

University of Washington
FACULTY SENATE

AD-20

Class "A" Bulletin No. 91

Mailing Date, 1 June 1994

EXPLANATION OF THE PROPOSED LEGISLATION

To All Voting Members of the Faculty:

Please find attached the documentation and a ballot for your vote on this major Class "A" action, the replacement of Chapter 28 in the Faculty Code which deals with adjudication procedures for the settlement of differences. Also included are changes in Chapter 25 that are required to provide consistency with the proposed revisions in Chapter 28.

For your convenience, the documents are arranged in the following order:

1. The ballot (to be returned no later than 22 June 1994)
2. The existing Chapter 28
3. The proposed replacement of Chapter 28
4. The existing Section 25-71 with its proposed revisions
5. The pro statement for Chapter 28
6. The con statement for Chapter 28

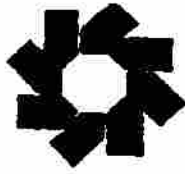
The pro and con statements are presented in accordance with the Faculty Code, Section 29-36A. I solicited the pro statement from Professor John Stewart who, as chair of the Faculty Council on Faculty Affairs, is well positioned to prepare a factual statement. The original proposal came to the Executive Committee and the Senate from this council. The only con statements I heard consistently during the many debates and discussions from which this legislation developed were from the AAUP and I accepted the offer from that organization to prepare the statement. The con statement was prepared by Professor Joan Martin with some assistance from three board members, and reflects their views only without any formal endorsement by the membership of the AAUP.

The purpose of these statements is to sharpen your awareness of selected issues in the proposed legislation. Hopefully, your vote will be based on your knowledge of the full text as presented in the following documents. I refer you also to the 18 May letter by Senate Chair Ronald Dear with its attached summary material and comparative process flow diagrams.

R.J.H. Bollard
Secretary of the Faculty

Enc.

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FACULTY SENATE

University of Washington

OFFICIAL BALLOT

Chapter 28, Adjudicative Proceedings for the Resolution of Differences

Should Chapter 28 be revised to address the following perceived problems with the existing code: a) adjudication of a grievance can take too long and cost too much, creating frustration for everyone involved with the process; b) under the existing Code a dean can take disciplinary action against a faculty member, including termination, before the faculty member has the opportunity to respond to the accusations at an adjudicative hearing; c) the current Code is not in compliance with the state law that specifies minimum requirements for hearings by state agencies; and d) in cases where there is a "victim," such as a sexual harassment case or a case of scholarly misconduct, exclusion of the victim, when a student or staff member, leads to the appearance of unfairness when control of the decision making is by faculty only.

YES _____

NO _____

ABSTAIN _____

Section 25-71, Standard of Conduct

Should changes be made in Section 25-71 to bring this portion of the Code into conformity with the proposed revisions to Chapter 28?

YES _____

NO _____

ABSTAIN _____

PLEASE TAKE TIME NOW TO COMPLETE AND RETURN THIS BALLOT IN THE ATTACHED SELF-ADDRESSED ENVELOPE BY WEDNESDAY, 22 JUNE 1994.

(Note: Your Senate group number is printed next to your mail stop on the address label attached to this bulletin. Please write this number and your department on the return envelope.)

Chapter 28

ADJUDICATIVE PROCEEDINGS FOR THE RESOLUTION OF DIFFERENCES

Adjudicative proceedings, as described in Section 25-62 and in this chapter, provide a formal hearing before a faculty committee empowered to act in a judicial capacity and to make known its findings and decision, which may be appealed to the President. In the types of cases described in Section 28-31 below, parties shall avail themselves of these proceedings prior to seeking review beyond the University. All cases subject to these proceedings may include allegations of unlawful discrimination because of race, religion, color, sex, national origin, age, handicap, sexual orientation, or status as a disabled or Vietnam era veteran.

