

1992

Non-Renewal of Contracts 1979-1992

Bowling Green State University. Administrative Staff Council

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1. Photocopies

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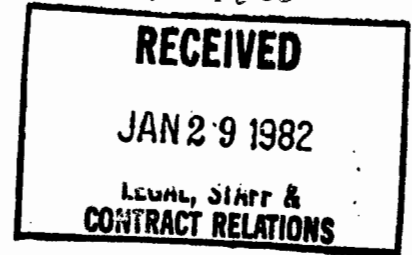
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82-0086



January 28, 1982

*xc: Handbook Review
Cabinet
M. Vadalto
2/1/82*

Mr. Myron M. Chenault
Associate Vice President, Legal,
Staff and Contract Relations
Bowling Green State University
Bowling Green, Ohio 43403

Dear Mr. Chenault:

You have inquired whether a contract staff employee who has been given timely notice that his contract will not be renewed has a right to pursue the grievance procedure contained in the Contract Staff Handbook.

The employee's contract is for a period of one year only and it is clear from the principles of contract law and from the Handbook that the University has a unilateral right to decide not to continue the employment. This right is subject only to the timeliness of the notification given to the employee that his employment will not be continued.

Assuming timely notice is given, the decision not to continue is not, in my opinion, subject to the grievance procedure. It is not a termination but, rather, simply a decision not to renew a contract. This decision is within the University's authority and is not grievable.

Sincerely,

John G. Mattimoe
John G. Mattimoe

JGM:lp



Bowling Green State University

[Handwritten signature]

8/31/80 ✓

To: M. Ferrari

Some good thoughts - see bottom of p. 2 upward - Your comments, pls. Dick Eakin

Institutional Studies
Bowling Green, Ohio 43403

MEMORANDUM

TO: Richard Eakin, Vice Provost for Institutional Planning and Student Affairs

FROM: Jim Litwin, Director of Institutional Studies *[Signature]*

RE: Thoughts On a Consulting Policy for Contract-Staff

DATE: August 25, 1980

What follows are my general thoughts on the issue of consultation for contract staff. As you know, I have lived under a somewhat different arrangement prior to working within the Provost Office -- the transition has made me aware of some of the differences that exist in different areas of the campus on the issue of consulting. Although I would have preferred to have had the time to discover the practices of other universities and other agencies, such as business and government, to see what kind of policy works well for them, I have not. I have relegated my thinking to current practices at BGSU and constrained myself to BGSU tradition and "what is reasonable" in my own mind.

My quick review of the Contract Staff Handbook found that there are at least two statements relevant to the issue of consulting: one is on political activity and the other is on outside employment. These policies are stated in the negative, i.e., you may not take a political office and you may not accept outside employment if either of these adversely affects your assigned responsibilities and duties. The opposite or positive position has to be an inference, i.e., you may accept a political office and you may accept outside employment if it does not interfere. I suspect consulting falls within the same sphere of consideration, i.e., you may do this under these kinds of conditions.

The case against consulting seems to center on the possibility that it may result in taking some time away from the institution. This is somewhat exacerbated in a non-profit governmental institution. Second, the issue of consulting can give rise to cases of professional envy. Not all people get consulting opportunities equally. This may have nothing to do with one's expertise, but simply be a matter of being in the right place at the right time. Also, such a policy always opens up the opportunity for abuse. (There may be current abuses in other areas of the University, but they cannot be corrected by not allowing another group to have the same opportunities. The correction must occur in the area where the abuse is occurring, and not by denying others similar professional opportunities.) OK, I don't like these kinds of negatives, but I know that they exist and I've acknowledged them briefly. Toward the positive.

Dr. Richard Eakin
August 25, 1980

page 2

What are the kinds of benefits that accrue as a result of a policy that allows contract staff to consult?

1. It fosters community. People will feel treated as if they are as competent as others at BGSU. We have professionals in the contract staff who are as competent as faculty are in their disciplines. They should be given similar opportunities. Not to do so exaggerates the discontinuities between groups and classes of people. In general, this inequity is not conducive to the development of community. (This notion has been reinforced in my own experience through my work with the classified employee staff, many of whom feel tremendously encouraged because the University is actually seeking their opinion and treating them as important individuals.)
2. It benefits BGSU directly. The chance to exercise skills allows opportunities for professionals to learn more skills and to develop even more expertise. They can experiment and learn in other situations. These skills can continue to develop and make them more effective professionals at BGSU. This is consistent with any notion of contract staff development, a concept that will have to be taken seriously as we become less and less of a mobile group.
3. BGSU indirectly benefits from such a policy. Through the reputation gained by effective professionals, BGSU is well thought of, and develops contacts both state-wide and nationally. In many ways the provision of consultative services is also consistent with the mission of a state university.
4. People will tend to think of themselves as professionals. Not many will actually use the opportunity to consult, but for those who do, it does provide a source of pride (and extra income) that is quite valuable. It is also a source of pride that the institution places trust and confidence in all contract employees not to abuse this privilege.

