

BOARD OF REGENTS BRIEFING PAPER

1. Agenda Item Title: UNR Bylaw Amendments.

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

1. Various items in this section needed to be consistent with Code or other UNR Bylaws already changed.
2. Currently, both reconsideration and grievance procedures affecting evaluation and salaries terminate at the presidential level.
3. A spokesperson in a grievance currently must be an UNR Employee and cannot be a lawyer.
4. Bylaws allow for peremptory strikes of members of the grievance committee and chair of the grievance committee but the bylaws lack language requiring that the parties be provided the names of the members.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

President Glick requests approval of amendments to the UNR Bylaws, as follows:

1. Include reference to appropriate sections in Code, change to committee for grievances instead of subcommittees which were removed in the prior amendments and referencing college work days to comply with Code.
2. Since reconsideration takes place before grievance, the President may be on record as already having denied a petition for reconsideration when the subsequent grievance is initiated, thus rendering it moot. The proposed changes avoid this issue in cases where allowed by Code.
3. The recommendation also excludes a member of the Faculty Senate Executive Board, the university ombudsperson, or any executive faculty at the equivalent level of dean or above as a grievance spokesperson, in order to avoid possible conflicts of interest in the future.
4. Language is added to provide a list of proposed grievance committee members and chairs to the petitioner and respondent for their use in peremptory strikes.

4. IMPETUS (WHY NOW?):

1. Important to maintain consistency of language within the UNR bylaws and between bylaws and Code.
2. These changes are allowed by the Code, Section 5.16, "Review of Evaluations and/or Denial of Salary Increase," which states that, "the bylaws may provide that the request for reconsideration terminates at a level below the president."
3. This change assures exclusion of university employees who may have a perceived conflict of interest from serving as a spokesperson for a petitioner or respondent.
4. Missing language in the grievance process did not give clarity as to how the peremptory challenges occurred.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

The Faculty Senate Bylaws and Code Committee has completed its work on these amendments and the faculty have voted overwhelmingly in favor of them.

1. Importance of consistency throughout bylaws and from bylaws to Code.
2. This change gives a faculty member a process to reconsider and grieve issues of evaluation and merit without the perception of double jeopardy with the president deciding in both cases.
3. Employees with perceived conflicts of interest should be formally removed as possible spokespersons.
4. Provides clarity in how the petitioner and respondent accomplish their peremptory committee challenges. Code requires that bylaws establish the grievance procedures.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

1. None, bylaws should contain consistent language throughout and be consistent with Code.
2. Recommendations come from different entities to the president in reconsiderations and grievances. The president should make each decision with regard to information presented in each case.
3. An employee with a perceived conflict of interest should be responsible and recuse themselves as a spokesperson.
4. Assuming that if they have peremptory strikes, the petitioner and respondent must receive the committee

list somehow. Senate office procedures have clarified this in the past.

7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

We do not have alternative recommendations for the proposed changes to the UNR Bylaws.

8. COMPLIANCE WITH BOARD POLICY:

X Consistent With Current Board Policy: Title #_2___ Chapter #_1___ Section #_1.3.4___

Amends Current Board Policy: Title #___ Chapter #___ Section #___

Amends Current Procedures & Guidelines Manual: Chapter #___ Section #___

X Other: Amends Board Handbook, Title 5 Chapter 7_____

Fiscal Impact: Yes___ No X

Explain:_____



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December 4, 2008

TO: Milton Glick, President *Milt Glick*
FROM: William Follette, Chair
2008-09 Faculty Senate
SUBJECT: Request for Action
Proposed Changes to UNR Bylaws

The Faculty Senate's Bylaws and Code Committee has worked to revise the UNR Bylaws. The section attached were approved by the Faculty Senate during the November 20, 2008 meeting. The approved revisions were then passed by a vote of the faculty completed on December 3, 2008. In addition, these sections have been submitted to UNR Counsel for review.

The Faculty Senate requests your support in presenting the revised bylaws to the Board of Regents at its February 2009 meeting.

