DR.PATRICK CHASE

v. Docket No. 93-BOD-362

BOARD OF DIRECTORS/SHEPERD COLLEGE

DECISION

Grievant, Dr. Patrick Chase, employed by the Board of Directors as an Associate Professor of Political Science at Sheperd College (Shepherd or Respondent), advanced a grievance appeal to level four on September 2, 1993, after denial at level two. The statement of the grievance follows in its entirety:

The Administration at Shepherd College supports and enforces the use of the demotion, promotion, and advancement system as a vehicle for the implementation of favoritism and discrimination with the intended result that bureaucratic complicity rather than professional excellency is the focus of promotions or lack thereof.

Accordingly, when Grievant, with a PhD, 13 years of excellent teaching, a record of excellent student reviews, and meeting all of the criteria for such promotion under the faculty handbook, began the process of applying for full professorship pointing to such criteria contained in the handbook, PT Committee Member Professor Rhee responded, "They don't promote you for these reasons". Grievant was capriciously thereafter denied full professorship by reason of a system of favoritism, discrimination, and retaliation which violated the process and substance of promotion as set forth in the Shepherd College Faculty Handbook, II, Policies and Procedures, Section A-9, "Guidelines and Criteria for Promotion in Rank and Tenure". Grievant was first employed by Shepherd College in 1981 as an Assistant Professor of Political Science. Grievant was granted tenure in 1986 and was promoted to the rank of Associate Professor in 1989. (See footnote 1) Grievant applied for promotion to full Professor in November 1992. It was the denial of that promotion which led to the present grievance.

The Shepherd College 1992 Faculty Handbook states that "promotion and tenure of faculty are the prerogatives of the President, who will base his or her decision primarily upon the

recommendation(s) of the Vice President for Academic Affairs, the Dean of the appropriate School, the Department Chair, and the appropriate School Promotion and Tenure (PT) Committee." Faculty requesting promotion and tenure are to be evaluated in five areas:
(1) The possession of the terminal degree and/or the requisite number of graduate hours toward the doctorate. Requests for exceptions will be entertained only for unusual circumstances;

(2) Excellence in teaching as evidenced by recent and regular evaluation;

(3) Professional growth as evidenced by scholarly research or creative work appropriate to the discipline or field of appointment. Such evidence may include publication; presentation of scholarly papers at professional forums; participation and recognition in juried shows, concerts, recitals; or other achievements of significant professional stature;

(4) Evidence of outstanding professional service, manifested in activities that add to the efficiency and positive image of the discipline, thedepartment, division, or school, Shepherd College, and the State of West Virginia, including involvement in professional organizations at the national, regional, and state levels;
(5) Attainment of the minimum educational and experience requirements as established in policy defining rank.

After reviewing Grievant's promotion application packet, Mary Walker, Chair of the Political Science Department, did not recommend the advancement. The Promotion and Tenure Committee of the School of Natural and Social Sciences also "concluded that [Grievant] should not be promoted." Donald L. Henry, Dean of the School of Natural and Social Sciences, disagreed with the prior reviews and recommended that Grievant be promoted. Because the recommendations of the Dean and the Promotion and Tenure Committee were split, the matter was then forwarded to the Professional Status Committee for review.

After a negative recommendation was issued by that panel the application was evaluated by Howard N. Carper, Jr., Vice President for Academic Affairs. The Vice President added a negative review to the process prior to providing the entire record to Shepherd President Michael Riccards for a final determination. By letter dated April 27, 1993, the President advised Grievant that "after looking carefully at the record and the extensive information that has been provided, I must regretfully accept

the consensus of the first three evaluations concerning the denial of such a promotion."

Grievant argues that he is equally or more qualified for promotion than other faculty members who have attained therank of full professor in the recent past. Grievant asserts that the denial of the promotion was an arbitrary and capricious decision by President Riccards "as a part of an on-going practice and design that actually promotes bureaucratic complicity, rather than academic excellence." Specifically, Grievant claims that promotions are awarded to those who unquestioningly support the President and are denied to those who offer any dissent to his agenda. (See footnote 2) Grievant opines that the denial was the result of President Riccards' suspicion that he was an instigator of some student dissent directed towards the administration, his vote in the Faculty Senate to reject the President's proposal that student fees be increased to fund faculty pay raises, and because he had signed a letter questioning the the President's decision to remove the former Department Chair.

