

Process and Provisions for Collective Bargaining with Faculty  
Applicable to University of Missouri-St. Louis Only

In conjunction with the Service Employees International Union (“SEIU”), some members of the faculty at the University of Missouri-St. Louis (“UMSL) have requested that the University establish a process for faculty to participate in collective bargaining. Pursuant to a Missouri Supreme Court decision, public sector employees have a right to engage in collective bargaining under the Missouri Constitution. There is no process or procedure set out in the Missouri statutes, however, for faculty to engage in such collective bargaining and teachers are expressly excluded from the procedural process set forth in Mo. Rev. Stat §105.510. Instead, under Missouri law, the University has the authority and the responsibility to establish a framework for allowing its faculty to participate in the collective bargaining process, if they so choose.

Accordingly, the University has designed a process for UMSL faculty to engage in collective bargaining. The process is set forth in the attached document entitled “University of Missouri Process and Provisions for Collective Bargaining with Faculty Applicable to University of Missouri-St. Louis Campus Only.” The proposed process is designed to be fair and meet the requirements of the law. It also is designed to assure that a majority of those UMSL employees who will be affected by a union do in fact want to be represented by the union. Additionally, the proposed process takes into consideration input from the UMSL campus in order to create a process that is appropriate for the UMSL campus at this time and under current circumstances.

October 31. 2016

No. 1

Recommended Action – Process and Provisions for Collective Bargaining with Faculty  
Applicable to University of Missouri-St. Louis Campus Only

It was recommended by Interim Vice President of Human Resources Pollock,  
endorsed by Interim President Middleton, moved by Curator \_\_\_\_\_ and  
seconded by Curator \_\_\_\_\_, that:

The University of Missouri Process and Provisions for Collective Bargaining with  
Faculty Applicable to University of Missouri-St. Louis Campus Only be approved  
as set forth in the attached document.

Roll call vote of Board:                      YES                      NO

Curator Cupps  
Curator Graham  
Curator Henrickson  
Curator Nelson  
Curator Phillips  
Curator Snowden  
Curator Steelman  
Curator Sundvold  
Curator Voss

The motion \_\_\_\_\_.

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**UNIVERSITY OF MISSOURI  
PROCESS AND PROVISIONS FOR  
COLLECTIVE BARGAINING WITH FACULTY  
APPLICABLE TO UNIVERSITY OF MISSOURI-ST. LOUIS CAMPUS ONLY  
("PROCESS")**

**ARTICLE I**

**PURPOSE**

- A. The Curators of the University of Missouri ("University") acknowledge, pursuant to the Missouri Supreme Court's ruling in Independence National Education Association v. Independence School District, 223 S.W.3d 131, 136 (Mo. banc 2007), that employees have a right to engage in collective bargaining under Article I, Section 29 of the Missouri Constitution.
- B. The University acknowledges that maintaining ongoing positive relations with faculty regarding decisions addressing salary and other terms and conditions of employment plays an important role toward fulfilling its mission to provide an outstanding educational value and experience to its students in a safe environment based on sound fiscal principles.

**ARTICLE II**

**COVERAGE**

- A. The University has established this Process to allow employees excluded ("Statutorily Excluded Employees") from the procedural process set forth under Mo. Rev. Stat. §105.510 ("Statutory Process") with the ability to participate in the collective bargaining process, if they so choose.
- B. The University has determined that to the extent such Statutorily Excluded Employees are determined to be employees, the bargaining unit for faculty at the University of Missouri-St. Louis campus ("Campus") shall be all faculty at the Campus who are Statutorily Excluded Employees, which will include adjunct, non-tenure track, tenure track and tenured faculty except supervisory employees, defined below ("Unit").
- C. To avoid a division of loyalties and conflicts of interest, supervisory employees (as herein defined below) shall not be included within the same bargaining unit as non-supervisory employees and shall not be part of the Unit.
- D. All employees who are covered by the Statutory Process (the "Statutorily Included Employees") must apply for certification of their employee representative with the State Board of Mediation in accordance with the law for such employees and shall not be part of the Unit or included in this Process.

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- E. Supervisory Employee. The term "supervisor" or "supervisory employee" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Supervisory employees include but are not limited to academic administrators, directors, department chairs, deans, provost, chancellor, and associated titles.

