In the Matter of the Arbitration Between

RIDER UNIVERSITY

and

RIDER UNIVERSITY, CHAPTER OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

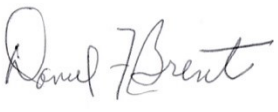
Improper Elimination of Programs Grievance

AWARD OF ARBITRATOR

The undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

Based on the evidence submitted and the facts and circumstances of the instant case, the instant grievance is arbitrable.

Based on the evidence submitted, the University's elimination of certain programs did not violate the parties' Collective Bargaining Agreement. Therefore, the instant grievance is hereby denied.



July 19, 2024

Daniel F. Brent, Arbitrator

State of New Jersey
County of Mercer

On this 19th day of July 2024 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.

Jessica Zakhari

Jessica V. Zakhari

In the Matter of the Arbitration Between

RIDER UNIVERSITY

and

RIDER UNIVERSITY, CHAPTER OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS

Grievance: Improper Elimination of Programs

Hearings in the above-entitled matter were held on February 15, March 19, and April 5, 2024, at Rider University in Lawrenceville, New Jersey before Daniel F. Brent, duly designated as Arbitrator. Both parties attended these hearings, were represented by counsel, and were afforded full and equal opportunity to offer testimony under oath, to cross-examine witnesses, and to present evidence and arguments. Both parties submitted post-hearing briefs, and the record was declared closed on June 8, 2024. The Arbitrator was granted an extension of time within which to issue his Award.

APPEARANCES

For the Employer:

John C. Romeo, Esq., of Gibbons P.C.
Jeremy Brooks, Esq., of Gibbons P.C.
Robert Soto, Vice President for Human Resources
Donna Jean Freeden, Provost and Senior Vice President for Student and Academic Affairs
Kelly Bidle, Dean, College of Arts and Sciences

For the Union:

Kent Y. Hirozawa, Esq., of Gladstein, Reif and Meginniss, Esqs.

Dr. Quinn Cunningham, President

Dr. Jeff Halpern, Chief Grievance Officer

Dr. David Dey, Assistant Grievance Officer

Dr. Joel Philipps

ISSUES SUBMITTED

1. Is the instant grievance arbitrable?
2. If so, did the University's elimination of certain programs violate the parties' Collective Bargaining Agreement?

   If so, what shall be the remedy?

NATURE OF THE CASE

The instant grievance was submitted by the Rider University Chapter of AAUP-AFT (hereafter, the Union) on February 14, 2023, protesting the elimination of twenty-five programs previously offered by Rider University (hereafter, the University or the Employer) without submitting these disputed actions to the applicable Academic Policy Committee (hereafter, APC) for approval before the University's decision to discontinue the programs was implemented. In support of its position that existing programs could not be eliminated without APC participation and approval, the Union relied on contract language conferring on Academic Policy Committees the authority to initiate and implement new academic programs and to modify programs.

The Union contends that because the collective bargaining agreement clearly mandates that no academic policy can be changed without the prior approval of the appropriate APC, no existing program can be discontinued without such APC approval. Citing decades of unchanged contract language in support of its position, the Union asserted that the unilateral elimination or "archiving" of a total of twenty-five programs by the University without prior approval of the appropriate APCs violated the collective bargaining agreement provisions establishing shared academic governance at Rider University.

The Employer denied the grievance, contending that nothing in the collective bargaining agreement or the course of dealing between the parties since 1979, when the current Academic Policy Committee language first appeared, supported the Union's assertion that a program could not be discontinued unilaterally by the University without prior approval by a departmental, school-wide, or University-wide APC. The Employer cited prior instances in which programs have been eliminated unilaterally by the University without grievance when exigent circumstances, particularly financial distress and low student enrollment in such programs, were deemed too onerous to continue the programs.

The parties were unable to resolve their dispute within the grievance procedure, and the matter was brought to arbitration. The Employer interposed a threshold issue of procedural arbitrability, asserting that the instant grievance, submitted on submitted on February 14, 2023, was time-barred because the grievance was submitted more than thirty days after the University unequivocally communicated its decision to eliminate the disputed programs to the Union on or about June 7, 2022.

The Employer also contended that the instant grievance was not arbitrable because the grievance was filed approximately six months after the University published its course catalog for the 2022-2023 Academic Year in August 2022 reflecting that the disputed programs had already been eliminated. Finally, the University contended that the Union failed to satisfy

any reasonable interpretation of the time limits for filing grievances established by Article XXII of the parties' collective bargaining agreement for disputes arising under Articles XII and XIII and further asserted that the Union's invocation of the provisions of Article XV governing layoffs had not extended the contractual filing deadline as no layoffs of faculty were ever announced or implemented in conjunction with the program eliminations.

