Article 18 Task Force Report
This is the concluding report of the Article 18 Labor/Management Task Force that was established in the PSU/AAUP 2013-2015 Collective Bargaining Agreement.

February 10, 2015

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Background

At Portland State University, Non-Tenure-Track Faculty (NTTF) play an integral role in the university’s instructional and research mission. Portland State University is not unique in this regard. Nationally, NTTF appointments are growing at public and private institutions. At their respective institutions, NTTF instructors and researchers are increasingly engaged in governance and other roles.

In an effort to establish broad contracting principles for NTTF faculty at Portland State, the University and the AAUP “created a joint labor/management task force to examine current employment terms and notice requirements for non-tenure track faculty, particularly the need for and timing of the end-of-year letters regarding the intent to not renew appointments.”

Summary of NTTF Contracting at Portland State University

In simple operational terms, NTTF appointments provide the stable, cohort of full-time faculty. NTTF introduce a contractual context different from both Tenure-Track Faculty (TTF) and part-time adjunct professors. For example, the annual pre-tenure contract renewal is assumed up to the year of an indefinite tenure decision. For part-time adjunct faculty, contracts run for specified periods and without an expectation for renewal, although many part-time faculty

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1Article 18, Section 9, Collective Bargaining Agreement American Association of University Professors and Portland State University For the Period September 1, 2013 through November 30, 2015, http://bit.ly/1BAisFY
contracts are renewed year after year. For the most part, Portland State University does not have a well-defined contracting process for full-time NTTF. What NTTF contractual processes are in place have been practiced unevenly and have NTTF sitting somewhere between being a member of a long-term stable department faculty and a member of a contingent pool similar to part-time adjunct faculty.

A NTTF contract typically ends in June at the close of an academic year. The process to end a NTTF contract starts much earlier. At the end of Fall Term, chairs of academic units send non-renewal notices (officially Notice of Intent Not to Reappoint) to employees with contracts ending in June. By the quirk of its timing the non-renewal letter is commonly called the “Christmas letter.” A December of 2010 memorandum to chairs and deans outlined the situations a non-renewal notice must be sent, conditions where a non-renewal notice must not be sent and finally, the implications of not sending a non-renewal notice at all (See Appendix).²

Table 1 is a summary of the use of the non-renewal notices from the 2004-2005 academic year to 2012-2013. The current NTTF contractual model sends non-renewal notices to at least 15% to 20% of NTTF each year and eventually renews nearly 95% of those notified and close to 99% of those employed in NTTF positions. The task force considered the current system inefficient and counter-productive. In the remainder of the report the task outlines a series of recommendations for a new contractual model that removes many of the shortcomings of the current model.

<table>
<thead>
<tr>
<th>Academic Year</th>
<th>Total NTTF³</th>
<th>Notices Sent⁴</th>
<th>Renewed w/Notice</th>
<th>% NTTF Renewed⁵</th>
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<td>2012-13</td>
<td>712</td>
<td>106</td>
<td>100</td>
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<td>118</td>
<td>105</td>
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<td>98.3%</td>
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²Memorandum is available from the OAA webpage, [http://bit.ly/1C4JemW](http://bit.ly/1C4JemW) and a copy is provided in Appendix II.

³Total NTTF obtained from Table 2: Total Faculty Headcounts and FTE’s by Contract Type (2002 - 2012), “How PSU Prioritizes Its Money: An Analysis of Personnel and Salary Allocation,” p13, October 2013

⁴OAA provided the task force the Renew and Total Notice sent data.

⁵Percentages are rounded.
Introduction to Policy Proposals and Recommendations

The intent of this policy is to recognize the valued role that Non-Tenure Track Faculty at PSU make to the instructional and research missions of the university as well as to create an appointment system that provides a more clearly defined employment commitment from the university to its Non-Tenure Track faculty members. Implementing a system of continuous employment opportunities will enable the University to attract and retain a high quality Non-Tenure Track Faculty dedicated to furthering Portland State University’s instructional and research missions.

The task force used the following principles to guide our design of a continuous employment system for Non-Tenure Track Faculty:

- Academic Freedom
- Job Security
- Governance
- Long Term Planning/Stability
- Professional Recognition and Respect

Core Elements:

1. A pathway should be created through which Non-Tenure Track Faculty can move to an ongoing employment status with an expectation of continuous appointment (rather than employment based-upon time-specific contracts).

