

Memo

To: Board of Regents
From: Kevin McRae, Director of Labor Relations and Human Resources
Date: October 28, 2009
Re: **Item 145-105-R1109**

I recommend approval of the following labor agreement between the Montana University System and the University Faculty Association at The University of Montana.

The agreement covers 580 faculty members in Missoula.

The agreement includes a two-year salary freeze through June 30, 2011. The dollar value of promotions for the roughly 5% of faculty who are promoted in a given year would increase an average of \$750. The dollar value of merit awards for the roughly 13% of faculty who earn merit awards would increase by \$250.

Tentative Agreement
between the
Montana University System
and the
The University of Montana University Faculty Association

The following revisions shall be incorporated into the collective bargaining agreement:

#

2.400 DISTRIBUTION OF CONTRACT

Upon final ratification and approval of this agreement, the employer shall have 200 equal quality copies of the agreement printed; 50 shall be provided to the UFA and the administration shall ~~distribute one copy~~ provide to each any member of the bargaining unit a copy upon request. The contract cover will include the seal of The University of Montana and the UFA insignia. The parties shall share equally the costs of printing. The official version of this contract shall exist in electronic form and be posted on a world-wide-web site. The Administration will publicize the address of the site so that all members of the bargaining unit will be informed of its presence and for download of the most recent official version of the CBA. The UFA-Administration Committee shall jointly publicize changes in the CBA.

#

2.600 CONTRACT TERM

This contract shall be in full force and effect from ten (10) working days after ratification or July 1, ~~2005~~ 2009, whichever is later, to and including June 30, ~~2009~~ 2013, and shall be considered as renewed from year to year thereafter unless either party notifies the other party in writing by December 1, prior to the date of expiration, of its desire to modify or terminate this agreement. The four-year (4) term of this agreement shall not bar actions filed pursuant to 39-31-207, et seq., MCA. The compensation provisions of this contract will expire on June 30, ~~2007~~ 2011. Negotiations for compensation for the period of July 1, ~~2007~~ 2011 to June 30, ~~2009~~ 2013 will commence according to CBA 2.700. At that time the parties may only by mutual consent open other sections of this contract for re-negotiation. Negotiations for the entire agreement for the period after July 1, ~~2009~~ 2013 will commence according to CBA 2.700.

#

2.800 **NON-DISCRIMINATION**

Neither the Board nor the UFA shall discriminate on the basis of race, color, sex, religion, sexual orientation, creed, age, physical disabilities, marital or familial status, national origin, political activity, or participation in labor organizations, and both agree to uphold citizenship rights and constitutional guarantees. The employer and the UFA are bound by the Vietnam Era Veterans Readjustment Assistance Act and applicable regulations there under, including CFR 60-250.4(a), which are incorporated as part of this agreement by reference. Neither the employer nor the UFA will discriminate against any employee or applicant for employment because he/she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. Further, no faculty member shall suffer any form of discrimination or retaliation, nor loss of opportunity or loss of privileges resulting from the free exercise, discussion or any reference to any of the provisions in this collective bargaining agreement.

#

3.100 **RECOGNITION**

The Board of Regents (Board) recognizes the UFA as the exclusive bargaining representative for all persons in the bargaining unit. The bargaining unit includes faculty on academic or fiscal year appointment to the rank of instructor, assistant professor, associate professor, and professor with appointments that are half-time or greater. In addition, adjunct faculty on term-by-term appointment who are half-time or greater (consistent with UM Policy 101.2: 07/01) for two or more successive semesters, excluding summer, shall be included in the bargaining unit concurrent with the second semester appointment. Any semester (excluding summer) without employment shall constitute a break in service for the purpose of determining consecutive employment. In addition, the bargaining unit shall include department chairpersons, divisional coordinators in the School of Education, program directors (of units listed in CBA 10.120), library faculty holding academic rank, replacement faculty, and otherwise eligible persons on terminal contract.

Nothing herein shall be construed either to permit or require UFA membership or apply to any other provisions of this agreement to any non-UFA member, except where otherwise noted.

Excluded from the bargaining unit are the Reserve Officer Training Corps faculty, part-time academic appointments for any service less than or not equivalent to at least one-half or more of a full-time academic-year appointment, ~~professional counselors of the Center for Student Development~~, the faculty of the College of Technology, and the faculty of the School of Law, as are the Director and Associate Directors of the Bureau of Business and Economic Research, ~~Director of the National Center for Career Education~~, the Director of the Mansfield Center, the Director of the University Biological Station, and the Director of the Applied Forest

~~Management Program, the Director of the Mission Oriented Research Program (MORP), the Director of the Montana University Affiliated Program.~~ Other directors of research units, centers and institutes (BOR 218.1) will be subject to an annual scrutiny by the UFA-Administration Committee for the purpose of establishing their membership in the bargaining unit. This will be done within the first forty-five (45) days of each semester. Also excluded from the bargaining unit are all administrative personnel, including Deans, Associate Deans, Assistant Deans (whose duties exceed one-half or more time Administration). The President, Vice-Presidents, and their administrative staff members shall also be excluded. While faculty of the School of Law may serve on the Faculty Senate (CBA 7.000) and committees as indicated in following sections, the compensation of Law School faculty is not covered by this contract.

The UFA-Administration Committee shall review all present academic appointments consistent with the above criteria and prepare an agreed list of all persons within the bargaining unit and a list of all persons agreed to be outside the bargaining unit. Thereafter, any new academic appointment or change in duties of a current appointee shall be reviewed by the Committee and be mutually agreed to be in the unit or out of the unit.

