

**MEMORANDUM**

**To:** President Jeffrey Armstrong

**cc:** Al Liddicoat  
Graham Archer  
Wayne Howard  
Tera Bisbee

**From:** Suzanne Phelan (Chair), Colleen L. Twomey, Bruce E. Greenbaum,  
Kathryn Rummell (alternate)

**Subject:** Faculty Hearing Committee decision on grievance R03-2015-189&CFA  
Case Number: 2016-106.

**Date:** May 30, 2016

The hearing was held on May 23, 2016 in the conference room of Building 33, room 290. The faculty panel consisted of Suzanne Phelan (Chair), Colleen Twomey, Bruce Greenbaum, Kathryn Rummell (alternate). The grievant in the case was Wayne Howard, Full Professor in the Agribusiness Department.

**Attendees**

Appearing for the grievant were Professor Howard, representing himself, and his witnesses were Agribusiness professors Lynn Hamilton and Neal MacDougall. Professor Howard was advised (but not represented) by Cal Poly CFA Chapter Faculty Rights Representative Jere Ramsey. Appearing for the University were Tera Bisbee, Assistant Vice Provost, Academic Employee Relations, who was representing the University. University witnesses were Agribusiness Professor Sean Hurley, Associate Vice Provost of Academic Personnel Al Liddicoat, Agribusiness Department Chair Cyrus Ramezani, Dean of the College of Agriculture, Food, and Environmental Sciences Andrew J. Thulin, and Provost and Executive Vice President of Academic Affairs Kathleen Enz Finken.

In addition, Cal Poly CFA Chapter President Graham Archer and Associate Vice Provost of Academic Personnel Al Liddicoat observed the entire hearing but did not advocate. Others who attended, as observers, were Lewis Call, Matt Lazier, Chris Murphy, Dawn Theodora, Linda Vanasupa, Rusty Roy, Maureen Loughran, Dianne DeTurris, Dustin Stegner, Haley Marconett, and Lisa Kawamura.

## **Statement of facts/relevant background**

Before the hearing, the two sides agreed to the following stipulated facts, which we take verbatim from the document disseminated at the start of the hearing:

1. From January through April 2014, Lynn Hamilton was a member of the College of Agriculture Dean Search Committee.
2. In September 2014, AGB faculty confirmed their decision to conduct an internal search recruit for a Department Chair (not Department Head).
3. In October 2014, the AGB Chair Search Committee met with Dean Thulin to discuss the Department Chair search policies and procedures. Dean Thulin indicated no issues with the policies and procedures.
4. CP AGB Department Personnel Policies and Procedures, revised in October 2005, references in Section VIII. Department Chair Selection. The AGB Department Chair position was established by faculty vote in 1998 and confirmed by vote again in 2004. Item C established Chair Nomination and Election procedures. These Personnel Policies and Procedures were approved by Dean Wehner and the former Provost William Durgin.
5. After an internal election for chair was held, on February 6, 2015, Lynn Hamilton was put forward as the sole nominee. The results of this were communicated to the Dean on February 13, 2015.
6. On April 16, Jay Noel sent a memo to the Provost expressing concerns about the Department Chair selection process.
7. On April 27, 2015, Dean Andy Thulin met with Lynn Hamilton to inform her about the rejection of her nomination for the Department Chair position.
8. On April 27, 2015, the AGB faculty met with Dean Andy Thulin to express their disagreement with his decision to not to appoint Lynn Hamilton as Department Chair.
9. On April 30, 2015, the AGB faculty met with President Armstrong and Provost Enz Finken to express their disagreement with administration's decision to not appoint Lynn Hamilton as Department Chair.
10. The Provost sent a letter dated May 8, 2015 to the members of the Agribusiness Department in which she said she had " ... determined that it is in the best interests of the Agribusiness Department, the college, and the university, that the Agribusiness Department transition to a model which includes a department head rather than a department chair."

