

UNIVERSITY OF MINNESOTA

University Senate

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May 30, 2003

President Robert H. Bruininks
President's Office
202 Morrill Hall

Dear Bob:

Please find attached to this letter a report from the Grievance Advisory Committee, chaired by Professor Laura Cooper in the Law School, concerning the establishment of an ombuds function at the University.

This report was reviewed thoroughly by both the Senate Committee on Faculty Affairs and the Faculty Consultative Committee. I believe it is fair to say that both committees strongly endorsed the report and that a majority of both groups would prefer that the University implement a more full-blown version of an ombuds office. At the least, we believe the Dispute Resolution Council recommended in the report should be seen as only an interim step toward a more permanent and independent ombuds office.

We would appreciate knowing how the administration will respond to the report. We would be pleased to discuss the recommendations with you at an upcoming FCC meeting.

Cordially,



Dan Feeney, Chair
Faculty Consultative Committee

cc: Professor Judith Martin, Chair-elect
Faculty Consultative Committee
Professor Art Erdman, Vice-chair-elect
Faculty Consultative Committee
Professor Laura Cooper, Chair
Grievance Advisory Committee
Professor John Fossum, Chair
Senate Committee on Faculty Affairs
Professor David Born, Chair-designate
Grievance Advisory Committee
Executive Vice President Christine Maziar
Vice President Kathryn Brown
Ms. Carolyn Chalmers, University Grievance Officer

April 10, 2003

**UNIVERSITY OF MINNESOTA
GRIEVANCE ADVISORY COMMITTEE**

**INTERIM REPORT AND PRELIMINARY RECOMMENDATIONS
ON
OMBUDS SERVICES FOR UNIVERSITY EMPLOYEES**

Introduction

The Grievance Advisory Committee (GAC) is created by the University Grievance Policy (UGP) which gives it the responsibility of advising the University President and University Senate about the operation of the Grievance Policy. The Grievance Advisory Committee includes members from all classes of employees covered by the UGP, including faculty, civil service, administrative and professional staff and student employees. The Grievance Policy provides for a four-step process to resolve conflicts that may arise between University employees in all employee classifications except union-represented groups and employees of University of Minnesota Physicians. Once a grievance is filed asserting violation of a University policy, the Grievance Officer directs a process to seek resolution of the grievance. The process may include mediated informal discussions between the grievant and supervisors, a peer hearing panel and binding arbitration.

Over a period of several years, members of the University community have periodically raised the question of whether employee-employer conflict resolution could be improved by the provision of ombuds services that could seek to resolve disputes by less formal mechanisms than those afforded by the Grievance Policy. In September, 2002, the Faculty Consultative Committee (FCC) requested that the Grievance Advisory Committee study the issue of whether the University should provide ombuds services to assist faculty, and perhaps other employees, with workplace problems and, if so, how such services should be structured.

The GAC has, since Fall 2002, actively engaged in information gathering and analysis of the questions posed by the FCC. Current budgetary conditions at the University make it appropriate to issue this interim report describing our findings and preliminary recommendations.

Scope of the Study

Ombuds services are conflict resolution services that are independent, neutral and non-adversarial. Ombuds services are widely offered today in a variety of institutions including corporations, universities and government agencies. In 2001, the House of Delegates of the American Bar Association passed a resolution encouraging greater use of ombuds services in all public and private entities. The ABA resolution provides a useful definition of the role of an ombudsperson:

Ombuds receive complaints and questions from individuals concerning people within an entity or the functioning of an entity. They work for the resolution of particular issues and, where appropriate, make recommendations for the improvement of the general administration of the entities they serve. Ombuds protect: the legitimate interests and rights of individuals with respect to each other; individual rights against the excesses of public and private bureaucracies; and those who are affected by and those who work within these organizations. . . .

The essential characteristics of an ombuds are:

- independence
- impartiality in conducting inquiries and investigations, and
- confidentiality.

This definition of an ombudsperson makes clear that the ombudsperson serves an active neutral role, but does not serve as an advocate for employees. While there has also been discussion within various University bodies over a period of years about whether there should exist an advocacy service for employees involved in disputes with the University, we do not address that question. An ombudsperson is an advocate for consensual resolution of a dispute, not an advocate for any party to the dispute.

Data Gathering

Our process of investigation has included gathering information about ombuds functions generally, gathering specific information about ombuds functions at comparable universities, interviewing and meeting with University of Minnesota campus leaders, and engaging in discussions of issues and options.

The Grievance Office can provide, upon request, underlying documentation for this Interim Report and Recommendations including bibliographic sources, information on ombuds functions at other universities, notes of interviews with campus leaders, and Committee minutes.

