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UNIVERSITY**

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1979-09-10 University Senate meeting

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Volume XVI

Agenda and Minutes of the Meeting of September 10, 1979

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WICHITA STATE UNIVERSITY SENATE

AGENDA

Meeting Notice: September 10, 1979, 126 Clinton Hall, 3:30 p.m.

Order of Business:

- I. Calling of the Meeting to Order
- II. Informal Proposals and Statements
- III. Approval of the Minutes for the meeting of the old Senate, May 14, 1979 (Vol. XV, No. 14) and the meeting of the new Senate, May 14, 1979 (Vol. XVI, No. 1)

IV. New Business:

Nominations for Senate vacancies:

At-Large Senator: Mary Sue Foster

Humanities division Senator: Susan Nelson

The State of Planning at W.S.U.-- Dr. George Platt,
Associate Vice President for Planning and
Institutional Studies

COCAO Statement on Financial Exigency
(Attachment A)

AAUP Response to Exigency and Retrenchment

V. Adjournment

ATTACHMENT A
To Senate Agenda
September 10, 1979

July 11, 1979
COCAO

DEFINITION OF FINANCIAL EXIGENCY

Financial exigency is the formal recognition by a Regents institution that prior reductions in budget or authorized number of positions have required the elimination of nontenured positions and operating expenditures to such a point that further reductions in these categories would seriously distort the academic programs of the institution; hence further budget or position reductions would require the nonreappointment of tenured members of the faculty or the failure to meet the standards of notice for nonreappointment of faculty. It is not a requirement of financial exigency that all nontenured positions throughout the University be first eliminated.

Distributed to Faculty
(These documents also
filed following minutes 9/10/79)

Sept. 13, 1979

To: WSU Faculty
From: Senate Office

Earlier this year, the Council of Chief Academic Officers of the Regents' Institutions (COCAO) was charged with the task of producing a definition of Financial Exigency for consideration by the State Board of Regents. On July 11, 1979, COCAO produced a definition of Financial Exigency.

Professor John McBride, President of the University Senate, has requested that the University Retrenchment Committee examine the proposed definition to determine its relationship to the WSU retrenchment document, Policies and Procedures for the Reduction of Unclassified Staff for Budgetary Reasons.

The University Senate, at its meeting on September 10, 1979, discussed the proposed definition. Professor Gerald Paske, President of the Kansas Conference of the AAUP, offered some remarks on the definition, and indicated that it conflicted with AAUP statements on financial exigency.

In light of the importance of these issues, the Senate Office was instructed to distribute to each faculty member a copy of the WSU retrenchment document, Policies and Procedures for the Reduction of Unclassified Staff for Budgetary Reasons, a copy of the definition of financial exigency proposed by COCAO, and a copy of the text of Professor Paske's remarks. (Ref: Senate minutes for Sept. 10, 1979, V.XVI, No. 2). These three documents are attached.

Deborah Soles

Deborah Soles
Secretary, University Senate

"Retrenchment Document
was included in distribution
but is not filed here - see after minutes of 9-10-79"

Remarks by Dr. Gerald Paske
University Senate Meeting
September 10, 1979

I appear before you today as a representative of the AAUP, and it is appropriate that the AAUP be represented here because the most seminal statements to be found with respect to the issue before you--financial exigency--are to be found in the Policies and Statements of the AAUP. It is doubly appropriate that I appear since I was President of this Senate when it passed the current W.S.U. Policies and Procedures for the Reduction of Unclassified Staff for Budgetary Reasons, which document was accepted by the faculty on May 17, 1976.

There is a great deal of confusion over such things as financial exigency, tenure, and tenure quotas, and it is important to perceive what is at issue with respect to these matters. The basic issue is the question of the degree of commitment that the University has to its faculty, all of its faculty. The system of tenure, not tenure alone, but the entire system, is meant to define that commitment.

That there must be a deep and serious commitment to the faculty on the part of an institution is justified on at least two grounds. One, the teaching and research functions of a university can only be properly carried out in an atmosphere of open inquiry and academic freedom, and hence faculty members must be protected by the University when their inquiries lead them into matters that are held to be offensive by powerful figures within and without the academic community. Secondly, the preparation required on the part of competent faculty members is expensive, long, and arduous; and it almost always requires an early commitment to what is essentially a life time occupation. For this reason it is necessary for a quality system of higher education to offer economic rewards sufficient to attract highly talented young people into the profession. Historically this has been done in part through offering economic security, rather than offering salaries equivalent to those in the non academic world.

The tenure system is simply the implementation of this need for commitment. It is meant to protect all faculty from arbitrary dismissal, on grounds violative of academic freedom, and it does this pretty well. At W.S.U., it does this very well, and we can be thankful that our administration, as well as our faculty, are strong supporters of academic freedom.