Section 28-31. Cases Subject to Adjudicative Proceedings

In the types of cases described in this section, a faculty member upon making petition for review, request for adjudication, or appeal within the time limits specified in Section 28-42 is entitled to initiate an adjudicative proceeding. The types of cases are as follows:

A. Cases in which an authorized University official initiates action on behalf of the University to effect the removal (or reduction in salary) for cause (1) of a tenured faculty member, or (2) of a faculty member designated as without tenure for reason of funding (Section 24-41F), or (3) of an untenured faculty member before the end of the term for which the faculty member holds appointment.

B. Cases in which an authorized University official initiates action on behalf of the University to censure or warn a faculty member for any alleged violation by the faculty member of rules or regulations of the University, or for any alleged dereliction or misconduct by the faculty member.

C. Cases, including denial of tenure, in which a non-tenured faculty member is not reappointed, or is subjected to discriminatory reduction in salary upon reappointment, and the faculty member alleges that there has been a violation of a provision of one or more sections of the Faculty Code in connection with such action or alleges that such action unlawfully discriminates against the faculty member. The issues to be adjudicated shall be limited to those arising from the allegations of violations of the Faculty Code or unlawful discrimination. The Hearing Committee shall be precluded from making merit or quality judgments except insofar as these judgments are necessary to reach a decision concerning charges of discrimination.

D. Appeals by a faculty member from a notice of removal for reasons of program elimination. The issues to be adjudicated in such cases are limited to whether the faculty member was properly identified as a member of the program eliminated, whether the procedures specified in Section 25-52 were followed, whether the decision to remove the faculty member was reasonable, and whether the faculty member was unlawfully discriminated against. The Hearing Committee shall not make a judgment on the merits of the decision to terminate the program; appeal of such a decision is provided under Section 26-31.

E. Cases (other than those arising under Paragraphs A through D of this section) where a faculty member alleges an injustice resulting from decisions, actions, or inactions of any person(s) acting on behalf of the University in an administrative capacity and affecting the terms, conditions, or course of employment of the faculty member by the University. Included here are cases in which a faculty member alleges that the appropriate administrator has not settled satisfactorily his or her complaint against another faculty member.

S-A 73, May 24, 1985: with Presidential approval

Section 28-32. Adjudication Panel and Hearing Committees

A. The Adjudication Panel shall be a standing committee consisting of twenty-four members of the faculty (limited to tenured faculty and associate and full professors without tenure for reasons of funding), three from each Senate group, as nominated by the Senate Executive Committee and approved by the Faculty Senate. During the selection and appointment process, careful attention shall be given to the commitment of the University to affirmative action. The Chairperson of the Panel shall be nominated annually by the Senate Executive Committee from among the twenty-four Panel members and be approved by the Senate. No department chairperson, dean, or administrative officer shall serve on the Panel. Panel members shall serve three-year terms. Panel members are eligible for reappointment, except that in the event a Panel member has served two consecutive terms such member shall be ineligible for reappointment for a period of three years.

B. A proceeding under this chapter shall be conducted by a committee composed of five members of the full Adjudication Panel, called a Hearing Committee.

1. Within fourteen calendar days of receipt of a request for an adjudicative proceeding, the Chairperson of the Panel shall designate five people from the Panel to sit as the Hearing Committee, and shall designate one of these to chair the Committee. One additional person shall be designated from the Panel to sit as an alternate. Impartiality shall be of paramount importance in the designation of members of the Hearing Committee. The Chairperson of the Panel shall promptly notify the parties concerning the appointment and composition of the Hearing Committee. In cases where petitions have been filed by more than one individual which deal with the same basic disagreement, the Chairperson in consultation with the Adjudication Panel shall have the prerogative of joining the cases under a single Hearing Committee.

2. The alternate member of the Committee shall sit with the full Committee at all times and participate in the proceedings, except that this person shall not have the right to vote in the Committee's final decision (Section 28-61), unless he or she shall have replaced a regular Committee member and have been present throughout all formal sessions of the proceedings or have reviewed the record as described in Section 28-44.

3. If a regular Committee member is disqualified (Section 28-44) before the conclusion of the formal sessions of the adjudicative proceedings (Section 28-54E), the alternate shall assume his or her place as a regular Committee member and a new alternate shall be designated by the Chairperson of the Adjudication Panel. The new alternate shall review the record of prior proceedings and so affirm as described in Section 28-44C.