Preliminary Observations

Practices at Other Institutions

Many comparable large research universities have a campus ombuds function. These include the University of Iowa; the University of Michigan; Ohio State University; the University of Wisconsin, Madison; the Massachusetts Institute of Technology; the University of Washington and the University of California, Berkeley. There is considerable difference among universities in the size and structure of such a function. Ombuds functions may be centralized or decentralized (specific to certain sectors of the University such as liberal arts or health sciences) and may be designed to serve some or all categories of employees (faculty, student, civil service) either in the same office or in different offices.

Identification of Unmet Needs at the University of Minnesota

Our research has identified a number of unmet needs in the employee dispute resolution process that could be satisfied by provision of ombuds services at the University of Minnesota. We believe that ombuds services would result in improving morale, enhancing productivity and decreasing litigation, thereby avoiding unnecessary expenditure of University resources. Our inquiries identified the following limitations and problems that could be remedied by ombuds services:

1. Lack of Transparency of Existing Dispute Resolution Offices

Several University offices currently provide conflict resolution services. These include Student Affairs, Student Dispute Resolution Services, the Grievance Office, the Office of Equal Opportunity and Affirmative Action, the Employee Assistance Program, Multicultural Affairs, and others. Some of these services have some of the ombuds features of neutrality, independence, confidentiality, non-adversarial approaches and are performed with professional skills. Their distinct features are not evident to potential users. Nor are these conflict resolution resources widely known or highly visible. The University's commitment to providing conflict resolution services to employees has not been clearly communicated. Individual offices have specific jurisdictional boundaries that include only particular types of issues or particular groups of employees. Employees thus face considerable difficulty in identifying the appropriate office for the particular issue. An employee anxious to obtain prompt resolution of a troubling workplace problem may be frustrated by confusion and multiple cross-referrals and denials of service.

2. Employment Issues Beyond, or Bridging the Jurisdiction of, Existing Dispute Resolution Entities

Each of the existing University dispute resolution services has discrete jurisdictional boundaries. For example, the Grievance Office can only address issues alleged to be in violation of a specific University policy or practice. The Office of Equal Opportunity and Affirmative Action is limited to matters asserting discrimination against a person who is a member of a protected class. Employees may have serious workplace problems that affect their morale and productivity that are either not within the coverage of any existing University service or that come within the jurisdiction of more than one such office. Examples of such disputes are issues about the exercise of supervisory discretion and disputes between faculty colleagues over a research program or authorship credit. Where a matter falls within the jurisdiction of more than one dispute resolution service, the employee may have to pursue or decide among multiple courses of action or be faced with incoherent and piecemeal efforts at resolution. Employees need guidance in how to navigate overlapping jurisdictions. Problems outside the jurisdiction of existing dispute resolution services may not require formal or adversarial processes but they may nevertheless, if left unresolved, impair the interests of both the University and the employee. At a time when the University is forced to accomplish its mission with reduced human resources, no issue that undermines the productivity and satisfaction of employees should be left unresolved.

3. The Desire for Non-Adversarial Dispute Resolution

Some disputes require formal adversarial procedures for their resolution, but in most cases employees and supervisors would prefer informal, non-adversarial means of addressing an issue. Our Minnesota and academic cultures make this especially true. In many instances, informal resolution can also achieve more creative and flexible remedies for workplace problems. Unfortunately, current University dispute resolution mechanisms generally require the filing of a formal complaint or grievance in order to receive any dispute resolution assistance. For example, the Grievance Procedure does not authorize the Grievance Officer to seek to mediate a dispute unless the employee first files a formal grievance identifying a university employee as a respondent and asserting specific violation of a University policy. Sometimes employees find themselves tolerating unpleasant or inappropriate workplace circumstances to avoid being forced into an adversarial relationship with workplace colleagues. The Committee's annual surveys of persons who interact with the Grievance Office have identified a strong interest in access to less-adversarial dispute resolution processes. Our surveys have found that employees who receive informal counseling and do not pursue adversarial procedures have the highest levels of satisfaction with their experience.

4. Lack of a Knowledgeable, Comprehensive, Neutral and Central Source of Information about University Employment Issues

The University is a very large and complex institution with countless special policies and procedures. Matters that present themselves as disputes may instead simply be the result of an employee's inability to locate the person within the University who can provide the correct answer to a question or identify the person with authority to exercise necessary discretion. Information and decisionmaking are dispersed among academic and non-academic units. The University lacks a central location where employees may obtain comprehensive authoritative and neutral guidance on policy and procedures. The Office of Human Resources is structured as an advisor to the employer and thus is not, and is not perceived as, neutral. We have confidence that fewer formal grievances would be submitted if employees could receive prompt reliable information from an easily-identifiable central neutral source when issues first arise.

