a decline in the 18-24 year old population until 1995 and a slight upturn by 2000. Even slighter increases by 2025 and 2050 were forecast. The 1990s will see us with a market potential of over 5 million less students than we have today. That means that all of us have a problem. Things are not going to get better in our work lifetime.

The chart just discussed presents national figures. Few institutions recruit from national markets. Regional and state-wide figures show even more problems with some institutions while a few quite obviously are somewhat safe. Figures for the Northeast and the Midwest with 40% of all of the colleges and universities show a 33% decline between 1980 and 1994. It is little consolation to a college facing dramatic losses in enrollment that it is simply the lower end of the national average. Misery, in this sense, does not love company.

For public colleges and universities, the problems are almost doubled. With an increasing emphasis on tuition fees to support public institutions along with the continued use of formula driven budget mechanisms, public institutions are hit twice. They lose the tuition and fees in the first year and the formula suffers shortly after. Even if the recessionary economy does recover, as the actor in Washington seems to want to say, he is too old to help us with the 18-24 year old population supply.

The pain of the cost squeeze will continue to increase. We cannot simply hold the line, even with no enrollment increases. Aside from distressing things like faculty demands for increased salaries, the cost of health insurance, social security and college administration continue to rise. With public colleges and universities averaging a 6.5% cost increase, we need a 6.5% increase in revenue just to keep even, assuming no inflation.

To our problems with the economy, enrollment and costs, we have to add a more qualitative issue that, while representing an incredible challenge, is also a problem. We can call this the computer invasion. Many observers are saying that the personal computer is one of the most significant developments in the history of personkind. It may be. At any rate, we have Carnegie-Mellon University aiming to get completely wired up with IBM by 1985 at a cost of $3,000 to each student and untold how many millions to the University and to IBM. Clarkson and Stevens Institute of Technology are also getting into the act in a big way and little Guilford College will require computer proficiency for graduation. I cannot, with any accuracy, suggest what all this will cost American higher education. I know it will cost a lot, both in terms of direct application of financial resources and in the application of intellectual energy to figure out what to do with all of the machines. For example, how do all the Guilford College faculty become computer proficient?

I have cited a number of factors that will influence American Higher Education over the next fifty years, but I have left to last what I think represents the real challenge. In the well publicized <u>New York Times</u> best-seller <u>Megatrends</u>, John Naisbitt identifies ten trends that he says will lead us to experience a paradigm shift..."a fundamental change in our assumptions and beliefs about how and why things work." While we may quibble about whether we are really in a paradigm shift or about the scientific validity of the book, I am of the opinion that we must examine these trends in light of how we are to go about helping higher education adapt to the future.

Seven of the ten trends have a particular relevance for what we face as a set of problems and how we can go about structuring a solution. I will use these in my discussion of what higher education needs to do.

Most importantly, we are moving from an industrial society to an information society. This transition will have a revolutionary impact as did the movement from an agricultural age to an industrial age. Society and institutions of higher education will be transformed, for intellectual information is an economic entity just as coal and iron have been. Information costs something to produce, and people are willing to pay for it. This transformation really began in 1956 and today a majority of workers are employed in the primary or secondary information sector. What more important information factory is there than an institution of higher education!

A second trend that joins the mega category and has special impact on higher education is the trend towards a global society. The United States is now an interdependent part of a total global economy. The responsibilities of an institution of higher education to prepare for a global economy are serious. Ranging from the obvious need for more language emphasis to the not so obvious need for more travel, the global economy has requirements that must be met by higher education.

What I have said thus far serves only to emphasize the fact that I believe higher education as well as society is standing on the threshold of a new era--an era that will require new structures and new missions and one that faculty and collective bargaining professionals must be aware of or we will all go down with the ship, sitting in a not so comfortable deck chair.

Faculty Must Lead

We face a unique challenge today. We have the opportunity and, in fact, the mandate to restructure higher education. Our public constituency is not what it once was and our role and mission are being questioned like they never have been. The current existence of an institution is no longer the sole criterion for its continued existence. We must adapt to a changing population, a changing society as well as to changing skill and educational needs.

In order to do this, we must develop a vision. We need to define what it is that higher education can do in a changed society and then organize for ourselves the means and resources to do that. Faculty must play a leadership role in this process. For intellectual reasons alone, faculty are the essential ingredient to a changing role for higher education. Even if all we do is to supply and train deans, presidents and even management-labor relations people, the faculty is where it all begins. We have the futurists, the technologists and even the humanists and the philosophers that can develop a strategic vision of the future and of higher education role in that future.

One of the megatrends that we face relevant to this issue is the trend towards participatory democracy and away from representative democracy. Naisbitt takes the position that grass roots political movements, including greater participation at the local government level and such activities as political initiatives, are going to be the most important democratic context in the future. He applies that in the corporate world, and it translates into an increased interest in workers' rights and greater labor participation in management-level decision making. This is consistent with his view that change occurring from the bottom up has greater potential for permanence. Specifically, he states that "...only one group can make the most pervasive changes--the employees of a corporation." What better example for all of this exists other than a university.

Another trend relevant to our consideration is the trend toward decentralization and away from centralization. An agricultural age and an information age are decentralized. Agriculture needed large land masses and information travels through the air or over wires and does not need physical proximity. Making steel or cars requires physical proximity and large scale centralization.

The changes that come about in the future are not going to be large scale initiatives that are established top down. The future will see more bottom-up strategies in which limited solutions to societal problems grow naturally in different settings and out of different local conditions. Thus, a single college and university can develop a local approach to resolution of its problems and initiate a national trend. The federal government cannot mandate. Again, what better opportunity for faculty to innovate and lead.

If we agree, then, that faculty must lead, we now need to examine the alternatives available for that leadership and the power available to faculty.

Faculty Must Use Every Available Power Mechanism

I consider the collective bargaining process a power mechanism. It allows a legally elected representative to sit down with an employer and discuss the allocation of significant resources. In the traditional sense, an industrial model will not work in higher education and, for that matter, in the public sector. Simply stated, in the pure industrial model both parties have access or control over the resources at issue. Labor can withdraw its human resources, and management can increase price or decrease profit margin and control its share of the resources.

This situation is far from applicable for public sector collective bargaining in higher education. Not only do higher education institutions depend upon resources that they cannot control in a bargaining setting, but today's problems are not solely problems of resources allocation. They are qualitative problems viewed in the context of total resource availability. How you allocate the impact of a 20% enrollment drop is hardly the point. That really is deck chair bargaining.

In full realization that this conference is concerned with collective bargaining, I have to remind us that collective bargaining alone is not enough to resolve our problems. Faculty need to seek out and utilize other power mechanisms. Let me suggest two.

The first one is legislative and political action. This is hardly new and I will not devote much time to it. I assume that those of us in this room would agree. It is important to note that others are beginning to agree and to point out that a "joint venture" is called for. Right now I'm speaking of labor-management "joint ventures," not the organizational "joint ventures" that have provided me with a form of personal job security for a number of years.

Evidence of faculty moving into the political action arena within our three national organizations has been with us for some time. Just recently we have witnessed faculty moving in other organizational areas as well. The NEA building in Washington now houses the National Coalition for Science and Technology. This group has grown out of a sort of science PAC to promote federal funding of research and other science-related legislation. They now have an office and their very own lobbyist.

The Consortium of Social Science Association opened a Washington lobbying office in May of 1981 and perhaps the newest addition is the American Physical Society that opened an office in January. Increased faculty lobbying is welcomed. The task is becoming one of leadership in coordinating all of this and deciding to march to at least a similar drummer (by a vote of 3 to 2 with 4 abstentions).

I would like to use a quote from Senator Robert Stafford, a prominent education advocate from Vermont to make another point. In a recent interview he was asked what higher education can do to promote the higher education agenda. Not surprising he stated that we should bring our needs directly to Congress, but he also said, "Faculty generally do a better job of this than the presidents." In other words, we should be lobbying our shared agendas together.

I would like to suggest another power mechanism that will assist in moving towards our vision that may be new to you. On the surface, something called a business-education partnership might not be seen as a power mechanism, but it is. My definition of a power mechanism is very simple. It is anything that can increase and/or control resources.

The American Council on Education recently reported that more campus-business partnerships had been developed in 1982 than in the previous five years. News stories, articles, essays, governors and many management dominated higher education groups are calling for direct support from the business community in research, in training for high technology and anything else that will attract money. If faculty do not take steps to become involved in these activities, we will be allowing business interests to have an influence that may or may not be consistent with our vision of the university.

Another closely related phenomenon that bears watching as well is something that is often called corporate education. In 1980, AT&T spent $1.7 billion on training and education. A management consultant firm named Arthur D. Little's Management Education Institute now offers an accredited Masters degree program. Again, according to the American Council on Education, business and the corporate world today offer 2,250 courses that are of sufficient quality to warrant academic credit. Hamburger University really does exist and it served 26,000 students last year and has now applied for approval to award an associate degree. Imagine an associate degree with a major in Big Mac or Fries.

Even if we lay aside the serious academic freedom and freedom of research, inquiry issues that arise with the involvement of the business world, we must take action for resource allocation issues alone. (Carnegie-Mellon, for example, cannot tell us much about their new computers because they have agreed with IBM to keep trade secrets confidential, trade secrets such as how best to use computer software in teaching Introduction to Electrical Engineering.)

An interesting and almost scary sidebar to both the role of private business and national defense in the academic world is available when you look at the so-called "super computer" situation. Scientists are concerned that the United States will forever lose its technological position if it does not develop the "super computer." Currently, Japan is leading in this development. The world contains about 50 "super computers." American universities have four of them. One is funded primarily by private industry research and the other three are trying to figure out how to get more private research money. Two of our large weapon research laboratories have four of these computers each. It is obvious that defense is more important as a national priority than university research. Our "super computers" will either be inventing new ways to kill us all or be in the control of private industry and working on alternatives to PAC-MAN and Tron. One is reminded of a not so old adage, to paraphrase for obvious reasons: If you have them by their super computer, their hearts and minds will follow. So much for freedom of intellectual inquiry and computers.

Some may consider it inappropriate to talk about political action and business-education partnerships at a collective bargaining conference. Fortunately, at least for me, anyone that considers it inappropriate is sitting down and I am standing up here. The point is, we must recognize the critical need for faculty to exercise leadership and move towards their vision of higher education. This movement requires action in at least three areas in order to effectively coordinate and deliver this leadership along with the representation function. Faculty need an organization along with resources and a leadership structure to develop their own vision. A collective bargaining representative can do that, but bargaining a contract is not enough to accomplish the mission. We also have to seek political influence and we also must move to influence the involvement of business and the corporate world in higher education as well.

Before anyone gets me wrong, I want to see business and corporate money involved in the university and I want to see some of that corporate training money spent on college faculty. I also want the faculty union involved to be sure that the best interests of the total faculty community are considered. In an information age, the economic treatment of information places universities in direct competition with other organizations that want and need that information. Faculty need to advocate for their share in a coordinated fashion.

Faculty Must Cooperate with Everybody

Anyone who wants to argue that a faculty union shouldn't cooperate with anyone else, even management, is just plain silly. Unions cooperate with management to produce a contract. I have never seen a union get so mad that it insists on writing a contract unilaterally. Unions always insist on lengthy negotiations. We love to debate. The point isn't cooperation, the point is sharing an agenda. Faculty organizations should develop cooperative relationships with everyone who shares their vision of higher education and the future.

Obviously, faculty organizations have a representative agenda, but if they have a firm grasp on that agenda and a mature attitude towards power and its application, they can make significant progress by working cooperatively. Naisbitt suggests that development of new coalitions is the political reality of the future and the obvious extension of a participatory and decentralizing trend. Faculty organizations can and must lead in that coalition building.

When cooperation extends beyond the campus environment and moves directly into the political arena, not only should labor and management work together, but other constituencies of the campus should be brought in. Students, alumni, parents, other university employees and future students all have a vested interest in the life of the campus and may well be effective partners in any number of ventures. A higher education PAC is in my dreams.

Approaches to Lessen the Impact of Retrenchment

In this final section, I will address several areas that could be considered approaches to lessen the impact on retrenchment. What I am most concerned about is the long-term view. Many people are concentrating on getting the lifeboats in order. This is fine, but we also need the long-range view. We need to decide if the issue is better hull design or better ice flow detectors. (It might also be an issue of where we base the MX missiles or can you dig a silo on an ice flow).

All the approaches that I will discuss stem from the initial need for developing a strategic vision of what higher education should be doing in an information age. The task is to move from where we are today to a vital and intellectually alive academic community that effectively serves the needs of a society undergoing a major transformation. Faculty as individuals and as participants in a power/leadership process must develop that vision and advocate for its implementation.

One concept in need of immediate examination is the nature of the product of our higher education institutions. The newspapers are filled with the problems of math, science and engineering shortages and how we are going to fall behind everyone in every race. Some less publicized numbers from the College Placement Council for 1983 graduates suggest that engineering jobs are down by 12%. Humanities and the social sciences are only down 9%. So much for immediate shortages. The real issue is the qualitative description of the college graduate.

Many corporate leaders, such as William C. Norris from Control Data Corporation, have stated that graduates "...must be educated more broadly, to enable them to analyze complex economic and technological problems and teach sound decisions... ." Other observers, including Naisbitt suggest that the rapid change of the future calls for the generalist that can adapt, a person that has learned how to learn. Even vocational schools are getting lost in the variety and specific requirements of technological skills, and moving towards interdisciplinary approaches that bring English, math, science and technical teachers together.

We also should apply the vision that we formulate on the nature of the college graduate to the vision of the appropriate college faculty member. Job security or tenure is and must remain a top priority. If the vaunted theory Z organizations tht seem to be so successful in Japan can make do with lifetime employment commitments, so can we. We need to look at tenure as a lifetime commitment to the individual not a promise that you can teach sociology 678 for the next 43 years. College faculty also may have to be flexible. We should not expect less from college faculty than we do from college graduates.

The demographies of our work force are also important to our considerations of alternative approaches. The work force is slowing down in numbers and getting older. The work force currently with us will constitute 90% of the work force in 1990 and 75% in the year 2000. The movement from an agricultural age to an industrial age occurred in the context of an expanding work force. We do not have that condition now. This means that unprecedented training and retraining will be required and it must be well coordinated in the context of limited resources. Experts have indicated that today's graduates will have to be retrained four times before their careers are over which means at least twice for those currently employed.

Altogether, the business world spends over $30 billion on training. This breaks down to approximately $300 per worker. The capital investment per worker is approximately $3,300. As we move in the direction of an information society in which human capital and brain power replace machinery and natural resources, these figures will come closer together. The thought of a business and corporate expenditure of $100 billion for training is astounding. It would not take too much of that for higher education to remain solvent and even to advance.

I won't even talk about federal commitment like the GI Bill that might go for retraining the displaced worker. This is not a useful discussion until we get a new president, which my organization will gladly try to do. The need to serve a REAL influx of older students has to be considered.

Technology itself offers some suggestions. Information technology is capable of distributing the substance of its message over time and distance. Interactive computers can be feet away or miles away. We have an unprecedented opportunity to reach new audiences in new ways. I recently stated that it might be easier for CSU to reach Alaska natives by telecommunication to increase the enrollment at Bakersfield. While the statement was facetious, the concept is valid. We can now reach foreign students, handicapped students, and each other in many different ways. These ways need to be explored.

As a final comment to this section, I will return to Megatrends. One of the relevant trends that Naisbitt discusses is the trend towards long-term solutions to problems and away from the short-term solution. In addition to providing the rationalization that has allowed me to ignore the reality of the retrenchment problems we face in 1983, the trend is important as a means of helping us understand how to address the problem. One of the key questions to ask in keeping with the long-term approach is: "What business are you really in?" Taking the long view allows an organization to really look at that question and some startling answers come back. What if the railroads had decided that they were in the transportation business instead of simply in the railroad business. Not only might we have profit-making companies that expanded beyond trains to other forms of transportation, I might have to fly back to Washington on the Wire-Lackawanna Shuttle or even worse, the Amtrak Air Express.

It seems to me that colleges and universities should ask themselves that same question. If not at the overall institutional level then, at least at different department and unit levels. "What business are we really in?" At least one college has done just that. The Washington Post recently reported that Bowie State College was changing from a teacher training institution with a predominantly black enrollment to a program that would emphasize computer and technology course work for working adults. A slight but significant change in defining what business this college is really in. Maybe some of us can lead your institutions to ask that question.

Conclusions

The American institution of higher education will change. I have no doubt of that. The only question is how. The current crisis, brought on by a recessionary economy, enrollment losses, the need to introduce a significant new technology in the context of forces that are transforming society to an information age--this crisis requires faculty leadership in creating a vision that we can all advocate. The collective bargaining process is not sufficiently broad in scope to solve all of our problems. It is appropriate for the bargaining agent of the faculty to reach out for political support and private enterprise support for its vision. Faculty should cooperate with any individual or organization that shares their agenda and, in that fashion, develop alternatives that will lessen the impact of retrenchment and enable institutions to honor their lifetime commitment to individuals. Megatrends, by John Naisbitt offers advice on many of the problems we have today and how their solutions might be addressed. We are living in a troubled and a challenging time.

Perhaps, I have done my assignment twice. Perhaps, I have done it once and then digressed for a time. Most of all, I hope I have kept you awake and said something that you will think about tomorrow.

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B. A UNION PERSPECTIVE ON COOPERATIVE VENTURES IN A PERIOD OF RETRENCHMENT II

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The CUNY Experience

It's very difficult to be controversial when one is talking about cooperation but I have a unique talent for that and although I am not really trying to be controversial, I have a feeling it may wind up that way. On this topic, I think I will differ from the two previous speakers, not that I disagree with what they had to say, but only that I shall attempt to be much more pragmatic and talk to you about some actual examples of cooperation between union and management which hopefully you can take back with you and make some use of with whatever adaptations are necessary. I am not unrealistic about the troubled waters as you have heard it described but I am not the purveyor of doom that some people seem to be; I think we need to get our house in order, we need to take a look at where we've been, what mistakes we've made, where we're going and I think, certainly, we need to enhance the quality of leadership in all of higher education, but I have very optimistic feelings about our survival, notwithstanding the fact that probably, as you all would agree, the institution of higher education is changing and will change dramatically.