#

3.200 UNION SECURITY

During the term of this agreement members of the bargaining unit shall:

1. become members and pay dues and membership fees to the UFA, or;
2. pay the representation fee to the UFA for the Administration of the agreement. The UFA will establish the amount of the representation fee in accordance with all legal requirements, ~~or;~~
3. ~~pay an amount equivalent to the representation fee to be forwarded to designated charities identified by the UFA.~~

~~New employees in the bargaining unit and continuing charity contributors may sign a statement provided by the UFA stating their objection in principle to becoming a member of the UFA or financially supporting the UFA and elect to contribute an equivalent amount to one or more charitable organizations authorized by the UFA. If this option is exercised within thirty (30) days of commencement of initial employment, it is in force (without need for annual renewal) for the duration of the individual's membership in the bargaining unit. Should one leave the bargaining unit and subsequently return, the same thirty (30) day limit shall apply for reinstatement of the charity option. The reinstated option shall similarly be in force for the duration of one's membership in the bargaining unit. All proceeds that are collected as a result of civil action by the UFA as hereinafter provided shall belong to the UFA and cannot be designated for charitable purposes. Nothing contained in this paragraph shall remove such employees from the bargaining unit.~~

The Administration is responsible for informing new hires of their obligations under this collective bargaining agreement to the extent of the inclusion of an "information sheet," jointly agreed to by the Administration and the UFA and provided to the Administration at the expense of the UFA.

Each new member of the bargaining unit has thirty (30) calendar days to exercise the option of becoming a member of the UFA or becoming a representation fee payer, ~~or making arrangements to become a charity contributor.~~ If one of these options is not selected within the thirty days, new members of the bargaining unit automatically become representation fee payers ~~and lose forever their right to be a charity contributor.~~

Members of the bargaining unit previously (before July 1, 2009) electing to contribute an amount equivalent to the representation fee to the UFA to be forwarded by the UFA to an authorized charitable

organization may continue making these contributions. Faculty hired after July 1, 2009 shall not have this option. Should an existing charity contributor leave the bargaining unit and subsequently return, they must reinstate their charity option within thirty (30) days of their return to the bargaining unit on a form provided by the UFA. All proceeds that are collected as a result of civil action by the UFA as hereinafter provided shall belong to the UFA and cannot be designated for charitable purposes. Nothing contained in this paragraph shall remove such employees from the bargaining unit.

Representation fee payers may become UFA members and UFA members may become representation fee payers at any time by making the necessary arrangements with the UFA office. Charity contributors may become representation fee payers or UFA members at any time by making necessary arrangements with the UFA office. However, in surrendering the charity status to become a member or representation fee payer, the charity option may never be reclaimed.

The dues, fees, or contributions provided for herein may be paid annually by direct payment to the UFA or on a monthly basis by payroll deduction.

Upon written authorization of any bargaining unit member, the employer shall deduct from the pay of the employee the monthly dues, fees, or contributions as certified by the UFA and shall deliver all monies thereby collected, along with an itemized list of said deductions, to the treasurer of the UFA who shall acknowledge each receipt thereof in writing. Direct annual payments shall be made by October 31 or payroll deduction shall be authorized within thirty (30) days of the beginning of fall term orientation activities or within thirty (30) days after initial employment whichever is later. In the event that a faculty member does not authorize a payroll deduction in time to meet the payroll deadline for August, those dues, fees or contributions shall be deducted, along with current dues, from the next succeeding month's pay.

In no event shall failure to pay the obligations result in termination of employment or otherwise affect the terms and conditions of employment of any employee in the bargaining unit. Any employee in the bargaining unit who fails to pay the authorized obligation shall be subject to:

- Step 1.** A joint conference with a representative from the UFA and a representative of the Administration at which the duties and obligations of the employee are explained to him/her.
- Step 2.** Civil action by the UFA for damages against the employee.

The Administration will cooperate with the UFA for the purposes of enforcing this section of the contract.

The UFA shall protect and hold harmless the University from any and all claims, demands, suits, or any costs or fees related thereto, by reason of the UFA's performance or enforcement of the provisions of this section.

#

7.200 REASSIGNED TIME — FACULTY SENATE

~~One designated representative of the Faculty Senate shall, upon request to the Administration, be granted the equivalent of three (3) credit hours release time per semester in work load with no reduction in pay.~~

~~— The portion of the assignment from which the representatives will be reassigned shall be determined by the Administration in consultation with the affected employee prior to the end of spring semester for the following academic year or as soon as possible thereafter.~~

Upon approval by the Administration, the Executive Committee of the Senate (ECOS) may allocate up to two (2) course reassignments with no reduction in pay (each equal to or less than five (5) credit hours)

per academic year. The Administration will grant these reassignments upon request of ECOS in consultation with the appropriate department(s) and dean(s) based upon their need, judgment, and discretion. ECOS will submit to the Provost's Office the plan that has been developed to cover the affected faculty for the following academic year prior to the end of spring semester or as soon as possible thereafter. The Administration will provide minimal funds necessary to hire temporary faculty to teach the reassigned course. The funding will be based upon the salary floors and the request of the appropriate dean.

#

(NEW SECTION)

8.100 UFA RIGHTS TO UNIVERSITY COMMITTEE MEMBERSHIP

The UFA shall have an appointment to the University of Montana Strategic and Budget Planning Committee. The UFA appointee, or their designee, shall have full, permanent, voting membership. Should this committee change names or purposes the UFA shall have an equivalent appointment on the analogous University committee charged with similar purposes.

#

9.110 RIGHTS OF NON-TENURABLE APPOINTEES

In addition to all of the rights and privileges defined in this contract and University Policy 101.2 (revised 7/2001), members of the bargaining unit holding non-tenurable appointments shall:

1. hold an FTE assignment, which represents the actual proportion of full-time load as determined by the dean in consultation with the unit taking into consideration expectations of teaching, research, and service and their relationship to Unit Standards. In making workload assignments, deans may assign workload in the form of equivalent credit for duties beyond or in lieu of normal classroom teaching, including but not limited to advising, thesis direction, large classroom enrollment, writing-intensive courses, committee service, administrative duties, lab supervision, and research. A full-time semester assignment will be comprised of 15 credits and/or credit equivalencies as determined by the dean and approved by the Provost. In classes which are team taught, class credit will be prorated by degree of responsibility. Credit equivalencies are in addition to class credit.
2. be hired at no less than at the salary floors in the CBA (section 13.300) prorated by FTE.
3. Further, if non-tenurable appointments have been hired at .50 FTE or greater for the academic year, they shall receive a normal increase (prorated by assigned FTE) if employed at .50 FTE or more for the subsequent academic year. Any increase in base must be least equal to the normal increase.

