

The Standing Committee on Faculty Rights Of the University Senate

To: President Mark Kennedy
From: Standing Committee on Faculty Rights
cc. Mr. Leo Wilking, Ms. Heather Wages
RE: 605 Grievance Hearing of Dr. Frank Cuzzo vs. University of North Dakota
Date: May 12, 2017

The Standing Committee on Faculty Rights (SCoFR) held an open hearing for a grievance filed by Dr. Frank Cuzzo regarding his dismissal with cause. The committee heard testimony on April 27 and May 2 and 4 in Swanson Hall 10-12 with deliberations occurring on May 9 in Swanson 10-12 and again on May 12 in Gillette 201.

The SCoFR Committee was comprised of Drs. Paul Sum, Douglas Munski, Brian Urlacher, Rebecca Weaver-Hightower, and Curtis Stofferahn (Chair). All committee members were present for the testimony and deliberations.

Section I.8.1.3(8) of the UND Faculty Handbook states that a faculty member may be dismissed at any time for adequate cause. The University alleges that Dr. Frank Cuzzo's dismissal is for adequate cause as defined as:

1. Incompetence or dishonesty in teaching, research or other professional activity related to institutional responsibilities,
2. Substantial and manifest neglect of duty, and
3. Conduct which substantially impairs the individual's fulfillment of his or her institutional responsibilities or the institutional responsibilities of others.

The committee's responsibilities, according to Section I.8.1.3(8) are as follows: "The findings of fact, conclusions and the decision shall be based solely on the evidence received by the Committee. In cases brought under section 605.3(8) or (9), the burden of proof that grounds for the institution's action exist shall rest with the institution and be satisfied only by clear and convincing evidence in the record considered as a whole."

"In order to meet the standard and prove something by clear and convincing evidence, *a party must prove that it is substantially more likely than not that it is true.*" (law.cornell.edu/wex/clear_and_convincing_evidence)

Furthermore, Section I.8.1.3(11) states that "The Committee's findings of fact, conclusions and recommendations, with supporting reasons, shall be reported, in writing, to the institution's president and the faculty member or the faculty member's representative. If the institution's action was a notice of dismissal and if the Committee concludes that adequate cause for dismissal has been established, but that a lesser penalty would be more appropriate, it may so recommend with supporting reasons."

Following SCoFR procedure, the Committee in its deliberations on May 9 discussed whether the University had provided clear and convincing evidence for each charge listed above. Committee members discussed each charge individually. After discussion, the chair called for a vote on each charge to determine whether the University had provided clear and convincing evidence to substantiate the charge. The votes of the Committee were as follows:

1. *Incompetence or dishonesty in teaching, research or other professional activity related to institutional responsibilities.* The committee voted 5-0 that the University had not provided clear and convincing evidence to substantiate the charge.
2. *Substantial and manifest neglect of duty.* The committee voted 3-2 that the University had provided clear and convincing evidence to substantiate the charge.
3. *Conduct which substantially impairs the individual's fulfillment of his or her institutional responsibilities or the institutional responsibilities of others.* The committee voted 5-0 that the University had provided clear and convincing evidence to substantiate the charge.

After the Committee voted on each individual charge, it voted on whether the University had provided clear and convincing evidence to substantiate dismissal with cause overall. The Committee voted 5-0 that the University had provided clear and convincing evidence, overall, to substantiate dismissal with cause. Furthermore, the Committee recommends to President Kennedy that Dr. Cuzzo be permitted to resign rather than be dismissed with cause.

Following in more detail are explanations for each charge and the Committee's conclusions, by either majority or unanimous vote. We will discuss findings of fact for charges number two and three and will conclude with a recommendation.

2. *Substantial and manifest neglect of duty.* The committee voted 3-2 that the University had provided clear and convincing evidence to substantiate the charge of substantial and manifest neglect of duty.

Two members of the Committee agreed that Dr. Cuozzo had demonstrated a "serious neglect of duty," but they had difficulty with the terms "substantial and manifest neglect of duty." They both cited Dr. Cuozzo's worry about his serious health concerns as a mitigating factor that may have interfered with his ability to attend to his duties as required in the disciplinary letter.

Three members of the Committee agreed that Dr. Cuozzo had demonstrated substantial and manifest neglect of duty. They cited the disciplinary letter as providing a standard of evaluation that provides a lens through which his conduct was to be evaluated. Specifically, they cited instances where Dr. Cuozzo did not ask for or receive prior approval for cancellation of classes, and they cited his lack of submissions of his annual evaluation materials. These three members felt that the "duty" in this case were these conditions clearly laid out in the disciplinary letter, which Dr. Cuozzo did not fulfill.