The above assumptions are basic to establishing such a policy. You've "got to believe" that these strengths overcome the aforementioned weaknesses before supporting such a policy.

What are the basic elements that such a policy should include? Again, I am going to try to state these briefly and while all of them have pros and cons, I do not think it is the task of this short "talking" paper to develop them. A lengthier background study should be done prior to developing policy.

1. A contract staff member may accept opportunities to consult outside the University if it does not adversely affect the fulfillment of

Dr. Richard Eakin
August 25, 1980

page 3

- responsibilities and duties of his or her assigned position.
- 2. The opportunity to consult should be discussed with one's supervisor. The supervisor should be notified of such arrangements in advance of the staff member taking on such activity.
- 3. The contract staff member may have up to 12 days of consulting time per year. No more than 3 days may be used in any one quarter without special permission from the staff member's supervisor. Any other days used in consulting must be applied to vacation time.
- 4. Consulting days are not cumulative and cannot be carried over from one year to the next.
- 5. Some evidence should be forwarded to the supervisor that consulting work is actually being performed. This might take the form of a letter of acknowledgment or a letter of thanks at the end of the work.
- 6. The policy applies to full time contract staff only.

I would make a distinct difference between external versus internal consultation. I personally believe that neither faculty nor contract staff should receive reimbursement for internal BGSU consultation. Workshops held for other offices or consultation on questionnaires or work done for other units strictly are service activities, analogous to serving on committees for the University. People should not be reimbursed for such activities. The above policy applies only to instances of consultation with agencies external to the University.

Perhaps the next step is to bring three or four people together and have an open discussion on the pros and cons of all of this. I think that a policy approach is far preferable to any practice in which individual arrangements are made, or discontinuities between groups of people are exaggerated. I think both of these are dangerous and not conducive to the atmosphere of professionalism that we both want to have exist on the campus.

Dick, above all, the policy has to be developed in a positive fashion. A reasonable policy of consultation will foster a healthy concept of professionalism and community on this campus.



Bowling Green State University

Office of the Provost
and Executive Vice President
Bowling Green, Ohio 43403

MEMORANDUM

August 7, 1979

TO: HM and RAE

FROM: MF

RE: Contract Staff Handbook: Possible Revision of
discontinuance/termination notice

Based on our experiences with the Warren Davis case and the ambiguities of our contract renewal provisions for contract staff, I have asked Myron to review with counsel ways to clear up the language. Palmer has reviewed (see attached) and given us some recommended language changes. In short Tom indicates that our current language does support a claim that we need to give reasons for non-renewal. There may be cases (I can think of a few right now) in which we would prefer not to have to give reasons. Do we want to reserve the right to not renew a contract if we deem it contrary to the institution's well-being. How does Tom's proposed re-write strike you? Any change would have to be approved by the Trustees. I suspect that given the timing of this matter, we could not get a change effective until issuance of the 1980-81 contracts.

MF/b
attachments

Contract Information

Appointment Information

Contract Staff Employees shall be advised in writing at the time of initial appointment of the primary responsibilities of the position including title, salary and pay period.

Employee Obligation to the University

The employee may not accept employment outside the University that will adversely affect his/her fulfilling the responsibilities and duties of his/her assigned position/title.

Continuance/Termination/Release

A. Continuance

Appointments to full-time contract staff positions will be subject to renewal or non-renewal annually, on the fiscal year basis. It is assumed that a full-time Contract Staff Employee will receive successive annual contracts unless:

1. The contract states the contrary.
2. The University has made the decision not to continue employment and has given timely notification as follows:
 - a. not later than March 1 of the first, second and third years of service if appointment is to expire at the end of one of those fiscal years;
 - b. not later than January 1 of any subsequent fiscal year of service.

Recommendations for non-renewal (which will include supportive information) will be made to the Provost/Vice President by the area head.

B. Termination

Termination of the appointment and contract before the end of any contracted term of service shall be referred to as "Termination for Cause" or "Release".

1. Termination for Cause

- a. A Contract Staff Employee may be terminated for cause during the contract year for the following reasons:
 - i) conviction of a felony;
 - ii) if credentials are proved to be fraudulent;
 - iii) failure to perform his/her duties and services; as identified in the appointed position or title and/or as may be assigned or changed; faithfully, honestly and diligently to the satisfaction of the employee's immediate supervisor.