Basic Characteristics of Ombuds Services

We believe that provision of ombuds services at the University of Minnesota could fill these identified gaps in conflict resolution. Our review of existing ombuds services at other academic institutions persuade us that there is no single structure for ombuds services appropriate for all universities. Ombuds services elsewhere function effectively both in centralized and decentralized offices, serving single as well as multiple groups of employees. They function well with both faculty and non-faculty service providers. We view the following, however, as necessary characteristics of any ombuds service:

1. The service provider must have a comprehensive knowledge of University policies, structures, and the distribution of decisionmaking authority within the University.
2. The service provider must be an independent neutral, not subject to the immediate authority of institutions within the University who make human resources decisions.
3. The service provider must have the trust of the variety of employee classifications as well as of University administrators.
4. The service provider must have professional conflict resolution skills.

Implications of the Budget Challenges of 2003-04

Current University financial circumstances preclude, in the near future, any significant expenditure of funds to support a new ombuds function. These same financial circumstances, however, make the need for improved conflict resolution particularly critical. The provision of ombuds services now could assure employees adversely affected by decisions of the fairness of the process, enhance the workplace experience of employees asked to do more with less, improve human resources decisionmaking, and permit the resolution of disputes without the significant expense and loss of productivity that accompany litigation. We are aware that, nationally, employers have experienced high levels of litigation in response to recent employee layoffs. Enhancement now of informal employee dispute resolution mechanisms can assist the University in fulfilling its mission in the face of restricted resources.

Preliminary Recommendations

The Future

Our research so far suggests that, were it not for the current financial circumstances, the University should devote resources to provide ombuds services. It would be unproductive to devote Committee resources to outlining a model program at this time when we are certain that no such program could be implemented in the near term. That effort, however, should not be abandoned, but rather postponed until a time when implementation of such a program would be a realistic option. In the meantime, some actions can be taken to facilitate the later pursuit of this effort:

1. The Grievance Office will retain a file of all of the data and interviews gathered in preparation of this Interim Report so that it will be available when the ombuds issue is again addressed.
2. To the extent that entities within the University are engaged in surveys of employees for other reasons, efforts should be made to include questions that would help to identify the extent of need for informal dispute resolution and

perceived preferences for the structure of its provision. Existing offices with dispute resolution responsibilities should collect and preserve data on services rendered and declined, including costs of services, that could be helpful in making sound future judgments about ombuds services.

3. The Grievance Advisory Committee will study whether the Committee should propose amendments to the University Grievance Policy that would authorize the Grievance Office to provide a greater range of informal dispute resolution options.

The Present

University administrators should convey to all employees the message that the University cares about their welfare yet knows that there will be conflicts in a time of upheaval and change. The University should make clear that it wants to resolve these conflicts fairly. The University should affirm its commitment to listen to and seek to remedy, as informally as possible, workplace problems that interfere with employee satisfaction and productivity.

Existing dispute resolution providers within the University should be brought together to explore how their offices can provide centralized effective informal dispute resolution services arising from and appropriate to the present financial crisis. This Dispute Resolution Coordinating Council should invite the participation of the Grievance Office, the Office of Equal Opportunity and Affirmative Action, Multicultural Affairs, Human Resources, the Employee Assistance Program, Student Affairs, the Student Dispute Resolution Center, the Office of the General Counsel, the Senate Judicial Committee, other faculty committees such as the FCC or SCFA, the Council of Academic Professionals and Administrators, and the Civil Service Committee.

This Council's responsibilities might include the following:

1. Share information about conflicts arising from budget reductions and provide analysis and feedback to decisionmakers.
2. Use the web and other media to provide coordinated outreach to University faculty, staff and students about the availability of conflict resolution services.
3. Coordinate policies and practices to improve and better integrate dispute resolution services.
4. Provide third-party neutral assistance to parties requesting it. We encourage the Council to explore possibilities for providing ombuds services that would require limited reallocation of funds, including training volunteer retired University faculty and staff to serve such a function.

5. Provide guidance to the Grievance Advisory Committee, based on the Council's experience in these crisis activities, on the need for and the appropriate structure for future ombuds services.

Grievance Advisory Committee

Laura Cooper, Chair, *Professor, Law School*

Mark Allen, *Program Director, Minnesota Alumni Association*

Linda Ellinger, *Assistant Vice Provost, Office of the Executive Vice President and Provost*

John A. Fossum, *Professor, Carlson School of Management*

Sue Hancock, *Director of Outreach and University Relations, Office of Multicultural and Academic Affairs*

Jonathan Suk, *Student, College of Liberal Arts*

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Carolyn Chalmers, *Grievance Officer*

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