INTRODUCTION

Under USU Policy 402.12.3 the Academic Freedom and Tenure Committee is defined as “an administrative body, with jurisdiction in matters related to academic freedom, tenure, promotion, dismissals, and other sanctions; and actions alleged not to be in accordance with the adopted standards, policies, and procedures of the University. In relation to these matters, the committee may hear both complaints initiated by the University against a faculty member and grievance petitions brought by a faculty member.”

AFT Committee Members 2010-2011

James Barnhill, Scott Budge, Maria Spicer-Escalante, Britt Fagerheim, Bryce Fifield, Sandi Gillam, Richard Jenson, Lynn Jemison Keisker, Anthony Lott, Craig Petersen, Peggy Petzelka, Mark Riffe, Aaron Roggia, Helga Van Miegroet, Ralph Whitesides.

OUTLINE OF MEETING FACTS AND DISCUSSIONS

Grievance Hearing, September 7, 2011

This hearing was held in response to a grievance filed by an assistant professor against the faculty member’s dean, department head, and committee chair subsequent to a nonrenewal decision. A pre-hearing had been previously held on April 14th, 2011 with the intent to stipulate facts, obtain potential witness lists, and establish documentary evidence to be presented. The major outcome of the pre-hearing was a narrowing down of the original grievance to focus on issues that were deemed grievable. Due to the unavailability of key participants subsequent to the pre-hearing, the proceedings of this grievance were temporarily suspended during the summer by a majority vote of the hearing panel, as permitted by 407.6.1. After the hearing, the panel concluded that no clear violation of due process had occurred. However, the panel also concluded that more specificity and clarification may be needed in the Faculty Code with regard to the procedures that should be followed when due process violations are identified by the ombudsperson.

AFT Committee Meeting, October 13, 2011

The AFT Committee reviewed the 2010-11 AFT report and discussed and approved several proposals for amendments to the faculty code that had been carried over from the previous academic year.

- It was moved that the AFT forward a recommendation to the Faculty Senate Executive Committee that 405.7.1(3) be amended to include language requiring the candidate to be
informed in writing whether, in the opinion of the department head or supervisor, the candidate’s progress is satisfactory or whether and what improvements might be needed. This motion passed.

- It was moved that the AFT forward a recommendation to the Faculty Senate Executive Committee that 407.7.2 be amended to clarify the reasons for non-renewal and to require that the faculty member receive a written record of the reasons for non-renewal. This motion passed.

- It was moved that the AFT forward a recommendation to the Faculty Senate Executive Committee that 405.7.2(1) be amended to increase the initial solicitation of external reviewers to six letters, at least half from the candidate list (the required minimum number of returned letters in the binder remains at four). If fewer than four letters are returned, additional reviewers will be solicited, at least half coming from the from the candidate list. Also, wording was inserted stating that potential reviewers shall not be excluded from consideration solely because they have professional contact with the candidate. This motion passed.

- It was moved that the AFT forward a recommendation to the Faculty Senate Executive Committee that 405.7.2(2-4) be amended to clarify the responsibilities and timing for delivering copies of the respective evaluation letters to the candidate. This motion also included a proposed amendment to 405.7.2(5) to include a paragraph stating that the Provost shall notify the candidate of the convening of the central committee and that the Provost will accept a written statement of supplementary information the candidate might wish to have reviewed (2 pages maximum). This motion passed.

**AFT Committee Meeting, November 10, 2011**

The AFT committee reviewed a memo from David Peak, a former member of the AFT committee, who recommended several amendments to sections 405 and 407.

- A proposal that section 405.12.2 [standard for quinquennial review] be amended to change the phrase “the basic standard for appraisal” to the “the only standard for appraisal.” Arguments for this proposed change raised concerns that the word “basic” could be interpreted as a minimum standard. There were a few members that felt that the word ”basic” should just be dropped from the phrase, but most AFT members felt that the word “only” would make the wording stronger and a motion was passed to recommend this change.

- A proposal to amend 405.12.2 to insert the word “in-depth” so that it would read “This in-depth evaluation of tenured faculty …..David noted that this word had recently been removed from the code and expressed the opinion that faculty undergoing a fifth year review deserved an “in-depth” review. While the AFT committee agreed with this sentiment, it also felt that the existing code already provided adequate guidance about
what is to be included in the review. There was no motion to approve this recommendation and no further action was taken on this recommendation.

- A proposal to amend 407.6.5 to insert a statement that compliance with pre-hearing procedures is an obligation of employment. This statement would be parallel to a similar statement with respect to obligations of USU employees to comply with in the actual hearing. A motion to approve this proposal passed.

