

# **RETRENCHMENT RIGHTS**

## **Article 29.D.3. and G.**

### **Preferential Hiring Rights and Minimal Qualifications**

### **Questions and Answers**

#### **Part 2**

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Once a faculty member has received a letter of retrenchment, the faculty member has the right to be given preference for openings at other PASSHE universities so long as he or she is minimally qualified.<sup>1</sup> The questions and answers below pertain only to retrenched faculty members who are applying to other State System universities.

**1. What does the word “preferential” mean when a retrenched faculty member exercises their preferential hiring rights under Article 29?**

The word “preferential” means that the retrenched faculty member shall have priority of consideration, including priority over other equally or more qualified applicants who do not possess preference based on retrenches status. If the retrenches is judged against other non-retrenched applicants, the retrenched faculty member no longer holds priority.<sup>2</sup> Therefore, Departments should review applicants with preferential hiring rights first and separately from any other applicants. The credentials of other non-retrenched applicants should only be examined if no retrenches is deemed to be minimally qualified for the open position.

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<sup>1</sup> Article 29D.3 or G.1

<sup>2</sup> VI Retrenchment and Rehiring Rights, pp. 10-11 (January 20, 1982) (Arb. Anderson)

## **2. What is meant by “minimally qualified?”**

When a retrenched candidate is applying for a position at another university, he or she must be “minimally qualified” to fill the position.<sup>3</sup> In order to be minimally qualified, a retrenched candidate needs to possess the skills necessary for the position; he or she does not need to be the “most” or “best” qualified.<sup>4</sup> Minimal qualifications are determined by both the job posting and the work that the person is expected to be assigned.

Work experience is a factor in determining whether the faculty member has the necessary minimal qualifications for the vacant position. For example, even if a University or Department requires a PhD for consideration in a job posting, a retrenched candidate may still be minimally qualified if he or she can demonstrate proof that he or she has relevant job experience, a background in the position, or has taught similar courses in the past. The courses that the new faculty member may be expected to teach may be a relevant inquiry.<sup>5</sup> The Department and the University do not have an unrestricted right “to increase the qualifications for vacancies by requiring rather than preferring that retrenches possess a doctorate for the position when the prior incumbents did not possess the doctorate.”<sup>6</sup> When a higher degree or certification is required in a job posting, the University and Department must ensure that the requirement is necessary for the survival of the program and not merely a preference for higher qualifications.<sup>7</sup>

## **3. What efforts should be pursued if a Department is unsure if the retrenched faculty member is minimally qualified for the position?**

If a Department is unsure if the retrenched faculty member is minimally qualified for a vacant position, the Department must “reasonably exercise its judgment as to qualifications,” and at the very least, further review retrenched candidates and call them in for an interview.<sup>8</sup>

Should a Department seek additional information from a retrenched candidate, the request must be limited to the minimal qualifications.<sup>9</sup> Departments should not request information beyond what is needed to determine minimal qualifications as it rescinds preferential hiring rights and subjects the retrenched faculty member to the same standards as a new hire applicant under a search and screen process.

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<sup>3</sup> VI Retrenchment and Rehiring Rights, pp. 10-11 (January 20, 1982)(Arb. Anderson).

<sup>4</sup> VI Retrenchment and Rehiring Rights, pp. 23 (January 20, 1982)(Arb. Anderson)

<sup>5</sup> VI Retrenchment and Rehiring Rights, pp. 10-11 (January 20, 1982) (Arb. Anderson).

<sup>6</sup> IV Retrenchment and Rehiring Rights, p. 38 (January 20, 1982)(Arb. Anderson).

<sup>7</sup> VI Retrenchment and Rehiring Rights, pp. 21-22 (January 20, 1982)(Arb. Anderson).

<sup>8</sup> VI Retrenchment and Rehiring Rights, p. 17, 23 (January 20, 1982) (Arb. Anderson); VII Retrenchment – Preferential Rehiring Rights, p. 33 (May 3, 1982) (Arb. Anderson).

