

**IN THE SUPREME COURT  
OF THE STATE OF VERMONT**

In re Grievance of John Summa	)	Supreme Court
	)	Docket No. 2018-222
	)	
	)	Appealed from Vermont Labor
	)	Relations Board Docket No. 17-27

**MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE**

The Appellant, John Summa, (*pro se*), pursuant to V.R.A.P. 32(c)(3), V.R.A.P. 27(a) and 21 V.S.A. § 1623(d), motions for leave to adduce the following exhibits (Exhibits A, B, C, D, E, F and G) into evidence. Exhibits C, D, and F were *pre-filed* by the Appellant (then Grievant) ahead of his grievance hearing at the Vermont Labor Relations Board (VLRB). Due to inexperience, the Appellant believed these exhibits remained in the record.<sup>1</sup> Exhibits A,B and E were not pre-filed because they not made available to the Appellant during discovery despite his requests for all relevant documents pertaining to evaluation of the Appellant's teaching and his grievance.<sup>2</sup> Exhibit G also was not pre-filed, but was part of a set of planned impeachment exhibits denied entrance by the Board. The VLRB Chair, without even seeing Exhibit G and related exhibits, concluded these would have “zero value”. (See argument section below for exact reference to the hearing transcript)

All above-mentioned exhibits are material to findings of fact and law by the Labor Board and to issues raised on appeal before this Court. Specifically at issue here are the following: (1) whether the Appellant requested peer reviews at any point prior to his second reappointment review, (2) whether the Appellant should have been given ad-hoc peer reviews at any point prior to his second

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<sup>1</sup> Proof of the Appellant’s confusion is found in the Appellant’s examination of the Chair of the Department of Economics during his grievance hearing using one of these exhibits without objection. (See Hearing Transcript, 2/14/2018, P. 213 at 9-25 and P 214 at 1-9).

<sup>2</sup> These only became available when a well-placed source inside UVM provided Exhibit A (Provost memo) to the Appellant in the summer of 2018, which led to the discovery of Exhibits B and E (more Provost communications).

reappointment review, and (3) whether the Appellant engaged faculty and observed any lectures of his peers prior to his second reappointment review.

Below are the exhibits the Appellant seeks leave to adduce as additional evidence:

**EXHIBIT A: UVM Provost David Rosowsky memo to “Academic Deans” (Sept. 23, 2014)**

UVM’s Provost David Rosowsky sent a memo to his academic deans on September 23, 2014 regarding the subject of “Evaluation of Teaching Performance” (title of memo). This memo notes a concern about “over-reliance” on student evaluations, “in particular for the case of lecturers” (the Appellant was a lecturer at UVM). He writes that “deans are charged to develop a model for assessing teaching performance in their college/schools...the key here is that a college/school *cannot rely solely on student input.*” (italics in original) The Provost wrote the following: (Emphasis in bold)

The evaluation of teaching is essential not only for performance reviews (both annual performance reviews and reviews as part of the RPT process) but also **to provide valuable and timely advice/guidance to faculty members as they develop and grow** throughout their teaching career....

The Faculty **Senate Executive Council has expressed concern about an over-reliance on student evaluations in assessing teaching performance, in particular for the case of lecturers** for whom teaching is the only consideration in performance reviews.

**SPECIFIC CHARGE TO THE DEANS**

RE: Models for the Evaluation of Teaching Performance

**The academic deans are charged to develop a model for assessing teaching performance in their college/school that includes, but is not limited to, the results of student evaluations of courses. The deans, in consultation with their faculty and students, will determine additional means for evaluating and assessing teaching effectiveness as broadly defined above.** This might include, for example, an assessment of how course activities are tied to learning objectives, some form of peer evaluation of teaching, and/or assessment of how well students achieved identified learning outcomes. **The key here is that a college/school *cannot rely solely on student input.***<sup>3</sup> The model must comprise a broad and credible methodology for obtaining the

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<sup>3</sup> Despite the Provost’s directive to his deans and chairs to no longer rely on student input “solely” and that all evaluations “must” include a “credible methodology,” for assessing teaching performance, was contradicted by his own sworn

proper information to assess teaching performance. The deans are encouraged to engage their faculty in a consultative manner to gather input and feedback on any supplemental assessment mechanism(s). Any instrument developed for this purpose should be shared with faculty prior to implementation.

