

## ATTACHMENT 2

### **Changes in Academic Staff Policies and Procedures (ASPP)**

**Effective 3/10/06**

**(Underline and Strikethrough Version)**

#### **1.03 Definitions**

“*Budget or Program Decision*” refers to the reallocation or termination of resources by a university management decision that requires a program to be discontinued, curtailed, modified, or redirected and may result in staffing reductions in a program or operational area. This is distinct from funding loss, ~~which is the result of a decision made beyond the control of management~~ (see definition below).

“*Employing Unit*” is the organizational area, such as a school, college, division, or smaller unit, having personnel and budgetary responsibility for a position.

“*Funding Loss*” is unanticipated cancellation or reduction of a contract or grant (usually from an external agency) or an unanticipated decline in an income account supporting a particular activity. Funding loss results from a decision neither made by nor within the control of University management.

“*Operational Area*” is the ~~organizational level, such as college, division, department or smaller unit,~~ specified in the letter of appointment as having responsibility for supporting a position ~~in cases of layoff or changes in indefinite appointments~~, such as a school, college, division, department or smaller unit.

“*Years of Service*” is continuous years of paid UW-Madison academic staff employment without regard to percent of employment. A leave of absence of any length or a break in academic staff service of three years or less will not result in loss of prior years’ employment credit. For purposes of determining the required notice periods, an appointment of one or both semesters of an academic year shall count as one year of service.

#### **2.01 Types of Appointment**

**1.b** A rolling-horizon appointment extends daily for the term specified in the letter of appointment or other document. The term may be for one or more years. For example, a three-year rolling-horizon appointment automatically renews every day and entitles the employee to a full three years’ notice of nonrenewal.

## 2.02 Letters of Appointment

Upon initial appointment, each academic staff member shall be provided a printed copy of and/or the Web address for *University of Wisconsin-Madison Academic Staff Policies and Procedures* and the *Rules of the Board of Regents of the University of Wisconsin System, s. UWS 8-13, 15, 18, 19, and 21, Wisconsin Administrative Code*.

## 2.04 Periods of Evaluation

Initial fixed-term appointments in an operational area shall include a period of evaluation of at least six months, but not more than 12 months (see exception in 2.04.36). ~~However, in the case of a fixed term terminal appointment of less than six months, an evaluation shall occur prior to the end of the appointment.~~ During the period of evaluation, the appointee may be dismissed ~~at the discretion of the individual making the appointment~~ with the approval of the dean, director, or designee; there is no and without right of appeal. The duration of the period of evaluation shall be specified in the appointment letter. If the appointment letter does not specify the period of evaluation, the evaluation shall be for a period of six months.

1. *Extension of Six-Month Evaluation Period.* The evaluation period may be extended beyond six months, but the total evaluation period may not exceed 12 months (see exception in 2.04.36). If the evaluation period is to be extended, a written statement of the duration of and the reason for the extension shall be provided to the employee prior to the end of the original evaluation period. A written performance evaluation must be provided to the employee at the same time. An evaluation period of 12 months cannot be extended; however, it may be suspended under certain circumstances (see 2.04.3).
2. *Evaluation Period of More than Six Months.* When the period of evaluation specified in the appointment letter is longer than six months, a written performance evaluation ~~must be provided to the employee within 10 working days of~~ is strongly recommended at the midpoint of the evaluation period.
3. *Suspension of the Evaluation Period.* An evaluation period shall be suspended during periods of leave without pay, use of sick leave, or use of other leave for family and medical leave purposes when the leave exceeds 20 working days. The period of suspension shall be equal to the length of time the employee is absent. The employee shall receive written notice that the period of evaluation has been suspended. After an initial suspension is granted, a subsequent suspension will be granted only if an additional leave of 20 or more days has been taken. No more than two suspensions will be granted during an evaluation period.

