

III. UNIVERSITY OF NEW ORLEANS

A. Background

Founded by the Louisiana legislature as a branch of Louisiana State University with a liberal arts program for commuting undergraduates, the institution that rapidly became the University of New Orleans opened its doors in 1958 on an abandoned U.S. Navy air station on the shore of Lake Pontchartrain. By the eve of the events to be discussed, UNO had grown into a comprehensive metropolitan university, the largest campus after Baton Rouge in the LSU System. It enrolled 17,250 students and had a full-time faculty numbering 560 members.

Hurricane Katrina's damage to campus buildings was substantial, estimated at more than \$100 million, but not nearly as severe as the devastation in the immediately adjacent areas where students, faculty, and staff resided. The Federal Emergency Management Agency had promised to have 489 trailers available for housing by late January 2006, when the main campus reopened, but it took until the end of the spring before most of them were in place and functioning. Despite these adverse conditions, UNO managed to organize and operate some classes during that fall 2005 term, offering online courses as early as October and using facilities just outside the city together with space on the Baton Rouge campus, thereby continuing the education of approximately 7,000 students. In contrast to the payless furloughs imposed that fall at the other public New Orleans universities, all full-time UNO faculty members continued to be paid, regardless of the closing down of classrooms and laboratories.

The administration's ability and willingness to keep salary commitments was apparently not an indication of financial health, however. UNO's income from state funding was considerably less than that received by other Louisiana public universities. In dollar terms, according to one estimate, UNO was slated for 2006 to receive \$21.5 million less than the average amount for a university under the statewide formula funding level. UNO had barely reopened on its main campus in January, with a student enrollment of 11,600 rather than the 16,000 who would normally have enrolled for the spring semester, when its administrative officers, while anticipating a balanced budget for the 2005–06 academic year, warned of the need for drastic reductions for 2006–07.

Long-range planning for UNO, dating back to 2004, gave way to the administration's *University of New Orleans Restructuring Plan 2006–07*. A draft text dated February 27, 2006, gained wide circulation among the faculty. It called for specific cuts in programs

and particular sums to be saved through resulting personnel cuts. Many professors could see from the draft that they were destined for release, and indeed administrative superiors told them so. Accompanying the Restructuring Plan was another document, *UNO Exigency Guidelines for Hurricane Katrina Disaster*. The LSU Board of Supervisors would have to declare a state of financial exigency and approve recommended changes in academic programs before the documents would become operative.

Several UNO faculty members sent copies of the documents to the Association, seeking advice and assistance. After discussing aspects of the documents with those who provided them, the staff on March 31 wrote at length to Chancellor Ryan to convey a number of concerns. The concerns included a criterion for deciding who was to be released of "meritorious performance, of which tenure may be an indicator," thus allowing release to be determined through a perception of relative merit and assigning to tenure the weight of only one among a number of factors to be considered. Other concerns were silence in the documents regarding notice or severance salary in terminating appointments and a review procedure with no provision for a hearing before a faculty committee but only for a meeting with the administrators who contributed to the decision and with the burden resting on the notified faculty member to convince those administrators that their decision was inappropriate.

The administration invited comments from the faculty and others on the documents, and a somewhat revised draft of the Restructuring Plan was issued on April 25. The review panel in a contested case of release would no longer be confined to administrators but would now consist of two faculty members together with the provost, the dean, and the department chair.

B. Declaring Financial Exigency and Imposing Furloughs

On April 21, on the recommendation of Chancellor Ryan, the LSU Board of Supervisors approved a "Declaration of Financial Exigency" at the University of New Orleans, stating that "the financial resources of the UNO campus are not sufficient to support the existing programs and personnel of the campus without substantial impairment of the ability of the campus to maintain the quality of its programs and services." The declaration projected that UNO would lose about \$10 million in tuition revenue from reduced enrollment (estimated at under 15,000) for the fall 2006 semester;

and it noted that the state of Louisiana in December 2005 had permanently reduced its annual operating budget for UNO by \$6.47 million. The combined losses, according to the declaration, meant a total reduction of approximately \$16.5 million in the university's financial resources, representing a loss of 12.8 percent of pre-Katrina revenues.

