

## II. LOUISIANA STATE UNIVERSITY HEALTH SCIENCES CENTER

### A. Background

The Louisiana State University Health Sciences Center in New Orleans houses the medical school and other health-related programs of the state's flagship public university. Its oldest and by far its largest component, the School of Medicine, was founded in 1931. The present organizational structure of the Health Sciences Center, which dates to 1965, consists of five additional schools—Dentistry, Nursing, Allied Health Professions, Graduate Studies, and Public Health—and nine Centers of Excellence, including centers for neuroscience, aging, and molecular and human genetics. According to the institution's mission statement, the Health Sciences Center's purpose is "to provide education, research, and public service through direct patient care and community outreach," which includes the provision of medical services to "the indigent and uninsured," particularly through the operation of several public hospitals throughout Louisiana. Prior to the late August 2005 onslaught of Hurricane Katrina, student enrollment was approximately 2,800. Data provided the Special Committee by the chancellor's office indicate that at that time the full-time Health Sciences Center faculty numbered approximately 1,000, of whom 678 held appointments in the School of Medicine. The full-time medical school faculty, which will be the focus of this chapter, consists of both scientific personnel and those with primarily clinical responsibilities, with categories of appointment including non-tenure-track, tenure-eligible, and tenured positions.

Funding for the LSU Health Sciences Center has come from multiple sources. State of Louisiana appropriations have accounted for approximately 40 percent of income, while a significant portion has come from patient fees generated by the faculty for the university through work in New Orleans hospitals. Other funds have come from tuition, from research contracts, and from gifts and grants.

### B. The Impact of the Hurricane

Along with virtually everything else in New Orleans, the LSU Health Sciences Center was forced to suspend its operations in the aftermath of Hurricane Katrina. The storm forced students and faculty to abandon their homes and offices. The basements of all the Health Sciences Center's buildings and all first floors were flooded following the storm, causing severe damage to electrical, mechanical, and communications equipment, and the lack of air conditioning and refrigeration that resulted from this damage ruined perishable and other sensitive

items. Of New Orleans's nine hospitals, Charity and University Hospitals, which served as the main training grounds for medical school residents, closed as a result of the hurricane's effects. Three others closed temporarily, and two more operated on a reduced schedule. The massive exodus of the city's population following the storm dispersed students, staff, and faculty over a large area and led to a sharp decline in the patient pool that required the Health Sciences Center's services, with an attendant, immediate, and sharp loss of revenue. Despite these obstacles and harsh realities, the Commission on Colleges of the Southern Association of Colleges and Schools, the regional accrediting body, renewed the LSU Health Sciences Center's accredited status for the ensuing ten years after receiving an updated report.

Within four weeks of Katrina, many of the instructional activities of the Health Sciences Center were back in operation in Baton Rouge and in hospitals elsewhere in Louisiana. Faculty were instructed to be available for work and, when necessary, to be prepared to commute to Baton Rouge or other worksites. Faculty who did not return when instructed to do so were warned that they faced the prospect of being discharged, but those who did return were not assured of being retained. (As was the case at other New Orleans universities, communication with the dispersed faculty took place through e-mail announcements, an emergency Web site, and the cooperation of outside organizations.) The majority of the Health Sciences Center's schools resumed classes in New Orleans within six months, and after one year, all but the School of Dentistry, which suffered the most severe damage from the storm, were operating again, though at lower levels than before the hurricane. With the continuing closure of Charity and University Hospitals, medical school residents had been training at a variety of clinical locations throughout Louisiana, but the partial reopening of University Hospital at the end of November 2006 promised, according to media reports, the return of students and medical residents to New Orleans. The administration estimated that at least 90 percent of the students returned or were expected to return to the Health Sciences Center.

