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Collective Bargaining Results Regarding Contingent Faculty

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American Association of University Professors

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Article 13

Appointment and Promotion

13.1 Regardless of the length of appointment, no Bargaining Unit Faculty Member is eligible for tenure under any circumstances, and nothing in this Agreement implies tenure.

13.1.1 Each Bargaining Unit Faculty Member not appointed in the College of Nursing and Health or the Lake Campus will have a primary appointment in an identified academic department.

13.1.2 Clinical Instructor and Clinical Assistant Professor are the ranks assigned only to those who teach courses in the College of Nursing and Health. Initial appointments are for three years and may be extended by a succeeding three-year appointment. Faculty may be appointed to the rank of Clinical Instructor or Clinical Assistant Professor upon beginning Wright State employment, depending on their credentials and experience.

13.1.3 Bargaining Unit Faculty have either fixed-term or continuing appointments.

13.1.3.1 Instructors and all ranks of Visiting Professors always have fixed-term appointments.

13.1.3.2 Lecturers, Clinical Instructors and Clinical Assistant Professors have fixed-term appointments during their first six years of employment as Bargaining Unit Faculty Members.

13.1.3.3 Lecturers, Clinical Instructors and Clinical Assistant Professors have continuing appointments beginning with the seventh year of employment as Bargaining Unit Faculty Members.

13.1.3.3 Senior Lecturers always have continuing appointments.

13.2 Fixed-term Faculty Appointments

13.2.1 Appointments for Instructors are for one year (or, if hired as a Member within an academic year, the appointment may include that partial year and the following academic year). Instructor appointments may not be extended beyond a total of six years of service. Instructor positions carry no expectation of continuing employment. Before the Member's sixth year as an Instructor begins, the University will (a) notify the faculty member that the appointment will not be continued or (b) offer a continuing appointment as a Lecturer with no identified date of termination. That is, if the university fails to notify that Member that the appointment will not be continued, then the Member will be given a continuing appointment as a Lecturer with no identified date of termination.

Rudy Fichtenbaum 9/19/13 5:07 PM

Comment [1]: Continuing Appointment language.

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Comment [2]: One year notification of a continuing appointment with no identified date of termination.

13.2.2 Visiting Assistant Professor, Visiting Associate Professor, or Visiting Professor is the rank assigned to a faculty member whose education and experience is equivalent to Wright State faculty with the corresponding rank. Visiting appointments may be made for a period of up to three years. If an initial appointment is for less than three years, it may be extended when the advertisements for the position and the appointment letter state that such extensions are possible, but the total length of a visiting appointment cannot exceed three years.

13.2.3 Bargaining Unit Faculty may be appointed to the rank of Lecturer upon beginning Wright State employment or after serving for a time as an Instructor. The university's decision to create a Lecturer position is based on university needs, regardless of the performance level of existing Instructors.

13.2.4 Fixed-term appointments as Lecturers, Clinical Instructors, and Clinical Assistant Professors are for the smaller of (1) three years and (2) the number of years needed to bring a Member's total service as an NTE faculty member to six. Before a Lecturer or Clinical faculty member begins his or her sixth year as an NTE faculty member, the university will (a) notify that Member that the appointment will not be continued or (b) offer a continuing appointment with no identified date of termination; that is, if the university fails to notify that Member that the appointment will not be continued, then the Member will be given a continuing appointment with no identified date of termination.

13.2.5 A Member who has completed at least four years as an Instructor, with sustained outstanding performance, as documented in accordance with Section 13.5.2.2, will have the right of first refusal to accept a position as Lecturer that becomes available in her or his department provided the Instructor is qualified to teach all the courses for which the Lecturer position has been developed. If more than one Instructor is so qualified in a department then the Instructor with the most seniority, based on hire date as a Bargaining Unit Faculty Member, will have the right of first refusal. If two or more qualified Instructors have the same seniority and one has significantly stronger performance than the other(s), that Member will have the right of first refusal for a Lecturer position. Otherwise, ties will be broken at random. The Department Chair will notify all eligible Instructors in his or her department if a Lecturer position becomes available in that department, and the Dean will notify eligible Instructors at Lake Campus if a Lecturer position becomes available at Lake Campus.

13.3 Continuing Faculty Appointments. Beginning with the seventh year as a Bargaining Unit Faculty Member at the University, a Member holding the rank of Lecturer, Clinical Instructor or Clinical Assistant Professor will have a continuing appointment (meaning, here and elsewhere, a continuing appointment with no identified date of termination). Bargaining Unit Faculty with continuing appointments are not eligible for tenure, and the employment of a faculty member

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Comment [3]: One year notification for Lecturers and Clinical faculty.

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Comment [4]: Right of first refusal to move from instructor to lecture with a seniority system.

with a continuing appointment may be terminated pursuant to Article 15. All Senior Lecturers have continuing appointments.

13.3.1 Senior Lecturer and Clinical Assistant Professor are the ranks assigned to those who have been promoted to that rank because of sustained outstanding performance in teaching and service (as specified in Section 13.8) for a minimum of six years at the Lecturer or Clinical Instructor rank, and also to those whose initial appointment as a Bargaining Unit Faculty Member is at this rank.

