



Unit Ties

Faculty Working Together for Superior Education

AAUP is our Best Hope

Susan Reese

Newsletter Editor

Spring 2005

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In reading the articles for this term's newsletter, especially Tom Barrows' piece from Salem, I find myself recalling a poem by Patrick Kavanagh, "Father Mat," in which the poet writes "In the dim/ Corners in the side seats faces gather,/ Lit up now and then by a guttering candle/ And the ghost of day at the window./ A secret lover is saying/ Three Hail Marys that she who knows/ The ways of women will bring/ Cathleen O'Hara (he names her) home to him./ Ironic fate! Cathleen herself is saying/ Three Hail Marys to her who knows/ The ways of men to bring/ Somebody else home to her--/"O may he love me."/ What is the Virgin Mary now to do?"

Here we are asking the state for monies for education, and they must ask the voters; we ask the University for equity in salaries across the disciplines, and they must ask the state. Sometimes our requests work at cross purposes,

(Editor, Continued on page 10)

Arbitrator Orders PSU to Reinstate Tenure-Track Faculty Member, Pay Lost Wages & Benefits

Julia Getchell

Chapter Coordinator

In April 8, 2005 Arbitrator Sylvia Skratek ordered PSU to reinstate a tenure-track faculty member and to "make her whole" for all lost wages and benefits. The faculty member, who has requested anonymity, will be restored to the fifth year on the tenure track at the beginning of the 2005-06 academic year. PSU-AAUP has requested that PSU pay the grievant for one year's lost wages and benefits plus costs associated with finding and maintaining interim employment but less interim earnings and benefits.

PSU-AAUP Grieves Violation of Article 14: Promotion and Tenure

In August 2003, PSU-AAUP filed

a grievance against the Dean of the School of Business Administration (SBA) on behalf of the Grievant, a tenure-track faculty member in the SBA. The grievance protested the termination of her contract and the violation of the Article 14: Promotion and Tenure and the PSU Promotion and Tenure Guidelines (P&T Guidelines) that are incorporated by reference into the Collective Bargaining Agreement.

The specific charges the Union raised were 1.) the Dean had failed to provide the faculty member with annual reviews and a timely third year review and 2.) unfairly terminated her after her fourth year on the tenure-track. The Dean provided just one annual review at the end of the Grievant's third year and a

(Arbitration, Continued on page 11)

President's Message: Retrospect & Prospect

Sy Adler

President

AAUP actively addressed several critical issues on campus this year. The quality and timeliness of performance reviews for tenure track and fixed-term faculty has been an ongoing concern. AAUP sponsored very well attended workshops on review processes for these groups during fall and winter quarters.

We're developing another one for fall term aimed at faculty who will conduct promotion and tenure reviews. A greatly expanded AAUP Grievance Committee worked intensively with members of the bargaining unit on grievance-related issues.

Enhancing AAUP's capacity to work with unit

members on those issues was a major accomplishment this past year. The Executive Council's Governance Committee started the year engaging with students and administrators on the ID card issue, looked into governance-related aspects of the University's recently established degree program in Shanghai, and, in general, monitored Faculty Senate dynamics. The Legislative Committee took a leadership role in co-sponsoring a panel discussion with Faculty Senate about the proposed merger of Portland State and Oregon Health and Sciences Universities that was extremely well attended and coordinated a letter-writing campaign about the importance of adequate state funding for higher education.

A committee composed of people who have agreed

(President, Continued on page 10)

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Unit-Ties is published on a quarterly basis. The American Association of University Professors (AAUP), established in 1915, is the only National Organization exclusively representing faculty of higher education. AAUP has pioneered the fights for tenure, academic freedom, and due process for all faculty. The Portland State Chapter (PSU-AAUP) operates as both a professional association and as the exclusive collective bargaining agent for all PSU faculty employed at least .50 FTE.

Legislative Report

Tom Barrows

Dave Barrows & Associates

Budget negotiations at the Oregon legislature have broken down due to a disagreement between the Democrat-controlled Senate and the Republican-controlled House. The main point of contention between the two is the amount of the Budget that should be allocated for K-12 education. The Democrats want to give the schools \$5.4 billion while the Republicans want them to get \$5.2 billion with the difference going to other budgets.

