

Faculty Senate Report
Personnel Policy Committee
Chair, E. Barclay Poling
April 18, 2009

I wish to sincerely acknowledge the fine service of the Personnel Policy Committee (PPC) over the 2008-2009 academic year. Our members include:

Michael Levy, Co-Chair, Prof. Dept. of Pop. Health and Pathobiology
Duane Akroyd, Prof. Dept. Adult and Higher Education
David Auerbach, Asst. Prof. of Philosophy, Philosophy and Religion
Kofi Boone, Asst. Prof. Design
Keith Edmisten, Prof. and Extension Cotton Spec., Crop Science
John Franke, Professor, Mathematics
K. L. Murty, Professor, Nuclear Engineering
Tom Roberts, Prof. & Dept. Head, Physical Education

Introduction. This past year we were invited by the Provost to review the new Faculty Grievance Procedure (POL05.25.1) developed by a University Task Force in 2008 (Appendix A). We have also had an opportunity to provide feedback on a policy that guides Appeals to the Board of Trustees (POL01.05.8), that has most recently been revised by Chief Counsel Mary Beth Kurz on April 6, 2009. The latter policy is still a “work-in-progress” and after a presentation made to the Board of Trustees (BOT) on April 16, 2009, this policy has been referred back to the Provost for further campus review.

In evaluating these personnel policy matters our committee has operated on the principle that faculty (and campus) governance is by its nature “collective,” and we have made a diligent effort to include a number of critical stakeholders in our meetings. This group includes members of the administration, a past Chair of the Senate (Dr. Dennis Daley), the current Chair (Dr. James Martin), as well as a Professor who served as a “designated observer” in a relatively recent grievance hearing (Jerry Whitten, Professor of Chemistry).

Our committee also received valuable input throughout the year from several members of the NCSU Administration, including: Mary Beth Kurz, Vice Chancellor and General Counsel, Office of Legal Affairs; Dr. Robert “Bob” Brown, Dean, College of Natural Resources & Faculty Grievance Task Force Chair; Dr. Katie Perry, Senior Vice Provost & Professor; Dr. Betsy Brown, Vice Provost for Faculty Affairs; and Marc Okner, Director, Employee Relations.

Accomplishments. Our committee “signed off” on the new Faculty Grievance Procedure in our final meeting of the Spring Semester (April 14). At that meeting we

developed a number of specific recommendations (Appendix B). But, in the PPC's letter to the Provost regarding the new Faculty Grievance Procedure, we will convey our "general sense" that this is a well-crafted procedure and it does provide for a fair internal process for resolving grievances related to non-reappointment decisions ("Section 604 Grievances") and employment related grievances ("Section 607 Grievances), of tenure track faculty. This is not a grievance policy for non-faculty staff (they are covered by another grievance procedure for EPA professionals and Senior Academic Administrative Officers (Tier II). It is the belief of the PPC that a policy for grievance against non-extension of appointments of non-tenure track (NTT) faculty is needed. The absence of a grievance policy for NTT was also noted by Grievance Task Force (GTF) Chair, Dr. Robert Brown, in his letter to the Provost on June 17, 2008.

It would have been desirable, as Chair Martin notes in his July 18, 2008 email to the Grievance Task Force, that the policy would be "easy to understand," and "less formal." Chair Martin has voiced a number of concerns about the policy, and in his *2007-2008 Report on the Grievance Process at North Carolina State University— Revised April 17, 2008* (distributed to the Faculty Senate on April 21, 2009), he again notes the shortcoming that the GTF task force did not simplify the process, and he points to a further failure of the GTF to, "...investigate systemic issues behind the failure of the grievance process."

However, the PPC cannot be critical of the Grievance Task Force's failure to simplify the policy, as the "suggested revisions" by our committee have actually added to this document's length. We are not really sure how to go about shortening the policy, nor can we readily identify an approach that would make a grievance procedure, which is by definition "a formal complaint proceeding," less formal (and easy to understand)?

One helpful suggestion made by the GTF to assist faculty in navigating this rather complicated process is to establish the position of volunteer Grievance Assistants to help grievants through the process. The PPC also wishes to provide its endorsement for the establishment of volunteer Grievance Assistants (Appendix A - Section 8.3).