### C. Declaring "Force Majeure" and Placing Faculty on Furlough

Salaries and benefits continued to be paid to all faculty in the wake of the hurricane while the university was closed and when it was only partially reopened in September, October, and into November 2005. On November 22, how-

ever, three months after Katrina, the LSU Board of Supervisors approved a “force-majeure exigency plan” for the Health Sciences Center to address “circumstances arising directly or indirectly as a result of those hurricanes [Katrina and Rita].” Citing the disruption of “revenue streams which no longer exist because they were generated by hospitals and clinical practices in New Orleans which have been destroyed, closed, or are non-operational,” the plan declared the administration’s right in an emergency situation to abrogate the protections associated with tenure and the institution’s own regulations regarding standards for notice of termination of appointment and of nonreappointment.

According to the board’s “findings”:

*The Regulations* previously adopted by the Board and upon which all related employment contracts are predicated recognize that the time periods for notice of termination or non-re-appointment *are predicated upon ordinary circumstances* (“ordinarily”) and are not controlling during a circumstance such as that in which [the Health Sciences Center] finds itself as a result of the effects of Hurricanes Katrina and Rita [emphasis added].

The plan described the “procedure for program modification”: “The Chancellor shall determine how many and what type of positions are currently needed, can be funded, and have work to be done”; in making these decisions, he “shall consult with the deans, department heads and, as reasonable under the circumstances in his determination, faculty members.” In large part, these determinations meant deciding which faculty members would be placed on “furlough” status, defined as “temporary leave without pay” that “may lead to eventual termination.”

The administration proceeded to place on furlough status members of the Health Sciences Center’s School of Medicine faculty, some tenured and some nontenured but all prior to the expiration of their existing appointments, removing them from the payroll as of December 1, 2005.<sup>3</sup> The placements on furlough were confined to

3. The “force-majeure” plan offered an additional justification for not paying salaries to furloughed faculty members: such payment would contravene Article VII, Section 14 of the Louisiana constitution, which prohibits “the donation of public funds.” The plan interprets the provision as prohibiting payment of salary to employees for whom no work is available. This is a legal assertion on which the Special Committee takes no position.

the School of Medicine. The numbers the Special Committee has received from the chancellor’s office reveal that fifty-one full-time medical faculty (and another thirty-four part-time) were furloughed as of December 1, 2005, and an additional ten (plus two part-time) were furloughed subsequently.

Faculty members report having received written notification of their furloughs only days before, and sometimes on or after, the effective date of December 1, providing them with virtually no notice of the impending termination of their positions, salaries, and health benefit payments by the university. The letters notifying faculty members that they were to be furloughed were worded alike:

Dear \_\_\_\_\_,

As you well know, these are challenging times for the School of Medicine. Hurricane Katrina has had a devastating effect on our New Orleans campus and operations. Moreover, the financial impact of the storm and lost revenues with the closure of many school and clinical facilities and programs in the metropolitan area and with the economic downturn in the entire state of Louisiana is unparalleled in the history of the school. As a consequence, each department has worked with the school leadership to develop a plan for financial remediation.

You will be placed in a furlough status effective December 1, 2005; it is not clear at this time how long you might remain in this status or if you will eventually be terminated. We made the decision to place you on furlough after careful deliberation. The reason that you will be furloughed is due to the absence of the existence of a revenue stream dedicated to or based on your work, and also from the loss of revenue from both clinical and residency supervision funding.

You do have the right to have this decision reviewed. The review process is outlined in detail in the Force Majeure Exigency Plan approved by the LSU Board of Supervisors on November 18, 2005, and is posted on the [Health Sciences Center] Emergency Website. There are deadlines to observe for both levels of potential review, so please note the date that you received this communication. You will also need to make your request for review in writing to the Vice-Chancellor for Academic Affairs, Joseph M. Moerschbaecher, PhD. Mail your request to his



attention at [Health Sciences Center], 2323 Kenilworth Parkway, Baton Rouge, LA 70808.

Additionally, as furlough status will likely affect your benefits, you should contact Human Resource Management at 225-334-1614 or 225-334-1622; in particular, you should pay attention to the circumstances that may arise relative to your health insurance coverage. You will receive an individualized benefits summary from HRM under separate cover.