13.4 Termination of Bargaining Unit Faculty Members shall be accomplished pursuant to Article 15.

13.5 Promotion from Lecturer to Senior Lecturer or Clinical Instructor to Clinical Assistant Professor.

13.5.1 Definitions.

13.5.1.1 The Promotion Document is the information that the candidate seeking promotion submits to the Department Chair summarizing his or her case for promotion. It consists of the following items:

1. The candidate review statement (Appendix A)
2. Evidence of sustained outstanding performance in teaching
 - a. Annual performance evaluations for at least the six most recent years
 - b. Peer evaluations of teaching (two in a given academic year) for at least two of the four most recent academic years, pursuant to Section 13.5.2.3
 - c. Statistical summary and frequency distributions of all required student evaluations of teaching during the past six years
 - d. List of 15 or more positive teaching-related activities from the list in Section 11.2.1.2
 - e. Other evidence of outstanding teaching (optional)
3. Evidence of sustained outstanding performance in service
 - a. List of significant service activities from the list in Section 11.2.2.2.1
 - b. List and description of major initiatives (Section 13.8.3)
 - c. List and description of significant leadership contributions (Section 13.8.3)
 - d. Other evidence of outstanding service and leadership (optional)

13.5.1.2 The Promotion File consists of the Promotion Document and the following items that are added during the review process:

1. A written statement of the Department Chair
2. The form shown in Appendix C used to record votes and recommendations
3. A record of the College Senior Lecturer Promotion Committee's vote and recommendation, or in the College of Nursing and Health a record of the College's Clinical Assistant Professor Promotion Committee's vote and recommendation.

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Comment [5]: The CBA says that this group of faculty have continuing appointments but are not eligible for tenure. They can be terminated pursuant to article 15. The language in article 15 is what gives this group of faculty virtually the same protection as tenured faculty have from being dismissed.

4. The recommendation letter of the college Dean
5. The recommendation statement of the Provost
6. Rebuttals and supporting material (if any) filed by the candidate

At any time throughout the process and after its completion, the candidate has the right to access and obtain copies of the Promotion File.

13.5.1.3 The Senior Lecturer Promotion Committee and Clinical Assistant Professor Promotion Committee review promotion cases at the college level and make recommendations to the college Dean. Their composition and selection are specified in Section 13.5.3.1.

13.5.2 Criteria for Promotion to Senior Lecturer and to Clinical Assistant Professor.

13.5.2.1 To be promoted to the rank of Senior Lecturer, a Lecturer must have served at least six years at the Lecturer rank. To be promoted to the rank of Clinical Assistant Professor, a Clinical Instructor must have served at least six years at the Clinical Instructor rank. During that time, the Member must have demonstrated a record of sustained outstanding performance in teaching and service for a minimum of six years, which is documented in accordance with Section 13.5.2.2 and defined by Section 13.8.

13.5.2.2 Outstanding teaching and service are documented by the Chair's annual evaluations of the Member's performance (Article 11), peer evaluations of teaching (Section 13.5.2.3), student evaluations of teaching, and other available evidence as needed or desired. The amount of recent teaching may be limited, and effective completion of administrative responsibilities may be substituted for service work expected of non-administrative faculty.

13.5.2.3 Peer Evaluation of Teaching

Instructors, Lecturers, Clinical Instructors, and Clinical Assistant Professors without continuing appointments will receive two peer evaluations of teaching each academic year. Any other Bargaining Unit Faculty Member will receive two peer evaluations of teaching in a given academic year if by September 15 the Member asks the Department Chair, in writing, that peer evaluations of teaching be done.

13.5.2.3.1 Each peer evaluation of teaching will involve classroom observation (except for distance learning courses) and may include a review of teaching materials such as syllabi, assignments, exams etc. Each completed peer evaluation shall be sent to the Department Chair (with a copy to the evaluated Member) and kept in the Department or College office. In addition to the roles of Peer Evaluations of Teaching specified in this Article 13, they shall inform the Chair's annual evaluations pursuant to Section 11.3.1.1.

13.5.2.3.2 Peer evaluators will be NTE Bargaining Unit Faculty with continuing appointments who hold the rank of Senior Lecturer (Clinical Assistant Professor) or TET Bargaining Unit who are tenured.

13.5.2.3.3 One peer evaluator will be chosen by the Bargaining Unit Member, and a second peer evaluator will be chosen by the Department Chair. Peer evaluators for a given academic year must be chosen no later than September 30, and one peer evaluation must be completed by the end of the fall semester.

13.5.3 Participants in Decisions of Promotion to Senior Lecturer and to Clinical Assistant Professor.

13.5.3.1 All grants of promotion to Senior Lecturer and to Clinical Assistant Professor are made by the Wright State University Board of Trustees based on review and recommendations from the following committees and individuals.

1. The candidate's Department Chair (not applicable in the College of Nursing and Health or at the Lake Campus)
2. A College Senior Lecturer (Clinical Assistant Professor) Promotion Committee consisting of the Dean as a non-voting member and five voting members who will be elected by the college's Bargaining Unit Faculty who hold the rank of Lecturer or Senior Lecturer (Clinical Instructor or Clinical Assistant Professor).
 - Three of the voting members will be of Senior Lecturer (Clinical Assistant Professor) rank and must hold continuing appointments. A college that does not have sufficient Senior Lecturers (Clinical Assistant Professors) may staff the committee by electing Senior Lecturers with continuing appointments from another college.
 - Two of the voting members will be Tenured TET Bargaining Unit Faculty. The voting members of the committee will elect a chair from among the voting members.
3. The candidate's Dean
4. The Provost

13.5.4 Procedures for Granting Promotion to Senior Lecturer (Clinical Assistant Professor)

13.5.4.1 To initiate the Promotion Process, a faculty member must submit the Promotion Document to the Department Chair by the date specified in Appendix D. The Document becomes part of the candidate's Promotion File and may not be altered after the candidate has submitted it, without permission of the candidate and the Department Chair; also, after the candidate has been voted on by the College Senior Lecturer (Clinical Assistant Professor) Promotion Committee, the Document may not be altered under any circumstances. Once the promotion process has begun, only the candidate may terminate the process. To do so, the candidate must submit written notice of withdrawal to the Dean, who will then convey this information as appropriate.

