



UNIVERSITY OF MINNESOTA
TWIN CITIES

All University Senate Consultative Committee

383 Ford Hall
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AGENDA (J)

Senate Consultative Committee
Campus Club - Room 626 - 12:30 p.m. - 3:00 p.m.
Thursday, February 5, 1981

1. Fix agenda.
2. Minutes of January 29 (enclosed).
3. Report of Chair.
4. Report of Student Chair.
5. Domed stadium.
6. Claim procedures.
7. Planning for program cuts.
8. Committee reports.
9. Old Business.
10. New Business.
11. Adjourn.



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MINUTES
SENATE CONSULTATIVE COMMITTEE
February 5, 1981

APPROVED 2/19/81

The eleventh regular meeting of the Senate Consultative Committee of the 1980-81 academic year was called to order by Chairman Marcia Eaton at 12:40 p.m. in Room 626 of the Campus Club on Thursday, February 5. Other members present were Orhan Arkan, Julie Bates, Russell Hobbie, Keith Jacobson, Judy Nord, Vera Schletzer, Patricia Swan, Donald Spring, Bruce Thorpe, Allan Ward and, for a portion of the meeting, Robert Brasted. Guest present: Dr. Carol Pazandak.

1. The agenda was fixed as to items. Professor Eaton announced that Professor Clare Woodward of the Women's Advisory Committee would talk to the SCC about procedures for claims filed under the consent decree.

2. Minutes of January 29. Two corrections: p. 3, par. 1, 1. 5 of the Report on Sexual Harrassment item should read, "...Wolfram (Tenure) and Bonita Sindelir, Assistant University Attorney..." P. 4, par. 2, 1. 4 of Senate Reorganization item, should read, "...February 19 is not until April 16..." (instead of May 14). The minutes were approved with these corrections.

3. Report of the Chair. Professor Eaton deferred her remarks until the pertinent agenda items arose.

4. Report of the Student Chair. Judy Nord reported for Sue Pribyl that any recommendations for changes in the domed stadium survey should be submitted at once.

5. University use of the domed stadium. Professor Eaton reported that Vice President Hasselmo has asked if the SCC would like to hear from athletic administrators on the question. She also reported that Professor Charles Scott, Chair of ACIA, had informed her ACIA would review the domed stadium issue insofar as it relates to ACIA's charge. Professor Scott thought ACIA's point of view would be more that of the "fan" than of students or faculty. Professor Eaton asked if the SCC would like to hear from athletic department people. Professor Schletzer recommended the SCC wait for its discussion until more evidence is in, including the ACIA's position and the results of the survey. She moved to table the item. The motion to table passed without dissent. Dr. Pazandak suggested that some SCC members might attend the Regents Committee of the Whole February 13 at 8:30 to hear the presentation there by intercollegiate athletics staff people.

6. Committee Reports.

A. Grievance and Legal Concerns. Professor Schletzer reported that she had attended a second meeting at which various groups reacted to Drafts VI

and VII of the recommendations of the Subcommittee on Sexual Harrassment. Most comment, she reported, concerns the make-up of the proposed hearing board. Some critics are of the opinion that any cases involving only faculty members should be heard only by faculty members and that a student should be on the panel only if a student is involved in the case and a civil service employee serve only if a civil service employee is involved. Professor Schletzer resisted the implication that panel members are all going to vote for their constituency; she believes all panel members can be equally objective and she continues to believe in the value of a broader board.

Professor Hobbie said he understood the University Appeals Committee on Academic Freedom and Responsibility operated with a similarly inclusive board. Professor Eaton said that in fact UACAFR rules have a clause permitting a purely faculty panel for a case which involves only faculty; the argument supporting that provision, however, was that faculty understand those issues most clearly. Sexual harrassment cases, on the other hand, she said, may involve and be understood by anyone.

Professor Hobbie asked if cases affecting tenure would not eventually go to Judicial. Professor Schletzer replied that a case would go to Judicial only after the President or the Vice President for Academic Affaris had made a recommendation and if the faculty member disputed that recommendation.