PALMER'S RECOMMENDATION FOR REVISION AND CLARIFICATION OF CONTRACT STAFF HANDEOOK

(C) Continuance/termination/release

(I) Continuance. Appointments to full-time contract staff positions shall, unless otherwise stated in an employee's contract, be for a one year term to correspond to the university's fiscal year. Such appointment shall be subject annually to renewal or nonrenewal, the decision for which shall be made by the provost or vice-president within whose jurisdiction the appointment resides. The decision of the provost or vice-president not to renew an appointment shall be final and conclusive and no employee shall have a right to demand renewal of a contract staff position.

In the event the provost or vice-president decides not to renew an appointment, notification shall be given to the contract staff employee as follows:

- (i) Not later than March one of the first, second and third years of service if appointment is to expire at the end of one of those fiscal years;
- (ii) Not later than January one of any subsequent fiscal year of service.

If such notification is not given to the contract staff employee, the appointment shall be deemed to be renewed for the ensuing fiscal year.

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RECEIVED

JUL 27 1979

INSTITUTIONAL CONTRACTS

July 26, 1979

Mr. Myron M. Chenault
Assistant Vice President
Institutional Contracts
Bowling Green State University
Bowling Green, OH 43403

Re: Bowling Green State University

Provisions for non-renewal of
contract staff employees

BGSU Personnel Procedures Memoranda
§3341 - 13 - 05 Contract Information,
subparagraph (C)

Dear Myron:

As we have discussed, it is possible to construe the personnel provisions relating to the non-renewal of contract staff appointments as requiring some reason or rationale to justify the non-renewal of such a position. The stated assumption that the contract will be renewed and the requirement that recommendations for non-renewal shall include supportive information, both contained in the provisions noted above, support the interpretation that the decision not to renew a contract staff appointment requires a reason or justification.

Enclosed is a copy of an office memorandum analyzing the foregoing.

I have also enclosed a draft of a proposed amendment of subparagraph (C)(I), §3341 - 13 - 05 Contract Information of the personnel procedure memorandums. This incorporate the matters that we discussed Tuesday.

After you have had an opportunity to review this, please call me with any questions or comments you may have.

Very truly yours,



Thomas W. Palmer

TWP/bjw
Enclosures

MARSHALL, MELHORN, COLE, HUMMER & SPITZER

OFFICE MEMORANDUM

TO	Thomas Palmer	DATE	July 19, 1979
FROM	Marshall Bennett	SUBJECT	BGSU - Non-Renewal of Contract Employee's Contract.

I. ISSUE

Must a decision by BGSU not to renew the contract of a contract employee be supported by some reason?

II. CONCLUSION

The ultimate determination of this issue depends upon an interpretation of the contract and the Rules of BGSU. Hence, it is impossible to say with complete certainty whether some reason is required or the nature of the reason. One thing which is certain, however, is that under the Rules of BGSU it is possible to argue that an arbitrary refusal to renew a contract would be improper.

Ohio Law on Employment Contracts for a Term

As in the case of contracts generally, the duration of a contract of employment and the time at which it may be terminated depend primarily upon the intentions of the parties. Bascom v. Shillito, 37 Ohio St. 431 (1882), 35 Ohio Jur. 2d. Master and Servant §10. In a situation involving a contract for a specific term, e.g., one year, neither the employee nor the employer may compel the other to continue the employment relation beyond the term of service agreed upon. Nor can either compel the other to enter into any new contract for service except by mutual consent of the parties. Frederick v. Owens, 25 OCC (NS) 581, 35 OCC 538 (1915), error dism'd 95 Ohio St. 407, 116 N.E. 1085.

-2-

Thus with respect to an employment contract for a specific term, the rights and responsibilities of the various parties to the relationship flow from the contract itself, and unless the contract specifies otherwise there is no inherent right to renewal following the expiration of the contract.

Contract Interpretation

The problem which we face with respect to the BGSU is that the BGSU Rules which deal with contract renewal are less than clear. It is possible that they require that the University have some reason for not renewing an employee's contract.

These rules explicitly set forth the basis for non-renewal of the contracts of contract employees in Chapter 13 Personnel Procedure Memorandums, 3341-13-05 Contract Information. Sub-section (C)(I) thereof indicates that the appointments to full-time contract staff positions will be subject to renewal or non-renewal annually on the fiscal year basis.

Renewal of these employment contracts is assumed unless the contract states the contrary or the University has made the decision not to continue employment and has given timely notification of its decision to the employee. Such notification must be given no later than March 1 during the first three years of employment, and no later than January 1 thereafter.

