SENATE COMMITTEE ON FACULTY AFFAIRS (SCFA)
MINUTES OF MEETING
APRIL 15, 2014

[In these minutes: Retirement Subcommittee Update, Regents Scholarship Program, Proposed Retirement Options for Tenured and Continuous Appointment P&A, Benefits Advisory Committee Update, Faculty Rights to Intellectual Property and Software]

[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 represent the views of, nor are they binding on, the Senate, the Administration or the Board of Regents.]

PRESENT: Joseph Konstan (chair), Chrstina Bourland, Randy Croce, Kathy Brown, Dann Chapman, Carl Flink, Teri Caraway, Sophia Gladding, Frank Kulacki, Monica Luciana, Peh Ng, Lori Rhudy, George Sell, Cathy Wambach, Nicole Victoria, Nicholas Poggioli

REGRETS: Theodor Litman, Daniel Skaar

ABSENT: Arlene Carney, Karen Miksch, Scott Lanyon, Samuel Gill

OTHERS ATTENDING: Jean Wyman

GUESTS: Tina Falkner, chair, Benefits Advisory Committee; Dan Feeney, chair, Retirement Subcommittee; Nancy Sims, copyright program librarian

I). Professor Konstan convened the meeting, welcomed those present and called for a round of introductions.

II). Professor Konstan welcomed Professor Dan Feeney, chair, Retirement Subcommittee, and asked him to provide the committee with an update on what the Retirement Subcommittee has been working on this year. Professor Feeney stated that the committee has had a busy year and then highlighted the issues/topics the committee has been working on:

- Bolster efforts around employee engagement related to retirement planning. New retirement tools and resources will be added to the existing line-up. In addition, beginning in May 2014, the retirement calculators on the Securian website will be pre-populated with participant's individual account balance(s) held at Securian as well as date of birth information, when applicable.
- Conduct quarterly performance reviews of the Faculty Retirement Plan (FRP) to monitor fund performance. Funds that are underperforming (actively managed funds that are more than 200 basis points below their benchmark, passively managed funds that are more than 75 basis points below their benchmark and fixed income funds that are 100 basis points below their benchmark) are put on a

watch list, which is carefully monitored by both the Retirement Subcommittee as well as the Retirement Plan Fiduciary Advisory Committee.

- Conduct an annual review of Securian. In addition to the Retirement Subcommittee's annual review of Securian, Stuart Mason, chief investment officer, Office of Investments and Banking, and staff from his office regularly meet with Securian to monitor the performance of the FRP. Because a substantial number of plan participants contribute to the General Account and General Account Limited funds, which are backed by the full faith and credit of Securian (and are not FDIC insured), particular attention is paid to these accounts as well as the FRP as a whole.
- Create an electronic library of financial planning resources for plan participants who are interested in learning more about retirement planning and managing their retirement account(s).
- Monitor fees that vendors are assessing and oversee utilization of the various funds, particularly new funds that have been added to the plan.
- Conduct a regular due-diligence analysis of the FRP. Under debate at this time is whether the University should offer a tiered plan that could better meet the needs of the wide variety of FRP investors. In essence, the proposed tiered plan would have three different types of investment options 1) target date funds, 2) an array of pre-screened core funds (similar to the current plan but fewer in number and 3) a self-directed brokerage account.
- Discussions about offering financial advice options for employees.

Member questions/comments included:

- What can be done to inform/train new and mid-range faculty about the importance of planning for their retirement? Professor Feeney stated that this is exactly what the Retirement Subcommittee has been talking about this year. The committee is exploring developing a checklist for employees to reference to get them thinking about different aspects of planning for their retirement. There are also plans to tap into the retirement planning resources/tools that Securian, Vanguard and Fidelity already have; these resources/tools could be customized for the University. Besides print materials, new resources/tools will need to be web-enabled. At some point in the not too distant future, there will be a campaign to roll out these resources/tools.
- It would be of value to have a way of estimating what percentage of employees in the University's retirement plans have "highly inappropriate" investment mixes. Having this information, would allow the institution to alert these people and encourage them to seek out financial advice. Mr. Chapman stated that the University has no means to do this type of screening. However, the notion of the University having a single recordkeeper that could keep track of employees' University retirement accounts has been on the radar for a number of years. Professor Feeney stated that until the Enterprise System Upgrade Project (ESUP - also known as PeopleSoft) is complete, no significant changes will be made. In the meantime, the Retirement Subcommittee is working hard to strategize about the best approach for reaching out to people and getting them engaged in their retirement planning.

