Minutes*

Senate Committee on Faculty Affairs
Tuesday, April 26, 2011
2:30 – 4:30
238A Morrill Hall

Present: George Sheets (chair), Ben Bornsztein, Arlene Carney, Dann Chapman, Vladimir Cherkassky, Randy Croce, Barbara Elliott, Kathryn Hanna, Theodor Litman, Karen Miksch, Geoffrey Sirc, James Wojtaszek

Absent: Carol Carrier, Richard Cline, Frank Kulacki, Jason Shaw, Roderick Squires, Pamela Stenhjem

Guests: Professor Mary Elizabeth Bezanson (Morris)(by telephone); Carolyn Chalmers (Director, Office for Conflict Resolution); Professor Dan Feeney (Chair, Retirement Subcommittee)

[In these minutes: (1) teaching assignments; (2) biennial report from the Office for Conflict Resolution; (3) biennial report from the Retirement Subcommittee and amendments to the subcommittee charge]

1. Teaching Assignments

Professor Sheets convened the meeting at 2:30 and welcomed Professor Bezanson. He explained that Professor Bezanson, in response to the request from the Faculty Consultative Committee (FCC) to faculty members asking for issues that faculty believe should be taken up, had responded as follows:

> At the moment, faculty work with appointments but not contracts. An issue has been raised at UMM regarding teaching assignments. The administrator position appears to be that once hired a faculties teaching assignment can be administratively changed. As retrenchment continues to hit all of the U there is a growing concern that teaching assignments can move beyond one's training. I think it conceivable that one could then be reviewed negatively and with or without tenure terminated.

FCC referred the matter to this Committee.

Professor Bezanson reported that in response to her question, there have been conversations with Vice Provost Carney and Vice Chancellor for Academic Affairs Cheryl Contant (Morris) and some points have been clarified. Given retrenchment, when faculty members are not replaced in a sub-area of a field, can faculty members be required to teach outside areas in which they were hired? Would it be possible to have someone teach outside their area, not do well, and disciplined or lose their job and tenure? Professor Bezanson reported that Dean Contant had assured her that that would never happen.

* These minutes reflect discussion and debate at a meeting of a committee of the University of Minnesota Senate; none of the comments, conclusions, or actions reported in these minutes represents the views of, nor are they binding on, the Senate, the Administration, or the Board of Regents.

Did she consult the tenure code, Professor Sheets asked? She did, Professor Bezanson said, and learned that faculty do not have contracts, they only have a letter of appointment. Her division chair has said that teaching assignments are an administrative decision.

Vice Provost Carney distributed copies of Interpretation 8 from the tenure code, which reads as follows:

> **8. Interpretation of Amendment to Subsection 10.2: Faculty Assignments.**
>
> Faculty members are free to choose topics for research or outreach and to discuss all relevant matters in the classroom, in accordance with the principles of academic freedom and responsibility. The head of the academic unit will assign individual faculty members to teach specific courses in accordance with the academic workload statement and other policies adopted by the faculty of that unit. A faculty member may challenge an assignment by showing that it is unreasonable. An assignment is unreasonable if: (a) taken as a whole, it exceeds the workload expected in the workload statement of that unit, (b) the faculty member lacks the basic qualifications to teach the course, or (c) the assignment was made in violation of the faculty member's academic freedom or in violation of another specific university policy. The faculty member should carry out the teaching assignment pending resolution of any grievance, unless the responsible grievance or hearing officer or panel indicates that provisional measures are appropriate.

What this says, Dr. Carney explained, is that it is the right and the responsibility of administrators to make teaching assignments. There is nothing in the tenure code that says a faculty member has the right to teach only in the sub-area for which he or she was originally hired. Many faculty members teach in areas that did not exist when they were originally hired. The concern is groundless, she said, because the University would only terminate a tenured faculty member if the person is performing at a very substandard level and has gone through five years of review, or under the provisions of section 10 of the tenure code, which provides, in section 10.21:

> **10.21. Termination Or Suspension Of A Faculty Appointment Before Its Expiration.**
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> A faculty appointment may be terminated or suspended (except under Section 10.22) before its ordinary expiration only for one or more of the following causes:
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> (a) sustained refusal or failure to perform reasonably assigned duties adequately;
> (b) unprofessional conduct which severely impairs a faculty member's fitness in a professional capacity;
> (c) egregious or repeated misuse of the powers of a professional position to solicit personal benefits or favors;
> (d) sexual harassment or any other egregious or repeated unreasonable conduct destructive of the human rights or academic freedom of other members of the academic community; or
> (e) other grave misconduct manifestly inconsistent with continued faculty appointment.

