VERMONT LABOR RELATIONS BOARD

GRIEVANCE OF:	)	
	)	DOCKET NO. 17-27
JOHN SUMMA	)	

FINDINGS OF FACT, OPINION AND ORDER

Statement of Case

On June 20, 2017, University of Vermont Economics Lecturer John Summa ("Grievant") filed a grievance with the Vermont Labor Relations Board contesting the decision of the University of Vermont ("Employer") to not reappoint him. Grievant contends that the Dean of the College of Arts and Sciences violated Articles 6.2, 14.4, 14,5.e.i, 14.13.a 14.13.c, and 14.13.d of the collective bargaining agreement between the University of Vermont and United Academics for the full-time faculty bargaining unit effective December 12, 2014 – June 30, 2017 ("Contract").by: 1) singularly relying on flawed peer evaluations which introduced a procedural defect that tainted the reappointment process, 2) making an arbitrary and capricious decision in not reappointing him, 3) applying a single criterion in lieu of other pieces of available evidence; and 4) denying Grievant's academic freedom rights by failing to fully and fairly evaluate the evidence showing that the motive for the recommendation of the Economics Department Chairperson that he not be reappointed, and the negative peer evaluations he received, was to remove a popular, "thorn in the side" lecturer.

A hearing was held on February 14, 2018, in the Labor Relations Board hearing room in Montpelier before Board Members Richard Park, Chairperson; Alan Willard, and Edward Clark, Jr. Attorneys Ritchie Berger and Kendall Hoescht represented the Employer. Grievant represented himself. The Employer and Grievant filed Proposed Findings of Fact and Memoranda of Law on March 2 and 5, 2018, respectively.

FINDINGS OF FACT

1. The Contract provides in pertinent part as follows:

. . .

ARTICLE 6 – ACADEMIC FREEDOM AND RESPONSIBILITY

6.1
Institutions of higher education operate for the common good to ensure the preservation and advancement of knowledge through its creation and dissemination and not to further the interest of either the individual faculty member or the institution. The common good thus depends upon the free search for truth and its free exposition.

6.2
Academic freedom is essential to these purposes and applies to both research and teaching. Freedom in research is fundamental to the search for truth, and academic freedom, in its teaching aspects, is fundamental for the protection of the rights of the faculty member in teaching and of the student to freedom in learning.

6.3
Academic freedom carries with it the equally demanding concept of academic responsibility. Faculty are expected to carry out their teaching and research responsibilities faithfully, in a manner consistent with the traditions of academic freedom and professional excellence.

6.4
The 1940 AAUP Statement of Principles on Academic Freedom provides:

> . . .
> **b.** Faculty are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject.
> . . .

6.5
. . .
Teaching may occur in any location, real or virtual, in which instruction occurs. In all these different types of classroom locations, the protections of academic freedom shall apply.
. . .

ARTICLE 12 – GRIEVANCE AND ARBITRATION PROCEDURE

. . .
12.8
. . .
STEP FOUR:
. ..

In resolving grievances arising out of this Agreement, the VLRB shall have no power to add to, subtract from, modify, amend 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 14 – APPOINTMENTS AND EVALUATION OF FACULTY

. . .

14.4

Department or School Reappointment, Promotion and Tenure (RPT) and Annual Performance Review Guidelines

. . . In addition to the criteria and procedures specified in this Article, all academic departments and all academic units with responsibility for making the first recommendation in RPT cases are required to prepare RPT and Annual Performance Review Guidelines that elaborate on these criteria, standards and procedures. . .

. . .

Committees and administrators making RPT decisions cannot augment or supplant the criteria for RPT in the Agreement or departmental guidelines. Departmental 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 or added to. Decisions must be made on the basis of the approved criteria.

. . .

14.5.e.i

Effectiveness in teaching is an essential criterion for reappointment . . . The prime indicators of effective teaching include, but are not limited to:

- intellectual competence, integrity and independence.
- evidence of knowledge of the field.
- evidence of a willingness to consider suggestions that emerge from peer review of one's teaching.
- evidence of the ability to work with other faculty members in designing and delivering a curriculum that fosters student learning.
- evidence of the ability to present course materials clearly and effectively.
- evidence of the capacity to structure the course and its assignments in ways that promote student learning.
- evidence of the employment of strategies to assess students' learning and adjust one's teaching in light of the findings of those assessments.
- Evidence of an ability to stimulate students' intellectual interest and enthusiasm.

Any additional criteria specified in college, school, unit and department guidelines shall supplement the above list.

. . .

