Confessions of a 'Mad Dog' Grievance Representative

by Robert H. Jackson

I refer to myself as a "mad dog" in the title of this article because of my approach to grievances. My e-mail handle is "ACADEMIC-ANARCHIST," which says worlds about my philosophy on higher education and grievance representation. Although I'm a professional, I don't feel constrained by an artificial reverence for academic administrators. The Pope may claim infallibility, but academic administrators cannot by any stretch of the imagination.

Academic administrators at all levels too often behave in arbitrary and capricious ways under the color of administrative authority, and it's my job as a grievance representative to ensure that they consider the consequences of their actions. At the end of the day, my goal is to ensure that I level the playing field for the faculty grievant, and that the administration recognizes that arbitrary and capricious actions may result in the irreverent "mad dog" grievance representative showing up at their door.

Understanding a bit of my history and something of higher education labor relations in my state helps explain how I became the "mad dog" union rep. I took a teaching position in Texas in 1990, and joined the Texas Faculty Association (TFA) in 1991. Texas is a so-called "right to work" state, which means that public employees do not have the right to

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bargain collectively or to use work stoppages (strikes) as leverage in their battles with management. But Texas public employees do have a right to grieve conditions of employment and to be represented in grievance by individuals or organizations such as the Texas Faculty Association. The state legislature first gave public employees the right to grieve in 1947, and this fundamental right is now incorporated in Texas Government Code 617.

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Many public institutions, particularly colleges and universities, have expanded on the basic right to grieve by creating procedures for grievances, including hearing panels composed of fellow faculty members. Most faculty grievance panels, however, can only recommend remedies. This leaves the grievant frequently subject to the whim of administrators. Nonetheless, even with the limited rights faculty members at Texas public universities have, grievance representatives can score victories on behalf of TFA members.

For more than a decade I have been an advocate for faculty rights as a member, chapter president, and staff person of TFA because I object to administrators who act in arbitrary and capricious ways and who do not respect faculty rights. Faculty in Texas universities and colleges often do not appreciate the importance of unions that give a collective voice to employees, even in right-to-work states such as Texas. Until such time as the legislature gives public employees the right to unionize and bargain collectively, the only recourse that faculty have in disputes over conditions of employment is the grievance. But to receive grievance representation, they must be TFA members.

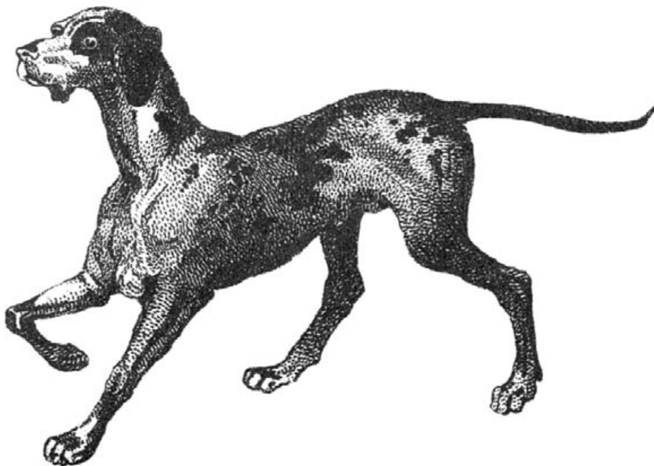
I have represented faculty at colleges and universities across Texas and have developed a method for preparing and presenting grievances to give faculty members more than a fighting chance in an environment hostile to employee rights. Texas has a long history of anti-union sentiment and union busting. Against this backdrop, I have developed my method for preparing grievances from my own training as a historian and cliometrician—a historian using quantitative methods.

First, a grievant needs to have an advocate through every step of the process, even in unionized states where a union grievance panel may review potential grievances before passing them on to the administration. Grievants, particularly individuals involved in disputes that may result in

the loss of their livelihood, often are not thinking clearly and need an advocate to identify the main points of a grievance and prepare the case to be presented. This is particularly important when a case may have larger implications, such as a potential Equal Employment Opportunity Commission complaint or "whistle-blower" action. Also, there are timelines to keep. I ask potential grievants to write a chronology of events that I can then read and use as the basis for discussing the case with the grievant. I also ask the grievant to provide me with all relevant documents as a starting point. I then determine the merits of a grievance and how to prepare an action.

A good example of how the grievance process works involves three foreign-born faculty members at Texas Tech University in Lubbock who felt they were treated in a disparate fashion and subject to harassment by the chair and higher level administrators. I helped all three to file discrimination charges with the EEOC and to prepare responses in support of their allegations. Frequently, the EEOC conducts a pro forma investigation and issues the so-called "right to sue letter" that gives the aggrieved party the right to file a civil suit on their own and at their expense. The outcome of the three EEOC complaints filed by the faculty I represented was a favorable ruling on behalf of all three during the spring and summer of 2002.