As these letters implied, the “force-majeure” plan allowed for brief windows of appeal to the chancellor and then to the system president, whose decision would be final. A faculty member put on furlough status who wished to contest the decision had only five working days from the receipt of notice to request a review of the decision by the vice chancellor for academic affairs and the appropriate dean. The vice chancellor would review the appeal and make a recommendation to the chancellor, who would decide either to uphold the furlough or rescind it. If the faculty member wished to appeal the written decision of the chancellor, he or she had three working days to apply for a review by the LSU System president. Even under the limited appeals procedure provided by the administration’s plan, faculty members report what appeared to them to have been perfunctory action in upholding of furlough decisions by Chancellor Hollier (who was also, previously, the dean who had issued many of the furlough notices). Five of the furloughed professors provided the Association with copies of letters of intent to appeal that they went on to address to LSU System president Jenkins.

In addition to the short or nonexistent notice and the absence of severance pay in lieu of notice, furloughed faculty were told, effective immediately, to give up their offices, their access to e-mail accounts, their parking permits, and indeed the right to unescorted access to their previous office space. The administration has stated that the advantage to faculty members of furlough was that they could continue health benefits, by paying both the employee’s and the university’s shares of premiums due. The apparent advantage to the employer was the relief from the obligation to pay its share of the benefits without having to issue notice of termination.

Faculty members had been called upon to defend their programs to an accrediting team from the Accreditation Council for Graduate Medical Education visiting the university in mid-November. They did so successfully, and were nonetheless given furlough notices within days thereafter. No programs were elimi-

nated. Affected faculty members called on only shortly beforehand to speak on behalf of their programs state that they had no reason to believe that their jobs were in jeopardy.

The furloughed medical school professors who communicated with the AAUP, some through the Association’s statewide Louisiana Conference and others by calling on the national staff directly, provided the staff with accounts of their own cases and a good deal of written material about the events at the Health Sciences Center and the administration’s actions. Subsequently the staff engaged in extensive correspondence with the administration.

The Special Committee has had access to all of these communications. Members of the committee met in New Orleans with approximately a dozen members of the Health Sciences Center’s faculty, including officers of the local AAUP chapter and both furloughed and retained individuals, and a fortnight later the committee met with Chancellor Hollier.

#### **D. A Benchmark for Evaluating the Placements on Furlough**

Prior to the devastating events of August 2005, the LSU Health Sciences Center had rules and procedures concerning faculty obligations and rights that were set forth in detail in the faculty handbook. Key provisions for the present discussion are those concerning termination or reduction of the appointment rights of faculty members in the face of financial exigency and program modification or discontinuance. These are the provisions rendered inoperative by the invocation of “force majeure,” and they merit close reading:

##### CRITERIA

[The Health Sciences Center] may terminate or reduce the contractual rights of faculty members when the Chancellor, upon authority of the President and Board of Supervisors, determines that it is necessary (1) to alleviate a financial exigency within the Health Sciences Center or subunit thereof, or (2) to effect a reorganization or elimination of an academic program of the institution. *Financial exigency is defined as the critical, pressing, or urgent need on the part of the University to reorder its monetary expenditures in such a way as to remedy and relieve the state of urgency within the University* [emphasis added].

## RETRENCHMENT PLAN

In the event of financial exigency or the need to reorganize or eliminate an academic program, the Chancellor of [the Health Sciences Center] will appoint an ad hoc committee of faculty and administrators to institute an orderly and consistent plan of retrenchment. Dismissal of faculty will only be initiated after all alternative means of alleviating the financial crisis have been exhausted or deemed inadequate. This retrenchment plan may be administered on a school-wide, departmental or program basis.

Termination of faculty members in order to alleviate a financial exigency shall be in the following order:

.. Faculty on term appointments, starting with the most recently appointed and then proceeding in reverse order of seniority.

.. Tenured faculty on continuous appointments, starting with the most recently appointed, and then proceeding in reverse order of seniority.

