



"Committed to Academic Excellence"

NEWSLETTER

Special Edition

January 17, 1994

CHAPTER SUPPORTS GEIRSSON'S APPEAL

On January 11, 1994, the Wartburg College chapter of the American Association of University Professors, by unanimous vote of the members present, authorized the Executive Committee to compose a letter supporting Heimir Geirsson's appeal of the "institutional need" determination that was the basis of the decision not to reappoint him beyond 1994-95. On Friday, January 14, the letter was sent to the four members of FRC who are hearing the grievance, to the president, the dean, and the chairs of ART and FC. The complete text follows:

The Wartburg Chapter of the American Association of University Professors supports Professor Heimir Geirsson's appeal of the "institutional need" determination that was the basis for the decision not to reappoint him after 1994-95. We support his appeal because the information that we possess suggests that both academic due process and basic fairness were disregarded in the proceedings that led to these decisions. We find the following issues particularly troubling:

1. A Dangerously Broad Interpretation of "Institutional Need"

Fairness would seem to dictate that a lack of institutional need should only be used as a basis for nonreappointment—if it should be used at all—when continuous monitoring during the probationary period indicates a significant decline from the need that justified the initial appointment. In other words, there should be evidence that the need has diminished, that this diminution of need is significant, and that it reflects long-term, not short-term, patterns.

However, the use of institutional need in reaching the decision not to reappoint Professor Geirsson reflects a much broader, and, in our view, less fair understanding of institutional need. According to this interpretation of institutional need, the position in question is examined relative to all other positions, departments, and programs. If another area is experiencing greater growth, it is said to be experiencing greater need, and on that basis is made the determination that there is a lack of institutional need for the position under examination.

Not only do we find this "rob-Peter-to-pay-Paul" approach to institutional need to be essentially unfair to the candidate, but we also consider its use to have dangerous long-term implications.

One of these implications is that the notion of "tenure-track" accepted at Wartburg College will be one that is peculiar to this institution. The generally accepted understanding of tenure-track is identical to that which is found in the AAUP Redbook. According to this understanding, anyone who accepts a tenure-track appointment can expect to receive tenure at the end of the probationary period if he or she fulfills the performance expectations and if no catastrophic changes occur in the college or in the department. But the use of institutional need to justify Professor Geirsson's nonreappointment seems to indicate that a radically different notion of tenure-track may eventually prevail at Wartburg, especially in departments where enrollments are not directly related to students' vocational interests. According to this notion, a person can be appointed to a tenure-track position, do more than what is expected of him, and still not receive tenure—indeed, not even be allowed the opportunity to be evaluated!

Wartburg AAUP believes that unless the college makes it clear to potential appointees that the meaning of a tenure-track appointment at Wartburg is fundamentally different from its meaning elsewhere, the college will not be offering tenure-track contracts in good faith.

And because of the relative insecurity and vulnerability of this kind of tenure-track position, Wartburg AAUP also believes that probationary faculty, especially in departments experiencing a lack of growth in enrollments, cannot possibly feel that they possess the same amount of academic freedom as their tenured colleagues (or their counterparts at other institutions). Such a circumstance is contrary to the AAUP

principle that probationary faculty should enjoy the same rights to academic freedom as tenured faculty (the 1940 *Statement of Principles on Academic Freedom and Tenure*, Redbook, p. 4).

Finally, we believe that the broad interpretation of institutional need, with its pernicious consequences for our tenure-track colleagues, does not reflect the will of the Wartburg College faculty. We therefore hope that a rejection of this interpretation will be one of the outcomes of Professor Geirsson's appeal.

2. An Abrupt Switch in Reappointment Criteria

As AAUP Associate General Secretary Jordan E. Kurland points out in his letter of December 17, when Professor Geirsson was first appointed to the Wartburg College faculty in 1990, he was led to expect that his chances for tenure depended on his academic performance. Such was also the case when he was reappointed in 1991 and, again, in 1992. It was only last spring that Dean Pence first alluded to his doubts about the institutional need for Professor Geirsson's position. Then, in the fall of 1993 Professor Geirsson was told that institutional need was the sole basis for his nonreappointment. Wartburg AAUP agrees with Mr. Kurland's conclusion that the sudden introduction of institutional need as the only criterion for tenure in Professor Geirsson's tenure year was an "abrupt switch" from academic performance as the only criterion of tenure, analogous to changing the rules of the game in the final minutes.

