MEMORANDUM

DATE: October 15, 2009

TO: Sarah Josephson, Attorney for United Academics

Beth Behner, Chief Human Relations Officer, Labor Relations, UA

FROM: Roger Brunner, General Counsel RB

RE: Step 4 Response; Professor Richard Steiner Grievances

Introduction

I was appointed by the President as his designee to decide the above listed Step 4 grievances against the university pursuant to Article 7.2.4 of the collective bargaining agreement (CBA) between the University and United Academics. The parties agreed, at the request of Professor Steiner, to waive the meeting on these grievances and instead to submit briefs with exhibits and to have the matter decided on the briefs.

Issues

The grievance is actually a combined Step 4 appeal of two grievances. The first grievance was filed on March 6, 2009, and was based on Professor Richard Steiner's 3rd Year Review, copies of emails received by Professor Steiner on January 30, 2009, Professor Steiner's Sea Grant funding, and a teleconference on February 12, 2009. The second grievance was filed on May 1, 2009, and was based on the decision to relocate Professor Steiner's office from the Cooperative Extension Service to the Marine Advisory Program. United Academics contends that the University violated the CBA Articles 2 and 6.1 on academic freedom, Regent's Policy 01.02.010

on free speech, Regent's Policy P04.08.010 on fairness, Regent's Policy 04.01.062 on personnel records and Regent's Policy 04.08.040 against retaliation.

Background

The grievances were decided at Step 3 by the Chancellor's designee, Robert Shefchik, on June 17, 2009. They were combined for purposes of Step 4. By agreement, the meeting was waived and instead UNAC submitted an opening brief, the University submitted a brief in response, and UNAC then submitted a Reply, with this decision to be based on those filings. I considered the briefs and exhibits submitted by the parties. As a preliminary matter, the University objected to UNAC's Exhibit 1, as a self-serving, unsupported and one-sided statement of Professor Steiner. UNAC says those things go to weight, not admissibility. I agree with UNAC on that point and did consider Exhibit 1 along with the others.

Academic Freedom/ Free Speech

In many regards the current claims appear to be a continuation of Professor Steiner's attempt to free himself from supervision and to have the university create a different job for him which would be more to his liking. Indeed, this grievance asks that a "permanent, autonomous faculty chair for environmental sustainability" be created for Professor Steiner and that it be continued after he retires. [UNAC Appeal, page 9]. That is something he has sought since 2004, according to the exhibits. It is also something he has no right to demand. CBA 18.1 j. reserves to the university the right to determine the organizational structure of the university.

UNAC argues that, on the one hand, that "Professor Steiner's prior performance evaluations and grievances" are irrelevant and "have no relation to the merits of his current claims" [Reply, page 1]. Yet elsewhere the same Reply brief argues for consideration of Professor Steiner's Exhibit 1 "Chronology" going back to 1989. UNAC also submitted other exhibits dating back at least as far as 2004 and refers to many occurrences before the "current claims." The CBA generally requires grievances to be filed within 30 days after the event giving rise to the grievance, so old matters are barred from being grieved. This would seem to apply to some stale issues. Additionally, some issues complained of now were resolved by prior grievances. However, some of these historical matters are relevant for context.

Professor Steiner's employment history contains many accusations by him about someone allegedly infringing on his academic freedom. In 1995, Dean Alexander pointed out Professor Steiner's tactic of claiming that attempts at supervision are an infringement of his academic freedom. He has unsuccessfully raised this claim in grievances filed in FY04, FY06, FY08. This grievance lists several acts and e-mails that are alleged to establish attacks on the professor's right to free speech and academic freedom.

Free speech is protected, constitutionally and by Regent's policy. Free speech is not freedom from the requirements to do one's job and to respond to reasonable direction. UNAC Exhibit 3 quotes Professor Steiner in a 2005 Daily News article:

> Steiner said he has renewed a request he first made last year to transfer his job from the fisheries and ocean sciences department to a "faculty chair for environmental sustainability."
> In an e-mail to superiors, Steiner says his work on environmental issues has grown to the point where he "can't adequately respond to the increasing international, national, and in-state requests for my conservation/sustainability assistance." In an interview, he said such a move would better protect himself and the department from political pressures.

Professor Steiner's position is Marine Conservation Specialist, Professor of Fisheries, Marine Advisory Program. The above quotes from him indicate that he prefers to spend his time on environmental issues to the point that he "can't adequately" provide the conservation and sustainability assistance that the university MAP program pays him to deliver. Those quotes and much of his grievance and history indicate that he would rather do a different job than the one assigned, free from supervision, with an office and supplies of his own choice. That is more than free speech and academic freedom.

