

## **ARTICLE 34. INSTRUCTORS**

34.1 Members of the bargaining unit whose duties involve any one or more but not all of the normal variety of academic duties expected of faculty members (teaching, research, service and administrative duties) but not simply duties in support of teaching may be appointed with the rank of instructor I, instructor II or senior instructor. Instructors may be granted contingent, term, probationary, or continuing appointments. Term appointments are governed by the provisions of sections 19.C.5.1 through 19.C.5.5.1 and contingent appointments are governed by the provisions of s. 19.C.6 of this Agreement.

34.1.1 The rights, duties and responsibilities of instructors are governed by sections 19.A.2.1, 19.A.2.2, 19.A.2.4 and such of sections 19.A.2.4.1, 19.A.2.4.2 and 19.A.2.4.3 of this Agreement, as are applicable to their duties.

### **34.2 Academic Freedom**

The common good of society depends upon the search for truth and its free exposition. Academic freedom in the University in teaching, research and the dissemination of knowledge is essential to these purposes. The instructor is, therefore, entitled to freedom in carrying out teaching and in discussing his/her subject, freedom in carrying out research and in publishing the results thereof, and freedom from institutional censorship. Academic freedom carries with it the responsibility to use that freedom in a manner consistent with the scholarly obligation to base research, teaching and the dissemination of knowledge in a search for truth.

### **34.3 Teaching and Technology**

34.3.1 Instructors must consent to the technology used in teaching courses dependent on information technologies. This consent shall not be unreasonably withheld.

34.3.2 Members teaching courses dependent on information technologies which involve the broadcast, transmission, retransmissions, publication, recording, or storage of the contents of the course shall exercise copyright and intellectual property rights regardless of the medium used to broadcast, transmit, retransmit, publish, record or store the course under the provisions of Article 14 of the Collective Agreement.

#### **34.3.3 Importing Courses via Information Technologies**

A course developed by anyone or any organization may only be developed and/or offered at the University of Manitoba through information technologies if it does not have the consequence of eliminating or reducing a Member's and/or Members' position(s).

### **34.4 Appointment**

34.4.1 Appointments to the ranks of instructor I, instructor II and senior instructor shall be subject to the provisions of Article 18, Hiring of Members. Appointments shall normally take effect on July 1 or January 1 of the academic year.

34.4.2 Initial appointments shall normally be at the rank of instructor I. Qualifications should be appropriate to the particular position and would normally require a Master's degree or its equivalent.

34.4.3 Appointment to the rank of instructor II shall normally be restricted to those who hold a Master's degree or its equivalent and who have five (5) or more years' experience in a University or equivalent position.

34.4.4 Appointment to the rank of senior instructor shall normally be restricted to those who hold a doctoral degree or its equivalent and who have ten (10) or more years' experience in a University or equivalent position.

### **34.5 Probationary Appointments**

34.5.1 On initial appointment an instructor may be given a two-year probationary period.

34.5.2 Before the end of each year on a probationary appointment, an instructor shall receive a written performance review after which the instructor may either be given a continuing appointment, terminated in accordance with s. 34.8 or reappointed on probationary status for one (1) year. The maximum probationary period for an instructor shall be four (4) years.

34.5.3 Upon being appointed or reappointed to a probationary position the instructor shall be notified of the date by which the written review is to take place.

34.5.4 A probationer who is to receive a continuing appointment shall be so notified in writing no later than the last day of his/her probationary period.

34.5.5 Leaves at less than full pay (other than maternity leaves or parental leaves and leaves granted pursuant to sections 22.1.1.11, 22.2.1.11 and 22.2.3, which shall extend the maximum probationary period by one (1) year), research study leaves, appointments outside of the bargaining unit, sick leave for a continuous period exceeding three (3) months and other lapses in service shall not be counted as part of the maximum probationary period. The period counted as part of the maximum probationary period shall include that period before and after any of these lapses in service.

### **34.6 Continuing Appointments**

The decision to give an instructor a continuing appointment shall be made in the best interests of the University and the instructor and shall reflect the written annual reviews referred to in s. 34.5.2 above. A continuing appointment may be terminated only as provided for in this Agreement.

### **34.7 Lay-Off**

Lay-offs shall be for valid academic and/or financial reasons. Lay-offs shall only take effect on July 1 or January 1 of any academic year. Should it become necessary to lay-off instructors, it shall be done in the following manner:

34.7.1 Under normal circumstances and consistent with the priorities established within the faculty/school, lay-off shall take place in the following order:

34.7.1.1 Instructors on probationary appointments;

34.7.1.2 Instructors on continuing full-time appointments by inverse order of appointment.

34.7.2 Instructors who are to be laid off will be so advised by the Board of Governors in a written statement which indicates clearly the reasons for the layoff. Those instructors affected by the lay-off (other than those holding term or contractually limited appointments) shall receive from the Board of Governors twelve (12) months' written notice. Instructors holding probationary or continuing appointments shall receive a discontinuance allowance equal to one (1) month's salary for each year of service in the University subject to a minimum of twelve (12) months' salary and a maximum of eighteen (18) months' salary.

