

# FOLLOW-UP: APRIL 2, 2013 NEGOTIATING SESSION

## TENTATIVE AGREEMENTS

### ***8.7 STEPS FOR PROCESSING A GRIEVANCE***

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**Step 3B: Special Optional Procedures for the Investigation and Resolution of Grievances Concerning Termination for Cause or Pursuant to Reductions in Force.**

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d. All testimony will be under oath and transcribed by a court reporter. ~~COHE and the institution will share the cost of preparing three transcripts of the hearing, an official copy for the record to be held by the institution, a copy for COHE and a copy for the grievant. The institution will retain a reporter and prepare one transcript of the hearing, an official copy for the record to be held by the institution; the parties will share equally in the cost of providing a second copy for the grievant.~~

### ***9.2 TERM CONTRACTS***

A term contract may be either part-time or full-time and will be of a definite term not to exceed one year or overlap two (2) fiscal years, unless the contract is for a spring-summer or a summer-fall appointment or is otherwise approved by the Board. A term contract will terminate automatically at the end of the term, unless the Board expressly renews the contract. Reasonable effort will be made to notify such faculty unit members, more than thirty (30) days prior to the end of their term, that they will have no further term appointment contract. Failure to so notify will not result in the extension of the appointment. As used in this agreement, "consecutive full-time contracts" include any combination of contracts for nine or more months, so long as no more than five months lapse between the end date of one contract and the start date of a subsequent contract.

The parties recognize that faculty unit members who have received several consecutive full-time contracts will come subjectively to expect continued employment on the same basis. Under this agreement, in the absence of an award of tenure, such unilateral expectations, however natural they may be, can never become constitutionally protected property interests. ~~The parties acknowledge, nevertheless, that, once a decision has been made not to reissue a subsequent term contract to such faculty unit members, professional courtesy requires that they be accorded an opportunity to assure themselves that the rationale and factual basis for the decision have been reviewed formally and have been found satisfactory.~~

~~To give effect to this professional courtesy, the parties agree that a faculty unit member on a term contract who has received eight or more consecutive full-time contracts may obtain a review of the decision not to reissue a subsequent contract. The faculty unit member may challenge the decision through the procedures that govern the termination of employment, including, at the option of the faculty unit member, a hearing before a faculty hearing panel. The review provided hereunder will not constitute a grievance proceeding or a contested case,~~

but the faculty unit member will be entitled to receive written responses when such would be required under grievance procedures, including findings and conclusions supporting the determination reached upon completion of the review. The institution will not bear a burden of proof, except when required by law in a proper case to show that its decision gave effect to the faculty unit member's entitlements under the first amendment to the United States Constitution and under state and federal antidiscrimination statutes. The determination reached at step 3 will be final and not subject to appeal to the department of labor.

The right to review created hereunder will not be interpreted to extend any limitation inherent in, or incidental to, a term contract as defined in this section. In particular, the right of review will not give rise to an expectation of continued employment beyond the expiration of the term contract; nor may the creation of the right of review be deemed to cloak a term contract with any of the characteristics or privileges of tenure track or tenure contracts.

## ***10.4 WORKLOAD—LIBRARIANS***

Faculty unit members assigned to positions in the various institutional libraries will normally not be required to work on more than five (5) calendar days per work week unless the assignment is mutually agreed to by the administration and the faculty unit member. A faculty unit member will not be required to work more than seven (7) consecutive days, unless mutually agreed to by the administration and the faculty unit member. Where faculty unit members holding librarian ranks serve on split appointments and also hold lecturer or professorial rank, workload expectations for the librarian positions will be adjusted to accommodate teaching or research responsibilities. Nothing in this section precludes library administrators from adjusting workload expectations to accommodate assignments to teach such credit-bearing courses as the library may offer from time to time or to permit librarians who have been awarded externally funded research grants and wish to use portions of the grant proceeds to obtain release time from their primary assignments. Irrespective of formal research assignments or accommodations, librarians enjoy the same prerogatives as other unit members to use of library-university resources, including incidental use of assigned office equipment, for research purposes; provided only that such use not conflict with the performance of other assigned duties.

## ***12.2 PERFORMANCE EVALUATION GUIDELINES***

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3. All faculty unit members holding full-time nine, ten, eleven or twelve month appointments will be evaluated annually. The annual evaluation of faculty unit members

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holding tenure track or tenure appointments will cover relevant activities during the calendar year ending with the close of the fall semester. The annual evaluation of faculty unit members holding term appointments, whether at professorial or lecturer rank, will cover relevant activities during the term of the appointment. The evaluation will be conducted by each faculty unit member's department head and will include student opinion surveys as described in § 12.4 if the faculty unit member's duties include teaching. If it is not practical to address fall semester student opinion surveys for the current evaluation, they will be addressed in the subsequent evaluation.