In terms of my own experience at City University, just to set a little bit of background, which I think in order to give you a little better understanding of what I am going to say, is made up of 10 four-year institutions, 8 two-year institutions and a graduate center. We have been in collective bargaining since the enactment of the Taylor Law back in 1967 in New York State. The first contract was in effect in 1969 and I think the important point, in terms of cooperation, is that during those early years of collective bargaining when it was very new on the scene, there was not much cooperation going on in any real sense. In fact, there was a good deal of nonproductive adversarial kinds of activities beyond what needed to be. When one faces a contractual grievance or some litigation on an issue, obviously I believe we should be as adversarial as we have to be and we will fight like hell to protect the rights of people we represent.

But there are a whole host of other kinds of areas where that adversarial relationship is not only not necessary but, in my judgment, not desirable. I think that the degree of productive cooperation between a union and its management is enhanced in direct proportion to the strength and sophistication of the union. If you think about that, I think it is not so difficult to understand. When it is possible to arrive at understandings with an organization and you know that that organization can do what it says it will do and doesn't have to go back and fight within itself and then come back and say we're sorry, we couldn't do this, obviously the ability to cooperate productively on important matters is enhanced. To the degree that the basic collective bargaining relationship is a mature one or sophisticated one, whichever description you like, I think that you will find from that grows a much more successful degree of cooperation in terms of the institution itself.

The Financial Crunch

At CUNY, this relationship was born rather suddenly out of adversity. As many of you know, back in 1975/76, when the City of New York was de facto bankrupt and the state was talking about the same thing, those of us associated with the University woke up one morning many millions of dollars poorer than we went to bed the night before. Within a few weeks after that, we lost many millions of dollars more in withdrawn funding in terms of what we thought we were going to have. The University was thrown into a severe trauma the magnitude of which I hope never happens to any other institution in the country. There was very serious consideration, at that time, of the University ceasing to exist, or if it existed, in a dramatically or drastically different form. Out of that adversity, in my opinion, grew this relationship that we now have.

The collective bargaining relationship goes far beyond sitting down at a table and negotiating a contract. As important as the contract is, the relationship that I am talking about now is beyond and sometimes outside the contract. What happened was that the University management, in its efforts to save the University, realized that there were certain doors that they could not open in terms of where the decision making process was taking place at the state government level. The union, through its own connections and through organized labor, was able to open some of those doors at critical times and, as a matter of necessity, the University leadership and the union leadership found themselves working side by side as one, trying to save the institution. Out of that severe trauma, which we all lived through, came this relationship which is built on some degree of trust and integrity on both sides. These are necessary ingredients if you are going to have mutual cooperation. I try to separate this out from the actual day-to-day enforcement of a contract activity.

The Dynamics of Cooperation

It's also difficult sometimes for us to explain this to our own constituency. One of the problems, from the union point of view, is to the degree that you cooperate with management, you have to worry about your constituency seeing you as too cooperative, or as a company union or whatever other term and it's important for us, I think, to understand that the kind of cooperation I'm talking about should, in no way, dilute the union's ability to meet its duty of fair representation in a vigorous and, if necessary, militant way. I think that, at least at CUNY, people on both sides of the aisle understand those differences. We can fight very diligently for our own causes if we're processing a grievance or any other issue where we have a disagreement and, at the same time, be cooperative in terms of what we're doing in the political arena and to obtain the necessary funding for the institution. Other examples of our cooperative ventures include our dealing with the New York State Regents and a whole host of other outside agencies in order to maintain the institution as one that we all would be proud of in terms of the excellence of its standards and the integrity of its programs.

We survived the financial crunch and were saved by the state legislature by the passage of a bill which guaranteed the University as an entity, including all of its component parts, and which established a different kind of governance and funding format for the future. Every year we have to fight with the governor about not getting enough money and every year there is talk of retrenchment and sometimes it is very serious but, since those dark days, we have not had to retrench and we don't believe that we'll be in a retrenchment mode for, at least, the foreseeable future.

This is another point I want to make about the dynamics of meaningful cooperation between unions and university managements. There must be, in my judgment, reciprocal benefits. You can't have a cooperative relationship if only the institution is getting the benefit or vice versa, if only the union is getting the benefit. At least, in my view, the things that I am talking about now have benefits, obvious benefits for the institution and less tangible but nonetheless important and real benefits for our organization. One of the basic decisions that we made was to get ourselves involved in promoting the institution itself in terms of its quality, enhancing its image in a public relations sense, and in student recruitment. We have invested much of our time and energy in this area. It's hard to measure exactly what kind of success one achieves in the area of student recruitment, but I think that certainly it is an upbeat activity.

We are currently involved in individual innovative recruitment programs at a variety of our campuses where we will say to the college - if you'll come up with an interesting and new plan for student recruitment, we'll help you fund it. We won't help you fund what you should be doing anyhow. We're looking for new ideas. That's worked very well. We have several programs going and the colleges are pleased, our faculty is pleased and the union is pleased. On a more general scale, in 1979, the union produced and partially paid for a supplement in the New York Times called "Opportunity U" based on City University of New York. That too is an example of cooperation, I think, that will stand any kind of test. We went to the presidents of the colleges with the cooperation of the chancellor and said look, we think we can do some good, we would like to do this kind of thing. We need our talents and our brains because naturally, you don't find that on the management side, and we'll fund it partially, but in order to make sure that we have your cooperation and your involvement, we would like some funding from each of the colleges. In fact, that's what happened. Each of the colleges put some non-tax levy money into the project, the union put a good deal of our funds into the project and a good deal of our time and energy and in 1979 produced our first Times supplement. They are available through our office if you're interested in seeing them. I must mention, not incidentally, that the genius behind this and the next publication I am going to talk about is my associate on staff, Aaron Alexander. In 1980, we planned a repeat performance with another supplement in the New York Times called Why Go to College? which was then reprinted in a variety of different editions all over the country with some minor modifications to make them suitable for other institutions.

In addition to that, we've produced some other publications. We've produced a document on the missions of City University. One of the things that is going to get us through this troubled future, as I think one of the other speakers said, is our ability to focus on where we are going; what is our mission, whatever it is for our institution, and not try to be everything to everyone. This publication was an attempt to say to the world this is what we believe the mission of the City University of New York is. We also did a publication on the amount of public money going to private higher education in New York State. That's a controversial subject which I will pass over quickly. The Chronicle of Higher Education saw fit to, if I may use the term, chronicle this kind of cooperation in their June 2, 1982 edition. They did a two-page article on this kind of union-management cooperation as it exists at CUNY. We can do things that many other institutions can't do because of our size and resources and I'm well aware of that, but it seems to me that in terms of the nature of this kind of thing, that there is something there for any organization or any institution no matter how small, how large, whether it's private or public, if the will is there to do it.

In addition to student recruitment, in our last two collective bargaining agreements, we have had a program on faculty development. We use the term faculty development rather than faculty retraining because it sounds better and it's more acceptable academically. Actually, it is faculty development. Our purpose here is to make available, on a voluntary basis, to faculty who are tenured and who are in disciplines where there is a declining student demand, the opportunity to acquire skills in disciplines where there is an increasing student demand. We try to guarantee, if you're successful, when you finish the program a chance to at least teach one course in the new field. It's a way of enhancing the flexibility of the tenured faculty. Our program is modest. We've started with a program in the teaching of writing and one in data processing and we will eventually move into English as a second language, all this reflecting our urban orientation. It's modest because we do not want to make mistakes. We're doing it very cautiously; we want to make it as productive and as positive a program as possible. All of you know, if you work in Academia, that when you get into this area, there are toes to be stepped on. Any kind of skills training that you provide will always be looked at with a raised eyebrow by the people in that discipline. You mean to tell me that you think you can teach so and so to teach my subject in just one semester or two semesters of training? You know it can't be done! So you have this kind of academic interdepartmental jealousy to be concerned about. My expectation is that while it is a modest program now, we'll be moving beyond that soon.

The only other thing I'll mention, because I have used up my time, is that we are working now to try to develop an early retirement incentive program. There have been a variety of programs around for state workers; there've been some suggested by some of the politicians which are not acceptable to the union. Management of the University and our union are working cooperatively here. We don't agree totally on what we want, but I'm confident we'll work that out and we'll come up with a plan to make early retirement more attractive.

VI. ADMINISTRATIVE ASPECTS OF RETRENCHMENT

A. RETRENCHMENT: FACULTY AND STAFF POLICIES

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Fiscal stress has become a way of life in higher education in many parts of the United States today.[1] As a labor intensive enterprise, this fiscal stress translates into retrenchment of human resources. While short-term fiscal stress may be met with policies that defer the maintenance of physical plant or major purchases, long-term fiscal stress inevitably translates into cuts in the human resources and realignment of the organization's goals toward mission. Before any specific action can be instituted to change faculty and staff policies, and before retrenchment activities can be initiated concerning human resources, a plan must be established to determine the desirable modes of implementation. Preliminary to any planning, it is imperative that the problem be carefully determined for its magnitude and scope. Therefore, before discussing particular strategies and policies, it is important to gain an understanding of three phases of the overall process: 1) determining the problem; 2) identification of the areas and methods of retrenchment; and 3) retrenchment policy implementation.

Determining the Problem

For any retrenchment strategy concerning faculty and staff to be successful, those affected should receive a clear explanation of the problem facing the institution. In addition, the courts have held that tenure rights cannot be voided without a clear showing that the institution is faced with a real financial crisis.[2] Information provided to faculty and staff should include, to the extent available, the history of how the problem developed, some definition of the magnitude of the problem and its longevity, and an assessment of the impact on the mission of the institution and its human resources.

Considerable attention has been given to the terminology used in outlining fiscal problems of higher education institutions. The word "exigency" has taken on meaning beyond that of the dictionary through the actions of the American Association of University Professors (AAUP). Therefore, to foreclose any possible misinterpretations, institutions have sought to use alternative language which will meet the requirements of the courts, while not implying any obligation to follow the policies of the AAUP. However, when an institution has adopted the AAUP policy as its own, it is obligated to follow the policy (mere changing of terminology does not void the obligation).

In defining the scope of the fiscal problem, the courts held that evidence of sizable operations deficits are sufficient indicators. In addition, where it can be shown that there are declining enrollments, the courts have held that actions are appropriate if taken to reduce the human resources dedicated to those problems. These indicators need not be found on a university-wide scale, nor must deficits extend to the capital assets. It is sufficient that the shortfall in both operational funds and enrollments be connected to the specific and identifiable programs being retrenched.

Determining the Areas and Methods of Retrenchment

The process of problem identification and the establishment of retrenchment strategies necessarily overlap. For purposes of discussion, it is helpful to think of retrenchment strategy formulation as a second phase.

In this phase, attention must be given to the process of input. Much has been written about the desirability of input from persons affected by policy change to enhance acceptability and prospects for successful implementation. The method of input will vary between various types of personnel because of differences in existing policy and in the role of faculty and staff. Where academic governance systems are available, utilization of these systems is critical. While governance systems tend to operate slowly and might appear to be an unattractive input methodology, it is nonetheless important to recognize these systems and prepare for the post-retrenchment period. Failure to utilize the governance system will add to the negative responses which can be anticipated when adverse personnel actions are taken. Therefore, whether it be academic governance for faculty input, negotiations with collective bargaining representatives for unionized personnel, or staff counsels where they exist in non-union settings, it is important that existing systems be utilized.

Where the existing systems have inadequate procedures to address the problem, additional support or redefinition of procedures may be required to enhance their effectiveness. Administrative assistance may be necessary to guide the existing processes in defining the scope of their deliberations. In addition, expansion of the normal method of receiving personnel input may be desirable to broaden the base. Where committees limit input to their own members, it may be necessary to establish a wider forum through open hearings, questionnaire input, telephone "hotlines", or specific invitations to key faculty and staff to ensure a great amount of involvement and potential acceptability.

Implementation

To the degree that the first two phases of problem definition and retrenchment strategies have been carefully and successfully carried out, the process of implementation becomes less onerous. Even under the best of circumstances, implementation of any strategy is stressful and potentially damaging to the long-run interest of the organization. Elimination of programs, reduction of certain services, or elimination of faculty have the potential for disruption of efforts toward mission. Therefore, persons responsible for implementation of the strategies should be involved in the deliberations leading to formulation of strategy and definition of the problem. Effective implementation must relate not only to the problem, but must be consistent with the intent of the representative bodies that developed the strategies.

Developing a Philosophy for Retrenchment

For the process of human resources retrenchment to be effective, certain concepts must be considered, and when adopted, followed with consistency. It must be determined at the onset whether deliberations concerning both the definition of the problem and the methods of retrenchment are to be conducted in open public settings or through private sessions. Whichever course is chosen, it should be utilized consistently, lest suspicions arise that some processes are genuine while others are conducted only for the pacification of certain constituencies. Likewise, when the various procedures produce written documents, the availability and distribution of these documents must be consistent with the philosophy of open or private deliberations. Seeking perceived equity is as important as the achievement of actual equity. Where suspicions arise about the deliberative procedures, it is unlikely that an objective evaluation will occur on the merits of the outcome of those procedures.

Short-Term Retrenchment Strategies

Short-term can be defined as "cash flow" shortfalls, which do not require a complete rebudgeting within the organization. The most common of these strategies takes the form of "across-the-board cuts" and are generally unrelated to concerns of duties or responsibilities of the affected units. Such a strategy, while appearing to have equity, may fall far short in actual equalization because of timing, anomalies in the existing budget, etc. Since the budgets of institutions of higher education are dedicated primarily to the support of human resources, when across-the-board cuts can no longer be taken in funds dedicated to human resources, other strategies must be considered.

To minimize the impact on persons already in regular employment of the institution, it may be desirable to place a "freeze" in the hiring process until the short-term fiscal deficits have been corrected. This strategy, however, if instituted over a long period, will create additional stress within the organization because position vacancies never seem to occur when and where the organization can adjust. The pressures to "unfreeze" positions soon create political problems within the organization which weaken the effectiveness of the strategy.

To control hiring for longer periods, consideration can be given to a more selective "freeze" on refilling of vacated positions and establishment of new positions. This control over positions has the advantage of saving not only salary costs, but generating less demand on the fringe benefit insurance systems, thereby creating additional savings. However, since most organizations tend to staff beyond minimum needs to accommodate lost time through illness, vacations, and turnover, the elimination of positions loses its strategic value at the point where further eliminations in personnel would result in elimination of desirable functions.

As with hiring freezes, control over vacating positions does not address the elimination of human resources commitments where no turnover occurs. It may be necessary to institute layoffs or to reschedule the work force through voluntary reductions in the working day, week or year. However, voluntary rescheduling of the work force may not lead to the desired retrenchment.

Layoffs, as a strategy, can encompass temporary or long-term separation from the work force. Temporary layoffs in higher education may take the form of short-term shutdowns of the institution during holiday periods or when programmatic requirements permit a reduction in support staff during breaks in the academic year. Long-term layoffs may be feasible when the financial stress eliminates funds for development or maintenance in the physical plant and positions dedicated to those functions are no longer needed.

For many years, faculty personnel have been employed on both academic year and calendar year appointments. A change in employment policies to schedule support personnel in a like manner is another viable alternative. However, such rescheduling may not generate the anticipated level of savings in compensation since in many states non-academic personnel are eligible for unemployment compensation during periods of inactivity. In such cases, a better alternative would be to reschedule throughout the entire calendar year to reduce the total number of hours worked and compensated, and thereby generate a greater percentage of savings.

Other short-term strategies include subcontracting to produce a savings through the use of outside personnel, increasing the use of student employees who are generally paid at a lower rate, and utilizing temporary personnel supplied by community agencies. Each of these strategies must be evaluated for its reliability to the functions performed, as well as the cost savings. An additional strategy worth consideration is the use of retired personnel as either paid or unpaid volunteers. As with all the strategies mentioned, the duration and the progress toward meeting financial stress goals must be constantly monitored and adjusted. No specific strategy can be assumed to be continuously desirable over long periods of time and changing circumstances.

Long-Term Strategies

Long-term strategies can be defined as reductions in the budgetary base of the total institution or any of its parts. Such reductions flow from a change in the mission or program of the part to be reduced. Prior to implementation, each strategy must be evaluated for its impact on the balance between the academic mission and the essential support services. Focus must be maintained throughout the process so that the institution eliminates its weaknesses and maintains or improves those programs, services, and research components upon which the future will be built. A realistic evaluation of support services must be conducted to assure that the academic program is not diminished unnecessarily or impeded by inadequate support.

As programs and the related human resources are reduced or eliminated, attention must be given to seniority and ability. Care must also be taken to preserve the gains of affirmative action while recognizing the role of seniority as a criteria in defining job rights.

The magnitude of fiscal stress may vary between types of funds and may create a disparity which must be analyzed for its impact. Where general revenue funds are more severely restricted than auxiliary, grants, or contracts sources, a differential impact on human resources will be evident as well. However, when adjusting the work force, source of funding should not be the only criteria for determining which positions are subject to elimination in the budget reduction process. Criteria to evaluate individuals should include seniority, field of competence, skills, or future potential within the institution.

When addressing any long-term strategy, the time frame for the reductions must be considered. While some reductions may be possible by instituting immediate layoffs, this strategy may be inappropriate for faculty or persons who are close to regular retirement age. Therefore, the time frame for implementation of the strategies may vary by weeks, months or even years, depending on the nature of the impact on the human resources.

It is also important to recognize the natural processes which occur within the organization that may add to or detract from the effectiveness of any strategies adopted. If eliminations are to occur within a work force experiencing a high rate of turnover, instituting layoffs prematurely may be disfunctional. The use of a longer time frame and allowance for personnel eliminations through regular turnover may be more efficient. On the other hand, it may be necessary to encourage turnover in areas which have historically been stable by offering voluntary incentives before instituting layoffs.

Strategies Related to Long-Term Retrenchment

Before instituting specific human resources-related strategies, the organization should undertake a review of its present administrative organization, policies, procedures and practices, staffing and support services. The savings that result from the elimination of organizational units and related personnel are advantageous not only for salary and benefits savings, but also for minimum negative impact upon the remaining organization if such units have been judged to be inefficient or ineffective toward basic goals and programs. This is also true where it is found that policies, procedures or practices, rather than adding to the efficacy of the organization, are counterproductive and actually create waste. Policies developed to govern human resources are related to the status of the organization and may be counterproductive as the organization is changed. For example, policies encouraging full-time employment may not be cost effective in times of stress when program eliminations make it desirable to utilize more part-time personnel.

Many services performed within an institution of higher education occur in response to certain cycles of activity. A readjustment of the cycle of activity could prove to be more efficient in the utilization of human resources and result in a net savings to the institution. A shift of the academic calendar, or time of wage increases may result in long-run savings.

