

VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:)	
UNITED ACADEMICS, AAUP/AFT)	DOCKET NO. 06-32
AND ANTONIO CAMPO)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On August 22, 2006, the United Academics, AAUP/AFT filed a grievance on behalf of itself and University of Vermont Professor Antonio Campo, alleging that the University of Vermont (“Employer”) violated Articles 4.3, 15.3, and 15.10 of the 2003 - 2005 collective bargaining agreement (“Contract”) in denying tenure to Campo. Specifically, Grievants contended that there were procedural violations in the review process that materially and adversely affected the outcome of the case, and the decision to deny tenure was arbitrary and capricious.

Hearings were held on April 5 and April 30, 2007, in the Board hearing room in Montpelier before Board Members Edward Zuccaro, Chairperson; Richard Park and James Dunn. Andrew Barnaby, Union Grievance Officer, represented Grievants. Thomas Mercurio, Deputy General Counsel for the Employer, represented the Employer. The Employer and Grievants filed post-hearing briefs on June 20 and 21, 2007, respectively.

Subsequent to the hearing and the filing of post-hearing briefs, Board Chairperson Zuccaro recused from the case on conflict of interest grounds. This was due to former University Provost John Bramley, who was involved in this case, being hired as President of the Windham Foundation subsequent to the Board hearing in this matter. Chairperson Zuccaro is a member of the Foundation’s Executive Board. Acting Chairperson Park appointed Board Member Leonard Berliner to replace Chairperson Zuccaro as the third

member of the panel to decide this matter. Member Berliner has reviewed the pleadings and the record in this matter, and has deliberated with Acting Chairperson Park and Member Dunn on the Board decision.

FINDINGS OF FACT

1. The 2003-2005 Contract governed the review of Campo's tenure application. It provides in pertinent part:

...

ARTICLE 4 BOARD RIGHTS AND RESPONSIBILITIES

...

3. ... (T)he parties acknowledge that written department policies (and College or School written policies in those Colleges and Schools with no departments) relating to reappointment, promotion, tenure and evaluation are incorporated by reference into this Agreement, provided such policies are submitted to and approved by the Deans and Provost following ratification of this Agreement and provided further that such policies are consistent with College and University policies and do not establish lesser obligations or standards than stated elsewhere in this Article. . .

...

ARTICLE 12 GRIEVANCE AND ARBITRATION PROCEDURE

...

6. . . **STEP THREE:** If the grievance is not resolved at Step Two . . . the grievance will be advanced by the grievant to Step Three, which shall be the Provost or his/her designee. . .

In any grievance involving . . . the denial of promotion or tenure . . . the Provost will, prior to conducting the third step meeting, first refer the case to a three (3) member faculty hearing panel for its recommendation on the grievance.

The panel shall be composed of one faculty member selected by the Provost and two faculty members appointed by the chair of the faculty grievance committee. The panel shall meet with the grievant and a representative of the Union to hear the grievance allegations. The panel shall meet separately with the Department Chair and/or Dean or Director who were involved in the decision giving rise to the grievance. The panel shall make a written recommendation to the Provost as to the disposition of the grievance . . .

...

STEP FOUR: If the grievance is not resolved at Step Three, . . . the grievant and/or the Union representative must file the grievance with the Vermont Labor Relations Board (“VLRB”). . .

In resolving grievances arising out of this Agreement, the VLRB shall have no power 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.

. . .

ARTICLE 15

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. . . In evaluating the candidate’s performance in these areas, reasonable flexibility shall be exercised, balancing, where the case requires, heavier assignments and responsibilities in one area against lighter assignments and responsibilities in another.

. . .

In all instances, excellent intellectual attainment, in accordance with the criteria set forth below, is the standard of reappointment, promotion and/or tenure. Insistence upon this standard for continuing members of the faculty is necessary for the maintenance of quality of the

University as an institution dedicated to the discovery, preservation and transmission of knowledge.

...

i. Teaching and Advising

Effectiveness in teaching is an essential criterion for reappointment, promotion and tenure. The prime requisites for effective teaching are:

- intellectual competence, integrity and independence;
- demonstrated knowledge of the field;
- a willingness and capacity to grow in the field;
- a willingness to consider suggestions and to cooperate with other faculty members in teaching activities;
- a spirit of scholarly inquiry that leads to the strengthening of both course content and presentation in light of developments in the discipline;
- a vital interest in teaching and working with students;
- an ability to stimulate students' intellectual interest and enthusiasm;
- a capacity to awaken in students an awareness of the relationship of the subject to other fields of knowledge.

Academic advising is an important part of the mission of the University. Interest and skill in the general guidance and academic advising of students will be an important consideration for reappointment, promotion and tenure.

The parties recognize that no single set of measures and methods can be prescribed to evaluate the quality of teaching and advising. Some of the measures and methods, however, include but are not limited to:

(a) Opinions of members of the candidate's department and of the candidate's department chair or supervisor . . .

(b) Evaluations of teaching and advising by students . . .

...

(d) Publications by the candidate on the teaching of his/her discipline in respected journals.

...

ii. Scholarship/Research/Creative Activity

Substantial and sustained scholarship/research/creative activity of high quality is an essential criterion for reappointment, promotion and tenure.

. . . In disciplines in which competitive grant and contract support is available, acquisition of external funding and a record of continuing support may be an indication of recognized research competence and productivity. . .

The University strongly supports collaborative and cross disciplinary research; however, when published work in joint authorship . . is considered, it is the responsibility of the candidate to document his or her role in the joint effort . . .

Appraisals of publications and other work in the scholarly and critical literature may be considered.

If the record of a candidate includes publication of journal articles, it is the responsibility of the department chairperson to address clearly in the review process information regarding the publication and to ascertain the standards of the journal and its standing in the discipline. . .

In cases involving tenure and promotion to associate or full professor, the quality and significance of the work must be evaluated by full-time tenured and tenure-track faculty members of the department as well as the department chairperson . . . In addition, the department must solicit evaluations from acknowledged scholars and practitioners in the discipline of the candidate at other institutions. These scholars and practitioners should be at “arms length” with the candidate and be capable of providing an objective, informed assessment of the candidate’s work.

. . .

iii. Service to the University, and in their Capacity as Scholars, to the Community and the Profession.

Service to the University, and in their capacity as scholars, to the community and their profession is an essential part of the University’s mission and faculty performance expectations. . .

Faculty may engage in service through effective committee or other activity relating to their department or program, College or School, or the University, or United Academics. Faculty may make contributions through effective participation in community, state, national or international endeavors relevant to their professional discipline, such as through service on governmental boards, commissions or task forces; accreditation teams, editorial boards, or peer review panels; professional organization committees or boards; and the like.