After the initial Article XV notice issued on June 7, 2022 was rescinded, a second Article XV notice issued on October 31, 2022. The Union notified the Employer on January 18, 2023 of its intention to arbitrate this Article XV notice. The Employer thereafter withdrew the October 31, 2022 Article XV notice on January 25, 2023 and announced that no layoffs of faculty would be effectuated in conjunction with the elimination of programs. The Union filed the instant grievance twenty days later on February 14, 2023. The Employer contends that this notice was also untimely.

The Union asserted that its grievance was timely filed within thirty days after the University announced on January 25, 2023 that no layoffs would be implemented as a result of the elimination of the twenty-five programs. The Union contended that this date was the appropriate determinant of when the thirty-day interval within which the Union's contractual obligation to grieve should be calculated, as the January 25, 2023 declaration of no layoffs provided the first clear statement of the full nature of the Employer's action and clarified the scope of and basis for the Union's grievance.

The Employer asserted that Article XV, which governs layoffs of faculty, was inapplicable because the Union's filing of a grievance regarding the disputed elimination of programs is explicitly governed by procedures established in Article XXII (C) of the parties' collective bargaining agreement. Moreover, the elimination of programs did not involve layoffs. Thus, the Employer contends, Article XV is irrelevant to determining whether the Union satisfied the applicable deadlines governing grievances contesting elimination of programs pursuant to Articles XII and XIII.

RELEVANT CONTRACT PROVISIONS

ARTICLE XII
PROGRAMS

A. Undergraduate Programs
1. Definition
All undergraduate majors, minors, and courses of study that offer academic credit (e.g. Baccalaureate Honors Program), and similar academic units not housed within a department that have an exclusive workload shall be designated as undergraduate programs (the term "undergraduate program" within this Agreement shall be recognized as referring to such units) and there shall be appointed or reappointed in accordance with the provisions of this Article a lead person for each such undergraduate program, to be referred to as the director (or undergraduate program director). Such directors of programs shall be full-time members of the faculty and the bargaining unit with all rights and privileges of those statuses, but shall receive one (1) course reduction per regular academic year. Undergraduate program directors who are required to perform duties during the summer shall receive extra compensation as negotiated and agreed to by the director and the Dean of their college.

2. Review and Approval of New Programs

Proposals for new programs must be submitted for review and approval by the appropriate Academic Policy Committee ("APC"). Proposals may be submitted by the Dean or by faculty members working as a group for the purposes of submitting a proposal. Proposals will include the following material for review:

(a) A list of the faculty who will constitute the faculty of the program along with the qualifications of that faculty (demonstrated scholarly activity, publications, workshops, course work, etc.). Evidence shall be provided that the submitting committee has attempted to recruit all interested and qualified faculty. (b) A clear and concise statement of the academic need, purpose, and objectives of the program and why those objectives cannot be met by existing departments and programs.

(c) An analysis of potential student interest and the budgetary impact of the new program. Such budgetary analysis shall be in the form of a Resource Impact Statement consistent with the requirements of Article XIII(A). At a minimum, it will include additional faculty support, equipment, and additional library resources needed in order to offer the new program. The APC will also consider the Facility Monitoring Committee's analysis of the impact of the proposal on the allocation and use of classroom and other physical spaces.

(d) The curricular requirements of the new program shall be described in detail. These shall include the courses which will comprise the program and whether they are existing courses that are to be cross-listed or new courses that would fall under the program's workload. New course proposals must be included with the proposal, but will be reviewed for approval once the program is established. In addition, the requirements for the program's major, minor, course tracks, concentrations, and/or certificates shall also be included. When reviewing program requirements and courses, the Academic Policy Committee should reference the standards and guidelines of the relevant national associations when such standards and guidelines are available.

(e) Programs established prior to September 1, 1999, shall be deemed to have been reviewed and approved without going through the above except that they shall follow the procedure in Section A(9)(a) above for the purpose of establishing the faculty of the program. Once that faculty is established, such programs shall be governed by majority vote as outlined below.