The Provost's Office will review each unit's proposed model on the basis of the guidelines noted above, and in consultation with the Faculty Senate. **Once it has been approved by the Provost, deans will be responsible for implementing the model within their college/school.<sup>4</sup> The process and procedures will be posted and communicated to all instructional faculty in the college/school prior to implementation.**

**DEADLINE:** Please provide your recommended model for the evaluation of teaching performance in your college/school to Brian Reed by **December 1, 2014.**

### **EXHIBIT B: Provost memo to “University of Vermont Academic Community” (Feb. 2015)**

**Discussions and plans around evaluation of teaching effectiveness also are motivated by calls from the Faculty Senate and SGA.** The focus of these important conversations within the colleges and schools is on helping faculty to develop into the best possible teachers, clarifying expectations for effective teaching, creating the best possible learning environments, and acknowledging teaching excellence.

**These efforts are also proceeding this spring with college/school plans expected to be fully vetted and posted online by the end of the semester.** Learn more about our evaluation of teaching performance initiative. [Emphasis in bold]

### **EXHIBIT C: Chair email and attachment regarding department “practices” and a “directive” pertaining to teaching evaluation and peer assessment requirements. (March 18, 2015; pre-filed VLRB Grievant Exhibit 12)**

From Chair email to all faculty in the Department of Economics:

**Yet another directive from on high requires us to prepare a document describing our practices around teaching evaluation.** The Dean provided a document that contained

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testimony at the VLRB hearing. During the Appellant’s examination of the Provost during his grievance hearing, when the Appellant stated his desire to have peer feedback at intervals between reappointment reviews, the Provost replied under oath: “Students can do that every course [with student evaluations]. So you’re getting that feedback [from student input alone].” (Hearing Transcript, 2/14/2017, Page 69 at lines 14-18). In 2015 and 2016 the Chair evaluated the Appellant in his annual review using student input only without any other credible methodology. His 2015 annual review sheet even has a Dean handwritten comment (order?) that says “Peer assessment!” (See Appellant VLRB Exhibit 8)

<sup>4</sup> The teaching performance guidelines for lecturers in the Department of Economics date from 2003 (See UVM’s VLRB Exhibit 42). UVM, that is, supplied lecturer evaluation guidelines into evidence that have a date of 2003. However, pursuant to UVM’s Collective Bargaining Agreement, guidelines must be reviewed every five years. (See UVM Exhibit 55. Article 14.4 states that “RPT and Annual Performance Review Guidelines shall be reviewed every five (5) years”). Given the Provost’s charge in his directive for updating guidelines in 2014, this would suggest that the Department of Economics 2003 guidelines were out of compliance.

sample language, instructions<sup>5</sup> and suggestions. I've taken a shot at shaping that document to **reflect our practices**.

We will discuss this document at our department meeting tomorrow.

Please note: **Teaching evaluation MUST now include peer assessment** and self-assessment along with student evaluations. [Emphasis in bold; uppercase in original]

**EXHIBIT D: Chair email attachment regarding frequency requirements for peer assessments (email of March 18, 2015; pre-filed VLRB Grievant Exhibit 22)**

From an attachment to the same email in Exhibit C: “Teaching Evaluation Guidelines in Economics.docx”<sup>6</sup>:

**Faculty will undergo peer evaluation (a) upon request...** [Emphasis in bold]

**EXHIBIT E: Provost’s Report to UVM’s Board of Trustees (May 15, 2015)**

From the Provost’s report to UVM’s Board of Trustees:

*Specific accomplishments* [Emphasis in italics; original emphasis in bold], all in partnership with other campus leaders and members of our academic community, include:

