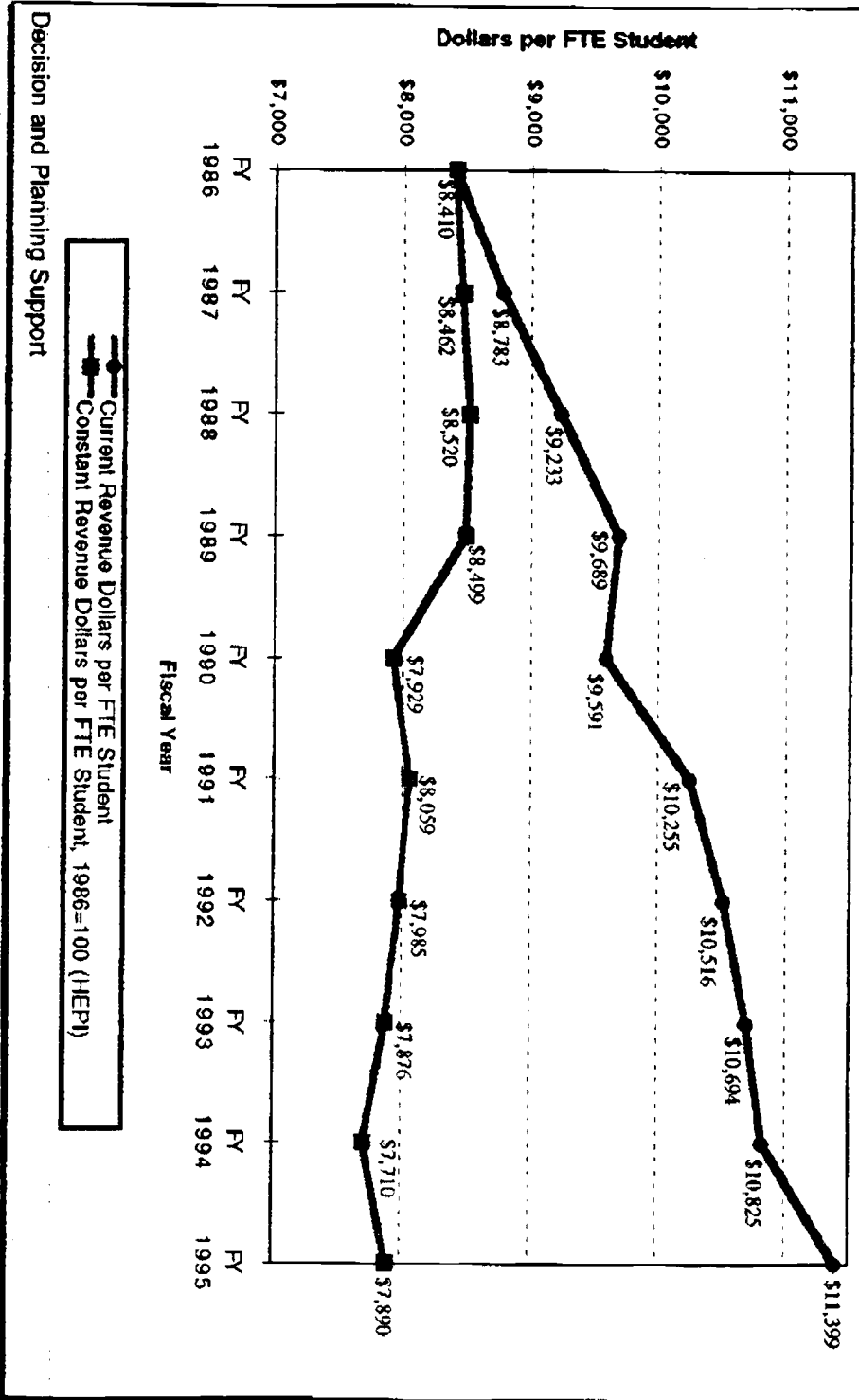


THE UNIVERSITY OF ARIZONA
 Current vs. Constant Dollar Revenues per FTE Student
 FY 1986 - FY 1995



Source: Annual Financial and FTE Reports, HEPI
 Note: Includes State & Federal Appropriations, Tuitions, & Other Revenues (excluding Other Auxiliary & Restricted);
 Less Academic Debt Service, Waivers, & Financial Aid Setaside from Tuitions

Decision and Planning Support

CHANGES IN STUDENT:FACULTY RATIOS AT THE UNIVERSITY OF ARIZONA
1975-1997

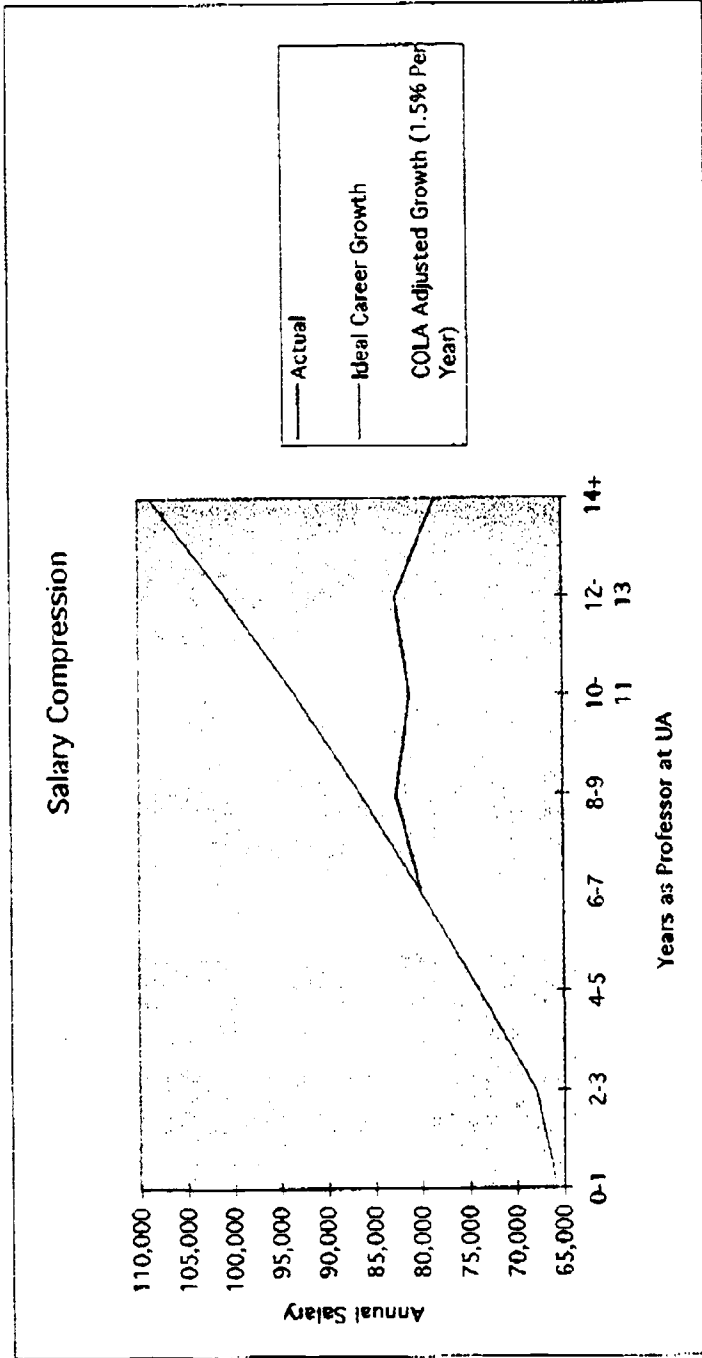
Year	Full Time Students			Full Time Faculty			Ratio of Students:Faculty
	Number	Gain/Loss	% Gain/Loss	Number	Loss	% Loss	
1975	28,818			1,735			17
1985	30,864	2,046	7.10%	1,667	-68	-3.92%	19
1995	34,774	3,910	12.67%	1,592	-75	-4.50%	22
1997	33,737	-1,037	-2.98%	1,448	-144	-9.05%	23
TOTALS SINCE 1975:		4,919	17.07%		-287	-16.54%	35.29%

NOTE: student and faculty full-time headcounts, as reported to Arizona Board of Regents

2/8/98

The University of Arizona, Main Campus Colleges
 Average Salaries of Tenure Track Full Professors with Academic Appointments

	Years as Full Professor at UA							14+
	0-1	2-3	4-5	6-7	8-9	10-11	12-13	14+
Actual	65,600	67,927	73,802	79,885	82,544	81,089	82,563	78,324
Ideal Career Growth	65,614	67,927	73,802	79,885	86,276	93,178	###	108,682
COLA Adjusted Growth (1.5% Per Year)	65,614	67,582	69,610	71,698	73,849	76,064	78,346	80,697



THE UNIVERSITY OF ARIZONA
 Salary Compression Analysis
 January 1998, After TIP/Merit Implementation

Main Campus
 Tenure Track Full Professors with Academic Appointments
 Excluding Department Heads

	Years as Full Professor at UA					
	0 to 6 Yrs		7 to 12 Yrs		13 or More Yrs	
	HC	Avg Sal	HC	Avg Sal	HC	Avg Sal
College of Agriculture	11	\$ 76,331	10	\$ 93,162	4	\$ 75,635
College of Architecture			2	\$ 77,625	4	\$ 66,580
College of Business & Public Admin	8	\$ 82,909	7	\$ 97,660	16	\$ 99,511
College of Education	8	\$ 67,373	5	\$ 74,276	12	\$ 72,374
College of Engineering & Mines	19	\$ 80,844	20	\$ 87,006	26	\$ 86,118
College of Fine Arts	11	\$ 56,827	11	\$ 61,622	14	\$ 59,655
College of Humanities	10	\$ 63,809	17	\$ 73,951	23	\$ 73,303
College of Law	2	\$ 116,139	5	\$ 97,048	8	\$ 110,390
College of Science	47	\$ 66,989	24	\$ 81,596	77	\$ 74,744
College of Social & Behavioral Sciences	21	\$ 66,538	24	\$ 80,217	40	\$ 80,194
Actual	137	\$ 70,213	125	\$ 81,486	224	\$ 78,732

Total \$ needed to bring actual to expected

\$ 81,486
 -3.5%
 \$ (2,754)
 \$ 616,960 \$ 616,960

Expected
 % diff (actual - expected)
 \$ diff (actual - expected)
 \$ needed to bring actual to expected

Note: Main Campus has a total of 237 Assistant, 392 Associate, and 651 Full Tenure Track Professors of which 195, 310, and 486, respectively, are included in this analysis; the remaining professors are either department heads, directors of academic units, or on fiscal appointment.

