

CHAIR'S REPORT: SBOE BOARD POLICY REVISION UPDATE
October 16, 2009

As many of you know, the SBOE removed its proposed HR policy revisions from the 10/15/09 meeting agenda. Through various board sources, we learned that the matter was removed because the board felt it was not ready to go forward with it or whether it was even necessary to do so. I was told that it would likely not return to the agenda in the future. As promised, at yesterday's meeting, the issue was not brought up.

However, in various conclaves outside of the regular meeting yesterday, I learned some startling information. Richard Westerberg, one of the board members, met with the chairs of 4-year institution senates and informed us that the board *was* planning to revisit the matter at its December meeting. While no formal announcement was made during the meeting, this was pretty much official confirmation. He explained that the board wanted to clarify the language in the existing policies and to come up with some "tools" for the administrations to use in bad fiscal times *without* a declaration of exigency.

There was talk among the faculty senate chairs that the institutions should respond with a counter-proposal on the policies (that effectively tells the board what we are willing to give up in hard times when the board does not want to declare financial exigency). This is a position that is being advanced by BSU's faculty senate chair, with the encouragement of his president.

Several thoughts come to mind.

1. Some folks have suggested we have the college's counsel advise us on this. I could direct an inquiry to him but remember that he advises the college administration. As these policies concern potential conflicts (acts of the administration that may affect faculty's rights), we may get turned away. We could hire a contract lawyer or higher ed law expert, but they are very expensive (I am still looking). However, we do have the benefit of a legal opinion from the AFT and we know that the AAUP legal office is looking into the matter (see Appendix A and B). With respect to contracts, the AFT opinion tells us that the board (1) can make whatever contracts it wants and (2) if we want to enforce our rights under them, we have to sue. While AAUP has yet to render an opinion, the tenor of its legal counsel's email (Appendix B) is similar to that of the AFT.

2. The AFT and AAUP positions notwithstanding, however, we have to remain united in our efforts to stop the policy changes. We cannot, and should not, try to advance the cause of tenured faculty rights over those of the nontenured faculty or staff. To do so would be an open invitation to the board to assert its power to restore order among the splintered groups. We should not start traveling down that path.

3. We have several legislators on board with us on the issue. Liz Chavez, Tom Trail, and Shirley Ringo, among others, have expressed their discontent with the policies. If the agenda item would have gone before the board yesterday, Rep. Chavez and Rep. Trail would have shown up to speak in opposition to them. I am assured they will continue to work behind the scenes on our behalf.

4. We continue to have the support and encouragement of our administration to voice our opinions on these policies. Dene Thomas and Tony Fernandez have remained, since the beginning of

this fracas, supportive of our efforts to assert our position. I continue to believe that this is an issue personal to each faculty (and staff) member and, while the administration are the "benefactors" of this kind of legislation, they are well cognizant of—indeed, they encourage—our participation in governance. (It is important to remember that we heard at the beginning of all this that there were presidents who wholeheartedly supported the board's revisions. Once the opposition mounted, they "switched sides" and then threatened to come out publicly against the policies.)

So. You are now up to speed.

We have some options. We can hold strong and continue to voice our opposition to the board's imposition of policies that infringe on our contractual rights and give unilateral power to the administrations. (Implicit in this option is a demand that the state board declare financial exigency, but I get the impression they are reluctant to do so as it may affect our bond/credit ratings.) Or, we can join the efforts to come up with concession language to countermand the board's proposal. Or, we can come up with a two-pronged response that combines the first two options. Or, if you think there are others, I invite the discourse!

I will convene a meeting of our Senate cabinet next week sometime to visit about these events and what action we should take, if any. (If you are not yet familiar with the policies, or with the proposed changes, please go to our website and read them. Do all you can to educate yourselves on this issue as it is personal to each of us.)

It is clear that the coming year will bring more cuts (see the most recent news from the governor's office). I believe that the board intends to do whatever it can to shift the burden to the administrations to make all cuts work instead of incurring the "brand" of exigency. At this point, it's not whether cuts will come, but that they will come and how they are to be made may be tempered by the outcome of the policy revision issue.

