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THOMAS L. BEAN

v.

DOCKET NO. BOR1-87-022-2

WEST VIRGINIA UNIVERSITY

D E C I S I O N

Grievant, Dr. Thomas L. Bean, is employed by West Virginia University as an Associate Professor of Agricultural Education assigned to the Center for Extension and Continuing Education. Dr. Bean initiated grievance proceedings on May 29, 1986 following President Neil Bucklew's denial of his request for promotion. The grievance was waived to level two by Robert L. Jack, Interim Director of the Division of Resource Management, on June 2, 1986 and by Edmund B. Collins, Division Leader of AFCD on June 6, 1986. An appeal was filed with President Bucklew on June 16, 1986 and was remanded to level one for informal resolution on July 2, 1986 by Dr. Frank A. Franz, Provost and Vice President for Academic Affairs and Research. Following an informal conference Dr. Franz denied the grievance but offered three optional

methods of resolving the dispute. The grievant determined that none of the options were acceptable and a level four appeal was filed on January 30, 1987. An evidentiary hearing was held on June 22, 1987 and proposed findings of fact and conclusions of law were submitted on July 16 and 20, respectively.<sup>1</sup>

The grievant began employment at West Virginia University in 1976 as an extension specialist for the Center for Extension and Continuing Education (hereinafter CECE). As the CECE did not have the capacity to promote or tenure faculty members at that time the grievant was given academic rank in the College of Agriculture and Forestry (hereinafter CAF). The grievant was promoted to associate professor in 1981 and granted tenure in 1983. Throughout this period of time he retained his original work assignment as an extension specialist in the area of farm safety.<sup>2</sup>

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<sup>1</sup>Hearings were previously scheduled for March 9 and April 20 but were continued on both occasions at the request of the parties.

<sup>2</sup>The functions of a faculty member assigned as an extension specialist vary greatly from his on-campus colleagues. Extension personnel work with the general public on a grass roots level teaching through seminars and workshops and developing practical, easy to understand publications in the form of pamphlets, fact sheets, etc.

In December, 1985 the grievant submitted a request for promotion to the rank of full professor. Upon review of the request and the grievant's personnel file the Division of Resource Management Promotion and Tenure Committee recommended that the promotion be awarded. In January, 1986 Dr. Robert L. Jack, Interim Chairman of the Division of Resources Management of the CAF, supported the recommendation of the Division of the Promotion and Tenure Committee to award promotion. In February, 1986 the CAF Promotion and Tenure Committee determined that the grievant had not established or maintained a record of scholarly accomplishments sufficient to warrant promotion and recommended that he be retained at the rank of associate professor. The grievant filed a rebuttal to the negative recommendation and the matter was forwarded to the next level for consideration.

Robert H. Maxwell, Dean of the College of Agriculture and Forestry, concurred with the recommendation to retain the grievant at his present rank based upon a lack of documentation of teaching and research activities that would justify promotion. Dean Maxwell noted that the grievant's extension activities were well documented but found difficulty in relating some of them to the overall goals and objectives of the college.

Two weeks prior to Dean Maxwell's decision, R. Rudy Filek, Dean of the Center for Extension and Continuing Education, completed a faculty performance rating at which time he recommended promotion of the grievant to the rank of professor. This recommendation was based upon evidence of innovative and creative teaching in extension farm and forestry safety programs, production of high quality publications, including fact sheets and guides, his receipt of grant money and involvement in national and regional professional organizations resulting in "a very high quality and adaptive program".

By letter dated May 12, 1986 Vice President Franz denied the request for promotion as several evaluations of the grievant's scholarly work had indicated that it was inadequate for promotion and there was insufficient evidence in the record to overrule the evaluations. Vice President Franz advised the grievant that consideration had been given to his extension assignment but that he must satisfy the criteria appropriate for rank in the CAF. President Bucklew regretfully denied the request for promotion on May 14, 1986.

The grievant argues that consideration must be given to his assignment which substantially differs from on-campus faculty and that the criteria based upon his duties and responsibilities should be applied in this instance as they were in past promotion and tenure decisions. He asserts that it is not possible for him to meet the same criteria as the faculty with on-campus academic assignments as his position is 100% federally funded and controlled by the Smith-Lever Act (7 U.S.C.A. §345 (1962)) which prohibits him from engaging in formal classroom instruction (also no credit courses relating to his specialty are taught within the CAF) and applying for competitive funds to perform basic research. As the CAF has no department or division which conducts research in the area of safety, the grievant would be required to engage in academic publication, an activity beyond the scope of his 100% extension assignment.

Finally, he has never been advised of any change in philosophy or policy regarding promotion since he was tenured in 1983 which would allow him an adequate opportunity to redirect his efforts towards promotion.

The respondent argues that the grievant's application for promotion was reviewed at all levels in accordance with the

"1985/86 Promotion and Tenure Guidelines" and the grievant's inadequate record of scholarly work justifies the decision to deny promotion. The institutional criteria used in assessing a faculty member for promotion are excellence in teaching, research and service.

At the level four hearing Stacy Garton, Chairman of the Division of Resource Management Promotion and Tenure Committee, explained that the committee recommendation for promotion had been based upon an evaluation of the grievant's specific work assignment in extension. While the institution's promotion and tenure guidelines were utilized the evaluation differed based upon the assignment. For example, the grievant's extension publications were considered adequate as they met the needs of the audience for which they were written. Dr. Jack concurred that his evaluation of the grievant was based on the extension assignment and noted the differences required in teaching on campus and in extension.

