

IV. SOUTHERN UNIVERSITY AT NEW ORLEANS

A. Introduction

Southern University at New Orleans was founded in 1956 as a branch of Louisiana's flagship historically black Southern University in Baton Rouge. SUNO's management was transferred in 1975 from the State Board of Education to the newly established Board of Supervisors for the Southern University System.

The flooding caused by Hurricane Katrina took an extremely heavy toll on SUNO. All eleven buildings on SUNO's main campus, located in eastern New Orleans just south of Lake Pontchartrain, were extensively damaged by flood waters that rose more than ten feet. During fall 2005, when the university was closed, the university administration was headquartered on the Baton Rouge campus of Southern University and some classes were held there. When the university reopened in New Orleans in January 2006, it was forced to operate out of trailers throughout the spring semester and into the 2006–07 academic year for most academic and administrative functions as well as for student and some faculty and staff residences. Before the hurricane struck New Orleans in late August 2005, the university enrolled approximately 3,700 students taught by some 160 full-time faculty members. Enrollments for the spring 2006 semester fell precipitously to 2,037 students but increased to about 2,300 students for the fall 2006 semester. At the beginning of the spring 2006 semester, ninety-one faculty members returned to the university. Those with approved work assignments had received their full salaries from August through December. Of the seventy or so faculty members no longer at the institution, the administration had notified fifty-five of them near the end of the fall 2005 semester that they had been placed on furlough. These furloughs are the central focus of this report.

B. Background

In a memorandum dated November 21, 2005, SUNO's interim chancellor, Robert B. Gex, notified some university faculty and staff members that they had been placed on furlough. The chancellor said the furloughs were a "lay-off avoidance measure," that "we hope by adopting this measure we will avert the need for layoffs," and that the university "will develop and implement a recall procedure." Shortly thereafter, in a December 12 memorandum, the chancellor informed all other faculty and staff that additional notifications of furlough would be issued "to further trim the University's budget and workforce in the aftermath of Hurricane Katrina and because the services of all SUNO employees may not be needed in the

Spring of 2006." "Some" classified and unclassified employees had already been furloughed, the chancellor stated, and the administration "will determine which employees will be needed in the short- and long-term to provide academic and support services at SUNO for spring 2006 and thereafter." Faculty and staff were told to expect to be notified about their status by the university's Office of Human Resources "as soon as we complete the assessment of the University's academic and service needs."

The assessment referred to by Dr. Gex was apparently completed in the next day or two, for letters dated December 16 signed by the director of human resources were sent to the fifty-five professors, thirteen with tenure, informing them that they were being furloughed without pay effective December 31. The reason given for the furlough in each case was much the same as described in Dr. Gex's December 12 memorandum, though stated with greater emphasis: this action "is necessary to further reduce the university's budget and workforce ... and based on projected student enrollment for the spring 2006 semester." The letters did not say how long the furloughs would last, but held out an expectation of eventual return to the university:

If it is determined that your services are needed, you will receive written notification of your recall for work from me; in which case, you must respond promptly. It is requested that you keep the Office of Human Resources informed of your continued availability for work, your current address and telephone number and provide other contact information so that written notices affecting your employment at SUNO can be timely delivered. The SUNO website will post important notices and information for the benefit of furloughed employees.

Some of those furloughed were indeed recalled. Chancellor Ukpolo informed the Special Committee in early February 2007 that twelve of the fifty-five had been reinstated, four turned down an offer of recall, nine resigned, and nine retired. Of the twenty-one remaining, seven had temporary appointments that were not renewed, and fourteen have not been recalled because of program elimination. The continuing tenure of one of the professors brought back has thus far been unrecognized by the administration. For the fourteen who remain on furlough, the prospect of their being recalled seems increasingly unlikely.

The December 16 letters concluded by informing the furloughed faculty members of their eligibility for medical

benefits: "Please be advised that if you participate in the group insurance program through State Group benefits, your insurance will expire on December 31, 2005, unless you pay your portion of the January 2006 premium that is due on or before December 23, 2005."