3. Governance of a Program

The faculty of a program may include additional faculty who apply to be faculty of the program and are approved by majority vote of the current program faculty. Such additional names will be provided to the Dean so that an accurate list of the faculty of the program may be kept. It shall be the

responsibility of the director to annually advise the faculty as a whole of their right to apply to be members of the program. Each September, any faculty member on such list who has not taught a course in the program during the preceding twenty-four (24) months and who is not scheduled to teach a course in the program during the upcoming academic year, shall be queried by the program director regarding their continuing interest in the program, and may be removed from such list by majority vote of the program's faculty. Such removal shall not be deemed a disciplinary action. (All other removals will be deemed disciplinary actions subject to the grievance procedures in this Agreement.) This faculty will play the same role with respect to the running of a program as the faculty of a department plays in running a department. This includes proposing new courses to the Academic Policy Committee, proposing changes in the program requirements to the Academic Policy Committee, and development of a workload plan. All such action shall be carried out by majority vote at a meeting of the members of the program.

ARTICLE XIII
ACADEMIC GOVERNANCE

A. Definitions:

"Academic Policy": Any implementable action passed by an APC is an academic policy.

"Proposal": A proposal is an APC agenda item that has the potential for implementable action, if passed/enacted by an APC.

"Proposer": A proposer is the entity that creates a proposal, typically a department or program acting after deliberations that led to an affirmative vote to proceed to the APC.

"Minor Proposals" are items perceived to have a modest impact, such as a single new course or appointment of members of a committee. Minor proposals typically will not require review by the Facilities Monitoring Committee, but may be referred to that committee at the request of the relevant Dean, the Provost, or the AAUP.

"Major Proposals" are items perceived to have a more substantial impact, such as new majors, new minors, new Programs, new departments, and the like. Major proposals require review by the Facilities Monitoring Committee.

B. Scope of Academic Governance

As used in this article, the term "policy" refers to all implementable actions of any APC as set forth in Section (C)(1) of this Article, including but not limited to the creation of new courses, programs, departments, etc. The University agrees that new academic policies pertaining to matters at the college/school and library levels, listed in Section D, and at the University level, listed in Section F will not be adopted unless they have been enacted in accordance with the provisions of this Article. The Academic Policy Committee ("APC") shall not intrude into areas of professional competence traditionally the responsibility of the department (such as determining the criteria for promotion and/or tenure) and/or individual faculty members (such as classroom presentation techniques). Nothing in this Agreement shall limit in any way the prerogative of the administration to create a task force and to select the members of such task force. Where, however, the work undertaken by any task force created by the University administration overlaps with the scope of academic governance set forth in this Article, any proposed change in academic policy proposed by the task force must be approved by the applicable APC pursuant to the procedure set forth in this Article.

C. Scope and Jurisdiction of College/School and Library APCs

The following matters shall be the primary responsibility of college and school APCs: oversight of requirements for degrees, majors, minors, and programs within the college or school, procedures for academic advising, procedures regarding academic standing, and approval of course proposals and the creation of new departments and programs. The college or school APC shall have the primary responsibility for the initial formulation and development of new academic policy for the college or school. The college and school APCs shall have jurisdiction over the following matters:

(a) student advising;
(b) departmental and program curriculum;
(c) establishment of new departments and programs, consistent with the mission statement of the school or college;
(d) course review and approval;
(e) grading standards;
(f) academic standing;
(g) degree requirements;
(h) requirements for majors, minors, tracks, and certifications;
(i) honors standards;
(j) subordinate committee creation, deletion, and oversight;

(k) methods of instruction;
(l) academic aspects of orientation for new students; (m) decisions to pursue and maintain accreditation, other than the University's general accreditation agency;
(n) high school course requirements for applicants for admission to Rider University in departments and programs of such college.
Notwithstanding the foregoing, upon agreement of the Dean and four (4) other members of a college APC, other than the Student Government Association representative, such committee may extend the scope of its jurisdiction to other academic matters not set forth on the foregoing list.
Programs with faculty drawn from more than one college or school shall be reviewed and be under the jurisdiction of the APC of the college or school from which the majority of the faculty of the program are drawn.

Matters not within the scope of the jurisdiction of the committee, as aforesaid, nor added thereto by the required number of votes, may be considered and discussed by the committee, but will not be subject to the procedures set out hereafter, nor may the committee adopt binding policies with respect thereto.

ARTICLE XV
REDUCTION IN FORCE

A. Reasons for Reduction in Force
The University may involuntarily separate from employment members of the bargaining unit as part of a reduction in force because of either financial exigency or the demonstrated financial need to eliminate or curtail programs or courses of instruction to protect the well-being of the University.