Earlier this Session it looked as though we might avoid the budget fights that caused the 2003 Session to go until late August, making it the longest in history by three weeks. In February, the leadership of both houses came to an agreement on the amount of the total General Fund budget for the next biennium. They agreed to \$12.393 billion, and each member of the negotiating team signed an agreement that this would be the amount. It was unprecedented for a total budget number to be set so early. There was a great deal of hope at that point that it might be a fairly short and harmonious Session.

When the negotiation on the K-12 amount broke down, the leadership of the Senate and the House had a heated exchange that caused hard feelings between the two, making an agreement less likely at that point.

The Speaker then pulled the House out of the Ways and Means process by creating a House Budget Committee.

This new Committee will move budgets to the House floor for a vote. These budgets must then go through the same process in the Senate. It is unlikely that the House and Senate will agree to the same amounts initially so any budgets that are moved out of the second body with a different number will likely go to a conference committee made up of members from both houses. The Joint Ways and Means Committee is set up to create budgets that have an agreement at the front end. Now that the Ways and Means Committee has been split into separate House and Senate Budget Committees, it is

"The good news is that the May revenue forecast projects the State to get more than \$220 million in additional funds than the March forecast had predicted."

looking unlikely that the Session will end before August.

The good news is that the May revenue forecast projects the State to get more than \$220 million in additional funds than the March forecast had predicted. The May forecast is usually the basis for the General Fund budget. This additional money is more than the amount that separated the House and Senate leadership budget proposals for K-12. This opens up options if the Legislature is willing to look at spending the additional money. The House Leadership is pushing for a rainy day fund and they hope to use some of this additional money to create that. The Senate Leadership is pushing to get more money to the schools.

Bargaining: Bridging the Gaps by Writing Bernstine

Martha Hickey

VP of Collective Bargaining

Each of us has an opportunity now to write President Bernstine to let him know that our Association, PSU-AAUP, has support in its efforts to reach a new contract. AAUP is asking PSU to honor the Higher Ed Board's own budget recommendation to fund reasonable salary increases for continuing faculty at the State's Spring 2005

universities: cost of living plus 2%. President Bernstine has publicly pledged to advocate for faculty salaries.

PSU must invest in the faculty whose efforts have helped it grow. AAUP is requesting a contract that would fund a cost of living increase plus 2% a year for the next four years and fully paid health benefits. But we have gone one step further than the Board. We are

pledging that the additional 2% will be awarded on the basis of the demonstrated good work that PSU faculty do on behalf of Oregon.

Reviews for performance increases will not create a lot more work. Most departments, units and programs are already reviewing the performance of their faculty. What has been noticeably lacking is the ingredient that would make

(Bargaining, continued on page 9)

Grievance Report

Susan Lindsay

VP of Grievances & Academic Freedom

As the year comes to a close, I'd like to report on the activities of the Grievance Committee. This year was challenging due to the high level of complex and demanding concerns that we addressed regarding membership issues. But among all of the dozens of complaints that we looked at, was the brightest spot of all, the Grievance Committee itself, a group a faculty volunteers, enjoyable to work with, and dedicated to helping fellow members in need.

This year the Grievance Committee took on the task of examining and discussing the concerns that we have seen regarding faculty members of color and women obtaining tenure and promotion. The Grievance Committee met with Connections, an informal faculty of color support network, the Diversity Action Council, the Director of Affirmative Action, the Director of the Center for Academic Excellence as well as conducted numerous interviews with faculty members of all ranks.

We concluded that there was a problem yet unaddressed by the university regarding retention of faculty members of color and women and we have sought information from the Administration to help document and quantify these issues. At press date we have still not received that information and we hope that the Administration will soon be forthcoming with these demographic statistics.

In the meantime, the committee has worked together to formulate a list of concerns as well as constructive suggestions to present

to the University's President and ask him for his assistance and leadership to address these concerns. We hope to meet with President Bernstine at the end of the academic year after the final tenure related decisions have been made.

Some of the suggestions that we have outlined include providing directed support for publication success, release time for junior faculty members as well as senior faculty members involved in mentoring, and more recognition during PPT review for the positive gains that the University obtains through minority faculty members' community involvement and outreach.

Much of the work of the Grievance Committee involves providing direct support and participating with members as they attend meetings with a supervisor, chair or dean and/or often just listening. This type of service work can be demanding emotionally but it provides immense satisfaction in the knowledge that you have helped a member and, thus, the Association at large with the member's needs during a time, which for them often feels bleak.