On the same day, December 12, that Dr. Gex distributed his "notice of pending furlough," he wrote to Johnny G. Anderson, chair of the Southern University System's Board of Supervisors, resigning his position effective December 31. Dr. Gex had served as SUNO's chancellor from 1989 to 1997, and he had agreed to return to the university in June 2005 for no more than one year while the board of supervisors conducted a search to replace retiring chancellor Press Robinson, Jr. The reasons for Dr. Gex's resignation are discussed later in this chapter, but here the Special Committee notes that the resignation was triggered by the board's decision to appoint Dr. Victor Ukpolo, the Southern System's vice president for academic and student affairs, as SUNO's chancellor. Dr. Ukpolo took office on January 7, 2006.

Along with the decision to furlough numerous faculty members, the SUNO administration announced far-reaching changes in the university's academic programs that had been approved by the system's board of supervisors at its meeting on December 8, 2005. The new academic plan eliminated nineteen degree programs, including undergraduate programs in English, mathematics, biology education, physics, political science, and history, and it added seven new programs, among them medical records administration, business entrepreneurship, and human development and family services. Described as an academic plan with a "community-based emphasis," the plan's stated objective was to make SUNO "relevant to the rebuilding of the city of New Orleans and its surrounding communities."

The December 8 changes called for a pervasive shift in the nature and mission of SUNO, from a largely liberal arts curriculum to a community-based one. The Special Committee cannot assess whether the sweeping subtractions and additions of programs were sensible or prudent, but the committee does express alarm that such fundamental changes in the educational program were enacted without faculty involvement and consultation. Indeed, the plan's release sparked immediate criticism from members of the faculty about how it had been formulated. The president of the SUNO faculty senate was reported in the local press as saying that "[n]obody can deny the fact that no faculty input went into the development of that plan." The same article quoted the chair of the board of supervisors as having said that he "was shocked to hear SUNO vice chancellors had not met with campus

academics," reporting that he planned to have a meeting with the vice chancellors.¹¹

While the December furlough letters notified faculty members about their status after December 31, they were silent about the right of appeal under a declaration of "force majeure" approved by the Southern system's board of supervisors on November 18. The declaration, identical in every key respect to the declaration of "force majeure" approved by the Louisiana State University Board of Supervisors for the LSU Health Sciences Center on the same day, superseded the university's faculty handbook and the board of supervisors bylaws and provided for an appeal procedure only through administrative channels.¹² In brief, affected faculty had five working days from their receipt of the furlough notice to appeal to administrative superiors, who were to make a recommendation to the chancellor. The chancellor's decision could be appealed to the Southern University System president, whose decision was final.¹³ Several faculty members filed appeals, all of which were rejected.

Criticism by faculty officers that the administration had not included them in the development of the new

11. Commenting on the prepublication draft of this report, Chancellor Ukpolo wrote that the statewide coordinating body for higher education, the Louisiana Board of Regents, "invited a small committee ... of the Southern University System's Board of Supervisors ... to announce that, given the storm's impact on the university, drastic measures would have to be taken to stabilize the institution and plan for the immediate and long term future of SUNO. ... All faculty members had an opportunity to attend regular meetings called by SUNO and System administrators where issues were discussed regarding the options faced of closing SUNO or drastically reducing the number of programs."

12. For a discussion of various features of the "force-majeure" declaration, see this report's chapter II on the Louisiana State University Health Sciences Center. With regard to the silence of the furlough letters about possible appeal, the declaration stated that "SUNO shall notify each affected employee of the proposed disaster-caused employment action in writing. ... The notice shall include a summary of the proposed action, the reasons therefor, and the available review procedures."

