

FORM OF ORDER AND TRANSMITTAL BY BOARD, COMMISSION, OR COUNCIL

State of Washington

BOARD OF TRUSTEES
(name of governing body)

CLARK COMMUNITY COLLEGE DISTRICT NO. 14
(name of institution)

Resolution No. 87-01

Administrative Order No. 87-01

(1) Be it resolved by the board of TRUSTEES
of the CLARK COMMUNITY COLLEGE DISTRICT NO. 14
(institution)
acting at VANCOUVER, WASHINGTON
(place)
that it does adopt the annexed rules relating to:

REDUCTION IN FORCE PROCEDURE

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. 87-10-045
filed with the code reviser on May 5, 1987. These rules shall take effect:
 thirty days after they are filed with the code reviser pursuant to RCW 28B.19.050(2).
 at a later date, such date being July 22, 1987. *changed per phone call to Janelle Farley (7-27-87)*

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

We, _____, find that
an emergency exists and that this order is necessary for the preservation of the public health, safety, or general
welfare and that observance of the requirements of notice and opportunity to present views on the proposed action
would be contrary to public interest. A statement of the facts constituting the emergency is:

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of WAC 1-13-040¹ that each order shall set forth an appropriate statement
of state statutory authority fill in statement (a), (b), or (c) as appropriate:

- (a) This rule is promulgated pursuant to RCW _____
and is intended to administratively implement that statute.
- (b) This rule is promulgated pursuant to RCW _____
which directs that the

_____ (institution)
has authority to implement the provisions of _____
(name of act or RCW citation)

(c) This rule is promulgated under the general rule-making authority of the
Clark College (institution)
as authorized in RCW 28B.50 and 28B.10

(4) The undersigned hereby declares that the institution has complied with the provisions of the Open Public
Meetings Act (chapter 42.30 RCW), the Higher Education Administrative Procedure Act (chapter 28B.19 RCW),
and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order after being first recorded in the order register of this governing body is herewith transmitted to
the Code Reviser for filing pursuant to chapter 28B.19 RCW and chapter 1-13 WAC.

APPROVED AND ADOPTED July 22, 1987

JUL 27 1987

By *Richard L. Schwary*
Richard L. Schwary, Chair, Board of
Trustees
Title

CODE REVISER'S OFFICE
WSR 87-16-036

NOTE:

¹Pursuant to WAC 1-13-040, each rule-making order adopted by an institution of higher education shall incorporate the most specific, but in no case omit all of the following language alternatives when adopting or amending rules:

(a) The most specific reference shall be to a section of law which the rule is implementing, and shall be quoted as follows: "This rule is promulgated pursuant to RCW _____ and is intended to administratively implement that statute."

(b) The next specific reference, and one which shall be used only if paragraph (a) of this subsection is not applicable, shall be to that portion of an act which directs an agency to adopt rules and regulations as necessary to implement the act, and shall be quoted as follows: "This rule is promulgated pursuant to RCW _____ which directs that the (agency) has authority to implement the provisions of (name of act or RCW citation)."

(c) The least specific reference, and one which shall be used only if paragraphs (a) and (b) of this subsection are not applicable, is one which indicates that the rule is promulgated under the agency's broad rule-making authority—either in the agency enabling legislation or chapter 34.04 RCW, and shall be quoted as follows: "This rule is promulgated under the general rule-making authority of the (agency) as authorized in RCW _____."

AMENDATORY SECTION (Amending Order 74-6, § 132N-128-080, filed 5/23/74.)