**....Developed Academic Advising Plans, Scholarly Productivity and Impact Metrics, and methods for Evaluating Teaching Performance for each College and School.**[Emphasis in bold]

**EXHIBIT F: Appellant’s 2013 Annual Activity Form (Grievant pre-filed VLRB Hearing Exhibit 19)**<sup>7</sup>

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<sup>5</sup> It should be noted that UVM has claimed in an email to the Appellant pursuant to a public records request that UVM is unable to locate the “document” containing “instructions” related to the “directive from on high” sent from the Dean to the Chair. The final version of the “draft” attached to the Chair’s email was sent to the Appellant just recently but the title was changed from “Teaching Evaluation Guidelines in Economics” to “Dep’t of Economics Guidelies”(sic), with no explanation as to why it was modified as late as October 24, 2018, when it is a PDF file public record document sent to the Dean in 2016.

<sup>6</sup> When the Chair testified about this document during examination as a witness, she stated under oath during the VLRB hearing that it was ordered by the Provost and that it was a “description of our practices”. (VLRB Hearing Transcript, 2/14/2017, Page 196 at line 4-22).

<sup>7</sup> The Chair during her annual review of the Appellant’s 2013 calendar year teaching relied on student evaluations only to gauge effectiveness of his teaching. The Chair made no attempt to *assess the major overhaul of teaching pedagogy* despite Appellant’s requests to get feedback to assess his improvement efforts.(See pre-filed VLRB hearing Grievant Exhibit 9; here Exhibit G). .

From the Appellant's Annual Activity Form (AAF) sent to the Chair by the Appellant pursuant to his 2013 annual review:

**D. Please provide all relevant information about new course preparation, significant course revision, innovative teaching techniques, etc.**

Courses were **redesigned to incorporate peer reviews (following 4 year external review)**, evaluations from students, and observations and discussions with colleagues regarding optimizing teaching methods. **The revised approach involves significantly more use of whiteboard lecture outlining, interactive exercises, and flipped classes aimed at intensifying real-time learning.** Improved student evaluations reflect these changes. Textbooks were replaced in EC 143 and EC 146, meanwhile, which required revision of the lectures, syllabi and homework (including full revision of Blackboard online chapter homework sets). No other significant revisions or new preps took place. [Appellant statement above; Emphasis in bold]

**EXHIBIT G: Appellant's email exchanges with the late UVM full professor, Ross Thomson, about attending his lecture and having lunch. (Not pre-filed, but referenced during Appellant's uncontradicted under-oath narrative testimony<sup>8</sup>)** [Emphasis below in bold]

From the Appellant's email exchange with Ross Thomson on UVM servers on April 23, 2013:

Hi Ross,

I really enjoyed having lunch and talking about the early days when political economy was having a revival.

We should do it again...

**Meanwhile Sara [Economics Department Chair] suggested I audit one of your ec12 classes to observe your teaching methods for help with perfecting my teaching style.**

We use the same textbooks so I think it would be instructive to see how you tackle delivery of the same content in a large class setting.

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<sup>8</sup> The Appellant testified under oath that he observed a lecture by his mentor and colleague, UVM Department of Economics full professor Ross Thomson, and alluded to *the email exchange he had with Professor Thomson during his narrative testimony*. "I reached out to Ross.... I was going to submit the email of that, but I'm under oath." (Hearing Transcript, 2/15/2018, Page 141 at 2-4; also see Hearing Transcript, 2/14/2018, Page 320 at 13-19). The Appellant also stated to the Board the following: "I reached out to Ross. Ross and I had lunch. We set up an observation. I went to his EC 12 lecture which is a large lecture for principles of micro. And I watched Ross do his delivery of that class on his chalkboard." (Hearing Transcript, 2/15/2018, Page 141 at 4-8). Ross was recommended by the Chair as one possible faculty member to observe. (Hearing Transcript, 2/14/2018, Page 321 at 22-25) The VLRB thus incorrectly concluded that the Appellant did not engage faculty and that the Appellant did not observe any lectures.