But teaching a new or different course, with student ratings that presumably are not as good as the faculty member otherwise receives, would never be grounds for the dismissal of a tenured faculty member—or a tenure-track faculty member.

Professor Bezanson noted that she had not raised the issue herself; the question came to her in her capacity as chair of the Morris faculty affairs committee. She interpreted Vice Provost Carney to be saying that, per the tenure code, if one is teaching outside one's field, and there is a dip in the person's student ratings of teaching because of substandard performance, there would be a period when the person could train to improve himself or herself. Dr. Carney agreed but said one would have to look at the context; if the person's ratings dipped because the faculty member did not come to class, that would be a different matter.

Professor Bezanson said that what is happening with the tension about the budget is that people are feeling more unsettled about their jobs. Has anyone protested a teaching assignment? Dr. Carney said she was sure it has happened, although she did not know of any particular instances. She noted that in her field, someone who is a specialist in X can also teach in fields Y and Z. It is not reasonable to say that one will only teach in a small or niche area. If one were really asked to stretch, such as asking an economist to teach anthropology, there might be grounds for a legitimate protest.

Professor Bezanson said she understood that the request must be reasonable. She felt she needed to ask the question and now believes she can reassure her colleagues. Their dean also reported that no one has been asked to teach dramatically different courses.

Professor Hanna said she has experience with this issue. There was a major retrenchment when the University closed a campus, and 19 tenured faculty members stayed with the University and took on very different positions. It can work. Dr. Carney pointed out that that kind of event is covered by section 12 of the tenure code, which provides that the University will offer training to faculty members whose programs are closed.

Professor Miksch said that the tenure code is an employment contract (see Section.2.1). In addition, Section 7(a)(3) of the tenure code provides what must happen if performance is judged to be substandard. Dr. Carney reported that three of the four divisions at Morris, in their revised 7.12 statements (which have been approved), have very explicit statements about post-tenure review. One dip in someone's ratings of teaching would never trigger post-tenure review.

Professor Bezanson thanked the Committee for the discussion. There is tension in the way the world is working, she said, and people are a little less happy. Professor Sheets said that is understandable in this fiscal climate, and is a sentiment that faculty members around the country share as their institutions face severe retrenchment.

Following the discussion with Professor Bezanson, Professor Sheets said that the issue did not turn out to be serious because of the protections of the tenure code. Dr. Carney said she receives questions like on a regular basis and refers people to the tenure code, which she notes is ironclad. She said she is always happy to answer questions and to reassure people.

2. Biennial Report from the Office for Conflict Resolution

Professor Sheets welcomed Ms. Chalmers to the meeting to provide her biennial report to the Committee on the work of the Office for Conflict Resolution.

Ms. Chalmers provided a handout with a bar graph showing the number of faculty members processing disputes through her office from 2001-02 to 2010-11 (through April 22). It also contained information about the units where the faculty who filed complaints work and about representative issues.

For the period 3/24/10 to 4/22/10, the faculty members who brought issues to her office came from these units:

AHC	16
CLA	9
Other	12

Three faculty members (out of the 37) filed a formal petition. All were resolved or closed prior to a hearing. All the others were dealt with informally, which gives the Committee an idea about the amount of the work in her office that is informal.

Representative issues presented by faculty members during 2010-11 to date were these:

1. Working relationships among faculty in a department or on a project.
2. Financial reductions, reductions in salary or research funds to meet department deficits, failure to provide benefits itemized in offer letters.
3. Sabbaticals, sabbatical supplements, semester research leave decisions; issues focus on the criteria and the process for making these decisions.
4. Equity. This arises when comparing salaries of faculty with long tenure with salaries of new faculty hires. It also arises in comparing salaries of male and female faculty. Issues include differential decision-making for male and female faculty, differential implementation of benefits such as FMLA, parental leave, and consulting policy.
5. Hostile work environment, misusing faculty or chair position.

Ms. Chalmers, noting the data on the bar graph, said the trend is steady. The issues come from regular faculty as well as contract/clinical faculty members. Dr. Carney observed that the number is largest from the AHC, which also has the largest number of contract faculty. Ms. Chalmers said that the AHC issues have come predominantly from regular faculty. The AHC is experiencing a lot of significant change—in leadership and finances. There are not always established mechanisms or policy to guide decision-making. This can result in *ad hoc* decisions. Professor Bornsztein asked if the majority of the issues come from one school in the AHC or from a number. They come from several schools, Ms. Chalmers said.