WAC 132N-128-080 PROCEDURES. Reduction in force means ~~((nonrenewal-of-contract-of-probationary-or-tenured-faculty))~~ layoff or placement on leave without pay of any persons holding tenured or probationary faculty appointments by reason of sufficient cause for the reduction of one or more ~~((employment))~~ faculty positions and is to be distinguished from nonrenewal ~~((solely by-reason-of-personal-shortcoming-of-an-individual, such-as insubordination-or-incompetency))~~ of probationary faculty and dismissal for cause. For purposes of ~~((a))~~ reduction in force, ~~((a))~~ sufficient cause shall include ~~((, but-not-be-limited to))~~ a lack of sufficient funding and/or ~~((a))~~ lack of sufficient enrollment and/or ~~((a-revision-of-program-offerings))~~ elimination, reduction, or modification of programs. The following procedures apply to all cases of reduction in force, provided that in the case of a reduction in force initiated pursuant to a declaration of financial emergency by the state board for community college education pursuant to RCW 28B.50.873, such reduction in force shall be accomplished in accordance with the procedures set forth in RCW 28B.50.873 in which case (1) the college shall be treated as one reduction in force unit notwithstanding WAC 132N-128-085; and (2) the provisions of this reduction in force policy shall not apply except for the following provisions:
WAC 132N-28-100 (1) and (2) and WAC 132N-128-120.

NEW SECTION

WAC 132N-128-085 REDUCTION IN FORCE UNITS. Whenever a reduction in force is being contemplated the reduction in force units shall be departments as listed in the most recent policy and procedures manual (Section 600, Appendix 9).

AMENDATORY SECTION (Amending Order 77-2, § 132N-128-090, filed 5/5/77; Order 74-6, § 132N-128-090, filed 5/23/74.)

WAC 132N-128-090 THE NEED FOR REDUCTION IN FORCE.

(1) If the president anticipates the need for a reduction in force, he/she ~~((shall))~~ will begin a ~~((thorough))~~ process of information-gathering including discussions and consultations with the ~~((Dean-of-Faculty, -Dean-of-Students/Administrative Services))~~ vice president, the deans, and other appropriate administrators, and with three faculty members designated by the ~~((executive-council-of-the-association))~~ senate of the Clark College Association of Higher Education as early as possible but no later than seven (7) weeks before the end of winter quarter. ~~((The-association-will-then-have-the-right-to-meet-as-often-as-is-necessary-to-offer-full-consultation-to-the-President.))~~ At least one of these discussions and consultations shall include all these persons together in a joint session. The dean of faculty shall keep the instructional advisory council informed and solicit views from its members. Other relevant campus committees ~~((shall))~~ may be ~~((available-for-consultation))~~ consulted by the president.

(2) The president shall provide for use in these discussions and consultations the following information:

(a) Enrollment and budget data for the preceding three years, ~~((shown))~~ by divisions and departments;

(b) The number and duties of each faculty member ~~((by division-and-department))~~ in the affected division and department, and enrollment projections, if possible;

(c) Lists of forthcoming faculty vacancies due to retirement, resignation, or leave;

(d) ~~((Other-data-requested-by-those-he/she-is-consulting~~

~~((e)))~~ Brief written statement of ~~((his/her))~~ reasons in support of ~~((his/her-tentative-assumption-of-a))~~ the need for reduction in force.

(3) The president after such discussion and consultation will, no later than ~~((four))~~ five (5) weeks before the end of winter quarter, ~~((issue-a-written-report-giving-his/her-conclusions-as-to-whether-or-not-there-is-a-need-for-reduction-in-force, and-including-a-summary-of-his/her-supporting-evidence))~~ notify any persons holding tenured faculty appointments who are to be laid off. ~~((If-the))~~ The president ~~((decides-that-a-reduction-in-spending-is-necessary, -he/she-will, -if-possible-propose-that the-dollar-cutback-be-achieved-by))~~ will propose granting up to three years leave (without pay) in lieu of ~~((non-renewal))~~ layoff. Self payment of benefits will be permitted in accord with State Employee Insurance Board rules and Washington Administrative Code.

AMENDATORY SECTION (Amending Order 77-2, § 132N-128-100, filed 5/5/77; Order 74-6, § 132N-128-100, filed 5/23/74.)