I have only taught 12 in front of a large audience once - but I have taught micro many times here and elsewhere in smaller classes.

Anyway, I thought maybe I could try to get this done before the end of the semester.

Let me know if that would be okay with you.

Thanks,  
John

From the Appellant's email exchange with Ross Thomson on UVM servers on April 25, 2013 at 10:38 AM (from Ross Thomson, sent from rthomson@uvm.edu)

Hi John,  
Tomorrow would be fine. I usually leave Old Mill around 9:25 or a little after to walk to Fleming. Shall we walk over together?  
Ross

From the Appellant's email exchange with Ross Thomson on UVM servers on April 25, 2013:

Hi Ross,  
Great, I can meet you at 925 -- my seminar is done at 920. Shall we meet outside on the north side of the building? or just inside if raining?  
JS

#### Contextual and factual background regarding relevance of Exhibits A, B, C, D, E, F and G

The UVM Faculty Standards Committee, which voted 5-0 in favor of the Appellant's reappointment (stating that the Appellant had "met the standard for reappointment"), concluded that the 2016 reappointment-related peer reviews must be discounted because they were procedurally improper, citing the absence of *any* interim peer assessments following the Appellant's first reappointment as the reason. The FSC noted that given the "cautionary" language attached to his first reappointment regarding some areas deemed to be in need of improvement, follow-up assessment should have been done. The FSC noted:

Although the FSC recognizes the concerns raised in the September 2016 peer evaluations, these concerns have to be discounted because there appears to have been **no**

**attempt by the department to perform any periodic peer reviews during the current appointment period until the very end.”** (Emphasis in bold; pre-filed UVM Exhibit 45)

The Dean wrote in his denial of the Appellant’s grievance<sup>9</sup> for wrongful denial of reappointment that there were no requirements to conduct periodic peer reviews with “any specific regularity”. (Pre-filed UVM Exhibit 45)

The Appellant’s Exhibit 20, pre-filed before the VLRB (and remaining in the record), (here Exhibit H) is an email exchange from late 2012 between the Appellant and the Chair, which captures the Appellant’s express desire for “another round” of peer assessments in the wake of his first reappointment review by peers and overall concern expressed in the same email about his efforts to improve teaching. He particularly expressed interest in a need for additional peer feedback aimed at assessing teaching improvement efforts. In the same paragraph expressing that he would “benefit” from more peer reviews, he wrote: “I could still use some help with lesson planning, and tools for managing time better.” Time management was mentioned by peers as an area needing to be improved following their visits in 2012. He also writes: “I think I would benefit from another round of visits to my classes by you or others maybe middle of next semester [Spring 2013<sup>10</sup>],” to which the Chair

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<sup>9</sup> The Appellant cited the FSC’s conclusion that the department did not “perform any periodic peer reviews during the current appointment period until the very end” and has argued that given the cautionary language found in his first reappointment review, the Chair needed to assess progress toward improvement as required pursuant to the Collective Bargaining Agreement Article 14.3. Despite the absence of any supplemental methodology -- such as peer assessments -- for evaluating teaching effectiveness as ordered by the Provost, the Chair stated under examination the following: “we know that student evaluations have their -- have their faults or have their biases, right? So there can be factors that don't relate to the quality of teaching. So I think peer evaluations are very important.” (VLRB Hearing Transcript, 2/14/2017, Page 222 at line 18-22). The Chair claims that student evaluations are biased while relying on them solely to evaluate the Appellant. She wrote in an email to the Appellant in 2012 (cited above as Exhibit 20; here Exhibit H) that “it is generally accepted that students systematically give higher/lower rating based on factors that do not relate to the quality of teaching. For example, on average men get rated more highly than women. *We trust the assessment of our colleagues more than that of the students.*”[Emphasis added] For all annual reviews prior to his 2nd reappointment review, the Appellant was scored favorably (meets or exceeds expectations) by the Chair, but using *only* student evaluations as a methodology to directly assess effectiveness in the classroom. This despite clearly not trusting student evaluations, as she admits, as reliable tools, while admittedly aware that the Provost had directed deans and chairs to no longer rely on student input alone in his 2014 memo.