Professional service activities shall be reviewed for evidence of demonstrated achievement, such as effective and innovative service and leadership. A faculty member must provide evidence of the quality of the service rendered, which may include evaluation by the officials or agencies served.

b. Procedures in Matters of Reappointment, Promotion and Tenure

. . .

iv. Tenure represents the commitment of the University to the continued appointment of an Officer of Instruction until retirement or resignation, or for just cause, including inability to perform the essential requirements of the faculty member’s appointment, with or without reasonable accommodation, due to physical or mental disability, or due to the termination on account of financial exigency or elimination of an institutional program.

. . .

v. Probationary Periods.

. . .

(c) Associate Professor. . . A probationary associate professor will be informed during the third year of service whether tenure will be granted. If tenure is not granted, the appointment will not be renewed after the fourth year.

. . .

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

(a) The Faculty Member

In preparing his or her dossier for . . . 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 . . . The Chairperson is required to seek the input of tenured and tenure-track faculty relative to the candidate's work in the performance areas evaluated prior to the completion of their statement and recommendation. The Chairperson's statement should include a faithful summary of the advice received, both favorable and unfavorable, from department colleagues concerning the candidate's record in the areas of teaching, advising, research/creative activity and service.

A numeric, anonymous tally of any department vote taken on the candidate will be provided to the faculty member evaluated.

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.

(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. . .

(d) Provost

In the case of both favorable and unfavorable RPT recommendations of the Dean . . . 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 . . .
...

10. A faculty member who is denied . . . 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 violation of the candidate's Academic Freedom as defined in this Agreement;
- d. allegations that the decision was arbitrary or capricious; and/or
- e. allegations that the decision was in violation of Constitutional rights.

...
(Joint Exhibit 1)

2. The successor collective bargaining contract to the 2003-2005 Contract is effective from December 22, 2005 to June 30, 2008. Article 14, Section 4, of the 2005-2008 Contract contains the following paragraph:

Committees and administrators making RPT decisions cannot augment or supplant the criteria for RPT in the Agreement of departmental guidelines. Department guidelines may be interpreted, explained, and defined by those who have to make the decisions. Although the criteria for RPT in the Agreement and departmental guidelines may be interpreted, they cannot be changed and added to. Decisions must be made on the basis of the approved criteria. (Joint Exhibit 2)

3. This provision of the 2005-2008 Contract was not contained in the 2003-2005 Contract. However, the provision was an articulation of the understood practice in

reappointment, promotion and tenure cases that existed during the term of the 2003-2005 Contract.

4. The RPT Guidelines for the Department of Mechanical Engineering provided in pertinent part at all times relevant in this matter:

1. RPT Expectations and Standards

The Department of Mechanical Engineering regards the guidelines set forth in Article 15 of the Faculty Contract to accurately reflect the general expectations for reappointment, promotion and tenure (RPT) for faculty within the department. The expectation is that tenure-track faculty efforts will be essentially distributed in a balance of teaching and scholarship; service activities are also expected but to a lesser degree. When appropriate, the relative weighting of the activities may be adjusted so as to reflect reasonable and fair expectations under prevailing conditions within the department.

2. RPT Procedures

...

Advising Evaluations. The faculty member should maintain semester to semester statistics of his/her official advisee count as evidence of advising load. In lieu of any current advising metrics available within the College to assess advising performance, an evaluation of advising duties and performance will be solicited from the College's Office of Student Services to be included in the documentation. As appropriate, letters from former and/or current student advisees may also be solicited in coordination with the Office of Student Services.

Departmental Evaluation. All eligible department faculty are required to review the RPT documentation and report their recommendations and comments to the Chair. Based on this input, the Chair will then prepare a formal letter of evaluation and recommendation on behalf of the department. . .

...

4. Departmental Consensus

The guidelines described in this document represent the outcomes of open discussions held in departmental faculty meetings on February 24 and 26, 2004. . . It was the joint resolution of the faculty . . . that the department adopt Article 15 as the basis for RPT standards. Further, it was decided that additional wording be included to reflect expectations of effort distributions. . .

(Joint Exhibit 3, Section 3)

5. The provision in the RPT Guidelines under the section entitled “Advising Evaluations” that “an evaluation of advising duties and performance will be solicited from the College’s Office of Student Services to be included in the documentation” was not complied with during the tenure review of Campo. The responsibility for soliciting such evaluation resided with the Chair of the Mechanical Engineering Department.

6. Campo has been employed as an untenured associate professor of mechanical engineering in the University of Vermont Department of Mechanical Engineering since September 1, 2002 (Joint Exhibit 3, pages 22 and 51).

7. Campo obtained a Bachelor of Science degree in Mechanical Engineering, and a Master of Science degree in Applied Mathematics, from Universidad de Puerto Rico. He earned a Master degree in Mechanical Engineering, and a Ph.D in Mechanical Engineering, from Texas A & M University (Joint Exhibit 3, pages 22 and 51).

8. During the Spring of 2004, Campo underwent a review for a two-year reappointment. Campo was reappointed for the following two academic years. This was the only reappointment review Campo had prior to his application for tenure (Joint Exhibit 2, pages 174-179).

9. During the reappointment review, the Chair of the Department of Mechanical Engineering submitted an evaluation of Campo which provided in pertinent part:

...

Research and Scholarship. The Department was uniformly impressed with Prof. Campo’s prolific record of scholarly publication. . . The only primary concern in this area is the very limited attempts made to secure external funding necessary to support graduate students within the department.

Teaching. . . On average, his teaching performance would be rated as comparable with departmental norms, with some variation amongst individual reviews.

Advising. . . While no issues were reported during the AY 2002-3, some concerns have surfaced in the current academic year and relate primarily to issues of non-availability.

Service. Since Fall 2002, Professor Campo has had only minor service assignments. Specifically, the assignments were membership on two Mechanical Engineering search committees . . . and, beginning in Fall 2003, he assumed the role of Graduate Coordinator for the department. While offering input on the respective search committees, regular attendance at scheduled meetings has been a problem. As Graduate Coordinator, Prof. Campo's failure to consistently fulfill responsibilities and perform duties in a timely manner has created a number of problems both within the Department and through its interactions with the Graduate College.

It is the departmental opinion that Professor Campo's scholarly activity is truly outstanding; however, he is strongly encouraged to seek sources of funding for the support of graduate students to participate in these efforts. In light of issues raised above, there is serious concern that other faculty responsibilities have suffered as a result of his focus on scholarly pursuits. Appropriate reallocation of effort is strongly recommended to ensure that existing issues are suitably addressed prior to the tenure review.

. . .