### **ARTICLE III**

#### **DESIGNATION OF EXCLUSIVE BARGAINING REPRESENTATIVE**

- A. The University will not voluntarily recognize an organization, association, union or professional group ("labor organization") as the collective bargaining representative for employees without a secret ballot election pursuant to these provisions.
- B. Any organization seeking to represent employees under this Process must submit a Petition for Election ("Petition") to the Vice President of Human Resources for the University of Missouri (hereinafter "VPHR") via certified mail addressed to the "Vice President of Human Resources of the University of Missouri" in a sealed envelope marked "Petition for Election."
1. The Petition must be accompanied by a showing of interest (via signed non-electronic union authorization cards) from at least thirty percent (30%) of the Unit, currently employed. The authorization cards are to be placed in a sealed envelope. Pursuant to Article III, Section C below, ONLY the Independent Verifier may view or know the identity of union card signers.
  2. No signature on a union authorization card can be older than three (3) months prior to the date the Petition is submitted to the VPHR.
  3. In addition to submitting the Petition, the organization seeking recognition as the exclusive representative must inform the VPHR of name, address, e-mail address and telephone numbers of the organization and its contact person(s).
- C. Upon receiving the Petition, the VPHR shall engage an independent neutral third-party ("Independent Verifier"), such as the League of Women Voters, in order to validate the signatures using handwriting examples and confirm that at least thirty percent (30%) of the employees in the Unit have signed timely cards and are still employed as of the date of validation in a position included in the Unit.
1. Thirty (30) days shall be allowed to verify that the required information is present in the Petition.

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2. VPHR may: (a) reject the showing of interest with specific reasons for the rejection (e.g., if the showing of interest is less than 30% as defined in Article III, Section B.1) and deny the request for an election; (b) accept the adequacy of the showing of interest; or (c) take other action as deemed appropriate by the VPHR, consistent with this Process.
  3. If the VPHR determines that the showing of interest is adequate, the VPHR will set a date for the election to take place.
  4. The VPHR's decision shall be final.
- D. If and when Article III, Section C.3 applies, then, within sixty (60) days after said determination, the exact date to be set by the VPHR, there will be a secret ballot election to determine whether the majority of employees in the Unit desire to be represented by the petitioning labor organization ("Petitioner") for purposes of collective bargaining, unless the VPHR and the representative for the Petitioner mutually agree upon a different election date.
1. The ballot will be on a form substantially similar to the form utilized by the National Labor Relations Board for conducting union elections.
  2. The election will be held in one (1) or more polling places reasonably convenient to the eligible voters, and at times when the employees in the Unit may vote without interfering with their assigned duties, all determined by the VPHR.
  3. The election shall be by secret ballot, utilizing such procedures as the VPHR determines are appropriate for ensuring the privacy and security of each employee's vote. The VPHR shall utilize the Independent Verifier to conduct the election consistent with the procedures as determined by the VPHR. All ballots shall be cast in person; no absentee ballots are allowed.
  4. Eligible voters shall be a member of the Unit and employed as of the date the Petition is filed and also as of the date of the election.
- E. Once an election date has been set, the VPHR shall issue a notice informing all eligible voters of the date, time, and place of the election. Such notice shall be posted where other comparable notices are posted for employees in the Unit and/or via email to the applicable University email address.
- F. The University shall have the right to freely express its opinion about whether or not the Petitioner should be selected as the exclusive bargaining representative of the employees in the Unit.
- G. No agent of the University or the Petitioner shall discharge or discriminate against any employee because of the exercise of the right to form and join the labor organization nor shall

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there be, directly or indirectly, any intimidation or coercion or any attempt to compel any such employee to join or refrain from joining the labor organization.