1. Bonus for Voluntary Separation
Prior to providing any notice of reduction in force, the University may offer a bonus of one (1) or more year's pay, in addition to any other benefits available under Article XXXIV for those eligible thereunder, to any full-time bargaining unit members in departments which may be subject to an involuntary separation from employment as part of a reduction in force who agree to voluntary separation from the University. The University will determine the number of such bonus offers it will make and will approve such proposed bonus recipients in the order of seniority within each department of those accepting the University's offer. If extending such a bonus or bonuses, the University will make such offer as early as possible but no later than twenty-one (21) days before October 31. Such bonus offers will be open for acceptance for a 21-day period.

2. Notice of Reduction in Force
In the event the University determines that an involuntary separation from employment as part of a reduction in force is still necessary, the University shall be required to notify the affected bargaining unit member(s) by October 31.

3. By October 31, the University shall also be required to provide the AAUP the material set forth in Sections a, b, and c:
(a) written notice of reduction in force, together with documenting evidence supporting the conclusion that one or both of the above reasons for reduction in force exists;
(b) a proposed reduction in force plan identifying the number of involuntary separations needed, the departments (or disciplines in multi-disciplined departments) or professional staffs to be eliminated or curtailed, and the bargaining unit positions proposed for the reduction in force in accordance with the order of reduction in force provided for in this Article;
(c) evidence demonstrating that there has been, or will be, contemporaneously with the reduction in force of bargaining unit members, other reasonable and prudent savings effected by the University through means other than by the reduction in force of members of the bargaining unit.

B. Conference with the AAUP
Within a 21-day period following the University's notice to the AAUP, representatives of the University and the AAUP shall meet to discuss and confer concerning the University's proposed reduction in force plan.

C. Arbitration Concerning Reduction in Force
The AAUP may refer the matter to arbitration, but notice to arbitrate must be given within two (2) days of the expiration of the aforesaid 21-day period following the University's notice to the AAUP. The grievance procedure steps prior to arbitration, as set forth in Article XXII, shall be omitted, and the matter shall, if the AAUP proceeds to arbitration, immediately be referred to an arbitrator selected by the AAUP from the panel listed in Article XXII. In the event of such an arbitration, the University and the AAUP shall each submit to the designated arbitrator their respective proposals and the arbitrator shall be absolutely required to adopt and accept either the proposal of the University or that of the AAUP as to the appropriate number of reductions, if any, the departments, disciplines or professional staffs to be eliminated or curtailed, and the bargaining unit members to be involuntarily separated from employment as part of the reduction in force, if any. The parties' final proposals

shall be the subject of a hearing before the arbitrator. At the same hearing, the AAUP may also raise issues with respect to whether the procedure under this Article has been followed by the University and whether the University's proposed reduction in force conform to the required order of a reduction in force as set forth in this Article. The arbitrator shall not have any authority to pass on any other issues relating to the proposed reduction in force.

ARTICLE XX
MANAGEMENT RIGHTS

The authority and right of the Board of Trustees to govern the affairs of the University, except as modified or limited in this Agreement, is recognized by the AAUP. All management rights and functions, except those which are changed or modified by this Agreement, shall remain vested in the Board of Trustees and its designees. The power and duties of the Board of Trustees under the laws of this State and the Charter granted to this University shall not be impaired or limited, except as may be set forth in the provisions of this Agreement.

ARTICLE XXII
GRIEVANCE AND ARBITRATION PROCEDURE

A. Purpose
The purpose of the Article is to provide a prompt and efficient procedure for the investigation and resolution of grievances as defined herein.

B. Definition
A grievance is an allegation by the AAUP that there has been a breach, misinterpretation, or improper application of the terms of this Agreement. Except as set forth in Section E, the grievance procedure provided for herein shall not include any complaints relating to appointments, reappointment (except as specifically set forth in Article XVI), annual evaluations, academic governance (except as specifically set forth in Article XIII), promotion and tenure, provided, however, that the AAUP may file a complaint in the areas mentioned previously, solely on the basis that due process under the procedures set forth elsewhere herein with regard to appointment, reappointment, annual evaluations, academic governance, promotion and tenure, has not been followed. Such procedural complaint shall not be filed until the grievant has exhausted such appeals procedures as are provided for herein. In such cases, the arbitrator's jurisdiction shall be limited to a determination, including appropriate remedies, as to whether the procedures

called for herein have been adhered to so that due process as required under this Agreement shall not be violated. In the case of academic governance, questions as to whether a matter is within the scope of jurisdiction of an Academic Policy Committee are arbitral hereunder.

