

## **CHAPTER 7**

### **EMPLOYMENT PROBLEMS: INFORMAL RESOLUTION AND GRIEVANCE PROCEDURES**

#### **7.01. Informal Resolution**

An academic staff member who has an employment problem that may lead to the grievance procedure is first encouraged to attempt to resolve the matter informally. Establishing open lines of communication between the parties in a non-intimidating manner may be sufficient to resolve the problem.

- A. University Resources for Advice and Information: If an academic staff member believes s/he is being treated unfairly, s/he is encouraged to seek advice and information. Information is available from a variety of university resources, including those listed below. The academic staff member may seek advice and information from any of these resources without initiating formal or informal action.
1. The employee's divisional human resources representative or the UW-Madison Academic Personnel Office can provide information and advice on employee rights and responsibilities and appropriate procedures for resolving a problem, either informally or through the grievance procedure.
  2. The UW-Madison Office of Equity and Diversity can provide information and assistance if the problem might involve discrimination or disability issues.
  3. The UW-Madison Employee Assistance Office can provide resources and support to employees who are experiencing employment problems.
  4. The UW-Madison Ombuds Office is an informal, confidential, and independent resource for staff seeking help in resolving problems and conflicts.
  5. Members of the Personnel Policies and Procedures Committee of the Academic Staff Assembly, the Office of the Secretary of the Academic Staff, or the Academic Staff Executive Committee are available to assist individuals in determining where to go for help.
- B. Options for Informal Resolution: Informal resolution of a problem may be pursued through any or all of the following:
1. Discussion with the immediate supervisor, principal investigator, department chair or unit head.
  2. Discussion with the dean, director or designee if:
    - a. discussion with the individual in 7.01.B.1. did not resolve the matter; or

- b. the academic staff member prefers not to discuss the problem with the individual in 7.01.B.1.
3. Discussion with the divisional human resources representative, the Academic Personnel Office or, in cases of alleged discrimination, the Office for Equity and Diversity. In response to a specific request for assistance in resolving an employment problem, these offices may initiate discussions with the academic staff member, supervisor, principal investigator, chair, director, dean, or other appropriate persons and recommend corrective action as needed. These discussions concerning the employment problem will be initiated only with the consent of the employee. Extreme cases may require notification of appropriate university officials without such consent.

## **7.02. Grievance Procedure**

If informal attempts at resolution are unsuccessful, or if the employee believes that informal resolution would not be productive, formal grievance procedures are available in Steps D.1 through D.3 below. The grievant may be accompanied by another person or persons throughout the procedure. All time limits specified in 7.02 may be modified by mutual consent.

### **A. Burden**

1. Grievances of Disciplinary Actions Resulting in a Loss of Pay. The burden is on the employer to show the existence of just cause (see the seven tests of just cause stated in ASPP 6.03.C.2)
2. Grievances Other Than Those Involving Discipline Resulting in a Loss of Pay. The employee has the burden to show by a preponderance of the evidence that the action being grieved is arbitrary, capricious, for reasons prohibited by law, or in violation of ASPP.

- ### **B. Time Limits.**
- Steps in the grievance procedures must be initiated and completed within the designated time periods except when modified by mutual consent. If the employee fails to initiate the next step in the grievance procedure within the designated time period, the grievance will be considered resolved by the decision at the last completed step. If there is no response to a step in the grievance process within the designated time period at any step, the employee can proceed to the next step in the grievance process within 10 working days of the expiration of the designated period. In cases of an appeal of dismissal for cause under ASPP 6, grievances filed by the appellant may be held in abeyance pending the resolution of the appeal.

C. Representation. In the interest of fairness, both parties shall be given reasonable advance notice if any additional persons will be present at any grievance conference. If, during the course of the conference, either party wishes to seek professional assistance, he or she may request a postponement without abrogating grievance rights at that stage. Such postponement may be for no longer than five working days, unless extended by mutual agreement.