(Joint Exhibit 3, page 174)

10. In a response to this evaluation, Campo stated that he was "presently intensifying my efforts in the area of external funding to support graduate students and to bring money to the department", and noted that he was "in the process of seeking external funding to support graduate students." He further stated: "In view of the fact that the departmental consensus is that my scholarly activity is truly outstanding, I will redistribute my time during the week including weekends more effectively in the future. This action will help to fulfill the departmental assignments." (Joint Exhibit 3, pages 178-79).

11. During the reappointment review, the Faculty Standards Committee of the College of Engineering and Mathematics recommended that Campo be reappointed as a professor. The committee indicated in its recommendation that “the committee was uniformly impressed by the candidate’s journal publication rate. The committee, however, was not able to assess the quality of the candidate’s research”. The committee viewed Campo’s teaching as “mixed”, and expressed the belief “that the candidate can improve the quality of his teaching, and should make every effort to do so.” The committee viewed Campo’s record of service “with concern”, and stated: “The committee hopes that the candidate will become more conscientious of his service duties.” The committee summarized: “On balance, Dr. Campo appears to be a seasoned scholar, who has directed most of his energy towards research, but may have neglected teaching and service in the process. The committee strongly encourages the candidate to obtain stronger (and more uniform) documentation of his teaching, student advising, and service for future RPT evaluations” (Joint Exhibit 3, pages 175-76).

12. Robert Jenkins, Dean of the College of Engineering and Mathematical Sciences, stated in part as follows in an April 14, 2004, memorandum on Campo’s reappointment:

...

Dr. Campo’s effectiveness in the classroom, and as an undergraduate advisor, appears to be very uneven. As a relatively senior faculty member he needs to set a positive example in teaching at both the undergraduate and graduate levels. It is important that he expand his role in graduate education by increasing his involvement in advising graduate students to graduation.

His scholarly efforts in terms of publications and presentations have been quite strong and his refereed publication rate is good. There is some concern, however, that he has not established a solid record of submitting proposals to external agencies to fund his research. . .

His service record appears to be uneven. While he notes that some of the negativity expressed in this aspect is as a result of attending scholarly conferences, it is imperative that vital Departmental functions take a high priority when scheduling attendance at these meetings. . .

I recommend that Dr. Campo be reappointed. However, as indicated by the College Faculty Standards Committee, it is important that he concentrate on establishing a solid record of effective teaching, advising and service. Similarly he needs to submit proposals in order to attract external funds to support his research efforts. These comments are particularly important since his next review will be for tenure. . .

(Joint Exhibit 3, page 177)

13. In November 2005, Campo submitted his application for reappointment with tenure (Joint Exhibit 3, pages 1-21).

14. The solicitation of evaluations on a tenure candidate's research accomplishments from faculty outside of the University of Vermont is a required part of the review process for a tenure application. The outside evaluators rated Campo highly with respect to his scholarship. One evaluator concluded that "Dr. Campo's productivity in research . . . is exceptional. His papers have appeared in the most highly respected journals". Another evaluator stated: "(I)t is very clear and Professor Campo has made a very large impact in the field of heat transfer in . . . scholarly work . . . He is well known nationally and internationally". Another evaluator summarized: "I characterize Dr. Campo's scholarship portfolio as prolific, innovative, and analytically rigorous." One evaluator stated: "Overall, Professor Campo is one of the most active researchers in heat transfer and in the general area of thermal sciences. He has made significant research contributions in his chosen field. He is well regarded by the community of mechanical engineers." Another evaluator commented: "He is prolific; the journal papers appear in reputable national and international journals". Another evaluator summarized: "When

one looks at the research output of Professor Campo over the years it is clear why he has achieved for himself a national as well as international reputation as a scholar in the science of heat transfer”. One evaluator concluded that “(h)is list of publications in many leading journals is impressive”. Other commentators, including co-authors with Campo on published works, made similar comments as those quoted above (Joint Exhibit 3, pages 279-323).

15. On November 10, 2005, Richard Foote, Interim Chair of the Department of Mechanical Engineering, issued his “Chair Evaluation” on Campo’s application for tenure. The evaluation provided in part:

...

1. Teaching and Advising

...

At the core undergraduate level Dr. Campo has taught ME 144 (Heat Transfer) for the past three Spring semesters . . . there are peer visitation reports by Professor Francis . . . and Professor Jenkins . . . Both visitations appear to be positive on the mechanics of teaching and student interaction. . . Professor Jenkins, in conversations with students, raises concerns about exams and availability of Dr. Campo outside of class that are echoed in the student evaluations.

Comments on student evaluations for ME 144 are generally positive . . .

. . . Overall it appears that the students in 2005 were more critical of Dr. Campo than in 2004, and this is supported by the drop in “Question 6: Overall Instructor Rating” from 4.19 to 3.16. (Dr. Campo’s corresponding rating for ME 144 in Spring 2003 was 3.92.) . . .

ME 123 is the Fall semester “Junior Lab” in Thermodynamics and Fluids . . . he taught it in Fall 2003 and is teaching it this semester. (Two) student letters . . . comment specifically that Dr. Campo’s involvement in the course in F03 was minimal. . . there is a peer class visitation report by Emeritus Professor Hermance on the Fall 2005 ME 123 lab. Again the issue of Dr. Campo’s commitment to being more than minimally involved in the course is raised. . . It should be noted that the physical state of the lab and equipment mentioned in Professor Hermance’s report is not attributable to Dr. Campo . . . On the other hand, I was disappointed that, given his expertise in this area, Dr. Campo took no active role in the

departmental effort to revamp the ME 123 equipment and space in preparation for the ABET accreditation site visit this October – this was despite being asked last spring and despite the fact that he was teaching ME 123 this Fall. . .

Dr. Campo's performance in senior-elective/graduate level courses is, for the most part, quite strong. . .

...

Graduate Student Mentoring

...

Dr. Campo's record of supervising graduate students at UVM is problematic. The Program currently lists 15 full-time MS and PhD students . . . Only one of these, a student who just started a PhD this fall . . . has Dr. Campo as an advisor. One offer to an international PhD candidate to be funded by Dr. Campo on EPSCoR funds was sent out last month, and acceptance is still pending. Dr. Campo has no other record of graduate student supervision. He has not supervised an MS or PhD student through successful completion of his/her degree during his entire probationary period. In the Dean's report on Dr. Campo's previous reappointment . . . it states:

“It is important that he expand his role in graduate education by increasing his involvement in advising graduate students to graduation.”

This condition has not been met. . .

Engineering Education and Educational Mission

Dr. Campo deserves recognition and praise for his work on engineering education. External Research Evaluator ER1 . . .in particular, states:

“Another noteworthy aspect of Dr. Campo's professional record is his archival publications in engineering education (19 published and 2 in press). This is very impressive and representative of a good educator.”