Approved
Faculty Senate
/ /

UNIVERSITY OF ARIZONA
A C A D E M I C C A L E N D A R
2001-2002

12/02/97

M 14 Tu 16
W 16 Th 14
F 14 30
44

FIRST SEMESTER

AUGUST

Applications for bachelor's degree candidacy must be filed for
degrees to be awarded at close of the following summer session . . . 1 W
Degrees awarded as of this date for students completing
requirements at close of summer session 9 Th
Residence halls open 16 Th
New Student Orientation Program (Last Session) 16-17 Th-F
Freshman Convocation 17 F
Classes begin 20 M
Last day of registration for credit 27 M

SEPTEMBER

Labor Day--no classes 3 M
Last day for dropping courses resulting in
deletion of course enrollment from record 14 F

OCTOBER

Honors Convocations--no classes 3-5 p.m. (Family Weekend) F
Last day for dropping courses 12 F

NOVEMBER

Veterans' Day--no classes 12 M
Thanksgiving recess 22-25 Th-Su

DECEMBER

Applications for bachelor's degree candidacy must be filed for
degrees to be awarded at close of the following fall semester . . . 3 M
Classes and laboratory sessions end 5 W
Semester examinations begin 7 F
Semester examinations end 14 F
Residence Halls Close 15 Sa
Winter Commencement 15 Sa

WINTER SESSION

DECEMBER

Classes begin 17 M
Last Day of Registration for Credit 18 Tu

JANUARY

New Year's day - no classes 1 Tu
Last day of class/examinations 8 Tu 2002

2001-2002

M 14 Tu 15
W 16 Th 15
F 15 30
45

SECOND SEMESTER

JANUARY

Residence Halls Open 6 Su
New Student Orientation Program (Last Session) 7-8 M-Tu
Classes begin 9 W
Last day of registration for credit 16 W
Martin Luther King Holiday 21 M

FEBRUARY

Last day for dropping courses resulting in
deletion of course enrollment from record 5 Tu

MARCH

Last Day for dropping courses 5 Tu
Spring Recess 9-17 Sa-Su

MAY

Applications for bachelor's degree candidacy must be filed for
degrees to be awarded at close of the following spring semester 1 W
Class and laboratory sessions end 1 W
Semester examinations begin 3 F
Semester examinations end 10 F
Residence Halls Close 11 Sa
Spring Commencement 11 Sa

SUMMER SESSION

PRESESSION

MAY

Classes begin 13 M
Last day of registration for credit 14 Tu

JUNE

Last day of class/examinations 1 Sa

FIRST SUMMER SESSION

JUNE

Classes begin 3 M
Last day of registration for credit 5 W

JULY

Last day of class/examinations 3 W
Independence Day - no classes 4 Th

SECOND SUMMER SESSION

JULY

Classes begin 8 M
Last day of registration for credit 10 W

AUGUST

Last day of class/examinations 7 W

THE UNIVERSITY OF
ARIZONA®
TUCSON ARIZONA

Faculty Senate

Instruction and Curriculum Policy Committee

Mailing Address:

Faculty Center
The University of Arizona
PO Box 210473
Tucson, AZ 85721-0473

E-mail: facsen@u.arizona.edu

Location:

Faculty Center
1400 E. Mabel St.
Tucson, AZ 85721

Phone: (520) 621-1342

Fax: (520) 621-8844

January 27, 1998

To: Faculty Senators
From: Academic Personnel Policy Committee

Dear Senators:

Enclosed you will find what the Committee hopes will be useful information for you relative to the issue of "whistleblowing."

Our discussion at the February 9th Senate meeting will doubtless refer to some or all of the documents herein, so please look them over carefully. The "Summary" is not intended to be an exhaustive list or comprehensive in scope. It is simply an attempt to lay out some comparative information.

Yours sincerely,
Prof. Betty Atwater and Tim Troy, Co-Chairs of APPC

A “Whistleblowing” Orientation Kit

List of Items in This Packet:

1. **Summary Sheet** including definitions.
2. **UHAP Chapters 2 and 6** which contain essential information for faculty about “whistleblowing,” retaliation, grievance procedures, timelines, and sequence, etc.
3. **Arizona Revised Statutes 38-531-38-533, 41-785** which relate to severability of employment, protection from retaliation, prohibited personnel practice, current exemptions (i.e. state universities), and information about the Arizona State Personnel Board).
4. **Title 2, Chapt. 5.1** of the **Arizona Administrative Code** which describes the Arizona State Personnel Board’s procedures relative to dismissal, demotion, suspension, and “whistleblowing” retaliation, the four specific areas in personnel matters the Board is charged with overseeing.
5. Position paper of the **Arizona Faculties Council (AFC)** on proposed new “whistleblower” legislation, **HB 2182**.
6. Latest draft of **HB 2182** which, among other things, would lift the exemption described in **AZ Rev. Statute 38-533**. The legislation would also amend **AZ Rev. Statutes 38-531, 38-532, and 41-785**. All of the above named statutes are included in this packet.

Summary: Whistleblowing

Definition of "Whistleblowing"

Good faith disclosure of information by an employee which the employee reasonably believes evidences: (1) a violation of any law and/or (2) mismanagement involving either a gross waste of monies or an abuse of authority. (Items 1 and 2 are usually referred to as "alleged wrongful conduct" in relevant UHAP chapters (UHAP 2.19 and UHAP 6.01-6.05) and Arizona statutes (38-531-38-533, and 41-785).

Note: the above documents are included in your packet.

Definition of "Retaliation"

An "adverse personnel action" against an employee for his or her good faith disclosure of information. e.g. termination of employment, demotion with salary reduction, decision not to promote, etc. (See: UHAP 2.19 for a complete list of " adverse personnel actions." There is a comparable list in Arizona statute 38-531. Both documents included in this packet).

Current UA Process (See: UHAP Chapters 2 and 6)

1. Time to report - 90 days plus "from the date on which the grievant or complainant becomes aware of the matter."
2. Sequence: in writing to immediate administrative head (6.02), Provost (6.03), Committee on Conciliation, CAFT, President (6.04, 6.05).
3. Counsel allowed in CAFT proceedings.
4. Resolution "inhouse," within the University of Arizona.
5. Final decision rests with the President (if the case goes to that level). "Not subject to further review."

Summary of Process via Arizona State Personnel Board

1. Time to report - 10 days from the adverse personnel action.
2. Sequence: direct written appeal to the Personnel Board which assigns a hearing officer. Hearing officer reports findings to Personnel Board which makes final decision.
3. Lawyer allowed throughout process.
4. Resolution external to the University.
5. Final decision rests with Personnel Board. Decision made "within thirty days after the conclusion of a hearing."

Summary of HB 2182

1. Time to report - 30 days
2. UA process as described above OR Arizona State Personnel Board (i.e. lifts exemption described in AZ Statute 38-533).

UHAP CHAPTER 2

2.19 PROTECTION OF EMPLOYEES FROM REPRISAL FOR THE DISCLOSURE OF INFORMATION

This policy is intended to protect any employee who engages in good-faith disclosure of alleged wrongful conduct to a public body or to a designated University official.

No adverse personnel action will be taken against a University of Arizona employee in knowing retaliation for a disclosure of information by the employee to a public body or to a designated University official, which information the employee reasonably believes evidences: (1) a violation of any law and/or (2) mismanagement involving either a gross waste of monies or an abuse of authority (items 1 and 2 are collectively referred to herein as "alleged wrongful conduct").

If an adverse personnel action is taken against a University employee in knowing retaliation for his or her good faith disclosure of information to a public body or to a designated University official concerning alleged wrongful conduct, and if the employee's conduct or performance did not warrant that action, then the adverse personnel action will be reversed.

Any supervisory employee who is found to have knowingly retaliated for disclosure of alleged wrongful conduct to a public body or to a designated University official shall be subject to discipline, up to and including termination, in accordance with existing University rules, policies and procedures.

For purposes of this policy the following definitions will be used:

Public body is defined as the Arizona Attorney General, the Arizona Legislature, the Governor of Arizona, or a federal, state or local law enforcement agency.

A designated University official is defined as The University of Arizona Provost, except when that official is implicated in the complaint, in which event the designated official will be The University of Arizona President.

Adverse personnel action is defined as one of the following:

- termination of employment
- demotion with salary reduction
- imposition of suspension without pay
- issuance of written reprimand
- decision not to promote
- decision not to grant tenure
- decision not to grant continuing status
- unsatisfactory overall performance rating
- withholding of appropriate salary adjustments
- elimination of the employee's position absent a reduction in force, reorganization, or by reason of insufficient funding, monies or workload

Knowing retaliation means that the supervisory employee was substantially motivated in the adverse personnel action by his or her knowledge or belief that the employee made a good faith disclosure of alleged wrongful conduct to a public body or to a designated University official.