The tenure system is also meant to protect all faculty from arbitrary dismissal based upon economic considerations. This aspect of the system has not received much attention over the past several decades, because we were in a period of abundant economic support. Times have changed, and hence all of us need to learn more about this aspect of the tenure system.

Again, the system is intended to protect all faculty, but, as is the case in every major industry and institution in the country, certain rights accrue as one increases one's seniority.

One of the most serious problems that apprentices face in any institution is that they may be dropped just before they gain certain seniority rights, and that they are dropped not because of incompetence or inadequacy, but because the institution does not wish to make a long term commitment to them--does not wish to give them seniority rights.

In the academic world this generally takes the form of a denial of tenure for purported economic reasons, and, in its worst application, it takes the form of tenure quotas. A tenure quota, in which a qualified probationary faculty member is dismissed and replaced, really amounts to firing a person not when there is an economic need to do so, but because there might be a need to fire someone sometime in the future. In the opinion of the AAUP, this is both unjust and unwise, and the AAUP has therefore expressed its categorical objection to tenure quotas. I presume that it is similar reasoning that led this senate and the W.S.U. faculty to adopt the AAUP position.

But economic problems do not stop with the granting of tenure. And, in fairness to institutions, some economic problems are genuine. Recognizing that there can be genuine economic problems, the AAUP and the Association of American Colleges, the two organizations which are largely responsible for the current tenure system, explicitly acknowledged that tenured faculty members may be dismissed "under extraordinary circumstances because of financial exigencies." They thus deliberately built a loophole into the 1940 statement on Academic Freedom and Tenure. The size of this loophole is another matter, and it is its size that is at issue today.

The loophole can be widened in two ways. If financial exigency can be declared at will, the loophole becomes enormous. To prevent this, Henry M. Wriston, the President of both Brown University and the Association of American Colleges, in 1939 proposed the following language, which was ultimately incorporated as the last clause of the 1940 statement: "Termination of a continuous appointment because of financial exigency should be demonstrably bona fide." President Wriston's explanation of the need for this clause is interesting, and I quote:

"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 the budget than by denying the 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. . ."

In making this statement Wriston not only was effective in gaining the requirement that claims of financial exigency be proven bona fide; he also indicated what was to be meant by 'financial exigency;' "a genuine emergency involving serious general retrenchment."

Wriston's insight has been refined into the AAUP's current definition of 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."

Both Wriston and the AAUP take a very stringent view of what is to count as financial exigency. I hope the reason is clear: a declaration of financial exigency in academe is like a declaration of bankruptcy in one respect, a

specific purpose of the declaration is to justify the breaking of contracts, tenure contracts in particular.

Since we hold that it is necessary that universities have a deep commitment to their faculty, we believe that such contracts should be broken only under extreme and unforeseeable circumstances. In other circumstances, careful long range planning, and if necessary, in the case of state institutions, additional financial support, should be utilized to solve the problems.

The proposed definition of financial exigency offered by the Council of Chief Academic Officers does not meet these stringent requirements. It substitutes a legislatively imposed financial difficulty for a genuine financial crisis, and it substitutes the distortion of the academic program for a threat to the survival of the institution as a whole.

Most significantly, the proposed definition entirely neglects the requirement that the problem cannot be alleviated by means less drastic than terminating faculty members.

I believe that a state university should make a reasonable reduction in credit hour expectations before terminating tenured faculty. I believe such a system should offer an attractive early retirement program before terminating faculty who have served well and long. And I believe there are a host of other reasonable expectations in favor of faculty which are not being addressed in the current academic structure.

Whether these can be addressed in the current structure, I do not know. That the proposed definition of financial exigency can be but two weeks away from being adopted by the Regents, without a shred of faculty consultation, makes me extremely skeptical about the adequacy of the current University structure. But perhaps all is not yet lost.

The problem to which the proposed definition is directed is a real and a serious problem. If it can be solved without destroying the University as we know it, it can only be resolved by a joint faculty-administration effort. Faculty, in my opinion, have been unable or unwilling to organize themselves in a manner which would allow them to effectively cooperate with the administration, as equal partners, in the search for a solution to these problems. If we cannot do so, then we and the University are in serious trouble.

But nothing can be done if the proposed definition is adopted by the Regents this month, or if tenure quotas are adopted by the deans at their next retreat. I suggest, therefore, that the senate ask our administration to oppose the adoption of these measures until after adequate faculty consultation.

UNIVERSITY SENATE

WICHITA STATE UNIVERSITY

Minutes of the Meeting of September 10, 1979, (Vol. XVI, No. 2).

Members Present: Aagaard, Ahlberg, Alley, Bardo, Breazeale, Brewer, Case, Childs, Dreifort, Duell, Felkner, Foster, Gosman, Greenberg, Hufford, Hursh, Ingmire, Irish, Kenyon, Kukral, Maddox, May, McBride, McKibbin, Mohr, Myers, Nelson, Paolillo, Parker, Perel, Poe, Rhatigan, Rodgers, Schrag, Scriven, Shimerda, Soles, Tasch, Terrell, Tilford, Wellshear, Welsbacher, Wright, Zandler.

