



UNIVERSITY OF MINNESOTA
TWIN CITIES

All University Senate
Consultative Committee
614 Social Sciences
267 19th Avenue South
Minneapolis, Minnesota 55455
Telephone (612)373-3226

FACULTY CONSULTATIVE COMMITTEE

October 20, 1983

626 Campus Club
10:00 - 1:15

AGENDA

- 10:00 - 1. Discussion of the Proposed Tenure Code. (See page 5
12:00 of FCC minutes of October 6, enclosed).
- 12:30 2. Discussion of an ad hoc Committee on Rajender
Grievance Procedures (with EEOWC). (See letter
from Charlotte Striebel to John Howe dated
September 29, 1983 and distributed to FCC on
October 6)*
- 1:00 3. Report on status of Faculty Legislative Liaison.

* Copy of letter enclosed to members absent on October 6.



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DRAFT
MINUTES

FACULTY CONSULTATIVE COMMITTEE

October 20, 1983
626 Campus Club
10:15 - 1:15

Members present: Virginia Fredricks, Phyllis Freier, John Howe, Marvin Mattson, Jack Merwin, W. Donald Spring, Deon Stuthman, W. B. Sundquist

Guest: Rick Bale.

1. Faculty legislative liaison.

Professor Howe reported that he and President Magrath had discussed the position and are in general agreement about the arrangements. It is likely that Phil Shively will take the job.

Professor Stuthman noted it would always be of great value if the same person were able to serve first as liaison in the off year of a biennium and then continue in the first year of the new biennium.

2. The Puleston case on workers' compensation.

Professor Howe recommended and the FCC agreed that it schedule a meeting with Attorney Dunham to clarify the implications of that case (the state lawyer's statements, for example) and of the settlement. Faculty need to know the definition of "employment-related."

3. Two faculty vacancies remain on the Student Services Fees Committee.

Professors Howe and Fredricks will find people to fill the spots, and report to the FCC.

4. Distribution of special salary monies.

The special faculty group consulting with Vice President Keller on distribution of unit merit and retention salary monies will have its second meeting on October 28. Professor Howe will report to FCC.

5. Cooperating Fund Drive.

Professor Howe summarized the history of the question of whether the Cooperating Fund Drive (CFD) should be incorporated into the University's charitable giving program. A special Senate and Civil Service committee studied

the question in 1982-83 and this fall submitted its report to the Civil Service Committee, Senate Committee on Social Concerns, Senate Committee on Faculty Affairs, and SCC, recommending against such incorporation.

CFD advocates in the University hope for an affirmative motion before the Senate on November 17. Either SCSC or SCFA could bring such a motion. If neither of those committees recommends favorably, CFD representatives have asked to make a presentation to the FCC on November 3 (FCC's next meeting date and the date the Senate docket is due) in hopes FCC will take a motion to the Senate.

FCC members asked that the chairpersons or other representatives from the SCSC and the SCFA attend that FCC meeting to give FCC the benefit of their committees' deliberations.

6. Tenure Code.

The greatest part of the meeting was devoted to a consideration of Section 12 and Section 16 of the 1983 draft of a new Tenure Code, including comparisons with corresponding subsections of the 1973 document. (See attached notes on this discussion.)

Following FCC's November 10 discussion on Section 13 and the Programmatic Change portion of Section 16, the committee will compile its comments and send them to the Tenure Committee.

7. Proposal for establishment of an ad hoc grievance committee to consider Rajender Consent Decree grievance procedures ("internal tribunal"). Guest: Professor Charlotte Striebel, Chairperson, EEOWC.

EEOWC has proposed to work cooperatively with the FCC to establish a special committee which would develop procedures for internal review of consent decree claims. Objection to the present form of internal tribunal is one of the six new petitions filed with the court in June.

Professor Howe noted that FCC was especially interested in knowing what inadequacies EEOWC has learned of in the procedures of the Judicial Committee, which has been serving as the internal tribunal.

Professor Striebel reminded FCC members that the University has the option of reviewing a petition internally before it goes to the special masters. The University attorney has asked EEOWC to recommend some procedures on all six of the recent petitions. Professor Striebel told FCC the EEOWC wants broader participation than it alone could supply. She seeks FCC's help in designing procedures regarding internal tribunals. Her purpose is not to argue the merits of the petitions. She said she would answer the FCC's question regarding the internal tribunal process on the basis of what she heard in EEOWC's hearings last spring and in conversations. The problems are said to be

- (1) Jurisdiction and the time frame. Claimants are never quite sure when they have to act, and where.
- (2) Conduct of the hearings. There are complaints the hearings have not been run in a judicial and orderly way. The respondent

is often permitted to harrass the complainant and her witnesses.