Should you wish to discuss this further with the executive board, please contact Michelle Hritz to arrange a meeting time.

Thank you.

Recommended by: _____ Date _____
Jannet Vreeland,
Vice Provost and Secretary of the University

Approved by: _____ Date _____
Milton Glick,
President

PROPOSED AMENDMENTS TO UNR BYLAWS
Deletions in ~~[strikeout in brackets]~~, additions in **bold**
Approved by the Faculty Senate on November 20, 2008
Approved by a Vote of the Faculty December 3, 2008

3.2 GRIEVANCES

3.2.1. GRIEVANCE PROCEDURES

This ~~[Chapter]~~ **Section 3.2** establishes grievance procedures pursuant to ~~[Section 5.7]~~ **Title 2, Chapter 5** of the Code. ~~[All grievance committees shall represent the administration and the faculty of the University.]~~ All hearings shall be informal in nature. The decision of a grievance committee shall be in the form of a recommendation addressed to the President of the University and such recommendation is advisory only.

Rationale: Three minor technical corrections: 1) The new number system lacks chapters, 2) we recommend referring to NSHE Code by title and chapter only, since section and subsection numbers may change, and 3) the composition of grievance committees is listed below in section 3.2.5.

3.2.2 SCOPE OF **GRIEVANCE PROCEDURES** ~~[GRIEVANCES]~~

A grievance is an act or omission to act by the respective administrations of the System institutions, allegedly resulting in an adverse impact on the employment conditions of a faculty member relating to promotion, appointment with tenure or other aspects of contractual status, or relating to alleged violations of the Nevada System of Higher Education Code or institutional bylaws. Decisions of the Board of Regents are not subject to review by grievance procedures. Any decision which involves the nonreappointment to or termination of employment of faculty as provided in **Title 2, Chapter 5 of the Code**, ~~[Subsections 5.4.2, 5.8.2, 5.9.1, 5.9.2, 5.9.3 and 5.9.4 of the Nevada System of Higher Education Code]~~, **or the furlough or lay off of faculty for financial exigency or curricular reasons** is not subject to review by grievance procedures.

Rationale: Title changed to reflect Code. Eliminate subsection references. Add clause on furlough or lay off of faculty to reflect Code. (This whole section mirrors 5.7.2 of the Code.) NOTE: IF APPROVED, CHANGE TABLE OF CONTENTS TITLE ALSO.

3.2.3 DEFINITIONS AND GENERAL PROVISIONS

- a. The person or **persons** ~~[group]~~ filing the **Notice of Grievance** shall be known as the "petitioner" and the person or **persons allegedly responsible for the grievance** ~~[group whose decision, action, or failure to act is challenged]~~ shall be known as the "respondent."

- b. Although specific time limits are set forth in this **section** [~~chapter~~], action should be taken more expeditiously whenever possible. [~~so that the issues involved in a grievance can be resolved by the end of the succeeding semester.~~]
- c. Any limitations on time set forth in this **section** [~~chapter~~] may be changed by the mutual written consent of the petitioner and the respondent, [~~but a reduction or an extension of time for hearings or any other time limitations is~~] subject to approval by the Chair of the Faculty Senate or, if a [~~sub~~]committee has been appointed to hear a grievance, by the chair of **the grievance** [~~such sub~~]committee.
- d. Unless both parties agree, and the grievance [~~sub~~]committee approves, no hearing shall be held during the summer recess, or during periods of authorized leave for concerned parties, including members of the grievance [~~sub~~]committee. In cases when a hearing is delayed to the succeeding semester, all time limitations shall continue on the **faculty contractual reporting date of that semester** [~~date that instruction begins in the succeeding semester~~].

Rationale: Since time is of the essence when a hearing is delayed to the succeeding semester, we propose the date of continuation be changed to the faculty reporting date. Also, we now refer to this as a committee, not a subcommittee.