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

(a) Assessments by members of the candidate's department and Department Chair or equivalent, particularly if based on examination of course materials, team teaching experiences, observations of the candidate's teaching through class visitations, attendance at lectures given by the candidate or on the results of the candidate's teaching in courses prerequisite to those of other department members.
(b) Evaluations of teaching or advising by students, appropriately documented and interpreted, for example through the use of student course evaluations, advising questionnaires, post-graduate surveys, etc.
(c) Development by the candidate of new and effective techniques of instruction or assessment and instructional materials, including textbooks, particularly when evidenced by acceptance at other colleges or universities. This may include the development and assessment of web-based courses and the effective transfer of current courses to a web-based format.
(d) Publication by the candidate on the teaching of his or her discipline in respected journals.
(e) Recognition and awards for distinguished teaching.
(f) Evaluations from service-learning partners.
(g) Evaluation of teaching by a co-instructor.
(h) Documentation of the utilization of active learning pedagogy by faculty professional development and instructional design staff such as are employed by UVM's Center for Teaching and Learning, Writing in the Disciplines Program, Community-University Partnerships and Service-Learning(CUPS), the Access Office, and the Residential Leaning Communities.

. . .

14.10

Appointments and Evaluations – Non-Tenure Track Faculty

a. Matters Involving Reappointment and Promotion

i. Reappointment Review (Pink Sheet Review)

A non-tenure track faculty member who is eligible for reappointment consideration shall be reviewed for reappointment prior to the expiration of his or her appointment according to the notice periods outlined in Section 11 of this Article. Reappointment reviews shall be completed by the Department Chair/Dean's designee. Procedures described in approved unit guidelines for non-tenure track faculty shall apply to those faculty members being reviewed for reappointment.

ii. Formal Peer Review (Blue Sheet Review)

Notwithstanding the above, Lecturers . . . must have at least one formal peer review through the level of the College/School/Unit every four (4) years. . .

Procedures described in approved unit guidelines for non-tenure track faculty shall apply to faculty undergoing a formal peer review. Such approved guidelines shall describe the level of input to be provided by department/unit faculty and Faculty Standards Committee during the formal peer review. In the absence of relevant language within approved unit guidelines the voting procedures described in Section 5.f.ii shall apply.

iii. Promotion Review (Green Sheet Review)

In the year in which a non-tenure track faculty member applies for promotion, a formal review shall take place at the department, college/school/unit and University level following the procedures outlined in Section 5.f of this Article . . .

A review of the promotion dossier for reappointment of the candidate will simultaneously occur and take place at the departmental and College/School/Unit level. If a negative reappointment decision is made, the promotion process will terminate at the College/School/Unit level.

b. Lecturer . . .. A Lecturer will initially be appointed for a term of one year and may be appointed in the University's sole discretion for an additional term of one year. However, in the Dean's discretion, a Lecturer may be appointed for an initial term of two (2) years. At the conclusion of two (2) years of consecutive service at the University as a bargaining unit Lecturer, . . . if the University in its discretion decides to reappoint the Lecturer, the University will appoint the Lecturer to a term contract of two (2) years. Any further Lecturer appointments shall also be for two (2) years with a formal review by the College/School/Unit in the fourth year.
A decision not to offer another appointment to a Lecturer shall not be grievable except as otherwise provided in Section 13 of this Article.
. . .
Evaluation Criteria – Lecturers

i. Lecturers shall be evaluated on the basis of their teaching, advising, service and research related to teaching . . . commensurate with their assignment distribution towards such endeavors, as set forth in the Annual Workload Plan. Such criteria may be elaborated upon in unit RPT and Annual Performance Guidelines.
. . .

14.11 Notice of Non-Reappointment . . .

a. Notice of non-reappointment . . .shall be provided in writing to the faculty member.
. . .
c. Lecturers . . .
. . .

iv. Notice of non-reappointments of a Lecturer with more than two (2) years of service shall be no later than March 1 of the year in which the appointment is ending.

. . .

14.13

A decision not to reappoint a Lecturer with less than four (4) years of service as a Lecturer in the bargaining unit shall not be grievable. Lecturers with at least four (4) years of service as a Lecturer in the bargaining unit . . . shall not have the right to grieve any of the individual recommendations in the process but instead shall only have the right to grieve the final action of the Provost . . . and only on the following alleged grounds:

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

(UVM Exhibit 55)

2. The "Economics Department Guidelines for Annual Evaluation, Reappointment and Promotion of Non Tenure-Track Faculty", adopted April 22, 2003, provide in pertinent part as follows:

Lecturers

Assigned Duties

- Teaching
- Availability to students for consultation on course-related issues
- Lecturers are not assigned formal advising duties

Annual Evaluation

Generally high-quality teaching, evidence of which *may* include:

- Student evaluations
- Peer observations
- Evaluation of teaching materials
- Publications, presentations and/or attendance at conferences demonstrating that the lecturer is remaining current on pedagogical trends in the field, and on the relevant research developments in the field.

Reappointment Reviews

Generally high-quality teaching, evidence of which *must* include:

- Efforts to address deficiencies identified in the annual evaluation process, if any
- Student evaluations
- Peer observations

- Evaluation of teaching materials
- Evidence demonstrating that the lecturer is remaining current on pedagogical trends in the field and on the relevant research developments in the field, such as evidence from course syllabi and/or class observations. Other appropriate evidence may be used, such as publications, presentations, and/or attendance at conferences. (UVM Exhibit 23)

3. Grievant was appointed to the position of Lecturer in the University of Vermont Department of Economics in 2009. He was reappointed in 2010 under a one-year contract. In 2011, he was reappointed for two years (UVM Exhibits 1, 2, 3).

