

AAUP

Voice

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"Academic freedom for a free society"

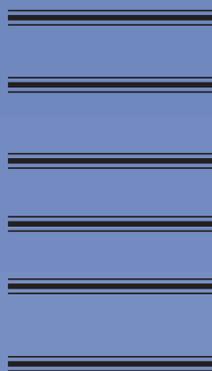
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The grievance procedure is a crucial feature of the collective bargaining agreement. By affording faculty members the right to be represented by the AAUP in disputes with the Administration over contractual conditions of employment including academic freedom, it provides them with a resource to secure their individual contractual rights. It also provides the AAUP with a means for enforcing the contract for all faculty.

In this issue, David Smith, AAUP Chief Grievance Officer, provides a thorough overview of the Grievance Procedure. David Smith, Associate Professor in the Department of Biological Sciences, has been serving as Chief Grievance Officer for the past two years. He brings a wealth of experience to this position. He served as Chief Grievance Officer from 1983 to 1988. He represented faculty members in grievances from 1995 to 2000. He has also served as President of the University Faculty Senate. David and members of the Executive Committee encourage faculty to contact him with questions about the grievance procedure or about personal issues involving their conditions of employment.

We ask you to join the AAUP if you are not currently a member. The strength of the AAUP depends on its membership!

The Contract and You:

Grievances and Academic Complaints

By David W. Smith, Chief Grievance Officer, University Delaware Chapter of the AAUP



Our Collective Bargaining Agreement (CBA) affords each member of the bargaining unit it covers the right to seek redress for an administrative action that is perceived to be in violation of the CBA. Within the CBA between the University of Delaware and the local chapter of the AAUP, such violations fall into two different categories: Grievances and Academic Complaints. There are important differences between the two, but my experience indicates that there is widespread confusion among our faculty about both. I offer this article in an effort to define and clarify both categories, with specific examples to illustrate each.

Definitions

The formal definitions may be found in the CBA and the Faculty Senate Bylaws, as set forth below.

Grievance: (From Article VIII, Section 8.1 of the CBA)

A grievance is defined as any dispute or difference concerning the interpretation, application or claimed violation of any provision of this Agreement. In addition, if an administrative action is taken which is not in accordance with the procedure required by the policies specified in Article XVII, Section 17.1, such alleged procedural error shall be grievable. Complaints or problems related to terms or conditions of employment which are not grievances as defined above may be referred to the University Senate Committee on Faculty Welfare & Privileges. Every attempt shall be made by both parties to resolve grievances arising under this Section speedily and informally by meetings between those directly affected.

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Definitions Con't

The Contract Maintenance Officer shall represent the University of Delaware AAUP in all matters involving the interpretation or implementation of the contract. The AAUP Contract Maintenance Officer shall also represent faculty in matters dealing with sexual and other unlawful harassment.

Academic Complaint: (From charge to Faculty Welfare and Privileges Committee)

This committee is charged with jurisdiction over faculty complaints which are not grievances as defined in the Collective Bargaining Agreement.

The language of these two passages is striking. Grievances are specifically defined in terms of contract provisions and procedures for their implementation. Academic Complaints are defined in a negative sense by what they are not. That is, an Academic Complaint is a dispute which does not meet the standard of Grievance in the CBA. It is clear that the Grievance is more primary than the Academic Complaint. In fact it is common for a specific issue to be examined with the conclusion that it "does not rise to the level of a Grievance." However, it may still be possible to pursue it as an Academic Complaint.

The above excerpt from Article 8.1 makes reference to Section 17.1 from Article XVII, where a detailed list of relevant topics can be found. In addition, Section 17.2 specifically indicates that the Handbook for faculty contains the details of the policies enumerated in 17.1. This explicit coupling of the Handbook to the CBA is very powerful and serves both the faculty and the administration with its precision. I urge everyone, faculty and administrators alike, to read Articles VIII and XVII very carefully.

Overview of Procedures

Faculty members who have a dispute, usually with the department chair, are often unsure how to proceed and often unsure if the situation meets the definition of a Grievance. (I am using the word

"dispute" as the general term to describe a disagreement before it becomes either a Grievance or an Academic Complaint).

In the large majority of cases, the best first step is to contact the Grievance Officer. The exceptions would be those referred to in Article 8.1 in which the Contract Maintenance Officer is the proper first contact.

When a faculty member contacts me, I explore the details of the situation with him or her and we discuss possible options. The most common result of these conversations is the mutual conclusion that the dispute does not fit the definition of a Grievance. In the past two years, I have been contacted by over 40 faculty members who came with a wide variety of issues from across the campus and in more than half of them, there was no further action.

In the remaining cases, I met with the faculty member's department chair or occasionally the Dean. These were informal conversations, usually with the faculty member present, and I have been pleased by the collegial attitude shown by the administrators with whom I have dealt. In nearly all cases, the dispute was resolved at these meetings to the mutual satisfaction of all parties.

In only 5 cases in the last two years did the dispute lead to the filing of a formal grievance by the faculty member. I accompanied the faculty member to the hearings in all of these cases as their representative.

To my knowledge, none of the cases that came to me in the last two years were taken to the Welfare and Privileges Committee as Academic Complaints.

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Gerry Turkel, Editor

The AAUP Voice is the official newsletter of the University of Delaware Chapter of the American Association of University Professors.

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The Executive Council acts as editorial board. During contract negotiations or when otherwise warranted, Bargaining Team members also participate on the board.