Chancellor Ryan provided the board of supervisors with the Restructuring Plan on May 3, and on or about May 16 the administration issued notifications of placement on furlough to selected members of the faculty, the large majority of them with tenured appointments, who served in programs "slated for elimination or modification."

As to defining the actions as a "furlough," the April 21 Declaration of Financial Exigency provided that faculty and staff members in a program being modified or discontinued could be "furloughed, laid off, or terminated." As stated in the declaration,

1. "*Furloughed*" means the employee is placed on temporary leave without pay status before the end of the employee's contract term.
2. "*Layoff*" means the employee is temporarily dismissed before the end of the employee's contract term.
3. "*Terminate*" means the employee is permanently separated from the institution. Both furloughs and layoffs may lead to eventual termination.

"Termination" differs from the first two categories in requiring action by the LSU Board of Supervisors under established procedures before it can be implemented, while the final authority in implementing a furlough or layoff rests with the LSU System president. Under the Declaration of Financial Exigency at UNO, furloughs and layoffs both required three months of notice before going into effect (the mid-May notifications of placement on furlough led to removal from the payroll in mid-August, or in late September for those who pursued the appeal process to the LSU System president), and the procedures for appeal were identical. Any practical difference between furlough ("temporary leave without pay") and layoff ("temporarily dismissed"), at least at UNO, is not apparent to the Special Committee.⁷

7. For discussion of furloughing as a means of reducing faculty positions at the other New Orleans public universities, see chapter II of this report, on the LSU Health Sciences Center, and chapter IV, on Southern University at New Orleans.

As to the number notified of placement on furlough, an initial estimate attributed to the administration, based on the cuts specified in the draft Reconstruction Plan dated February 27, had been a reduction by eighty-three positions from the 560 full-time pre-Katrina faculty positions. Chancellor Ryan was quoted in the April 20, 2006, *Times-Picayune* as stating that seventy-eight professors would have to be laid off and that thus far twenty-nine had left voluntarily. An unexpectedly large number of faculty resignations and retirements occurred that spring and into the summer, leading to advertising in several instances for new faculty appointments. The Special Committee appreciates that the random nature of those voluntary departures could have decimated some academic areas and thus necessitated new appointments. Still, one would have thought the unexpected departures would be grounds for reconsideration in many instances of intended notifications of placement on furlough. The administration submitted recommendations for the authorization of specific furloughs to the board of supervisors on May 3, followed by supplementary recommendations on May 24. The mid-May notifications were widely reported as having been issued to thirty-five to forty members of the faculty, but it is known that several of the recipients had already arranged to resign or retire. On the eve of final action by the board of supervisors on June 1 and 2 to approve the furloughs, Provost Fredrick Barton reported the number as sixteen, but he called it a "flexible" number because yet more faculty members might still decide to leave UNO on their own.

The letters of notification, identical in all cases so far as the Special Committee can determine, stated that the furloughs were the result of downsizing and restructuring through "the elimination and/or modification of academic programs" that were identified in an enclosed copy of the board's Declaration of Financial Exigency.⁸ The notifications identified seven criteria used in evaluating the academic programs. Five criteria were then listed for identifying faculty members not

8. The downsizing included the elimination of various degree programs in Economics; Human Performance and Health Promotion; Film, Theater, and Communications Arts; Mathematics; Music; and English. Additionally, "reduced instruction" was to occur in Education, Engineering Management, Anthropology, English Composition and Literature, Fine Arts, Foreign Languages, Philosophy, Sociology, Biology, Computer Science, Earth and Environmental Sciences, Physics, Psychology, Mathematics, and Public Administration.



in programs slated for elimination as subject to furlough. These, which in broad intent resemble the seven criteria invoked at the LSU Health Sciences Center, were

1. being the source of “a revenue stream”;
2. having skills that “would be difficult to replace”;
3. having a record of “past performance and productivity”;
4. fitness for retention in an alternative UNO position; and
5. “other relevant and compelling institutional considerations.”