- An interesting aspect of being in a defined contribution plan at a university where faculty have life tenure, is that the success of the plan in preparing employees to retire, is one of the obstacles that impacts whether they actually retire. When faculty retire, departments rejuvenate themselves by hiring new faculty. Besides being concerned that employees are able to retire well, there is also an institutional obligation to make sure that employees can afford to retire in a timely manner. Mr. Chapman noted that the University community has been well served over the years by the Retirement Subcommittee and their expertise. Having said this, the institution is faced with a balancing act in terms of not limiting choice for employees who want to make unconventional investments but still offering a plan that is sufficiently straightforward that allows participants to make choices that make sense for their particular situation. This continues to be an ongoing challenge for the institution.
- If the administration is serious about instituting a tiered retirement plan, the University should conduct a cost/benefit analysis before doing so. If only a small percentage of FRP participants are interested in a self-directed brokerage account, maybe the money could be better spent on benefits that would have a broader reach. Professor Feeney stated that the fee issue has been highly debated. The goal will be to minimize fees for the group as a whole as well as for individuals. Before a decision is made about whether a tiered retirement plan is offered, a consultant will be hired and the pros and cons will be weighed.
- What is the financial intelligence quotient of the faculty as a whole? Professor Feeney stated that he sees a distinct difference between the faculty's intelligent quotient and their interest in retirement planning. The Retirement Subcommittee is focusing its efforts on engaging employees in their retirement planning.
- How satisfied are retired faculty when it comes to their interactions with Securian after they retire? Anecdotally speaking, stated Professor Feeney, the committee has heard positive comments.

Hearing no further questions and in light of time, Professor Konstan thanked Professor Feeney for the update.

III). Next, Professor Konstan welcomed Vice President Brown and introduced the next agenda item, the Regents Scholarship. He began by providing some background information in order to frame the discussion. The issue for the committee, which will be clarified today, stated Professor Konstan, is whether faculty, as part of their professional development, education and training, are required to pay 25% of their tuition out of pocket. If this is true, it raises the questions of whether the Regents Scholarship is designed for faculty professional development, education and training and whether departments should be sending employees to other institutions to take courses because it is cheaper for them to do so.

Vice President Brown stated that the Regents Scholarship Program falls under the Board of Regents (BOR) Policy – Employee Development, Education and Training (http://regents.umn.edu/sites/default/files/policies/Employee_Develop_Educ_Training.pdf). In Section V, Subd. 2. the policy states, "The University shall offer eligible employees access to University credit-bearing educational opportunities at a reduced tuition cost through the Regents Scholarship Program." She also noted that there is a corresponding administrative policy (http://www.policy.umn.edu/Policies/hr/Benefits/REGENTSSCHOLARSHIP.html) that sets forth eligibility requirements for the Regents Scholarship Program.

The policy was designed to allow employees to take advantage of educational opportunities on campus and was originally 100% employer-paid. Then, about five to six years ago, there was a change to the policy, which essentially added an employee contribution to use the Regents Scholarship. When the policy was initially changed, first time degree-seeking employees were required to pay 10% of their tuition, but that has since been changed and now first time degree-seeking employees are not required to pay any tuition. However, for employees who are seeking an advanced degree or are taking courses for personal enrichment, there is a 25% employee contribution stipulation under the current policy. The Regents Scholarship is a costly program for the institution. The thought behind implementing the employee contribution was that if employees had to pay a percentage of tuition that they would be more selective in the courses they take, e.g., more relevant to their work, and have more of a vested interest in doing well.