13.5.4.2 By the date specified in Appendix D, the Department Chair will review the Promotion Document, add a letter recommending for or against the promotion to the Promotion File, give a copy of the letter to the candidate, and transmit the Promotion File to the Dean. If the Chair reviews or otherwise takes into account materials that are not part of the individual's Promotion File, the Chair will promptly make such materials available to the candidate. The recommendation of the Chair must be based on criteria in Section 13.8 and no other. The candidate will have ten (10) working days to add a rebuttal letter to the File by submitting the rebuttal letter to the Dean; the actual deadline for the candidate to do so is specified in Appendix D.

13.5.4.3 By the date specified in Appendix D, the College Senior Lecturer (Clinical Assistant Professor) Promotion Committee will review the candidate's File and make its written recommendation, adding this recommendation to the File. The recommendation must be based on criteria in Section 13.8 and no other. If the Committee reviews or otherwise takes into account materials that are not part of the individual's Promotion File, the chair of that committee will promptly make such materials available to the candidate.

13.5.4.5 By the date specified in Appendix D, the college Dean will inform the candidate in writing of the recommendation and vote of the College Senior Lecturer (Clinical Assistant Professor) Promotion Committee, and will provide a copy of the College Committee's written recommendation to the candidate. The candidate will have ten (10) working days to add a rebuttal letter to the File by submitting the rebuttal letter to the Dean; the actual deadline for the candidate to do so is specified in Appendix D.

13.5.4.6 By the date specified in Appendix D, the college Dean will review the File, add a letter recommending for or against the promotion to the File, give a copy of the letter to the candidate, and transmit the Promotion File to the Provost. The recommendation must be based on criteria in Section 13.8 and no other. The candidate will have ten (10) working days to add a rebuttal letter to the File by submitting the rebuttal letter to the Provost; the actual deadline for the candidate to do so is specified in Appendix D.

13.5.4.7 By the date specified in Appendix D, the Provost will review the File, add a statement recommending for or against the promotion to the File, give the candidate a copy of the statement, and transmit the Promotion File to the University President for consideration and recommendation to the Board of Trustees. If the Provost disagrees with the Dean's recommendation, he or she will add a written explanation to the File and promptly send a copy to the candidate.

13.5.4.8 The Board of Trustees will announce all promotions as soon as feasible.

13.6 Appeals

13.6.1 A candidate may appeal the Provost's recommendation on the grounds that (a) an error in the described procedures materially affected the outcome, (b) the decision was not based upon the criteria in Section 13.8, or (c) the outcome was arbitrary, discriminatory or capricious. The Candidate has at least five (5) working days after receiving a copy of the statement of the Provost (Section 13.5.4.7) to notify in writing both the University President and the AAUP-WSU Grievance and Contract Administration Officer of her or his intent to file an appeal. The actual deadline in a given year is set forth in Appendix D. The appeal and all supporting documentation must be submitted to the University President and the AAUP-WSU Grievance and Contract Administration Officer by the deadline set forth in Appendix D, which is at least fifteen (15) working days after the candidate receives a copy of the statement of the Provost.

13.6.2 Upon receiving a written notification of the intent to file an appeal from one or more Bargaining Unit Faculty Members, the AAUP-WSU and the University shall form a Promotion Appeals Committee consisting of three NTE or TET Bargaining Unit Faculty Members selected by the AAUP-WSU and three department chairs, assistant deans, or associate deans who are also faculty selected by the University. In addition, the AAUP-WSU and the University will each appoint two alternate members to the Committee. Each of the members, including the alternates, selected by the AAUP-WSU must be from different colleges. Likewise each of the members, including the alternates, selected by the University must be from different colleges. The Committee will be formed within ten (10) working days after notice of intent to file an appeal is received (see Section 13.6.1). All meetings of the Appeals Committee will include exactly six voting members: three NTE or TET Bargaining Unit Faculty appointed by the AAUP-WSU and three faculty (department chairs, assistant or associate deans) appointed by the University. Any members of the Committee who have previously voted on or written a letter for the case under appeal or are from the appellant's college shall recuse themselves.

13.6.3 The Appeals Committee shall have Co-Chairs. One Co-Chair must be elected by the Faculty appointed by the AAUP-WSU, and one Co-Chair must be elected by the faculty members appointed by the University. A single chair may be elected by both constituencies.

13.6.4 Procedures of the Promotion Appeals Committee.

13.6.4.1 If at least three members of the Committee agree, the Committee may request that the appellant or other persons with knowledge of the case appear before the Committee or respond to the Committee's questions in writing.

13.6.4.2 Following the review of materials and testimony relevant to a given case, the Committee will determine if any of the criteria (a), (b), (c) listed in Section 13.6.1 appear to be substantiated. The Committee will then send to the University President a report stating its findings (as to whether or not any criteria listed in

Section 13.6.1 appear to be substantiated), the basis for its findings, and its recommendations.

13.6.4.3 Recommendations of the Committee require a majority vote, but minority opinions must be represented in the final report if the minority so desires. All voting will be by secret ballot.

13.6.5 If the Committee is not able to reach a consensus, members of the Committee may write dissenting opinions, which shall be attached to the majority opinion. If the six-person Committee is divided three to three, then both groups will file a report. The Committee will make a good faith effort to issue its written report no later than thirty (30) working days after the appellant submits the appeal and all supporting documentation to the University President and the AAUP-WSU Grievance and Contract Administration Officer. The Committee will send its report to the University President, with copies to the appellant and AAUP-WSU.

13.6.6 Upon receiving the Committee's report, the candidate has five working days to submit a letter of appeal to the University President.

13.6.7 Within twenty (20) working days after receiving the recommendations from the Provost and from the Appeals Committee, the President will notify the candidate in writing, with a copy to AAUP-WSU, that (a) the recommendation of the Provost is being upheld, (b) the Provost's recommendation is being overturned, and the case being presented to the Board of Trustees for approval, or (c) that the case is being remanded in a specified way for further consideration.