...

2. Research and Scholarship

External Research evaluator #1 . . . perhaps best summarizes salient aspects of Dr. Campo's research . . .:

“Dr. Campo's productivity in research, which is primarily focused on both fundamental and applied issues in single-phase convective heat and mass transfer, is exceptional. His papers have appeared in the most highly respected journals . . . and the output to date of 140 published articles (including >40 since joining UV) with 16 in

press, and 23 others in different stages of acceptance, review, or submission is indeed exemplary. In addition, he has a published book (1984) with one other in preparation, one patent (2003), and over 100 conference/symposia presentations (including both national and international meetings) and technical papers, and 12 invited lectures, which all reflect a sound professional standing as a researcher and scholar.”

...

There is universal agreement and praise for Dr. Campo's productivity, notably while at UVM. Likewise, there is agreement among the external reviewers on the variety of heat transfer topics considered by Dr. Campo.

...

The quality of Dr. Campo's research is regarded well by the external evaluators. . .

...

Dr. Campo works productively with many coauthors from the US and the international community. . . there seems to be a good balance between coauthors who are peers . . . postdocs . . . and ones who are, or were, his students . . . Coauthors CA13 and ST10 are notable exceptions to the otherwise harmonious interactions between Dr. Campo and his coauthors . . . The(ir) current stature . . . lends these letters credence, and it is especially worrisome that they are the only UVM student coauthors who responded to my solicitation. Thus Dr. Campo's record with coauthors is overall highly positive, but not without concern, particularly regarding his work with UVM graduates in Mechanical Engineering.

Dr. Campo's funding record is perhaps the most problematic facet of his research and scholarship record at UVM. . . Dr. Campo has been funded on EPSCoR grants (listed in his CV) while at UVM, but has neither obtained nor even applied for competitive external grants while at UVM. This is despite documented expectations on green sheets and annual reports that he should do so. In particular, the previous green sheet Chair summary . . . states in the Research and Scholarship section:

“The only primary concern in this area is the very limited attempts made to secure external funding necessary to support graduate students within the department.”

The Dean's report on this same reappointment review echoes this:

“There is some concern, however, that he has not established a solid record of submitting proposals to external agencies to fund his research. I note a pending DEPSCoR submission but it is not clear as to Dr. Campo's contribution to this proposal. Thus, I strongly urge Dr. Campo to increase his efforts to attract funding to support his research endeavors, and particularly to support graduate students.

...

In the discussion with the tenured ME faculty on Dr. Campo's tenure case, the issue of funding was explicitly raised. . . The Faculty emphasized that securing funding should not be a precondition of tenure; but they were dismayed that Dr. Campo had not even submitted a competitive external grant proposal during his probationary period at UVM. This was considered a serious shortcoming of Dr. Campo's record (as it would for any probationary faculty member in Mechanical Engineering).

...

3. Service

Dr. Campo's professional service, both prior to coming to UVM and while at UVM seems to be strong . . .

At UVM, Dr. Campo has had only a light service load, commensurate with his probationary status. Given his senior status, he has been assigned the role of Graduate Program Coordinator since Fall 2003. His previous green sheet departmental report . . . signaled concerns in this responsibility:

“As Graduate Program Coordinator, Prof. Campo's failure to consistently fulfill responsibilities and perform duties in a timely manner has created a number of problems both within the Department and through its interactions with the Graduate College.”

The Dean's report for this reappointment states:

“His service record appears to be uneven. . . Dr. Campo is aware that the well-being of the Department is highly dependent on senior faculty taking leadership roles in service to the institution.

. . . Dr. Campo has not redressed the concerns from the previous green sheets.

. . . (A)lso . . . Dr. Campo's unavailability means he takes little or no part in ongoing activities . . . Dr. Campo's lack of participation results in other faculty members . . . having to carry an extra service load.

...

5. Chair Summary and Conclusion

. . . I have enormous respect and admiration for Dr. Campo, as a researcher, scholar, educator, and caring human being. His strengths in all these areas shine forth, and those individuals he benefited speak glowingly

of him in their testimony. He should be extremely proud to have such praise and admiration.

On the other hand, Dr. Campo seems to have focused his efforts so much in the production of publications and external service that certain mandated commitments to UVM have suffered. In particular, he has lost sight of, or chosen to ignore, his yearly contractual workload breakdown of 40%/40%/20% for teaching/research/service. In each of the three areas of Teaching-Advising, Research-Scholarship, and Service there are nontrivial shortcomings ascertained through various, independent evaluative means. Many of these – funding, graduate student mentoring, service commitment, leadership – one would not expect from a person of his stature. And at the heart of it: he simply has not redressed the specific and pointed strictures of the previous green sheet reports. He has had ample time and exhortation to do so, as is the purpose of a probationary period, and so there is little evidence that he would do so after tenure.

Taken all in all, I concur with the majority vote (2 in favor, 3 against) of the tenured Mechanical Engineering Faculty, and I recommend that Dr. Campo not be granted tenure at UVM.
(Joint Exhibit 3, Section 4, p.55-71)

16. On December 12, 2005, the Faculty Standards Committee of the College of Engineering and Mathematics, consisting of six members of the Engineering and Mathematics faculty, sent a memorandum to Dean Domenico Grasso on the tenure application of Campo. The memorandum provided in pertinent part:

...
Dr. Campo's record on teaching is mixed at best, unacceptable at worst. His teaching evaluations are weak, and as the interim chair's evaluation notes are in steady decline. An overview of the evaluations shows that the candidate is strong in specific senior-level/graduate courses that he cares about, but uncaring about other required assignments. . .

The record on service is not much better. We note . . . his refusal to help with ABET accreditation, including an upgrading of the lab. He did serve for several years as head of the department graduate program. However, all indications are that he did not do this job well and the committee viewed his role in this service as a negative. . . There is little indication of other service to the department.

The case for research is a different story. By almost all measures Dr. Campo is, as one faculty commented, a "publishing phenomenon". He has

140 published articles, with over 40 coming since his time at UVM. . (H)e had a good mix of publications . . . We all agreed that he is a brilliant scholar, and in this aspect is doing it on his own without collaboration with others in his department. Dr. Campo's productivity in research is exceptional.

There was some concern expressed in the documentation that Dr. Campo had a lack of funding, specifically that there was a "weak history of funding, despite being warned". The committee noted this point, but did not view it as a major concern in making their recommendation.

