



# The Advocate

April 2018

INVESTIGATORY HEARINGS – ARTICLE 22  
Robert Trenary, Grievance Officer

## MARK YOUR CALENDAR

April 27	5:00 p.m.	Fourth Friday Happy Hour Arcadia Brewing Company
June 22	5:00 p.m.	Fourth Friday Happy Hour Arcadia Brewing Company
July 27	5:00 p.m.	Fourth Friday Happy Hour Arcadia Brewing Company

**Did you know . . .** Your grievance officer has worked on over 42 cases this academic year. Time well spent.

## Know Your Contract

### Article 16: Evaluation of Professional Competence

The team made significant strides toward replacing the ICES as the system for student evaluations. The new language in Article 16 grants the Chapter the right to select a new externally developed student ratings instrument. The committee assigned to select the instrument submitted its choice to the administration in March.



No area of the contract can be as confusing and threatening as Article 22 — Progressive Review and Discipline for Cause. This is especially true when first met in the form of a letter requesting

attendance at an Investigatory Hearing (IH) because of concern that violations of the Rules of Conduct for bargaining unit members have been occurred. Labels for such violations are listed in Article 21 and the request for an IH may state only a concern that e.g. “Unprofessional Conduct” may have occurred.

**IT AIN'T FAIR** - There is great asymmetry in this first step (although thinking of it as the Zeroth step may be more accurate since for the vast majority the result of the IH is a either nothing or a Letter of Notice. See below.) Triggers for an IH for example, can be a reflexive, legally driven obligation by the University to investigate various possible discriminations. The University has a lot of liability-covering behaviors that force it to demonstrate due diligence, *just in case* you really did suggest that Left Handers have deficient character, a charge made anonymously by a confused and ambidextrous student who reported the alleged comment to your chair.

Worse, bargaining unit members can make charges against others, and these can be quite extreme and inaccurate. Nonetheless, if such charges carry the obligations which so excite Human Resources, (discrimination against the various legally protected classes or violations of norms that the University embraces), there *must* be a response by the University and the IH is commonly that response. **No, you may not file a grievance against another member.** Allegations of various kinds can be leveled against a colleague with a letter reaching to the top levels of the organization, perhaps forcing a response.

**WHAT DID I DO?** - The initial letter requesting an IH tends to be rather general. 'Allegation of a breach of Professional Conduct' does not really inform. It may be that you have some idea of what the issue is, but very often the initial letter is a surprise. One is left to wonder. The constraints imposed by HR can tie the tongue of the chair or other superior who has been the bearer of this news and is part of the expected due process, leaving one even more bewildered.

There is another, historic, reason that the first letter contains little substance about what event triggered the IH. Since this letter, copied in various places, may not be uniformly removed when the initial 'trigger' proves vacuous, practice is now that the letter contains nothing specific, and thus no copies of the notification letter will remain with errant accusations.

**HOW AAUP HELPS** - Any such initial disciplinary charge is copied to the Association. Within that letter, your right to AAUP representation is stated. But more importantly, this notice will generate some conversation between (typically) the contract administrator, grievance officer, and Academic Labor Relations in the Provost's Office. We three are in contact a lot on such discipline matters and on myriad others as you the members raise issues through your Association Council representatives, officers, or negotiation team. For these discipline matters, some conversation about "what is this about?" will almost certainly take place before an IH. This is conversation that may be difficult to have since Legal and HR often make us all dance to the tune of *possible liability* and we would hate to be on record. But it is these 'back channels' cultivated as part of your work by the AAUP that can help a member walking into an IH, otherwise completely confused.

**AM I GOING TO GET FIRED?** - With almost certainty, NO! When reading Article 22 one should see "progressive" as the operative principle. IHs are the first (zeroth?) step in the discipline process which is strongly governed by due process. Although Article 22 describes steps of discipline that *could* lead to dismissal and entertains the possibility of events so egregious that immediate dismissal is possible, the spirit of Article 22 is that the Administration and Bargaining Unit member are working together within the 'handshake' that the contract represents to resolve concerns that have arisen.

**THE ACTUAL HEARING** - The IH will reveal the events that have caused the investigation. Typically, a chair, director or some such administrator accompanied by the Academic Labor Relations Director will present the charges. A bargaining unit member can bring AAUP representation, typically the grievance officer or contract administrator. There is no obligation to respond to the charges orally but some response is ultimately expected. Depending on the concern some constructive discussion or clarification will take place. The spirit of this meeting should be problem solving.

**LETTER OF NOTICE** - For this reason, a majority of hearings resolve in no further discussion or in a "Letter of Notice". One may interpret they have been "put on notice". This letter is not part of a personnel file, and is kept in the Administration Office of Academic Labor Relations. They are kept in case some pattern of repetition occurs. [I personally believe these should 'decay' i.e. be removed at some point, but in fact there are archives where the long history of Letters of Notice are kept.]

**SO, DON'T PANIC** - The daunting language in a letter requiring an IH should be understood to be a necessity which really reflects the protection of the due process provided by the Master Agreement and the principles of Progressive Discipline embodied in Article 22. Stay cool, contact the AAUP, find out what the Administration is thinking, and know your rights will be protected and that the unfairness of a blind accusation is the cost of having a strong contract.

Summary points:

- The WMU-AAUP grievance officer is here for guidance and support.
- The process is progressive
- Most often an IH is resolved through problem solving