- ~~34.~~ *Completion of the Evaluation Period.* The employee shall be notified in writing of the successful completion of the evaluation period. If the evaluation period lapses without such notification, the employee shall be considered to have completed the evaluation period successfully.
45. *Early Completion of the Evaluation Period.* The evaluation period may be concluded whenever the individual making the appointment determines that the employee's performance is satisfactory. The employee shall be notified in writing of the successful completion of the evaluation period.
56. *Termination During the Evaluation Period.* During the evaluation period, ~~appointee may be dismissed~~ the appointment may be terminated by the employing unit at any time at the discretion of the individual making the appointment. Before issuing a termination notice, the employing unit shall obtain the approval of the dean, director, or designee. If employment is terminated, the academic staff member shall be informed in writing a letter that includes the reasons for termination. ~~Termination does not require review by the dean or director, and t~~There is no right of appeal. No notice period prior to termination is necessary, as long as the period of evaluation is specified in the appointment letter; however, if the appointment letter does not specify the period of evaluation, the employee shall be given at least 10 working days' notice. An employee who is given written notice of termination during the evaluation period shall be considered to have been dismissed during the evaluation period even if the last day of employment falls after the end of the evaluation period. Termination during an evaluation period is neither a nonrenewal nor a dismissal for cause and is not subject to the provisions of ASPP 3 or 6, or UWS 11.
- ~~6.~~ *Leaves of Absence During the Evaluation Period.* ~~The evaluation period may be suspended by the supervisor during periods of leave without pay, use of sick leave, or use of other leave for family and medical leave purposes. Employee requests for suspending the evaluation period must be made in writing to the supervisor prior to the end of the evaluation period. The academic staff member shall be informed in writing of the supervisor's decision.~~

## 2.05 Review of Appointment Status

No presumption is made that individuals must have had five years of service before being considered for multiple-year or rolling-horizon appointments. Academic staff with five years or more of service at UW-Madison whose ~~appointments do not provide at least a two-year multiple-year or a two-year rolling-horizon appointment~~ receive a new or increased multiple-year or rolling-horizon appointment or an indefinite appointment as a result of this review shall be given written reasons upon request.

## 2.06 Continuance of Employment Rights and Privileges

Members of the academic staff who hold the employment rights and privileges provided by a rolling-horizon, multiple-year, or indefinite appointment may negotiate continuance of these rights and privileges when accepting another academic staff position or appointment. Such appointments, however, are granted at the discretion of the new employer. If continuance of an indefinite appointment is negotiated, review by an Area Review Committee is not required.

## 2.09 Indefinite Appointment

An indefinite appointment is an academic staff appointment with permanent status and for an unlimited term in a specified operational area. Indefinite appointments confer the greatest job security of any academic staff appointment. Indefinite appointments are neither limited to nor specific to any academic staff title series or position.

The rights conferred by an indefinite appointment are limited to the operational area in which the appointment is made. However, if an individual's operational area moves to another unit, the indefinite appointment shall be retained. An individual who is selected for an academic staff position in a different operational area may negotiate a continuance of indefinite appointment status with the new employer. The new employer shall decide continuance of the indefinite appointment in the new position; no further review is required.

1. *Procedure.* Each department or its functional equivalent, with the participation of its academic staff, shall develop appropriate procedures for initiating the review process.
  - i. *Continuance of Employment Rights and Privileges.* Members of the academic staff who hold the employment rights and privileges provided by an indefinite appointment may negotiate continuance of these rights and privileges when accepting another academic staff appointment. Continuance of an indefinite appointment is granted at the discretion of the new employer and does not require review by an Area Review Committee.

## 3.06 Basis ~~Right~~ of Appeal

~~Nonrenewal decisions may be appealed when nonrenewal is alleged to be arbitrary, capricious, for reasons prohibited by law, or in violation of ASPP when the alleged violation influences the decision under review. An arbitrary or capricious nonrenewal decision is one that was made without a basis in fact or for inconsequential or unsubstantial reasons when the needs of the program had not changed, funds for the position were available, and performance was satisfactory. In carrying out its mission and goals, the university retains the right to determine~~