As faculty and staff positions are identified for elimination, it may be desirable to facilitate transfers within the organization rather than face the costs of displacement. Providing some form of retraining may be more efficient than displacing individuals and paying the costs of contract "buyouts" or unemployment.

With the passage of age discrimination legislation, it is no longer a viable option to force the retirement of individuals within the protection of the law. However, individuals may volunteer to retire if a system of incentives is established, and a program for personal planning and assistance is offered. Faculty, in particular, may select early retirement if they are allowed to phase down their duties and responsibilities while maintaining a level of income and benefits providing a transition to retirement.

There are advantages of flexible scheduling as a method of increasing the productivity of the human resources. In times of retrenchment, the use of flexible scheduling can open the door to individuals who might not otherwise want full-time regular scheduling, but whose performance and productivity meet the needs of the institution.

Work-sharing, like flexible scheduling, can offer an opportunity to employ or retain individuals whose productivity levels meet the needs of the institution without incurring the higher costs associated with full-time employment. Work-sharing also has the advantage of creating a new pool of candidates who might not otherwise be available to the institution. This new pool could increase the quality of performance, while at the same time, reduce the quantity of financial commitment necessary to accomplish desired service.

When it becomes necessary to displace personnel, whether faculty or staff, several strategies besides straight-out termination are available. The political, as well as practical, value of outplacement services makes it a desirable strategy, particularly for faculty and professional employees. Outplacement services may be provided through current staff or by contracting with agencies who provide specialists. In either case, personnel who are assisted in securing employment outside the institution create opportunities for retrenchment and a net financial savings to the institution.

Where individuals have contractual rights by institutional policy or law, creation of a system of "buyout" is a viable option. While buyouts are generally related to contractual rights, it is not the only condition justifying the strategy. Buyouts, like early retirement incentives, do not have to occur on a short time frame. Options can be offered to individuals to allow some control over the timing of their exit and the amount of the buyout received.

Before instituting a system of buyouts for tenured faculty, it is important to understand the legal status of tenure under conditions of fiscal stress. The courts have held that a governing board has inherent power to establish a new policy to terminate tenured faculty even though tenure was conveyed to that faculty before the policy was put into effect.[3]

It has also been determined that implementation of any policy to terminate tenured faculty must be devoid of any constitutional right violation, and arbitrary or capricious behavior on the part of the administration or governing board.[4] As stated earlier, release of tenured faculty does not have to follow the guidelines of the AAUP on fiscal exigency, unless such guidelines have been adopted as institutional policy.[5] Neither does implementation have to be institution-wide or by tenure and non-tenure status, but may be program or quality justified.[6] Some courts have held that the institution has a responsibility to make a good faith attempt to find a suitable position within the institution. However, this good faith attempt does not extend to the provision of retraining, relocating or severance pay, unless already an institutional policy. The buyout strategy for tenured faculty even in view of the court decisions, are desirable more from a political standpoint than one of contractual rights.

Conclusion

Any discussion of faculty and staff retrenchment policies would not be complete without concern for the long-term impact upon an institution. Insecurities which result from the process of retrenchment permeate the institution and affect even those persons whose status is otherwise obviously secure. As stated earlier, the perceived equity of any program may be as important, or more important, than the actual equity that the program achieves. The long-term confidence of the faculty and staff toward the governing board and administration will set the tone for morale well beyond the retrenchment.

It was recognized long ago that the creative activities of a university operate best in an atmosphere of security. Commitments to academic freedom provide this type of security.

Of equal importance to the creative process is a feeling of economic security by individual employees and their dependents. Retrenchment activities spread out over a long period of time are counterproductive to achieving a return to security and negatively impact morale. To the extent that care is taken in the development and execution of retrenchment policy, the long-term impact upon the excellence of the institution can be positive.

FOOTNOTES

1. The ideas presented and discussed in this paper do not necessarily reflect the policies and procedures of Michigan State University or its faculty.

2. Krotkoff v. Goucher College, 585 F.2d. 675 (4th Cir. 1978)
   AAUP v. Bloomfield College, 346 A.2d. 615 (N.J. App. 1975)
   Scheuer v. Creighton University, 260 N.W. 2d. 595, 601 (Neb. 1977)
   Bignall v. N. Idaho College, 538 F.2d. 243 (9th Cir. 1976)

3. Steinmetz v. Board of Trustees, 385 N.E.

4. Vallejo v. Jamestown College, 244 N.W. 2d. 753

5. Mabey v. Reagan, 537 F.2d. 1036

6. Brenna v. Southern California State College, 589 F.2d. 475

7. Browzin v. Catholic University, 527 F.2d 843

B. BARGAINING RETRENCHMENT: PROCEDURAL CRITERIA FOR LAYOFF

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Introduction

Many of us who have been involved in collective bargaining in higher education since it first started can recall when retrenchment policies were not included in collective bargaining agreements, and in fact when most institutions did not have a stated policy about retrenchment. Unfortunately, the need for such policies came upon a great many people too late in the game; that is, the need for retrenchment was upon them before the policy was worked out or negotiated. Developing a policy in those circumstances is extremely difficult, since every discussion immediately becomes personalized in the minds of all participants. For those who are not in immediate need of a retrenchment policy, or who do not see retrenchment in the near future, I suggest that now is the appropriate time to develop such a policy and negotiate it into a collective bargaining contract if necessary.

I. Areas of Concern: Defining Retrenchment

One of the most common errors made by those of us who did negotiate retrenchment policies was to neglect to include a proper definition of retrenchment. Retrenchment involving tenured faculty is easily defined. If tenure itself is defined as continued employment until termination due to resignation, retirement, or termination for just cause after due process, then a sort of negative definition of retrenchment for tenured faculty is possible. That is, a definition of retrenchment as termination caused by financial exigency, program redirection, or enrollment reductions is easily made.

The danger in not clearly defining retrenchment is the problem in differentiating between a standard nonrenewal of probationary faculty, and a retrenchment of probationers which may carry with it certain recall rights, and thereby create limitations upon management flexibility in filling positions. In these circumstances, the lack of a definition may mean that taking a position vacated by normal attrition, particularly the nonrenewal of a probationary faculty member, and moving it to another department or program may constitute a retrenchment of the first program. This would, of course, involve all of the consultation with the faculty called for prior to a retrenchment, and a limitation for a stated number of years in management's right to fill that vacated position other than through the recall of the probationary faculty member.

II. Designating Authority

Another area for consideration in the negotiation of a retrenchment policy is the designation of the party with the authority for deciding the need for and extent of any retrenchment. This may be the president of an institution, the chief executive officer of the system, or the governing board, and this clause will be the place where the extent of faculty involvement in the decision making process will be clarified. It is also occasionally possible for the contract itself to be the means for determining the need for an extent of any retrenchment. For instance, the collective bargaining agreement for the

University of Montana states that if the legislative allocation of funds is reduced by a certain stated percentage, or if the enrollment declines by a certain percentage, that constitutes prior agreement that retrenchment is necessary.

III. Defining the Unit

Another area of great concern is the definition of exactly what unit or college is being retrenched. In following the AAUP recommendations for a retrenchment policy, the definition of a financial exigency involves a financial problem which affects the institution as a whole. It is difficult to imagine a definition of a financial problem which does not affect the entire institution or, in the case of a multi-campus system, the entire system. However, if other stated causes for retrenchment are to include such things as program redirection or enrollment decline, it should be possible to define a retrenchment as affecting only one of the institutions in the system. In most cases, it should be possible to have an even narrower definition of the unit being retrenched, such as a department or a program within a department.

IV. Defining the Order of Layoffs

Once the need for retrenchment at an institution has been determined, and the unit within which the reduction is to occur has been defined, we enter the negotiation of the traditional heart of retrenchment or layoff policy. That is, the definition of just what the order to layoff will be. The layoff of temporary employees first, followed by probationary employees, and ending with tenured employees is a fairly common negotiated procedure. However, it is possible to have some variations on this, including such ideas as the retrenchment of tenured part-time faculty before retrenchment of full-time probationary faculty. Within each of the categories which are established, it is possible to have the administration determine the order of retrenchment, allowing for such things as the continued effective maintenance of the program offerings and the consideration of affirmative action goals to be factors in the decision. With a traditional union agreement, the order of layoff within the categories will be by strict seniority. However, even that statement leaves to be negotiated the definition of how seniority is to be calculated.

V. Delineating Faculty Rights

Having defined what triggers the need for retrenchment, the method of determination of the unit being reduced, and a stated order of retrenchment within that unit, a very important area to consider is the rights of the individual faculty member affected. Without such a statement, a layoff contested by an individual faculty member might well result in a third party determining that the entire process is a sham, conducted to enable the termination of a tenured faculty member without establishing just cause.

Among the negotiated rights of laid-off faculty members are the notice period, which might be different for financial exigency cases than it is for programmatic changes, and programmatic changes which should allow for longer notice periods if the institution's planning process is working properly. The notice period might also be different for tenured faculty than for probationary faculty. Also, depending upon how closely the bargaining agent adheres to traditional union priorities in its negotiations, a statement that the individual may claim any vacant position for which he or she is qualified, or even bump a less senior individual in another department where the individual is qualified, might be included. This right might extend from a college throughout an institution or from an institution to the entire multi-campus system. If such rights are stated, details such as a clear statement of who will determine whether the individual is qualified for a vacancy, and whether the individual can retain tenure, leave accumulations, and salary level should also be included.

A key factor in differentiating between a termination for cause and a layoff is a statement that the affected faculty member is granted the right to return to the department or program from which he or she was laid off, if a decision is made to fill any additional positions in that department or program. A statement should be included defining just how long the individual retains such recall rights. This section might include the negotiations of which fringe benefits might be continued, for how long, and at whose cost.

Conclusion

An important area easily overlooked is the negotiation in a contract, or the statement in a faculty handbook, of the alternatives to retrenchment which will be seriously considered by the institution. A customary statement includes a management pledge to attempt to offer other suitable employment to the affected individual, and an effort to handle any necessary reductions through normal attrition. Other things which might be considered include a liberal sabbatical policy for affected faculty, the funding of leaves for retraining in areas and skills useful to the institution, long-term unpaid leaves for career redirection, and job sharing. An effective way of handling the necessary reduction in force might be to encourage the resignation or early retirement of more senior and highly paid individuals through the negotiations of a financial incentive for such early separations. In Minnesota, we negotiated in 1981 a financial separation incentive for all faculty who were at least 55 years of age and who had at least 15 years of service in the system. Those who agreed to resign or retire at the end of the 1981-82 academic year were offered one year's salary, one-half in July, 1982, and one-half in July, 1983. The incentive was sufficient to convince 73 senior faculty to take early retirement, and the delayed payments enabled the institutions to handle the financing of replacement faculty in those areas where such replacements were deemed mandatory.

I believe that it is essential for those who have not already negotiated a retrenchment policy to do so while considering all those factors which I have mentioned as being essential parts of the problem. Given the forecasts for population decline and the state of the economy generally, the need for a retrenchment policy will soon be felt by all those who have not already become involved in the process of layoffs. Additionally, for all of us, there is a need for a greater concentration and effort in developing suitable alternatives to the retrenchment of faculty, particularly the need to avoid layoffs of tenured faculty who have provided many years of service to the institution.

VII. AN ALTERNATIVE PERSPECTIVE

A. HOW NEUTRALS CAN HELP BARGAINERS IN TROUBLED TIMES

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There is a long tradition of using third parties to help management and labor achieve closure when they find themselves at impasse and feel unable to make further progress on their own. The processes of mediation, fact-finding, and arbitration are familiar to us, and we all recognize that the presence of an unbiased and presumably fair neutral changes the ways in which bargainers interact. But by the time neutrals enter at impasse, positions have usually become polarized and flexibility of the parties to consider new alternatives has severely eroded. Although impasse may be the point in the bargaining process at which neutrals are most commonly used, for many reasons it may also be the period in the relationship between the parties at which neutrals can be least effective.

There is an equally long, but much less widely recognized, tradition of neutral involvement in bargaining which has as its major purpose the prevention of impasse, rather than its resolution. The development of joint labor-management committees with the participation of third parties, the Relations-by-Objectives initiatives of the Federal Mediation and Conciliation Service, and the attempts by several social scientists to change bargaining interactions through Organization Development (OD) techniques are all examples of what might be called preventative mediation. The purpose of these programs is to alter the structures and processes through which parties interact at the bargaining table so that they can strengthen their relationships and more effectively resolve their mutual problems.

The next fifteen years promises to be a period of unusual stress for higher education in general, and for union-administration relations in particular. Enrollments and resources are likely to decline in the face of inexorable demographic trends and competing demands for other critical social services. If we focus our attention and efforts on our differences, we may use the adversarial and contentious environment of the bargaining table to fight more and more over less and less. In the face of an increasingly malevolent environment, that is a fight that both sides may lose. On the other hand, if, without losing sight of our differing interests, we can focus our attention on working together to solve extremely complex problems of mutual concern, bargaining may fulfill its promise as an instrument for institutional development. The problems we will face in the 1980s and 1990s make it imperative that we consider a new approach to bargaining to accomplish this.

My Rutgers' colleague, Bert Brown, refers to this new orientation as "mutual-gain bargaining." It is an orientation to bargaining that may enable us to move away from arguing over who will control the retrenchment process, and to move towards considering collaborative ways in which union and administration can develop creative alternatives to retrenchment. I believe that it represents the form of bargaining that will characterize successful labor-management relationships in higher education during the next decades.

The creative use of neutrals can be one way of redirecting the course of negotiations towards mutual gain bargaining. Last year, with support from the Fund for the Improvement of

Postsecondary Education, a third party worked over a twelve-month period with the administration and faculty union of a two-year, public community college to test the idea that a neutral could be a catalyst for more constructive mutual-gain bargaining through involvement with the parties before, during, and after negotiations, as well as at impasse. Union-administration relationships at this college during an earlier ten-year period of campus growth and expansion were considered satisfactory by both parties. However, the onset of enrollment declines, shifts in student interests, and inadequate state fiscal support levels led the administration during the previous round of negotiations to declare a state of fiscal emergency, institute a reduction in force, and lay off a number of tenured faculty. The negotiations that year were understandably bitter and contentious. As the parties prepared to renegotiate a successor contract in the summer of 1981, their relationship was clearly adversarial, characterized by high levels of distrust and personal animosity, unwillingness to share information, and an almost complete serverance of communications. The layoff actions were being legally challenged, and charges and countercharges were being exchanged. When the union and administration were approached and asked if they would be willing to participate in a pilot program to determine if neutrals could help make bargaining more constructive, they both accepted and gave as their reason "it can't get any worse."

They agreed to permit interviews of union and administration representatives, and distribution of a questionnaire on campus to assess the climate of present relationships. They also agreed to permit the neutral to sit in at negotiating sessions with the right to offer suggestions to the parties (later expanded to permit attendance by the neutral at all caucuses). They indicated their willingness to participate in workshops or other experiences which might be suggested by the neutral, and to support an evaluation effort at the conclusion of the project. In turn, the neutral agreed to engage in no activity without prior consultation with, and approval of, the parties, and both parties reserved the right to ask the neutral to withdraw from the campus at any time if it felt its interests were being compromised. These understandings were contained in a letter jointly signed by the parties, which not only ensured that they would retain complete control over the bargaining process but also served as evidence to each other of their desire to improve their relationship.

In describing some of the activities and outcomes of this pilot project at various points in this presentation, I want to intersperse a number of generalizations or assertions that I would offer as counsel to others interested in the creative use of third parties. I will refer to them as "Propostions" to underscore their tentative nature since they are based primarily on experiences at only one campus. However, they are fully consistent with the experiences of professionals and scholars concerned with the productive management of conflict in many settings, and I believe that they are generally applicable to academic bargaining.

The process I will describe can be thought of as consisting of four sequential stages; entry, diagnosis, intervention, and evaluation. In the first, or entry, stage of third-party participation in bargaining, the neutral must contact the principals and reach a mutually acceptable understanding with them concerning activities and relationships. Many campuses are familiar with the use of expert consultants as third parties called in by administrators without faculty consultation to examine some aspect of institutional operations. This client-consultant relationshp is not sufficient in bargaining, however. Since it is a bilateral process involving two parties approaching each other with legal equality, the use of a third party must be mutually agreeable. In many ways, these initial contacts between the neutral and the administrative and union leadership constitutes the most critical phase of third party involvement, since it is the foundation upon which the balance of the process is built. Based upon our experience, I would suggest the following:

> PROPOSITION 1. Neutrals can work effectively in bargaining only when union and administration jointly wish to improve their relationships, and mutually agree on the use of a third party.

> PROPOSITION 2. During the initial contact stage, as well as in all subsequent interaction, a neutral must be honest, open, and evenhanded, and treat both as equal partners.

> PROPOSITION 3. A Neutral can provide assistance, but parties must retain control of their bargaining relationship at all times. This is facilitated by an understanding that the neutral serves at the pleasure of the parties and will immediately end the relationship at the request of either of them.

The implication of these initial propositions is that the potential usefulness of a neutral in promoting mutual-gain bargaining is negated if the concept is forced on either party. Constructive outcomes must be desired, not imposed, and the neutral is a means, not an end. The goal of the process is to improve the relationships between the bargaining parties, and to permit them to reach more constructive and mutually advantageous contractual agreements. The neutral is effective only to the extent that both parties see him or her as a tool for that purpose. This means that the use of neutrals is not a panacea for the problems of bargaining. A neutral cannot provide assistance if one party sees no need to change the bargaining relationship, or is interested only in attempting to manipulate the other.

Limiting the use of neutrals to situations in which the parties share a desire to improve their relationship may at first glance appear to make neutrals superfluous. However, the desire to change, while necessary, is not by itself sufficient to lead to mutual-gain bargaining. For reasons which will be described below, the nature of bargaining is such that even parties with the best of intentions may inadvertently find themselves enmeshed in processes of spiralling disruptive conflict.

Once a neutral has been accepted by the union and administration, the next stage of the process begins. In this diagnostic stage, the neutral works with the union and administration leadership to collect and analyze data which will indicate more precisely the ongoing or anticipated problems in bargaining. The parties may both feel a need to improve their relationships, but at the same time may have different concepts of the cause of their present difficulties and therefore different ideas about what must happen in order for change to occur. One of the functions of the neutral during this diagnostic stage is to help the parties clarify which of their problems are related to apparent conflicts of interest, and which are caused by misunderstandings. Because of the difficulties in maintaining accurate communications in bargaining, parties are often unable to correctly make this distinction, yet without an accurate sense of their relationship, improvement is exceptionally difficult.