Supervisory employee is defined as any supervisor, director, chair, dean, department head or other employee who has control over personnel actions.

In order to permit the University an opportunity to review allegations of wrongful conduct and take necessary action as appropriate, appointed personnel are encouraged to make such allegations to the Provost.

This policy may not be used as a defense by an employee against whom an adverse personnel action has been taken for legitimate reasons or cause under University rules and policies. It shall not be a violation of this policy to take adverse personnel action against an employee whose conduct or performance warrants that action. If a supervisory employee proves to the satisfaction of the body investigating and considering a claim of "knowing retaliation" that he/she would have taken the adverse personnel action for legitimate reasons or cause, under University rules and policies, even if the disclosure of information had not occurred, then the supervisory employee shall not be disciplined under this policy, and the fact of disclosure shall not alter the adverse action.

Any University employee who knowingly makes false allegations of alleged wrongful conduct to a public body shall be subject to discipline, up to and including termination of employment, in accordance with University policies and procedures.

An employee who believes he or she has been subjected to an adverse personnel action based on prior good faith disclosure of alleged wrongful conduct may protest the action and have a claim of retaliation investigated and considered in accordance with existing University grievance procedures. Such procedures, and the applicable time-frames, are outlined in Chapter 6, Section 6.02.

CHAPTER 6: GRIEVANCES AND HEARINGS

6.01 SCOPE OF CHAPTER

This chapter applies to all grievances and complaints by or against appointed personnel of the University that are not provided for in Chapters 3, 4 and 5 of this Handbook. Those chapters set out rules and procedures for grievances and complaints concerning personnel matters, i.e., matters regarding appointment, performance evaluation, renewal, nonrenewal, promotion, continuing status, tenure, resignation, removal, suspension, dismissal, and releases due to institutional financial emergency or reorganization.

The rules and procedures in this chapter are established pursuant to the Arizona Board of Regents Conditions of Service and shall be construed so as not to conflict with any provision contained in those conditions or any provision contained in Chapters 3, 4 or 5 of this Handbook.

6.02 GENERAL ADMINISTRATIVE PROCEDURES

All grievances or complaints by or against appointed personnel shall be filed with and addressed first by the immediate administrative head of the individual about whom the grievance or complaint is made. All grievances or complaints shall be filed in writing no later than 90 days from the date on which the grievant or complainant becomes aware of the

matter which gives rise to the grievance or complaint, except for compensation.

Grievances or complaints regarding compensation shall be filed no later than 30 days from the date the grievant or complainant receives notice of the matter which gives rise to the grievance or complaint.

The administrative head shall review the grievance or complaint and develop any factual information required for a decision on the matter. The administrator may consult with standing committees or appoint a special committee or an individual to investigate the matter. The administrator shall communicate his or her decision in writing to the grieving or complaining party and to the party against whom the grievance or complaint is made, stating the factual basis and reasons for the decision.

Within 10 days after receipt of the administrator's decision, the grieving or complaining party may appeal the decision to the next administrative level. Additional factual development may be undertaken at the next administrative level if deemed necessary. The decision at that next administrative level is not subject to further administrative review except as otherwise provided in this chapter.

6.03 UNLAWFUL DISCRIMINATION REVIEW PROCEDURES

If a grievance or complaint contains an allegation of unlawful discrimination or other unconstitutional action and this aspect of the grievance or complaint is not resolved through administrative review under Section 6.02, the grievant or complainant may request the Provost's Office to investigate the matter. Where such a request is made, an Affirmative Action Office or other appropriate investigation shall be conducted and a recommendation shall be made to the Provost that the matter be closed or that further action be taken to resolve the matter. The Provost may take any lawful action deemed appropriate to resolve the matter. The Provost's decision shall be final and is not subject to further administrative review.

6.04 **FURTHER HEARINGS**

If a grievance or complaint by a faculty member or by a professional is not resolved through administrative review under Sections 6-02 or 6-03, the individual may file a petition with the Committee on Conciliation and, if conciliation is not possible, then subsequently with the Committee on Academic Freedom and Tenure. The rules and procedures contained in the Constitution and By-laws of the General Faculty of The University of Arizona govern the jurisdiction and proceedings of these committees and may be obtained from the Chairman of the Faculty or the chairperson of the respective committee. Any recommendation by the Committee on Academic Freedom and Tenure to the President shall be advisory. The decision of the President shall be final and is not subject to further review.

6.05 **PROTECTION OF EMPLOYEES FROM REPRISAL FOR THE DISCLOSURE OF INFORMATION - REVIEW PROCEDURE**

If the grievance or complaint has not been resolved through the Provost's investigation, the individual may file a petition with the Committee on Academic Freedom and Tenure. The rules and procedures contained in the Constitution and By-laws of the General Faculty of The University of Arizona govern the jurisdiction and proceedings of this committee and may be obtained from the Chairman of the Faculty or the chairperson of the committee. Any recommendation by the Committee on Academic Freedom and Tenure to the President shall be advisory. The decision of the President shall be final and is not subject to further review.

5 AND EMPLOYEES
Title 38

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DISCLOSURE OF INFORMATION

Ch. 3

amended by this act. shall require only public officers and local public officers as defined in § 38-541, Arizona Revised Statutes, as added by this act, holding office on January 31, 1984 to file a financial disclosure statement required by this act for the 1983 calendar year."

For purpose of Laws 1985, Ch. 350 repealing title 38, chapter 3.1, article 3. which established a legislative ethics committee in the house of representatives and in the senate, see Historical and Statutory Notes following § 38-581.

Law Review Commentaries

Public employees, dismissal, property and liberty limitations. Ariz.State L.J. 4, 1977, p. 835.

Library References

States ⇄ 34.
WESTLAW Topic No. 360.
C.J.S. States §§ 55 to 58.

Notes of Decisions

Teachers 1

1. Teachers

A teacher or instructor in a public school system or insitution of higher learning may

serve as a legislator: however, whether the legislator may serve in a particular committee or vote on particular legislation without violating ethical standards must be resolved by the house in which the member sits. Op.Atty.Gen. No. 190-097.

§§ 38-520, 38-521. Repealed by Laws 1983, Ch. 328, § 2, eff. Feb. 9, 1984; Laws 1984, Ch. 6, § 33, eff. March 9, 1984, retroactively effective to Feb. 9, 1984

Historical and Statutory Notes

Section 38-520. added by Laws 1974. Ch. 199, § 4, provided standards of conduct for legislative members. See. now. § 38-519.

Section 38-521. added by Laws 1974. Ch. 199, § 4. and amended by Laws 1978, Ch. 201. § 688, provided penalties for violations of Article 8.1 or for failure to disclose substantial interests. See. now. § 38-519.

For legislative purpose and intent and effective date provision of Laws 1983. Ch. 328. see Historical and Statutory Notes following § 38-519.

Laws 1984. Ch. 6, § 1, par. 18. effective March 9, 1984. provides:

"Laws 1983, chapter 328. § 2 attempted to repeal §§ 38-520 and 38-521, Arizona Revised Statutes. However. the delayed repeal of these sections was not reflected in the title of the act as required by Constitution of Arizona Article IV. part 2. § 13. In order to accomplish the intent of the 1983 legislation, in this enactment §§ 38-520 and 38-521. Arizona Revised Statutes, are repealed."

1983 Reviser's Note:

The delayed repeal of these sections by Laws 1983. chapter 328. section 2 was not reflected in the title of the act as required by Constitution of Arizona Article IV. part 2, section 13.

**ARTICLE 9. DISCLOSURE OF INFORMATION
BY PUBLIC EMPLOYEES**

Article 9, consisting of §§ 38-531 and 38-532, was added by Laws 1985, Ch. 189, § 1, effective April 26, 1985.

Cross References

Public officers and employees. personnel board. appeal of disciplinary action. see § 41-782.

§ 38-531. Definitions

In this article, unless the context otherwise requires:

1. "Employee" means an officer or employee of this state or any of its departments, commissions, agencies or boards. Employee includes employees and officers of community college districts, school districts and counties of this state but does not include officers or employees of a municipal corporation established for the purpose of reclamation and distribution of water and the generation of electricity.

2. "Former employee" means an employee who was dismissed.

3. "Personnel action" means:

- (a) Appointment.
- (b) Promotion.
- (c) Disciplinary or corrective action.
- (d) Detail, transfer or reassignment.
- (e) Suspension, demotion or dismissal.
- (f) Reinstatement.
- (g) Restoration.
- (h) Reemployment.
- (i) Performance evaluation.
- (j) Decision concerning pay, benefits or awards.
- (k) Elimination of the employee's position without a reduction in force by reason of lack of monies or work.
- (l) Other significant change in duties or responsibilities which is inconsistent with the employee's salary or grade level.

4. "Public body" means the attorney general, the legislature, the governor, a federal, state or local law enforcement agency, the county attorney, the governing board of a community college district or school district, the board of supervisors of a county or an agency director.

5. "Reprisal" means to take a personnel action the result of which is adverse to an employee.

Added by Laws 1985, Ch. 189, § 1, eff. April 26, 1985. Amended by Laws 1989, Ch. 285, § 1; Laws 1990, Ch. 373, § 1.

United States Supreme Court

Free speech, public employment, speech as basis for discharge, see *Waters v. Churchill*, 1994, 114 S.Ct. 1878, 128 L.Ed.2d 686.

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§ 38-532

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Notes of Decisions

Public body 1

§ 38-531, brings board of directors of community hospital association and all nonprofit corporations operating hospitals for county hospital districts within reach of the Law. Op. Atty. Gen. No. 185-088.