13.6.8 If the Board of Trustees approves a promotion based in whole or in part on a Promotion Appeals Committee recommendation, the promotion shall be made retroactive to the normal promotion date for candidates from that department.

13.7 Promotion Grievances.

13.7.1 A promotion case not resolved by appeal (Section 13.6) may be grieved and go directly to arbitration if the AAUP-WSU concurs with the candidate that (a) an error in the described procedures materially affected the outcome, (b) the decision was not based upon the criteria in Section 13.8, or (c) the outcome was arbitrary, discriminatory or capricious. If the AAUP submits a promotion case to arbitration it must do so within thirty (30) working days of receiving the President's disposition of the case (Section 13.6.7). The arbitrator will be selected by the procedure specified in Section 16.6.1.

13.7.2 The arbitrator may remand the promotion decision being grieved with directions as to which of the existing procedures in this Agreement are to be followed.

13.7.2.1 The arbitrator may advise on altering procedures and time limits to expedite the remand process.

13.7.2.2 The arbitrator does not have authority to award promotion to a Bargaining Unit Faculty Member.

13.7.3 Individuals and committees to whom a promotion case is remanded will duly consider all advice and recommendations of the arbitrator.

13.7.4 A promotion case may be sent to arbitration no more than once every three years.

13.8. The successful candidate for promotion to Senior Lecturer or Clinical Assistant Professor must demonstrate sustained outstanding performance in both teaching and in service for a minimum of six years as described, below, in Sections 13.8.1 through 13.8.3.

13.8.1 Sustained Outstanding Performance in Teaching for Promotion to Senior Lecturer or Clinical Assistant Professor

- Overwhelmingly positive student evaluations
- Excellent peer evaluations of teaching completed pursuant to Section 13.5.2.3
- Satisfies all **essential** teaching related behaviors set forth in Section 11.2.1.1
- Has at least 15 **positive** teaching-related activities from the list in Section 11.2.1.2 on behalf of students or the department. Each annual positive teaching-related activity counts toward the total.

13.8.2 Sustained Outstanding Performance in Service for Promotion to Senior Lecturer or Clinical Assistant Professor

13.8.3 Sustained outstanding performance involves engaging in significant service as defined in Section 11.2.2.2 over a minimum of a six year period and engaging in leadership in teaching or service. Scholarship related to the practice of teaching may also count toward demonstrating leadership. Leadership can be demonstrated by (1) **major initiatives** with substantial and ongoing impact, (2) a number of **significant leadership contributions that form a pattern of continuing engagement**, or (3) an equivalent combination of the two. One item from the **major initiatives** list might in itself be sufficient to confirm the individual's leadership or might only be sufficient if combined with two to four of the items from the **significant leadership contributions** list. Similarly, all items on the lists will not be of equal value. Some factors that might impact the value are:

- The impact of the effort expended,
- The relative prestige (of awards, publications, etc.), or
- The differing levels of responsibility.

The candidate's combined activity and achievement must be of high quality, must exceed routinely assigned teaching and service, and must include demonstrated leadership.

1. **Major initiatives** with substantial and ongoing impact include the following types of activities or the equivalent:
 - a. Developing and sustaining a study abroad experience for students,
 - b. Obtaining substantial internal or external funding or grant monies,
 - c. Spearheading a major university project,
 - d. Coordinating a major campus event involving several units within the university and continuing for multiple years,
 - e. Advising a significant organization or student activity that results in regional and/or national recognition,
 - f. Developing and editing a professional periodical,
 - g. Writing and publishing a text book or ancillary materials adopted by multiple universities;
 - h. Writing and publishing a scholarly book, article or discipline specific publication.
2. **Significant leadership contributions** should include a variety of the following types of activities or the equivalent:
 - a. Developing a new course;
 - b. Developing internships or service learning courses, projects and partnerships;
 - c. Advising an Honors project;
 - d. Obtaining moderate internal or external funding or grant monies;
 - e. Providing formal and substantial faculty mentoring;
 - f. Promoting student success through documented initiation of innovative strategies or a superior commitment to student advising;
 - g. Receiving a university honor or recognition;
 - h. Directing/coordinating a college or department program;
 - i. Effectively chairing an active college or university committee;
 - j. Actively serving on a college or university committee that is highly active and productive;
 - k. Coordinating a college, campus or community event or a policy or process change within the college;
 - l. Promoting alumni relations or engaging in fundraising
 - m. Exercising leadership that draws on professional expertise outside the university
 - n. Receiving a community honor or recognition;
 - o. Holding an office in a professional or community organization;
 - p. Effectively chairing a major government or community board;
 - q. Effectively serving on a major government or community board that is highly active and productive;
 - r. Providing professional consultation to community groups, government agencies or businesses;

- s. Presenting a competitively selected scholarly paper or serving as a reviewer in the competitive selection of scholarly work;
- t. Guest editing a professional journal.

Article 15

Termination of Appointment or Suspension without Pay

15.1 The University has and retains the right to terminate or to suspend without pay the employment of a Bargaining Unit Faculty Member. In addition to resignation or retirement, faculty appointments may be terminated due to (1) retrenchment, pursuant to Article 17, (2) completion of a fixed-term appointment, (3) poor performance, (4) enrollment or curricular changes that eliminate the need for their services pursuant to Section 15.4, and (5) just cause pursuant to Section 15.5. The University may also suspend a Bargaining Unit Faculty Member without pay for just cause pursuant to Section 15.5.

Rudy Fichtenbaum 9/19/13 5:07 PM

Comment [6]: This is key language

15.2 Termination at the Completion of Fixed-term Appointments. Faculty on fixed-term appointments (Instructors, Visiting Professors, and those Lecturers and Clinical Faculty who are in their initial appointment periods) are automatically terminated at the conclusion of their appointments unless the university either offers them a succeeding appointment or fails to give notification, pursuant to Section 13.2.1 or 13.2.4, that the appointment will not be continued.