Grievant further argues that the lower-level recommendations, with the exception of that from Dean Henry, were tainted in that Ms. Walker "harbors expressed biases against him and against his teaching methods" which are expressed in her recommendation. He claims that Ms. Walker's recommendation is subjective by her own admission and that she cited incorrect information when she stated that he didnot assign term papers. Grievant further asserts that Ms. Walker had never conducted a classroom observation upon which to base her annual evaluation of his performance and that she had failed to apprise him of the completion of a 1992 evaluation. Unaware of the existence of this document, he was unable to include it in his promotion application. Grievant also disputes comments made by Ms. Walker regarding his temper and that he failed to carry his load of higher-level courses.

Grievant next claims that an impropriety occurred when the membership of the Promotion and Tenure Committee was changed, contrary to policy, prior to consideration of his application. Specifically, Grievant states that an individual he perceived to be supportive of his cause was removed from an elected position on the Committee prior to the end of her term and that another individual was improperly assigned the Committee duty to fulfill an objective of obtaining promotion for a friend. That faculty member, with whom Grievant stated he had never shared the warmest of relationships, subsequently voted against Grievant's promotion. Grievant also indicated that the third full-time member of the Political Science department was on the Promotion and Tenure Committee and that he too was likely predisposed to vote against the promotion due to some differences they

had experienced. Grievant asserts that this Committee also considered erroneous information regarding his assignment of term papers, mischaracterized his outbursts oftemper, and demonstrated inadequate consideration of his body of publications.

Grievant argues that the Professional Status Committee erred when it based its recommendation to deny promotion on his time in rank and when it limited consideration of his publications to the approximately two-year period since his last promotion. Grievant asserts that time in rank is not listed in the Faculty Handbook as a criterion to be considered for promotion and that the Committee should have considered his entire publication history, including a book review which was accepted for publication by Military magazine at that time. (See footnote 3)

Finally, Grievant claims that Vice President Carper harbored resentment against him because of his failure to cooperate with what he perceived to be an inappropriate request from the Vice President in 1990 involving the evaluation of an off-campus student.

In addition to arguments that his credentials compare favorably to other candidates who received promotion and that the evaluators on nearly every level had developed some bias towards him, Grievant argues that his application fully establishes that he meets the requirements for the position of full professor as set forth in the Handbook. The Handbook states that the minimum qualifications for the rank of full professor are:a. Earned doctorate or the highest academic degree in the field of specialization or achievement of professional eminence.

b. Ten (10) years of satisfactory teaching or professional experience. Persons employed with an earned doctorate are eligible to be considered for promotion to the rank of professor after eight years of full-time employment.

c. Evidence of continuous professional growth demonstrated throughout the teaching or professional experience.

d. Outstanding teaching effectiveness.

e. Scholarship as evidenced by publications of: research within the field(s) of specialization or in the areas of teaching problems on the college level; or of creative writing.

f. Outstanding institutional and community service.

g. Character reputation above reproach. (See footnote 4)

Grievant addressed the four qualifications which are disputed in his application and his assessments therein are summarized as follows:

(c) evidence of continuous professional growth was supported by his initiation of two new courses, American Political Theory and American Foreign Policy Since World War II. During a sabbatical in the 1991 Spring semester Grievant received a $2000. grant to work on a publication for the West Virginia University Institute for Public Affairs. Grievant also indicated that he had participated in professional meetings including service as Chair of a panel on regulatory politics at the annual meeting of the West Virginia PoliticalScience Association in October 1992, serving as representative to the Potomac River Basin Consortium from 1981-1990 and acting as Vice President of that organization from 1981-1985. Grievant was also invited to participate in the Advisory Commission on Intergovernmental Relations "critics" session in August 1983.

(d) Grievant twice received merit pay and a comparative study conducted by Dean Henry on recent student evaluations reflected that Grievant met or exceeded the school average in nine of the ten categories in the upper division classes. He concedes that his evaluations are not as strong in the lower division courses, but that his median scores in both groups exceeds the school median. Grievant attached an Appendix A illustrating his class load for the prior five years, Appendix B which shows that in Fall 1991, he taught the highest number of students in the department, and Appendix C which is student evaluations from two Fall 1991 classes.

(e) The promotion application included the following record of publications:

1991 - an article co-written and published in The West Virginia Public Affairs Reporter.

1986 - three, one page biographical sketches for American Legislative Leaders, 1619-1982: A Biographical Directory of Colonial and State House Speakers, a three volume work published by Greenwood Press.

1984 - the instructor's manual for Pragmatic Federalism.1982 - publication of a study entitled A Federal Influence on State and Local Roles in the Federal System.

1980 - preparation of an Urban Data Service Report on a profile of elected county executives for the International City Management Association in Washington, D.C.

1979 - assisted the Advisory Commission on Intergovernmental Relations in the development of a report on "The Roles of State and Local Governments: Adapting Form to Function."