Professor Spring cautioned that the Faculty Senate might reject the plan because it can be seen as the first chink in relinquishing promotion and tenure control to a group including non-faculty.

Professor Eaton reported that it is subcommittee chairman Root's perception that faculty mem are likely to vote down the creation of a special structure because they don't believe the University has a problem of sexual harrassment. Professor Hobbie said that he was among those who had never had a clear understanding of the kinds of cases which actually arise. Professor Eaton cited an extreme case from last spring and Professor Schletzer read the description in the subcommittee's report of the kinds of acts covered. The SCC felt it would be advisable to come prepared to cite actual examples to the Senate during debate or to print abstracts of actual cases in the docket so people will realize sexual harrassment does occur here. It is generally assumed that a large proportion of any cases that arise are likely to involve graduate students.

There was considerable discussion of where the power of sanction should lie and how the board's powers should be described. Professor Swan argued that to permit the proposed board to break tenure goes beyond the protections of the Tenure Code and that it would be dangerous to permit the panel even to recommend sanctions. Professor Spring suggested the responsibilities of the panel might be parallel to those of a grand jury in bringing an indictment: where a panel believes the appropriate sanction would be to break tenure, the panel should be able to foward the case to Judicial with the report that there might be cause for dismissal.

Professor Hobbie recommended phrasing the process description so that it is clear the board makes a recommendation to the Vice President for Academic Affairs, thereby guaranteeing to the faculty member the protection of the Judicial Committee's process.

Professor Schletzer moved that the SCC approve the proposed Sexual Harrassment board, consisting of 3 faculty members, 1 academic staff employee, 1 civil service

employee and 2 students, as constituting an appropriate representation which should act as a full panel on all cases brought forward.

Professors Hobbie and Swan asked that wherever the word "dismissal" occurs in the recommendation, the words "initiate proceedings for dismissal" be substituted. With this understanding, the motion to approve the full panel for acting on all cases carried without dissent.

Professor Schletzer repeated her belief that such an apparatus could be established administratively because of the court-established responsibility of the employer in this area. Professor Spring advised that since faculty and students are trying to preserve Senate governance in very difficult circumstances, the Senate should be given some preparation and background in hopes of winning its endorsement of the proposal.

7. Planning for Program Cuts. Professor Eaton reported that she and Professor Swan, UCBRR Chair, have discussed informally the point of view that across-the-board cuts will not suffice if the University faces a severe financial crisis. While President Magrath is justifiably concerned about damage to morale if the spectre of cuts is raised hypothetically, Professors Eaton and Swan hope to see talks begin on the criteria and the process for determining cuts should the necessity eventually ensue. An agenda item at the January 31 Big Ten faculty governance conference was on planning for cuts. Michigan State has reached the point of talking about cutting tenured faculty, including individuals in their late fifties. Their Geography department is under review and threatened with elimination. Eaton and Swan discovered that Minnesota's planning techniques and processes seem more advanced than any of the other participating schools, although both Wisconsin and Michigan have well-developed processes for eliminating programs when financially necessary.

Professor Eaton referred the SCC members to Section 15 of the proposed new tenure code which requires previous determination of a fiscal emergency prior to any reference to particular programs. ('Program' is defined broadly, meaning variously sized units, both academic and service.) President Magrath has said he thinks it appropriate for the SCC to study the criteria in this document and see if they still approve them. The Faculty Senate, he said, could approve the process and criteria as a way of preparing for emergencies even though the tenure code as a whole may not be adopted in the very near future.

Professor Spring recommended defining 'program' modestly as "segments of departments," thereby starting a process which can work even within a department, and avoiding extended arguments as to the scale under discussion, in which the development of a process might get lost. He recalled that the section regarding dismissal of tenured people became extremely complex and met with some disapproval precisely because many faculty want to avoid considering that possibility until and unless circumstances force it. There is a danger, he suggested, such a study could look as though faculty are preparing something the administration could use against them.

