

1979 WL 43503 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 6, 1979

***1 SUBJECT: Employees, Public, Employment Relations**

1. The State Performance Appraisal Policy applies to faculty of state colleges and universities.
2. The tenure system and faculty handbook rules do not take precedence to the State Performance Appraisal Policy.
3. The State Employee Grievance Committee and the South Carolina Budget and Control Board have the authority to order the reinstatement of terminated employees.
4. The same criteria should apply in non-renewal of contracts as in other cases of termination if the employee concerned is a permanent state employee.

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QUESTIONS:

1. Does the State Performance Appraisal Policy apply to faculty of the state colleges and universities?
2. Does the tenure system or faculty handbooks take precedence to the State Performance Appraisal Policy?
3. Does the State Employee Grievance Committee and the Budget and Control Board have the authority to instruct an institution of higher learning to renew a contract or to reinstate a terminated employee?
4. Should the same criteria apply in non-renewal of contracts as in other cases of termination?

STATUTES

1976 South Carolina Code of Laws Sections 8-11-230, 8-11-260, 8-11-270(2) and 8-17-10 et seq., State Employee Grievance Procedure Act. State Personnel Manual Section 4.02 and 4.03.

DISCUSSION

I

The State Performance Appraisal Policy applies to faculty of colleges and universities. Academic personnel are exempted from the state classification and compensation plan in 1976 South Carolina Code of Laws, Section 8-11-270(2) but are not exempted from the coverage of the state plan for administration of personnel matters in, 1976 South Carolina Code of Laws, 8-11-260. [Section 8-11-230, 1976 South Carolina Code](#) of Laws provides that:

The Budget and Control Board is authorized and directed to: . . . 6. After coordination with agencies served, develop policies and programs concerning leave with or without pay, hours of work, fringe benefits (except State retirement benefits), employee/management relations, performance appraisals, grievance procedures, employee awards, dual employment, disciplinary action, separations, reductions in force and other conditions of employment as may be needed.

. . .

11. Delegate to the heads of the State agencies served such of the above responsibilities as may be appropriate in such form as the Board may determine. (Emphasis added).

Pursuant to the authority given by the General Assembly to the Budget and Control Board, the Board promulgated personnel rules and regulations which are encompassed in the State Personnel Manual. Section 4.02 of the State Personnel Manual provides in

A. Each agency head shall be responsible for the establishment of written procedures and evaluation devices for appraising the performance of all employees on an impartial basis. Individual agency procedures shall be established in accordance with the provisions of this policy . . .

***2** B. Each employee's performance shall be appraised on a periodic basis in accordance with Section 4.03 of this policy.

. . .

D. Employee performance appraisals shall be used for, but not limited to the following:

1. To evaluate the employee objectively and to inform the employee of strong and weak points, as well as training needs and expected improvements . . .

F. Unclassified employees, including faculty of the institutes of higher education shall have their performance appraised at least annually. (Emphasis added).

Thus, state law gives the Budget and Control Board broad latitude in matters concerning state employees and the Board may delegate the performance of certain responsibilities to state agency heads. The Board has delegated the responsibility of making personnel rules and procedures to state agency heads but the rules and procedures must be compatible with state personnel policy (See State Personnel Manual Section 4.02A). Consequently, if a state agency has created a procedure whereby an employee's performance is evaluated and the employee is not informed of the results of the evaluation i.e., his or her 'strong and weak points, as well as training needs and expected improvements' such a procedure is incompatible with state policy and should be revised.

Inasmuch as faculty members of state colleges and universities are state employees, (See Attorney General's Opinion dated August 8, 1978, Re: Employees, Public, Labor Relations) they too, must be provided with an appraisal procedure which meets the requirements of state policy as stated in Section 4.02 and 4.03 of the State Employees' Manual.

II

Rules and regulations found in faculty handbooks of the various state colleges and universities are the primary source of rules for faculty members. These rules must encompass state personnel policy. Section 4.02A of the State Personnel Manual requires that the rules and regulations which are promulgated by a state agency must be 'in accordance with' state personnel policy.

This conclusion is not entirely free from doubt. The state institutions of higher education operate under different statutes which touch upon faculty members' rights. Each institution will be considered in seriatim.

University of South Carolina-Under § 59-117-40(6) of the Code, U.S.C., a body corporate and politic, is authorized 'to appoint or otherwise provide for the appointment of subordinate and assistant officers and agents, faculty members, instructors, and other employees prescribing the terms of their employments, their duties, and fixing their compensation.'

Clemson University-Under § 59-119-50 of the Code, the Board of Trustees shall 'elect the professors, and define their duties and fix their salaries and make all rules and regulations for the government of the university.'