- (3) Bias of the panels. The perception exists that the Judicial panels are pro-administration to start with. The system for challenging panel members does not work well. It is hard for the claimants to get good information on the prospective panelists.

Professor Striebel said many other models exist to consider as possible replacements.

FCC members offered several comments:

- We might seek improvement of the existing procedures;
- Skill at conducting a meeting or hearing is inevitably going to vary among faculty members;
- It is already hard to persuade people to serve on the Judicial Committee; if those now serving are not adequate to the job, how would we find faculty who would be?
- Could the option of using the internal tribunal be removed?
- An ad hoc group should not construct a system which circumvents the Judicial Committee process;
- Could sensitize the Judicial Committee for these kinds of cases;
- UMD has no grievance procedures except through the bargaining unit. We need to know the bargaining unit's attitude and also the legality of any other proposed course.

Professor Spring said that now is an appropriate time to review Judicial Committee proceedings because of both the new tenure code consideration and the review of University grievance procedures. But should there be a general Judicial review, or one specific to Rajender cases? If it were found procedures should be altered for one group, he said, they should be altered for everyone, for otherwise the stature of the committee would be diminished.

Professor Striebel said the Rajender claimants do not want to be isolated in the University community and don't want special treatment. She recommended regarding the immediate work as a pilot program.

Presumably, any recommendation from an ad hoc committee would require the agreement of the Rajender parties and the University, and of any Senate committees affected. Senate action would be necessary if a new measure were inconsistent with the constitution, bylaws, or rules.

Professor Spring moved that Professors Howe and Striebel and Attorney Dunham meet to propose membership on and a charge to an ad hoc committee which would respond to the Rajender petition on internal tribunals, and to report back to the FCC and EEOWC for their approval. FCC specified that there was

no agreement in advance that the composition of an ad hoc committee would be as outlined in Professor Striebel's September 29 letter to John Howe.

Professor Howe said the group created would be an ad hoc committee of the University Senate.

The motion was carried without dissent.

The meeting was adjourned at 1:15 p.m.

Meredith Poppele,
Recorder



UNIVERSITY OF MINNESOTA
TWIN CITIES

School of Mathematics
127 Vincent Hall
206 Church Street S.E.
Minneapolis, Minnesota 55455

September 29, 1983

Professor John Howe
Chair, University Consultative Committee
733 Social Science Tower

Dear John,

As you know, petitions involving six different and rather general issues of sex discrimination were filed under the Rajender Consent Decree against the University at the end of last Spring quarter. A summary of the petitions is attached. Under the Consent Decree the University has the opportunity to review these petitions internally with the view of resolving them so that it does not become necessary to pass them on to the Special Masters. Since this is the first time that petitions of this generality have been filed, the University has not yet developed procedures for their internal review.

The Committee on Equal Employment Opportunity for Women (EEOW) has been asked to make recommendations to the administration regarding these procedures. Since the recommendations which we are considering would require the joint action of our two committees, the EEOW committee has asked me to communicate with you in an effort to develop specific proposals that would then be taken to our respective committees for approval.

In general outline the proposal that we are considering requires that ad hoc committees be appointed jointly by the Consultative Committee and the EEOW Committee to deal with each of the six issues. Since most of the issues require development of considerable statistical evidence before they can be properly studied, it is not necessary to appoint all these committees at one time. It is anticipated that these committees will be appointed one at a time as the relevant data becomes available and that each committee be tailored specifically to the issue that it will consider. We believe that the first issue to be addressed should be internal tribunals since this does not require the development of statistical data and because there has already been considerable work done on this problem that can be relied on to speed the deliberations of the committee. We propose that an ad hoc committee on grievance procedures be appointed as quickly as possible following the general outline below. After that experience, we could then modify the procedures and establish methods to be approved by both of our committees for appointing subsequent ad hoc committees as that becomes necessary.

