

Chapter UWS 5

LAYOFF AND TERMINATION FOR REASONS OF FINANCIAL EMERGENCY

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UWS 5.01 General. Notwithstanding s. 36.13 Stats., the board may lay off or terminate a tenured faculty member, or lay off or terminate a probationary faculty member prior to the end of his or her appointment, in the event of a financial emergency. Such layoffs or terminations may be made only in accord with the provisions of this chapter, and imply the retention of rights indicated herein. A nonrenewal, regardless of reasons, is not a layoff or termination under this section.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.02 Financial emergency. (1) For the purposes of this chapter, "financial emergency" is a state which may be declared by the board to exist for an institution if and only if the board finds that the following conditions exist:

(a) The total general program operations (GPR/fee) budget of the institution, excluding adjustments for salary/wage increases and for inflationary impact on nonsalary budgets, has been reduced;

(b) Institutional operation within this reduced budget requires a reduction in the number of faculty positions such that tenured faculty must be laid off, or probationary faculty must be laid off prior to the end of their respective appointments. Such a reduction in faculty positions shall be deemed required only if in the board's judgment it will have an effect substantially less detrimental to the institution's ability to fulfill its mission than would other forms of budgetary curtailment available to the institution; and

(c) The procedures described in ss. UWS 5.05 and 5.06 have been followed.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.03 Layoff and termination. For the purposes of this chapter "lay-off" is the indefinite suspension or an involuntary reduction in services and compensation of a faculty member's employment by the university of Wisconsin system. A laid off faculty member retains the rights specified in ss. UWS 5.16 through 5.21, inclusive. For the purposes of this chapter, "termination" is the permanent elimination of a faculty mem-

ber's employment by the university of Wisconsin system. A terminated faculty member retains rights specified in ss. UWS 5.18 and 5.19.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.04 Faculty consultative committee. The faculty of each institution shall, promptly after February 1, 1975, designate or create a standing faculty committee to consult with the chancellor if at any time a declaration of financial emergency is to be considered. The committee shall consist of faculty members of the institution chosen by the faculty in a manner to be determined by the faculty. It is the right and responsibility of this committee to represent the faculty before the board if a declaration of a state of financial emergency for the institution is being considered, and to assure that the procedures of ss. UWS 5.05 and 5.06 are followed.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.05 Consultation. (1) In the event that a declaration of financial emergency is contemplated, the chancellor of the affected institution shall consult with and seek advice from the faculty committee provided for in s. UWS 5.04 at least 3 months before the matter is taken to the board. The chancellor and committee shall:

(a) Consider identifiable alternative methods of budget reduction;

(b) Determine whether reductions in faculty positions under the provisions of this chapter can be made with less detriment to the institution's ability to fulfill its mission than would follow from reasonable alternative courses of action;

(c) Determine from which colleges, schools, departments, or programs faculty positions should be eliminated;

(d) Consult with faculties of colleges, schools, departments and programs potentially involved; and

(e) Consult with such other individuals and groups as they feel may be able to provide valuable advice.

(1m) The committee shall prepare a report, with supporting documents, for submission to the chancellor, the faculty senate, or institutional equivalent, and the board.

(2) It shall be the primary responsibility of the faculty of the institution to establish criteria to be used by the chancellor and committee for academic program evaluations and priorities. A decision to curtail or discontinue an academic program for reasons of financial emergency shall be made in accordance with the best interests of students and the overall ability of the institution to fulfill its mission.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.06 Recommendation to the system president and the board. (1) If the chancellor decides to recommend that the board declare a state of financial emergency for the chancellor's institution, the recommendation to the system president and the board shall be accompanied by a report which shall include the following:

(a) A statement of the procedures followed in arriving at the recommendation, showing compliance with s. UWS 5.05;

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(b) Data clearly demonstrating the need for a reduction of faculty positions in accord with the provisions of this chapter;

(c) An identification of the colleges, schools, departments or program areas in which reductions will be made, with data indicating the appropriateness of such choices;

(d) The report of the faculty committee, expressing its views on these matters; and

(e) A report of any action of the faculty senate or institutional equivalent on this matter.