Members Absent: Benningfield, Chaffee, Graham, Kasten, Kehoe, Meabon, Morgan, Olivero, Stevens, Tejada, Thomann.

Guests: Gerald Paske, Helen Crockett, Carla Lee.

I. CALL TO ORDER

President McBride called the meeting to order at 3:30 p.m.

II.
INFORMAL
PROPOSALS
AND
STATEMENTS

President McBride welcomed the senators to the first meeting of the 1979-1980 academic year, and reminded senators to sign the attendance sheet, since the Senate rules require publication of attendance.

President McBride announced that new senators should have received a copy of the Senate constitution, and asked them to call the Senate office for a copy if they had not received one.

President McBride noted that a retreat involving a number of senators was scheduled for September 24, 1979, and that the regular Senate meeting on that date might not be held. He advised senators that they would be notified in this regard after the Agenda Committee meeting September 12, 1979, at 4:00 in the LAS conference room.

President McBride appointed President-Elect Roger Kasten as Parliamentarian for the 1979-1980 Senate.

President McBride invited the senators to take advantage of the Informal Proposals and Statements portion of the agenda to express opinions and make statements upon which no action is requested of the Senate.

President Ahlberg announced that as of September 8, 1979, 16,067 students were enrolled for the fall semester, for a total of 143,870 credit hours. President Ahlberg added that while these figures did not take into account exclusions, he was optimistic about this fall's enrollments, which are the highest in the history of WSU.

III.
APPROVAL OF
MINUTES

The minutes of the meeting of the old Senate on May 14, 1979 were approved. The minutes of the meeting of the new Senate on May 14, 1979 were amended to show Senators Wellshear, Hufford and Zandler present. The minutes of the meeting of the new Senate were then approved.

NEW
BUSINESS
FILLING OF
SENATE
VACANCIES
VOTE

Senator Duell moved that Mary Sue Foster serve as a replacement for Senator Millett as At-Large Senator during Senator Millett's leave of absence for the fall semester. The motion was seconded by Senator Dreifort.

The motion passed unanimously.

Senator Irish moved that Susan Nelson serve as a replacement for Senator Goldenberg, who resigned. Senator Wellsbacher seconded the motion.

VOTE The motion was passed unanimously.

STATE OF
PHYSICAL
PLANNING

Dr. George Platt reported on physical planning. He discussed improvements in parking, and announced that the perimeter road is expected to be completed by the end of October. He also reported on the state of the construction of the Health Sciences building, as well as on current and projected remodeling on campus. He also discussed the status of the Multi-Purpose Complex.

Dr. Platt noted that the long-term construction plan will be described in an upcoming WSU News, and invited faculty comments. He suggested that the Senate might want to discuss these issues during the winter months.

Senator Hursh asked whether the present perimeter parking arrangement really served the needs of students.

Dr. Platt replied that the 1973 traffic plan was designed to facilitate traffic on campus and that it was serving its purpose well.

Vice President Rhatigan commented on the benefits of the present plan, which emphasized convenience, accessibility and beauty.

Dr. Platt added that serious thought needs to be given to parking for handicapped students.

There was a discussion of the merits and drawbacks of the peripheral road theory and the present parking situation. Alternative means of transportation, such as buses and bicycles, were advocated.

Senator Maddox asked about the possibility of multi-level parking.

Dr. Platt replied that multi-level parking facilities are desirable, but very expensive.

President Ahlberg added that the state wouldn't pay for such facilities.

Senator Dreifort asked if electronic gates could be installed on reserved parking lots.

President Ahlberg thought that this would be something for the Traffic Committee to consider.

COCAO
STATEMENT OF
FINANCIAL
EXIGENCY

President McBride provided the history of the definition of financial exigency proposed by the Council of Chief Academic Officers, and said that the Council of Presidents would be discussing the proposed definition at their next meeting in Topeka. He announced that he had also passed along the document to the University Retrenchment Committee for their examination at their September 13 meeting.

Gerald Paske, President of the Kansas Conference of the AAUP, presented remarks on the proposed definition of financial exigency and retrenchment. Professor Paske raised the issue of the degree of commitment a university owes to its faculty, and pointed out that in the past the courts have supported the AAUP definition of this commitment. Professor Paske stated that the tenure system has been the core of this commitment, for it protects both academic freedom and it protects the arbitrary dismissal of faculty for economic considerations. Professor Paske cited the AAUP and Association of American Colleges' position on financial exigency, and recapitulated the explanation for this position, which emphasizes the fact that dismissal for economic reasons is defensive only in a genuine emergency involving serious general retrenchment. Professor Paske then argued that the proposed definition of financial exigency doesn't meet the standards adumbrated by the AAUP. He then pointed out that there has been no faculty consultation with regard to this definition being offered to the Regents, and requested that the University administration oppose the adoption of the definition until adequate faculty consultation has been obtained.