In terms of the representative issues, Ms. Chalmers said that with respect to working relationships within departments, the office offers good help to interdisciplinary work groups, helping them communicate their expectations of each other and adopt mechanisms for working out conflict. With respect to sabbaticals and research leave issues, some departments operate smoothly and are well-oiled machines; others are not, and when they are not, people are unhappy. This is a matter the Committee could work on.

Professor Sheets said that the initial decision about sabbaticals and leaves is at the college level. Not for leaves, Dr. Carney said; the Provost's office sends a notice each year on the number of semester leaves available to each college, which is based on the number of faculty members in the college. It is Board of Regents policy that up to 4% of faculty members may be on leave in any year (including contract faculty). Each college receives a number and each college decides who receives a semester leave and who receives a sabbatical. The formula for salary supplements is that the central administration provides one-third and the college provides two-thirds. Some colleges invest more in supplements than others. But the central administration does not participate in the selection of individuals to receive leaves and sabbaticals or in the distribution of the money.

This is an area where good preventive work could be done, Ms. Chalmers said. For example,, a few years ago a concern was raised about the lack of consistency in the ways different colleges were handling student hearings about academic concerns A workgroup developed a two-page set of advisory guidelines for collegiate hearings. The same could be done for the collegiate process of selecting individuals for leaves and sabbaticals. She said she would be glad to work with the Committee on this. If the complaints occur more frequently in one college, Professor Hanna said, perhaps there should be a communication from the Provost's office with some guidelines. Any guidelines should go to all the colleges, Professor Sheets added. Dr. Carney said that sometimes colleges have more applications than the number of slots they have available, so a person might not make the cut. In many colleges faculty review the applications. When one does not like the results, Ms. Chalmers said, it helps if one can look at the process and see that it is fair and thoughtful. Professor Sheets said that he and Ms. Chalmers would work on this.

Probationary faculty members are eligible for a single-semester leave after two years of employment, Dr. Carney reported, and after four years if they are a tenured hire. In some colleges, probationary faculty members receive a fair number of single-semester leaves, while in others they do not. That is a college decision. The problems tend to arise when the number of leaves available to a college is small. They see that at Morris because of the small number, Professor Wojtaszek said. The big question, he agreed, is how to divide them between tenure and probationary faculty members. Ms. Chalmers commented that guidelines could suggest a college review the number of probationary and tenured faculty members it has, who receives the leaves, and articulate the benefits to tenured and to probationary faculty members. That would make the process more transparent.

With respect to equity issues, gender disparities in salary are under discussion by the Women's Faculty Cabinet as a systemic issue, but it is also a issue for individuals, Ms. Chalmers said. Issues arise when faculty members feel that criteria are not consistently applied or benefits not consistently provided.

With respect to issues of workplace culture, Ms. Chalmers said that "hostile" is an overstatement but she observed that faculty satisfaction seems to turn on the local environment, such as departmental leadership and relationships with colleagues. If the work environment is contentious, that may bring people to her office. Misuse of a faculty position refers to bullying or belittling behavior, which can trouble people deeply. Her office helps facilitate conversations to shift the nature of interactions among colleagues.

In addition to individual concerns, Ms. Chalmers reported that her office is working with the Student Conflict Resolution Center on an initiative to improve the organizational culture and discourage bullying behavior at the University. The work group has focused on graduate students because they are vulnerable. It has developed tools that faculty and students can use to improve the work environment, and has provided templates for orientation programs and for evaluating graduate programs. This work is not controversial, it is constructive, it does not infringe academic freedom, and it taps into a shared value that a unit should have a healthy culture. For several years, the Office for Conflict Resolution has collaborated with the Graduate School, the Provost's office, Office of the Vice President for Research, and the Student Conflict Resolution Center to develop programs for faculty on conflict management. This year, the NIH Ombudsman will be presenting on June 1 and 2 on building successful research teams. The sessions are eligible for RCR credit

It was noted that academic-freedom claims by faculty members go the Senate Judicial Committee, under the Tenure Code as amended in 2007. Academic freedom claims by staff members go to Ms. Chalmers' office. It is still an open question where graduate students go, which the Committee on Academic Freedom and Tenure is taking up.