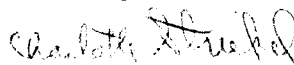
The procedure for appointing the ad hoc committee on grievance procedures would have two stages. First, a general charge to the committee would be prepared and the constituencies identified that should be represented on the committee. From this the format for the committee would be prepared. A proposal for the general charge and format for an ad hoc committee on grievance is attached. This general charge and format should be approved by both the Consultative Committee and the EEOC Committee. At that time the members of our committees will be invited to volunteer for membership on the ad hoc committee and to suggest names for membership on the ad hoc committee. At the next step, a nominations committee (probably at this stage you, me and Steve Dunham) should attempt to agree on members for the ad hoc committee and should prepare a specific charge and time table for the ad hoc committee. These should again be taken to our committees for final approval.

You will notice that the proposed format calls for two members from the Duluth campus. I know that this may pose some problems because of the union contract and because Duluth is not represented in the University Senate. I strongly urge that solutions to these problems be found. The EEOC committee has discussed this problem, and we believe that representation from Duluth is absolutely essential to any procedure which attempts to deal with the petitions. The Rajender Consent Decree, of course, covers the Duluth campus, and several Duluth women have filed petitions.

The actual process by which the ad hoc committee collects its information and makes its recommendation should be left up to the ad hoc committee itself in large part. It is, of course, hoped that both parties to the petition (on Internal Tribunals) will concur in the recommendations of the ad hoc committee and that these recommendations will form the basis of a settlement agreement under which the petition will be dismissed. If the ad hoc committee is to be successful in this goal, it is essential that both parties be given access to the ad hoc committee to give evidence, to present their positions on issues, and to make suggestions. It should be pointed out that the general goal of the ad hoc committee is considerably broader than the resolution of the petition and that it should attempt, as much as possible, to serve the greater good of the University rather than narrow legal objectives.

Please understand that all of these suggestions are quite tentative. The excess of specificity is provided with the intent of giving you and others a beginning point for discussion. The EEOC Committee will begin discussion of these proposals immediately, and we would be grateful for any input from you or your committee. All comments - written, oral, thoughtful, off the cuff - will be appreciated.

Sincerely,



Charlotte Striebel
Chair, EEOC Committee

CS:ks

cc: Steve Dunham

Summary of Petitions

Equal Work

It is asked that a statistical study be prepared comparing the salaries of men and women with similar qualifications and performing similar duties. Equity salary adjustments should then be made based on this study so as to equalize pay for equal work.

Traditionally Female Departments

It is asked that the University devise methods such as the Hay point system for measuring comparable value of the work performed in traditional women's departments such as nursing, libraries, home economics, social work, and women's physical education with traditionally male departments. Equity salary adjustments should then be made based on this measure so as to equalize pay for work of comparable value.

Specificity of Standards for Promotion, Tenure and Salary Adjustments

It is asked that standards and criteria for promotions, tenure and salary adjustments (including merit pay) be stated in writing and with specificity so as to avoid uneven and discriminatory application.

Retrenchment

It is asked that the impact of budget cuts, reassignment of academic positions and elimination of academic positions fall equally on men and women.

P/A

It is asked that changes from regular faculty positions to the Academic Staff, Professional and Administrative Personnel Category be administered so as to avoid a disparate impact on women.

Internal Tribunal

It is asked that internal tribunals be conducted so as to provide fair and unbiased judgements and so as to avoid harassment and intimidation that discourages women from pursuing valid Rajender claims.

Proposed Format for the Ad Hoc Committee
on Grievance Procedures

Two members from each of the following:

Consultative Committee

Committee on Equal Employment Opportunity for Women (EEOW)

Judicial Committee (present or past)

complainant or faculty adviser for complainant in
previous grievance procedure

respondent or faculty adviser for respondent in previous
grievance procedure

Duluth campus.

One representative from the University attorney's office.

The committee chair to be selected by the five members from the Consultative Committee, the EEOW Committee and the University attorney's office.

Proposed General Charge to the Ad Hoc Committee
on Grievance Procedures

The committee shall review existing grievance procedures for hearing disputes between academic non-student employees and administration which involve conditions of employment such as tenure, promotion, salary, work assignment and allocation of support services and equipment. The committee shall consider and make recommendations for improvement where necessary on at least the following aspects of the grievance process:

methods of assigning disputes to a particular procedure
extent to which administrative remedies must be exhausted before the
 dispute is eligible for hearing
type of dispute and limits on the type of evidence that will be heard
 by each procedure
selection of hearing panels
selection of hearing panel chair
supervision of discovery
assurance of orderly hearings
 (protection of parties from harassment)
representation of parties by faculty
 adviser's or attorneys
standard of review by the panel
 (reasonable doubt, preponderance of evidence, other)
legal advice to the panel
preparation of hearing reports
reliance on precedent
binding nature of the findings
avenues of appeal
role of the University attorney's office and other branches
 of administration in the grievance process.

