

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 05-43
UNITED ACADEMICS, AAUP/AFT	)	
AND JUDY BRANCH	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On October 6, 2005, United Academics, AAUP/AFT (“Union”) filed a grievance on behalf of itself and Judy Branch alleging that the University of Vermont (“Employer”) violated Article 15 of the collective bargaining agreement between the Employer and the Union, effective February 6, 2003, to June 30, 2005 (“Contract”), by denying Branch’s application for promotion from Extension Associate Professor to Extension Professor. Grievants specifically alleged that Article 15, Section 10 (a) and (d), were violated because: a) there were procedural violations in the promotion review process that materially and adversely affected the outcome of the case, and b) the decision was arbitrary and capricious.

Grievants further alleged in the grievance that the Employer’s action resulted from discrimination against Branch due to her union activities in violation of Article 5 of the Contract. Grievants have since withdrawn this union activity discrimination claim.

The Labor Relations Board conducted a hearing on April 18, 2006, in the Board hearing room in Montpelier before Board Members Richard Park, Acting Chairperson; Carroll Comstock and Joan Wilson. Dr. Stephen Finner, Senior Consultant, Higher Education, for the Union; represented Grievants. Thomas Mercurio, Deputy General Counsel for the Employer, represented the Employer. The Employer and Grievants filed post-hearing briefs on May 17 and 18, 2006, respectively.

## FINDINGS OF FACT

1. Article 15 of the Contract provides in pertinent part:

### **EVALUATION OF FACULTY AND REAPPOINTMENT, PROMOTION AND TENURE CRITERIA AND PROCEDURES**

...

#### **3. Department/School RPT and Annual Review Guidelines**

The following sections describe the criteria and standards of performance as well as the procedures under which judgments in annual reviews are made on the achievement and the potential of candidates for reappointment, promotion and tenure (RPT). In addition to these sections, all academic departments and all academic units with responsibility for making the first recommendation in RPT cases are required to prepare RPT and Annual Review guidelines that elaborate on these criteria, standards and procedures. Such guidelines should include additional specific descriptions of expectations for job performance in the areas of evaluation and of procedures to be followed in making RPT decisions and annual evaluations. Under no circumstances can such department/school guidelines establish lesser obligations or standards than stated elsewhere in this Article.

...

#### **4. Officers of Instruction**

a. Officers of Instruction holding the ranks of Instructor, Assistant Professor and Associate Professor shall be evaluated for reappointment, promotion and/or tenure ("RPT") based upon the candidate's record of performance in the areas of teaching, advising, scholarship / research / creative work and service. . . .

#### **b. Procedures in Matters of Reappointment, Promotion and Tenure**

...

viii. Officers of Instruction shall be evaluated in accordance with the following procedures:

##### **(a) The Faculty Member**

In preparing his or her dossier for reappointment, promotion or tenure, the faculty member shall be responsible for preparing his or her own file consisting of a self-evaluation and the curriculum vitae, which shall address his or her work in the performance areas of teaching, advising, scholarship/research/creative work and service.

##### **(b) The Department Chairperson**

The Department Chairperson shall be responsible for completing a Chair's Statement, which will include narrative evaluation of the candidate's teaching, advising, scholarship/research/creative work and service, and will measure the candidate's performance against any

departmental, School or College RPT guidelines where such exist, taking into account the nature of the type of RPT action involved. . .

Following consultation with departmental faculty, the Chairperson shall make a determination on the proposed personnel action under review. The determination shall be in the form of a written assessment of the candidate's record. A faculty member will receive a copy of the Chair's written assessment and may add a written rebuttal to the file. The faculty member may also write a rebuttal to any comments made by outside evaluators of his or her research. These rebuttals will be placed in the candidate's dossier before being passed on to the next level of review assuming they are timely received.

. . .