Edmund Collins, Division Leader at the Extension Service, is the immediate supervisor and evaluator of the grievant. Mr. Collins recommended promotion based on the grievant's "excellent" performance and suggests that the denial may be a result of

a change in philosophy or policy, as prior to 1984 extension personnel had experienced no difficulty in gaining promotion through the CAF.

Dean Filek stated that he had recommended promotion based on the grievant's outstanding performance and belief that he was fulfilling his commitment to the college through extension work.

Dean Maxwell testified that he applies the University criteria of excellence in the areas of teaching, research and service to all faculty members uniformly and recommends that for the grievant to gain promotion he should increase his teaching load through guest lecturing, offering non-credit courses or working with other faculty.<sup>3</sup> Research could be conducted through a multi-disciplinary team with publications in refereed, peer reviewed journals. Although the grievant was judged to be above average in the area of service, the average performance in teaching and research does not support promotion.

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<sup>3</sup>Dean Maxwell does not believe these activities would be in violation of the Smith-Lever Act if federal funding was not involved.

Vice-President Franz denied the application after reviewing the promotional file and discussing the matter with Dean Maxwell.<sup>4</sup>

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

#### Findings of Fact

1. Grievant began employment with West Virginia University in 1976 when hired by the CECE as extension specialist. As the CECE had no mechanism for promotion or tenure of its faculty members the grievant was assigned academic rank in the CAF. Under this arrangement he was promoted to the rank of associate professor in 1981 and granted tenure in 1983.

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<sup>4</sup>It is of interest to note that the grievant's efforts towards promotion have been hindered by the respondent insofar as the CECE now has the capacity to tenure and promote its faculty yet university officials encouraged and advised the grievant to remain on the faculty of the CAF. Now the respondent attempts to penalize the grievant for following the advice (directive?) of his superiors. Also, following a denial of promotion for the year 1985-86 the grievant was advised to obtain a memorandum of understanding from the Deans of the CAF and CECE regarding promotion criteria for extension personnel. Grievant did make an effort to secure a memorandum but none was ever produced by the deans.



2. The grievant applied for promotion to the rank of professor in 1986. The application was approved by the Division of Resource Management Promotion and Tenure Committee, the members of which evaluated the grievant in consideration of his extension assignment. The CAF Promotion and Tenure Committee, Dean Robert Maxwell and Vice President Frank Franz all denied the promotion based upon the grievant's failure to meet the University standard of excellence in the areas of teaching, research and service. President Neil Bucklew formally denied promotion by letter dated May 14, 1986.

3. As an extension faculty member the grievant works primarily with non-students on a practical level. Teaching is done in a more informal manner through seminars and guest lectures. Publication is the production of practical, easy to understand pamphlets and fact sheets.

4. The grievant's position is federally-funded and he is prohibited by the Smith-Lever Act from engaging in formal classroom instruction or applying for competitive research funding.

5. The CAF offers no credit classes or courses in the area of the grievant's specialty, safety.

6. Any research or publication of articles in academic journals would require additional effort by the grievant beyond his 100% work assignment.

7. The grievant was not advised of a change in philosophy or policy which would require that he meet different criteria than that applied to his previous promotion and tenure awards.

8. Extension faculty assignments differ greatly from on-campus faculty as they fulfill different objectives of a land grant institution. Rather than engaging in academic research and instruction, extension faculty disseminate the knowledge to the public in a practical, understandable manner. Therefore, criteria used to evaluate on campus faculty is inappropriately applied to extension personnel who do not teach formal classes or engage in academic research.

#### Conclusions of Law

1. West Virginia Board of Regents Policy Bulletin 36, Section V, provides that promotion of faculty shall not be granted automatically, routinely or because of length of service nor shall it be denied capriciously but considered within guidelines and criteria established by the President in cooperation with

the faculty or elected faculty representatives. Ultimate authority regarding the application of guidelines and criteria shall rest with the institution; however, there shall be demonstrated evidence that promotion is based upon a wide range of criteria appropriate to the mission of the institution.

2. The West Virginia University Faculty Handbook provides that while no university-wide criteria for promotion exists, the general evaluative criteria provides a basis for determining advancement while schools/colleges and/or departments/divisions may specify criteria appropriate to their disciplines. The record of research or equivalent scholarly activity and publication are given great weight in the consideration of promotion above the rank of assistant professor.

3. The Faculty Handbook provides that all faculty members with specific work assignments or expectations will be appraised primarily on the basis of their performance in these assignments while all other faculty members will be evaluated by general university criteria which normally give primary weight to excellence in teaching, research or equivalent creative scholarship and in-service, including clinical and extension duties.

4. CAF criteria for promotion conforms with the University policies and procedures for faculty evaluations. Specific criteria are set forth in the areas of teaching, research and public service. Categories of activities attempt to reflect all possible professional activities with the college but are not to be interpreted as being exclusive.

5. Unquestionably the criteria used to evaluate this grievant who has been performing the same assignment since 1976 has changed since he was last promoted in 1981 and granted tenure in 1983. An ex post facto application of criteria developed for on-campus faculty is in violation of university policy set forth in the "1985/86 Promotion and Tenure Guidelines" which require that faculty members with specific work assignments be appraised primarily on the basis of their performance in these assignments.

Accordingly, the grievance is **GRANTED** and the respondent is hereby **ORDERED** to re-evaluate the grievant for promotion based upon his extension assignment.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Monongalia County and such appeal must be filed within thirty (30) days of receipt of this decision. (W. Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.

DATED

August 25, 1987

Sue Keller

SUE KELLER  
Hearing Examiner