4. There are two types of review processes in the Department of Economics: annual performance evaluations and reappointment reviews. Lecturers in the Department of Economics receive their annual performance evaluations each spring. These are less formal reviews and they are largely based on student course evaluation scores. Lecturers also undergo reappointment reviews every four years. These are more detailed and formal reviews, and they include peer evaluations of the Lecturer's teaching.

5. There are several steps during the formal reappointment review process in the Department of Economics. The Department Chair organizes class visits by tenured and tenure-track faculty members. These peer reviewers attend classes and observe and evaluate the teaching of the person under review. They each prepare a written summary of his or her observations of the class with the focus on the quality and effectiveness of the teaching. These peer evaluations become part of the reappointment review record. No set number of peer reviews is required at the University. In the Department of Economics, peer reviews are not a required part of faculty members' annual evaluations and they are not routinely conducted then. The Department always conducts peer reviews in the year of a formal reappointment review.

6. Another step in the reappointment review process is that a dossier for the reappointment process is prepared which has several components. The faculty member under

review prepares a self-summary on a form provided by the Dean's office, and also may submit documents to be included in the dossier that he or she thinks supports the request for reappointment. The Economics Department Chair is responsible for filling out portions of the form and providing the quantitative student course evaluation data. At the end of each semester, students in economics courses are asked to answer questions about the course and instruction on a 1 through 5 scale. A summary of the numeric responses is prepared, and the Chair includes the results with the forms.

7. Once the dossier is complete, it is available to all voting faculty members in the Economics Department for review. After reviewing the dossier, the faculty members meet, discuss their views on the faculty member subject to the reappointment review, and vote on whether to recommend reappointment. The Chair summarizes the faculty discussion and vote, and then makes her recommendation to the Dean of the College of Arts and Sciences.

8. After the Department vote, the faculty member under review is provided with the full dossier, including the written peer evaluations, and has the opportunity to submit a written reubuttal. Next, the College of Arts and Sciences Faculty Standards Committee reviews the written record, including any rebuttal, and the Chair's recommendation. The Faculty Standards Committee is an advisory committee to the Dean on matters concerning faculty reappointment, tenure and promotion. The Committee votes as to its own recommendation concerning the review and prepares a summary for consideration by the Dean. Then, the Dean reviews the record, including the recommendations, and makes the final decision concerning reappointment.

9. Grievant underwent a formal reappointment review in his fourth year of teaching, the 2012-2013 academic year. Three Economics Department professors, including Chair Sara Solnick, attended Grievant's classes to evaluate his teaching effectiveness. The peer evaluators

noted some areas of concern in their summaries of the class observations (UVM Exhibit 8, 9 and 10).

10. In the Blue Sheet Form completed for the 4th year review of Grievant, the Chair's Evaluation section of the form contained the following statement by Chair Solnick with respect to peer observations of courses taught by Grievant: "(F)aculty visitors to his courses this fall noted areas in need of improvement. The faculty believes he needs to direct his efforts to planning his courses and planning lessons within those courses so that students are better guided to understand the models, concepts and techniques of our discipline." Chair Solnick's Summary Statement of Performance stated:

> At the end of his fourth year at UVM, Summa is contributing well-received courses at the introductory, intermediate and advanced levels, including two that he created . . . Student evaluations for Summa's courses are generally positive and meet department expectations. Overall, students appreciated Summa's enthusiasm for the subject and his willingness to help them. Faculty have also noted Summa's good rapport with his classes and his strong commitment to students. He has devoted much time and energy to improving his courses, and he welcomed the feedback from senior faculty that accompanied this review, as faculty visitors to his courses this fall noted areas for improvement.
>
> We are pleased to have an instructor who has excellent credentials and a strong commitment to the department. Summa has eagerly agreed to work with the Center for Teaching and Learning, to visit classes taught by highly regarded colleagues and to invite senior faculty to observe more of his classes, all towards the goal of improving his teaching. He has already begun the process of rethinking how to present complex material in a manner that engages students and helps them make sense of it. The Economics faculty agree that Summa meets the standard for reappointment established in our guidelines. We expect that Summa should continue to receive solid student evaluation scores and he should work to revise his teaching style so that peer observations are generally positive.
> (UVM Exhibit 6).

11. The tenured and tenure-track faculty in the Economics Department met on January 23, 2013, to discuss whether Grievant should be reappointed and voted 6 to 2 to

recommend his reappointment. Chair Solnick stated as follows in the Summary of Recommendations on the Blue Sheet Form:

> Faculty were concerned about the issues observed in the peer visits. However, all acknowledged that Summa's student evaluations are good, the peer evaluations were based on only three class sessions and he has demonstrated strong commitment to students, and the majority agreed that he should be given the opportunity to improve. The Chair concurs fully with the majority opinion (UVM Exhibit 6).