The provisions which deal with the non-renewal notice do not include any requirement that the notice of non-renewal given to the employee contain a reason therefor.

Unlike the Ohio cases dealing with contracts for a specific term with no renewal provisions, the BGSU Rules on Contract Information create an expectation of automatic renewal unless proper notice of non-renewal is given. Thus, at the very least, notice of the decision not to renew must be properly given before the employment relation may be terminated.

But due to the lack of clarity in the Rules themselves, something more than simply a notice of non-renewal may be required. On the basis of (C)(II) it may be possible to argue that the decision not to renew must be based on some kind of valid reason and may not be wholly arbitrary,

This sub-section specifically indicates that recommendations for non-renewal made by area heads to the provost/vice president must contain "supportive information." Unfortunately the Rules do not contain a specific definition of the term "supportive information", hence we cannot say with certainty what kind of reasons must be given in the recommendation. Nor is it clear whether the provost/vice president in fact must make his decision not to renew for the reasons given or for any reason at all. What is clear, however, is that an argument may be made that is a wholly arbitrary decision not to renew is improper under the contract and rules, and would constitute a breach thereof.

MABjr:bws

PALMER'S RECOMMENDATION FOR REVISION AND CLARIFICATION OF CONTRACT STAFF HANDBOOK

(C) Continuance/termination/release

(I) Continuance. Appointments to full-time contract staff positions shall, unless otherwise stated in an employee's contract, be for a one year term to correspond to the university's fiscal year. Such appointment shall be subject annually to renewal or nonrenewal, the decision for which shall be made by the provost or vice-president within whose jurisdiction the appointment resides. The decision of the provost or vice-president not to renew an appointment shall be final and conclusive and no employee shall have a right to demand renewal of a contract staff position.

In the event the provost or vice-president decides not to renew an appointment, notification shall be given to the contract staff employee as follows:

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- (ii) Not later than January one of any subsequent fiscal year of service.

If such notification is not given to the contract staff employee, the appointment shall be deemed to be renewed for the ensuing fiscal year.



Bowling Green State University

Vice President for
Planning and Budgeting
Bowling Green, Ohio 43403-008
(419) 372-826
FAX: (419) 372-844
Cable: BGSUO

April 30, 1992

MEMORANDUM

TO: Planning & Budgeting Area Directors

FROM: J. Christopher Dalton *Chris Dalton*
Vice President for Planning and Budgeting

SUBJECT: Variable Work Schedules for Administrative Staff

The budget reductions of the recent past and those now being considered have often required staff members to take on even more work and responsibilities in many areas on campus. We are all aware that many administrative staff members routinely work beyond the minimum 40 hours per week. I encourage you, as supervisors, to give the opportunity for a variable work schedule, whenever possible, for those administrative staff in your area who frequently work over 40 hours per week.

Although the Administrative Staff Handbook states that compensatory time is not earned for such circumstances, there are times when it may be appropriate to allow those administrative staff who work over 40 hours per week the opportunity to arrive later, leave earlier or take some time off on a less busy day without the need to charge vacation or personal leave, and without the need for your prior approval of each instance. This does not mean an exact hour-for-hour exchange, but we should use common sense in recognizing that administrative staff members are professionals who deserve this recognition of their dedication to the University and the extra hours they spend fulfilling their responsibilities.

JCD:sf

xc: Joshua Kaplan
John Moore

COMPENSATORY TIME

UNDER NORMAL CIRCUMSTANCES, AN ADMINISTRATIVE STAFF MEMBER IS EXPECTED TO WORK A MINIMUM OF FORTY HOURS PER WEEK. THERE MAY BE OCCASIONS, HOWEVER, WHEN IT WILL BE NECESSARY TO WORK BEYOND THE FORTY HOURS IN ORDER TO FULFILL THE CONTRACTED OBLIGATIONS. NO COMPENSATORY TIME IS EARNED FOR EXTRA HOURS OF SERVICE. WHEN AN ADMINISTRATIVE STAFF MEMBER'S NORMAL DUTIES PERPETUALLY REQUIRE WORK BEYOND THE FORTY HOUR WEEK, IT IS ASSUMED THAT THIS SITUATION WILL BE TAKEN INTO ACCOUNT IN THE EMPLOYEE'S OVERALL COMPENSATION.

Karl, ^{BS}
This is the paragraph
we were proposing
for insertion in the
Administrative
Staff Handbook.
Was it? Accepted?
N. H.

1/31

At Phil Mason's request, the Handbook, as revised,
has been reviewed by a subcommittee of
the Administrative Staff Council. We have
made a few changes and plan to have our
final recommendation back to the President
in a week or two.

N.