

# HEEA

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November 21, 2006

David Hammer  
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P.O. Box 1808  
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Dear David,

I have fully reviewed the depositions of Paul Jefferies and John Stewart plus the Faculty Handbook of the University of Dubuque and related materials.

From a Policy Handbook/Manual point of view, the key element is the question of when Paul Jefferies' tenure contract became official. The Handbook states "awards of tenure shall be effective with the ensuing academic year."<sup>1</sup> Thus in this case, this is the time when a tenure contract becomes official which is at the start of the new academic year which would be August 15<sup>th</sup> or later of a given year when the faculty return to resume that year's duties.

There are numerous Handbooks and Policy Manuals which have similar language and I will bring with me a number of these specific language quotes, their source and approximate year of these adoptions.

As I mentioned, there is a case, *Worzella vs. Board of Regents*<sup>2</sup> in South Dakota. Your clerk can get that case for us to review the night before I testify. David Figuli did not try that case. It was earlier than his tenure there.

The *Worzella* case led to a decision by the South Dakota Board of Regents to make a policy that contracts of new hires or new tenure contracts were only effective after the Board formally approved the contract. While there is no formal legal cases, there was a second censure of the Board of Regents in the case of Frank Kosik. See *AAUP Academe* 1968, p. 306 and following. I am getting from the current Board of Regents' attorney the whole background of this issue and will fax it up to you next week for our discussion. It takes place at Northern State College in Aberdeen, while Terry Brown was President, and again prior to David's involvement in South Dakota.

The gist of the issue was that Kosik was hired late in the summer of 1967 on a one year contract, but that the policy of the Board of Regents of the South Dakota system was in writing that the contract was not valid until they met and approved it in a formal meeting. Kosik was somewhat of a radical from the east coast. He alienated the administration, fellow faculty and the students in his classes, including a relation of one of the members of the Board of Trustees. Everyone was outraged by his lack of fit to South Dakota and when the Regent met, they cancelled the contract. The AAUP censored the Board of Regents since the Board did not offer to pay out the contract per AAUP Policy. He was dismissed at once, per Board policy.

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<sup>1</sup> Faculty Handbook University of Dubuque, May 11, 2000, Page 32, Section 2.7.6.

<sup>2</sup> 93 NW 2<sup>nd</sup> 41 (501958)

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Both of these censorships were later negotiated and settled by 1990, in particular, in the case of Kosik, who was living in Kansas. More on that when I get the documents from the South Dakota Board attorney.

While we don't have a case in full issue, we can show that in a next door state there was a policy and precedent that led to action. In our case, there are no damages since a second new contract was offered and in his own deposition, Paul Jefferies felt he would not get tenure if he stayed the two years, so he chose not to sign it or even grieve it. He cost himself a lot of problems on that faulty decision of assuming something that may or may not happen in the future. The two years offered by the University of Dubuque was not a usual contract and clearly showed the University wished to give him a chance to show them he could be a proper faculty member in his discipline and live the traditions and philosophy of the University.

I conclude, therefore, that because of the Faculty Handbook language, the University and Paul Jeffries did not have a contract when school began and since Paul Jeffries refused the contract offered in the timeframe before school began, the actions of the University in this respect regarding contract status was in keeping within the prescription of the Faculty Handbook language.

It should be noted and not missed that this language in the University of Dubuque Faculty Handbook pertained only to tenure and not promotion. Had it been pertaining to promotion, it could possibly harm the University and individual faculty member who perhaps received a doctoral degree in the middle of an academic year and the University felt that a title and salary increase were appropriate at that time.

Tenure, however, is a very serious University action and the Board of Trustees in a majority of cases approves Tenure contracts. The Board, to a lesser degree, passes on promotions except in some instances on the rank of full professor by honoring the professor in a formal way.

Respectfully Submitted,



Thomas A. Emmet  
Founder and President  
HIGHER EDUCATION EXECUTIVE ASSOCIATES  
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P.S. I will see you the evening of December 6<sup>th</sup>.

P.P.S. The enclosed is the AAUP Committee A's legal authority of the time, one Clark Byse, who responded to Worzella. I will also send a Journal article by the current South Dakota legal counsel in which he disagrees with Byse on the Worzella case.

Enclosure: Byse comment, Harvard Law Review in 1959.

TAE/cc

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**ROBERT C. DICKESON, PH.D.  
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November 20, 2006

Mr. David L. Hammer  
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Dear Mr. Hammer:

At your request, I have reviewed the materials sent me relative to the Jeffries v. University of Dubuque case. These include the depositions of Jeffries and Stewart, the materials shared in discovery, the faculty handbook, and the "What Wentt Wrong" blog site.

You have asked for my professional conclusions. They follow:

1. Mr. Jeffries appears as a petulant, argumentative, self-centered young professor suffering, ironically, with serious ethical lapses, notably a problem with the truth. That he asserts a role as "the voice of the conscience of the University," when no such role exists, indicates delusions of grandeur that are not grounded in reality.
2. I cannot see how he can prevail on the breach of contract claim. I have carefully constructed a chronology of events and it is clear that, based on the respective dates, conversations, back-dating, counter-amendments, and university policy, no contract exists or existed, and tenure has not been secured.
3. I cannot see that the University violated any of Mr. Jeffries' rights, nor did it violate its own policy. To the contrary, I believe the University bent over backwards to accommodate Mr. Jeffries, by offering to continue him on a tenure-track basis, offering the opportunity to be reviewed for tenure in a subsequent year, and to receive much-needed mentoring and coaching, as offered by Dr. Stewart. This accommodation goes beyond the reasonable expectations of an administration or a Board of Trustees, and the fact that it was offered reveals the true Christian nature of the defendants. The fact that it was refused by Mr. Jeffries reveals the nature of his true "love for" the University.
4. Paragraph 8 of the proffered contract, which the plaintiff alleges is contrary to public policy, is in fact a reasonable representation of what the University of Dubuque – and other private universities – expect of their employees. In the case of this University, with its nationally-recognized need to pull out of an institution-threatening past, the expectation that a faculty member not foul the institutional nest is entirely appropriate. I see nothing in the record that Mr. Jeffries was prevented from speaking out on true public policy matters.
5. A reasonable person would conclude that the primary source of content for the blog site, "What Wentt Wrong," is Mr. Jeffries himself. To allege violations of

privacy while simultaneously feeding the flames of the publicly-accessible blog is extraordinarily disingenuous, and would serve as a cause for dismissal in itself.

Respectfully submitted,

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