C. Grievance Procedure

Where special procedures relating to arbitration have been provided for elsewhere in this Agreement, they shall apply. Otherwise, the following procedure shall apply. Grievances may be filed by the AAUP on behalf of any member or group of members of the bargaining unit. A written grievance by the AAUP must be filed in duplicate with the Dean or the associate Dean of the respective college, the Provost or the Associate Provost, or, in the case of the libraries and Athletic Department, with the Dean of University Libraries or the Director of Athletics, within thirty (30) calendar days after the event or state of facts giving rise to the grievance becomes known to the grieving party. However, in all cases, including adjunct faculty out of contract, the initiation of a grievance must be filed within ninety (90) calendar days after the occurrence of the facts upon which it is based.

The decision of the arbitrator shall be final and binding on the parties. However, the arbitrator may not alter, modify, add to, or change the terms of this Agreement.

DISCUSSION AND ANALYSIS

I. Arbitrability

Citing pervasive major looming financial deficits and low student enrollment, the University announced on June 7, 2022, that it intended unilaterally to eliminate twenty-five academic programs without input from any Academic Policy Committee with jurisdiction over a particular program. The Union immediately communicated its dissatisfaction with this announcement. The next day, on June 8th, the University communicated to the Union that its Article XV Notice and announcement to eliminate the programs was not a

preliminary a statement of future intent but constituted a final decision to eliminate or "archive" or indefinitely suspend these programs. The possibility that layoffs could occur in conjunction with the elimination of these programs was left for future evaluation.

The June 7, 2022 date of the University's initial announcement is relevant because, as the Union reminded the Employer, the parties had agreed in a Memorandum of Understanding that Article XV would not be invoked and no layoffs of faculty would occur during the 2021-2022 academic year. The Employer recognized this agreement and advised the Union that the notice addressing any potential layoffs would be reissued after the end of the 2021-2022 academic year on August 31, 2022.

The Employer cited a thirty-day interval provided in Article XXII (C) as governing the Union's obligation to submit a timely grievance regarding the elimination or archiving of programs. Article XXII (C) provides, in relevant part:

> Where special procedures relating to arbitration have been provided for elsewhere in this Agreement, they shall apply. Otherwise, the following procedure shall apply. Grievances may be filed by the AAUP on behalf of any member or group of members of the bargaining unit. A written grievance by the AAUP must be filed in duplicate with the Dean or the associate Dean of the respective college, the Provost or the Associate Provost, or, in the case of the libraries and Athletic Department, with the Dean of University Libraries or the Director of Athletics, within thirty (30) calendar days after the event or state of facts giving rise to the grievance becomes known to the grieving party.

The Union correctly asserts that the applicable time limit within which to file a grievance begins on the date of the occurrence of an actual event, not on

the date a prospective intention to take a particular action is announced. Even if the Union reasonably discounted the Employer's June 8th email asserting that the decision to eliminate these programs was a final decision could be distinguished from the actual elimination of these programs, and thus the Union could wait until the Employer followed through on its announced intention to eliminate the disputed programs, the time limit for filing a grievance alleging a violation of Articles XII or XIII began when the Union became aware or reasonably should have known that the programs had actually been eliminated or archived. These programs had been removed from the 2022-2023 Academic Year course catalog, which was published and publicly accessible by the end of August, 2022.

The removal of the disputed courses from the publicly accessible Rider University annual course catalog presumptively placed the Union on notice that the Employer had taken the action it had announced on June 7, 2022 by unilaterally deleting the programs and associated courses. Therefore, the Union arguably should have filed its grievance regarding violations of Articles XII or XIII within thirty days after the 2022-2023 course catalog was published.

Because June 7, 2022 Article XV notice of potential layoffs was withdrawn as premature, as the parties had agreed that no faculty layoffs would be announced or effectuated during the 2021-2022 academic year, the Provost issued a second Article XV Notice and wrote to the Union and to all faculty members on October 31, 2022, announcing that seventeen programs would be

eliminated and eight more would be archived. This announcement can reasonably be construed as restarting the grievance filing interval established in Article XXII of the collective bargaining agreement, creating a deadline of November 30, 2022 that superseded the prior deadlines based on either the University's June 7, 2022 announcement that the twenty-five programs were to be eliminated or the publication of the 2022-2023 Academic Year course catalogue in August 2022. The Union's grievance was not submitted until February 14, 2023. This delay of more than thirty days after the October 31st Provost's written announcement to the Union and all faculty members of the elimination of programs would render the instant grievance untimely filed, but for an unusual circumstance that impeded compliance.

