

## **Article 35.41-35.46 Interpretive Guide**

**Agreed as part of settlement of:**

**Simon Fraser University and the Faculty Association of Simon Fraser University, Article 35 Practice or Policy Grievance**

**Settled October 6, 2023**

1. The creation of a continuing position per the process set out in Articles 35.41 – 35.46 of the Collective Agreement requires the following preconditions to be met:
  - a. The faculty member must have been employed as a Term Lecturer (TL) of at least 0.5 FTE for four years. Generally, appointments will have been in a single Department/ Unit or non-departmentalized Faculty (“Department”), except where the TL has a joint appointment. Any break in employment of 8 months or greater during the required four year period will restart the required four year period.
  - b. During the fourth year of the required four-year period, the Department must determine whether there is a continuing need for the position in which the faculty member has been employed as a TL. The Department’s determination whether there is a continuing need for the position must be made in good faith and must be evidence-based.
  - c. The continuing position must receive budgetary approval. Where the Department determines there is a continuing need, the request for a continuing position first goes to the Dean for budgetary recommendation. The Dean’s recommendation is

then provided to the Provost and Vice-President, Academic (“VPA”) for final budgetary approval.

2. If a continuing need is identified and budgetary approval is provided for a continuing position, there are three possible approaches to filling that continuing position:
  - a. A non-advertised search targeted to the incumbent faculty member,
  - b. An internal search, or
  - c. An open search.
3. The Department will make a recommendation to the Dean as to which of the three possible search approaches is preferred, with reasons for its recommendation. The Dean’s recommendation is separate and distinct, must be made in good faith, and should take into account the Department’s preferences as well as any reasonable operational consideration(s) which the Dean identifies. The Dean’s recommendation is subject to the approval of the VPA.
4. The timelines set out in the above preconditions do not preclude a Department from making an earlier request for a continuing position to the Dean as part of the faculty renewal process.
5. Normally, a continuing position created through this process will be a continuing teaching faculty appointment.
6. Article 35.42 does not establish a personal or individualized right for the person who has held the relevant term appointment for four years. The process established by article 35.42 focusses on whether there is a continuing need for a position, not on whether there is a continuing need for a particular teaching faculty member.

7. If the Department determines there is no continuing need for a continuing position or if the VPA does not provide budgetary approval, the Department will have only the following options in the two years following the expiry of the TL appointment which triggered the Department's consideration of the need for a continuing position:
- a. Courses or substantially similar courses to those taught by the faculty member who held the relevant TL appointment may be taught only by continuing faculty; or.
  - b. Courses or substantially similar courses to those taught by the faculty member who held the relevant TL appointment will not be offered.

The Parties recognize that exceptions to the limitations in paragraph 7 (above) may be appropriate in unforeseen circumstances. Where such circumstances arise, the Department must inform Faculty Relations. Faculty Relations will inform the Association and solicit a response from the Association prior to approving any requests for exceptions. Where the Association and the University disagree on granting an exception, the Association may grieve the University's decision to grant the exception.