Consistent with BOR Policy 702.1, for non-tenurable faculty on a one-year appointment there is no expectation of reappointment or renewal of any non-tenurable faculty appointment. Non-tenurable contracts are term contracts which automatically expire (without notice) at the end of the contract term unless renewed prior to expiration. However, the Administration will attempt to inform non-tenurable faculty in a timely fashion if they are to be reappointed for the next semester. Non-tenurable faculty may be given a three (3) year contract at the

discretion of the Administration in negotiation with the faculty member, the department and the dean of the school. The continuation of a multi-year, non-tenurable contract is dependent on continued funding for the position and satisfactory performance by the faculty member. Discharge for cause of all non-tenurable faculty is governed by the procedures outlined in section 18.400.

Non-tenurable faculty who are bargaining unit members shall be encouraged to apply for non-tenurable appointments comparable to those they have previously held and shall be guaranteed reasonable consideration according to their teaching experience at UM. Service in non-tenurable appointments does not count towards probationary service for tenure unless otherwise agreed to in writing by the dean and approved by the Provost. Any non-tenurable faculty member dismissed from a previous position for cause forfeits this reasonable consideration at the time of dismissal.

#

9.220 **RANK AND APPOINTMENTS**

At the time of appointment or reappointment, each faculty member shall be provided by the employer with a written agreement which specifies rank, salary, and other terms and conditions of employment. All initial appointments at the rank of professor, associate professor, and assistant professor shall be probationary. An initial tenure-track appointment at the rank of instructor shall be probationary only with prior written approval by the Provost.

No probationary appointment may be made to a line which is not supported by at least 50% state appropriated funds or fully supported by a permanent endowment fund (as defined by UM procedure 11002,8/4/04) where "state appropriated funds" is defined as funds derived from the General Funds/Salaries/Faculty University of Montana budget category and includes at least 50% of all costs of the contractual salary and benefits (see "written agreement" above). Should the endowment fail to cover the 50% of contractual costs then the University or the Board shall be responsible for and pay those costs from the same General Funds/Salaries/Faculty budget category. Exceptions may be considered by the UFA-Administration committee (Section 8.000) and approved by mutual agreement. Probationary faculty shall not be restricted from seeking outside funding to support their research scholarship/creative activities.

All full-time service at The University of Montana in the rank of assistant professor, associate professor, or professor shall count as probationary service toward tenure. Full-time service at The University of Montana at the rank of instructor shall count as probationary service toward tenure only with prior written approval by the Provost. Pro rata credit will be given for all full-time service for any academic term except summer session.

Specific exceptions regarding creditable probationary service toward tenure may be granted by the President in a written agreement separate from the employment contract.

(NEW SECTION)

9.400 **TENURE CLOCK EXTENSIONS**

A probationary faculty member may request an exemption for the year of creditable service toward tenure (CBA 9.310) during which they exercised the Faculty Modified Duties option (11.200). All such requests are subject to approval by the UFA-Administration committee and then the Provost shall forward that decision as a final recommendation to the President.

#

10.210 INDIVIDUAL'S PERFORMANCE RECORD - October 15

The documentation or evidence of performance required by the unit standards and applicable sections of this agreement, shall be prepared by every member of the bargaining unit in sequentially numbered pages which incorporate exhibits by reference and are signed on the last page by the person to be evaluated. Exceptions to this requirement are limited to those members of the bargaining unit who are in their first year of service at The University of Montana or who are on a terminal year contract. These individuals are not required to prepare nor submit an IPR. The individual shall submit the documentation to the chairperson of the Faculty Evaluation Committee (FEC) and the department chairperson or in those instances where there is no chairperson, to the dean by October 15. The performance period, ~~shall consist~~ **consisting** of one or more academic year(s) of record each running from the first day of the academic year and including Fall Semester, Spring Semester and applicable summer term(s). ~~The IPR for that period should document performance to be documented~~ for the respective types of advancement ~~as is a~~ follows:

1. **Promotions:** All service in the current rank or since the documentation was prepared for the last promotion, **or the most recent seven (7) sequential years.**
2. **Tenure:** The entire probationary period including credited prior service.
3. **Merit:** The time since the documentation was prepared for the last granted merit or promotion, **or the most recent seven (7) sequential years whichever is shorter.**
4. **Normal and Less-Than-Normal:** The record of the previous year(s) as appropriate (see Section 10.340 for the evaluation schedule of tenured and tenure-track faculty).

Copies of the SEC, FEC, chair, dean and Provost's recommendations from all evaluations during the performance period must be included in the Individual Performance Record (IPR) before transmittal to the dean.

An individual on split assignment shall submit the documentation and evidence to the unit in which the greatest portion of the FTE is assigned; or if the FTE is equally split, to the unit in which first hired; or if not first hired in one unit, to the unit in which best qualified for full-time service. The chairperson of the Faculty Evaluation Committee, department chairperson and dean of the unit evaluating the split appointment shall obtain evaluations from their respective counterparts in the other units to which the individual was partially assigned.

The Faculty Evaluation Committee, the department chairperson, or the dean may request and consider any evidence from any source, including the faculty member to be evaluated, provided that any evidence relied upon for evaluation purposes shall be incorporated into the record and the faculty member shall be afforded an opportunity to respond to it. No individual to be evaluated may be sanctioned, suspended, disciplined, or discharged for failure to comply with a request to provide additional information.