(c) The Dean

In the case of both favorable and unfavorable RPT recommendations by a chair, the Dean of the College or School shall review the candidate for reappointment, promotion or tenure . . . The Faculty Standards Committee (FSC) of the College or School shall also review the candidate for RPT. The FSC will assess the candidate's record and shall make a written recommendation to the Dean on the proposed personnel action under review. Following review of the FSC's assessment and recommendation, the Dean will issue a written assessment and decision regarding the personnel action under review, which shall be forwarded to the Provost. The faculty member shall receive a copy of the FSC's and the Dean's written assessment and may add a written rebuttal to the file. . . .

(d) Provost

In the case of both favorable and unfavorable RPT recommendations of the Dean, after the first reappointment decision, the Provost shall review the proposed RPT action. The Faculty Affairs Committee (FAC) of the Senate shall also review the candidate for RPT. The FAC will assess the candidate's record and shall make a written recommendation to the Provost on the proposed personnel action under review. The Provost shall issue a written determination with respect to the RPT action following review of the FAC's assessment and recommendation. The Provost's decision shall be final and shall constitute the final action of the University in all cases other than first reappointment decisions. . . .

**6. Officers of Extension**

a. General Considerations. The basic quality that must be evident for appointment, reappointment or promotion of an Officer of Extension is performance at a high professional level in areas which contribute to creative and scholarly work, and the educational, research and service activities of the University. The University's insistence upon this standard for continuing members of the faculty is necessary for maintenance of quality of the University as an institution dedicated to the discovery, preservation and transmission of knowledge.

b. Specific Criteria. i. The following criteria are the bases for judgments to be made regarding the quality of performance of an Officer of Extension. They provide the basis for decisions on appointment, reappointment and promotion. Officers of Extension should be evaluated annually and the results summarized in writing and considered in all reappointments and promotions.

In evaluating the performance of each Officer of Extension with respect to these criteria, reasonable flexibility should be exercised, balancing, where the case requires, heavier assignments and responsibilities in an area against lighter assignments and responsibilities in another. Documented consistency of performance over a period of years is considered an excellent indicator of future performance.

The University values effective collaboration in, and synthesis of, teaching, research and other scholarly endeavors and supports and encourages Officers of Extension who contribute effectively to teaching efforts. When documenting evidence of accomplishment that resulted from a team collaboration, the Officer of Extension should: (1) explain the significance of the team accomplishment; (2) identify collaborators, whether within the University or outside institutions and agencies; and (3) describe with specificity his or her own role in the team effort. Accomplishments and elaboration of a team effort should only be reported when the Officer of Extension's contribution is substantial.

ii. Teaching. . . .

iii. Scholarship, Research and Creative Activities

Each faculty member is expected to engage continuously and effectively in creative professional activities of high quality and significance. Scholarship demonstrates continued excellence in, and significant contributions to, a specific field through a continuum of creative and scholarly endeavors, which may include basic and/or applied research; the development and analysis of original and innovative educational program efforts; creation and dissemination of new knowledge; and the adaptation, integration and application of existing knowledge or technology into one's work.

Active scholarship should be a fundamental endeavor of all members of the Extension faculty. However, the type and level of scholarly activity will vary, depending on the roles and responsibilities of the individual faculty member, and should be evaluated based on the individual's specific responsibilities within the institution.

In cases involving promotion to Associate Professor or Professor, the unit must solicit evaluations from highly accomplished professionals at other institutions. When evaluating the significance of an Officer of Extension's scholarship, the following guidelines may be used: (1) impact and quality of the work in an assigned area of responsibility; (2) breadth, value and originality of the work; (3) innovation in using either original or

revised work to meet clientele needs; (4) pertinence of the activity or scholarly effort in identifying and solving problems; (5) acquisition of external funding, awards and patents; (6) consistency in publishing or presenting results, writings and reports to peers and colleagues over a period of years; (7) peer-reviewed, significant, scholarly contributions to mass media including newspaper and magazine articles, television programs, and radio broadcasts; and (8) type and number of honors and awards earned.

