

A Finding of the Gustavus Faculty Senate (September 2011)

After careful consideration, the Gustavus Adolphus College Faculty Senate finds that President Jack Ohle violated Board and Faculty policy, as codified in the jointly adopted Gustavus Faculty Manual, during the 2010-2011 search for the Bernhardson Distinguished Endowed Chair of Lutheran Studies. Specifically, President Ohle unilaterally cancelled this search, despite the unanimous opinion of the search and screening committees that the two job finalists represented excellent candidates for this Distinguished Endowed Chair position, and he did so without providing compelling and detailed reasons as required by section 3.1.3 of the Faculty Manual. Section 3.1.3 of the Faculty Manual is based on the “Statement on Government of Colleges and Universities” which establishes a set of foundational principles that have guided U.S. higher education for the past 45 years and which was jointly formulated and endorsed by the American Association of University Professors (AAUP), the American Council on Education (ACE), and the Association of Governing Boards of Universities and Colleges (AGB) (of which the Gustavus Board of Trustees is a participating member). Section 3.1.3 of the Faculty Manual states,

3.1.3 Responsibilities to Colleagues

Faculty status and related matters are primarily a faculty responsibility; this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the work of their colleagues; in such competence it is implicit that responsibility exists for both adverse and favorable judgments.

Likewise, there is the more general competence of experienced faculty personnel committees having a broader [college-wide] charge. Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the Board. The governing board and the President should, on questions of faculty status as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.

This section of the Faculty Manual has been central to the governing of Gustavus Adolphus College for decades and, as with all sections of the Faculty Manual, is jointly adopted by the Gustavus Board of Trustees and the Faculty and thus represents a mutual (and contractual) commitment to the shared governance that is a hallmark of Lutheran higher education. This commitment to shared governance has been respected and endorsed by Gustavus administrations, Boards of Trustees, and the Faculty for decades.

President Ohle, at different points in time, offered two explanations for his desire to unilaterally cancel the search. The first was his assertion that the Bernhardson Distinguished Endowed Chair is not a faculty position and therefore, as president, he has the right to cancel the search without providing a compelling reason. The second was his assertion that the applicant pool was not sufficiently broad. As explained below, the Faculty Senate finds neither of these explanations to be compelling or reasonable.

The first explanation offered by President Ohle asserted that a Distinguished Endowed Chair is not a faculty position and as such he is not bound by section 3.1.3 of the Faculty Manual. While it is true that Distinguished Endowed Chairs may apportion their time among teaching, scholarly pursuits, and other intra- and extra-mural activities appropriate to their discipline differently than traditional faculty, it is also true that all faculty members engage in such activities. Section 1.1.3 of the Faculty Manual explicitly designates Distinguished Endowed Chairs as faculty positions:

1.1.0 Faculty Status and Rank (N.B. this is the Faculty Manual section title under which 1.1.3 appears)

1.1.3 Faculty Members with Distinguished Endowed Chair Appointment

Distinguished Endowed Chair positions are funded by a substantial endowment, and the faculty members holding these appointments will be recognized scholars and intellectual leaders in their fields. They will normally teach two to four courses per year, devoting significant time to such work as writing, publishing, performing, initiating/running symposia, and other intra- and extra-mural activities appropriate to the focus of their Chair. If coming to Gustavus from a tenured position elsewhere, the Distinguished Endowed Chair may be appointed with continuous tenure, following approval by the relevant academic department(s), the Faculty Senate, Provost, President, and the Board of Trustees.

The second and ultimate explanation offered by President Ohle for cancelling the Bernhardson Distinguished Endowed Chair search was that the applicant pool was not sufficiently broad. This assertion does not stand up to examination, as search and screening committee members (largely comprised of “scholars in the particular field or activity having the chief competence for making such judgments”) did not express similar concerns and, in fact, found that the pool size was appropriate given the size and state of the field of Lutheran Studies. These committees unanimously concluded that both finalists were excellently qualified, with some members of these committees finding that both finalists were exceptionally well qualified to hold the Bernhardson Distinguished Endowed Chair.

In conclusion, the Faculty Senate of Gustavus Adolphus College expresses its profound concern about this clear violation of long standing, well established, and jointly adopted procedures of shared governance that are so central to Gustavus and Lutheran higher education. In particular, the Faculty Senate expresses concern that the search process for the Bernhardson Distinguished Chair did not accord primary responsibility to the Faculty in accordance with Section 3.1.3 of the Faculty Manual. As we look forward, the Senate declares that faculty appointments must be made in accordance with these time-honored agreements, which exist to ensure the integrity and quality of the institution.