15.2.1 The University will make a good faith effort to notify Members by February 1 of the year their fixed-term appointment expires whether or not they will be offered a succeeding appointment.

15.2.2 Notice of termination is not required for faculty who complete fixed-term appointments. Even if succeeding appointments had been received in earlier years, faculty on fixed-term appointments should not expect that their employment will continue after the fixed-term unless they have received a written offer of continuation from their dean.

15.3 Termination for Poor Performance. Bargaining Unit Faculty in all ranks on fixed-term or continuing appointments may be terminated for poor performance. When notified in writing by February 1 of their first academic year's service, faculty will be terminated at the conclusion of that academic year. Following the first year, the university will provide written notice at least twelve months in advance of termination. Notice is not required, however, if the Member's fixed term appointment expires before a termination for poor performance would have taken effect.

15.3.1 Fixed-term faculty may be terminated for poor performance if:

1. the performance was specified in a written evaluation,
2. the faculty member was given a reasonable amount of time (normally, at least one semester) to address the unsatisfactory performance, and
3. the unsatisfactory performance continued.

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Comment [7]: Even fixed term faculty must be given an opportunity to address deficient performance.

15.3.2 A Bargaining Unit Faculty Member with a continuing appointment may be terminated for persistent poor performance as specified in Section 15.3.2a below, or for deficiencies in teaching that are so severe that the Member is not minimally effective. Symptoms of poor teaching performance may include (but are not limited to)

- a pattern of classes that are missed without suitable reason (e.g., illness, approved professional travel) or of missed advising appointments
- persistent and justified complaints from students or peers
- persistently erratic classroom behavior
- persistent failure to be reasonably available to students and advisees
- persistent failure to communicate effectively with students
- a pattern of irresponsible or unprofessional conduct with or in the presence of students in a university setting
- persistent failure to comply with the established curriculum
- persistently outdated or inappropriate course content

15.3.2a Persistent poor performance pursuant to Section 15.3.2 must have been specified in a written evaluation, in which the department chair states that the performance is so substandard that it could be grounds for dismissal. The Member must then be provided a reasonable amount of time (normally, at least one semester) to correct the identified deficiencies. If the substandard performance continues, the department chair must specify, in writing, the basis for concluding that the Member's performance is persistently poor.

15.3.2.1 If the Dean believes that a Bargaining Unit Faculty Member (hereinafter, "Member") with a continuing appointment should be dismissed due to poor performance according to the criteria in Section 15.3.2, then the Dean shall notify the Provost. The Dean's notification shall specify whether the Member has persistent poor performance as specified in Section 15.3.2a above, or exhibits deficiencies in teaching that are so severe that the Member is not minimally effective.

15.3.2.2 **Informal hearing:** The Provost or designee shall call a meeting with the Dean, the Member, and a representative of the AAUP-WSU, and shall clearly inform the Member and AAUP-WSU that the meeting is the informal hearing stage of a process that might lead to dismissal. The purpose of this meeting shall be to reveal and clarify all related facts in the matter and to attempt resolution of it through informal discussion. One additional meeting will occur if either the Member or the Provost (or designee) wishes. Additional meetings may occur provided the Provost or designee and the Member believe that further meetings will serve a useful purpose.

Rudy Fichtenbaum 9/19/13 5:07 PM

Comment [8]: This is fairly close to demonstrated incompetence which is the standard to dismiss a tenure track faculty member.

15.3.2.3 **Formal hearing:** If after the informal hearing, the Provost or designee determines that termination due to poor performance should be considered, he or she shall call for the creation of a Hearing Board.

15.3.2.4 The Hearing Board shall consist of six members and four alternate members: three members and two alternates will be selected by the AAUP-WSU and also by the University. Each Hearing Board member must either have tenure, be a Senior Lecturer, or be a Clinical Assistant Professor with a continuing appointment, and all should be selected on the basis of their objectivity and competence and of the regard in which they are held in the academic community.

15.3.2.5 The Provost or designee shall provide written notice to the Member and the Dean, stating that a formal hearing will be held and listing the members of the Hearing Board, including alternate members. Within ten calendar days after receiving notice of the intended hearing, the Member is entitled to remove at most two members of the Hearing Board selected by AAUP-WSU and at most two selected by the University. After the Member has been given the opportunity to exercise his or her right to remove members or alternate member of the Hearing Board as specified above, the AAUP-WSU and the University will respectively add alternates to the Hearing Board, as needed, so that the Hearing Board consists of three members named by the University and three members named by the AAUP-WSU.

15.3.2.6 The President of AAUP-WSU (or designee) and the Provost (or designee) will convene the Hearing Board, and at this time the Hearing Board will elect a Chair or Co-Chairs and determine the rules governing the hearing. The Hearing Board shall communicate in writing the scheduled date, place, and time of the hearing and provide to all parties concerned an explanation of the rules under which the hearing shall be conducted.

15.3.2.7 The University will provide access to all available evidence and give the names of all potential witnesses to the Member and AAUP-WSU in a timely manner.

15.3.2.8 Both the Member and the Dean or designee may confront and cross-examine witnesses, present and summon witnesses, and be present to hear all evidence and arguments given at all meetings of the Hearing Board. The Member may be accompanied, advised, and/or represented by any fulltime WSU faculty member. Both the AAUP-WSU and the University are entitled to have representatives present at any hearing. Members of the Hearing Board may question all witnesses appearing before the Board. The Dean or designee has the burden of demonstrating to the Hearing Board that, on the basis of clear and convincing evidence, the assertion of poor performance according to the criteria in Section 15.3.2 is true. The hearing shall be conducted in private with only the AAUP-WSU and the University representatives, and those summoned as witnesses or directly involved in the matter present. Subject to the approval of the Member, the Dean or designee, and the Hearing Board, observers can be present at the hearing.