Mr. Croce noted that there has been discussion of changes in the non-renewal policy for P&A staff. He said he understood that P&A staff may not bring a grievance contesting a non-renewal unless there is a violation of University policy or the law. A grievance must allege a violation of University policy or practice, Ms. Chalmers clarified. Mr. Croce asked about a claim by a P&A staff member who is not renewed and it is said that the non-renewal is for budgetary reasons—but the person believes it is because of a violation of academic freedom or is discrimination. It would, Ms. Chalmers said. A "just cause" reason for non-renewal of a P&A position is not required. But policy prohibits issuing a non-renewal for an impermissible reason, such as discrimination in violation of the EOAA policy. If a P&A person believes a non-renewal was motivated by an impermissible reason, such as discrimination, the person could file a petition in her office or a complaint in the EOAA office. If someone receives a notice of non-renewal, the time limit for filing a petition is six weeks from the notice or from the effective date of termination, whichever is later. (More information about the jurisdiction rules for filing a petition are explained in an appendix to the administrative policy found in the University policy library.) How long would it take to grieve a non-renewal, Mr. Croce inquired? Would a shorter notice period impinge on the ability of someone to use her office? Few petitioners go through every step in the process, but if one exercises all of the policy options, the petition process can take several months. If the petition is timely filed, the petition process will continue even though the person is no longer a University employee. Since the policy permits the filing time limit to run from the date of termination regardless of the date of notice, shorter notice periods should not negatively impact the ability of a P&A employee to use the petition process to challenge a termination.

Professor Sheets thanked Ms. Chalmers for her report.

3. Biennial Report from the Retirement Subcommittee and Amendments to the Subcommittee Charge

Professor Sheets now welcomed Professor Feeney to the meeting to report on the activities of the Retirement Subcommittee (which deals with the Faculty Retirement Plan and optional retirement plans).

Professor Feeney said it has been an interesting year for the Subcommittee, one that started with the contributions by Securian to Minnesota Forward. That matter came up as recently as two meetings ago, and Securian is aware that faculty and staff do not want Securian to make high-profile political contributions.

Professor Feeney noted several proposed changes to the charge from this Committee to the Retirement Subcommittee and said there were questions about who reported to whom when the question of discontinuing the TIAA options in the retirement plan. There is a Retirement Plan Fiduciary Committee (composed of several administrators, elected representatives for faculty, P&A, and civil service employees, plus the chair of the Retirement Subcommittee), which has certain legal obligations to carry out in dealing with the retirement funds; the changes to the charge to the Retirement Subcommittee clean up who does what.

Professor Feeney then reported on Subcommittee activities.

-- They are trying to update the retirement calculators on the Securian website because there is a wide variety in investment savvy and interest. These were started about five years ago and have gotten more sophisticated with help from Securian. New ones are coming in June, and by the end of 2011 there will be a number of different scenarios available.

-- For everyone’s information, the faculty retirement basic plan default provisions (some people never sign up for funds) have been updated in the past couple of years. These are now the target date funds.

-- They do an annual letter that reminds people to put more money in the optional retirement plans, think about long-term care, and so on. It is a reminder for people to get their house in order.

-- They do a Morningstar style-box analysis and work with the Retirement Plan Fiduciary Committee to assure an appropriate spectrum of fund choices (e.g., large Cap growth, small cap value).

-- A representative from Securian did an analysis of the University's account and found that there were no significant gaps in the current fund array. The University needs to decide if it wants American funds in the plan; if some are added, then others may be deleted, because the Subcommittee is constantly being told the plan is too complicated.

-- They have an annual meeting with Securian and are provided a lot of materials about its fiscal strength and comparisons with other companies. Fifteen years ago the University had two companies managing the Faculty Retirement Plan; now there is only one, Securian. The

University has more than $1 billion in accounts with Securian so "we have a large interest in their financial health," Professor Feeney observed. Securian also serves as the University's record keeper, from which the University receives the benefit of an economy of scale.

-- They do a quarterly review of the Faculty Retirement Plan and how funds are being used; they have found that the newly-added funds are doing well. With a shaky fiscal climate, they wanted to see if people were changing their investments. By and large they are not.

-- The subcommittee revisited the Minnesota Guarantee Association (MGA), a participating organization of the major retirement plan groups doing business in Minnesota. While the MGA document indicates its purpose is to cover individual losses should a plan provided default, there is only $10 million in the fund, versus over $1 billion in University retirement funds, so it would not pay out much on University accounts. This is brought up to underscore the Subcommittee's diligence on the stability of Securian.

-- Beginning last year, the Securian executives will meet twice yearly with Stuart Mason, the University's Chief Investment Officer, and Chris Suedbeck in Mr. Mason's office, to go over in more detail Securian's finances to ensure that there is no undue risk to the Faculty Retirement Plan.

-- The Subcommittee has been consulted about the proposed change in contributions to the Faculty Retirement Plan for new employees. The Subcommittee started talking about that option last September; they believe the total contribution level must remain at 15.5%, based on past experience, in order to provide an adequate retirement income.