11. On June 2, 2015 Dean Thulin met with AGB to discuss potential options for an interim replacement of Jay Noel. Cyrus Ramezani and Charlie Crabb both attended a meeting with the department. Cyrus Ramezani spoke with the department
12. On June 8, 2015, CFA Representative Jere Ramsey filed a grievance on behalf of the "Agribusiness Department" as a Statutory Procedure (Faculty Hearing committee). The grievance was signed on page 2 by Jere Ramsey. No specific faculty members were named or signed the grievance.
13. In mid-June, an extension was signed, with mutual agreement that the Level I Meeting needed to take place by October 9, 2015.
14. On July 1, 2015, the Dean sent an email to AGB announcing that Cyrus Ramezani would begin his 3- year term as Department Leader.
15. A Level I grievance meeting was held on October 8, 2015. During that meeting, Jere Ramsey produced an "amended" grievance form, with Wayne Howard's signature on page 2 as the grievant and removed her name from the form. The form was also revised to indicate CFA was not representing Wayne Howard with this grievance.
16. The Level I response from Provost Enz Finken and Dean Thulin, dated October 21, 2015 state that the grievance was improperly filed and time-barred.
17. Both parties agreed to bifurcate the issue and convene a faculty hearing panel on arbitrability/procedural violations. This panel, which met on March 3, 2016 determined the grievance was arbitrable, and a second panel was thus convened to hear the merits of the case.

### **Grounds for statutory grievance**

The grounds for this grievance are to determine: 1) whether the Cal Poly Administration violated the rights of Agribusiness faculty on April 30, 2015 when the president and the provost announced a unilateral decision to change from a rotating department chair to a permanent department head; and, 2) whether the Administration also violated the rights of Agribusiness faculty by refusing to use the process outlined in the Agribusiness Department's Personnel Policies and Procedures (Revised 2005) to choose a department chair.

### **Statement of issue(s)**

The issues presented by both parties were whether the University violated the rights of Agribusiness faculty member Wayne Howard by announcing a decision to change from a rotating department chair to a permanent department head and whether the University disregarded the Department of Agribusiness's process for selecting a chair as outlined in their Personnel Policies and Procedures.

### **Grievant's position:**

The Grievant claimed that the Administration violated his rights as an Agribusiness faculty member by refusing to use the process outlined in the university-approved (2005 by Provost Robert Koob) Agribusiness Department's Personnel Policies and Procedures for choosing a department chair. Professor Howard expressed that, consistent with these policies, the department conducted an internal search process that resulted in recommending a candidate for chair (witness Lynn Hamilton) to the dean. However, the dean declined to interview the internal candidate, deemed her unacceptable as chair, and failed to communicate the reasons behind his decision. Instead, the dean placed Professor Cyrus Ramezani from Orfalea College of Business as interim department chair (3-year appointment) and did not consult the Agribusiness Chair of the Selection Committee in this decision.

The Grievant argued that this decision by the Administration to disregard the Department's selected candidate was in violation of university-approved Agribusiness policies and also university policies concerning shared governance that indicate that the Administration should consult with faculty in the process of selecting a chair. Specifically, the Grievant argued that the dean's decision was in violation of the Collective Bargaining Agreement Article 20.30 which states, "Department chairs shall normally be selected from the list of tenured or probationary faculty employees recommended by the department for the assignment." Professor Howard referenced four texts to support his point:

1. The Academic Senate Resolution on Shared Governance (AS-748-12, adopted May, 2012) that indicates "that decisions of trustees and the President should concur with faculty judgment except in rare circumstances and for reasons clearly communicated to the faculty, and with the full input from and consultation with the faculty;"
2. The AAUP Statement on Government of Colleges and Universities that indicates that chair or head selections should "normally be in conformity with department members' judgment;"
3. The Higher Education Employer-Employee Relations Act (HEERA) that "recognizes that joint decision-making and consulting between administration and faculty...is the long-accepted manner of governing institutions of higher learning;"
4. The Academic Senate Resolution on the Binding Nature of College and Department Personnel Policy and Criteria Statements (801-15, adopted June, 2015) that indicates that if a department's policies specify a chair rather than a head, "any effort to install a department head, interim or otherwise, would therefore be contrary to the formal agreement its faculty have with the administration."

The Grievant claimed that the abrogation of university-approved departmental policies and the lack of transparency on the part of the Administration negatively affected his working conditions as a faculty member in the department. The Grievant claimed that

the Dean Thulin lacked transparency when he recommended that the faculty conduct the process of selecting an internal chair (email communication October 16, 2014) while already having expressed to the Provost and Associate Vice Provost of Academic Personnel that he desired to move the department's governance structure from a chair to a head (email communication October 11, 2014).

**University position:**

The University claimed that Professor Howard's individual rights were not violated in either complaint. Regarding the claim that the Administration disregarded the Department of Agribusiness' policies in place for selecting a chair, the University denied the claim and contended that the Grievant participated in the process of selecting a chair, consistent with the Agribusiness Department's policies, and that the University did not interfere in this process. Also, the University argued that Agribusiness faculty did not follow their own policies because their letter to the dean putting forth their candidate for chair (Lynn Hamilton) did not include the candidate's weaknesses, as described in their policies. Also, the University argued that, consistent with university policies, the Agribusiness faculty were consulted in the process of nominating Professor Cyrus Ramezani as interim chair. The University contended that the Grievant was provided the opportunity to participate in the selection of the interim chair candidate and in moving from a chair to a head model through opportunities to vote for the interim candidate and to participate in a departmental meetings with his department, the dean, the provost, and the president.