15.3.2.9 When all witnesses summoned and able to appear have presented testimony and when cross-examination has been conducted, the Board shall retire to make its evaluation as to whether or not, on the basis of clear and convincing evidence, the assertion of poor performance according to the criteria in Section 15.3.2 is true. This evaluation of the Hearing Board shall be made by a majority vote of all its members and immediately shall be communicated in writing to the University President, the Member, the AAUP-WSU, and the Dean. A verbatim, written record of the hearing shall be sent to the University President, the Member, the AAUP-WSU and the Dean as soon as possible following the conclusion of the hearing. (This verbatim record may be taken by a stenographer or transcribed from electronic recording equipment.)

15.3.2.10 Within twenty (20) working days after receiving the evaluation of the Hearing Board, the President will (a) recommend to the Board of Trustees that the Member be terminated, or (b) dismiss the assertion that the Member's performance warrants termination. Both the Member and AAUP-WSU will be promptly notified, as will the Dean.

15.3.2.11 Should the final decision be for termination, it shall not become effective until the end of the academic or fiscal year, except where otherwise ordered by the University Board of Trustees, which can require severance of the Bargaining Unit Faculty Member's relationship with students and the University prior to the end of the academic or fiscal year when it finds the situation to be of extreme gravity.

15.3.2.12 At the sole discretion of the AAUP-WSU, the final decision may be taken directly to binding arbitration. The timelines, procedures and the costs of arbitration will be governed by the provisions concerning arbitration in Section 16.6.

15.4 A Bargaining Unit Faculty Member with a continuing appointment may be terminated for lack of need if

- (a) enrollment declines extending over at least three academic semesters
- or
- (b) curricular changes

have resulted in reduced demand that eliminates the need for more than half of the Member's annual teaching load (which load shall include "alternate classes that the Member is qualified to teach" pursuant to Section 15.4.1).

15.4.1 Before terminating a Member for lack of need, the University will make a good faith effort to find alternate classes that the Member is qualified to teach. In particular, the University shall assign classes to the Member that would otherwise be taught by persons who are in neither the TET or the NTE Bargaining Unit.

Rudy Fichtenbaum 9/19/13 5:07 PM

Comment [9]: This is exactly the same due process mechanism that we have for tenured faculty. This is the heart of the protection that faculty with continuing appointments have and is why this language is virtually equivalent to tenure.

15.4.2 Terminations for lack of need will be done by inverse order of seniority pursuant to Sections 17.6.2 – 17.6.4.3.

15.4.3 For two years following a termination for lack of need, the University will provide the terminated Member the opportunity to teach classes he or she is qualified to teach before assigning the classes to a non-bargaining unit faculty member. For such teaching, the terminated Member will be paid a rate proportionate to pay he or she would have received for teaching the class on a full time basis. Thus, a Member who had an annual teaching load of seven classes would be employed as an adjunct and paid at rate equal to one-seventh of her or his full-time salary for each class taught.

15.4.4 If, within two years of a Member's termination for lack of need, the University opens a full-time teaching position for which the terminated faculty member is qualified, the terminated Member shall be offered that position.

15.4.5 When a dean anticipates terminating a Member(s) for lack of need, he or she shall notify the Provost and the AAUP-WSU.

15.4.6 The Provost or designee shall call a meeting with the Dean, the Member(s), and a representative of the AAUP-WSU. The purpose of this meeting shall be to reveal and clarify all related facts in the matter and to explore whether there are reasonable alternatives to termination. Additional meetings may occur provided the Provost or designee and either the Member or the AAUP-WSU believe that further meetings will serve a useful purpose.

15.4.7 If, following the meeting, the Provost believes that termination is necessary, he or she will provide a written statement to the Member(s) and to the AAUP-WSU explaining the basis for the termination(s).

15.4.8 Within twenty working days after receiving the Provost's written statement, the Member may submit a written rebuttal to the President, as may AAUP-WSU.

15.4.9 Within twenty working days after receiving a written rebuttal from the Member and/or AAUP-WSU, the President will send a written statement to the Member and the AAUP-WSU confirming or reversing the termination(s). If the final decision is for termination, the Member will not be terminated any sooner than one year following the date of the written statement confirming the termination. Alternatively, the University pay salary and provide full benefits for all or part of the one year.

15.4.10 At the sole discretion of the AAUP-WSU, the final decision may be taken directly to binding arbitration. The timelines, procedures and the costs of arbitration will be governed by the provisions concerning arbitration in Section 16.6.

Rudy Fichtenbaum 9/19/13 5:07 PM

Comment [10]: This is similar to the program elimination language for tenured faculty.

15.5 Termination or suspension without pay for Just Cause.

15.5.1 Just cause terminations or suspensions without pay may be based on (a) fraudulent credentials pertaining to employment at WSU; (b) demonstrated incompetence or dishonesty in teaching, scholarship, or professional service; (c) substantial and manifest neglect of duty, (d) personal conduct which presents a serious threat to health or safety of any person in the University community, manifests severe and continuing harassment or discrimination, or otherwise substantially impairs the Bargaining Unit Faculty Member's fulfillment of the institutional responsibilities; (e) malicious conduct that directly obstructs the performance of instructional or scholarly programs authorized or permitted by the university; or (f) conviction of a crime involving an offense of violence as defined in division (A)(9)(a) of Section 2901.01 of the Ohio Revised Code as of January 1, 2008 or a substantially equivalent offense under a municipal ordinance. The effective date of a termination or a suspension without pay for just cause shall be effective on a date selected pursuant to Section 15.5.13.

15.5.2 Charges may be initiated against a Member of the Bargaining Unit by an administrator who is a tenured faculty member. Such charges shall be made in writing with reasonable particularity of the grounds for termination or suspension without pay based on one or more of the categories in Section 15.5.1 and shall be presented to the President of the University.