Officers of Extension should have a mastery of their subject matter and be capable of developing and implementing quality educational programs and materials and providing technical assistance. Documented support of scholarship may include the following: (1) letters and/or program evaluations from peers and clientele addressing the faculty member's expertise and scholarship; (2) original or creatively revised curricula and educational materials; (3) journal articles, book chapters, Extension and research publications, multimedia materials and other reports and documents as well as significant writing for newspapers and business, industry, agency, agency and community publications; (4) original and significant contributions using electronic media including television, radio and computer; (5) presentations or lectures made to peer groups as an invited speaker, at professional meetings and in other public forums; and (6) other significant efforts that directly contribute to the knowledge base of the clientele.

Officers of Extension who do not have research responsibilities per se but who collaborate in research efforts should be recognized and evaluated for their participation, which may include such activities as: (1) identification of problems requiring investigation; (2) participation in the design and execution of applied research in the laboratory and in the field; (3) adaptation of the research within the context of Extension education programs. Officers of Extension who are supported by research funds may be involved in creation or application of new knowledge through basic, adaptive and applied research. Research, as measured by peer recognition of its originality, impact and quality, may be documented by refereed publications, such as journal articles, chapters in textbooks and other books of high quality or proceedings pertinent to the faculty member's Extension work. Research/scholarship may also be demonstrated by the presentation of papers at professional meetings at the regional, national or international level. Research should be documented and evaluated by peers both within and outside of the University as to its quality and relevant contributions to the state, region, nation or world.

...

c. Procedures Concerning Reappointment and Promotion of Officers of Extension.

...

ii. Procedure in Matters of Promotion

Recommendations for faculty promotion may be forwarded at any time by an Officer of Extension who believes he or she has met the

standards for the proposed rank. The Chairperson will make recommendations on promotion to the appropriate Director or Dean, who, after considering the written documentation provided by the individual faculty member and the recorded recommendations of the Extension Faculty Standards Committee, will make his or her decision on a recommendation. Specific procedures to be followed are those outlined and prescribed in Section 4(b).

d. Officers of Extension are not eligible for tenure. . . .

10. A faculty member who is denied reappointment, promotion or tenure shall not have the right to grieve any of the individual recommendations in this process but instead shall only have the right to grieve the final action of the Provost . . . and only on the following grounds:

- a. alleged procedural violations in the review process that materially and adversely affected the outcome of the case;
- b. alleged violation of the Anti-Discrimination Article of the Agreement;
- c. alleged violations of the candidate's Academic Freedom as defined in this Agreement;
- d. allegations that the decision was arbitrary and or capricious; and/or
- e. allegations that the decision was in violation of Constitutional rights.

(Joint Exhibit 1)

2. Article 12 of the Contract, entitled "Grievance and Arbitration Procedure", provides for a four-step grievance procedure. Step 3 is appeal to the "Provost or his/her designee". In any grievance involving denial of promotion, the Provost is required by Article 12, prior to conducting a Step 3 meeting, to refer the grievance to a faculty hearing panel for a recommendation to the Provost on the grievance. The panel is composed of one faculty member selected by the Provost and two faculty members appointed by the chair of the faculty grievance committee. Step 4 is appeal to the Labor Relations Board. Article 12, Section 6, provides in pertinent part as follows with respect to Step 4 grievances: "In resolving grievances arising out of this Agreement, the VLRB shall have no authority to add to, subtract from, modify or disregard any of the provisions

of the Agreement. Where the provisions of this Agreement call for the exercise of judgment, the VLRB shall not substitute its judgment for those of the University official(s) making such judgments, but shall be confined to a determination of whether the Agreement has been followed” (Joint Exhibit 1).