12. The Faculty Standards Committee voted 5 – 0 in favor of reappointment. In its Comments on the reappointment, the Committee stated that it "recommends that Dr. Summa confer with his department chair to work out a plan for improving his teaching in the noted areas of concern before his next reappointment. Dean Antonio Cepeda-Benito of the College of Arts and Sciences concurred in Grievant's reappointment, stating: "Although there have been some issues with his teaching, he meets departmental expectations. Further, he seems very willing to teach a wide array of courses and thus makes an important contribution to the college's offerings. I encourage him to continue to work with the Center for Teaching and Learning to find a way to present difficult concepts more effectively. I shall be looking for evidence of improvement in this respect in his next review" (UVM Exhibit 7).

13. Dean Cepeda-Benito informed Grievant on February 27, 2013, that his reappointment was approved. Grievant received a two-year contract for reappointment after the reappointment review. Two years later, Grievant received another two-year reappointment contract (UVM Exhibits 4, 5).

14. Following the feedback Grievant received from faculty who had observed his Fall 2012 classes during the reappointment review process, Grievant informed Chair Solnick that he believed he would benefit from observing classes of, and consulting with, senior Department faculty who teach effectively. Grievant also indicated to Solnick that he thought he would benefit

from another round of visits to his classes from Solnick and other faculty. Solnick informed Grievant that she thought faculty would be happy to speak with him about teaching and that the best way to do that was on an ad hoc basis. Solnick said more visits by faculty to Grievant's classes could be arranged but that the purpose of such visits had to be clear (Grievant's Exhibit 20).

15. Chair Solnick observed one of Grievant's classes in February 2013. There were no other occasions between Grievant's 4th year review in 2012-2013 and his reappointment and promotion review four years later that another professor observed and evaluated Grievant's classes. Grievant did not ask Chair Solnick or other Economics Department professors to observe any of his other classes during this four-year period. Grievant did not ask other professors if he could attend their classes to learn by observing.

16. The March 31, 2015, edition of *The Vermont Cynic*, the student-run newspaper at UVM, contained an article on Economics Department courses. Grievant informed the reporter for the article: "Our department is exceptional in that we have complete autonomy and trust in what we say and teach" (UVM Exhibit 11).

17. The Economics Department has been open to alternative points of views on economics among its faculty members at all times relevant. There has not been an ideological or political litmus test in the Department. There is a broad range of preferred schools of economic thought and methodologies.

18. On August 29, 2016, Chair Solnick informed Grievant that she was having trouble finding faculty to teach two courses in the Spring of 2017. She asked Grievant to let her know if he was interested in teaching an extra course. Grievant proposed teaching a seminar on topics in

political economy, Chair Solnick approved his request, and Grievant designed and taught that course in the spring of 2017 (UVM Exhibits 13, 15).

19. The review of Grievant for reappointment and promotion to the rank of Senior Lecturer occurred during the Fall 2016 semester. The process was referred to as a "green sheet" review because Grievant sought both reappointment and promotion. The general procedures for the green sheet review were essentially the same as the 2012 "blue sheet" review (UVM Exhibit 24).

20. During the Fall 2016 semester, Grievant taught three classes: 1) International Economics I, EC 143, a class concerning the fundamentals of international trade theory; 2) Economics Methods, EC 170, a statistics course; and 3) Global Financial Crisis, EC 220, a seminar.

21. Each of these classes was visited three times on three different days by different professors for a total of nine peer reviews. Chair Solnick was the only reviewer who visited more than one class; she visited a class in each of the three courses. The reviewers and dates of reviews were coordinated with Grievant in advance.

22. The first review was by Professor Richard Sicotte. He visited EC 170, Economics Methods, on September 7, 2016. He concluded that Grievant "gave a very good class" that engaged students and was well-received by them. He viewed Grievant as well-organized, in command of the material, and answering students' questions well (UVM Exhibit 27).

23. Professor Catalina Vizcarra observed Grievant's Global Financial Crisis class, EC 220, on September 7, 2016. She found it productive that Grievant provided detailed feedback to students on drafts of research papers. She found it unusual in a seminar class that Grievant relied heavily on non-academic papers. She questioned Grievant leaving the discussion of theoretical

perspectives to the end of the semester, and she wondered whether presenting this section earlier would be more helpful to students (UVM Exhibit 28).

24. Chair Solnick visited Grievant's EC 220 class on September 9, 2016. She recognized that Grievant had put a lot of work into helping students read assigned articles productively and that students were well-prepared. However, she was critical of Grievant in that the class session did not build on the work that students had done, but merely put them in the position to prove whether they had done it. She concluded that Grievant did not go a good job in fostering student discussion in the class (UVM Exhibit 29).

25. Professor Emily Bean visited Grievant's Economics Methods class, EC 170, on September 12, 2016. She complimented Grievant for bringing in interesting real-world examples as a teaching aid, demonstrating a strong command of the material, and exercising excellent time management. She was critical of Grievant for spending too much time summarizing what they were going to cover in class, and too little time explaining difficult examples and introducing important ideas. She also thought Grievant could improve student interaction (UVM Exhibit 30).

26. Professor Marc Law conducted a classroom observation of Grievant's EC 220 class on September 14, 2016. He expressed reservations about the pedagogical value of the class because all students in a classroom exercise that day argued the same side of an issue on a legal case, the assignment of questions to the student teams was skewed, and the courtroom format was not conducive to effectively communicating the underlying economics behind the subprime crisis and the global financial crisis (UVM Exhibit 31).