Professor Swan said that the current planning system, including the unit planning documents process, works for handling small increases and small decreases but that none of the existing process is adequate to deal with major cuts. The University has nothing, she said, which would prepare it to deal with an approximately \$28 million permanent cut as Michigan must do this spring.

There was discussion on exactly how the SCC should raise the issue in the Senate. It was suggested the SCC involve the Senate in a discussion of designing a process for "catastrophic planning," should the University face the possibility of dismissing tenured faculty. The Senate should also consider what the faculty's role should be in making decisions about the retention, elimination, or paring back of units.

The SCC concluded it should have more background before introducing the question to the Senate. Professor Eaton, in consultation with Professor Swan and others, will draft a statement for the SCC to consider at a later meeting and some form of which could go to the April 16 Senate meeting for information.

8. Consent Decree Claim Procedures. Professor Eaton introduced Professors Clare Woodward and Charlotte Striebel of the Women's Advisory Committee.

A. Burden of Proof. The SCC members had copies of the Special Master's ruling in the Gleason case on establishing a prima facie case of sex discrimination, taken from a 1973 Supreme Court decision. The conditions for a prima facie case in placing burden of proof as ruled by the Special Master, she said, is a very standard version to use for Title VII cases. The term 'open' in the text, which several readers have misunderstood, she explained does not mean a job must have remained open indefinitely; it means, rather, that a real job opening existed. She said the Gleason ruling will not necessarily pertain, verbatim, to all cases before the Special Master or the internal tribunal.

Professor Schletzer asked if the University or the Women's Advisory Committee would not want consistent rules for all cases. Professor Woodward replied that they hope for case-by-case consistency. She added that the Advisory Committee is going to submit for consideration another description of Title VII burden of proof.

B. Criticism of draft of claim procedures. Professor Woodward reported that University attorney Tierney has stated the attorneys are going to give the claim procedures considerable further revision, which might be completed by early next week. The Women's Advisory Committee, she said, would write the attorney a comment upon that draft and send a copy to the Consultative Committee. It did not seem worthwhile to examine the current draft in detail, she said. She talked instead about the general nature of the document. She complained that a plaintiff cannot understand from the claim procedures what she needs to do, what constitutes evidence, or how and whether she can get necessary comparative data. The "claims procedures" do not constitute a procedural manual, but rather an explanation of "how the papers are shuffled."

The University agreed in the consent decree, she told the SCC, to provide rapid access for women to a federal court without high legal costs, but the University also retained the opportunity to check its past procedures internally, via the internal tribunal. However, the Special Master is not required to follow the recommendation from the internal tribunal, and the plaintiff may choose not to hire a lawyer and reveal her legal case to the internal tribunal. If the plaintiff does not hire a lawyer, the University may choose not to use a lawyer for the internal tribunal. The internal tribunal hence may be unable to make a determination on the case. There is a danger, she cautioned, that members of internal panels may feel they can be of no real effect and hence that such service is not worth their time. The Women's Advisory Committee is concerned that the truth come out. The internal tribunals of course have no

subpoena power while the Special Master does. If the internal tribunal is to conduct a search for the truth, she said, University people should be urged to come forward to testify.

C. Open hearings. Professor Woodward asserted that the University delayed addressing the question of whether hearings of the internal tribunals would be open by tying them to the practices of existing University grievance bodies. The University need not open every other internal grievance process, she said, in order to have this special set of hearings open. She asked that the University simply declare the hearings of the internal tribunal will be open. She pointed out that the hearings before the Special Master will be open.

D. Procedures for non-hires. Non-hires presently have no internal tribunal. She alleged that the language of this section of the claims procedures document is itself discriminatory, as follows: "No case" she sees as a pre-judgment, which actually means "University will challenge;" "Case unclear" means the University may challenge or may negotiate; "Clear cause" means the University will negotiate. She pointed out that a claimant is not even aware of the initial screening her claim will undergo in University offices. Dr. Pazandak described the intended purpose of the "No case" category as to screen out claims filed out of misunderstanding, such as those actually involving civil service positions.