1. Public body

The 1985 amendment to definition of "public body" contained in Open Meeting Law, A.R.S.

§ 38-532. Prohibited personnel practice; violation; reinstatement; exceptions; civil penalty

A. It is a prohibited personnel practice for an employee who has control over personnel actions to take reprisal against an employee for a disclosure of information of a matter of public concern by the employee to a public body which the employee reasonably believes evidences:

1. A violation of any law.
2. Mismanagement, a gross waste of monies or an abuse of authority.

B. The disclosure by an employee to a public body alleging a violation of law, mismanagement, gross waste of monies or abuse of authority shall be in writing and shall contain the following information:

1. The date of the disclosure.
2. The name of the employee making the disclosure.
3. The nature of the alleged violation of law, mismanagement, gross waste of monies or abuse of authority.
4. If possible, the date or range of dates on which the alleged violation of law, mismanagement, gross waste of monies or abuse of authority occurred.

C. An employee who knowingly commits a prohibited personnel practice shall be ordered by the state personnel board, a community college district governing board, a school district governing board or other appropriate independent personnel board established or authorized pursuant to § 38-534 to pay a civil penalty of up to five thousand dollars to the state general fund, a county general fund, a community college district unrestricted general fund or a school district maintenance and operation fund, whichever is appropriate. The employee who committed the prohibited personnel practice, not the governmental entity, shall pay the civil penalty. Upon a finding that an employee committed a prohibited personnel practice, the employer shall take appropriate disciplinary action including dismissal.

D. An employee or former employee against whom a prohibited personnel practice is committed may recover attorney fees, costs, back pay, general and special damages and full reinstatement for any reprisal resulting from the prohibited personnel practice as determined by the court.

E. An employee does not commit a prohibited personnel practice if he takes reprisal against an employee if that employee discloses information in a manner prohibited by law or the materials or information are prescribed as confidential by law.

F. This section may not be used as a defense in a disciplinary action where the employee is being disciplined for cause pursuant to § 41-770, except in a hearing on a complaint brought pursuant to this section by an employee or former employee who believes he has been the subject of a prohibited personnel practice as prescribed in this section as the result of a disclosure of information.

G. On request or at any time an employee alleges reprisal, an employer shall provide an employee who is subject to disciplinary or corrective action, suspension, demotion or dismissal with a copy of this section.

H. If an employee or former employee believes that a personnel action taken against him is the result of his disclosure of information under this section, he may make a complaint to an appropriate independent personnel board, if one is established or authorized pursuant to § 38-534 or to a community college district governing board or school district governing board. If an independent personnel board has not been established or authorized, or if a school district governing board or a community college district governing board does not hear and decide personnel matters brought pursuant to this section, the employee or former employee may make a complaint to the state personnel board. A complaint made pursuant to this subsection shall be made within ten days of the effective date of the action taken against him. The state personnel board, a school district governing board, a community college governing board or other appropriate independent personnel board, shall, pursuant to the rules governing appeals under § 41-785, make a determination concerning:

1. The validity of the complaint.
2. Whether a prohibited personnel practice was committed against the employee or former employee as a result of disclosure of information by the employee or former employee.

I. If the state personnel board, a community college district governing board, a school district governing board or other appropriate independent personnel board established or authorized pursuant to § 38-534 determines that a prohibited personnel practice was committed as a result of disclosure of information by the employee or former employee, it shall rescind the personnel action and order that all lost pay and benefits be returned to the employee or former employee. The employee, former employee, employee alleged to have committed a prohibited personnel practice pursuant to subsection A of this section or employer may appeal the decision of the state personnel board, a community college district governing board, a school district governing board or other appropriate independent personnel board established or authorized pursuant to § 38-534 to the superior court as provided in title 12, chapter 7, article 6.¹ Notwithstanding § 12-910, an appeal to the superior court under this subsection shall be tried de novo.

J. For purposes of a hearing by the state personnel board, a school district governing board, a community college district governing board or other appropriate independent personnel board conducted under this section, the employ-

ee, former personnel be represented by a hearing board, a hearing board law.

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ee. former employee. employee alleged to have committed the prohibited personnel practice pursuant to subsection A of this section and employer may be represented by counsel. In addition, representation by counsel in such hearings shall meet any other requirements stipulated by the state personnel board, a school district governing board, a community college district governing board or other appropriate independent personnel board or as required by law.

K. An employee or former employee may also seek injunctive relief as is otherwise available in civil actions.

L. This section shall not be construed to limit or extend the civil or criminal liability of an employee or former employee for any disclosure of information or to limit an employee's right to a separate pretermination hearing with the employee's employer, as provided by law.

M. An employee who knowingly makes a false accusation that a public officer or employee who has control over personnel actions has engaged in a violation of any law, mismanagement, a gross waste of monies or an abuse of authority is personally subject to a civil penalty of up to twenty-five thousand dollars and dismissal from employment by the employer.

Added by Laws 1985, Ch. 189, § 1, eff. April 26, 1985. Amended by Laws 1989, Ch. 285, § 2; Laws 1990, Ch. 373, § 2.

¹ Section 12-901 et seq.

Historical and Statutory Notes

The 1989 amendment rewrote the section which had read:

"A. It is a prohibited personnel practice for an employee who has control over personnel actions to take reprisal against an employee for a disclosure of information by the employee to a public body which the employee reasonably believes evidences:

"1. A violation of any law.

"2. Mismanagement, a gross waste of monies or an abuse of authority.

"B. An employee who commits a prohibited personnel practice shall be suspended without pay for up to thirty days or dismissed.

"C. An employee does not commit a prohibited personnel practice if he takes reprisal against a person if that person discloses information in a manner prohibited by law or the materials or information are prescribed as confidential by law.

"D. This subsection may not be used as a defense in a disciplinary action where the person is being disciplined for cause pursuant to § 41-770.

"E. This section shall not be construed to limit or extend civil or criminal liability of a

person for any disclosure of information or the consequences of disclosing information."

The 1990 amendment rewrote the section, which had read:

"A. It is a prohibited personnel practice for an employee who has control over personnel actions to take reprisal against an employee for a disclosure of information by the employee to a public body which the employee reasonably believes evidences:

"1. A violation of any law.

"2. Mismanagement, a gross waste of monies or an abuse of authority.

"B. An employee who knowingly commits a prohibited personnel practice is personally subject to a civil penalty of up to twenty-five thousand dollars and shall be dismissed.

"C. An employee or former employee against whom a prohibited personnel practice is committed may recover attorney fees, costs, back pay, general and special damages and full reinstatement for any reprisal resulting from the prohibited personnel practice as determined by the court.

"D. An employee does not commit a prohibited personnel practice if he takes reprisal against an employee if that employee discloses

§ 38-532

PUBLIC OFFICERS AND EMPLOYEES
Title 38

information in a manner prohibited by law or the materials or information are prescribed as confidential by law.

"E. This section may not be used as a defense in a disciplinary action where the employee is being disciplined for cause pursuant to § 41-770, except in an appeal before the state personnel board by an employee or former employee who believes he has been the subject of a prohibited personnel practice as defined in this section as the result of a disclosure of information.

"F. An employer shall provide an employee who is subject to disciplinary or corrective action, suspension, demotion or dismissal with a copy of this section at the time the action is taken.

"G. If an employee or former employee believes that a personnel action taken against him is the result of his disclosure of information under this section, he may make an appeal to the state personnel board within ten days of the effective date of the action taken against him. The state personnel board shall, pursuant to the rules governing appeals under § 41-785, make a determination concerning:

"1. The validity of the complaint.

"2. Whether a prohibited personnel practice was committed against the employee or former employee as a result of disclosure of information by the employee or former employee.

"H. If the state personnel board determines that a prohibited personnel practice was committed as a result of disclosure of information by the employee or former employee, it shall order the employee or former employee to be reinstated with back pay. The employee, former employee or the employer may appeal the decision of the board to the superior court as provided in title 12, chapter 7, article 6. Notwithstanding § 12-910, an appeal to the superior

or court under this subsection shall be tried de novo.

"I. For purposes of an appeal to the state personnel board conducted under this section either party may be represented by counsel. In addition, representation by counsel in such hearings must meet any other requirements stipulated by the state personnel board or required by law.

"J. An employee or former employee may also seek injunctive relief as is otherwise available in civil actions.

"K. This section shall not be construed to limit or extend the civil or criminal liability of an employee or former employee for any disclosure of information. Neither shall any provision of this section be construed to limit an employee's right to a separate pretermination hearing with the employee's employer, as provided by law.

"L. An employee who knowingly makes a false accusation that a public officer or employee who has control over personnel actions has engaged in a violation of any law, mismanagement, a gross waste of monies or an abuse of authority is personally subject to a civil penalty of up to twenty-five thousand dollars and dismissal from employment."

Reviser's Notes:

1989 Note. Pursuant to authority of § 41-1304.02, in the section heading "classification," was deleted and "civil penalty" was added after "exceptions" and in the second sentence of subsection K the spelling of "pretermination" was corrected.

1990 Note. Pursuant to authority of § 41-1304.02, in subsection J, first sentence, the comma after the fourth "board" was transposed to follow the first "section".

Notes of Decisions

- Complaint 2
- Hearings 3
- Remedy 4
- Validity 1

1. Validity

Insofar as concerns employees of the Supreme Court, legislative attempts to vest in State Personnel Board the power to enforce remedies mandated in whistle-blowing statutes result in unconstitutional encroachment on powers granted to Supreme Court under Arizona Constitution. McDonald v. Campbell (1991) 169 Ariz. 478, 821 P.2d 139.