The Union cited month-long difficulties it experienced in opening the Gmail confidential mode files sent by the Employer containing information regarding the programs to be eliminated. As a result, the Union's Grievance Chair was unable to circulate the Employer's position statement to various Union officials. Although his difficulty accessing the Employer's list of programs was communicated promptly to the Employer, the Union did not receive the list of affected programs with sensitive financial information redacted until December 2, 2022. The delay in the Union's obtaining usable versions of the Employer's statement of position and accompanying documents

in a format that could be circulated among Union leadership justified extending the contractual time limit for filing a grievance under Article XII and XIII to January 2, 2023 (as January 1st is a legal holiday).

If the thirty-day time limit were deemed to be tolled until this technological limitation imposed by the Employer was rectified, the Union's delayed filing of the instant grievance until February 14, 2023 nevertheless exceeded the applicable time limits negotiated by the parties for filing a grievance about a previously known event because this deadline would have expired thirty days after the Gmail confidential mode problem was rectified on December 2, 2022. The Union did not seek an extension of the time limit for filing its grievance.

If one party to an agreement wants to toll the negotiated contractual time limit during ongoing settlement negotiations, the other party must agree to such tolling. Absent such mutual agreement, the prudent course of action to preserve a potential grievance is to file a grievance before any deadline could disqualify the grievance as untimely. The Union failed to file its grievance in a timely manner. Thus, the Union's failure to preserve its right to contest the elimination of programs and courses imposes an impediment to addressing the merits of this dispute.

The Union asserted that its grievance filed on February 14, 2023 satisfied the thirty-day filing requirement because the Union was not advised by the Employer until January 25, 2023 that no bargaining unit employees would be laid off as a result of the Employer's unilateral elimination or archiving of the disputed programs. According to the Union, this notice first defined the Employer's announced action as limited to eliminating existing programs without any layoffs, thus triggering the time interval to grieve that was governed by the Article XXII time limit for grievances not involving layoffs. However, the Union's reliance on Article XV as preserving the period within which to grieve the elimination of the program until the Union could ascertain whether or not bargaining unit faculty would be laid off as a consequence of such elimination was misplaced because no layoffs were announced and, therefore, Article XV does not apply. The appropriate course of action was to file a timely grievance under Articles XII and XIII and Article XV to preserve all the Union's options.

Since no layoffs affecting bargaining unit faculty were announced, the faculty layoff grievance procedure did not come into play. If such layoffs had been announced or implemented in conjunction with the elimination of the disputed programs, such layoffs could have been grieved under Article XV within the twenty-three-day interval triggered by the layoffs. Absent such layoffs, the Union delayed filing a grievance over the elimination of programs at its peril, as Articles XII and XIII, the contract provisions dealing with

elimination of programs, are governed by the time limits in Article XXII, which explicitly excuses the thirty-day filing limit only in situations where an alternate time limit has been negotiated into the collective bargaining agreement.

The Union correctly asserts that the applicable date when the time limit for filing a grievance begins is the date of the actual occurrence of an event, not the announcement of an intention to take a particular action. The Employer's June 8, 2022 email advised the Union that the Employer's decision to eliminate or archive twenty-five programs announced on June 7, 2022 was a final decision. The publicly accessible removal of the disputed courses from the annual course catalog published in August, 2022 and ultimately the reissued announcement of program elimination on October 31, 2022, alerted the Union that the Employer had taken the action it had announced and had unilaterally deleted the programs and associated courses. Thus, the instant grievance can reasonably be construed as untimely filed. At issue is the consequence of this failure to meet the negotiated grievance filing deadline.

Even if the instant grievance was untimely filed, the importance of the issue to both parties would justify the Arbitrator's analysis of the merits of the dispute but preclude a retroactive remedy if the Union were successful in demonstrating that its position regarding APC jurisdiction over elimination of programs were correct. Alternatively, if the instant grievance must be denied on the merits because the Employer's actions were justified under the collective

bargaining agreement, both parties would be better served by a decision on the merits, rather than creating a situation in which the grieving party believes it was deprived of a favorable substantive ruling based solely on procedural grounds, leaving unclear the application of the collective bargaining agreement governing elimination of academic programs if additional programs are eliminated unilaterally by the Employer in the future as exigent financial circumstances or insufficient enrollment for particular programs were to recur. Such lack of clarity would precipitate another round of arbitration. Either analysis supports consideration of the merits by the Arbitrator.

The preferable analysis, and the one that the Arbitrator has adopted, mandates a conclusion that although the Union failed to submit its Article XII and Article XIII-based grievance in a timely manner, the Union's delay in submitting its grievance until the Employer announced unambiguously on January 25, 2023 that there would be no layoffs was a good faith delay constituting excusable neglect that justifies examination of the merits under the parties' agreement. The Union's conflating the Article XV cause of action regarding layoffs with a grievance alleging violation of other sections of the contract by eliminating programs should not preclude consideration of the parties' positions in order to provide guidance for future situations. Moreover, the Union's good faith belief that the University's unambiguous January 25, 2023 announcement was the triggering event that clarified the nature of the dispute for the Union and the

relatively expeditious filing thereafter cannot be discounted completely in determining arbitrability.