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B. Faculty unit members serving on tenure contracts will be responsible for proposing six-year plans for their own professional development in the areas of teaching, scholarship and service. Individualized professional development plans must address institutional standards for faculty performance, they must assure maintenance of productivity consistent with expectations for tenured faculty, and, for persons below the rank of professor, they must be designed to permit individuals to progress towards the levels of high performance that would justify the award of tenure under institutional performance standards then in effect in all areas of professional activity and extramural recognition for ongoing scholarly accomplishment and leadership that would be expected of persons holding the rank of professor. If such plans necessitate equipment or resources not otherwise available at the university, the plans must indicate how the faculty unit member intends to secure funding for such resources.

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### ***13A.1 MINIMUM RANK QUALIFICATIONS FOR EMPLOYMENT AT PROFESSORIAL RANK AND PROMOTION***

#### **ASSOCIATE PROFESSOR: (Tenurable)**

1. **Either,**

**(a)** Earned doctorate and six (6) years of successful tenure track or postdoctoral college teaching or research experience in appropriate fields (or appropriate equivalent experience); or

**(b)** A postgraduate degree, other than a doctorate, recognized by the institutional administration as terminal for the faculty unit members' discipline, and six (6) years of successful tenure track or post-degree college teaching or research experience in appropriate fields (or appropriate equivalent experience); **and**

2. Evidence of external recognition for scholarly accomplishment consistent with

institutional standards implementing Board Policy No. 4:38 for professorial ranks; and

3. ~~The award of~~ Tenure at the institution or, for persons appointed to the rank of associate professor at the time of hire, tenure at a prior institution.

PROFESSOR: (Tenurable)

1. Either,
  - (a) Earned doctorate and ten (10) years of successful tenure track or postdoctoral college teaching or research experience in appropriate fields (or appropriate equivalent experience); or
  - (b) A postgraduate degree, other than a doctorate, recognized by the institutional administration as terminal for the faculty unit members' discipline, and ten (10) years of successful tenure track or post-degree college teaching or research experience in appropriate fields (or appropriate equivalent experience); ~~and~~
2. Evidence of external recognition for ongoing scholarly accomplishment and leadership consistent with institutional standards implementing Board Policy No. 4:38 for professorial ranks; ~~and~~
3. Tenure at the institution or, for persons appointed to the rank of professor at the time of hire, tenure at a prior institution.

### ***13A.4 PROMOTION AND TENURE COMMITTEE FORMULATION***

The institutional promotion and tenure committee will consist of elected members of the faculty unit and members ~~of~~ appointed by the administration. The composition of the committee will be: fifty percent (50%) tenured faculty unit members; fifty percent (50%) administrative appointees, who may ~~or may not be~~ administrators or tenured faculty. Each president will determine the total number of members for the institutional promotion and tenure committee at each institution and will notify the institutional COHE president no later than the date when faculty report for the start of the fall term of the number of members on the committee.

The faculty unit representatives on the institutional promotion and tenure committee will be elected by the faculty unit as soon as practicable after the commencement of school activities in the fall. Membership terms will be for three (3) years.

Vacancies will be filled according to procedures established for the original appointment. Election procedures will be determined by COHE and the election will be conducted under its auspices. Only tenured faculty unit members will be eligible for election to the institutional promotion and tenure committee. Election procedures must provide all faculty unit members whose names appeared on the list generated on February 15 pursuant to § 2.2 and who are still employed at the institution at the time of the election, with equal opportunities to nominate candidates for committee membership and to elect committee members, and they must provide all tenured faculty unit members whose names appeared on the list generated on February 15 pursuant to § 2.2 and who are still employed at the institution at the time of the election with equal opportunities to be nominated for committee membership. Alternates should be selected in the same manner.

The parties recognize that the integrity of the promotion and tenure review process requires not only that it be fair, but also that it be regarded as fair. Therefore, individual committee members ~~are encouraged to~~ will recuse themselves whenever ~~they feel that~~ their ability to make a disinterested judgment might reasonably be called into question ~~by a candidate or by other members of the university community.~~

Faculty unit members, who themselves are to be considered for promotion or tenure, are not eligible for membership on the promotion and tenure committee during the academic year in which their promotion or tenure is being considered. If such a faculty unit member is denied promotion or tenure, the individual's term on the committee will be deemed to have expired. Faculty unit members who have been denied promotion may serve on the promotion and tenure committee if elected in an election held no sooner than one academic year following the year in which the denial occurred.