(2) The chancellor and the chairman of the faculty committee, or their designees, and representatives of affected colleges, schools, departments and programs, may appear before the board at the time the recommendation is considered. Other interested parties may submit in writing alternative recommendations or challenges to any part of the report.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.07 Individual designations. Once the board has declared a state of financial emergency it shall be the primary responsibility of the tenured members of the affected department(s) to recommend which individuals are to be laid off. These recommendations shall follow seniority, as provided in s. UWS 5.08, unless a clear and convincing case is made that program needs dictate other considerations, e.g., the need to maintain diversity of specializations within a department. The department may seek the advice of other groups or individuals in formulating its recommendations. The departmental recommendation shall be forwarded to the chancellor, and the chancellor shall prepare recommendations for the system president and the board, as provided in s. UWS 5.14.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.08 Seniority. The faculty of each institution shall promptly after February 1, 1975, determine the form of seniority that is to be considered. Such a determination shall be effective uniformly throughout the institution. Seniority may be, but is not limited to, the following definitions:

(1) Without regard to rank, with seniority established by total years of service in the institution;

(2) By rank, and within rank according to total years of service in the institution; or

(3) By rank, and within rank, according to length of service in the institution at that rank.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.09 Notification. Each faculty member whose position is recommended for elimination shall receive prompt written notification from the chancellor. This statement of notification shall include:

(1) A summary of the reasons and evidence supporting the declaration of a state of financial emergency and of the reasons and data leading to the choice of the colleges, schools, departments or programs in which reductions are to be made;

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(2) A statement of the basis on which the individual position was selected for elimination (if on the basis of seniority, the criterion used and data supporting the choice; if on another basis, the data and reasons supporting that choice);

(3) A statement of the date on which the layoff is to be effective (this must be consistent with the provisions of s. UWS 5.10); and

(4) A copy of these rules and such other information or procedural regulations as the chancellor or faculty hearing committee shall deem appropriate.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.10 Notification period. (1) For an academic year appointment the effective date of layoff must coincide with the end of an academic year. For an annual appointment it shall be June 30. In either case notification must be given at least 12 months in advance of the effective date. The notification referred to here is that specified in s. UWS 5.09 informing the faculty member that his or her position has been recommended for elimination.

(2) During this period, and prior to entering layoff status (see s. UWS 5.16), the chancellor may offer as appropriate, and the faculty member may accept:

(a) Terminal leave and early retirement

(b) Relocation leave accompanied by resignation

(3) Acceptance of either of these options will terminate the faculty members association with the university of Wisconsin system at the end of the leave period.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.11 Faculty hearing committee. The faculty of each institution shall, promptly after February 1, 1975, establish a committee or designate an existing committee to serve as a hearing committee for the purposes of this chapter. The committee shall consist of faculty members of the institution chosen by the faculty in a manner to be determined by the faculty. This standing faculty committee shall operate as the hearing agent for the board pursuant to s. 227.12, Stats., and conduct the hearing, make a verbatim record of the hearing, prepare a summary of the evidence and transmit such record and summary along with its recommended findings of law and decision to the board according to s. UWS 5.14

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.12 Review hearing. (1) A faculty member whose position is recommended for elimination is entitled to a hearing before the faculty hearing committee as to the appropriateness of the decision to lay off that particular individual. The existence of a state of financial emergency and the designation of the colleges, schools, departments or programs in which faculty positions are to be eliminated are not subject to review in the hearing.

(2) A hearing must be requested within 20 days of the receipt by the faculty member of notification of recommended layoff. The request shall state with particularity the grounds to be relied upon in establishing the

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impropriety of the decision. Relevant information supplementary to that contained in the notification statement may be requested. The question to be considered in the review is whether one or more of the following improper factors entered into the decision to lay off:

(a) Conduct, expressions, or beliefs on the faculty member's part which are constitutionally protected, or protected by the principles of academic freedom; or

(b) Factors proscribed by applicable state or federal law regarding fair employment practices; or

(c) Improper selection of the individual to be laid off. For the purposes of this section, "improper selection" occurs if material prejudice resulted from any of the following:

1. The procedures required by rules of the faculty or board were not followed; or

2. Available data bearing materially on the role of the faculty member in the institution were not considered; or

3. Unfounded or arbitrary assumptions of fact were made; or

4. Immaterial or improper factors other than those specified above entered into the decision.

(3) The faculty member shall present evidence on whether one or more of the improper factors specified above entered into the decision to lay off. The committee shall then consider whether the evidence presented establishes a prima facie case that such factor or factors did enter significantly into the layoff decision. If the committee finds that a prima facie case has not been established, the layoff decision shall be found to have been proper and the hearing shall be ended. The committee shall report this finding to the chancellor and faculty member.