The Citadel-Under § 59-121-50 of the Code, the Board of Visitors of the Citadel 'may appoint professors . . . and may fix their salaries and the period for which they shall serve.'

*3 The Medical University of South Carolina-Under § 59-123-60 of the Code, the Board of Trustees of the Medical University 'shall elect teachers of professorial rank in the various schools which make up the Medical University of South Carolina and such other officers and employees as may be necessary for the proper conduct of the university and fix their compensation . . .'

Winthrop College-Under § 59-125-90 of the Code, the Board of Trustees of Winthrop College 'shall appoint . . . professors of said institution . . . [and] fix all salaries and wages of teachers and employees.'

South Carolina State College-Under § 59-127-70 of the Code, the Board of Trustees may 'select a proper corps of professors and instructors and fix their salaries.'

Francis Marion College-Under § 59-105-10, of the Code, is governed by the State College Board of Trustees.^{a1}

College of Charleston-Under § 59-101-20(B) of the Code, is governed by the State College Board of Trustees.^{a1}

Lander College-Under § 59-101-30(3) of the Code, is governed by the State College Board of Trustees.^{a1}

Technical Education Colleges and Centers-Under § 59-53-20 of the Code, 'All personnel employed in the institutions and programs within the jurisdiction and control of the Board^{aa1} are designated state employees whether paid in whole or in part by state funds and shall be subject to the rules, regulations, guidelines and policies of the Board, the Budget and Control Board and the state personnel system.'

III

While there is no statute which states what the exact remedies or resolutions of grievances the State Employee Grievance Committee and the Budget and Control Board may order, it can be inferred from the language used in [Section 8-11-230](#) and [8-17-10 et seq.](#), that the Committee and the Board have the authority to order whatever remedy is appropriate to resolve a grievance. Section 8-17-10, 1976 South Carolina Code of Laws, provides:

The General Assembly finds that harmonious relations between public employers and public employees are a necessary and most important factor in the effective and efficient operation of government and that a proper forum for the understanding and resolution of employee grievances will contribute to the establishment and maintenance of harmony, good faith and the quality of public service. (Emphasis added).

Section 8-17-30 of the Code provides that the State Employee Grievance Committee was created so that a state employee may 'secure acceptable adjudication' of his or her grievance if the employee remains dissatisfied with the final decision of a state agency head.

The Committee and the Board have the authority to order the reinstatement of a state employee whose employment by a state agency has been terminated. Section 8-17-20 of the Code provides that a dismissal is an appropriate subject matter of a grievance. Section 8-17-30 states that the Committee's decision concerning the resolution of a grievance shall be final unless rejected by the Board. If the Board rejects the Committee's decision it must make its own decision at its next regular meeting or within 10 days whichever occurs earlier. Section 8-17-30 of the Code expressly provides that the agency/respondent is bound by the Board's decision which the agency must promptly implement. Hence, the General Assembly envisioned the situation in which the Committee and the Board might render decisions contrary to the positions of State agencies and the Legislature has provided that the Board's decision takes precedence over the state agency's decision. Thus, if the respondent agency has decided to terminate a state employee's employment, the Committee and the Board may reverse the agency's decision if the Committee or the Board disapproves of either the agency's decision or the method whereby the employment decision was implemented.

IV

*4 The same criteria should apply in non-renewal of contracts as in other cases of termination if the employee concerned is a permanent state employee. A faculty member of a state college or university becomes a permanent state employee once he or she has completed six months of satisfactory service or 'after an official extension not to exceed three months for marginal performance has been given a satisfactory performance appraisal.' Section 8-17-30, 1976 South Carolina Code of Laws, as amended. Since non-renewal of a contract of a permanent state employee is tantamount to a dismissal the same criteria for dismissals of state employees should apply.

CONCLUSION:

The State Performance Appraisal Policy applies to faculty members of state institutions of higher education. Faculty members once becoming permanent state employees, have the right to be informed of their strong and weak points, and areas of expected improvement. If an institution of higher learning seeks to terminate the employment of a faculty member who is a permanent state employee, it must have good cause i.e., employee misbehavior, incompetency, neglect of duty, gross insubordination, reduction in force, etc., as the basis of the termination and it must comply with personnel procedures which includes documentation of deficiencies, warnings and progressive discipline.

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Footnotes

a1 The State College Board of Trustees is a body corporate and politic and is authorized under § 59-105-40(5) of the Code, to appoint . . . 'faculty members, instructors and other employees prescribing the terms of their employments, their duties, and fixing their compensations.' Section 59-105-40(15) of the Code states further that the Board shall have the power '[t]o remove any officer, faculty member, agent or employee for incompetence, neglect of duty, violation of college regulations,' or conduct unbecoming a person occupying such a position.'

aa1 State Board for Technical and Comprehensive Education.

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