For the purposes of this retrenchment plan, seniority shall mean total years of service at [the Health Sciences Center] as determined by the retirement system.

## EXCEPTIONS TO THE RETRENCHMENT PLAN

Department Heads or other administrators who wish to make specific exceptions to the Retrenchment Plan can appeal to the Dean of the appropriate school, who will act upon a recommendation made by an ad hoc committee of faculty members appointed by the Dean of the School.

## NOTICE

[The Health Sciences Center] shall provide written notice no fewer than thirty (30) calendar days prior to the intended date of termination. This written notice shall specify the cause of the termination, or reduction of time, provide a summary description of the facts relied on by the Health Sciences Center to make the decision, and a reference to the faculty member's rights to file an appeal pursuant to Handbook Section 10.10. Written notice shall be sent by certified U.S. mail, return receipt requested.

## ALTERNATIVE POSITIONS

Faculty members whose employment time is terminated or reduced due to retrenchment will be eligible to transfer to any vacant [Health Sciences

Center] faculty position for which he is qualified, subject to the terms and conditions of employment attendant to that position. A faculty member's qualification for a vacant position shall be determined by the Dean of the appropriate school, after consultation with the Department Head involved, and approved by the Chancellor. A faculty member who exercises the rights accorded under this section and who is determined by the Dean of the school to be qualified for a vacant position will have a preemptive right to the position consistent with the retrenchment plan.

## RECALL

If vacancies become available, faculty terminated under the retrenchment plan will be recalled in the reverse order of dismissal. Faculty will be eligible for recall up to one year after dismissal. Exceptions to this order can be appealed by the Department Head to the Dean of the appropriate school, who will act upon a recommendation made by an ad hoc committee of faculty members appointed by the Dean of the school.

The "force-majeure" plan, as noted above, declared that the university's financial exigency regulations "are predicated upon ordinary circumstances," but the clear language of those regulations belies that declaration. They state that a "financial exigency is defined as the critical, pressing, or urgent need on the part of the university to reorder its monetary expenditures in such a way as to remedy and relieve the state of urgency within the university." Plainly this text does not describe "ordinary circumstances," and just as plainly the effects and impact of the hurricanes fit within these "criteria," placing the university as they did in a "state of urgency."

The Special Committee notes that the university's existing financial exigency policy already limited the rights of faculty when compared to applicable AAUP-supported standards. Regulation 4c of the Association's *Recommended Institutional Regulations on Academic Freedom and Tenure* provides procedures supplementing the provision in the 1940 *Statement of Principles on Academic Freedom and Tenure* that termination of an appointment because of financial exigency should be demonstrably bona fide. Regulation 4c calls for the meaningful participation of faculty in the declaration of a financial emergency, for the right of a faculty member notified of termination to a full hearing before a faculty committee, for the



right of first refusal of a suitable new position for a period of three years, and for severance pay or notice based on length of service, from a minimum of three months for a first-year faculty member to at least one year following eighteen months of service. But why even the procedures and protections already provided in the institution's regulations for alleviating a financial crisis were completely bypassed in favor of a declaration of "force majeure" has not been explained by the administration and is not apparent to the Special Committee.

### E. The "Force-Majeure" Policy

A first major consequence of the "force-majeure" provisions put in place in November 2005 was the replacement of the long-established and mandated role of faculty in decisions regarding educational policy and faculty competence with the virtually total discretion of deans and the chancellor to decide which members of the faculty and what academic programs to retain in the reemergent Health Sciences Center.