MEMORANDUM

TO: University Personnel Responsible for
Administering the Claim Procedure

FROM: R. Joel Tierney, University Attorney

RE: Claim and Petition Procedures Under
Rajender Decree

I. Claim Procedures

The claim procedures are set out in Part II of the Consent Decree (beginning on page 6 of the printed version) and govern essentially three categories of claims: (a) non-hires; (b) renewal, promotion and tenure decisions; and (c) claims related to compensation and other terms and conditions of employment. Most procedures will be common to all three types of claims. The purpose of this memorandum is to outline the claim procedures that will generally be used. Of course, exceptional circumstances will require modification of these procedures. These procedures are not binding, except as they may be required by the Consent Decree, but will be followed as appropriate. They are subject to change as circumstances warrant.

1. All claims will be filed with the Special Masters in the form stipulated in the Consent Decree. The Special Masters will defer action on the claims and forward them to the University for appropriate internal proceedings.

2. Claims referred to the University should be sent to the Office of the University Attorney. That Office should:

- a. Log in all claims in some form of docket book;
- b. Determine if the claim is in the form required by the Consent Decree, and return it to the Special Masters if it is not;
- c. Determine if the claim has been filed in a timely fashion and move to dismiss all untimely claims;
- d. Send advice copies of the claims to the Vice President for Academic Affairs and the EEO Officer;
- e. Advise and consult with appropriate office staff;
- f. Determine the appropriate channels for processing the particular claim and attach a recommended time table for each step in the process so that the claims can be resolved in the time permitted by the Consent Decree;

- g. Determine if there are any other claims involving the same position which can or must be joined for processing.
3. The University Attorney shall:
 - a. Thoroughly investigate each claim or assemble materials from prior investigations;
 - b. Prepare a report for the responsible University administrative authorities including the following:
 - i. A summary of the claim;
 - ii. A summary of the facts developed;
 - iii. An analysis of the legal merits of the claim; and
 - iv. A recommendation for disposition.

Each report will be submitted to the EEO Officer, the Vice President for Academic Affairs and, in appropriate cases, the Vice President for Health Sciences. These Officers shall inform the University Attorney of their recommendation for the disposition of the claim and the basis for it. The University Attorney will transmit the entire file consisting of the report and recommendations to the Vice President for Administration and Planning, who will provide these data and his own recommendation to the President of the University.

4. The President may decide to (a) attempt settlement of the claim; (b) refer the matter to an internal tribunal for hearing; or (c) refer the matter to the Special Masters for hearing or other disposition.
 - a. If a settlement offer is to be made, it will be made on the basis of settling all claims an individual has made or could make. Where the individual is represented by counsel, the settlement proposal will be made by the University Attorney to the claimant's counsel. Where the claimant is not represented by counsel, the settlement proposal will be made by an appropriate University administrator to the claimant. All settlement agreements will be reduced to writing and filed with the Special Masters.
 - b. If the matter is to be referred to an internal tribunal, except in the case of renewal, promotion,

or tenure claims, the Chairperson of the University Senate Judicial Committee shall, in accordance with Rule 11 of the Judicial Committee Rules of Procedure, designate an internal panel. Rule 11 provides:

Appointment of Panel and Hearing Officer.

(a) Designation of Panel and Hearing Officer.

When a determination is made under Rule 9 to hear a case, the Chairman shall select a panel of three Committee members who shall serve as the hearing panel. The Chairman shall designate one of the three members as the hearing officer for the case.

(b) Functioning of Panel. The panel shall conduct further proceedings in the case and shall have full authority to act for the Committee in all procedural matters. Arrangements for further conduct of the case shall be made by the hearing officer, in consultation with the hearing members of the panel.

(c) Challenge to Membership of Panel. The Chairman shall notify both parties of the identities of the hearing officer and panel members as soon as they are appointed. Either party may challenge any member of the panel for cause by delivering to the Chairman a written challenge to the appointment within ten days after receipt of the letter from the Chairman notifying the parties of the panel appointment. Therefore, a member of the panel may be removed by challenge only for a ground which was not reasonably discoverable before the expiration of that ten-day period. Contested challenges shall be heard by the full Committee.