The Committee did not concur that failure to communicate with the Anthropology Department Chair constituted substantial and manifest neglect of duty because the disciplinary letter only required monthly meetings. Nevertheless, because Dr. Cuozzo was obligated by the disciplinary letter to communicate with the Chair, he should have been in frequent communication with him to ensure that he was following the expectations of the disciplinary letter. The Committee noted that emails from Shannon Mikula of January 11, 2017 and from Donna Smith on January 18, 2017 reminded him to follow the measures outlined in the January 16, 2016 disciplinary letter that required him to seek prior approval from his Chair for cancellation of classes, and both recommended procedures for him to communicate with his Chair.

The three members' reasoning follows:

Dr. Cuozzo's failure to obtain prior approval to cancel classes demonstrated a substantial and manifest neglect of duty.

Explanation: The Disciplinary Letter required that Dr. Cuozzo seek prior approval from the department chair before any class cancellations or absences for a period of three years. During the spring and fall semesters of 2016, he complied with this requirement. He admitted that he was aware of the requirement and that he had failed to seek or receive prior approval before cancelling 12 class sessions in the first month of the spring 2017 semester. He did not hold classes on January 13 (Friday), January 23 (Monday), January 27 (Friday) and January 30 (Monday), with three classes scheduled on each date. He also admitted that he did not communicate with anyone regarding the cancellation of these classes. Regardless of his reasons for the class cancellations, his failure to obtain prior approval from the department chair for cancelling these classes was a direct violation of the disciplinary letter and additional directives from University officials.

Dr. Cuozzo's failure to submit evaluation materials as requested, as well as to ensure completion of UND (USAT) evaluations, demonstrated a substantial and manifest neglect of duty.

Explanation: According to the Department Evaluation Policy for Annual Evaluation/Tenure and Promotion, Dr. Cuozzo was required to submit UND (USAT) course evaluation summaries and written responses. Furthermore, the disciplinary letter dated January 13, 2016 required him to provide UND (USAT) evaluations to his department chair for review. By email on January 15, 2017 the Chair directed him, together with other faculty in the department, to provide annual evaluation materials no later than Monday January 23, 2017 in accordance with the department and college policies. During the Departmental meeting on January 18, 2017 at which he was present, the chair discussed the evaluation process. On January 24, 2017, the chair instructed him to submit the materials as soon as possible. At the department meeting on January 25, 2017, the chair discussed the annual evaluation process, and the chair informed Dr. Cuozzo that the department secretary had

not received his evaluation materials, and that he must submit them as soon as possible. Finally, on January 25, 2017, the chair instructed him to submit these materials no later than January 26, 2017 at 12:00 p.m. Dr. Cuozzo failed to provide any evaluation materials for annual review and evaluation to his department chair, or any other University Official, for the 2015-2016 academic year. Additionally, he failed to implement or ensure completion of UND (USAT) evaluations for his Spring 2016 semester courses.

3. *Conduct which substantially impairs the individual's fulfillment of his or her institutional responsibilities or the institutional responsibilities of others.* The committee voted 5-0 that the University had provided clear and convincing evidence to substantiate the charge.

The Committee agreed that Dr. Cuozzo's failure to follow the expectations in the disciplinary letter substantially impaired his ability to fulfill his institutional responsibilities or those of others. The Committee noted that the disciplinary letter of January 16, 2016 is the lens through which all subsequent conduct by Dr. Cuozzo must be evaluated.

The Disciplinary Letter required Dr. Cuozzo to: (1) obtain pre-approval by the chair *for any cancellation or absence* from class for a three-year period; (2) provide written comments from students from class USAT forms for review by the chair of the Department; and continue to comply with all UND, College of Arts & Sciences and Anthropology Department policies. Dr. Cuozzo acknowledged that he had received the letter, and he did not submit any response to it. Thus, the committee regarded all issues presented to it in the context of the standard to which Dr. Cuozzo was held under the Disciplinary Letter.

The Committee's reasoning follows:

Dr. Cuozzo's failure to submit the evaluation materials, as requested, substantially impaired fulfillment of his institutional responsibilities, as well as impaired the institutional responsibilities of the faculty and the chair of the Department.

Explanation: As noted above under 2. *Substantial and manifest neglect of duty*, Dr. Cuozzo failed to provide any evaluation materials for annual review and evaluation to his chair, or any other University Official, for the 2015-2016 academic year. Additionally, he failed to implement or ensure completion of UND (USAT) evaluations for his Spring 2016 semester courses. His failure to fulfill his institutional responsibilities impaired the ability of the faculty in the Department to conduct the annual evaluation of faculty according to the Department's and the College's own guidelines.

Dr. Cuozzo's continued insistence that he be exempted from the schedule and rotation agreed upon by the rest of his department indicated a disregard for fulfillment of institutional responsibilities to his departmental and to the University.