(f) Service on many varied, unnamed committees and the large number of student advisees counseled throughout his career were cited by Grievant as evidence of his outstanding institutional and community service. He also noted that in 1986 he supervised three students in their endeavor to gain recognition for Shepherdstown as an All West Virginia city. Grievant stated that he had participated in Kinder College, evaluated student teachers, is an active member of his church, and supervised a homeless shelter on weekends in his community.

In summary, Grievant asserts that because he has shown factual errors and procedural deficiencies occurred throughout the various levels of consideration of his application, he has established that he meets all minimum criteria for promotion, and that his qualifications favorably compare to others who were recently promoted, he is entitled to promotion. (See footnote 5) Grievant requests that he be awarded the rankof full professor and backpay effective from the date such promotion would have been awarded under the 1992 application.

Respondent argues that it has wide discretion in the promotion of its faculty and that Grievant has proven neither that the denial of his, or any other faculty member's, advancement was the result of a systematic practice of arbitrary manipulation regarding promotion and tenure at Shepherd College, nor did he establish a record of excellence to support his promotion to full professor. Respondent asserts that the record does not support a finding that the various recommendations regarding Grievant's promotion were colored by personal bias or based upon inaccurate facts. Respondent contends that the denial of promotion was solely based upon a finding that Grievant had failed to prove that he had engaged in scholarly work, professional growth, service or professional activity of an outstanding nature which would warrant promotion to the rank of full professor.

Evidence elicited at level four contravene substantially all of Grievants allegations of impropriety. First, Ms. Walker acknowledged that her evaluation of the application was to some extent subjective. This factor alone does not render the evaluation, or her recommendation, invalid. Although the Handbook lists objective criteria to beconsidered, the application of those criteria must by necessity be subjective to an extent. Neither Grievant's nor the Chair's observations regarding his assignment of term papers appear to be inaccurate. Grievant submitted examples of term papers completed by his students; however, because he assigns these papers to only upper-division students and he teaches primarily lower-division courses, there would be few term papers actually completed for Grievant's classes.

The lack of an evaluation of Grievant's work based upon classroom observation is apparently not unique or even unexpected at Shepherd College. Testimony from several individuals establishes that classroom observations are not completed due to a general objection by the faculty that such an intrusion would impair their academic freedom. It does appear that Ms. Walker had neglected to provide Grievant with a copy of his 1992 evaluation, but there is no evidence that the oversight was intended or was due to anything more than her lack of experience at that time. Ms. Walker does not dispute Grievant's assertion that he had inquired about the possibility of his assuming some upper-division courses taught by Dr. Rhee; however, she concluded that it was inappropriate to take well-developed courses away from senior faculty and stated that her intent had been for Grievant to develop upper-level courses consistent with his expertise and interests.

Respondent concedes that an irregular change of personnel was made on the Promotion and Tenure Committeeprior to its consideration of Grievant's application. Dr. Suda Kunyosing testified that she had been elected for a two year term on the committee but found that with her other obligations she was compelled to ask Dr. Jerry Smith to relieve her of this duty. Both she and Dr. Smith testified that it was their understanding at that time that he was the only other faculty member in their department who was qualified to serve. Dr. Smith stated that he agreed to serve on the committee because he had hoped to be of assistance to a friend who he had encouraged to apply for promotion. Dr. Smith confirmed that he did vote to not recommend Grievant's promotion; however, there is no indication from the record that he had any predilection to do so.

Grievant correctly asserts that the Handbook makes no mention of time in rank as a criterion for promotion. While the Professional Status Committee did refer to the brief period of his time as an Associate Professor, its letter of recommendation went on to note the paucity of Grievant's publications since that time. Although the letter refers to two reasons, it appears from the general testimony that time in rank would not bar a promotion but that failure to meet the requirement of publication would. Grievant urges that consideration was improperly limited to the time he served as Associate Professor, yet he offers no authority in support of his position that his entire work be considered. Limitation of consideration of the applicant's work product since the time of his last promotion is reasonable, otherwise theindividual need not maintain a consistent record of productivity and may be rewarded multiple times for the same work. Clearly, the Committee could not consider the book review as part of Grievant's publications because it had neither been published nor made a

part of his application proposal. (See footnote 6)

Vice President Carper, now retired, testified that prior to making a recommendation to President Riccards he reviewed Grievant's application for promotion. He indicated that he was aware of some inter-departmental differences and that he regarded Ms. Walker's letter with some caution. He opined that a brief time in rank was not a disqualifier for the promotion and he denied that he harbored any personal animosity towards Grievant.