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Details of Grievance Procedure

As the contract specifies in detail, there are four different levels to the formal grievance procedure: Chair, Dean, University, Arbitration. Grievances are typically filed at Step 1 with the Chair. If the outcome at that level is unfavorable, then the case may be advanced to step 2. The faculty member has the sole right to decide to pursue Grievances at steps 1 and 2. It is definitely appropriate for a faculty member to seek AAUP advice for a step 1 or step 2 Grievance, but control of whether or not to proceed and how to proceed are entirely in the hands of the faculty member.

However, a Grievance may only go to step 3 or 4 with the approval of the Executive Council of AAUP. The rationale for this distinction is worth discussing. Grievances at the first two steps can often be resolved rather quickly, less formally and with less overall commitment of University resources. On the other hand, Grievances that reach step 3 are necessarily more formal and involve the time of the AAUP, chair, Dean, Vice-President for Administration and the faculty members who form the panel that hears the Grievance. Therefore, the Executive Council must agree that the issues involved are significant enough for this extra level of effort. Grievances that go to step 4 are rare (there have been none in the last three years) and are heard by a professional arbitrator from the American Arbitration Association, with the costs being split equally between AAUP and the University. The decision of the arbitrator is binding on both the faculty member and the administration. Cases that are arbitrated are very much like court cases and the consequences can be far-reaching. Not only does the decision affect the specific case at hand, but these decisions become precedents for cases nationally. Therefore, a case must have particularly compelling principles involved to justify this final step.

How should a faculty member decide if a particular dispute is a Grievance or an Academic Complaint? The grievance procedure is very clearly defined, has more steps at which to be heard and has arbitration as the final possibility. Therefore, I suggest that any faculty member with a dispute which might be a Grievance should pursue that possibility first.

Examples of Disputes which are Grievances

The clearest cases are those which involve violations of written procedures. There are two types of dispute which are presented to me much more frequently than all others.

1. Criteria for annual evaluations are changed and the new standards are put into effect prematurely. Evaluation criteria must be communicated to the faculty in advance of the period covered by the evaluation (Article 12.4).
2. Merit pay increase is not clearly related to annual evaluation. There must be a correspondence between merit pay and annual evaluation and a faculty member must be supplied with appropriate information on this point upon request to the chair (Article 12.4)

Other disputes that have arisen in the last two years include the failure to meet deadlines for 2-and 4-year reviews for Assistant Professors, flawed procedures for soliciting outside letters of evaluation for Promotion and Tenure dossiers, failure to give qualified full-time faculty a chance to receive an S-contract before offering it to someone outside the University, and various violations of department procedures.

Examples of Disputes which are Not Grievances

There is no clear pattern to these situations except that they usually do not involve written policies and procedures. In the past two years, all of the following have come to my attention.

1. Faculty member is not assigned to teach a class which he or she wishes to teach. When there are multiple faculty members in a department who can teach a given class, there are occasional disputes on the assignment.
2. Faculty member is assigned to teach a class at a time that he or she does not desire. This can be complicated, but often the chair of a department makes efforts to spread the times of classes across the week.
3. Faculty member is dissatisfied with committee assignments. Some committee service is seen as more desirable or prestigious than others.

Although faculty in such situations can be very unhappy, there is nothing contractual that applies to these cases and they are not grievable. It is possible that some could become Academic Complaints. The ultimate resolution depends on collegiality and good will between the faculty and the chair and in nearly all cases these disputes were resolved amicably.

Grievances related to Promotion and Tenure

The decision not to recommend a candidate for promotion understandably produces strong emotions, no matter which of the six levels of review is involved. Each year a few faculty members who have received a negative decision contact me for advice. The most important thing to understand in these cases is that procedures are grievable, but academic decisions are not.

Great respect is given to the judgments of peers in the promotion process, as everyone agrees is appropriate.

The role of the AAUP in promotion cases is to be sure that the clearly defined procedures are followed in each case. Procedural violations may occur in the selection of outside reviewers or in the failure to meet appropriate deadlines for completing reviews. The substance of the academic arguments in these instances is outside the scope of the CBA and should remain there. It is occasionally possible that an Academic Complaint would be heard on such grounds, but that will be rare.

The Faculty Handbook contains a section on Career Development of Assistant Professors which describes principles for the mentoring of new faculty members. The first sentence of this section reads:

There should be a major plan worked out with every new arrival to a unit so that there is an orderly progression to promotion, within a reasonable time.

The details are left to each department, but the section closes with an explicit reference to the need for "... senior people, or a single designated mentor..." to provide guidance. In recent years, there have been several instances in which Assistant Professors applying for Promotion have not received such mentoring. This is a procedural violation that has been pursued through the Grievance Procedure.

Although most details concerning the Promotion and Tenure procedure are found in the Faculty Handbook, one aspect of great importance is directly addressed in Article 11.4 of the CBA. It reads:

An individual's workload shall be assigned with the expectation that the faculty member will have the opportunity to meet the criteria for promotion and satisfactory peer review.

This is a powerful passage which applies to the candidate's entire career and not just actions during the application year. It also directly involves the department chair, who makes the annual workload assignments. Junior faculty members would be well advised to examine their annual workload with respect to the department's promotion and tenure guidelines. For example, if an Assistant Professor is assigned to teach four courses each semester, which is a 100% of workload, then the department guidelines cannot require scholarship. Clearly, there may be large variations in the appropriate plans for individual faculty members, even within the same unit, but the overall need for compliance with article 11.4 remains. Violations are subject to the Grievance Procedure.

Summary

University of Delaware faculty have two channels to pursue disputes: the Grievance and the Academic Complaint. A faculty member who has a dispute with his or her chair (or occasionally the Dean) should take advantage of these systems. A robust grievance procedure is valuable in providing incentive for faculty and administrators alike to be cognizant of the provisions of the CBA and the Faculty Handbook.

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