Based on Vice President Brown's remarks, clarified Professor Konstan, the current policy applies to individual who are required to take a course as part of their job. Yes, stated Vice President Brown, the Regents Scholarship could apply in this situation. Professor Konstan asked whether the Regents Scholarship applied to courses only for personal enrichment or for professional development, education and training. Vice President stated that the Regents Scholarship applies to any non-first time degree-seeking employee who takes a course at the University. With that said, asked Professor Konstan, would it be possible for the unit/department to pay the 25% contribution or does the policy require the employee pay? Vice President Brown stated that her interpretation of the policy is that employees who are not pursuing their first undergraduate degree are required to pay a 25% contribution toward their tuition cost. She noted that it is her understanding that the policy is not intended to allow departments to unilaterally decide to pick up the employee contribution. Vice President Brown added that, other than hypothetically, she has not been asked by a department that is requiring one of their employees to take a course, whether the department can pay for it.

Professor Konstan stated that the specific issue that was brought to the committee had to do with a faculty member who had a discretionary spending account (University managed account) and wanted to use that account to pay the 25% employee contribution. Vice President Brown stated that based on her interpretation of the policy, the employee is required to pay the 25% contribution. Professor Konstan noted that it is members understanding that if a department were to send one of its faculty members, for example, to another institution to take a course, the University would pay 100% of the cost of that course, which appears to be an unintended consequence of the policy. Vice President Brown agreed and stated that she has not heard of departments sending employees to take courses at other higher education institutions as of result of employees having to pay the 25% tuition contribution.

Professor Konstan asked why the Regents Scholarship is such a high cost program. Is it because scholarship tuition dollars are being shifted to the college of enrollment under the assumption that the employee is a tuition paying student or are there other reasons? There is no differentiation between a Regents Scholarship student and any other student signing up for a course. Seventy-five percent of the course tuition is paid for by the department to the college where the course is being offered. There is an internal shift of money for the Regents Scholarship Program.

Research/development funds, noted a member, are valuable sources of funds for faculty. If the personal 25% contribution is intended to be incentivizing and create an investment on the part of the employee, faculty should be allowed to use these funds for their professional development. The personal (25%) contribution in this situation seems to be splitting hairs and should not be applicable under this scenario.

Professor Wyman commented that the reason she brought this issue to the committee was for career development and advancement for junior faculty. In her opinion, the institution has a responsibility to help junior faculty advance. A number of these faculty have extramural and intramural K awards, which provide for stipend support that could be used to pay the 25% contribution. These faculty, however, are being restricted from doing this. It does not seem right that funds from an NIH award, for example, cannot be used to pay the 25% contribution even though the faculty member budgeted for the course in their training grant award. What is the rationale for this? Vice President Brown stated that she suspects that when the policy was put in place, such a scenario was not taken into consideration. She added that she would be happy to go back and look further into this issue.

Professor Ng noted that based on the BOR Regents Scholarship FAQ - http://www.policy.umn.edu/Policies/hr/Benefits/REGENTSSCHOLARSHIP_FAQ.html – question #4 is: " If the department requests or requires the employee to enroll in particular courses; can departmental, professional development, or grant funds be used to cover the employee tuition cost contribution?" The FAQ response is: "No. It is not permissible for grant funds or any type of University funds to provide more benefit than the Regents Scholarship allows. The department may opt to pay the tuition cost in full as professional development, but not in conjunction with a Regents Scholarship." Vice President Brown thanked Professor Ng for the clarification, which will be included in the minutes.

In closing on this discussion, Professor Konstan stated that it is clear based on today's discussion that the 25% contribution issue needs to revisited.

IV). Moving on, Vice President Brown distributed copies of proposed retirement options for tenured faculty and continuous appointment P&A, which came out of discussions with some of the deans who thought that while the phased retirement program was working well, the terminal leave program was rarely being used and felt that alternative options should be considered. Vice President Brown walked members through the handout outlining the three proposed options:

> Option 1: Provide a tenure buyout and limited continuing employment for those who might need to teach a class or finalize a research project.
>
> Option 2: Provide a tenure buyout and immediate separation.
>
> Option 3: Provide for a phased retirement.

Vice President Brown reported having met with the deans yesterday to solicit their feedback on these proposed retirement options and would now like to get the committee's input.

Professor Konstan asked whether these options would be applied individually or whether there would be any entitlements. Vice President Brown stated there would be no entitlements. All three of these options would need to be in agreement with the department chair and/or dean.