Upon approval of the UFA-Administration committee, electronic records as document files (e.g. Microsoft Word or .PDF) may be used to transmit documents during the evaluation process. However, a complete version of original documents shall be used for inclusion in the employee personnel file maintained by Human Resource Services.

#

10.280 APPEALS TO THE APPEALS COMMITTEE - April 4

There shall be an Appeals Committee comprised of seven (7) members of the bargaining unit. Three (3) members shall be appointed by the Faculty Senate, three (3) shall be appointed by the President of the University, and one (1) shall be appointed by the President of the UFA.

The Appeals Committee may hear only those appeals which are based on one or more of the following grounds for complaint:

1. that a prejudicial procedural error, defect, or omission has been committed or has occurred;
2. that a recommendation is not supported by factual evidence or is lacking a rational basis;
3. that a recommendation was the result of personal prejudice or bias which adversely affected the substantive academic judgment of the decision maker;
4. that a recommendation was made for reasons which are clearly impermissible.

No error or omission may be appealed unless the error or omission was brought by the appellant to the attention of the person(s) responsible within ten (10) working days after the appellant knew or should have known of the error or omission.

A written appeal must be served on the chairperson of the Appeals Committee within ten (10) days of receipt of the dean's evaluation or his/her decision on an appeal, whichever is later. The appeal must set forth concisely the recommendation being appealed, the reason(s) why the appellant disagrees with the recommendation and shall specifically cite any procedural errors or omissions that were alleged to have occurred in the decision making process; identify witnesses and the point to be evidenced by the testimony of each; identify and indicate the purpose for each document or other evidence to be presented; state appellant's preference for an open or closed hearing; and state the name and address of any person who will represent the appellant at the hearing and whether they appear as legal counsel. No appeal shall be reviewed unless all of the information required by this section has been provided. If the faculty member is notified that he/she has not submitted all the information required by this section, and the faculty member has thereafter failed to submit all the information required by this section within a reasonable time, the appeal shall be considered withdrawn.

The Committee shall set a hearing within two (2) weeks of receipt of the appeal and notify the appellant and dean of the time and place and forward a copy of all materials filed by the appellant to the dean. The dean and the person(s) against whom the appeal has been brought shall be entitled to be present at the hearing. The University will be represented by legal counsel only if the appellant has elected to be represented by legal counsel.

The strict rules of evidence shall not apply, and the chairperson of the Committee shall make the final decision on the admissibility or order of presentation of evidence as well as procedural matters. Either party may present evidence and examine and cross-examine witnesses. Any member of the Committee may request additional witnesses or evidence of either party.

A written statement of findings based on the evidence and recommendations for appropriate action shall be prepared and a copy forwarded by the Committee, within ten (10) working days of the hearing, to the appellant, department chairperson, dean, and the Provost. The written statement shall respond specifically to each of the alleged complaint(s) that have been raised by the appellant. The Committee's function is not to act as a substantive decision-maker regarding the academic merits of the decision appealed. The Committee therefore shall not substitute its academic judgment for that of others in the evaluation process. The following recommendations for actions may be made by the Committee:

1. If the Committee finds that the appellant has not established by a preponderance of evidence the grounds for complaint, it shall recommend that the appeal be dismissed.

2. If the Committee finds that appellant has established by a preponderance of evidence that a prejudicial procedural error, omission, or defect has been committed or has occurred, it **may shall** recommend a remand in accordance with Section 10.330.
3. If the Committee finds that the appellant has established by a preponderance of evidence any of the other grounds for complaint permitted by this section, it **may shall** recommend either a remand or a direct cure by the Provost in accordance with Section 10.330.

A specific direct cure may be recommended by the Committee but in no event may it recommend, as a direct cure, the granting of tenure, promotion, appointment, reappointment, or a specific salary determination. Where all levels of the process prior to the appeal are found to have been tainted by one or more of the above grounds for complaint to the prejudice of the appellant, the Committee may recommend to the Provost as a direct cure that he/she appoint an ad hoc committee to review the faculty member's performance and make a recommendation in accordance with the standards set forth in Section 10.000. In the event that an ad hoc committee is to be appointed, it shall be composed of faculty members in the discipline or from disciplines or programs which have a close relationship to the discipline of the appellant. The Executive Committee of the Faculty Senate shall recommend five (5) names to the Provost from which he/she shall choose three (3) to serve on the Committee. The ad hoc committee shall review the faculty member's performance and make its recommendation to the Provost within thirty (30) days from the date the Provost receives the recommendation of the Appeals Committee. The time period may be extended by mutual agreement.

Any member(s) of the Appeals Committee may forward a minority finding and recommendation. All findings and recommendations of the Appeals Committee should be forwarded by April 4.

Within ten (10) working days of the disposition of an appeal, the Provost shall provide the members of the Appeals Committee with a copy of the decision.

#

10.290 PROVOST'S RECOMMENDATION

The decision of the Provost shall be based on the total evaluation record, including findings and recommendations of the Appeals Committee, shall be consistent with his/her overall administrative responsibilities, and shall constitute the final institutional recommendation to the Board regarding matters of faculty retention, salary increment, promotion, and tenure. The recommendation shall be forwarded to each faculty member by April 25 provided all other recommendations have been timely forwarded and no matter is under appeal. In legislative years, the Provost's decision shall be forwarded by May 15 or thirty (30) days after ratification of the agreement, whichever is later. **The Provost, after consultation with the Vice President for Research and Development, will forward recommendations for research faculty on an identical timeline.**

#

10.310 CONFLICTS OF INTEREST

No person shall participate in his/her own evaluation; or that of any other person to whom he/she has a relationship by blood or marriage, or cohabitation, or with whom he/she is engaged in adversarial litigation **or proceedings**. No person shall participate in the evaluation of any person with whom he/she has joined in a business relationship or nature which would reasonably be presumed to preclude objective application of professional judgment. Allegations of conflict of interest will be filed with the UFA-Administration Committee **no later than September 15 of each year within 25 working days of discovering such a conflict.** That

committee will make a recommendation to the Administration. The Administration will determine ~~by October 10 of each year~~ if a conflict of interest exists. The failure to timely file an allegation of conflict of interest shall prevent the later allegation of a conflict of interest during the academic year.