34.7.3 A laid-off instructor who previously held a probationary or continuing appointment shall have for a period of three (3) years from the date of his/her lay-off a right of first refusal for any vacant position in the bargaining unit for which he/she is qualified according to a recall order which is the reverse of the order of lay-off provided for in s. 34.7.1 hereof.

34.7.4 In the event that an instructor holding a probationary or continuing appointment is laid-off and is subsequently given a full-time academic appointment with the University, he/she shall receive such appointment status as he/she shall have enjoyed at the time of the lay-off. Salary shall be increased for the subsequent appointment by any applicable scale and increments awarded to Members as provided for under Article 24 during the period of lay-off.

34.7.5 A laid off instructor who previously held a probationary or continuing appointment may maintain, for a period of three (3) years from the date of his/her lay-off, such University staff benefits as he/she chooses provided that he/she makes prior arrangements to pay the costs of such coverage.

## **34.8 Termination Procedure**

34.8.1 If during an instructor's probationary period, the department head has reason to consider the termination of the instructor's probationary appointment for inadequate performance, he/she shall so inform the instructor in writing, and, on request of the instructor, shall discuss the matter with the instructor. Subsequently, if the department head still has reason to consider the termination of the appointment for inadequate performance, he/she shall seek the advice of appropriate staff members as to the validity of his/her concerns. If after receiving this advice, the department head believes that the appointment should be terminated, he/she shall so inform the dean/director. If the dean/director concurs with this advice, he/she shall so inform the instructor and, if the latter requests written reasons, shall supply him/her with same in sufficient detail to permit him/her to respond. The dean/director may then forward a recommendation and the reasons to the Vice- President (Academic) and Provost along with a written report of the advice received together with a list of the names of those consulted. The written report shall include the written annual reviews referred to in s. 34.5.2 above. The Vice-President (Academic) and Provost may then forward a recommendation and the reasons to the President along with a written report of the advice received together with the names of those consulted. The written report shall include the written annual reviews referred to in s. 34.5.2 above. If the President intends to recommend termination of the probationary appointment, then the President shall give the instructor notice of his/her intention to do so. If the probationer who receives this notice of intention from the President believes that:

34.8.1.1 the action is arbitrary or capricious; or

34.8.1.2 there was an inadequate exercise of professional judgment in the particular circumstances of the University and the faculty or school concerned; or

34.8.1.3 his/her appointment is being terminated as a result of the exercise of his/her academic freedom, he/she may request, within ten (10) working days of the receipt of the said notice of intention, and shall be granted an informal hearing with the President before the final decision is taken. The time elapsed between the date of the request for an informal hearing and the date of the receipt by the Board of the President's recommendation shall count as part of the notice referred to in s. 34.8.2.

34.8.2 If the President does not recommend a reappointment to a probationary appointment or to a continuing appointment, then the probationary appointment may be terminated upon giving two (2) months' written notice.

34.8.3 An instructor may grieve the termination of his/her probationary appointment as provided for at Stage 3 of Article 32, Grievance Procedure and Arbitration, insofar as the procedures in Stage 3 are appropriate. The instructor's written presentation shall include a duly completed copy of the grievance form. If the decision in the Stage 3 procedure does not resolve the grievance, the matter may be submitted to arbitration in accordance with Stage 4 of Article 32.

34.8.4 An instructor may terminate his/her appointment upon giving the University two (2) months' written notice prior to the termination date, or such shorter notice as the dean/director agrees to accept.

34.8.5 By mutual agreement vacation entitlement earned may constitute part of the period of termination notice.

## **34.9 Promotions**

Promotions from the rank of instructor I to instructor II and from instructor II to senior instructor shall be in accordance with the procedures set out in s. 20.A.

## **34.10 Reprimand, Suspension and Dismissal**

34.10.1 An instructor may be reprimanded or suspended without loss of pay for inability or refusal to carry out, or misconduct in carrying out, his/her University duties and responsibilities.

34.10.2 An instructor may be suspended with loss of pay or dismissed for just and reasonable cause, for example, but without limiting the generality of the foregoing, for persistent neglect of duty, incompetence or gross misconduct.

34.10.3 When the President has recommended to the Board of Governors that an instructor be dismissed or suspended with loss of pay, the President may suspend that instructor from duties without loss of pay pending the decision of the Board.

34.10.4 Medical disability shall not be cause for reprimand, suspension or dismissal, since this is covered by sick leave and medical disability insurance, unless the instructor has unreasonably refused medical attention. When an instructor's performance is judged to be inadequate and where it is believed that this inadequacy may be the result of illness, the University may require that he/she produce a medical certificate. If there is then evidence that the inadequate performance is the result of illness the instructor shall be placed on sick leave.

34.10.5 Whenever an instructor is reprimanded, suspended or dismissed he/she shall be given written notification thereof together with a written statement of the reasons for taking this action, in sufficient detail to permit him/her to respond.

- 34.10.6 The Association shall be notified of the names of any instructors who have been reprimanded, suspended or dismissed.
- 34.10.7 Where a meeting is scheduled by the University for the purpose of imposing discipline or conducting an investigation into inappropriate behaviour, the Member shall be provided reasonable notice of the meeting, advised of the nature of the meeting, and advised of the right to request that a representative of the Association attend the scheduled meeting. Where a Member intends to have an Association representative present, the Member shall so advise the person arranging the meeting.