2. A continuous appointment will be awarded to Non-Tenure Track Faculty members after the successful completion of a probationary employment period.

3. Continuous appointments will be achieved through a formalized process and be based upon demonstrated excellence in job performance as it relates to job description.

4. Academic units will be responsible for the review of Non-Tenure Track Faculty being considered for a continuous appointment. These units will use their annual review guidelines, which have been developed in accordance with University’s Promotion and Tenure guidelines.

5. Professional development opportunities should be provided to individuals with probationary appointments (those on a pathway to review for a continuous appointment), to those who receive continuous appointments, and when appropriate, to faculty hired on fixed-term appointments.
Proposed New Policies for Employing Non-Tenure Track and Fixed-Term Faculty

Non-Tenure Track Faculty (Instructional and Research) Appointments:

Definitions:

*Non-Tenure Track Faculty (NTTF) appointments* have instructional or research expectations and are eligible for continuous employment after the successful completion of four-years of probationary employment. While Non-Tenure Track faculty members can expect to have ongoing employment with the university with job security protections, these are not tenure-track appointments.

*Continuous employment* means the faculty member (instructional or research) has an expectation of ongoing, indefinite employment at the University.

Uses:

Probationary appointments leading to the opportunity for continuous employment will be the standard for both instructional and research Non-Tenure Track faculty positions.

Since there is an expectation that Non-Tenure Track faculty positions will become continuous appointments, appropriate recruitment and screening processes should be used when hiring for these positions. Recruitment should be open to a diverse set of applicants, and hiring should be done by a faculty-led search committee.

Faculty members will be hired on annual or multi-year contracts for a probationary period of four years. Faculty members will be subject to annual (or biannual, depending upon the length of their contract) evaluations. During their fourth year of service, upon successful completion of their annual review, the Non-Tenure Track faculty member will be granted a continuous appointment.

Once granted, the continuous appointment will remain for the duration of the faculty member’s employment unless:

- Financial exigency is declared using the process outlined in Article 22 of the Collective Bargaining Agreement.
- There is just cause to release the faculty member. Definitions of just cause and dismissal procedures are defined in Article 27 of the Collective Bargaining Agreement.
- There is no longer a curricular need for an instructional position. If this is the case, the following conditions must be met:
  - The Department Chair will be required to provide written justification for the elimination of the faculty member’s position to the Dean, Provost and AAUP.
  - The affected faculty member will get adequate notice of the elimination of his/her position.
In departments where a position is going to be eliminated and there are multiple Non-Tenure Track faculty members in equivalent positions or with equivalent qualifications, Non-Tenure Track faculty members will be laid off according to their seniority and rank. More senior and higher ranked Non-Tenure Track faculty members will be moved into the remaining positions within the department.

- The School/College will make an earnest attempt to find an alternate assignment for the affected Non-Tenure Track faculty member.
- The faculty member will have recall rights for up to three years.

● There is no longer a need or a reliable funding stream for a research position. If this is the case, the following conditions must be met:
  - The center/unit director will be required to provide written justification for the elimination of the research faculty member’s position to the Dean, Provost and AAUP.
  - The affected researcher will get adequate notice of the elimination of his/her position.
  - In departments where a position is going to be eliminated and there are multiple research faculty in equivalent positions or with equivalent qualifications, researchers will be laid off according to their seniority and rank. The more senior, higher ranked researcher faculty will be moved into the remaining positions within the department.
  - The School/College will make an earnest attempt to find an alternate assignment for the affected researcher.
  - The research faculty member will have recall rights for up to three years.

**Fixed-Term Faculty (Instructional and Research) Appointments:**

**Definitions:**

*Fixed-Term Faculty (FTF) Appointments* are made by contract letter to an instructional or research faculty member for a specific period of time. There is no expectation of employment beyond the period of appointment.

**Uses:**

While probationary appointments leading to continuous employment opportunities will be customary for most Non-Tenure Track faculty members, we recognize that there may be circumstances that necessitate the use of temporary, fixed-term appointments.