4. If a regular Committee member is disqualified (Section 28-44) after the conclusion of the formal sessions of the adjudicative proceedings (Section 28-54E), the alternate shall assume his or her place as a regular Committee member but no new alternate shall be designated. Only those members who have been present throughout the entire proceeding or who have reviewed the record as described in Section 28-44D shall have the right to vote on the disposition of the matter (Section 28-61).

5. The Chairperson of the Hearing Committee shall preside over the proceedings, make procedural rulings, and control the proceedings.

S-A 73, May 24, 1985; S-A 78, December 14, 1988; S-A 80, December 11, 1989: with Presidential approval

Section 28-33. Burden of Proof

A. In adjudicative proceedings in the types of cases described in Sections 28-31A, 28-31B, and 28-31D the burden of proof is on the University or the administrative party to the proceedings. In adjudicative proceedings in the types of cases described in Sections 28-31C and 28-31E the burden of proof is on the petitioning faculty member.

B. In adjudicative proceedings of the types described in Sections 28-31A, or 28-31B, or in proceedings described in Section 28-31C where the issue is one of discrimination, if a faculty member's academic competence is questioned, the proof before the Committee shall be insufficient unless it includes the testimony or written reports of teachers or other scholars, either from the University or another institution. The Committee may require evaluations from scholars external to the University if it desires.

S-A 73, May 24, 1985: with Presidential approval

Section 28-41. Computation of Time

In computing any period of time prescribed or allowed in Chapter 28, the day of the act or event from which the designated period of time begins to run shall not be included. All "days" shall be calendar days. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a University holiday, in which event the period runs until the end of the next business day. If the faculty member so requests, the period from June 16 through September 15, shall not be counted in such computations.

S-A 73, May 24, 1985: with Presidential approval

Section 28-42. Time and Manner of Initiating Adjudicative Proceedings

A. A party wishing to initiate adjudicative proceedings shall do so within the time limits set forth in this section. If the parties choose to engage first in administrative and/or conciliatory proceedings as described in Chapter 27, then the time limits described in this section shall be suspended until those prior proceedings are completed. If adjudicative proceedings are then initiated, they shall be commenced within thirty days of the conclusion of the administrative and/or conciliatory proceedings. If administrative and/or conciliatory proceedings are commenced beyond the time limits for initiating an adjudicative proceeding, the party shall have no right to a subsequent adjudicative proceeding, except under the circumstances outlined in Paragraphs B and C below.

1. In cases arising under Section 28-31A a faculty member shall deliver a request for adjudication to the Chairperson of the Adjudication Panel and to the Secretary of the Faculty within thirty days of receipt by the faculty member of a statement of charges with notice of intention of dismissal (or reduction in salary) for cause, and the filing of that statement with the Chairperson of the Adjudication Panel, as provided in Section 25-71E.

2. In cases arising under Section 28-31B a faculty member shall deliver a request for adjudication to the Chairperson of the Adjudication Panel and to the Secretary of the Faculty within thirty days of receipt by the faculty member of a statement of charges with notice of intention of censure or warning, and the filing of that statement with the Chairperson of the Adjudication Panel, as provided in Section 25-71E.

3. In cases arising under Section 28-31C a faculty member shall deliver a petition for review to the Chairperson of the Adjudication Panel and to the Secretary of the Faculty within 180 days of receipt of official notification of non-reappointment or reduction in salary upon reappointment.

4. In cases arising under Section 28-31D a faculty member shall deliver an appeal to the Chairperson of the Adjudication Panel and to the Secretary of the Faculty within thirty days from delivery to the faculty member and filing with the Chairperson of the Adjudication Panel of a notice of removal for reasons of program elimination, as provided in Section 25-52C.2.

5. In cases arising under Section 28-31E a faculty member shall deliver a petition for review to the Chairperson of the Adjudication Panel and to the Secretary of the Faculty within 365 days from taking cognizance of the decisions, actions, or inactions that form the basis of his or her grievance.