These new procedures gave no heed to key aspects of the institution's own regulations in the following respects:

1. Essentially no consultation with the faculty about the nature and extent of the financial crisis
2. Furlough decisions, potentially leading in some instances to de facto termination, made without faculty consultation and apparently without deference to length of service and tenure
3. Decisions made without acknowledgment of eligibility of potentially furloughed faculty to a preemptive right to transfer to other positions for which they were qualified
4. Decisions made without acknowledgment of rights of furloughed faculty to be recalled as positions became available in the next year

Under the "force-majeure" provisions, assuming that termination of faculty appointments was required, how should the deans and chancellor have decided who was to be furloughed and who retained? The "force-majeure" document specifies two unassailable general criteria: the needs and requirements of the institution and the value an individual provides toward meeting these. Presumably these have traditionally been the bases for recruiting, promoting, and, where appropriate, granting tenure to individuals, as well as for identifying and developing programs and curricula. Not relying on these, the "force-majeure" document added seven other criteria (here stated in somewhat abbreviated form):

1. The existence of a revenue stream dedicated to or based on the work of the particular individual
2. The individual's specific clinical, research, or teaching skills
3. The individual's recent performance and productivity
4. The individual's history of productivity
5. The individual's long-standing commitment and contributions to the institution
6. Evidence of the individual's "outstanding" service in the immediate aftermath of the hurricane
7. Other relevant and compelling considerations

The Special Committee was subsequently informed by the chancellor's office that additional criteria considered included the individual's ability to contribute to the recovery of the LSU Health Sciences Center and his or her geographic location (in-state or out-of-state) after Katrina.

Here the devil is in the details. Because no weights are assigned to the criteria, which replaced the presumptions based on tenure and seniority, the discretion of the administrator is, in fact, unlimited: anyone with less than perfect performance on any one of these criteria could be furloughed or, alternatively, have that deficiency overlooked in favor of other criteria.

The criteria themselves are suspect. Some introduce considerations, such as past and recent performance and productivity, that call for judgment about the relative merit of faculty members, thereby raising the prospect of furloughing professors on the grounds of fitness of performance and thus their release for cause. Others seem to allude to considerations that defy specification (for example, one's "long-standing commitment to the institution"), while one criterion—evidence of "outstanding" service after the hurricane struck—seems to be wholly impressionistic.

It is perhaps not surprising that Dr. Hollier, who seems to have had major responsibility for most of the furlough decisions in his roles as dean of the School of Medicine and then as acting chancellor, referred to a different formulation. He told the Special Committee that his decisions about who was to be furloughed were based on three considerations:

1. If a faculty member did not want to come back to work (this apparently was inferred if the faculty member did not show up when instructed to be available for assignment)
2. If there was no longer work for the faculty member to do, owing to the decreased demand caused by the closing of hospitals
3. If there was work, but no funding

While here nominally relying on financial considerations, the dean still had considerable discretion regarding who could be designated for furlough. For example, if the Health Sciences Center had the need and sufficient funds to support six faculty members with given skills, and ten fully qualified individuals were available, any four of the ten could be designated as redundant.

The Special Committee is unable to determine the actual bases for the furlough decisions that were made because it does not have a full list of those furloughed and because no specific reasons were given to the individuals furloughed at the time of their notice. The lack of stated reasons for the furloughs seriously complicated the task of anyone contesting the decision in his or her case.

The individual professors who met with committee members offered a variety of speculations about the reasons for the decisions. In the limited number of cases about which the Special Committee has specific information, no single consistent pattern is discernible. Faculty speculations, untested in any hearing procedure, do little more than testify to the overall unsatisfactory nature of the process employed. The unfettered discretion of a few administrators in a matter of days replaced the years of considered decision-making in shaping the nature of the university's faculty and curriculum.

#### F. The Necessity and Propriety of Invoking "Force Majeure"

Beyond the issue of the effect of the "force-majeure" policy on faculty appointments is the issue of whether invoking the policy was at all necessary, an issue to which the Special Committee now turns.

The "force-majeure" policy, emanating from the office of the LSU System's general counsel, employs a legal term derived from French contract law but which has close counterparts in the United States and in other developed legal systems. In brief, "force majeure" refers to a doctrine that releases a party from a contractual obligation when an unforeseen event renders a contract impossible to perform. As one commentator explains,

little, if anything, is abstractly unforeseeable . . . [a fire, a hurricane, a strike, legislation] . . . The

test which is applied is that the event must have been unforeseeable by a reasonable person at the time of the contract and in the circumstances in which it was made.<sup>4</sup>

As a result, contracts often contain "force-majeure" clauses to deal with such contingencies.