the direction and scope of its programs—including the right to reduce staff levels through nonrenewal because of a funding loss or a budget or program decision that requires a program to be discontinued, curtailed, modified or redirected. However, the academic staff member has the right to appeal when the staff member believes that his or her performance was satisfactory, or that the nonrenewal is not actually because of a budget or program decision or when he or she believes a result of a funding loss or a budget or program decision, that another academic staff member should have been nonrenewed instead, or that the nonrenewal is arbitrary, capricious, for reasons prohibited by law, or in violation of ASPP when the alleged violation influences the decision under review. An arbitrary or capricious nonrenewal decision is one that was made without a basis in fact or for inconsequential or unsubstantial reasons when the needs of the program had not changed, funds for the position were available, and performance was satisfactory. An academic staff member does not otherwise have the right to appeal the substance of a budget or program decision. A pending appeal of the nonrenewal decision does not in and of itself extend the appointment.

### **3.07 Appeal Process for Nonrenewals**

2. *Review by the Academic Staff Appeals Committee.* The academic staff member shall have 15 working days from receipt of the dean or director's decision to file an appeal with the Academic Personnel Office, which will forward the files to the Academic Staff Appeals Committee and the dean or director within five working days. The dean or director shall provide the employing department and employee's supervisor with a copy of the academic staff member's request for a review or a hearing by the Academic Staff Appeals Committee. The Academic Staff Appeals Committee shall conduct a review in accordance with ASPP 9.
  
7. *Representation.* The presence of a representative or other third party designated by the employee is permitted at any stage during the appeal process.

### **3.08 Joinder of Nonrenewal Appeals**

If the nonrenewal of two or more members of the academic staff arises from the same or similar situation in a single operational area, the academic staff members who appeal or the dean or director may request joinder of cases for review. The Academic Staff Appeals Committee shall consider joinder before taking up the merits of any case. In addition, the Academic Staff Appeals Committee may join the cases on its own motion.

## CHAPTER 4

### **NONRETENTION OF PROBATIONARY EMPLOYEES HOLDING PROBATIONARY APPOINTMENTS**

This chapter applies only to probationary appointments, which lead to review for indefinite status. See 2.01.2 and 2.08.

#### **4.03 Appeal of Nonretention**

2. *Review by the Academic Staff Appeals Committee.* Upon receipt of the dean or director's decision, the academic staff member shall have 15 working days to file an appeal with the Academic Personnel Office, which will forward the files to the Academic Staff Appeals Committee and the dean or director within five working days. The dean or director shall provide the employing department and employee's supervisor with a copy of the academic staff member's request for a review or a hearing by the Academic Staff Appeals Committee. The Academic Staff Appeals Committee shall conduct a review in accordance with ASPP 9.
7. *Representation.* The presence of a representative or other third party designated by the employee is permitted at any stage during the appeal process.

#### **5.01 Layoff Defined**

Layoff is defined as the termination of an academic staff member's employment because of a funding loss or a budget or program decision (see ASPP 1.03) either prior to the end of the appointment or when proper notice of nonrenewal under ASPP 3.04 cannot be given. If proper notice of nonrenewal has been given, the provisions of this chapter do not apply. Layoff is neither dismissal for cause (ASPP 6) nor nonretention of a probationary appointee (ASPP 4).

#### **5.05 Basis of Appeal Process for Layoffs**

1. *Basis of Appeal.* In carrying out its mission and goals, the university retains the right to determine the direction and scope of its programs—including the right to reduce staff levels through layoff because of a funding loss or a budget or program decision that requires a program to be discontinued, curtailed, modified or redirected. However, the academic staff member has the right to appeal when the staff member believes that the layoff is not actually a result of a funding loss or a budget or program decision, when he or she believes that another academic staff member should have been laid off instead, or when the layoff is arbitrary, capricious, for reasons prohibited by law, or in violation of ASPP when the alleged violation influences the decision under review. An arbitrary or capricious layoff decision is one that was made without a basis in fact or

for inconsequential or unsubstantial reasons when the needs of the program had not changed, funds for the position were available, and performance was satisfactory. An academic staff member does not otherwise have the right to appeal the substance of a budget or program decision. A pending appeal of the layoff decision does not in and of itself extend the appointment.