WAC 132N-128-100 SPECIFIC IMPLEMENTATION. (1) (~~If the president then decides to initiate~~) The following order of layoff or placement in leave-without-pay status will be used after all temporary part-time faculty have been terminated within the reduction in force unit (he/she will, after discussion with the deans of the instructional advisory council, decide which faculty member's contract will not be renewed for the following year). (~~Layoff shall be accomplished on the basis of~~) First, probationary appointees starting with those with the least seniority; (as set forth herein:--Provided, That affirmative action employment-related practices required by law or federal contract shall prevail and be complied with concurrently) second, full-time tenured faculty members starting with those with the least seniority.

(2) (~~The following order of layoff will be used provided there are qualified~~) Seniority shall be determined by establishing the date of the signing of the first contract for the most recent period of continuous professional service for Clark College, which shall include leaves of absence, remunerated leaves, and periods of layoffs. (This shall also include professional services for the Vancouver School District No. 37 prior to 1967.) In instances where faculty members (to replace and perform all the needed duties of the faculty members to be laid off; First, part-time faculty members; second, probationary appointees with the least seniority; third, full-time tenured faculty members with the least seniority) have the same beginning date for full-time professional employment, seniority shall be determined in the following order:

(a) First date of the signature evidencing acceptance of employment;

(b) First date of application for employment.

(3) (~~Seniority shall be determined by establishing the date of the signing of the first full-time contract for the most recent period of continuous professional service for Clark College, which shall include leaves of absence, sabbatical leaves and periods of layoffs. (This shall include professional services for the Vancouver School District No. 37 prior to 1967.) In instances where faculty members have the same beginning date for full-time professional employment, seniority shall be determined in the following order:--(1)--First date of the signature evidencing acceptance of employment--(b)--First date of application for employment)~~)

Tenured faculty, who have been given notice of layoff or leave without pay and wish to secure a transfer to another department, must request in writing such reassignment within three (3) working days after receipt of such notice. The employee must meet the minimum qualifications required of employees of that department as determined by the vice president or dean in consultation with the appropriate division and department chairs. This determination, as to whether faculty members to be laid off meet the minimum qualifications to be assigned to another department(s), shall be made, taking into account WAC 131-16-080, 131-16-091, the screening criteria used for the most recent hiring in the

department(s), and current and former faculty assignments within the college. The dean or vice president must inform the faculty member in writing of this determination within three (3) working days of receipt of the request.

(4) ~~((Clark-college-shall-be-one-employment-unit-and-an employee-must-meet-minimum-qualifications,-as-determined-by the-dean-of-faculty,-appropriate-division-chairpersons-and-department chairpersons-to-instruct-in-other-departments,--This-determination, as-to-whether-faculty-members-to-be-laid-off-meet-the-minimum qualifications-to-instruct-in-another-department,-shall-be-made by-the-dean-of-faculty-with-the-counsel-of-the-respective-division or-department-where-the-individual-wishes-to-be-considered-for professional-employment))~~ Placement within a department shall be based on seniority as determined in Section 2.

AMENDATORY SECTION (Amending Order 76-3, § 132N-128-110, filed 2/1/77; Order 74-6, § 132N-128-110, filed 5/23/74.)

WAC 132N-128-110 REDUCTION IN FORCE REVIEW COMMITTEE.

(1) ~~((Before-final-action-by-the-appointing-authority in-not-renewing-a-faculty-contract-for-reason-of-reduction-in force, each case must be reviewed by a review))~~ No later than 5 working days after notification as provided in section (3) WAC 132N-128-090, affected employees may request a hearing by a committee consisting of one administrator appointed by the president, one full-time student selected by the ((council-of representatives-of-the)) Associated Students of Clark College, and three faculty members elected by the ((faculty-acting-in a-body)) senate of Clark College Association of Higher Education. ((One-board-member-may-serve-as-ex-officio-if-desired.--Such)) All such reduction in forces cases ((may)) will be consolidated for hearing purposes before the same review committee.