27. Professor Donna Ramirez-Harrington observed Grievant's class on International Economics, EC 143, on September 16, 2016. She expressed several concerns on Grievant's teaching effectiveness: using the wrong teaching tools to deliver materials to the students,

presenting graphs to the students instead of drawing the graphs with them, using slides with long texts making it hard for the students to digest materials. She also had various suggestions on improving the content of the information which Grievant provided to students (UVM Exhibit 32).

28. Professor Stephanie Seguino visited Grievant's EC 143 class on September 21, 2016. She observed that students were not talkative in the class, and she offered suggestions on increasing student engagement (UVM Exhibit 36).

29. Solnick observed Grievant's class in Economics Methods, EC 170, on September 21, 2016. She indicated that the course was well-organized, but she concluded that Grievant presented the material at a rapid rate and students were not connecting with it. She expressed the view that it would be more effective if Grievant provided more hands-on work to the students during class (UVM Exhibit 37).

30. Solnick made the final class visit to Grievant's International Economics class, EC 143, on September 23, 2016. She identified several problems including a substantive error, a provocative statement by Grievant without follow up discussion, use of static graphs rather than a more dynamic presentation, and a lack of student engagement (UVM Exhibit 38).

31. In the Green Sheet Form completed for the review of Grievant for promotion to Senior Lecturer and reappointment, Grievant submitted a summary of his accomplishments. He did not mention any outreach he had made to UVM's Center for Teaching and Learning. The Chair's Evaluation section of the form completed by Chair Solnick with respect to student evaluation scores indicated that the scores were within the desired range. She summarized the peer observations of courses taught by Grievant, and then stated that the peer observations "this

semester reveal a number of serious concerns". One of the concerns highlighted by Solnick was a lack of student engagement. In this regard, she stated:

> . . . Summa skipped or gave scant time to key definitions and concepts before moving to a critique of the standard model. . . We appreciate that Summa includes critiques of the standard neoclassical model in his teaching. Faculty in our department often strive to emphasize where the standard model falls short as well as where it is successful in reflecting and predicting behavior. However, the model must be presented fully and fairly before its limitations are examined. Rather than presenting the merits and weaknesses of both the standard neoclassical model and the alternative model and guide the students to think critically, he made provocative assertions that were not questioned or discussed. There was very little interaction as Summa advanced quickly through the complex slides . . .Overall, Summa did not give adequate time and attention to explaining the economic models.
> (UVM Exhibit 24).

32. The tenured and tenure-track faculty in the Economics Department met on October 14, 2016, to discuss, and vote on, whether Grievant should be promoted and reappointed. Chair Solnick stated as follows on the Green Sheet Form with respect to the Department review:

> . . . A Senior Lecturer must display "consistent high-quality" teaching, and the faculty agreed that Summa's teaching did not meet this standard. There were zero votes in favor and eleven votes against promotions, with no abstentions.
>
> Turning to the issue of reappointment, the faculty discussed whether deficiencies that had been identified previously had been addressed. In the prior review, the department had stated that Summa should revise his teaching "so that students are better guided to understand the models, concepts and techniques of our discipline . . . (and) peer observations are generally positive," and both the Faculty Standards Committee and the Dean echoed this expectation. Faculty members commented that some of the problems mentioned in the peer observations had been identified in the peer observations that took place at the earlier reappointment. The faculty concluded that the classes did not adequately explain or include economic models and essential concepts, and in some cases inaccurate information was given, and the expectation of resolving prior problems had not been met. The standard for reappointment is "generally high-quality" teaching, and faculty agreed that because serious concerns regarding the content, clarity, and effectiveness were presented for all of the classes that were offered this semester, that standard had not been met. One person who was in favor of reappointment stated that the teaching was currently not effective and that extensive improvements would have to be undertaken. There was one vote in favor and ten votes against reappointment, with no abstentions. . . . (UVM Exhibit 24).

33. Chair Solnick concurred with the faculty vote and thus recommended against Grievant's reappointment and promotion. Solnick informed Grievant of the recommendation on October 17, 2016. Grievant submitted a written rebuttal to the recommendation to the Dean of the College of Arts and Sciences on October 31, 2016 (UVM Exhibits 24, 43, 44).