- A proposal to amend 407.6.6(8) because of an apparent conflict in the hearing panel’s reporting requirements under the code. As David Peak notes, the first sentence in this paragraph states that the hearing panel will “determine only whether the grievance is valid or not valid.” Yet, this paragraph later refers to a written report and recommendation. The AFT committee agreed that this amounted to a conflict. The committee felt that the hearing panel should retain the prerogative to provide recommendations to the president that would address important issues raised in the grievance process. A motion was made to remove the word “only” from the first sentence and to retain the word “recommendation.” This motion passed.

Two additional issues were raised as discussion points during this meeting.

- Craig Petersen raised concern about a grievance process convened during 2010-11 in which the hearing panel issued a “default judgment” for the grievant before a hearing could be scheduled. Scott Budge, who had served on this panel, explained that most of the respondents had stopped cooperating with the panel, and that this prevented the panel from proceeding to the hearing stage. Craig was given the assignment to identify and propose methods and procedures for handling similar cases in the future.

- Helga Van Miegroet introduced a discussion point regarding the use of calendar days in computing the various deadlines governing the timing of grievance hearing events. She expressed concern about the impact of a faculty code amendment that changed the computing of days from a basis of working days to the current basis of calendar days. Although the original intent of this amendment was to expedite the grievance hearing process, Helga presented an example timeline showing that a grievance filed after a January 15th termination notice would still not reach the hearing stage until the Fall semester of the following year. She felt that the calendar year reckoning of days could lead to unrealistic expectation on the part of a grievant that a hearing could be concluded by the end of Spring semester. In addition, Helga raised concerns that panel chairs and others participating in the hearing process, who are not on summer contracts, would be negatively affected by the current calendaring basis. The preliminary response from the AFT committee was that a calendaring solution should be developed that makes the hearing process as expeditious as possible, minimizes the burden on hearing participants, and is realistic in its timeframe. This issue was tabled for the lack of time, but with the intention that discussion continue at the next meeting.
The AFT Committee continued its discussion of two issues raised during the November 10th meeting.

- Helga Van Miegroet had recommended that working days be used in place of calendar days in computing the various deadlines governing the timing of grievance hearing events (407.1.2). Two reasons given for her recommendation were that (1) grievants are given unrealistic expectations about the timeline of the grievance process; and (2) panel chairs and others participating in the hearing process, who are not on summer contracts, are negatively affected by the calendar day approach. A motion was passed to carve out an exception in 407.1.2 to use “working days for nine-month employees” as the basis for reckoning of grievance deadlines. Helga accepted the assignment to wordsmith the exception for the proposed code amendment.

- Helga Van Miegroet recommended that the AFT committee examine an apparent contradiction in sections 405.6.5 and 405.7.1(2) with respect to the ombudsperson’s duty to identify, intervene, and report irregularities in TAC meetings. The committee also discussed the possible impact of the ombudsperson’s refusal to sign a TAC recommendation letter. Lynn Jemison-Keisker and Scott Budge accepted the assignment to examine this issue for the AFT committee and to recommend possible amendments to these sections that would answer two questions: (1) what happens when an ombudsperson refuses to sign the TAC letter?; and (2) how does the ombudsperson report irregularities to administration?

- Craig Petersen introduced several discussion points related to the grievance process. First, he asked the committee to consider whether the obligation of USU employees to participate in grievance proceedings (407.6.6(2)) is enforceable. The general view of the committee was that this “obligation” is probably not enforceable. Craig also asked the committee to consider whether code section 407.6.5 should be amended to address the permissible role of an advisor/attorney at the pre-hearing conference (the paragraph is currently silent on this issue). The view of the committee was that this paragraph needed to be clarified, and Craig accepted the assignment to recommend the wording. Finally, Craig asked the committee to address whether a hearing panel can issue a default judgment. The general view of the committee was that default judgments should not be permitted – that the hearing must be held regardless with the willing participants and the available evidence. Craig accepted the assignment to develop a proposed amendment to address this issue in the policy manual.

As a follow-up to the December 1st meeting, the AFT committee reviewed proposed wording for the following proposed amendments.
Helga Van Miegroet presented suggested wording to replace calendar days with working days in 407.1.2. After a brief discussion and a wording adjustment, a motion was made to define “day” in 407 proceedings as a working day within the faculty contract period for Fall and Spring semesters, excluding Saturday, Sunday, and university holidays. This motion passed.

Scott Budge presented wording to address a conflict in the code found in 405.6.5 with respect to required response of the ombudsperson and department heads when a process violation is observed by the ombudsperson. Discussion centered on the documentation required by the department head when the ombudsperson reports unresolved issues. A motion was made to propose a code amendment that requires: (1) the committee chair to immediately resolve process violations observed by the ombudsperson; (2) the ombudsperson to report unresolved irregularities to the department head; and (3) the committee report to document the violations and corrective actions. This motion passed.

Craig Petersen presented a proposal to amend 407.6.5 define the role of advisors/attorneys in the grievance pre-hearing as being advisory only (they are not permitted to argue the case). A motion was made to approve this proposed amendment. This motion passed.