- e. The petitioner and respondent have the right to consult with legal counsel, at petitioner's or respondent's own expense. However, legal counsel shall not participate in [~~the~~] grievance hearings.

3.2.4 PROCEDURES FOR INITIATING A GRIEVANCE

a. RECONSIDERATION OF DECISIONS AFFECTING SALARY

Petitioners [~~initiating~~] **who wish to initiate a Notice of Grievance** regarding a disagreement with an annual evaluation rating or a denial of salary increase [~~may~~] **have the option of first [request] requesting** reconsideration, as provided for in [~~Subsections 5.12.3 and 5.16~~] **Title 2, Chapter 5** of the Code [~~as a part of the grievance procedure~~]. In connection with review of merit pay, “denial of a salary increase” means review of the step or level of merit in accordance with [~~Section 5.16~~] **Title 2, Chapter 5** of the Code.

The petitioner may file a request for reconsideration regarding a disagreement with his or her annual evaluation rating or denial of salary increase, in accordance with [~~Subsections 5.12.3 and 5.16~~] **Title 2, Chapter 5** of the Code, within 15 calendar days of the date he or she received written reasons for the action or decision (**except that the supervisor is not required to state reasons for an adverse annual evaluation under [~~Section 5.2.3~~] Title 2, Chapter 5 of the Code if the reasons for the evaluation are stated in the evaluation**). The request for reconsideration shall be submitted in writing to the petitioner's department chair, supervisor, or dean together with the reasons, arguments, and documentation supporting the request for reconsideration. The petitioner's department chair, supervisor, or dean who rendered the negative decision shall promptly

direct the request for reconsideration through regular administrative channels up to ~~[through]~~ the **Executive Vice President & Provost (Provost)**, ~~[President's Office]~~ with recommendations for or against reconsideration of the decision ~~[(except that the supervisor is not required to state reasons for an adverse annual evaluation under Section 5.2.3 if the reasons for the evaluation are stated in the evaluation).]~~ Final action shall be taken within a reasonable time by the ~~[president]~~ **Provost, who shall promptly inform the petitioner, in writing, of the decision.** ~~[after receipt of the recommendations.]~~

If the petitioner is dissatisfied with the ~~[President's]~~ **Provost's** decision ~~[after reconsideration]~~, within 15 **college** working days after ~~[the]~~ receipt of **same** ~~[the President's decision,]~~ the petitioner may file a written Notice of Grievance as described **below** ~~[in 3.2.4 e].~~

Note on "college working days": The definition of what constitutes a "working day" in a university is not always self-evident and is sometimes at issue, for example, in conflict-of-interest determinations that require counting days worked for the university versus days worked for outside entities. For this reason we recommend adopting the term "college working days," as defined in Title 2, Section 1.1 of the Code. We believe this term should be used globally in the UNR Bylaws in place of "working days." ("Calendar days" to remain as is, since these are defined as such in the same section of the Code.)

Rationale: Currently, both reconsideration and grievance procedures affecting salaries terminate at the presidential level. Since the former takes place before the latter, the president may be on record as already having denied a petition for reconsideration when the subsequent grievance is initiated, thus rendering it moot. The proposed changes avoid this quandary by terminating reconsideration at the provost level. These changes are allowed by the Code, Section 5.16, "Review of Evaluations and/or Denial of Salary Increase," which states that "the bylaws may provide that the request for reconsideration terminates at a level below the president."

b. RECONSIDERATION OF DECISIONS AFFECTING APPOINTMENT WITH TENURE, PROMOTION, OR REAPPOINTMENT

Petitioners ~~[initiating]~~ **who wish to file a Notice of [a] Grievance** regarding a ~~[disagreement for]~~ denial of appointment with tenure, or promotion, ~~[may]~~ **have the option of first [request] requesting** reconsideration as provided for in ~~[Subsections 3.4.5, 5.2.3, and 5.2.4]~~ **Title 2, Chapters 3 and 5** of the Code ~~[as a part of the grievance procedure].~~