Initial fixed-term contracts should last for a period of at least one year (unless the appointee is hired as a temporary replacement for a shorter duration), but they may be offered as multiple-year appointments. After the third annual appointment, the position should be converted to a multi-year appointment.
Limitations of Fixed-Term Instructional Appointments:

A fixed-term contract can be used for an instructional appointment if:

- The appointee is a visiting faculty member
- The position is a temporary replacement for a faculty member on sabbatical, sick or family leave
- The position is hired to temporarily cover a vacant faculty position for which the department is conducting an active search.
- The position is in a newly established program or part of the expansion of an already established program. Under these circumstances, the position would need to be reviewed by its fourth year. If there is an ongoing need for this position, then it should convert to a continuous appointment.

Limitations of Fixed-Term Research Appointments:

A fixed-term contract can be used for a research appointment if:

- The appointment is for work on a time-delineated project that is financed through external sources

If a unit can demonstrate a sustained pattern of extramural support, the unit may make a request to the dean or equivalent administrative unit, to convert the position into a continuous appointment based upon the research unit’s established pattern of support.

All fixed-term research appointments will be reviewed during the fourth year to see if it is feasible to convert them to a continuous appointment.

The University will use the following criteria when considering the conversion from a fixed-term to a continuous appointment:

- The academic or research unit’s track record of raising adequate funding. If the research unit has a solid, fund-raising track record that generates enough resources to cover the costs of the appointment, the appointment should convert to continuous status even if external funds have not yet been obtained to cover the position.
- The researcher’s ability to raise funds for his/her position
- The researcher’s contribution to the university’s mission in terms of teaching or mentoring students, providing training/support to faculty, and/or maintaining university/community partnerships

Recognizing the ebb and flow of external funding awards, the university will create a bridge funding pool from which academic units can borrow to cover temporary lulls in funding or delays in funding awards.
If a fixed-term position is converted to a continuous appointment, the Non-Tenure Track faculty member can make a request to his/her supervisor to count up to four years of time served in a fixed-term position towards his/her probationary period, however, s/he is not required to do so.

**Evaluation Process for Awarding a Continuous Appointment**

The faculty member’s fourth year annual evaluation will be the evaluation used for awarding continuous appointments. If the faculty member successfully promotes to a higher rank before his/her fourth year of service, s/he will be granted a continuous appointment with the higher rank.

The Non-Tenure Track faculty member can request an extension of the probationary period if s/he experienced a break in service because of family, medical or parental leave.

If a Non-Tenure Track faculty member was initially hired on a full-time, fixed-term or part-time adjunct basis performing the same or relevant duties, s/he can count up to four years of service (pro-rated for part-time service) towards his/her probationary period.

The faculty member’s annual evaluation in his/her fourth year of service will be the evaluation that is used to award a continuous appointment. Criteria for Non-Tenure Track faculty’s annual evaluations have already been determined by departments in accordance with the University’s Promotion and Tenure Guidelines. Current review guidelines are based upon the Non-Tenure Track faculty member’s job description. These guidelines should have clear expectations and include information about the types of documentation required for the review.

Non-Tenure Track faculty are currently evaluated through a peer-review process. Peer-review committees are chosen using established, departmental governance procedures. Whenever possible, Non-Tenure Track faculty members’ review committees should include other Non-Tenure Track faculty members.

A satisfactory fourth year annual evaluation results in a continuous appointment. Departmental recommendations to grant a faculty member a continuous appointment will be sent to the college/school (program), then to the provost’s office for final approval.

If a Non-Tenure Track faculty member is denied a continuous appointment, s/he can appeal the decisions at the departmental, college/school and provost levels. If the fourth year review is the first unsatisfactory evaluation the faculty member received, results of earlier reviews should be considered during the appeals process.

If a Non-Tenure Track faculty member is not awarded continuous status, s/he will be given adequate, timely notice. Fourth year evaluations of Non-Tenure Track faculty members will be scheduled in a way that allows for adequate notice should an appointment be denied.
Denial of a continuous appointment does not preclude the faculty member from applying for other positions at Portland State University.

Once a Non-Tenure Track faculty member achieves a continuous appointment, s/he will continue to be evaluated on a 3-5 year cycle. A pool of money shall be established in connection with these reviews, similar to the current post-tenure review pool in the current Collective Bargaining Agreement.