. . . In the end we gauged Dr. Campo's performance against the standard 40% teaching, 40% scholarship, and 20% service guidelines. There is no doubt that Professor Campo is an excellent researcher. However, we felt that the attention paid to teaching and service "should be adequate (even at a minimal level)". We did not feel he met these standards. . . Dr. Campo had been warned about areas of concern to be addressed, but there is no indication he did so.

. . . (T)he committee voted 0 in favor of tenure, 4 opposed, 1 abstained, and 1 member recused. . .
(Joint Exhibit 3, Section 4, p.72-74)

17. Dean Domenico Grasso of the College of Engineering and Mathematics issued a statement on January 13, 2006, on Campo's application for tenure. The statement provided in pertinent part:

. . . Upon review of the various advisory opinions at both the department and college levels, I concur with the overwhelming sentiment to deny appointment to the rank of associate professor with tenure to Dr. Antonio Campo.

His area of scholarship is focused on heat transfer in mechanical engineering. He has compiled a voluminous record of published journal papers (more than 140). However, volume does not necessarily correlate with quality or impact. A review of *Science Citation Index* indicates the vast majority of these papers have three or fewer citations, indicating little or no relevance of his published opus to the scientific community. Moreover, his papers appear to have been published with colleagues at other institutions rather than UVM students or UVM colleagues. He has had little success in attracting funds to support his research work while at UVM. To date, all of his research funds have been EPSCoR-related. More importantly his efforts to secure competitive external funding for research and student support have been minimal. I find that there is no objective

and significant evidence that his scholarship can be considered substantial or of high quality.

Dr. Campo has not graduated any master's or doctoral students while at UVM. At present, he appears to have only one graduate student advisee (who is just starting his program). This is most unacceptable for anyone in engineering applying for tenure at a research university.

With regard to his teaching capability, there appears to be a significant difference of opinion surrounding his effectiveness in and out of the classroom. It is, however, clear that teaching and advising are not unequivocal strengths that counterbalance shortcomings in other areas. Weighing the preponderance of the evidence before me, I must conclude that tenuring Dr. Campo would not be in the best interest of the students, the College, or the University.

Finally, although there is an expectation of light service work during the probationary period, there is again sufficient evidence that Dr. Campo has not been a good departmental citizen. For any academic program to function, everyone must be an active participant in the logistical necessities of the department. Again, I find Dr. Campo lacking in this area and that tenuring would not be in the best interest of the Institution.

In summary, I find that Dr. Campo's research is not substantial or noteworthy. Although he has published many papers, they appear to be of little significance or import. He has failed to follow previous RPT advice and advise UVM graduate students to completion or to build a graduate student research team. His teaching and advising are questionable at best, with serious concerns surrounding his commitment to students' access. Finally, his service effort appears to lack dedication, attention to detail, and quality (Joint Exhibit 3, Section 4, p.75-76).

18. The Professional Standards Committee of the Faculty Senate consists of professors from throughout the University's colleges and schools. The Committee reviews each tenure application and makes a recommendation to the Provost. The Committee voted 8-2 in March 2006 to not recommend tenure of Campo. The Committee statement provided in pertinent part:

. . . Two members felt the candidate had minimally met the standards for tenure. The majority, however, believed that the teacher/scholar is central to the University's mission, and that the candidate did not demonstrate the appropriate balance. While the candidate is an active scholar, we agreed

with departmental and college reviews that the teaching and University service record did not meet the standard for tenure (Joint Exhibit 3, Section 4, p.77).

19. The Provost is the chief operating officer of the University. The Provost is responsible for all hiring, tenure, reappointment, promotion and evaluation of faculty. On April 7, 2006, Provost John Bramley decided not to grant tenure to Campo. He issued a statement providing: “I agree with the recommendations of the Chair, Dean and Professional Standards Committee not to recommend tenure” (Joint Exhibit 4, Section 4, p.55).

20. Andrew Barnaby, Union Grievance Officer, filed a grievance on behalf of Campo on May 19, 2006, with Provost Bramley, contesting his decision with respect to Campo’s application for tenure (Joint Exhibit 4).

21. As required by Article 12, Section 6, of the Contract, Provost Bramley referred the grievance to a three-member faculty hearing panel for its recommendation. On June 23, 2006, the hearing panel appointed to consider the grievance filed on the denial of tenure to Campo issued a memorandum containing its recommendations. The memorandum stated in pertinent part:

...
Upon reviewing the case, we concur unanimously with the grievant that procedural errors in his tenure case occurred. . . However, we found that only certain errors were consequential. . . . Our recommendation as to the disposition of this case is that Professor Campo be allowed to go through the tenure process again in a manner that does not prejudice his case. . . . Our panel makes no judgment as to the merits of his case for tenure. We simply agree that he may have been successful had the guidelines been strictly followed.

We begin with a review of the fundamental problems at the departmental level. The letter to external evaluators sent by the chair suggests that a “national or international reputation” is required for tenure. Evaluators are instructed to evaluate Professor Campo in light of this criterion. However,

these words never appear in the departmental guidelines for tenure, and certainly are never specified in the CBA. Theoretically, the external evaluators could have given the candidate a more negative assessment than they would have if they were not asked to evaluate him in this way.

In the chair's statement, Professor Foote criticizes Professor Campo for his deficiencies in "funding, graduate student mentoring, service commitment, leadership." He further alleges that Professor Campo did not seem to follow the admonishments of a previous RPT action. Certainly service commitments are part of the guidelines in the CBA, however, "funding, graduate student mentoring . . . [and] leadership" are not specified as necessary in the guidelines. . .

. . .

Dean Grasso seemed to be acting in good faith in his attempt to interpret the CBA and apply its standards. However, he also makes much of Professor Campo's lack of funding and lack of support for graduate students. The CBA states (Article 14.4): "Committees and administrators making RPT decisions cannot augment or supplant the criteria for RPT in the Agreement of departmental guidelines." The article goes on to say that administrators can "interpret" the criteria, but "[d]ecisions must be made on the basis of the approved criteria." Clearly, administrators can use some professional judgment, but since they must do so in accord with the guidelines, they need to address the guidelines squarely. Since the department criteria do not shed much light on how a candidate should be evaluated, the chair and dean both had the responsibility of deferring to the CBA guidelines. These guidelines do not list graduate student mentorship or external funding as necessary – they are but one kind of teaching and one kind of scholarship, respectively.