#

10.330 APPROPRIATE REMEDIAL ACTION

The normal remedy for any prejudicial errors, omissions, or defects in the process of evaluation of faculty for promotion and tenure shall be to remand and properly re-do the process to cure the defect. **A remand by the Appeals Committee shall constitute return of the evaluation to the appropriate step in the process where the defect occurred with a specific, binding remedy that is consistent with the CBA. Following proper application of the Appeals Committee remedy and reevaluation at that step, the evaluation process shall continue forward as directed in section 10.000 with the remedy in place. The faculty member retains the option to return to the Appeals Committee if the remedy from the original complaint was not properly applied or with a separate complaint.** In appropriate cases, including those involving personal prejudice or bias or where previous remand has not resolved the matter, the Appeals Committee may recommend, in accordance with Section 10.280, that the Provost cure the defect directly. In the event of such a recommendation, the Committee shall specify the reason for its decision not to recommend a remand. Any delay incident to a remand or direct cure by the Provost shall be corrected by making any change in employment terms retroactive to the date the change would have become effective if the remand or cure had not been required.

Faculty evaluations are non-grievable and non-arbitrable except in the following cases:

1. When all prior recommendations have been timely, failure of a dean or the Provost to meet the times specified for their actions shall constitute grounds for a grievance unless there are unusual circumstances justifying the delay which are made known to the faculty member. Any faculty member who prevails in a grievance for such delay shall be entitled to an award of one hundred dollars (\$100) for every five (5) working days delay endured.
2. When all prior tenure or promotion recommendations have been in agreement, a contrary decision by the Provost may constitute grounds for a grievance where it is alleged that the contrary decision is not supported by evidence or is lacking a rational basis, is the result of personal prejudice or bias which adversely affected academic judgment, or is made for reasons which are clearly impermissible.
3. A decision of the Provost not to follow the recommendation of the Appeals Committee or an ad hoc committee where one has been appointed may constitute grounds for a grievance where it is alleged that the Provost's decision is not supported by evidence or is lacking a rational basis, is the result of personal prejudice or bias which adversely affected judgment, or is made for reasons which are clearly impermissible.
4. In merit recommendations by the Provost where it is alleged that the recommendation is not supported by evidence, is lacking a rational basis, is the result of personal prejudice, or is made for reasons which are clearly impermissible.

#

10.340 EVALUATION SCHEDULE FOR TENURED AND TENURE-TRACK FACULTY

Tenured faculty members who have achieved the rank of full professor shall be reviewed every third year, and tenured faculty members who have achieved the rank of associate professor shall be reviewed every second year. This evaluation schedule is contingent upon the following conditions:

1. The faculty member is seeking a normal increase;
2. The faculty member has not received a less-than-normal recommendation in the past three (3) years; and
3. The unit Faculty Evaluation Committee does not wish to initiate consideration for other than a normal recommendation.

The triennial evaluation of full professors shall be conducted in the following manner: surnames from A-H one year, I-Q the second year, and R-Z the third year. The biennial evaluation of associate professors shall be conducted in the following manner: Surnames from A-L one year and M-Z the next year. When full and associate professors are evaluated, they will prepare an Individual Performance Record (IPR, section 10.210) for the period since the last evaluation (normally three or two years) or, if seeking a merit increment, since the last merit or promotion. Full and associate professors on sabbatical assignment or leave without pay shall be exempted from evaluation if the three conditions listed above in this section are met. **Faculty of any rank that are eligible for and exercise the Family Modified Duties (CBA 11.200) option may defer evaluation of assigned duties for one year if they so choose.** Those exempted from evaluation will not normally be evaluated until their alphabetical group is required to undergo the evaluation process, except that the Provost, dean, and/or department chair agree to require a performance review during any year(s) of the cycle.

All other faculty will be evaluated annually. Any faculty member may request to be evaluated in any year.

#

11.000 **FACULTY DEVELOPMENT, RECRUITMENT AND RETENTION**

The UFA, the University, and the Board mutually agree that faculty career development is inherent to the guarantee that all University of Montana students are provided a quality education on both the baccalaureate and post-baccalaureate levels. The parties to the CBA are, therefore, committed to developing a diverse faculty with the highest professional standards and capabilities. Based on the provisions of the CBA and by the exercise of them free from reprisal, or discrimination (CBA 2.800; UM 406.4), all faculty shall have access to professional career development opportunities.

(NEW SECTION)

11.010 FACULTY RELATIONS AND DIVERSITY

The UFA, the University, and the Board are firmly committed to promoting faculty diversity in all ranks during consideration and adoption of all University and MUS policies and procedures (CBA 8.000; BOR 207.1). Faculty diversity may be recognized as conduction of recruitment (UM 405.5), provision of employment contracts (CBA 2.200), professional development and advancement consistent with non-discrimination (CBA 2.800; UM 406.4) and equality (UM 401.1, 4/02) policies. A diverse faculty reflects the characteristics of the local and national populations.

As a member of the faculty, each person is expected to interact with colleagues in a professional manner consistent with CBA section 6.200 and 2.800. Actions or activities inconsistent with professionalism (CBA 6.200, 2.800) may be considered a faculty-faculty conflict that shall be managed by the Office of the Provost consistent with all provisions of the CBA and inclusive of University policies (406.4, 4/02; 406.5, 04/02; 406.51, 04/02). Conflict resolution may include a faculty, UFA, or Administration request for mediation. Mediation shall be performed by a professionally trained mediator who is free from conflict of interest, familiar with the academic environment, and mutually acceptable to both parties. All parties in the conflict are urged to attempt resolution through mediation, but mediation does not preclude

other actions available through the CBA or the law. Faculty declining mediation shall provide a written explanation. Following mediation, either party may request a finding of facts by the University Appeals Committee.