<sup>10</sup> During the Appellant’s March 2013 annual review by the Chair, he discussed the matter of sending peers and his concern that all previous peer reviewers were female. He stated to the Chair that he would prefer a mixture of male and female, and

responded:

We can arrange more visits but we have to be clear on the purpose. **We can give more formative feedback, with the goal of giving you insight into what is working well or needs attention.** I don't think it would appropriate to do more summative feedback, which has the goal of "grading" you or simply describing your level of performance. [Emphasis in bold; See attached Appellant's pre-filed VLRB Exhibit 20; here as Exhibit H]

The Chair conducted no additional peer reviews. VLRB found that while periodic peer reviews "may" be conducted [separate from the reappointment peer reviews] there is no requirement that they must be done annually (*pursuant to annual evaluation criteria*), and thus concluded that "the Grievant has not demonstrated, as is required, that there was a violation of a Contract provision, or violation of a rule or regulation, relating to reappointment review procedures. (See VLRB "Findings of Fact, Opinion and Order" re *The Grievance of John Summa*)

#### Argument supporting Appellant's Motion for Leave to Adduce Additional Evidence

Appellant John Summa asserts that he pre-filed at the VLRB relevant and material documents as exhibits (here Appellant Exhibits C, D, and F; VLRB pre-filed Grievant Exhibits 12, 22 and 19, respectively) and was unaware they were removed from the record by the Labor Board during the time of the hearing. All of these exhibits are relevant and contain facts material to the Appellant's case, including a description of department "practices" regarding evaluation of faculty.

The Appellant, inexperienced as *pro se*, was not fully aware of all hearing procedures at the time of the hearing, and was generally learning as he went along during much of the hearing.

Additionally, UVM's lawyer, Ritchie Berger, objected to so many exhibits, including relevant

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suggested perhaps Rich Sicotte or Ross Thomson, both faculty members of the Department. The Chair stated that she would arrange it. Under oath during examination, when asked about this meeting with the Appellant for his annual review, the Chair stated that "I don't recall the meeting that we had in the spring of 2013." (VLRB Hearing Transcript, 2/14/2017, Page 213 at lines 4-8). It should be noted that the Appellant is the only lecturer in the Department of Economic that the Chair reviews.



impeachment exhibits, that the Appellant simply became overwhelmed, especially when the VLRB Chair expressed his opposition to further efforts at introducing additional exhibits (see below).

The Appellant asserts, moreover, that it was not made clear to him by the VLRB Chair that pre-filed documents (referencing, for example, a Provost's "directive" regarding evaluating faculty performance and related department "practices") would be excluded from the record unless he moved to re-introduce them. These and other documents are directly and contextually relevant (and material) to the Appellant's arguments of law, proposed findings, and issues raised on appeal. Exhibit D, for example, (Chair email attachment: "Teaching Evaluation Guidelines in Economics.docx") makes clear that peer assessments **"will" be done when "requested"** by a faculty member. Had the Appellant been aware that these exhibits were struck from the record, he would have certainly moved to re-introduce them. Exhibits C, D and F are relevant because they contradict claims by UVM, and findings of the VLRB, that the Chair of the Department of Economics was not required to conduct any interim (ad-hoc) peer reviews.

Meanwhile, Exhibit G (email exchanges with Professor Thomson about observing his class), which was *not* pre-filed, formed the basis for an uncontradicted part of his narrative testimony about visiting his colleague's (Thomson) lectures to observe his teaching. The Board found he did not observe any lectures of colleagues. Exhibit G shows that the Appellant observed a lecture of a senior member of the Department of Economics in an effort to improve teaching, as was requested, and this exhibit was part of a set of impeachment exhibits the Appellant was planning to introduce in support of his narrative testimony. But the VLRB Chair told the Appellant, regarding this and other emails he planned to introduce at the start of his narrative testimony, the following: "If we allow you to let this in, you're going to spend fifteen minutes on it and it's going to add zero value or little value." (VLRB Hearing, 2/15/2018, Page 106 at 24-25 and Page 107 at 1-5).