3. At all times relevant to this grievance, the University Extension Service had adopted procedures for review of extension faculty for reappointment and promotion. The procedures provide that “(a) faculty member’s performance in regards to reappointment and promotion will be considered within the guidelines and criteria described in Article 15, Section 6, in the UA agreement, and as supplemented in this document.” The procedures provide that promotion to Extension Professor requires that a person exhibit “a high degree of professional accomplishment” which “is most clearly evidenced by forms of scholarly presentation made, and service rendered, to accomplished professional groups in a region extending beyond Vermont or in the national or international arena”. Qualifications for promotion to Extension Professor include “distinction in scholarship, as evidenced by recognition and significant contributions to the field or profession”. Included among examples of documentation of scholarship are: a) letters and evaluations from peers and clientele addressing the faculty member’s expertise and scholarship; b) original or creatively revised curricula and educational materials; c) journal articles, book chapters, Extension and research publications, multimedia materials and other reports and documents as well as significant writing for newspapers and business, industry, agency, agency and community publications; d) peer-reviewed and significant scholarly contributions using electronic media including television, radio and computer; e) presentations or lectures made to peer groups; and f) evidence of invited activities, awards or other recognition (Joint Exhibit 2).

4. S. Ellen Rowe, the Regional Director of Extension Education in the Central/Northeast Region for the Employer, produced a document providing guidance to Extension faculty in her region on what the Employer is looking for during the reappointment and promotion process of extension faculty. The document provided as follows with respect to research, scholarship and/or creative activities:

Research, scholarship and/or creative activities refer to production of articles, newsletters, conference presentations and one's impact in his/her professional subject matter area. Scholarship demonstrates continued excellence in, and significant contributions to, a specific field through a continuum of creative and scholarly endeavors, which may include:

- basic and/or applied research;
- development and analysis of original and innovative educational program efforts;
- creation and dissemination of new knowledge; and
- adaptation, integration, and application of existing knowledge or technology into one's work.

Research should be documented and evaluated by peers both within and outside the University. Vehicles for sharing Extension research include the *Journal of Extension* which is the official refereed electronic journal of the nationwide Cooperative Extension System. Other venues include refereed annual publications of professional organizations designed to provide members an opportunity to share current research. (Joint Exhibit 3)

5. Judy Branch has been employed at the University of Vermont since 1977. She has been an Associate Professor in the Central/Northeast Region of the University's Extension Service since 1992. Branch's field of expertise is family studies with an emphasis on parenting, divorce and separation. Branch received a Bachelor of Science degree in Home Economics Vocational Education from North Texas University in 1965. She earned a Master of Science degree in Child Development and Family Relations from the University of Arizona in 1972. She is enrolled as a candidate for a Doctorate in Education in Leadership and Policy Studies at the University of Vermont (Joint Exhibit 4, Tabs 1 & 2).



6. Extension faculty typically teach the public, rather than undergraduate or graduate students. They are not teaching for credit.

7. On November 4, 2004, Branch applied for promotion to Professor. Professor is the highest academic rank at the University. Many faculty members never achieve the distinction of being promoted to Professor.

8. The process for evaluating faculty for promotion is lengthy and detailed. The candidate for promotion puts together a compendium of materials known as a “dossier” which includes teaching evaluations, service activities, research, publications, other evidence of scholarship, academic activities and letters of commendation in support of the application for promotion. The dossier is then examined by those at the University who are reviewing the candidate’s promotion application. As part of the evaluation process, the candidate’s scholarly materials are sent to external evaluators with no prior relationship with the candidate.

9. The eight Central/Northeast Region Extension faculty voted unanimously in November 2004 to recommend Branch’s promotion from Associate Professor to Professor. Regional Director S. Ellen Rowe concurred with their recommendation. The Extension Faculty Standards Committee voted 3-0 in January 2005 to recommend promotion. Douglas Lantagne, Interim Director of Extension, also recommended that Branch be promoted (Joint Exhibit 4, Tab 4).