While we don't always succeed in winning every case, the service that we provide the member is invaluable. In specific, this year, due to the intervention and involvement of the Grievance Committee, we directly altered the course of some faculty member's employment, tenure, pay and promotion, and in fact saved several people's jobs.

To note, Julia Getchell, AAUP Chapter Coordinator and I have been meeting with Vice-Provost Mike Driscoll on a weekly basis to address grievance concerns with the philosophy of trying to solve these

issues as directly and informally as possible. VP Driscoll deserves recognition for his assistance and willingness to try to address and solve before a formal grievance is filed, these oft, contentious issues.

Approximately fifty percent of situations with AAUP Grievance Committee involvement resulted in some degree of success for the member in the form of concessions from the University or a positive change in a decision that had previously been rendered by the University. This service is, however, volunteer based, and is only possible through the generous donation of service time provided by these highly regarded members of the AAUP Grievance Committee.

We are always seeking new members to the Committee and would love to see some new faces as we form again in fall of this year. Faculty members of any promotional rank or term of employment are welcome but we especially can use tenured faculty members to help the junior faculty members as they seek assistance with their review process.

Besides the obvious benefits gained by helping a fellow member, a number of members of the grievance Committee are traveling to New Hampshire this summer to attend the AAUP Summer Institute in July. These members will attend specialized training in grievance handling and will be more prepared to serve the membership when they return.

As Grievance Committee Chair, I would like to personally thank each and every member of the Committee as well as our wonderful AAUP staff.

Letter Writing Campaign

Tired of “Compensation Slippage”?

Gary Brodowicz

Past President

If you're like me and want to let others know how you feel about the steady erosion of faculty compensation at PSU, then you should seriously consider taking a moment to write a letter. Don't have time? We've made it easy.

Check out your bargaining team's 3-point plan to improve faculty compensation (“Bridging the Gaps”) at <http://www.psuaaup.net/CATltr.doc>. The site also includes a sample letter. All you have to do is print the letter, sign it, and send copies to the PSU administration and the PSU-AAUP office. If the sample doesn't quite articulate how you REALLY feel, then I encourage you to customize it so that your voice is heard. The PSU-AAUP Contract Action Team encourages **EVERY** member of the PSU faculty to send a letter. If you still can't seem to find the time to write your own letter, consider co-signing one with your colleagues.

Remember, if *you* don't let others know how you feel, you can't expect them to do anything about it.

Spring Commencement

All tenured faculty members are contractually obligated to attend commencement. Article 4 (Responsibilities of the Members) of the Collective Bargaining Agreement says that “Members of the bargaining unit shall be available to perform duties during the period of their contractual appointments including attendance at spring commencement by all tenured faculty.”

While fixed-term research and instructional and academic professional faculty members are not contractually obligated to attend, they are welcome to attend. The PSU spring commencement ceremony will be Saturday, June 11, 3 p.m. at the Rose Garden Arena. Transportation from PSU to the Rose Garden Arena will begin at 12 p.m. Faculty Lunch begins at 1 p.m.

More faculty members need to register for commencement! As of today, May 20, only 69 faculty members had indicated they were planning to attend with an additional 68 volunteering to serve as marshals and 17 to participate in hooding doctoral candidates.

To register for commencement, go to <http://www.pdx.edu/commencement/faculty.html>

To order your commencement regalia, go to <http://www.portlandstatebookstore.com>

One of the benefits PSU-AAUP membership is up to \$35 reimbursement for renting commencement regalia. This benefit and several others are available only to members. To become a dues-paying member, fill out the membership application in this newsletter. Once you become a member, all you need to do is bring or send a copy of your receipt to the AAUP office at 232 SMSU. Please indicate the address where you would like your check to be mailed. Regalia reimbursement requests will be honored until October 15, 2005.