Senator Greenberg asked for clarification of the history of the COCAO definition.

President Ahlberg related that until last year, the Board of Regents was satisfied with individual institutions setting their own policy. However, declining enrollments have raised questions about releasing faculty for economic reasons, and the Legislature requested that the Board of Regents provide a Regents' statement on financial exigency. President Ahlberg agreed that there needed to be widespread faculty-administration discussion on the topic of financial exigency.

Professor Paske pointed out that the University Retrenchment document does not define financial exigency, but that the AAUP definition has been supported in the courts. Professor Paske said that the WSU faculty understood the definition of financial exigency to be the AAUP's.

Senator Terrell asked if time was vital in regard to the COCAO definition.

Professor Paske responded that the definition could be accepted by the Council of Presidents on September 20 and passed on for adoption by the Board of Regents on September 21.

President Ahlberg stated that if it were passed by the Council of Presidents, it would be more likely to appear on the October Regents agenda.

Senator Terrell congratulated Professor Paske on his discussion and evaluation, and requested that the Senate office distribute a copy of the text of Professor Paske's remarks to each member of the faculty. He also requested that a copy

of the COCAO definition of financial exigency be distributed to each member of the faculty. He requested further that the Senate Agenda Committee keep track of the proposed definition of financial exigency and if necessary call an emergency meeting of the faculty to vote on this definition.

Senator Perel pointed out that there have been previous discussions of the question of who is to declare financial exigency, by the Council of Senate Presidents and the Regents' Institution Coordinating Committee. He added that one of the difficulties with reducing staff when enrollments decline is that when a university's enrollments shrink, they don't shrink uniformly.

Professor Paske agreed with Senator Perel. He stated that his point is that the concept of financial exigency is related to crises and emergencies, but that attempts to reduce staff in the face of gradually declining enrollments by appeals to financial exigency is an abuse of financial exigency. He asked that the problem we now face be addressed comprehensively and with faculty consultation.

Senator Mohr expressed concern for the possible shortness of time for such consultation. Senator Mohr also requested clarification of the phrase "extreme circumstances" in the proposed definition, pointed out that the statement doesn't address itself to internal issues, such as existing retrenchment policies, and stated his qualms that the proposed definition could be abused in such a way that tenured faculty could be terminated under any conditions.

President McBride pointed out that the issues under discussion at this meeting have been brought before Chancellor Dykes at KU.

Vice President Breazeale requested that the Senate office distribute a copy of the Policies and Procedures for the Reduction of Unclassified Staff for Budgetary Reasons document to each member of the faculty, along with Professor Paske's remarks and the COCAO definition. He emphasized the fact that according to the university's policies on retrenchment, it is not the case that all untenured faculty must be released before tenured faculty.

Senator Greenberg quoted from the 1976 Senate Resolution of Standby Plans in Case of Financial Exigency a passage urging the Regents to adhere as closely as possible to AAUP standards. Senator Greenberg requested that President Ahlberg suggest that the Council of Presidents table the COCAO definition so that adequate discussion and consultation can take place on campus.

President Ahlberg stated that he was happy to support full consultation and an orderly procedure. He pointed out that the issue may lose urgency if enrollments are up. President Ahlberg said that there is a strong feeling in the Legislature that budgetary reductions will accompany drops in enrollments. He added that he did not believe that the university's retrenchment document would be endangered by the COCAO definition, and that in the face of budgetary reductions, the university would pursue other avenues before turning to the retrenchment document. President Ahlberg pointed out that the Board of Regents believes itself to need a document for recognizing financial exigency.

Professor Paske pointed out that our document does allow reductions of staff

from the tenured ranks, and that the faculty has frequently used AAUP recommendations in its procedures. He reiterated his concern that financial belt-tightening may become confused with financial exigency.

President McBride announced that the University Retrenchment Committee was looking into the COCAO definition, and would be reporting to the Senate.

Senator Terrell said that while declaration of financial exigency might be remote, he was concerned that existing budgetary restrictions would have a negative effect on faculty performance. Senator Terrell recommended that close attention be paid to maintaining classroom excellencies.

Senator Poe moved that the meeting be adjourned. Senator Dreifort seconded the motion.