In this project, data were collected to assist in diagnosis in two ways. First, faculty and administrators completed a questionnaire developed for this project which asked them to identify characteristics related to general campus climate, as well as the specific processes and outcomes of bargaining on campus. Second, intensive, open-ended interviews were held with 21 union and administrative leaders on campus in which respondents were asked to identify their perceptions of the bargaining relationship, how it got the way it was, and what both sides could do to improve it. Both the questionnaire data and the interviews were summarized, and presented at separate meetings to the union president and chief negotiator, and to the administration president and chief negotiator. The data were provocative, and the interview comments were frank and, in some cases, unsettling. Both sides found some of their perceptions confirmed, and others unconfirmed by what they saw. They both understood the importance of the results, and they both agreed to expose the data to a larger group of people at a full-day, off-campus workshop directed by the neutral. This was a risky decision by both parties for several reasons. Some of the data reflected politically sensitive issues (for example, the degree to which the faculty supported the union, or administrative perceptions of top campus administration); others dealt with matters which would almost certainly appear in the forthcoming bargaining (for example, the degree of faculty satisfaction with salary levels). In the existing adversarial campus environment, these data could be used by either side to publicly attack the other. In addition, the workshop setting might place either of them in a compromising position, or lead to expressions of overt hostility which could worsen rather than improve their relationships. Despite these problems, both sides agreed to continue their participation. The reactions of the parties during this diagnosis phase lead to the following propositions:

PROPOSITION 4. A neutral can help parties collect and analyze data concerning their bargaining relationship that will be accepted as valid by both sides, and that will give them insight into the dynamics and problems of their negotiations process and style. This understanding is an essential precondition for change.

PROPOSITION 5. The active involvement of a neutral permits parties to communicate collaborative intentions to each other in a way that would not otherwise be possible when adversarial relationships and low levels of trust make it difficult for either side to accepte the word of the other as credible.

PROPOSITION 6. The presence of a neutral provides some protection to the parties against having weaknesses exploited, and therefore makes it more likely that they will be willing to take risks to improve their relationships.

The decision to participate in a workshop to discuss the results of the data collection processes marks the transition between the diagnosis phase and the intervention phase of the project. An intervention can be thought of as an event or process which would not normally occur in an institution but which has been specially designed to correct some diagnosed problem. It should be noted, however, that while the use of neutrals is conceptually presented in this paper as a sequence of four discrete stages of entry, diagnosis, intervention, and evaluation, in fact, elements of each of these are seen all through the program's implemention. The development of trust and credibility, for example, a major concern during the entry phase, is a continuing and recurring issue all through the program. Diagnosis, while most prominent after entry issues have been resolved and before formal intervention activities take place, in fact begins with the first contacts with the campus and is refined and altered by events in all other phases. In the same way, while the concept of intervention achieves formal importance with the development of the workshop and the participation at the bargaining table which follows, in fact, even prior to that time a number of important interventions had already affected the ongoing functioning of the campus. For example, the initial contact by the neutral with the union and administration provided an opportunity for signaling to each other by their behavior a desire to improve bargaining, and the interviews and questionnaires themselves were reported later by participants to have called attention by their wording and presentation to problems and opportunities not previously considered.

The off-campus workshop was based on an established OD process called survey feedback in which data collected from a group are given back to it in summary form to be used for understanding and changing organizational processes. Eighteen people attended, evenly divided between the union leadership, the administration leadership, and the heads of the academic divisions who were faculty now also considered part of "middle management." In the morning session, summaries of the questionnaire and interview data were displayed on large charts in front of the room, analyzed by the neutral, and discussed by the participants. Interest was extremely high, the data were considered credible because they had been generated by the participants themselves, comments were almost uniformly analytical and questioning rather than defensive, and people seemed pleased to have an opportunity to publicly confront issues which had previously only been discussed in the hidden proceses of the bargaining table. There was general satisfaction of both groups in many aspects of institutional functioning, as well as agreement that previous bargaining relationships had reduced trust, decreased communications, and exacerbated adversarial relationships. In particular, they were surprised by the mirror images they had of each other as bargainers. For example, the data indicated that they saw their own positions as reasonable while those of the other side were not, and in the same vein questioned the openness and flexibility of the other, the support of their constituencies, their desire to cooperate, and their willingness to listen to new ideas and understand the other, while at the same time believing that their own side was free of these faults. The neutral was able to discuss these results in terms of commonly experienced consequences of intergroup conflict, and to suggest that in a system of low trust and inadequate communications, parties are likely to see only those behaviors of the other which confirm their own expectations, and to ignore or misunderstand behaviors by the other which would contradict them.

The afternoon session of the workshop was structured to permit the three role groups to meet separately to identify specific problems which they discussed in the morning session, and then to meet together to see if the entire group could work on one of these problems and achieve consensus on the next steps that should be taken to correct it. Because of time constraints, the afternoon session was not fully successful in achieving its goal. Nevertheless, the entire process was later evaluated by the participants as having had significant impact upon the perceptions of each group about the other, increasing their understanding of the nature of their poor relationships, and changing the behaviors of several of the participants. Based upon this experience, I have the following conclusions:

> PROPOSITION 7. A neutral can help negotiators establish structures, such as workshops, in which bargaining parties can come together to discuss the nature of their relationship, and the changes which could improve it.
>
> PROPOSITION 8. Sponsorship of such an activity by a neutral legitimates the open expression of views, and ensures that conflict generated will not get out of hand; the off-campus setting removes the participants from the common distractions of the campus and, by clearly separating the activity from bargaining, makes more open communication possible.
>
> PROPOSITION 9. A neutral can offer the parties conceptual insights that may enable them to more fully understand the processes that have disrupted their relationship, and thus to alter their present, and often erroneous, conceptions about the personalities and intentions of bargainers on the other side.

Formal bargaining at the table began shortly after the completion of the workshop, and participation of the neutral at the bargaining table, in caucuses, in joint union-administration study committees, and in casual meetings with the bargainers before and after the sessions, constituted the major elements of the intervention phase of the project. It is impossible to completely describe, in this presentation, the full range of activities of the neutral over 50 hours of bargaining held during 17 sessions; indeed, preliminary content analysis of notes at each session identify literally hundreds of individual behaviors, ranging from mediating a dispute to rearranging chairs in a committee meeting room. It is critical to note, however, what the neutral did <u>not</u> do, and that is attempt to influence the parties concerning the <u>content</u> of the contract. Rather, the neutral's role was to assist the parties by focussing their attention on the <u>process</u> of their interaction, and thus to help them more effectively accomplish their own objectives. We all recognize the difficulty that people have in clearly communicating ideas so that the message sent by one is completely understood by another. This problem is intensified when the topics become more complex, and when the parties fill different organizational roles and thus have different perceptions of organizational life. But perhaps of even greater importance, communication is problematic when the parties are in competition -- and bargaining is a clear example of a competitive relationship. That is why bargainers are apt to focus their attention on the differences between their positions rather than their similarities, to create stereotypical images of the other, to filter communication so that messages inconsistent with the stereotype are filtered out and ambiguities are distorted, and finally to be so committed to one's own solutions that one is literally unable to hear, much less understand, the positions of others. One example demonstrating the effect of bargaining on communication occurred during one of the final sessions in this project. Several participants were discussing the possible inclusion of a specific clause in the contract. Two alternative positions were mentioned, voices were raised, various interpretations of the two positions were offered, and additional matters were injected into an increasingly agitated argument so that it became difficult for the neutral to understand individual positions or even the topic being discussed. Finally, one of the participants summarized the issue and asked for people to go around the table and clearly state their position. As a consequence, it was discovered that everyone who had been arguing held exactly the same position. One of the participants asked incredulously "You mean we've all been in agreement on this for the last 15 minutes? I thought you guys disagreed." He then turned to the neutral, laughed, and said, "It's all in line with your theory on how bargainers can misunderstand each other." I have used this example, rather than many others, because of the unusual circumstances of this argument; it took place in a team caucus, and not in the bargaining conference! If, in the heat of battle, it is easy to misinterpret the intentions and meanings of one's colleagues, consider how much more likely a bargainer is to do so faced with an adversary. But while we are able to laugh about misunderstandings with our friends and attribute them to the complexity of the material, we are more likely to attribute exactly these same misunderstandings with an adversary to duplicity, incompetence, or a desire to harm us, leading to a further deterioration in the bargaining relationship.

In this particular situation the neutral merely observed, but in many others, the neutral actively intervened into the process in one of four settings; at the bargaining table, in caucus, at joint study committee meetings, and in informal meetings with bargaining participants. We are now in the process of creating a typology of these interventions so that we can more fully understand the dimensions of the neutral role. At the moment, however, brief examples of different behaviors in each of these four settings will serve to illustrate these activities.

At the bargaining table, the neutral, at several points, helped to clarify positions by summarizing what had been said during long periods of discussion, proposed language for a contract clause that met the needs of both parties but which they were having difficulty in constructing, helped the parties to establish joint study committees to take complex issues off the table, and focussed attention on the task when discussion strayed too far from the agenda. In caucus, the neutral helped parties consider likely responses of the other side to bargaining initiatives, provided information about programs and practices existing elsewhere, suggested means by which parties could develop and sustain a climate of trust, and clarified misunderstandings that individuals on one side had about the positions of colleagues or rival bargainers.

The neutral assisted the parties in establishing two joint study committees, and one off-the-record problem-solving group which could give more careful attention to complex mutual problems such as faculty retraining, promotions policy, and early retirement than would be possible in the competitive interaction of the bargaining table. At various times, neutral involvement included collecting and distributing to the parties articles and program descriptions on these topics from other institutions, providing a committee with drafts of language which accurately reflected their discussions, and serving as convenor and facilitator of a brain-storming session at which administration and union negotiators worked together as colleagues to jointly develop as inclusive a list as possible of alternatives which they later could consider. The work of the joint committees was accepted by the negotiators and incorporated into the contract. As one participant said later at the bargaining table, "these were real working committees, they weren't adversarial at all, and there was no issue of turf involved." Finally, in addition to working with the bargainers in these formal settings, the neutral met frequently before or after bargaining sessions with individuals in the bargaining process to discuss their perceptions of progress, serve as a sympathetic listener, suggest aspects of their bargaining behavior that might be creating unwanted responses in others, and ensure that they had understood collaborative overtures by the other side which might have gone unnoticed in the heat of debate. Experiences with these behaviors suggest the following statements:

PROPOSITION 10. Non-intrusive interventions by a neutral into the processes and structures of bargaining can influence both the climate of the bargaining table and the outcomes of the negotiations.

PROPOSITION 11. Involvement at the table by a neutral can be accepted as non-threatening and supportive by the parties if it is seen by them as focussed on process and structure, rather than advocating specific substantive positions.

PROPOSITION 12. Intensive contact by the neutral with the participants during the earlier diagnosis stage is probably related to the credibility and trust later afforded the neutral during the more sensitive bargaining interactions.

PROPOSITION 13. Neutrals can be effective in suggesting new structures for bargaining which are useful for dealing with complex issues. Joint study committees provide one such alternative structure which permits problem-solving rather than advocacy behavior, and leads to the development of solutions meeting the interests of both sides.

PROPOSITION 14. Neutrals familiar with higher education can provide informational resources to the parties that otherwise might not be accessible to them; their introduction by a neutral rather than by a party to the negotiations increases the likelihood that they will be considered nondefensively.

PROPOSITION 15. Even when silent at the table, a neutral's presence can change the actions of the participants by making them more self-conscious of their behavior.

As a result of these interventions, the relationships and communications between the parties were greatly improved over those seen in the previous round of negotiations. But now, after dealing with significant non-monetary issues, the parties turned to salaries and fringe benefits. The fiscal crises that had been the proximate cause of their previous animosity had not abated, and the collaborative intentions and behaviors which had been developed over the past months began to deteriorate. Finally, the union believed that no further progress could be made and decided to declare impasse and seek the assistance of a state mediator. The neutral, who had been present in all caucuses, knew that a settlement range existed, that the parties were closer to agreement than they realized, and that without assistance the parties would be unlikely to be able to discover this for themselves. He therefore offered to serve as mediator, and both sides agreed. Because of the trustful and open relationship developed previously, he was able, after brief meetings, to suggest a salary package which, after several minor modifications, was accepted. A number of issues were still unresolved on the table, and one of the parties suggested that mediation be extended to include these as well. In one additional day of separate discussions with the parties, a package was developed which was approved by both of them, negotiations were concluded, and union-administration peace broke out. Experience with this phase of the project suggests the following:

> PROPOSITION 16. Mediation by a neutral who has previously worked with the parties may be seen by them as a continuation of their collaborative relationships rather than as a formal indication of impasse and inability to agree. This more constructive orientation to mediation may make it more effective than traditional crisis intervention.

> PROPOSITION 17. When a mediator knows the real interests of the parties because of previous involvement with them, there is no need for them to posture and no incentive to misrepresent their goals as a bargaining ploy, as might be the case with a state mediator. Full use can be made of the neutral's good offices to help parties search for mutually acceptable solutions.

The outcomes of this project were evaluated in two different ways. One was through a comparison of questionnaire data collected both before and after the neutral-assisted bargaining. On 15 items dealing with the relationships between the union and the administration, administrators saw improvement in 14 at the conclusion of bargaining using a neutral compared to the pre-bargaining ratings, and faculty saw improvement in 10. In general, the parties saw increased trust, more frequent communications, diminished adversarial relationships, increased commitment to work together on common problems, and decreased levels of misunderstanding as a result of the new bargaining process.

The other, and perhaps more persuasive evaluation, was performed by a three-person project advisory committee which visited the campus at the conclusion of bargaining, interviewed the union and administration leadership, and assessed the project's results. Their evaluation fully supported the empirical data. The parties were satisfied with the outcomes of the negotiations, pleased at positive changes in their relationship, and extremely supportive of the role neutrals could play. They had gained valuable experience in working with each other, were more understanding of the needs of the other side, and made changes in their bargaining style. In particular, they noted that several innovative clauses in the contract related to faculty retraining and early retirement would most likely not have been included in the absence of a neutral. In addition to determining the consequences of the neutral's involvement, the evaluation team visitation was itself an intervention. Operating much like an accrediting team, at the conclusion of their visit they had an exit interview jointly with the administration and union leadership to indicate their findings, reinforce the parties' changes of behavior, and suggest the importance of maintaining their new relationship in their future interactions. Experiences during this last phase of neutral involvement lead to the following:

> PROPOSITION 18. Questionnaires can be used to assess changes in bargaining relationships related to the use of neutrals, as well as to diagnose problems prior to neutral involvement. They thus offer an inexpensive way for the parties to become more self-conscious about their relationship and increase its rationality.

> PROPOSITION 19. Accreditation-like reviews of bargaining process by neutrals can serve to highlight to the parties both the positive aspects of their new behaviors as well as the need for improvement. Joint exit interviews can also reinforce new behaviors, therefore making these behaviors more likely to recur in the future.

Although this project was probably among the most carefully documented and evaluated interventions into a real-life, ongoing collective bargaining relationship, many questions about it are still unanswered. Why did the parties change? Was the presence of a neutral itself enough to inhibit behavior that would otherwise have occurred in private? Or was a particular aspect of the intervention more or less responsible, and if so, which one? To what extent was the acceptability of the neutral during the intervention phases predicated on trust built up during the diagnosis stage? Can a stage in the process be skipped without lessening its effectiveness? Are these processes more or less effective in institutions of various types, or with parties whose previous relationships are more or less adversarial? Did the parties get all there was to get in this negotiation or, in the absence of a neutral, would the administration have exacted greater concessions or the union achieve increased benefits?

There are no definitive answers to these, but my own opinion is that without the involvement of the neutral these parties would have gone to impasse, lost the opportunity to develop some unusual programs, and perpetuated their adversarial and highly strained relationships. Probably of even greater importance, they would have foregone the major benefit afforded by mutual-gain bargaining -- the opportunity to begin working together as equals and colleagues on the critical questions which will confront all of us as educators during the next fifteen years. If they can maintain and strengthen these bonds in the future, they will help to construct a new model of bargaining that meets the unique needs of the academic community in troubled times.

VIII. CASE STUDIES

A. FINANCIAL EXIGENCY: THE NORTHERN MICHIGAN UNIVERSITY EXPERIENCE

1. A UNION OFFICER'S PERSPECTIVE

DAVID CARLSON
President
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Introduction

We have just gone through financial exigency at Northern Michigan University. Our experience has involved many of the issues you would expect in a financial exigency: a decline in state funding, concern over the definition of financial exigency, the organizational trauma it engendered, and the potential for abuse in the process. Certain aspects of our experience were somewhat unique, and the process was rather nontraditional in that negotiations at the table became intimately related to the entire set of grievances that arose out of the exigency. This report is a narrative of our experience and generally reflects joint administration/union views.

Northern Michigan University is a regional university with about 8,500 students. In recent years, there has been some enrollment decline. The full-time faculty numbers about 280; they are represented by the local chapter of the American Association of University Professors which was elected bargaining agent in 1975. Three multi-year contracts have been negotiated to date. On April 1, 1982, the Board of Control of Northern declared a state of financial exigency. The Board's action triggered a contractual process under Article VII of the contract which ultimately led to the issuing of 19 layoff notices to faculty on tenure or tenure-track appointments. The declaration of financial exigency was the seventh formal budget reduction which had taken place over a three-year period. The major reason for the Board's action was the severe recession in Michigan generally, but specifically it was related to communication from the Governor's office that the state appropriations for July, August and September of 1982 would not be forthcoming. This meant that the 1982-83 academic year budget would possibly be 25 percent less than anticipated. There was also the possibility of additional executive order budget cuts which might be implemented later in the academic year. Finally, applications for Fall Semester 1982 were down nearly 12 percent.

Actually, the declaration followed by a few weeks the President's request for a salary freeze in 1982-83. At the time, two newly unionized groups were attempting to negotiate their first contracts. The ominous financial situation was clearly a major reason why these two groups agreed to a salary freeze for 1982-83, after retroactive increases were granted for 1981-82. In the case of the faculty contract, 1982-83 would be the third year of a three-year contract which called for an 8 percent salary increase at the beginning of school, and an additional 3.2 percent base salary increase at mid-year.

