

The University of Washington
Faculty Council on
Faculty Affairs
November 9, 1999

The Faculty Council on Faculty Affairs met on November 9, 1999 in 36 Gerberding. Chair Robert Holzworth presided.

PRESENT: *Professors* Carr, Alexandro, Holzworth, Holt, Hunn, Luchtel, Roberts; *Ex officio* *Adman, Fabien, Olswang, *Rickerson; *Special guests* Lea Vaughn, Míceál Vaughn.

ABSENT: *Professors* Kushmerick; *Ex officio* Taricani.

*Denotes Ex officio member with vote.

Approval of Minutes of October 19, 1999.

Minutes were approved with deletion of comments regarding Amendment 28-35.C and 28-36.B. and discussion concerning Amendment 28-53.A.

Action Items

1. **Amendment to second paragraph of Introduction to Ch. 28** to remove contradiction between it and 28-61.A (and/or amend the latter to effect the same end). Motion to strike section reading, "Results of these adjudications are ultimately appealable to the President, except for cases where. . . "; add the following section, "Only results of adjudications in which"; and language beginning, "Results of Comprehensive Adjudications . . ."; and strike the wording beginning, ". . . then the results are appealable to the President," seconded, voted on and passed unanimously.

2. **Amendment to add new Subsections 28-31.H and 28-51.A** to establish an additional category, "administrative party of right." **New Subsection 28-31.H** was revised to read as follows: "Administrative party of right is a person, not identified in the petition, who, for good and valid reason, is a necessary participant in the adjudication by virtue of being immediately superior in administrative rank to a respondent (for example, the dean of a school or college in which a department chair is a respondent) or to another administrative party of right and whose request to participate in the proceeding has been granted by the Hearing Officer. The administrative party of right shall participate as a respondent to the petition and shall have the same rights and be subject to the same responsibilities as a party."

Review of Proposed Amendment to Ch. 28 Introduction to Remove Contradiction between it and 28-61.A.

Míceál Vaughn advised the Council that this amendment was proposed in response to an incident from an actual adjudication, Roffman vs. Ryan, as a remedy against the President inserting himself in a process that he was excluded from. The President did so on the basis of the wording of the introduction to Ch. 28 which seems to permit appeal to the President in all adjudications, despite the fact that specific language later on in Ch. 28 explicitly excludes him from review of the adjudications. It is clear from the above situation that there is a contradiction in the *Code* that needs to be resolved.

As indicated in Prof. Vaughan's comments and in the experience of anyone who has ever served on a "Brief Adjudication" panel, Brief Adjudications are anything but brief. In the case of Roffman vs. Ryan, it was clearly a difference between legal opinion on certain issues and faculty collegial opinion expressed, not by a Hearing Panel, but by a Brief Adjudication Review Panel. The solution to the problem, in Prof. Vaughan's view, is, when those two bodies--the Hearing Officer and the Hearing Panel--disagree, then the case would go to the President for review, but only in cases when the two parties could not reach an agreement. The idea of the Brief Adjudication was to effect brief resolution of differences more quickly by avoiding having to convene a panel of five faculty to do that. As it turns out, though, the opposite is true, with cases often dragging on for as long as two years, as was the case with Roffman vs. Ryan.

It was suggested that a time limitation be placed on the President's right to appeal adjudications and that this be stated explicitly in the Introduction. It was pointed out that there is a timeframe covering the President's right to appeal later on in Ch. 28 (21 days) as well as a section which allows the President to stretch out the review process under certain circumstances. It was also pointed out that the President is not involved in an adjudication unless he is specifically named as such by one of the parties involved. Prof. Vaughan then clarified that this amendment would disallow the petitioner the right to appeal to the President in cases where the Hearing Officer and Hearing Panel are able to reach a decision in the Brief Adjudication process. He also stressed that, at any point in the Brief Adjudication procedure, the petitioner can request that the process be raised to the level of "Comprehensive Adjudication," though the request does not have to be granted.