15.5.3 The University President shall, as soon as possible, inform the accused Bargaining Unit Faculty Member and the AAUP-WSU in writing of the charges, specifying which one or combination of the categories in Section 15.5.1 comprise the basis of the charges.

15.5.4 Informal hearing: Before a formal hearing is conducted the University President or designee shall call a meeting with the charging party, the accused Bargaining Unit Faculty Member, and a representative of the AAUP-WSU. The purpose of this meeting shall be to reveal and clarify all related facts in the case and to attempt resolution of the matter through informal discussion. Additional meetings may occur provided the University President or designee and the Bargaining Unit Faculty Member being charged believe that further meetings will serve a useful purpose.

15.5.5 Formal hearing: If after the informal hearing, the University President or designee determines that charges are warranted, he or she shall call for the creation of a Hearing Board of six members.

15.5.6 The Hearing Board shall be created in the following manner: the AAUP-WSU and the University shall form a Hearing Board consisting of three persons, each of whom shall either be a Bargaining Unit Faculty Member with a continuing appointment or a tenured member of the TET Bargaining Unit, selected by the AAUP-WSU and three department chairs, assistant or associate deans who are

Rudy Fichtenbaum 9/19/13 5:07 PM

Comment [11]: Just cause language exactly the same as the language for tenured faculty. See the due process below. Again right out of the contract for tenured faculty.

tenured faculty selected by the University. In addition, the AAUP-WSU and the University will each appoint two alternate members to the Board who must satisfy the conditions above. The AAUP-WSU and the University shall select the members of this Board on the basis of their objectivity and competence and of the regard in which they are held in the academic community.

15.5.7 The President or designee shall notify in writing the accused Bargaining Unit Faculty Member and the administrator initiating charges of the intended hearing and of the composition of the Hearing Board, including alternate members. Within ten calendar days after receiving notice of the intended hearing, the accused Member is entitled to remove at most two members of the Hearing Board selected by AAUP-WSU and at most two selected by the University. After the Member has been given the opportunity to exercise his or her right to remove members or alternate members of the Hearing Board as specified above, the Hearing Board will be convened by the President of AAUP-WSU (or designee) and the Provost (or designee). At this time the Committee will elect a Chair or Co-Chairs and determine the rules governing the hearing. The Hearing Board shall communicate in writing the scheduled date, place, and time of the hearing and provide to all parties concerned an explanation of the rules under which the hearing shall be conducted.

15.5.8 The University will provide access to all available evidence and give the names of all potential witnesses to the accused Member, the Member's counsel (who, here and elsewhere in the article, shall be at the Member's expense), and AAUP-WSU in a timely manner.

15.5.9 Both the accused Bargaining Unit Faculty Member and the administrator initiating charges may be represented by counsel, confront and cross-examine witnesses, present and summon witnesses, and be present to hear all evidence and arguments given at all meetings of the Hearing Board. Both the AAUP-WSU and the University are entitled to have representatives present at any hearing. The accused Bargaining Unit Faculty Member may choose not to testify or answer questions at this hearing. However, such failure may be taken into consideration by the Hearing Board. Members of the Hearing Board may question all witnesses appearing before the Board. The charging party has the burden of proving to the Hearing Board that, on the basis of clear and convincing evidence, the charges are true. The hearing shall be conducted in private with only the AAUP-WSU and the University representatives, the Member's counsel (if the Member chooses to be represented by counsel) and those summoned as witnesses or directly involved in the dispute present. Subject to the approval of the accused, the charging party, and the Hearing Board, observers can be present at the hearing.

15.5.10 When all witnesses summoned and able to appear have presented testimony and when cross-examination has been conducted, the Board shall retire to make its recommendation. If it finds against the accused, the Hearing Board may recommend such penalty as it deems fair and appropriate, including termination, or suspension without pay, or lesser penalties. All decisions of the Hearing Board shall

be made by a majority vote of all its members, and its recommendation immediately shall be communicated in writing to the University President, the accused Bargaining Unit Faculty Member, the AAUP-WSU, and the charging party. A verbatim, written record of the hearing, including all findings and recommendations, shall be sent to the University President, the accused, the AAUP-WSU and the charging party as soon as possible following the conclusion of the hearing. (This verbatim record may be taken by a stenographer or transcribed from electronic recording equipment.)

15.5.11 Within twenty (20) working days after receiving the recommendation of the Hearing Board, the President will (a) recommend to the Board of Trustees that the accused be either suspended without pay for an identified period of time or terminated, (b) dismiss the charges, or (c) impose a specified lesser penalty. Both the accused Member and AAUP-WSU will be promptly notified.

15.5.12 Before the Board of Trustees approves either suspension without pay or termination, the accused shall have the right to appear before the Board with counsel and a representative of the AAUP-WSU.

15.5.13 Should the final decision be for termination or for suspension without pay, it shall not become effective until the end of the academic or fiscal year, except where otherwise ordered by the University Board of Trustees, which can require severance of the Bargaining Unit Faculty Member's relationship with students and the University prior to the end of the academic or fiscal appointment when it finds the conduct or situation to be of extreme gravity. A penalty of suspension without pay shall not exceed one year, and during this year a suspended Bargaining Unit Faculty Member may purchase benefits from the University at his or her own expense.

15.5.14 At the sole discretion of the AAUP-WSU, the final decision may be taken directly to binding arbitration. The timelines, procedures and the costs of arbitration will be governed by the provisions concerning arbitration in Section 16.6.

Article 17

Retrenchment

17.1 Retrenchment is defined in this Agreement as the termination of Bargaining Unit Faculty Member(s) with continuing appointments as a result of any of the following three circumstances: (1) financial exigency; (2) significant reduction in enrollment of a college, department, or program continuing over four or more academic semesters (not counting summer) and which is expected to persist; or (3) discontinuation of a college, department or program. Financial exigency means that severe financial problems exist which threaten the University's ability to maintain its operations at an acceptable level of quality

17.2 Should the University President anticipate the need for retrenchment that includes termination of Bargaining Unit Faculty, the data and information upon which this decision is based shall be provided to the AAUP-WSU.

