RESOLUTION ON THE PERSONNEL REVIEW COMMITTEE

WHEREAS, The Personnel Review Committee has become a traditional instrument of review since its inception in 1968; and

WHEREAS, The Personnel Review Committee performs a valuable advisory role in personnel considerations; and

WHEREAS, The Personnel Review Committee has served as a catalyst for personnel policy reforms by calling attention to procedural irregularities; and

WHEREAS, The continued existence of the Personnel Review Committee is not precluded by the Collective Bargaining agreements of 1983; therefore be it

RESOLVED: That the charter of the Personnel Review Committee, as it appears in the current bylaws, be reaffirmed; and be it further

RESOLVED: That elections be held during the Fall 1984 quarter to fill such vacancies on the Personnel Review Committee as shall exist at that time.

APPROVED

May 22, 1984
REPORT ON THE EFFECT OF THE COLLECTIVE BARGAINING AGREEMENTS ON REVIEW, GRIEVANCE AND THE CONTINUED EXISTENCE OF THE PERSONNEL REVIEW COMMITTEE

The Role of the PRC in Review and Grievance

The collective bargaining contracts streamline the review process. They neither provide for the PRC, nor eliminate it or comparable agencies of review on other campuses. According to Provost Fort, however, the PRC will not be involved in RPT cases in Spring 1984. Since the Unit 3 CFA contract covers the vast majority of faculty, the rest of this report will focus on the effect of the CFA Agreement on review and grievance procedures.

The Peer Committee review option is the only specified provision for a committee of faculty members to review and make recommendations on a given evaluation case. This process has many of the same features as the PRC, but there are important differences. The panel of eligible faculty members is chosen by the President instead of being elected by the faculty. There are restrictions imposed on who can serve on this committee that are not imposed on the PRC membership. Most importantly, the Peer Review Committee is formed only after the President's initial decision on any given case. Formerly the PRC gave its input prior to the President's decision and, hence, was likely to have a greater chance of influencing the eventual outcome of a case.

We now compare the grievance process that existed with CAM and E.O. 301 with that provided by the CFA Unit 3 Contract. We note that there are three bargaining unit contracts which affect constituents of the Academic Senate. However, in order to avoid the confusion which would be caused by including information from all three contracts, this report will cover only the Unit 3 contract. For reference, we provide a flow chart outlining the different avenues of consultative and appeal procedures.

The Unit 3 Contract contains two grievance procedures, Article 10 (Contract Grievance Procedure) and Article 16 (Faculty Status Grievance Procedure). According to Michael Suess (Director of Personnel Relations), Article 10 deals with disputes over the use, alleged violations, and interpretations of the Unit 3 Contract. Article 16, on the other hand, deals with negative decisions with respect to retention, tenure, and promotion. This subcommittee did not examine Article 10.

Grievance procedures begin with a negative decision from the president. Both sets of procedures ask for an attempt to settle informally. E.O. 301 (sections 1.1 and 4.0) suggests that good faith efforts should continually be made. Article 16 (sections 16.10 and 16.11) requires a meeting with the president to discuss a potential grievance.

Both procedures require formal filing.
A notice of grievance and proposed remedy (section 7.2) followed by a supplemental notice of grievance (section 7.3). The latter is to detail the grounds for grievance and may consist of a simple listing of alleged infractions.

The major difference is that Article 16 requires the grievant's entire case (description, evidence, and arguments) to be provided prior to the establishment of a Peer Grievance Committee or an Arbitration Panel. E.O. 301 allows the case to be developed during the hearings and presented to the Grievance Committee.

Following filing, Article 16 offers either, but not both, of the two options by which the grievance is to be heard. These are Peer Committee Review and Arbitration. There are subtle differences in the wording of the two (sections 16.13 and 16.14), e.g., unjustified decisions versus unreasonable decisions. It is not clear whether these subtle differences are intended to offer directions as to which option is to be used. With E.O. 301, filing was followed by the establishment of a Grievance Committee.

Establishment: A panel consisting of no less than 25% of all full-time faculty served as a pool (3.4). A list of potential members of a particular grievance committee was drawn from this pool (8.2). Each party, grievant or administrator, with or without cause, could strike names (8.3).

The major differences are that E.O. 301 provided a potentially large and diverse pool, and permitted parties to challenge the committee make-up. Article 16 requires a previous affiliation, allows for the current practice of restricting the pool size, and offers no provisions to alter the make-up of the committee for reasons of cause or otherwise.

Witnesses: all on duty persons except the president are expected to serve if requested (10.10).
E.O. 301

Chairperson: Section 10.10 defines the duties of the chair.

Hearing: may be open or closed (10.4, 10.5, 10.6).

Attendance: presence of both parties required during the presentation of evidence (10.9).

Rebuttal: Sections 10.9.3 and 10.9.4 allow for rebuttals to evidence, testimony, and arguments presented by both parties.

Tapes: Section 10.14 requires a tape recording of the hearing and gives the grievant access to the tapes.

Decision: is to be based upon materials, evidence, and arguments presented (11.2). To find in favor of the grievant, the grievant's case must be in preponderance (51%).

Both E.O. 301 and Article 16 require reports and recommendations to be made to the president. With Article 16, no further avenues are available to the grievant. On the other hand, E.O. 301 allows the grievant to pursue Arbitration if the president disagrees with the Grievance Committee's recommendations (13.1). Article 16 provides arbitration as an avenue only in lieu of the Peer Grievance Option. Both E.O. 301 and Article 16 have specific procedures by which the arbitration agency is selected. Essential differences lie in the make-up of the Arbitration Panel, evidence to be considered, and the nature of awards.