<sup>9</sup> VII Retrenchment – Preferential Rehiring Rights, p. 33 (May 3, 1982)(Arb. Anderson)

**4. What should a retrenched faculty member who is exercising his or her right to preferential hire do if he or she feels a request for information goes beyond what is needed to determine minimal qualifications?**

A retrenched member exercising preferential hiring rights should notify State APSCUF immediately if he or she is asked to provide more information than what is necessary to determine minimal qualifications.

**5. If one or more retrenched faculty members apply for a vacant position, may the Department or the President choose the most qualified retrenchee?**

No, the discretion exercised by the hiring Department in filling vacancies during retrenchment is limited to whether the retrenched candidate is qualified.<sup>10</sup> Retrenchees are to be considered in order of seniority. The Department should evaluate the most senior retrenchee's qualifications first. If that retrenchee is minimally qualified, the search ends. If the most senior retrenched candidate declines an offer, the offer must go to the next senior retrenched candidate who is minimally qualified.<sup>11</sup> Neither the Department nor the University President may choose a candidate based on who they "may prefer as most qualified or most likely enhance the program of the Department ...".<sup>12</sup> Instead, the Department and University President may only determine whether the candidate meets the minimum qualifications necessary to fill the position.<sup>13</sup>

Even if a University or Department seeks to protect the long-term goals of the Department by selecting a candidate they consider to be the "most" or "best" qualified over a retrenched faculty member who meets the minimal qualifications, that decision violates Article 29(G)(1), and the position must be awarded to the qualified retrenched candidate.<sup>14</sup>

**6. If one or more retrenched faculty members are minimally qualified for a position, how should the position be awarded?**

Minimally qualified candidates must be considered in order of seniority.<sup>15</sup>

**7. After the Department makes its determination of qualifications, what process should be followed?**

The hiring Department is responsible for judging the qualifications of a retrenched faculty member applying for a vacancy.<sup>16</sup> The hiring Department must exercise "reasonable judgment" in determining whether a candidate is minimally qualified.<sup>17</sup>

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<sup>10</sup> Article 29(G)(1); (Preferential Hiring Rights Fair Practices, p. 26 (April 19, 1992)(Arb. Jaffe).

<sup>11</sup> Retrenchment – Appropriate Remedy, p. 6-7 (March 18, 1981)(Arb. Anderson)

<sup>12</sup> VI Retrenchment and Rehiring Rights, p. 6, 10, 11 (January 20, 1982)(Arb. Anderson).

<sup>13</sup> (Article 29(G)(1)

<sup>14</sup> VI Retrenchment and Rehiring Rights, p. 11-12 (January 20, 1982)(Arb. Anderson).

<sup>15</sup> (Article 29(G)(1)).

After the hiring Department finds the applicant qualified, the name of the applicant is forwarded to the University President for approval, a process that mirrors the general hiring process.<sup>18</sup>

**8. What is the role of the University President if the hiring Department finds the applicant not minimally qualified?**

If a Department deems a retrenched candidate not to be minimally qualified, the University President should ensure that the Department gave the retrenched faculty member the priority consideration to which he or she was entitled and ensure the Department made its determination for good faith reasons and without improper discrimination.<sup>19</sup> The President should make sure that the Department did not violate a retrenchee's rights to preferential consideration by following normal search-and-screen processes.

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<sup>16</sup> (Article 29(G)(1); Re: Preferential Hiring Rights Fair Practices, p. 26 (April 19, 1992)(Arb. Jaffe).

<sup>17</sup> VI Retrenchment and Rehiring Rights, p. 23 (January 20, 1982)(Arb. Anderson).

<sup>18</sup> (Article 29(G)(1); Re: Preferential Hiring Rights Fair Practices, p. 26 (April 19, 1992)(Arb. Jaffe).

<sup>19</sup> Preferential Hiring Rights Fair Practices, p. 26 (April 19, 1992)(Arb. Jaffe).