It is incumbent upon us to be vigilant in our efforts to (1) protect ourselves from any kind of unethical or illegal actions and (2) stay focused on emphasizing shared governance in our institution to ensure our voices are heard. In the meeting yesterday, I spoke briefly as part of LCSC's progress report and made my pitch for shared governance. I reminded the board that we--the faculty--are the "educational engineers" that sustain LCSC's efforts to educate Idaho's workforce (the board's mission). I stated that it is only through our inclusion in the policy- and decision-making processes that we can continue to sustain that mission. I think we need to continue to broach this issue from that standpoint and emphasize our importance in the machinery of higher education.

We will have a discussion about this issue at our October 22 Faculty Association meeting. My apologies for the very short notice and steep learning curve on the issues, but this is coming at us at light speed; nevertheless, we must be prepared to respond. I will do everything I can to keep you posted on our progress on this issue. Please check Faculty Senate website for updates.

Thanks!

APPENDIX 1: AFT LEGAL OPINION

Provided to Nick Gier, President, Higher Education Council, Idaho Federation of Teachers, AFT/AFL-CIO via email, 10/8/09

Nick,

I have reviewed the proposed changes to the Idaho State Board of Education Governing Policies and Procedures §§ II(B), II(G) and II(N).

I concur with your assessment that these are significant changes which concentrate power in the hands of campus executives. The new subsections in section II(B) invest the "chief executive officers" with significant powers to manage personnel. The new subsection (c) in Section II(G) formalizes a procedure (which, I expect was already in place) that faculty who serve pursuant to contracts containing a stated salary are not guaranteed the salary in subsequent contracts. Finally, and perhaps most importantly, the changes to section II(N) formally invests the chief executive officers with the new powers they have pursuant to Section II(B) discussed above.

In my opinion, these changes apply to tenured as well as non-tenured faculty. Your ability to challenge the changes based upon infringement of tenure rights may be limited, however, due to the fact that, while the changes are certainly draconian, they do not appear to limit a tenured faculty member's right to notice and a hearing when being relieved of their position. As you can see from Section II(B)(2)(b), the new language says, "...the chief executive officers shall have the authority to manage [etc]...work hour adjustments (furloughs or unpaid leave) *not tantamount to dismissals.*" The Board retains the right to dismiss individuals and they are obligated to provide notice and a hearing to tenured individuals who are being relieved of their tenure.

I hope this was helpful. If you have any additional questions or require further clarification on any point, please do not hesitate to contact me again.

Samuel J. Lieberman, Senior Associate
Legal Department, American Federation of Teachers, AFT/AFL-CIO

APPENDIX 2: AAUP LEGAL OPINION

Provided to BSU's Faculty Senate Chair in response to an inquiry for a legal opinion on the board's proposed changes.

On Mon, Sep 28, 2009 at 5:53 PM, Robert Kreiser <bkreiser@aaup.org> wrote in response to an inquiry posed by a BSU faculty member:

Thank you for your message, which was forwarded to my desk in the Department of Academic Freedom, Tenure, and Governance.

You have every reason to be horrified. The proposed changes in the university's policies are truly dreadful. Either I or one of my colleagues will be back in touch with you in the next couple of days with specific comments. In the meantime, see Regulations 4c and 4d of our Recommended Institutional Regulations on Academic Freedom and Tenure (<http://www.aaup.org/AAUP/pubsres/policydocs/contents/RIR.htm> <<http://www.aaup.org/AAUP/pubsres/policydocs/contents/RIR.htm>>). See also the "Financial Crisis FAQs" on our Web site at <http://www.aaup.org/aaup/financial/mainpage.htm> <http://www.aaup.org/aaup/financial/mainpage.htm> .

I encourage you and your colleagues at Boise State and at the other public universities covered by these policies to mount a joint effort to resist their adoption. We will do our best to assist you in those efforts.

Best wishes,

Robert Kreiser

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