The basic unfairness of this switch is evident. And, as Mr. Kurland also points out, it is antithetical to AAUP standards, in particular the standard that requires tenure-track faculty to be informed, "early in their appointments," of all the procedures and criteria affecting their reappointment and eventual tenure (AAUP Redbook, p. 16).

3. Inadequate Consideration of Institutional Need

According to the faculty handbook, an examination of institutional need must attempt to determine that there is a "change in the future need" for that position (emphasis added). This examination must be based on evidence provided by the following: "overall student enrollment; course enrollment patterns; number of majors and minors; [and] departmental, general education, and other program staffing needs" (2.7.4.2).

This evidence, instead of suggesting a decrease, seems to suggest an increase in the need for Professor Geirsson's position, an inconsistency that causes us to question whether all the evidence was adequately considered.

Our concern is intensified by the fact that, despite the wide-ranging considerations implied in the types of evidence listed above, the dean did not make this decision based on any long-range planning, either for the college or for the department. It seems to us that decisions of this sort should be based on a thorough program review and on a reasonably clear idea of the future ramifications for the curriculum as a whole. Finally, we note that, according to the minutes, Faculty Council met only twice (October 27 and 29) to examine the institutional need of six tenure-track positions.

4. The Possibility of an Improper Basis for the Institutional Need Determination

The apparent inconsistency between the institutional need determination and the evidence upon which it was supposed to be based suggests another possibility in addition to that of inadequate consideration—namely, that the institutional need determination was reached upon a basis not specified in the faculty handbook.

This possibility is further suggested by the alleged problems between Professor Geirsson and his department chair alluded to in Mr. Kurland's December 17 letter. Wartburg AAUP shares the concern expressed by the national office over the possibility that these problems may have influenced the nonreappointment decision. Our concern is compounded by the fact that the department chair did not submit a five-year plan as requested by Faculty Council.

5. Violation of Faculty Procedures

It is an AAUP principle that recommendations pertaining to renewal and tenure be made "in accordance with procedures approved by faculty" (Redbook, p. 16). We are therefore concerned about the following procedural irregularities:

A. Institutional Need as a Means of Program Reduction

We find it troubling that a decision which, in its consequences, very much resembles program reduction could be reached without a formal program review and without action by the full faculty, as our handbook requires (section 2.10.5.3.7.2).

Wartburg AAUP recognizes the right of the administration to make cuts in programs and positions. The procedures for doing so are found in the faculty handbook sections entitled "Financial Exigency" and "Formal Reduction or Discontinuance of Degree or Program Areas."

But, as we understand the new faculty handbook, the policy described under the heading of "Institutional Need Considerations" is fundamentally different from financial exigency or program reduction.

B. Failure to Monitor Institutional Need Continuously

According to the faculty handbook (2.7.5.3), "the need for a tenure-track position shall be continuously monitored during the probationary period" in the manner described in section 2.7.4.2.

However, two members of APC have stated that Professor Geirsson's position was not so monitored in 1992-93. And since the old handbook did not require it, there is no reason to think that Professor Geirsson's position was monitored in the two previous academic years either. Under the old handbook, the institutional need of a tenure-track position had to be reviewed only at the time that the person holding the position was standing for tenure (p. 85).

According to AAUP Counsel Helen Irvin, however, the handbook that applies to a faculty member who has been denied reappointment is the handbook which was in place when the nonreappointment decision was made—in Geirsson's case, the new handbook. Clearly, in this instance Professor Geirsson fell victim to a lack of articulation between the old and new faculty handbooks.

Apparently, the Handbook Revision Committee recognized that problems of this sort might occur. In a memo dated March 25, 1993, HRC alludes to "questions of implementation and 'grandparenting'" that would "need to be addressed when considering the adoption of a new Handbook." And they add that they are willing to "develop recommendations for achieving fair and reasonable implementation of specific aspects of the Handbook, including the transition from current faculty appointments to those proposed in [the March 24, 1993] draft." It is unfortunate that these recommendations were never developed and adopted.

Because it is impossible to redo the continuous monitoring of Professor Geirsson's position, we would argue that the assessment of institutional need must be disallowed.