The University described reasons behind the decision to deem the department's internal candidate unacceptable and the rationale for appointing an interim chair from outside the department. The University provided testimony from Provost Enz Finken and Dean Thulin and Professor Ramezani that the department lacked cohesion, had an untenable and stressful climate for junior faculty members, and was being financially mismanaged. The University argued that a change was needed in the department's culture.

Regarding the unilateral decision of the president and the provost to change from a rotating department chair to a department head, the University denied that rights were violated and referenced the Collective Bargaining Agreement article 20.32 which states, "Such department chairs shall be appointed by the President and shall serve at the pleasure of the President." Also, the University cited the Campus Administrative Manual (CAM) that states that, "the department head/chair serves at the discretion of the dean." Furthermore, the University cited the Academic Senate Resolution (AS-801-15; June 2, 2015) that states, "both department chairs and heads are selected by and serve at the pleasure of the Dean, Provost, and President." The University noted that Professor Ramezani's position is an interim chair and not a head, as noted in his offer letter.

Associate Vice Provost of Academic Personnel Al Liddicoat provided testimony that among policy documents, the Collective Bargaining Agreement is the most authoritative, followed by the university Campus Administrative Manual, college policies, and then departmental policies.

## **Discussion/Analysis**

The grievance makes two assertions: 1) the rights of the Agribusiness faculty were violated by the Administration's decision to change the leadership of the department from a department chair to a department head, and; 2) the rights of the Agribusiness faculty were violated by the Administration's refusal to adhere to the Agribusiness Department's Personnel Policies and Procedures in the selection of the department chair in 2015. The Grievant is seeking a two-part remedy that includes the maintenance of a department chair for leadership of the Agribusiness department and the use of the department's existing Policies and Procedures in the department chair selection process.

The first claim was that the University violated Professor Howard's rights by deciding to change the leadership of the department from a chair to a head. The Collective Bargaining agreement, Campus Administrative Manual, and Senate Resolutions collectively indicate that department heads/chairs are ultimately appointed by and serve at the discretion of the president as well as the provost and dean. The Administration's decision to change leadership from a chair to a head did not appear to be in violation of these policies, although seemed to be inconsistent with the spirit of shared governance described in Senate Resolution 801-15.

We note that numerous policy documents suggest that decisions of the Administration should concur with faculty judgment except in rare circumstances. Testimony provided by Provost Enz Finken, Dean Thulin, and interim chair Ramezani indicated untenable circumstances within the Agribusiness department, particularly for junior faculty. Testimony presented by Dean Thulin, Associate Vice Provost Liddicoat, and Provost Enz Finken asserted that significant consultation was undertaken among senior university administrators and external stakeholders, including the Agribusiness Department's Advisory Council, regarding the transition from a department chair to a department head. Email communication between Associate Vice Provost Al Liddicoat, Dean Thulin, Provost Enz Finken and President Armstrong assert that the Administration was seeking to explore opportunities to change the department's leadership to a department head position (Grievant exhibits 8, 10). Al Liddicoat asserted the need to consult with the department's faculty regarding this potential transition on multiple occasions. The Faculty Hearing Committee heard limited evidence of direct consultation with faculty on the issue beyond a reportedly highly contentious meeting between the Agribusiness department and President Armstrong and Provost Enz Finken on April 30, 2015.

The Agribusiness department's policies and procedures do not specifically address any process for changing the department leadership from a department chair to a department head (University exhibit 5). The Agribusiness department's policies and procedures indicate that the faculty voted to create the department chair position in 1998 (University exhibit 5), and Wayne Howard testified that the 1998 change was from a department head to a department chair. When discussing the current consideration of

a change from department chair to department head, Dean Thulin, in an email to Provost Enz Finken and Associate Vice Provost Al Liddicoat, asserted that “Of course, it goes without saying that the department faculty and staff would be involved in recommending a suitable candidate for department head” (Oct. 11, 2014 email, Grievant exhibit 8).

