Weakening Tenure and Shared Governance: The Case of the University of Wisconsin

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In the state of Wisconsin, prior to 2015, faculty tenure and shared governance protections were written into state law, giving Wisconsin faculty in essence the strongest protections in the United States.
UW Shared Governance Prior to 2015

(4) Faculty. The faculty of each institution, subject to the responsibilities and powers of the board, the president and the chancellor of such institution, shall be vested with responsibility for the immediate governance of such institution and shall actively participate in institutional policy development. As such, the faculty shall have the primary responsibility for academic and educational activities and faculty personnel matters. The faculty of each institution shall have the right to determine their own faculty organizational structure and to select representatives to participate in institutional governance.
UW Shared Governance After 2015

Faculty. The faculty of each institution, subject to the responsibilities and powers of the board, the president, and the chancellor of such institution, shall have the primary responsibility for advising the chancellor regarding academic and educational activities and faculty personnel matters. The faculty of each institution shall have the right to determine their own faculty organizational structure and to select representatives to participate in institutional governance, except that the faculty of each institution shall ensure that faculty in academic disciplines related to science, technology, engineering, and mathematics are adequately represented in the faculty organizational structure.
…vested with responsibility for the immediate governance of such institution and shall actively participate in institutional policy development.

…have the primary responsibility for advising the chancellor regarding academic and educational activities and faculty personnel matters.
UW Tenure Prior to 2015

37.31 1a) “The employment of a teacher who has become permanently employed under this section may not be terminated involuntarily, except for, cause upon written charges…”

36.21 “Lapse of appointments. Notwithstanding ss. 36.13 (4) and 36.15, the board may, with appropriate notice, terminate any faculty or academic staff appointment when a financial emergency exists.”
JOINT STATEMENT BY THE UNIVERSITY COMMITTEE AND
THE OFFICE OF THE CHANCELLOR ON THE CONTRACTUAL IMPLICATIONS OF TENURE

A judicial decision resulting from 1978 litigation involving one of the former state universities determined that the statute then in force covering tenured faculty appointments (former Ch. 37 Wis. Stats.) was not itself an enforceable contract between the state and the individual. It was, however, deemed to be a statement of legislative policy. The University Committee, reviewing the matter, concluded that previous and present statutes give the Board of Regents authority to make tenure appointments which are binding contracts. The Faculty Senate then asked the University Committee and administration to take steps to insure that the University's past and present appointment practices constitute tenure contracts.

This statement is intended to provide such clarification. It represents an understanding by the administration, concurred in by the University Committee, that appointment to a tenured rank (professor or associate professor) represents an express and binding contractual commitment on the part of the university, acting on authority of the Board of Regents.

Tenure involves a contractual commitment to the faculty member from the Board of Regents of the University of Wisconsin System, and is awarded under authority granted to the Board by Chapter 36, Wisconsin Statutes. It is an express and binding commitment for an indefinite period, limited only by retirement, dismissal for cause, termination for reasons of financial emergency, or voluntary resignation. The appointment is subject to the lawful procedures of the Board of Regents as found in Chapters 1-7, Wisconsin Administrative Code, and the appropriate Faculty Policies and Procedures of the University of Wisconsin-Madison.
UW Tenure After 2015

36.21   Termination due to certain budget or program changes. Notwithstanding s. 36.15, the board may, with appropriate notice, terminate any faculty or academic staff appointment when such an action is deemed necessary due to a budget or program decision requiring program discontinuance, curtailment, modification, or redirection.”
Tenure involves a contractual commitment to the faculty member from the Board of Regents by the University of Wisconsin System, and is awarded under authority granted to the Board by Chapter 36, Wisconsin Statutes. It is an express and binding commitment for an indefinite period, limited only by retirement, dismissal for cause, termination for reasons of financial emergency when such an action is deemed necessary due to a budget or program decision requiring program discontinuance, curtailment, modification, or redirection, or voluntary resignation. The appointment is subject to the lawful procedures of the Board of Regents is found in Chapters 1-7, Wisconsin Administrative Code and the appropriate Faculty Policies and Procedures of the University of Wisconsin-Madison.
Policy Statement:

“Tenure is the keystone for academic freedom and excellence and is awarded for academic and professional merit. Tenure is an essential part of the guarantee of academic freedom that is necessary for university-based intellectual life to flourish.”

“Accordingly, faculty layoff will be invoked only in extraordinary circumstances and after all feasible alternatives have been considered. Additionally, faculty layoff shall not be based on conduct, expressions, or beliefs on the faculty member’s part that are constitutionally protected or protected by the principles of academic freedom.”
A. “Accordingly, and notwithstanding RPD 20-23 (Regent Policy Document on Faculty Tenure), a tenured faculty member, or a probationary faculty member prior to the end of his or her appointment, may be laid off in the event that educational considerations relating to a program require program discontinuance. Educational considerations may include strategic institutional planning considerations such as long-term student and market demand and societal needs.”
B. "…" Educational considerations are related in part to regular program review, and reflect a long-range judgment that the educational mission of the institution as a whole will be enhanced by program discontinuance. This includes the reallocation of resources to other programs with higher priority based on educational considerations. Such long-range judgments generally will involve the analysis of financial resources and the needs, value and quality of the program and any related college or school.”

C. “A proposal to discontinue a program due to educational considerations that will result in faculty layoff may be initiated by faculty in the program, faculty in the college or school that contains the program, the faculty senate, the dean, the provost, or the chancellor.”
Definitions

Educational Considerations: “For the purposes of this policy, “educational considerations” shall not include cyclical or temporary variations in enrollment. Educational considerations must reflect long-range judgments that the educational mission of the institution as a whole will be enhanced by a program’s discontinuance.”

Program: “a related cluster of credit-bearing courses that constitute a coherent body of study within a discipline or set of related disciplines. When feasible, the term shall designate a department or similar administrative unit that offers majors and has been officially recognized by the UW institution. Programs cannot be defined ad hoc, at any size, but should be recognized academic units. Programs shall not be defined to single out individual faculty members for layoff.”
“I’m getting hammered by the “shared governance” leaders because they weren't involved in the process; however, had they been involved we wouldn't be doing anything!!”

UW System President Ray Cross on proposed mergers of two year universities in 2018
2017: UW Superior: 25 programs were suspended, including 9 majors

2018: UW Stevens Point: 13 humanities departments, but eventually limited it to just six, and then to four

Both plans created without faculty input; UWSP limited by faculty organizing