#

11.100 SABBATICAL ASSIGNMENT

Because of its duty to provide excellence in education, the Administration recognizes the need for and is committed to supporting as many sabbatical assignments as possible within the limits of available funding for this purpose to qualified faculty members for the purpose of encouraging scholarly and professional achievement and for the mutual benefit of the University and the grantee.

11.110 ELIGIBILITY

Only tenured faculty are eligible to apply for sabbatical assignment. Any tenured faculty member who has completed six (6) years of satisfactory service at The University of Montana prior to the year for which sabbatical assignment is requested shall be eligible to apply for such assignment and must apply for the sabbatical in the academic year prior to beginning the assignment. The deadline for application (stated in 11.140) applies. A faculty member starting a sabbatical assignment shall have completed at least twelve (12) semesters or their equivalent of full-time service at The University of Montana since a prior sabbatical assignment. The elapsed academic terms need not be consecutive, but no more than two (2) semesters shall be counted for any one (1) fiscal year. Academic terms for which other types of leave were granted shall be excluded in determining academic terms of service.

#

(NEW SECTION)

11.200 FACULTY MODIFIED DUTIES

To minimize variations in classroom staffing and consistent with the goals of achieving faculty diversity, professional career development and career advancement: The University shall coordinate a Faculty Modified Duties (FMD) policy for eligible faculty. FMD is NOT defined as an employee benefit or leave as defined under the Family Medical Leave Act (FMLA). Furthermore, modification of duties under this policy does not preclude availability or use of other defined benefits; nor modification of duties mutually arranged by faculty and the Unit Dean without opting for FMD.

Regarding implementation and ongoing application of FMD: UM Human Resource Services (HRS) shall receive the faculty application, determine eligibility and apply FMD provisions (CBA 11.300). FMD implementation and applications shall be consistent with University policy (UM 101.6) the provisions of which shall be subject to collective bargaining through the UFA/Admin committee (CBA 8.000).

11.210 ELIGIBILITY FOR FMD

All full-time tenure-track/tenured faculty shall be eligible provided that they are:

1. The primary care giver due to the birth, adoption, or foster care placement of a child under six. A primary care giver shall be either parent, the legal guardian, a live-in partner or a spouse by marriage.
2. The primary care giver of an invalid or disabled primary family member including a spouse, parent, live-in partner or child who requires constant care by the primary care giver.

11.220 MODIFICATION OF FACULTY DUTIES

Faculty Modified Duty is based on the current, common practice of faculty duty modification as applied to teaching, scholarly activity or service. That practice and the FMD option are derived from the authority of the Unit Dean (CBA 6.210; 6.220) to fairly assign (CBA 2.800) teaching and other duties consistent with the provisions of the individual employee contract.

The FMD option shall allow eligible faculty up to one semester of modified duties in any academic year whereby elimination or reduction of any duty in exchange for enhancement of another duty constitutes an FMD accommodation. University HRS shall, on behalf of the eligible faculty member, arrange the terms of an FMD accommodation in consultation with the department Chair and Dean. The faculty member has the right to UFA counsel and representation throughout the entire FMD process. Consistent with all other provisions of the CBA, no faculty shall experience reprisal for exercising the FMD option.

The Administration shall be responsible for funding the faculty modified duties policy and each accommodation is subject to the review and final approval of the Provost.

Where and when possible, the funding will be applied so that FMD in any unit:

- 1) results in hiring of faculty to replace necessary teaching responsibilities.
- 2) does not result in cancellation of required classes.
- 3) does not result in an increased teaching load for any unit faculty, unless by volition.
- 4) allows an option for tenure clock extension (CBA 9.400 or 9.340).
- 5) allows an option for exemption or deferral from faculty evaluation (CBA 10.340).
- 6) allows interpretation of applicable UM and Board policies to provide enough flexibility in negotiations between the parties (eligible faculty, Chair, Dean and Provost) so as to reach a suitable FMD arrangement.

#

(NEW SECTION)

11.300 GRANTS AND CONTRACTS

11.310 INVOLUNTARY TRANSFER OF GRANTS AND CONTRACTS

Transfer of a grant or contract from one principal investigator to another mandated by the Administration without the consent of both parties shall:

- 1) be consistent with non-discrimination policies (2.800);

- 2) require the Administration to provide a written, detailed explanation for the necessity of the transfer to both parties;
- 3) be subject to the approval of the granting agency; and
- 4) be subject to grievance consistent with the principles of CBA section 19.00.

#

13.000 COMPENSATION

13.220 NORMAL INCREASE

1. ~~2005-2006 - The normal increase in salaries of all full-time equivalent faculty for the 2005-2006 academic year shall be 3.5 percent. This percentage increase will be added to faculty base salary effective October 1, 2005.~~
2. ~~2006-2007 - The normal increase in salaries of all full-time equivalent faculty for the 2006-2007 academic year shall be 4.0 percent. This increase will be added to faculty base salary effective October 1, 2006.~~

If a special session of the Legislature is called by the Governor and convenes to appropriate increased state revenue to the Montana University System during the 2010-11 biennium, the parties agree to re-open Article 13.000 of this Agreement for economic negotiations. The parties otherwise agree that no normal increases will occur in the Fiscal Year 2010-11 biennium.