The Faculty Response

The initial response of the faculty union to the notion of a salary freeze was negative. There was a feeling that the state funding might not be cut so severely and that a wait-and-see approach was preferable to concessions at the time. The faculty had also felt that they made significant sacrifices during the previous round of budget cuts, sacrifices that included reduction in the size of faculty through attrition, and in having large numbers of faculty go on annualized appointment. Such appointments involve having faculty teach summer school as part of their 24 credit hour annual teaching load, and receiving an equivalent reduction in their fall or winter semester teaching load. This, of course, allows the University to reduce course offerings and to reduce instructional costs. Finally, faculty members believed that on previous occasions, the President had persuaded them to accept minimal salary offers because of financial difficulties, only to find the picture much rosier shortly after the faculty had committed themselves. They were determined not make concessions prematurely.

Article VII (Budget Reduction: Layoff and Recall) of the contract between faculty and the Board is a comprehensive set of provisions for dealing with financial exigency. As a first step, it is important to note how financial exigency is defined in the bargaining agreement. Both parties agreed in the first contract negotiations in 1975 that the Board's action in declaring a financial exigency was nongrievable. The union had been reluctant to concede the nongrievability language, but was convinced that the lengthy procedures offered significant protection, and that the courts could be enjoined to rule against flagrant abuses in the initiation of financial exigency. The potential of grieving actions taken subsequently to the declaration was never in question. The process itself involves many formal steps starting with the President of the institution precisely delineating the budgetary reduction that must be achieved. This is followed by opportunities for the union and other campus groups to react to the problem as described, and to make proposals about alternative ways to solve the financial problem. Naturally, there were many suggestions to take the money out of the noninstructional budget. Ultimately the President proposed that the instructional budget be reduced by 13-1/2 percent or $1,681,000. In order to achieve such a reduction, the layoff of tenured faculty was inevitable.

Article VII then remanded the process to a joint faculty-administration committee named the Educational Policy Committee. This committee was charged with formulating a plan for achieving the required budget reductions. This involved determining which schools and departments would lose faculty members. The EPC set forth its view of institutional program priorities by establishing a list of program and personnel cuts to be effected at the school and departmental level. These existing programs ranged from easiest to achieve and least damaging to those most difficult to implement. The EPC began its task very tentatively but as it began to formulate a set of procedures, it began to confront the problem of how to down-size the university. As the summer months passed, the mood of the campus regarding financial exigency became much more serious as the discussions of layoffs became increasingly specific. The committee carried out over 200 hours of meeting during the summer in its efforts to identify where cuts would have to be made. This involved discussing the consequences of budget reductions and the impact of personnel cuts with department heads and departmental representatives. Finally, in order to meet the President's target the committee identified 34 faculty positions by school and department which would have to be eliminated; that represented a 10 percent reduction in the faculty. When the committee's work was finished in August, there was general consensus that the recommendations it forwarded to the Provost reflected reasoned judgments about how reductions should be made if reductions of this magnitude proved to be necessary.

Utilization of the Grievance Process

In late July, the union filed its first Article VII grievance. It charged that the President, in fulfilling his obligation under Section 7.5, had failed to give serious reasons for departing from EPC recommendations to spend one-time monies and to identify additional base-budget reductions in the noninstructional budget so that less drastic reductions would be needed in the instructional budget. The grievance also indicated that the President's determination of needed budget reductions failed to reflect new budget information: that the state intended to restore the July, August, and September payments in subsequent months so that the university funding would be much healthier, that a major new equipment purchase had been deferred and the budget had not been properly adjusted to reflect this, and that the cash carryover of the fiscal year concluded the previous month was $1,000,000 larger than anticipated.

In September, the union filed its second Article VII grievance. The Provost had rejected some of EPC's primary recommendations for layoffs in certain departments, and had substituted reductions in other departments from an appendix that had been prepared by the EPC. The union alleged that the Provost had failed to give serious reasons for doing so, as required by the contract.

Because of the funding improvements, the union viewed the exigency problem as basically political. However, a decision was made to file the grievances because the action of declaring financial exigency was not grievable, thus the only avenues left to pursue were possible contractual violations, i.e., procedural errors. In spite of this apparent weakness in pursuing limited contractual questions, the decision was made that grievances would be filed with two hopeful outcomes: (1) that some individuals might be able to retain their positions on account of these procedural grievances, (2) that the filing of many grievances over the course of the year would result in mounting political pressures on the administration which would somehow influence events. Most significantly, the union felt that its duty of fair representation required the filing of grievances such as these. To file many grievances was going to be costly, but the decision was implicitly made at that time to gamble the entire financial worth of the union on these and subsequent grievances.

The general termination decisions were then made individual as specified in Article VII. Some individuals were easy to identify since they had already left the University and their position simply was not filled. For the others, a formal working assumption had been that lowest rank and lowest seniority faculty members would be given termination notices. Considerable disagreement in identifying individuals emerged both at the departmental and academic administration levels because of a contractual provision which highlighted programmatic needs as the primary criterion for determining order of layoff. In short, this meant that even full professors were subject to layoff. It also meant that budget reductions were achieved more readily than had been anticipated. Two senior professors were pressed by the circumstances to retire and they, along with some others tentatively identified for layoff, were removed from the list. In the end, 19 tenured or tenure-track faculty were given layoff notices on September 23, 1982, and an additional 7 temporary appointment faculty positions were identified as terminating at the end of the year.

Grievances were filed shortly on behalf of 15 of the 19 who had received notice, alleging that the administration was attempting to attack tenure under the guise of financial exigency. The considerations involved in the selection of specific individuals in particular programs was challenged as well. The other four individuals who had received layoff notices were promised jobs in another unit of the University, and requested that grievances not be filed in their cases. When these jobs were offered, the union filed another grievance challenging this action. The EPC had prepared an ordered list for layoffs. These four designated individuals were all instructors in the first program identified for elimination and they were high on the EPC priority list. In the new unit, these individuals were to be instructors in exactly the same type of instructional program, suggesting to the union that this was an attempt to circumvent the ordered list of EPC.

The last three months of 1982 was a wait-and-see period, and a general question seemed to be: who would blink first. Neither side did. The faculty indicated that they were ready to open negotiations and some sessions were held. But when it became evident that the faculty wanted to talk about using institutional resources other than faculty salary concessions to solve the budget problem, the administration was disinclined to talk and discussions broke off. Anxiety increased within the faculty because there was a definite interest in resolving the issues at hand but there was also a growing conviction that the financial problem was not nearly so bleak as the administration had painted. Specifically, student tuition was now fairly firm and higher by $250,000 than projected, and the state appropriation levels were much firmer and promised to be $750,000 higher than anticipated in the budget.

Administrators, on the other hand, were talking less and less about financial exigency and more and more about enrollment declines projected over the next decade that might reduce the need for faculty by 30 percent. This was coupled with stated concerns about tenured-in departments, of which we have a large number, especially in the natural sciences, the social sciences and the humanities. Union leadership viewed this as a shift from financial exigency to programmatic need. They also felt they had detected an attitude that suggested that much grief had been endured in carrying out the Article VII process to date, and that it may as well be carried through to conclusion so that some benefit could be realized. Thus, the union leadership became persuaded that only tenured faculty were likely to be let go in the end, and that the process itself was becoming an attack on tenure. There was a strong desire to grieve this shift in focus or to undertake court action, but no such steps seemed sound at the moment, and the decision was made to wait until a situation arose tht had standing. One situation that led to another Article VII grievance was a University purchase of a robot for an instructional unit in industrial technology. The union felt this purchase was the inaugural step in developing a new and expensive instructional program at a time when the University was supposedly in a financial crisis that rendered it unable to keep its tenure commitment.

At about this time, a new political dimension began to emerge. President Jamrich had announced at the beginning of the school year that he would retire at the end of that year. A selection committee was appointed and included some members of the Board of Control, the President of the faculty union and the President of the Faculty Senate, as well as representatives of other campus constitutions. As the committee contemplated the transition to this new leadership, they became concerned about the turmoil that would face the new president with the grievances coming to arbitration just as he arrived on campus, with growing concern about the ability of departments to staff courses in light of the layoffs, and with the faculty contract expiring the day before the new president officially took office. In view of this, faculty leaders and Board of Control members began to discuss informally the positive benefits of resolving all greivances and attendant turmoil, and to extend the contract for one year.

January, February and March passed, and by then the administration's budget updates were projecting a budget surplus of $1,250,000 by year's end, thus confirming the union's long-standing conviction about the financial health of the University. In spite of this, union leaders did understand four important political facts:

(1) that the public peception of the State of Michigan was it was near bankruptcy and therefore, the University must be in some financial difficulty;

(2) that the University did have some abnormal cash flow problems and some long-run budget concerns;

(3) that possibly, more important than financial health or difficulty, was the potential disaster of not being able to bring this information into the arbitrations; and

(4) that within the campus, there was a perception that the faculty had not been forced to make any concessions whereas other groups had done so, which suggested that justice was not being served by faculty holding on to their salary increases for the year.

As a consequence of these political variables, the union leadership decided to press for a negotiated settlement of the crisis that would involve making modest concessions, rescinding the layoff notices and extending the contract for one year. The union also ceased its insistence that the administration tap other budget sources to make up for the deficit in the instructional budget. From the administration standpoint, negotiations took on an entirely different tone following the change in the union's bargaining posture.

Agreement

In April, tentative agreement was reached at the table. Base budget reductions in excess of $400,000 were agreed to, which involved salary concessions as well as implicit agreement not to pursue contractual language on staffing decisions, particularly where attrition was occurring. Some of this attrition was a result of a newly instituted early-retirement program. The concessions also involved giving up some contractual language on replacement staffing for sabbatical leave positions. On salary, the agreement called for a reduction in base salaries of 1.87 percent at the end of the 1982-83 academic year, with the proviso that this amount would be reduced if additional savings in faculty salaries could be achieved in certain specific ways. In addition, there would be a reopener on salaries for 1983-84 on October 15 with the expectation that the finances of the state and the University, which should be more or less fixed in place by that date, would permit modest increases. Eleven of the fifteen layoff notices were to be rescinded, and alternative solutions such as reassignment worked out for the others. The contract was otherwise left unchanged and extended for one year. On April 20, the union membership approved the agreement by a 73-27 percent margin. The Board of Control is expected to approve the agreement this coming Friday, April 29 (the Board did give its approval thus, effectively ending the financial exigency).

2. A GRIEVANCE OFFICER'S PERSPECTIVE

CANDY BAYS
Grievance Officer
NMU/AAUP

What The Faculty Has Learned

What has the faculty union learned from this year-long experience with financial exigency? On the one hand, we are still dazed and relieved by the contract extension, ratified just last week, which takes care of the faculty under notice of layoff. On the other hand, we are asking ourselves: Was this all necessary? We think not.

Today we offer our assessment of our experience by pointing to the hazards, the unanswered questions, and our concerns for the future, all of which we hope will help others who may be facing the decisions we faced this year.

First, times have changed. Perceptions of financial exigency in the mid-70's--and the resulting language in contracts--do not meet the realities of the 80's. The declaration of financial exigency was not grievable in our contract. At the time we negotiated the provisions for retrenchment, 1975, we assumed we could challenge successfully such a declaration in the courts; thus, we traded the nongrievable clause for our lengthy procedure to protect due process. Our specific experience was this: believing to the end that the declaration was a political maneuver to extract wage concessions from the faculty and not bona fide, but also knowing the reluctance of the courts to favor any challenge we might make, our only recourse was to file procedural grievances and press for negotiations at the same time. Internal grievance steps often overlapped with table negotiations. The result was confusion and a slowing down of an already slow process. The grievances eventually became a part of negotiations and settlement, which leads us to believe that they were a successful political tool. We hope that those of you with untested language dealing with financial exigency and layoff reexamine it carefully. The declaration of financial exigency should be subject to review and challenge by the faculty union.

Issues of Concern

More specifically, our lengthy procedure held problems we did not foresee before going through this test: did it protect due process as intended?

1. Faculty involvement in this review, an important check on paper, in reality results in bitter divisions among faculty. Loyalties and cooperative spirit disappear when individuals' jobs are on the line. The damage done to faculty morale will be difficult to repair. And, we are not certain the faculty participation had as much effect on decision-making as we thought was guaranteed by the contract. Two grievances were filed protesting the President's and the Provost's failure to abide by the recommendations of the joint faculty-administration committee. We traded these grievances to get our people back, so we still don't know how worthwhile our faculty participation was, or if such participation counteracted the hazards of division among faculty.

2. The process itself had an insidious side-effect: when people began approaching the problem of deciding who should be cut, they committed to writing their rationale for these decisions. Once on paper, these rationales began to be believed by people formerly horrified by proposed cuts in faculty. (You say it enough times and you begin to believe it.) By mid-year, deans who had railed during the summer about how their schools could not stand cuts were by mid-year defending the cuts and resisting efforts in negotiations to restore positions.

3. A further ramification of this lengthy procedure was the shift in mid-year to discussions of programmatic need instead of financial exigency. Administrators and some faculty who had formerly believed cuts were a financial necessity now began saying: but we could get along without that position; we need someone here more, etc. If we have learned anything, we have learned that financial exigency is not an effective means to downsize programs.

4. This shift from financial exigency to need happened, in our view, because the administration did not want to give up this opportunity to get rid of tenured people. And this attack on tenure became the overriding problem for the union. It was very clear how to get into a state of financial exigency, but when is financial exigency over? When all tenured people are brought back? The moment new monies become available? Can temporaries be hired before all tenured faculty are recalled if the temporaries are needed in a different area? Can new equipment be purchased? Again, we don't know the answers because we chose to negotiate for recall of these tenured people, a move which involved dropping the grievances which raised these questions.

5. Finally, this long process appears to have affected enrollment. By spring, pre-registration, students still did not know if the affected faculty would be back. This we cannot finally assess until fall, but we have already seen a negative effect on students' attitudes this year, in face with the uncertainty. This effect on student attitude and enrollment is one of the bitter ironies involved in layoffs.

We believe a negotiated settlement was the best route for us to follow. As a union, we were able to protect our tenured faculty. But, we also believe that there had to be a better way to get to where we are now from where we were last May when the administration declared financial exigency. The hundreds of man-hours devoted to the procedure, by administrators and faculty alike, would have been much better spent on constructive long-range planning. We have protected the status quo; we have not moved forward.

3. AN ADMINISTRATIVE RESPONSE

GLENN R. STEVENS
Associate Provost
Northern Michigan University

The initial contract between the faculty represented by the AAUP and the Board of Control was negotiated in 1975. The text of Article VII (Budget Reduction: Layoff and Recall) has remained intact since that time. We moved from the realm of the theoretical to the practical approximately one year ago when a state of financial exigency was declared. At the outset, I want to stress that this action was taken only as a last resort following a series of major budget reductions which had cut deeply into nearly all sectors of university operations. I say last resort because every effort was made to avoid attracting undue public attention by taking such a significant albeit uncertain step.

This paper sets forth a number of points based on what we have learned, some of which may be applicable in your own situation. These suggestions take the form of specific recommendations, couched with some personal observations. I am sure that you will observe that these views are diametrically opposed to many of the points which Larry White, Assistant Counsel for the AAUP, made in his presentation earlier today.

1. Recommendation. Within a collective bargaining environment, the governing board must assume responsibility for determining whether a financial exigency exists. Comment: In our contract (Section 7.1.1.), you will note that the Board retains exclusive nongrievable authority to declare a financial exigency, but the scope or size of the budget reduction is subject to review. I would very strongly argue against the notion that the declaration of financial exigency must be co-determined by the administration and a representative faculty body. Such decision-making authority in a nonbargaining situation may well be justified, however, it seems reasonable to argue that it is inappropriate for a faculty body to have direct and substantive involvement in the initial stages of the process while at the same time retaining the leverage of a grievance procedure after layoff actions have been implemented.

2. Recommendation. Define what financial exigency means in as precise terms as possible. Comment: It is important to note that the Northern Michigan University contract specifies that the layoff article can only be activated if the Board contemplates reductions of such magnitude that faculty layoffs might be required and that such reductions (Section 7.1) are necessary "to maintain a balanced budget." In view of the statement that "the Board and the Association agree that the layoff of faculty is one of the last and most serious steps an institution of higher

learning takes," it was incumbent upon the administration to demonstrate that substantial measures had already been taken to deal with budgetary problems before reaching the stage where declaration of financial exigency became a real possibility. The notion of an eminent financial crisis of such magnitude that institutional survival is in question, is however, not explicitly stated in the layoff article. As will be mentioned later, the principle of programmatic need is stressed in the order of layoff as well as recall.

3. Recommendation. A governing board's decision to declare financial exigency should in itself be nongrievable. Comment: In Section 7.1.1, it is stated that the Board's determination that a bona fide financial exigency exists is beyond the scope of grievance review. Without going into too much detail about the bargaining history surrounding this important point, I think it is fair to say that the administration made every effort to avoid having protracted arguments about whether or not a financial exigency existed by insisting upon the nongrievability of a financial exigency declaration.

4. Recommendation. Establish limits on the scope of financial exigency by having clearly defined budgetary categories which are included in any review procedure. Comment: Our contract limits the review process to the instructional budget defined in Section 7.3 as the budgets of all academic schools and off-campus credit hour instruction. The existence of this language makes it possible to focus our attention on identifying reductions which could be effected in the academic area thus, limiting to a great extent arguments and conflicts about where budget reductions could be made elsewhere to lessen the impact on the instructional budget.

5. Recommendation. Insist upon a process which maintains the integrity of instructional priorities. Comment: Although obviously difficult to do, it is important to resist pressure to have the seniority/rank as being the major criterion for determining order of layoff. In Section 7.11, we established the general principle that the primary criterion to be used in the implementation of layoffs was to be the value or worth of the faculty member to the particular program and department. Furthermore, we insisted that a department's ability to satisfactorily fulfill its instructional mission must be affected as little as possible as a result of any personnel reductions. You will recall that the union expressed grave concern about the drift from an initial declaration of financial exigency to programmatic needs as the determinant. In my view, the distinction between financial exigency as a basis for terminating faculty with tenure and programmatic discontinuance or program reduction as a legitimate reason for such action is somewhat artificial, at least in the context of a layoff article. Consistent with the programmatic criterion as the primary consideration for determining order of layoff, note that in Section 7.12 it is stated that the faculty member's recall rights are directly related to his or her ability "to carry out the full range of instruction needed at the <u>time of recall</u>." There is, one might argue, a very strong link between funding and program need.

6. Recommendation. Maintain an up-to-date mission or role statement. Comment: The importance of engaging in short- and long-term planning which reflects consensus regarding instructional priorities cannot be overemphasized. In many respects, the long, drawn-out procedure which we went through

amounted to a quasi attempt to order instructional and/or program priorities. While it is possible to do so, it is ill-advised to undertake such a critical process with all of the stress attendant to a declaration of financial exigency.