Appendix: Timeline Summary of the 2010-2011 Bernhardson Distinguished Endowed Chair Search

September 2010

President Ohle and Provost Fienen drafted and distributed a draft of the search process to be used in the Bernhardson Chair search. This draft was shared with search committee Chair Garrett Paul, Religion Department Chair John Cha, and Dean John Clementson, who were told that the development of the search process was to be kept confidential. Furthermore, the specific process outlined in the draft stipulated that the final candidates submitted to the President and the Provost would not be ranked, and that it would be the President who would decide the appointment, in consultation with the Provost. Paul and Cha questioned the stipulation.

March 18, 2011

Excerpt from approved faculty meeting minutes, Provost Fienen addressed the matter of the Bernhardson Chair search after being designated to do so on the floor of the meeting by President Ohle:

10.2 "Provost Fienen announced that the search process for Distinguished Endowed Professorships very much mirrors the normal faculty search process, but that such searches are institutional as well as departmental...Since these are institutional as well as faculty positions, they involve the President in a way that he is not involved in other faculty appointments. The committees will bring a recommendation indicating a ranking of candidates, together with indications of strengths and concerns, and the President will make the final appointments...In response to a question with regard to whether the extant Faculty Manual section 3.1.3 provision that the President should concur with faculty judgment in matters of faculty status 'except in rare instances and for compelling reasons which should be stated in detail' would be observed with respect to these appointments, Provost Fienen indicated that it would."

April 5, 2011

At a morning meeting of the President's cabinet to which Faculty Senate Chair Steve Mellema and Vice Chair Sujay Rao were invited, the President outlined the progress in the Bernhardson Chair search process and stated that, as in the recently concluded administrative vice-president searches, he would decide whom to hire from among those candidates for the position that were deemed acceptable by the search and screening committees. Soon after the Cabinet meeting ended, Senate Chair Mellema and Vice Chair Rao called the President's office, asking for an urgent meeting to discuss the Bernhardson Chair search.

That same afternoon Chair Mellema and Vice Chair Rao met with Provost Fienen and President Ohle in the President's office. After seeking clarification on the search process, they were given a copy of the search-procedure document. The President further stated that the search committee would not be allowed to make final recommendations of any candidate(s) for the position, but rather would only be allowed to decide if any of the candidates was "unacceptable." He (President Ohle) would then be the one to decide which candidate to hire. Chair Mellema and Vice Chair Rao expressed their mutual opinion that such a search process was in direct violation of section 3.1.3 of the Faculty Manual. The President replied that this was not a search for a faculty position, but rather for an institutional position with broader responsibilities. Chair Mellema read section 3.1.3 verbatim, and stated that it applied to all faculty appointments, of

which the Bernhardson Chair was one. Chair Mellema and Vice Chair Rao made it clear that they had serious reservations about the how the entire search process had been set up and conducted, but stated that their primary concern was that, going forward, the Faculty Manual be adhered to, in particular that the faculty search committee be able to make a recommendation of candidate(s) in whatever way the committee deemed appropriate to the situation. They further stated that, in accordance with the Manual, the President should then concur with the recommendation of the faculty committee except for a compelling reason which would need to be stated in detail. At the conclusion of the meeting, President Ohle stated his agreement with those principles.

April 13, 2011

Senate Chair Mellema and Vice Chair Rao were contacted by Search Committee Chair Garrett Paul and asked to accompany him to a meeting in the President's office which was also attended by Provost Fienen. The situation which had precipitated the meeting was that, approximately ten days earlier, the search committee had forwarded to the President the names of two "extremely well qualified" candidates whom they wished to invite for on campus interviews. The President had taken no action on their recommendation, and the committee feared possibly losing these outstanding candidates if they were not contacted promptly.

At the meeting the President expressed the need for three finalists' names, saying two was not enough. When asked why two interviewees had been allowed for the recent distinguished chair search in Economics and Management, he simply restated his desire for a larger pool of candidates. Chair Mellema and Vice Chair Rao stated their mutual opinion that the President's refusal to bring to campus candidates recommended by the search committee, and thereby effectively cancelling the search process without a compelling reason was a violation of the Faculty Manual. They urged him to reconsider inviting the candidates for on-campus interviews and allowing the search to go forward in accordance with the Faculty Manual. His final response was that he would "take it under consideration."