Administrative appointees will be appointed by the president.

~~At USD and SDSU there will be, in addition to the institutional promotion and tenure committees, college or school promotion and tenure committees. At all institutions, Colleges, school,~~ departments or other appropriate administrative units that have sufficient numbers of tenured faculty to form a committee may petition the president for the creation of a promotion and tenure committee for the respective college, school, department or unit. If approved, the president will determine the membership consistent with the ratio and constituency heretofore established for the institutional promotion and tenure committee. Tenured faculty unit members will be elected to college or school, department or other appropriate administrative unit promotion and tenure committees using the same procedures used to elect tenured faculty unit members to the institutional promotion and tenure committee. Faculty unit members within the appropriate unit will participate in the election procedures.

The promotion and tenure committees will make their recommendations to the administrator of the applicable department or appropriate unit. Administrators will consider the recommendations of their departmental or unit promotion and tenure committee in formulating their recommendations to the next level of the process.

### ***13B.5 NONRENEWAL OF SENIOR LECTURERS***

Faculty unit members promoted to the rank of senior lecturer will be subject to nonrenewal under this section. Faculty unit members assigned the rank of senior lecturer at hire will become subject to the provisions of this section after completion of eight consecutive full-time contracts.

For purposes of transition, faculty unit members assigned the rank of senior lecturer with the contract for the academic year 2012-2013 will become subject to nonrenewal under provisions of this section effective with the first academic year following completion of eight consecutive full-time contracts at the institution, including service prior to academic year 2012-2013.

Nonrenewal under this section ordinarily terminates employment at the end of an annual contract term. Nonrenewal is not a disciplinary action. It does not terminate rights under an existing annual contract. The decision not to renew a senior lecturer's appointment is discretionary with the administration, provided that it is not based upon reasons expressly forbidden by this agreement. Nonrenewal is subject only to those procedural limitations expressly set forth in this section.

1. Prior to the issuance of a final written notice of nonrenewal, the institutional administration will provide the opportunity for a meeting with the senior lecturer to apprise the senior lecturer of the proposed nonrenewal, together with reasons for the action. The senior lecturer will be given at least five (5) working days' written notice of such meeting so that both the senior lecturer and the administration may arrange to have present a witness or a representative.
2. No later than five working days after the personal meeting, the administration will provide the senior lecturer with final written notification whether the appointment will not be renewed, and, if the decision is made not to renew the appointment, the reasons for the decision.
3. Deadlines to bring any grievance arising from the decision, under this section, not to renew a senior lecturer's appointment will run from the time that the administration

provides notice, pursuant to § 22.9, of the final written notice of nonrenewal.

4. The administration will provide the faculty unit member with final written notice of nonrenewal before December 15 of the current year of employment for senior lecturers serving under fall-spring appointments, by April 15 for senior lecturers serving under spring-summer appointments, or before August 31 for senior lecturers serving under summer-fall appointments.
5. If the administration is late in providing the final written notice, the senior lecturer will be entitled to receive, at the election of the administration, either (1) an additional term contract for a period of time equal to twice the number of working days by which the notice is late; or (2) a payment equal to twice the number of working days by which the notice is late times the senior lecturer's monthly salary divided by twenty-two (22).

### ***13C.1 MINIMUM RANK QUALIFICATIONS FOR EMPLOYMENT AT LIBRARIAN RANK***

The rank qualifications which are set forth below are minimums for employment. All references to teaching experience in rank qualifications listed below are to full-time academic year appointments or to their equivalents. Where part-time experience is to be recognized, it will be recognized on a pro-rata basis.

#### **ASSISTANT LIBRARIAN:**

1. Master's degree in library or information science from a program accredited by the American Library Association; or
2. Other degrees or qualifications recognized under academic program or discipline accreditation standards.

#### **ASSOCIATE LIBRARIAN:**

1. Master, Specialist or Doctoral degrees in addition to the master degree in library or information science; and
2. Ten years of experience as a professional librarian or ~~five~~ three years in rank as an Assistant Librarian at the institution.

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1. Master, specialist or doctoral degrees in addition to the master degree in library or information science; and
2. Fifteen years of experience as a professional librarian or five years in rank as an associate librarian at the institution.