However, Dean Grasso relied almost exclusively on the part of the CBA that says "substantial and sustained scholarship/research/creative activity of high quality is an essential criterion for reappointment, promotion and tenure." (Article 14.5e.ii). Furthermore, Dean Grasso seemed to believe his sole responsibility was to make judgments about the impact / significance of the research, using only citations – and ignoring other aspects of scholarship in the CBA. This makes for a very narrow and overly specified career path for faculty members. . . The fact that impact is essentially the only criterion upon which tenure decisions will be based in CEMS is not documented in the CBA, College or department guidelines. . . (S)ince the guidelines do not state how impact will be measured, it would have been reasonable for a candidate to assume that sheer volume would "count". In addition, the dean relies excessively on the Science Citation Index, which may be a reasonable measure – it is but one measure. . . The dean does not mention the very positive letters Professor Campo received. This is the very essence of an arbitrary and capricious process insofar as

the dean imposed some standards while ignoring others, and utilizing some measures, while ignoring others. . .

The dean in his written statement also criticizes Campo for having collaborated in his research and publications with colleagues outside of UVM, rather than colleagues within the department. Again, since the RPT guidelines do not even hint that this would be required, a candidate could not reasonably use the guidelines as a “guide” for an appropriate career. The dean’s heavy emphasis on impact, and his reliance on his own unwritten measures (however reasonable they may be) are tantamount to augmenting existing criteria, which is expressly forbidden in Article 14 in the CBA.

Indeed, the various committees of the tenure review process seem to apply different standards as well. . . (T)he Dean and PSC refer to “ghost” criteria such as funding and grad student mentorship in their denial decisions. Given that the all-important chair’s statement referred to these ghost criteria, and the department’s negative assessment on their basis, Professor Campo’s “failure” in these respects likely influenced subsequent committee’s evaluations.

. . .

(Joint Exhibit 5)

22. Provost Bramley had left his position by the time the University hearing panel made its recommendations. His successor, Provost John Hughes, wrote a letter to Andrew Barnaby, Union Grievance Officer, on July 24, 2006, to “summarize my findings” regarding the recommendation of the hearing panel. The letter provided in pertinent part:

. . . The conferral of continuing tenure represents an extraordinary commitment on the part of a university, suggesting that the accomplishments of an individual are deserving of a life-long commitment of salary, health insurance, retirement benefits, and, by far most importantly, a certification that the successful applicant is to be entrusted with the education of our children. . .

. . . (The Hearing) Panel found that procedural errors occurred in the review . . .

The perceived violations of the CBA were focused on the decisions of the Chair of the Department and Dean Grasso, although I here note that all

other adjudicating bodies reached the same conclusion as did the Chair and Dean. For example, the Hearing Panel noted that the Chair suggested that a “national or international reputation” is required for tenure. The sentence in question is here reprinted: *“We would like to have your evaluation of Dr. Campo’s research contributions, including any particularly distinctive accomplishments, the significance of the problems on which he works, comparisons with other mathematicians at his academic level of seniority, the extent of his national or international reputation, the impact of his work in the field, his promise for continued growth as a scholar, and any other insights which might help this Department, our College, and the University arrive at a fair evaluation.”* This statement does not suggest that a national or international reputation is required for tenure; it merely seeks input regarding the extent of that reputation so that UVM evaluators can make an even more informed decision. Indeed, one could argue that if evaluators did not seek to determine the level of an applicant’s reputation in advance of a tenure decision they would be remiss in their attempts to make an informed decision. I do note that at least one of the reviewers did indeed note that Professor Campo’s work was known both nationally and internationally, and I assume that statement contributed to the several positive evaluations of his research by the adjudicating bodies.

The Hearing Panel also noted that such requirements as “graduate student mentoring” are not specified as necessary in the guidelines. However, the CBA states . . . that “Interest and skill in the general guidance and academic advising of students will be an important consideration for reappointment, promotion and tenure”. The CBA does not restrict such mentoring solely to undergraduate students nor solely to graduate students, but is silent on the level of the advising efforts. An expectation that “interest and skill in the general guidance and academic advising of students” has been demonstrated at all extant levels in a department is certainly reasonable. . . It is not unreasonable to conclude that conferral of continuing tenure in a department includes evidence of ability in advising students at all levels of instruction in that department.

Dean Grasso was also criticized for using only citations to make a judgment about the impact/significance of Dr. Campo’s research. Evaluative data derived using the *Scientific Citation Index (SCI)* are based on the premise that the more frequently that other scientists cite a colleague’s research, the greater the reputation of that scientist. Indeed, I would suspect that there exists a very high (positive) correlation between the number of citations and national reputation, and I do not believe that Dean Grasso was arbitrary and capricious in applying that metric, as the measure is widely used to assess the reputation of a scientist’s work. . . I do note that Dean Grasso reached a different conclusion regarding Dr. Campo’s research than did other deliberative bodies reviewing his case for

continuing tenure; such is often the case in these deliberations. However, despite the differences in position regarding Dr. Campo's scholarly efforts, I note that all deliberative bodies reached the same conclusion regarding the conferral of continuing tenure. Clearly, different reviewers may reach different conclusions regarding aspects of a candidate's record; if not, there would be no need to progress beyond the first reviewing body.

The Hearing Panel also felt that the Dean's actions indicated that "impact is essentially the only criterion upon which tenure decisions will be based" although they note that such a criterion is not documented in the CBA, College, or department guidelines. However, in Dr. Campo's case Dean Grasso noted that "teaching and advising are not unequivocal strengths that counterbalance shortcomings in other areas". Dean Grasso also noted in the area of service there is again sufficient evidence that Dr. Campo has not been a good departmental citizen", and also that he finds "Dr. Campo lacking in this area and that tenuring would not be in the best interest of the Institution. To conclude that Dean Grasso used only a single criterion that focused on research citations in making his tenure decision is not supported by a reading of his letter.

. . . The decision outlined here undoubtedly caused considerable difficulty for all involved in the decision, yet all individuals and deliberative bodies reached the same conclusion. For the reasons outlined above, I reject the tenets of the grievance. I perceive no procedural errors that marred the judgment of deliberative bodies in adjudicating Professor Campo's application for continuing tenure, and I find that the determination was based on sound evidence. The denial of tenure to Dr. Campo therefore stands. Consequently, I reject this grievance.
(Joint Exhibit 6) (emphasis in original)

MAJORITY OPINION

Grievants contend that the Employer violated Article 15, Section 10, of the Contract by: a) committing procedural violations in the review process that materially and adversely affected the outcome of Grievant Campo's case for tenure, and b) issuing a decision to deny tenure that was arbitrary and capricious. Article 15, Section 10, provides in pertinent part that a "faculty member who is denied . . . tenure shall . . . have the right to grieve the final action of the Provost . . . on the . . . grounds: a. alleged procedural

violations in the review process that materially and adversely affected the outcome of the case; . . . d. allegations that the decision was arbitrary or capricious . . .”