13.230 PROMOTION

1. ~~2005-2006~~ 2009-2010 - Faculty members promoted during the ~~2005-2006~~ 2009-2010 academic year to the rank of associate professor, consistent with the promotion procedures of this contract, shall have an amount equal to ~~\$2,500~~ \$3,000 added to their base salary effective October 1, ~~2005~~ 2009. Faculty members promoted during the ~~2005-2006~~ 2009-2010 academic year to the rank of professor, consistent with the promotion procedures of the contract, shall have an amount equal to ~~\$5,000~~ \$6,000 added to their base salary effective October 1, ~~2005~~ 2009.
2. ~~2006-2007~~ 2010-2011 - Faculty members promoted during the ~~2006-2007~~ 2010-2011 academic year to the rank of associate professor, consistent with the promotion procedures of this contract, shall have an amount equal to ~~\$2,500~~ \$3,000 added to their base salary effective October 1, ~~2006~~ 2010. Faculty members promoted during the ~~2006-2007~~ 2010-2011 academic year to the rank of professor, consistent with the promotion procedures of this contract, shall have an amount equal to ~~\$5,000~~ \$6,000 added to their base salary effective October 1, ~~2006~~ 2010.

13.240 MERIT

The following merit awards pool shall be allocated to compensate outstanding faculty performance. Merit pay shall be in addition to other salary increments provided in this contract. No faculty member may earn a merit in the same year that a promotion is granted. The awarding of merit pay shall be consistent with the unit standards of the faculty evaluation procedures in this contract.

Faculty members receiving a merit award during the ~~2005-2006 or 2006-2007~~ 2009-2010 or 2010-2011 academic years, consistent with the procedures of this contract, shall have an amount equal to ~~\$2,000~~ \$2,500 added to their base salary effective October 1, ~~2005~~ 2009 and October 1, ~~2006~~ 2010 respectively.

	Number of Merits	Value of Merits
2005-2006	80	\$2,000
2006-2007	80	\$2,000
<u>2009-2010</u>	<u>80</u>	<u>\$2,500</u>
<u>2010-2011</u>	<u>80</u>	<u>\$2,500</u>

#

(NEW SECTION)

13.260 INVERSION AND COMPRESSION

Inversion and compression adjustments are authorized to offer additional compensation to tenured and tenure-track faculty members of the bargaining unit. Before granting an inversion or compression adjustment, the UFA-Administration Committee shall be consulted.

The terms inversion and compression shall refer to circumstances where individual base salary compensation for senior faculty does not keep pace with that of newly hired or junior faculty. Compression is the narrowing of salary differentials over time between junior and senior faculty within a unit resulting in a relatively small individual base salary difference between faculty regardless of skills, rank or experience. Inversion is an extreme form of compression that refers to a situation where a newer faculty is hired at an individual base salary that exceeds that of a senior faculty at the same or higher rank within the unit.

The Administration shall use individual base salary data to calculate inversions and compressions on an annual basis. Based on magnitude, faculty experiencing inversion or compression shall be ranked on a funding priority list including all units. The highest ranked priority on the descending list shall be the most inverted to least inverted and then from most compressed to least compressed.

#

13.410 CONTRACT CONVERSION

The only conversions governed by this section include conversions from and to the same type of base salary; i.e., state-appropriated to state-appropriated, or externally funded to externally funded. In no case shall these provisions be applicable to mixed conversions, such as state-appropriated to externally funded, or externally funded to state-appropriated. Any employee within the bargaining unit who is changed from an academic year appointment to a fiscal year appointment within the bargaining unit shall thereafter receive at least 1.22 times the academic year salary received at the time of the change and shall be entitled to accrue vacation leave as provided by Regents' Policy. Any employee within the bargaining unit who is changed from a fiscal year to an academic year appointment and any employee who changes from a fiscal year appointment outside the unit to an

academic year appointment within the unit shall be compensated at a salary determined by dividing the fiscal year salary, less any stipend for administrator or other special duties, by 1.22 and shall cease to be entitled to take or accrue annual leave, but shall be entitled to payment for any amount of annual leave previously accrued which is not in excess of twice the amount annually accruable. Administrators, including deans, associate deans, assistant deans and administrators on Board of Regents' contracts, who cease to hold fiscal year contracts and enter the bargaining unit with an academic year contract shall be governed by this section except that their salary shall be made comparable to members of the bargaining unit with similar credentials and years of experience. When an employee is hired initially into an externally funded position and moves to a state-appropriated position, the Provost will establish a new base salary.

#

13.510 DEPARTMENTS OF FEWER THAN EIGHT PERSONNEL

For departments having fewer than eight (8) FTE personnel directly supervised by the chairperson: a minimum of one-fifth (1/5) release time and an academic year stipend of ~~\$2,800 for 2005-2006 and \$2,900 for 2006-2007, effective October 1, 2005, and October 1, 2006~~, \$2,900 for 2009-2010 and \$2,900 for 2010-2011 effective October 1, 2009, and October 1, 2010, respectively.

13.520 DEPARTMENTS FROM EIGHT TO SIXTEEN PERSONNEL

For departments having eight (8) to sixteen (16) FTE personnel directly supervised by the chairperson: a minimum of one-fourth (1/4) release time and an academic year stipend of ~~\$3,200 for 2005-2006 and \$3,400 for 2006-2007, effective October 1, 2005, and October 1, 2006~~, \$3,400 for 2009-2010 and \$3,400 for 2010-2011 effective October 1, 2009, and October 1, 2010, respectively.

13.530 DEPARTMENTS HAVING MORE THAN SIXTEEN PERSONNEL

For departments having more than sixteen (16) FTE personnel directly supervised by the chairperson: a minimum of one-fourth (1/4) release time and an academic year stipend of ~~\$3,600 for 2005-2006 and \$3,900 for 2006-2007, effective October 1, 2005, and October 1, 2006~~ \$3,900 for 2009-2010 and \$3,900 for 2010-2011 effective October 1, 2009, and October 1, 2010, respectively.

#

(NEW SECTION)

13.650 WINTER SESSION

The rate of pay for winter session instructional activity shall be \$1,100 per credit for 2009-10 and 2010-11.