7. Recommendation. Review and update personnel policies on a regular basis. Comment: Section 7.10 of the layoff article calls for consideration to be given to a number of alternatives before layoffs are actually implemented. In our case, the process stimulated work on developing an early retirement policy for faculty. Although temporary in nature, an early retirement policy was adopted by the Board of Control last September, which has subsequently produced several retirements, most of which would otherwise not have taken place for several years. The cost savings or net budget reductions resulting from these retirements after the coming academic year will be substantial. Secondly, it is highly advisable to examine your institutional posture on retraining, specifically with regard to retraining programs which are designed to retain existing faculty by shifting them into new areas of responsibility. Lastly, policies regarding the reassignment of faculty need to be examined. Possibilities for reassignment will undoubtedly be restricted in view of pressures brought by other employee groups to preserve their own job security.

8. Recommendation. Keep it short. Comment: When the language of Article VII was drafted there was general consensus that the review process should be as deliberate and extend as long as possible. Our experience, however, suggests that is probably in everyone's best interest to move through the process as quickly as possible.

Some final observations: As was indicated in our joint statement, we have, with one exception, avoided the necessity to lay off tenured faculty at this time. The events which took place during the past year, however, had a sobering effect upon the University community as a whole and the faculty in particular. While there was general aversion to the prospect of severing tenure relationships, our experience has caused many thoughtful participants and observers to reexamine the nature of tenure commitments in the context of changing financial and programmatic realities.

B. RETRENCHMENT: THE WAYNE STATE EXPERIENCE

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Wayne State University

In order to understand the current problems associated with the economic constraints at Wayne State University, I think it is helpful to look back at some of the developments over the past ten or twelve years.

Historical Developments

Unionization at Wayne State (excluding the trade unions) started about 1970 with the clerical union and the professional and administrative union. This was quickly followed by the unionization of the faculty and non-teaching academic staff (librarians, counselors, academic advisors, etc.) in 1972 with the American Association of University Professors being selected as the bargaining agent. A pattern of two-year agreements developed with all three unions, and, except for a one-year extension of the 1978-80 agreement with the AAUP through 1981, this pattern has been followed up until now. The 1981-83 agreement with the AAUP is our fifth collective bargaining agreement with them.

With multi-year agreements, serious economic problems can arise after the first year (and sometimes even in the first year) if projections of general fund revenue (state allocation plus tuition) are in error. There is, obviously, some control over tuition revenues since tuition rates can be adjusted to take enrollment changes and state allocations into account. In fact, we and other Michigan universities have even had to resort to mid-year tuition increases to help with the financial situation. However, while we may have some influence with regard to the state allocation, we certainly have no control over the final amount.

Our first serious financial problem arose during the second year of the 1974-76 agreement. At the beginning of the 1975-76 academic year, our treasurer forecast that at the current staffing level we would have insufficient funds to pay for the negotiated increases during the coming year. In order to solve the problem, the various unions were asked to accept one unpaid mandatory vacation day per month. The one unpaid vacation day per month was also imposed upon administrative personnel below the level of dean, and deans and persons in the central administration received no salary increases for 1975-76.

Some unions accepted the one unpaid vacation day per month and others, including the AAUP, did not. In those other unions, except for the AAUP, the staffing level was adjusted to achieve the requisite salary savings. However, due to the involved procedures and lengthy notice requirements for the layoff of faculty and academic staff who have tenure or are not at the end of term appointments, there was litile that could be done to recover salary monies from AAUP represented persons if the AAUP did not voluntarily agree to do so. The net result was that the AAUP bargaining unit was the only employee group in the University that did not contribute, either by salary savings or reduction in personnel, to the resolution of the 1975-76 financial problem. However, even though the salaries for the AAUP bargaining unit represent roughly one-half of our total salary budget (and almost one-third of our total general fund budget), we were able to get through that year by taking a series of other steps that recovered sufficient funds to pay for the AAUP salary increases.

Our next attempt to cope with the budget uncertainty came in 1980-81. During the spring of 1980, we discussed with the AAUP the possibility of extending the 1978-80 agreement for one year so that we could plan early on for what we thought might be a rather tight budget. We were able to come to an agreement for a one-year extension which called for a 9% increase for 1980-81, but 1.3% of the 9% was contingent upon enrollment.

The University had projected a decline in enrollment for 1980-81 of approximately 3%. With such a decline, 7.7% was the maximum salary increase in 1980-81 that the University thought it could reasonably afford for AAUP represented persons. However, if there was no enrollment decline, or if it was less than projected, additional monies could be put into salary improvements. The final formula was rather simple. For X% decrease in student credit hours for Fall Term, 1980 compared to Fall Term, 1979, the 9% salary improvement figure would be decreased by 0.5X%, the total reduction not to exceed 1.3%

As it turned out, the decline in student credit hours was close to the projected 3% and, therefore, the entire 1.3% contingent portion of the salary improvement was eliminated.

Executive Order Budget Reductions

In the meantime, the State of Michigan's economy was rapidly becoming worse, and the state began making mid-year reductions in the state appropriations to the universities by means of executive orders issued by the Governor. Thus, our original problem of having difficulty in forecasting the revenues during the second year of the collective bargaining agreement became one of not knowing what the state allocation, which represents approximately two-thirds of the general fund budget, was going to be until we were literally at the end of the fiscal year. Some significant executive order reductions were issued within days of the end of the fiscal year.

For Wayne State University, the executive orders over the past four years were the following:

Year	State Appropriation	Executive Order	Final Appropriation
1979-80	$ 98.2M	-$1.1M	$97.1M
1980-81	92.2	- 2.8	89.4
1981-82	103.2	- 3.8	99.4
1982-83	99.4	- 1.7	97.7

But even this does not show the complete picture. Last year, 1981-82, was especially complex. For the period October 1, 1981 through September 30, 1982 the Wayne State University initial state appropriation of $103.2M was reduced by $3.1M, then by $7.4M (which was paid back in 1982-83), then by another $0.7M, and finally by another $5M (which is to be paid back in 1982-83), leaving an actual state appropriation of $87M; a reduction of $16.2M from the appropriation in effect at the beginning of the fiscal year. As you might imagine, a reduction of this magnitude created some very serious problems for us.

Reduction in Staff

Over the four year period from 1978-79 to 1982-83, the state appropriation to Wayne State increased by approximately 7.6%. Due to substantial increases in tuition rates (the in-state tuition rates at the University of Michigan, Michigan State University and Wayne State University are now among the highest in the nation for public universities), the total increase in the general fund was approximately 17.3%. However, the negotiated salary increases for the AAUP bargaining unit over this period were 37.7%. By simple arithmetic, we can see that in order to support a 37.3% salary improvement with a 17.3% increase in allocation, the percentage reduction in staff must be:

$$(1 - (1.173/1.373)) \times 100\% = 14.6\%$$

While the relationship between the total general fund budget of a university and the size of a given employee group is obviously more complicated than this simple picture, in our case it holds remarkably well for the AAUP represented group. In 1978-79, there were 1749 AAUP represented persons and in 1982-83 there were 1496; a reduction of 14.5%.

I might note that this reduction in staff has also had a rather marked effect on the tenure ratio. In 1978-79, 48% of the AAUP bargaining unit were tenured, and in 1982-83, 60% are tenured, and we now have two colleges in which over 80% of the faculty are tenured. Only 3% of the increase is due to an increased number of persons holding tenure. The other 9% of the increase is due to the reduction in the size of the bargaining unit.

Wage Concessions

Returning to the situation of last year, we were facing very serious budget and cash flow problems, and we had just negotiated a two-year agreement with the AAUP. Our problem was roughly the following: our general fund revenues for 1982-83 were expected to be about $150M ($50M from tuition and $100M from the state), and if we took no action at all, we projected a $20M deficit for 1982-83. That is, our general fund spending would be at the rate of $170M.

We cut $10M from the budgets of the units, but that still left us with a projected deficit of $10M. Of this remaining $10M projected deficit, $6.5M was for compensation increases. Since we are required by law to have a balanced budget and since we would already have to borrow considerable sums to make up for the late payments from the state (which finally approached $25M), it was deemed critical that we find some way to reduce our compensation costs for 1982-83.

As I previously noted, the compensation costs for the AAUP bargaining unit are about half of our total compensation expenditures, so if we wanted to significantly reduce the $6.5M projected increase in compensation expenditures for 1982-83, the AAUP had to be involved. It could not be another 1975-76 situation where they were the only group in the university not to participate in the savings.

In March 1982, we asked to meet with the AAUP to discuss this matter. They designated three members from their Executive Committee to meet with three of us from the University administration. We asked the AAUP to forego their negotiated salary increases for 1982-83 because the alternatives were very grim indeed.

The AAUP's share of the increased compensation costs for 1982-83 was approximately $3.25M. If the savings had to be accomplished through a reduction in staff at that late date, the numbers were, we thought, unacceptable and would do great harm to our programs. Since at Wayne State it requires six months notice of termination for persons holding one year appointments (even under conditions of financial exigency), the soonest persons holding faculty rank could be terminated would be mid-year. In order to save $3.25M through mid-year terminations, it would be necessary to terminate 260 persons if the average compensation was $25,000. Due to unemployment compensation and other costs, the number would actually have to be considerably higher, possibly as high as 400 persons.

With our Board of Governors about to declare financial exigency, which was a necessary step in the termination process, we were able to reach an agreement with the AAUP at the last moment that amended, among other things, the 1982-83 compensation portion of the collective bargaining agreement.

The amended agreement called for the rescission of the salary increases for a portion of the year which would depend on the actual general fund revenues. The fraction of the year, f, over which the salary increases were to be paid was given by:

$$f = \frac{\text{State Appropriation + Tuition - \$146.4M}}{\text{\$6.5M}}$$

Our base budget after the cuts to the units had been made and with no compensation increases ($6.5M) was estimated to be $146.4M. If the general fund revenues exceeded the base budget amount, these extra funds would go into compensation. If the excess was $6.5M or greater, the entire negotiated salary increases would be paid.

The final problem arose because we said we would calculate f early in the fall. There was confusion at that time about the actual state appropriation and even more confusion about the estimate of the tuition for the entire year. When we were unable to work out our differences with the AAUP, they filed two formal grievances, one dealing with the State appropriation and one sealing with the tuition. However, we eventually resolved both issues and the final result was that f = 0.28. This meant the salary increases were paid over 28% of the year which resulted in a savings of approximately $2M. When the same concept is applied to the other employee groups in the University, the total compensation savings for 1982-83 is approximately $4M.

Thus, through a salary concession agreement with the AAUP, the University was able to deal with a very serious budget problem that would have otherwise resulted in drastic reductions in staff.

C. NEGOTIATING ALTERNATIVES TO LAYOFF: THE MACOMB COUNTY COMMUNITY COLLEGE EXPERIENCE

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Macomb County Community College
Faculty Organization

Introduction

During the past decade, all educational institutions, especially public ones, have faced major problems. Problems of demographic, economic, societal, and technological natures have all made insistent and often contradictory demands on academe. Reactions to these demands have been as varied as the demands themselves. Local conditions, perceived mission of the institution, quality of leadership, and factors too numerous to list have shaped each institution's response--no school or college has been exempted.

Unavoidably, the impact of these pressures has been felt at the bargaining table. Financial exigency, concession bargaining, and retrenchment appear to be approaching the status of an administrative trivium of academic collective bargaining.

Of course, the impact of any external influence on the bargaining process depends on the attitude of the parties. If each and every pressure is scrutinized and utilized for its maximum potential bargaining leverage by either side--the adversarial concept of collective bargaining carried to its limit--then an outcome that is less than mutually satisfying is usually predictable. If, on the other hand, both sides view problems as mutual problems to be resolved in partnership, a more favorable outcome, at least one that does not exacerbate the adversarial relation between the parties, can usually be expected.

Cooperative Approaches

Numerous examples of the success of a cooperative approach to resolving complex issues exist throughout the country. One is Miami-Dade Community College's integrated faculty development and curriculum development approach to massive revisions in its general education program. Since course revisions, program revisions, degree requirements, and shifting enrollment patterns clearly have job security implications for faculty, the administration of the college made two important initial commitments:

1) No faculty would lose his or her teaching position as a result of any changes in the course requirements.

2) Faculty members would be provided opportunities to participate in staff development activities to prepare themselves to teach the new interdisciplinary courses.[1]

Although these principles did not guarantee that each teacher would continue to teach the same courses, they effectively eliminated the overriding job security concern and shifted the concern to academics. The obvious approach was to first diffuse adversarial issues to allow the cooperative ones to be emphasized.

A second example of the cooperative approach is Maricopa Community College's Human Resources Master Plan. It is premised on the following commitment:

> At the Maricopa Community College District, we have no intention of laying off faculty and staff in response to declining resources. Rather, we are committed to planning for a future in which the creative utilization of our human resources will provide the financial and programmatic flexibility to respond to continually changing demands and opportunities.[2]

Again, the pivotal issue that contributes to an adversarial relationship has been eliminated as a starting point for forging a cooperative relationship.

In spite of these and numerous other examples of mutual problems leading to cooperative efforts in private industry as well as education, most faculty unions are not presented such pleasant options. They have little choice but to attempt to find reasonable solutions to similar problems by the adversarial bargaining method. And, even in these most trying circumstances, persistence and determination can lead to solutions. This paper is a case study of one such instance.

Statement of the Problem: The Macomb Model

Macomb Community College[3] shared with sister institutions in the explosive growth and favorable funding climate of the 1960's and 1970's. During this period, two campuses, numerous buildings, courses, programs, faculty and staff were added to meet the demand. Since funds were available in abundance and since rapid growth produced problems requiring immediate attention, very little was done to coordinate or plan for the future. With no end to the growth in sight, new faculty members were hired, especially in traditional liberal arts disciplines, as soon as student enrollment produced enough classes to provide a full teaching load.

Today, the enrollment of Macomb still grows despite, some would argue because of, the adverse economy of the community. However, the funding climate now rivals Michigan's frigid winters. Macomb has felt the effects of the public's criticism, apathy, and even cynicism that now envelops public education. Local funding has shrunk from approximately 33% to 20% of the operating budget. Successive attempts to rectify this have been defeated at the polls. Dependence on state funding has made the institution even more vulnerable to a disasterous state economy. State contributions to the operating budget have decreased from 49% to 37% of the revenues in the last five years. The need to increase revenue has, therefore, been imposed mainly on the student. The portion of revenues generated by tuition has increased from 26% to 38% during this same period.

Further, student enrollment patterns have radically changed. As the progeny of the post-war baby boom passed through the higher education system, the market shifted to an older job oriented population. This shift was accelerated by a faltering economy that heightened the employment concerns of even the normal market, the recent high school graduate. During the last six years, occupational enrollment has increased from 44% to 54% of Macomb's student population.

The natural selection of the market was further compounded by a change in degree requirements. As the second campus was encouraged to develop a different educational philosophy during a period of affluence, declining resources brought about a period of contraction, centralization, and standardization. A campus that was based on an interdiciplinary philosophy now was faced with a curriculum emphasizing disciplinary expertise.

Throughout these changes, the union, the Macomb County Community College Faculty Organization[4], was faced with a dilemma. It could either venture into areas of academic concerns, degree requirements, or, by staying out of these, appear to callously ignore job security concerns of its members.

The response of the union was to separate the two concerns. The academic concerns were left to the appropriate academic committees, and the union took unto itself the proper fiduciary obligations as bargaining agent--the job security issues. The first step was to establish a detente with administration based on this separation. An agreement was reached to allow academic concerns to be resolved by the appropriate academic forums, without interference, and to leave the job security problems to be resolved by management and the union.

The initial problems were minor and were handled with relative ease on an ad hoc basis. Full loads were developed by simply allowing a few classes with low enrollment to run. In situations where this was not feasible, the union agreed to reallocated sabbatical leaves.

However, these ad hoc solutions were not without concomitant difficulties. The union was regularly confronted with administrative arguments about declining productivity. These arguments implicitly and explicitly juxtaposed saving jobs against salary increases.

The early solutions were also not without internal union difficulties. Whenever classes with less than normal minimum enrollment were allowed to run to save a job, the union heard "why are we treated differently" arguments from those whose classes were cancelled. On the other hand, some faculty whose jobs were endangered took an increasingly "jobs at all costs and academics be damned" position.

Briefly described, it was in this atmosphere that the union embarked upon negotiations in 1981. The union leadership was committed to the seemingly contradictory position of saving jobs, maintaining academic integrity, and improving salary.

First, to ascertain the position of the membership, specific and pointed questions were asked in a pre-negotiations questionnaire. They exhibited an overwhelming concern about job security. However, they were adamantly opposed to either compromising academic standards or reducing salary improvements as a quid pro quo. On the other hand, they were willing to trade off some other benefits to help those in danger of layoff. The mood could be characterized as one of providing reasonable alternatives rather than subsidizing.

The union, therefore, entered negotiations with three related guidelines: 1) Do not compromise academic standards, 2)

Do not compromise salary improvements and, 3) Provide job security.

The union attempted to reconcile any apparent conflict between these aims by incorporating them in a package of proposals that emphasized compassion for employees of long-standing, quality of work life, maintenance of academic standards, and a fair and competitive salary. This approach encompassed proposals on early retirement, phase-out retirement, flexible scheduling of workloads, and retraining.

A. The Union's Response

Early retirement was envisioned by the union as a means of alleviating overstaffing by offering senior faculty an additional, appealing career option. The problem area, liberal arts, just happens to be the oldest area and is therefore, the area with most senior employees. A proposal was developed relating early retirement benefits to age, years of service, and proximity to the mandatory retirement age. As an ancillary benefit, it was hoped that this proposal would provide a means for shifting scarce resources from disciplines of declining enrollment to disciplines of growing need such as the evolving technologies. In other words, it appeared that the proposal also had clear institutional merit.

Early retirement is not a visionary concept by any means. Its feasibility has been considered in an Oregon study and found useful either as "an academic personnel policy to create turnover in faculty ranks, or as a fiscal policy to save funds...."[5] Further, successful programs already exist at Henry Ford Community College in Michigan, Maricopa Community College in Arizona, Massachusetts Institute of Technology, Indiana University, the University of California, and Stanford University, to name a few.