V.
ADJOURNMENT The meeting was adjourned at 5:07 p.m.

Distributed by Senate Office
To all Faculty
13 pages

Sept. 13, 1979

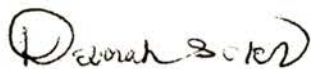
To: WSU Faculty
From: Senate Office

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Deborah Soles
Secretary, University Senate

Approved by the Senate, May 4, 1976

POLICIES AND PROCEDURES
FOR THE REDUCTION OF UNCLASSIFIED STAFF
FOR BUDGETARY REASONS

Preface. This document, the result of nearly two years of deliberation, represents the best efforts of the Wichita State University faculty to set up policies for use should the time arise when, due to a sharp decline in credit hour production, the Regents declare that a number of faculty positions must be cut from the budget. The faculty undertook this project at this time while the University is continuing to grow so that its deliberations could be as free as possible from blinding pressures of personal, college, and departmental loyalties which would become inordinately intense if such cuts were to be immediate. Every attempt has been made to insure the welfare of the University and its various programs, while at the same time preserving the most humane treatment possible for those who have served it as faculty members. The following procedures are to provide a formal process of retrenchment in the event of a declaration of financial exigency or other budgetary emergency.

I. Committee Structure. The following committees shall be selected each year and elect their own chairpersons:

A. College Advisory and Appeals Committees for Retrenchment.

1. Each degree-granting college shall select a committee of its faculty according to the same procedures it uses to select its Tenure and Promotion Committee, or by other procedures adopted by the faculty of the college, except that
 - a. The college dean¹ shall not be a member of this committee: and
 - b. an affirmative action officer of the college shall be a non-voting member of the committee.
2. An election shall be held to elect from the unassigned unclassified staff a committee of six members by which such staff shall be represented. No more than two members of the committee shall be from the same division of the unassigned staff. In addition to the elected members, an Affirmative Action Agent will be designated as a non-voting member by the WSU Affirmative Action Office.²

B. The University Advisory and Appeals Committee for Retrenchment. The University Retrenchment Committee shall comprise the chairpersons of each College Retrenchment Committee, the University Affirmative

1. The term "college dean" shall refer to the deans of the degree-granting colleges and to the administrator charged by the President with developing the retrenchment program for unassigned staff.

2. The term "college committee" shall refer to this committee as well as those defined in I/A/1.

Action Officer as a non-voting member, and a representative of the Student Government Association.

II. Restrictions and Guidelines on Termination for Budgetary Reasons.

A. Prima Facie Restrictions.

Each of the following restrictions expresses a reasonable expectation about the criteria that will be used to select those persons to be terminated for budgetary reasons; but it is possible, even likely, that on occasion these restrictions shall conflict with one another and that on these occasions one or more of them will have to be violated. All parties contributing to programs of retrenchment constructed under part III of this document are enjoined to adhere to these restrictions to the fullest extent possible and to deviate from them only to the extent required by the best interests of the university. Any report at any level recommending the termination of any individual in such a way as to violate any of these restrictions must be accompanied by a full explanation of the reasons for such a recommendation.

1. Termination should not be made in any way which would prevent any unit of the university from performing the tasks appointed for it.
2. Any terminations in any given unit which are based on the decreasing demand for the services of that unit should be based on services over no less than a three year period.
3. Terminations within a given department or unit should ordinarily be made according to rank [(lecturers, part-time faculty and graduate assistants first), followed in order by assistant instructors, instructors, assistant professors, associate professors, professors] and within rank according to years of service at the university at that rank.
4. Terminations should be made in such a way as to maximize compliance with the university's obligations to affirmative action guidelines.
5. Administrative terminations should be made in the same proportion as faculty terminations.

B. Mandatory Guidelines on Termination of Staff for Budgetary Reasons.

1. If the University because of financial exigency terminates appointments, no new state funded positions will be established 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 within the department a faculty member without tenure, except in extraordinary circumstances where a serious distortion of the academic program would otherwise result. The existence of "extraordinary circumstances" shall be determined by the University Retrenchment Committee. The appointment of a faculty member with tenure will not be terminated in favor of retaining a faculty member without tenure in another unit of that college, if the tenured faculty member can establish with the College Retrenchment Committee that

he is at least as qualified for the position as the untenured faculty member.

2. Except in the utmost emergency, which could not have been foreseen, the standards of due notice of non-reappointment stated in the Faculty Handbook shall not be violated.
3. In all cases of termination of appointment because of financial exigency, the place of the tenured 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 (not to exceed 60 days) in which to accept or decline it.
4. Any tenured faculty member chosen for termination on the grounds that he/she is less competent in his performance than someone who otherwise would have been terminated instead, must be terminated according to the procedures for Termination for Inadequate Performance.
5. If a dean recommends a retrenchment program requiring the elimination of a department or a degree or certificate program, it may not be approved either by a College Retrenchment Committee or by the University Retrenchment Committee unless the elimination of the program has been approved by a majority of a quorum of the college in which that department or program is located. (This document states the possibility and conditions of a retrenchment committee's being overruled by a dean or by the President. Hence this wording in no way confers a veto power on the elimination of departments to the faculty.)