Professor Striebel reemphasized that the document should be written in terms useful to the claimants and the panel members. She also pointed out that the cases are going to start being heard fairly soon, whether or not everyone is ready. (The University attorney has reported 24 cases have been filed to date.)

Professor Schletzer suggested there were disincentives for the EEO to accept cases as having clear or possible cause. She asked whether each case that office clears for further consideration is not an admission their affirmative action processes were inadequate the first time around. Furthermore, each such case increases their own workload. Professor Eaton pointed out that errors in affirmative action could have occurred in a department and yet the forms still reached the EEO in order, appearing to confirm proper procedures, and have been approved by EEO in good faith.

Professor Eaton asked what the Women's Advisory Committee would like to see the Consultative Committee do. Professor Woodward said they would appreciate it if the SCC would make the relevant documents available to them and would help to educate the faculty on the issues.

Professor Schletzer recommended that the SCC, to the extent it can, influence the University and its attorney's office to disseminate all relevant information.

Professor Swan moved that Professor Eaton convey to Attorney Tierney the SCC's concern about the language in the claims procedures document, request that the SCC see the new draft of the document as soon as possible and urge the administration to share the procedures with interested faculty, and convey the nature of the SCC's motion last week on opening grievance proceedings, with a request that it pertain to the internal tribunal as well. The motion carried without dissent. Professor Eaton will cite the perceived shortcomings of the present document in her cover letter.

9. Opening grievance procedures. The SCC received copies of the motion for the Senate from the Judicial and Tenure committees to provide for revising the procedures of the Judicial Committee. No one present knew whether the existing tenure code can legally be amended.

10. New Business.

A. Julie Bates extended the invitation of General College to all SCC members to attend its wine and cheese open house on Friday, February 13.

B. Allan Ward expressed thanks to Professor Spring for his effort in visiting the Waseca campus on January 27 and presenting a balanced report on the capacities of the University Senate. Professor Ward said it was unfortunate that the invitation and visit probably came two years too late.

C. Professor Eaton expressed her concern that the SCC is no longer getting the breadth of faculty opinion it needs. Duluth is no longer represented on the Faculty Consultative Committee, and it is assumed that following the next Regents meeting, Waseca will also be separated from the Senate. There was speculation as to whether the SCC could regain a faculty representative from Crookston.

D. Professors Ward and Spring announced that Waseca has submitted an amendment to provide continuous faculty representation from Waseca and Crookston to the Consultative Committee and the Committee on Committees. There was considerable discussion as to whether it would be helpful or confusing to have this motion on the floor at the February 19 Senate meeting when the vote will be taken on adopting the new constitution, and immediately following Waseca's anticipated dismissal from the Senate.

Professor Spring expects that some Senators may raise the issue that Duluth is not on the Senate floor when the revised constitution is discussed and voted upon; he is reluctant to add the Waseca-Crookston question. He recommended postponing the amendment to a later Senate meeting. He pointed out that on some unionized campuses the bargaining agent has chosen to use the previously existent governing structure while on about as many others it has chosen not to use that structure. Should the bargaining agent (UMDEA) and the University's liaison negotiate using the Senate for governance, then at that point the Waseca amendment for it and Crookston could be considered, without any additional problems.

If the issue of Duluth's absence from the Senate while the new constitution is being discussed and voted comes up, Professor Spring would like to appeal to the Senate to go ahead as best it can in the circumstances. He would remind people that we do not know what the final relationship of UMD will be with regard to the Senate, and yet believes the University cannot postpone the needed reforms which were recommended by the Watson Report. He will encourage giving the Senate the best structure possible and fitting that structure to existing conditions when they are resolved.

Professor Ward described the issue in the Waseca amendment as not whether Waseca is in the Senate or not; rather, it is whether Waseca (and Crookston) shall be entitled to continuous representation on the Consultative Committee and the Committee on Committees. He would urge Senators to assume the old system as they consider the new constitution, and be prepared to delete references to Duluth and Waseca later if that becomes necessary.

The meeting was adjourned at 2:50 p.m.

Respectfully submitted,

Meredith B. Pappale
Meredith B. Pappale, SCC