(4) If the committee finds that a prima facie case has been established, the chancellor or designee shall be entitled to present evidence to support the layoff decision, and, thereafter, the faculty member may present evidence in rebuttal. On the basis of all the evidence presented, the committee shall make its determination as follows:

(a) The committee shall first consider whether one or more of the above specified improper factors entered significantly into the decision to lay off. Unless the committee is convinced that such factors did significantly enter into that decision, the committee shall find the decision to have been proper.

(b) If the committee believes that improper factors may have entered into the decision, but is convinced that the same decision would have been reached had the error(s) not occurred, it shall find the decision to have been proper.

(c) If the committee is convinced that improper factors entered significantly into and affected the decision, it shall be found to be improper.

(5) The committee shall report its findings and recommendations to the chancellor and the faculty member.

UWS 5.13 Hearing procedure. (1) If the faculty hearing committee requests, the chancellor shall provide legal counsel to the committee. The hearing shall be closed unless the faculty member whose position has been recommended for elimination requests an open hearing, in which case it shall be open (see s. 66.77, Stats., Open Meeting Law).

(2) The faculty hearing committee may, on motion of either party, disqualify any one of its members for cause by a majority vote. If one or more of the faculty hearing committee members disqualify themselves or are disqualified, the remaining members may select a number of other members of the faculty equal to the number who have been disqualified to serve, except that alternative methods of replacement may be specified in the rules and procedures adopted by the faculty establishing the standing committee under s. UWS 5.11. No faculty member who participated in the decision to lay off or who is a material witness may sit in on the hearing committee.

(3) The faculty member shall be given at least 10 days notice of the hearing; such hearing shall be held not later than 20 days after the request except that this time limit may be extended by mutual consent of the parties or by order of the hearing committee.

(4) The faculty member shall have access to the evidence on which the administration intends to rely to support the decision to lay off, and shall be guaranteed the following minimal procedural safeguards at the hearing:

- (a) A right to be heard in his or her own behalf;
 - (b) A right to counsel and/or other representatives, and to offer witnesses;
 - (c) A right to confront and cross-examine adverse witnesses;
 - (d) A verbatim record of the hearing, which might be a sound recording, provided at no cost;
 - (e) Written findings of fact and decision based on the hearing record; and
 - (f) Admissibility of evidence governed by s. 227.10, Stats.
- (5) Adjournments shall be granted to enable either party to investigate evidence as to which a valid claim of surprise is made.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.14 Recommendations and review by the board. The recommendations of the chancellor and the recommendations, if any, of the faculty hearing committee, shall be transmitted to the president of the university of Wisconsin system and to the board and acted upon as follows:

(1) If the faculty member has not requested a hearing before the faculty hearing committee, the recommendation shall be deemed proper and shall be reported for information to the system president and the board.

(2) If the faculty member has requested a hearing and the faculty hearing committee has found the decision to be proper, the report of the faculty hearing committee shall be forwarded to the system president and board by the chancellor with a recommendation. The faculty member

may request a review by the board, and the board review panel may at its option grant a review. Unless the board review panel grants the request for review, the recommended findings of fact and decision of the standing faculty committee shall be the final decision of the board of regents.

(3) If after a hearing, the faculty hearing committee's recommended findings of fact and decision are that the initial decision was improper, the chancellor shall review the matter and give careful consideration to the committee's finding. If the chancellor accepts the committee's findings the chancellor's decision shall be final. If the chancellor contests the recommended findings that the decision was improper, the verbatim record, a summary of the evidence and the recommended findings of law and decision shall be forwarded to the board review panel (see s. UWS 5.15). The chancellor and the faculty member shall be furnished with copies of this material and shall have a reasonable opportunity to file written exceptions to such summary and proposed findings and decision and to argue with respect to them orally and in writing before the board review panel. The board review panel shall hear and decide the case in accordance with s. 227.12, Stats. The decision of the board review panel shall be final.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.15 Board review. A review panel shall be appointed by the president of the board of regents, and shall include 3 members of the board, and 2 nonvoting staff members from the academic affairs office of the university system. The panel shall review the criteria and reasoning of the chancellor and the findings and recommendations of the faculty hearing committee in each case forwarded for its review, and shall reach a decision on the recommendation to be approved. The decision shall be final and binding upon the chancellor and the faculty member affected unless one or more of the regent members of the review panel request that the decision be reviewed by the full board of regents, in which case the record shall be reviewed and a decision reached by the full board.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.16 Layoff status. (1) A faculty member whose position has been eliminated or reduced in accordance with the provisions of this chapter shall, at the end of the appropriate notice period, be placed on layoff status, unless the layoff notice has been rescinded prior to that time.