We first address 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 tenure decisions concerns ensuring defined procedures are followed rather than substantive review of the merits of a decision. Grievance of United Academics, AAUP/AFT and Branch, 28 VLRB 325 , 339 (2006). “Procedures” refer to the specific steps and manner by which a faculty member will be reviewed. Id. 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). Branch, 28 VLRB at 339. Grievance of McIsaac, 26 VLRB 1, 81-82 (2003). *Affirmed*, 177 Vt. 16, 33-34 (2004). If standards for tenure are applied that differ from standards for tenure set forth in the collective bargaining contract or department guidelines, there may be a procedural violation in the review process that materially and adversely affects the outcome of the case. Branch, 28 VLRB at 340-41.

Grievants contend that the Employer repeatedly violated the Contract with procedural errors that materially and adversely affected the outcome of Professor Campo’s application for tenure. Many of the alleged procedural errors cited by Grievants

involve the research and scholarship criteria for tenure. We first discuss these alleged procedural errors.

Grievants assert that the Employer amended the express standards for evaluating scholarship in the Contract and Department RPT Guidelines by requiring substantial citation of Campo's publications in the *Science Citation Index*. This allegation is a reference to Dean Grasso's statement on Campo's application for tenure that Campo's voluminous record of published journal articles "does not necessarily correlate with quality or impact", noting: "A review of *Science Citation Index* indicates the vast majority of these papers have three or fewer citations, indicating little or no relevance of his published opus to the scientific community."

This statement by Dean Grasso did not constitute an amendment of standards for tenure set forth in the Contract and RPT Guidelines. Article 15, Section 4ii, of the Contract provides that the "quality and significance" of published works must be evaluated in tenure cases. Dean Grasso was using citation of Campo's publications in the *Science Citation Index* as a measure of evaluating the quality and significance of Campo's works. This was consistent with the standard set forth in the Contract providing for the evaluation of the quality and significance of published works.

Grievants further contend that the Employer created a new standard for tenure by attacking Campo's scholarship based on his record in obtaining grants; that there is no basis in the Contract and the Department RPT Guidelines to use success in obtaining grants in evaluating candidates for tenure. We disagree that the Employer created a new standard for tenure in this regard. Article 15, Section 4ii, of the Contract provides: "In disciplines in which competitive grant and contract support is available, acquisition of

external funding and a record of continuing support may be an indication of recognized research competence and productivity.”

We conclude that a candidate for tenure can be evaluated on efforts made to secure external funding under this contract provision if external funding is available in the candidate’s discipline and the candidate has been provided notice of an expectation to seek such funding. Both conditions have been met here. Such external funding is available in the Engineering discipline in which Campo is engaged. Campo was provided notice in his reappointment review preceding his tenure application that he was expected to seek external funding. Thus, the Employer did not violate the Contract during the tenure application process by citing Campo’s failure to seek external funding.

Grievants further contend that Dean Grasso, in his statement recommending against tenure, created a new criterion not set forth in the Contract and RPT Guidelines by criticizing Campo for publishing papers “with colleagues at other institutions rather than UVM students or UVM colleagues.” It is true that there is no criterion set forth in the Contract and RPT Guidelines requiring tenure candidates to publish papers with UVM students or colleagues.

Nonetheless, this observation by Dean Grasso does not rise to the level of constituting a procedural violation that materially and adversely affected the outcome of Campo’s tenure application. Dean Grasso made this observation in the context of discussing Campo’s failures to make efforts to secure external funding which, as discussed above, was an appropriate subject of evaluation. Also, it is apparent in reviewing Dean Grasso’s statement recommending against Campo’s tenure that Campo’s record in this regard was not determinative in his recommendation. He found Campo

deficient otherwise in research, and also concluded that he was lacking in teaching, advising and service. Further, Dean Grasso was only one of several levels of review of Campo's tenure application. There is no evidence that the other levels of review either held it against Campo for not publishing papers with UVM students and colleagues or were influenced by this observation of Dean Grasso.

Grievants also assert that the Employer ignored the express contractual requirement to give weight to the recommendations of external evaluators in evaluating Campo for tenure. Grievants have not demonstrated that the Employer violated the requirements of the Contract concerning soliciting evaluations from external evaluators. Article 15, Section 4ii, of the Contract requires the tenure candidate's department to solicit evaluations from acknowledged scholars and practitioners in the tenure candidate's discipline to assess the candidate's scholarly work. Campo's department solicited and obtained evaluations from outside evaluators on his scholarly work in compliance with this provision, and such evaluations were considered during the tenure review process. We cannot conclude that any procedural violation of the Contract occurred given these circumstances.

In sum, Grievants have not demonstrated that the Employer violated the Contract by engaging in procedural errors with respect to the research and scholarship criteria for tenure that materially and adversely affected the outcome of Professor Campo's application for tenure. Grievants also contend that the Employer committed such procedural errors in evaluating Campo's teaching and advising record and his service record.

Grievants cite the Employer's failure to follow Department RPT Guidelines and obtain an evaluation of Campo's advising duties and performance from the University Office of Student Service as a procedural error in evaluating Campo's teaching and advising record. We agree that the Employer failed to adhere to Department RPT Guidelines requiring the obtaining of such an evaluation. However, such failure did not rise to the level of constituting a contractual violation. Grievants need to demonstrate that such procedural violation materially and adversely affected the outcome of Campo's tenure application. Grievants have not demonstrated that the Employer's failure in this regard had any effect on the decision to deny tenure to Campo.

Grievants further assert that the Employer improperly imposed a standard for tenure not contained in the Contract and the Department RPT Guidelines by making mentoring of graduate students a requirement for tenure. We disagree that the Employer created a new standard for tenure in this regard. Article 15, Section 4i, of the Contract provides that "(i)nterest and skill in the general guidance and academic advising of students will be an important consideration for . . . tenure."

The Contract does not provide specifically the levels of students to which these advising responsibilities apply, but it would be reasonable for the Employer to interpret this provision to apply to both undergraduate and graduate students. Accordingly, the Employer acted consistent with the Contract by establishing expectations for Campo with respect to advising graduate students and then considering his performance in this regard when evaluating him for tenure.

Grievants also contend that the Employer committed a procedural error by ignoring the contractual standard for tenure set forth in Article 15, Section 4i, that one of

the measures to evaluate the quality of teaching and advising is “publications by the candidate on the teaching of his/her discipline in respected journals”. The evidence does not support a conclusion that the Employer ignored this contractual standard.

The Department Chairperson, in his evaluation of Campo’s tenure application, stated that “Dr. Campo deserves recognition and praise for his work on engineering education” and cited a laudatory review of Campo’s record in this regard by an external evaluator. This indicates that the contractual standard on publications by the tenure candidate on the teaching of the candidate’s discipline was followed in Campo’s tenure review. Although this standard was not explicitly addressed in the written recommendations in further stages of tenure review, this does not mean it was not considered. There is no contractual requirement for such detailed written recommendations, and we will not impose one.