#### **5.05 5.06 Appeal Process**

- 2 1. *Request for Review by the Dean or Director.* To be entitled to a review, the academic staff member must submit a written request to the dean or director within 20 working days of receipt of the written notice of layoff.
- 3 2. *Review by the Dean or Director.* When a review is requested, the dean, director, or designee shall meet with the academic staff member, who shall have an opportunity to present facts and circumstances concerning the layoff. The dean, director, or designee shall make an objective review of all pertinent facts and circumstances and inform the employee, the department chair or unit head, and the Academic Personnel Office of the decision in writing within 15 working days following the meeting. If there is no response by the dean or director to the written request for review within the designated time period, the employee can appeal to the Academic Staff Appeals Committee within 15 working days of the expiration of the designated period.
- 4 3. *Hearing by the Academic Staff Appeals Committee.* The academic staff member shall have 15 working days from receipt of the dean or director's decision to file a written appeal with the Academic Personnel Office, which will forward the files to the Academic Staff Appeals Committee and the dean or director within five working days. The dean or director shall provide the employing department and employee's supervisor with a copy of the academic staff member's request for a review or a hearing by the Academic Staff Appeals Committee. The Academic Staff Appeals Committee shall conduct a hearing in accordance with ASPP 9.
- 5 4. *Access to the Evidence.* An academic staff member who files an appeal shall have the right to review all evidence the employer used to make the layoff decision. All additional information the employer uses or plans to use to support the decision shall also be provided to the appellant in a reasonable time prior to a hearing. Likewise, the employer shall have the right to review all materials to be presented by the appellant. The exchange shall take place within a reasonable time prior to a hearing.

6 5. *Burden*.

- a. Fixed-Term Appointments. For layoffs of fixed-term appointees, the employer's burden shall be to show by a preponderance of the evidence (i) that the layoff is in fact the result of funding loss or a budget or program decision requiring program discontinuance, curtailment, modification, or redirection, (ii) that another academic staff member should not have been laid off instead, and (iii) that the layoff is not arbitrary, capricious, for reasons prohibited by law, or in violation of ASPP when the alleged violation influences the decision under review.
- b. Indefinite Appointments. For layoffs of indefinite appointees, refer to UWS 12.05(5) for details about the requirement to establish a prima facie case.

7 6. *Notification and Disposition*. The Academic Staff Appeals Committee shall forward its findings of fact with a recommendation to the chancellor or designee and shall send a copy to the Academic Personnel Office, dean or director, department chair or unit head, and employee. Within 30 working days of receipt of the Committee's recommendation, the chancellor or designee shall implement the recommendation or give the appellant and the Committee written reasons for any decision to modify the recommendation. The employee, department chair or unit head, dean or director, Academic Personnel Office, and the Committee shall be notified of the decision of the chancellor or designee, which is final. If the decision of the chancellor or designee has not been issued within 30 working days, the recommendation of the Academic Staff Appeals Committee becomes final. As an exception, an indefinite appointee may request a review by the Board of Regents under UWS 12.05(8).

8 7. *Time Limits*. Steps in the appeal process must be initiated and completed within the designated time periods except when modified by mutual consent. If the employee fails to initiate the next step in the appeal process within the designated time period, the appeal will be considered resolved by the decision at the last completed step.

9 8. *Representation*. The presence of a representative or other third party designated by the employee is permitted at any stage during the appeal process.

**5.06 5.07 Joinder of Layoff Appeals**

**5.07 5.08 Layoff Status Defined**

Layoff status shall be defined as the three-year period starting with the effective date of layoff. To initiate layoff status, the staff member must register with the Academic Personnel Office. To maintain layoff status, the staff member shall notify that office at least quarterly regarding employment status, or whenever a change of address or employment status occurs. Layoff status ends automatically when a staff member accepts an alternative appointment that is not ~~purely~~ temporary, fails to accept an appropriate alternative appointment, resigns, or fails to notify the Academic Personnel Office of changes of address or employment status. The primary test in the determination of appropriate alternative appointment is not salary level but comparability of the qualifications necessary and skill level required.