(d) Maintenance of Case File. The hearing officer shall maintain the file in the case, and shall transmit the file to the Chairman at the conclusion of the hearing.

(e) Prohibition Against Change of Panel Membership. Section 12(b) of the Tenure Regulations provides that the personnel of the Committee hearing a particular case shall not be changed and that no member of the Committee who has not been present during each of the hearings of a case shall participate in its decision. This is subject to an exception for hearings on coordinate campuses (Section 15 of the Tenure Regulations) and may be waived by the consent of both parties and the Committee.

Composition of the internal panel, including challenges to and changes of membership of the Panel, shall be governed by Rule 11; except that notwithstanding Rule 11(a), members of internal panels shall not be restricted to members of the Judicial Committee and members of the department/unit named in the claim will not be named to the internal panel.

The internal panel shall thereupon proceed to hearing evidence in relation to the claim, with the burden of proof being that prescribed for hearings before the Hearing Panel pursuant to Section II.D.8 of the Consent Decree. The respective burdens of proof shall be those placed on litigants in civil actions under Title VII. (Attached, as Exhibit 1 is a copy of the United States Supreme Court's most recent pronouncement on the Title VII burden of proof, Texas Department of Community Affairs v. Burdine, ___ U.S. ___, 49 U.S.L.W. 4214 (1981).) Evidence of statistical disparity or the lack thereof may be introduced in any such hearing and shall be given the weight accorded thereto by statute or judicial decision in employment discrimination cases under Title VII. If the burden of going forward shifts to the University, the University shall have, in addition to the burdens otherwise provided by law, the burden of proving, by the preponderance of the evidence, that the search procedures prescribed by Exhibit B to the Consent Decree (for hiring decisions or decisions not to fill a faculty position) or the evaluation procedures required by Part VI of the Consent Decree (for tenure and promotion decisions), as appropriate, were followed in good faith.

The hearing should be conducted in accordance with rules of procedure of the Senate Judicial Committee as appropriate, and where those rules do not conflict with the Consent Decree. The hearing should be conducted as if it were an arbitration proceeding; i.e., governed by an overall search for truth rather than the formal rules of evidence. However, the parties' right to submit evidence and cross-examine witnesses must not be unduly restricted. A taped or stenographic record should be kept of the hearing and the internal panel should render its recommendation, in writing, to the President for his disposition, with advice copies provided to the EEO Officer and the Vice President for Academic Affairs. In all cases the President shall timely report his decision to the Special Masters pursuant to the Consent Decree, with copies to the University Attorney and the

claimant.

In cases of renewal, promotion, or tenure claims, the internal tribunal shall be the Senate Judicial Committee, which will conduct proceedings in accordance with its Rules of Procedure.

In all cases involving either an internal panel or the Senate Judicial Committee, openness of hearings shall be governed by Rules 6 and 17 of the Rules of Procedure of the Senate Judicial Committee, effective April 27, 1981. These Rules provide, in pertinent part:

Rule 6. Representation and Attendance at Hearings

(d) Observers. Upon request of either party, or at its own initiative, the panel may permit designated representatives of education associations, organizations of faculty members, the Office of the Vice President for Academic Affairs, or other interested groups, to present their views on the issues before the panel, if any, that transcend the particular case. The panel may require these views to be presented in writing only, with a copy to each panel member. Faculty, students, administrators, and members of the public at large may be permitted to attend the hearing in the case, except as provided in Rule 17, and on the condition that the proceedings can be conducted in a decorous manner consistent with due process.

Rule 17. Public Nature of Findings and Recommendations and of Hearings

(a) General Goals. Public discussion or publicity about a case before the Judicial Committee might result in the loss of the privacy of faculty members, students, administrators, and others who appear as parties or witnesses in evidentiary hearings and might create pressure on potential witnesses and Committee members to testify or decide matters in ways that would not otherwise occur. On the other hand, it may be necessary or desirable to acquaint a broader audience with the fact of the filing of a complaint or to discuss broadly matters of policy that are raised by individual cases. In any event, the overriding principle to be applied, concerning openness of hearings, is that a fair and just resolution of the case be reached through due process.

(b) Implementation. In a manner consistent with these goals, the following should guide the conduct of hearings and persons participating in or observing such hearings before panels of the Judicial Committee.

(1) Hearings shall be open to faculty, students, administrators, and the public unless the hearing Panel finds compelling cause to close the hearings in whole or in part.