Professor Konstan stated that the committee will need more time to carefully review the proposed options in order to give meaningful feedback to Vice President Brown. Having said that, he noted that while option 2 has a higher buyout than option 1, it requires immediate separation from the University and wondered whether there might be a way to combine the two options into one that would make the options cleaner and easier to negotiate. Perhaps, stated Vice President Brown, but for purpose of this discussion, the decision was made to display the options this way because there are issues around continued employment.

A member asked whether it would be possible for a department to negotiate a 75%, 75%, 50%, 50% phased retirement over four years with a faculty member. Yes, stated Vice President Brown, this would still be possible. The 25% and 33.3% reduced work effort have been difficult for departments to manage, and, therefore, under this proposal, they have been eliminated. The minimum reduced work effort will be 50% under this proposal.

A member commented that the length of time for a phased retirement can have a powerful impact, particularly on smaller departments. It is good to hear that there will be no entitlements, and that an agreement has to be negotiated with the department chair and/or dean.

Professor Konstan stated that the committee would continue this discussion at its next meeting on May 6. In the meantime, he encouraged members to give the proposed retirement options more thought and consult with their colleagues on this matter. Vice President Brown added that these are just options for consideration and are not set in stone; alternative ideas are welcome. Professor Konstan thanked Vice President Brown for joining the committee today.

V). Professor Konstan welcomed Tina Falkner, chair, Benefits Advisory Committee (BAC), who was invited to provide a BAC update. Before the update, Professor Konstan called for another round of introductions.

Ms. Falkner began by answering the questions that she had been given prior to today's meeting. Regarding the question of whether the cost shifts resulting from the Affordable Care Act have reduced the cost of the UPlan, Ms. Falkner stated yes, and deferred to Mr. Chapman, director, Employee Benefits, for a further explanation. Mr. Chapman noted that the cost shifts are expected to reduce UPlan costs, but it is far too early to quantitatively prove this at this point in time. It will take approximately a year to know the extent of any cost savings. With said that, one of the results of the medical cost shifts to employees is that some employees have moved to less expensive plans, which saves both the employee and the University money. He added that since he came to the University, he has been looking for evidence that the plan changes that have taken place over the years have actually incented individuals to avoid necessary care, and not just optional care. Anecdotally, he reported hearing that lower paid employees are putting off getting care because they can't afford the copay, which is an unintended/undesired outcome of the Affordable Care Act that the University has been forced into. The Affordable Care Act provides a great service to employees who work for employers with substandard coverage, but, unfortunately, at the same time, it is forcing employers who offer high-quality plans to move some of the plan costs to employees in the form of out-of-pocket expenses. Vice President Brown added that the University has established a new, one-year Medical Cost Relief Program for 2014 (http://www1.umn.edu/ohr/benefits/openenroll/premiumrelief/) to help families who may be struggling financially due to rising medical costs.

Ms. Falkner then commented on the next question, which had to do with the University's experience thus far with the deductible, which was instituted in 2014. She noted that the biggest confusion around the deductible is what services have a deductible and what services do not. The BAC is working with Employee Benefits to make sure that all deductible communications are worded in such a way that they can be easily understood by lay people. In Professor Konstan's opinion, any communications around this topic will not resolve the problem. In order to reduce confusion related to deductibles, the information needs to be available at the point of care. This is also an issue when it comes to copays. Mr. Chapman agreed with Professor Konstan and stated that it is a systems problem. Health care providers and insurance companies have different systems that do not "talk" with each other in real time, and this is problematic.

Regarding a question about people's experiences with ADP, the University's Flexible Spending Accounts (medical and dependent care) administrator, Ms. Falkner reported that according to Terry Super in Employee Benefits who works regularly with ADP, 95% of UPlan participants are having their medical debit card transactions automatically validated. However, there has been a significant learning curve for employees who need to scan and upload documentation in order to validate their medical expenses as required by the IRS. A vast majority of employees with dependent care FSA accounts, report being happy with ADP. From a systemwide perspective, ADP needs to make improvements to their system to make it more intuitive. If employees have problems with ADP, they should contact Ms. Super. A member requested a copy of the written ADP update provided by Ms. Super. Ms. Falkner stated that she would give a copy to Professor Konstan who could then share it.