10. Two of the four external evaluators made critical comments about Branch’s scholarship. One evaluator, although endorsing her promotion, stated: “With her background and experience, I would think that Ms. Branch would have the expertise to make a submission to a child and/or family related journal such as *Family Relations* or *Marriage and Family*”. Another external evaluator stated:

I have evaluated promotion packets of Extension Agents and Specialists for at least six years. . . . When I compare Ms. Branch's packet with others I have reviewed in the past and also this year I conclude the materials as submitted do not warrant promotion to professor. While she has received grants, written some publications for Extension and certainly has performed many service functions for the profession there is not the breadth and scope that is expected of someone at the full professor level. (Joint Exhibit 6, p. 1-2)

11. Branch's supervisor, Regional Director Rowe, did not send to the external evaluators the procedures for review of extension faculty for reappointment and promotion.

12. On April 5, 2005, the Professional Standards Committee of the Faculty Senate recommended by an 8-0 vote that Branch not be promoted to Extension Professor. The Committee's statement explaining its recommendation provided:

The committee unanimously felt there was insufficient evidence of sustained scholarly contributions while in rank. Moreover, the external letters of evaluation indicated the quality of the candidate's scholarly contributions did not warrant promotion to Professor. The Committee also notes that the Chair enthusiastically endorsed the action without addressing the unsupportive assessments from the external evaluators. (Joint Exhibit 4, Tab 4)

13. Provost John Bramley then made a decision on Branch's application for promotion. The Provost is the chief academic officer of the University, and is responsible for all hiring, tenure, reappointment and promotion of faculty. Provost Bramley has been Provost for five years. During that time, he has considered over 400 applications for reappointment, promotion and tenure. It is unusual in Provost Bramley's experience for departments of the University to provide negative evaluations of faculty members in their departments who are being considered for reappointment, tenure and promotion. It also is unusual in his experience for the Professional Standards Committee to unanimously reject applications for promotion.

14. Provost Bramley read all the contents of the dossier on Branch's application for promotion. In considering Branch's application, the Provost was aware of the standards for review of extension faculty for reappointment and promotion set forth in the Contract, as well as those adopted by the University Extension Service. After reviewing the dossier, the Provost concluded that there was not sufficient documentation of Branch's record of scholarship to warrant promotion. He found it notable that there was a lack of peer evaluation of her scholarship in the dossier. Provost Bramley did not conclude that acceptable peer review necessarily had to be in the form of a publication. He determined that it could be in the form of the credibility given to her work by her peers in her professional field.

15. On April 8, 2005, Provost Bramley decided to deny Branch's application to be promoted to Extension Professor. His statement explaining his decision provided:

Extension Associate Professor Branch is a productive and valued colleague. She has demonstrated a strong performance in terms of her teaching and service. However, I agree with the advice of the PSC that, at this time, a level and quality of scholarly activity, consistent with this promotion has not been achieved. As noted by two of the external evaluators, the scholarly interests of the candidate have not been translated into peer-reviewed scholarly publications in professional journals. I suggest that if Professor Branch addresses that weakness, there is a strong probability of her future success in achieving promotion.  
(Joint Exhibit 4, Tab 4)

16. On May 12, 2005, the Union filed a grievance with Provost Bramley on behalf of Branch alleging that the Professional Standards Committee and the Provost violated Article 15 of the Contract in denying Branch's application for promotion. Specifically, the grievance alleged that there were "procedural violations in the review process that materially and adversely affect the outcome of the case", and the

“decision was arbitrary or capricious”, in violation of Article 15, Section 10 (a) and (d), of the Contract (Joint Exhibit 6).

17. Provost Bramley referred the grievance to a three-member faculty grievance panel pursuant to Article 12, Section 6, of the Contract. The panel unanimously concluded that the Professional Standards Committee and Provost Bramley had violated Article 15, Section 10 (a) and (d) of the Contract, as alleged in the grievance. The panel stated in its report:

The grievance letter alleges that both Provost Bramley and the PSC failed to consider the complete list of options that UVM Extension allows to be used as representative of a faculty member’s “Scholarship, Research and Creative Activities.” While published work in peer-reviewed journals is one option, there are many others that are accorded equal value in the *UVM Extension Procedures for Review of Extension Faculty for Reappointment and Promotion*. In his rejection of Prof. Branch’s application, the Provost singled out publications, thereby privileging it above the other options available.