(2) In reaching a decision to close a hearing, the panel shall consider the arguments of both parties and may seek the advice of the Judicial Committee. However, the decision of the panel in this matter shall be final.

(3) The provisions of this rule notwithstanding, the witness rule, Rule 15(f), shall apply.

(4) Distribution of findings in a case, as provided by Section 16 of the Regulations Concerning Faculty Tenure, is governed by Rules 18(d).

All hearings before any internal panel shall be held on the Twin Cities campus unless the claimant applied for employment or is employed by the University on a coordinate campus and requests, in writing, within ten days after notification of the appointment of an internal tribunal, that the hearing be held on the campus where she applied or is employed, which request shall be granted.

(c) If a matter is to be referred back to the Special Masters for hearing or other disposition, that action will be taken within the time specified by the Consent Decree and as soon as possible consistent with a thorough administrative review of the claim and any appropriate efforts to settle.

II. Petition Procedures

The petition procedures are set out in Part III of the Consent Decree (beginning at page 10 of the printed version). Upon receipt of a petition challenging any employment policy, practice or procedure which is claimed to violate Title VII or the Consent Decree, the Special Masters will defer action for 180 days and forward it to the University for appropriate internal processing.

The petitions should be received by the University Attorney for initial processing similar to that involving claims referred to the University by the Special Masters. The University Attorney should then forward a copy of the petition to the President along with his recommendations for future processing.

Under the Consent Decree, within thirty days from the date the Special Masters forwarded a copy of the petition to the University, the President must either: (1) refer the petition to appropriate committee(s), administrators(s) or other bodies for review and notify the petitioner by letter of the group or individual conducting the review; or (2) notify the petitioner and the Special Masters that the matter will not be reviewed internally. If course of action (2) is selected, the deferral period will terminate. If course of action (1) is selected, the petitioner must be given an opportunity to present her view to the group or individual conducting the review and must be notified of all public meetings of the group at which the matter will be considered. If the matter is referred for review, the reviewing group or individual should make their findings and recommendations known to the President. At the end of the 180-day deferral period, or sooner if the review process is completed, the President must notify the petitioner of the University's resolution of the matter and notify the Special Masters that the review process is completed.

III. General Matters

1. The Vice President for Administration and Planning has been designated by the University of Minnesota as the appropriate person to respond to questions or issues raised by the Special Masters.

2. The University Attorney's Office is designated as the unit responsible for administering this claim procedure. Questions regarding these procedures or the status of any claim should be directed to that office.

3. A memorandum describing discovery procedures available under the Consent Decree, as well as this Memorandum can be obtained from the Office of the Vice President for Administration and Planning, the Office of Equal Opportunity and Affirmative Action, the University Attorney's Office, and the Office of the Special Masters.

4. Class members, prior to filing a claim relating to a non-hire, will be provided, on written request made to the Office of Equal Opportunity and Affirmative Action, President Forms 16 and 17, and the name, sex and resume or curriculum vitae of the successful applicant for the position the class member sought.

UNIVERSITY OF MINNESOTA, MORRIS
Division of the Humanities
October 19, 1983

TO: Faculty Consultative Committee

FROM: W. D. Spring

SUBJECT: Crucial issues in Section 12 Financial Exigency and Section 16
Contested Cases....of the 1983 document

I have followed my own advice and identified as crucial issues only those points upon which the 1983 and 1973 documents differ markedly. In this regard, I remind you that crucial issues settled in 1973 may very well be revived as live crucial issues even though the 1983 document supports the 1973 settlement.

I have confined my references to the 1973 document exclusively to Section 15. Section 18 Judicial Committee Procedures of the 1973 document has no exact counterpart in the 1983 document. It deals with the composition of the Judicial Committee, the method by which its members and chair are appointed, and, at great length (11 pages), with rules of procedure involving mediation panels, judicial committee panels, hearing officers, and the conduct of hearings. In contrast, Section 14 Judicial Committee in the 1983 document contains three brief paragraphs (one-third of a page) on the composition and conduct of the Judicial Committee. It is possible that this difference between the two documents may in itself constitute a crucial issue.

Wherever possible I have begun each issue with a reference to the relevant section in the 1983 document. Issues #3 and 9 start with references to the 1973 document, however, because the point is not covered in the 1983 document.