13. Chair Anderson of the Southern University System Board of Supervisors, commenting on the draft text of this report, wrote that authority rests with the board for "final internal review."

academic plan was followed by a series of faculty senate memoranda addressed to Chancellor Ukpolo on “Reductions in Faculty Ranks and University Reorganization” (January 23, 2006), “Furloughs and Appeals Hearings” (March 9), “Teaching Loads” (March 20), and “Repeal of ‘Force Majeure’” (April 5). Each memorandum sharply faulted the administration for actions taken or issues left unaddressed, and each proposed specific remedies. The April 5 memorandum, the shortest of the lot, merits full citation:

“Force majeure” is a legal concept protecting a person or organization from being forced to honor a contract when an act of God makes performance impossible. As such it is limited in both scope and duration. Once the disaster passes, “force majeure” expires. “Force majeure” covers the impossibility of performance, not convenience of performance.

Katrina is over. The event that makes performance impossible has passed. While the physical devastation lingers, the university took steps to reorganize and reduce expenses and these have left us in a stable posture. Further, spring enrollments provide a basis to make knowledgeable projections for summer and fall enrollments. There is no need to continue “force majeure” and its legal strength at this point is questionable.

The Faculty Senate at Southern University at New Orleans urges that, as chief officers of this institution, you either declare “force majeure” over or request the Board to take such action so that the university can resume using the Faculty Handbook as the guiding reference in making teaching-load and faculty-employment decisions. It is no longer acceptable to fail to fulfill all contractual obligations.

Responding on April 18 to the senate’s memorandum, Chancellor Ukpolo said that the “force-majeure” policy “is still relevant to deal with the uncertain future confronting SUNO. However, once we know our enrollment numbers for the Fall Semester 2006, we should revisit the necessity of the ‘force majeure.’” In October 2006, at a meeting of the faculty senate, he stated that he would reexamine the need for the policy and recommend its revocation to the Southern University president if enrollment for the next semester increased by 10 percent. The Special Committee understands that the declaration is still in force.

The Association’s staff, having reviewed documentation provided by SUNO faculty members and officers of the AAUP’s Louisiana state conference, wrote to Chancellor Ukpolo, initially in February 2006, to convey the Association’s concerns about issues of tenure, academic due process, and academic governance posed by the furlough decisions. The staff later provided information to the chancellor about the establishment of this Special Committee and its plans for visiting New Orleans in August to meet with university administrative officers and concerned faculty members.

In a letter dated June 12, 2006, the chancellor responded at length to these letters. With respect to furloughed faculty, he stated that “those remaining in furlough status could maintain their [health-insurance] coverage by paying the premiums themselves. In the face of state-mandated cuts in SUNO’s budget and reduced student enrollment, there was no other alternative to this action.” Furloughed faculty were to be recalled “as circumstances dictated and, of necessity [we] eliminated low completer programs and reorganized curricula to meet our immediate academic needs based upon the programs maintained and projected and actual student enrollment.” These faculty had “the right to appeal,” but “we set no deadlines by which any faculty member could appeal.”

With regard to the faculty’s role in the furlough decisions and the decision to adopt a new academic program, the chancellor distinguished between the faculty senate, on the one hand, and the faculty as a whole, on the other:

While it is recognized that there is an elected faculty body of faculty representatives, SUNO does not operate on the premise that the faculty as a whole is incapable of participating in the decision-making process except as directed by that body. As SUNO’s business unfolded, the entire faculty was given the opportunity to participate in the information gathering and disseminating process and to have direct input into matters that were affecting them.

Selected members of the Special Committee met on August 18 with furloughed SUNO faculty members, continuing officers of the SUNO faculty senate, and Dr. Joseph Bouie, who served as chancellor of the university for the period 2000–02. At the August 30 meeting attended by senior administrative officers of the three New Orleans public universities, committee members had the opportunity to hear directly from Chancellor Ukpolo.