D. Procedural Steps

1. Step 1 – Appeal to Department Chair, Unit Head, or Designee.

- a. *Filing of Written Statement.* The grievant or designee must file a written statement with the department chair or unit head and send copies to the dean or director and the Secretary of the Academic Staff. The statement shall specify the grievant's name, the facts and allegations relevant to the grievance and the relief sought. A grievance must be initiated no later than 20 working days from the time the grievant knew or could reasonably be expected to have known of the circumstances giving rise to the grievance. Initiation of the informal procedure described in 7.01 within the 20-working-day period will extend the deadline for initiating the grievance to 40 working days.

If a grievant has changed operational areas or has left UW-Madison employment, the unit being grieved shall refer the grievance in writing to the Academic Staff Appeals Committee to decide if the grievance shall be processed. The unit shall provide a copy of the referral to the grievant. The Committee shall submit its findings in writing to the employee, the former employing department and its dean or director, and the Secretary of the Academic Staff.

- b. *Reconciliation Period.* Following receipt of the written statement of grievance, there shall be a period of 20 working days, unless modified by mutual agreement, during which attempts shall be made to resolve the matter. At the request of either party, a conference shall be held during this period.
- c. *Written Response.* Following these initial resolution efforts, a written response to the formal grievance must be made to the grievant by the department chair or unit head, or designee within 20 working days of receipt of written grievance. This response must also notify the grievant of his or her right of appeal under 7.02.D.2.

2. Step 2 – Appeal to Dean, Director, or Designee.

- a. *Filing of Written Appeal.* If the decision is not accepted by the grievant, he or she shall have 10 working days to file an appeal with the dean, director or designee together with any additional information the grievant deems appropriate and to send a copy to the Secretary of the Academic Staff. At the request of either party, a conference shall be held prior to the decision.
- b. *Written Response.* The dean, director, or designee shall render a written decision within 10 working days and send copies to the grievant, the chair, director or designee and the Secretary of the Academic Staff. This decision must also include notice to the employee of his or her right of appeal under 7.02.D.3.

3. Step 3 – Appeal to the Academic Staff Appeals Committee.

- a. *Filing of Written Appeal.* If the dean, director, or designee's decision is not accepted by the employee, he or she shall have 20 working days from receipt of the dean's decision to file an appeal with the Secretary of the Academic Staff, which will forward the files to the Academic Staff Appeals Committee, the Academic Personnel Office, and the dean, director or designee within 10 working days. The dean, director or designee shall provide the employing department and employee's supervisor with a copy of the academic staff member's request for a review or a hearing by the Academic Staff Appeals Committee. The Academic Staff Appeals Committee shall conduct a review or hearing in accordance with ASPP 9.
- b. *Access to the Evidence.* An academic staff member who appeals a grievance to the Academic Staff Appeals Committee shall have the right to review all evidence the employer used to make the decision. All additional information the employer uses or plans to use to support the decision shall also be provided to the appellant in a reasonable time prior to a review or hearing. Likewise, the employer shall have the right to review all materials the appellant uses or plans to use to support the appeal. The exchange shall take place within a reasonable time prior to a review or hearing.

- c. *Notification and Disposition.* The Academic Staff Appeals Committee shall forward its findings of fact with a recommendation to the chancellor or designee and shall send a copy to the Secretary of the Academic Staff, the appropriate dean or director, department chair or unit head, and the grievant. Within 30 working days of receipt of the Committee's recommendation, the chancellor or designee shall implement the recommendation or give the grievant and the Committee written reasons for any decision to modify the recommendation based on his/her review of the appeals material and the Academic Staff Appeals Committee hearing. The employee, department chair or unit head, dean or director, Secretary of the Academic Staff, and the Committee shall be notified of the decision of the chancellor or designee, which is final. If the decision of the chancellor or designee has not been issued within 30 working days, the recommendation of the Academic Staff Appeals Committee becomes final. The use of this grievance procedure shall not prevent the grievant from seeking redress through another administrative or legal process.
- d. *Evaluations of Grievances.* At the completion of a grievance in which redress is awarded following a review or hearing by the Academic Staff Appeals Committee, the chancellor or designee shall make a reasonable effort to evaluate whether the specific redress awarded should be extended to other individuals in circumstances similar to those of the original grievant. A report of this evaluation and the action taken will be included in the quarterly report specified in ASPP 9.06.A.