

PART 4: NEUTRAL UMPIRE'S DECISION

On Friday, October 8, 2010, I conducted an Assignment Dispute Resolution (ADR) Meeting to review Dr. Lester Embree's allegation that his 2010-2011 Assignment had been imposed arbitrarily or unreasonably. Present at the meeting were Dr. Lester Embree of the Philosophy Department, Dr. Douglas Broadfield, Contract Enforcement Officer, FAU Chapter of the UFF, Dr. Manjunath Pendakur, Dean of the Dorothy F. Schmidt College of Arts & Letters (A&L), and Dr. Wes Hawkins, Assistant Provost for Promotion and Tenure.

The meeting lasted from 2:00-4:00 P.M. The participants introduced themselves; I stated my understanding of the reason for the meeting and told them what materials I had received from the University; I then described the method in which I wanted to conduct the meeting. There were no objections.

In the first part of the meeting I asked general questions to the group about the annual assignment procedures at FAU and in the College of A&L, both for regular faculty and for Eminent Scholars, questions about policy for the assignments of faculty on terminal contracts, and questions about enrollment in the Philosophy Department; and I asked Dr. Embree questions about the history of his assignments at FAU. In addition, I had several questions about details in the materials I had received – in emails from Dr. Embree to Dean Pendakur and in the University's written response drafted by Dr. Hawkins.

In the next part of the meeting I asked Dean Pendakur to describe how he had taken into consideration the relevant areas outlined in Section 9.3 of the Collective Bargaining Agreement (CBA) in making Dr. Embree's assignment. I asked the other participants to respond and add information as they felt necessary.

In the third part of the meeting I asked Dr. Embree to address the two reasons he gave for the allegation that Dean Pendakur had violated Section 9.3 and gave the University representatives the opportunity to respond.

Finally I asked if any of the parties had anything more they felt I should know to help me come to a just decision.

Because assertions, responses and discussions throughout the meeting tended to be repeated, clarified, and/or expanded, I am going to summarize the major points made by both sides during the hearing.

Dean Pendakur's repeated assertion throughout the meeting was that he had given Dr. Embree an assignment that reflected the best way to deploy Dr. Embree's talents at this time at FAU. Dr. Pendakur had to look first at the needs of the students and the university. The increasing enrollments at the undergraduate level required a recalibration of assignments to reflect the increasing instructional needs. In any given year the demands for research, teaching and service change. The Dean is aware of

what that means for the faculty. Unfortunately, the pressure for increasing faculty instructional time is only rising. While Eminent Scholars were given more research and service time in the past, Dean Pendakur argued that it is no longer possible to guarantee similar assignments and that Dr. Embree's 2010-2011 assignment is a logical reallocation of his time to meet current department needs.

In alleging that his assignment was inconsistent with other faculty assignments in his area, Dr. Embree's focus was on the comparison of his current assignment to that of the other Eminent Scholar in his department. That individual is assigned one course this year, in the fall term, and will be on leave in the spring term. Dean Pendakur responded that there is no formal rule for or standardization of the course assignments of Eminent Scholars across the University or across the College of A&L. In fact, within the College of A&L, they vary widely, from 1/1 in some cases to 2/3 in one. The Eminent Scholars all do different things and have different responsibilities. There was also a brief discussion of the current course assignment given to a member of the Philosophy Department on a terminal contract. However, these comparisons are not germane, since the CBA does not require consistency of course loads to be considered in the assignment process.

There was a difference of opinion as to whether there was due consideration of Dr. Embree's "professional growth and development" and of the "character and complexity" of the assignment. Dr. Embree stated that introductory courses do not develop him as a scholar or converge with his research interests. Dr. Broadfield felt that the assignment

was not congruent with the status of an Eminent Scholar. A lower level course was being pushed on Dr. Embree to meet the needs of the department. Dr. Embree said that eminent scholars were supposed to be different and have traditionally been hired for their research and scholarly achievement. Dr. Pendakur responded that it is beneficial to the University and to the department to have the very best faculty in the classroom, especially in front of the youngest students. In fact this can be a way of attracting students to a major.

Dr. Embree made the point that, while teaching can be considered a one year commitment, the kind of research and professional service he does, is a long term commitment with obligations that build up over the years. The current 5% allocation for professional service will not allow him to do what he wants to do and what he was hired to do in that area twenty years ago. With regard to research he referred to his "planetary reputation" in his field of phenomenology and said that he has been carrying the flag for FAU for twenty years. Dr. Pendakur complimented Dr. Embree on his scholarship and service, but again asserted that he was balancing the needs of the students and those of the faculty in adding one class to Dr. Embree's annual assignment this year. Finally, Dr. Pendakur affirmed that the assignment will not negatively affect Dr. Embree's opportunity for any available merit salary increases.

Dr. Broadfield said that assignments should not be limited to the four criteria in Section 9.3(a), which he characterized as "vague." For almost twenty years Dr. Embree has had a 1/1 teaching assignment. This new assignment takes away what he expected, and it

differs from the promise of a 1/1 assignment for 2010-2011, which Dr. Broadfield and Dr. Embree find implicit in the February 2009 memo from former Provost Pritchett referenced in the ADR. In response, Dr. Hawkins stated that Dr. Pritchett has since said that his letter in no way intended to supersede or violate the CBA. There was a brief discussion as to whether the chief academic officer can make a faculty assignment since there is nothing in the contract that prohibits it. The point is moot, though, since Dr. Pritchett has denied any intention of making an assignment. In addition, the meeting participants confirmed that Deans are the persons responsible for making the assignments for the Eminent Scholars in their colleges. Again, Dr. Pendakur repeated that the mix of teaching, research, and service in Dr. Embree's assignment for 2010-2011 reflects the current needs of the department and college.

At the end of two hours of discussion, it was agreed by all participants that each had had their fair say in the matter, and that the hearing had been conducted fairly.

The disputed assignment was _____ was not _____x_____ arbitrarily or unreasonably imposed.

Reasons for this determination that the assignment was not arbitrarily or unreasonably imposed are:

The Dean made the assignment with due consideration of the factors outlined in Section 9.3 (a) of the Collective Bargaining Agreement and exercised the right that he has per

Section 9.3(c) 'to determine the types of duties and responsibilities which comprise the professional obligation and to determine the mix or relative proportion of effort an employee may be required to expend on the various components of the obligation.'

The addition of one course to the 1/1 course load assigned to Dr. Embree for almost twenty years recalibrates the percentage of time he is expected to spend on instruction, research and professional service. However, this recalibration is Dean Pendakur's legitimate response to the changing needs of a growing university that is very different from the institution Dr. Embree came to twenty years ago.

Kristen Murtaugh
Neutral Umpire's Name
Kristen Murtaugh
Neutral Umpire's Signature

LESTER EMBREE
Employee's Name
10/12/2010
Date Decision Issued