### ***13C.2 MINIMUM ELIGIBILITY CRITERIA FOR A CHANGE IN LIBRARIAN RANK***

In addition to the minimum rank qualifications for employment in § 13C.1, the minimum eligibility criteria for change in rank will be:

#### **ASSISTANT LIBRARIAN TO ASSOCIATE LIBRARIAN:**

**Five (5) Three (3)** years in rank at the institution; performance of assigned responsibilities that meet or exceed expectations for associate librarians.

#### **ASSOCIATE LIBRARIAN TO LIBRARIAN:**

Five (5) years in rank at the institution; performance of assigned responsibilities that meet or exceed expectations for librarians.

All references to years in rank herein are to full-time, twelve month appointments or to their equivalents. Faculty unit members become eligible to apply for change in rank during the year in which their length of service will meet the stated requirements.

The Board may, at its discretion and upon the recommendation of the administration of the institution, reduce the number of years of service required for eligibility for change in rank; provided that prior service credit may not be requested in conjunction with an application for change in rank.

### ***13C.4 NONRENEWAL OF LIBRARIANS***

**Faculty unit members promoted to the rank of librarian will be subject to nonrenewal under**



provisions of this section. Faculty unit members assigned the rank of librarian at hire will become subject to the provisions of this section after completion of eight consecutive full-time contracts.

For purposes of transition, faculty unit members assigned the rank of ~~senior lecturer~~ librarian with the contract for the academic year 2012-2013 will become subject to nonrenewal under provisions of this section effective with the first academic year following completion of eight consecutive full-time contracts at the institution, including service prior to academic year 2012-2013.

Nonrenewal under this section ordinarily terminates employment at the end of an annual contract term. Nonrenewal is not a disciplinary action. It does not terminate rights under an existing annual contract. The decision not to renew a librarian's appointment is discretionary with the administration, provided that it is not based upon reasons expressly forbidden by this agreement. Nonrenewal is subject only to those procedural limitations expressly set forth in this section.

1. Prior to the issuance of a final written notice of nonrenewal, the institutional administration will provide the opportunity for a meeting with the librarian to apprise the librarian of the proposed nonrenewal, together with reasons for the action. The librarian will be given at least five (5) working days' written notice of such meeting so that both the librarian and the administration may arrange to have present a witness or a representative.
2. No later than five working days after the personal meeting, the administration will provide the librarian with final written notification whether the appointment will not be renewed, and, if the decision is made not to renew the appointment, the reasons for the decision.
3. Deadlines to bring any grievance arising from the decision, under this section, not to renew a tenure track appointment will run from the time that the administration provides notice, pursuant to § 22.9, of the final written notice of nonrenewal.
4. The administration will provide the librarian with final written notice of nonrenewal before December 15 of the current year of employment for persons serving under fall-spring appointments, by April 15 for persons serving under spring-summer appointments, or before August 31 for persons serving under summer-fall appointments.
5. If the administration is late in providing the final written notice, the librarian will be entitled to receive, at the election of the administration, either (1) an additional term

contract for a period of time equal to twice the number of working days by which the notice is late; or (2) a payment equal to twice the number of working days by which the notice is late times the librarian's monthly salary divided by twenty-two (22).

## **16.1 GENERAL PROVISIONS**

If it becomes necessary to terminate the contractual rights of faculty unit members because of governmental action, significant loss of enrollment, consolidation of departments, or other reorganization, dropping of courses, programs, or activities, or financial exigency, the Board may, notwithstanding any other provision of this agreement, terminate the appointments of faculty unit members in accordance with the provisions of this agreement.

The president of the institution will notify any individual faculty unit member of termination and provide the local president of COHE or the UniServ director of COHE the reasons for the reduction and the faculty unit members to be affected under the proposal, in order for COHE to have the opportunity to respond. Such response will be within ten (10) working days of the president's notice. Upon request of COHE, the president will schedule a meeting to discuss the response **and furnish COHE with all analyses that led to unit member reductions**. An effort will be made to provide notice of intent to utilize the provisions of this article, as soon as practicable.