The petitioner may file a request for reconsideration of the denial of appointment with tenure, ~~[or]~~ promotion, or **reappointment to employment** in accordance with ~~[Subsection 5.2.4]~~ **Chapter 5** of the Code within 15 calendar days of the date he or she received written reasons for the action or decision. The request for reconsideration shall be submitted in writing to the petitioner's department chair, supervisor, or dean together with the reasons, arguments, and documentation supporting the request for reconsideration. The petitioner's department chair, supervisor, or dean who rendered the

negative decision shall promptly direct the request for reconsideration through regular administrative channels up to the President [~~’s Office~~] with recommendations for or against reconsideration of the decision. Final action shall be taken within a reasonable time by the president after receipt of the recommendations, except if the President, after reconsideration, decides to recommend appointment with tenure, the final decision regarding tenure **rests with** [~~must be made by~~] the Board of Regents.

If the petitioner is dissatisfied with the President's decision after reconsideration, within 15 **college** working days after [~~the~~] receipt of [~~the President's decision~~] **same**, the petitioner may file a written Notice of Grievance as described **below**. [~~in 3.2.4~~]. [~~Cases of reconsideration of non-appointment or non-reappointment as provided in Subsections 5.4.2., 5.9.1, 5.9.2, 5.9.3, and 5.9.4 of the Code are not eligible for grievance.~~]

Any decision which involves the nonreappointment to or termination of employment of faculty, or the furlough or lay off of faculty for financial exigency or curricular reasons is not subject to review by grievance procedures. The petitioner may file a request for reconsideration of nonreappointment or termination, in accordance with Chapter 5 of the Code.

Rationale: Section 5.2.5 of the Code provides for reconsideration of decisions affecting appointment with tenure, promotion, *or reappointment*, and the Code specifies that these requests for reconsideration must be decided by the President. The paragraph on nonreappointment has been added, to conform with the Code.

c. NOTICE OF GRIEVANCE

The [A] petitioner shall [may] file [institute a grievance by filing a] the written Notice of Grievance with the Chair of the Faculty Senate [~~within 15 working days from the date the petitioner gains knowledge of the act or omission to act being challenged~~]. **If the petitioner chooses not to request reconsideration, the Notice of Grievance shall be filed within 15 college working days from the date the petitioner gains knowledge of the alleged grievance.** The Notice of Grievance shall contain [~~1~~] a [~~brief~~] **concise statement describing the grievance and the remedy sought** [~~of the act or omission to act that is being challenged; 2) the reasons supporting the grievance; and 3) the remedy sought~~]. The Chair of the Faculty Senate shall serve **a copy** of the Notice of Grievance on the respondent at the time it is filed.

Rationale: Language changed to include reconsideration as a first step when appropriate.

d. FINAL ACTIONS

Upon completion of a hearing by the University Grievance Committee, the recommendation of the Committee shall be forwarded to the President for final decision.

Final action shall be taken by the President. However, the approval of the Board of Regents shall be required for appointment [to] **with** tenure. In cases requiring the Board of Regents' approval, the President may request an oral presentation to the Regents of the reasons for and against the personnel action before final decision. **Decisions of the Board of Regents are not subject to review by grievance procedures.**

Rationale: Change made to conform with the Code.