Morale Worse in Departments with Lowest Salaries

Jennifer Ruth

Assistant Professor, English

Editor's note: *I was at my book group at a local private club the other evening (I'm not a member, I just lead the group for snacks and camaraderie), and the doctor was talking to the interior designer about how her son had struggled to put food on the table and clothing on the children at his starting salary of \$87,000.00, to which I said, "I'd like to make \$87,000.00!" Their heads swiveled and he said "Well, you can go to school for 15 years, then." I stuttered, "Well, I'd be 70 by then." He said, "Well, okay." And I can't get it out of my head! What I should have said is "I'm currently working on another degree, and I've been in school, beyond my high school diploma, for going on 10 years; of course, it's not 15, but my \$37,000.00 with no promise of advance still seems paltry for time invested, time served." I'm bothered not only by the inequity in salary, but in what that inequity has done to my self image in terms of my value as a professional; clearly I feel somewhat apologetic and less valuable teaching than others do in their professions, and yet teaching is one of the most valuable professions in our society. Where is the equity in salary to support this? We must work together, through AAUP, to rectify this horrendous inequity that shakes our morale to its very core. -Susan Reese*

PSU faculty are not suffering equally in this new world of attenuating state support. The shrinking state budget for higher education gets blamed for all our ills, but how do we explain the gross disparity among salaries by discipline?

Two decades ago, there was a university culture in which it was understood that faculty in the same ranks should make roughly equal salaries across disciplines. There were some slight differences depending on your discipline but nothing like what we see today.

Here, at PSU, for example, one assistant professor does comparable work to mine and makes more than twice what I make: \$91,000 to my \$43,000. Not ten thousand more, not fifteen thousand more, forty-eight thousand more. There's the Assistant Professor making \$78,000 to my Berkeley PhD colleague's \$39,000. I could do this ad infinitum. The response to this line of argument is always that we couldn't have gotten that person without offering this salary. Well, there's a hard decision I would have liked to see the University make by choosing equity.

I'm not saying that we aren't all suffering, that we

don't all feel like we're taking a hit by being at PSU, but I am saying that the person trying to get by on \$40,000 after 8 years of graduate school is in a qualitatively, not just quantitatively, different position than the person making just fifteen thousand more.

It affects more than our standard of living. It impacts our ability to do our job. We can't afford full-time childcare so that we can do our more-than-full-time jobs; we can't go to conferences; we can't do research or develop new courses in the summer because we have to teach. Much of what I needed to do to fulfill tenure expectations, I literally could not have done if I lived only on what PSU paid me.

I have the luxury to be buffered from the brunt of my salary by my husband's income, but I think the prerequisite for being a Professor of Literature should be the PhD not that we be independently wealthy or sleeping with the private sector.

While it may be true that the University can "get" the Literature PhD for cheap and not the computer science PhD or the Business Administration person, it doesn't follow that this is actually a good administrative strategy. When the money gets this out of whack, the result is very low morale and, thus, diminishing returns for the \$40,000 you pay your Literature PhD.

A whole generation of demoralized Assistant Professors is not going to make for a good English department. I'm not casting any aspersions on my astonishingly talented and dedicated peers here in the English department when I imply that the long-term effects of such inequity will be dismal. When institutions don't reward good work and, worse, show an inclination to keep you as cheaply as they possibly can while coughing up more funds for others who are in better structural positions to negotiate (i.e., facing better job markets), they do not inspire loyalty and good will.

The University is experiencing this when it expresses surprise and dismay that the English department is not signing up in droves to marshal at graduation this spring. Ceremonial participation, mentoring individual students, representing the department at various functions: these are the kinds of things that require good will and where there is little trust, there is little good will.

Do You Know PSU's Funding Priorities?

Take this true/false quiz and find out:

1. The PSU Administration spent \$1.25 million of E&G funds on University Place to cover the debt service on the bonds used to finance the purchase of the facility (for 22.3 million).
 T F
2. The PSU Administration spent hundreds of thousands of dollars of E & G funds on renovations for University Place.
 T F
3. The PSU Administration covers millions of dollars in Athletic Department deficits annually.
 T F

If you:

- value fully-funded healthcare
- would like your salary keep pace with the cost of living
- would like to be rewarded for the good work that you do

let the PSU Administration know! Write Dan Bernstine and Michael Reardon and tell them they should value faculty. Sample text for letters and contact information is available at: <http://www.psuaaup.net/CATltr.doc>. (Be sure to cc Mike Driscoll!)

(Answers: 1. T; 2. T; 3. T)

Although it is true that only about 20 percent of American workers are in unions, that 20 percent sets the standards across the board in salaries, benefits and working conditions. If you are making a decent salary in a non-union company, you owe that to the unions.

One thing that corporations do not do is give out money out of the goodness of their hearts.