The VLRB Chair's statement that emails showing faculty engagement have "zero value" was later contradicted by the VLRB when the Board found that the Appellant had *not pursued peer engagement aimed at observing a lecture*. Once denied his request to admit more impeachment exhibits referenced above by the VLRB Chair's statement, the Appellant felt intimidated, especially in the context of UVM's lawyer relentless objection on relevance grounds to relevant impeachment exhibits the Appellant had planned to introduce. Exhibit G, and other exhibits denied entrance to the record, represent evidence that the Appellant engaged faculty and observed a lecture of a senior member of the Department of Economics in an effort to improve teaching. This evidence contradicts the Board's finding and should not have been excluded. (See VLRB "Findings of Fact, Opinion and Order" re *The Grievance of John Summa*)

This Court has ruled that an agency does not have a right to exclude relevant evidence even if it might be inadmissible in a civil court. In *re Central Vermont Public Service Corp.*, 141 Vt. 284,293 (1982). Furthermore, pursuant to 21 V.S.A. § 1623(d)<sup>11</sup>, "if either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such additional evidence at the hearing before the Board, the court may order such additional evidence to be taken before the Board."

Given that the Appellant was inexperienced, unaware of some procedures and felt intimidated by the VLRB Chair and UVM's continued objections, this Court cannot "permit unfair imposition or unconscionable advantage to be taken of one who acts as his own attorney." *State Highway Board v.*

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<sup>11</sup> Under 3 V.S.A § 815 in Chapter 25 of Vermont's Administrative Procedures Act ("Judicial review of contested cases"), a similar statute states the following: "(b) If, before the date set for court hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decisions by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court." Here the word "present" replaces "adduce" in 21 V.S.A. § 1623(d) and "agency" replaces "Board".

*Sharrow*, 125 Vt. 163, 164, 212 A.2d 72, 73 (1965). While this does not mean that *pro se* litigants are not bound by ordinary rules of civil procedure, the Appellant argues here that repeated objections by UVM to what are quite obviously highly relevant and material exhibits (documents showing current “practices” -- as described in Exhibit C, among others that challenge the Board's findings of fact and conclusions of law) is an unfair imposition and unconscionable taking advantage of an inexperienced grievant representing himself. And for the VLRB Chair to claim *a priori* that his exhibits have “zero value,” and deny their admission, is a denial of due process. These exhibits provide evidence that the Board made clearly erroneous findings and thus have more than “zero value”.

Regarding Exhibits A, B, and E, UVM did not provide these exhibits during discovery, all of which are relevant as new Provost directives and guidelines that apply to evaluation of the Appellant's teaching. Requests were made during discovery for all relevant documents pertaining or relating to teaching evaluation, yet these particular documents were not produced.<sup>12</sup> The Appellant became aware of the Provost’s memos (Exhibit A and B) and report (Exhibit E) only after they were provided to him by a source at UVM in the summer of 2018.

Exhibits A, B and E represent evidence that is material to the question of whether the Chair was following newly decreed directives and “charges” regarding requirements related or pertaining to conducting peer assessments of the Appellant between reappointment reviews (e.g., during annual evaluations or at any other time prior to his final 2016-2017 reappointment review). Exhibits A, B and E specifically *make clear that relying on student input solely is an insufficient method of evaluation of lecturers, and that a “credible methodology” must be deployed to remedy this admitted defect.*

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<sup>12</sup> The Appellant requested the following in his pre-trial discovery request to UVM: “All documents or electronically stored information that refer, relate, or pertain in any way to JFS’s teaching, the arguments UVM is making in UVM’s Answer to JFS’s VLRB grievance, Step 2 and Step 3 grievance denial and JFS’s VRLB grievance, and JFS’s rebuttal to Chair Sara Solnick contained in JFS’s dossier.” JFS represent the Appellant’s initials, John Francis Summa.