In both the grievance letter and in the interview with Prof. Branch, it was made clear that she has a substantial record of scholarly production in a variety of areas, all recognized as equally valid according to the *UVM Extension Procedures for Review of Extension Faculty for Reappointment and Promotion*. . . . She has always received high marks for her scholarship and research. Because publications in peer reviewed journals are but one option out of several, Prof. Branch made the decision to forego this line of scholarly production and to instead work on training manuals and workshops which she thinks do a better job of reaching the target audience.

. . . The PSC and Provost Bramley chose to rely on the negative comments about Scholarship in two of the external letters of evaluation. These letters restrict their negative statements to the publication record, and therefore it is important to understand that these authors were not provided with adequate information about the full range of options which the Extension RP guidelines allow in fulfillment of “Scholarship, Research and Creative Activities.” Work that some might consider service (as singled out by one external evaluator) is treated as evidence for “Scholarship, Research and Creative Activity” in the Extension RP guidelines. These two authors substituted their own criteria in the evaluations of Prof. Branch’s production and noted her failing in one area. When the PSC used the negative aspects of the letters they did not properly consider the other

options available to Prof. Branch. When the Provost privileged publications in peer-reviewed journals in his final statement over the other options of proof of “Scholarship, Research and Creative Activities” and employed the information supplied by evaluators who had not been adequately advised of the criteria used to evaluate Officers of Extension as stated in the RP Guidelines, he operated in opposition to the Extension RP guidelines and to the spirit of Article 15 Section 3 of the CBA.

...

(Joint Exhibit 7)

18. After Provost Bramley received the recommendations of the faculty grievance panel, he met with Branch for approximately one hour. The Provost focused on Branch’s scholarly work and its direction, and how it should be considered and evaluated. The Provost gave Branch the opportunity to demonstrate that he had missed something in his evaluation of her scholarly work. He concluded that there was no basis for reconsidering his conclusion that she did not merit promotion to full Professor.

19. In a decision dated September 6, 2005, Provost Bramley denied the grievance. He stated in pertinent part:

I reject both elements of the grievance. I disagree that the scholarly activities were interpreted by either the Professional Standards Committee or the Provost in a manner that was inconsistent with either the Agreement or the Extension Guidelines. Further, I do not accept that an arbitrary or capricious outcome resulted, so I reject the conclusions of the faculty panel.

For an Extension faculty member a broader range of scholarly publication is acceptable than would be the case in most other promotions. I certainly considered the various formats and presentations in which Professor Branch has been engaged. I am very familiar with the roles and challenges facing the Extension faculty member, particularly in addressing the needs of specific populations. Nevertheless, there needs to be sufficient published material and peer assessment, particularly for a promotion to full professor, to objectively assess the quality of the scholarly record. There is no doubt that Professor Branch has a strong record of developing materials, curricula, etc. that are educationally valuable. That was acknowledged during the RPT process and I repeat it here. However, the concern of the PSC and Provost was about the scholarly productivity. I pursued this further in the August 23 grievance meeting, trying to learn more about the external and peer validation of Professor Branch’s

scholarship. I subsequently reread her dossier. Not only do I detect no violation of process, no lack of consideration of the broader definition of scholarship, but still feel that a level of scholarly activity, consistent with the promotion had not been achieved.

I do have some concerns about the dossier and process. However, I see no basis to believe that these were significant in Professor Branch's promotion denial particularly since I re-evaluated the dossier with these clearly in my thoughts. However, if Professor Branch chooses to resubmit, then I suggest they should be addressed. There is a lack of evaluation of the scholarly work. Additional evaluator letters would need to be sought to be able to address these aspects and they should be informed by the Extension guidelines. Additionally, as mentioned by the PSC, the Chair should seek to address concerns raised by external evaluators when making her recommendation.