Explanation: The Committee found Dr. Cuozzo's conflict with the faculty in the Department of Anthropology relating to his class schedule demonstrated disregard of his institutional responsibilities to his colleagues, to the chair, and to students, as well as a disregard for University and Departmental procedures. Because of an open scheduling process in the department and because he had been granted course releases, Dr. Cuozzo had taught a 2-2 schedule on Tuesdays and Thursday for many years. He was unwilling to teach other days, and this schedule, along with a reduced teaching load (from 2-3) that had been permitted to continue without clear justification, had created conflict between him and his departmental colleagues.

In the fall of 2015, in conjunction with discussing AY 2014-15 annual assessment findings, the faculty in the Department discussed, developed, voted on, and implemented a course scheduling process that was to begin in AY 2016-17. The process established a rotation whereby faculty members were assigned, for a given academic year, one semester to teach Mon/Wed/Fri (or Mon/Wed) and the other to teach on Tues/Thurs. The faculty implemented the policy to create fairness among faculty schedules, to better serve students, to comply with Common Course Scheduling, and to better utilize classroom space per State Board of Higher Education directives. Dr. Cuozzo was on leave the semester during which the policy was developed, although the issue had been discussed many times over the years.

Dr. Cuzzo was very unhappy with the new course scheduling process. In spring 2016, he asked for “an accommodation” from his departmental colleagues, but these faculty members were unwilling to revisit the policy and did not grant it. When Dr. Cuzzo did not receive the accommodation that he had on several occasions requested, he asked the department chair to grant him permission to keep his current teaching schedule. The chair, unwilling to go against the wishes of the department or to go against the best interests of the students, also refused to exempt Dr. Cuzzo from the scheduling process. Dr. Cuzzo was to have begun teaching Mon/Wed/Fri during the spring 2017 semester.

Dr. Cuzzo’s failure to obtain prior approval to cancel classes substantially impaired fulfillment of his institutional responsibilities to the Department, to students, and to the University.

Explanation: As noted above under 2. *Substantial and manifest neglect of duty*, Dr. Cuzzo failed to secure prior approval from the Department chair for cancellation of 12 class sessions in the first month of the spring 2017 semester. He did not hold classes on January 13 (Friday), January 23 (Monday), January 27 (Friday) and January 30 (Monday). He readily admitted that he did not communicate with anyone regarding the cancellation of these classes. Regardless of his reasons for the class cancellations, his failure to obtain pre-approval for cancelling several classes was a direct violation of the disciplinary letter and additional directives from University officials.

Summary Statement and Recommendation

The Standing Committee of Faculty Rights, in its deliberations on May 9, discussed each charge individually. After discussion of each charge, the chair called for a vote on each charge to determine whether the University had provided clear and convincing evidence to substantiate the charge. The votes of the Committee were as follows:

1. *Incompetence or dishonesty in teaching, research or other professional activity related to institutional responsibilities.* The committee voted 5-0 that the University had not provided clear and convincing evidence to substantiate the charge.
2. *Substantial and manifest neglect of duty.* The committee voted 3-2 that the University had provided clear and convincing evidence to substantiate the charge.
3. *Conduct which substantially impairs the individual’s fulfillment of his or her institutional responsibilities or the institutional responsibilities of others.* The committee voted 5-0 that the University had provided clear and convincing evidence to substantiate the charge.

After the Committee voted on each individual charge, the chair asked the committee to vote on whether the University had provided clear and convincing evidence to substantiate dismissal with cause overall. The Committee voted 5-0 that the University had provided clear and convincing evidence, overall, to substantiate dismissal with cause.

The Committee, however, recommends to President Kennedy that Dr. Cuzzo be permitted to resign rather than to be dismissed with cause. The reasons for the recommendation are that the Anthropology Department has a long history of being dysfunctional with faculty who have not always acted collegially so that Dr. Cuzzo became a member of an already dysfunctional department. Furthermore, because of his admitted anxiety and distress caused by an early, but fortunately incorrect, diagnosis of possible terminal cancer, his concerns lay with his illness rather than in fulfilling the expectations of the disciplinary letter. Lastly, Dr. Cuzzo has been remarkably successful in publishing peer-reviewed articles and in securing very competitive National Science Foundation grants. For these reasons, we recommend that President Kennedy extend a degree of mercy to Dr. Cuzzo, as Shakespeare said in *The Merchant of Venice*: “*The quality of mercy is not strained; It droppeth as the gentle rain from heaven Upon the place beneath. It is twice blest; It blesseth him that gives and him that takes.*”

Respectfully submitted,

Dr. Curtis Stofferahn, Chair

Dr. Paul Sum

Dr. Douglas Munki

Dr. Brian Urlacher

Dr. Rebecca Weaver-Hightower