–Molly Ivins

PERS Update

Beckie Lee

Oregonians for Retirement Security

If you're a PERS member, the Supreme Court is the center of the universe right now. Just two months ago, the court issued their opinion on *Strunk et al vs. Public Employees Retirement Board* – and we won some big victories!

The court overturned two major cuts the Legislature made to PERS in 2003 - the freeze on cost of living adjustments for retirees and the 8% return for PERS members. Their ruling said the Legislature violated contract rights of employees when they made these cuts to the retirement system.

We did not win on two issues: – Tier 1 and Tier 2 member contributions are still being diverted to newly created IAP accounts and the new actuarial factors will be implemented. We continue to challenge these issues in Federal Court.

Overall, the wins are significant. The courts opinion states loud and clear that the Legislature can't change the deal made to you when you started your job. That gives you the security you deserve in your retirement.

Now the question we get asked all the time is: when will I get my reimbursement?

First the good news: The reimbursements are retroactive for either the COLA or your 8% earnings. So regardless of when the payment is made, you will get back the dollars you were promised.

The bad news is the PERS Board is waiting for another Supreme Court decision (the Lipscomb case) before they pay you back. Here's why....

The Lipscomb case involves many issues, but the

central issue is if the PERS Board credited too much money to members' accounts in 1999. At first, Judge Lipscomb ruled that yes indeed the PERS Board credited too much money to accounts in 1999.

Based on that decision, the PERS Board entered into a settlement with employers, who said as long as the Legislature cut PERS in the 2003 session they would be happy. Happy, with a caveat. They said if the Legislative cuts were overturned (as they were two months ago), the settlement would be void and the PERS Board would have to take earnings back from members from 1999.

We think that the Judge was wrong in his decision, and secondly, we think that the settlement was unfair. We filed a lawsuit challenging the judge's ruling and challenging the settlement.

The Supreme Court will decide shortly if the settlement will stand or not. If we win this case, your retirement will not be impacted. If the settlement stands, however, the PERS Board will take earnings back from members who were active in 1999.

This decision affects many of *you*, whether you are retired or still working. If you are interested in participating in events the day the decision comes down, please contact Beckie.

With all these changes, it can be challenging to understand what impact it has had on your retirement. To help, we've put together a series of examples of how the Legislative changes and Supreme Court decision impacted some typical members. These examples can be found on the PSU-AAUP website at: www.psuaaup.net.

With changes being made to PERS all the time, are you wondering what you can do?

Sign up to attend a speakers training on PERS. You will learn how to talk to the media or people in your community about PERS. Trainings will take place across the state in the coming months.

Call or email Beckie Lee at Oregonians for Retirement Security – (503) 248-7099 or blee@easystreet.com – to learn more and to sign up today!

those reviews more meaningful, an incentive that other professionals who work for the state of Oregon already have—related salary increases.

AAUP is advocating that the review cycle be linked to the length of contract and position description. We are proposing that those on two-year contracts be reviewed biennially, and those with tenure triennially, as we currently do post-tenure reviews. We want to give departments a year to review their guidelines, and to introduce new steps within rank for instructors and researchers. We will ask faculty to submit annual activity reports. (The PSU CLAS web site features one that its faculty are already required to submit.)

Under the system currently being discussed, faculty would become eligible upon their first third-year review. Since all full-time continuing faculty will be eligible, PSU must budget for all to receive a performance increase. Because shifting to a new pattern of compensation will probably be a three-year process, we are also asking that faculty who have not yet been integrated into a review cycle receive a market/retention increase to balance the performance increases others will begin to receive.

When PSU acquires a new building, it assumes an obligation. It pledges to pay interest on the bond that underwrites the cost of its investment. Does it have a lesser obligation to its faculty? When new faculty were recruited in the nineties at competitive salaries (a goal that is once again proving elusive), the implication was that salaries would continue to remain competitive with their peers. As new faculty have been hired at mid-career over the last four or five years, at Associate Professor rank and at elevated salaries, continuing faculty have been disadvantaged and a new set of expectations have been raised. Gaps are expanding.

PSU has money to invest. Last year, PSU took 1.2 million dollars from its Education and General Fund

budget to pay the first year's interest on University Place. It invested \$750,000 dollars in University Place renovations. It is time to put faculty at PSU on the list of obligations, reward good work and prevent the demoralizing effects of salary erosion, compression and inversion.