This amendment was described by Prof. Vaughan as being the "most substantive revision" of Ch. 28 as it makes a substantive change in what was the intention of the Brief Adjudication, which was, in his opinion, not expressed in the prefatory language but later in the *Code*, which was basically that a Brief Adjudication was to be handled by a Hearing Officer who reviewed and appealed to the Faculty Review panel, and by inserting the President into that it extends the Brief Adjudication process one more stage and goes against the very spirit of "Brief Adjudication."

Discussion regarding adding new Subsection 28-31.H and 28-51 to establish an additional category, "Administrative Party of Right."

In the case when Chairs are named as parties and Deans are not, the Dean obviously has a stake in that issue and should be automatically permitted to join as an Administrative Party of Right (APR). If the grievance were with the Dean, the Provost's Office could decide if this allowed the President to participate as an APR. Lea Vaughn asked if the Council wanted to include language behind the policy of that approach which is that where that person is necessary because of interest in policy or remedy. How far does the Council want to go with determining who is supposed to be present and under what circumstances?

The Chair remarked that the "Immediate Supervisor" was an APR but who else would fall into this category of "Immediate?" "The Deans?" "The Regents?" Prof. Olswang replied that the legislation was originally drafted so that the Hearing Officer would make this decision and that the Officer would have to have a reason for including these persons. He suggested adding language along the lines of: ". . . by virtue of being immediately superior, the Administrative Rights of the Respondent, or to another APR, are to request to participate in a proceeding which is granted by the Hearing Officer because the adjudicable issue involves important matters of policy within that broader unit."

Míceál Vaughn pointed out that almost every case dealing with Tenure Denial is a case directed primarily against a Dean. The implication here is that the Provost's Office could be involved as an

APR in every case of Tenure Denial. Prof. Olswang suggested adding the phrase "who is a necessary participant for good and valid reason" to qualify the APR's and Lea Vaughn added that the Hearing Officer would be a lawyer or other legally-trained person who would recognize this phrase as the Council's cognate to Rule 19--"necessary parties." Prof. Olswang added that this amendment would allow for the summary disposal of an inappropriate party--as in the case where a secretary was called as a participant and the Administration had to call for a summary disposition and start the whole process over again, rather than just objecting to the admission of that party on the grounds that it was entirely inappropriate.

After the motion was made and seconded, Prof. Holt asked for further discussion of whether adding another potential level of Administrative participation in these adjudications wasn't doing a disservice to the faculty member by allowing the Administrators to "gang up" on the petitioner. Prof. Olswang offered that the situation often arose where the wrong person or persons were named in the petition and there was no mechanism to include the appropriate parties in the proceedings. In many cases, the appropriate parties got involved anyway but they were not "at the table" and couldn't help solve the problem. Lea Vaughn offered that the Hearing Officers are "incredibly skilled" people who are not going to let anyone "gang up" on anyone else. Prof. Holt wondered if the role of "summary disposition" didn't already allow both parties to correct the inclusion of any inappropriate parties and Prof. Olswang replied that it did, however, it created twice the work since the whole process had to start all over at that point.

The Chair commented that this amendment helps the Faculty member by allowing more flexibility in naming respondents. Perhaps a faculty member believes he or she has been wronged but is not exactly sure who is responsible; he or she then has the ability to ask for additional parties to be named as respondents or to have certain parties dismissed on the grounds that they were not the appropriate respondents. Prof. Luchtel asked for clarification of Sec. 28-51.A, last sentence, which describes the role of the APR. Prof. Olswang suggested adding that last sentence to the end of 28-31.H. After a brief discussion, the Council agreed to this proposal and to leave 28-51.A. as-is except for the deletion of the final sentence beginning, "The administrative party of right shall participate. . . ." The motion was made, seconded and approved unanimously.

Discussion of Proposed Amendment to 28-31.K.

Prof. Olswang explained that the *Code* has two inconsistent provisions right now. One says within ten days of the filing of a summary disposition, the Committee must schedule a meeting and deal with it. Another provision says that the first order of business is to schedule a pre-hearing conference to try to narrow down the issues--to determine which witnesses will be called and what evidence will be presented etc. Inevitably what happens is, in the response to a request for an adjudication, there is a summary disposition request--some part of the adjudication is inappropriate; someone has been named who shouldn't have been named. What happens is, the Committee is unable to get the process going.