As President Hamilton has said, "Freedom of speech encourages the contest of ideas. When we disagree, let's not make the error of trying to find a reason why the author shouldn't have said it." Yet much of this grievance consists of claims by UNAC for Professor Steiner alleging that his supervisors and others should not have questioned the scientific merits of his work or opinions, or the fit between his "work on environmental issues" and his duties for the university. Freedom to speak is not a one-way street, nor is it limited to one professor. Ideas and statements put out by Professor Steiner are not immune from criticism. The Provost found that there was no proof that anyone infringed on Professor Steiner's right to speak. Also, according to the Provost, at the hearing Professor Steiner told her that no one at the University limited his speech and that he would continue to speak. There is no reason to find otherwise here.

An agency funding a position that provides advice on fisheries sustainability and conservation has a right to expect that the incumbent will spend his time providing that advice, and doing so in an effective way. If an incumbent instead uses the position and his time to, for example, advocate for or against a particular development project, the funding agency may have a legitimate concern.

When a funding agency expresses concern in the context of some public controversy, University administrators must determine whether the concern relates to effective performance of the funded task, or whether the concern is based solely on viewpoint. In communicating with the employee involved, the administrator must clearly distinguish between legitimate concerns that the task assigned is not being performed, or not being performed effectively, versus viewpoint concerns. That distinction was not as clearly articulated here as it could have been. This is a

matter of imprecision, not improper motive or action. Free Speech and Academic Freedom are, and must be protected. There was no infringement here.

Teleconference-- No personnel records were disclosed during the teleconference. Additionally, the Alaska Sea Grant Advisory Council had a right to discuss the program and its quality, including the scientific merits of its members' work. That is free speech and academic freedom. The exhibits and prior meetings indicate that Professor Steiner dialed in to the teleconference, listened surreptitiously, and did not answer a direct question of whether he was on the line. UNAC says that "Professor Steiner had no obligation to disclose his presence during the teleconference." [UNAC Reply at p. 7]. Aside from considerations such as candor and forthrightness, and obligations to communicate with colleagues and to participate in office meetings in order to maintain a separate office, Professor Steiner did have an obligation to object to the discussion if he wanted it to stop. His deliberate failure to do so waived any objection to the content or subject matter.

Other Matters--I agree with the findings at previous steps. The Shell Oil meeting was previously resolved. The legislative committee set the terms for testimony before it and that was years ago. The email controversy shows only that some people disagree with Professor Steiner's opinions, as they have a right to do. Matters complained of by Professor Steiner do not amount to harassment, infringement or undue restriction. The Sea Grant source of funding decision was the dean's to make and did not harm Professor Steiner. He is still listed in the National Sea Grant Experts Guide.

The work environment was not shown to be unduly difficult. Few workplaces satisfy everyone completely. The third year review of Professor Steiner has been revised as directed by the Provost and is appropriate. The office move is an appropriate management decision. It is not, and could not be, retaliation for Professor Steiner filing his academic freedom grievance in March of 2009. The office move has been contemplated for years. Professor Steiner successfully delayed the move for years. The delay was expressly conditioned on his increased cooperation, participation in meetings and communication with his coworkers at MAP. Management expressly reserved the right, in the CBA and in prior memos regarding office space, to alter geographic locations [CBA 18.1 m]. There is no harassment nor retaliation in requiring Professor Steiner to work with his coworkers in their facility, as has been contemplated for years.

Conclusion

Based upon the foregoing, having been delegated the Step 4 decision in this matter, I conclude that no violation of the CBA or Regent's Policy has been demonstrated. I am denying the grievance as well as the remedies requested. The decisions from Step 3 are affirmed for the reasons stated here, and to the extent not inconsistent with this decision, for reasons stated in the Step 3 decisions, and in the university's briefing.

The decisions of the Chancellor's designee and the Provost are incorporated herein, with the modifications stated. Some of the grievance issues were not raised in a timely matter under the CBA. If United Academics is not satisfied with this determination, Article 7.2.4 of the CBA

gives it the right to advance the grievance to binding arbitration within ten days of receipt of this letter, or the date the finding was due, whichever occurs first.

Cc: Chancellor Rogers

Robert Shefchik, Chancellor's Designee

Provost Henrichs

Dean Wiesenburg