PSU can also absorb modest increases in health care, in addition to what the state may be budgeting. Every year the Oregon University system charges PSU over a million dollars above the actual cost of its health care, to subsidize the costs to other campuses,

it argues. This assessment could easily cover up to a 15% increase in health care costs. (A cost, we are already, in effect, paying.)

Over the years PSU has repeatedly subsidized the cost of running other campuses—including those where the faculty are paid more -- through fee re-distributions, required "loans" and now through a budget model that undervalues the cost of instruction where the numbers of faculty are highest. The resources that PSU needs to offer a quality education to its students and a quality working environment for its faculty should stay at PSU.

PSU has the opportunity to show the University system and the legislature that it has a plan to bridge the gaps.

PSU can pledge to invest in its faculty, in the good work that we do, and the vitality and expertise that we bring to the state and the metropolitan community that we serve. Let your president know that you care about PSU's future and the outcome of the current contract negotiations: bernstined@pdx.edu or PO (Office of the President), 341 Cramer Hall.

Responses to the plan for performance increases are also welcome and encouraged. Please contact the bargaining team at aaup@psuaaup.net.

"PSU has money to invest. Last year, PSU took 1.2 million dollars from its Education and General Fund budget to pay the first year's interest on University Place. It invested \$750,000 dollars in University Place renovations."

"It is time to put faculty at PSU on the list of obligations, reward good work and prevent the demoralizing effects of salary erosion, compression and inversion."

(Editor, continued from page 1)

mine canceling yours. It strikes me that AAUP is our best hope for addressing the equitable service of all our requests as it listens to and takes all of our needs and dreams, consolidates them, and presents them to the University on our behalf, with simultaneous representation at the State level. It is through AAUP that we may be heard, that our united numbers have the power to effect change.

If we are kept separate, unaware of inequities being dealt us, we all lose. When we are together in AAUP, informed, when we know what we're missing, or what we have that others are being denied, then and only then can we work toward fair treatment, financial and otherwise, across the board here at PSU. So, please read this newsletter in its entirety, Tom's report from the front in the Oregon Legislature, Martha's words as our Chief Negotiator on our Bargaining Team, Julia's report on a major victory for AAUP as a result of a filed grievance, Gary's call to action in writing a letter to President Bernstine, Beckie's report on PERS, and everything else that lies within these pages.

If you haven't yet become a full member of AAUP, please use the form at the back of this newsletter to do so today. We can and must be heard because our combined voices will make a difference. Thank you, have a great summer, and please send me your articles for our fall newsletter at sgreese@pdx.edu.

(President, continued from page 2)

to serve as Unit Representatives met throughout the year to talk about recent developments and about ways of communicating them to their colleagues.

And, as you all know, our Collective Bargaining

Team is negotiating a new agreement.

The Team is building on the work of a joint AAUP-administration compensation task force, and is supported by a Contract Action Team. National AAUP staff has visited us to assist with our ongoing contract campaign. I deeply appreciate the efforts of the many people who have participated in all of the above and other AAUP activities this year.

This year the number of people in the bargaining unit surpassed one thousand.

Integrating the members who have joined in recent years into the life and work of AAUP will be a major initiative for us in the coming year.

It's imperative that more people become actively involved in AAUP efforts, and that new people step up to take leadership roles as officers, council members, unit representatives, and committee members. In order to be effective, an organization as large as ours has become requires many different

kinds of contributions that reflect the diverse interests and needs of our membership.

As the campus continues to grow in size, in the

number of students, and in the number and variety of programs, the role of AAUP as an advocate for the individual and collective interests of faculty and academic professional faculty regarding the quality of our working lives and the quality of the educational experience for our students becomes ever more critical. Establishing productive relationships with the new Provost and with the new Vice-President for Finance and Administration will also be critically important.

Please don't hesitate to communicate with us about

any issues of importance to you. Let us know the ways in which you want to contribute to the organization.

Have a happy, healthy, and productive summer.

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third-year review at the end of her fourth year which is a clear violation of PSU P&T Guidelines

The PSU's P&T guidelines clearly state that "faculty on annual tenure must be reviewed after the completion of the first year of their appointment and each subsequent year. In order to assure that candidates for tenure have a timely assessment of their progress so as to permit correction of deficiencies, there must be a review at the end of the third year."