17.3 The AAUP-WSU shall be provided access and the opportunity to inspect and/or copy any information relevant to the anticipated retrenchment within ten (10) calendar days after the delivery of a written request to the Provost. However, the AAUP-WSU is not entitled to any information that is confidential under any applicable law. In addition, the AAUP-WSU is entitled to view information in its existing form only.

17.4 Within sixty (60) calendar days after receipt of the data and information in Section 17.3 a joint Committee on Retrenchment, with three members appointed by the University and three members appointed by the AAUP-WSU, shall submit its advisory recommendations to the University President. Such recommendations may include ways to relieve the exigency by raising additional funds, by reallocating funds, or by cutting or eliminating specified activities.

17.4.1 In making its recommendations, the Committee on Retrenchment shall give consideration to long-term enrollment projections, the mission of the University as a whole, the continued accreditation of academic units, the effect on joint programs with other institutions, and the impact on the students registered in the programs.

17.4.2 In the case of an anticipated reduction in size or discontinuation of a College, Department, or Program, the Committee on Retrenchment's recommendations shall include consideration of-

- its historical role and contributions in the University's educational, scholarly and service mission, and those long-range circumstances which may have changed to alter that role and those contributions;
- the dependence of other programs in the University on the College, Department, or Program;

- duplication elsewhere in the University of courses, research or services offered through the department, college or program, and possible organizational arrangements which might serve as alternatives to discontinuation;
- arrangements which can be made to allow students enrolled to satisfy degree or certificate requirements;
- stature of its faculty and alumni, and the possible consequences to the academic stature of the University through discontinuation;
- the profile of ages, periods of service and tenure status of its Bargaining Unit Faculty Members and an estimate of their possible usefulness elsewhere within the University; and
- possible arrangements for planned phasing out of the College, Department, or Program as an alternative to abrupt discontinuation.

17.5 The President shall forward the recommendations of the Committee on Retrenchment along with his or her recommendations to the Board of Trustees.

17.6 Procedures for Retrenchment.

17.6.1 The University shall, in good faith, consider whether the need for retrenchment can be alleviated through normal attrition or other alternatives to retrenchment. If doing so will prevent or minimize the need for retrenchment of Bargaining Unit Faculty Members, the University will cease using adjunct faculty and temporarily increase teaching loads of Members within a department, within a college, or university-wide. In making its decisions about retrenchment, the University shall, in good faith, give consideration to the factors listed in Sections 17.4.1 and 17.4.2.

17.6.2 Consistent with the operating needs of the level of organization the University has deemed appropriate for retrenchment, the University shall retrench faculty by rank in inverse order of seniority within the unit(s) identified for retrenchment.

17.6.3 Visiting faculty will be retrenched before Instructors, who will be retrenched before Lecturers, who will be retrenched before Senior Lecturers within a particular Program, Department or College. In like fashion, Clinical Instructors will be retrenched before Clinical Assistant Professors

17.6.4 Within each academic rank, seniority shall be calculated from the earliest date of continuous University employment.

17.6.4.1 Leaves with pay shall count as years of service for seniority.

17.6.4.2 While unpaid leaves shall not count as years of service for seniority, neither do they constitute a break in continuous University employment.

Rudy Fichtenbaum 9/19/13 5:11 PM

Comment [12]: Seniority for retrenchment

17.6.4.3 Periods of continuous employment wherein an individual is outside the Bargaining Unit shall count as years of service for seniority.

17.6.5 Before retrenching a Bargaining Unit Faculty Member(s) the University will remove teaching responsibility from all unclassified staff members who teach in that Member's Department, unless it can be shown that the staff member is academically essential to the continuation of the academic mission of that Department or that the staff member's continued teaching does not diminish teaching opportunities for Bargaining Unit Faculty Members.

17.6.6 To meet operating needs of the unit(s) being reduced, the University will retain specific Bargaining Unit Faculty Members who are best qualified to meet programmatic, curricular, or other needs.

17.6.7 The termination of a Bargaining Unit Faculty Member may not be necessary if his or her salary is paid by restricted funds.

17.6.8 Bargaining Unit Faculty Members whose positions are terminated shall be offered available faculty positions for which they are fully qualified or for which they can become fully qualified within the period of their notification of termination as specified in Section 17.6.9. Where feasible, the University will consider relocating Bargaining Unit Faculty Members in a non-faculty position, as an alternative to termination.

17.6.9 A Bargaining Unit Faculty Member whose appointment is terminated shall receive salary and benefits (or notice) in accordance with the following schedule:

Service as a Full-Time Faculty Member

less than nine months

at least nine months but less than eighteen months

at least eighteen months but less than six years

at least six years but less than ten years

at least ten years

Salary and Benefits (or Notice)

end of the fixed appointment or three months, whichever is less

end of the fixed appointment or six months, whichever is less

end of the fixed appointment or twelve months, whichever is less

Current academic year plus twelve months

Current academic year plus twelve months (eighteen months minimum)

17.7 The University shall not fill a position in a discipline in which a Bargaining Unit Faculty Member with a continuing appointment, who has been retrenched, is professionally qualified for a period of two (2) years from the date of termination of service, unless the position is first offered to that Member and he or she is given at least thirty (30) days to decide whether to accept or decline the position. The Bargaining Unit Faculty Member shall be able to complete the term of his or her

Rudy Fichtenbaum 9/19/13 5:12 PM

Comment [13]: Generous severance or relatively long notification for long-time employees. Same notifications for tenured faculty.

current employment (up to one year) before beginning the recalled position at Wright State University.