2. Complaint

An employee of the Department of Public Safety, aggrieved by a disciplinary action, may submit to the State Personnel Board a complaint alleging a prohibited personnel practice as provided in A.R.S. § 38-532. Op. Atty. Gen. No. 190-089.

3. Hearings

Statutory authority of the Department of Public Safety and the Law Enforcement Merit System Council over personnel actions does not include authority to hear and review complaints of alleged prohibited personnel practices. Op. Atty. Gen. No. 190-089.

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4. Remedy
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§ 38-538

4. Remedy

State Personnel Board is authorized by A.R.S.
§ 38-532 to rescind a personnel action by the
Department of Public Safety or by the Law

Enforcement Merit System Council upon a de-
termination that the personnel action was the
result of a prohibited personnel practice. Op.
Atty.Gen. No. 190-089.

§ 38-533. Exemptions

This article does not apply to an employee or former employee of a state university or the board of regents which has in effect at the time a personnel action is taken against the employee a rule or provision for the protection of its employees from reprisal for the disclosure of information to a public body, except that the employee or former employee may appeal the final administrative decision to the superior court as provided in title 12, chapter 7, article 6.¹ Notwithstanding § 12-910, an employee or former employee who has been dismissed is entitled to a trial de novo in superior court.

Added by Laws 1989, Ch. 285, § 3. Amended by Laws 1990, Ch. 373, § 3.

¹ Section 12-901 et seq.

§ 38-534. Appropriate independent personnel boards

A. A community college district, county and school district may either:

1. Establish an appropriate independent personnel board to hear and decide personnel matters brought pursuant to § 38-532.
2. Authorize an existing independent board to hear and decide personnel matters brought pursuant to § 38-532.

B. Notwithstanding subsection A of this section, a school district governing board or a community college district governing board may hear and decide personnel matters brought pursuant to § 38-532.

C. If a community college district, county or school district does not establish an appropriate independent personnel board to hear and decide personnel matters brought pursuant to § 38-532, or does not authorize an existing independent board to hear and decide personnel matters brought pursuant to § 38-532, or if a school district governing board or a community college district governing board does not hear and decide personnel matters brought pursuant to § 38-532, complaints filed pursuant to this article shall be heard by the state personnel board.

Added by Laws 1990, Ch. 373, § 4.

**ARTICLE 10. DESIGNATION OF STATE AND POLITICAL
SUBDIVISION MOTOR VEHICLES**

Article 10, consisting of §§ 38-538 to 38-538.04, was added by Laws 1995, Ch. 132, § 4, effective January 1, 1997.

**§ 38-538. Designation of state and political subdivision motor vehicles;
definition**

Effective January 1, 1997

eligibility list of previous employees who have
 been removed from their positions without fault on their

reason of lack of funds or work, or abolition of a
 organization, and for reemployment of employees
 in § 41-763.04.

circumstances under which an employee may be

employee grievances and complaints and in cases
 where the appropriate agency if an employee is not
 resolution.

hours of employment, annual, sick and special
 with reduced pay. Rules on hours of employment
 flexible hours of employment as an option for
 the agency decides, in his discretion, that existing
 wide:

leave from one employee to another employee
 occur if the employee to whom the leave is
 incapacitating and extended illness or injury or a
 temporarily incapacitating and extended illness or injury
 leave balances. Transferred annual leave shall
 be the difference in the salaries of the employees as
 administration.

employee is unable to work due to a non-job related,
 illness or injury, as certified by a physician of the
 physician chosen by the agency, and the employee has
 been transferred pursuant to subdivision (a) of this
 leave without pay status for up to one hundred
 days, whichever is sooner.

provisions for the employment of qualified handicapped

any locality where the demand for temporary

employees in state service to accept appointment to
 positions which are exempt from the terms of this article and

applicable solely to special classes of employees whose
 employment is the adoption of rules applicable only to a specific

disciplinary conduct for employees.

notice shall be given of the examinations for a

available to all employees a handbook outlining

employees in state employment shall qualify the employee
 for determination the director shall consider all
 labor standards act of 1938 (52 Stat. 1060; 29
 amended and interpreted, and shall exclude all
 positions as defined in such act, as amended and
 positions may be granted to the following positions

pursuant to § 38-211.

(c) All professional positions as defined by the director.

(d) Persons whose primary duty is to manage the state agency or state agency subdivi-
 sions, and:

(i) Who use discretionary powers.

(ii) Who direct the work of at least two other employees.

(iii) Who have the authority to hire and fire.

26. Provision for compensatory time off for employees, except those employees in posi-
 tions as prescribed in paragraph 25 of this section.

27. Provision for approving overtime pay for positions eligible for compensatory time off
 pursuant to paragraph 26 of this section because their primary duty is management when
 either of the following criteria is met:

(a) The practice is determined by the director to be a prevailing condition in the Arizona
 labor market and when pay differentials between subordinates and supervisors are reduced
 by overtime pay received by the nonexempt subordinates to the extent that it is no longer an
 incentive to remain in the supervisory position.

(b) When temporary emergency conditions arise that make it more practical to pay
 overtime than to grant compensatory leave.

28. Establishment of a plan for the impartial review of complaints.

Amended by Laws 1992, Ch. 20, § 1; Laws 1994, Ch. 160, § 1, eff. April 18, 1994; Laws 1997, Ch. 288,
 § 7.

¹ Section 41-761 et seq.

² 29 U.S.C.A. § 201.

For text of section as amended by Laws 1997, Ch. 66, § 2, see § 41-783, ante

Historical and Statutory Notes

Laws 1992, Ch. 312, § 22, as amended by Laws
 1997, Ch. 288, § 8, provides:

"Sec. 22. Relocation reimbursement; trans-
 fer of law enforcement merit system employees
 to state service

"A. Notwithstanding § 41-783, Arizona Re-
 vised Statutes, the department of administration
 shall establish procedures for:

"1. A limited relocation reimbursement ex-
 pense program to avoid or reduce the need for a
 reduction in force. Notwithstanding the provisions
 of § 35-196.01, Arizona Revised Statutes, payment
 may be made for reasonable relocation expenses to
 employees whose work location will be changed to
 a distance of more than seventy-five miles from
 their current work location. All such payments
 are subject to the availability of monies and shall
 not exceed one thousand dollars for any individual.

"2. Employees covered by the law enforcement
 merit system council to transfer into state service
 positions, as approved by the director of the de-
 partment of administration, to avoid or reduce the
 need for a reduction in force. This section does
 not mean that the retirement rights and privileges
 earned by the employee under the law enforce-
 ment merit system council are transferred to state
 service.

"B. In carrying out the provisions of this sec-
 tion the rules are exempt from the administrative
 procedures act as outlined in § 41-1055, Arizona
 Revised Statutes."

1997 Reviser's Note:

The amendment of this section by Laws 1997,
 Ch. 288, sec. 7 failed to set forth in full the text of
 the section as amended by Laws 1997, Ch. 66, sec.
 2, an emergency act, as required by Constitution of
 Arizona art. IV, pt. 2, sec. 14.

§ 41-785. Appeals to the personnel board; notice of charges; hearings

A. Any employee who has completed his original probationary period of service as
 provided by the personnel rules may appeal to the board seeking relief from dismissal from
 state service, suspension for more than forty working hours or demotion resulting from
 disciplinary action. The appeal shall be filed not later than ten working days after the
 effective date of such action. The employee shall be furnished with specified charges in
 writing when the action is taken. Such appeal shall be in writing and must state specific facts
 relating directly to the charges on which the appeal is based and shall be heard by the board
 within thirty days after its receipt. The personnel board shall provide the employing agency
 with a copy of the appeal not less than twenty days in advance of the hearing.

B. Hearings on such appeals shall be open to the public, except in cases where the employee requests a confidential hearing, and shall be informal with technical rules of evidence not applying to the proceedings except the rule of privilege recognized by law. Both the employee and his employing agency shall be notified not less than twenty days in advance of the hearing and may select representatives of their choosing, present and cross-examine witnesses, and give evidence before the personnel board. The personnel board may appoint a hearing officer to conduct the hearing and take evidence on behalf of the board and exercise the rights prescribed by § 12-2212. The personnel board shall prepare an official record of the hearing, including all testimony recorded manually or by mechanical device, and exhibits, and shall transcribe such record on request of either party. If the disciplinary hearing would involve evidence the state is prevented by law from disclosing, then a confidential hearing upon the state's request shall be granted.

C. The board may reverse an agency's action on appeal only if the board finds the action to be arbitrary, capricious or otherwise contrary to law.

D. The board may reduce the disciplinary penalty chosen by an agency only if the board finds the penalty to be excessive or made for reasons that are arbitrary, capricious or otherwise contrary to law.

E. Within thirty days after the conclusion of the hearing, the board shall enter its decision and shall at the same time send a copy of the decision by registered mail to the employing agency and to the employee at his address as given at the hearing or to a representative designated by him to receive the same.

F. Any party may appeal the decision of the board pursuant to title 12, chapter 7, article 6¹ to the superior court in the employee's county of residence on one or more of the following grounds, that the order was:

1. Founded on or contained error of law which shall specifically include error of construction or application of any pertinent rules.
2. Unsupported by any evidence as disclosed by the entire record.
3. Materially affected by unlawful procedure.
4. Based on violation of any constitutional provision.
5. Arbitrary or capricious.

G. Appeal shall be available to the court of appeals from the order of the superior court pursuant to title 12, chapter 7, article 6 as in other civil cases.