Economically, institutional benefits accrue from the replacement of senior faculty at the top of a salary schedule by junior faculty at the bottom. As a specific instance, Maricopa Community College saved $351,000 during the first year of its early retirement program and projects that figure will reach $1,000,000 during the second year.[6]

B. Flexible Scheduling

Flexible scheduling was proposed as another means of relieving some of the immediate problems of overstaffing. The union believed that more individual flexibility in scheduling one's workload could be coordinated to relieve short-term problems. For example, the flexibility to increase one's workload during a semester of relatively higher enrollment while reducing it in a subsequent semester of lighter enrollment, was seen as an obvious palliative. This flexibility concept was extended to include leaves of absence for faculty without loss of benefits, other than salary. Again, it was envisioned that the ability to take such leaves might encourage those in impacted disciplines to consider other alternatives without undue loss--an "any shelter in the storm" philosophy.

C. Retraining Plan

Finally, a retraining plan was proposed as the most important long-term solution to the overstaffing problem. This proposal contemplated a review of enrollment and staffing patterns, a declaration of overstaffed and understaffed disciplines based on these findings, an opportunity for faculty in overstaffed disciplines to make proposals to retrain in understaffed ones, an evaluation of such proposals, and an awarding of compensable leaves to retrain. From the start, all union proposals were based on the expectation that such retraining would culminate in the acquisition of credentials needed to meet the standards, usually a Master's Degree, of the receiving discipline. No reduction of standards was proposed or contemplated.

The Administration's Response

The administration's reaction was typical of adversarial negotiations. Since the proposals originated from the union, they were initially rejected completely, and subsequently packaged as trade-offs against other legitimate union demands such as improved salary. As a consequence, that which was finally secured resulted from union compromises and, in the final analysis, a demonstrated commitment to strike.

Early retirement proposals were summarily rejected by the college team. One administrative concern centered on the potential loss of valued senior faculty. The union countered that if the only thing that kept senior faculty from retiring was a contractual obligation or a potential loss of benefits, then an early retirement would probably be beneficial to both parties. Further, the obvious economic benefits were delineated. In each case, union arguments were resisted with a puritanical fervor. Providing a monetary benefit that could not be directly tied to a job performed was deemed unacceptable, if not immoral. As a result, no progress was made in this important area.

Likewise, attempts to gain flexibility of individual workload scheduling met with only minor success. The administration appeared to be more interested in the predictability and simplicity of administering a rigid workload pattern than in any resolution of overstaffing problems that could be gained by such flexibility.

The retraining concept was also opposed by the college's administration. Here, however, the initial opposition was tactical. That is, an attempt was made to trade these demands off for either union concessions in economic areas or to gain acceptance of administrative proposals that were onerous to the union. When this approach proved unsuccessful, the concerns shifted to procedural and economic ones.

Procedural concerns centered on the difficulties of projecting enrollment patterns. Such projections were needed to provide a rational basis for declaring both overstaffed disciplines as well as disciplines for retraining. The union argued that such planning was necessary in any case. Limitations on available funds no longer permitted the luxury of random growth.

Economic concerns were more difficult to counter. Although the college did not contend it was unable to fund the union's retraining proposal, it presented an obdurate unwillingness to do so. The college would not recognize any accrued obligation to employees of long-standing. Any relief for these employees had to be purchased by their bargaining agent.

Another factor in these negotiations was an often stated antipathy for sabbatical leaves by the college's Board of Trustees, the elected governing body. This lack of appreciation for sabbaticals had led, in the past, to numerous confrontations, usually in the form of arbitration. Although these confrontations had, in each case, been resolved in the union's favor, and perhaps because of this, the mood of the Board was unquestionably hostile to sabbatical leaves. In fact, the college's proposal was to eliminate them.

In an attempt to make progress while keeping concessions to a minimum, the union proposed funding one year retraining leaves by a one-to-one reduction in sabbatical leaves. Since sabbatical leaves consist of six (6) leaves of either one-half year at full pay or a whole year at one-half pay, this proposal would have shared the cost of retraining equally between the college and existing contractual provisions. It was not accepted.

After a number of intermediate steps, the union finally proposed to fund seven (7) retraining leaves as follows: The first three retraining leaves would be funded by a reduction of sabbatical leaves on a two sabbaticals for one retraining leave basis. The fourth retraining leave would be funded by the college. Subsequent retraining leaves would be funded from an existing professional growth fund that amounted to $300.00 per teacher. These funds would provide at least three additional retraining leaves. This proposal, now of minimal cost to the college, was still unacceptable.

The Negotiated Solution

It finally became clear that this issue, along with the issue of salary, would only be resolved by negotiation brinkmanship. Neither was resolved until one strike vote had been delayed to consider an eleventh hour administrative proposal, and one day before a second strike vote was scheduled. The settlement included an acceptance of the union's last retraining proposal with but one significant modification, a statement that these benefits constituted the total extent of the college's obligation to provide compensable retraining leaves.

The important features of Macomb Community College's contractual provisions for retraining leaves are: 1) An analysis period during which the administration is required to make a good faith attempt to identify disciplines that are overstaffed as well as those that are understaffed. Further, the administration must also project the number of full-time positions in each category. Finally, the results of this analysis must be discussed with the union and, in certain instances, modified at the union's request. 2) A notification period in which all faculty in overstaffed disciplines are informed of this fact, as well as possible disciplines for retraining. Each member of an overstaffed discipline then has the opportunity to apply for retraining in one of the designated understaffed disciplines and to prepare a plan of work. 3) An application an evaluation period requiring the submission of the proposed plan of work to a faculty committee, their review, and, if contractual criteria are met, a one-year retraining leave with full salary and benefits is awarded. Seven leaves are available each year. 4) Finally, the retraining period itself during which a regular reporting procedure is required to assure that the plan of work is being fulfilled. The maximum retraining period is now two years, the second year being non-compensable.

Other features of the plan include an immediate transfer to the new discipline, without loss of institutional seniority, once the retraining leave has started. After one year, and upon completion of approximately two-thirds of the requirement, the teacher is allowed to start teaching in his new area. Any unfulfilled requirements must still be completed within the two-year period.

A key factor in obtaining the retraining leave concept was an agreement by the union to eliminate a contractual provision allowing some teachers to teach certain courses regardless of credentials or preparation. When a reasonable opportunity to attain reasonable standards was made available, the union did not object to those standards. Although this stance did not meet with uniform enthusiasm, the contract was ratified by 265 to 47.

During the first semester of experience with a retraining leave, the fall semester of 1981, the wisdom of this type of leave became obvious. Enrollment in the interdisciplinary social science courses plummeted from 1057 students during the fall semester of 1980 to 143. The number of sections suffered a corresponding decline from 32 to 6, many of these running with minimal enrollment. Eleven faculty members were forced to make major schedule modification and, in most cases, teach classes outside of their major discipline. One was involuntarily transferred to another discipline.

This sobering experience provided sufficient inducement to begin early preparation for implementation of the retraining leave, the date for notification being February 15. Early attempts by administration to provide a reasonable analysis were discouraging in terms of methodology, accuracy, and results. Little or no use was made of historical data and patterns. Conclusions about qualifications were based on factual errors and contractual misinterpretations; and, as a result, the predictions were draconian. Thirteen positions in seven disciplines were marked overstaffed, and twenty-two positions in eleven disciplines were designated as understaffed.

The union's analysis suggested the number of overstaffed positions was overstated, while the number of understaffed ones was understated. Further, the understaffed positions were concentrated in technical disciplines such as mathematics, accounting, data processing, and electronics--disciplines that one might expect to be less than appealing to social scientists. A lengthy, and sometimes acrimonious, debate on these topics carried into the start of the spring semester.

If any reversal or abatement of the problem was expected, it did not materialize. Again, the enrollment picture in the social sciences was dismal. Again, classes were run with minimal enrollment. Again, a number of professors had to make workload adjustments, at least eight teaching outside their major disciplines.

Confronted with undeniable trends and having several jobs hanging in the balance, a new mood of reality infused administrative/union discussions. Eight positions were finally designated overstaffed: six in the social sciences, one in speech, and one in allied health. Forty-seven positions in twenty disciplines were designated understaffed: three of these in other social science disciplines and one in counseling and guidance.

These projections were then presented to the faculty of the overstaffed disciplines. Five applied for retraining leaves. Fortunately, there was no problem of duplicate requests for the same position. A teacher with twelve years of seniority in the Medical Laboratory Technician program applied to retrain in management. Four teachers averaging 13.5 years of seniority in the social sciences applied: one from geography, two from history, and one from the general discipline of social science. Two applied to retrain in psychology, one in sociology, and one in counseling and guidance. Each plan of work was reviewed by a faculty committee, the Sabbatical Leave Committee, and found appropriate; each proposing to pursue a master's degree in the new discipline. Consequently, each was awarded a retraining leave.

One teacher had already completed substantial work in his new discipline. In fact, he had previously been teaching his full load in the new discipline. As a result of these extenuating circumstances, he requested that his leave be for one-half time for one year, the equivalent of one-half of a retraining leave. This variation was approved by all parties.

The fall semester of 1982 found enrollment trends unchanged. Without the retraining leaves, at least four faculty members would have been laid off. The retraining concept had clearly served one of its purposes, saving jobs.

Today, all retrainees report making satisfactory progress. Three confidently expect to have achieved a master's degree in their new discipline by the start of the fall semester of 1983. Although the other two may not be able to complete all degree requirements by that time, both expect to have them at least two-thirds completed, and both confidently expect to complete any remaining requirements during the second year. So, the second purpose of retraining leaves, maintaining academic standards, also appears to be well served.

Summary and Conclusions

However, the retraining concept at Macomb Community College has not been without problems. One has been an indigenous union problem, the other an exogenous problem precipitated by the college administration.

First, some faculty in disciplines that are prospective recipients of retrained faculty argue that present standards, usually the master's degree, are too general. This is especially the case in business disciplines and is applied most often to the M.B.A. degree. Advocates of even more stringent requirements argue that not all M.B.A. degrees are created equal. Even in cases where the degree must include specialization in the discipline of retraining (management, for example), these voices contend that the M.B.A. degrees offered by some colleges are simply inadequate degrees. The union has been most reluctant to enter this murky realm, contending that questions of quality of degrees are better left to the appropriate accrediting agencies.

The second problem was a refusal by the college to report those on retraining leaves to the state for retirement service credit. The administration contended that since retraining leaves were not specifically named in the Teacher Retirement Act, people on such leaves could not legally be reported for service credit. The union argued that the negotiated intent was to continue all benefits for retrainees, the leave was covered under the spirit of the law since it was tantamount to a sabbatical leave, and the Retirement Board would undoubtedly grant a mutual appeal if these reasons were put forward. The administration refused all offers of a joint appeal and, informed each person on a retraining leave, as well as all prospective retrainees, that they would not be reported for retirement service credit for the period of the leave.

The reaction of the union was predictable. Every argument was marshalled and every political avenue was pursued in an attempt to preserve a benefit unnecessarily and unfairly stripped from members who were already subjected to the trauma of a forced career change. The Board of Trustees of the college proved more sympathetic to these approaches and appeals. At the request of the union, a resolution committing the college to securing the retirement service credit in question was adopted. Subsequently, the Retirement Board, when petitioned to do so, agreed to treat retraining leaves as sabbatical leaves for this purpose of retirement service credit.

The resolution of this problem has not been without an adverse side effect. This year, 1983, five disciplines were determined to be overstaffed by seven positions. Fourteen disciplines were found to be understaffed by twenty-one positions. One person applied for a retraining leave.

Even though this case study has been one of a union's resolution of job security issues during a period of adversarial relations with management, it is not the purpose of this study to present such relations as being necessary, or even desirable, if one wants to accomplish similar ends. To the contrary, this case study shows what can be accomplished by a responsible union in less than ideal circumstances.

It would seem obvious that where good relations exist, similar or improved accomplishments can be achieved with less effort and less acrimony--especially on issues such as these where there clearly exists a mutuality of interest. The task is to get both the union and management to realize that a fair solution to these problems is in the common interest. Nor is this to suggest that all adversarial relations are bad per se. On some issues, they are unavoidable and in some cases, legally mandated. But we must learn to distinguish between issues of cooperation and issues of confrontation with greater acuity. This is a lesson that has been forced upon industry by foreign competition. It is a lesson that we, in education, ignore at our own peril.

When there is neither a general decline in student population nor a substantial decrease in revenue of such magnitude that the end for which retraining is intended no longer exists, but where there is staff reduction because of program modification, course deletion or insufficient enrollment affecting a particular department or area, techers affected shall have the right to retrain according to the conditions set below. Such retraining would be interpreted as a voluntary transfer for seniority purposes.

1. The Administration shall identify, by February 15, each discipline where insufficient work will probably exist during the next academic year and the number of faculty that will probably be unable to obtain a full load. All members of these disciplines will be provided with this information. The Administration shall also provide, by February 15, a list of all disciplines for which retraining is possible--and the maximum number of retraining leave applications that would be appropriate for those disciplines. The President of MCCCFO will also be provided with this information, as well as an opportunity to discuss this at Service Committee. MCCCFO shall have the right to add probable over-staffed disciplines and positions to the list of said disciplines and positions.

2. Teachers in a discipline identified as overstaffed shall have until March 15 to apply for a retraining leave. This application shall include: 1) the discipline for which retraining is intended consistent with the list of disciplines established in 1. above, 2) a plan of study that would qualify the applicant for that discipline, 3) the amount of time, not to exceed two years, required to complete the plan of study, and 4) a schedule of periodic progress reports.

3. Application for retraining will be forwarded to the Sabbatical Leave Committee and the appropriate vice-president. The Sabbatical Leave Committee will evaluate each retraining leave application to determine if it fulfills the requirements of 2. above. If there are enough approved applicants and enough leaves as provided in XV, A. and XVI, B., the number of retraining leaves awarded to members of a discipline shall be the same as the number of overstaffed positions in that discipline.

4. Progress reports shall be filed with the appropriate vice-president. Lack of satisfactory progress in fulfilling the approved plan will result in immediate layoff without pay.

5. Retraining leaves, excluding extensions, shall be at full pay. Extensions for a second year, without pay, may be granted upon application to the Board.

6. At the start of a retraining leave, the teacher shall be assigned, as a voluntary transfer for purposes of seniority, to the discipline for which he is training. After the first year of retraining and upon acquiring the qualifications specified in XII, B., 7., the teacher will be allowed to select a workload in the discipline. However, the qualifications of IV, D., must be satisfied by the end of the retraining leave. Failure to complete IV, D. qualifications will result in layoff.

7. Any faculty member who is without a full load and not on a retraining leave is subject to the provision of Article XXVIII, A.

8. Faculty members on retraining leaves shall suffer no loss of seniority.

9. Faculty members returning from retraining leave shall have their base salary set at the amount it would have been if they had not taken a retraining leave.

10. Retraining leaves shall be limited to permanent status teachers.

11. Exhaustion of the benefits provided herein shall satisfy the obligation of the college to provide compensable retraining leaves.

FOOTNOTES

1. Jeffrey D. Lukenbill, "Faculty and Program Development Go Hand in Hand," Community and Junior College Journal (March 1982): 16-18.

2. Ronald W. Bush, et al, "Maricopa Community College District Human Resources Master Plan: A Brief Review," (November 1982): p. 10.

3. Macomb is a suburban community college with a current enrollment of 30,410 students ranking it as the third largest institution of higher education in Michigan and the seventh largest two-year college in the nation.

4. The Macomb County Community College Faculty Organization is an unaffiliated union that has been the bargaining agent for full-time faculty at Macomb since 1967.

5. Barbara A. Mitchel, "Early Retirement in Higher Education." Paper presented at the 1981 Annual Meeting of the Association for the Study of Higher Education, (March 1981).

6. Bush, "Maricopa Community College District Human Resources Master Plan: A Brief Review," p. 6.

7. Article XXVIII B. of the Agreement between Board of Trustees of the Community College District of the County of Macomb and Macomb County Community College Faculty Organization, 1981-1983.

D. NEGOTIATING ALTERNATIVES TO LAYOFFS: THE OREGON STATE EXPERIENCE

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Introduction

There are three contexts that I would like to describe briefly so that you will understand the background for my remarks; the Oregon context, the psychological or intellectual context that occurs with retrenchment and the continuing duty to bargain during the pendency of an existing agreement.

Oregon public higher education consists of eight baccalaureate institutions governed by an 11 member Board of Higher Education. The first petition for a faculty bargaining unit was in 1973, preceding Oregon's comprehensive Public Employee Collective Bargaining Act by about half a year. As other petitions were filed, the Employment Relations Board decided that campus-by-campus bargaining rather than systemwide bargaining was most appropriate and, over the period extending from 1974 to 1977, all but the Health Sciences University faculties petitioned for bargaining elections. Two campuses have voted against representation once, two campuses have voted against representation twice, the most recent being Oregon State University which recently voted 2 to 1 against collective bargaining. Three institutions are now represented: Portland State University by the AAUP, Western Oregon State College by the AFT and Southern Oregon State College by an independent association of professors. As a result, it makes it somewhat less than easy to establish uniform personnel policies when dealing with three different unions and five unrepresented campuses, and just to keep things on an even keel, the graduate assistants of the University of Oregon organized and negotiate with the university via the American Federation of Teachers.

Cutback Management

Oregon's financial problems began in the summer of 1980 when there were insufficient revenues. The governor called a special session of the legislature and cut the budgets of all state agencies, or most of them, including higher education which suffered a $13 million reduction at that point. Although the 1981 legislature left with a balanced budget, including new revenues, they were back in about six months for the first of four special sessions during 1982, each further reducing the budgets of higher education, as well as other public agencies. The governor presented the 1983 session of the legislature, which is now at work with a balanced budget--balanced with $400 million of expected new revenues if a tax package is passed and, of course, just in time for us to begin opening all the contracts for the 1983/85 biennium.

The second context I would like to describe is the psychological and intellectual one which typifies a period of retrenchment. When the possibility of retrenchment first appeared on the horizon--or more often, when it comes charging down the hill, the first reaction is to circle the wagons and fight the bastards off until we can get back to the fort and set up temporary defenses until the danger passes. The only problem is that the danger is not temporary and we soon begin to run out of food and ammunition. If you're like me, you haven't been prepared for that.