Regarding the second claim that Professor Howard’s rights were violated by the Administration’s refusal to adhere to the Department’s Personnel Policies and Procedures, the Committee heard testimony from both the Grievant and the University Administration that the Agribusiness department conducted an internal search for a new department chair, as outlined in the department’s policies and procedures (Grievant exhibit 1). The department’s faculty evaluated two internal candidates and presented one candidate to Dean Thulin for review. Ultimately, Dean Thulin, in consultation with Provost Enz Finken, Associate Vice Provost Liddicoat, and President Armstrong, declined to approve the department’s selected department chair candidate. One significant point of contention between the parties was Dean Thulin’s decision to not conduct an in-depth interview with the faculty’s proposed department chair candidate. While the dean declined to attend this in-depth meeting with the candidate, the department’s policies and procedures do not outline any specific requirements for the dean to evaluate a proposed department chair candidate.

The department’s policies and procedures also do not outline any specific process for continuing a search when the faculty’s recommended candidate(s) is/are rejected (Grievant exhibit 1). Additionally, both the Collective Bargaining Agreement (University exhibit 6) and the University’s Campus Administrative Manual (University exhibit 8) indicate that a department chair serves at the pleasure of the president and/or the dean and is appointed by the president and/or the dean in consultation with the faculty. This Committee heard testimony from Dean Thulin that two candidates (Dr. Ramezani and Dr. Crabb) were presented to the faculty for review once the faculty’s initial candidate had been rejected. Ultimately, Dr. Ramezani was offered and accepted the interim department chair position (University exhibit 13).

On a technical note, the Grievant filed this grievance under the Statutory procedure, which mandated the use of this Faculty Hearing Committee rather than an arbitrator. Testimony was presented by Associate Vice Provost Al Liddicoat that a Statutory grievance is filed by an individual – not a group, department or broader collection of eligible grievants – and the remedies are individual-level remedies. However, the remedy sought in this grievance is at a department level. The Committee heard testimony from Dr. Sean Hurley, a member of the Agribusiness department’s faculty, that he did not support the grievance and that the grievance did not reflect the feeling of the entire department’s faculty. It is unclear to this Committee how to align the individual grievant’s claims and the department-level remedy sought.

## Decision

After evaluating the evidence, the Committee has concluded unanimously that there is insufficient evidence to support the grievance. The Committee did not hear convincing evidence or testimony outlining the specific rights from the Agribusiness department's policies and procedures that were violated in the department chair selection process. While unusual, the Administration's rejection of the Agribusiness department's recommended candidate does not appear to violate any of the department's policies and procedures, the Collective Bargaining Agreement, or the university's Campus Administrative Manual. In the absence of any specific policies or procedures addressing the process required after the rejection of the faculty's proposed candidates, the dean appears to be within his rights to appoint a department chair – as asserted in both the Collective Bargaining Agreement and the university's Campus Administrative Manual.

Additionally, there does not appear to be a specific university policy regarding the change from a department chair to a department head. Instead, there is only the Academic Senate Resolution 801-15, which, as we understand it, is not policy but is rather a statement of the faculty's beliefs about shared governance and personnel policies and was also not in effect during the time of the actions alleged in the grievance. Also, the Grievant is an individual, but the remedy sought would affect the entire department, which is not represented in this case..

Though we find that there was no breach of department policy here, we want to point out that departments are limited in what they can require of deans and other upper administrators in their policies. Departments cannot, for instance, place requirements on a dean to interview potential chair candidates, nor can departments control how a dean selects a chair. Because department policy documents are necessarily limited in their scope, it is incumbent on deans, provosts, and presidents to help ensure that shared governance is followed.

Implied in shared governance is a trust between faculty and administration that consultation and real listening will occur. Though it appears that the administration had serious and long-standing concerns about the Agribusiness Department, the evidence presented suggests limited consultation with the Agribusiness Department faculty occurred when making the decision to move to a department head. Because the implications of this grievance could stretch beyond the Agribusiness Department, we urge the administration to follow AS Resolution 801-15 when considering departmental and college governance. Without collaboration between University Administration and faculty and due consideration of input from faculty on critical governance issues, the University risks devolving into a more inhospitable environment for faculty to support the university's mission of serving its students. The Academic Senate calls for greater commitment to shared governance and this Committee agrees that a strong commitment from both the Administration and faculty to work together on critical governance issues is of the utmost importance.



Sincerely,



**Suzanne Phelan (Chair)**

see attached

**Colleen L. Twomey**



**Bruce E. Greenbaum**



**Kathryn A. Rummell (alternate)**

**From:** Colleen Larkin Twomey  
**Sent:** Wednesday, June 1, 2016 9:31 AM  
**To:** Suzanne Phelan; Kathryn A. Rummell; Bruce E. Greenbaum  
**Subject:** Re: Grievance

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I approve.

Colleen

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