C. Issues

1. FURLoughs AND FINANCIAL EXIGENCY

The American Association of University Professors has long recognized that a college or university can legitimately terminate faculty appointments, including appointments with tenure, on grounds of financial exigency, but that much can be done to avoid the necessity of this extreme step. Furloughs without pay, a familiar measure in industry and government, are one such step, which the AAUP has identified, along with numerous other steps, as a way for institutions to deal with pressing financial problems.¹⁴

Payless furloughs are a mixed blessing, however, for faculty members. On the one hand, a furlough implies the possibility of returning to the campus and a paid position, and, as described earlier in this report, the December 2005 notices issued to SUNO faculty members announcing the furloughs explicitly referred to this possibility. On the other hand, the financial burden on the individual is no different from what it would be if the appointment had actually been terminated: in either circumstance, no salary is paid. It would therefore not be surprising to learn that faculty members placed on furlough will consider positions elsewhere as a hedge against furloughs that go on too long. An administration, for its part, if it is concerned that furloughed faculty members not leave for other positions, will try to limit the duration of the furloughs.

There is no question that SUNO's financial condition in the aftermath of Katrina was grave, and that it faced the daunting tasks of rebuilding its physical infrastructure and its academic programs. Because a significant portion of the university's operating expenses are linked to salaries and benefits, these were a prime target for reduction. SUNO's faculty handbook and the Southern University System's bylaws are silent with regard to furloughs, but the declaration of "force majeure" identified furloughs, defined as a "temporary leave without pay status before the end of the employee's contract term," as one of three "Disaster-caused Employment Actions." The other two were, like those noted in this report's preceding chapters on the LSU Health Sciences Center and UNO, layoff ("the employee is temporarily dismissed

14. "Financial Exigency, Academic Governance, and Related Matters," *Academe* 90 (March–April 2004): 112. For an account of a university that utilized payless furloughs, which were then followed by appointment terminations, see "University of the District of Columbia: Massive Terminations of Faculty Appointments," *Academe* 84 (May–June 1998): 46–55.

before the end of the employee's contract term") and termination ("the employee is permanently separated from the institution"). The declaration stated that "both furloughs and layoffs may lead to eventual termination," and it called for actions taken against faculty members to respect the "needs and rights of the affected employees to the fullest extent possible under these extraordinary circumstances."

Despite the characterization of furlough (and even layoff) as temporary, some of the SUNO faculty members placed on furlough would seem to have had good reason to think that their professional futures lay elsewhere. The furlough notices made no reference to an expiration date or to a date by when the furloughs would be reassessed. They identified no criteria according to which the administration would determine if someone's services were needed again, and they were silent about any plans for protecting faculty salaries and hence faculty positions in the future. Moreover, the approval by the board of supervisors of a new academic plan a few days before the furlough notices were issued had direct and far-reaching implications not only for the curriculum and students but also for faculty appointments. A furloughed faculty member could understandably conclude that his or her furlough was, or would very soon become, tantamount to termination.

In his November 21, 2005, memorandum that preceded the issuance of the December 16 furlough notices, Dr. Gex described furloughs as a "measure that will avert the need for layoffs." With another academic year approaching completion, however, the result in the fourteen cases of furloughed faculty members, including some with tenure, who have not been recalled has not been merely layoff but, it is increasingly apparent, permanent termination of appointment.

2. THE REVIEW PROCEEDINGS

The Special Committee turns next to the issue of the procedures available to those tenured faculty members who sought to contest the notifications of placement on furlough. As noted above, the university's policies in effect before the declaration of "force majeure" make no reference to furloughs, but afford to faculty members subject to termination of appointment because of financial exigency or "matters directly related" to such termination the opportunity for a full on-the-record hearing before an appropriate faculty committee. The elements of the SUNO hearing procedure are drawn verbatim from Regulation 4 of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure*, derived from the 1940 *Statement of*



Principles on Academic Freedom and Tenure, including the right of the faculty member to cross-examine adverse witnesses and to be provided with a record of the hearing. The burden of proof rests with the administration.