34. The Faculty Standards Committee reviewed the dossier and supporting materials, the green sheets, and Grievant's rebuttal. They met to discuss Grievant's reappointment and promotion. They prepared written comments for the Dean which summarized information in the case and stated in part:

> The FSC raises a concern with the process used by the Department of Economics to evaluate Dr. Summa. There have been no reported peer reviews of Dr. Summa's teaching between 2013, when his reappointment was approved with cautionary language attached, and September 2016, less than a month before Dr. Summa's reappointment and promotion paperwork was due. If the Department had concerns based upon faculty evaluations in 2013, why were there no periodic follow-up peer observations? Peer observations are part of the annual evaluation criteria for lecturers. Although the FSC does not disagree with the peer reviews from September 2016, the FSC raises a concern about the absence of review between 2013 and 2016.
>
> This is a difficult reappointment and tenure case. Some of the department criteria for reappointment and promotion (such as demonstrating currency in pedagogical trends in the field) appear to be satisfied. The recent improvement in student course evaluations appears to provide support that Dr. Summa has worked to improve on aspects of his teaching that were highlighted as problematic at his previous reappointment. However, these measures define satisfactory or adequate teaching relative to the departmental norms, but do not show exemplary or outstanding teaching that would be expected of "high quality teaching." The peer reviews from his colleagues highlight continued concerns with his teaching approach, presentation, and engagement, even when separating the reviews conducted by his chair from the remainder. . .
>
> In conclusion, the FSC does not believe that Dr. Summa has demonstrated that he has met the standard of "consistently high quality teaching" to warrant promotion to senior lecturer at this time. However, the FSC also concludes that Dr. Summa has demonstrated that he has met the standard for reappointment based on his record of teaching a wide range of courses, including developing curricula for the Honors College, and from the satisfactory student evaluation scores he has received. Although the FSC recognizes the concerns raised in the September 2016 peer evaluations, these concerns have to be discounted because there appears to have been no attempt by the department to perform

> any periodic peer review during the current appointment period until the very end. Therefore, the FSC voted 5 in favor, 0 opposed for reappointment as Lecturer; and 0 in favor, 5 opposed for promotion to Senior Lecturer.
> (UVM Exhibit 45)

35. Dean William Falls of the College of Arts and Sciences then provided his written comments and decision. He stated that "Dr. Summa continues to make valuable contributions in the array of courses he offers and in the development of new courses." He further indicated that Grievant's "student course evaluations remain at or near to department averages", which reflects a "high standard of comparison" because the Economics Department is a "very good teaching department". The Dean noted that all but one of the evaluations carried out in the fall of 2016 "suggested need for improvement in areas including lecture content, approach, organization, delivery, or level of student engagement". Dean Falls went on to state:

> Thus, the peer evaluations continue to raise significant concern about Dr. Summa's teaching. In the 2013 review, the chair noted that Dr. Summa was eager to work with his colleagues and with the Center for Teaching and Learning (CTL) to improve his teaching. The Dean encouraged Dr. Summa to work with the CTL to improve his teaching, and stated that he would "be looking for evidence of improvement in this respect in his next review."
>
> Based on Dr. Summa's current self-evaluation, it appears that he has not taken advantage of the resources available through CTL to improve his teaching, nor has he presented evidence of seeking advice and support from his colleagues. CTL is an invaluable resource for professional development, and as the chair notes, the Economics Department has many senior faculty who are strong teachers. The fact that Dr. Summa has not sought out these resources suggests a lack of engagement or an unwillingness to improve his teaching. In fact, many of the statements in his rebuttal . . . suggest a self-satisfied view of his teaching style and an unwillingness to embrace criticism. . . I see no evidence that Dr. Summa has sought to improve his teaching by professional development, thoughtful engagement with colleagues, or significant course revision. Thus, I am electing to not reappoint Dr. Summa. . . .
> (Exhibit 45)

36. After this decision of Dean Falls was conveyed to Grievant, Grievant asked Dean Falls to review some information that was not included in his dossier regarding his efforts to improve his teaching. Dean Falls agreed to do so. Grievant informed the Dean that he had taken

the following CTL courses/modules following his initial reappointment review: 1) Building the Gaps I: Creating More Inclusive Teaching Environments, 2) Bridging the Gaps II: Creating More Inclusive Teaching Environments, 3) Practices for Engaging Students, 4) 2013 Summer Bridge Program Workshop for Instructors at CTL, and 5) Teaching Effectively Online. He also informed him of several meetings he had with colleagues to discuss improving teaching and pedagogic tactics (UVM Exhibit 49).

37. In a February 13, 2017, email, to Grievant, the Dean indicated that he had given the information serious consideration, and he informed Grievant: "While I acknowledge that you consulted on occasion with colleagues and took advantage of some CTL workshops, the fact remains that significant weaknesses in your teaching persisted. Even if I had been aware that you made these efforts, I would have come to this same conclusion" (UVM Exhibit 47).

38. On February 16, 2017, Grievant filed a Step 2 grievance pursuant to the Contract with Dean Falls over the denial of his reappointment (UVM Exhibit 48).

39. On March 9, 2017, Dean Falls issued a written response to the grievance. He rejected Grievant's assertion that the Dean's "singular reliance on flawed peer evaluations introduced a procedural defect" that violated the Contract. The Dean stated: "My decision to not reappoint was based on my overall assessment of your teaching record and was heavily influenced by the deficiencies in your teaching noted in your peer evaluations." He indicated that "I considered the student evaluations, but gave more weight to the peer evaluations, which addressed your teaching deficiencies." The Dean further expressed disagreement with the Faculty Standards Committee's critique of the peer evaluation process used by the Economics Department, stating: "there is no requirement that peer evaluations be carried out with any specific regularity nor is there a prohibition against conducting multiple peer evaluations in a

single semester." Dean Falls further rejected Grievant's assertion that his critique of the standard neoclassical model in and of itself was a concern for Grievant's colleagues. The Dean stated: "In fact, your colleagues praise your willingness to critique the standard model. . . The concern of the faculty focused on how you presented the model and your critique . . . the faculty were not concerned with the fact that you critiqued the standard model as you assert, but that your critique was not presented in the most pedagogically sound way and as a result may have been lost on your students" (UVM Exhibit 50).