H. An employee may represent himself or designate a representative, not necessarily an attorney, before any board hearing or any quasi-judicial hearing held pursuant to this section providing that no fee may be charged for any services rendered in connection with such hearing by any such designated representative who is not an attorney admitted to practice.

Amended by Laws 1997, Ch. 207, § 1.

¹ Section 12-901 et seq.

Historical and Statutory Notes

The 1997 amendment by Ch. 207 inserted new subsecs. C and D, and redesignated existing subsecs. C to F as E to H, accordingly.

Notes of Decisions

1. Due process

Executive appointee to Board of Pardons and Parole was afforded due process by governor's notice, opportunity to be heard, and subsequent posttermination hearing; therefore, his due process rights were not abridged by failure to hold a pretermination hearing. *Johnson v. Mofford* (App. Div.1 1995) 181 Ariz. 301, 890 P.2d 76.

3. Notice of appeal

Under regulation providing that employee is entitled to notice in advance of time and place of Personnel Board meeting at which appeal from personnel action will be decided and statute providing that employee and employee in agency shall be notified not less than 20 days in advance of Personnel Board hearing Board must give interested parties 20 days notice regardless of whether

its meeting is termed a hearing or a meeting and employee was entitled to 20-day notice of meeting at which hearing officer's recommendation was considered. *Johns v. Arizona Dept. of Economic Sec.* (App. 1991) 169 Ariz. 75, 817 P.2d 20.

6. Demotions

Butterworth v. Wiley (App. 1979) [main volume] 123 Ariz. 419, 600 P.2d 32.

8. Removal

Governor's removal of executive appointee to Board of Pardons and Parole was not judicially reviewable only under Administrative Review Act (ARA) as the ARA is not available when separate act provides for judicial review of agency decisions and prescribes a procedure for the review, and executive appointee was a state employee and a separate act provided for adjudication of decisions involving state employees. *Johnson v. Mofford* (App. Div.1 1995) 181 Ariz. 301, 890 P.2d 76.

§ 41-786. Reimbursement of public tra

Administrative

Reimbursement for public transportation, see A.A.C. R2-1-801 et seq.

ARTICLE 7. MANAGEMEN

§ 41-790. Definitions

In this article, unless the context otherwise r

1. "Building renewal" means major activi building and the supporting infrastructure that useful life. Building renewal does not includ additions, landscaping and area beautification, of a building.

2. "Building system" means a group of bu for purposes of planning, land acquisition, cons

3. "Capital projects" means buildings, stru use or benefit of this state.

4. "Infrastructure" means nonbuilding im facility that is listed in the annual building sy systems, external lighting systems, irrigation s

5. "Land acquisition" means the procurer lease purchase, condemnation or other lawful n

6. "State capitol building" means:

- (a) The original 1898 statehouse known as t
- (b) The 1919 state capitol wing and the 193 the legislative services wing.
- (c) The house of representatives wing.
- (d) The senate wing.
- (e) The west wing known as the state capitol

Amended by Laws 1997, Ch. 85, § 10, eff. April 10, 1

State Personnel Board

TITLE 2. ADMINISTRATION

CHAPTER 5.1. STATE PERSONNEL BOARD

(Authority: A.R.S. § 41-781 et seq.)

Laws 1983, Ch. 98, § 162 limited authority of the Personnel Board. Prior rules and regulations were found in A.C.R.R. Title 2, Chapter 5, now consisting of rules and regulations of Personnel Administration, Department of Administration.

ARTICLE 1. GENERAL PROVISIONS

Section

R2-5.1-101. Personnel Board procedures

R2-5.1-102. Appeals

ARTICLE 1. GENERAL PROVISIONS

R2-5.1-101. Personnel Board procedures

- A. Regular meetings. The time and place of each regular monthly meeting of the Board shall be announced at the preceding public meeting and shall be in conformance with statutory requirements. Notice shall be given in conformance with all open meeting laws.
- B. Special meetings. Special meetings of the Board shall be called by the Chairman. Notice shall be given in conformance with all open meeting laws.
- C. Emergency meetings. In the case of an emergency, a meeting may be called by the Chairman. The emergency meeting shall be held at a time and upon notice as is appropriate and in conformance with all open meeting laws.
- D. Agenda. All matters to be presented for consideration by the Board at a meeting shall be placed on the Board's agenda. The agenda shall be mailed to each member of the Board at least five days prior to the meeting. Matters which have not been placed upon the agenda shall not be considered by the Board.
- E. Notice to agencies. A copy of the agenda for each meeting shall be mailed to state agencies that indicate an interest in receiving the agenda at least five working days prior to the Board meeting. Failure to mail the agenda, or failure of an agency to receive it, shall not affect the validity of the meeting or of any action taken by the Board at the meeting.
- F. Notice to parties. All parties in a contested matter scheduled for a Board meeting shall be notified of the Board meeting pursuant to A.R.S. § 41-785.
- G. Minutes. The official actions of the Board shall be recorded in its minutes. The time and place of each meeting of the Board, names of the Board members present, all official acts of the Board, the votes of each Board member except when the acts are unanimous, and, when requested, a member's dissent with his reasons shall be recorded in the minutes. The minutes shall be written by Board staff and presented for approval by the Board members at the next regular meeting. The minutes or a true copy thereof certified by a majority of the Board shall be open to public inspection.

Historical Note

Adopted effective November 10, 1983 (Supp. 83-6).

R5-5.1-102. Appeals

- A. General provisions. Unless the context requires otherwise, the following definitions govern:
 1. "Appeal" means any written request filed with the Board by any permanent status employee seeking relief from dismissal, demotion, or suspension of more than 80 working hours.
 2. "Appellant" means the permanent status employee filing any appeal with the Board.
 3. "Hearing officer" means a person employed or appointed by the Board or its chairman as a hearing officer, or any

member of the Board designated by it or its chairman as a hearing officer.

4. "Respondent" means the state service agency or agencies whose interests are adverse to those of the appellant or who will be directly affected by the Board's decision.

B. Appeal Procedures

1. Appeal. The appeal to the Board shall be filed in writing. The appeal shall include the action requested of the Board and must state specific facts relating directly to the charges on which the appeal is based, so that the Board may understand the nature of the appeal. A copy of the appeal shall be provided to the respondent by the Board within twenty days in advance of the hearing.
2. Time for appeal. An appeal must be filed by the appellant not later than ten working days from the effective date of the dismissal, suspension, or demotion, which is the subject of the appeal.
3. Reply. No reply to the appeal need be filed by the respondent. If a reply is filed prior to the hearing, a copy thereof shall be sent by the respondent to the appellant. If no reply is filed, every relevant and material allegation of the appeal is in issue, but in any case, irrelevant and immaterial issues may be excluded.
4. Hearing officer. Any appeal may be assigned by the Board or its chairman to a hearing officer for hearing. When an appeal is assigned to a hearing officer, he shall be the authorized representative of the Board and is fully authorized and empowered to grant or refuse extensions of time, to set proceedings for hearing, to conduct the hearing, and to take any action in connection with the proceedings which the Board itself is authorized to take by law or by these rules on behalf of the Board other than making the final findings of fact, conclusions of law, and order. No assignment of an appeal to a hearing officer shall preclude the Board or its chairman from withdrawing such assignment and conducting the hearing itself or from reassigning an appeal to another hearing officer. The hearing officer conducting the hearing shall write and submit a report embodying findings of fact, conclusions of law and recommendations, as well as a brief statement of reasons for his findings and conclusions within ten days of the last date of the hearing. The hearing shall be considered concluded upon receipt by the Board of the hearing officer's findings of fact, conclusions of law and recommendation. The hearing officer may be present during the consideration of the appeal by the Board, and, if requested, shall assist and advise the Board.
5. Time for hearing. Every hearing on an appeal shall be held within thirty days from receipt by the Board unless the time is extended by mutual consent of the appellant and respondent.
6. Notice of hearing. Written notice of the time, date, place of hearing of an appeal, and the name of the hearing officer, if any, shall be provided the appellant and the respondent by the Board not less than twenty days before the date of such hearing.

7. Nature of hearing, rules of evidence. Every hearing shall be open to the public unless the appellant requests a confidential hearing. If the disciplinary hearing involves evidence the state is precluded by law from disclosing, then a confidential hearing requested by the state may be granted by the Board or its hearing officer. If testimony of certain witnesses is of a sensitive nature, either the appellant, respondent or hearing officer may request that those portions of the hearing be sealed or adequately protected. Any party may be represented by himself or a representative as provided by law. Every hearing shall be conducted in an impartial manner as a quasi-judicial proceeding under the rules of administrative procedure. All witnesses shall testify under oath or by affirmation, and a record of the proceedings shall be made and kept for three years. Hearings shall be conducted in a manner so as to ascertain the substantial rights of parties. The Board, a Board member or hearing officer shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure except the rule of privilege as recognized by law.
8. Exclusion of witnesses. Upon the motion of any appellant or respondent, the hearing officer, in his discretion, may exclude from the hearing room any witnesses not at the time under examination, but a party to the proceeding, or his representative, or other person conducting the case, shall not be excluded.
9. Witness fees. Witnesses, other than employees, when subpoenaed to attend a hearing or investigation are entitled to the same fee as is allowed witnesses in civil cases in courts of record. If a witness is subpoenaed by the hearing officer on his own motion, fees and mileage may be paid from funds of the Board upon presentation of a duly executed claim. If a witness is subpoenaed upon request of the appellant or respondent, the fees and mileage shall be paid by the party requesting the witness. Reimbursement to employees subpoenaed as witnesses shall be limited to payment of mileage by the party requesting him.
10. Depositions. If a witness does not reside within the county or within one hundred miles of the place where the hearing or investigation is to be held, is out of the state, or is too infirm to attend the hearing or investigation, any party thereto at his own expense may cause his deposition to be taken. If the presence of a witness cannot be procured at the time of hearing or investigation, his deposition may be used in evidence by either party or the Board.
11. Proposed findings of fact. Both appellant and respondent shall have the right to file with the Board proposed findings of fact and conclusions of law for the benefit of the hearing officer.
12. Objections to findings. The findings and conclusions of the hearing officer shall be transmitted to the interested parties. Within ten days of their receipt, any interested party may file written objections (not post-hearing evidence) to the hearing officer's report with the Board and shall serve copies of them upon the other interested parties.
13. Personnel Board decision. The Board shall notify the interested parties in advance of the time and place of the Board meeting at which the appeal will be decided. The Board may affirm, reverse, adopt, modify, supplement, amend or reject the hearing officer's report in whole or in part, may recommit the matter to the hearing officer with instructions, may convene itself as a hearing body, or

may make any other appropriate disposition of the appeal. The Board will make its decision on the appeal in its open meeting within thirty days after the conclusion of a hearing and shall send a copy of their decision to the interested parties by registered mail, return receipt requested. In the event the Board orders the respondent to reinstate the appellant, it may also order the respondent to reinstate the appellant with or without back pay for the period and in the amounts as the Board determines to be proper.