The University argued that the grievance was untimely because the Grievant should have filed a grievance when she did not receive her first review in 2000. The University also argued that the matter was not grievable because it was a matter of academic judgment.

Arbitrator Rules that Grievance is "Ripe" When the Harm Accrues

At a June 11, 2004 hearing on the arbitrability of this matter, Skratek agreed with the Union's argument that the grievance was "ripe" when the harm accrued. That is, the grievable act was when the Dean terminated the Grievant not when he failed to provide her first annual review.

The University argued that all the Grievant needed to do is request her reviews. Skratek expressly rejected this argument saying, "Any expectation that an employee would remind an employer to either reprimand or praise his or her work is not in the realm of normal employee-employer relations. The employee is in a subservient position, particularly an employee on probationary status. The Employer is clearly in control and has the right, the power, the responsibility, and the authority to make employment decisions. Their failure to do so in a proper and timely manner is not something that an employee should be expected to bring to their attention unless and until such failure leads to an adverse action."

According to the Arbitrator, the Dean has a responsibility to make certain that the P&T Guidelines are being properly implemented. "To suggest that she (the Grievant) had a responsibility to implement either of the guidelines is absurd," she said. "She had a right to expect that her progress toward tenure would be reviewed within the standards found in the Guidelines."

In addition, Skratek ruled that this matter was grievable because it alleged procedural steps and Article 14 of the Agreement were not followed. The Agreement specifically exempts matters of academic judgment from being raised in the contractual grievance procedure but allows procedural errors to be grieved.

Arbitrator Rules Dean Violated Article 14

A two-day hearing was held in January 2005 to determine if PSU violated Article 14 of the Agreement and to determine an appropriate remedy. The University argued that it had the authority to terminate the Grievant by providing her timely notice. PSU also argued that lack of a review after her first year did not harm the Grievant and that the second-year and third-year reviews were timely.

The Union argued that the University violated the Agreement when it terminated the Grievant for not making adequate progress toward tenure after failing to provide her with the required evaluations so that she could correct any deficiencies before her "up or out" promotion and tenure review in her sixth year. In addition, the Union argued that the University's termination of the Grievant after her fourth year violated the Agreement and the overwhelming past practice of giving Assistant Professors six years to demonstrate their qualifications for tenure and promotion.

On April 8, 2005, Skratek ruled in the Union's favor. She found that the Dean's failure to provide the Grievant with annual reviews and a timely third-year review violated the P&T Guidelines incorporated within Article 14 of the Agreement. "To allow (the Grievant) to proceed through her fourth academic year with only the guidance provided from her one and only annual review was a violation of the provisions of the Agreement and the P&T Guidelines," the Arbitrator said. "To provide her with only one review during that time frame ignores any reasonable interpretation of the P&T Guidelines. Without an assessment or documentation of her performance, (the Grievant) had no guidance, no direction, and no knowledge of any deficiencies."

Skratek rejected the University's argument that no harm had come to the Grievant due to lack of reviews because it "fails to consider the expressed purpose of the P&T Guidelines to equitably assess and document the performance of faculty members." Failure to provide her with an assessment of her performance "has indeed resulted in harm to her: the loss of her employment," Skratek said.

Arbitrator Rejects University's Claim That It Can Terminate With Timely Notice

In addition, Skratek found the University's claim that it can "simply terminate an annual tenure track faculty member for any reason by providing timely notices without merit." The Arbitrator agreed with the Union's position that this would render meaningless the Promotion & Tenure Guidelines. In the Arbitrator's words, "To suggest that the University can ignore its own guidelines is beyond reasonableness."

Skratek said the contention the University can terminate a tenure-track faculty member for any reason by giving timely notice "ignores the language on page 17 (of the PSU P&T Guidelines) that states 'The granting of tenure . . . is exercised only after careful consideration of a faculty member's scholarly qualifications and capacity for effective continued performance over a career.'" She continued, "If the parties had intended that at any time for any reason the University could terminate the employment of an annual tenure-track employee then why did the parties specify at length in the Guidelines the means by which faculty members would be evaluated? For the Arbitrator to agree with the University, she would have to find that the Guidelines are meaningless and superfluous, something that she cannot do given the clear incorporation of the Guidelines into the Agreement at Article 14."

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