~~((2)--The-reduction-in-force-review-committee, to-which the-matter-is-referred, shall-then-conduct-proceedings-to-determine if-cause-exists-and-at-the-conclusion-of-such-proceedings-shall develop-and-make-detailed-recommended-findings-of-fact-and-make an-appropriate-recommendation-through-the-president-to-the-appointing authority-regarding-the-nonrenewal-of-contract.~~

~~((3)--If-the-review-committee, to-which-a-proceeding-is referred, fails-to-make-a-recommendation-through-the-president to-the-appointing-authority-prior-to-the-last-day-of-winter quarter-the-matter-shall-be-submitted-to-the-appointing-authority and-it-is-assumed-the-reduction-in-force-committee-supports the-president's-recommendation.~~

~~((4)--The-only-exception-to-the-last-day-of-winter-quarter deadline-permitted-would-be-legislative-exigency-in-which-case the-appointing-authority-would-have-the-authority-to-suspend the-deadline-date.))~~

NEW SECTION

WAC 132N-128-112 HEARING OFFICER-APPOINTMENT. Upon receipt of a request for a hearing from affected employee(s) the president shall notify the Board of Trustees and request that the Board appoint an impartial hearing officer from the State Office of Administrative Hearings.

NEW SECTION

WAC 132N-128-114 HEARING OFFICER-DUTIES. It shall be the role of the hearing officer to conduct the hearing in accordance with RCW 28B.19.120 and any procedural rules adopted by the college. The duties of the hearing officer include:

(1) Deciding, with advice from the review committee, whether the hearing shall be open to the educational community, or whether particular persons should be permitted or excluded from attendance.

(2) Administering oaths and affirmations, examining witnesses, and receiving evidence, and ensuring that no person shall be compelled to divulge information which he/she could not be compelled to divulge in a court of law.

(3) Issuing subpoenas.

(4) Taking or causing depositions to be taken pursuant to rules promulgated by the college;

(5) Regulating the course of the hearing;

(6) Holding conferences for the settlement or simplification of the issues by consent of the parties;

(7) Disposing of procedural requests or similar matters;

(8) Making all rulings regarding the evidentiary issues presented during the course of the review committee hearings;

(9) Appointing a court reporter, who shall operate at the direction of the hearing officer and shall record all testimony, receive all documents and other evidence introduced during the course of the hearing, and shall record any other matters related to the hearing as directed by the hearing officer.

(10) Allowing the review committee to hear testimony from all interested parties, including but not limited to faculty members and students, and reviewing any evidence offered by same.

(11) Preparing the hearing officer's proposed findings of fact and conclusions of law and a recommended decision as soon as reasonably practicable, but in no event longer than 30 calendar days after the conclusion of the formal hearing. The written recommendation of the hearing officer will be presented to the president, review committee, affected faculty member(s) and the Board of Trustees.

(12) Preparing and assembling a record for review by the Board of Trustees which shall include:

(a) All pleadings, motions and rulings;

(b) All evidence received or considered;

(c) A statement of any matters officially noted;

(d) All questions and offers of proof, objections and rulings thereon;

(e) The hearing officer's proposed findings, conclusions of law, and a recommended decision;

(f) A copy of the recommendations of the review committee.

(13) Assuring that a transcription of the hearing is made, if necessary, and that a copy of the record or any part thereof is transcribed and furnished to any party to the hearing upon request and payment of costs.

(14) Consolidating individual reduction in force hearings into a single hearing.

(15) Taking any action authorized by rule consistent with this chapter.

NEW SECTION

WAC 132N-128-116 RESPONSIBILITIES OF REVIEW COMMITTEE.

The responsibilities of the committee shall be:

- (1) To review the case of the proposed layoff.
- (2) To attend the hearing and, at the discretion of the hearing officer, call and/or examine any witnesses.
- (3) To hear testimony from all interested parties, including but not limited to other faculty members and students, and review any evidence offered by same.
- (4) To arrive at its recommendations in conference on the basis of the hearing. As soon as reasonably practicable, but in no event longer than 45 calendar days after the conclusion of the formal hearing, the written recommendations of the committee will be presented to the hearing officer, president, the affected faculty member(s), and the Board of Trustees.