The notifications, however, did not include the identification of specific shortcomings that led to the recipient's having been selected for furlough while other faculty members within their programs were being retained. Individuals who wished to contest being furloughed complained that they were handicapped in preparing an appeal if the reasons for their having been singled out were withheld from them. The presidents of the AAUP chapter and of the UNO Federation of Teachers sent a joint letter to Chancellor Ryan urging that the affected professors be provided, prior to an appeals hearing, with written specific reasons for having been selected for furlough. Those notified received no further explanation, however, before hearings were held.

Responding to a letter informing him of the composition of the AAUP Special Committee and its plans for meetings, Chancellor Ryan wrote to the Association's staff on May 29. He reviewed the devastation wrought by Hurricane Katrina on New Orleans in general and the physical, financial, and academic damage suffered by UNO in particular. Discussing the restructuring that was in process, he asserted that the faculty had been involved “in every stage” of the decision making, that evidence of a bona fide financial exigency requiring the furloughs could be demonstrated, that “eliminating weaker programs in order to sustain and eventually enhance stronger programs” was necessary for “UNO's financial and academic viability,” and that UNO's focus must be on its programs that are most vital to the task of rebuilding New Orleans, which “has become a critical part of the university's mission.” As to the adversely affected faculty members, the chancellor wrote, they are receiving “adequate notice and an opportunity to respond,” but “protracted appeal procedures” would have a negative impact on the university. Quoting the 1940 *Statement's* precept that “institutions of higher education are conducted for the common good,” Chancellor Ryan concluded with the hope that the Special Committee would see its charge as an opportunity to assist UNO and the other universities affected by

Katrina, because “it would be truly unfortunate if AAUP chose this difficult time to advance the cause of a few over the common good of our community as a whole.”

Responding to the chancellor on June 12, the staff questioned whether “the common good” (which the AAUP certainly joins in supporting) is truly affected adversely by upholding the rights of the “few.” With those facing furlough having become fewer and fewer, the staff expressed hope that the administration might succeed over the ensuing weeks in reducing the relative handful of prospective involuntary terminations still further, or indeed in eliminating the category altogether.

C. Appealing the Furloughs

The chancellor's office has not stated how many of those notified of placement on furlough submitted an appeal, but faculty sources have indicated that at least ten did so. Hearings were held during the course of June by a panel of three administrators (the provost, the cognizant dean, and the cognizant chair, or their designees) and two members of the faculty's elected Policy Committee. The minutes of a June 27 meeting of the Policy Committee summarize reports from those attending the hearings that the environment was cordial or civil, that deans were supposed to have told those notified specifically why they had been selected for furlough and that some deans had done so but others had not, and that members of the hearing panel had been informed about how the hearings would be conducted but that this information had not been shared with the appealing faculty members. Hearing panels were reported as having discussed statements made by the appellant after he or she had left the room and could no longer refute what a dean or chair had said. Appellants complained about faculty peers being a minority on the panels, but there was no record of dissenting votes, which would suggest that a different composition of the panel might have led to a different outcome. Despite these serious concerns, the chair of the Policy Committee stated in conclusion that “the process was less unpleasant than expected and as good a process as we could have.”

By letters of July 7, 2006, Chancellor Ryan informed each of those who had appealed that he was adopting a recommendation by the hearing panel and thereby sustaining the decision to place the faculty member on furlough. He recounted the appellant's objections to the decision and provided a brief reason for disregarding them, and he stated that transfer to an alternative UNO position had been considered but that a suitable position could not be identified. He concluded by reminding the recipient of opportunity within the next twenty days

to submit a request for review of the decision to the LSU System president and by offering assurance that every possibility short of reducing faculty and staff had been thoroughly considered but that unfortunately the financial situation did not allow another choice.