## Conclusion

The VLRB concluded that peer reviews were not required at *annual intervals* by the Department of Economics and subsequently dismissed the Appellant's grievance before the Board. Yet the Appellant (and the FSC) did not argue that peer reviews (assessments) were required pursuant to annual evaluation criteria *per se*. In light of Article 14 (taken as a whole) of UVM's Collective Bargaining Agreement (CBA) with its teachers, covering annual reviews *and* reappointment review procedures, the Appellant has argued that the Chair, supervised by the Dean, needed to do *ad hoc* peer assessment, particularly when requested by a faculty member, in areas in need of improvement. This would be especially true given department past practices of sending peers whenever there were concerns about teaching quality in order to provide timely feedback.<sup>13</sup>

Instead the Chair relied on student input alone between reappointment reviews -- what she admits is an insufficient assessment tool, one that the Provost had noted needed replacement with a credible methodology. The Appellant was told by the Chair at annual intervals that his teaching met or exceeded expectations, thus sending a misleading impression that his teaching was satisfactory without resorting to peer reviews. Exhibits A, B and E are material to evaluating this argument.

Furthermore, given the Appellant's express desire for "another round" of peer feedback, as noted above, Exhibits C, D and F (all pre-filed) are material to the question of whether the Board's conclusion that peers were not required to be sent to assess the Appellant at any time between

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<sup>13</sup> Under oath when asked by VLRB board member Edward Clark "did you attend any of Dr. Summa's classes prior to 2013?", the Chair replied "No". (Hearing Transcript, 2/14/2017, Page 324 at lines 3-6). This false statement was impeached by the Appellant during the second day of the hearing. Before later being blocked the VLRB Chair from introducing more documents, the Appellant introduced exhibits into evidence that included an email from the Chair to the Appellant informing him of the date and class she would review a lecture, *prior to 2013*. Later under examination, Dept. of Economics Professor Donna Ramirez-Harrington stated she had visited an Appellant's lecture to do a peer review, acknowledging that she had been "asked" to do a review in 2011 of EC 40 taught by the Appellant (Hearing Transcript, 2/15/2017, Page 44 at lines 11-12). The Appellant gave uncontradicted narrative testimony under oath that three faculty had visited his lectures in 2011 to do reviews, the Chair, Donna Ramirez-Harrington, and Dept. of Economics Professor Nathalie Mathieu-Bohl, and that all had been "unilaterally announced by the Chair" (Hearing Transcript, 2/15/2017, Page 110 at lines 16-25). See Appellant's VLRB Exhibits interim peer visits and their exact dates. No such peer visits were conducted or ordered by the Chair *after* the Appellant's first reappointment in 2013.

reappointment reviews. Finally, given the Board's findings that the Appellant did not engage faculty<sup>14</sup> and observe any lectures, Exhibit G is directly material to whether the Board's findings related to this question were clearly erroneous.

The Appellant thus respectfully requests that the Court rule to have all these exhibits made a part of the record.

Dated at Burlington, Vermont this \_\_\_\_ day of November, 2018

By: John F. Summa



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<sup>14</sup> The Appellant testified under oath at the VLRB in his narrative testimony, referencing emails with the Chair, that he had been denied entrance to monthly department meetings (uncontradicted testimony) despite his repeated requests to “engage” faculty through participation in such meetings. His first request was denied because the Chair said he was not “regular” faculty despite being full-time and teaching more courses than anybody in the Dept. of Economics. After repeated attempts, however, the Appellant was finally allowed to attend meetings and annual faculty retreats (also previously denied) and was eventually added to the email list of the Department of Economics faculty. He was allowed to attend his first department meeting in 2015, six years after being appointed a full-time lecturer. (VLRB Hearing Transcript, 2/15/2018, Pages 143-147; uncontradicted testimony by UVM lawyer).

# EXHIBIT A

# EXHIBIT B

# EXHIBIT C



# EXHIBIT D

# EXHIBIT E

# EXHIBIT F

# EXHIBIT G

# EXHIBIT H