- H. The University and the Petitioner may select observers so that there may be one (1) observer representing the University and one (1) observer representing the Petitioner at each polling place during the election. No observer may be a supervisor of the University or an employee of the Petitioner.
  - 1. Any observer may challenge an employee's eligibility to vote. The basis of the challenge is only whether the employee is properly within the Unit and is employed as of the date of the election. Eligible voters shall be a member of the Unit and employed as of the date the Petition is filed and also as of the date of the election.
  - 2. Challenged ballots shall be folded and placed in a sealed envelope with the name of the voter plainly written on the outside.
  - 3. Challenged ballots will not be considered unless the votes could affect the results of the election.
  - 4. If the ballots might affect the results of the election, the challenged ballots will be presented to the VPHR for a determination. Any issues as to the sufficiency of any ballot shall be determined by the VPHR.
- I. Ballots will be tallied after the posted time for closing the polls. The ballots will be tallied by the VPHR in the presence of designated observers from the University and the Petitioner. Tallied ballots will be placed in a sealed envelope and saved until all objections are resolved and the VPHR certifies the election results. The tentative results will be recorded in writing and authenticated by the observers present when the ballots were tallied. The results will remain tentative until the VPHR certifies the results.
- J. Within ten (10) business days after the votes are tallied, either the Petitioner or the University may file with the VPHR an objection ("Objection") to the conduct of the election or conduct affecting the results of the election, which shall contain a statement of the reasons for the Objection. To be considered, any Objection must be based on alleged conduct violation of Article III, Section G hereof.
  - 1. A copy of the Objection will be provided to all parties, specifically the University and the Petitioner.
  - 2. The VPHR will investigate all claims and determine the process for doing so.
  - 3. The VPHR shall determine if a hearing is needed. If not, the VPHR shall render a decision.

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4. If a hearing is held, the Petitioner and the University (“Parties”) shall receive notice of the hearing, to be scheduled within thirty (30) days of the election.
    - (a) Briefs may be allowed at the discretion of the VPHR. Both Parties will have an opportunity to present evidence, examine and cross examine witnesses and present arguments.
    - (b) The VPHR will make a decision within thirty (30) days of the close of the hearing.
    - (c) The VPHR’s decision will be final.
  5. The final results of the election will be certified to the Parties after the time for filing objections has expired, or the VPHR has made a decision on all Objections and challenged ballots.
  6. After the results of the election become final, the University will consider the Petitioner as the sole representative of the employees of the Unit only if a majority of the Unit voted to be represented by the Petitioner, and The Board of Curators of the University of Missouri (“Board”) shall officially recognize the Petitioner as the sole representative of the employees of the Unit.
- K. Once either the certification of results of the election issues or a Petition is filed but withdrawn prior to a vote, no Petition by any labor organization for election in the same Unit will be accepted by the University in the eighteen (18) month period after certification of the results or after a Petition is withdrawn prior to a vote.
- L. In the event that a majority of the employees in the Unit determines at any time that they no longer wish to be represented by said labor organization, they may revoke their designation of the organization by tendering a signed and dated petition for revocation to the VPHR (“Petition for Revocation”).
1. Upon receipt of such a petition, the VPHR will designate a representative to investigate the authenticity of the Petition for Revocation.
  2. If the VPHR determines that the Petition for Revocation is authentic, the VPHR shall revoke recognition of the organization.
- M. Should a different labor organization seek to represent employees who are already represented or the employees in the Unit seek representation by a different labor organization, the employee or labor organization seeking to change the recognized organization must initiate the process by filing a Petition for Election as set forth above.
1. Such Petition may not be filed during the term of any agreed and ratified understanding of policies, excepting that the Petition may be filed within a thirty (30) day period beginning on the ninetieth (90<sup>th</sup>) day before the expiration of an understanding of

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policies and ending on the sixtieth (60<sup>th</sup>) day before the expiration of the understanding of policies, unless the University and the recognized labor organization enter into a new agreement prior to the ninetieth (90<sup>th</sup>) day before such expiration of an understanding of policies.

2. No more than one election shall take place in any Unit within the same eighteen (18) month period. Once an election takes place, the VPHR shall not accept cards from labor organizations or employees within the Unit seeking another election for 18 full months after the date of the prior election.

## **ARTICLE IV**

### **COLLECTIVE BARGAINING**

- A. Within four (4) weeks after a labor organization is certified as the exclusive bargaining representative for the employees in the Unit as set out above, representatives of the University and representatives of the labor organization shall meet and begin bargaining for an agreement covering the wages, benefits, and other terms and conditions of employment for the employees within the Unit.
- B. The University's collective bargaining team may consist of the following: the VPHR; Office of the General Counsel and/or outside counsel; and others as selected by the VPHR. The University will designate its principal negotiator.
- C. If the University and the labor organization agree upon a proposed understanding of policies, the VPHR is authorized to execute said understanding of policies on behalf of the University.
- D. If the University's team and the labor organization cannot reach an agreement on the terms of a proposed understanding of policies and the VPHR determines the Parties are at impasse after substantial good faith negotiations, the VPHR may implement the University's final offer.
- E. It is essential that negotiations not disrupt University operations or otherwise disrupt the educational process.
- F. Both sides shall bargain in good faith, making an effort to reach a mutually acceptable agreement, as required by law.
- G. The University shall not pay any union representative for time spent participating in collective bargaining or preparing for collective bargaining.
- H. The legal obligation to collectively bargain does not require agreement or concession by either party to any particular proposal.