April 25, 2011

The search committee having still received no word from the President on their recommendation of finalists for on-campus interviews, the Faculty Senate called a special meeting and placed on the agenda a discussion with the President of the Bernhardson Chair search.

[From the approved minutes of the April 25 special Faculty Senate meeting:]

2.1 c) "President Ohle responded that the matter was between him and the search committee. Vice Chair Rao agreed that there should be broad agreement between the parties in question, but that the Faculty Manual was clear that the primary role in faculty searches is accorded to the faculty. If there is a decision not in accord with the faculty view, compelling reasons need to be given for that decision. The roles are not equal. President Ohle responded by indicating that he and Vice Chair Rao were in disagreement, citing the fact that there was no precedent for these searches except the Darrell Jodock position, and that the way that was done was exactly the same as these searches."

2.1 d) "John Cha, Religion Department Chair and a member of the previous [original] Bernhardson Chair search committee, reported that the previous Bernhardson Chair search had been conducted like a regular faculty search, after which President Steuer asked for recommendations on the candidates, and accorded with the departmental recommendation."

2.1 f) "President Ohle asserted that the Faculty Manual says that he can appoint anyone he wants to. Chair Mellema read the language from section 3.1.3 from the Faculty Manual about the President concurring with faculty judgment in matters related to faculty status, except in rare instances and for compelling reasons to be stated in detail."

At the conclusion of the meeting, the Senate passed a motion which "finds President Ohle's actions in the search for the Bernhardson Distinguished Endowed Professor to be in violation of the Faculty Manual (section 3.1.3) and the spirit of shared governance that have been hallmarks of the Gustavus community and academic life in the United States for decades."

April 26, 2011

[From a Memo from President Ohle to the Faculty Senate]

The President states, with regard to the Faculty Senate's motion, "I have and always will honor the provisions of the Faculty Manual, including those in Section 3.1.3. The Faculty Manual is a joint document, a covenant, approved by the Board of Trustees and the faculty and must be honored by all of us." He further states, regarding the Bernhardson Distinguished Endowed Chair search, "I anticipate meeting with the committee next week, and for the interviews to take place during May in hopes that we can announce an appointment by early this summer."

April 27, 2011

From the summary report on the search process provided to the Faculty Senate by the faculty members of the Bernhardson Distinguished Endowed Chair search committee:

"Following a Special Senate Meeting on April 25th, President Ohle agreed to have on-campus interviews for the two candidates recommended by the Bernhardson Chair screening committee. Previous to this announcement, the president had communicated to the search committee chair that he [Ohle] would terminate the search if the committee did not forward three names."

May 5, 2011

From the summary report on the search process provided to the Faculty Senate by the faculty members of the Bernhardson Distinguished Endowed Chair search committee:

"President Ohle convened a meeting with the search committee to discuss on-campus interviews for the Bernhardson Chair position. Ohle restated that he agreed to consider the two candidates forwarded by the screening committee and to invite them to campus; he then mapped out the interview process. On-campus interview dates were set for each of the two candidates."

May 18 & May 19, 2011

Candidate #1 visits Gustavus for an on-campus interview.

May 19, 2011

From Faculty meeting minutes, approved by Provost Fienen, currently pending approval by the entire faculty, quotation requested of the Faculty Secretary by the Faculty Senate Chair:

"President Ohle reminded faculty that he has said that the Board does not want to cut off communication with the faculty. He indicated further that the Board has clearly expressed that on policy matters administration and faculty need to work together. He gave his opinion that, even with setbacks, there has been real communicative progress. The simultaneous work on two Faculty Manual amendments, which has put the endowed chairs issue behind us, demonstrates this progress."

May 25 & May 26, 2011

Candidate #2 visits Gustavus for an on-campus interview.

May 27, 2011

From the summary report on the search process provided to the Faculty Senate by the faculty members of the Bernhardson Distinguished Endowed Chair search committee:

"A meeting of the screening committee was convened to further discuss the candidates and make recommendations based on the on campus interviews. After committee members made initial comments and discussed the candidates at length, the committee concluded that both candidates were well qualified for the position. Members unanimously agreed to recommend both, with the majority expressing a slight preference for one of the candidates. The search committee chair then forwarded the committee's recommendation to the President."