B. If a faculty member does not file with the Adjudication Panel a request for adjudicative proceedings within the time limits prescribed in Section A above, then the opportunity for redress of grievance shall terminate and, as applicable, the removal, reduction in salary, censure or warning, non-reappointment, or notice of future removal shall take effect according to its terms at the expiration of the time limits. In the exceptional case that a faculty member files with the Adjudication Panel a request for initiation of an adjudicative proceeding after the time limits prescribed in Section A above have expired, a Hearing Committee shall be appointed. The first business of the Hearing Committee shall be to determine whether circumstances exist which would make it grossly unjust to dismiss the proceeding for reason of delay. The Hearing Committee may then dismiss the proceeding for reason of delay, and there shall be no case or issue before the Adjudication Panel to be decided further. Alternatively, the Hearing Committee, following the provisions of Paragraph C below, may decide to entertain the proceedings, but may take the fact of the delay in the initiation of the proceedings into appropriate account in the conduct of the proceedings and its decision.

C. To determine whether it would be grossly unjust to dismiss for delay an initiation of proceedings, the following factors shall be considered by the Committee:

1. The seriousness of the actions, events, or decisions from which a claim for relief allegedly arises, and the seriousness of the alleged impact on the person seeking relief.

2. The reasons for the delay and the extent to which they were or were not within the control of the person seeking relief.

3. The degree of probable prejudice to other parties to the proceeding if the limitation periods are not adhered to.

D. The Secretary of the Faculty shall keep the Hearing Committee informed of time limits affecting this section.

S-A 73, May 24, 1985: with Presidential approval

Section 28-43. Pleadings

In this chapter the document by which a party initiates an adjudicative proceeding is called a *petition* and the document by which another party answers the petition is called a *response*. *Petition* includes any documents referred to in this section as a "statement of charges" or an "appeal from a notice of removal for reasons of program elimination."

A. Cases of the type described in Sections 28-31A and 28-31B shall be governed by the procedures set forth in Section 25-71E. The request for adjudication may include allegations of unlawful discrimination because of race, religion, color, sex, national origin, age, handicap, sexual orientation, or status as a disabled or Vietnam era veteran.

The faculty member may file a request for adjudication alone without filing, then or later, a response to the statement of charges, in which event the summary disposition procedures under Section 28-52 may be invoked.

B. In cases in which adjudicative proceedings are authorized by Sections 28-31C and 28-31E the faculty member's petition shall state with reasonable particularity the facts relied upon as the grounds for the relief sought.

The dean or other authorized University official shall respond to the petition in writing within thirty days of receiving a copy of the petition from the Secretary of the Faculty. A copy of the response shall be delivered to the Chairperson of the Adjudication Panel and the faculty member. The response shall state with sufficient specificity which of the faculty member's assertions are accepted and which are not accepted and may include further assertions of fact or reasons why the relief requested should not be granted. If no written response is delivered to the Chairperson of the Panel, then the summary disposition procedures under Section 28-52 may be invoked.

C. In cases of the type described in Section 28-31D, the faculty member shall first file an appeal within the time limits specified in Section 28-42. With the filing of this appeal, an adjudicative proceeding shall be deemed to have commenced. Within the same time period the faculty member may file a more extended statement explaining his or her reasons for filing the appeal. The faculty member may allege unlawful discrimination. He or she may assert facts contesting that he or she is a member of the program eliminated. The faculty member may declare that procedures specified in Section 28-52 were not followed. Or the argument may be offered that the decision to remove the faculty member is unreasonable. Copies of the appeal and the more extended statement (if submitted) shall be delivered to the Chairperson of the Adjudication Panel and to the Secretary of the Faculty.

If the faculty member delivers only an appeal without also filing the more extended statement, then the summary disposition procedures under Section 28-52 may be invoked.

D. In cases described in Sections 28-31A or 28-31B, the faculty member may be relieved while proceedings are pending from such of his or her duties as the President may deem necessary to preserve the health or safety of members of the University community. In such event the President shall assign to the faculty member such duties as the President deems appropriate. The faculty member shall be continued on his or her regular salary while the proceedings are pending.