You may not even have known that in such journals as Public Management, Policy Sciences, Policy Analysis, and the Public Administration Review, there have been for several years a series of articles on something called "cutback management," a term that I didn't even know existed two years ago but with which I now have considerable experience. Let me quote a moment from an article written by Robert Behn of Duke University's Institute of Public Policy Sciences and Public Affairs. He says in one of his articles, "for a manager of a governmental agency faced with a real and severe cutback in resources, nothing is more central to the exercise of leadership than the definition and articulation of a new corporate strategy...." Before a new corporate strategy can be developed, articulated and accepted, however, the agency's attentive public and its employees must be convinced that retrenchment is really required. This is no easy chore. Most people believe the cutbacks are not necessary. We have lived with growth too long. We have little experience with contraction and our psychological defenses will all work to convince us that if we were only clever enough retrenchment can be avoided, at least by us if not by others. As Behn stated:

> Even an initial decline in resources will not alter this attitude. People will not believe the decline is permanent. At the beginning stages of retrenchment, everyone believes that budgets will be cut but they will be restored in a year or two. To avoid reality, the initial discrepancy can easily be met (if not with creative financing) with across-the-board cuts and deferred maintenance. Eventually, however, reality is forced upon the organization either by its leaders who explain it or by outsiders who place strict conditions on their continued support. Only once the organization is in this second stage can the serious business of managing the decline begin.

I think that puts it as succinctly as I've heard it put--the problem of recognizing that we are indeed in a different situation. If you're not convinced, perhaps you can read additionally in such books as John Naisbitt's Megatrends. At least it will make you think about what is going to happen in the future, even if you do not accept what he predicts.

At this second stage of retrenchment, a complete and genuine review of the institution's missions and goals becomes necessary. Not a superficial look, but a zero-based mission analysis followed by a strategic plan encompassing the strategy of moving from the present to the desired circumstances. Such a revision of missions, goals and strategies should precede the trip to the bargaining table for obvious reasons. if we're going to use the bargaining table to achieve our purposes on both sides, then we must know what it is we are about in this new era of higher education.

The Duty to Bargain

The third context of these remarks relates to the continuing duty to bargain during a contract. Many of us, particularly non-lawyers, have been taught or learned or at least thought that a contract, particularly one with a good zipper clause, relieves the parties of the right or obligation to bargain during the term of the agreement. Unstable economic times and the retrenchment it portends have raised these issues of mid-term bargaining to our consciousness, at least in our part of the country. The issue is of sufficient concern that we've asked some attorneys to prepare a monograph on the subject of the continuing duty to bargain during contracts and it has just been issued by the Labor and Education Research Center at the University of Oregon. Although a number of circumstances may vary which give rise to mid-contract negotiations, there are only two which I want to mention this afternoon.

The first relates to the obligation to bargain the "effects" of unilateral changes in permissive subjects. Although one response to retrenchment, contracting out, is more apt to be used in classified contracts than with professional staff, the effects of such a decision may reach the terms and conditions of employment for faculty and must be bargained. The decision to reduce staff is typically a management right, a permissive subject, but if there is no layoff article, there may be a duty to bargain the order of layoffs.

The second circumstance which may lead to the duty to bargain mid-contract is described by the doctrine of impossibility of performance, or business necessity. In Oregon law, for example, it is provided that, "In the event any provision of a collective bargaining agreement is declared invalid...by the inability of the employer or the employees to perform to the terms of the agreement, then upon the request of either party, all of any part of the agreement shall be reopened for negotiation." Does one then have an "impossibility to perform" situation when budgets are cut so that one may not, at least in theory, fulfill the requirements of the agreement? The Oregon Employment Relations Board has suggested, but not directly ruled, that an emergency or business necessity may lead to unilateral implementation of changes after bargaining, including the use of dispute resolution procedures. The Board has recently commented "...the extent of the duty to bargain a decision may be modified if the employer is faced with a legitimate emergency or business necessity." Question: Does retrenchment or does the existence of financial exigency, or its imminence, portend a legitimate emergency or a business necessity which will permit mid-term contract negotiations on such grounds, or at least the possibility that if the union refuses to reopen or bargain problems related to financial exigency, then an employer may unilaterally implement its proposals?

Nontraditional Approaches

With this background, then, I would like to discuss some of the so-called nontraditional approaches being taken at the table or, if not nontraditional, at least perhaps new combinations, or new twists, or new emphases. I am going to describe these in three different categories: concessions, retraining and early retirement. The most obvious and apparently the most often used concession, particularly in the mid-contract bargaining, is that of the reduction or postponement of salary increases. In Oregon, faculty at each of the eight institutions--including the three involved in collective bargaining--preferred the reduction or postponement of pay increases to layoffs and terminations. It was not even a contest; we didn't have to persuade or twist arms at all. In fact, in some institutions, the initiative came from the faculty members themselves. In at least one case, salary adjustments were twice postponed. Little difficulty was encountered in negotiating addendums to existing agreements, amending salary articles without reopening the remainder of the contract for tradeoffs or other kinds of negotiations.

Other kinds of concession approaches being used include:

- the reexamination of permissive subjects that have found their way into early contracts
- the focusing on non-economic matters in the absence of salary increases
- the ability to respond to economic demands not particularly in the area of concessions but through the use of problem-solving or win/win kind of approaches rather than the traditional adversarial, or win/lose posture
- an extension of contracts to maintain the status quo during a period of reexamination of missions and goals
- negotiation of articles related to retrenchment and program reduction using the governance structure for an examination of academic and program decisions
- using the contract to resolve the procedures by which those layoffs or other results of such reexamination are treated.

In our experience, retraining has not been a particularly useful mechanism; one of the obvious problems is that in research universities, where the Ph.D. is a fundamental requirement for admission to the academic discipline and for progression in rank, retraining is not a short-time proposition. Nonetheless, we instituted for the current year a policy of granting educational leaves which would permit half pay for any length of time during the academic year--from a quarter to a full year for any educational purpose including retraining. The attempt was to take advantage of a sabbatical-like approach without having to wait for the eligibility of sabbatical leaves and without having to have some of the other restrictions that frequently accompany sabbatical leave applications.

Another approach which has been used at Portland State University in its contract is to have post-tenure review and to fashion, at the same time, any required support for the retraining or upgrading of faculty at the institution's expense and/or contribution.

In the area of early retirement, several approaches seem to be gaining acceptance. One which has been mentioned most frequently is the part-time or partial retirement with part-time teaching as a remaining option. With respect to the property rights of tenured faculty members and the question of how one obtains a relinquishment of these property rights, one answer is to buy those property rights back as a means of achieving early retirement. The purchase price for the relinquishment of tenure or the reduction of the tenure commitment from full-time to part-time may be a one-time payment or, as at the University of Oregon, a program whereby salary will be enhanced for a period of three years at a rate of six percent over and above any other merit or across-the-board increases which might be available to the faculty member. The latter proposal has both the costs on the one hand and the attractiveness on the other of increasing the salary base upon which retirement is made.

Another activity which seems to be very attractive to faculty members is the ability to retain health and dental insurance and other insurance within the group structure that's available to them as active faculty members, and if this can be continued with employer participation in the premium, so much the better.

One of the major problems that must be kept uppermost in our minds during a period of retrenchment is that of maintaining quality in the institutions. We've heard this morning of the problems of across-the-board reductions, of freezing vacant positions and the fact that vacancies occur not necessarily where the oversupply of faculty members might be. We heard speakers advocate that we save strong programs and reduce or eliminate weak ones. But what if the weak programs are in English literature or in philosophy or in foreign languages? We can't reduce or eliminate those merely because they're weak, but we have to reexamine the entire institutional missions and goals in the abstract; not just in terms of its existing strengths or weaknesses.

E. AVOIDING FINANCIAL EXIGENCY: THE CANADIAN ASSOCIATION OF UNIVERSITY TEACHERS EXPERIENCE

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Statement of the Problem

Avoiding financial exigency, from the perspective of a faculty association, is to avoid lay-offs of faculty members for reasons of financial exigency. No Canadian university has declared a state of financial exigency, so we have been fortunate in not having to test the alternatives to lay-offs which we have developed and negotiated. While there are similarities between the Canadian and the American experiences, I think there is value by outlining the "standard" provisions on financial exigency in collective agreements at Canadian universities.

In Canada, we accepted that there are two circumstances which provide, generally speaking, a proper basis for lay-off of tenured faculty. Those are programme redundancy and financial exigency. I say generally we accept these as bases because at some Canadian universities lay-off is clearly not permitted for programme redundancy, and arguably, it is not even permitted for a financial exigency. Some university by-laws and some tenured contracts of employment can easily be interpreted as not permitting termination simply for financial reasons. Fortunately, we have not yet had any judicial or arbitral interpretation of these, and thus the matter remains in some doubt.

To understand alternatives to financial exigency in the Canadian context, you should understand what they would be alternative to. By financial exigency, I am referring to a situation in which there is a serious short-fall in revenue, such that the university is unable to meet its commitments, and the question becomes, should tenured faculty members be terminated? With exigency, we canvass the issues by asking and answering five questions.

1. What is the definition of financial exigency? In other words, what must the employer prove before being able to invoke the procedures which follow? For example, must the university sell off its art collection, golf course or stock portfolio before declaring an exigency?

2. The second question is, how and by whom is the financial exigency determined? Is the employer given an unfetted right, some discretion, or no discretion at all in determining this? Is the existence of an exigency arbitrated prior to invoking the rest of the procedures and, in particular, before lay-offs are made? What, if any, is the role of Senate or the other academic bodies, in this process?

3. Thirdly, having determined that the procedures will be invoked, is the employer entitled to terminate faculty or must they be retrained? Assuming that lay-offs are contemplated, are they done on the basis of merit, (and if so, who determines), or by seniority, (and if so, on what basis - that is by faculty, by department or university wide, or some combination)?

4. Fourthly, having determined who is to be laid-off, what are their rights with regards to notice (i.e. are they given one year's notice prior to lay-off, or more, or less)

and, having been laid-off what, if any, are the severance pay arrangements? For example, can a highly trained specialist in computer science be laid-off, receive two years' salary, and go to work elsewhere at a higher salary the next day?

5. Last question is, what are their rights after lay-off? Can the members be recalled; in what disciplines may they be recalled to or, for how long does this right continue? For example, can a physics professor be recalled to the math department after some seven or ten years of lay-off? Do laid-off members retain group insurance plans, office space, library privileges and other rights?

On the basis of those questions, let me indicate, in a general way, what a typical Canadian collective agreement provides. Of course there are exceptions.

Our collective agreements define financial exigency in terms that make it clear that it involves a serious crisis or substantial and recurring deficits threaten the survival of the institution as a whole (similar to the AAUP). You cannot have a financial exigency in, for example, one faculty. The possibility of laying off faculty is a matter of last resort, to be undertaken after all other efforts to alleviate the financial difficulties have been taken. While this is invoked at the instance of the employer, there is requirement for full disclosure to other appropriate institutions or bodies within the university. Thus, Senate and the Faculty Associations receive full financial information. Our agreements also require the independent establishment of the existence of the crisis and the degree of the crisis. In effect, we arbitrate the very existence of and the extent of the exigency before any lay-offs are permitted. In turn, in a subsequent individual grievance, the grievor cannot allege that a financial exigency does not exist. We do this, in part, because we believe that different people would be more able and acceptable in arbitrating the existence of an exigency, as compared with the issue of whether or not the proper people had been selected for lay-off under an exigency.

As for who is eventually selected for lay-off following a declaration of an exigency, we have quite disparate provisions. The actual criteria vary; some use seniority solely, others use merit, most use some combination. My own view is that it should be done on the basis of seniority and on a university-wide basis. There are others who would advocate seniority on a programme or department basis, and still others who recommend using solely academic grounds, as seniority provisions produce academically unacceptable results. To be frank, part of the reason why I prefer seniority, university-wide, is that I think a financial exigency would only be provoked by government. If the provincial government wishes lay-offs, then I would argue that selection for lay-off should be made in the most mechanical and objective manner possible. And, I would also note that the most likely candidates for lay-offs in such a situation would be in the recent growth areas (computer science, accounting, engineering, etc.) where alternative employment is also quite likely. Criteria which permit, or even promote, a rationalization of the university by invoking a financial crisis should, in my view, be avoided by anyone who purports to represent the interest of the faculty, let alone that of post-secondary or higher education.

In any event, a faculty member has the right to grieve the application of the criteria to his or her own situation. On the issue of notice and severance pay, we require both substantial notice and substantial severance pay. If the financial crisis must be long-term and projected to continue, the university should be able to see it coming. Thus, a year or more of notice is not unrealistic and is, in fact, fairly common. In addition, our agreements provide for substantial severance pay, although, again, we have some sympathy for the view that if we adopt the strict university-wide seniority approach to lay-offs, there may be computer specialists, engineers and business administration faculty who quickly find alternate employment that is higher paying and thus may not be deserving a substantial severance. For this reason, some agreements provide for periodic payments depending on continued employment. For those who need it, nevertheless, I would think that one month's pay for each year of service, in addition to perhaps a basic 6 months' is not unreasonable and, while actual amounts differ, many agreements are in this range. In addition, most benefits, such as pension and insurnce, continue until alternate employment is arranged, or for a set period of time coinciding generally with the right of recall. Recall rights generally run five or more years and are for any position for which the person is capable or can be retrained within twelve to eighteen months.

Alternatives to Lay-offs

Having reviewed the standard Canadian provisions, I am now ready to move on to look at the alternatives. In devising alternatives to lay-offs in the event of a financial exigency, I suggest we must also look at the consequences of lay-offs. Clearly, the effect of lay-offs for financial reasons will be to move the universities back to the time when they were institutions for the wealthy. You will end up with even more restricted enrollments and the perpetuation of an education system for the privileged only. Clearly, the effect of lay-offs will be to limit access to post-secondary education. In my view then, the fight against financial exigency is one which really must be fought on the issue of access to higher education. Having said that, I recognize that a discussion of the need for accessible and affordable universities is not the topic which I am directed to address. However, we cannot simply ignore the predictable consequences of political attacks on access that we currently face.

A. Mid-Career Retraining Options

If we cannot preserve access and are forced to either reduce the number of faculty or the amont of money for faculty salaries, what are our alternatives? In Canada, much of the pioneering work in this area was done at Carleton University. The National Center (NCSCBHEP) has already published an article entitled "Costs Saving Measures and Mid-Careers at Carleton University" (see Newsletter, Volume 9, No. 3, July/August 1981). I don't propose to repeat that material here. Instead, I intend to briefly review various money saving alternatives which might either alleviate financial problems, perhaps even preventing an exigency, or else may help to reduce the number of lay-offs needed after a state of financial exigency has been declared.

B. Methods to Increase University Revenue

It will, no doubt, come as no surprise that several alternatives, in my view, are ones which are solely the employer's responsibility.

1. Many Canadian universities own vast quantities of real estate which are frequently found in large metropolitan areas. These holdings could be disposed of and thereby provide considerable income for the university.

2. Many universities seem to be doing very little about maximizing investment returns on existing funds.

3. The number of administrators in Canadian universities is rising rapidly while the number of academic and support staff is either constant or, more likely, diminishing. I believe this phenomenon should be examined and that funds can properly be freed-up following such an examination.

4. Universities can improve their administrative efficiency.

5. Universities can continue the efforts which they have been making over the past number of years to improve operating efficiencies.

It is clear, in Canadian universities at least, that much can still be done on the employer's part in maximizing income and minimizing expenditures without at all touching the salaries portion of the budget.

C. Early Retirement Options

A number of other alternatives to lay-offs do involve the academic staff and the faculty associations. The first of these involve early retirement. Under existing salary structures, older faculty are generally higher paid. If sufficient inducements to retire exist, there could be considerable savings in salary expenses which might even be used to hire new, younger and cheaper faculty. In order to do this, however, it is necessary to make early retirement attractive. The areas in which we are directing our attention in order to do so are a) improving the pension paid at early retirement by reducing the penalty for early retirement, b) continuing access to university facilities such as office space, library, research space, secretarial and technical assistance, and computer facilities, and c) the possible continuation of medical, dental and other benefit plans.

We are looking into, and experimenting with, partial early retirement. Under this scheme, a faculty member might reduce his or her workload by some percentage (such as 50%) and take partial retirement. The faculty member would receive half of his or her normal salary and half of the pension which he or she would otherwise receive. Usually, the employer continues full contribution to pension and other benefit plans, with employees paying 50% of what they might otherwise pay and the employer making up the difference. The exact details of the arrangements obviously vary from one place to the other. The advantage of this system is that it permits faculty members to ease into retirement. Some of our collective agreements have a similar system for a "voluntary reduction of workload" where a faculty member agrees, for some fixed period of time, to reduce his or her workload to a given amount and, at the same time, to receive a reduced salary. Members use this scheme for additional time to pursue outside business objectives, or perhaps to engage in retraining. Generally, under a scheme like this, full contributions to the benefit plans continue and the faculty member is entitled to resume full employment if the reduced appointment does not work out satisfactorily.

D. Reduced Workload/Payment

Other forms of reduced workload or reduced payment are available. There are, for example, fellowship opportunities, in which a granting agency will take over the payment of a faculty member's salary, or a portion thereof, as part of a major research project. In addition, some universities and faculty associations have considered arrangements whereby faculty members may agree to defer portions of their salaries until a later date. For example, a faculty member who wishes a year's leave may agree to work for three years at 75% of the salary otherwise received, deferring in each year the extra 25%. In the fourth year, the faculty member may then claim the 75% salary deferred, with the effect that the salary is constant over the four years and the faculty member has the advantage of one year's leave during which he or she is not obligated to the university in any way.

E. The Efficiency Issue

Other arrangements do not directly save money but, by increasing efficiency, may permit the university to increase its income through greater enrollment or to otherwise benefit and thereby have at least the potential for alleviating difficulties. The first of these involves voluntary transfers from one department to another, or retraining schemes, following which a transfer would take place. Faculty members may already possess the skills required to perform adequately in another discipline where the need is greater, or may easily acquire them. The faculty member and the university may agree to implement such moves. Another possibility involves inter-university cooperation. Unfortunately, we still have some instances where one university has a demand for faculty in a discipline in which another university is overstaffed. It may be possible, although little has been done in this area, to arrange for some sharing of resources between the institutions. In addition, there is the possibility of shared appointments, although in the academic setting this varies very little from multiple part-time appointments. Finally, it may be possible through rearrangement of course offerings, including the teaching of summer school or off-campus courses, to increse enrollments and thus revenues and to alleviate the need for any lay-offs.

Conclusion

In Canada, some of these options have been tried more than others. In addition, some universities have adopted formal systems for buying out faculty members. We call these "golden handshake" provisions, whereby, for a certain fee, the faculty member agrees to "resign". All these are areas in which CAUT and its member associations are directing their attention. Our chief concern still remains one of maintaining adequate funding for higher education in Canada, but we nevertheless continue exploring the alternatives to the clearly undesirable notion of lay-offs.

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