Also, the PPC is in full agreement with Dean Brown and the GTF in their recommendation to encourage faculty to first seek mediation before filing a formal grievance petition. Regrettably, the PPC did not have adequate time this year to discuss the mediation option at any length. Relative to a formal campus-level complaint proceeding (Grievance), or an appeal of an EPA grievance to the Academic Affairs and Personnel Committee of the Board of Trustees, it is always going to be to the faculty member's benefit to seek mediation first. Mediation is a voluntary process (vs. formal complaint process), and is considerably less stressful than a grievance proceeding. It does not involve legal counsel for either the faculty member or the applicable administrator; it is non-judgmental; and, mutually satisfying results can be achieved in a matter of days or weeks vs. the months, or perhaps even more than a year that a grievance case may consume.

Dr. Marc Okner, who participated as one of our “regular special guests” in our PPC meetings over this past year, has recently shared with our committee some good news regarding the Mediation program at NC State: “There have been three cases meditated so far in 2009. Two ended with an agreement and one is ongoing” and The Mediation Web Site is in the process of being revised in order to provide clear and concise information to the University community about the program (personal communication).

As far as Dr. Martin’s comment about the failure of the 2008 Grievance Task Force to, “...investigate systemic issues behind the failure of the grievance process,” we wish to indicate to the Faculty Senate that our committee has spent considerable time this year in discussions with various stakeholders about these deeper issues.

For example, early in the fall semester (September 16, 2009), Dennis Daley, former Senate Chair, provided comments to the committee about serious problems with the grievance committee process and provided both his 2003-2004 Grievance Report to the Faculty Senate as well as his 2005 Report. In the latter report, he states,

“During the past two years I have had ten grievances and hearings. From my knowledge of the management literature (derived primarily from Federal Government data) I would expect the university to win two-thirds to three-fourths (because of management discretion/flexibility concerns). Yet, I can attest to only one case (including withdrawals) where the faculty member “won.” In light of Federal figures, a ten-percent rate seems rather low.”

His reports also cite three cases where he had concerns about administrative behavior where the cases were “resolved” through technicalities or by “running out the clock” on the faculty member. At this same meeting (September 16, 2009), the PPC was prepared to discuss Jim Martin’s “2007-2008 Report on the Grievance Process at North Carolina State,” but this report draft contained information on several pending cases, and so the report was not addressed at this meeting. This same report has now been revised by Dr. Martin and will be distributed for the Senate’s consideration on April 21, 2009.

At the end of this same meeting on September 16th, a suggestion was made by Dr. Katie Perry, Senior Vice Provost and Professor, that the PPC should seek additional information about the total grievances filed and decided. Accordingly, before the Sept. 30 meeting of the PPC, the committee chair met with Mary Beth Kurz, Vice Chancellor and General Counsel, NCSU, to see about the possibility of obtaining such a report. Mary Beth agreed to produce such a report, and it was decided that the report should examine the total grievances filed and decided by Chancellors Monteith (2), Fox (11), Interim Chancellor Barnhardt (1) and Oblinger (8). This report was prepared over the next few weeks, and then presented to PPC on October 28. Kurz covered several topics at our October 28th meeting.

At the October 28, 2008 PPC meeting, Mary Beth Kurz reported that there were a total of 22 grievances filed and decided during the period from 1996-1997 to the present. Of the 18 concluded grievances at this time, the Chancellor concurred with 16 committee recommendations (3 after seeking additional clarification /information from the committee). On November 11th our committee had a second visit with Mary Beth Kurz to discuss the Reports of Grievances Decided by the Chancellor, and then near the end of the fall semester at an Executive Committee meeting, I shared the information from Vice Chancellor Kurz's report that the Chancellors from 1996 to October 2008 concurred with 16 of the 18 grievances. This data from the "Report of Grievances Decided by the Chancellor" was met with considerable questioning by the Executive Committee.