S-A 73, May 24, 1985; with Presidential approval

Section 28-44. Disqualification of Hearing Committee Members and Alternates

A. Members or designated alternates of hearing committees shall disqualify themselves upon their own initiative immediately upon discovery of a cause for disqualification. Cause for disqualification shall include reason to believe that some personal consideration or relationship might interfere with the reaching of an unbiased conclusion; that the member, outside the proceedings, has received communications or has obtained information which creates a significant risk of substantial unfairness; or that the matter directly involves a departmental colleague or a college or school colleague of the member when the matter involves a faculty member from a nondepartmentalized school or college.

B. A party may challenge a chairperson, a member, or an alternate for cause for the reasons stated in Paragraph A. If the facts giving rise to the question of qualification are then known to the party, such a challenge must be made in writing to the Chairperson of the Adjudication Panel within seven days after receipt of notice that the person to be challenged is a member or alternate of the Committee. A copy of this written challenge shall be provided to the other party. If such facts are subsequently discovered, then reasons relating to such discovery shall be stated and the challenge shall be promptly made. Challenges for cause shall be ruled upon by the Chairperson of the Adjudication Panel.

C. Each party may exercise one challenge without cause to a chairperson, member, or alternate of the Hearing Committee. Such challenge must be made in writing to the Chairperson of the Adjudication Panel, with a copy provided by the party issuing the challenge to the other party, within seven days after notice that

the person is a member or alternate of the Committee, or, if a challenge for cause has been made previously as to the person, within seven days after notice that such challenge for cause has been denied.

D. If a member or alternate is absent from a session of a proceeding other than one where only procedural decisions are made, then the person shall be disqualified from further serving unless, before the next session of the hearing, he or she listens to the recorded proceedings of the missed session or reads a transcript of them and so affirms on the record at the beginning of the next Committee session. The Chairperson of the Adjudication Panel may disqualify a member or alternate for prolonged or repeated absences.

S-A 73, May 24, 1985; with Presidential approval

Section 28-45. Setting the Date and Place of the Proceedings

A. After the Hearing Committee has been constituted, the Chairperson of the Committee, after consulting with the parties, shall immediately set the time and place of the adjudicative proceedings and notify the parties thereof. The hearing shall commence as soon as possible after the pleadings are required to be filed. Unless the parties and the Hearing Committee agree otherwise, except for preliminary proceedings, the time for any adjudicative proceedings shall not be set during the period of June 16 through September 15.

B. If upon receipt of additional information either party becomes aware of additional facts pertinent to its pleading, the party may request leave from the Chairperson of the Committee to amend its pleading, and such leave shall be freely granted when the presentation of substantive issues will be served thereby. Upon request, the Chairperson shall grant a continuance to give the other party reasonable time in which to respond to the amended pleading.

C. All notices, pleadings, and communication by the parties with the Chairperson and the Committee shall be in writing with copies provided at the same time to the other party. No substantive communication may occur between one party and the Chairperson or the Committee in the absence of the other party, unless consented to by the other party.

S-A 73, May 24, 1985; S-A 78, December 14, 1988; S-A 80, December 11, 1989; with Presidential approval

Section 28-51. Preliminary Proceedings

A. The Committee may, either at the request of a party or on its own initiative:

1. Instruct the parties to file further written statements or pleadings.
2. Order the parties to produce documents and to identify possible witnesses.
3. Conduct preliminary meetings with both parties present to refine the issues and to arrive at agreements as to facts to the extent possible.

B. The Committee may at its option prepare a preliminary statement reciting the facts agreed upon by the parties and not contested and identifying the contested issues of fact to be resolved.

S-A 73, May 24, 1985; with Presidential approval

Section 28-52. Summary Disposition

A. The Committee may decide a case prior to a hearing by dismissal of the proceedings, if the Committee determines, after using the preliminary proceedings of Section 28-51, or after expressly concluding not to use such preliminary proceedings:

1. That none of the facts necessary to such a decision are in dispute and that all of the facts necessary to such a decision appear, and are uncontradicted, in the documents that have been filed in the case; or

2. That there is not controversy sufficient to permit the Committee to reach a decision; or

3. That no injustice of sufficient importance has occurred.

B. If no summary disposition occurs, then the Committee shall (1) instruct the parties to identify possible witnesses and (2) establish a proposed order of further proceedings.