III. Procedures to be followed when a State of Financial Exigency has been Declared by the Kansas Board of Regents.

- A. The President shall announce to the deans and the University Retrenchment Committee that the Kansas Board of Regents has declared a state of financial exigency for the University and his proposed plan for,
 1. the number of positions to be eliminated from the central administrative staff of the university,
 2. the number of positions to be eliminated from each college, and
 3. the calendar for procedures to determine cutbacks.
- B. The University Committee will
 1. review the entire program of retrenchment for the university to see that it conforms with the restrictions and guidelines (Part II),
 2. consult with the deans concerning the proposed retrenchment program, and

3. file with the President and the deans any changes it recommends in the retrenchment program and the committee's reasons for those changes.
- C. After reviewing the university committee recommendations, the President will send to the deans and the university committee a copy of the final university retrenchment program and his reasons for any departures from the university committee's recommendations.
 - D. The dean of each college shall announce to the college
 1. the number of positions provisionally to be eliminated from the administrative staff of the college,
 2. the number of positions provisionally to be eliminated from each department within the college.
 - E. The chairperson of each department shall consult with the tenured faculty of the department, or a representative committee thereof, according to the procedures used in the making of recommendations for tenure, and shall then provide the dean in writing
 1. any evidence that serious programmatic difficulties would result from the proposed retrenchment in the department or other departments or colleges, and
 2. recommendations of the department concerning the particular individuals to be terminated, including the reasons for those recommendations.
 - F. The dean shall, in consultation with his staff and taking into account the written arguments from department chairpersons,
 1. design a program of retrenchment designating each member of the college to be terminated, containing explicit reasons for the termination of any tenured faculty member, or for any deviation from restrictions in Part II or college restrictions and guidelines,
 2. inform each department chairperson of
 - a. the particular individuals designated for termination from that department,
 - b. any reasons explicitly stated in the college retrenchment program for the selection of those individuals,
 - c. the number of persons designated for termination from other departments and from the administrative staff of the college;
 3. inform in writing each person designated for termination of his status, of any reasons explicitly stated in the college retrenchment program for

his designation for termination, and of his right to appeal as below;

4. present the entire program of retrenchment, including chairpersons' recommendations, to the college retrenchment committee.
- G. The college retrenchment committee shall
1. maintain confidentiality with respect to the names of individuals designated for termination to the extent permitted for the adequate fulfillment of their charge;
 2. hear any appeals from tenured or probationary staff according to the definitions of charges and procedures given in Part IV*, and
 3. report its findings to the dean and to the appellant.
- H. The dean shall take appropriate actions on the committee recommendations concerning appeals from III/B, and report to the committee any modifications he wishes to make in the college retrenchment committee. He shall also report these changes to the appropriate chairpersons and individuals as in F/2-3.
- I. The college retrenchment committee shall
1. review the entire program of retrenchment for the college to see that it conforms to college restrictions and guidelines, if any, and the restrictions and guidelines in Part II of this document,
 2. consult with the dean concerning the proposed retrenchment program, and
 3. file with the dean any changes it recommends in the retrenchment program and the committee's reasons for those changes.
- J. The dean shall modify the college retrenchment program as he deems appropriate in the light of the committee recommendations, and shall
1. inform the college retrenchment committee of the changes he has made, and of his reasons for not accepting any committee recommendations that he has rejected;
 2. inform each department chairperson of
 - a. the particular individuals from that department designated for termination in the modified retrenchment program from that department,

*The procedures are designated to allow each faculty member only one opportunity to appeal if that appeal results in a negative recommendation by the committee to which he appeals.

- b. differences between the dean the the College Committee concerning individuals to be terminated from that department,
 - c. his reasons for rejecting the recommendations in section J/2/b:
3. inform in writing each individual designated for termination in the modified retrenchment program of his status, of the Dean's reasons if the College Committee does not concur in that designation, and of any right to appeal;
- K. The college retrenchment committee will
1. hear appeals from any tenured or probationary staff designated for termination in the modified retrenchment program of any college but not designated for termination in the original retrenchment program of that college
 2. report its findings to the appropriate dean and the faculty member.
- L. The Dean shall present a report of the college's retrenchment program to the Vice President for Academic Affairs who shall transmit these reports to the deans of the other colleges, this report to include
1. the modified retrenchment program of the college, together with supporting arguments,
 2. copies of all recommendations from chairpersons, together with supporting arguments,
 3. a list of all recommendations from the college retrenchment committee that were not accepted, together with the committee's reasons for those recommendations and the dean's reason for rejecting them.
- M. The University Retrenchment Committee shall
1. hear any appeals, according to the definitions of charges and procedures given in Part IV, from any member of the central administrative staff of the University designated for termination by the Vice President for Academic Affairs, and
 2. hear appeals from any college based on programmatic impact in that college of decisions made in other colleges,
 3. recommend to the Vice President for Academic Affairs appropriate procedures for redress of any appeals it upholds from M/1-2.
- N. The Vice President for Academic Affairs shall act on the recommendations, if any, from M/3.
- O. The Vice President for Academic Affairs shall transmit to the President