NEW SECTION

WAC 132N-128-118 FINAL DECISION BY THE BOARD OF TRUSTEES.

The case shall be reviewed by the Board of Trustees as follows:

(1) Board review shall be based on the record of the hearing and on any record made before the Board of Trustees.

(2) The Board may permit an opportunity for oral or written argument or both by the parties or their representatives.

(3) The Board may hold such other proceedings as it deems advisable.

(4) The final decision to layoff shall rest, with respect to both the facts and the decision, with the Board of Trustees after giving reasonable consideration to the recommendations of the review committee and the hearing officer. The review committee's recommendations and the findings, conclusions, and recommended decision of the hearing officer shall be advisory only and in no respect binding in fact or law upon the Board of Trustees. The Board of Trustees shall, within a reasonable time following the conclusion of its review, notify the affected faculty member in writing of its rationale, final decision, and the effective date of layoff.

AMENDATORY SECTION (Amending Order 74-6, § 132N-128-120, filed 5/23/74.)

WAC 132N-128-120 REEMPLOYMENT AND OTHER CONSIDERATIONS.

(1) The college president shall use his/her best efforts in attempting to procure similar employment in another community college district within the states of Washington and Oregon for any faculty member (~~(reduced)~~) laid off under the provisions of this article (~~(in another community college district within the states of Washington and Oregon)~~). Recall shall be accomplished on the basis of (~~(reverse)~~) seniority as set forth herein (~~(--Provided, That affirmative action employment related practices required by law or federal contract shall prevail and be complied with concurrently)~~).

(2) Faculty members (~~(nonrenewed)~~) terminated under this section shall be considered as being "on-layoff" or on leave of absence without pay.

(a) A full-time tenured faculty member (~~(whose contract was not renewed)~~) laid off or placed on leave without pay as a result of this faculty (~~(staff)~~) reduction procedure has a right to recall to any (~~(teaching)~~) full-time faculty position, either a newly created one or a vacancy, (~~(providing)~~) provided he/she is qualified as determined by (~~(the dean of instruction)~~) following the procedure above in WAC 132N-128-100, section (~~(4)~~) (3). The recall shall be (~~(reversed)~~) by seniority, the most senior first. The right (~~(of)~~) to recall shall extend three (3) years from the date of layoff.

(b) While a layoff continues no new full-time faculty will be hired into the RIF unit except in (~~(the unique)~~) circumstances where:

(i) There are no employees on layoff or leave without pay qualified by retraining to fill a vacant position, or

(ii) All qualified faculty members on layoff or leave without pay decline the offer to fill the vacancy.

(c) Faculty members on layoff or leave without pay shall receive a written (~~(notice)~~) offer of any open full-time faculty position and within (~~(at least)~~) twenty (20) calendar days (~~(in advance of the deadline for determining whether to)~~) must exercise their recall rights or decline the offer. The notices sent to the (~~(employees)~~) employee(s) must also be submitted to the association.

(d) Once an individual on layoff or leave without pay status declines an offer to fill a (~~(vacancy)~~) full-time position for which he/she is qualified, he/she will be removed from layoff and/or leave without pay status and will no longer have any (~~(priority)~~) rights to recall.

(e) Any individual on layoff or leave without pay will be given first consideration for any part-time (~~(position)~~) assignments for which he/she is qualified (~~(for)~~).

(3) Full-time tenured faculty members who have been laid off will retain (~~(all)~~) accrued benefits (~~(7)~~) including but not limited to (~~(sick leave)~~) seniority and (~~(seniority)~~) sick leave. Upon recall they shall be placed at least at the next higher increment on the salary schedule than at the time of layoff and will retain their tenured status.