Historical Note

Adopted effective November 10, 1983 (Supp. 83-6).
Amended subsection (B)(2) effective March 3, 1988 (Supp. 88-1). Corrections to subsections (B)(2) and (4) from revised format edition published February 1991 (Supp. 96-1).

DRAFT 1-12-78

Below is the first draft of the article for AAUP.

The membership of the Arizona Faculties Council (AFC), officially recognized by the Arizona Board of Regents (ABOR) as the elected representatives of the faculty in the Arizona University system, has been asked to provide AAUP Advocate readers with an assessment of the proposed "whistle blower" legislation.

The AFC generally supports any legislation or administrative rule that protects or increases the rights of faculty in the Arizona University system. We are, however, not in favor of any changes in the current system of shared governance that: 1) circumvents the faculty grievance process or 2) reduce the authority of ABOR to govern the Universities. We, the AFC do not believe that the proposed whistle blower legislation, in its most current form, increases the protection of the faculty in the University system, because it both circumvents the faculty grievance process and reduces the authority of ABOR to govern the Universities.

As currently proposed, the legislation provides that a whistle blower would have thirty days in which to report suspected retaliation on the part of a university to the State Personnel Board. The net negative result of this is two fold.

First, the membership of the AFC believes that the current proposal which limits the period in which a grievance could be filed would essentially force a faculty members to make a decision to either use the faculty grievance process or go to the State Personnel Board within thirty days so as to not lose standing. Forcing a potential grievant to make such a weighty decision in such a short time would necessarily circumvent the faculty-operated grievance process which allows a much longer period in which to file a grievance. Additionally, by forcing a quick decision on the part of the faculty member, the legislation might force the faculty member in to a situation in which the decision would have to be made either without the aid of competent legal council.

Second, and most important, is the issue of the ability of ABOR and the faculty to participate in the shared governance of the University system. There is currently in place a rigorous yet fair system in which a faculty member can grieve. This system is managed by the faculty and the issues are adjudicated by faculty, not administrators. The AFC is concerned that the removal of any of the Constitutionally proscribed authority to manage the personnel affairs of the Universities would lead to: 1) the end of shared governance by reducing the ability of a faculty member to be judged by his/her peers rather than the State Personnel Board, and 2) other attempts on the part of state government to micro-manage the Universities.

In sum, the Arizona Faculties Council does not support any legislation which reduces the ability of the Arizona Board of Regents' ability to govern the University system nor does it support any legislation that threatens the current faculty grievance structure.

Note: Items shown in capital letters below indicate additions to the current law. The rest, in lower case type, shows the current law. The numbers on the left side of the page are to allow people to easily refer to particular lines of the bill. (This copy of the proposed legislation was obtained from Carol Bernstein, Pres. AAUP AZ Conf. on January 13, 1998.)

REFERENCE TITLE: public employees: whistle-blower changes State of Arizona

House of Representatives
Forty-third Legislature
Second Regular Session
1998

H.B.-----
Introduced by-----

AN ACT AMENDING SECTIONS 38-531, 38-532 AND 41-785, ARIZONA REVISED STATUTES;
REPEALING SECTION 38-533. ARIZONA REVISED STATUTES: RELATING TO DISCLOSURE OF
INFORMATION BY PUBLIC EMPLOYEES,

- 1 Be it enacted, by the Legislature of the State of Arizona:
2 SECTION 1, SECTION 38-531, ARIZONA REVISED STATUTES, IS AMENDED TO
3 READ:
4 **38-531, Definitions**
5 In this article, unless the context otherwise requires:
6 **1. "Employee"** means an officer or employee of this state or any of its
7 departments, commissions, agencies or boards. Employee includes employees
8 and officers of UNIVERSITIES UNDER THE JURISDICTION OF THE ARIZONA BOARD OF
9 REGENTS, community college districts, school districts and counties of this
10 state but does not include officers or employees of a municipal corporation
11 established for the purpose of reclamation and distribution of water and the
12 generation of electricity.
13 **2. "Former employee"** means an employee who was dismissed,
14 **3. "Personnel action"** means:
15 (a) Appointment,
16 (b) Promotion,
17 (c) Disciplinary or corrective action,
18 (d) Detail, transfer or reassignment,
19 (e) Suspension, demotion or dismissal,
20 (f) Reinstatement,
21 (g) Restoration,
22 (h) Reemployment,
23 (i) Performance Evaluation,

- 1 (j) Decision concerning, pay, benefits or awards,
2 (k) Elimination of the employee's position without a reduction in
3 force by reason of lack of monies or work.
4 (l) Other significant change in duties or responsibilities which is
5 inconsistent with the employee's salary or grade level.
6 (m) ACCOMMODATION FOR HEALTH OR DISABILITY NEEDS.

7 **4. "Public body"** means the attorney general, the legislature, the
8 governor, a federal, state or local law enforcement agency, the county
9 attorney, THE ARIZONA BOARD OF REGENTS, the governing board of a community
10 college district or school district, the board of supervisors of a county,
11 or an agency director, IN-HOUSE LEGAL COUNSEL OF A SCHOOL, COMMUNITY COLLEGE
12 OR UNIVERSITY OR A DEAN, CHANCELLOR OR PRESIDENT OF A COMMUNITY COLLEGE OR
13 UNIVERSITY.

14 **5. "Reprisal"** means to take a personnel action the result of which is
15 adverse to an employee,

16 **SEC. 2, SECTION 38-532. ARIZONA REVISED STATUTES, IS AMENDED TO READ:**
17 **38-532, Prohibited personnel practice; violation:**

18 reinstatement; exceptions; civil penalty

19 **A.** It is prohibited personnel practice for an employee who has
20 control over personnel actions to take reprisal against an employee for a
21 disclosure of information of a matter of public concern by the employee to
22 a public body which the employee reasonably believes evidences:

- 23 1. A violation of any law,
24 2. Mismanagement, a gross waste of monies or an abuse of authority.

25 **B.** The disclosure by an employee to a public body alleging a violation
26 of law, mismanagement., gross waste of monies or abuse of authority shall be
27 in writing, MADE IN ORAL STATEMENTS TO THE PUBLIC BODY AT A PUBLIC HEARING
28 OR CONTAINED IN A RECORDED TRANSCRIPT OF STATEMENTS MADE AT A PUBLIC HEARING
29 HELD BY THE PUBLIC BODY and shall contain the following information

- 30 1. The date of the disclosure,
31 2. The name of the employee making the disclosure.
32 3. The nature of the alleged violation of law, mismanagement, gross
33 waste of monies or abuse of authority.
34 4. If possible, the date or range of dates on which the alleged
35 violation of law, mismanagement, gross waste of monies or abuse of authority
36 occurred.

37 **C.** An employee who knowingly commits a prohibited personnel practice
38 shall be ordered by the state personnel board, THE ARIZONA BOARD OF REGENTS,
39 a community college district governing board, a school district governing
40 board or other AN appropriate independent personnel board established or
41 authorized pursuant to section 38-534 to pay a civil penalty of up to five
42 thousand dollars to the state general fund, a county general fund, a
43 community college district unrestricted general fund or a school district
44 maintenance and operation fund, whichever is appropriate. The employee who

1 committed the prohibited personnel practice, not the governmental entity,
2 shall pay the civil penalty. Upon a finding that an employee committed a
3 prohibited personnel practice, the employer shall take appropriate
4 disciplinary action including dismissal.

5 D. An employee or former employee against whom a prohibited personnel
6 practice is committed may recover attorney fees, costs, back pay, general and
7 special damages and full reinstatement for any reprisal resulting from the
8 prohibited personnel practice as determined by the court.

9 E. An employee does not commit a prohibited personnel practice if he
10 THE EMPLOYEE takes reprisal against act an ANOTHER employee if that OTHER
11 employee discloses information in a manner prohibited by law or the materials
12 or information are prescribed as confidential by law.

13 F. This section may not be used as a defense in a disciplinary action
14 where the employee is being disciplined for cause pursuant to section 41-770,
15 except in a hearing on a complaint brought pursuant to this section by an
16 employee or former employee who believes he THE EMPLOYEE OR FORMER EMPLOYEE
17 has been the subject of a prohibited personnel practice as prescribed in this
18 section as the result of a disclosure of information.

19 G. On request or at any time an employee alleges reprisal, an employer
20 shall provide an employee who is subject to disciplinary or corrective
21 action, suspension, demotion or dismissal with a copy of this section.