By contrast, the declaration of “force majeure” called for any hearing to involve only the administration and indeed those same administrative officers who issued the notices of furloughs being contested. The declaration provided no information about how the hearing should be conducted other than to say that the vice chancellor and the cognizant dean (or designee) “shall listen to and consider any facts and contentions by the employee and review the initial recommendation as to that employee.” In short, as in the LSU Health Sciences Center case, the declaration of “force majeure” at SUNO served to short-circuit the institution’s existing procedural protections against involuntary termination of faculty appointments. The declaration of “force majeure” and the ensuing terminations were unaccompanied by explanation of why existing procedural protections relating to financial exigency were being bypassed.¹⁵

A few tenured faculty members promptly filed appeals. Among their various claims, they alleged that the administration had retained nontenured faculty members or engaged new contingent faculty to teach courses that they were qualified to teach. There were delays in the administration’s processing of appeals, but Chancellor Ukpolo’s eventual May 25 response to one of them appears to have been typical:

Please be informed that I have received the documentation from your Furlough Appeal Hearing. After my review of the documentation you submitted, I concur with the recommendation of the Vice Chancellor of Academic Affairs that the decision for furlough remains unchanged.

The chancellor thus did not provide the affected professors with any reasons for his decision, thereby offering them no indication of the grounds on which further appeal could be mounted.

The five-day filing deadline prescribed in the “force-majeure” declaration perhaps reflected concern that involvement of a faculty committee would have delayed decisions that needed to be made quickly. But there is no reason to believe that a faculty hearing committee

could not have finished its work within at least the nearly six-month period that the SUNO administration took to complete its task. Neither the board of supervisors nor the SUNO administration explained why it was considered necessary to bypass the university’s existing hearing procedure and replace it with a procedure that on its face, and as it operated in these cases, was seriously deficient. Under it, the SUNO administration determined that faculty members should be furloughed, announced that furloughs were forthcoming, and issued letters to faculty members notifying them that they had been furloughed. In their appeals, tenured faculty members questioned the legitimacy of these decisions as applied to them and the process by which they had been made. The administration was thus in the position of adjudicating its own contested decisions. The failure of the board of supervisors and the SUNO administration to afford to furloughed faculty members the opportunity for a faculty hearing represents, in the judgment of the Special Committee, a flagrant deficiency in academic due process.

3. THE ROLE OF THE FACULTY IN THE FURLough DECISIONS

The official role of the SUNO faculty in financial exigency decisions was well established before Hurricane Katrina struck New Orleans. The university’s policies provided that a university committee, with at least half of its members appointed by the elected faculty senate, would determine whether a financial exigency exists. Department chairs, in consultation with a faculty committee elected by members of the department, would “determine the individuals whose services are to be terminated.” Lastly, “any proposed termination of tenured faculty based on financial exigency” would “be reviewed by a committee of tenured faculty before a course of action is decided.” Consistent with standards set forth in Regulation 4c of the AAUP’s *Recommended Institutional Regulations on Academic Freedom and Tenure*, these SUNO policies conferred upon the faculty a significant role in financial exigency decisions.

The “force-majeure” declaration addressed the faculty’s role only as follows: “Prior to making a determination to discontinue a program [as a result of the university’s lack of funds], the Chancellor shall take reasonable steps under the circumstances to consult with deans, department heads, and faculty representatives.”

Faculty members at SUNO, furloughed and nonfurloughed alike, have justifiably complained about the absence of meaningful faculty involvement in any

15. See section F, “The Necessity and Propriety of Invoking ‘Force Majeure,’” in chapter II of this report.

aspect of the furlough decisions—from the determination to issue a declaration of “force majeure,” to the determination of which academic programs were to be discontinued and which were to be added, to the determination of the criteria for selecting particular individuals to be furloughed, and to the identification of the faculty members to be furloughed.¹⁶

Indeed, the SUNO administration itself complained about the role of the board of supervisors and the Louisiana Board of Regents in SUNO’s affairs. In his letter of resignation following the announcement of Chancellor Ukpolo’s appointment as chancellor, Dr. Gex criticized the treatment of the SUNO administration by the two boards:

For me, I have felt disrespected since I arrived on the Baton Rouge campus. System and Baton Rouge personnel were assigned to attend SUNO’s meetings so that the [System] administration knew what we were doing almost before we knew. SUNO was micromanaged from the beginning. And the worst indignity occurred when a delegation of System persons went to the Board of Regents to discuss SUNO’s future with no representation from SUNO on that delegation.