#

14.230 INVENTORS' RIGHTS AND DUTIES

Employees in the bargaining unit retain the right and responsibility for recognizing in their work inventions that may reasonably be marketable; and in every case, complete academic freedom ~~of including~~ publication in both time and scope shall be maintained (Board policy 302, 9/2004); UM policy 704, 7/2004, CBA 6.100), unless

agreements with outside sponsors provide otherwise as indicated below. Investigators will participate in work under such outside agreements only after they have informed themselves of such provisions and have accepted these provisions. Any employee to whom the conditions are set forth in Section 14.210, 1, 2, and 3 above applies, who either alone or in association with others makes an invention shall promptly disclose in writing to the University Patent Officer in a format acceptable to the University such invention, and as to any such invention shall, upon request, promptly execute all contracts, agreements, waivers, or other legal documents necessary to invest the University or, if applicable, the federal government, other outside sponsors, or the University's assignees and any and all rights to the invention, including complete assignment or any patent applications for the invention.

With the exception of those inventions developed under agreements with outside sponsors, the Patent Officer shall inform the inventor(s) in writing whether the University plans to secure the patent or release the discovery to the inventor(s). In the case of the release of the discovery, or in the case of failure by the Patent Officer to communicate in writing within ~~sixty (60) days~~ twelve (12) months, the inventor(s) is free to secure the patent, pay all fees, and receive all benefits therefrom. If a dispute arises concerning the origin of an invention or patentable discovery or any aspect of patent Policy, the dispute shall be presented to the System Invention Committee for final disposition.

#

14.250 PROSECUTION OF PATENTS

1. **Time Limits:** In the event that the University deems that a patent should be prosecuted, the prosecution shall be carried out diligently and without expense of any kind to the inventor. The parties to this agreement recognize the need to file the patent application and develop the patent as fast as possible with no abridgement of academic freedom (Board policy 302, 9/2004; UM policy 704, 7/2004; CBA 6.100). The time limits expressed herein represent the maximum time allowed, but every effort should be made to complete the process faster than the time limits specified. The inventor must assign to the University any interest in the patent equivalent to the property interest which the Patent Officer determines to belong to the University or which is required by Section 14.210, 1 and 2. The preliminary patent search must be started within ~~sixty (60) days~~ six (6) months from the date the matter is presented to the University or the University forfeits all rights to the invention. If no patent application is filed within a total elapsed time of ~~eight (8)~~ fifteen (15) months following disclosure, all patent rights revert to the inventor(s).

#

APPENDIX

(NEW LETTER OF UNDERSTANDING)

LETTER OF UNDERSTANDING (AGREEMENT) ON FACULTY CAREER DEVELOPMENT OFFICE

The UFA and the Administration shall collaborate to establish and administer a Faculty Career Development Office staffed with 1.0 FTE employee of the University and compensated by the Administration. The Faculty Career Development Office shall disseminate information, coordinate and

assist in administering faculty development programs (Section 11.00) to best provide faculty with opportunities for professional career development and advancement. Duties of the faculty development office shall include but not be limited to provision of information to faculty, faculty training, recruitment, orientation, spousal accommodation (UM 404.7, 7/23/07) and dissemination of faculty rights and responsibilities under the CBA. The Office will be provided an operating budget to support the faculty development programs.

The UFA and the University shall further collaborate to initiate and implement a program for faculty career development through an Administration Track that prepares faculty for Administrative and management positions. The program shall be administered through the Faculty Development Office. Elements of the Administration Track shall include but not be limited to personnel management, budgeting, planning, conflict resolution and compliance. Compliance, in particular, shall emphasize compliance with the CBA, Board of Regents policies and University policies.

The collaboration described in this MOU will take place in the current (FY10 and FY11) biennium, with the intent to have the Office and related programs ready to be implemented as soon as possible but no later than the Fall 2011 term. Both the UFA and the Administration acknowledge that the Faculty Career Development Office is subject to available funding. The parties will explore possible grant funding for the office, both in the near- and longer-term.

#

(NEW LETTER OF UNDERSTANDING)

LETTER OF UNDERSTANDING (AGREEMENT) ON ONE-TIME PAYMENT FOR 2009-2011 BIENNIUM

Full-time faculty members whose base pay is \$45,000 or less annually will receive a one-time lump sum payment of \$450. Faculty members who are less than full-time but have a contract at greater than .50 FTE will receive a \$250 one-time lump sum payment. Such one-time lump sum payments will be paid to eligible faculty members within 90 days of ratification and will not be added to an individual salary base.

#

(NEW LETTER OF UNDERSTANDING)

LETTER OF UNDERSTANDING (AGREEMENT) ON DEPENDENT PARTIAL TUITION WAIVER

Both the UFA and the Administration recognize the value of the Dependent Partial Tuition Waiver and potentially other tuition programs as meaningful benefits to faculty and employees. In an effort to increase the effectiveness of these types of benefits as a recruitment and retention tool, both parties agree to work jointly to prepare a recommendation to the Board of Regents to modify the Dependent Partial Tuition Waiver policy. Such recommendations may include modifications to the eligibility requirements, the amount of the waiver, or the number of eligible dependents, or any other mutually agreeable alteration to the policy or participation in other tuition programs. The recommendation will be submitted to the Board of Regents for their consideration prior to the close of the 2009-10 academic year.

#

LETTER OF UNDERSTANDING ON FACULTY COMPUTING AND LABORATORY/ACADEMIC EQUIPMENT

The funds reserved for faculty computing [\$400,000 annually] laboratory and academic equipment [\$204,000 annually] will remain in the budget annually for their intended purposes. Faculty computing funds shall be allotted in their entirety for the purpose of providing information technology to faculty members. The replacement process for faculty computers will be managed by the Administration. The UFA-Administration Committee will form a Task Force of faculty and administrators to consider more efficient means of administering the faculty computer replacement process. The Task Force may recommend to the Administration that any savings realized from great efficiency be repurposed to faculty development.

#