1. the complete report on retrenchment from each college
 2. his recommendation for termination from the central administrative staff of the university,
 3. the recommendations of the University Retrenchment Committee concerning central administrative staff appeals,
 4. his own responses concerning the recommendations of the University Retrenchment Committee.
- P. The President shall in consultation with his staff,
1. construct a program of retrenchment for the University
 2. notify the University Retrenchment Committee of the entire program, and of his reasons for any deviations from recommendations of the University Retrenchment Committee;
 3. notify each dean of
 - a. any changes he has made in the modified retrenchment program presented by the dean, and
 - b. his reasons for those changes;
 4. notify each department chairperson of
 - a. the individuals to be terminated from that department, and
 - b. his reasons for any terminations not recommended by the College Retrenchment Committee;
 - c. the numbers of individuals to be terminated from other departments of that college,
 5. notify each individual to be terminated under his program of his termination
 6. notify any individual to be terminated under his program who has not had prior opportunity to appeal his case of his right to appeal according to the procedures in Part IV.
- Q. The appropriate College Retrenchment Committee (for central administrative staff, the University Retrenchment Committee) shall hear appeals according to definitions of charges and procedures given in Part IV, from any tenured or probationary faculty member who is designated for termination in the report of the President and has not had prior opportunity to appeal his designation for termination.
- R. President shall act on any upheld appeals and notify the appellants.

IV. Appeals Procedures.

Sections G,K,M and Q of Part III of this document describe conditions under which a member of the unclassified staff may appeal a decision to designate him for termination. All appeals from probationary and tenured faculty members will go to their College Advisory and Appeals Retrenchment Committee and appeals from central administrators will go to the University Advisory and Appeals Retrenchment Committee. Such a staff member, hereinafter referred to as the appellant, shall file his appeal with the chairperson of the committee described in the section under which the appellant is appealing, hereinafter referred to as the Appeals Committee, basing his appeal on the charges described in the following:

- A. If the appellant alleges that a decision not to reappoint him was based significantly on considerations violative of (1) academic freedom or (2) governing policies precluding prejudice with respect to race, sex, religion, or national origin, the allegation shall be given preliminary consideration by the Appeals Committee which shall seek to settle the matter by informal methods. The allegation shall be accompanied by a statement that the appellant agrees to the presentation, for the consideration of the committees hearing the appeals, of such reasons and evidence as the institution may allege in support of its decision. If the difficulty is unresolved at this stage, and if the committee or the faculty member so recommends the matter will be heard in the manner set forth in Regulations 5 and 6 of the 1972 AAUP Recommended Institutional Regulations on Academic Freedom and Tenure, except that the appellant is responsible for stating the grounds on which he bases his allegations, and the burden of proof shall rest on him. If the appellant succeeds in establishing a prima facie case, it is incumbent upon those who made the decision not to reappoint him to come forward with evidence in support of their decision.

- B. If the appellant alleges that the decision to designate him for termination was based on inadequate consideration, the Appeals Committee shall review the faculty member's allegation and shall determine whether the decision was the result of inadequate consideration in terms of the relevant standards of the university. The Appeals Committee shall not substitute its judgment on the merits for that of those making the decision. If the Appeals Committee believes that adequate consideration was not given the appellant's qualifications, it will request reconsideration by those who made the decision to designate the appellant for termination, indicating the respects in which it believes the consideration may have been inadequate. The Appeals Committee shall provide copies of its findings both to the appellant and to those who made the decision to designate the appellant for termination.

These procedures are adapted from sections 10 and 2f, respectively, of the 1972 AAUP Recommended Institutional Regulations on Academic Freedom and Tenure of the American Association of University Professors.

Remarks by Dr. Gerald Paske
University Senate Meeting
September 10, 1979

I appear before you today as a representative of the AAUP, and it is appropriate that the AAUP be represented here because the most seminal statements to be found with respect to the issue before you--financial exigency--are to be found in the Policies and Statements of the AAUP. It is doubly appropriate that I appear since I was President of this Senate when it passed the current W.S.U. Policies and Procedures for the Reduction of Unclassified Staff for Budgetary Reasons, which document was accepted by the faculty on May 17, 1976.

There is a great deal of confusion over such things as financial exigency, tenure, and tenure quotas, and it is important to perceive what is at issue with respect to these matters. The basic issue is the question of the degree of commitment that the University has to its faculty, all of its faculty. The system of tenure, not tenure alone, but the entire system, is meant to define that commitment.

That there must be a deep and serious commitment to the faculty on the part of an institution is justified on at least two grounds. One, the teaching and research functions of a university can only be properly carried out in an atmosphere of open inquiry and academic freedom, and hence faculty members must be protected by the University when their inquiries lead them into matters that are held to be offensive by powerful figures within and without the academic community. Secondly, the preparation required on the part of competent faculty members is expensive, long, and arduous; and it almost always requires an early commitment to what is essentially a life time occupation. For this reason it is necessary for a quality system of higher education to offer economic rewards sufficient to attract highly talented young people into the profession. Historically this has been done in part through offering economic security, rather than offering salaries equivalent to those in the non academic world.