Very frankly, it has been a very challenging year for the PPC *in our quest to better understand the various issues that have caused so many faculty to lose confidence and trust in the grievance system at NC State*. But, this is not to say that our committee has given up hope! However, I should add that it doesn't hurt to have the faith of a mustard seed to serve on this committee. It has been in the words of one PPC member, Duane Akroyd, "a difficult task," especially given our time constraints (meeting only every other week for 2 hours) relative to the mountain of issues we have faced!

A less legalized process. In this report we have identified the PPC's support for the 2008 Grievance Task Force's recommendations to: 1) encourage all faculty to first seek mediation before filing a formal grievance petition, and 2) establish the position of volunteer Grievance Assistants to help faculty through an admittedly complicated and daunting process. Our committee wishes to offer a third suggestion for improvement of the Grievance Procedure that we believe "strikes closer" to the mark of making this a *less legalized process*:

[\(new\) Section 12.1 \(POL05.25.1\) "Upon receipt of the report, and prior to his/her making a final decision, the Chancellor shall meet with the Grievance Committee to resolve any potential differences in perception of the preponderance of the evidence; said differences possibly resulting from the Chancellor's cold reading of the record versus the Committee's live hearing and cross examination of the direct testimony."](#)

It is our belief that the Chancellor may be more inclined to "defer" to the recommendations made by the Grievance Committee (GC) (such deference being the desired paradigm), *if* the Chancellor has an informal (face-to-face) meeting with the GC prior to reaching a final decision. The genesis of this recommendation comes in part from: a) R. E. Bienstock, *A guide to conducting a hearing in a higher education setting*, p. 9; b) background information provided by David Auerbach, PPC member, "Grievances about Grievance Procedures," Inside Higher Ed, Oct. 18, 2008, and c) the preamble of the new Grievance Procedure for Faculty that calls for the "good faith resolution of employment related grievances filed by faculty."

In Beinstock's guide, that is standard issue to all NCSU Grievance Case Chairs and Faculty Panel participants, the author points out the need for "some informality" in these proceedings:

"The courts understand that college and university hearing panel members are not trained judges or lawyers. They understand that it is a good thing that panelists are not lawyers! The courts respect the fact that institutions of higher education need to resolve their disputes internally, with some informality."

At the University of Missouri at Columbia, where the grievance system has undergone several overhauls in recent years, consideration was given in October 2008 to placing an administrator on the grievance resolution panel along with members of the faculty. Supporters of this proposed change say:

"This change will move the grievance system toward a focus on a cooperative process of mediation rather than one based on litigation, with aggrieved faculty pitted against the administration."

<http://www.insidehighered.com/news/2008/10/16/grievance>

In addition to Beinstock's appeal for "informality," and relatively recent efforts at University of Missouri to find a grievance process that encourages a more cooperative process; our Personnel Policy committee was very pleased to note in the preamble to the new grievance procedure the words, "good faith resolution."

New Section 12.1 is aimed at achieving "good faith resolution." The Personnel Policy Commit cannot provide empirical evidence that the idea of an informal meeting (between the Chancellor and Grievance Committee) will lead to discernibly different outcomes for complainants. We do know that the faculty panelists have had the benefit of participating directly in live hearings and cross examinations, and we see this "additional conversation" between the Chancellor and Grievance Committee as simply another tool by which the Chancellor can assure herself/himself that the "totality of the circumstances" surrounding a case have been fully examined (and heard) before rendering a final decision.

Conclusion. We wish to conclude our report by indicating our general support for an Ombuds office at NC State. The goal of the Ombuds is to resolve disputes, manage conflicts and help people find more productive ways of communicating. The office would be an independent, confidential, neutral and an informal resource to the whole NCSU community, and thus would be accessible to all faculty (tenure and NTT), staff, students and post-docs. Our committee concurs with Dean Brown, Chair of the Grievance Task Force, who has previously stated that, "... such a position would help avoid many formal grievances." We would take this one step further, and indicate that the presence of an Ombuds Office at NC State would go a long ways toward helping to "informally" resolve a number of conflicts *prior to* the mediation stage. The more we can do to help faculty informally resolve their conflicts with department heads (and

chairs of PTR Committees), the less time a Personnel Policy Committees like ours will have to spend on “higher stakes” grievance procedures and legally complex policies that govern appeals to the Board of Trustees.