Grievants further fault the procedure of the Employer in evaluating Campo’s teaching record due to the Faculty Standards Committee of the College of Engineering and Mathematics stating that “Dr. Campo’s record on teaching is mixed at best, unacceptable at worst”. This allegation by Grievants requests in essence that we engage in a substantive review of the merits of a decision rather than ensuring defined procedures are followed. Grievants have pointed to no violation of a Contract provision, or violation of a rule or regulation, relating to faculty review procedures, and thus we have no basis to conclude that this statement of the Faculty Standards Committee constituted a procedural violation.

Grievants finally allege procedural error by the Employer in the procedure followed to evaluate Campo’s service record by evaluating only Campo’s service to the

UVM community and ignoring his service to his professional discipline. The evidence does not support a conclusion that the Employer improperly narrowed its review of Campo's service record.

The Department Chairperson explicitly addressed Campo's service to his professional discipline in his evaluation of Campo's tenure application. He stated: "Dr. Campo's professional service, both prior to coming to UVM and while at UVM seems to be strong." Again, although Campo's service to his professional discipline was not explicitly addressed in the written recommendations in further stages of tenure review, this does not mean it was not considered.

We next consider Grievants' contention that the Provost's decision denying Campo's application for tenure was arbitrary and capricious in violation of Article 15, Section 10(d), of the Contract. 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).

Grievants assert that the procedural violations and irregularities that they alleged so infected the processing of Campo's tenure application as to render the decision to deny him tenure arbitrary and capricious. As discussed above in detail, Grievants have not demonstrated that the Employer violated the Contract by engaging in procedural errors that materially and adversely affected the outcome of Professor Campo's application for

tenure. Accordingly, we conclude that procedural errors cannot form the basis for a conclusion that the decision to deny Campo tenure was arbitrary and capricious.

Grievants also contend that it was arbitrary and capricious for the Employer to conclude that Campo's scholarship record did not meet the requirement for tenure in the face of Campo's prodigious scholarly productivity and favorable assessments from external evaluators. The bulk of Grievants' criticism in this regard is directed at statements made and conclusions reached by Dean Grasso.

Dean Grasso's assessment of Campo's scholarship was markedly different than other reviewers during the tenure review process. As Provost John Hughes noted in his memorandum responding to the recommendations of the faculty hearing panel during the grievance process: "Dean Grasso reached a different conclusion regarding Dr. Campo's research than did other deliberative bodies reviewing his case for continuing tenure". Dean Grasso viewed Campo's scholarship in a more negative light than reviewers at other stages of the review process, and it is reasonable to question the balanced nature of the Dean's assessment.

Dean Grasso's conclusions, however, do not result in the ultimate decision to deny tenure being arbitrary and capricious. He constituted just one of several levels of review. The evidence does not indicate that other reviewing persons and bodies departed from applicable standards and criteria in their assessments of Campo's scholarly record. The evidence also does not indicate that they were improperly influenced by the Dean's conclusions.

Further, all levels of review reached the same determination that Campo did not meet the requirements for tenure of having achieved excellent intellectual attainment in

each of the areas of teaching and advising, scholarship and service. These conclusions did not result from improper reliance on procedural violations, or constitute a capricious or unprincipled determination that departed from the established criteria. Grievants have not met their difficult burden of demonstrating by a preponderance of the evidence that the tenure denial decision was arbitrary and capricious.

Article 12, Section 6, of the Contract provides: “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.” Absent Grievants demonstrating a violation of the Contract, the decision on Campo’s application for tenure constituted a permissible exercise of judgment by the Employer. Thus, we deny this grievance.

/s/ Richard W. Park

Richard W. Park, Acting Chairperson

/s/ Leonard J. Berliner

Leonard J. Berliner

CONCURRING OPINION

Grievant's contention that it was arbitrary and capricious for the Employer to conclude that Campo's scholarship record failed to meet the requirement for tenure is largely directed at statements made and conclusions reached by Dean Grasso. A review of evaluations of Campo's scholarship record highlights why the focus was directed at Dean Grasso.

Both during his reappointment process in 2004, and in this tenure process, Campo's scholarly achievements were recognized as exceptional. The majority opinion summarizes the views of the external evaluators during the tenure process, who uniformly rated Campo highly with respect to his scholarship. Internally, the Chair of Campo's Department, citing with approval one of the external evaluators, noted that "Dr. Campo's productivity in research . . . is exceptional. His papers have appeared in the most highly respected journals . . . and the output... is indeed exemplary." The Faculty Standards Committee of the College concluded: "By almost all measures Dr. Campo is, as one faculty commented, a 'publishing phenomenon'. . . He had a good mix of publications . . . We all agreed that he is a brilliant scholar."

On the other hand, Dean Grasso's findings and conclusions on Campo's scholarship stand in stark contrast to all other reviewers involved in the process. Grasso finds that "...there is no objective or significant evidence that his scholarship can be considered substantial or of high quality. I find that Dr. Campo's research is not substantial or noteworthy. Although he has published many papers, they appear to be of little significance or import."

The majority notes that, while it is reasonable to question the balanced nature of Dean Grasso's assessment, his conclusions do not result in the ultimate decision to deny tenure being arbitrary and capricious. It is true, as the majority states, that there are several levels of review, and that there is no evidence that other reviewers departed from appropriate standards, or were improperly influenced by the Dean's decision. Nevertheless, the opinion and recommendation of the faculty member's Dean must be viewed as significant in the overall tenure application process. It is, at best, a difficult burden to show what impact the Dean's departure from the standards for scholarship excellence might have had in the overall evaluations and determinations made in this case.

In the end, however, it is the final decision to grant tenure that is subject to the arbitrary and capricious standard. I concur with the majority that the ultimate decision to deny Campo tenure was not arbitrary and capricious. The contractual provisions are clear that a grant of tenure requires a finding of excellent intellectual attainment in each of the areas of scholarship, teaching and advising, and service. There was, at best, mixed evidence with respect to the latter two criteria. Given the broad discretion granted to the University with respect to tenure decisions, I concur with the majority that the decision denying tenure in this case did not constitute a capricious, unprincipled determination departing from the established criteria.

/s/ James J. Dunn
James J. Dunn

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 Antonio Campo is dismissed.

Dated this 27th day of September, 2007, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park
Richard W. Park, Acting Chairperson

/s/ Leonard J. Berliner
Leonard J. Berliner

/s/ James J. Dunn
James J. Dunn