

**AMERICAN ARBITRATION ASSOCIATION
CASE NO.
ARBITRATION OPINION AND AWARD**

January 3, 2022

In the Matter of an Arbitration Between

TEMPLE UNIVERSITY

and

**TEMPLE ASSOCIATION OF UNIVERSITY
PROFESSIONALS, AFT, LOCAL 4531**

Introduction

Temple University (hereinafter “Temple”, “University” or “Employer”) and the Temple Association of University Professionals, American Federation of Teachers, Local 4531 (hereinafter the “Union” or “Association”) are parties to a collective bargaining agreement which governs the wages, hours and working conditions of full-time and regular part-time faculty, librarians and academic professionals.

Findings and Opinion

The issue before this Arbitrator is: Did the University violate Article 11 and/or Article 16, Section B of the collective bargaining agreement; and if so, what shall be the remedy?

Article 11 in the current collective bargaining agreement provides the following:

USE OF STUDENT FEEDBACK FORMS

Student Feedback Forms (SFFs) shall not be used as the sole criterion and shall not be used as the primary criterion for evaluating faculty for hiring, re-appointment, termination or any other personnel decision. In cases of discipline, the university may decide at its sole discretion to use the SFFs as the primary or sole basis for initiating the disciplinary process as articulated in Article 13.

This Article was added during the last round of contract negotiations and came about as the result of Union proposals. The Union

explained that these student evaluations, based on studies, have been shown to be subject to bias and prejudice. As a result, SFFs can lack the ability to fairly measure a faculty member's actual teaching ability.

Article 11 is unambiguous and limits the University's ability to use SFFs for evaluative purposes and prohibits the University from using SFFs as the sole or primary criterion for evaluating faculty for re-appointment¹. Thus, this provision precluded the University from using SFFs as the sole or primary reason not to reappoint Grievant.

Based on the totality of the evidence before this Arbitrator, it is clear that Grievant's 2019 SFFs were, if not the sole criterion, certainly the primary criterion for Dr. xxxxxx's decision to recommend that Grievant not be reappointed. Dr. xxxxxx candidly testified that in January 2019, after Grievant had submitted all of his reappointment materials², his "mind had been essentially made up" that Grievant's one-year contract was terminable. The following January, when Grievant was again up for reappointment, instead of requesting an entire NTT portfolio and associated documents, Dr. xxxxxx only asked Grievant for his 2019 SFFs. Shortly thereafter Grievant met with Dr. xxxxxx and was advised that he would not be reappointed. Grievant credibly testified that during this meeting only his SFFs were discussed. Grievant's testimony is buttressed by the fact that ~~in early March~~ he received a letter

¹ Inasmuch as this is not a case involving discipline, the University's ability "to use SFFs for the primary or sole basis for initiating discipline" is not applicable to this matter.

² On January 24, 2019, Grievant, in response to Dr. xxxxxx's Assistant's request, provided a completed NTT (Instructional) portfolio and indicated that two peer faculty review letters, and three letters of support/recommendation would be forthcoming. Union Exhibit 4.

requesting that he provide his CV and teaching portfolio to Dr. xxxxxx, despite the fact that he had already received written confirmation from the Associate Dean of Faculty Affairs that his contract was not being renewed. Moreover, when asked why Grievant was requested to provide these materials after having already been told he was not being reappointed, Dr. xxxxxx stated he “did not know why he would have requested documents from [Grievant] since the decision not to renew was already made.”

Based on the foregoing, this Arbitrator finds that the University used Grievant’s SFFs, at a minimum, as the primary criterion for evaluating his reappointment. Such action was a clear violation of Article 11.

For the same reasons set forth above, this Arbitrator finds the University violated Article 16 Section B.2. That section of the collective bargaining agreement provides the following:

Article 16, Nontenure-Track Faculty Classifications

B. Appointment and Reappointment Procedures

2. The processes for appointment and reappointment shall be discipline specific and shall be determined by the Dean in consultation with Department Chairs, department committees and other appropriate collegial bodies. These processes shall include consultation with appropriate departmental committees and/or faculty within the department, except in urgent situations, such as when faculty are unavailable for consultation and a rapid decision is necessary. The faculty in the relevant departments and colleges shall be provided a copy of the procedures once they have been approved by the Dean. Faculty shall be notified of any changes in the procedures.

Pursuant to this provision, the College of xxxxxxxxx developed Procedural Guidelines for the Appointment, Reappointment and Promotion of Non-Tenure Track Faculty in the College of xxxxxxxxx. In accordance with those guidelines, faculty members up for reappointment would provide a Teaching Portfolio to their Department Chair. After receipt, and presumably a review of those materials, the Department Chair makes a recommendation to the Dean. Here, based on the above facts, it is clear that Dr. xxxxxx did not review anything other than Grievant's SFFs prior to making his recommendation to the Dean. In fact, it appears Dr. xxxxxxx had made the decision as early as January 2019 that Grievant's contract would not be renewed. Even if the evidence did not support that conclusion, there can be no dispute that Dr. xxxxxx made the 2020 recommendation not to reappoint Grievant prior to receiving any evaluative materials, other than Grievant's SFFs. Such decision making entirely disregards the processes set forth in Article 16, Section B.2, and is thus a violation of the contract.