In response to a question about whether there will be additional UPlan changes, Ms. Falkner reported that nothing major is being discussed at this time. Having said that, Employee Benefits is watching pharmacy trend closely as specialty drugs (biologics) are becoming an ever-increasing percentage of what is being spent on pharmacy. This not mean or imply that big changes are on the horizon for the pharmacy benefit plan, it simply means that this is an aspect of the plan that will be monitored closely.

Professor Konstan asked if there have been any discussions about having pharmacists on each of the campuses to actively engage employees in pharmacy-related counseling discussions. While there have been some discussions along these lines, stated Mr. Chapman, it has been decided that it would not be practical to set up a pharmacy on each of the campuses, at least at this time. The convenience and teaching aspects of this suggestion have been addressed through the Medication Therapy Management (MTM) program. Besides educating UPlan members about drug costs, the MTM program addresses efficacy and medication interactions.

Lastly, regarding a question about the new Accountable Care Organization (ACO) offerings for 2014, Ms. Falkner noted that it is still too early to get a real sense of whether people like or dislike this plan. Vice President concurred and stated that Employee Benefits has heard some very positive comments about the ACOs and other comments where people have concluded that the plan is not the right fit for them. This is a new product/offering for the University.

A member asked if an assessment of the Wellness Program is being conducted and if it would be possible for UPlan members to go to their doctor for a wellness assessment and have the results sent to Employee Benefits versus requiring individuals to participate in wellness activities to earn wellness points to reduce their premiums. Ms. Falkner noted that a return on investment assessment is being conducted for the Wellness Program. Vice President Brown added that the Wellness Program is intended to encourage people to engage in activities that will keep them healthy. The program is not about having people go to their doctor and affirm that they are well, but to engage them in activities that will keep them well. Mr. Chapman noted that the University would ideally like to see the health care systems/providers offer the gamut of acute, holistic and preventative care. The reality, however, is that there is a wide spectrum of services being offered by the clinic systems and providers but very few offer the full spectrum of services; the current payment system is not set up to incentivize them to offer the full spectrum of services. If clinic systems and providers were to offer a full array of services, the Wellness Program could be dismantled, but they do not, at least not at this time.

Professor Ng requested that if at any point pharmacy benefit changes are being considered that the University be mindful of the system campuses that are located in rural areas given the limited number of pharmacies that are in these areas. Ms. Falkner reiterated her earlier comments and assured Professor Ng that there are currently no discussions underway to change the pharmaceutical benefits.

Professor Konstan thanked Ms. Falkner for the BAC update. Ms. Falkner stated she would be happy to come back and meet with the committee in the future and provide another update. She also encouraged people who are having any benefit-related problems to contact Employee Benefits for assistance at 4-UOHR (8647).

VI). Professor Konstan welcomed Nancy Sims, copyright program librarian, and introduced the last agenda item, faculty rights to intellectual property and software. Software, explained Professor Konstan, is complicated legally because it is a writing or fixation of creative ideas into a fixed form that is protected by copyright law, but it also, in many cases, encodes inventions under US patent law that can prevent people from doing something whether they copy the software or not. Within the context of the University, this issue becomes particularly tricky because the University has a long history of asserting by policy that the copyright of most work, particularly scholarly and academic work, are retained by the author.

Ms. Sims noted that the challenge of the law as it relates to software is twofold, 1) software is eligible for copyright in most circumstances and 2) software is eligible for patent in some circumstances. Theoretically, these do not overlap and the legal theory is that they are two separate regimes for two different kinds of products. Two University policies have jurisdiction in this matter:

1. Commercialization of Intellectual Property Rights - egents.umn.edu/sites/default/files/policies/Commercialization_IP.pdf
2. Copyright - http://regents.umn.edu/sites/default/files/policies/Copyright.pdf

The basic rule of law, stated Ms. Sims, is that employers own the copyright in things that their employees create during the course of their employment. The University policy, however, on things that employees create stipulates that scholarship belongs to scholars. Faculty and faculty-like employees own their scholarship. Unquestionably, software is scholarship in many different disciplines. Software is also eligible for patent. The University's Commercialization of Intellectual Property Rights policy says that the University owns inventions that people invent in the course of their employment. Generally, this means that the University has a right of first refusal for commercial development. If the University chooses to develop an invention, the inventor would get a cut of the proceeds, but, if the University elects not develop an invention, it would usually disclaim all rights back to the inventor.