S-A 73, May 24, 1985: with Presidential approval

Section 28-53. Representation of the Parties

A. Each party may be advised during the conduct of the proceedings by no more than two persons.

B. Only if the faculty member who is a party to the proceedings is represented during the conduct of the proceedings by an attorney may the administrative party to the proceedings be represented by an attorney. Otherwise, any party may be represented during the conduct of the proceedings by any person.

C. The faculty member who obtains the representation of an attorney shall do so at his or her own expense.

S-A 73, May 24, 1985: with Presidential approval

Section 28-54. Order of Proceedings; Powers of Committees; Rights of Parties

A. The Hearing Committee shall decide at the outset of the proceedings whether the adjudicative proceedings shall be open or closed.

B. In both open and closed proceedings before the Hearing Committee the following persons are entitled to be present:

1. The parties and their advisers and representatives.

2. The Committee members, the alternate, and a secretary or recorder.

3. Persons serving in an advisory capacity to the Committee, unless their presence is objected to for cause by either party and the Committee sustains the objection.

4. Witnesses, except that the Committee may in its discretion exclude witnesses from the hearing room except while testifying.

5. Such other persons as specifically authorized by the Committee, unless their presence is objected to by either party.

C. An audio recording of the proceedings before the Hearing Committee shall be made by an electronic recording device at University expense. Copies of the recording shall be made available at the request of either party at University expense.

D. If the facts in the case are in dispute, testimony of witnesses and other evidence relevant to the issues shall be received if offered. The Committee may admit and consider evidence which reasonably prudent people in the conduct of their affairs would commonly accept as having probative value. The Committee shall give effect to the rules of privilege recognized by law and may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. All testimony of parties and witnesses shall be given under oath or on affirmation.

E. The adjudicative process normally should proceed as follows:

1. Opening statements.

2. Presentation of the evidence to support the initiating petition by the faculty member; or the allegations which form the basis for the action against the faculty member.

3. The responding party's evidence and answers.

4. The rebuttal evidence.

5. Closing arguments.

If the circumstances warrant, the Committee may vary the normal order of proceeding.

F. The parties and their representatives, Committee members, and persons serving in an advisory capacity to the Committee as specified in Section 28-54B.3, shall have the right to question all witnesses who testify orally.

G. The Committee in its discretion may:

1. Direct the parties to produce information on specific issues deemed significant by the Committee.

2. Proceed on its own initiative to call witnesses to testify or admit evidence on its own motion.

H. The parties shall have the opportunity to confront all witnesses. In the event that witnesses are unavailable or at the consent of the parties, depositions from witnesses or answers to written interrogatories may be presented or telephone depositions may be made. The Committee, in its discretion, may make such information part of the record.

I. Formal court procedures are not required of the Committee.

J. The Committee, in its discretion, may adjourn the proceedings from time to time to permit the parties to obtain further information.

K. Ordinarily, hearings shall be conducted during normal business hours of the University.

S-A 73, May 24, 1985: with Presidential approval

Section 28-55. Powers of the Hearing Committee To Compel Production of Evidence

A. The Chairperson of the Committee may instruct any person who is a party to the proceedings or an administrative officer or administrative employee of the University to appear and to give testimony under oath or affirmation, or to produce a specific document or other thing belonging to a party or to the University relevant to the issues in the proceedings.

1. If the person to whom the instruction is directed is a non-administrative party to the proceedings and that person refuses or fails to appear at the time and place designated to give testimony or to produce the documents or things specified:

a. If the Committee finds that the testimony, documents, or things sought are under the control of the non-administrative party to produce and are not privileged for purposes of the proceeding, then the Committee may impose such sanctions as are appropriate.

b. Sanctions may include dismissal of the proceedings or the drawing of inferences, to be stated in the record, with respect to the issues to which the evidence sought would have been relevant, adverse to the position of the faculty member or other party to the proceedings.

2. If the person to whom the instruction is directed is an