22 H. If an employee or former employee believes that a personnel action
23 taken against him THE EMPLOYEE OR FORMER EMPLOYEE is the result of his THE
24 EMPLOYEE'S OR FORMER EMPLOYEE'S disclosure of information under this section,
25 he THE EMPLOYEE OR FORMER EMPLOYEE may make a complaint to EITHER:

- 26 1. THE STATE PERSONNEL BOARD.
27 2. An appropriate independent personnel board, if one is established
28 or authorized pursuant to section 38-534, or to THE ARIZONA BOARD OF REGENTS,
29 a community college district governing board, or A school district governing
30 board. If an independent personnel board has not been established or
31 authorized, or if a school district governing board or a community college
32 district governing board does not hear and decide personnel matters brought
33 pursuant to this section, the employee or former employee may make a
34 complaint to the state personnel board.

35 I. A complaint made pursuant to this subsection H OF THIS SECTION
36 shall be made within ten THIRTY days of the effective date of the action
37 taken against him THE EMPLOYEE OR FORMER EMPLOYEE. The state personnel
38 board, THE ARIZONA BOARD OF REGENTS, a school district governing board, a
39 community college governing board or other AN appropriate independent
40 personnel board, shall, pursuant to the rules governing appeals under
41 section 41-785, make a determination concerning:

- 42 1. The validity of the complaint.

1 2. Whether a prohibited personnel practice was committed against the
2 employee or former employee as a result of disclosure of information by the
3 employee or former employee.

4 I. J. If the state personnel board, THE ARIZONA BOARD OF REGENTS, a
5 community college district governing board, a school district governing board
6 or other AN appropriate independent personnel board established or authorized
7 pursuant to section 38-534 determines that a prohibited personnel practice
8 was committed as a result of disclosure of information by the employee or
9 former employee, it shall rescind the personnel action and order that all
10 lost pay and benefits be returned to the employee or former employee. The
11 employee, former employee, employee alleged to have committed a prohibited
12 personnel practice pursuant to subsection A of this section or employer may
13 appeal the decision of the state personnel board, THE ARIZONA BOARD OF
14 REGENTS, a community college district governing board, a school district
15 governing board or other AN appropriate independent personnel board
16 established or authorized pursuant to section 38-534 to the superior court
17 as provided in title 1%, chapter 7, article 6. Notwithstanding section
18 12-910, an appeal to the superior court under this subsection shall be tried
19 de novo.

20 J. K. For purposes of a hearing by the state personnel board, THE
21 ARIZONA BOARD OF REGENTS, a school district governing board, a community
22 college district governing board or other AN appropriate independent
23 personnel board conducted under this section, the employee, former employee,
24 employee alleged to have committed the prohibited personnel practice pursuant
25 to subsection A of this section and employer may be represented by counsel.
26 In addition, representation by counsel in such hearings shall meet any other
27 requirements stipulated by the state personnel board, THE ARIZONA BOARD OF
28 REGENTS, a school district governing board, a community college district
29 governing board or other AN appropriate independent personnel board or as
30 required by law.

31 K. L. An employee or former employee may also seek injunctive relief
32 as is otherwise available in civil actions.

33 L. M. This section shall not be construed to limit or extend the
34 civil or criminal liability of an employee or former employee for any
35 disclosure of information or to limit an employee's right to a separate
36 pre-termination hearing with the employee's employer, as provided by law.

37 M. N. An employee who knowingly makes a false accusation that a
38 public officer or employee who has central over personnel actions has engaged
39 in a violation of any law, mismanagement, a gross waste of monies or an abuse
40 of authority is personally subject to a civil penalty of up to twenty-five
41 thousand dollars and dismissal from employment by the employer.

42 **SEC. 3. REPEAL**

43 Section 38-533, Arizona Revised Statutes. is repealed.

44 **SEC. 4. SECTION 41-785.** Arizona Revised Statutes, is amended to read:

1 41-785. Appeals to the personnel board, notice of charges:

2 **Hearings**

3 **A.** Any employee who has completed his THE EMPLOYEE'S original
4 probationary period of service as provided by the personnel rules may appeal
5 to the board seeking relief from dismissal from state service, suspension for
6 more than forty working hours or demotion resulting from disciplinary action.
7 The appeal shall be filed not later than ten THIRTY working days after the
8 effective date of such action. The employee shall be furnished with
9 specified charges in writing when the action is taken. Such appeal shall be
10 in writing and must state specific facts relating directly to the charges on
11 which the appeal is based and shall be heard by the board within thirty days
12 after its receipt. The personnel board shall provide the employing agency
13 with a copy of the appeal not less than twenty days in advance of the
14 hearing.

15 **B.** Hearings on such appeals shall be open to the public, except in
16 cases where the employee requests a confidential hearing, and shall be
17 informal with technical rules of evidence not applying to the proceedings
18 except the rule of privilege recognized by law. Both the employee and his
19 THE employing agency shall be notified not less than twenty days in advance
20 of the hearing and may select representatives of their choosing, present and
21 cross-examine witnesses, and give evidence before the personnel board. The
22 personnel board may appoint a hearing officer to conduct the hearing,
23 take evidence on behalf of the board and exercise the rights prescribed by
24 section 12-2212. The personnel board shall prepare an official record of the
25 hearing, including all testimony recorded manually or by mechanical device,
26 and exhibits, and shall transcribe such record on request of either party.
27 If the disciplinary hearing would involve evidence the state is prevented by
28 law from disclosing, then a confidential hearing upon the state's request
29 shall be granted.

30 **C.** The board may reverse an agency's action on appeal only if the
31 board finds the action to be arbitrary, capricious or otherwise contrary to - - -?

33 **D.** The board may reduce the disciplinary penalty chosen by an agency
34 only if the board finds the penalty to be excessive or made for reasons that
35 are arbitrary, capricious or otherwise contrary to law.

36 **E.** Within thirty days after the conclusion of the hearing, the board
37 shall enter its decision and shall at the same send a copy of the
38 decision by registered CERTIFIED mail to the employing agency and to the
39 employee at his THE EMPLOYEE 'S address as given at the hearing or to a
40 representative designated by him THE EMPLOYEE to receive the same COPY OF THE
41 DECISION.

42 **F.** Any Party may appeal the decision of the board pursuant to title
43 12, chapter 7, article 6 to the superior court in the employee's county of
44 residence on one or more of the following grounds - that the order was:

- 1 1. Founded on or contained error of law which shall specifically
- 2 include error of construction or application of any pertinent rules,
- 3 2. Unsupported by any evidence as disclosed by the entire record,
- 4 3. Materially affected by unlawful procedure,
- 5 4. Based on A. violation of any constitutional provision,
- 6 5. Arbitrary or capricious.
- 7 **G.** An appeal shall be available to the court of appeals from the order
- 8 of the superior court pursuant to title 12, chapter 7, article 6 as in other
- 9 civil cases.
- 10 **H.** An employee may represent himself or designate a representative,
- 11 not necessarily an attorney, before any board hearing or any quasi-judicial
- 12 hearing held pursuant to this section providing that no fee may be charged
- 13 for any services rendered in connection with such hearing by any such
- 14 designated representative who is not an attorney admitted to practice.

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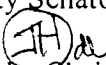
Chair of the Faculty

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January 28, 1998

TO: All Faculty Senators

FROM: Jerry Hogle,  Chair of the Faculty, and the Chair's Task Force
on Faculty Salaries

RE: The Attached Survey on Salaries

The Task Force on Salaries wants to get broad faculty input across the UA on how faculty perceive several aspects of salary distribution. Accordingly, we have devised a questionnaire (attached), but we would first like to pilot (or test) it with a selected group. We all agreed that Faculty Senators would be a good test group. We therefore ask you to fill out the attached questionnaire, giving us (naturally) your own opinion. Please hand it in to me at the Senate meeting on February 9.

We realize that this instrument may not be perfect. That is why we are testing it this way. If you have suggestions for alterations, please indicate them on the back of the survey sheet. But do fill it out so that we can see if it gives us the information we really need or not.

We will let you know how we will release results once we see how our test has gone. We appreciate your help and your returning these surveys at the February 9 meeting.

Thanks very much.

dl
Attachment

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PILOT TEST

FACULTY SALARY SURVEY

Spring 1998

Current rank: _____

Years in current rank: _____

Gender: _____ female _____ male

Years with University: _____

Minority: _____ yes _____ no

1. Does your Department Head/Dean distribute salary increases according to an established Departmental Policy? _____ yes _____ no _____ don't know
2. Does your Department/College have a faculty-approved algorithm for determining salary increases for merit? _____ yes _____ no _____ don't know
3. Does your Department/College have a faculty-approved algorithm for determining market adjustments? _____ yes _____ no _____ don't know
4. Do you believe that faculty salaries are fairly distributed in your Department/College?
_____ yes _____ no _____ don't know

What is the basis for your response to #4? (mark all that apply)

- _____ factual knowledge of salaries in your Department/College
- _____ hearsay knowledge of salaries in your Department/College
- _____ discussions with colleagues
- _____ other (please specify: _____)

5. Is your current salary fair relative to peers in your Department/College? _____ yes _____ no
6. Is it your perception that full-time faculty salaries are fairly allocated throughout the University? _____ yes _____ no

Please comment briefly on your response to #6: _____

7. Is your current salary fair relative to your peers in the University? _____ yes _____ no
8. Is your current salary fair relative to your counterparts at peer universities?
_____ yes _____ no

9. In your opinion, what is the major problem that needs to be addressed in faculty salaries?

10. What suggestions do you have for increasing resources for faculty salaries?