Therefore, given the unique facts and circumstances of the instant case, I find that the instant grievance must be deemed arbitrable

II. The Merits

The essence of the instant grievance is the Union's charge that the University improperly arrogated to management the right to eliminate programs without consulting the appropriate APC as mandated by Article XIII (C) , which provides as follows:

> Scope of Jurisdiction of College/School APCs
> The following matters shall be the primary responsibility of college and school APCs: oversight of requirements for degrees, majors, minors, and programs within the college or school, procedures for academic advising, procedures regarding academic standing, and approval of course proposals and the creation of new departments and programs. The college or school APC shall have the primary responsibility for the initial formulation and development of new academic policy for the college or school. The college and school APCs shall have jurisdiction over the following matters:
>
> (a) student advising;
> (b) departmental and program curriculum;
> (c) establishment of new departments and programs, consistent with the mission statement of the school or college;
> (d) course review and approval;
> (e) grading standards;
> (f) academic standing;
> (g) degree requirements;
> (h) requirements for majors, minors, tracks, and certifications;
> (i) honors standards;
> (j) subordinate committee creation, deletion, and oversight;
> (k) methods of instruction;

(l) academic aspects of orientation for new students; (m) decisions to pursue and maintain accreditation, other than the University's general accreditation agency;
(n) high school course requirements for applicants for admission to Rider University in departments and programs of such college.

Notwithstanding the foregoing, upon agreement of the Dean and four (4) other members of a college APC, other than the Student Government Association representative, such committee may extend the scope of its jurisdiction to other academic matters not set forth on the foregoing list. Programs with faculty drawn from more than one college or school shall be reviewed and be under the jurisdiction of the APC of the college or school from which the majority of the faculty of the program are drawn.

Matters not within the scope of the jurisdiction of the committee, as aforesaid, nor added thereto by the required number of votes, may be considered and discussed by the committee, but will not be subject to the procedures set out hereafter, nor may the committee adopt binding policies with respect thereto.

The Union established persuasively that governance of academic policy has been shared by the parties since the current language in Article XIII was negotiated by the parties in 1979. The collective bargaining agreement expressly provides that new programs and curricula cannot be initiated by the University without the prior approval of the appropriate Academic Policy Committee with jurisdiction over the department or program.

Article XII (A) provides, in relevant part:

Proposals for new programs must be submitted for review and approval by the appropriate Academic Policy Committee ("APC"). Proposals may be submitted by the Dean or by faculty members working as a group for the purposes of submitting a proposal.

This contract language and other provisions consistently and explicitly refers to the implementation of new programs. For example, Article XII (A)(2)(d) provides, in relevant part:

> (d) The curricular requirements of the new program shall be described in detail. These shall include the courses which will comprise the program and whether they are existing courses that are to be cross-listed or new courses that would fall under the program's workload. New course proposals must be included with the proposal, but will be reviewed for approval once the program is established.

The absence of any similarly explicit contract language referring to the elimination of programs reasonably justifies a conclusion that the elimination or "archiving" of programs falls outside the exclusive jurisdiction of APCs under the collective bargaining agreement.

The instant grievance raises the question whether the elimination of courses or programs under the circumstances described by the University constitutes a new policy. The Union has not met its burden of persuasion as the grieving party to demonstrate that the parties mutually intended to include elimination of a program as a new academic policy for the purpose of conferring exclusive jurisdiction on an APC.

The absence of a reference to eliminating existing programs in both Article XII and Article XIII and the negotiated reference to the APC as a primary, but not exclusive, mechanism for creating new programs further support this conclusion. If ambiguity exists that requires additional evidence to determine whether, as the Union asserts, APCs enjoy right to be consulted

for approval before an existing program can be eliminated or archived or, as the Employer asserts, the University retains the right under certain circumstances to eliminate programs unilaterally without APC input or consent, the parties' prior course of dealing provides insight into how the parties themselves viewed the scope of exclusive APC jurisdiction.