This is an amendment that codifies what, in reality, happens today. And, what happens today is that the first part of the pre-hearing is to look at the summary disposition and if the case is not disposed of then they move on to the pre-hearing conference. What this proposal does is to combine those two meetings into one.

This amendment would reduce the demands on panel members' time and also clear up an ambiguity--what comes first, the summary disposition or the pre-hearing conference (which cannot take place within the mandated 10-day period). Prof. Hunn asked if anyone had considered leaving the decision of summary dismissal up to the Hearing Officer alone? Prof. Olswang replied that he would have a real problem with this because if the Hearing Officer dismissed the

petition, then the petitioner would never get a chance to present his or her case before another faculty member.

The Chair and Prof. Holt replied that this is not what they understood to be the major objections to this amendment. According to Míceál's notes, this would allow the dismissal of a petition without the Hearing Panel ever having to hold an official meeting. At this point, the Chair suggested forming a Subcommittee to examine the ramifications of this proposed amendment and report back to the FCFA during the Nov. 23rd meeting. The Subcommittee will consist of The Chair, Prof. Holt, Prof. Hunn, Prof. Luchtel and either Lea Vaughn, Steve Olswang or Míceál Vaughn. The Subcommittee's goal will be to clarify proposed amendments VIII, IX, XII and XIII.

Discussion of Proposed Amendment 28-53.A. to clear up sections dealing with advisors/ers and representatives.

Prof. Holt pointed out that Míceál has added a line to section 1 but has only suggested that the FCFA add something to sections 2,4, and 5. Prof. Luchtel reminded the Council of his suggestion to eliminate sections 2,3,4,5 and 6 altogether and end the first section with ". . . agreed to by the petitioners. That is, advisors would be allowed if it was agreed to by the petitioners. There was some debate over whether "Advisors" and "Non-Party Participants" are the same thing and Prof. Olswang commented that this was the fundamental problem with the wording--that it the distinction between "non-party participants," "advisors," and "representatives" is not clear, unless "advisors" are going to be defined as "attorneys." Furthermore, the issue of whether these people can participate in the proceedings is unclear. If they are "advisors" then they should only be allowed to advise and not participate directly in the proceedings.

Prof. Olswang also stated that he would prefer not to have "advisors" at all; the Council questioned why, if both parties agree to the presence of advisors, would he object to them and Prof. Olswang responded, "Why add more complications to the process?" Prof. Alexandro wondered why, if both parties want these advisors present, would anyone object to them being there? Prof. Olswang responded that these "advisors" could be allowed under the category of "non-party participant" or "representative": persons present in an advisory capacity alone and not allowed to insinuate themselves into the process. The Chair asked the Subcommittee to consider this discussion in their forthcoming meeting. Prof. Holt requested a copy of Ch. 28 showing the amendments that had already been approved by FCFA alongside the current version and proposed changes. The Chair said he would ask Lea Vaughn to provide this for the Subcommittee.

Prof. Olswang requested that the FCFA deal with one other issue pertaining to the length of time the *Code* permits for initiating an adjudication. The current version allows the petitioner 120 days to file for an adjudication. This gives the petitioner four months after the "event" has taken place to decide to file; and, this timeline stops any time the petitioner engages in sanctioned negotiations with the goal of resolving the dispute i.e. The Chair, the Dean, the Ombudsman. If the person is on a 9-month contract, summers don't count. Prof. Olswang suggested reducing the time limit to 90 days. The Chair requested the Ch. 28 Subcommittee look into this suggestion as well.

The Chair advised that the Council should be prepared to discuss the WOT issue next meeting since Prof. Kushmerick would be presenting the results of the WOT Subcommittee meeting in an effort to push this item forward. In addition, the FCFA and FCR will be meeting as a joint subcommittee to examine the possibility of eliminating the WOT title altogether. The argument being that we have regular faculty with zero per cent tenure and why is this any different than WOT?

The Senate officially appointed Research and ALUW representatives as voting members of Faculty Councils. Prof. Adman requested to be added to the FCFA's agenda to give a report on Research Faculty, along with Prof. Sheehan from Cardiology research.

Meeting adjourned at 10:30.

Minutes by Todd Reid
Recorder, Faculty Senate