**5.08 5.09 Reappointment Rights and Referral Rights Priority**

The UW-Madison shall devote its best efforts to securing alternative appointments in positions for which staff laid off under this chapter are qualified. The head of the operational area responsible for the layoff is encouraged to identify and inform the employee of any comparable positions in related operational areas. An academic staff member on layoff status may be hired without open recruitment into an academic staff position in another unit at the discretion of that department or unit. Units are encouraged to provide released time to academic staff members being laid off for such purposes as retraining, job interviews, career counseling, or job searches. Members of the academic staff on layoff status or on notice of layoff shall have ~~the right of first referral~~ referral priority rights to all academic staff vacancies for which they may reasonably qualify. Such referrals shall be made by the Academic Personnel Office prior to posting of position vacancies. Prospective employers must consider these persons before consideration of other referrals, if any, and before the commencement of open recruiting, and upon request must give written reasons to any referred academic staff member on layoff status to whom employment is refused.

**6.03 Dismissal**

- 1 e. *Review by Dean or Director.* Upon receipt of dismissal notification the employee shall have 20 working days to submit a written request to the dean or director for a review, including a summary of the facts and circumstances concerning the allegations. The academic staff member shall have the opportunity to make a personal presentation to the dean, director, or

designee. The dean, director, or designee shall make a determination of just cause for dismissal and notify the employee of the decision in writing within 15 working days after the receipt of the request for a review or 15 working days after the personal presentation, whichever is later. If the dismissal is upheld by the dean, director, or designee, the notification shall inform the employee of his or her right to appeal to the Academic Staff Appeals Committee under 6.03.3. If there is no response by the dean or director to the written request for a review within the designated time period, the employee may appeal to the Academic Staff Appeals Committee within 15 working days of the expiration of the designated period.

3. a *Hearing Before the Academic Staff Appeals Committee.* The academic staff member shall have 15 working days from receipt of the notification (20 working days if notice is by first-class mail and publication) to file an appeal with the Academic Personnel Office, which will forward the files to the Academic Staff Appeals Committee and the dean or director within five working days. The dean or director shall provide the employing department and employee's supervisor with a copy of the academic staff member's request for a review or a hearing by the Academic Staff Appeals Committee. The Academic Staff Appeals Committee shall conduct a hearing in accordance with ASPP 9.
  - ii. *Representation.* The presence of a representative or other third party designated by the employee is permitted at any stage during the appeal process.

## **7.01 Informal Resolution**

- 1.d. The UW-Madison Ombuds Office can provide an informal, confidential, and independent resource for staff seeking help in resolving problems and conflicts.
- e. Members of the Academic Staff Assembly Personnel Policies and Procedures Committee or the Academic Staff Executive Committee are also available to assist individuals in determining where to go for help. For committee membership, contact the Secretary of the Academic Staff.

## **7.02 Grievance Procedure**

1. c. *Step 3 -- Appeal to the Academic Staff Appeals Committee.* If the dean, director, or designee's decision is not accepted by the employee, he or she shall have 15 working days from receipt of the dean's decision to file an appeal with the Academic Personnel Office, which will forward the files to the Academic Staff Appeals Committee and the dean or director within five working days. The dean or director shall provide the employing department and employee's supervisor with a copy of the academic staff member's request for a review or a hearing by the Academic Staff Appeals Committee.

The Academic Staff Appeals Committee shall conduct a review or hearing in accordance with ASPP 9.

3. *Burden.*

- b. *Grievances of Disciplinary Actions Resulting in ~~the~~ a Loss of Pay.* The burden is on the employer to show the existence of just cause (see the seven tests of just cause stated in ASPP 6.03.3.b).

### **10.03 Methods of Performance Review**

1. Some units use a structured process of periodic performance review. Methods of performance review may include peer review, committee review, ~~and~~ individual consultation, and, when academic staff members have supervisory roles, gathering input from those individuals being supervised. These ~~methods~~ reviews usually result in written documentation. Examples of review documents used in these units are on file in the Academic Personnel Office.