Dr. Joseph Bouie, the former chancellor who met with the Special Committee on its visit to New Orleans, voiced similar concerns.

As noted earlier, Chancellor Ukpolo, in his June 12 letter to the Association’s staff, drew a distinction between the faculty as a whole and the faculty senate, suggesting that the administration’s communications with the former could substitute for dealing with the official agency for faculty participation in the governance of the university. Even if the severity of the university’s financial crisis and the need for prompt action explained why there was less than full consultation with the faculty senate, the faculty’s role seems to have been limited to reacting to decisions already made by the board of supervisors and the administration. This was notably true with regard to

16. Chancellor Ukpolo, expressing doubt that this statement can be substantiated, wrote in response to it that “deans, chairs, and faculty were briefed at regular meetings to explain the compelling circumstances leading to the decision to furlough faculty In fact, department chairs and deans, in conjunction with the faculty, recommended to the administration the names of faculty to be furloughed based on the prevailing circumstances in each department.”

the issuance of the declaration of “force majeure,” the announcement of the new academic plan, and the issuance of furlough notices. All these decisions bore directly on the faculty’s responsibility for the teaching and research done at the university, and therefore the faculty should have had an important role in the decision-making process. Instead, the evidence is persuasive that these decisions were made entirely within the confines of the board of regents, the board of supervisors, and in smaller part the SUNO administration, and that the faculty was thus left without an effective voice in matters significantly affecting faculty status.

In not submitting proposed program changes to the faculty senate and instead reporting on them in a more inclusive but more amorphous manner to the faculty as a whole, the SUNO administration effectively denied the faculty an opportunity to respond expeditiously through its formal governance structure.

D. Conclusions

The Special Committee, throughout its inquiries, was continually reminded that the damage inflicted on Southern University at New Orleans and other universities in the city by Hurricane Katrina was unparalleled in the history of higher education in the United States. In the face of these extraordinarily difficult circumstances, particularly in losing the use of its campus buildings for an indefinite future, the SUNO academic community has undoubtedly made progress toward restoring the university’s operations. This achievement, however, has come at a high and unnecessary cost to faculty rights and particularly to principles of due process and academic governance. The Special Committee concludes that :

1. The furloughed Southern University at New Orleans faculty members were denied the academic due process to which they were entitled under the university’s own policies before “force majeure” was declared, under the 1940 *Statement of Principles on Academic Freedom and Tenure*, and under the Association’s derivative *Recommended Institutional Regulations on Academic Freedom and Tenure*.
2. Actions of the Louisiana Board of Regents, the Southern University System Board of Supervisors, and the SUNO administration, taken singly or in some combination in matters fundamentally affecting the university’s academic programs and the status of its faculty, manifested disregard for the faculty’s appropri-

ate role in academic governance as enunciated in the *Statement on Government of Colleges and Universities*.¹⁷



17. Southern University System Board of Supervisors chair Johnny Anderson, in his comments on the prepublication text of this report, maintained that “academic freedom and due process safeguards were preserved for all SUNO faculty members during the implementation and enforcement of the *Declaration of Force Majeure*.”

System president Ralph Slaughter wrote as follows:

While we reaffirm our appreciation to the AAUP and the Special Committee for the attention that your visit ... and the report have drawn to the continuing plight of SUNO and other New Orleans area higher education institutions, we must respectfully disagree with your findings. We could not and cannot have tunnel vision in planning and executing recovery activities while we continue our efforts to attract students to return to our campus in New Orleans. Our administrators must see and consider the entire picture, the whole institution, and not just how the landscape relates to faculty. As advocates for faculty and faculty issues, AAUP and the Special Committee can adopt this narrow viewpoint, our university administration cannot. As our students come, they will require not just faculty's services, but a full complement of staff and administrative services that will contribute to their successful matriculation at the university.