-- The Subcommittee looks at plan expenses in an effort to be sure that the return on retirement investment is not being unduly compromised by managerial fees. All involved providers are aware that the Subcommittee is watching the fees, including record-keeping fees from Securian.

-- They did an overview of plans at peer institutions, and the information was provided at the Senate meeting. They have looked at peer plans over the years, and when they do, one question is how vulnerable they are to change. The Faculty Retirement Plan is less vulnerable than many because the money belongs to the account holders (faculty and P&A staff), unlike the case with defined-benefit plans. What they have emphasized, as they look at other plans, is the replacement ratio; with the University's plan, it is 61% of salary at retirement, and when Social Security is added, the ratio gets to about 80%. They believe the plan is solid, Professor Feeney concluded.

-- They discussed retiree health care, a proposal that has no traction here because of the cost.

-- The estimate is that people will need between $210,000 and $300,000 for health care when they retire, which is another reason they call for the 15.5% contributions, because that money must come from what one has set aside.

Professor Hanna, who serves on the Retirement Subcommittee, said that Securian over the years has used a guaranteed account approach known as General Account and General Account Limited. These are retirement options where the net asset value of shares are guaranteed by the financial health of Securian and do not fluctuate with the markets. This "fixed income" option has subunits which are asset aggregates paying a particular rate of interest based on the time the investment was made and the status of maturity of the investments in that subunit. The term "guaranteed" has come under debate in the Retirement Subcommittee because of the potential for participants making the assumption that there is an external guarantor such as FDIC. The Subcommittee is working with Securian on the terminology. But she said she is impressed with the financial soundness of Securian and noted that it was very strong during the last financial crisis.

For people who put assets in plan funds outside of Securian (e.g., Fidelity, Vanguard), what risk is there linked to the health of Securian, Professor Sheets asked? For money in other funds, none; there is no tie, Professor Feeney said. The biggest issue is the General Account, in which University faculty and staff have about $1.1 billion (out of a total of $2.5 billion in total U-MN retirement accounts). Securian is about a $30-billion company, so the University's retirement plan investments are a noteworthy part of its portfolio.

Professor Cherkassky asked how decisions are made about selecting different investment funds. There are standard stock funds, bond funds, etc. But he could not find an energy fund. There is no information on why the selections are made. The Subcommittee watches the 401(a) and 403(b) accounts, and uses the Morningstar evaluation to try to have reasonable funds available, Professor Feeney said. The optional plan from Securian (457 and 403(b)) contains whatever funds they deem appropriate. The optional plans from Fidelity and Vanguard allow access to all of their respective funds except exchange-traded funds. The Subcommittee has received pressure from fund providers to include real-estate funds in the Faculty Retirement Plan. They have taken the position they will not go into sectors—gold, real estate, etc.—in the basic plan because people can invest in those on their own in the optional plans if they choose. The philosophy of the Retirement Plan Fiduciary Committee, Professor Hanna reported, is to stick with general investment categories, not sectors, for the basic plan. The optional plan has hundreds of choices.

Professor Miksch asked about one change in the charge to the Retirement Subcommittee, which eliminates the term limits. It was noted that (1) parent committees may set the membership terms of subcommittees (subcommittees are not subject to Senate rules on term limits), and (2) in this case, the development of expertise on a somewhat arcane subject has been seen as more desirable than turning over the membership for the sake of turning over the membership. In addition, there has been turnover, when someone leaves or retires. Professor Feeney recalled that when he started on the Subcommittee in 1989, there were four members and they met in a faculty member's office; it was difficult to get people to serve. About ten years ago the membership and charge were changed, and now the Subcommittee has a group of faculty members with expertise in retirement plans. They have dynamic discussions and can ask pointed questions of representatives of the companies. When Securian meets with the Subcommittee, their contingent includes vice presidents and chief financial officers because they take the University and the Subcommittee very seriously. They are also fortunate to have a representative from the Office of the General Counsel serve as counsel to the Subcommittee.

Professor Sheets posed a brief question to Professor Feeney about changes to the Retirement Subcommittee charge: Why was the term of the chair changed from two years to one? Professor Feeney said the change of language merely brought the official charge into line with existing and relatively long-standing practice. The Committee on Committees is in a better position to make informed decisions regarding the choice of chair, as it does with other committee chairs.

The Committee voted unanimously to approve the changes to the charge to the Retirement Subcommittee.

Professor Sheets thanked Professor Feeney for his report and adjourned the meeting at 4:20.

-- Gary Engstrand

University of Minnesota