The LSU Health Sciences Center policy rested upon the principle that employment contracts, including contracts of tenure, are "predicated upon ordinary circumstances." Even though hurricanes and floods are a foreseeable occurrence in New Orleans—witness the several institutions that had purchased insurance against those contingencies—the impact of Katrina was physically to disable the university's medical facilities and significantly to depopulate the city. Consequently, instruction in neither the basic sciences nor in clinical practice could proceed in those facilities nor, to the extent that the medical faculty were compensated out of patient fees, were adequate funds being generated. The performance of many of the faculty's contractual obligations had been rendered largely impossible by this event.

The LSU System, as has been noted, did have in place a policy designed to deal with financial exigency. Its provisions, like the "force-majeure" policy, allowed for furloughs and layoffs as well as termination and, also like the "force-majeure" policy, gave the administration considerable discretion in deciding whom to separate. Moreover, adopting a concept deeply rooted in the 1940 *Statement of Principles*, the invocation of financial exigency would have brought in its train such common understandings as a requirement that there be no less drastic alternative to separation, a significant role for the faculty in adopting and applying criteria governing separation, a strong presumption in favor of the tenured faculty in deciding whom to retain, full due process to ensure the fairness of the decisions, and significant post-termination economic protections. The effect of the "force-majeure" policy was to obviate the applicability of these common understandings and of parallel university policies. Thus the question is not whether Katrina rendered some contracts for professorial service impossible to perform, but whether it rendered impossible the observance of existing rules that would seem to apply to just such a situation.

The legality of reliance on a "force-majeure" declaration is of course a matter for judicial determination. Whatever the outcome of any litigation, however, it is unlikely to undo the damage to the status and the careers of many of those faculty members most directly

4. Barry Nicholas, "Force Majeure in French Law," in *Force Majeure and Frustration of Contract*, ed. Ewan McKendrick, 2d ed. (London: Lloyds of London Press, 1995), 21, 24.



affected. Necessarily, the Special Committee is called upon to address this question not as a matter of law but from the perspective of academic policy and sound practice.

Under the 1940 *Statement*, a bona fide financial exigency allows for the termination of faculty appointments during their term under “extraordinary circumstances” where no less drastic action will suffice. Similarly, under the LSU financial exigency policy, “furlough, layoff, or termination of tenured faculty, non-tenured faculty [or others] before the end of their contract term *will be handled* in accordance” with this policy. (Emphasis added.) The text would seem rather plainly to apply to post-Katrina action.

Further, financial exigency is defined by LSU’s policy as the lack of the resources necessary to support the “existing programs and personnel ... without substantial impairment” of the campus’s ability to maintain the quality of its programs. This may be the consequence of lack of funds or “the substantial threat of deterioration of faculties due to a lack of resources,” among other things. The list of conditions that might result in the inadequacy of facilities and the lack of funds does not mention natural disaster; but, obviously, the list of the reasons for a financial exigency is not exhaustive, nor could it be. The policy merely supplies some possible reasons why there might be such lack of work or lack of funds as to allow terminations without being preclusive of others. It is the critical lack of work or funds that the financial exigency policy addresses. In essence, the university’s provision for financial exigency *is* a “force-majeure” policy.<sup>5</sup>

At the time the “force-majeure” announcement was circulated for consideration and approval, Chancellor Rock, in a November 14, 2005, memorandum to Vice Chancellor for Academic Affairs Joseph Moerschbaecher, expressed his strong disapproval of the furlough of tenured faculty without pay. He recognized that fur-

loughs would likely lead to ultimate separation, and he suggested the availability of alternative ways to compensate for the losses in revenue. He further emphasized the need for transparency and due process in an effort to maintain a scholarly environment.