As confirmed by LSU System general counsel Lamonica, seven of the UNO professors notified of placement on furlough pursued their appeals to the next level by writing to the system office to request a review. Acknowledgments of receipt of the request were sent upon their arrival, followed by almost identical letters signed by LSU System president Jenkins and dated September 20, notifying them (without a specific explanation) that he had found no basis for reversing the chancellor's decision and that their furloughs would commence on September 22. An exception was made in the letter to one of the professors, who in her appeal had expressed fear of being placed on furlough just a little before her sixtieth birthday on October 8, when she would become eligible for retirement and thereby for continued participation in UNO's joint health benefits plan with a large potential savings in costs for her over the years ahead. President Jenkins accommodated her situation by commencing her furlough on October 9.

The system president concluded his September 20 letters by pointing out that under the existing declaration of financial exigency the authorized furloughs would expire, if no further actions are taken, not later than July 1, 2007, and that any steps to terminate a tenured faculty member's appointment, which would require approval by the board of supervisors, would have to comport with the stated procedures for termination.

D. The Special Committee's Interviews

Between August 7 and 17, Special Committee members conducted face-to-face individual interviews with five of the UNO professors who were appealing notification of placement on furlough, and they interviewed by telephone three additional professors being furloughed. Others from UNO who were interviewed included officers of the faculty senate, of the AAUP chapter, and of the UNO Federation of Teachers, various faculty members who were resigning, retiring, or remaining, and a graduate student who had urged the Special Committee to give him an opportunity to argue on behalf of his furloughed adviser.

The Special Committee was mindful of the strong likelihood that it would be meeting preponderantly with faculty members who were displeased with the UNO administration in the aftermath of Katrina. What the committee heard was not entirely negative: some good

things were said about the chancellor's efforts, and comments about the actions and attitudes of various deans and chairs were not uniformly unfavorable. Still, the Special Committee was struck by the virtual unanimity of opinion, and the intensity with which it was conveyed, that at bottom the involuntary furloughs brought unnecessary harm to members of UNO's academic community whose performance had been judged positively, who had been granted continuous tenure, and whom the administration had not now demonstrated to be unfit to continue. The furloughs were imposed, so the argument of those interviewed went, despite the voluntary exodus of UNO faculty in unexpectedly large numbers through resignations and retirements, achieving all the downsizing in faculty positions and personnel costs that the administration had sought and leading to the recruitment of new faculty members for tenure-eligible positions and the engagement of part-time instructors to teach courses that had to be offered while tenured faculty members were kept from their classrooms and laboratories and removed from the payroll.

Accounts of individual instances of alleged unfairness and abuse heard by the Special Committee, many of whose members have had significant experience as administrative officers during their careers, left the committee with the impression that these were not occasional lapses, perhaps inevitable when large-scale restructuring is effected. Rather, a disturbing abundance of cases suggested a propensity to take advantage of the downsizing by removing someone who was simply no longer wanted, whatever the personal reason and no matter the academic merits and needs. A few examples follow.

The reason given to a tenured professor, the only PhD in her department, for furloughing her was a belief that too few students were completing her program. The number came from a count taken early in the semester, however, and had she known this, the professor states, she could have shown to the hearing panel that it was a serious undercount.⁹

Another professor was eventually informed that his having been selected for furlough was based on a low rating in a March evaluation. The initial Restructuring Plan that was circulated in February already had this professor slated for release, however, a fact that cast doubt on the stated reason for furloughing him.

9. Chancellor Ryan, responding to a prepublication draft of this report, stated that the program in question had been identified as a "low completer" prior to Katrina and that there were not enough students to warrant its retention in a condition of financial exigency.





A third professor, who had received positive evaluations of her academic performance year after year, was informed when her appeal was rejected that the decision was based on evidence presented by her department chair “of a persistent and longstanding performance deficiency with respect to scholarly research.” The professor stated to the Special Committee that now having “performance deficiency with respect to scholarly research” on her official record implies incompetence or even something unethical, when in fact in a department with a focus on teaching she has authored seven publications, none previously criticized for absence of quality.