Nancy Snyder, an assistant coordinator and previously secretary to Dr. Carper, testified regarding the incident referred to by Grievant which he asserts caused the administrator to give his application a biased review. Ms. Snyder recollected that several years ago a student had requested that his work experience be evaluated for college equivalent credit. The request was submitted very late in the semester, just before graduation. Dr. Carper directed Ms. Snyder to send the materials to Grievant for evaluation. Grievant declined to complete the evaluation because it was so close to graduation. It cannot be found that Dr. Carper was ever angry with Grievant as a result of this matter and it cannot be concluded that he claimed revenge over a relatively insignificant matter a number of years later. Thus, it must be concluded that Dr. Carper did not render a biased recommendation regarding Grievant's promotion.

Notwithstanding the elaborate review process discussed herein, the ultimate decision whether to grant or deny promotion rests with the President of the institution. Dr. Riccards testified at the level two hearing at which time he denied using promotion and tenure as part of a system of rewards and punishment. He stated that the incidents which Grievant identifies as the actual basis of the Presidential decision, were not considered. He suggests that his lack of animosity towards Grievant must be substantiated by the fact that he has previously approved Grievant's promotion from assistant to associate professor and had granted Grievant a paid sabbatical.

The President concluded that Grievant's case was clear- cut and that his decision to deny promotion was adequately supported by the nearly unanimous, negative lower-level recommendations by his peers. Dr. Riccards further noted that the student evaluations submitted by Grievant were limited and did not provide a broad enough view of this type of evaluation and that Grievant's record of service was inadequate to support promotion. Given this factuallysupported, criteria-based reason for his decision, it cannot be found that the President's decision was either arbitrary or capricious or that it was derived from an improper application of the promotion process to

serve as a method of faculty control.

In addition to the foregoing narration it is appropriate to make the following formal findings of fact and conclusions of law.

FINDINGS OF FACT

1. Grievant is employed by the Board of Directors as an Associate Professor of Political Science at Shepherd College.

2. In November 1992 Grievant submitted an application for promotion to the rank of full professor.

3. Grievant's application received negative recommendations from his Department Chair, the Division Promotion and Tenure Committee, the campus Professional Status Committee, and the Vice President for Academic Affairs. The sole recommendation to grant the promotion came from Dean Donald Henry.

4. In general, the recommendations that the promotion not be granted were based on concerns regarding Grievant's teaching skills, lack of additional publication, and less than adequate showing of service-related activities.

5. Grievant's application for promotion was denied by President Riccards on April 27, 1993.

CONCLUSIONS OF LAW

1. It is incumbent upon the Grievant to prove all of the allegations constituting the grievance by a preponderance of the evidence. Baroni v. Board of Directors/Fairmont State College, Docket No. 92-BOD-271 (Feb. 11, 1993).

2. Grievant has failed to prove that the denial of his application for promotion was denied due to bias by the reviewing administrators, or that he had presented a record of accomplishment which would merit the advancement.

3. Grievant has not demonstrated a violation of law, regulation or policy and has not otherwise established an entitlement to promotion to the rank of full professor as a matter of law.

Accordingly, the grievance is **DENIED**.

July 24, 1994 SUE KELLER

SR ALJ

Footnote: 1

Grievant's first application for promotion to Associate Professor, filed in 1987, was denied. Grievant did not grieve that action and this fact appears to have little, if any, relevance to the instant matter.

Footnote: 2

Grievant offered the testimony of several colleagues who described their own difficulties with President Riccards and their opinions as to his management style, which unremarkably, were consistent with Grievant's own theories. After the extensive review of this individual record it does not appear that the experiences or opinions of these individuals are of any particular relevance in that they do not specifically or directly prove the allegations herein.

Footnote: 3

That eight paragraph review was ultimately published in September 1993.

Footnote: 4

It is undisputed that Grievant meets requirements (a), (b), and (g).

Footnote: 5

Grievant makes numerous references comparing himself to a Dr. Hulse. It appears that Dr. Hulse was promoted to Associate Professor the same year as Grievant and further attained the rankof full professor prior to Grievant. Grievant asserts that Dr. Hulse presented comparable or lesser qualifications for promotion, particularly in the areas of student evaluations and publications. Because no corroborative evidence relating to Dr. Hulse's qualifications or the circumstances surrounding his promotion were made a part of the record no consideration may be given this matter.

Footnote: 6

Grievant explained that he did not include the book review in his application on the advice of a colleague. If it is Grievant's position that the omission was due to the fault of another, it is simply noted that he has compiled at least one and possibly two previous applications for promotion and should have known what was to be included.