C. Denial of the Right to a Tenure Evaluation

According to the faculty handbook, both the dean and ART are obliged to evaluate tenure-track candidates for tenure regardless of any other considerations: "All tenure-track faculty shall be evaluated each year. . . . In the sixth year of appointment (or its equivalent, in the case of prior service), tenure-track faculty shall be evaluated for tenure. . . . Faculty in their . . . sixth year of appointment shall be evaluated by their Department Chair, Peer Review Panel, Appointment, Rank and Tenure Committee, and the Dean of the Faculty" (2.7.4). During this evaluation, the dean and ART "take [the institutional need] information into consideration" (2.7.4.2). After the evaluation process, the dean and ART "shall make" their separate recommendations of tenure or no tenure to the president (2.7.5.5).

It is clear that these procedures were not followed in Professor Geirsson's case. He was not evaluated for tenure by the dean and ART; the nonreappointment decision was made before, not after, the required evaluation process; and it was made without a recommendation on tenure by ART and the dean.

Nowhere does the new handbook state or imply that institutional need is required for a candidate to be evaluated for tenure. Rather, it states that institutional need is required for a candidate to receive tenure (2.7.5.3).

In our view, it should be up to the candidate to decide whether or not he or she wishes to be evaluated for tenure, regardless of the institutional need determination.

We hope that the foregoing information will serve to explain why Wartburg AAUP supports Professor Geirsson's appeal of the institutional need determination. For reasons of fairness and justice, we believe that

Professor Geirsson should be allowed to be evaluated for tenure on the basis of his academic performance only.

THE USE AND ABUSE OF CONFIDENTIALITY

Wartburg AAUP contacted national officers and officials on the subject of confidentiality, as it applies to personnel files and grievance proceedings.

The Word from the National. On December 3 we sent a letter to the national office, asking for an opinion on how to interpret the new faculty handbook statements on the confidentiality of grievance proceedings. Our handbook states that "grievance proceedings are confidential, subject only to the need of the grievant and the College to comply with the processes specified herein, and to present evidence concerning the grievance in other judicial or administrative proceedings."

We asked these questions: "(1) Are we correct or safe if we assume that 'grievance proceedings' are the formal hearings that take place? (2) If the grievant cannot talk about what is said in these hearings, how can he or she double-check statements or ask others (like AAUP) for assistance?"

We received an answer to these questions from Associate General Secretary Jordan Kurland in a letter dated December 17. He writes, "As to your specific questions: (1) **you are certainly correct, by AAUP's lights, in assuming that confidentiality with respect to grievance proceedings applies to the specific information that comes forth in the formal hearings;** and (2) **the grievant, while he or she is constrained from making public statements, is certainly free to double-check statements and to reveal information to those (like AAUP or legal counsel) to whom he has turned for advice and assistance."**

Pearls from Perley. Another of our correspondents was Jim Perley, whom the Executive Committee met when they attended his Iowa AAUP-sponsored workshop on Committee A activities in October. Perley, a biologist at Wooster College in Ohio, is Chair of the AAUP Association of State Conferences, former member of Committee A, former President of Ohio Committee A, and current candidate for President of AAUP.

Perley had this to say about confidentiality in grievance proceedings: "**My feeling is that a procedure should not present barriers to getting at the truth. My own personal view is that confidentiality is just such a barrier."**

We also asked Perley for his opinion on the confidentiality of personnel files. His response: "**I can understand confidentiality of personnel files to protect the faculty member and personal information. I have more difficulty with confidentiality of materials relating to how officials acted, such as a letter from a department chair recommending against tenure.**

"**It has always been my policy as chair to be as open as possible with any correspondence I wrote about a faculty member up for review, including recommendations for non-renewal. I have shared all information with candidates for tenure, and allowed them to use those materials in any way they saw fit, including release to the press.**

"**Confidentiality, often, is a protective device to insure that dirty tricks done under the cloak of secrecy never see the light of critical examination. I have no problem with a chair recommending against tenure. However, I would also argue that a chair has the obligation to defend that position with logic and clarity."**

THE REDBOOK ON CONFIDENTIALITY

Wartburg AAUP searched the Redbook for statements on the confidentiality of grievance proceedings and discovered that AAUP does not recommend that grievance proceedings be confidential (see pp. 18-20).

A HIGHER AUTHORITY ON CONFIDENTIALITY

"For every one who does evil hates the light, and does not come to the light, lest his deeds should be exposed. But he who does what is true comes to the light, that it may be clearly seen that his deeds have been wrought in God" (John 3:20-21).