## **16.2 FACULTY UNIT MEMBER REDUCTION PROCEDURES**

1. The following guidelines will be used in sequence in the identification of faculty unit members, within a designated organizational area (grouping of faculty unit members by department, discipline, or program), to be terminated subject to the need to retain personnel with special skills essential to maintain the integrity and quality of a program. Where the reduction plan is expressed in terms of a program(s), a reasonable effort will be made to group more than one program within a department, such that the programs selected for grouping are those in which faculty unit members exist who are comparably qualified for the programs to be retained. **The retention priorities outlined in this section will govern to the extent that faculty unit members will only be entitled to preference when their performance equals or exceeds that of persons in lower retention categories as documented on the annual performance reviews for the three most recent years, if available, and taking into account differences in performance expectations among ranks.**

- a. Whenever possible, faculty unit member reduction will be accomplished through attrition.
- b. Provided that they are willing to return to full-time appointments for each of the years remaining under their phased retirement contracts, faculty unit members in the first four years of a phased retirement plan will have retention priority over faculty unit members serving under terms contracts or in the fifth year of a phased retirement plan.
- c. Faculty unit members serving under tenure track appointments will have retention priority over faculty unit members serving under term contracts or participating in phased retirement plans.
- d. Faculty unit members serving under full-time tenure appointments will have retention priority over faculty unit members serving under tenure track and term contracts, and faculty unit members serving under part-time tenure appointments will have retention priority over faculty unit members serving part-time under tenure track and term contracts.

The retention priorities outlined stated in subparagraphs (b), (c) and (d) apply only to persons who have met expectations on their annual performance reviews in each of the three most recent years, if available.

2. Among faculty unit members having equal retention priority under section 1, the faculty unit member with highest rank will have higher retention priority over junior colleagues, and, within ranks, the faculty unit member with greatest seniority will have highest retention priority over colleagues whose performance ratings are lower. In the event that individuals have equal retention priority, after rank and seniority have been considered, persons with higher performance ratings for the most recent three years will be accorded higher retention priority. Seniority will be based upon faculty unit member's total years of full-time equivalent employment within the system exclusive of periods of unpaid leave, provided that faculty unit members with a break in service of more than four (4) years will not be given credit for service prior to such break.
3. The preceding provisions of this article notwithstanding, a faculty unit member who is under a constructive plan with significant deficiencies remaining uncorrected after a reasonable time for such correction, may be terminated prior to any other faculty unit member. A constructive plan will not be used to frustrate the intent of this article.
4. If a tenured faculty unit member is terminated under this article, the position may not be filled for a period of ~~two (2)~~ three (3) years, unless the terminated faculty unit

member has been offered reappointment and refused the offer. The terminated faculty unit member has twenty (20) working days from the receipt of an offer of reappointment to accept the position.

5. During four (4) calendar years following the last day of the spring semester of the year in which a reduction in force took place, faculty unit members will be recalled to their institution in order of greatest retention priority as specified in Article 16.2, provided the faculty unit member is qualified to perform the duties of the vacant position. Outside applicants will not be employed unless the position has been offered to and rejected by all faculty unit members subject to recall who fulfill all qualifications specified for the vacancy and assert an interest in it. The institution will have the obligation to attempt to contact former faculty unit members who enjoy rights under this provision.

As to persons who had been displaced by a reduction in force during or prior to the end of the 1990-91 academic year, the four year period will be deemed to commence July 1, 1991. The administration of each institution will notify such former faculty unit members whose addresses are known to it of these changes in their recall rights.

6. The fringe benefits of faculty unit members who return to employment under item 4 or 5 above will, to the extent provided by law, be as they were at the time their previous employment terminated, provided the benefits still exist and they are eligible for them in the new position.
7. Every reasonable effort will be made to relocate a terminated faculty unit member in another academic position within the regental system that is vacant and to be filled, provided the faculty unit member fulfills all qualifications specified for the vacant position. Priority consideration for relocation will be given to those faculty unit members nearing retirement age. If relocation is accomplished the salary and other considerations of employment will be as stated for that position.
8. Every reasonable effort will be made to allow an affected unit member to complete the current appointment.
9. To the extent that the same or comparable positions are available, the accrued rights of faculty unit members will be maintained in those cases involving involuntary transfers of faculty unit members that have resulted from geographical relocation of programs. The Board will provide moving expenses in the case of such transfers as provided by state rules and regulations.

## **XXV. EFFECT AND DURATION**

### ***25.1 EFFECT AND DURATION***

This agreement will take effect when signed and ratified by both parties. It will remain in full force and effect through the 30th day of June ~~2011~~ 2016, except to the extent that modification is required in order to respond to changes in statute or regulation or to binding court decisions. Notwithstanding this limitation, the parties may reopen talks concerning §19.1 in the event that the Board fails to provide funds to supplement salary policy for a fiscal year

On or before the first day of March ~~2011~~ 2016, either party may notify the other that it wishes to renew or modify this agreement. In this event, the parties will meet no later than the 15th day of March 2011, to negotiate with respect to a successor agreement.

If a successor agreement has not been ratified by the 30th day of June ~~2011~~ 2016, the parties may mutually agree to extend the force and effect of this agreement.