ARTICLE 16

Chairperson: No provisions.

Hearing: apparently restricted to closed hearings (16.23 - 16.26).

Attendance: the grievant may meet with the committee to present issues (16.24). Note, evidence had already been presented at filing. An administrator may meet with the committee (16.25).

Rebuttal: Since the grievant's total case is made available at the time of filing, the administrators meeting with the committee could be a means by which the administration provides a rebuttal to the grievant's case. However, no provisions are made for the grievant to rebut the administration's arguments. In fact, the grievant may never be apprised of administration arguments.

Tapes: Article 16 does not really allow for a hearing as such. No provisions are made for recording any committee sessions.

Decision: is to be based upon evidence and presentation of both parties (16.26). The level of persuasion is not addressed.
**E.O. 301**

Make-up: Arbitration is to be considered by an agency arbitrator (14.7, 15.2).

Decision: is to be based upon the Grievance Committee report, materials considered by the Committee, Tapes, and the President's written decision (15.3).

Binding of Award: yes (15.9).

Nature of Award: may include retention, tenure, and promotion (15.7).

**ARTICLE 16**

Make-up: The arbitration panel consists of an agency arbitrator, administration representative, and a CFA representative (16.3).

Decision: is to be based upon evidence and arguments presented by both parties. This includes the filing package and testimony of witnesses called before the Panel (16.40).

Since membership is not otherwise defined, any or all members could be attorneys.

Binding of Award: yes (16.39).

Nature of Award: Section 16.38c specifically excludes retention, tenure, and promotion.

E.O. 301 allowed for the grievant to be apprised of the basis for the administration's case and for the grievant to prepare a rebuttal to this. This PRC provided the service of investigating possible infractions of the consultative process. Having access to other files (CAM 341.1A, paragraph 4), and interviews with all concerned parties, the PRC could make determinations of probable cause for grievance. This service may have alleviated unnecessary grievances by providing the relative merits of each party's positions. In addition, CAM provided avenues by which a candidate could gain a better understanding of the administration's position and by which he/she could respond to it. For example, CAM 341.1E required the administration to seek amplification. CAM 342.2, paragraph 2g, required the administration to meet with the candidate should the dean's recommendation have differed from the department's. The Unit 3 Contract does not have such provisions. It only provides for the candidate to respond to a recommendation (which may not be stated explicitly), by adding to the promotion package. With the Unit 3 Contract, grievance is the only method provided whereby disputes may be settled. Here, the grievant has limited access to information and evidence, and may never be apprised of the administration's actual case. Thus given the limitations of the Unit 3 Contract, the investigative efforts of the PRC could provide valuable services not otherwise available to both the administration and candidate.
The Past, Present, and Future Role of the PRC

Information from the Archives and Senate Office files indicate the following:

1. The present PRC has been in existence, with some variations in its charge, since 1968;

2. During this time, the purpose of the Committee has been to:
   a. Review personnel actions taken in regard to promotions, reappointments, tenure, termination and sabbatical leave decisions, at the request of the individuals affected by such decisions, to determine if the proper procedures were followed;
   b. Review school and departmental personnel policies to determine if there are procedural irregularities, ambiguities, or other factors that lessen the objectivity with which such personnel decisions are made.

3. At all times, the role of the PRC has been advisory, to call attention to defects which may bias personnel considerations with the hope that such irregularities may be corrected. While it is difficult to measure the success of the PRC in quantitative terms vis-a-vis individual personnel actions, the Committee can properly claim to have instigated personnel policy reforms over the years;

4. Both variations and inadequacies in record keeping make it difficult to construct a win-lost tally for those faculty who have aired their cases before the PRC. Because different administrators react differently to PRC recommendations, the extent of PRC influence is unknown. For example, while an individual who has been turned down for promotion may get a favorable response by the PRC in terms of how the nonpromotion decision was reached, that individual may not be granted promotion by the University president in that promotion cycle, but may be promoted the next. Moreover, the PRC report may be of major or minimal consequence if a grievance is filed;

5. The PRC contacts individuals who have been adversely affected by personnel decisions to inquire as to whether they want the PRC to investigate the decision. Many faculty accept this opportunity while others do not. The PRC records are incomplete over the years to show (1) those adversely affected by personnel decisions; (2) the number who contact the PRC; (3) the PRC recommendation; and (4) the final action by the University president;

6. A strong case can be made that the PRC provides a useful function in its review of personnel policy documents; the PRC serves a symbolic role in that it does call attention to administrators of irregular procedures; second, it informs faculty that proper procedures have been followed--this is a safety valve role which is important; based on how University presidents have subscribed to PRC recommendations in personnel action disputes, the effectiveness of the Committee is less tenable. Since the power of the PRC is only advisory, it would be futile to measure its success by a ratio of recommended actions accepted by the University president.
7. The new CFA contract obviously lessens the influence of the PRC on this campus in personnel actions since it effectively eliminates the advisory role played by the PRC since 1968. This notwithstanding, however, the PRC may continue to provide a useful function for both faculty and administration on this campus by reviewing departmental/school policies relating to promotions, reappointments, tenure, termination and sabbatical leave decisions. The major benefit of such an advisory review would be to call attention to procedural defects in the policies evident by irregular standards or ambiguous language.

A vote of the PRC on October 21, 1983 indicated that a majority of our committee favored (8 yes, 4 no, 2 absent) the continuation of the PRC in its traditional role. We, therefore, recommend that the Academic Senate call upon the President to activate the PRC for the 1983-1984 academic year, conferring upon it the same powers of investigation it has had in the past.