The committee that Provost Hanson and Vice President Herman convened to look at the issue of faculty rights to intellectual property and software did not propose any changes to the current University policies, but had suggestions for clarifying the policies. Ms. Sims then read the clarification language for the Copyright Policy that was proposed by the committee: "Faculty members and University employees with faculty-like appointments hold the copyright in software that they develop in the course of or within the scope of their University employment in that it is an academic work. However, under the Commercialization of Intellectual Property Rights Policy, the University claims ownership of the patent rights in all software developed at the University, including software that is an academic work."

In addition to clarifying existing policies, noted Ms. Sims, the committee also looked at how different situations were handled, and learned that the outcome often depended on whom the individual contacted first; different answers from different offices at the University.

In response to a question, Ms. Sims clarified that faculty and faculty-like employees automatically own the copyright for whatever they create at the moment it is created. Put differently, copyright automatically comes into exist when the work is created. This is how the law has worked since 1978. Prior to 1978, an author would have had to register for a copyright.

What is the "test" for invention and when does scholarship slide into the inventive realm, asked a member? When Greg Brown from the Office of the General Counsel (OGC) attended a previous SCFA meeting, he was unable to answer this question when it was raised in the context of MOOCs versus textbooks. Ms. Sims stated that this is likely because there is not a clear line to be drawn in this example. Things that are clearly inventions, and are not copyrightable include, for example, new drug formulations, some types of genetic materials, machines/devices. Software, on the other hand, is not as clear-cut and presents challenges. In the case of MOOCs, which are created with input/ contributions from designers and faculty, the patentable and copyrightable subject material often simply cannot be pulled apart.

Professor Konstan noted that in practice nearly any piece of software someone creates that is original is probably patentable. Fortunately, most of those pieces of software have little value and are not of concern. He added that most issues for the University and faculty involve copyright, and over the past few years an increasing number of faculty have decided to make their scholarship open source. As long as faculty members do not use an open source license that gives away their patent rights, they have the right to decide if they want to let people copy/use it under conditions that they share back their work. Ms. Sims noted that the Office for Technology Commercialization is interested in helping faculty open license their work if the creators are interested in doing so.

Ms. Sims noted that the Bayh Dole Act (also known as the Patent and Trademark Law Amendments Act), is legislation that deals with intellectual property arising from federal government-funded research, and has had a significant impact on higher education. Prior to the passage of this law, federal research funding contracts and grants obligated inventors to assign inventions they made using federal funding to the federal government. After the Bayh Dole Act was passed, universities, small businesses and non-profits were allowed/encouraged to pursue ownership of an invention in preference to the government. The logic behind this legislation was that patents are the best way to get technology out of the research lab and into the real world. Conventional wisdom related to this premise has since evolved and patents are no longer thought to be the only best option.

Another recommendation by the committee looking at faculty rights to intellectual property and software, stated Ms. Sims, was to have the institution be more coordinated in its communications concerning licensing and commercialization, particularly in situations where 1) the University may own the patent rights, 2) when a creator wants to commercially exploit something they own, and 3) for things where the creator is interested in disseminating it via a different path.

Before wrapping up the discussion, Professor Konstan pointed out that the presumption is that faculty write a lot of software; however, the reality is that faculty have students who write a lot of software. If these students are not employees of the University, they would own the copyright and any other things that they create as far as rights into their creation. Ms. Sims stated that whether an individual is an employee of the University or not has major implications in terms of who owns what. For the most part, employment is required before the University can own anything. However, policies around ownership of patents in works created by students have been under review lately.

Professor Konstan thanked Ms. Sims and members of the committee for a good discussion.

VII). Hearing no further business, Professor Konstan adjourned the meeting.

Renee Dempsey, University Senate