...

(Joint Exhibit 8)

### OPINION

Grievant contends that the Employer violated Article 15 of the Contract by denying Judy Branch's application for promotion from Extension Associate Professor to Extension Professor because: a) there were procedural violations in the promotion review process that materially and adversely affected the outcome of the case, and b) the decision was arbitrary and capricious.

Grievants contend that the Employer committed procedural errors: a) by not providing the external evaluators with the applicable standards for evaluating Grievant's application, and b) by the Provost applying a standard for promotion – i.e., the absence of peer-reviewed scholarly publications in professional journals – that differed from the Contract and the procedures for review of extension faculty for promotion. Grievants assert that these procedural errors infecting the review process materially and adversely affected the outcome of the case because they resulted in improper standards being relied upon in denying Branch's application for promotion.

In considering this claim by Grievants, we need to determine whether the Employer committed “procedural violations in the review process that materially and adversely affected the outcome of the case” in violation of Article 15, Section 10(a) of the Contract. This protection afforded faculty under the Contract with respect to Board review of promotion decisions concerns ensuring defined procedures are followed rather than substantive review of the merits of a decision. “Procedures” refer to the specific steps and manner by which a faculty member will be reviewed. Grievance of United Academics, AAUP-AFT and Broughton, 27 VLRB 249, 262 (2004).

Grievants must demonstrate that there was a violation of a Contract provision, or violation of a rule or regulation, relating to faculty review procedures for the Board to conclude that there was a procedural violation pursuant to Article 15, Section 10(a). Grievance of McIsaac, 26 VLRB 1, 81-82 (2003). *Affirmed*, 177 Vt. 16, 33-34 (2004). We are without authority under our grievance jurisdiction to address a purported deficiency in the review process unless it involves an alleged violation of a provision of the Contract, rule or regulation. Id. There is no actionable grievance when the manner by which the promotion review is conducted is not consistent with best practices if there is no violation of a provision of the Contract, rule or regulation. Id., 26 VLRB at 88-89, 177 Vt. at 36. Employer regulations governing procedures, or guidelines mandating procedures, for management constitute binding rules or regulations. Grievance of Gobin, 158 Vt. 432, 435 (1992).

Grievants have not shown that failure to provide the external evaluators with the applicable standards for evaluating Grievant’s application constituted a violation of any provision of the Contract, rule or regulation relating to faculty review procedures.

Grievants have referred us to no such provision, and thus have not demonstrated that they have an actionable grievance in this regard concerning adherence to defined procedures.

Our decision in this regard should not be viewed as approving of the failure to provide the external evaluators with the applicable standards for evaluating Grievant's application. As conceded by the Provost in response to the grievance filed over the failure to promote Branch, he had concerns with the process during Branch's application for promotion and stated that external evaluators should be informed of the applicable standards the next time that Branch chooses to seek promotion. Nonetheless, as discussed above, there is no actionable grievance when the promotion review is not conducted consistent with best practices if there is no violation of a provision of the Contract, rule or regulation.

Moreover, even assuming for the sake of argument that there was a procedural violation in this regard, it did not materially and adversely affect the ultimate outcome of the case. The Provost re-evaluated Branch's application for promotion mindful of the external evaluators not having the applicable standards for evaluating Grievant's application. We are persuaded that this allowed him to make a thoughtful and informed assessment of Branch's application without giving undue influence to the external evaluators.

We further conclude that the Provost did not apply a standard for promotion that constituted a procedural violation in the review process that materially and adversely affected the outcome of the case. We would agree with Grievants that a contract violation occurred if we were to determine, as Grievants assert, that the standard that the Provost used in denying Branch's application for promotion was the lack of peer-reviewed scholarly publications in professional journals. The standards for promotion of extension



faculty in the area of scholarship, research and creative activities set forth in the Contract and the Extension Guidelines provide for scholarly activities other than peer-reviewed scholarly publications that may be demonstrated by a successful applicant for promotion. It would be a procedural violation that was material and adverse to the outcome of the case for the Provost to apply such a limited standard.