40. After receiving the grievance decision of Dean Falls, Grievant filed a Step 3 grievance pursuant to the Contract with Provost David Rosowsky (UVM Exhibit 52).

41. Provost Rosowsky convened an *ad hoc* grievance committee pursuant to the Contract. The Committee was composed of Professor William Bowden, representing the Faculty Senate; Professor Jane Kolodinsky, representing the Provost's Office; and Associate Professor Andrew Barnaby, representing United Academics. After convening several meetings, the Committee found: 1) insufficient evidence to support Grievant's allegation of a procedural violation by Dean Falls, 2) insufficient evidence that the decision of Dean Falls was arbitrary and capricious, and 3) no infringement of Grievant's freedom on academic expression in a way that would have affected the decision of Dean Falls (UVM Exhibit 53).

42. On May 30, 2017, Provost Rosowsky issued his decision on the Step 3 grievance. He concluded that the record did not support Grievant's allegations of material procedural violations, arbitrary and capricious decision-making, or a violation of academic freedom. He thus denied the grievance (UVM Exhibit 54).

OPINION

Grievant contends that the Dean of the College of Arts and Sciences violated Articles 6.2, 14.4, 14.5.e.i, 14.13.a, 14.13.c, and 14.13.d of the Contract.by: 1) his singular reliance on flawed peer evaluations which introduced a procedural defect that tainted the reappointment process, 2) making an arbitrary and capricious decision in not reappointing him, 3) applying a single criterion in lieu of other pieces of available evidence; and 4) denying Grievant's academic freedom rights by failing to fully and fairly evaluate the evidence showing that the motive for the recommendation of the Economics Department Chairperson that he not be reappointed, and the negative peer evaluations he received. was to remove a popular, "thorn in the side" lecturer.

We first address Grievant's allegation that the Employer violated Article 14.13.a of the Contract by committing procedural violations in the review process that materially and adversely affected the outcome of his reappointment case. This protection afforded faculty members under the Contract with respect to Board review of reappointment decisions concerns ensuring defined procedures are followed rather than substantive review of the merits of a decision. Grievance of United Academics, AAUP/AFT and Campo, 29 VLRB 263, 287 (2007). Grievance of United Academics, AAUP/AFT and Branch, 28 VLRB 325, 339 (2006). Grievance of United Academics, AAUP/AFT and Broughton, 27 VLRB 249, 262 (2004). "Procedures" refers 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). Grievant 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 14.13.a of the Contract. Campo, 29 VLRB at 287. Branch, 28 VLRB at 340-41. Grievance of McIsaac, 26 VLRB 1, 81-82 (2003). If standards for reappointment are applied

that differ from standards for reappointment 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.

Grievant specifically asserts in this regard that the Dean's singular reliance on flawed peer evaluations introduced a procedural defect that tainted the reappointment process up to, and including, the Dean's final decision. The evidence does not support a conclusion that the peer evaluations were flawed. Although the Faculty Standards Committee concluded that concerns expressed in the peer evaluations conducted during Grievant's reappointment review should be "discounted because there appears to have been no attempt by the department to perform any periodic peer review during the current appointment period until the very end ", the Committee so concluded based on the incorrect assumption that peer observations are part of the annual evaluation criteria for lecturers.

In fact, the Economics Department Guidelines for Annual Evaluation, Reappointment and Promotion of Non-Tenure Track Faculty clearly state that peer reviews "must" be conducted during reappointment reviews, and they "may" be conducted during annual evaluations. Here, there was no procedural violation when the Economics Department only conducted the peer evaluations during the reappointment review. Grievant has not demonstrated, as is required, that there was a violation of a Contract provision, or violation of a rule or regulation, relating to reappointment review procedures.

Grievant further contends that the Dean's decision was arbitrary and capricious in violation of Article 14.4 and 14.13.d of the Contract by substituting his own singular criterion of Center for Teaching and Learning workshop attendance for the criteria in the Contract and the Economics Department Guidelines. An "arbitrary" decision is one "fixed or arrived at through an

exercise of will or caprice, without consideration or adjustment with references to principles, circumstances or significance". Grievance of Fairchild, 4 VLRB 164, 176 (1981); *Affirmed*, 141 Vt. 362 (1982). Campo, 29 VLRB at 293. 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). Campo, 29 VLRB at 293.

The evidence does not support Grievant's assertion of arbitrary and capricious action in this regard. A review of the written comments of Dean Falls indicates that he considered student evaluations and peer evaluations in concluding that Grievant's teaching had not improved to the level of generally high-quality teaching to warrant reappointment. These measures of effective teaching to support reappointment review are required by the Contract and the Economics Department Guidelines. Thus, Dean Falls did not rely on the "singular criterion" of Center for Teaching and Learning workshop attendance.