Finally, I have condensed the phraseology in my paraphrases of the two documents and, no doubt, I have sacrificed some of the precision of diction in the originals.

kc

#1 12.2 Reduction or Postponement of Faculty Compensation. This is a response to a condition of "financial debility" short of declaring a state of "fiscal emergency," in other words short of termination of faculty.

--Comments on 12.2 provide possible alternatives, including possibility of mandatory furloughs.

--No relevant section in 1973 document, but see Section 15.26 for prohibition against mandatory leaves of absence without a declaration of "fiscal emergency."

#2 12.4 Procedures Preliminary to Declaring a Fiscal Emergency. Unlike the 1973 document, this section recognizes the Faculty Senate/University Senate (& FCC/SCC) distinction in processing a recommendation to declare a fiscal emergency.

#3 --The 1973 document (Section 15.25), unlike the 1983 document, states that neither the President nor the Regents shall take action contrary to the Consultative Committee's recommendations "regarding the educational policies and...priorities... pursued in effecting the retrenchment" without communicating in writing their reasons and without consulting the Senate.

#4 12.6 Procedures for Suspending or Terminating Appointments 1983 document says that collegiate and campus plans for achieving retrenchment and criteria for faculty suspension and termination must be submitted to VP Academic Affairs, FCC, and SCC for their recommendations before decisions are made.

--1973 document (Section 15.31) says that each plan shall not become operative without approval of both VP Academic Affairs and FCC.

#5 12.7(d) Principles for Termination or Suspension.... --1983 document says that the selection of faculty for termination must be made not only on objective criteria (1973 document says the same--15.24) but on "objective programmatic criteria" and then goes on to define program. (Definition may be controversial)--See long comment on this section.

--No such effort at definition in 1973 document.

#6 12.7(e) Tenured faculty between 57 and 62 shall not be terminated unless there is no valuable service which they can perform.

--1973 document contains no such statement.

#7 12.7(f) Proportion of women faculty--tenured, probationary, and non-regular--terminated or suspended shall not exceed proportions of women in each of those three classifications in the University as a whole.

Ditto for minorities.

--1973 document has no such provision.

--In addition to the substantive issue raised here, this provision raises an issue of practical application: can this be imposed later in the aggregate, if it isn't imposed earlier in units?

#8 12.8 Notice and Severance Pay
In 1983 document, severance pay seems to be restricted to tenured faculty.

In 1973 document, severance pay is extended to all faculty (Section 15.41) and it might be for more than a year's compensation for long tenured faculty.

1973 document also requires (15.41) "preceding March 1" notice and 9 month notice for one-quarter suspensions.

#9 The 1973 document contains a provision (Section 15.32) which does not exist in the 1983 document: no faculty member may be terminated or suspended unless the Regents can demonstrate by clear and convincing evidence that there is no position for which the faculty member qualifies. It goes on to discuss such transfers.

The 1973 document supports this provision further by listing under Judicial Committee Reviews (Sections 15.511(d) and 15.512) failure of the Regents to comply as a basis for reconsideration.

#10 16.3 Hearings Before the Judicial Committee
This section anticipates the possibility of joint hearings of cases involving common issues (class action). Consequently it anticipates the possibility that different panels may hear and decide different issues in any individual's request for review.

--There is no such provision in the 1973 document.

--(This section of the 1983 document reiterates that the faculty member bears the burden of proof in review. In Issue #9, I pointed out that the comparable section of the 1973 document (15.512) requires the Regents to bear the burden of proof that there is no other position in the University for which the faculty member is qualified.)

#11 16.5

Action by the President

The 1983 document stipulated that if the Judicial Committee recommends that a termination or suspension be rescinded, the President may (a) decide the matter on his own; (b) ask for written statements; (c) or refer the matter back to committee. In any event, the President shall not reject recommendations of the Judicial Committee except for compelling reasons stated in writing.

The 1973 document (Section 15.6) is markedly different. It states that if a faculty member proves his case, the Judicial Committee recommends that the decision should be reconsidered "by the academic units concerned and the reviewing Academic Administrators." If the decision remains unfavorable, the faculty member is given notice and "there shall be no further review by the Judicial Committee." An appeal to the President is allowed within ten days, and the President's decision is final; but the President may not take action contrary to that recommended by the academic unit concerned without compelling reasons stated in writing.

#12 16.6

Further Action Permitted

A rescision of a termination or suspension will not bar a later termination or suspension of that position in a subsequent action.

--No such section in 1973 document.