President Jenkins and Chancellor Ryan had assured the Special Committee that they would cooperate with its inquiries. When the committee met in New Orleans on August 30 with the public-sector administrative officers, Chancellor Ryan was asked why, with the small number of tenured faculty being furloughed and the still smaller number pursuing appeals, efforts were not being made to work out a mutually acceptable parting of the ways with those whom the administration believed it truly could not retain. LSU System general counsel Lamonica, with the submissions from the seven who were pursuing their appeals presumably then in the system office, immediately responded to the effect that something extra cannot be provided to one without providing it to all. Asked if he were averse to exploring possibilities of settling the cases, Mr. Lamonica replied that some of the appellants had engaged lawyers and that he objected to any discussion with the AAUP about ongoing cases.

E. Issues

1. CRITERIA AND PROCEDURES REGARDING PLACEMENT ON FURLOUGH

Clearly the criteria and procedures called for in UNO’s Declaration of Financial Exigency, Restructuring Plan, and supplementary documents, and those that have been employed in the furloughing, depart sharply from applicable AAUP-supported standards as provided in Regulation 4c of the Association’s *Recommended Institutional Regulations on Academic Freedom and Tenure*. Regulation 4c calls for faculty participation in the various steps leading to the temporary or permanent termination of faculty appointments: determination of the existence of a state of financial exigency requiring termination, of the needed number of terminations, of the guidelines for selecting those to be released, of where within the university the releases were to occur, and of who specifically would be selected for

release. Assessments of the degree of faculty participation in these matters differ widely. Chancellor Ryan has asserted that the faculty was kept abreast and consulted throughout, saying so on numerous occasions on campus, in correspondence with the Association’s staff, and orally at the meeting with the Special Committee on August 30. Some faculty members acknowledged a modest degree of involvement, while others characterized it as scant and meaningless. Members of the elected Faculty Planning Committee are reported as having been shown a draft of the Restructuring Plan at a stage before it was circulated but having said nothing about it then because they assumed it was confidential. The parlous financial situation of UNO was certainly not kept secret and was not seriously disputed, and it was known that a declaration of financial exigency was forthcoming long before the board of supervisors acted on it. The drafts of the Restructuring Plan pretty well laid out where cuts were to occur, and there apparently was no serious faculty challenge beyond those who stood to be adversely affected. Decisions on who specifically was to be released were in most cases made in the particular colleges and departments, with faculty involvement varying from unit to unit but with the actual decisions left largely to the deans and the department chairs.

The Special Committee believes a fair assessment of the degree of faculty involvement would be that, while the administration did not resist it, the faculty through its elected bodies, whether because it believed challenging what was in process would be futile or whether it viewed the decisions as the administration’s responsibility and prerogative, was not as aggressive as it might have been in insisting on exercising its own prerogatives under principles of shared academic governance.

On matters of academic due process for those notified of placement on furlough, contrary to the requirements of Regulation 4c they were not provided upon notification with a written (or in some cases even an oral) explanation of why they in particular were selected: the burden in contesting the notification fell upon them rather than on the administration; their appeals were heard not by a committee of faculty peers but by a panel with the majority of its members the administrators who were responsible for the notification; and they received three months of notification of removal from the payroll rather than the twelve months that are required under Association-supported standards. The investigating committee accordingly finds that the UNO administration, in furloughing members of the faculty pur-

suant to a declaration of financial exigency, denied them safeguards of academic due process as called for under Association-recommended standards.

Were there factors that prevented the administration from acting in closer conformity with these standards? When the Association's staff conveyed concerns about shortcomings in due process, Chancellor Ryan stated in his response that "protracted appeal procedures" would have a negative effect on the university and the community. The Special Committee might see some justification for this response if a massive number of furloughs had been in prospect, but only a small fraction of the initially contemplated eighty or more received notice of placement on furlough and only a fraction of these contested the notification. The committee rejects the implication that affordance of adequate safeguards of academic due process would have been overly burdensome.

2. FACULTY TENURE AT THE UNIVERSITY OF NEW ORLEANS

Tenure has existed at UNO from the institution's outset. The criteria that were adopted for furloughing faculty, however, refer to having tenure only as one of many factors that can be considered because it might be evidence of a faculty member's competence. From the available information on the notifications of furlough, the Special Committee is aware of cases of furloughing tenured faculty members while retaining junior members of the faculty or engaging part-timers to do similar work and indeed recruiting for someone new as a replacement. It is apparent that a disproportionate number of tenured faculty has left UNO, voluntarily or involuntarily. Chancellor Ryan is reported as having been hard pressed, when questioned at faculty meetings, to say anything positive about a need to respect tenure commitments. The procedures governing release of faculty that were adopted at UNO in connection with the financial exigency declaration and the restructuring plan do indeed allow opportunity for releasing tenured faculty that did not exist while the previous policies with their safeguards for tenure were in place.