The tenure system is simply the implementation of this need for commitment. It is meant to protect all faculty from arbitrary dismissal, on grounds violative of academic freedom, and it does this pretty well. At W.S.U., it does this very well, and we can be thankful that our administration, as well as our faculty, are strong supporters of academic freedom.

The tenure system is also meant to protect all faculty from arbitrary dismissal based upon economic considerations. This aspect of the system has not received much attention over the past several decades, because we were in a period of abundant economic support. Times have changed, and hence all of us need to learn more about this aspect of the tenure system.

Again, the system is intended to protect all faculty, but, as is the case in every major industry and institution in the country, certain rights accrue as one increases one's seniority.

One of the most serious problems that apprentices face in any institution is that they may be dropped just before they gain certain seniority rights, and that they are dropped not because of incompetence or inadequacy, but because the institution does not wish to make a long term commitment to them--does not wish to give them seniority rights.

In the academic world this generally takes the form of a denial of tenure for purported economic reasons, and, in its worst application, it takes the form of tenure quotas. A tenure quota, in which a qualified probationary faculty member is dismissed and replaced, really amounts to firing a person not when there is an economic need to do so, but because there might be a need to fire someone sometime in the future. In the opinion of the AAUP, this is both unjust and unwise, and the AAUP has therefore expressed its categorical objection to tenure quotas. I presume that it is similar reasoning that led this senate and the W.S.U. faculty to adopt the AAUP position.

But economic problems do not stop with the granting of tenure. And, in fairness to institutions, some economic problems are genuine. Recognizing that there can be genuine economic problems, the AAUP and the Association of American Colleges, the two organizations which are largely responsible for the current tenure system, explicitly acknowledged that tenured faculty members may be dismissed "under extraordinary circumstances because of financial exigencies." They thus deliberately built a loophole into the 1940 statement on Academic Freedom and Tenure. The size of this loophole is another matter, and it is its size that is at issue today.

The loophole can be widened in two ways. If financial exigency can be declared at will, the loophole becomes enormous. To prevent this, Henry M. Wriston, the President of both Brown University and the Association of American Colleges, in 1939 proposed the following language, which was ultimately incorporated as the last clause of the 1940 statement: "Termination of a continuous appointment because of financial exigency should be demonstrably bona fide." President Wriston's explanation of the need for this clause is interesting, and I quote:

"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 the budget than by denying the 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. . . ."

In making this statement Wriston not only was effective in gaining the requirement that claims of financial exigency be proven bona fide; he also indicated what was to be meant by 'financial exigency;' "a genuine emergency involving serious general retrenchment."

Wriston's insight has been refined into the AAUP's current definition of 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."

Both Wriston and the AAUP take a very stringent view of what is to count as financial exigency. I hope the reason is clear: a declaration of financial exigency in academe is like a declaration of bankruptcy in one respect, a

specific purpose of the declaration is to justify the breaking of contracts, tenure contracts in particular.

Since we hold that it is necessary that universities have a deep commitment to their faculty, we believe that such contracts should be broken only under extreme and unforeseeable circumstances. In other circumstances, careful long range planning, and if necessary, in the case of state institutions, additional financial support, should be utilized to solve the problems.

The proposed definition of financial exigency offered by the Council of Chief Academic Officers does not meet these stringent requirements. It substitutes a legislatively imposed financial difficulty for a genuine financial crisis, and it substitutes the distortion of the academic program for a threat to the survival of the institution as a whole.

Most significantly, the proposed definition entirely neglects the requirement that the problem cannot be alleviated by means less drastic than terminating faculty members.

I believe that a state university should make a reasonable reduction in credit hour expectations before terminating tenured faculty. I believe such a system should offer an attractive early retirement program before terminating faculty who have served well and long. And I believe there are a host of other reasonable expectations in favor of faculty which are not being addressed in the current academic structure.

Whether these can be addressed in the current structure, I do not know. That the proposed definition of financial exigency can be but two weeks away from being adopted by the Regents, without a shred of faculty consultation, makes me extremely skeptical about the adequacy of the current University structure. But perhaps all is not yet lost.

The problem to which the proposed definition is directed is a real and a serious problem. If it can be solved without destroying the University as we know it, it can only be resolved by a joint faculty-administration effort. Faculty, in my opinion, have been unable or unwilling to organize themselves in a manner which would allow them to effectively cooperate with the administration, as equal partners, in the search for a solution to these problems. If we cannot do so, then we and the University are in serious trouble.

But nothing can be done if the proposed definition is adopted by the Regents this month, or if tenure quotas are adopted by the deans at their next retreat. I suggest, therefore, that the senate ask our administration to oppose the adoption of these measures until after adequate faculty consultation.