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- I. University policy and procedures, including the CRRs, hereinafter defined, will govern in the absence of a binding agreement when the agreement does not address an issue, or when an agreement expires and a new agreement regarding the issue is not reached.
- J. The University, through its VPHR, shall not approve an agreement that diminishes or compromises the University's ability to make administrative decisions and educational policy decisions including, but not limited to, curriculum decisions. The University will not approve an agreement that could cause the University to violate any state or federal law, negatively affect the University's accreditation, or disrupt or weaken the University's educational purpose.

## **ARTICLE V**

### **CONTENT OF LABOR AGREEMENTS**

- A. All understanding of policies must be for a fixed term or duration.
- B. The University will not approve an understanding of policies that does not include a provision reserving the right of the University to modify unilaterally any of the provisions contained in the understanding of policies, including, without limitation, those related to wages, hours, working conditions and other terms and conditions of employment under the following circumstances:
  - 1. In the event during the term of the agreement, of a reduction in annual appropriations from the Missouri General Assembly to the University, or the withholding by the Governor of appropriations made by the Missouri General Assembly such that the appropriated funds available for University operations are less than the appropriated funds available for University operations during the preceding fiscal year; or
  - 2. In the event of enactment, promulgation, amendment or repeal of a law or regulation applicable to the University during the term of the Agreement which results either in a reduction of revenue available or an increase in expenses for University operations when compared to such revenue or expenses for the preceding fiscal year or which renders any provision unlawful; or
  - 3. In the event of an unforeseen change in circumstances from those in existence at the time the Agreement was entered into which would result in an unreasonable burden, financial or otherwise, on the University or its employees.
  - 4. Such provision will also require that, if the University deems it necessary to modify the economic terms of the understanding of policies under the circumstances set forth in this Article, the University will notify the relevant labor organization and shall provide a period of thirty (30) days during which the University and the labor organization shall bargain in good faith over any necessary adjustments to the economic terms of the

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agreement. If after thirty (30) days the parties have been unable to agree upon modifications that meet the VPHR's requirements, the VPHR shall have the right to, unilaterally, make necessary adjustments on her/his own authority.

5. In the event of any conflict between the understanding of policies and the University's Collected Rules and Regulations (hereinafter "CRRs"), the CRRs shall control and supersede the understanding of policies.
- C. Every agreement shall contain a provision, in accordance with Mo. Rev. Stat. §105.530, providing that strikes and other unlawful conduct by any employee, whether individually or in concert with others, including sympathy, unfair labor practice or wildcat strikes, sit downs, slowdowns, sick outs, work stoppages, boycotts, any acts honoring a picket line, or any other acts that interfere with the University's educational operations will be prohibited, and that any employee who engages in such prohibited act shall be subject to termination of employment, subject to and in accordance with protections afforded such employee regarding termination of employment.

## **ARTICLE VI**

### **VALIDITY AND ENFORCEMENT**

- A. If the State of Missouri passes any law governing collective bargaining for the Statutorily Excluded Employees, then to the extent any of the provisions established herein are inconsistent with the Missouri statute, the inconsistent provisions shall be superseded in whole or in part by such statute.
- B. If any court of competent jurisdiction shall declare any of the provisions established herein or portions thereof to be unenforceable under any state or federal statute, regulation or other authority, the unenforceable portion of the provisions shall be removed, but all other provisions contained herein shall remain in effect.
- C. In interpreting the legality of any or all of the provision herein, the parties may be guided by precedence established by the National Labor Relations Board and decisions by the Missouri State Board of Mediation addressing the comparable issue but such decisions shall not have precedential effect and any court of competent jurisdiction may decide such issue on its own.

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