The record includes evidence that there have been numerous prior instances throughout multiple contract terms where the Union did not grieve the University's unilaterally eliminating programs under exigent financial circumstances or where the eliminated programs were under-enrolled. Thus, the Employer has established persuasively that elimination of programs, majors, minors, and other curriculum has not been submitted for determination exclusively to the jurisdiction of an APC over a period of many years. The record also established that programs have been eliminated by executive fiat of the Provost in the past without grievance. Therefore, the demonstrated course of dealing between the parties in this regard mandates a finding that APC's have not had and do not now enjoy the same scope of mandatory jurisdiction over elimination of existing programs as explicitly conferred by the parties regarding initiating new programs.

The Union asserted that the University was required to bargain with the Union over the impact of eliminating the twenty-five programs. However, there is a material distinction between an obligation to negotiate over the impact of a unilateral action and the right to take such action. The elimination of

programs, particularly in the absence of any faculty layoffs, did not create an obligation to submit the proposed program elimination decision to the applicable APC for review or approval before implementing the changes announced by the University. Nor did the contract confer veto power on an APC over the University's proposed elimination of programs. Although intra-University comity would be enhanced by such discussions, mandating submission to an APC of the decision to eliminate programs in response to onerous financial distress or persistent low enrollment is inconsistent with the Management Rights clause, Article XX, unless explicit contract language to the contrary has been negotiated elsewhere by the parties.

Article XX provides, in relevant part:

> The authority and right of the Board of Trustees to govern the affairs of the University, except as modified or limited in this Agreement, is recognized by the AAUP. All management rights and functions, except those which are changed or modified by this Agreement, shall remain vested in the Board of Trustees and its designees. The power and duties of the Board of Trustees under the laws of this State and the Charter granted to this University shall not be impaired or limited, except as may be set forth in the provisions of this Agreement.

The evidentiary record established persuasively that the University has reserved and repeatedly exercised the right unilaterally to discontinue programs for valid financial reasons, particularly with demonstrated low enrollment. Moreover, the inferred mandatory jurisdiction over decisions to discontinue programs that the Union ascribes to Academic Policy Committees because APCs enjoy an unambiguously bargained right to implement new programs would create a veto

power over discontinuing programs that is inconsistent with the management rights specifically reserved to the University in Article XXII of the collective bargaining agreement, particularly when the Employer has acted to address exigent circumstances as in the instant case. Consequently, the Employer has preserved and properly exercised its management right pursuant to Article XX to eliminate programs, especially when implementing a comprehensive restructuring responding to major financial crises and operational exigencies caused by chronic low enrollment in certain programs.

Two alternative procedures for initiating the elimination of a program have co-existed for many years. Testimony adduced during the arbitration established, and the parties did not dispute, that faculty members can propose to an APC that a program, department, major, or course of study be discontinued and that APCs have actual authority to eliminate a program in response to a request from one or more faculty members. Such APC approval creates a sufficient, but not necessary, precondition to eliminating an existing program under the shared academic governance structure in place for many years.

However, nothing in the collective bargaining agreement confers on APCs a monopoly on eliminating programs. As recently as 2016, the University has eliminated existing programs through its designee, the Provost, without referring the decision to an APC for concurrence. The established course of dealing between the parties over many years clearly demonstrates that

Academic Policy Committees do not have sole or exclusive jurisdiction to determine whether academic offerings will be discontinued, particularly where no bargaining employees will be laid off and the University has made a good faith determination that low enrollment or other financial exigencies mandate such changes.

The Union's position relies on contract language regarding APC authority to establish new programs, majors, or curriculum. This language does not confer, explicitly or implicitly, mandatory review or approval by an APC of proposals to eliminate programs or confer sole jurisdiction over program elimination to the APC system. Therefore, the crucial inference sought by the Union that the right explicitly afforded an APC by the collective bargaining agreement to be a gatekeeper when programs are created also unequivocally conferred the exclusive procedural and substantive right to determine whether a program may be discontinued cannot be sustained.

This conclusion is buttressed by Article XXII (B), which provides, in relevant part:

> In the case of academic governance, questions as to whether a matter is within the scope of jurisdiction of an Academic Policy Committee are arbitral hereunder.

Article XXII also states:

> The decision of the arbitrator shall be final and binding on the parties. However, the arbitrator may not alter, modify, add to, or change the terms of this Agreement.

Absent language in the contract explicitly codifying the exclusive jurisdiction of an APC to determine whether a program may be discontinued, the Arbitrator lacks jurisdiction to modify the parties' negotiated agreement by adding a material contract term.

Therefore, based on the evidence submitted, the University's elimination of certain programs at issue in the instant dispute did not violate the parties' Collective Bargaining Agreement. The instant grievance is hereby denied.

July 19, 2024 Daniel F. Brent, Arbitrator