The Special Committee finds that the UNO administration, in several cases placing tenured faculty members on furlough while retaining nontenured faculty for similar work, disregarded the protections for tenure set forth in the joint 1940 *Statement of Principles on Academic Freedom and Tenure* and the Association's derivative *Recommended Institutional Regulations*. The committee finds further that tenure at the University of New Orleans is currently insecure and will remain so as long as the current Declaration of

Financial Exigency with its procedures for releasing faculty members remains in effect.

3. THE NECESSITY OF INVOLUNTARY FURLOUGHES

As discussed earlier in this report, at most sixteen professors who had not already agreed to resign or retire were notified of placement on furlough. The saving of costs through the reduction of faculty positions that was a target of the Restructuring Plan had been essentially met by the voluntary (or semivoluntary) departures from the faculty that had occurred or were still expected. Several departments were advertising for multiple regular faculty positions to fill newly created vacancies. Based on this evidence and absent any contrary evidence from the administration, the Special Committee strongly doubts that any involuntary furloughs were necessary. The committee strongly suspects, if there were a small handful of remaining cases in which retention was not feasible, that these cases could likely have been resolved on mutually acceptable terms had the administration pursued this course.¹⁰

4. USING A CRISIS AS AN OPPORTUNITY FOR RESTRUCTURING

As have other chief officers of New Orleans universities, Chancellor Ryan has acknowledged that the post-Katrina crisis, with its immediate need to repair damage and the need in the broader sense to construct a new and changed city with a university restructured to

10. Chancellor Ryan commented on this paragraph as follows:

The contention that furloughs were unnecessary because of the high number of retirements and resignations evidences a fundamental misunderstanding of the underlying facts. At the time the UNO Restructuring Plan was developed, the University projected a total loss of revenues of \$16.5 million. This figure was based on a \$6.5 million reduction in state revenues and a *projected* loss of \$10 million in tuition revenues. Enrollment before the storm was 17,250. The Restructuring Plan budget was based on *projected* enrollment of 14,600. Actual enrollment for Fall '06 was 11,700—fully 25 percent less than the projected figure upon which the Restructuring Plan budget was calculated. The estimated \$16.5 million in restructuring savings *included* \$1 million in retirement and resignations forthcoming after the Board declared financial exigency. ... Thus, the notion that retirements and resignations produced revenue that made the furloughs unnecessary is simply mistaken.





serve and to lead the future New Orleans with maximum effectiveness, brought about a sense of urgency and a receptiveness to change that are lacking in more tranquil times. The Special Committee cannot fault the chancellor for seeing this opportunity and endeavoring to use it. Whether these endeavors required the abandonment of existing faculty policies, and particularly the safeguards of faculty tenure, is quite another question. The Special Committee finds that these policies did not need to be disregarded in order to achieve the envisioned restructuring. Making changes without having to adhere to certain policies may be more convenient, but the countervailing inconvenience is a small price to pay for the maintenance of policies that ensure principles of academic freedom and tenure at an institution of higher learning.

F. Conclusions

1. The administration of the University of New Orleans, in placing members of the faculty on furlough pursuant to a declaration of financial exigency, denied those faculty members safeguards of academic due process as set forth in the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*.
2. The administration, in selecting faculty members for furlough, paid insufficient heed to the protections of tenure as enunciated in the 1940 *Statement of Principles on Academic Freedom and Tenure* and derivative Association policy documents.
3. Tenure at the University of New Orleans is currently insecure and is likely to remain so as long as the current Declaration of Financial Exigency with its procedures for releasing faculty remains in effect.
4. The administration has not demonstrated need for the continuation on furlough of any members of the University of New Orleans faculty.