However, we disagree with Grievants that the Provost applied such a standard. It is true that, in the statement explaining his decision denying Branch's application, the Provost stated that the "scholarly interests of the candidates have not been translated into peer-reviewed scholarly publications in professional journals", and "I suggest that if Professor Branch addresses that weakness, there is a strong probability of her future success in achieving promotion." Nonetheless, in considering the evidence as a whole, we conclude this statement represents an incomplete articulation of the standards applied by the Provost.

In considering Branch's application, the Provost was aware of the standards for review of extension faculty for promotion set forth in the Contract and the Extension Guidelines. After reviewing Grievant's dossier, he concluded that there was not sufficient documentation of Branch's record of scholarship to warrant promotion. He found it notable that there was a lack of peer evaluation of her scholarship in the dossier. He did not conclude that acceptable peer review necessarily had to be in the form of a publication. He determined that it could be in the form of the credibility given to her work by her peers in her professional field. Given this evidence, we ultimately are persuaded that the Provost gave a thoughtful and thorough review to Branch's application for promotion that was consistent with standards of review for promotion set forth in the Contract and the Extension Guidelines.

We next consider Grievants' contention that the Provost's decision denying Branch's application for promotion was arbitrary and capricious in violation of Article 15, Section 10(d), of the Contract. In support of this contention, Grievants assert that the Provost's decision deviated from the established standards of review set forth in the Contract and Extension Guidelines. Grievants further maintain that the conclusions the Provost reached were irrational on their face.

An "arbitrary" decision is one "fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances or significance". Grievance of Fairchild, 4 VLRB 164, 176 (1981); *Affirmed*, 141 Vt. 362 (1982). A decision is arbitrary if it constitutes a capricious or unprincipled determination that departs from the established criteria. Grievance of D'Aleo, 4 VLRB 192, 203 (1981); *Affirmed*, 141 Vt. 534 (1982).

We conclude that the Provost's decision was not arbitrary and capricious. It did not constitute a capricious or unprincipled departure from the established criteria. Rather, as discussed above, the Provost's decision was consistent with standards of review for promotion set forth in the Contract and the Extension Guidelines.

We also disagree with Grievants that the Provost's decision was irrational. Grievants contend that the decision was irrational because on the one hand the Provost disregarded and discounted the unanimous endorsement of Branch's promotion by her colleagues in the Extension Division, and on the other hand he indicated that a professor's colleagues in his or her professional field can provide the necessary peer review to meet the standard for promotion without the need of publication. His conclusions are rationally explained by the different contexts in which he made his statements.

The Provost's testimony concerning the unanimous endorsement of Branch by her colleagues in the Extension Division occurred in the context of the Provost discussing his experience during his five years of reviewing faculty members being considered for reappointment, tenure and promotion. The Provost explained that it was unusual in his experience for departments of the University to provide negative evaluations of faculty members in their departments.

His testimony that a professor's colleagues in his or her field can provide the necessary peer review to meet the standard for promotion without the need of publication did not constitute an irrational departure from this line of thinking. He provided such testimony in discussing the standards providing for evidence of professional accomplishments by work a faculty member does with professional groups in a region extending beyond Vermont. Thus, the peer review he was referring to here involved professionals outside of the state, rather than the department colleagues he was discussing in his other testimony. It was rational for the Provost to draw a distinction between a review by professionals outside of the state and a review by a faculty member's colleagues in the same unit of a university.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of the United Academics, AAUP/AFT, and Judy Branch is dismissed.

Dated this 16<sup>th</sup> day of June, 2006, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

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Richard W. Park, Acting Chairperson

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Carroll P. Comstock

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Joan B. Wilson