(2) The faculty member whose notice period has expired, and who is placed on layoff status shall remain on layoff status until:

(a) For probationary faculty, the probationary appointment would have expired under its own terms;

(b) For tenured faculty, one of the following occurs:

1. Reappointment to the position from which laid off. Failure to accept such reappointment would terminate the faculty member's association with the university of Wisconsin system.

2. Acceptance of an alternative continuing position in the university of Wisconsin system. Failure to accept an alternate appointment would not terminate the faculty member's association with the university of Wisconsin system.

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3. Resignation.

4. Failure by the affected faculty member to notify the chancellor not later than December 1, of each year while on layoff status as to his/her location, employment status, and desire to remain on layoff status. Failure to provide such notice of desire to remain on layoff status shall terminate the faculty member's association with the university of Wisconsin system.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.17 Alternative employment. Each institution shall devote its best efforts to securing alternative appointments within the institution in positions for which faculty laid off under this chapter are qualified under existing criteria. In addition, the university of Wisconsin system shall provide financial assistance for one year for faculty who are designated for layoff to readapt within the department or within another department of the institution, where such readaptation is feasible. Further, the university of Wisconsin system shall devote its best efforts to insure that faculty members laid off or terminated in any institution shall be made aware of openings within the system.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.18 Reappointment rights. Each institution shall establish administrative procedures and policies to insure that where layoff or terminations occur for reasons of financial emergency, no person may be employed at that institution within 3 years to perform reasonably comparable duties to those of the faculty member laid off or terminated without first offering the laid off or terminated faculty member reappointment without loss of tenure, seniority and other rights. The 3 year period shall be computed from the effective date of layoff as specified in the original notice.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.19 Retention of rank and salary. Any faculty member reappointed within 3 years after layoff or termination shall be reappointed with a rank and salary at least equivalent to the rank and salary when laid off or terminated, together with such other rights and privileges which may have accrued at that time; any faculty member relocated within an institution or within the university of Wisconsin system shall not have either rank or salary adversely affected except by consent at the time of relocation.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.20 Rights of faculty members on layoff. A faculty member on layoff status in accord with the provisions of this chapter has the reemployment rights guaranteed by ss. UWS 5.18 and 5.19, and has the following minimal rights:

(1) Such participation in fringe benefit programs as is allowed by state regulations governing rights of laid off state employes;

(2) Such continued use of campus facilities as is allowed by policies and procedures established by the department and institution; and

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(3) Such participation in departmental and institutional activities as is allowed by guidelines established by the department and institution.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.21 Systemwide tenure. The commitment to systemwide tenure within the former chapter 37 institutions shall be honored by those institutions for those eligible under s. 36.13 (4), Stats., 1973 in the event of layoff or termination under the provisions of this chapter.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.

UWS 5.22 Lack of faculty action. If the faculty of an institution is given due notice of its rights and responsibilities under this chapter, and does not act, the chancellor may act as follows in lieu of the faculty action:

(1) If a faculty committee provided for in s. UWS 5.04 is not established, the chancellor may consult those members or representatives of the faculty he considers appropriate to satisfy the intent of s. UWS 5.05. All departments potentially involved shall be consulted and representatives of the faculty may dispute the chancellor's recommendation for a state of financial emergency before the board.

(2) If the faculty does not act to determine the form of seniority to be followed, the chancellor may designate the form. Such designation shall be effective campuswide and shall be made prior to the declaration by the board of a state of financial emergency.

(3) If an affected department or program does not recommend individuals for layoff or termination following declaration of a state of financial emergency, the chancellor shall determine the individuals to be affected, using such advice as is deemed of value.

(4) If a faculty hearing committee provided for in s. UWS 5.11 is not established by the faculty, the chancellor may appoint a committee of faculty members to provide this function.

History: Cr. Register, January, 1975, No. 229, eff. 2-1-75.