Craig Petersen also presented a proposed addition to 407.6.6(2) to address the issue of unwilling or non-cooperating parties in a grievance. A motion was made to accept his proposed amendment requiring that, in the case of non-cooperating parties, the hearing panel must proceed with a hearing that involves the willing participants and the available evidence. The panel is precluded from issuing a letter to the president without first holding the grievance hearing. This motion passed.

ISSUES

The 2011-21 AFT Committee has developed recommendations for several amendments to the Policy Manual. These proposed amendments stemmed from issues identified from several grievance hearings conducted over the past two years. The issues and code sections under review, as well their current status, are listed below.

- A recommendation that 405.7.1(3) be amended to include language requiring the candidate to be informed in writing whether, in the opinion of the department head or supervisor, the candidate’s progress is satisfactory or whether and what improvements might be needed. **Status: Submitted to Faculty Senate Executive Committee (FSEC).**

- A recommendation that 407.7.2 be amended to clarify the reasons for non-renewal and to require that the faculty member receive a written record of the reasons for non-renewal. **Status: Submitted to FSEC.**

- A recommendation that 405.7.2(1) be amended to increase the initial solicitation of external reviewers to six letters, at least half from the candidate list (the required minimum number of returned letters in the binder remains at four). If fewer than four letters are returned, additional reviewers will be solicited, at least half coming from the candidate list. Also, wording was inserted stating that potential reviewers shall...
not be excluded from consideration solely because they have professional contact with the candidate. **Status: Submitted to FSEC.**

- A recommendation that 405.7.2(2-4) be amended to clarify the responsibilities and timing for delivering copies of the respective evaluation letters to the candidate. This motion also included a proposed amendment to 405.7.2(5) to include a paragraph stating that the Provost shall notify the candidate of the convening of the central committee and that the Provost will accept a written statement of supplementary information the candidate might wish to have reviewed (2 pages maximum). **Status: Submitted to FSEC.**

- A recommendation that section 405.12.2 [standard for quinquennial review] be amended to change the phrase “the basic standard for appraisal” to the “the only standard for appraisal.” **Status: Submitted to FSEC.**

- A recommendation to amend 407.6.5 to insert a statement that compliance with pre-hearing procedures is an obligation of employment. This statement would be parallel to a similar statement with respect to obligations of USU employees to comply with the actual hearing procedures. **Status: Submitted to FSEC.**

- A recommendation to amend 407.6.6(8) because of an apparent conflict in the hearing panel’s reporting requirements under the code. The first sentence in this paragraph states that the hearing panel will “determine only whether the grievance is valid or not valid.” Yet, this paragraph later refers to a written report and recommendation. The committee felt that the hearing panel should retain the prerogative to provide recommendations to the president that would address important issues raised in the grievance process. A motion was made to remove the word “only” from the first sentence and to retain the word “recommendation.” **Status: Submitted to FSEC.**

- A recommendation that working days be used in place of calendar days in computing the various deadlines governing the timing of grievance hearing events (407.1.2). The reasons supporting this recommendation are that (1) grievants are given unrealistic expectations about the timeline of the grievance process; and (2) panel chairs and others participating in the hearing process, who are not on summer contracts, are negatively affected by the calendar day approach. **Status: Submitted to FSEC.**

- A recommendation that the AFT committee examine an apparent contradiction in sections 405.6.5 and 405.7.1(2) with respect to the ombudsperson’s duty to identify, intervene, and report irregularities in TAC meetings. The AFT Committee passed a motion to propose a code amendment that requiring the committee chair to immediately resolve process violations observed by the ombudsperson. Also, the ombudsperson must report unresolved irregularities to the department head. Finally, the committee report must document the violations and corrective actions. This motion passed. **Status: Submitted to FSEC.**

- A recommendation that code section 407.6.5 be amended to address the permissible role of an advisor/attorney at the pre-hearing conference. The proposed amendment would permit the presence of an advisor or attorney, but only in an advisory role. **Status: Submitted to FSEC.**
A recommendation that the AFT address the permissible actions of a hearing panel when some parties to the grievance do not cooperate with the panel. The proposed wording insertion to 407.6.6(2) would require the hearing panel to proceed with a hearing, even if one or more parties is unwilling to participate in the hearing or provide evidence. Also, the hearing panel is precluded from issuing a report to the president without a hearing.

**Status:** Submitted to FSEC.

**RECOMMENDATIONS OR ACTIONS NEEDED BEFORE WORK CAN CONTINUE**

None.

**SUPPORTING MATERIALS**

Minutes, AFT Committee Meeting, October 13, 2011
Minutes, AFT Committee Meeting, November 10, 2011
Minutes, AFT Committee Meeting, December 1, 2011
Minutes, AFT Committee Meeting, January 30, 2012