A critical element in my strategy is to establish the context for the grievance within a department or larger unit within the institution, and I routinely review faculty/administrative résumés, salary data, merit and other evaluations, and related documents. Texas has a strong Public



Information Act: Texas Government Code 552 (PIA) similar to "sunshine" laws in other states, and I use the PIA to obtain copies of any and all documents that I want to review for the grievance. I do this for several reasons. I need to establish the context and patterns related to a case; I might get lucky and find the proverbial smoking gun—and I have. And I need to send administrators a message that what they do can and will be exposed.

I generally ask for a variety of documents, including résumés for faculty and administrators, evaluations and merit evaluations, all correspondence regarding a grievant I am representing, and all documents related to all personnel actions including the hiring of administrators, among other types of records. I document general patterns and variations from the patterns that constitute disparate treatment and the basis for a legitimate grievance.

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Most of what I obtain is rather mundane, but is still valuable because it provides the context for a grievance. Occasionally I find a smoking gun. One such example comes from the discrimination case I've been working on at Texas Tech University. One of the faculty members is a native of Iran who does research using explosives. He contacted the U.S. Bureau of Alcohol, Tobacco, and Firearms (ATF) to make sure his handling of explosives met federal guidelines, and was commended by the local ATF agents for doing so. Despite this, his dean wrote a letter to the Provost, with "Confidential" written on the top, stating that he believed the Iranian faculty member to be a threat because of his efforts to obtain access to explosives, and his "agenda." The dean, an Anglo-American and former CIA operative, gave no reasonable justification for his allegations. This "Confidential" memo came to light through a Public Information Act (PIA) request, and the dean ultimately had to apologize for the memo. I like to use an analogy to explain the salutary effect PIA requests can have: Cockroaches thrive in the dark, but scurry to find cover when the light shines on them.

In preparing a grievance, I make sure we are on top of all timelines for actions such as the filing of EEOC complaints. I also make sure that the grievant files a timely complaint if my analysis indicates that such an action is warranted. I generally prepare the written grievance myself because I'm able to analyze the situation dispassionately. I've found that a grievant, even when he or she has calmed down, is too close to the sit-

uation to see it clearly. Depending upon the institution, written grievances either lead to a discussion with an administrator or a grievance hearing before a faculty panel where a lawyer often represents the institution.

I take an in-your-face approach to dealing with the formal response to the grievance, and particularly the grievance hearing. At the same time, I maintain a professional demeanor. On a number of occasions, I've stared down university lawyers and have found that their presentations are hampered by, rather than benefiting from, a courtroom mentality that does not have any place in a grievance hearing. Grievance panel members often find efforts by lawyers to impose courtroom rules of evidence irritating, and this often works against the lawyer. I am quite happy to raise the issue that courtroom rules do not apply, and allow the lawyer to argue to the contrary.

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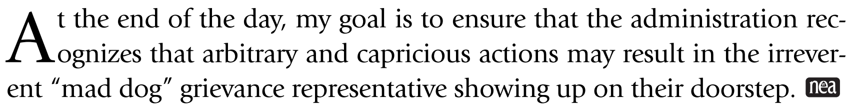
While I take an in-your-face approach to grievances, I also see the benefit of developing relationships with administrators and university lawyers. In some instances, I've found that administrators appreciate having a level-headed person take over a grievance, since the grievant may be difficult to deal with. And even if I take a strong adversarial position, I also treat administrators and even lawyers with a high level of professional respect. But this does not mean that I am adverse to playing mind games with them.

I have developed some relationships with administrators and attorneys to the point where I can pick up the phone and discuss an issue to see if an informal resolution is possible. I also find it useful to meet with administrators and lawyers to discuss issues other than the specifics of a grievance.

During a grievance hearing, however, I go for the jugular and exploit to the maximum the contradictions in the case being presented by the opposition. In one hearing I questioned a dean, who at the outset claimed to have thoroughly analyzed the credentials of a faculty member being denied tenure. By the end of my questioning, the dean admitted that he had only superficially examined the faculty member's credentials, and the faculty panel report specifically reprimanded the dean for his actions. I was able to deconstruct his testimony because I had thoroughly prepared the case and had established the context through an extensive and time-consuming process of reviewing the pertinent documents.

Higher education faculty often view themselves as individuals able to cut their own deals with the administration. This highly individualistic mentality is one reason why faculty members are vulnerable to administrative manipulation It is only through its collective voice that faculty can effectively protect themselves from arbitrary and capricious administrators, and this is especially true in the so-called right-to-work states where unions are seen as deviant, communist-influenced, foreign, and un-American institutions



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