**Article 18 Task Force Recommendations**

The Article 18 Task Force recommends:

- PSU and AAUP write mutually acceptable contract language and implementation policies based upon the task force’s proposals and recommendations.
- We urge the parties to engage in interim bargaining, so that new policies can go into effect by the 2015/2016 academic year.
- Implementation procedures are designed in a way that recognizes and rewards the service of current Non-Tenure Track faculty members.
- The University establishes a committee to create a bridge fund pool that would cover temporary lulls in funding for PSU research units. This committee will include representatives from the University, research unit administrators, and research faculty.
- The University reviews the current promotional pathways for Non-Tenure Track faculty members and explores ways to expand advancement opportunities.
Appendix

December 2010 Memorandum
Fixed Term Instructional and Research Faculty

December 2, 2010

To: Deans, Vice Provosts, Associate/Assistant Deans, Directors, Department Chairs

From: Carol L. Mack, Vice Provost for Academic Personnel and Leadership Development
Cathy LaTourette, Associate Vice President for Human Resources

RE: Fixed-term Instructional and Research Faculty Notice of Intent Not to Reappoint (Notice)

(Please note separate memo that addresses contract language for Academic Professionals)

Over the last several years, we have asked units to consider how to provide Notice of Intent Not to Reappoint (Notice) to their AAUP-represented, fixed term employees. In some years, units opted to send letters to all such employees to provide maximum flexibility in times of uncertain budget conditions. In recent years, our data show that most units send letters more selectively, honoring the contributions of fixed-term employees while still allowing for reasonable staffing flexibility.

While the mythology exists that most represented employees get these “holiday letters,” it has been and should continue to be our intention to be strategic about who receives these letters based on predictions of need and available funding. Deans, vice provosts, and department chairs should carefully assess the staffing needs of their units and will continue to have the authority to send Notice of Intent Not to Reappoint as appropriate within their units.

The PSU Policies and Procedures for the Evaluation of Faculty for Tenure, Promotion, and Merit Increases states that a Notice of Intent Not to Reappoint (Notice) should be sent to any academic faculty and staff with a fixed-term, renewable appointment that is 0.50-1.0 (annualized) FTE who will not, or may not, be reappointed in the following fiscal/academic year.

AAUP-represented, fixed term instructional and research employees who are not in their first year of service must receive notice by December 31, 2010 if they are not to be renewed. We recommend that you distribute these letters, preferably by December 17th. AAUP-represented fixed-term instructional and research employees within their first year of service must receive Notice by March 31, 2011, but may receive Notice earlier, if they are not to be renewed.

Most AAUP-represented, fixed-term instructional and research employees are eligible to receive Notice. However, please review carefully the following special situations and contact us if you have any questions:

- For those who are on multi-year renewable appointments but who are not in the final year of the appointment, Notice must NOT be sent.
Those who are funded by self-support or grant dollars and whose Notice of Appointment contains language that allows their appointment to be terminated if funding is no longer available need not receive Notice at this time unless it is possible that you may not re-contract the employee for any other reason.

For those in non-renewable appointments, the Notice requirement has already been met. However, as a courtesy and to be absolutely clear with the employee that their appointment will not continue, you may choose to give Notice at this time.

In determining how to best comply with this Notice provision for the AAUP-represented, fixed-term instructional and research faculty in your unit please review these considerations:

1. Not receiving Notice will convey to your faculty that their appointment will be renewed next year. In other words, you will have an obligation to re-contract each fixed-term instructional and research faculty through June of 2011 if Notice is not sent at this time.

2. For fixed-term instructional and research faculty who have attained seniority status pursuant to Article 18, Section 5(a), Notice may only be sent in the limited circumstances described therein. Deans, vice provosts, department chairs and directors should pay particular attention to these decisions.

Attached are two documents for your use:

- A template Notice of Intent Not to Reappoint for Fixed-Term Instructional and Research Faculty. Supervisors should use this template to prepare Notice letters to deliver to their faculty members. Do not deviate from the template without first contacting Christina Kraus (5-9838).

- A set of guidelines for presenting Notice letters to employees, including what can and cannot be said to employees at this time. It is strongly recommended that supervisors personally deliver the Notice.

What we need from you:

- No later than December 31, e-mail Sharon Buhlinger, Special Assistant to the Vice Provost for Academic Personnel and Leadership Development; and Christina Kraus, Employment Manager (buhlingers@pdx.edu and krausc@pdx.edu) a list of faculty members—including ID numbers—to whom you are providing Notice.

- No later than December 31, send photocopies of the Notice letters you delivered to faculty members to Christina Kraus in Human Resources (mail code HR).

Please notify any other supervisors in your unit of these procedures and deadlines. If you have any questions, please contact us.

Enclosures
cc: executive assistants and assistants