Further, the fact that the Dean considered Grievant's apparent lack of taking advantage of the resources offered by the Center for Teaching and Learning in reviewing Grievant for reappointment did not introduce a criterion that was outside the Contract and the Economics Department Guidelines. Article 14.5.e.i of the Contract provides as one of the "measures and methods" to evaluate teaching quality "documentation of the utilization of active learning pedagogy by faculty professional development and instructional design staff such as are employed by UVM's Center for Teaching and Learning". In Grievant's previous reappointment review, the Economics Department Chair noted that Grievant had agreed to work with CTL to improve his teaching, and the then-Dean stated with respect to Grievant's teaching effectiveness: "I encourage him to continue to work with the Center for Teaching and Learning to find a way to present difficult concepts more effectively. I shall be looking for evidence of improvement in

this respect in his next review." Given this notice to Grievant, it was appropriate for Dean Falls to comment on the lack of evidence submitted by Grievant that he had used the resources of CTL.

This evidence belies Grievant's claim that the Dean substituted his own singular criterion of Center for Teaching and Learning workshop attendance for the criteria in the Contract and the Economics Department Guidelines. Grievant has not demonstrated arbitrary and capricious action in this regard.

Grievant also contends that the Dean acted in an arbitrary and capricious manner by changing his stated basis for denying reappointment when presented with evidence that contradicted his evaluation of Grievant's teaching. This does not accurately depict what transpired. In initially denying Grievant's reappointment, the Dean stated: "Based on Dr. Summa's current self-evaluation, it appears that he has not taken advantage of the resources available through CTL (Center for Teaching and Learning) to improve his teaching". This was accurate – Grievant had not indicated in his self-evaluation that he had used the CTL.

After the Dean's decision was conveyed to Grievant, Grievant asked him to review some information that was not included in his dossier regarding actions taken to improve his teaching, which included participating in several CTL courses/modules. The Dean reviewed the information, and then informed Grievant: "While I acknowledge that you consulted on occasion with colleagues and took advantage of some CTL workshops, the fact remains that significant weaknesses in your teaching persisted. Even if I had been aware that you made these efforts, I would have come to this same conclusion." This does not constitute arbitrary and capricious action. The Dean simply considered further information which was not earlier made available to him by Grievant, and then concluded that significant weaknesses in Grievant's teaching persisted

despite the efforts made by Grievant. Adjusting the stated basis for taking action when presented with new information, and considering that information, is far removed from arbitrary and capricious action under these circumstances.

Nonetheless, Grievant contends that the final Dean action was arbitrary and capricious because he ultimately relied on the single criterion of peer evaluations. Grievant contends this violates the Article 14.5.e.i prohibition against relying on a single criterion to evaluate teaching. This is not a fair characterization of the record. The Dean considered the student evaluations, but he gave more weight to the peer evaluations which addressed Grievant's teaching deficiencies. The Contract did not require the Dean to give equal weight to these two measures of teaching effectiveness, and it was not arbitrary and capricious for him to weigh the measures as he did.

Our conclusions on Grievant's assertion of arbitrary and capricious action also serve to answer Grievant's further assertion that the Dean violated Article 14.5.e.i of the Contract because he applied a single criterion in lieu of every other piece of available evidence. As detailed above, the Dean considered many criteria in examining the available evidence before him and deciding to not reappoint Grievant.

Grievant's final contention is that the Dean violated his academic freedom rights pursuant to Article 6.2 and Article 14.13.c of the Contract by failing to fully and fairly evaluate the evidence showing that the motive for the recommendation of the Economics Department Chairperson that he not be reappointed, and the negative peer evaluations he received, was to remove a popular, "thorn in the side" lecturer. Grievant asserts that his use of alternative economic models, in addition to teaching the standard model, was the real reason for not allowing him to continue teaching. Grievant contends that he was not reappointed because of what he taught – i.e., challenging models and critical statements that threaten the status quo

standard model and its associated pro-free market ideology – and that this violates his right to express his opinion in the classroom.

Grievant did not demonstrate that his academic freedom rights were violated. The evidence does not demonstrate that the Economics Department Chairperson and peer evaluators were motivated to remove Grievant because he critiqued the standard economic model and used alternative models. Instead, they were critical of him because he did not explain the model fully to students before critiquing it, thus reducing the ability of students to understand the critique and become engaged. The problem was not that he taught the alternative economic model versus the standard model; it was how he taught. The quality of Grievant's teaching drove his colleague's decision to not recommend him for reappointment, rather than the subject matter of what he taught.

ORDER

Based on the foregoing findings of fact and for the foregoing reasons, it is ordered that the Grievance of John Summa is dismissed.

Dated this 27th day of April 2018, at Montpelier, Vermont.

VERMONT LABOR RELATIONS BOARD

/s/ Richard W. Park

Richard W. Park, Chairperson

/s/ Alan Willard

Alan Willard

/s/ Edward W. Clark, Jr.

Edward W. Clark, Jr.