The Special Committee does not find that the former chancellor’s views have been persuasively refuted, or that the wholesale bypassing of the existing rules has been justified. The crisis, to the university and to New Orleans and its population, was indeed devastating, and it required an orderly and adequate response. But there were available alternatives, and the administration seems to have chosen one that was antithetical to the institution’s own rules and the traditions of faculty involvement in university governance and decision-making. Indeed, this committee cannot discount the view, expressed by a number of Health Sciences Center faculty, that the “force-majeure” plan seems to have provided the opportunity to use the genuine need for prompt action as an excuse to restructure and reconfigure the university and its faculty in ways that were desired by the small number of administrators with the newly conferred authority to do so.<sup>6</sup>

### G. Steps toward Recovery

As hospitals reopen, as students return, and as outside groups respond to the disasters of the hurricane with gifts, grants, and other assistance, a situation that once, perhaps, threatened the continuing viability of the LSU Health Sciences Center now seems much more hopeful. This is reflected in news stories about the university, in the statements made by the administration in its internal publications and announcements, and in formal actions. General Counsel Lamonica has informed the

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there simply was not enough money to continue the same levels of employment as before the storms; there was not employment which produced the funds. Much of the faculty of [the Health Sciences Center] is devoted primarily to clinical duties, or to research which involves the treatment of patients in clinical settings. The patients were largely gone from New Orleans for months after the storms, and they still have not, and may never, return in the same numbers as before. LSU did not need, and could not afford to maintain, a faculty large enough to service a city of almost half a million people after the population dropped to something much less than that. Without work for them to do or money with which to pay them, LSU had no choice but to issue the furloughs it did.

5. LSU System general counsel P. Raymond Lamonica, responding to a draft text of the Special Committee’s report, stated that

LSU has amply and repeatedly explained why the normal provisions of financial exigency were inadequate fully to respond to ... the unique and, as the report itself admits, unprecedented destruction caused by hurricanes Katrina and Rita.

6. Asserting the lack of an alternative to the prompt placement of scores of faculty on furlough, General Counsel Lamonica wrote that at the Health Sciences Center

Association of an announcement at the final board of supervisors meeting for 2006 that, while the “force-majeure” exigency plan remains in effect, no more furloughs under the plan will be imposed. The Health Sciences Center administration has notified the Association that, despite a faculty sharply reduced from its pre-Katrina size (as of early January 2007, a total of 752 full-time faculty and 218 part-time), nine furloughed School of Medicine professors have been reinstated to active faculty service, a tenth has been brought back to a nonfaculty position, and discussions on reinstating seven to ten additional furloughed professors are proceeding or planned. Others who were furloughed have retired or resigned. Remaining on involuntary furlough as of early January 2007, however, were twenty-two full-time (and twenty-four part-time) members of the faculty.

administration has effectively terminated the appointments of the furloughed professors without having respected tenure rights and afforded academic due process as called for in the 1940 *Statement of Principles on Academic Freedom and Tenure* and the Association’s derivative Regulation 4c.

## H. Conclusions

1. The administration of the Louisiana State University Health Sciences Center discarded the institution’s existing financial exigency procedures, without adequately explaining why it deemed them inadequate, in favor of a new “force-majeure” plan. It thereby set aside standards in closer conformity with those set forth in the 1940 *Statement of Principles on Academic Freedom and Tenure*. It did so without having consulted with the faculty, thus depriving the faculty of its appropriate role as called for in the Association’s *Statement on Government of Colleges and Universities* and in Regulation 4c of its *Recommended Institutional Regulations on Academic Freedom and Tenure*.
2. The administration proceeded under the “force-majeure” plan to place a large number of professors on furlough with virtually no notice. In selecting those to be furloughed and in implementing the furloughs, the administration acted at odds not only with applicable Association-supported standards but also with the existing Louisiana State University procedures on financial exigency: it unilaterally decided whom to furlough; it paid scant if any deference to tenure rights and length of service; and it paid no discernible heed to rights to relocation in an alternative suitable position.
3. Some amelioration of the damage inflicted by the furloughs has been achieved through instances of reinstatement. In those cases where the actions are likely to be permanent, however, the

