

## “Careful Consideration”

### Suggestions for Deans, Department Chairs, and RPT Committees

#### *Introduction*

The phrase “careful consideration” is found in Article 12.7 of the CBA. It is used with reference to subsequent hiring of temporary faculty. More than mere words, “careful consideration” has been formalized as a significant concept in the hiring process, as a consequence of numerous grievances and arbitration hearings. As one arbitrator noted, “The term ‘careful consideration’ must mean more than simply thinking about someone and deciding not to offer that person a position. It must mean the University has to have some kind of a *reason* for what it did, or 12.7 would be meaningless.” [Emphasis mine] Several arbitrators have used the standard of a “reasonable person,” and asserted that this reasonable person would be expected to review files (and related materials) with a “special standard of care.” What this present set of suggestions hopes to do is further elaborate on these concepts, and offer some fairly concrete examples of how we may implement them.

#### •How would a “reasonable person” define *careful consideration*, and implement a *special standard of care*?

--The procedures for evaluation and decision-making set forth in Article 15 would be followed.

--The reasons for the offer of an appointment (or not) would be based on legitimate academic criteria, such as quality of course materials, formal academic training and experience, credentials (advanced degrees, licenses, etc.), student course evaluations, peer observations, etc.

--The department’s decision would consider all aspects of a candidate’s performance, and would be based on objective, merit-based standards.

--The department would avoid “tailoring” a position description in order to favor a particular candidate, or preclude giving another candidate careful consideration.

--The department would review the candidate’s Personnel Action File, and be able to provide proof that it had done so (e.g., that the PAF log had been signed).

#### •What guidelines would a “reasonable person” employ in carrying out performance evaluations?

--These would be done periodically (i.e., annually), and they would be completed in accordance with written procedures. These written procedures would not be changed or amended during the review process of a specific individual.

--Candidates would be given copies of those procedures and copies of all information placed in the Personnel Action File. Candidates would be provided an opportunity to respond in writing to these materials.

--Evaluations would be based on the primary criterion for the appointment (this is usually assumed to be effective teaching). Therefore, materials to be considered would be student course evaluations, peer observations, course materials, assessment practices, appropriate academic preparation, etc.

--The evaluative judgment would be reduced to writing, placed in the Personnel Action File, and provided to the candidate.

--These periodic evaluations would be given careful consideration, as part of the review of the PAF, when contemplating a subsequent appointment.

•What does the Collective Bargaining Agreement mandate (or imply) regarding careful consideration of a candidate for subsequent employment?

--A list of temporary faculty who have been evaluated must be maintained by the department. This list must include the specific courses taught by those faculty for the department. (Art. 12.7 & 12.8)

--Periodic evaluations must be completed and must be considered. (Art. 12.7)

--A “target position” must exist, and a candidate must have applied for it. (Art. 12.7, 12.28, & 12.29)

--If a temporary faculty member applies for, but does not receive, a subsequent appointment, he/she may grieve on the basis of failure to receive careful consideration (Art. 12.7), or violations of Art. 11 (Personnel File), Art. 15 (Periodic Evaluations), and Art. 16 (Discrimination).

•What have we learned from arbitration rulings regarding the concept of careful consideration?

--We must be able to document the procedures which led to a decision, and we must be able to provide the legitimate reasons we used to reach that decision.

--If a position, or “work,” is abolished because of decreased enrollments, budget reductions, or assignment of the work to probationary/tenured faculty, then “careful consideration” is not at issue. Similarly, we are not *required* to fill positions we have previously announced as available/vacant.

--Article 12.7 does not preclude consideration of other relevant factors (in addition to a candidate's application materials, PAF, and periodic evaluations). Examples of other relevant factors might be: a significant program/curricular change; greater knowledge of recent disciplinary developments; a desire to have one person teach all sections of a single course, etc.

--It is possible to offer a plausible *reason* for bypassing a qualified incumbent in favor of a less-experienced applicant. A *reasonable* basis might be: a more advanced degree, or a degree more closely aligned with the specific teaching assignment. (Temporary faculty do not accrue seniority, but it is assumed that experience "counts" as one factor, among many, in the process of careful consideration.)

--Article 12.7 does not preclude giving graduate assistants priority over temporary applicants as part of an overall policy to strengthen a graduate program.

--Incumbent temporary faculty must be told the criteria on which they will be evaluated, and supplied with the policies/procedures which guide the evaluation and appointment processes.

--Temporary faculty with discipline problems may not be excluded from careful consideration. A (fully documented) disciplinary problem may be a subsequent reason for a non-reappointment decision *after* careful consideration. In general, discipline problems ought to be addressed through due process policies and procedures, and kept separate from appointment policies and procedures. (This means that non-reappointment should not be used as the sole disciplinary punishment.)

--Do not rely *exclusively* on student course evaluations as the sole basis for careful consideration. Undocumented (i.e., not included in the PAF) student remarks should not be the basis for careful consideration, nor should anonymous comments by faculty, staff, or students.