3.2.5 THE UNIVERSITY GRIEVANCE COMMITTEE

- a. There shall be a University Grievance Committee Pool which will be the pool of faculty from which will be selected members who will serve on grievance committees. The responsibility of these committees shall be to hear and make recommendations on properly filed grievances as provided in these Bylaws.
- b. The grievance process is critical to faculty rights, and service on the grievance committee is a responsibility of all faculty. The Grievance Committee pool shall thus consist of all members of the faculty designated as at least .50 FTE, who have completed at least five years of employment at the university. Probationary tenure-track faculty and faculty on approved leave shall be excluded from the pool, along with the president, provost, vice presidents, associate and assistant vice presidents and chief administrators of major units or their administrative equivalents. Faculty may be otherwise excused from a grievance committee only with written permission of the Provost.
- c. There shall be a subset of the Grievance Committee Pool, the Grievance Committee Chair Pool, from which will be selected members who will serve as the chair of each grievance committee responsible for hearing a grievance. The Grievance Committee Chair pool shall consist of members of the faculty who have completed at least ten years of employment at the university, and have been selected by the Faculty Senate Chair with the approval of the Provost. Once selected, members shall remain in the Grievance Committee Chair Pool until removed by either the Provost or the Faculty Senate Chair.
- d. The Faculty Senate shall establish procedures to ensure that the responsibility of service on grievance committees is equitably distributed among faculty. The Chair of the Faculty Senate shall be responsible for the selection of grievance committee members and administration of the process.

- e. Within five **college** working days from [~~the~~] receipt of the Notice of Grievance, the Faculty Senate Chair shall select, by lot, five members of the Grievance Committee Chair Pool, plus fifteen other members of the Grievance Committee Pool, and they shall be numbered in the order selected. If the petitioner is academic faculty, then these members shall [~~also~~] be academic faculty. If the petitioner is administrative faculty, then these members shall [~~also~~] be administrative faculty. **The lists of members of the Pool and members of the Chair Pool shall be forwarded to the petitioner and the respondent.** The composition of the grievance committee may be changed only by mutual written consent of the petitioner, the respondent, and the Faculty Senate Chair. These members may not include anyone from the same major unit as either the petitioner or the respondent, nor may they include two members from the same department, nor may they include anyone with a clear conflict of interest. If the grievance concerns denial of appointment with tenure, the members must be tenured faculty. If the grievance concerns denial of an academic promotion to a higher rank, the members must be of that rank or above.

Rationale: This change assures that the petitioner and the respondent receive notice of the composition of the pools from which the committee will be formed, in case either wishes to make preemptory challenges allowed under 3.2.5 f.

- f. Within five **college** working days from receipt of the lists, the petitioner and the respondent may exercise one preemptory challenge each for the grievance committee chair and up to three preemptory challenges each for the other members. The grievance committee chair, and four other members shall be chosen for the grievance committee in the order they were originally selected.
- g. Once the grievance committee is constituted, the Chair of the Faculty Senate shall call a meeting of the committee as soon as possible. At the first meeting, the grievance committee chair shall schedule a hearing on the grievance as soon as possible. The hearing shall be informal in nature. Sufficient time must be allowed for all parties to prepare their evidence. All written materials to be considered shall be submitted at least ten **college** working days before the hearing to the Faculty Senate Chair for distribution to the committee, the petitioner, and the respondent. The committee shall hear the evidence presented at the hearing and shall reach its decision based solely on the evidence, written and oral, presented at the hearing. The hearing shall be informal in nature, and the legal rules of evidence shall not apply at the hearing, but the committee shall make every effort to consider only relevant and reliable evidence. The committee may request additional information in order to render its decision if this information is related to information presented in the hearing. Either side may bring a colleague, who may serve as spokesperson, to the hearing. The colleague must be a UNR employee and may not be an attorney, **a member of the Faculty Senate Executive Board, the university ombudsperson, or any executive faculty at the equivalent level of dean or above.** Any party bringing a colleague must so advise the grievance committee chair in writing at least ten days prior to the hearing, and the grievance committee chair will in turn inform the other party.

Rationale: This change assures exclusion of university employees who have a perceived conflict of interest from serving as a hearing spokesperson on behalf of the petitioner or the respondent.

- h. The decisions of the grievance committee shall be in the form of recommendations and are advisory only. The findings and recommendations of the committee shall be prepared by the committee chair and submitted in writing to the Chair of the Faculty Senate, who shall forward them to the President, the petitioner, and the respondent within ten **college** working days of the hearing. The President shall then provide written notification of a decision within a reasonable time to the Chair of the Faculty Senate, to the petitioner, and to the respondent. The Chair of the Faculty Senate shall then notify the members of the committee of the President's decision.