May 31, 2011

From the summary report on the search process provided to the Faculty Senate by the faculty members of the Bernhardson Distinguished Endowed Chair search committee:

"President Ohle convened a meeting with the screening committee to discuss the Bernhardson Chair search. In his introductory remarks he stated that he found both candidates acceptable. The search committee chair provided summary remarks about the screening committee's discussions and recommendation. There followed brief remarks from most of the search committee members on their impressions of the candidates. After hearing remarks by members of the search committee about each of the candidates, during which President Ohle asked some questions, he said that he would speak with each of the candidates and that he hoped to make an announcement soon regarding the position. Ohle did state that it may take a little time given that one of the candidates was out of the country. Also, he said that he would be leaving for Sweden on June 12 and might not have a report before he left. Ohle then stated that after speaking with the candidates and making a decision that the screening committee would be the first to know the outcome. He also told Garrett Paul (Search Committee Chair) that he would be told first. During this meeting, President Ohle took notes and concluded the meeting stating he would take our comments into consideration; he thanked the committee and committee chair for all the hard work put into the search.

"[Note: After the meeting, a number of committee members commented on the positive tone of this meeting and the constructive quality of the discussion. Also, at no time during this meeting did President Ohle indicate that at this point in the search the pool was too small.]"

July 8, 2011

From the summary report on the search process provided to the Faculty Senate by the faculty members of the Bernhardson Distinguished Endowed Chair search committee:

“President Ohle contacted the search committee to schedule a meeting regarding the Bernhardson Chair search.”

July 14, 2011

From the summary report on the search process provided to the Faculty Senate by the faculty members of the Bernhardson Distinguished Endowed Chair search committee:

“President Ohle convened a meeting with the search committee members to provide an update on the search. After a few introductory remarks President Ohle announced that he had ended the search. The sole rationale provided was that he decided the College needed to “cast a wider net” in order to increase the pool of applicants. President Ohle further elaborated that Darrell Jodock had set the bar very high, and that we needed a larger pool to insure we get the very best applicants. He then announced that he planned to hire an outside consultant to assist the committee with the new Bernhardson Chair search, which would commence this September.

“Following his announcement, a search committee member asked at what point he decided to end the search; was it after he talked to the two candidates recommended by the search committee and accepted by President Ohle at the May 31st meeting? President Ohle answered no, and explained that his decision was based on the need for a larger pool. The president was then asked if he spoke to the candidates; President Ohle answered no, he had not contacted the candidates since the May 31st meeting, but that he would do so.

“The chair of the search committee commented that Ohle’s ending of the search was not consistent with what he said to the search committee at the May 31st meeting, that he (Ohle) accepted the search committee’s recommendation of both candidates.”

“A search committee member then asked for further clarification on his decision; President Ohle repeated the need for a larger pool, and provided no further clarification or justification for ending the search. The committee member commented that this was not a satisfactory answer.”

“Another committee member commented on the president’s decision to hire an external consultant; that in this person’s 20 years here at Gustavus, and being involved in numerous searches, external consultants were never used for faculty searches, only administrative ones.”

“Furthermore, while recognizing the Bernhardson Chair has many institutional duties, the committee member reminded everyone that the Bernhardson Chair is a faculty position, not an administrative one.”

“All search committee members expressed their disappointment in the President ending the search.”

Addendum

From the summary report on the search process provided to the Faculty Senate by the faculty members of the Bernhardson Distinguished Endowed Chair search committee:

“As of Tuesday, August 2, 2011, the search/screening committee members have not been notified by President Ohle about whether or not he has contacted the two Bernhardson Distinguished Endowed Chair candidates.”

Search and Screening Committee Members

Search Committee

Garrett Paul (search committee chair)
Bishop Jon Anderson (board member)
Grady St. Dennis (Church Relations)
John Clementson (Provost's Office)
Brian Johnson (Chaplain's Office)
Florence Amamoto (diversity rep)
John Cha (Religion dept chair)
Mary Gaebler (Religion dept rep)

Screening Committee

Entire Search Committee

Tenured/Tenure track members of the Religion Department (John Cha, Garrett Paul, Casey Elledge, Deborah Goodwin, Mary Solberg, Thia Cooper, Blake Couey, Mary Gaebler, Sarah Ruble)